

COMMONWEALTH OF PENNSYLVANIA )

vs. )

OTN: K045369-2

CHARLES BROWN, )

Defendant. )

H E A R I N G

held at Monroeville, PA, before the Honorable

Walter Luniewski, on December 7, 2004, beginning at the

hour of 1:30 o'clock before Phyllis M. Machel, a

Professional Court Reporter, in and for the said County

of Allegheny.

A P P E A R A N C E S

FOR THE COMMONWEALTH:

Janet Necessary, Esq.

Assistant District Attorney

303 Courthouse

Pittsburgh, PA 15219

FOR THE DEFENDANT:

Robert DelGreco, Esq.

Dickie, McCamey & Chilcote

2 PPG Place

Pittsburgh, PA 15222



I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
FAITH ALLEN	8	13		

1 THE COURT: This is the Commonwealth vs.  
2 Charles Brown.

3 Janet Necessary, are you going to make an  
4 opening?

5 MS. NECESSARY: No, Your Honor.

6 MR. DELGRECO: Your Honor, before we begin.  
7 I would like to address a matter concerning both  
8 the admissibility as well as a potential witness'  
9 rights.

10 Judge, as you know from the sidebar, both  
11 the District Attorney and I agreed to allow this  
12 Court to review the tape at its leisure because  
13 of its length and render a verdict relative to  
14 a prima facie case after the hearing.

15 The District Attorney's office was kind  
16 enough to allow me to view this tape. In doing  
17 so, it is apparent to me, and, of course, I'm  
18 not the Tryer of Fact, but it is apparent to me  
19 that what has been receptive on this tape is  
20 oral communication.

21 It has also come to my attention that this  
22 tape has been disclosed to individuals over a  
23 three month period of time, prior to giving it  
24 to the police, and quote, the contents of it  
25 were used.

1                   Section 5703 of the Crimes Code specifically  
2 makes it a felony for, one, intercept oral  
3 communications, two, to disclose, or, three, to  
4 intentionally use.

5                   Additionally, in our information suggests  
6 that this hiding of this recorder and the taping  
7 of this event was done, at least in concert with  
8 another, which in propensity brings to mind a  
9 conspiracy.

10                  Of course, I intend to ask the witness  
11 whether or not she has been immunized for these  
12 matters, but I bring it to the Court's attention  
13 because, to the extent that the audio portion of  
14 this tape was on, and to the extent that it was  
15 disclosed or used, or that she did this in  
16 concert, I would suggest to this Court that she  
17 certainly would be incriminating herself and  
18 might possibly be exposed to criminality,  
19 depending upon the discussion with the District  
20 Attorney's office. I certainly would intend  
21 to pursue that to the extent that I am able.

22                  THE COURT: Thank you.

23                  MS. NECESSARY: Your Honor, the Common-  
24 wealth is of the opinion that this does not  
25 violate the Wirstap Act and we're offering it

1 for the video content only, and I think that  
2 would be a matter for suppression prior to  
3 trial if this case is held for court.

4 MR. DELGRECO: Judge, if I may?

5 Janet, is it your proffer that what the  
6 Judge will hear, will have the video person  
7 only?

8 MS. NECESSARY: I think that it will be  
9 pretty much what you and I have viewed, which  
10 is fairly muffled and not --

11 THE COURT: If you so desire, I'll leave  
12 the audio off.

13 MR. DELGRECO: Well, no, Judge. Actually  
14 at some point, at the conclusion of this, I  
15 intend to argue -- the Commonwealth's theory in  
16 this case is that this woman was unconscious,  
17 and at some point I would like to offer for this  
18 Court's consideration, whether or not this Court  
19 can come to that legal opinion in light of not  
20 only what they observed in terms of whether it  
21 be facial expressions, but, also, whether or  
22 not, regardless of whether or not you can hear  
23 the content, whether there is conversation,  
24 whether or not it appears to be responsive  
25 conversation, which I think would bear on the

1           notion of whether or not this Court can  
2           conclude that she was, quote, unconscious  
3           during the whole of this.

4           So at this juncture, I'm not requesting  
5           the Court to be redacted or that the audio  
6           portion be excised, I'm merely requesting that  
7           to the extent that if there is an audio portion,  
8           that she testifys to that as well as the  
9           disclosure and/or use that it may be the  
10          District attorney is of the opinion that they  
11          don't hear anything on this tape, but my opinion  
12          differs with them to the extent that she testifys  
13          as to that.

14          My thought is that she needs to understand  
15          that those facts will be of record and can be  
16          used against her to the extent that someone wants  
17          to enforce the Wiretap Act.

18                 THE COURT: With understanding.

19                 MS. NECESSARY: We're prepared to proceed,  
20                 Your Honor.

21                 (Whereupon, the witnesses were first duly sworn.)

22                 THE COURT: I'd ask that you speak up when  
23                 you're testifying, and also if you would, please,  
24                 wait until the question is completed before you  
25                 begin to answer it.

1 MS. NECESSARY: Your Honor, do we need to  
2 do any preliminaries? I don't know if the  
3 complaint has been read --

4 MR. DELGRECO: Waive the reading and plead  
5 not guilty.

6 DIRECT EXAMINATION

7 BY MS. NECESSARY:

8 Q Would you state your name, please and spell your last  
9 name?

10 A Faith allen, a-l-l-e-n.

11 Q You have to keep your voice up so that the Judge can  
12 hear you because he's the one that has to hear you.

13 How old are you, Ms. Allen?

14 A Twenty-eight.

15 Q Ms. Allen, back earlier this year, did you attend a  
16 certain church?

17 A Yes.

18 Q What church did you attend?

19 A Potter's House Ministry.

20 Q I still need you to keep your voice up so that the  
21 Judge can hear you?

22 A Potter's House Ministry.

23 Q Where is that located?

24 A Braddock.

25 Q Did you meet the defendant there?



1 A Yes.

2 Q For the record, could you point to the defendant,  
3 please?

4 A Right there (indicating).

5 Q You're referring to the defendant, Charles Brown?

6 A Yes.

7 MS. NECESSARY: Your Honor, I'd ask that the  
8 record reflect that this witness has identified  
9 the defendant.

10 THE COURT: So noted.

11 BY MS. NECESSARY:

12 Q How did you know Mr. Brown, the defendant?

13 A Originally he was my covering pastor in the beginning.

14 Q You say that he was your covering pastor?

15 A Yes.

16 Q What does they mean?

17 A He just covers certain members of the congregation

18 Q He was responsible for certain members of the  
19 congregation?

20 A (Nod of the head in the affirmative).

21 Q You have to say yes or no. She can't take it down if  
22 you don't say.

23 A Yes.

24 Q At some point did the defendant counsel you as a  
25 pastor?

- 1 A Yes.
- 2 Q Approximately, when did this take place?
- 3 A After Easter, sometime after Easter, in April.
- 4 Q Of this year?
- 5 A Yes.
- 6 Q Where did the counselling take place?
- 7 A My home.
- 8 Q In your home?
- 9 A Yes.
- 10 Q Your home is in the town of Monroeville?
- 11 A Yes.
- 12 Q At some point, did the defendant employ any kind of
- 13 particular techniques in counselling you?
- 14 A There was a suggestion of hypnosis to be used.
- 15 Q Who suggested that?
- 16 A He had said that he was going to try different types
- 17 of therapy to work with me?
- 18 Q He suggested hypnosis
- 19 A Yes.
- 20 Q Did you agree to that?
- 21 A Yes.
- 22 Q At some point, did you become concerned about the
- 23 counselling sessions?
- 24 A Yes.
- 25 Q Why did you become concerned?

1 A I was having like dreams and things like that, so  
2 that's when I decided to set up the camera.

3 Q Did you remember what happened during the counselling  
4 sessions?

5 A No.

6 Q You didn't know what happened afterwards?

7 A No.

8 Q Were these sessions in which you where hypnotized?

9 A Yes.

10 Q You say that you set up a camera, a vidio camera?

11 A Yes.

12 Q Where did you set it up?

13 A In an entertainment center.

14 Q This would be in your house?

15 A Yes.

16 Q In what room in your house?

17 A The living room.

18 Q In particular, I draw your attention to June 3, 2004,  
19 did you have a scheduled counselling session that day?

20 A Yes.

21 Q Is that when you set up the video camera?

22 A Yes.

23 Q Did the defendant hypnotize you on that occasion?

24 A Yes.

25 Q Do you recall how he hypnotized you?

1 A He just. it was all just telling me to relax and he'd  
2 take me back to childhood areas, different ages.

3 Q When this counselling session was over, did you  
4 remember anything that happened during the session?

5 A No.

6 Q No?

7 A No.

8 Q All right.

9 Was the video tape running at the time that you  
10 had this counselling session?

11 A Yes.

12 Q Afterwards, did you see some of the things that occurred  
13 during the counselling session on the tape?

14 A Yes.

15 Q Were you aware of the things that were going on during  
16 the counselling session?

17 A No.

18 Q Were you aware that you were being touched in any of  
19 your sexual or intimate parts?

20 A No.

21 Q Did you agree or consent to be touched by the defendant  
22 on any of your sexual or intimate parts?

23 A No.

24 Q Did you give this tape to the police?

25 A Yes.

1 MS. NECESSARY: Thank you.

2 Cross examine.

3 CROSS EXAMINATION

4 BY MR. DELGRECO:

5 Q Ma'am, I want to be clear. The events that occurred  
6 on the June 3, 2004 tape that was eventually surrendered  
7 to the police, you have absolutely no recollection of  
8 any of that occurring, correct?

9 A Correct.

10 Q Can you tell me what time the events occurred?

11 A I believe that one was around 2 or 3, I'm not sure

12 Q Would that be daylight or nighttime, a.m. or p.m.?

13 A Daylight.

14 Q 2 or 3 o'clock.

15 A In the afternoon.

16 Q The events that are depicted in the June 3 tape, were  
17 you under the influence of alcohol during this?

18 A No.

19 Q Were you under the influence of any drugs or  
20 medications?

21 A I take prescription medication.

22 Q Does that medication tend to make you drowsy?

23 A No.

24 Q Has it ever effected your ability to think clearly?

25 A No.

1 Q Has it ever effected your ability to remember things  
2 that happened while you were on the medication?

3 A No.

4 Q You obviously watched the tape after the recording, is  
5 that correct?

6 A Parts of it.

7 Q Did you watch the tape in its entirety?

8 A No.

9 Q So that I understand the nature of this. You had no  
10 idea after you came out of this hypnotic trance, you  
11 had no idea what happened earlier, correct?

12 A No.

13 Q That's incorrect?

14 A No, that's correct.

15 Q When you watched the tape, did you observe yourself  
16 smiling on occasion?

17 A No, not on the parts that I saw I didn't.

18 Q Tell me why it is that you didn't watch the tape in  
19 its entirety?

20 A Because I couldn't deal with it.

21 Q How is it that you watched the tape

22 A I watched parts of the tape, I didn't watch the whole  
23 tape.

24 Q In the format of the tape, is it the smaller 8 milli-  
25 meter tape that I'm holding here.

1 A Yes.

2 Q How is it that you watched this? Do you watch it on  
3 the recorder itself, or do you have a device that  
4 allows you to watch it on television?

5 A No. I made a copy of it.

6 Q You made a copy of this tape onto a VHS tape?

7 A Yes.

8 Q Then you put the VHS and put it in a recorder and  
9 watch it on television?

10 A Correct.

11 Q When you watch it on television, is it your testimony  
12 that you didn't watch the entirety of it but only  
13 certain parts?

14 A Yes.

15 Q My question is, how is it that you determined what  
16 parts? Do you randomly fast forward?

17 A Yes.

18 Q When you randomly fast forwarded it, there were  
19 certain parts that you found to be offensive and  
20 inappropriate in Mr. Brown's conduct, would that be  
21 a correct statement?

22 A Correct.

23 Q Now let's go back to the original question.

24 At any time when you viewed the tape, did you  
25 observe yourself smiling?

- 1 A No.
- 2 Q Is it your testimony that you would not have smiled  
3 during the whole of this?
- 4 A I don't know whether I would have smiled. On the parts  
5 that I saw, I did not smile.
- 6 Q Did you observe yourself talking to Mr. Brown?
- 7 A No.
- 8 Q During the parts that you watched?
- 9 A No.
- 10 Q No talking?
- 11 A No.
- 12 Q Had you been hypnotized by Mr. Brown on prior  
13 occasions?
- 14 A Yes.
- 15 Q How many.
- 16 A Probably about 8 to 10 sessions.
- 17 Q On each of those prior occasions, were you in the same  
18 state as you were on this one, and that is by your  
19 testimony, unaware of what was occurring?
- 20 A Most of them, yes.
- 21 Q Were there ones where you were not?
- 22 A What?
- 23 Q Where you were conscious of what was occurring?
- 24 A During the hypnosis sessions?
- 25 Q Yes.



1 A No. I wasn't aware of the hypnosis sessions. There  
2 were sessions in the beginning that were not hypnosis  
3 sessions.

4 Q The hypnosis that you're talking about is Charles  
5 Brown asks you to relax, is that correct?

6 A Correct.

7 Q And asks you to think about your childhood, correct?

8 A Yes.

9 Q And as a result of that, you become unconscious, is  
10 that correct?

11 A Yes.

12 Q Does he use any props in this hypnosis?

13 A No.

14 Q You know how you see in the movies with a watch or a  
15 pendulum moving?

16 A No.

17 Q He simply tells you to relax and to think of your  
18 childhood and you become unconscious?

19 A Yes.

20 Q Now how is it that you come out of this hypnotic  
21 trance that you testified to?

22 A Usually he would bring me back, I don't really recall.  
23 I just remember sleeping for hours afterwards.

24 Q I think that you testified to that one of the reasons  
25 why you felt the need to record these sessions was that

1 you had had dreams, correct?

2 A Yes.

3 Q In those dreams you dreamt of inappropriate sexual  
4 conduct, is that correct?

5 A On one occasion, yes.

6 Q It was on one dream?

7 A One dream but I had had dreams prior to that, that  
8 were not really related, and I didn't know why I was  
9 having them.

10 Q You had dreams way before you met Charles Brown,  
11 correct?

12 A Correct, but not in the last few years, or year and a  
13 half.

14 Q The Affidavit of Probable Cause indicates that on a  
15 previous session, when you were out of it, you seemed  
16 to awaken and have some realization of what is occurring,  
17 is that true?

18 A No.

19 Q I'm reading from a statement that says, Allen stated  
20 that during one of these sessions in which hypnosis  
21 was used, and while she was, quote, out of it, she  
22 began to waken and thought Brown was touching her  
23 inappropriately but she wasn't sure. Is that a true  
24 statement?

25 A Yes.

1 Q And when was that session?

2 A That was the week before the June 3rd one that I made  
3 that statement.

4 Q At that point you believe that you had some level of  
5 consciousness to observe what I just read, is that  
6 correct?

7 A Correct.

8 Q Did you tell anybody about that?

9 A Yes.

10 Q Did you tell Charles about that?

11 A No.

12 Q Were you concerned at all about that in your relation-  
13 ship with Charles?

14 A At the time, yes

15 Q Can we agree that you continued to counsel with Charles?

16 A One session after that to record it.

17 Q To record it?

18 A Because I wasn't sure.

19 Q But it was after that session that you also spent the  
20 night with Charles Brown, isn't that true?

21 A No

22 Q May 27th?

23 A That's not true.

24 Q That is categorically not true?

25 A That is not true.

1 Q He did not sleep over your house that evening?

2 A No.

3 Q May 27th?

4 A No.

5 Q Did you address your concerns with Charles Brown after  
6 the session where you woke out of it and observed  
7 inappropriate conduct?

8 A No.

9 Q Did you address it with the hierarchy at Potter's  
10 House?

11 A Yes.

12 Q Who is it that you told?

13 A One of the other pastors who then took it to the  
14 bishop.

15 Q So it is your testimony that before June 3rd of 2004,  
16 Potter's House was on notice that Charles Brown was  
17 hypnotizing you, and that during the hypnotic  
18 sessions, was engaging in inappropriate sexual  
19 conduct?

20 A Right.

21 Q Did you tell any of his family?

22 A Yes.

23 Q Who was that?

24 A His sister-in-law.

25 Q What is her name?

1 A Tiffany.

2 Q You, of course, know his wife and in-laws, correct?

3 A Yes.

4 Q It would be a fair characterization to say that  
5 they're friends of yours?

6 A They were more like family, yes

7 Q You spent holidays at their home?

8 A Yes. Right.

9 Q Did you tell any of them, prior to June 3, 2004,  
10 about this notion of either dreams of inappropriate  
11 contact, or the fact that you were awakened out of  
12 a hypnotic trance and made an observation?

13 A No.

14 Q Have you ever been hypnotized by any other  
15 individuals?

16 A No.

17 MS. NECESSARY: I think that's irrelevant,  
18 Your Honor.

19 THE COURT: Asked and answered.

20 BY MR. DELGRECO:

21 Q Do you have any knowledge of Charles Brown hypnotizing  
22 any other people, that being not yourself?

23 A No.

24 Q In all prior occasions, you lapsed into this state of  
25 unconsciousness, is that your testimony?

1 A Yes

2 Q Did you ever tape any other sessions

3 A No.

4 Q Did you ever give anybody else permission to tape the  
5 other sessions?

6 A No. I never wanted them taped.

7 Q I'm not saying whether or not you wanted them to, did  
8 you give people permission to tape them?

9 A No.

10 Q Did somebody aid you in the planning, in the placement  
11 of this recorder?

12 MS. NECESSARY: Your Honor, I'd object.

13 That's irrelevant also.

14 THE COURT: Sustained.

15 BY MR. DELGRECO:

16 Q You said that you placed the recorder in the enter-  
17 tainment center, is that correct?

18 A Correct.

19 Q From my view of the tape, it is trained on a limited  
20 area of the couch, is that correct?

21 A Correct.

22 Q Why was that placed there?

23 A That is usually where we sit for the sessions.

24 Q And that's where the sessions began?

25 A Yes.

1 Q And is that where the sessions ended?

2 A Yes.

3 Q The tape that I observed is approximately 45 to 50  
4 minutes, is that your recollection?

5 A Yes.

6 Q How long was the session that day?

7 A I have no idea.

8 Q You just have no recollection of that whatsoever?

9 A No. I would sleep afterwards.

10 Q When is it that you first saw the events depicted in  
11 the June 3, 2004 tape?

12 A I saw them on June 3rd.

13 Q After Charles left, you saw what was depicted on that  
14 tape?

15 A Yes.

16 Q If I understand your testimony, you didn't see it in  
17 its entirety, correct?

18 A Correct.

19 Q You saw portions that were clear to you that you had  
20 been touched inappropriately, is that correct?

21 A Correct.

22 Q You were unconscious at the time, correct?

23 A Correct.

24 Q There's no doubt in your mind that those facts are  
25 true?

1 A Correct.

2 Q How did the tape recording start?

3 A It was on a timer.

4 Q How is it that you determined the time that the  
5 recorder would start?

6 A Because he told me what time he would be there, and I  
7 know how long he would be there at least an hour  
8 before I would start feeling tired, so I set a timer  
9 so that the tape wouldn't run out.

10 Q For an hour?

11 A Correct.

12 Q Do I understand it took an hour for you to lapse into  
13 this hypnotic trance?

14 A Correct.

15 Q During that time, what he is telling you to do is simply  
16 to relax?

17 A Yes.

18 Q Not that you fell asleep, correct, but that you were in  
19 a trance?

20 A It felt like I was asleep.

21 Q The tape ends by what means or device?

22 A I think that the tape ran out or the timer.

23 Q You had a device on your recorder to start the tape?

24 A Correct.

25 Q And it would end when there was no longer any tape?



1 A Correct.

2 Q Does the tape have an audio portion to it?

3 A Yes.

4 Q Can we agree that the audio portion was on the tape?

5 In other words, if someone were to record what is going  
6 on here, they would not only see me moving my lips and  
7 hands, but they would hear me asking the questions?

8 A No. The audio part was covered up.

9 Q When you say, covered up, there was something pushed  
10 against the microphone aspect of it?

11 A Yes. You could not hear a sound.

12 Q Your intention was to muffle the sound, is that correct?

13 A It was not my intention, it just happened because I was  
14 hiding the video camera.

15 Q How would that advance the purpose of hearing sound,  
16 whether or not the video camera was --

17 A Because the item that I put around the lense covered  
18 up the microphone and I didn't realize that.

19 Q Was it your intention to both video tape and record the  
20 audio portion of this episode?

21 MS. NECESSARY: I'm going to object, Your

22 Honor, that's not relevant.

23 THE COURT: Sustained.

24 BY MR. DELGRECO:

25 Q So that I'm clear, the recorder doesn't have a device

1           which would permit you to not record the audio portion,  
2           is that correct, like a switch?

3           A     I don't know. It was not my recorder.

4           Q     But what you did is, in order to conceal this  
5           recording you only had the lense sticking out of the  
6           entertainment center, is that correct?

7           A     Correct.

8           Q     In doing so, the microphone or the receptor for the  
9           audio portion was covered with whatever it was that  
10          you needed to do to cover it?

11          A     Correct.

12          Q     Did you, on the portions of the tape that you listened  
13          to, did you hear, and I'm not talking about the actual  
14          content, but do you hear talking between you and  
15          Charles?

16          A     No.

17          Q     Of course, you can't say whether or not there was  
18          talking because you have absolutely no recollection of  
19          that, correct?

20          A     Correct.

21          Q     Did your tape have anything on it that would record  
22          the time as it was recording?

23          A     I don't know.

24          Q     How about a counter to show the length of the tape?

25          A     It's possible. I don't know.

1 Q The tape that you watched, do you have a recollection  
2 now as to whether either of those things were there.  
3 that is either a counter or the date and time embedded?

4 A I don't know.

5 Q This occurred on June 3, 2004, correct?

6 A Correct.

7 Q I think by your testimony on June 3, 2004 you observed  
8 the tape, or at least portions of it, and came to the  
9 independent conclusion that Charles Brown touched you  
10 inappropriately and sexually while you were unconscious,  
11 correct?

12 A Correct.

13 Q With whom did you share that tape?

14 MS. NECESSARY: I'm going to object, Your  
15 Honor. I think that's beyond the scope.

16 MR. DELGRECO: Well, Judge, this is the  
17 portion that I spoke to the Court previously.  
18 She has not been mirandized and it's the district  
19 attorney's opinion that it does not violate the  
20 wire tape act. Of course, the Court can listen  
21 and view the tape as best as it wants.

22 In my humble opinion, I heard conversation.  
23 not content, conversation, which would be  
24 consistent with the muffling of it. Beyond that,  
25 the Wire Tape Act only prohibits the recording

of oral communications but also its dissemination and use.

And to the extent that this individual took this tape on June 3rd, remember she doesn't bring it to the police until September, and so during the months of July and August is disseminating this tape to other individuals, I think it is very relevant for a number of reasons, including the aspect of unconsciousness, because she's also testified, I knew that I was violated on June 3, 2004, and I think that I can explore, then why is it that the police don't get it until September 9, 2004?

THE COURT: I don't totally disagree with you, but I think that in view of the fact that she was not mirandized, and that this would go to the corpus delicti, which, unless you're going to file the charge, I think it would be inappropriate for her to answer this question at this time.

MR. DELGRECO: Because it may tend to incriminate her?

THE COURT: Yes.

MR. DELGRECO: Under these circumstances, Judge, I'd like the Court to consider striking the

1 whole of her previous testimony because I have  
2 a right to cross examine her, and to the extent  
3 that she's either invoking her 5th Amendment rights,  
4 or is not being permitted to testify, I think --

5 THE COURT: I don't disagree with you, but  
6 we're looking at a prima facie point here, and  
7 I think that your question would go beyond prima  
8 facie, not to inhibit the initial opening  
9 statements that you did characterize.

10 BY MR. DELGRECO:

11 Q Were copies of this tape given to other people?

12 MS. NECESSARY: I'm going to object. I'd  
13 make the same objection. I don't think that  
14 goes to a prima facie case. Counsel will get  
15 those matters in discovery.

16 THE COURT: Sustained.

17 BY MR. DELGRECO:

18 Q The Affidavit of Probable Cause indicates that on  
19 September 9, 2004 Detective Turkula was contacted  
20 by you and you said that you were sexual assaulted,  
21 is that an accurate statement?

22 A Correct.

23 Q Why is it that from June 8, 2004 until September 9,  
24 2004 the contents of this tape were not given to the  
25 police?

1 MS. NECESSARY: Your Honor, I'm going to  
 2 object. Again, that's beyond the scope of  
 3 direct. It does not go to a prima facie case  
 4 when she reported this to the police.

5 THE COURT: Overruled. Go ahead and answer  
 6 the question.

7 THE WITNESS: What was the question?

8 BY MR. DELGRECO:

9 Q Let me ask you in shorter questions.

10 Can we agree that on June 3, 2004 the tape was  
 11 produced?

12 A Correct.

13 q Can we agree September, that on September 9, 2004,  
 14 was the first time that you contacted the police  
 15 relative to this tape?

16 A Correct.

17 Q Can we also agree as testified previously, that in  
 18 knew of the events depicted in the tape, way back on  
 19 June 3, 2004?

20 A Correct.

21 Q And that you also knew those events to be in your  
 22 mind criminal in nature inasmuch as they depicted,  
 23 as far as you were concerned, inappropriate sexual  
 24 conduct?

25 A That's correct.

1 Q The question is, why then the lapse between June 3rd  
2 and September 9th in reportin gthis matter to the  
3 police?

4 A I had a really hard time dealing with it at first,  
5 and I didn't want to go to the police at first, and  
6 I tried to resolve it in the church first.

7 Q How is it that you attempted that resolution

8 A I went to the pastor, she went to the bishop, and they  
9 were very supportive in the beginning.

10 Q In fact, if I understand your previous testimony, you  
11 went to the bishop and the pastor even before  
12 June 3, 2004, correct?

13 A No.

14 Q Since this incident, since June 3, 2004, have you had  
15 the occasion to have any other counselling sessions  
16 with Mr. Brown?

17 A Before June 3rd?

18 Q No, after June 3rd?

19 A No.

20 Q Did you have any occasion to have any type of relation-  
21 ship with him?

22 A No.

23 Q No conversation?

24 A I called him to get one of my house keys back and that  
25 was it.

1 Q No E-mails?

2 A No.

3 Q Prior to June 3rd, that is before June 3, 2004, we can  
4 agree there was substantial interaction with Mr. Brown,  
5 correct?

6 A Correct.

7 Q Which also included E-mails?

8 A Correct.

9 THE COURT: That's all that I have.

10 Thank you.

11 MS. NECESSARY: That's all that I have.

12 Your Honor, I have, and perhaps counsel  
13 will stipulate, I have a copy of the tape, which  
14 was made from the item, the tape that Ms. Allen  
15 identified. Can we agree that this is an  
16 accurate copy of the tape?

17 I would make this Commonwealth Exhibit  
18 Number 1.

19 MR. DELGRECO: If that's what you're telling  
20 me, we can agree.

21 judge, I would only ask that the original  
22 tape be retained to the extent that I can view  
23 it on some other device.

24 MS. NECESSARY: Sure. I think that would  
25 have to be in an actual video camera.



1           So. I would offer at this time, Commonwealth's  
2 Exhibit Number 1, the tape.

3           And that would concluded the Commonwealth's  
4 testimony, other than the viewing of the evidence.

5           THE COURT: Any arguments at this time,  
6 Mr. DelGreco?

7           MR. DELGRECO: Thank you, Judge.

8           Of course it's a little peculiar to be  
9 arguing as a result of evidence that hasn't been  
10 viewed by the Court, but I would ask this Court  
11 to consider the nature of the testimony while  
12 viewing the tape and consider that the Common-  
13 wealth's theory for this Court, is not that this  
14 is forceful, it's not that it wasn't given  
15 consent, but that the legislature determines  
16 inappropriate that if someone is unconscious,  
17 they are unable to give consent. And I would  
18 suggest to this Court that a fair viewing of  
19 this tape, what this Court will have to conclude  
20 as a *prima facie* nature, is one, that this  
21 individual, by talking to the witness in soft  
22 tones and asks her to go back to her childhood,  
23 put her in a hypnotic trance, and that what  
24 you'll observe is a hypnotic trance to the  
25 extent that she is unconscious, as opposed to

1 something else, whether it be role playing,  
2 whatever else it is, the conclusion this Court  
3 has to reach is that.

4 I would suggest to this Court that a fair  
5 viewing of this tape must show voluntary  
6 movement on this individual, will show, although  
7 not the content, what appears to be conversation  
8 and receptiveness between the two, will show a  
9 smiling face on a couple of occasions. And I  
10 think will not permit this court to conclude that  
11 what we have here is a woman who is in a hypnotic  
12 trance to the extent that she is unconscious,  
13 and, therefore, having my client culpable for  
14 the events that are portrayed on the tape.

15 MS. NECESSARY: Your Honor, I would point  
16 out to the Court that not only does the statute  
17 forbid indecent contact while a person's  
18 unconscious, also when the defendant knew that  
19 the complainant was unaware that the indecent  
20 contact was occurring, and both of those states  
21 cover a wide range of activity and states of  
22 unawareness.

23 And, I think that the Court, when you view  
24 the tape, will see that throughout, the victim's  
25 demeanor and appearance are very consistent.

1 She is very much out of it and very much helpless  
2 to prevent what was happening to her, and, indeed,  
3 unaware what was happening to her.

4 THE COURT: Thank you both.

5 After viewing the tape, I will be notifying  
6 all of the parties on my decision.

7 Court is adjourned.  
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C E R T I F I C A T E

I, Phyllis M. Machel, a Notary Public - Court Reporter for the Commonwealth of Pennsylvania, do hereby certify that the said hearing was taken at the time and place stated herein; and that the said hearing was recorded stenographically by me and then reduced to transcript form under my direction, and constitutes a true record to the best of my ability and belief of the testimony given at the time of the hearing.

Phyllis M. Machel

Phyllis M. Machel

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

COMMONWEALTH OF  
PENNSYLVANIA,

vs

CHARLES NATHANIEL  
BROWN,

Defendant.

CRIMINAL DIVISION

No. 200500569

No. 200507472

PROCEEDINGS:  
Nonjury Trial

Date:  
February 2 & 3, 2006

Filed by:  
Mary Martin, RPR

HELD BEFORE:  
The Honorable  
Kevin G. Sasinoski

COUNSEL PRESENT:

For the Commonwealth:  
Janet R. Necessary, DDA

For the Defendant:  
Arthur Ettinger, PD

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P-R-O-C-E-E-D-I-N-G-S

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3 (Thereupon, the following discussion  
4 was held at side bar.)

5 MS. NECESSARY: Janet Necessary. We  
6 have a little problem, Your Honor.  
7 Mr. Ettinger has informed me that there was  
8 a report that he did not receive in  
9 discovery, and I delivered him -- he had  
10 received it. We just made him a copy of  
11 it.

12 He has found some evidence in there of  
13 a possible witness he believes will be --  
14 would be exculpatory. I agree that it -- I  
15 know it might be well someone that he would  
16 want to call.

17 So we do not know if the witness is  
18 available. I'm going to try to get in  
19 touch with this witness, perhaps right now.

20 THE COURT: Okay.

21 MS. NECESSARY: So we really didn't  
22 want to start at this point.

23 THE COURT: We will hold off, assuming  
24 they can get the witness here.

25 How long will it take you to interview

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1 the witness?

2 MR. ETTINGER: It should be quite  
3 brief. If I may just add a couple items.  
4 I have -- I had a formal -- I had filed a  
5 formal motion for discovery in this case,  
6 and when we informally discussed it, I had  
7 said to Ms. Necessary that I had a very  
8 brief police report.

9 In fact, all I had was an affidavit of  
10 probable cause. And walking past her  
11 today, I saw there was, in fact, a two-page  
12 addendum which contains a paragraph that  
13 goes right to one of the lengths that  
14 Defense -- in the Defense, contains  
15 exculpatory information.

16 Had I had it prior to trial, I'd have  
17 subpoenaed this witness to be here.

18 THE COURT: So you have more witnesses  
19 that you need?

20 MR. ETTINGER: Just this one.

21 THE COURT: Just that one that you are  
22 talking about.

23 Okay, well, has all the discovery been  
24 turned over?

25 MS. NECESSARY: I had thought it had



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1                   been. There wasn't a whole lot. That's  
2                   why I thought he had that one page.

3                   We should have sat down and gone  
4                   through it, but we didn't.

5                   THE COURT: Why don't you do that  
6                   until -- we will just continue it in the  
7                   afternoon. Come back about 1:30.

8                   We should -- if you have your witness  
9                   here, then we will go ahead. If not, we  
10                  will roll it until tomorrow -- or not.

11                 Tomorrow is pretrial, but are you both  
12                 available tomorrow?

13                 MS. NECESSARY: I can be, Your Honor.

14                 My witness has come in -- my victim  
15                 has come in from out of town. That's why  
16                 it would be better to go ahead, get  
17                 started.

18                 If not, you know, if this witness that  
19                 he wants is not available.

20                 THE COURT: What I'm suggesting, then,  
21                 is maybe we can start a trial today. Then  
22                 get the witness in and continue back on  
23                 Monday or Tuesday.

24                 MR. ETTINGER: That's a possibility.  
25                 I have a number of subpoenaed witnesses

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1 myself. However, I don't know their  
2 availability. I don't know if they're in  
3 from --

4 THE COURT: Any witness subpoenaed,  
5 I'll send the sheriff to go out to get.

6 MR. ETTINGER: If they are subpoenaed,  
7 it will continue.

8 THE COURT: Yes.

9 They're subpoenaed for the trial, not  
10 just the day. I will make that clear.  
11 I'll place it on the record.

12 Okay. Do you want to start now or  
13 wait until 1:30?

14 MS. NECESSARY: Let me go see if I can  
15 get the witness, if he's living out of  
16 town.

17 THE COURT: It is 20 to 12:00. You do  
18 that. Take the time to go out, get the  
19 witness, then what we will do is start this  
20 afternoon.

21 MS. NECESSARY: All right. Thank you.

22 (Thereupon, the discussion held at  
23 side bar concluded and a recess was taken.)

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A F T E R N O O N S E S S I O N

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3 THE COURT: Okay, is everything  
4 working?

5 MS. NECESSARY: I believe so,  
6 Your Honor. I think we are ready to go.

7 THE COURT: Are you ready to proceed?  
8 Will you bring your client forward,  
9 please.

10 MR. ETTINGER: Yes, Your Honor.

11 THE COURT: This is Commonwealth  
12 versus Charles Brown.

13 (Thereupon, the Defendant stands  
14 before the Court.)

15 THE COURT: Mr. Ettinger, you are here  
16 for the Defendant and --

17 MR. ETTINGER: Art Ettinger.

18 THE COURT: And, Ms. Necessary, you  
19 are here for the Commonwealth.

20 Are you Charles Brown?

21 MR. ETTINGER: Yes.

22 THE COURT: You are charged at  
23 200500569. It is alleged that on or about  
24 June the 3rd of 2004, in Allegheny County,  
25 that you committed an offense of indecent

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1 assault.

2 Do you understand the nature of these  
3 charges, as well as the maximum penalty?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand that  
6 you have a right to have a jury trial in  
7 this case?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Do you understand the  
10 process by which you would participate in  
11 selecting a jury?

12 THE DEFENDANT: Yes.

13 THE COURT: You would go to the third  
14 floor of this building, along with your  
15 lawyer and Ms. Necessary, and you would  
16 participate in and pick a panel of 35  
17 prospective jurors assembled. You would  
18 have up to five peremptory challenges.

19 Since you're charged with a  
20 misdemeanor in this case, the preemptory  
21 challenge is one way in which you could  
22 strike a prospective juror from being  
23 seated, not have to give any reason  
24 whatsoever for striking that juror.

25 You would also have an unlimited

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1 number of challenges for cause, a cause for  
2 any reason why a particular prospective  
3 juror would not be able to be fair or  
4 impartial in your case.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Knowing that, in a jury  
8 trial also, the Commonwealth would have the  
9 burden, as it does in a nonjury trial, to  
10 prove you guilty beyond a reasonable doubt.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: And in a jury trial, all  
14 12 jurors who are finally selected to hear  
15 the case would have to vote for your guilt  
16 before a verdict of guilty, in fact, could  
17 be entered in this case.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Has anybody influenced you  
21 in any way to give up your right to a jury  
22 trial and instead proceed nonjury?

23 THE DEFENDANT: No.

24 THE COURT: Did you have any drugs or  
25 medication or any alcohol in the last

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several days that would cause you not to understand today's proceedings?

THE DEFENDANT: No.

THE COURT: Have you ever suffered from any mental or physical infirmity that would cause you not to understand today's proceedings?

THE DEFENDANT: No.

THE COURT: Has anybody threatened you in any way to give up your right to a jury trial?

THE DEFENDANT: No.

THE COURT: In a nonjury trial, or bench trial before the Court, in addition to ruling on evidentiary matters, procedural issues and all other matters, it will be my responsibility to make a determination likewise as to whether the Commonwealth has proven its burden or met its burden of proving you guilty beyond a reasonable doubt, or a verdict of guilty could be entered in this case.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And are you satisfied with

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1 your lawyer; Mr. Ettinger?

2 THE DEFENDANT: Yes.

3 THE COURT: Did you answer the  
4 questions contained in your colloquy form  
5 truthfully?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you sign it?

8 THE DEFENDANT: Yes.

9 THE COURT: On the end, here.

10 Mr. Ettinger, are you satisfied that  
11 your client understands his constitutional  
12 right to have a jury trial in this case and  
13 that he's making a valid waiver of that  
14 right?

15 MR. ETTINGER: I am, Your Honor.

16 THE COURT: The Commonwealth likewise  
17 has a right to proceed in a jury trial in  
18 this case.

19 Does the Commonwealth wish to waive  
20 its right to a jury trial also?

21 MS. NECESSARY: Yes, we do,  
22 Your Honor.

23 THE COURT: Is there anything else  
24 that you would like to add to the colloquy  
25 that I have just conducted?

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1 MR. ETTINGER: Nothing, Your Honor.

2 MS. NECESSARY: No. Thank you,  
3 Your Honor.

4 THE COURT: I find that, Mr. Ettinger,  
5 you're effective in representing your  
6 client thus far.

7 I find that, Mr. Brown, you have made  
8 a knowing, intelligent and voluntary  
9 decision to waive your right to a jury  
10 trial in this case, and likewise, the  
11 Commonwealth of Pennsylvania has waived its  
12 right to have a jury trial, and accordingly  
13 your waiver will be accepted.

14 And are there any other pending  
15 pretrial motions, any other issues that  
16 need to be resolved?

17 MS. NECESSARY: No, Your Honor.

18 MR. ETTINGER: No, Your Honor, other  
19 than a request for sequestration and a  
20 request to make an opening statement.

21 THE COURT: Okay. You can have a seat  
22 at counsel table.

23 Any objection to sequestration?

24 MS. NECESSARY: No, Your Honor.

25 Detective Trkula will remain with me.



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1 THE COURT: Okay. All Commonwealth  
2 witnesses and all defense witnesses are  
3 ordered to be sequestered from the  
4 courtroom, and during the time period that  
5 you are sequestered, you're not to discuss  
6 any previous witness' testimony among  
7 yourselves, and you will be called  
8 individually to come into the courtroom, if  
9 called by either the Commonwealth or the  
10 Defense.

11 So any and all witnesses, if you  
12 would, you may please leave now. Just  
13 remain in the immediate area of the  
14 courtroom so we can call you at the  
15 appropriate times.

16 MR. ETTINGER: If, by agreement with  
17 the Commonwealth, I have a potential expert  
18 witness who will be arriving shortly, will  
19 he be permitted to remain in the room, as  
20 long as Your Honor has no objection to  
21 that?

22 THE COURT: You have an expert  
23 witness?

24 MR. ETTINGER: Your Honor, that is the  
25 side bar we did this morning, was in

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relation to the side bar.

The police report that I had just received today, that referenced an individual who the Commonwealth had sought their expertise in this matter previously. They are on their way.

THE COURT: All right. Any objection to that?

MS. NECESSARY: No, Your Honor. I suggested that, as a matter of fact, that he be able to view the videotape since he hasn't viewed it for awhile.

THE COURT: Okay. Was there a report prepared by the expert?

MS. NECESSARY: No. There was just a paragraph in a police report.

THE COURT: Okay. It is the Commonwealth's expert or the Defense's expert?

MR. ETTINGER: It is now going to be the Defense's expert, Your Honor.

THE COURT: Okay.

MR. ETTINGER: Would you like us to approach on this issue?

THE COURT: No.

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1 MS. NECESSARY: I understand that we  
2 had a side bar. I thought that I was just  
3 perhaps again under the misimpression that  
4 it was an eyewitness or a fact witness, not  
5 someone who was going to be called to be  
6 qualified as an expert.

7 If that's all, okay.

8 MR. ETTINGER: Thank you, Your Honor.

9 THE COURT: All right. Commonwealth  
10 may call its first witness, please.

11 MS. NECESSARY: Your Honor, I believe  
12 Mr. Ettinger wants to make an opening  
13 statement. In that case, the Commonwealth  
14 would make a very, very brief opening  
15 statement.

16 THE COURT: Okay.

17 MS. NECESSARY: Your Honor, the  
18 Commonwealth is going to present in this  
19 case witnesses, including the victim in  
20 this case, Faith Allen.

21 Ms. Allen joined a church called  
22 Potters House Ministry sometime in 2003.  
23 She became acquainted with the Defendant,  
24 who was a pastor, one of the pastors for  
25 the congregation of Potters House, and

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1 became friends with him and his family, and  
2 he also counseled her in a pastoral  
3 relationship.

4 Many of these sessions occurred in her  
5 home in Monroeville, and the sessions began  
6 in 2004, and at some point during the  
7 counseling sessions, the Defendant  
8 suggested that he hypnotize her, use  
9 hypnosis in order to do therapy or  
10 counseling with her.

11 And she agreed. Several -- a number  
12 of hypnosis sessions were done in her home,  
13 and after these sessions, Ms. Allen  
14 would -- she will, say, be very sleepy,  
15 sleep for several hours afterwards.

16 The Defendant would rouse her after  
17 the session. She would have no memory of  
18 what occurred during the session and did  
19 not know what had occurred while she was  
20 under the hypnosis.

21 She at some point became disturbed  
22 because she was having vivid dreams, and in  
23 some cases, she wasn't sure if it was real  
24 or a dream, which she thought she might  
25 have been touched inappropriately by the

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1 Defendant.

2 Because of her suspicions, Ms. Allen  
3 set up a video cassette recorder in her  
4 living room, trained on the living room  
5 sofa, was hidden and put behind glass in an  
6 entertainment center. She intended to  
7 videotape the next session with the  
8 Defendant.

9 Ms. Allen, when she learned the  
10 Defendant was coming over, she set the  
11 timer to come on somewhere around  
12 preemptory minutes after the Defendant was  
13 due to arrive, because it usually took her  
14 that long to lose consciousness and have no  
15 memory of what was going on.

16 After the session, it proceeded again.  
17 She had no memory of it. She was extremely  
18 sleepy and slept for some time afterwards.

19 When Ms. Allen viewed the videotape,  
20 she discovered that the Defendant was,  
21 during the videotape, touching her  
22 inappropriately and that she, herself,  
23 appeared to be unconscious, unaware of what  
24 was going on, and she did not remember  
25 anything about the session.

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Ms. Allen was very upset by this. She went to the church council first, to try to resolve this situation, and when it was not resolved, she decided to report it to the police, which she did so.

This incident that she videotaped occurred on June 3rd of 2004. She reported it to the police on September 9th of 2004. The police viewed the video, investigated, and then filed this charge.

That would be the brief outline, Your Honor, of the Commonwealth's case. We intend to present the testimony of the victim and show the videotape.

THE COURT: All right.

Mr. Etinger.

MR. ETTINGER: Thank you, Your Honor.

Very briefly, obviously I will not bore Your Honor with the recitation of burden of proof.

I know it's not commonplace to make an opening statement in a nonjury trial. I want to inform the fact-finder of the theory of the case without arguing the case. At this point, the evidence will

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1 show, as Ms. Necessary pointed out, that  
2 Faith Allen was a member of Potters House  
3 Ministries. The evidence will also show my  
4 client, Charles Brown, his day job was a  
5 reporter at the Tribune.

6 In addition to being a reporter at the  
7 Tribune, he acted as pastor at  
8 Potters House. One of his obligations was  
9 to counsel certain members.

10 The church is not licensed to do  
11 counseling, per se. They have other teams  
12 they use to assemble, colloquialism  
13 speaking, what people will say is  
14 council -- the evidence will show that  
15 eventually an improper relationship did  
16 develop between my client and Faith Allen,  
17 and the evidence will show, had one-on-one  
18 meetings with Faith Allen in her room  
19 against church policy, and an inappropriate  
20 relationship developed.

21 This relationship at times turned  
22 sexual. The evidence will show that, prior  
23 to this relationship turning sexual, my  
24 client, Charles Brown, would videotape the  
25 sessions, and whenever sexual-type

1 activities were going to occur, there was  
2 an agreement the camera would go off. They  
3 would turn the camera off. They would not  
4 have a tape running.

5 THE COURT: So you're saying that you  
6 have evidence that sessions, whatever you  
7 may want to call them, occurred where the  
8 Defendant, your client, and the victim in  
9 this case were videotaped?

10 MR. ETTINGER: Correct.

11 THE COURT: You have those videotapes?

12 MR. ETTINGER: I have one, Your Honor.

13 THE COURT: Okay. During sexual  
14 encounters, the tape, video camera,  
15 whatever it is, the device was turned off?

16 MR. ETTINGER: Correct.

17 THE COURT: Okay. Go ahead.

18 MR. ETTINGER: And the Commonwealth  
19 will present no evidence that my client has  
20 any background in hypnosis. They have no  
21 evidence to suggest that Charles Brown is a  
22 trained hypnotist.

23 In fact, the evidence will show, as  
24 part of the Commonwealth's investigation,  
25 they consulted an expert in hypnotism,



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1 Chief Robert Payne, to view the video, who,  
2 upon observing the video, did not believe  
3 that this was a video of someone under  
4 hypnosis.

5 The Commonwealth then proceeded to try  
6 to develop a theory that perhaps she was  
7 drugged and conducted a chemical testing,  
8 which was fruitless, did not show that she  
9 had any drugs in her system.

10 Between June 3rd, the date that  
11 Faith Allen videotaped the session,  
12 Your Honor, we will view in court today,  
13 and September 9th, she did not go to the  
14 police. Instead, she went to the various  
15 members of the church, some of whom are  
16 here to testify today.

17 One witness, Marie Johnson, will  
18 testify today, that while being shown the  
19 tape, Faith was giggling. Faith stated  
20 that the purpose of the tape was she was  
21 going to make Charles her boyfriend and  
22 that she -- if this didn't work out, she  
23 would prove on video that they were having  
24 a sexual relationship.

25 Contrary to other evidence that will

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1 be presented, Marie Johnson will tell you  
2 that Faith indicated that she remembered  
3 everything, or at least certain things from  
4 this session, that she was not fully under  
5 hypnosis.

6 Therefore, it can be argued that my  
7 client and Faith Allen had an improper  
8 relationship, but the evidence will show  
9 that my client is not guilty beyond a  
10 reasonable doubt of the crime charged.  
11 Thank you.

12 THE COURT: Thank you, Mr. Ettinger.  
13 Commonwealth may call its first  
14 witness.

15 MS. NECESSARY: Yes, Your Honor. The  
16 Commonwealth calls Faith Allen.

17 -----  
18 FAITH ALLEN,  
19 a witness herein, having first been duly sworn, was  
20 examined and testified as follows:

21 -----  
22 DIRECT EXAMINATION

23 BY MS. NECESSARY:

24 Q. Could you state your name, please. Spell your  
25 last name.

1 A. Faith Allen, A-l-l-e-n.

2 Q. All right. I'm going to ask you to keep your  
3 voice up, Ms. Allen, so that the Judge can hear  
4 you.

5 Okay, even though there is a  
6 microphone there, you have a very soft voice.

7 Can you tell us, how old are you,  
8 Ms. Allen?

9 A. 29.

10 Q. And back in 2004, where were you living?

11 A. In Monroeville.

12 Q. Did you have an apartment or house there?

13 A. Apartment.

14 Q. All right. And, Ms. Allen, at some point, you  
15 no longer lived in the Pittsburgh area; is that  
16 right?

17 A. Right.

18 Q. At some point, while you were living in  
19 Monroeville or living in the Pittsburgh area,  
20 did you have occasion to join a church?

21 A. Yes.

22 Q. What church did you join?

23 A. Potters House Ministries.

24 Q. Where is Potters House Ministries located?

25 A. In Braddock.

1 Q. In Braddock. All right.

2 Is this church, is this affiliated  
3 with any particular denomination; do you know?

4 A. No.

5 Q. Is it an independent church?

6 A. I think so.

7 Q. All right. Do you recall precisely when you  
8 would have joined the church?

9 A. February of 2003.

10 Q. Okay. Is that when you first started going  
11 there or when you joined?

12 A. I think that's when I first started going  
13 there.

14 Q. All right. Now, once you became a member of  
15 the congregation, did you have occasion to meet  
16 Charles Brown?

17 A. Yes.

18 Q. And was he a member of the church?

19 A. Yes.

20 Q. Did he have any other function in the church?

21 A. He was a pastor.

22 Q. He's a pastor.

23 For the record, is he present in court  
24 today?

25 A. Yes.

1 Q. Could you point to him, please.

2 A. Right there (indicating).

3 MS. NECESSARY: All right.

4 Commonwealth would ask the record to  
5 reflect this witness has identified the  
6 Defendant, Charles Brown.

7 THE COURT: The witness has identified  
8 the Defendant.

9 MS. NECESSARY: Thank you.

10 BY MS. NECESSARY:

11 Q. Now, did you become acquainted with Mr. Brown?

12 A. Yes.

13 Q. And with any members of his family?

14 A. Yes. They considered us their family.

15 Q. I'm sorry?

16 A. They considered me and my daughter their  
17 family.

18 Q. All right. Now, did you have any particular  
19 relationship with the Defendant?

20 A. He was just a brother/father figure to me.

21 Q. He was a brother/father figure.

22 All right. Did he perform any  
23 pastoral duties towards you?

24 A. He started counseling me for childhood issues.

25 Q. Now, approximately when did he begin to start

1 counseling you?

2 A. It was February the next year.

3 Q. All right. That would be 2004?

4 A. Right.

5 Q. All right. Now, did you choose him, or how did  
6 that come about?

7 A. He originally was my -- he was originally my  
8 covering pastor.

9 THE COURT: What does that mean?

10 I don't understand. He was  
11 originally --

12 MS. NECESSARY: Covering -- she said  
13 covering pastor.

14 THE COURT: The covering pastor.  
15 Explain it.

16 BY MS. NECESSARY:

17 Q. Explain to us what you mean.

18 A. Whatever your last name began with, you got  
19 assigned to a certain pastor.

20 Q. This was like according to the alphabet?

21 A. Right.

22 Q. Like A through L would be one person?

23 A. Right.

24 Q. All right. So he was originally, and then you  
25 switched to someone else?

1 A. Right.

2 Q. Okay. What about at the time that you began  
3 the counseling sessions with him?

4 A. My daughter and I already -- were already a  
5 part of his family. So he wasn't my covering  
6 pastor at that time.

7 Q. But he was counseling you?

8 A. Yes.

9 THE COURT: Hold on one second.

10 Did she say that the witness and her  
11 daughter were part of the Defendant's  
12 family? Is that what the testimony --

13 MS. NECESSARY: That's what she said.

14 BY MS. NECESSARY:

15 Q. What do you mean by that?

16 A. They considered my daughter and I their family.

17 Q. Okay. In other words, you were close with him  
18 and his family?

19 A. Right.

20 THE COURT: Well, did she live with  
21 the Defendant?

22 THE WITNESS: No.

23 MS. NECESSARY: No.

24 BY MS. NECESSARY:

25 Q. No, you didn't live with the Defendant?

-----

1 THE COURT: But you were close to him?

2 THE WITNESS: Right.

3 BY MS. NECESSARY:

4 Q. All right. Now, did -- when you would be  
5 counseled by the Defendant, where would these  
6 counseling sessions take place?

7 A. At my house.

8 Q. Okay. And was there a time when the counseling  
9 sessions took a different course or became  
10 different?

11 A. Yes.

12 Q. All right. And approximately when was that?

13 A. It was like the end of April, 1st of May.

14 Q. Okay. How did they become different?

15 A. I just started sleeping a lot after the  
16 session. I just became a little concerned,  
17 because I couldn't get a direct answer as to  
18 what was going on during the session.

19 Q. What I'm asking, what was different about the  
20 session?

21 A. He started using hypnosis, is what he called  
22 it.

23 Q. Now, was -- from when you first began  
24 counseling with the Defendant, did he use  
25 hypnosis?



1 A. No.

2 Q. Okay. So this was something that arose later  
3 on?

4 A. Right.

5 Q. Now, do you know approximately how many  
6 sessions involving hypnosis there were?

7 A. About eight or ten.

8 Q. Okay. Now, what was different about these  
9 sessions involving hypnosis?

10 A. I just would be really tired and sleep a lot  
11 afterwards.

12 Q. Did you know -- did you remember what was going  
13 on during the sessions?

14 A. I didn't really remember the sessions.

15 Q. All right. You didn't remember the sessions at  
16 all?

17 A. Not once the hypnosis is -- no.

18 Q. Okay. Now, did -- at the time that these  
19 hypnosis sessions began, did the Defendant  
20 explain to you what he was going to do?

21 A. Yes.

22 Q. What did he tell you he was going to do?

23 A. Just to take me back to a certain age in my  
24 childhood, to be able to deal with those  
25 issues.

-----

1 Q. How did he put you into the hypnotic state?

2 A. He usually would like just tell me to think  
3 about a certain age, whatever age he would  
4 pick.

5 Q. All right. Now, did he explain to you anything  
6 that was going to be going on during the  
7 hypnotic session?

8 A. No, just that he would take me back to a  
9 certain area of my life.

10 Q. And you did not remember any of these?

11 A. No.

12 Q. All right. Did you have any other problems or  
13 things that disturbed you once these hypnotic  
14 sessions began?

15 A. Sometimes I felt weird after the sessions.  
16 Then I started having dreams. I didn't -- I  
17 didn't know if they were real or not.

18 Q. All right. Did you take any action as a result  
19 of your misgivings or concerns?

20 A. I went to the church.

21 Q. All right. And did you do anything else in  
22 order to find out what was going on?

23 A. In the beginning, I just -- I first approached  
24 the bishop of the church, and I talked to them  
25 about it first, and then I went to the police

-----

1 and talked to someone there.

2 Q. I'm talking about before that.

3 What did you do to find out if -- find  
4 out what happened during the session, these  
5 sessions?

6 A. A friend of mine set up a video camera when I  
7 told her I was feeling uncomfortable.

8 Q. When did you set up the video camera?

9 A. It was June 3rd, I think.

10 Q. Okay, of 2004?

11 A. Yes.

12 Q. All right. Now, who was the person that helped  
13 you set up the video camera?

14 A. Candy.

15 Q. That was a friend of yours?

16 A. Yes. Candy Cogdale.

17 THE COURT: Candy Cogdale?

18 THE WITNESS: Uh-huh.

19 BY MS. NECESSARY:

20 Q. Was it her video camera?

21 A. Yes.

22 Q. How did you set up the camera; where did you  
23 set it up?

24 A. We set it up in my entertainment center in my  
25 living room.

1 Q. And this is what kind of an entertainment  
2 center?

3 A. A TV entertainment center. On the side, we had  
4 glass doors on the side. So we put it in and  
5 just put something stuffed in front of the  
6 door.

7 Q. So you set it up in the glass doors?

8 A. Yes.

9 Q. Did you disguise it in any way?

10 A. Yes.

11 Q. Did you know when the Defendant was next going  
12 to come over for a counseling session?

13 A. Yes.

14 Q. And is that when you set up the camera?

15 A. Yes.

16 Q. Now, did you set it up on any kind of a timing  
17 device or anything so it would be on?

18 A. Yes. Yes. I set it for a time, like an hour  
19 after the session would start, because I  
20 usually -- because I usually kept up with the  
21 time.

22 Q. All right. Why did you set it up for an hour  
23 after the session?

24 A. Because the sessions were really long  
25 sometimes. I didn't want the tape to run out.

-----

1 I knew that -- when I was starting getting  
2 tired, sometimes I would see the time.

3 Q. All right. Now, on the day that this occurred,  
4 did the Defendant tell you he was coming over,  
5 or did you ask him to come over?

6 A. He told me he was coming over and set up a  
7 scheduled time.

8 Q. All right. Now, when you would have these  
9 counseling sessions, the ones that you  
10 remembered, did the Defendant ever touch you  
11 intimately in any way?

12 A. No.

13 Q. What did he do during the ones that you  
14 remember, before the hypnosis occurred?

15 A. We would just talk. He would bring up certain  
16 issues in my childhood to talk about and give  
17 me like different assignments to do.

18 Q. Did he ever tell you during these sessions, the  
19 hypnotic sessions or before them, that there  
20 was going to be any touching?

21 A. No.

22 Q. All right. Now, did the Defendant arrive on  
23 June 3rd of 2004?

24 A. Yes.

25 Q. Now, let me ask you this, that day or any other

-----

1            day when the Defendant would be there, would  
2            you ever have anything to eat or drink?

3            A.    Yes.

4            Q.    What would you have?

5            A.    I usually drank Pepsi.

6            Q.    And was there any moving around, the Defendant  
7            ever move around, go anywhere in your  
8            apartment?

9            A.    He would go in the kitchen on his own or to the  
10           bathroom at times.

11           Q.    Now, on this particular day, do you remember  
12           anything about the counseling session?

13           A.    No.

14           Q.    Do you recall how long after what happened,  
15           when you went -- when it was over, what was the  
16           next thing you remember?

17           A.    I just, I remember waking up, and then I  
18           checked the tape, and then I left and took --  
19           went over to Candy's house.

20           Q.    Okay. So you got the tape, and did you look at  
21           this, at any of the tape?

22           A.    I looked at part of it.

23           Q.    And what did you, if anything, see on the tape?

24           A.    I just saw him fondling a couple parts, but  
25           that was all.

1 Q. All right. And did you know that he was doing  
2 this to you?

3 A. No.

4 Q. All right. Did you remember anything about  
5 that?

6 A. No.

7 Q. What was your reaction when you saw this  
8 happening?

9 A. I was shocked.

10 Q. All right. Had you ever given the Defendant  
11 permission to do anything like that to you?

12 A. No.

13 Q. During the sessions, did you anticipate that  
14 anything like that would be happening during  
15 the sessions?

16 A. No.

17 Q. All right. Did you do anything about this,  
18 report this to anyone, once you found out what  
19 was on the tape?

20 A. I first reported it to the church.

21 Q. All right, and at some point, did you report it  
22 to the police?

23 A. Yes.

24 Q. Okay. Do you recall about when you did that?

25 A. I believe that was in September.

-----

1 Q. Okay. This occurred in June.

2 Was there a reason why there was a  
3 delay in reporting it to the police?

4 A. I first wanted to see if I could work it out  
5 with the church, because I had relationships  
6 there that I didn't want to ruin. That was my  
7 reason.

8 Q. And was that not satisfactory?

9 A. No. At first, it was, but then a couple weeks  
10 later, I was asked to leave the church.

11 Q. You were asked to leave?

12 A. Uh-huh.

13 Q. As far as you know, did anything happen to  
14 Mr. Brown?

15 A. Not that I know of.

16 Q. All right. At some point, you decided to go to  
17 the police?

18 A. Yes.

19 Q. Okay. And did you give them a copy of the  
20 tape?

21 A. Yes.

22 Q. And I'm going to show you what I have marked as  
23 Commonwealth's Exhibit No. 1. I'm going to ask  
24 you if this is the tape that you gave.

25 A. Yes, that's the tape.



1 Q. All right. Now, have you viewed the entire  
2 tape?

3 A. I did today.

4 Q. All right. And did you want to view that tape?

5 A. No.

6 Q. Okay. Were you aware of anything that was  
7 happening on that tape at the time it was  
8 happening?

9 A. No.

10 Q. Did you want any of it to happen?

11 A. No.

12 MS. NECESSARY: Thank you.

13 Cross-examine.

14 MR. ETTINGER: Thank you.

15 -----

16 CROSS-EXAMINATION

17 BY MR. ETTINGER:

18 Q. Good afternoon. You stated that you now -- you  
19 are not presently living in the Pittsburgh  
20 area, correct?

21 You're not, in fact, from the  
22 Pittsburgh area, correct?

23 A. No.

24 Q. And when did you start going to the  
25 Potters church; what did you say?

1 A. 2003.

2 Q. Prior to that, you went to another church  
3 locally; is that correct?

4 A. Yes, occasionally.

5 Q. And you mentioned changing names when you were  
6 questioned here today.

7 Faith Allen isn't your birth name,  
8 correct?

9 A. Correct.

10 Q. Where does that name come from?

11 A. I just changed my name. My daughter and I, we  
12 are starting over. So we changed our names.

13 Q. You received some media attention upon changing  
14 your name to Faith Allen, correct?

15 MS. NECESSARY: I'm going to object,  
16 Your Honor. That's irrelevant. Whether  
17 she changed her name is irrelevant.

18 THE COURT: It is cross-examination.  
19 I'll give you a little latitude.

20 BY MR. ETTINGER:

21 Q. Okay. You received some media attention when  
22 you changed your name to Faith Allen, correct?

23 A. One newspaper.

24 Q. And what was that, what was that media  
25 attention?

-----

1                   Why was that covered in the newspaper?

2       A.     Because I took the last name of a friend of  
3           mine.

4       Q.     That friend of yours was Judge Allen, correct?

5       A.     Correct.

6       Q.     Who you were living with, correct?

7       A.     No, not correct.

8       Q.     Okay. And so you left that church and began  
9           attending Potters House, correct?

10      A.     Correct.

11      Q.     Let me just make sure we all understand how  
12           pastors were assigned to the members of the  
13           congregation.

14                   Initially, your name was not  
15           Faith Allen, and your name fell under  
16           Charles Brown, correct, under the name he was  
17           to pastor?

18      A.     Correct, right.

19      Q.     When you changed your name to Faith Allen, you  
20           were no longer one of the people he would  
21           typically pastor?

22      A.     Right.

23      Q.     It is also correct that male members of the  
24           church don't usually pastor female members,  
25           correct?

- 
- 1 A. No, not correct.
- 2 Q. It is common for male members to pastor female
- 3 members?
- 4 A. Yes.
- 5 Q. Including one-on-one sessions in their homes?
- 6 A. I don't know what their rules were, but I
- 7 assumed so.
- 8 Q. And you had sessions with Charles Brown prior
- 9 to the one in which you videotaped it, correct?
- 10 A. Yes.
- 11 Q. And he would videotape these sessions, correct?
- 12 A. He did sometimes and would not let me see
- 13 those.
- 14 Q. He didn't videotape all the sessions, though,
- 15 did he?
- 16 A. No.
- 17 Q. And, in fact, he wouldn't videotape sessions
- 18 where you and he were engaging in sexual
- 19 conduct, correct?
- 20 A. He taped that?
- 21 I don't know.
- 22 Q. You and he would agree that certain sessions
- 23 would not be taped, correct?
- 24 A. Correct.
- 25 Q. And isn't it true that you would agree that

-----

1 sessions not being taped were where he knew  
2 that the two of you were going to be engaged in  
3 sexual touching; is that correct?

4 A. No.

5 Q. Wasn't it common for him to have his hand down  
6 your pants during those sessions?

7 A. No.

8 Q. Isn't it true that you and Charles had  
9 nicknames for each other?

10 A. No.

11 Q. You don't recall ever calling him Sexy Daddy or  
12 him calling you Sexy Mama?

13 A. No.

14 Q. And do you recall saying something to the  
15 effect that someone is going to pay for stuff  
16 that happened in my past?

17 A. I don't recall saying that, no.

18 Q. And before making this videotape, you discussed  
19 your relationship with Charles Brown with at  
20 least one member of the church, correct?

21 A. The counseling relationship, yes.

22 Q. And you decided to videotape this session,  
23 correct?

24 A. Yes.

25 Q. And also tried to set up a separate, separate

1 from the video camera, you attempted to set up  
2 a separate audio recording pretty much,  
3 correct?

4 A. Yes, but I didn't do it.

5 Q. You had planned on doing it, correct?

6 A. Correct.

7 Q. Because you knew that you and Charles talked to  
8 each other during those sessions?

9 A. Correct.

10 Q. How did you know you talked to him during those  
11 sessions if you were under hypnosis?

12 A. I don't know that I talked to him within these  
13 sessions.

14 Q. Okay. So you had no reason for trying to set  
15 up the audio?

16 A. Correct.

17 Q. You stated today that you kept up with the time  
18 during these sessions when you were being  
19 hypnotized; am I correct?

20 A. Yes, right.

21 Q. So you were able to tell what time it was  
22 approximately when you were going under  
23 hypnosis was your testimony?

24 A. Right.

25 Q. You stated that, at times, you would drink

1 while the two of you were together?

2 A. Yes.

3 Q. These were typically nonalcoholic drinks?

4 A. Correct.

5 Q. Would you typically supply the drinks?

6 It was your home, correct?

7 A. Yeah.

8 Q. Today, when you were in court, you stated that  
9 when you watched this videotape you were  
10 shocked, correct?

11 A. Yes.

12 Q. You didn't remember that he had fondled you,  
13 correct?

14 A. Yes.

15 Q. You remember showing this video to a number of  
16 people, correct?

17 A. Correct.

18 Q. Between going to the police -- June 3rd and  
19 September 9th, you showed this tape to a number  
20 of individuals?

21 A. Correct.

22 Q. And do you recall telling an individual that  
23 you do remember what happened on the tape?

24 A. No, I never said.

25 Q. Do you recall laughing as you showed this tape

1 to individuals?

2 A. No.

3 Q. And you said one of the reasons you wanted to  
4 make this tape was due to nightmares you were  
5 having, correct?

6 A. I had started having dreams, yes.

7 Q. You have a history of having nightmares, don't  
8 you?

9 A. Yes.

10 Q. Nightmares about your past, correct?

11 A. Correct.

12 Q. Including nightmares about past involvement  
13 with cults, correct?

14 MS. NECESSARY: I'm going to object.

15 I don't think that is relevant.

16 THE COURT: Overruled.

17 BY MR. ETTINGER:

18 Q. Isn't it true that you have nightmares  
19 involving your past involvement with cults?

20 A. At times.

21 Q. Including involving observing your parents  
22 participating in human sacrifices in cults,  
23 correct?

24 A. No.

25 MS. NECESSARY: I will object, what a



1 person has in their dreams.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 BY MR. ETTINGER:

5 Q. So you do recall having nightmares about  
6 involvement in a cult, but not involving human  
7 sacrifices, correct?

8 A. Yes.

9 MR. ETTINGER: I only have a few more  
10 questions. I appreciate your patience.

11 BY MR. ETTINGER:

12 Q. What is checking out?

13 Do you recall using the term "checking  
14 out" in your sessions with Charles Brown?

15 A. That is when I had my nightmares.

16 Q. I'm asking you. We don't know. I don't know  
17 what checking out means.

18 I'm asking you to define it to us here  
19 in this courtroom.

20 What is checking out?

21 A. It just means I was having nightmares and  
22 wasn't aware of my dreams.

23 Q. Some of your sessions, prior to Charles Brown  
24 attempting hypnosis, isn't it true, that you  
25 would check out during these sessions?

-----

1 A. That's what he said, yes.

2 Q. He said that you told him that term. You  
3 introduced the term "checking out", correct?

4 A. Correct.

5 Q. And how do you -- is it something that happens  
6 to you; do you check out?

7 A. No. I haven't checked out.

8 Q. Have you ever checked out?

9 A. I've had nightmares, and that's what I was  
10 referring to.

11 Q. Okay. Your relationship with Charles Brown, it  
12 wouldn't be uncommon for you to call him on the  
13 telephone, correct?

14 A. Correct.

15 Q. And one of the ways you communicated with him  
16 was over e-mail, correct?

17 A. Correct.

18 Q. It wouldn't surprise you if, say, this whole  
19 pile here was e-mail communications between you  
20 and Charles Brown, correct?

21 A. Correct.

22 Q. You would write journal entries to  
23 Charles Brown as part of your counseling  
24 sessions too, correct?

25 A. He didn't always have those, his journal

1 entries.

2 Q. But you would write journal entries?

3 A. Right.

4 Q. I think you have stated during your direct  
5 examination he would give you assignments. You  
6 would write journal entries about some of the  
7 problems in the past.

8 You would make journal entries, right?

9 A. Yes.

10 Q. And you would buy lunch for Charles, correct?

11 A. Yes, as other pastors I would, too.

12 Q. And originally you met with him once a week,  
13 correct?

14 A. Correct.

15 Q. And then twice a week for the last couple of  
16 weeks, correct?

17 A. Right.

18 Q. Starting maybe the last week of April?

19 A. Right.

20 Q. And it was during these last two weeks that he  
21 began hypnotizing you, correct?

22 A. Yes.

23 Q. So it wasn't true at the preliminary hearing or  
24 today when you referred to eight to ten  
25 sessions involving hypnosis?

-----

1 A. Yes, it was. I said end of April, 1st of May  
2 all through to June 3rd. That was enough time  
3 to have eight to ten sessions.

4 Q. On these sessions -- well, you taped the  
5 session on the 6th of June but didn't go to the  
6 police until September 9th.

7 A. The 3rd of June.

8 Q. The 3rd of June is when you taped it.

9 You didn't go to the police until  
10 September 9, correct?

11 A. Right.

12 Q. And in between that, you went to the church,  
13 correct?

14 A. Right.

15 Q. And you showed the tape to various people,  
16 correct?

17 A. A few, yes.

18 Q. You showed the tape to a Karen Johnson,  
19 correct?

20 A. Yes.

21 Q. You showed the tape to Bishop Carswell, right?

22 A. Yes.

23 Q. You showed the tape to my client's wife,  
24 correct?

25 A. Right.

-----

1 Q. And you showed the tape to Candy Cogdale,  
2 correct?

3 A. Right.

4 Q. And you tried to show the tape to Vivica Jones,  
5 correct?

6 A. No.

7 Q. You discussed the tape with Vivica Jones?

8 A. Yes.

9 Q. You showed the tape to some other individuals,  
10 correct?

11 A. One or two more, yes.

12 Q. Do you recall telling Marie Johnson that you  
13 remember what was going on in the videotape?

14 A. No, I never told her that.

15 Q. Do you recall telling Marie Johnson that you  
16 wanted Charles to become your boyfriend?

17 A. I never told her that.

18 Q. And do you recall a trip to Baltimore that  
19 Charles had at the end of May?

20 Do you recall he went out of town to  
21 go to Baltimore at the end of May?

22 A. Yes.

23 Q. Do you recall that he was going to go to  
24 Baltimore on May 28th, correct?

25 A. Correct.

-----

1 Q. Do you recall that he spent the night at your  
2 house on the evening of May 27th, didn't he?

3 A. No.

4 Q. That didn't happen. He didn't spend the night  
5 at your house?

6 A. He had a counseling session with me on a  
7 Thursday before he left.

8 Q. And he didn't spend Friday night there?

9 A. Not that I'm aware of.

10 Q. You don't -- did you discuss with him that you  
11 were afraid you would lose him when he went to  
12 Baltimore?

13 A. No.

14 Q. Do you recall telling him you wanted to be his  
15 wife?

16 A. No.

17 Q. Do you recall telling him that you were testing  
18 him?

19 A. No.

20 Q. This case -- you weren't able to come to court  
21 the last time we were going to have this case  
22 to be heard as a trial; is that correct?

23 A. Yes.

24 Q. And that's because you were appearing on  
25 national television at that time; is that

1 correct?

2 A. I had a situation I needed to deal with, with  
3 my daughter.

4 Q. That you felt was more important than attending  
5 to this, correct?

6 MS. NECESSARY: I'm going to object,  
7 Your Honor. That's irrelevant, what the  
8 reason was for a previous postponement.

9 THE COURT: When was the postponement?

10 MR. ETTINGER: The Commonwealth  
11 postponement was on --

12 MS. NECESSARY: January 10th,  
13 Your Honor.

14 MR. ETTINGER: It was asked for in  
15 advance. The trial date was supposed to  
16 be -- the trial date wasn't supposed to be  
17 January 10th. It was supposed to be --

18 THE COURT: A postponement was sought  
19 on October 21st of 2005 when the trial was  
20 listed for January 10, 2006.

21 The postponement was requested on  
22 December 12, 2005, for the reason that the  
23 victim is unavailable the week of the trial  
24 date, so that she could be on TV; is that  
25 what I'm hearing?

-----

1 MR. ETTINGER: That's my  
2 understanding. I'm not 100 percent on the  
3 dates that Your Honor was stating. I  
4 believe I misspoke at one point.

5 THE COURT: The last postponement.

6 MR. ETTINGER: The last postponement  
7 was --

8 THE COURT: Was December 12, 2005.  
9 The original trial date was  
10 January 10, 2006, and the new trial date  
11 was February 2, 2006.

12 MR. ETTINGER: That's correct.

13 THE COURT: The reason was that the  
14 victim is unavailable the week of the  
15 original trial date; is that basically what  
16 you are talking about?

17 MR. ETTINGER: Yes, Your Honor.

18 THE COURT: All right.

19 BY MR. ETTINGER:

20 Q. You were unavailable because you had to appear  
21 on television, correct?

22 A. My daughter had to appear on television. I was  
23 not going to let her be by herself.

24 Q. So you appeared on television with her?

25 A. Correct.



1 Q. On Oprah and Nancy Grace?

2 MS. NECESSARY: Your Honor.

3 THE WITNESS: Oprah.

4 MS. NECESSARY: I think this is  
5 irrelevant.

6 THE COURT: It is cross-examination.  
7 I'll give him some latitude.

8 MR. ETTINGER: That's just a yes or no  
9 question.

10 THE WITNESS: Not Nancy Grace.

11 BY MR. ETTINGER:

12 Q. You only went with the Nancy Grace --

13 A. Nancy Grace was the following week.

14 Q. So the week in question was open?

15 A. One day, yes.

16 MR. ETTINGER: I have no other  
17 questions at this time.

18 THE COURT: Any redirect?

19 MS. NECESSARY: Yes, just a couple  
20 things, Your Honor.

21 -----  
22 REDIRECT EXAMINATION

23 BY MS. NECESSARY:

24 Q. Referring to the counseling session at the end  
25 of May that Counsel referred to, did anything

1 unusual happen during that counseling session  
2 or after that counseling session?

3 A. Yes. The sessions usually were in my living  
4 room, and I was out asleep again, and I just  
5 remember waking up in my bedroom the next  
6 morning, and he was there, but I can't say that  
7 he was there all night. I don't know.

8 Q. You woke up in your own bed?

9 A. Right.

10 Q. Do you know how you got there?

11 A. No.

12 Q. All right. You say the Defendant was at your  
13 house in the morning?

14 A. Yes.

15 Q. All right. Do you know whether or not he spent  
16 the night there?

17 A. No, I really don't.

18 Q. You did not invite him to spend the night?

19 A. No.

20 Q. All right. Now, your appearance on TV, Counsel  
21 referred to, that has nothing to do with this  
22 case?

23 A. No, it didn't.

24 Q. All right. It has something to do with your  
25 daughter?

1 A. Right.

2 Q. Your daughter was being interviewed by  
3 Oprah Winfrey?

4 A. Yes, and her lawyer had set that up.

5 MS. NECESSARY: All right. Thank you.  
6 That's all.

7 THE COURT: Any recross?

8 MR. ETTINGER: No, Your Honor. Thank  
9 you.

10 THE COURT: Ma'am, you may step down.  
11 Thank you.

12 (Thereupon, the witness steps down.)

13 MS. NECESSARY: Detective Trkula.

14 -----

15 DETECTIVE JOHN TRKULA,  
16 a witness herein, having first been duly sworn, was  
17 examined and testified as follows:

18 -----

19 DIRECT EXAMINATION

20 BY MS. NECESSARY:

21 Q. Would you state your name, please, and spell  
22 your last name.

23 A. John F. Trkula, T as in Tom, r-k-u-l-a.

24 Q. How are you employed?

25 A. I'm a detective with the Monroeville police

1 department.

2 Q. How long have you been so employed?

3 A. Twelve years.

4 Q. Detective, did you receive a complaint or take  
5 a report from Faith Allen?

6 A. Yes, I did.

7 Q. When did she come to you?

8 A. That would have been the 9th of September,  
9 2004.

10 Q. And she reported to you the situation that she  
11 found herself in?

12 A. Yes.

13 Q. All right. Now, did she give you anything?

14 A. She gave me two videotapes.

15 Q. All right.

16 A. One --

17 Q. Go ahead.

18 A. One you are holding in your hand, was the  
19 actual tape made, that was in the recorder the  
20 day the video was made.

21 She --

22 Q. That would be Commonwealth's Exhibit No. 1?

23 A. Yes, ma'am.

24 Q. All right.

25 A. And she also gave me a copy made from that

1 video.

2 Q. All right. Now, you viewed the tape?

3 A. Yes, I did.

4 Q. All right. And after viewing the tape, you  
5 were the one who actually filed charges in this  
6 case; is that correct?

7 Is that right?

8 A. That is correct.

9 Q. Now, did you make any copies of the video from  
10 Commonwealth's Exhibit No. 1?

11 A. I made three.

12 Q. And is one of them what I have marked as  
13 Commonwealth's Exhibit No. 2?

14 A. Yes, ma'am.

15 Q. All right. The other one was one for the  
16 Defense?

17 A. Yes.

18 Q. So you made the copies directly from the  
19 smaller cassette that she had given you?

20 A. That's correct.

21 Q. Now, this has been marked as Commonwealth's  
22 Exhibit No. 2.

23 Is this one of the tapes that you made  
24 from that original?

25 A. Yes.

-----  
1 MS. NECESSARY: Thank you.

2 Cross-examine.

3 -----  
4 CROSS-EXAMINATION

5 BY MR. ETTINGER:

6 Q. A few very brief questions.

7 You stated that Faith Allen also gave  
8 you a copy of the tape, correct?

9 A. That is correct.

10 Q. Was it a complete copy of the tape, or was it a  
11 copy of a portion of the tape?

12 A. It was a copy of a portion of the tape, I  
13 believe.

14 Q. Did she tell you that was the tape that she had  
15 shown individuals in the church?

16 A. She did not.

17 Q. It was, for lack of a more sensitive term,  
18 almost like a greatest hits, bits and pieces of  
19 the tape that she wanted to focus on?

20 A. It was not bits and pieces. It was continuous  
21 running but --

22 Q. It was not full length?

23 A. It appears that the church had gotten a hold of  
24 the tape as she was making a copy of it. I  
25 believe it ran only about 45 minutes.

1 Q. And the tape that was provided to us, it  
2 contains footage of Faith with her church.

3 That's on this original tape as well?

4 A. That is not.

5 Q. How did that end up on the tape that you  
6 provided to counsel?

7 A. Wait. I shouldn't say that.

8 I have watched the copy that she gave  
9 me until the end of the part with Mr. Brown. I  
10 didn't watch it any farther. So it very well  
11 may be on there.

12 Q. As far as the copy we are going to watch here  
13 today, you personally taped it off the  
14 original?

15 A. Yes, that is correct.

16 Q. And when she spoke with you on September 9th,  
17 she told you that she had been hypnotized; is  
18 that correct?

19 A. That is correct.

20 Q. You spoke with Faith Allen on September 9th,  
21 correct?

22 A. That is correct.

23 Q. But didn't file a complaint until October 21st?

24 A. That is correct.

25 Q. Because in the meantime, you conducted an

1 investigation?

2 A. Yes.

3 Q. One of the things you did in your investigation  
4 was show the tape to someone who you believe  
5 was an expert in hypnosis, correct?

6 A. I wouldn't say an expert, but someone I knew  
7 who was familiar with it, yes.

8 Q. So he concluded that --

9 MS. NECESSARY: Objection, Your Honor.  
10 That's calling for hearsay. That wasn't  
11 witnessed.

12 MR. ETTINGER: I'll withdraw the  
13 question.

14 THE COURT: Sustained.

15 MR. ETTINGER: It does call for  
16 hearsay. I'll withdraw the question.

17 BY MR. ETTINGER:

18 Q. You conducted a further investigation, correct?

19 A. Yes.

20 Q. You obtained a sample of Faith Allen's hair,  
21 correct?

22 A. After watching the video personally, it looked  
23 to me as if she had been drugged. So, yes, I  
24 wanted to check Faith for long-term drug use.

25 Q. Those results came back negative?



1 A. That is correct.

2 MS. NECESSARY: I'm going to object to  
3 that, Your Honor, as well.

4 THE COURT: The results -- were the  
5 results -- was this sample submitted to the  
6 crime lab?

7 THE WITNESS: Yes.

8 THE COURT: The Allegheny County crime  
9 lab?

10 THE WITNESS: Yes, sir.

11 THE COURT: And was that provided in  
12 discovery?

13 MS. NECESSARY: Yes, it was,  
14 Your Honor. Actually, it was sent out to  
15 an independent testing lab. The crime lab  
16 doesn't do that kind of testing, but those  
17 were provided to counsel.

18 THE COURT: Okay. What is the basis  
19 for the objection?

20 MS. NECESSARY: Well, that's calling  
21 for hearsay. I have no problem if counsel  
22 wishes to call someone from the crime lab  
23 to explain the results.

24 THE COURT: Do you want to have them?  
25 I'll sustain the objection. You can

1 call someone.

2 MR. ETTINGER: The Commonwealth has no  
3 evidence that they can present that  
4 Faith Allen was under the influence of  
5 drugs, no physical evidence. There is no  
6 reason for me to call this person.

7 So if the Court does not wish to enter  
8 into evidence the negative crime lab, I  
9 have no reason to call someone from it.

10 THE COURT: All right.

11 MR. ETTINGER: And I have no other  
12 questions for this officer.

13 THE COURT: Any redirect?

14 MS. NECESSARY: No, Your Honor. Thank  
15 you.

16 THE COURT: Detective, thank you. You  
17 may step down.

18 (Thereupon, the witness steps down.)

19 MS. NECESSARY: I would offer into  
20 evidence Commonwealth's Exhibit No. 1,  
21 which is the original tape, and No. 2,  
22 which is the copy made by the detective,  
23 and I would ask the Court to view the tape  
24 at this time.

25 THE COURT: All right. Any objection

-----

1 to Commonwealth's No. 1 and No. 2?

2 MR. ETTINGER: I have no objection.

3 (Thereupon, Commonwealth's Exhibit  
4 Nos. 1 and 2 were marked into evidence.)

5 THE COURT: What about the portion --  
6 audio portion of this tape?

7 There was a motion this morning  
8 wherein I allowed the audio portion to be  
9 played.

10 Do you wish for the court reporter to  
11 make an effort to transcribe what is being  
12 said while the video portion is being  
13 played, or will the exhibit, Commonwealth's  
14 No. 2, be sufficient with regard to what is  
15 said?

16 MS. NECESSARY: Your Honor, I don't  
17 think the court reporter would be able to  
18 make out any words, so I see no point in  
19 that.

20 THE COURT: If she were to make that  
21 effort, it would just be within parenthesis  
22 unintelligible followed by a closed  
23 parenthesis; is that a fair statement?

24 MS. NECESSARY: Yes.

25 MR. ETTINGER: I would agree,

-----

1 Your Honor, with that statement.

2 MS. NECESSARY: Your Honor, should we  
3 move this?

4 THE COURT: No, I'm good. I can move  
5 down. I'll step down.

6 MS. NECESSARY: I just want to make  
7 sure it is clear for Defense table and  
8 also --

9 THE COURT: If you want to move it up  
10 farther, if you can.

11 MR. ETTINGER: I make a motion for a  
12 brief recess. I received a telephone call  
13 from the expert witness who is on his way.

14 I would like to return that call and  
15 make sure that everything is okay with his  
16 arriving here.

17 THE COURT: Okay. We will take a  
18 short recess.

19 -----  
20 (Thereupon, a brief recess was taken.)

21 THE COURT: Mr. Ettinger, do you want  
22 this on the record.

23 MR. ETTINGER: I received a message,  
24 left at 2:08, I believe -- Chief Payne has  
25 entered the room.

-----

1 THE COURT: You received a message at  
2 2:08 that he was -- Chief Payne was on the  
3 way, and he will be there at 2:30.

4 He's 11 minutes late.

5 MR. ETTINGER: I had to rely on -- may  
6 I approach, Your Honor?

7 (Thereupon, a discussion was held at  
8 side bar off the record.)

9 THE COURT: Okay. All ready?

10 MS. NECESSARY: Yes, Your Honor.

11 (Thereupon, the videotape was played.)

12 THE COURT: Videotape is paused.

13 Off the record.

14 (Thereupon, a discussion was held off  
15 the record.)

16 THE COURT: We had a brief  
17 off-the-record discussion. We have been  
18 going some time, viewing the videotape, and  
19 the Court was just inquiring as to how much  
20 longer the tape would run until the end,  
21 and the nature of the subject material that  
22 is on the videotape.

23 Is that a fair statement of our  
24 off-the-record discussion?

25 I have been advised about 30 or 35

1 more minutes; is that correct?

2 MR. ETTINGER: Yes, it is, Your Honor.

3 THE COURT: Any additions or  
4 corrections?

5 MR. ETTINGER: None, Your Honor.

6 May I ask a logistical question?

7 This can be off the record.

8 (Thereupon, a discussion was held off  
9 the record.)

10 THE COURT: Okay. We are back on the  
11 record in this case, and we have had a  
12 brief off-the-record discussion. Our  
13 intention is to continue the case tomorrow.

14 We will finish watching the videotape  
15 today, and we will resume the trial  
16 tomorrow morning about 9:15, and all  
17 witnesses who were subpoenaed for the  
18 Commonwealth and the Defense today remain  
19 under subpoena to appear for court  
20 tomorrow.

21 The scheduling matter, we have no  
22 control over how long a trial may take,  
23 when it begins and when it ends.

24 Anything else, Mr. Ettinger?

25 MR. ETTINGER: I have nothing further,

-----

1 Your Honor.

2 THE COURT: Okay. Can we resume the  
3 tape again.

4 (Thereupon, the videotape continues to  
5 play.)

6 THE COURT: Back on the record.

7 The tape is concluded.

8 Was that the -- did the tape end  
9 because it ran -- the tape ended, ran out  
10 of tape to film, or why did it end?

11 MS. NECESSARY: I believe it ran out.

12 THE COURT: It ran out of tape.

13 MS. NECESSARY: (Nodding in the  
14 affirmative.)

15 THE COURT: Okay. We have a witness  
16 who's here -- are you done with the  
17 Commonwealth's case?

18 MS. NECESSARY: Your Honor, I don't  
19 know if you want to do -- the Commonwealth  
20 was, yeah. The Commonwealth rests.

21 THE COURT: The Commonwealth rests.

22 I would like to do Chief Payne. He is  
23 here.

24 MR. ETTINGER: First, I would move for  
25 a judgment of acquittal, and I would say

-----

1 that the Commonwealth has not presented,  
2 even had that burden of proof, evidence  
3 that this victim was unconscious at the  
4 time of this incident. That would be the  
5 basis of my argument.

6 THE COURT: Okay. How about a  
7 response from the Commonwealth?

8 MS. NECESSARY: Your Honor, under the  
9 law in Pennsylvania, a victim who is unable  
10 to think and feel and react, as in the  
11 normal waking state, is unconscious for the  
12 purposes of the statute. That would  
13 include someone who is in a stupor state,  
14 someone who is intermittently conscious and  
15 unconscious, someone who is intoxicated and  
16 someone who is sleeping.

17 The Commonwealth believes that the  
18 tape speaks for itself, and this victim was  
19 definitely not in the normal waking state.

20 THE COURT: Well, I don't know what it  
21 was. It was strange, to say the least. I  
22 don't know. There's been no evidence of  
23 intoxication. There's no evidence that the  
24 victim was drugged.

25 She was not totally asleep. There was



-----

1                   some altered state of consciousness that  
2                   was observable, but yet there was  
3                   conversation back and forth. I don't know  
4                   what to think of it.

5                   MS. NECESSARY: Well, Your Honor, she  
6                   has stated that she has no memory of what  
7                   went on there. She was not aware of  
8                   anything that went on.

9                   Her reactions on the tape are that of  
10                  someone who is not aware that she is being  
11                  sexually touched. As the Court saw, her  
12                  arms were moving somewhat at random. The  
13                  Defendant was the one who placed her in  
14                  various positions, put her hand back. It  
15                  would flop back down again.

16                 She, at one point, fell off the couch.  
17                 He is the one who placed her in various  
18                 states. She did not react to anything on  
19                 her own. She did not initiate any  
20                 conversation. It was more of a response to  
21                 what he said.

22                 THE COURT: All right. I'm denying  
23                 your motion at this time, at this point.

24                 MR. ETTINGER: Your Honor, if I may, I  
25                 spoke with Ms. Necessary. So if I could

-----

1                   just have a brief moment with my witness.  
 2                   I knew of this witness as of this morning.  
 3                   We could -- we agreed I could briefly  
 4                   speak with him before calling him as a  
 5                   witness.

6                   THE COURT: Are you ready,  
 7                   Mr. Ettinger?

8                   MR. ETTINGER: I am, Your Honor.

9                   THE COURT: Call your first witness,  
 10                  please.

11                  MR. ETTINGER: At this time, the  
 12                  Defense will call Chief Robert Payne.

-----

13                  CHIEF ROBERT PAYNE,  
 14                  a witness herein, having first been duly sworn, was  
 15                  examined and testified as follows:  
 16                  -----

DIRECT EXAMINATION

17                  BY MR. ETTINGER:

18                  Q. Good afternoon. Please state your name.

19                  A. Robert Payne, P-a-y-n-e.

20                  Q. What is your occupation?

21                  A. I'm currently the Chief of Police for the  
 22                  Borough of Plum.  
 23                  -----

24                  Q. How long have you been a police officer?  
 25

-----

1 A. Approximately 34 years.

2 Q. Were you always working in Plum?

3 A. No, sir.

4 Q. Where did you work prior to that?

5 A. Prior to that, I was with the Allegheny County  
6 Police Department. I spent 26 years there, the  
7 majority of my time in criminal investigations,  
8 possibly about 21 years in the homicide squad.

9 Q. Twenty-one years in the homicide squad.

10 What is your educational background;  
11 did you attend college?

12 A. Yes. I have a Bachelor's Degree out of the  
13 University of Pittsburgh in Administration of  
14 Justice. I have a Master's Degree in  
15 Criminology out of the University of  
16 Pittsburgh.

17 Q. And as part of your 21 years, what is -- you  
18 said in the homicide unit of the Allegheny  
19 County police?

20 A. Yes.

21 Q. Did you have an opportunity to become familiar  
22 with the field of hypnosis?

23 A. Yes, I did.

24 Q. And what is your -- how did that begin?

25 A. In the late 1970s, maybe 1980s, myself and

-----

1           Detective Ron Freeman of the Pittsburgh Police  
2           Department had an interest in looking to create  
3           a program for forensic hypnosis.

4                     At that time, we ended up contacting  
5           the LA, Los Angeles Police Department, speaking  
6           with Mr. Martin Rilser who was their  
7           psychologist. We knew that they had a program.

8                     When we talked to him, he gave us  
9           directions on how to start a program here. We  
10          approached two individuals that he suggested  
11          that we talk to, a Dr. Russell Scott, who is a  
12          clinical psychologist, and a Dr. Kay Thompson,  
13          who is a professor at the University of  
14          Pittsburgh dental school.

15                    We spoke with them, and they felt it  
16          was a viable program, and the two of them put a  
17          program together for us. We had gotten a grant  
18          from the Mellon Scaife Foundation. We had a  
19          two-year pilot program in which both Dr. Scott  
20          and Dr. Kay Thompson trained us in the use of  
21          forensic hypnosis.

22          Q.    Did they train you technically in this?

23          A.    Yes.

24          Q.    What did your training entail?

25          A.    I'm sorry?

-----

1 Q. What did your training entail?

2 A. It entailed classroom work. It entailed a  
3 hands-on early on in the stages of the use of  
4 hypnosis. We were able to be exposed to both  
5 individuals and using hypnosis, and over a  
6 period of time learned from them the techniques  
7 in inducing hypnotic trances, and in the -- of  
8 course, using it for the purpose of forensic  
9 hypnosis, mainly to try and gather information  
10 from witnesses and victims that were involved  
11 in various kinds of crimes.

12 Q. And did you end up practicing hypnosis after  
13 this training?

14 A. Oh, yes.

15 Q. How many individuals would you say you  
16 hypnotized in your career?

17 A. Probably somewhere in the area of about 150 or  
18 better.

19 Q. And in your training and experience --

20 MR. ETTINGER: I would ask at this  
21 point that Chief Robert Payne be admitted  
22 as an expert in the field of hypnosis.

23 I would offer voir dire for  
24 Ms. Necessary if she has questions.

25 THE COURT: Ms. Necessary.

-----  
1 MS. NECESSARY: Just a couple things.

2 -----  
3 EXAMINATION EN VOIR DIRE

4 BY MS. NECESSARY:

5 Q. Just what did your classroom work consist of?

6 It was teaching by Dr. Thompson and  
7 Dr. Scott?

8 A. Yes. Both classroom work in the class itself  
9 and by them teaching us. I think we had four  
10 or five books that we were using at that time,  
11 to learn the various techniques of hypnosis.

12 Q. And your -- the classroom work consisted mainly  
13 of how to hypnotize someone?

14 A. It consisted of the various techniques of  
15 inducing trances with various types of people,  
16 preventing what was known as a reacting.

17 In our case, we would be dealing with  
18 a lot of traumatized people. So we didn't want  
19 them certainly to experience some of the  
20 physical things that they went through, such as  
21 a rape victim. I have done a lot of rape  
22 victims over the years, that kind of thing.

23 Q. It was more a practical hands-on thing on how  
24 to do it, as opposed to doing theoretical  
25 research or anything like that?

-----

1 A. Correct.

2 Q. Okay, but you are familiar with how to  
3 hypnotize someone and the various types of  
4 hypnosis that there are?

5 A. Yes.

6 MS. NECESSARY: Your Honor, I have no  
7 objections to the Chief testifying.

8 THE COURT: All right. Chief Payne  
9 will then testify as an expert in the area  
10 of hypnosis.

11 Go ahead.

12 MR. ETTINGER: Thank you, Your Honor.

13 -----  
14 DIRECT EXAMINATION (continued)

15 BY MR. ETTINGER:

16 Q. Did Officer Trkula -- maybe I'm pronouncing his  
17 name --

18 THE COURT: I thought it was Trkula.

19 THE WITNESS: That's it.

20 MR. ETTINGER: That's the formal  
21 handling statement.

22 THE COURT: It is spelled, the name,  
23 yeah, is it not?

24 MS. NECESSARY: Yes.

25 MR. ETTINGER: I would ask if you want

-----  
1 to say it again.

2 THE COURT: Trkula.

3 BY MR. ETTINGER:

4 Q. Did Officer Trkula approach you in the  
5 investigation of the Commonwealth versus  
6 Charles Brown?

7 A. Yes, he did.

8 Q. And what did he do in the process of  
9 approaching you in this investigation?

10 A. He explained to me that he was involved in an  
11 investigation with Mr. Brown. He explained the  
12 particulars of the investigation.

13 He indicated that he had a tape that  
14 was apparently taken at the victim's home;  
15 Mr. Brown was engaged with her. And then he  
16 asked if I would actually look at this tape and  
17 make a determination on whether or not I  
18 thought that this individual was under some  
19 type of hypnotic trance.

20 Q. Did you watch the videotape?

21 A. Yes, I did.

22 Q. When did you first watch the videotape?

23 A. I don't really recall the date.

24 Q. If I suggested that it was in September, would  
25 that seem approximate?



-----

1 A. It was a while back. It could have easily been  
2 September.

3 I believe it was shortly after I got  
4 involved in the case.

5 Q. Did you watch it again here today?

6 A. Yes, I did.

7 Q. And as an expert in the field of hypnosis, what  
8 is your opinion as to whether or not  
9 Faith Allen appeared hypnotized on the tape?

10 A. I don't believe she was under any type of  
11 hypnotic trance, from what I saw.

12 Q. Why do you not believe she was under any type  
13 of hypnotic trance?

14 A. I don't believe that she exhibited the physical  
15 characteristics one would have in a hypnotic  
16 trance. In this particular case, she seemed to  
17 me almost in a semiconscious state.

18 When we use hypnosis, people are not  
19 in a semiconscious state, by any stretch of the  
20 imagination. People are in a state of trance,  
21 meaning there is an altered state of  
22 consciousness, but not to the point where they  
23 absolutely, say a motor function, are not able  
24 to maneuver.

25 As far as their physical activity,

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1 they are able to speak properly. It is quite  
2 contrary with people who are in a hypnotic  
3 trance. They are very easy to speak with and  
4 things of that nature.

5 When I saw some of the physical  
6 characteristics of him placing her hand on his  
7 head, in a trance, you don't have to make  
8 physical contact with anyone.

9 Quite honestly, all you have to do is  
10 ask them to do certain things. In fact, they  
11 still have their free will. They will be more  
12 than happy to do that for you.

13 Q. In your training and experience, can a lay  
14 person hypnotize somebody?

15 A. I would think not, unless they had an ability  
16 to read a little bit about something dealing  
17 with hypnosis. Of course, with computers  
18 today, everything is online. So if someone  
19 would have the ability to get some background  
20 information on hypnosis, they may be able to  
21 use that to assist someone into a trance.

22 Q. And in your expert opinion, would you say from  
23 watching this video it is possible that  
24 Faith Allen was play acting in the video?

25 A. That's always a possibility, I'm sure.

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MR. ETTINGER: I have no further questions.

THE COURT: Cross-examine.

MS. NECESSARY: Yes.

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CROSS-EXAMINATION

BY MS. NECESSARY:

Q. Chief, you described hypnosis as an altered state of consciousness?

A. Yes.

Q. All right, but in your experience, it is a state of consciousness?

A. Absolutely. You do not lose -- you don't lose the ability to have free will.

Q. Is there such a thing as regression hypnosis?

A. Yes.

Q. And what regresses someone back to an earlier age?

A. I've seen it used where they actually regressed people to the level of infancy.

Q. So someone who has been regressed to an earlier stage, say to an infancy stage, would have the awareness of an infant?

A. Yes. What I have seen, the individual -- in fact, it was Dr. Scott that did it, regressed

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1 an individual backwards in time.

2 As Dr. Scott was taking them backward  
3 in time and addressing them, he would stop and  
4 ask them various questions. I can recall he  
5 asked the one individual to write his name, and  
6 at that point, the individual could not write  
7 his name because he was at such an age that he  
8 didn't know how to write. He could only print.

9 So, yes, they would certainly manifest  
10 that kind of characteristic.

11 Q. So one who maybe was putting their thumb in  
12 their mouth, sucking their thumb would be, I  
13 believe, indicative of regressing to an earlier  
14 stage?

15 A. Surely.

16 Q. And someone who had regressed would not have  
17 the same awareness as she would in her normal  
18 ,adult waking state?

19 A. That's correct.

20 Q. All right. Now, as a police officer, you say  
21 you have handled, as part of your hypnosis  
22 training, you did that in order to deal with  
23 sexual assault cases?

24 A. Yes, many.

25 Q. And homicide cases?

1 A. Correct.

2 Q. All right, and is part of your -- you have been  
3 a police officer for many years, and you have  
4 had occasion to see people who are unconscious  
5 or semiconscious, who have been under the  
6 influence of some drugs?

7 A. Absolutely.

8 Q. All right, and did it appear to you that  
9 Ms. Allen may have been under the influence of  
10 a drug?

11 MR. ETTINGER: I would object to his  
12 testimony as to speculation. He hasn't  
13 been qualified as an expert in that area.

14 THE COURT: Overruled.

15 THE WITNESS: When I first viewed this  
16 tape, my first impression was, in fact, she  
17 was suffering from some intoxicant, whether  
18 it be a drug or alcohol.

19 BY MR. ETTINGER:

20 Q. So you're saying that Ms. Allen appeared to be,  
21 as you said, in the semiconscious state?

22 A. Yes.

23 Q. So that would be a lesser state of awareness  
24 than someone who was in a hypnotic trance?

25 A. Absolutely.

-----

1 Q. It is possible in hypnosis to suggest -- I  
2 mean, there are types of hypnosis in which  
3 suggestions are made to a person?

4 A. Yes.

5 Q. And they can -- it can be suggested -- what is  
6 hypnotic suggestion?

7 A. A hypnotic suggestion is a suggestion that the  
8 hypnotist would put forth to the subject, the  
9 individual he was working with.

10 Q. Someone can be given a hypnotic suggestion to  
11 not remember what has happened during the  
12 hypnotic trance?

13 A. Sure. For instance, a doctor or dentist uses  
14 the post-hypnotic suggestion to block pain.  
15 They use it for the ability to not smoke and  
16 things of that nature. So, certainly, that  
17 would certainly fall into the same category.

18 Q. You said you wouldn't even need to manipulate  
19 someone physically in order to get them to do  
20 what you wanted when they are in a hypnotic  
21 trance?

22 A. Quite the contrary. In our training, we were  
23 always taught never to make physical contact  
24 with anyone that was the subject of hypnosis.

25 Q. Someone in a hypnotic trance, it could be

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1 suggested that they were thirsty, then they  
2 would be given a drink, and they would drink  
3 it?

4 A. Absolutely.

5 Q. And then they could be given the suggestion  
6 that they would not remember having had  
7 anything to drink?

8 A. Correct.

9 Q. Now, a person in a hypnotic trance can also be  
10 made to believe things that are not true; is  
11 that right?

12 A. Yes. That's one of the pitfalls of hypnosis,  
13 is suggestion. One can suggest various things  
14 to, especially, a witness. That's where you  
15 have to be very careful.

16 Q. That was, of course, something you had to be  
17 very careful about?

18 A. If it truly got to the point where I thought it  
19 was the influence of suggestion, then we  
20 actually videotape each session, so there would  
21 be no question about being suggestive in any  
22 way.

23 Q. All right. So someone can be made to believe  
24 that they -- to forget, for example, say the  
25 number six?

1 A. Yes.

2 Q. You have heard of that. So they try to count  
3 their fingers. They end up with 11 fingers?

4 A. It is used in stage hypnotism all the time.

5 Q. That's a different kind of hypnotism than your  
6 kind?

7 A. It is an entertainment type of hypnotism.

8 Q. That's making people do things, right, like  
9 lose things?

10 A. Bark like a dog, cackle like a chicken.

11 Q. But your belief is that Ms. Allen was either  
12 drugged or in some sort of a -- under the  
13 influence of some intoxicant?

14 A. From what I observed, yes.

15 MS. NECESSARY: Thank you. That's  
16 all.

17 THE COURT: Anything else?

18 MR. ETTINGER: Just very briefly.

19 -----

20 REDIRECT EXAMINATION

21 BY MR. ETTINGER:

22 Q. Did you observe, in the video, Faith Allen  
23 sucking her thumb?

24 A. It appeared that she had her thumb -- near her  
25 thumb -- I can't really tell whether or not she



1 was sucking it.

2 Q. Given that fact, it is still your opinion that  
3 she was not in any form of a hypnotic state on  
4 that video?

5 A. No. No.

6 THE COURT: Anything else?

7 MR. ETTINGER: I have nothing further.

8 MS. NECESSARY: No, Your Honor.

9 THE COURT: Chief Payne, do you hold  
10 that opinion within a reasonable degree of  
11 scientific certainty within the field of  
12 hypnotism, as you testified today?

13 THE WITNESS: Yes, I do.

14 THE COURT: You did not see -- what  
15 you saw on the tape, you did not see  
16 anything where someone may have been -- you  
17 didn't see the beginning when the Defendant  
18 apparently arrived at this place, if it was  
19 her apartment; is that correct?

20 THE WITNESS: No, I did not.

21 THE COURT: You did not see how it  
22 ended, when this person came out of this  
23 state, whatever you may wish to call it,  
24 that you observed; is that correct?

25 THE WITNESS: Well, one point towards

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1 the end of this particular tape, when I saw  
2 him attempt to pick her up and shake her  
3 and things of that nature, to me, that was  
4 indicative of trying to get her to become a  
5 little more conscious to her surroundings.  
6 Other than that, nothing else.

7 THE COURT: All right. Anything else?

8 MS. NECESSARY: No, Your Honor.

9 THE COURT: Chief, you're excused,  
10 with the thanks of the Court.

11 (Thereupon, the witness is excused.)

12 THE COURT: Off the record.

13 (Thereupon, a discussion was held off  
14 the record.)

15 THE COURT: Do you have any other  
16 witnesses?

17 MR. ETTINGER: I do. They were  
18 released and told to return tomorrow  
19 morning.

20 THE COURT: We are adjourned until  
21 9:30 tomorrow morning.

22 -----  
23 (Thereupon, the hearing adjourned.)

24 -----  
25

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1 (Proceedings resumed February 3, 2006)- - - - -

2 THE COURT: Okay, Mr. Ettinger, are  
3 you ready to go?

4 MR. ETTINGER: I am. My first witness  
5 is in the restroom, Your Honor. She should  
6 be out in a moment.

7 We are ready to proceed, Your Honor.

8 THE COURT: Okay. Call your witness,  
9 please.

10 MR. ETTINGER: At this time, the  
11 Defendant would call Candy Cogdale.

12 -----

13 CANDY COGDALE,  
14 a witness herein, having first been duly sworn, was  
15 examined and testified as follows:

16 -----

17 DIRECT EXAMINATION

18 BY MR. ETTINGER:

19 Q. Good morning, Ms. Cogdale. What is your  
20 position?

21 A. Candy Cogdale.

22 Q. And where do you work?

23 A. I work at home. I have a day care out of my  
24 home.

25 Q. And how do you know Charles Brown?

1 A. From my church.

2 Q. And how do you know Faith Allen?

3 A. Also from my church.

4 Q. And did Faith Allen come to you with her  
5 problems, ever, as you knowing her through the  
6 church?

7 A. Yes.

8 Q. And what types of problems would she come to  
9 you with?

10 MS. NECESSARY: I'm going to object,  
11 Your Honor. I think that's a little broad.

12 THE COURT: Do you want to rephrase  
13 it?

14 BY MR. ETTINGER:

15 Q. Did Faith Allen approach you about a problem  
16 she was having in regards to Charles Brown?

17 A. Yes.

18 Q. And what did she tell you was the problem?

19 A. She came to me. It was on the phone. She said  
20 that she was having some problems with somebody  
21 in the church and that Pastor Brown had been  
22 hypnotizing her, and she thought that he was  
23 fondling her.

24 Q. And did you talk to her about what some of her  
25 options might be and how to handle that

1 situation?

2 A. Yes.

3 Q. And what, if anything, did you discuss doing  
4 about it with her?

5 A. I told her that we will go and talk to the head  
6 of our church about the situation. And when  
7 she first came to me with the situation, that  
8 she said, I thought that he was doing this,  
9 well, I was like, you can't just say you  
10 thought somebody was doing something to you,  
11 and I don't remember the process after that.

12 Q. Did she discuss with you setting up a camera in  
13 her house?

14 A. She did, yes. She did.

15 Q. And how did she say she planned to do that?

16 A. As in how she was going to set it up?

17 Q. Yes.

18 A. She just said she was going to set up a camera  
19 and have him come over, and she was going to  
20 videotape him hypnotizing her.

21 Q. Did she say that she was setting up the camera  
22 so that she could see what was being filmed at  
23 the time?

24 A. I mean, the camera would have been on, yes.

25 Q. I'm sorry, let me rephrase it.

-----

1                   Did she specifically go over with you  
2                   how she intended to have the camera situated?

3                   Did she tell you, or did she --

4           A.    She actually showed me how she had the camera  
5           set up.

6           Q.    She showed it to you; what did you observe?

7           A.    When I came to her house, when she had the  
8           camera, which was a mini recorder, she had the  
9           view finder flipped so she could actually see  
10          the reflection of the couch.

11                   If she was sitting on the couch, she  
12                   could look in the mirror to see the reflection  
13                   of what you could see on the tape.  And then  
14                   she had a small bear that had a cut hole in and  
15                   taped the camera --

16          Q.    Do you mean a teddy bear?

17          A.    A stuffed animal, yes.

18          Q.    Did she go over with you setting up a separate  
19          audio?

20          A.    She had a mini tape recorder that she said she  
21          was putting inside the couch.

22          Q.    And did she approach you after making this  
23          videotape?

24          A.    Yes.

25          Q.    Did she show you this videotape?

1 A. Yes.

2 Q. How did she act while she was showing you this  
3 videotape?

4 A. She was kind of skittish, a little gigglish  
5 when she was showing me the tape.

6 Q. Would it be fair to say she was giggling or  
7 laughing when she showed the tape?

8 A. Yes.

9 MR. ETTINGER: I have no further  
10 questions of this witness.

11 THE COURT: Cross-examine.

12 MS. NECESSARY: Thank you.

13

14 CROSS-EXAMINATION

15 BY MS. NECESSARY:

16 Q. Whose video recorder was it?

17 A. Mine.

18 Q. So you had lent it to her?

19 A. Yes.

20 Q. Was that for the purpose of setting this up?

21 A. Yes.

22 Q. Okay. Did you show her how to use it?

23 A. No.

24 Q. Did you give her the directions on how to use  
25 it?

1 A. No. I just gave her the tape.

2 Q. You just gave it to her?

3 A. Yes.

4 Q. She had to set it up herself?

5 A. Correct.

6 Q. Did you come over the night that she used the  
7 video recorder?

8 A. I can't -- I'm pretty sure. It was apparently  
9 the same night. I know that it was on a  
10 Thursday evening and that, but I can't remember  
11 exactly if it was the same day that the  
12 videotape was made, but I know it was on a  
13 Thursday evening she brung the tape over.

14 Q. So it was either that night or shortly  
15 thereafter?

16 A. It was whatever that Thursday was on.

17 Q. Was she upset by what she had seen, as far as  
18 you could tell?

19 A. She said she was, that she was nervous about  
20 it.

21 Q. All right. And then did she tell you she was  
22 going to go and report this to the church?

23 A. Yes.

24 No. Actually, I'm sorry, she -- she  
25 said she was going to wait because we were



1 going to talk to our Bishop. He was out of  
2 town.

3 Yes, she had. Yes, she was going to  
4 report it the church.

5 Q. Because the Bishop is part of the church?

6 A. Yes, correct.

7 Q. Originally, she was not sure what had happened  
8 during these sessions; is that right?

9 A. Correct.

10 Q. She came. She didn't remember anything that  
11 happened afterwards?

12 A. Correct. She said that she thought that he was  
13 fondling her.

14 Q. Did she tell you that she had been having some  
15 bad dreams prior to the sessions or throughout  
16 her therapy?

17 A. I'm not sure.

18 Q. She thought that something may have been  
19 happening, but she didn't really remember?

20 A. Correct, uh-huh.

21 Q. You tell her you really need to know for sure  
22 if you are going to say something?

23 A. Correct.

24 THE COURT: Any redirect?

25 MR. ETTINGER: Very briefly.

-----  
REDIRECT EXAMINATION

1  
2  
3 BY MR. ETTINGER:

4 Q. Ms. Necessary asked you if she told you she was  
5 having bad dreams.

6 Did she ever talk to you of having  
7 recurring issues about being a member of a  
8 cult?

9 A. Yes.

10 Q. And did she ever tell you, as a member of a  
11 cult, she took part in human sacrifices?

12 A. Correct.

13 MS. NECESSARY: I'm going to object.

14 THE COURT: Overruled.

15 Reask the question. What was that?

16 MR. ETTINGER: Yesterday I asked the  
17 witness if, as part of her participation in  
18 a cult, she participated in human  
19 sacrifices. You allowed the question, and  
20 the victim said, no, she did not.

21 So I was asking this witness.

22 THE COURT: All right. Ask the  
23 question.

24 BY MR. ETTINGER:

25 Q. Did she tell you that, as part of her

1 participation in this cult, she participated in  
2 human sacrifices?

3 MS. NECESSARY: Your Honor, that's  
4 beyond the scope of counsel's direct. He  
5 should have asked that on direct.

6 THE COURT: Overruled.

7 Ask the question, please.

8 BY MR. ETTINGER:

9 Q. Did she tell you that, as part of her  
10 participating in a cult, she participated in  
11 human sacrifices?

12 A. Not that she participated, but that she  
13 witnessed. She said she did see human  
14 sacrifices.

15 MR. ETTINGER: Thank you. I have no  
16 further questions.

17 THE COURT: Any recross?

18 MS. NECESSARY: No. No, thank you,  
19 Your Honor.

20 THE COURT: Ma'am, you may step down.  
21 Thank you.

22 Any need to have Ms. Cogdale remain,  
23 or may she be excused?

24 You're excused, with the thanks of the  
25 Court.

-----  
1 (Thereupon, the witness is excused.)

2 THE COURT: Ms. Necessary, do you need  
3 to have her remain?

4 MS. NECESSARY: No, Your Honor.

5 THE COURT: Call your next witness,  
6 please.

7 MR. ETTINGER: Thank you, Your Honor.

8 -----  
9 BISHOP CARSWELL,

10 a witness herein, having first been duly sworn, was  
11 examined and testified as follows:

12 -----  
13 DIRECT EXAMINATION

14 BY MR. ETTINGER:

15 Q. What is your name, sir?

16 A. Bishop Odeus L. Carswell.

17 Q. And where do you work, Mr. Carswell?

18 A. I'm a senior pastor at the Potters House  
19 Ministries.

20 Q. How do you know Charles Brown?

21 A. Charles Brown was a member of our church.

22 Q. And do you know Faith Allen?

23 A. Yes, I do.

24 Q. How -- excuse me, how do you know Faith Allen?

25 A. She too was a former member of the church.

1 Q. Did she grow up in your church?

2 A. No, she didn't.

3 Q. Did you know anything about her background when  
4 she came to your church?

5 A. I heard some rumors, I guess you could call  
6 them.

7 Q. And does your church have a setup for members  
8 of the congregation to being counseled?

9 A. We do.

10 Q. Do you call it counseling?

11 A. We call it spiritual advice because it is more  
12 on the lines of the spiritual, Biblical advice  
13 versus professional type of counseling.

14 Q. Would it be fair to say that your church isn't  
15 licensed to counsel?

16 A. No. We do have one licensed counselor already  
17 on staff, though.

18 Q. How does a pastor get assigned to a  
19 congregation member to counsel?

20 A. We have a system where each pastor rotates on a  
21 weekly basis as to who is on call for that  
22 particular week.

23 Q. Did you, at some point, have an alphabetical  
24 system as well, where members of your  
25 congregation will fall under certain pastors

1 based on their last name?

2 A. Yes, sir.

3 Q. And are male pastors supposed to counsel female  
4 congregation members?

5 A. They can, if they are married with their  
6 spouse; if they are not married, with another  
7 person of the opposite sex assisting them.

8 Q. Would it be permissible for a male pastor to  
9 counsel a female congregation member alone, at  
10 their home?

11 A. No, totally not.

12 Q. Were you approached about a situation between  
13 Faith Allen and Charles Brown?

14 A. Yes, I was.

15 Q. Who approached you about that?

16 A. Pastor Pollard.

17 Q. Were you shown a videotape?

18 A. Yes.

19 Q. Now, was Faith Allen present within this  
20 videotape?

21 A. No, she wasn't.

22 Q. What, if any, action did you take upon viewing  
23 this videotape?

24 A. I didn't view the entire tape. I viewed a  
25 portion. I then called Reverend Brown in and

1           asked him about it, and we then relieved him of  
2           his pastoral duties that day.

3           Q.    At that time, was Faith Allen permitted to  
4           remain at the church?

5           A.    Yes, she was.

6           Q.    Was sometime subsequent to that she asked to  
7           leave the church?

8           A.    Yes, she was.

9           Q.    Why was that?

10                   MS. NECESSARY:  I'm going to object.

11                   I don't think that is relevant.

12                   THE COURT:  Overrule the objection.

13           BY MR. ETTINGER:

14           Q.    Why was she asked to leave the church?

15           A.    She was asked to leave because she began to  
16           divide the church with some antics that were  
17           questionable.

18                   MS. NECESSARY:  I'm going to object.

19                   I think that is totally improper testimony.

20                   It is prejudicial.  It is a conclusion.  It  
21           is -- he's not telling us specifics that he  
22           knows about, and it is improper.

23                   THE COURT:  Overruled.

24           BY MR. ETTINGER:

25           Q.    What specifically, what specific antics, as you

-----

1           have called them, did she engage in which  
2           caused you to ask her to leave Potters House?

3       A.   Well, she began to spread the tape, for one, to  
4           different members of the congregation.

5                   The straw that pretty much broke the  
6           camel's back, if I could use that slang, was  
7           when she approached one of our youth and was  
8           attempting to show the tape to one of the young  
9           people.

10       Q.   After she was asked to leave the church, was  
11           Charles Brown ultimately allowed to return to  
12           the church?

13       A.   Yes.

14       Q.   Was he allowed to return as a pastor?

15       A.   No, sir, not as a pastor, but to worship with  
16           his family.

17       Q.   Did you call the police about this incident?

18       A.   No, sir, I did not.

19       Q.   How long have you known Charles Brown?

20       A.   I have known Charles for around 14, 15 years.

21       Q.   Are you familiar with the community in which  
22           Charles goes to church and lives?

23       A.   Yes.

24       Q.   And in your familiarity with that community,  
25           would you say he has a reputation -- what would



-----

1           you say his reputation is as to his character  
2           traits and honesty?

3           A.     Above reproach.

4                         MR. ETTINGER: I have no other  
5                         questions of this witness.

6                         THE COURT: Cross-examine.

7                                 -----

8                                 CROSS-EXAMINATION

9           BY MS. NECESSARY:

10          Q.     Is it Carswell?

11          A.     Carswell, C-a-r-s-w-e-l-l.

12          Q.     Carswell.

13          A.     Uh-huh.

14          Q.     Thank you.

15                         Bishop, you saw the tape?

16          A.     A portion of it, yes, ma'am.

17          Q.     Portions of it?

18          A.     Yes, ma'am.

19          Q.     The portions that you saw, I take it that  
20                 Mr. Brown was violating the rules that a pastor  
21                 should follow in dealing with an unmarried  
22                 female in the church?

23          A.     Yes.

24          Q.     And you didn't throw him out for that?

25          A.     Say that again.

1 Q. You didn't throw him out of the church for  
2 that?

3 A. Throw him out of the church for that?

4 Q. For violating the rules.

5 A. We didn't throw him out of the church.

6 Q. At all?

7 A. No. We asked him to be relieved of his  
8 pastoral duties.

9 Q. Now, you say that he violated the rules. And  
10 did he tell you ahead of time that he was going  
11 to be doing this with Ms. Allen, that he was  
12 performing this kind of --

13 A. No, ma'am.

14 Q. So you didn't know about that?

15 A. No, ma'am.

16 Q. And yet you -- his reputation; he is a very  
17 honest person?

18 A. Yes, ma'am.

19 MS. NECESSARY: Thank you. That's  
20 all.

21 THE COURT: Any redirect examination?

22 MR. ETTINGER: None, Your Honor.

23 THE COURT: Bishop, you may step down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Is there any need to have

-----

1 the Bishop remain here, or may he be  
2 excused?

3 MR. ETTINGER: He may be excused.

4 THE COURT: Bishop, you are excused,  
5 with the thanks of the Court.

6 (Thereupon, the witness is excused.)

7 MR. ETTINGER: At this time, the  
8 Defense will call Marie Johnson.

9 -----

10 MARIE JOHNSON,  
11 a witness herein, having first been duly sworn, was  
12 examined and testified as follows:

13 -----

14 DIRECT EXAMINATION

15 BY MR. ETTINGER:

16 Q. Please state your name, and spell it for the  
17 record.

18 A. My name is Marie A. Johnson, M-a-r-i-e,  
19 J-o-h-n-s-o-n.

20 Q. And do you know Charles Brown?

21 A. Yes, I do.

22 Q. How do you know him?

23 Ms. Johnson, would you be kind enough  
24 to pull that up towards you.

25 A. Pull it up, sure.

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1 THE COURT: It is very fully  
2 adjustable. That way everyone can be sure  
3 to hear your answers.

4 THE WITNESS: Got you.

5 BY MR. ETTINGER:

6 Q. How do you know Charles Brown?

7 A. I know him from Potters House Ministries.

8 Q. How long would you say you have known him?

9 A. For about three years.

10 Q. Do you know Faith Allen?

11 A. Yes, I do as -- known as Lynn also.

12 Q. You are you saying that -- what is the first  
13 name you knew Faith Allen by?

14 A. I knew her as Lynn first.

15 Q. Do you also know her as Faith Allen?

16 A. Yes, I do.

17 Q. Did she approach you at some point about an  
18 issue she was having with Charles Brown?

19 A. Yes, she did.

20 Q. And did she show you a videotape?

21 A. Yes, she did.

22 Q. And where did you watch this videotape?

23 A. At my house.

24 Q. And how was she acting as she showed you the  
25 videotape?

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1 A. She was laughing.

2 Q. Did you discuss the contents of the videotape  
3 with her?

4 A. No, because it was kind of messed up. She was  
5 laughing, and in certain parts, she kept  
6 cutting out, and when it got to certain parts,  
7 she would just laugh, and she said something  
8 about her taping it.

9 I asked her why did she tape it.

10 She said because he is supposed to be  
11 my boyfriend, and I taped it.

12 Q. Let me ask you some questions about that.

13 Did you just say she said she wanted  
14 to make the tape because she wanted Charles to  
15 be her boyfriend?

16 A. Yes, she did.

17 Q. What else did she say about why she wanted to  
18 videotape?

19 A. She said, back in March of 2004, he was trying  
20 to make her comfortable, because of all the  
21 things that she had been through.

22 She would call me at nighttime, 2:00  
23 in the morning, 3:00 in the morning. I would  
24 minister to her, but then after I prayed with  
25 her, she would stop crying. And when I'd say

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1           goodnight to her, I'm getting ready to hang up  
2           and go back to sleep, she would start crying  
3           then again.

4                        There, I stopped the phone calls.

5       Q.    Did she say that she remembered what went on in  
6           the videotape?

7       A.    Yes, she did.

8       Q.    What exactly did she say to that effect?

9       A.    She said she remembered a lot of the parts,  
10          because she was just being comforted by him.

11      Q.    Did she use the word "comfortable" to describe  
12          how she felt at the time of the videotape?

13      A.    Yes, she did.

14      Q.    You have already testified that she said that  
15          she wanted Charles to be her boyfriend.

16      A.    Yes.

17      Q.    Did she say that she made the tape to have  
18          proof that he was with her?

19      A.    She said she made the tape just in case things  
20          didn't go right.

21                       MR. ETTINGER:  I have no other  
22                       questions for this witness.

23                       MS. NECESSARY:  Cross-examine.

24  
25

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CROSS-EXAMINATION

BY MS. NECESSARY:

Q. Ms. Johnson, you and Faith were both members of the same congregation?

A. Yes, ma'am.

Q. You say she called you for help, for counseling?

A. I would minister every time she called me. She called me 2:00, 3:00, 4:00 o'clock in the morning, saying -- dealing with her mom.

Q. I'm asking, do you call her for counseling?

A. Yes, she did.

Q. Are you one of the designated counselors in the congregation or ministers?

A. I'm an evangelist.

Q. You are an evangelist?

A. Yes, I am.

Q. Okay. So she called you. She trusted you with her problems?

A. No, she didn't. It was just how the spirit moved. I mean --

Q. You are saying she didn't trust you with her intimate problems?

A. I seen some things in her when I first --

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1 Q. I'm asking you a specific question.

2 THE COURT: Hold on, please. Only one  
3 person can talk.

4 A question was asked. Please allow  
5 the witness to answer the question fully  
6 before asking another question.

7 THE WITNESS: Thank you.

8 THE COURT: You may respond to the  
9 question.

10 THE WITNESS: Thank you, sir.

11 When I first met her at Potters House,  
12 I started -- I met her. I introduced  
13 myself, and I got to know her on a  
14 one-on-one basis.

15 She called me. I gave her my number.  
16 We switched numbers. I ministered to her.  
17 She tells me about problems, about the  
18 cult, her mom, baby, this, and that was it.

19 BY MS. NECESSARY:

20 Q. All right. So she would call you?

21 A. Uh-huh.

22 Q. All right. Now, let me ask you this, did  
23 you -- when did she show you the tape?

24 A. It was on a Sunday. I got up out of the  
25 sanctuary area, out of the pews on a Sunday



1 morning.

2 Q. What month; what year?

3 A. I don't know what month. Let me see, I don't  
4 know what month.

5 Q. Do you know what year?

6 A. 2004.

7 Q. All right. And you're not sure what month?

8 A. It was about around June, I guess, between May  
9 and June, I guess.

10 Q. Between May and June. All right.

11 You were shown this?

12 A. I'm not sure of the date, ma'am, at all.

13 Q. That's what I'm asking. And you say you saw  
14 some of the tape?

15 A. Uh-huh.

16 Q. All right. And did you see some inappropriate  
17 conduct on the part of Mr. Brown?

18 MR. ETTINGER: Objection. That calls  
19 for her to make a conclusion as to what  
20 inappropriate conduct is.

21 THE COURT: Why don't you just --  
22 overrule the objection. It is  
23 cross-examination.

24 You can answer the question, if you  
25 know.

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1 THE WITNESS: Yes, I did see some  
2 inappropriate behavior.

3 BY MS. NECESSARY:

4 Q. All right. Now, did you tell Ms. Allen that  
5 she should report what happened?

6 A. No.

7 Q. That she should report this?

8 A. No, ma'am.

9 Q. You didn't tell her that she should report this  
10 to the police?

11 A. No, ma'am, because what --

12 Q. Did you tell her that she should report this to  
13 the leadership of the church?

14 A. Well, what I seen, I put her out of my house.

15 Uh-huh.

16 Q. So you put her out of your house?

17 A. Because she was laughing. She said she knew  
18 everything that was going on. She was not  
19 supposed to have been hypnotized, she said.

20 Then she changed her story. I said,  
21 you contradict yourself.

22 She touched me on the shoulder. I  
23 asked her to leave my house. I was really  
24 ready to go off on her, because I know  
25 Pastor --

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1 THE COURT: Ms. Necessary, would you  
2 be kind enough to let her finish her  
3 answer, please.

4 MS. NECESSARY: I will ask in return  
5 that the witness respond to the questions  
6 and not make a speech.

7 THE COURT: I don't know if she is  
8 responding or not, because I'm not able to  
9 hear her entire answer.

10 If you disagree with her answer, if it  
11 is not responsive to the question which you  
12 asked, which was -- I believe you asked,  
13 why did you ask her to leave your house.

14 MS. NECESSARY: I didn't ask her why.

15 THE COURT: Then you can move to  
16 strike that portion if you feel that is not  
17 an answer, but I can't logically or  
18 sensibly rule on it if I can't hear her.

19 Hence, please don't cut her off until  
20 she has answered her answer.

21 With that, you may ask her another.

22 MS. NECESSARY: Yes, Your Honor.

23 BY MS. NECESSARY:

24 Q. Did you report what you had seen to the  
25 leadership of the church?

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1 A. Yes, when I put her out of my house and told  
2 her I would definitely pray for her, that there  
3 was some things going on in her mind that was  
4 very sick.

5 Yes, I did. I called another pastor  
6 at the time.

7 Q. Did you report Mr. Brown's conduct that you saw  
8 in the tape to the church?

9 A. I reported to -- I called a pastor and told her  
10 what was going on with Lynn.

11 Q. I'm asking -- the question is whether you  
12 reported Mr. Brown's conduct to the church.

13 A. I did not have to, ma'am. The pastor that I  
14 called gave the information to my bishop. It  
15 goes through a channel.

16 Q. So you, yourself, did not?

17 A. I called my --

18 Q. That's an easy question; yes or no?

19 A. I called my pastor.

20 MS. NECESSARY: Thank you. That's  
21 all.

22 THE COURT: So you called your pastor  
23 and --

24 THE WITNESS: I called another pastor  
25 in the --

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THE COURT: Told him about this incident?

THE WITNESS: Yes. I called her pastor and told her, and the pastor called Lynn.

She said that she wasn't at my house.

MS. NECESSARY: Objection, Your Honor.

THE WITNESS: She said she wasn't at my house.

MS. NECESSARY: Double hearsay.

THE WITNESS: She wasn't at my house, sir, but she was at my house.

THE COURT: So you have information that the victim denied having even been at your house?

THE WITNESS: But she was, because I seen her there.

THE COURT: All right.

MS. NECESSARY: I object, though, that whole response by the witness.

THE COURT: Sustained.

Anything else of this witness; Ms. Johnson?

MR. ETTINGER: A couple brief questions.

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1  
2 REDIRECT EXAMINATION

3 BY MR. ETTINGER:

4 Q. Who was the pastor who you reported this to?

5 A. Pastor Winnie Pollard, W-i-n-n-i-e  
6 P-o-l-l-a-r-d, I think.

7 Q. Who is Winnie Pollard?

8 A. Sir?

9 Q. What is Winnie Pollard's position at  
10 Potters House?

11 A. She is an apostle. She is a pastor.

12 Q. What does -- what is she?

13 A. She is an overseer of the church.

14 Q. So an apostle is a high-ranking member of the  
15 church?

16 A. Yes, sir.

17 Q. On cross-examination, you stated that Faith  
18 discussed with you issues about the cult and a  
19 baby, correct?

20 A. Yes, sir.

21 Q. What did she say in regards to this baby and  
22 the church?23 A. That she was going through changes in her mind  
24 about being in a cult. Her mom --

25 MS. NECESSARY: I object again.

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THE WITNESS: Her making her kill her baby. And at nighttime, I would minister to her, but then several times after that, I stopped because she would keep calling me.

She would cry out. Then she would stop crying. When I'm getting ready to go out of the phone, I get ready to hang up, she starts crying again.

MR. ETTINGER: Thank you. I have no further questions of this witness.

THE COURT: Any recross?

MS. NECESSARY: No, Your Honor. Thank you.

THE COURT: Ms. Johnson, you may step down.

Is there any need to have Ms. Johnson remain, or may she be excused?

MR. ETTINGER: She may be excused as to the Defendant.

THE COURT: Ms. Johnson, you are excused, with the thanks of the Court.

THE WITNESS: Thank you, Your Honor. (Thereupon, the witness is excused.)

THE COURT: Call your next witness,

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1 please.

2 MR. ETTINGER: Thank you, Your Honor.  
3 The Defendant will call Jeffrey  
4 Swensen.

5 -----

6 JEFFREY SWENSEN,  
7 a witness herein, having first been duly sworn, was  
8 examined and testified as follows:

9 -----

10 DIRECT EXAMINATION

11 BY MR. ETTINGER:

12 Q. Please state your name, and spell it for the  
13 Court.

14 A. My name is Jeffrey, J-e-f-f-r-e-y, Swensen,  
15 S-w-e-n-s-e-n.

16 Q. How are you employed, Mr. Swensen?

17 A. Self-employed as a freelance photographer.

18 Q. And how do you know Charles Brown?

19 A. Charles and I worked together. We met actually  
20 ten years ago today, working at the Valley News  
21 Dispatch in Tarentum, Pennsylvania.

22 He was a reporter, and I was a  
23 photographer.

24 Q. And since working together at that newspaper,  
25 how else have you come to know Charles Brown?



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1 A. We developed a friendship for a number of  
2 reasons. We worked on a book together.  
3 Charles helped me out in some employment issues  
4 years ago, as well.

5 We -- our families go on picnics,  
6 work. We associate with one another all the  
7 time.

8 I photographed his in-laws getting  
9 married.

10 Q. So tell me a little bit more about your career  
11 presently and who you work for.

12 A. I'm a freelance photojournalist. I work for  
13 Giddy Images News Service, based in New York,  
14 the New York Times, US Today, almost every  
15 major newspaper, I think, in the country within  
16 the past year, a number of magazines, Time,  
17 Newsweek.

18 Q. And since having worked with Charles Brown at  
19 the Valley Dispatch, you're aware of some of  
20 his journalistic endeavors?

21 A. Absolutely.

22 Q. Where has he worked since then?

23 A. Well, the Tribune Review. Bates bought the  
24 Valley News Dispatch, I believe, in 1999. He  
25 was moved to other offices, but Charles started

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1 a -- started his own newspaper called  
2 Glad Tidings. I'm not sure exactly when the  
3 year was, but I was aware of all these things.

4 Q. Having known Charles for this long, and working  
5 in the same professional community, have you --  
6 are you aware of Charles' reputation in that  
7 community?

8 A. I am.

9 Q. What would his reputation be as to honesty?

10 A. I think that he speaks with veracity.

11 MS. NECESSARY: Objection, Your Honor.

12 That's improper reputation testimony.

13 THE COURT: Okay.

14 MR. ETTINGER: I would agree.

15 BY MR. ETTINGER:

16 Q. What is his reputation in the community as to  
17 honesty?

18 A. I can speak for myself and how well I know him.

19 MS. NECESSARY: That would -- I  
20 object.

21 THE COURT: Sustained.

22 BY MR. ETTINGER:

23 Q. Are you aware of his reputation in your  
24 professional community?

25 A. It would be speculation, but you know, I'm

1           aware of a community of friends and how we  
2           feel, you know, Charles is as a person.

3           Q.    And as to that community, are these journalist  
4           friends?

5           A.    Yes.

6           Q.    As to that community, what is his reputation as  
7           to honesty?

8           A.    He is honest.

9                           MR. ETTINGER:  I have no other  
10                          questions for this witness.

11                         THE COURT:  Cross-examine.

12                         MS. NECESSARY:  All right.

13                           -----

14   CROSS-EXAMINATION

15           BY MS. NECESSARY:

16           Q.    Mr. Swensen, obviously you are close friends  
17           with the Defendant?

18           A.    I'm close friends with a lot of people.

19           Q.    You're close friends with the Defendant?

20           A.    Yes.

21           Q.    And you have -- and you haven't actually  
22           discussed his reputation for honesty with other  
23           people in the community, either your  
24           professional community or your community of  
25           friends; is that right?

-----

1 MR. ETTINGER: Objection. Having  
2 discussed someone's reputation for honesty  
3 with others in the community is irrelevant  
4 as to whether or not he knows what his  
5 reputation for honesty is.

6 MS. NECESSARY: How -- well, how does  
7 one determine what it is?

8 THE COURT: Don't you, you know, then  
9 open the door to all these individual  
10 particular circumstances and reasons with  
11 that type of question?

12 MS. NECESSARY: I don't believe so. I  
13 think that's a standard question for  
14 determining this witness' basis of  
15 knowledge.

16 THE COURT: Overrule the objection.  
17 You can ask the question.

18 THE WITNESS: Would you ask me that  
19 one more time?

20 BY MS. NECESSARY:

21 Q. You haven't actually discussed his honesty or  
22 his reputation with other people in the  
23 community?

24 A. That would be correct; I have discussed it.

25 Q. You have, and you sit around and discuss

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1 Mr. Brown's reputation?

2 A. I have.

3 MS. NECESSARY: All right. Thank you.  
4 That's all.

5 THE COURT: Mr. Ettinger.

6 MR. ETTINGER: Just briefly.

7 -----

8 REDIRECT EXAMINATION

9 BY MR. ETTINGER:

10 Q. What would be an incident in which you have  
11 discussed his reputation for honesty with  
12 people in the community?

13 A. Throughout this whole past two years, the whole  
14 community is aware of it, we have spoken about  
15 what we think, who we think Charles Brown is,  
16 the fact that we know him to be a truthful and  
17 honest person.

18 MR. ETTINGER: Thank you. I have no  
19 other questions of this witness.

20 THE COURT: Any recross?

21 MS. NECESSARY: No. Thank you,  
22 Your Honor.

23 THE COURT: Mr. Swensen, you may  
24 step -- is there any need to have  
25 Mr. Swensen remain?

-----

1                   MR. ETTINGER: He may be excused as to  
2 the Defense.

3                   THE COURT: You are excused, with the  
4 thanks of the Court.

5                   THE WITNESS: Thank you.

6                   (Thereupon, the witness is excused.)

7                   THE COURT: You may call your next  
8 witness, please.

9                   MR. ETTINGER: At this time, the  
10 Defense rests.

11                   THE COURT: The Defendant rests.

12                   Bring your client forward, please.

13                   (Thereupon, the Defendant stands  
14 before the Court.)

15                   THE COURT: Mr. Brown, before I allow  
16 your lawyer to rest the case, I just wanted  
17 to ask you a few questions.

18                   Do you understand that you have a  
19 constitutional guaranteed right to testify  
20 in your own defense?

21                   THE DEFENDANT: Yes. My attorney and  
22 I have discussed it.

23                   THE COURT: You have discussed it with  
24 Mr. Ettinger?

25                   THE DEFENDANT: Correct.

-----

1 THE COURT: Is it your conscious  
2 decision to elect not to do so?

3 THE DEFENDANT: Yes, it is.

4 THE COURT: Has anybody promised you  
5 anything or threatened you in any way to  
6 give up your right to your own defense?

7 THE DEFENDANT: No.

8 THE COURT: Is it a knowing,  
9 intelligent and voluntary decision on your  
10 part to elect not to testify in trial?

11 THE DEFENDANT: Yes, it is.

12 THE COURT: All right. Do you have  
13 any additional questions you would like to  
14 ask your client relative to his waiver of  
15 his right to testify in his own defense?

16 MR. ETTINGER: I do not, Your Honor.  
17 We went over this matter at length, both in  
18 my house and here today.

19 THE COURT: Very well. The Defense  
20 rests. You may have a seat at counsel  
21 table.

22 Is there any rebuttal.

23 MS. NECESSARY: No, Your Honor.

24 THE COURT: There being no rebuttal,  
25 is there any argument?

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1 MR. ETTINGER: Yes, Your Honor.

2 As I stated in the beginning of this  
3 trial, what is important is what the  
4 evidence will not show.

5 I think that, as Your Honor sat  
6 through this videotape yesterday and heard  
7 the extent of the investigation in this  
8 case, Officer Trkula testified that, upon  
9 receiving this videotape, he took this  
10 videotape to Officer Payne, who yesterday  
11 was qualified as an expert in the field of  
12 hypnosis and testified here in this  
13 courtroom, the Officer testified that in  
14 his expertise, to a degree of scientific  
15 certainty, this individual did not appear  
16 to be hypnotized, and there is some  
17 speculation that perhaps she was drugged on  
18 this videotape.

19 So, in the course of their  
20 investigation, they took a hair sample from  
21 her. This hair sample was submitted to the  
22 crime lab. The Commonwealth produced no  
23 evidence that she was under the influence  
24 of any controlled substance.

25 The circumstances surrounding



1 Faith Allen and her claims she was making  
2 in church are odd, and obviously, that  
3 videotape that we observed in the courtroom  
4 yesterday was odd.

5 There were various witnesses who  
6 mentioned, including the alleged victim  
7 herself, that she had been a member of a  
8 cult. While she denied taking part in  
9 human sacrifices, at least two witnesses  
10 today, Candy Cogdale and Marie Johnson,  
11 stated she had told them the opposite.

12 These two witnesses also said that  
13 when she showed them this videotape, Faith  
14 was laughing, and Ms. Johnson stated  
15 further that not only was she laughing, but  
16 she stated she remembered everything that  
17 was going on in the tape and that she made  
18 this tape to prove that Charles was with  
19 her because he was going to be her  
20 boyfriend.

21 Between June 3rd and September 9th,  
22 Faith Allen did nothing as far as taking  
23 this to the police. She showed this  
24 videotape to numerous people in the church,  
25 and ultimately, not being satisfied with

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1                   how the church dealt with things, she  
2                   turned this tape over to the police.

3                   She was not credible as a witness  
4                   given her denials and given the fact that  
5                   there was testimony countering what she had  
6                   claimed was the reason for making this  
7                   videotape.

8                   As far as what was seen on the  
9                   videotape, I don't see how the Commonwealth  
10                  has sustained the elements of the events  
11                  beyond a reasonable doubt.

12                 In addition, Bishop Carswell and  
13                 Jeffrey Swensen testified to my client's  
14                 character, and this is a case where, while  
15                 definitely a bizarre situation, and while  
16                 no one presented evidence that an  
17                 inappropriate relationship hadn't  
18                 developed, certainly an inappropriate  
19                 relationship of some sort developed in this  
20                 matter. However, the Commonwealth has not  
21                 proven the charge of indecent assault  
22                 beyond a reasonable doubt.

23                 THE COURT: Thank you, Mr. Ettinger.  
24                 Ms. Necessary.

25                 MS. NECESSARY: Thank you, Your Honor.

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1                   And I have a brief memo on the  
2 elements of the particular count of  
3 indecent assault to present to the Court,  
4 Your Honor. This case rested on a sole  
5 count of indecent assault.

6                   There are basically two elements.  
7 One, that the actor had indecent contact  
8 with or had caused the victim to have  
9 indecent contact with him while she was  
10 unconscious or where the Defendant knew she  
11 was unaware that the sexual contact or  
12 indecent contact was occurring.

13                  I would note, Your Honor, that we do  
14 not have to prove how the victim came to be  
15 in this state of unconsciousness.

16                  Unconsciousness is defined as someone  
17 who is not in a normal waking state,  
18 someone who lacks knowledge or awareness of  
19 her only sensations and external events,  
20 someone who lacks the conscious awareness  
21 that they would have in a conscious waking  
22 state. So a person doesn't have to be  
23 totally out of it.

24                  THE COURT: Am I mistaken or is not  
25 your theory of the case in your opening

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1 statement that the victim has maintained  
2 throughout this entire time period, and as  
3 recently as yesterday, that she was going  
4 to engage in a hypnotic counseling session  
5 with the Defendant and that specifically  
6 the Defendant hypnotized her?

7 MS. NECESSARY: Your Honor, that is  
8 what she believes. The Commonwealth does  
9 not have to prove that is what actually  
10 happened. We have to simply prove that she  
11 was unconscious at the time this occurred.

12 THE COURT: I did -- I observed the  
13 videotape. There was movement, body  
14 movement.

15 MS. NECESSARY: That's correct.

16 THE COURT: Talking. Conversation.

17 MS. NECESSARY: That is correct,  
18 Your Honor.

19 THE COURT: And I considered also  
20 Chief Payne's testimony, in his opinion,  
21 that that could have been contemporary to  
22 the suggestion or the claim that she was  
23 hypnotized.

24 The Commonwealth's theory that she was  
25 hypnotized, that as an expert he could say,

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1 after watching it now twice, that the  
2 victim was not, in fact, hypnotized?

3 MS. NECESSARY: His opinion also was  
4 that she was in a state of consciousness  
5 less than a person who had been hypnotized  
6 and that it was his impression that she had  
7 been drugged and that she was in a  
8 semiconscious state. That's what he  
9 testified to.

10 THE COURT: Let's get to that.

11 There is no evidence that, in fact,  
12 the victim -- Defendant was the victim --  
13 was drugged.

14 I thought the tests were negative.  
15 There was no evidence of any lab reports  
16 that would show that she was drugged.

17 Moreover, the tape, the part of the  
18 tape that I saw did not have a beginning,  
19 for example, as to when the Defendant got  
20 to her house or wherever this occurred, nor  
21 did it have an ending as to what occurred  
22 at the conclusion of this encounter.

23 I just saw some time period where  
24 there was touching, and there was contact,  
25 but the expert indicated that in fact she

1 was not in a hypnotic state.

2 MS. NECESSARY: Your Honor, the  
3 Commonwealth does not have to show that she  
4 was in a hypnotic state. That was not  
5 necessarily a theory of the case.

6 We were showing that she was  
7 unconscious, which if the Court looks at  
8 the case law, shows that a person who is  
9 not able to think or feel as in the normal  
10 waking state is someone who is unconscious,  
11 for the purposes of the statute.

12 All the case law indicates that a  
13 person does not have to be totally comatose  
14 or totally without movement in order to be  
15 unconscious; they have to be unaware of  
16 what is going on. This victim was.

17 THE COURT: What about the witness,  
18 Marie Johnson, related that the victim  
19 herself admitted to her that she, in fact,  
20 was conscious --

21 MS. NECESSARY: Your Honor, one of  
22 the --

23 THE COURT: -- during this whole  
24 episode?

25 MS. NECESSARY: One of the other

1 Commonwealth -- one of the other Defense  
2 witnesses said the exact opposite, that  
3 Ms. Allen had come to her and said that she  
4 didn't know what was going on. She  
5 suspected that she had been touched, but  
6 she didn't know. That was why she set up  
7 the videotape.

8 The Commonwealth's position is that  
9 Marie Johnson is a member of the church, a  
10 member of the church which pretty much  
11 punished the victim in this matter and  
12 embraced the Defendant, who was the one who  
13 is engaging in, had to be, at least to  
14 them, improper conduct.

15 They threw her out of the church. I  
16 submit to you that the bias of the church  
17 and the members of the church is obvious.  
18 This woman would not answer my question.  
19 She said what she wanted to say, and no  
20 matter what I asked her, she blurted out  
21 what she wanted to say, which was very  
22 harmful and contrary to someone who would  
23 be a counselor, a confidant, which  
24 obviously Ms. Allen had gone to her for  
25 help.

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1                   Why would -- it would make no sense if  
2                   Faith Allen was trying to put forth  
3                   enormous fraud for her to tell this woman,  
4                   who was a member of the church, that she  
5                   really knew all about it. That makes  
6                   absolutely no sense whatsoever, Your Honor.

7                   THE COURT: Anything else?

8                   MS. NECESSARY: No, Your Honor.

9                   THE COURT: Bring your client forward,  
10                  please.

11                 (Thereupon, the Defendant stands  
12                 before the Court.)

13                 THE COURT: In this case, I have  
14                 reviewed my notes from yesterday, as well  
15                 as today. I have noted that the  
16                 Commonwealth's theory all along has been  
17                 that the victim was hypnotized to a state  
18                 where she did not recall anything, and  
19                 could not recall, and that during that  
20                 period of time, period of that state of  
21                 mind, if you will, that the Defendant had  
22                 an indecent contact with her.

23                 The victim set up a video camera  
24                 expecting the Defendant to come to her  
25                 house at a predetermined time. Counseling



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1 sessions between the Defendant, who was a  
2 pastor at the Defendant's church -- or, at  
3 the victim's church, rather, and the  
4 victim -- had been going on for several  
5 weeks.

6 The victim claimed that the Defendant  
7 was, in fact, hypnotizing her. The video  
8 was presented as evidence of the  
9 Defendant's contact with the victim during  
10 the counseling session, allegedly, again  
11 while under hypnosis.

12 The film doesn't show either the  
13 beginning nor the end of the incident or  
14 that session between the Defendant and the  
15 victim on the date in question.

16 Chief Payne was called as an expert  
17 and --

18 MR. ETTINGER: It is Officer Payne.  
19 I hate to interrupt you. You  
20 misstated his name previously.

21 THE COURT: His name is Officer Payne.  
22 I'm sorry, Officer Payne, who was --  
23 who is the chief.

24 Chief Payne testified in this case,  
25 and he was called by Detective Trkula, and

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1 Detective Trkula is the Monroeville police  
2 officer who investigated this, and  
3 Detective Trkula contacted Chief Payne  
4 because of Chief Payne's area of expertise  
5 in the field of hypnotism.

6 Apparently, Chief Payne viewed the  
7 tape back in 2004 on one occasion. He was  
8 subpoenaed and observed the tape again in  
9 open court as it was played again.

10 He offered the expert opinion that, in  
11 fact, the victim was not under hypnosis?

12 When asked, could she have been  
13 drugged, could she have been under the  
14 influence? Perhaps she acted that way or  
15 appeared to be under the influence of  
16 something, but whether it was actually that  
17 or not, I don't know.

18 There is no evidence in this case that  
19 any alcohol was used or -- there was a drug  
20 test apparently made which indicated that  
21 the drug tests of the victim indicated no  
22 drugs.

23 I have considered the testimony of the  
24 victim, the testimony of the detective,  
25 Detective Trkula, the testimony of

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1 Chief Payne, and I find Chief Payne's  
2 testimony regarding the issue of hypnotism  
3 and the state of consciousness to be  
4 credible.

5 Also, I have considered the  
6 Defendant's witnesses who have testified,  
7 specifically Ms. Johnson, Marie Johnson. I  
8 considered the testimony of  
9 Jeffrey Swensen. I conferred all other  
10 factors which I may take into account, as  
11 well as the burden which the Plaintiff  
12 Commonwealth bears such as this.

13 For all those reasons, at 200500569,  
14 at Count One of this information, Count Two  
15 having previously been dismissed, I find  
16 the Defendant not guilty.

17 Sir, you're discharged with respect to  
18 this count in this case.

19 MR. ETTINGER: Thank you, Your Honor.

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21 (Thereupon, the hearing concluded.)  
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C E R T I F I C A T E

I, Mary Martin, Registered Professional Reporter, do hereby certify that the foregoing proceedings are contained fully and accurately in the notes taken by me on the hearing of the herein cause to the best of my knowledge and ability; and that this is a true and accurate transcript of the same.

  
Mary Martin  
Registered Professional Reporter