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The View From Here

Taped call in sex case raises doubts

By Carl Strock

I have just become aware of a legal case that I think should be disturbing to any fair-minded person. It is the case of a fellow named Jack Carroll, who about a year and a half ago was convicted in Rensselaer County Court of having sexual relations with a girl during the time when she was 9 to 13 years old.

Carroll appealed his conviction, and a couple of weeks ago the Appellate Division of state Supreme Court turned him down, though the five judges of the panel did find his sentence of 12 ½ to 25 years to be more than allowed by law and reduced it to the legal maximum of 8 1/3 to 25 years.

The case is disturbing because there is a powerful piece of evidence in Carroll's favor that the jury in the case was not allowed to hear, and that is a tape recording the state police made when they tried to trick him into incriminating himself.

A state police investigator got the girl to confront Carroll over the telephone from the police barracks in East Greenbush.

The call was recorded, and the investigator sat by her side coaching her with hand-written notes: "You did sex to me"... "You on top of me on couch"... "Yes, you did"... "I know you did and so do you." (I have a copy of the notes.)

Hearing this for the first time and having no way of knowing that the call was being recorded, Carroll responded with utter astonishment, "Oh my God, honey, I never did anything to you! Me? Jesus!"

I have listened to this tape in the office of Carroll's lawyer, Mike Koenig, in downtown Albany, and I can tell you it is a chilling thing to hear -- a young girl in the hands of the authorities being coached to accuse a man close to her of preying on her, and the man absolutely flabbergasted. "Oh, my God," he says over and over. "I don't know what the hell you're thinking of...I would never touch you in a sexual fashion, ... What do you think, I'm sick? Oh my God. I can't believe you're doing this."

It's difficult for me to listen to that and believe Carroll is guilty. He reacted the way I would react. His breath was taken away, and he said, " Oh, sweetheart, I would never, honest to God, I swear to God to you I never would do that to you!" And it goes on like that for 15 minutes.

But my point is not whether the tape proves him innocent -- surely, it doesn't. My

point is the jury never got to hear it. Judge Joseph Sise characterized the tape as “self-serving hearsay” and wouldn’t let it into evidence, and the Appellate Division agreed.

(Naturally if Carroll had incriminated himself, the tape would have been admitted. There is no question about that.)

Shortly after that phone call, the state police tried to trap Carroll again by showing him a fake polygraph test and telling him it proved the girl was telling the truth. The ensuing interrogation, centering on that trick, lasted for some three hours.

Now, if it were up to you to determine Carroll’s guilt or innocence, wouldn’t you like to know how he reacted to that ruse also? Wouldn’t you like to hear a tape-recording of the conversation?

I certainly would. But guess what: After striking out the first time, the police made no tape of that conversation. They barely even took notes.

Nevertheless the investigator who conducted the interview, Ed Girtler, was allowed to testify about it in court.

Imagine a judge not letting a jury hear an actual recording but permitting them to hear a cop’s unsupported testimony about a later conversation, a conversation that the police could have recorded but chose not to. On the grounds that the tape is hearsay!

In the event, the testimony was ambiguous. The investigator said Carroll reacted to the charges with disbelief, but he also claimed that at one point Carroll answered “no” when asked if the girl was lying or was a liar.

There is more to say about this case, and I expect to say more. For now Jack Carroll is sitting in Clinton Correctional Facility waiting for his lawyer to file the final appeal, and I can’t get that tape out of my mind.