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The View From Here

## Jack Carroll's last chance for justice

By CARL STROCK

A case is coming up for argument before the Court of Appeals that I have been following, and I can only keep my fingers crossed that justice will be done at last.

This is the case of Jack Carroll, a 45-year-old Troy boat mechanic and marina operator who was convicted of having sexual relations with an underage girl and was sentenced to 8 to 25 years in prison. The conviction was upheld by the Appellate Division, and this is now the final appeal, before the state's highest court.

Arguments will be presented next Tuesday afternoon by Mike Koenig for the defendant and by Bruce Knoll for the Rensselaer County district attorney's office, while Jack Carroll himself spends the day in Clinton Correctional Facility, in Dannemora, where he has spent every day for the past 2½ years. He will be in Lower H Block, where the most despised prisoners are kept for their own protection - a maximum security prison within a maximum security prison.

I visited him a few days ago, for the second time, and will report on that visit soon.

The reason I'm interested in the case is simple: I believe the guy was railroaded.

As I reported earlier, I heard a tape recording of him talking to the girl who accused him, the first time she ever mentioned this sexual-assault matter to him - the first time anyone ever mentioned it to him - and he responded with utter disbelief, just as any innocent person would respond.

"Oh, my god, honey, I never did anything to you! Me? Jesus! Jesus, I never touched you!" and so forth, for 15 agonizing minutes, while the girl hesitantly says accusatory things to him at the prompting of a state police investigator, which of course Jack Carroll didn't know about at the time.

The girl was at the state police barracks in East Greenbush being coached by Senior Investigator Ed Girtler, who scribbled to her notes like, "You on top of me on couch," and so forth as the tape recorder ran. (I have a copy of the notes.)

The significant thing is that the jury was never allowed to hear that very moving tape recording. The state police made it in order to trap the guy, and when the trap didn't spring, the district attorney succeeded in keeping the tape out of evidence.

Judge Joseph Sise, who presided over the trial, agreed with the D.A. that the tape constituted "self-serving hearsay," which from a common-sense point of view I must say is one of the more preposterous things I have heard in my life - that a person's own spontaneous reaction to a charge, recorded without his knowledge, should be regarded as hearsay.

What makes all of this doubly offensive is that the cops were able to put what I would regard as real hearsay into the trial record without quibble, the real hearsay being what they claim Carroll said on another occasion, when they tried to trick him again.

On that second occasion Girtler of the state police and Detective Steve Weber of the Troy police brought Carroll to the barracks and showed him a fake polygraph purporting to prove that the girl was telling the truth when she accused him of having sex with her.

They grilled him for some three hours about that polygraph - without letting on that it was a ruse, naturally - and then they went into court and were allowed to testify as to what he said in response to it.

Their testimony was that along with much head-shaking, Carroll at one point conceded the girl was "not lying."

"His acknowledgement that the victim did not lie is tantamount to his admitting the accusations," the D.A. argues in his brief to the Court of Appeals, which is what the Appellate Division thought also and indeed what any reasonable person would think.

The trouble is not only that the cops' unsupported word about what someone else said is rank hearsay, from any common-sense point of view, but Detective Weber freely admitted to me in an interview last year, after the conviction had been upheld, that it was not true. Jack Carroll never admitted anything, directly or indirectly.

"We tried to get him every way we could, and he wouldn't go for it," Weber told me affably enough, recalling this interesting case of his. And he even imitated Carroll to me: "I didn't do it, I didn't do it, I didn't do it."

He seemed to get a kick out of how they managed to get the guy convicted anyway.

He made clear that as far as he was concerned, Carroll was guilty and he and Girtler were just looking for a way to nail him. They weren't investigating anything, in the sense of trying to find the truth.

"My job is to believe the victim first and then try to prove it beyond a reasonable doubt," he told me.

Actually, he and Girtler didn't simply believe the girl but went well beyond that. They managed to convince her she wasn't a virgin, as she had first told them, and eventually prepared for her signature a statement that finessed the question of sexual intercourse by using such ambiguous language as "pressure between my legs and inside my vagina," language that the girl ultimately repeated, verbatim, in her court testimony.

Conveniently enough, they did not tape-record their interrogation of Carroll, though of course they could have if they had wished, and even though Carroll says one of them appeared to be running a recorder by opening a drawer, inserting a tape and pushing buttons.

But anyway, there to me is the fundamental injustice of this case - that Jack Carroll's actual tape-recorded response to the heinous charge of sex abuse was kept out of evidence while the cops' unsupported description of his response on another occasion, which one of them later admitted was false, was presented to the jury and used to convict him.

To me that is not right, and I pray the Court of Appeals will reverse his conviction and let him have another trial.