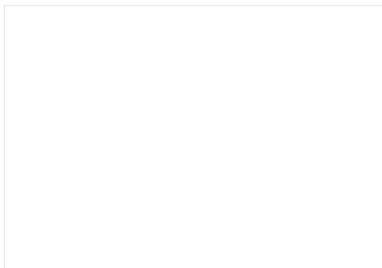


court redacted the officer's question.

When Justice Gary Hicks asked whether the jury was given instructions on how the evidence should be considered, Johnson said they were essentially told to not consider anything the officer said as truth. But he argued that the instruction wasn't enough.



And while McGinnis said that when listening to the interview as a whole it becomes apparent Willis was evading questions, changing his story and trying to uncover what information the officer had, Johnson said none of the "shifting" depended on the DCYF report being mentioned.

"Much of that happens before the DCYF report," Johnson said.

But McGinnis argued that the defense opened the door for the tape to be played in full when they mentioned in opening statements that there was no evidence Anderson described the intercourse as forcible until the investigation was reopened many years later.

"They specifically said that knowing full well this record existed," she said. "The defendant argues that doesn't mean you can bring in inadmissible hearsay. But it does. The specific contradiction rule says that otherwise inadmissible evidence can come in to counteract."

But Justice Robert Lynn wondered whether that rule applies regardless of how trustworthy the evidence is.

"I had always understood that to mean otherwise inadmissible, in the sense that it wouldn't be relevant otherwise, may now be relevant," he said. "But if it's not competent?"

But McGinnis said she didn't find the evidence to be incompetent.

"It's hearsay," Lynn countered quickly.

"It's hearsay but that doesn't necessarily mean it's incompetent evidence," McGinnis said. "It just means you don't have the person there to say it. Hearsay is not necessarily unreliable."

Lynn noted that the report was from an anonymous source.

"That's right, and if she had been there, if they had been able to determine who that was, her testimony may have been admissible," McGinnis responded. "But the defense can't . . . say, 'This evidence is inadmissible so I'm going to argue in opening that it doesn't even exist.' They took that risk and that's what happened."

Willis was convicted and sentenced to serve 15 to 30 years.

The justices often take up to six months to issue an order following oral arguments.

(Tricia L. Nadolny can be reached at 369-3306 or tnadolny@cmonitor.com or on Twitter @tricia_nadolny.)

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