

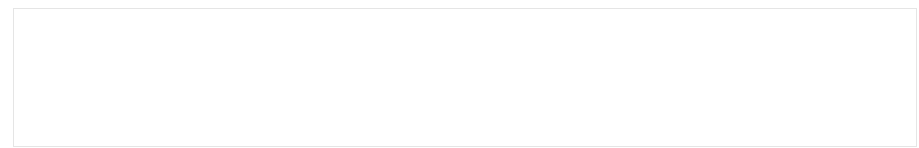
Sign in (https://mobile.concordmonitor.com/clickshare/subscribeCenter.do?CSTargetURL=http://www.concordmonitor.com/subscribe/3877545-95/willis-johnson-pastor-church) | News (http://www.concordmonitor.com/news/) | Contact Us (/contact-us)

33° Foggy Hi 36° | Lo 23°
Sponsored by: **grappone**



Search the site

- Home (http://www.concordmonitor.com/home/)
- News (http://www.concordmonitor.com/news/)
- Obituaries (http://www.legacy.com/obituaries/concordmonitor/)
- Opinion (http://www.concordmonitor.com/opinion/)
- Sports (http://www.concordmonitor.com/sports/)
- Community (http://www.concordmonitor.com/community/)
- Do, See, Taste (http://www.concordmonitor.com/doseetaste/)
- Photos (http://www.concordmonitor.com/photos/)
- Marketplace (http://classifieds.concordmonitor.com)
- Reader Services (/contact-us)



CONCORD

N.H. high court hears arguments in rape conviction

Attorney points to confidentiality rule

By TRICIA L. NADOLNY
Monitor staff
Wednesday, January 16, 2013
(Published in print: Thursday, January 17, 2013)

When Ernie Willis admitted to his pastor that he had impregnated a 15-year-old girl at his church, Willis saw the confession as a plea for spiritual guidance, according to his lawyer. That fact alone made the conversation protected, attorney Christopher Johnson said yesterday at the state's Supreme Court, arguing the pastor in turn shouldn't have been forced to testify at Willis's 2011 trial.

Email

Print (/home/3877545-95/willis-johnson-pastor-church?print=true)

Comments (0)

But as Johnson made the appeal, some of the justices seemed uncomfortable with letting the former pastor at Concord's Trinity Baptist Church off the hook under a rule that protects a minister from testifying about confessions made to them in their "professional character as a spiritual advisor."

Chuck Phelps testified before Willis was convicted of rape that as pastor, he had initiated the conversation to investigate whether church rules were broken. And he said Willis knew that he planned to go to the police.

"If we found in your favor wouldn't we be turning (the religious privilege) rule inside out?" Justice Carol Conboy asked Johnson. "In other words, it doesn't matter whether the pastor initiated the conversation. It doesn't matter whether the pastor is doing an investigation. It doesn't matter that the pastor plans to go to the police. There was this private exchange and therefore it's totally protected. I have a problem with that."

Willis went on trial at Merrimack County Superior Court in May 2011 after an investigation into allegations first made in 1997 was reopened by the Concord Police Department. Tina Anderson, who at the time of the assault was 15 years old and baby-sat Willis's children, testified that he twice forced her to have sex with him after he

Local Voices

 THE INSIDERS (/TOPIC) and a walk by moonlight, night
concordmonitor.com/community/10245024-95-and-a-walk-by-moonlight-night)

 TIM O'SULLIVAN (/TOPIC) O'SULLIVAN)
O'Sullivan: Ainge adroitly adds more assets to portfolio of Crawford, Brooks
www.concordmonitor.com/sports/10245024-95/tim-osullivan-ainge-adroitly-adds-assets-with-trade-of-crawford-brooks)

 (/topic/?t=RAYDUCKLER) RAY DUCKLER (/TOPIC) /?T=RAYDUCKLER)
Ray Duckler: Marty Capodice's love for the

gave her driving lessons.

The main questions at trial were the frequency and the force of the intercourse. Willis admitted to having sex with Anderson once, but he said it was consensual. And he denied having intercourse with her a second time, as prosecutors alleged.

Judge Smukler's decision Categories

Phelps took the stand after Judge Larry Smukler ruled two conversations he had with Willis weren't protected. The pastor went on to say that Willis told him he had confessed sexually involved with Anderson twice and admitted to being the aggressor in the relationship, despite maintaining that the sex was consensual.

Yesterday, Senior Assistant Attorney General Susan McGinnis argued that Smukler made the right call in allowing Phelps's testimony, saying the pastor's point of view, as well as the confessor's, has bearing on whether the religious privilege rule applies. And she said it was allowed Phelps to tell Anderson what they had talked about and even admitted to the police in a 2010 interview that the conversation with his pastor had taken place.

"You have to understand this church, too. This is an independent, fundamentalist Baptist church. They do church discipline. The defendant was subjected to church discipline," McGinnis said, referencing a sermon where Willis stood before his congregation and admitted to adultery. "He knew there was going to be church discipline. This is the case where Willis went to him seeking to confess. It's a case where he was confronted with information and basically told to explain himself. And he did."

But she said the real question in her mind was whether spiritual guidance took place during the conversation. McGinnis said that if it did, it was only after Willis had confessed under the pressure of an investigation. Johnson argued, though, that an investigation and spiritual guidance could have both occurred, and he said the religious component.

Over his newspaper family includes the religious component. The privilege is held by the penitent, he said, it's not held by the cleric. The important question is what the penitent's attitude."

Interview played in court

Johnson also raised a challenge yesterday to whether jurors should have been played a segment of an interview recorded in 2010 between Willis and a Concord police officer. In the interview, the officer tells Willis about a 1997 report by the state's Division of Children, Youth and Families in which an anonymous source described the man's contact with Anderson as forcible.

The report from the anonymous source was hearsay, Johnson argued, saying it carried so little weight that the prosecution didn't even mention it in their closing arguments.

"There is nothing legitimate the state could have said in closing about the DCYF report," Johnson said. "It matters, it has such a significant bearing, because this was in effect a police-endorsed document contradicting the defense theory (Anderson) had not alleged force previously."

He said Willis's answer would have made sense even if the

Newspaper & Website

- Terms of Service (/terms-of-service)
- Privacy Policy (/privacy-policy)
- Copyright Policy (/copyright-policy)
- Reader Services (/contact-us)
- Subscriptions (/monitor/subscribeirc)
- Discussion Board (/discussion-board)
- Newspaper in Education (/forms/send-a-correction)

Advertising & Services

- Advertise (/advertising)
- Commercial Printing (/commercial-printing)
- Place a classified ad (/http://concordmonitor.adperfect.com/)

Contribute

- Suggest a correction (/http://drupal.concordmonitor.com/forms/send-a-correction)
- Send photo (/http://drupal.concordmonitor.com/form/send-a-photo)
- Suggest a link (/http://drupal.concordmonitor.com/form/send-a-news-tip)
- Letter to the Editor (/http://drupal.concordmonitor.com/forms/letter-to-the-editor)

Capitol Center helped him fight to the end (<http://www.concordmonitor.com/community/10155217-95/ray-duckler-marty-capodices-love-for-the-capitol-center-helped-him-fight-to-the>)



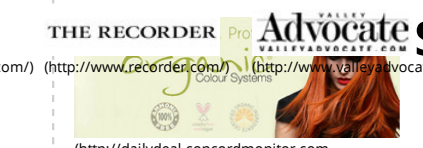
Connect With Us

- Facebook (<https://www.facebook.com/ConcordMonitor>)
- Twitter (<https://twitter.com/ConMonitorNews>)
- LinkedIn (<http://www.linkedin.com/company/concord-monitor>)
- YouTube (<http://www.youtube.com/user/ConcordMonitor>)
- Instagram (<http://www.instagram.com/concordmonitor>)
- Pinterest (<http://www.pinterest.com/concordmonitor>)
- Google+ (<http://www.google.com/+ConcordMonitor>)
- SoundCloud (<http://www.soundcloud.com/concordmonitor>)
- Spotify (<http://www.spotify.com/concordmonitor>)
- Apple Music (<http://www.apple.com/music/concordmonitor>)
- Amazon Music (<http://www.amazon.com/concordmonitor>)
- Google Play (<http://www.google.com/play/concordmonitor>)
- Android (<http://www.android.com/concordmonitor>)
- iOS (<http://www.apple.com/concordmonitor>)
- Windows Phone (<http://www.microsoft.com/concordmonitor>)
- BlackBerry (<http://www.blackberry.com/concordmonitor>)
- Next Issue (<http://www.nextissue.com/concordmonitor>)
- Newsletters (<http://www.concordmonitor.com/newsletters>)
- Subscribe (<http://www.concordmonitor.com/subscribe>)
- Shopnewham (<http://www.shopnewham.com>)
- THE SPORTS BLOG (<http://www.thesportsblog.com>)
- FACEBOOK (<https://www.facebook.com/thesportsblog>)
- Twitter (<https://twitter.com/thesportsblog>)
- LinkedIn (<http://www.linkedin.com/company/thesportsblog>)
- YouTube (<http://www.youtube.com/user/thesportsblog>)
- Instagram (<http://www.instagram.com/thesportsblog>)
- Pinterest (<http://www.pinterest.com/thesportsblog>)
- Google+ (<http://www.google.com/+thesportsblog>)
- SoundCloud (<http://www.soundcloud.com/thesportsblog>)
- Spotify (<http://www.spotify.com/thesportsblog>)
- Apple Music (<http://www.apple.com/music/thesportsblog>)
- Amazon Music (<http://www.amazon.com/thesportsblog>)
- Google Play (<http://www.google.com/play/thesportsblog>)
- Android (<http://www.android.com/thesportsblog>)
- iOS (<http://www.apple.com/thesportsblog>)
- Windows Phone (<http://www.microsoft.com/thesportsblog>)
- BlackBerry (<http://www.blackberry.com/thesportsblog>)
- Next Issue (<http://www.nextissue.com/thesportsblog>)
- Newsletters (<http://www.thesportsblog.com/newsletters>)
- Subscribe (<http://www.thesportsblog.com/subscribe>)

Daily Deal (<http://dailydeal.concordmonitor.com/publishers/concordmonitor/deal-of-the-day>)



Half Off Hair Coloring at Earthly Roots Hair Studio (http://dailydeal.concordmonitor.com/daily_deals/112963)



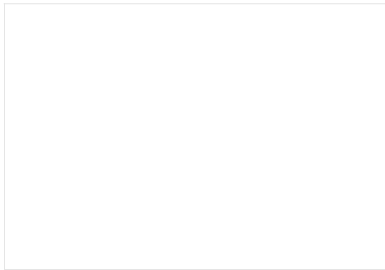
Enter your email for deal alerts: I agree to the [Terms](#) and [Privacy Policy](#)

[CONCORD MONITOR](#) |
 [INSIDER](#) |
 [Ledger-Transcript](#) |
 [VALLEY NEWS](#) |
 [GAZETTE](#)

[THE RECORDER](#) |
 [Advocate Pro](#)

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.)

Share: Email Print (/home/3877545-95/willis-johnson-pastor-church?print=true) Comments (0)

Contribute: Suggest a correction (<http://drupal.concordmonitor.com/forms/send-a-correction>)

Send a photo (<http://drupal.concordmonitor.com/form/send-a-photo>)

Suggest a link (<http://drupal.concordmonitor.com/forms/suggest-a-link>)

Send a news tip (<http://drupal.concordmonitor.com/form/send-a-news-tip>)

Letter to the Editor (<http://drupal.concordmonitor.com/forms/letter-to-the-editor>)

Comments 0

[DISCUSSION GUIDELINES \(/DISCUSSION-GUIDELINES\)](#) [DISCUSSION FAQ \(/DISCUSSION-FAQ\)](#)

Today's E-Edition
(<http://concordmonitor.nh.newsmemory.com>)



(<http://concordmonitor.nh.newsmemory.com/>)

Get more information about the *E-Edition* »
(<http://concordmonitor.nh.newsmemory.com/>)

There are no comments yet. Be the first!

Post a Comment

You must be registered to comment on stories. Click here (<https://home.concordmonitor.com/clickshare/authenticateUserSubscription.do?CSProduct=cmonitor-metered&CSTargetURL=http://www.concordmonitor.com/home/3877545-95/willis-johnson-pastor-church?signin=1>) to register.

Popular

MOST READ COMMENTED

Most read stories in the past 48 hours.

1. **New Hampshire House passes marijuana legalization** (<http://www.concordmonitor.com/news/10230372-95/new-hampshire-house-passes-marijuana-legalization>) (3834 reads)
2. **State House Live: House votes to legalize, tax marijuana** (<http://www.concordmonitor.com/news/10224831-95/state-house-live-house-votes-to-legalize-tax-marijuana>) (3657 reads)
3. **Ex-police officer Breckinridge: I choose life – for myself and Michael Addison** (<http://www.concordmonitor.com/opinion/10141773-95/ex-police-officer-breckinridge-i-choose-life-for-myself-and-michael-addison>) (2640 reads)
4. **Pembroke Academy appeals NHIAA ruling that its players broke the rules** (<http://www.concordmonitor.com/home/10197406-95/pembroke-academy-appeals-nhiaa-ruling-that-its-players-broke-the-rules>) (1307 reads)
5. **Concord hypnotist accused of sexually assaulting relative during therapy session** (<http://www.concordmonitor.com/news/10215544-95/concord-hypnotist-accused-of-sexually-assaulting-relative-during-therapy-session>) (1298 reads)
6. **Mother of slain 9-year-old pushes to make domestic violence its own crime** (<http://www.concordmonitor.com/news/10203377-95/mother-of-slain-9-year-old-pushes-to-make-domestic-violence-its-own-crime>) (1132 reads)
7. **Gun groups, mental health advocates divided over gun bill requiring mental health checks** (<http://www.concordmonitor.com/news/10197844-95/gun-groups-mental-health-advocates-divided-over-gun-bill-requiring-mental-health-checks>) (1051 reads)
8. **Former state rep Richard 'Stretch' Kennedy remembered for testy but generous spirit** (<http://www.concordmonitor.com/community/town-by-town/hopkinton/10228332-95/former-state-rep-richard-stretch-kennedy-remembered-for-testy-but-generous-spirit>) (989 reads)
9. **House committee hears testimony on use of EBT cards for tobacco, alcohol** (<http://www.concordmonitor.com/news/10215357-95/house-committee-hears-testimony-on-use-of-ebt-cards-for-tobacco-alcohol>) (774 reads)
10. **Nonprofits speak out against expanded Business Enterprise Tax** (<http://www.concordmonitor.com/news/10215513-95/nonprofits-speak-out-against-expanded-business-enterprise-tax>) (723 reads)

