OFFICE OF THE PROSECUTING ATTORNEY
ERIC M. HOFFMAN, PROSECUTOR
46TH JUDICIAL CIRCUIT
DELAWARE COUNTY, INDIANA

3100 S. TILLOTSON AVE., SUITE 270
MUNCIE, IN 47302-6548

TELEPHONE 765-747-7801
FAX: 765-747-7830

FOR IMMEDIATE RELEASE

From: Eric M. Hoffman, Prosecuting Attorney
prosecutor@co.delaware.in.us
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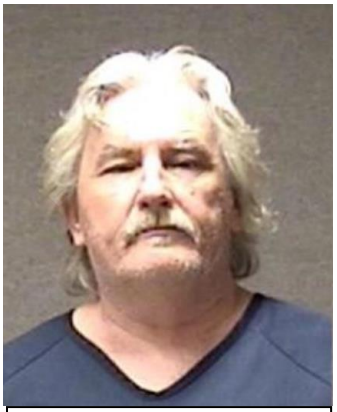
CHILD MOLESTER'S CONVICTION UPHELD ON APPEAL

Muncie Indiana – Earlier today, the Indiana Court of Appeals rejected convicted child molester James Samuels' (DOB 5/29/1963) appeal to overturn his convictions. A copy of the Court of Appeals Opinion is attached. In July of 2021 a Delaware County jury convicted Samuels of Child Molesting, a Class A Felony and Vicarious Sexual Gratification, a Class B Felony. The Honorable Judge Marianne L. Vorhees of the Delaware County Circuit Court No. 1 sentenced Samuels to 65 years in prison.



James Samuels

After the Appellate Opinion was handed down, Delaware County Prosecuting Attorney Eric Hoffman said "I am pleased with the outcome of the appeal. This is one more child predator that has been taken off the streets. He can no longer prey on innocent children. I am proud of my Steve Sneed and Bryce Winslow for their hard work and dedication in this case."

# # #

MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Samuel J. Beasley
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jesse R. Drum
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James Edward Samuels,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 11, 2022

Court of Appeals Case No. 21A-CR-1810

Appeal from the Delaware Circuit Court

The Honorable Marianne Lafferty Vorhees, Judge

Trial Court Cause No. 18C01-1806-FA-4

Mathias, Judge.

[1] James Edward Samuels appeals the Delaware Circuit Court's denial of his motion to dismiss the State's charges of Class A felony child molesting and

Class B felony vicarious sexual gratification. Samuels raises a single issue for our review, which we restate as whether Samuels has demonstrated that his due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963), were violated by the State's failure to preserve any records that may have been created in an investigation into the underlying facts some eighteen years before the instant charges were filed.

[2] We affirm.

Facts and Procedural History

[3] In 1997, Samuels and his twelve-year-old son, D.S., moved in with Samuels' girlfriend and her nine-year-old daughter, J.A. Shortly thereafter, their home caught on fire, and the four moved into a new house on Biltmore Street in Muncie.

[4] At the Biltmore Street house, Samuels repeatedly molested J.A. He touched her vagina and made her touch his penis. He performed oral sex on her and made her perform oral sex on him. He had vaginal and anal intercourse with her. J.A. later estimated that Samuels had forced her to have vaginal intercourse with him at the Biltmore Street house "[thirty] or more times" and had forced her to engage in anal intercourse with him "ten to twenty times." Tr. Vol. 2 pp. 164–65.

[5] About six months after Samuels began molesting J.A., he made D.S. participate in the sexual activity. Samuels made D.S. and J.A. both engage in oral sex with each other as well as vaginal intercourse. Sometimes Samuels would also

engage in the acts with the children, and sometimes "he would watch" and "masturbate." *Id.* at 168. Samuels referred to D.S. and J.A. as "his little porn stars." *Id.* At some point, they all moved from the Biltmore Street house to a house on 21st Street in Muncie and then a house on Grafton Street. Samuels's molestations of J.A. and D.S. continued at those locations.

[6] In 2000, when J.A. was twelve, she became pregnant. In 2000 or 2001, the Indiana Department of Child Services and local police[1] opened an investigation, and authorities interviewed J.A. at the Youth Opportunity Center in Muncie. J.A. later recalled being interviewed and "den[ying] everything at first because [she] was scared." *Id.* at 172. However, as the interview progressed, she opened up and "told them everything that had been going on between me and [Samuels], and . . . D.S. being made to do things as well, and that I was six months pregnant." *Id.*

[7] Investigators also interviewed D.S. at the Youth Opportunity Center. However, D.S. did not disclose any information at that time. Neither J.A. nor D.S. recalled if their 2000/2001 interviews were recorded. In 2001, J.A. gave birth to her child, and D.S. was confirmed to be the father. The investigation appears to have been dropped around this time and did not result in criminal charges.

[8] In 2018, Muncie Police Department Detective Kristofer Swanson was working with the Sexual Molest and Abuse Response Team, which is "a group of

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[1] It is not clear from the record which law enforcement agency or agencies participated in the investigation.

investigators [who] are specifically trained to conduct investigations involving child abuse." *Id.* at 234. In the course of investigating another child molestation case from around the year 2000, Detective Swanson learned of J.A.'s allegations against Samuels. Detective Swanson attempted to locate records of the original interviews with J.A. and D.S. and other investigatory records from that time. However, after reviewing records across Delaware County law enforcement agencies, the only record of J.A.'s allegations that Detective Swanson discovered was an initial report created by DCS.

[9] Detective Swanson located and approached J.A. for a formal interview, which she agreed to do. In that interview, J.A. recalled Samuels' abuse of her. Detective Swanson then interviewed both D.S. and Samuels. They both continued to deny J.A.'s allegations.

[10] In June 2018, the State filed its information against Samuels, alleging the following three counts:

- Count 1: Child Molesting, as a Class A felony;
- Count 2: Vicarious Sexual Gratification, as a Class B felony;
- Count 3: Child Molesting, as a Class C felony.

Thereafter, Samuels filed a motion to dismiss the three charges. Regarding Counts 1 and 2, Samuels asserted that the State had "intentionally or negligently destroyed, misplaced, or otherwise" failed to make available to him the records underlying the original 2000/2001 investigation. Appellant's App. Vol. 2 p. 72. Regarding Count 3, Samuels asserted that the statute of limitations

had lapsed. After a hearing, the trial court denied Samuels's motion with respect to Counts 1 and 2 but granted the motion with respect to Count 3.

[11] The court then held Samuels's jury trial. At that trial, J.A. testified in detail about Samuels's repeated molestations of her during her childhood. D.S. also testified and, for the first time, corroborated J.A.'s testimony. Both J.A. and D.S. testified about the 2000/2001 investigation. And Detective Swanson testified that he had attempted the locate any records from that investigation but, aside from the initial report from DCS, was unable to locate any such records.

[12] The jury found Samuels guilty on Counts 1 and 2. The trial court entered its judgment of conviction accordingly and sentenced Samuels to an aggregate term of sixty-five years in the Department of Correction. This appeal ensued.

Discussion and Decision

[13] On appeal, Samuels asserts that the trial court abused its discretion when it denied his motion to dismiss with respect to Counts 1 and 2. We review a trial court's ruling on a motion to dismiss a charging information for an abuse of discretion. *Yao v. State*, 975 N.E.2d 1273, 1276 (Ind. 2012). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* A trial court also abuses its discretion when it misinterprets the law. *Id.*

[14] The essence of Samuels's motion to dismiss Counts 1 and 2 is that, by not preserving and then disclosing whatever records may have been created during

the 2000/2001 investigation of J.A.'s allegations, the State violated Samuels's rights under *Brady v. Maryland*, 373 U.S. 83 (1963).[2] In *Brady*, the Supreme Court of the United States held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87.

[15] But the ensuing case law of the Supreme Court of the United States has added important clarification to the scope of *Brady*. As the Indiana Supreme Court has explained:

> [The defendant] . . . complain[s] that the State failed to preserve and provide him with the interview notes of an FBI agent. . . .
>
> Adopting the United States Supreme Court's decision in *California v. Trombetta*, 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984), this Court has declared that the scope of the State's duty to preserve exculpatory evidence is:
>
> > limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the

[2] Indeed, every authority cited by Samuels in his appellate brief is from 1975 or earlier and expressly relies on *Brady*. *See Birkla v. State*, 263 Ind. 37, 43, 323 N.E.2d 645, 648 (1975); *Hale v. State*, 248 Ind. 630, 634, 230 N.E.2d 432, 435 (1967); *Ortez v. State*, 165 Ind. App. 678, 684, 333 N.E.2d 838, 841–42 (1975); *see also State v. Fowler*, 422 P.2d 125, 126–27 (Ariz. 1967); *People v. Hoffman*, 203 N.E.2d 873, 875 (Ill. 1965); *Trimble v. State*, 402 P.2d 162, 165–68 (N.M. 1965).

> defendant would be unable to obtain comparable evidence by other reasonably available means.

Holder v. State, 571 N.E.2d 1250, 1255 (Ind. 1991) (quoting *Trombetta*, 467 U.S. at 488–89, 104 S. Ct. 2528 (footnote and citation omitted)). The notes at issue here do not meet the standard of constitutional materiality as [the defendant] has not shown that the handwritten interview notes played a significant role in his defense. . . . Furthermore, [the defendant] provides no basis for us to conclude that [the FBI agent's] notes would have shown whether [a witness] actually made the statements or that [the agent's] recollection of the interview was incorrect. [The agent] testified that the summary reports, which did not mention the statements, were a reliable and complete account of the interview. [The defendant] used the reports to impeach [the agent's] recollection of the interviews. Thus, he accomplished the task for which he now claims the notes were necessary.

> At most, the notes may have been potentially helpful to [the defendant's] case as additional evidence. However, the State's failure to preserve useful evidence violates the Fourteenth Amendment only when the defendant can show bad faith on the State's part. *Arizona v. Youngblood*, 488 U.S. 51, 58, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988); *Vermillion v. State*, 719 N.E.2d 1201, 1206 (Ind.1999), *reh'g. denied*; *see also Killian v. United States*, 368 U.S. 231, 242, 82 S. Ct. 302, 7 L. Ed. 2d 256 (1961) (declaring that where the pre-trial destruction of an FBI agent's notes, which were transferred to other documents that were made available to the defense, was done in good faith as part of a normal practice, their destruction would not be impermissible nor deprive a defendant of any right). Here, [the defendant] has made no showing of bad faith. He was not denied due process of law nor the right to a fair trial.

Albrecht v. State, 737 N.E.2d 719, 723–25 (Ind. 2000) (footnote omitted).

[16] In a footnote, our Supreme Court added:

> [The defendant] cites *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), in support of his claim. Although closely related to the principles of evidence preservation announced in *Trombetta* and *Youngblood*, *Brady* is not directly on point. *Brady* applies in situations where a defendant discovers after trial that the prosecution suppressed material, exculpatory information. *United States v. Agurs*, 427 U.S. 97, 103, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976). *Brady* has no application[ ]where the alleged exculpatory evidence no longer exists but its content was nonetheless revealed through testimony at trial. *Noojin v. State*, 730 N.E.2d 672, 676 n.1 (Ind. 2000) (citing *Williams v. State*, 714 N.E.2d 644, 649 (Ind. 1999), *cert. denied*, 528 U.S. 1170, 120 S. Ct. 1195, 145 L. Ed. 2d 1099 (2000)). The notes in this case were negligently destroyed well before trial and testimony as to their existence and content was presented during trial. Further, there was no evidence of suppression by the State. Therefore, *Brady* is inapplicable here.

Id. at 724 n.2.

[17] We agree with the State that Samuels's exclusive reliance on *Brady* is misplaced for numerous reasons. First, aside from the initial report from DCS that was disclosed to Samuels, there is no evidence that any other records from the 2000/2001 investigation ever existed, and "*Brady* has no application[ ]where the alleged exculpatory evidence no longer exists . . . ." *Id.* Second, J.A. and D.S. testified at Samuels's trial about the 2000/2001 investigation, and Detective Swanson testified about his attempts to locate any related records from that investigation. Again, "*Brady* applies in situations where a defendant discovers *after trial* that the prosecution suppressed material, exculpatory information"

and "has no application" where the content of that information "was nonetheless revealed through testimony at trial." *Id.* (emphasis added).

[18] Instead, Samuels's motion to dismiss would have been more properly framed as a failure to preserve potentially helpful information under either *Trombetta* or *Youngblood*. But, as Samuels did not present argument either to the trial court or to this Court that applied the standards of *Trombetta* or *Youngblood*, he has not preserved any such argument for our review. *See, e.g.*, Ind. Appellate Rule 46(A)(8)(a). And, because Samuels has not presented any argument under *Trombetta* or *Youngblood*, he cannot show either that the purported records would have been "expected to play a significant role in the suspect's defense" or that the State acted in bad faith in not preserving any such records. *See Albrecht*, 737 N.E.2d at 724.

[19] As Samuels has not met his burden to show error, we affirm the trial court's denial of his motion to dismiss Counts 1 and 2.

[20] Affirmed.

Bailey, J., and Altice, J., concur.