

Sexual Abuse Charge Dismissed Against Lucinda Hites-Clabaugh

First-degree sexual abuse charges have been dismissed against Lucinda S. Hites-Clabaugh after the Oregon Court of Appeals overturned her conviction. She was wrongly imprisoned for more than two years.

Hites-Clabaugh was a substitute teacher for a third-grade class in Woodburn, Oregon on May 13 and 14, 2008. (Woodburn is about 30 miles south of Portland.) The day the regular teacher returned a female student told her that while she had been gone a teacher [had touched](#) her inappropriately between the legs." The teacher informed the principal who contacted the State Department of Human Services and the Woodburn Police.

Woodburn Police Officer Potter interviewed the teacher, the principal, the student, and Hites-Clabaugh. Those interviews were the extent of Potter's investigation. Based on Potter's report the Marion County District Attorney charged Lucinda with first-degree sexual abuse.

During Hites-Clabaugh 2009 trial the prosecution's case consisted of testimony by the principal, the teacher, Officer Potter, and the student. She testified a teacher touched her crotch over her clothing for about a minute. When asked, she said she didn't see the person in the courtroom who touched her. So the student didn't identify Lucinda as the alleged perpetrator either by name or in person.

During cross-examination officer [Potter testified](#) "he had no specialized training concerning Marion County's child abuse investigation protocols and little experience involving child sexual abuse cases. He acknowledged that there were protocols in place for such investigations in Marion County, but indicated that ... he was not trained in those protocols."

Based on Potter's testimony about his lack of training and experience in child sexual abuse cases, Lucinda's [lawyer requested](#) that she be allowed to call psychologist [Dr. Kevin McGovern](#) "as an expert on the necessity to use protocols that have been promulgated by the State of Oregon in sex abuse cases." The prosecution objected, and Lucinda's lawyer argued that Potter's testimony about his lack of knowledge and inexperience had opened the door for Dr. McGovern's expert testimony about the im-



portance of following investigation protocols in a case of alleged child abuse. The judge sustained the prosecution's objection and Dr. McGovern wasn't allowed to testify.

Hites-Clabaugh testified she did not inappropriately touch the student and that the incident didn't occur. Numerous character witnesses testified on Hites-Clabaugh's behalf.

No eyewitness or physical evidence was introduced Lucinda's trial that she had touched the student, or if the incident had even happened.

Hites-Clabaugh was convicted of first-degree sexual abuse by the majority 10-2 jury vote allowed by Oregon's Constitution. She was subsequently sentenced to the mandatory minimum of 75 months imprisonment. Lucinda was denied bail pending the outcome of her appeal, and she began serving her sentence after her sentencing hearing in August 2010.

On July 18, 2012 the Oregon Court of Appeals ruled in [Oregon v. Lucinda Hites-Clabaugh](#), No. A-146356 (OR Ct of Appeals, 7-18-2012), that the trial court's exclusion of Dr. McGovern's expert testimony was so prejudicial to Hites-Clabaugh's defense that they overturned her conviction, and remanded her case back to the Marion County Circuit Court:

Here, the defense theory of the case was that the event described by the victim simply did not occur, that the investigating officer was not trained in investigating allegations of child sexual abuse, and that as a result, his investigation was markedly deficient. The excluded evidence went to the heart of defendant's theory of defense. In those circumstances, the exclusion of the evidence was prejudicial.

The 55-year-old Hites-Clabaugh was released on \$5,000 bail on August 30, 2012 after more than two years imprisonment, and on September 24 her felony indictment [was dismissed](#) with the agreement of the Marion County District Attorney. The DA agreed to dismiss the felony charge in exchange for her no contest plea to Class B misdemeanor harassment for an unrelated incident. She was formally discharged from custody after the hearing. After the hearing [her lawyer](#) Mark Geiger told *The Oregonian* newspaper, "This is a huge victory to

go from sex abuse to harassment. We would have preferred a complete dismissal, but you do the best you can."

Justice Denied interviewed attorney Geiger, and when asked about the circumstances of the misdemeanor harassment conviction, he said it was the result of Hites-Clabaugh's use of [Chakra](#) to calm an unruly student -- in a classroom full of students -- by using the healing touch on her forehead and above her breastbone. Geiger said that student was the same one who later told authorities she was sexually touched. Geiger suggested the girl told her parents about the Chakra healing touch, and they may have misconstrued and blown it all out of proportion into the alleged sexual incident that resulted in Hites-Clabaugh's prosecution, conviction and imprisonment.

Geiger said an impediment to Hites-Clabaugh resuming her public school teaching career is the insurance company she used said they won't insure her. If she gets her teaching certificate reinstated it is possible they may reconsider.

Oregon doesn't have a wrongful conviction compensation statute. However, Geiger told *Justice Denied* Hites-Clabaugh's misdemeanor plea agreement doesn't include a stipulation she cannot seek money damages related to her felony conviction for wrongdoing by any responsible government agency or employee.

The Oregon Court of Appeals decision can be read [by clicking here](#).

Detailed information about Lucinda's case is on the [Justice For Lucinda](#) website

The website of Dr. Kevin McGovern & Associates is at, [www.forensicpsychs.com/psychologists.html](#)

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