

31A01-PC-547

1 IN THE  
2 INDIANA COURT OF APPEALS

3 APPELLATE NO.: 31A01-0902-CR-088

|                         |   |                          |
|-------------------------|---|--------------------------|
| 4 LAWRENCE NUNLEY,      | ) | APPEAL FROM THE HARRISON |
| 5 APPELLANT/PARTY BELOW | ) | SUPERIOR COURT           |
|                         | ) |                          |
| 6 VS.                   | ) | TRIAL COURT CASE NO.     |
|                         | ) | 31D01-0805-FA-389        |
|                         | ) |                          |
| 7 STATE OF INDIANA,     | ) | THE HONORABLE ROGER D.   |
| 8 APPELLEE/PARTY BELOW  | ) | DAVIS, JUDGE             |

9 TRANSCRIPT OF EVIDENCE

10 VOLUME I OF IV

11 PAGES 1 TO 250

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COUNTY OF HARRISON  
IN THE HARRISON SUPERIOR COURT

STATE OF INDIANA

VS.

LAWRENCE E. NUNLEY

CAUSE NO. 31D01-0805-FA-389

TRANSCRIPT OF PRETRIAL HEARING  
SEPTEMBER 22, 2008

BEFORE THE HONORABLE ROGER D. DAVIS  
REGULAR JUDGE OF THE HARRISON SUPERIOR COURT

THE APPEARANCES:

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Court Reporter

**PRETRIAL CONFERENCE 09-22-06**

1 STATE OF INDIANA (MS. WHEATLEY): We could do Lawrence  
2 Nunley.

3 THE COURT: Nunley. Nunley times two, it looks like.

4 MS. SCHULTZ: I think there's actually three maybe.

5 STATE OF INDIANA (MS. WHEATLEY): Yeah, that's true.

6 THE COURT: Oh, three. Okay, yeah. I'm sorry, three. Nunley  
7 times three. All right, what do you all say? It looks like he's got trial dates  
8 scheduled and a jury trial scheduled.

9 MS. SCHULTZ: Yeah. The trial date is set for October the 14<sup>th</sup>.  
10 And the day before that, the Monday is a holiday. So my, my initial question  
11 would be, do we have a final pretrial conference on this Friday at nine o'clock  
12 also?

13 THE COURT: Friday, yeah. Yeah.

14 MS. SCHULTZ: And for the Court's information uh, we are  
15 scheduling the depositions of the victim and the mother, and I'm not sure if  
16 there'll be any other witnesses. We're gonna set up for Tuesday of next week so  
17 we'll be ready for the trial.

18 THE COURT: All right.

19 MS. SCHULTZ: There are a couple of things that I wanted to ask  
20 the State about. Uhm, I have received copies of the search warrants that were  
21 issued in this case, but I don't have any returns on those. Do you know if they  
22 gave returns on the search warrants?

23 STATE OF INDIANA (MS. WHEATLEY): I honestly cannot answer  
24 that on the record. It is a huge file.

25

**PRETRIAL CONFERENCE 09-22-08**

1 MS. SCHULTZ: Okay. And then the other thing that uh, I did not  
2 receive..., this...

3 THE COURT: I'm sorry? Ms. Schultz, what was that you were  
4 asking them about?

5 MS. SCHULTZ: The search warrant returns.

6 THE COURT: Okay. Search warrant, you need to look through that  
7 and get..., make a note and get her that stuff.

8 STATE OF INDIANA (MS. WHEATLEY): Will do, Judge.

9 MS. SCHULTZ: And then the other thing, Mr. Nunley has indicated  
10 to me that during the course of this case, he was interviewed by the Washington  
11 County Sheriff's Department, and by Officer Wibbels from the Indiana State  
12 Police. And it is his recollection that both of those uhm, interviews were  
13 recorded and I haven't received any uh, copies of any recorded statements from  
14 either of those. So if they could check and let me know if those are available  
15 too. I would appreciate it.

16 THE COURT: Wibbels and, Wibbels with the State Police and the  
17 Washington County Sheriff's Office.

18 MS. SCHULTZ: Right.

19 THE COURT: Uh, you need to get that to Mr. Schultz's right away.  
20 Okay? What else?

21 MS. SCHULTZ: I think that's the only thing else that I had.

22 THE COURT: Okay. Uh, anything from the State?

23 STATE OF INDIANA (MS. WHEATLEY): No, Judge.

24 THE COURT: The offer that was made, was...

25

**PRETRIAL CONFERENCE 09-22-08**

1 MS. SCHULTZ: There hasn't been an offer made yet.

2 THE COURT: Is..., no offer?

3 STATE OF INDIANA (MS. WHEATLEY): Honestly, Judge, this is  
4 one that we need to talk to Ms. Flanigan about, because she's done all the  
5 research and she filed the charges. Ms. Woolen and I are meeting with Ms.  
6 Flanigan tomorrow. We, we'll stay in constant contact with Ms. Schultz.

7 THE COURT: You say you're gonna be in contact with her  
8 tomorrow?

9 STATE OF INDIANA (MS. WHEATLEY): Yes.

10 THE COURT: And then there'll be some kind of an offer?

11 STATE OF INDIANA (MS. WHEATLEY): Right.

12 THE COURT: Okay. All right. But there's still a trial date?

13 STATE OF INDIANA (MS. WHEATLEY): That's correct, Judge.

14 THE COURT: All right. We'll show that a final pretrial is held. And  
15 uh, okay, and those things need to be taken care of. File a Motion to Compel if  
16 there's not...

17 MS. SCHULTZ: Okay.

18 THE COURT: Something done on those things.

19 MS. SCHULTZ: All right.

20 THE COURT: All right.

21 MS. SCHULTZ: Thank you, Judge.

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COUNTY OF HARRISON  
IN THE HARRISON SUPERIOR COURT

STATE OF INDIANA

VS.

LAWRENCE E. NUNLEY

CAUSE NO. 31D01-0805-FA-389

**REPORTER'S CERTIFICATE**

I, Karen Hamilton, Court Reporter of the Harrison Superior Court, Harrison County, State of Indiana, do hereby certify that I am the Court Reporter of said court, duly appointed and sworn to report the evidence of causes tried therein.

That upon the Pretrial Hearing of this cause, beginning on the 22<sup>nd</sup> day of September, 2008, I recorded and transcribed all statements of counsel, the evidence given during said hearing, the objections of counsel and the rulings of the Court upon such objections.

I further certify that the foregoing transcript, as prepared, is full, true correct and complete of the Pretrial Hearing.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal this 11<sup>th</sup> day of May, 2009.

*Karen Hamilton*

KAREN HAMILTON,  
COURT REPORTER  
HARRISON SUPERIOR COURT  
HARRISON COUNTY, INDIANA

SEAL

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IN THE HARRISON SUPERIOR COURT

STATE OF INDIANA

VS.

LAWRENCE E. NUNLEY

CAUSE NO. 31D01-0805-FA-389

TRANSCRIPT OF HEARING

NOVEMBER 14, 2008

BEFORE THE HONORABLE ROGER D. DAVIS  
REGULAR JUDGE OF THE HARRISON SUPERIOR COURT

THE APPEARANCES:

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Mrs. Karen Hamilton  
Court Reporter



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE COURT: Okay. We're back to State of Indiana versus  
2 Lawrence E. Nunley. The record will reflect that uh, okay. Now, the State of  
3 Indiana tendered to me some case law. Did you copy that to Ms. Schultz?

4 THE STATE: Yes sir, yes.

5 THE COURT: Uh, they gave you some cases they wanted me to  
6 take a look at at some point. And you've got copies of those?

7 MS. SCHULTZ: Yes, I do.

8 THE COURT: Okay. Okay, now uh, let's see..., one thing that I  
9 wanted to uh, okay, we're here for a hearing on uh, on, on uh, I guess the  
10 pending issues. One of them is the 404B issue and one of them is the hearsay  
11 issues. Is that right?

12 THE STATE: That's correct, Judge.

13 THE COURT: Okay. And uh, would the State like to uh, begin on  
14 that uh, you know what. There's one issue that I have before we begin.

15 THE STATE: Okay.

16 THE COURT: The State filed a Notice of Intent to Introduce A.Y.'s  
17 Statements Into Evidence Pursuant to 35-37-4-6, and a Motion for a Hearing,  
18 which is scheduled for today. Is there any objection to the timing of the hearing  
19 by the...

20 MS. SCHULTZ: No, Judge.

21 THE COURT: Okay, now I'm referring to the ten days.

22 MS. SCHULTZ: No, I don't have any objection. They had, well,  
23 does that one have a ten-day time period on it?

24 THE STATE: Judge, the statute is that I have to notify her, notify,  
25 give notice ten days prior to trial, which I did fax her those that day. I didn't

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 understand the statute to say that we have to have a hearing in ten days prior to  
2 trial.

3 MS. SCHULTZ: No, I don't think we do. I thought the notice had to  
4 be ten days before the trial.

5 THE COURT: Okay. Uh, but uh, well, what I'm, I wasn't talking  
6 about ten days before. What I was referring to was uh, let's see..., 35-37-4-6,  
7 subsection "g", the statement., unless the Prosecuting Attorney informs the  
8 defendant, the defendant's attorney at least ten days before trial of the intention  
9 to introduce it and the content. So you've had the uh, the video tape and so forth  
10 for more than, you've probably had that for more than a month, I suppose,  
11 haven't you?

12 MS. SCHULTZ: I've had it for a significant period of time. I don't  
13 know exactly when I got it, but it's been several months ago.

14 THE COURT: Okay, so you've had it.

15 MS. SCHULTZ: Uh huh.

16 THE COURT: And is it fair to say that you've known that they were  
17 uh, wanting to use it for uh, more than ten days?

18 MS. SCHULTZ: I had suspected that. I actually received my notice  
19 that they wanted to use it on November the 6<sup>th</sup>. So I think they're more than ten  
20 days in advance.

21 THE COURT: November the 6<sup>th</sup> to November the 14<sup>th</sup> is not ten  
22 days. Okay.

23 MS. SCHULTZ: It's scheduled for...

24 THE STATE: Uh, well, ten days prior to trial it would be. The trial is  
25 the 18<sup>th</sup>.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE COURT: Okay. Oh, at least ten days before the trial. I'm  
2 sorry, okay. Excuse me. All right. Okay, so I guess that does comply. All right.

3 MS. SCHULTZ: Believe me, if I can find some technicality...

4 THE COURT: Okay. I just, I was thinking about the ten days. I  
5 hadn't read it very carefully. And I just wanted to make sure that we've got  
6 everything covered, okay?

7 MS. SCHULTZ: But I don't have any objection on the timing of it.

8 THE COURT: All right, okay. No objection about any timing issues.  
9 Okay. All right. So uh, now then, how, what do you want to start with, Ms.  
10 Prosecutor?

11 THE STATE: Judge, just so we're clear too. I filed actually two  
12 motions to introduce A.Y.'s statements. One was..., I filed them a day apart.  
13 The first is the one you mentioned which is the Comfort House interview. The  
14 second is her statements in the form of a note she wrote that she presented her  
15 mother and father uhm, and I notified Ms. Schultz of that in a motion, of the  
16 content of that. And she was also aware of that from a deposition she took of  
17 Tonya Caves. I also want to try to introduce under this, and put it in the form of a  
18 notice of intent with all the required parts of the statute. There's the uh, A.Y.'s  
19 statement to Trooper Kevin Bowling, in which she disclosed the day after this uh,  
20 allegedly took place, what happened to her. So there's actually, I guess if you  
21 would say four different things I'm trying to introduce under the child hearsay.

22 THE COURT: The first one is the video of, the video uh, the video  
23 that's really a DVD, a video-DVD at the Comfort House, April 18<sup>th</sup>, 2008  
24 interview. That's one of them. April 18<sup>th</sup>, '08. And then the second one is a note  
25 to her mother?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE STATE: And the contents, the note which you'll find out and  
2 Ms. Schultz is well aware of the note that no longer exists, but the contents of the  
3 note that she wrote on April the 14<sup>th</sup>, 2007...

4 THE COURT: Contents of note, of April the what?

5 THE STATE: April the 14<sup>th</sup>, 2007.

6 THE COURT: April the 14<sup>th</sup>, 2007, okay.

7 THE STATE: She showed that to her mother and father, so I have  
8 both of them here today. And then her statement of April the 14<sup>th</sup>, 2007.

9 THE COURT:

10 THE COURT: April the 14<sup>th</sup>, 2007. Statement to who?

11 THE STATE: Trooper Kevin Bowling of the Indiana State Police.

12 THE COURT: To Kevin Bowling, okay. B-o-l-i-n-g?

13 THE STATE: Yes. And he's here today. B-o-w-l-i-n-g.

14 THE COURT: B-o-w-l-i-n-g. Okay. B-o-w-l-i-n-g, okay. Okay, then,  
15 go ahead.

16 THE STATE: And for the record, all of the, all of those individuals  
17 are here, or will be here. Ms. Caves is on her way. Uh...

18 THE COURT: Was there a fourth item or a fourth statement?

19 THE STATE: The fourth statement is really the note was shown  
20 both to Richard Caves and Tonya Caves. They both saw that note.

21 THE COURT: Okay. So it's three statements...

22 THE STATE: Four witnesses.

23 THE COURT: Four witnesses. The video-DVD Comfort House,  
24 April 18<sup>th</sup>, the contents of the note of April 14<sup>th</sup>, '07, April 14<sup>th</sup> '07 statement to  
25 Kevin Bowling uh, an Indiana State Police Officer. Is that right?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE STATE: Yes, Judge.

2 THE COURT: Okay.

3 THE STATE: And the same I have the 404B witnesses present.

4 And I've uh, one being Kirstin Nunley, the other being Kimberly Simler. And

5 they're here ready to testify. Katelyn Barnes has not appeared...

6 THE COURT: Kirstin, K-i-r-s-t...

7 THE STATE: ...i-n.

8 THE COURT: ...t-i-n, t-i-n, Kirstin Nunley.

9 THE STATE: Yes.

10 THE COURT: Okay.

11 THE STATE: And Kimberly Simler.

12 THE COURT: Kimberly Simler, Kimberly Simler. S-i-m-l-e-r?

13 THE STATE: Yes.

14 THE COURT: Okay.

15 THE STATE: I also have Anne Young, Annie Young, who's the  
16 alleged victim in this case, and she's...

17 THE COURT: Annie Young, A-n-n-i-e?

18 THE STATE: Yes.

19 THE COURT: Okay.

20 THE STATE: She, she, she would have to testify, Judge, as to the  
21 404B evidence to show that what she is alleging is similar to what the other girls  
22 are alleging. So, you'll need her testimony on that as well as on the reliability  
23 issue of her other statements. So my intention was to put her on the stand first  
24 and not to have to have her come in a couple of times. We'd start with her.

25 THE COURT: Okay. Anything before we start with witnesses, Ms.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Schultz?

2 MS. SCHULTZ: Well, I mean when you get all these things all  
3 wrapped up together, it can sometimes get a little bit confusing. And I guess the  
4 question that I would have on the 404B stuff, it's my understanding from the way  
5 the law has interpreted that court rule, that before the State is permitted to  
6 present any 404B evidence, they have to identify specifically what it is that  
7 they're going to use that 404B evidence for, and it has to be something other  
8 than the propensity of the defendant to commit the act of which he is charged.  
9 So I would like to know very specifically what it is that the State would intend or  
10 believe that this other acts evidence is going to show other than the propensity of  
11 Mr. Nunley to commit the act that he's charged with.

12 THE STATE: That, that's a fair request, Judge. And I filed uh, and  
13 hope it was faxed to Ms. Schultz, my amended notice of intent to introduce  
14 extrinsic act evidence at trial. And I indicated in paragraph six of that, that I  
15 intended to use this to show Nunley's modus operandi with respect to how he  
16 molests young girls.

17 THE COURT: Let me catch up with you and get the copy of that  
18 filed. Oh, there it is okay.

19 THE STATE: It would be a para...

20 THE COURT: October the 8<sup>th</sup>.

21 THE STATE: No, Judge. There's an amended one that was filed  
22 on November the 13<sup>th</sup>.

23 THE COURT: Well, okay. Hang on. Let's see about that. Did you  
24 get it, Ms. Schultz?

25 MS. SCHULTZ: Yes, I did. It was faxed to me yesterday.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE STATE: Judge, I can make you a copy, if you'd like one.

2 THE COURT: I'm making sure that I've got it or don't have it. Uh,  
3 yeah. Maybe you should get me one. I don't see that I have it. Thank you.  
4 Okay, so Ms. Schultz, you were about to say uh, uhm, Ms. Prosecutor?

5 THE STATE: I said at the bottom of paragraph six is..., I mean the  
6 State would use this evidence to show his modus operandi with respect to how  
7 he molests young girls. And the case law that I tendered to the Court and to Ms.  
8 Schultz indicates that modus operandi can be shown when the crimes are so  
9 strikingly similar that one can say with reasonable certainty that one and the  
10 same person committed them. Strikingly similar method must be unique in ways  
11 that it attributes the crimes to one person. And that's what I would submit, when  
12 the Court hears the testimony of these two other little girls, two, one's now older,  
13 but one child and one now adult, that you will see that the specific type of  
14 molestation is actually the handiwork of the same person. And that's how I read  
15 the case law to be modus operandi, and that's what I would be tendering to the  
16 Court is the reason we would want to get in these other facts.

17 THE COURT: Okay...

18 MS. SCHULTZ: Judge, perhaps we'll have to get into the facts to  
19 make that decision, but I would suggest to the Court that if this is the only person  
20 that... I mean that assuming for the purposes of the statement that Mr. Nunley  
21 committed the acts that he's accused of. But I would suggest to the Court that if  
22 this is the only person, I mean assuming for purposes of this statement that Mr.  
23 Nunley committed the acts that he is accused of. If he's the only person in this  
24 world that has done that, I would be very grateful and very surprised. I don't  
25 think there's anything unique about the allegations in this particular case. And I

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 believe that this is a situation where there is nothing unique about it. There are  
2 many, many people who engage in conduct similar to what Mr. Nunley has been  
3 accused of. And I don't think that there's anything particularly uh, unique to  
4 identify the person who committed these similar acts as Mr. Nunley as anybody  
5 else. So I think we probably have to get into the factual basis for that. But if the  
6 allegations are what I think they are, then it's not a unique situation. We would  
7 certainly object to any uh, evidence of any other type of conduct. And I have  
8 reviewed the cases that Ms. Flanigan provided to the court, and I don't believe  
9 that any of those cases uh, are in opposition to our argument.

10 THE STATE: And I think that's why we have to a hearing, Judge.  
11 And I've brought these two other witnesses for you to hear and come up...

12 THE COURT: Okay. I see. Let's call your first witness, then.

13 THE STATE: Judge, back to Ms. Schultz's point, before we start  
14 this, she said sometimes things get confused. We can also break this into two  
15 parts, which would be the 404B witnesses, and then recall Annie as to the child  
16 hearsay witness, if she would rather conduct them as two separate...

17 MS. SCHULTZ: That would certainly be a lot easier for me. I have  
18 a little trouble keeping these things straight in my mind.

19 THE COURT: I, I have no problem.

20 THE STATE: That's fine with the State. If I, I'll just uh, Ms.  
21 Wheatley...

22 THE COURT: If you wish to do it that way. I, I'm not opposed to  
23 you doing uh, proceeding with the uh, testimony of the alleged victim all in one  
24 fell-swoop one time.

25 THE STATE: It'll be fine, I think, if we split it up. And in fact, I think



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 that the child hearsay statute requires that Annie be present for the hearings. So  
2 don't think she could go any way. So I, I don't think we're inconveniencing her  
3 too terribly. We'll just do it in two separate parts, Judge.

4 THE COURT: Okay. Whatever you all prefer.

5 THE STATE: I just could have them walk up. Judge, Ms. Wheatley  
6 is actually going to do the direct on Annie Young because she was present at the  
7 deposition while I was out and was more of a rapport with her, I would say.

8 THE COURT: Okay.

9 THE STATE: Uh, the other thing is I would ask, one of the  
10 witnesses is going to be Kimberly Simler, and I've asked her mother and  
11 grandmother to leave the courtroom so there's no suggestion that they hear what  
12 Annie says, and then attempt to tell Kimberly what to say. So I've asked them to  
13 not be here.

14 THE COURT: Okay, all right. The record will so reflect that none of  
15 the other witnesses are present in the courtroom. And of course, the jury is not  
16 here. That's not until next week. And..., all right.

17 THE COURT: Judge, the State would call Annie Young to the  
18 stand. And let the record reflect that Lauren Wheatley will question her on behalf  
19 of the State.

20 THE COURT: Okay. All right uh, Annie uh, let's see, were you in  
21 school today?

22 WITNESS: Yes.

23 THE COURT: Okay. So you got out of school this afternoon, huh?

24 WITNESS: Uh huh.

25 THE COURT: Okay. Well, uh, this is an awfully big room for no

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 more people than are in it, isn't it?

2 WITNESS: Uh huh.

3 THE COURT: It's almost wintertime, isn't it?

4 WITNESS: Uh huh.

5 THE COURT: I like the springtime, when it's a little bit warmer and  
6 everything's starting to grow. What do you think?

7 WITNESS: Yeah.

8 THE COURT: Yeah, you like that too. Okay. So, Annie, what I'd  
9 like for you to do is uh, I want you to raise your hand, okay? Just like I do mine,  
10 okay? And uh, do you solemnly swear or affirm under penalties of perjury that  
11 you will tell the truth, the whole truth and nothing but the truth?

12 WITNESS: Yes.

13 THE COURT: Okay. Now uh, Ms. Wheatley is going to ask you  
14 some questions and uh, the other lawyer may ask you some questions. I'll even  
15 ask you some questions.

16 WITNESS: Okay.

17 THE COURT: And if you need to take a break or anything, we can  
18 do that, all right?

19 WITNESS: Uh huh.

20 THE COURT: Okay.

21 WITNESS: And my Aunt Missy said if I needed to cry, I'd just have  
22 to cry.

23 THE COURT: I'm sorry. What did you say?

24 WITNESS: My Aunt Missy said if I needed to cry, I could cry.

25 THE COURT: Okay, well, that'll be all right. You can do that too.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 All right.

2

3 DIRECT EXAMINATION OF ANNIE YOUNG BY MS. WHEATLEY:

4 Q All right, Annie. Now remember we talked about how important it is say  
5 "yes" or "no" and to make sure you're loud and clear. Okay?

6 A Okay.

7 Q Great job. Now can you start off by telling everybody in the courtroom  
8 what your name is?

9 A I am Annie Young and I'm eight years old.

10 Q Eight years old. What is your birthdate?

11 A June 24<sup>th</sup>.

12 Q June 24<sup>th</sup>. Do you remember the year that you were born?

13 A 2000.

14 Q All right. Now, Annie, do you understand the difference between the truth  
15 and a lie?

16 A Yes.

17 Q Okay. Can you tell me a little bit about that?

18 A Uh huh.

19 Q Okay. Well, tell me.

20 A A lie is something you're not supposed to do. A lie is something, you can  
21 tell a lie and you'll get in big trouble. The truth, you won't get into much  
22 trouble as you usually do if you lie.

23 Q Okay, all right. So if I said that you were wearing a pink shirt, would that  
24 be a truth or a lie?

25 A The truth.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q It is because you are wearing a pink shirt, aren't you?
- 2 A Uh huh.
- 3 Q Okay. Now if I said that I was wearing a bright blue jacket, what would
- 4 that be?
- 5 A A lie.
- 6 Q A lie. Why is that?
- 7 A Because you're wearing a red jacket.
- 8 Q All right. Okay, and so you know that you can get in trouble if you lie,
- 9 right?
- 10 A Yes.
- 11 Q Okay. And have you gotten in trouble before at home maybe?
- 12 A Uh huh.
- 13 Q Yeah. Maybe for not doing your homework on time?
- 14 A I always do my homework.
- 15 Q You always do your homework. Well, that's great. Okay, so I'm going to
- 16 talk to you a little bit about what happened on April 13<sup>th</sup>, 2007.
- 17 A Okay.
- 18 Q Okay? Now uh, you're a girl, right?
- 19 A Yes.
- 20 Q Yes. Okay, and do you know that girl parts are different than boy parts?
- 21 A Yes.
- 22 Q Okay. Do you call girls parts anything?
- 23 A Yes.
- 24 Q What do you call them?
- 25 A Pee pee.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay. And uh, I'm going to show you a picture. What's this a picture of?

2 A A girl.

3 Q A girl. How do you know that?

4 A Because I can see the body parts and how her hair is.

5 Q Okay. She's got bows in her hair, doesn't she?

6 A Uh huh.

7 Q And you can see the body parts. Okay, can you point to the picture of the

8 pee pee? Okay. All right, I'm going to give you my pen and I'm gonna

9 have you circle the girl's pee pee. Can you do that for me? Okay, great.

10 All right, now boys have body parts too, don't they?

11 A Uh huh.

12 Q Okay. Now I'm gonna show you this picture. What's this picture of?

13 A A boy.

14 Q Okay. And what do you call a boy's body parts?

15 A A weedy-bob.

16 Q A weeny-bob?

17 A Uh huh.

18 Q Okay. And I'm gonna have you circle a boy's weeny-bob. Okay. Good

19 job. All right. Now, Annie, do you know a person by the name of Ed

20 Nunley?

21 A Yes.

22 Q Is Ed in the courtroom today?

23 A Uhm, yes.

24 Q Okay. All right, it's okay. Do you see him?

25 A I see half of him.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q You only see half of him?

2 A Yes.

3 Q Where is he sitting?

4 A He's sitting right, right beside that lady right there.

5 Q Okay. What color clothes is he wearing?

6 A Black and white.

7 Q Okay. Are, are there anything specific about those clothes?

8 A Yeah. It means he is, he's in jail.

9 Q Okay, all right...

10 A Because I know the colors orange, that's the jail clothing, what color they  
11 are, and black and white.

12 Q Okay, all right. And so Ed is in the courtroom today?

13 A Yes, Ed Nunley.

14 Q Okay...

15 MS. LAUREN WHEATLEY: Your Honor, may the record please  
16 reflect the witness has identified the witness in this case?

17 THE COURT: Ms. Schultz, any objection?

18 MS. SCHULTZ: No objection.

19 THE COURT: The record will so reflect.

20

21 STATE RESUMES DIRECT EXAMINATION OF ANNIE YOUNG:

22 Q Okay. Now, Annie, do you remember the last time you went to Ed  
23 Nunley's house?

24 A Yes.

25 Q Okay. And why were you going there?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Just to spend the night.

2 Q To spend the night. Is that something you had ever done before?

3 A That's the first time I spent the night.

4 Q That's the first time you spent the night?

5 A Uh huh.

6 Q Okay, had you been there before?

7 A Yeah. But I was with my mommy.

8 Q Okay. Now, why were you going to go spend the night there?

9 A Well, because I wanted to and it was usually boring at home.

10 Q Boring at home?

11 A Yeah. And Kiki was supposed to be there to watch me.

12 Q Kiki? Now who's Kiki?

13 A It's, I think it's Ed Nunley's daughter.

14 Q You think it's Ed Nunley's daughter?

15 A Uh huh.

16 Q Okay. Now whenever you went to Ed Nunley's house before, was Kiki

17 always there?

18 A Yeah.

19 Q Okay. So you thought you were gonna go stay the night at Ed's house

20 and have fun with Kiki?

21 A Yeah.

22 Q Yeah? Okay. Was she older than you?

23 A Uh huh, she's a teenager. Now I don't think it is Ed Nunley's daughter,

24 but I think he has a son, but I can't remember his name.

25 Q Okay. So maybe his son's girlfriend?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yeah.

2 Q Okay. A friend of Ed's son?

3 A Yeah.

4 Q And she was a teenager?

5 A Uh huh.

6 Q And she played with you, right?

7 A Uh huh.

8 Q Now, when you went there, the last time that you went to Ed's house, was

9 Kiki there?

10 A Uhm, yeah.

11 Q Okay. Did, was she there the whole time?

12 A Uhm, no.

13 Q Okay. When did she leave?

14 A I really can't remember because it's such a long time.

15 Q I understand. Did she spend the night there?

16 A Uh, no, because when I woke up in the morning, she wasn't there.

17 Q Okay. Did you spend the night there?

18 A Yes.

19 Q Okay. So when you got there, who took you to Ed Nunley's house?

20 A Mommy and Daddy.

21 Q Okay. All right, and, and was Kiki there when you got there?

22 A Yes, and then she left. But I can't remember what time.

23 Q Okay, that's all right. Now, whenever you were at Ed Nunley's house,

24 what did you do?

25 A I played a game most of the time and stuff like that.



**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q Okay. So you played a game. Did you play outside?
- 2 A I can't remember.
- 3 Q Okay, do you remember playing inside?
- 4 A Uh huh. That was the game Ed Nunley had in his house.
- 5 Q Okay, what game? Do you recall?
- 6 A Mario.
- 7 Q Mario. Was that like a video game?
- 8 A Uh huh. It was like on a, a Nintendo game.
- 9 Q Okay. And was that on a T.V.?
- 10 A Uh huh.
- 11 Q All right. And where was that T.V.?
- 12 A It was in the living room on that side of the wall.
- 13 Q Okay. All right. And where did you sleep that night?
- 14 A Uh, first I started on the couch, and then I went back in the bedroom to
- 15 sleep.
- 16 Q Okay, whose bedroom was that?
- 17 A Ed Nunley's.
- 18 Q Ed Nunley's bedroom, okay. Do you recall how many bedrooms there
- 19 were in the house?
- 20 A Bedrooms? Two.
- 21 Q Two, okay. But you were in Ed's bedroom?
- 22 A Yeah.
- 23 Q Okay. Was there a T.V. in Ed's bedroom?
- 24 A I can't remember.
- 25 Q Did you watch anything on T.V. in Ed's bedroom?

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 A Uh huh, yeah, like a mini T.V.
- 2 Q A mini T.V.? Okay.
- 3 A Mini.
- 4 Q Maybe like one that you could carry?
- 5 A Yeah.
- 6 Q Okay. And could you play movies on that mini T.V.?
- 7 A Yeah. You could play like DVDs.
- 8 Q Okay. Did you watch any DVDs?
- 9 A Uh huh. And one was bad.
- 10 Q One was bad? Okay. Well, we're gonna....
- 11 A I only watched one and it was bad.
- 12 Q Okay, we'll talk about that in a minute. Did you watch any not-bad
- 13 movies?
- 14 A Uh, yeah. When I woke up in the morning I watched Scooby Doo.
- 15 Q Okay. Well, you watched Scooby Doo in the morning. Did you watch
- 16 anything that night?
- 17 A No.
- 18 Q Okay, so you didn't watch the Lion King?
- 19 A No.
- 20 Q Okay. All right. You, you told me that you watched a bad movie. Can
- 21 you tell us what you mean by bad?
- 22 A Yeah. I had to watch some bad stuff.
- 23 Q What do you mean by bad?
- 24 A Like girls doing stuff to guys and guys doing stuff to girls.
- 25 Q Okay. Did the people have clothes on?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Huh uh.

2 Q Is that a "yes" or a "no"?

3 A Nope.

4 Q Had you ever seen a movie like that before?

5 A No, not really.

6 Q Okay. And how did you know that was a bad movie?

7 A Because I saw the stuff that they did.

8 Q Can you tell us what they did?

9 A Well...

10 Q That's okay. It's just you and me talking.

11 A They was doing a whole bunch of bad stuff like guy was...

12 Q Did you see the guy's weeny-bob?

13 A On that movie, yeah.

14 Q Okay, did you see a girl's pee pee?

15 A On that movie, yes.

16 Q Okay, all right. Did you want to watch that movie?

17 A Not really.

18 Q Okay. Would you have rather watched Scooby Doo?

19 A Uh huh.

20 Q Yeah. You like Scooby Doo better?

21 A Yep.

22 Q Okay. Did anything happen that night?

23 A Uh huh.

24 Q Okay. Can you tell the Judge what happened that night? Do you need a  
25 drink? Okay, it's just you and me talking, okay? Good job. Now, can you

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 tell me what happened that night?

2 A Yeah. Ed Nunley, he licked my pee pee and he made me suck on his  
3 weedy-bob.

4 Q Okay. Had you ever seen a weeny-bob before?

5 A No.

6 Q Did you want to suck on his weeny-bob?

7 A No.

8 Q What were you wearing? Did you have on pajamas?

9 A I was just wearing a tee shirt.

10 Q Okay. Did you take off, did you have pajamas on before that?

11 A No. I just had a tee shirt on.

12 Q Okay. And did, where were you when Ed Nunley licked your pee pee?

13 A In his bedroom.

14 Q In his bedroom. Were you on any furniture?

15 A The bed.

16 Q The bed. Was it just you and Ed Nunley?

17 A Yeah.

18 Q Yeah? It's all right. Take a big deep breath for me. Okay, now, you say  
19 that he licked your pee pee. Did he do anything else to your pee pee?

20 A No, not really.

21 Q Okay. Did he ever touch your pee pee?

22 A Nope?

23 Q Did he ever touch your pee pee with his weeny-bob?

24 A Not that I know of, no.

25 Q And did you see his weeny-bob?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yeah.

2 Q And did he make you touch his weeny-bob?

3 A Yeah.

4 Q Yes? And after that happened, what did you do?

5 A I can't remember.

6 Q Okay. Did, did Ed Nunley talk to you about that?

7 A He told me not to tell Mommy.

8 Q Why did he say that?

9 A Because he wanted to keep it as a secret.

10 Q Did you want to keep it a secret?

11 A No, not really.

12 Q And did you tell your Mommy?

13 A Yeah.

14 Q When did you tell her?

15 A I told her the next day and I wrote it on a piece of paper. And then after

16 that, Mommy went to beat up Eddie. And, and stuff like that. And my

17 Mommy told me that she beat up his Harley and busted the windows out

18 of the house. And then Mommy saw Eddie, Ed Nunley come out and she

19 said man, his eyes was rage. And she said if Ed Nunley had got that from

20 her hands, then she would've been dead when she came back.

21 Q Okay, all right. So let me ask you this. When you told your Mommy, you

22 said that you wrote it on a piece of paper. Why did you write it on a piece

23 of paper?

24 A Because I was afraid to tell and I just didn't want to talk about it very

25 much.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q It's not something fun to talk about, is it?  
2 A No.  
3 Q No. You'd probably rather talk about uh, like Hannah Montana, wouldn't  
4 you?  
5 A Yeah.  
6 Q Okay. But you understand that you have to tell the truth, right?  
7 A Uh huh.  
8 Q Okay, and you're telling the truth today?  
9 A Yeah.  
10 Q Okay. Can you move your fingers? Thank you.  
11 A Oh.  
12 Q So you're doing a good job. Take a big deep breath. All right, you need  
13 another drink? Okay. Okay, Annie, I'm gonna, I'm finished asking you  
14 questions for awhile, okay? Miss Susan is going to ask you some  
15 questions now, okay? All right.  
16 A Put that right there.  
17 Q Okay, that's fine.  
18  
19 **CROSS EXAMINATION OF ANNIE YOUNG BY MS. SUSAN SCHULTZ:**  
20 Q Is it easier for you to hear me if I come up next to you to talk?  
21 A Uh huh.  
22 Q Okay. So you went to Ed Nunley's that uh, that night. Right? It was in  
23 April?  
24 A Uh huh.  
25 Q Was it a school night? Do you remember?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Well, after school I came there really.

2 Q Okay. So do you remember if you to school that day or not?

3 A I did.

4 Q You did, okay. Do you remember what time of the day you got there?

5 A No, not really. But it was daytime.

6 Q It was still daylight when you got there?

7 A Yeah.

8 Q And when you got to the house, was Kiki there when you got there?

9 A Yeah.

10 Q Do you remember if Kyle was there when you got there?

11 He wasn't there.

12 Q He was not there?

13 A Yeah, he was. And then him and Kiki left.

14 Q Were you still awake when they left?

15 A Yeah.

16 Q When you came to the house, did you take anything with you to the

17 house?

18 A Yeah, clothes, panties...

19 Q Did you take extra clothes with you?

20 A Uh, panties and stuff to take a bath.

21 Q And what did you have your clothes in?

22 A What?

23 Q What were your clothes in when you took them? Did you have them in a

24 suitcase or a plastic bag...

25 A I had them in a suitcase.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q You had them in a suitcase. Okay. And do you think you got there while  
2 it was still light, but you don't know what time. Am I right?  
3 A Yes.  
4 Q Okay. Did you have dinner before you went there that night?  
5 A Yeah.  
6 Q Did you eat anything at Ed's house that night?  
7 A I don't know. But I think that's no.  
8 Q You don't remember that you ate anything there?  
9 A Uh, I think that's no, because I don't remember eating anything there and  
10 I'm mad at Ed Nunley.  
11 Q And you're what?  
12 A I'm mad at Ed Unley.  
13 Q You're mad at him?  
14 A I think he should go to prison.  
15 Q When did you get mad at him?  
16 A Just, now.  
17 Q Just now you got mad at Ed?  
18 A Yesterday I got mad at him right after he did that to me.  
19 Q Okay. So you went to Ed's house that night and Kiki was there, and then  
20 she left. And you said, when Lauren was asking you questions, you told  
21 her that you went to sleep first on the couch, and then you went into Ed's  
22 room?  
23 A Yes.  
24 Q So when you went to sleep on the couch, did you have a blanket or  
25 anything to cover up with?



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yes.

2 Q You did have?

3 A Uh huh.

4 Q And did you take a bath before you went to bed that night?

5 A Yeah.

6 Q All right. And how, if you started to sleep on the couch, did you wake up  
7 and go into the bedroom? Or what happened?

8 A Uh, I didn't go to sleep on the couch, but laid on the couch for a few  
9 minutes. And then I went in there.

10 Q Were you watching T.V. or anything while you were on the couch?

11 A Uhm, yeah. But it wasn't a movie.

12 Q Was it just a regular T.V. show?

13 A Yeah.

14 Q You don't remember what it was?

15 A I don't remember what it's called.

16 Q I couldn't remember what I watched on T.V. a year and a half ago. I know  
17 that.

18 A I can't even remember what I watched a week ago, not even yesterday.

19 Q I think that's true for lots of us. So, you got up off the couch and you went  
20 into the bedroom. You walked into the bedroom yourself, right?

21 A Yeah.

22 Q Ed didn't carry you in or anything?

23 A No.

24 Q So you went into the house, went into the bedroom. Uh, did he ask you to  
25 go in there?

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 A No. He said I could if I wanted, yeah.
- 2 Q So why did you go in the bedroom?
- 3 A Uhm, I really don't know why.
- 4 Q Was he in the bedroom when you went in there?
- 5 A Yeah.
- 6 Q He was in the bedroom when you went in there?
- 7 A Yes.
- 8 Q Okay. You remember when we talked before?
- 9 A Uh huh.
- 10 Q Do you remember telling me before that you were in the bedroom and he
- 11 came in there after you?
- 12 A Uhm, no.
- 13 Q You don't remember that? Okay, maybe I'm wrong. Maybe I'm not
- 14 remember right. Okay, so you were in the bedroom, and Ed was in the
- 15 bedroom when you got in there?
- 16 A Yes.
- 17 Q And did you do anything in the bedroom before he showed you the nasty
- 18 movie?
- 19 A Yeah.
- 20 Q What did you do before he showed you the nasty movie?
- 21 A Uh, just talked.
- 22 Q Were you in there just for a real short time, like a couple of minutes, or a
- 23 long time before he showed you the nasty movie?
- 24 A A couple of minutes.
- 25 Q Just a couple of minutes?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Like five minutes.

2 Q Okay. And then you, did he do anything, touch you in any way before you  
3 watched the nasty movie?

4 A No.

5 Q Had you ever seen a nasty movie or naked people before?

6 A No.

7 Q Ever seen any pictures in any books or magazines of naked people  
8 before?

9 A No, not really.

10 Q Do you have any brothers?

11 A Yeah.

12 Q Have you ever seen your brothers...

13 A No. I only have one brother and that's, A-l-a-n, Alan. And he is thirteen  
14 now. He just turned thirteen October 6<sup>th</sup>. He's Alan Fentress. His dad is  
15 Rick Young. Because my mom has been with a lot of men. Rick, and  
16 then Daddy, and then Eddie, Eddie Foreman, of course. There's two Eds,  
17 Ed Nunley and Eddie Foreman, and she got with Will.

18 Q So you've had a lot of, you've had a lot of men in your house, your mom's  
19 house?

20 A Yeah. But Mom really doesn't have a house. She lives in a van.

21 Q And you don't live with your mom now, do you?

22 A No. Because if I lived with my mom, I'd be took away and be put in a  
23 foster home, and I wouldn't like that.

24 Q And the day that this happened at Ed's house, were you living with your  
25 mom then?

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 A Uhm, yeah. I think Mom and Dad. That is true.
- 2 Q And tell me what your dad's name is.
- 3 A Richard Caves. He's thirty-two, I think. And, and he's my daddy.
- 4 Q And you live with him now?
- 5 A Yeah.
- 6 Q And you see your mom sometimes?
- 7 A Uhm, yeah. I haven't seen her in awhile. But I'm glad I got to see her this
- 8 time.
- 9 Q Okay. So back to the day that this happened at Ed's house...
- 10 A What?
- 11 Q It happened in his bedroom, is what you told us before. Right?
- 12 A Yes.
- 13 Q And after it happened in the bedroom, what happened, what did you do
- 14 for the rest of the night?
- 15 A Uhm...
- 16 Q Did you go to sleep?
- 17 A Yeah.
- 18 Q And where did you go to sleep?
- 19 A In the bed.
- 20 Q In the bed? Do you know where Ed was when you went to sleep? Are
- 21 you asking for a drink? Do you want a drink?
- 22 A He was beside me.
- 23 Q He was at..., did he got to sleep in the bed beside you?
- 24 A Yeah.
- 25 Q And when you woke up in the morning, where were you when you woke

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 up in the morning?

2 A Still in the bed.

3 Q And where was Ed when you woke up in the morning?

4 A I don't..., that's one thing I can't remember.

5 Q So you don't remember if he was still in bed or not?

6 A No.

7 Q Do you remember if it was daylight or dark when you woke up in the  
8 morning?

9 A Daylight.

10 Q Do you remember if Kiki was there when you woke up?

11 A Uh, I don't think she was there.

12 Q Did you take a bath in the morning?

13 A No, because I took one at night.

14 Q You took the bath...

15 A Right before bed.

16 Q So you took your bed at night before you went into Ed's bedroom. Is that  
17 what you're telling me?

18 A Yes.

19 Q Okay. So after Ed had touched you, you didn't take a bath before your  
20 mom picked you up?

21 A No.

22 Q Okay. So your mom came to pick you up the next day sometime. Do you  
23 know when she came to pick you up?

24 A No. Not really. I can't remember very much because I didn't know the  
25 time because I didn't read the time when I was in Ed's house.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q Did you have breakfast before your mom came to pick you up?
- 2 A I really wasn't hungry so I didn't e-a-t there.
- 3 Q Did you have lunch or anything? Did you have anything at all at any time
- 4 you were at his house?
- 5 A No, because I never got hungry.
- 6 Q Okay. And when your mom came to pick you up, did she come into the
- 7 house?
- 8 A Uh, yeah. She just took a step to the door.
- 9 Q Did she ever come inside the house that day?
- 10 A No.
- 11 Q When your mom came to pick you up, did she and Ed have any kind of an
- 12 argument?
- 13 A No, not really.
- 14 Q When you left the house with your mom, was your mom mad at Ed then?
- 15 A After I wrote the note, then she got mad. She went over there and she
- 16 beat up Eddie and beat up his house and did the windows, like bam, and
- 17 bammed his Harley up.
- 18 Q So, you wrote the note to your mom.
- 19 A Uh huh.
- 20 Q Do you know what happened to the note?
- 21 A After that, we brought it to the police officer, and he kept it.
- 22 Q And it was the police officer that you went to was in Salem, right?
- 23 A No. In Corydon.
- 24 Q You came to a police officer in Corydon?
- 25 A Uh huh, yeah.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And that's the police officer that kept the note?

2 A What?

3 Q Is that the police officer that kept the note, the police officer in Corydon?

4 A Uh huh.

5 Q And was that the same day you wrote the note?

6 A Yeah. The same exact day.

7 Q Okay. And you went to talk to the police after your mom went back to  
8 Ed's house and beat on his motorcycle and broke his windows in...

9 A I never wanted to talk to him again.

10 Q You don't want to talk to Ed again?

11 A No. I don't even want to..., I don't know what he looks like right now. I, I  
12 don't even know, I don't know uh..., really I do want to see him, but never,  
13 ever, ever want to talk to him. And after seeing him, I'm only gonna get to  
14 see him, I only want to see him for one second. I don't want it to be today  
15 though.

16 Q When you were going with your mom to talk to the police, what did the  
17 mom, what did your mom tell you that you should tell the police?

18 A The truth and what all happened and stuff.

19 Q Did she remind you of what happened?

20 A She really didn't know much of what happened. She wasn't there.

21 Q When you wrote the note, did anybody help you spell the words?

22 A I only had Daddy...

23 Q He helped you spell the words?

24 A Yeah. He didn't know what I was writing though. That's...

25 Q Tell me how that went. Did you say to your day, "How do you spell

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 weeny-bob?"

2 A Uh huh, yeah. Then...

3 Q Then did you ask him how to spell "pee pee"?

4 A No. I just wrote, I sucked on his weeny-bob, and that's all.

5 Q So did you know how to write "suck" yourself without asking your dad?

6 A Yeah. It's s-u-c-k.

7 Q And when you were in kindergarten, could you write like that when you  
8 were in kindergarten?

9 A Uh huh.

10 Q So you knew how to spell "suck". Did you, but you didn't know how to  
11 spell "weeny-bob"?

12 A No.

13 Q Do you know how to spell "licked"?

14 A No. I didn't have...

15 Q Did you have to ask your dad how to spell that?

16 A I didn't write that. I just wrote, "I sucked on his weedy-bob", which is pretty  
17 much all I wrote. That's all, really.

18 Q So your note said, "I sucked his weeny-bob"?

19 A Yeah.

20 Q It didn't say anything else?

21 A No. Because that's all I really pretty much thought of in my mind, because  
22 I was only in kindergarten.

23 Q Do you know what you wrote the note with? Did you write it in pencil or  
24 pen or...

25 A I wrote it with a colored pencil Ed Nunley gave me. And he gave me



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 sunflower seeds, and the colored pencil he gave me. It was like red and  
2 kind of like those car pencils.

3 Q Who gave that to you?

4 A Ed Nunley.

5 Q And when did he give that to you?

6 A In the morning. No, no.

7 Q That same day?

8 A When I went there, because it was daylight. And then Mom and them left  
9 and he gave it to me because I found it. And he gave me sunflower  
10 seeds.

11 Q Okay.

12 A Is that all the questions?

13 Q No, I just have a couple more.

14 A Five more?

15 Q And I know..., I know how you do with questions and you like to bargain.

16 A Is that just five more questions?

17 Q I will promise you no more than five more questions, if you can answer  
18 these, okay?

19 A Okay.

20 Q Before you came here today, did anybody talk to you about what you had  
21 told other people before?

22 A What?

23 Q Did anybody talk to you before you came into this courtroom today and  
24 sat in this chair, did anybody talk to you about the things you'd said that  
25 happened to you?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Daddy.

2 Q He talked to you about it?

3 A He told me to say the truth and nothing but the truth. And Lauren, and  
4 she, and she showed me the courtroom and showed me where I'm sitting.  
5 She said the same thing. You have to say nothing but the truth, but the  
6 truth.

7 Q Did anybody ever tell you that what you had told somebody else about this  
8 before?

9 A No.

10 Q Did anybody come to you and say, "Well, you talked to somebody before  
11 and this is what you said happened then"? Anybody do anything like  
12 that?

13 A No.

14 Q Okay...

15 A That's two questions.

16 Q All right. And remember when I talked to you the last time, we told you  
17 the Court Reporter was going to write this all down and type it up? Do you  
18 remember that?

19 A What, what?

20 Q Remember when we were in the room across the hall before, when we  
21 talked about this, and the Court Reporter was going to type it all up? You  
22 remember that?

23 A No. And that's three questions.

24 Q Okay. Did you have a chance to uh, see what the Court Reporter typed  
25 up that you said the last time you and I talked?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A No.

2 Q Okay.

3 A You have one more question.

4 Q I'm not going to ask one more question. I'm done. Okay?

5

6 MS. LAUREN WHEATLEY: Judge, we have no more at this.

7 Unless you.

8 THE COURT: No.

9 MS. LAUREN WHEATLEY: Annie, want to come with me? Go get  
10 your drink.

11 THE STATE: The State would ask that she uh, stay at the  
12 courthouse, but she doesn't need to stay in the courtroom for the next witness.

13 THE COURT: Okay.

14 THE STATE: The State will call Kimberly Simler. Judge, and I'll go  
15 get her.

16 THE COURT: Okay. Good afternoon.

17 KIMBERLY SIMLER: Good afternoon.

18 THE COURT: Okay. Tell me, what's your name, young lady?

19 KIMBERLY SIMLER: Kim Simler, Kimberly Simler.

20 THE COURT: Kimberly Simler, okay. How old are you, Kimberly?

21 KIMBERLY SIMLER: Ten.

22 THE COURT: Ten years old. Are you in the fifth grade?

23 KIMBERLY SIMLER: Yes.

24 THE COURT: Fifth grade, okay. Who's your teacher?

25 KIMBERLY SIMLER: Ms. Easler.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE COURT: Ms. what?

2 KIMBERLY SIMLER: Easler.

3 THE COURT: Easler, Mrs. Easler. So uh, what school do you go  
4 to?

5 KIMBERLY SIMLER: Lanesville.

6 THE COURT: Lanesville, okay. Okay, Kimberly. Uh, uhm, I want  
7 you to raise your hand. Okay, do you solemnly or affirm the testimony you're  
8 about to give shall be the truth and nothing but the truth, so help you God?

9 KIMBERLY SIMLER: Yes.

10 THE COURT: Okay. Now the ladies are gonna have some  
11 questions for you. Okay?

12 KIMBERLY SIMLER: Okay.

13  
14 **DIRECT EXAMINATION BY JULIE FLANIGAN, DEPUTY**

15 **PROSECUTING ATTORNEY:**

16 Q Kimberly, uh, we've met before, right?

17 A Uh huh.

18 Q And you remember my name is Julie?

19 A Yeah.

20 Q And when you were, you met Susan. We did a deposition.

21 A Uh huh.

22 Q And that's where you told what happened, and somebody took that all  
23 down.

24 A Yeah.

25 Q Okay. You have not had a chance to re..., to look at that, what was typed

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 up yet, have you?

2 A No.

3 Q Okay. And uhm, since that time I have not talked to you about your  
4 testimony here today or what to say today, is that right?

5 A Yes.

6 Q Has anybody told you what to come in here and say today?

7 A No.

8 Q All right. How old are you?

9 A Ten.

10 Q Okay, what's your birthday?

11 A December 17<sup>th</sup>.

12 Q So you'll be eleven in December?

13 A Yes.

14 Q Do you know uh, somebody by the name of Ed Nunley?

15 A Yes.

16 Q Do you see Mr. Nunley here in the courtroom today?

17 A Yes.

18 Q Can you tell the Court where he is?

19 A Right there.

20 Q Was there a time uh, that you actually stayed at Mr. Nunley's house?

21 A No.

22 Q Do you remember how old you were then, Kimberly?

23 A I think about seven or eight. I can't remember.

24 Q Do you remember what school you went to when you stayed at his  
25 house?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Either North Harrison or Fairmont. I can't remember that either.

2 Q Can you tell the Judge if you remember what uh, where did you go to  
3 second grade? Do you remember?

4 A A little bit of Fairmont and a little bit of North Harrison.

5 Q Where did you go to third grade?

6 A Uh, Fairmont.

7 Q And do you remember where you went in fourth grade?

8 A Uh, yeah, Fairmont. And I went back to North Harrison.

9 Q You ended up last year at North Harrison?

10 A Yes.

11 Q And now you're back at North Harrison?

12 A No. I'm at Lanesville now.

13 Q Lanesville. Kimberly, can you tell uh, the Judge, was there a time when  
14 Ed Nunley uh, did something to you that you thought was not right?

15 A Yeah, yeah.

16 Q Can you tell the Judge the first time he did it and what exactly he did?

17 Can you tell him what you were watching, what was on television?

18 A The Fox and the Hound.

19

20 THE COURT: What was on television?

21 WITNESS: The Fox And The Hound, the movie.

22 THE COURT: The Fox And The Hound, okay.

23

24 STATE RESUMES DIRECT EXAMINATION:

25 Q Is that a Disney movie?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yeah.

2 Q Who was there?

3 A My sisters, Amber and Nicole, and Ed and me.

4 Q Do you remember how old uh, your sisters were?

5 A Uhm, I think, I think Amber was five or six, and then my sister Nicole was,  
6 I think she was around eleven or twelve. I can't remember.

7 Q So Amber is younger than you.

8 A Yeah.

9 Q Nicole is older than you, and they were both there. How old were you  
10 around that time?

11 A Seven or eight.

12 Q Seven or eight. And you were watching The Fox And The Hound. And  
13 tell the Judge what Ed Nunley did.

14 A He pulled down his pants and he showed me his penis. And I didn't pay  
15 any attention. And then he grabbed my hand and made me rub his, and  
16 he rubbed my vagina.

17 Q Is another word back at that time, Kimberly, that you would call your  
18 vagina?

19 A My coochie.

20 Q Coochie. After that time uhm, did Ed do that every to you again?

21 A Yes.

22 Q When would, when would you say the next time he did that was?

23 A I don't know. I can't remember.

24 Q Okay. Was there a time uh, that he would show you other kinds of  
25 movies?

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 A Yes.
- 2 Q Can you tell the Judge what kind of movies those were?
- 3 A Movies of people having sex.
- 4 Q When did he, how many times do you think that he showed you movies of
- 5 people having sex?
- 6 A A lot of times.
- 7 Q When he would show you movies of people having sex, Kimberly, did he
- 8 do anything to you or make you do anything to him?
- 9 A Yes.
- 10 Q Can you tell the Judge what he did to you?
- 11 A Grabbed my vagina and make me rub his penis.
- 12 Q Did he ever touch your vagina with his mouth?
- 13 A Yes.
- 14 Q And would he do that while he was watching these, while you were
- 15 watching these, these movies?
- 16 A Yes.
- 17 Q Did uh, he ever make you uh, place your mouth on his penis?
- 18 A Yes.
- 19 Q And did he do that while you were watching these movies?
- 20 A Uh huh, yeah.
- 21 Q Okay. Kimberly, can you tell the Judge where, besides the time of The
- 22 Fox And The Hound, where this would happen?
- 23 A His house.
- 24 Q In what room in his house?
- 25 A His bedroom.



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Would you be alone in that bedroom?

2 A Yes.

3 Q What kind of uh, the naked movies, what would he show you those to you  
4 on?

5 A A portable DVD player.

6 Q So you have a little portable DVD player and put in a naked movie?

7 A Yes.

8 Q And as that was going, he would uh, do the things you've described?

9 A Yes.

10 Q Did Ed ever uh, put his uh, put anything inside your vagina?

11 A His finger.

12 Q Okay. How many times did he do that?

13 A A lot.

14 Q Did he uh, what would he mostly do when he would watch these dirty  
15 movies? Do you remember?

16 A No. Just do like the stuff I described earlier, sometimes.

17 Q Would that be that he would lick your vagina?

18 A Yes.

19 Q And make you lick his penis?

20 A Yeah.

21 Q How long did this go on? Do you know?

22 A I think this one summer. I don't know.

23 Q Was there a summer that you and your family were staying at Ed's  
24 house?

25 A Yes.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q In Greenville?
- 2 A Yeah.
- 3 Q And this happened in his bedroom there. Did it also happen at your  
4 mom's house on Grant Line Road?
- 5 A Sometimes.
- 6 Q Where did it happen there?
- 7 A Basement.
- 8 Q Would you be alone with him then?
- 9 A Yes.
- 10 Q And let me go back and ask you. When he would have you in the  
11 bedroom, Kimberly, his bedroom...
- 12 A Yes.
- 13 Q Would it be just the two of you?
- 14 A Yes.
- 15 Q Okay. And when he would have you in the basement of your mom's  
16 house, it would be just the two of you?
- 17 A Yes.
- 18 Q Did Ed ever tell you not to tell anybody?
- 19 A Yes.
- 20 Q Tell the Judge what he would tell you.
- 21 A He'd say, "Don't tell nobody." That's all.
- 22 Q And you, eventually you did tell somebody. Is that right?
- 23 A Yes.
- 24 Q Who did you tell?
- 25 A My mom.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And eventually did you talk, did you uh, go to Child Protective Services?

2 A Yes.

3 Q And you talked to a man named Randy?

4 A Yes.

5 Q And you also have a counselor?

6 A And Nicole.

7 Q And Nicole. And you wrote a note to Nicole. Is that what...

8 A Before she moved.

9 Q She moved, and you wrote a note. And I'm going to show you that note,  
10 okay? And I'll let the Judge know that uh, Ms. Schultz has seen this note  
11 and has a copy of this note. And I'd you, Kimberly, if you could see what  
12 the date is on that note right there. You see that there?

13 A Is that a three or a two?

14 Q I'd say that's a three.

15 A You want me to say it?

16 Q Yes.

17 A Five uh, three, '07.

18 Q Kimberly, is that your handwriting?

19 A It was.

20 Q It's not anymore?

21 A No.

22 Q So you wrote that over a year and a half ago, right?

23 A Uh huh.

24 Q And can you uh, read that to the Court?

25 A Yeah.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Could you please? Thank you.

2

3 MS. SCHULTZ: And, Judge, before she starts reading this, like I  
4 said, we'd ask for what's the relevancy of this document. What we're here to  
5 determine is whether the acts that are alleged are uh, similar to the acts that  
6 have been uh, alleged by in the case that uh, on trial here. And there is no  
7 allegation of any description in a note or anything of that nature that I, that he  
8 was involved in. So I don't know how this letter would even assist the Court in  
9 making a determination under 404B whether this uh, evidence is admissible or  
10 not.

11 THE STATE: Your Honor, it's a document written close in time to  
12 the incident when she recorded what happened to her, what Mr. Nunley did to  
13 her. And I would submit that it does describe some specific acts, which are the  
14 exact uh, exact subject in this 404B motion. In fact, she describes in detail about  
15 the naked movies and some of the sex acts. And I would say it would uh, you  
16 have to judge Kimberly's credibility here today, and she wrote this letter close in  
17 time to the actions. And I think that the Court should be allowed to hear that.

18 THE COURT: Anything else?

19 MS. SCHULTZ: Well, the problem that I have here is that I do not  
20 believe that the victim in the case at bar actually said anything that is anywhere  
21 similar to what this witness is testifying about. If I recall her testimony, it was that  
22 uh, there was a dirty movie, and then there were some acts. And then the next  
23 morning, she watched a kiddie movie. And that's not the theory the State is  
24 going on here. And if that, if that's what they're basing this upon and that's why  
25 they want this uh, letter into evidence, I don't think that their proof so far in what

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 the other victim has said or following the track of what they anticipated. And I  
2 don't see how this letter at all relevant to what the other victim testified happened  
3 to her.

4 THE STATE: Judge, quite to the contrary, I think although uh, the  
5 prior victim did not say anything about a child's movie, she did testify exactly like  
6 Kimberly said, to watching a pornographic movie, then having oral sex performed  
7 on her, performing oral sex on Mr. Nunley, that she was around the same age  
8 uh, as Kimberly, that it was in Mr. Nunley's bedroom that she was isolated. Uh,  
9 and that it's, it's exactly the same type of thing, and that's what's gonna be in this  
10 letter. So I think it's exactly on point.

11 THE COURT: Okay. Well, you all have the letter. I don't. So I'm  
12 gonna overrule the objection and uh, listen to it.

13

14 WITNESS RESUMES ANSWER:

15 A Dear Nicole, I tried to talk about Ed, but I will write about him, what he has  
16 done and what I'm hoping you will give this to Randy. It all started one  
17 night at my house. Me, Nicole, Amber and Ed was watching a movie  
18 called The Fox And The Hound. Then Ed grabbed a pillow so Nicole  
19 could not see, showed me his penis, but I didn't pay any attention. Next  
20 he grabbed my hand and made me rub his penis. And he rubbed  
21 cootchie, which that's what I called my private. Most of the time I came  
22 over, he made me rub his penis and he rubbed my cootchie. Months later  
23 he showed me a, me sex movies. When I was going to the bathroom, he  
24 would ask me to...

25 Q If you can't make it out, Kimberly, just say, "I can't make it out."

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A I can't make that out. I was, and I can't read that word out. I said I'm  
2 going to the bathroom. He..., I can't make that out. He showed me a sex  
3 movie at his house. Before the sex movie, he..., he showed me a picture  
4 of a naked girl, but really one time. Months later I was in a tree house  
5 alone, and Ed came up along with the portable DVD player and showed  
6 me the sex movie. This time he licked my cootchie and made me lick his  
7 penis. And that was the last thing Ed had done to me. Please, please,  
8 please give this to Randy. The reason I want you to give this to Randy is  
9 because I want Ed to get punished for what he has done to me and Nicole  
10 and to protect other kids. Thank you, and I will miss you. Love, Kim.

11 Q Okay. Kimberly, I'm gonna ask you a little bit about that time in the tree  
12 house. Were you, can you describe the tree house to the Judge?

13 A It wasn't really in a tree. It was kind of like four long poles that were put  
14 up with a swing under it, two swings, and you could climb a rope ladder up  
15 to like a little room. It's like a, it's like a tree house, but not in a tree.

16 Q And you were in there and Ed came in?

17 A Yes.

18 Q Was it just the two of you?

19 A Yes.

20 Q Did he bring that portable DVD player with him?

21 A Yes.

22 Q And he showed you a naked movie?

23 A Yes.

24 Q He licked your vagina?

25 A Yes.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And made you lick his penis?

2 A Yeah. That's the first time.

3 Q Were there other times he went into the bedroom and showed you naked  
4 movies and he would do that to you?

5 A Yes.

6 Q But this time in the tree house was one that you have a really strong  
7 memory of. Is that right?

8 A Yeah.

9 Q Kimberly, let me ask you one more question. When you lived at Grant  
10 Line Road, which was your mom's house...

11 A Yes.

12 Q What kind of, in the basement, what kind of sex acts would Ed do there?

13 A He would lick my vagina sometimes, and make me lick his penis and rub  
14 and touch mine, and make me rub his.

15 Q And that was on Grant Line Road?

16 A Uh huh.

17 Q And he would do those same things at his house in Greenville?

18 A Yes.

19 Q And I think I asked you this in the deposition. When, when he was doing  
20 those things, would he uh, most of the time show you the dirty movies?

21 A Uh, at my house or his?

22 Q Either one. At your...

23 A He never showed it to me at my house, but he did it at his house.

24 Q And when he did these things to you at your house, would he, how often  
25 would he show you the dirty movies?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A He didn't show me..., he didn't bring the portable DVD player to his house  
2 or the movies.

3 Q No, to your house.

4 A Oh.

5 Q To his house in Greenville.

6 A Yeah.

7 Q When he would do these things to you, how often would he show you the  
8 movies?

9 A Probably most of the time.

10

11 THE STATE: Judge, I don't have any, I'm gonna go ahead and  
12 move this letter into evidence at this hearing.

13 THE COURT: Okay. Have it marked.

14 MS. SCHULTZ: We would object on the basis of relevancy, the  
15 same as the other objection we had to the child reading the letter.

16 THE STATE: And I would just, after you have heard the letter,  
17 Judge, I would renew the arguments I made earlier and ask the Court to review  
18 the letter.

19 THE COURT: Okay. The letter is admitted into evidence. The  
20 objections of the defendant are overruled. It's marked as...

21 COURT REPORTER: One.

22 THE COURT: State's Exhibit "1". Today's date.

23 THE STATE: Judge, that's all I have of Kimberly.

24 THE COURT: Just wait. And uh, this lady may have some  
25 questions for you. Okay?



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 WITNESS: Okay.

2

3 CROSS EXAMINATION BY DEFENSE:

4 Q Do you remember meeting me about a week or so ago?

5 A Yes.

6 Q Okay. And you have not seen what the court reporter typed up of, for the  
7 questions that we asked you with that?

8 A No.

9 Q Okay. Well, I just have a couple of things that I want to clear up. The first  
10 time that this ever happened to you, when Ed did anything to you that you  
11 felt uncomfortable with was at your mom's house. Is that right?

12 A Yes.

13 Q And he never showed you any kind of movies at your mom's house?

14 A Not that I remember. If he did, I can't remember.

15 Q Okay. And the only time he ever showed you the dirty movies was at his  
16 house?

17 A Yeah.

18 Q Was it always the same movie that you saw?

19 A He had several different movies in his, I think, lefthand drawer, in like a  
20 black case.

21 Q And you saw him get the movies...

22 A No.

23 Q ...out where they had been stored?

24 A I saw where they were stored.

25 Q Okay, and how did it happen that you saw where the movies were stored?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Sometimes when he'd go to the bathroom I'd look through his stuff,  
2 behind his pillows and in his drawers.  
3 Q Okay. Curiosity like many of us, right?  
4 A Right.  
5 Q So you saw the movies in there?  
6 A Uh huh.  
7 Q Do you remember about how many movies there were?  
8 A Quite a few.  
9 Q Are we talking more than ten?  
10 A Maybe a little under. I can't remember.  
11 Q Under ten. Okay. From the point you remember this, according to your  
12 memory, there was probably more than one movie that you saw, at least  
13 part of some?  
14 A Yeah.  
15 Q And he didn't sit you there and have you watch the movie from beginning  
16 to end, did he?  
17 A No.  
18 Q So you, you, the movie would be in and you would see little snippets of it,  
19 and maybe for a few minutes and then...  
20 A Uh huh.  
21 Q ...you'd turn it off. Is that how it worked?  
22 A He'd switch movies sometimes.  
23 Q Sometimes he showed you more than one movie on the same day?  
24 A Uh huh.  
25 Q Okay. Do you know the name of any of the movies?

HEARING ON 404B AND HEARSAY EVIDENCE

- 1 A They weren't like regular movies. Like when you pop one in and just  
2 watch it. It was kind of like all the way through it, it didn't have a name.
- 3 Q Oh, so maybe there was more than one movie on the same disc? Movies  
4 on DVDs?
- 5 A Yeah.
- 6 Q Okay. So you just move to a different channel and you get a different  
7 movie? Is that what you're talking about?
- 8 A He like, it just has one scene, and then it like goes to another scene.
- 9 Q Scrolled through it to a different scene?
- 10 A Yeah. It does it by itself.
- 11 Q And think you may have told Julie earlier, but do you remember about  
12 how many times it was that each different days that he showed you  
13 movies?
- 14 A Different days?
- 15 Q You think it was more than ten?
- 16 A Yes.
- 17 Q But it all took place at his house that...
- 18 A Yes.
- 19 Q ...the dirty movies.
- 20 A Yeah.
- 21 Q And there was one time that it happened in the tree house?
- 22 A Yes.
- 23 Q And that was the last time he showed you any movie? And...
- 24 A Yeah.
- 25 Q ...sometimes in the bedroom.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yes.

2 Q And do you remember uh, how long it was after he showed you the last  
3 dirty movie before you told your mom about it?

4 A No, I can't remember.

5 Q Was it just a few days or would it have been some months later?

6 A No. I can't remember. Maybe..., I'm not for sure, but maybe like a few  
7 months later. I can't remember.

8 Q Now the letter that you read to the Judge has a date at the top of it that  
9 says "5-03-07".

10 A Yeah.

11 Q Did you put that number on it? Is that your handwriting where the date is  
12 on the letter?

13 A No.

14 Q So do you remember if that's when you wrote the letter?

15 A That's the day I think I gave it to Nicole.

16 Q And we're, this letter is talking about things that happened quite awhile  
17 before then, isn't it?

18 A Yes.

19 Q Do you remember what year it was that this happened? It was in the  
20 summertime, right?

21 A Yeah. It either was 2006 or 2007. Most likely 2007.

22 Q So if you told about it in May of 2007, then it would've happened before  
23 that. Am I right?

24 A Yeah. So it probably happened in 2006, the summer of 2006, because I  
25 think I was eight.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q And you are how..., you'll be eleven pretty soon?
- 2 A Yes.
- 3 Q So if you would've been eight that summer, you would've been nine in
- 4 December?
- 5 A Yes.
- 6 Q So it would've been about two years ago in the summertime?
- 7 A Yes.
- 8 Q And this is 2008, so that would've been 2006 in the summer?
- 9 A Uh huh.
- 10 Q Okay. And you said you spent a lot of time at Ed's house that year?
- 11 A Yes. Just the summer.
- 12 Q During the summertime?
- 13 A Uh huh.
- 14 Q You didn't move your, your mom didn't move her furniture into that house
- 15 though?
- 16 A No.
- 17 Q You didn't have your clothes in his closets or anything, did you?
- 18 A No. A few of them. But just like a few clothes.
- 19 Q You would just stay there occasionally.
- 20 A ...a lot.
- 21 Q You had some extra clothes there, but you didn't move all your clothes to
- 22 Ed's house?
- 23 A Yeah.
- 24 Q And when you stayed there, would your mom also stay there with you?
- 25 A Yes.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Did she ever leave you there when she wasn't...

2 A Sometimes when she runs errands, yeah.

3 Q Did she ever leave you overnight without her being there?

4 A No.

5 Q Did he show you the dirty movies the first time he touched you?

6 A No.

7 Q When you wrote this letter, did you want your new counselor to, did you  
8 have to tell your new counselor all again what you told Nicole? Is that  
9 right?

10 A Yes.

11 Q Kind of tough to talk about sometimes?

12 A Yes, yes.

13

14 MS. SCHULTZ: I haven't any further questions.

15 THE STATE: Judge, just on redirect, I just want to ask Kimberly...

16

17 REDIRECT EXAMINATION BY STATE:

18 Q Kimberly, do you know the difference between the truth and a lie?

19 A Yes.

20 Q Okay. And what you've told here today is the truth?

21 A Yes.

22 Q And you understand that when you raised your hand and swore to tell the  
23 truth, that that means you have to tell the truth. Is that right?

24 A Yes.

25

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE STATE: Okay. That's all I have, Judge.

2 THE COURT: Uh, just a minute. Uh, let me ask you this, Kimberly.

3

4 EXAMINATION BY THE COURT:

5 Q Uh, who is uh, the letter that you wrote, who was Nicole?

6 A She was my counselor at the time.

7 Q She was your counselor at school?

8 A No.

9 Q Okay...

10 A My mom would take me to counseling.

11 Q Oh, where your mom took you to counseling?

12 A Yeah. She would take me to counseling. Uh, it was like up in New Albany  
13 by Walmart. I can't...

14 Q Okay...

15 A ...remember the place, what it was called. It had "family" in it. I remember  
16 that. And center. Maybe it was The Family Center. I can't remember.

17 Q Okay. And Randy was uh...

18 A C.P.S. detective, I think.

19 Q Okay, okay. Okay. Just a minute, let's see.

20

21 THE COURT: Julie? Susan?

22 THE STATE: No.

23 MS. SCHULTZ: No other questions.

24 THE COURT: Okay. Thank you, Kimberly.

25 THE STATE: I would ask uh, Ms. Schultz if she could be excused

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 from the courthouse.

2 MS. SCHULTZ: I have no objection to that.

3 THE COURT: All right.

4 THE STATE: I'm going to call uh...

5 THE COURT: Okay. You can uh, you can go ahead and go home  
6 now.

7 THE STATE: I'm going to call Kirsten Nunley, Judge.

8 THE COURT: Do you solemnly swear or affirm..., raise your hand,  
9 please. Do you solemnly swear or affirm the testimony you're about to give shall  
10 be truth and nothing but the truth, so help you God?

11 WITNESS: Yes.

12 THE COURT: Okay. Tell me what your name is, ma'am.

13 WITNESS: Kristen Nunley.

14 THE COURT: How do you spell your name?

15 WITNESS: K-r-i-s-t-e-n.

16 THE COURT: Okay, all right. Thank you.

17 THE STATE: Judge, there are some people in here that are related  
18 to Kimberly Simly and I'm gonna ask that they leave because I don't want there  
19 to be any appearance that people are hearing what other witnesses are saying.

20 THE COURT: Okay. If you will, please wait outside. All right.

21 Okay.

22

23 **DIRECT EXAMINATION OF KRISTEN NUNLEY BY STATE OF INDIANA:**

24 Q Ms. Nunley, how are you related to uh, Lawrence Edward Nunley?

25 A That's my dad.



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay, do you see him in the courtroom here today?

2 A Yeah.

3 Q Can you indicate for the Judge where he's seated?

4 A Right there.

5 Q Okay. The defendant's table? The defense table?

6 A The defense table?

7 Q Next to Ms. Schultz, his lawyer?

8 A All right.

9 Q Okay. And, Miss Nunley, do you remember giving a statement to

10 Detective Wibbles who's sitting here next to me?

11 A No. I remember him showing me CDs and everything else in his car.

12 Q Okay. You don't remember giving an interview to uh, Detective Wibbles

13 on May 30<sup>th</sup>, 2008?

14 A I talked to him.

15 Q Okay. Do you remember what you talked to him about?

16 A Nothing really uh, in particular.

17 Q Okay. Uh, did, let me just ask you this. Uh, has your father, who's sitting

18 here in the courtroom, has he ever touched you inappropriately?

19 A No ma'am.

20 Q Okay. So you did not tell Detective Wibbles that uhm, from the

21 approximate age of four to the age of six that Ed Nunley had fondled your

22 vagina and had performed oral sex on you?

23 A No ma'am. He insisted that I did. But I never actually said it.

24 Q He insisted..., I'm sorry?

25 A He said if he'd done it to these other girls, why wouldn't he have done it to

**HEARING ON 404B AND HEARSAY EVIDENCE**

1       you?

2 Q       Okay. So you never told Detective Wibbles that?

3 A       No ma'am.

4 Q       Okay. So if Detective Wibbles gets on the stand and says that you said  
5       that, Kristen, that would not be true?

6 A       No ma'am.

7 Q       Okay. Uh, you did not tell Detective Wibbles that the fondling and oral sex  
8       occurred approximately ten times and included penetration of your vagina  
9       by your father's tongue?

10 A       No.

11 Q       Okay. Have you ever told anyone else that your father had molested  
12       you?

13 A       No ma'am.

14 Q       You never told Michelle Cayton that your father had molested you?

15 A       Not to my recollection.

16 Q       Okay. You never told uh, Kirsten that, Kirsten Sanders that your father  
17       had molested you?

18 A       No. She told me a bunch of stuff. But nothing that I really considered uh,  
19       reliable.

20 Q       You've never told Kirsten Sanders, Kiki, that's who we're talking about,  
21       right?

22 A       No. I don't talk to her.

23 Q       You never told her that?

24 A       No.

25 Q       Okay...

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A I haven't talked to her in about a year and a half.

2 Q Okay. Has your father ever given you pornographic videos?

3 A No.

4 Q Okay. Did your...

5 A I've taken some out of his room and stuff before when I was younger,  
6 but...

7 Q What room are you talking about?

8 A His bedroom.

9 Q Okay, what house?

10 A Pekin.

11 Q What, what's the address there at Pekin?

12 A 29711 Robin Road.

13 Q Robin Road.

14 A Yes.

15 Q You took pornographic videos out of his bedroom?

16 A Yeah.

17 Q Okay, what age were you then?

18 A Seventeen.

19 Q So you never told Detective Wibbles that he gave you a pornographic  
20 video?

21 A No.

22 Q You had uh, so your testimony here today is that all of this information that  
23 you gave, that Detective Wibbles has written in his report is not true?

24 A Most likely. He also discussed other cases with me and everything else. I  
25 don't know what was going on really. He was telling me about..., talking

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 about Michelle's kids to me, that little girl and everything else.

2 Q What little girl?

3 A Uh, Amie.

4 Q Okay.

5 A Which I've never met her. So I don't know who she is.

6 Q So he has uh, just so we're straight, you have never told Detective  
7 Wibbles about your father molesting you between the ages of four and  
8 six?

9 A No ma'am.

10

11 THE STATE: That's all I have.

12 THE COURT: Now, just a minute.

13 MS. SCHULTZ: I get to you ask you some questions.

14

15 CROSS EXAMINATION BY DEFENSE:

16 Q Just to make it clear for the record, prior to coming to court today, have  
17 you ever talked to me personally?

18 A No ma'am.

19 Q Has anybody told you what to say when you came to court today?

20 A No. I tried calling you and asking for advice, but you wasn't in your office.

21 Q Okay. So we haven't discussed what your testimony would be?

22 A No ma'am.

23 Q Okay. And during the summer of 2006, do you recall if your dad was  
24 living in the Pekin house that summer?

25 A 2006?

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q Right.
- 2 A Pekin or Palmyra?
- 3 Q Pekin.
- 4 A I don't know which one, Pekin or Palmyra. Uhm...
- 5 Q Well, he was living at either Pekin or Palmyra...
- 6 A Yeah.
- 7 Q But you don't remember which? Well, let me put it this way. Your parents  
8 are divorced. Is that right?
- 9 A Yes ma'am.
- 10 Q And after the divorce, you lived with your father part of the time?
- 11 A Uh huh.
- 12 Q Or was it most of the time?
- 13 A Uh, I lived with my mother for, I think for two years, and then with my  
14 father for two years.
- 15 Q And do you recall what years you lived with your dad?
- 16 A Seventeen and eighteen.
- 17 Q And how old...
- 18 A Sixteen through eighteen.
- 19 Q How old are you now?
- 20 A Nineteen.
- 21 Q So up until about a year or so ago you lived with your dad?
- 22 A Uhm, let me think. Uh, I moved in with my mom right before I graduated  
23 high school. And I'll be twenty next week.
- 24 Q What year did you graduate?
- 25 A 2007.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q So you would've moved in with her just before you graduated in 2007?
- 2 A Yeah. North Harrison wouldn't accept my credits because I went to a  
3 private school.
- 4 Q All right. And you had lived with your dad a couple of years before that?
- 5 A Yes ma'am.
- 6 Q And during the, the summer, the year before you moved out of your dad's  
7 house, was Jackie Simler and her kids around your dad's house quite a  
8 bit?
- 9 A During the summer when I lived there or moved out?
- 10 Q No, during the summer before you moved back to your mom's.
- 11 A Uh, they come over every once in awhile. She'd drop them off and leave  
12 them for a couple of days.
- 13 Q But did they ever move into your dad's house?
- 14 A Not that I'm aware of.
- 15 Q Did they spend quite a bit of time there?
- 16 A Uh, when she'd ask to babysit. She'd ask me to watch them for a couple  
17 of hours and come back four days later.
- 18 Q She left the kids there frequently without being there herself?
- 19 A Yeah. Usually it was just me and my brothers and uh, my boyfriend at the  
20 time was there.
- 21 Q What was the longest she ever left the kids there by themselves without  
22 her being there?
- 23 A Without her being there?
- 24 Q Yes.
- 25 A I think the longest was like two days.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And you're sitting here today telling this Court and us that your father has  
2 never touched you inappropriately in a sexual manner at any time. Is that  
3 right?

4 A No ma'am. Well, yes, I am saying that.

5 Q That's what you're telling me. And if the police officer believed that you  
6 were saying that he had, he was incorrect?

7 A The police officer said he believed I was lying, and that this was the true  
8 story, and that's what he was turning in.

9 Q Okay...

10 A That was almost an exact word-for-word quote from him.

11 Q And he talked to you around the time that your dad was arrested, is that  
12 right?

13 A Yeah. And I think a little bit later down the road.

14 Q Has there been more than once occasion when he's come to talk to you?

15 A Just once.

16 Q And we're talking Officer Wibbles had talked to you. Is that right?

17 A Yeah.

18 Q Have you had any opportunity to see the written report that he did uh,  
19 about his interview with you?

20 A No, I hadn't seen or heard from him until today, back in the uh,  
21 prosecution room, the prosecutor's office.

22 Q Okay. So when the prosecutor asked you if everything he wrote in his  
23 report was false, you haven't seen his report, so you really don't know. Is  
24 that right?

25 A He didn't write a report, as far as I knew.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 MS. SCHULTZ: Okay. I don't have any other questions.

2

3 REDIRECT EXAMINATION BY STATE OF INDIANA:

4 Q Kristen, did your father have uh, pornographic DVDs in the house at  
5 Palmyra?

6 A I don't think so. I didn't uh, live in Palmyra very long. Like I said, North  
7 Harrison wouldn't accept my credits into high school.

8 Q Okay. Uhm, how many times have you been to see your dad since he's  
9 been in jail?

10 A Uhm, I always come every week until my car broke down.

11 Q At one point did you try to get a clergy's license so you could have uh...

12 A Yeah.

13 Q ...visits with him?

14 A Yeah.

15 Q And that was denied by the jail. Is that right?

16 A Yeah. I have a clergy's license. They just won't accept it here.

17

18 THE STATE: I have nothing further, Judge.

19 MS. SCHULTZ: I have no other questions.

20 THE COURT: Well, okay. Thank you.

21 THE STATE: I'll call Detective William Wibbles.

22 WITNESS: Am I free to go?

23 THE STATE: The State has nothing further of this witness.

24 THE COURT: Do you solemnly swear or affirm the testimony you're  
25 about to give shall be the truth and nothing but the truth, so help you God?



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 WITNESS: Yes sir, I do.

2

3 DIRECT EXAMINATION BY STATE OF INDIANA:

4 Q Detective Wibbles, how long have you been with the Indiana State Police?

5 A I was appointed on August 24<sup>th</sup>, 1997.

6 Q What is your current position with them?

7 A I'm Investigator, assigned to the Criminal Investigations Division of the  
8 Sellersburg Post.

9 Q Would that commonly be known as a detective?

10 A Yes, it is.

11 Q How long have you been a detective?

12 A I was uh, promoted to detective August 24<sup>th</sup>, 2004.

13 Q Okay. In connection with being a detective, what county, what counties  
14 do you work?

15 A Mostly Harrison, Floyd, some Washington, some Clark, some Scott, some  
16 Crawford.

17 Q Okay. How many uh, sex crimes do you think that you've investigated  
18 during that time?

19 A Approximately seventy-five over my career.

20 Q Before I ask you some questions about that, Detective uh, did you just  
21 hear Kristen Nunley testify?

22 A Yes, I did.

23 Q Do you, did you indeed interview her on May the 30<sup>th</sup>, 2008?

24 A Yes, I did.

25 Q And did you write a report involving that?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yes, I did.

2 Q Tell the court what Kristen Nunley told you on that date.

3

4 MS. SCHULTZ: I'm going to object, hearsay.

5 THE COURT: May the 30<sup>th</sup>, what? What was the date?

6 THE STATE: That was May the 30<sup>th</sup>, 2008.

7 MS. SCHULTZ: Judge, I'm going to object on the basis of hearsay.

8 THE STATE: Your Honor, I'm offering it not for the truth of the

9 matter asserted. I'm offering it to impeach Kristen Nunley's testimony.

10 MS. SCHULTZ: Well, well, I guess that would be for the truth of the

11 matter asserted. If, if the State's position is that she told the truth to Officer

12 Wibbles and she's lying to this Court today when she testified, and we're here on

13 a 404B motion, what does the State intend to do? Use Mr., Officer Wibbles to

14 testify as to what this witness said, that somebody else did to her and use it

15 under 404B? This doesn't even make sense.

16 THE STATE: Your Honor, what I need is some evidence that it

17 happened to someone else. Until today, we were, the report showed, and

18 Detective Wibbles' report indicated that Kristen Nunley had indicated that the

19 things that I had questioned her about, that's why she was called here today.

20 She's now facing her father, what I believe is recanted, and I think that I get to

21 impeach her and I think the Court can consider what she told Detective Wibbles

22 and, and can consider in reviewing all of the State's 404B motions.

23 MS. SCHULTZ: Well, I guess, Judge, it really doesn't make a

24 whole lot of sense to go that route, because in order to do the 404B, the 404B

25 evidence in, assuming, for example, that the Court believed that she was in fact

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 molested, the State would have to have her on the stand to say that she was  
2 molested. And they're not gonna get her on the stand to say that she was  
3 molested if she's saying, telling us that she never was. So what's the point?

4 THE COURT: What about that?

5 THE STATE: Judge, I, I think that the Court can take into  
6 consideration that she's here today, that she has recanted what she told this  
7 officer, and I think I can put that evidence before the Court, and you can  
8 determine whether she was...

9 THE COURT: Well, what, what Susan is saying is uh, even if I hear  
10 what Mr. Wibbles says, how are you gonna use that as 404B evidence? I mean  
11 if you don't have a evidence, because clearly what Mr. Wibbles would say is  
12 hearsay. Uh...

13 THE STATE: Not if, maybe that she would be here and subject to  
14 cross examination. I mean she was here earlier and was subject to cross  
15 examination. Uh, I...

16 THE COURT: Did you record it?

17 WITNESS: No sir. She declined to be recorded.

18 THE COURT: Oh. Well, now, if you had been able to record it,  
19 perhaps you could play the tape for her and see if that refreshes her recollection.  
20 But uh...

21 THE STATE: Judge, if you're not inclined to follow...

22 THE COURT: I mean in other words, what I'm saying is, let's say  
23 that I believed, if I were to hear this and, and uh, and she tells a similar story and  
24 whatever, and says that her father molested her repeatedly and so forth. And,  
25 and uh, then we get to the trial then, what are you gonna do at trial? I mean

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 what's the point? Ms. Schultz, what Ms. Schultz is saying, what's the point  
2 anyhow? How does it really reflect on..., I mean what, even if I did agree that  
3 there was some kind of 404B evidence that the jury could hear, they couldn't  
4 hear it from Mr. Wibbles, could they?

5 THE STATE: Your Honor, I understand that point. And, and given  
6 the fact that she recanted and I think given the strength of the evidence of  
7 Kimberly Simler, then I'll withdraw the motion on Kristen Nunley.

8 THE COURT: Well, see, the, I mean sometimes I don't see  
9 everything that goes on in the courtroom. I, you know, I, I saw the two of them  
10 exchange that look whenever she came into the courtroom. Her and her father  
11 exchanged that look. You know, and uh, who knows what that means. Uh, who  
12 knows what that look meant, you know. Uhm, only the defendant and her would  
13 really know. But uh, it doesn't really make much difference uh, because if all  
14 you've got is Mr. Wibbles' hearsay testimony about what she told him, then you  
15 can't really get that before the jury anyhow, no matter what he tells me that she  
16 said.

17 THE STATE: I'll respect what the Court says and I'll just move on.

18 THE COURT: But, I mean, tell me, do you think that Ms. Schultz is  
19 wrong about that? I mean that's what she's saying. She's saying, "Hey, you  
20 know, so what if you hear this now. I mean you still can't do anything with it",  
21 even if I were to agree with you and think that the nature of the evidence is 404B  
22 or whatever.

23 THE STATE: The only way you can do it, Judge, is would be the  
24 same way it's done here, which would be either, she'd either get on the stand  
25 and either..., who knows if she'd recant again? I have no idea. But she'd get on

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 the stand and give her testimony, and then I would..., you're right. I would have  
2 to impeach her by putting Detective Wibbles on the stand. I would have to  
3 impeach her by indicating that he had testified before. So, if your Honor does  
4 not feel that that...

5 THE COURT: Well, you know, how uh, you're suggesting that you  
6 would ask her uhm, well, how do you think that you get..., how do you think you'd  
7 get that in when she denies it? You see what I'm saying? How do you think  
8 you'd get that in? Tell me how you think you'd get that in.

9 THE STATE: Well, I think that she gets on the stand and she  
10 denies it...

11 THE COURT: Denies it, like she did today.

12 THE STATE: And then I put Detective Wibbles on the stand to  
13 impeach her with what she told...

14 THE COURT: With the prior inconsistent statement.

15 THE STATE: Right.

16 THE COURT: Okay. Now let's talk about that. The prior  
17 inconsistent statement. Uh, okay uh, what's, refresh my memory. What's the  
18 rule on that? There's a foundation for a prior inconsistent statement. And I just,  
19 need my memory refreshed.

20 MS. SCHULTZ: Rule 613, Judge, I believe it is.

21 THE COURT: Six-thirteen?

22 MS. SCHULTZ: Yes.

23 THE COURT: But uh, uhm, but...

24 MS. SCHULTZ: The prior inconsistent statement can't be used...

25 THE COURT: I mean in other words, wouldn't it be more the matter

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 if uh, if the defendant tried to offer her up to stay that he's a great person, never  
2 molested me or anything like that, then you'd bring Mr. Wibbles in for her prior  
3 inconsistent statements.

4 THE STATE: Judge, that...

5 THE COURT: To impeach her, but rather as opposed to trying to  
6 show..., you see what I'm getting at?

7 THE STATE: I agree, Judge. And I don't really want to belabor this  
8 point, because I think that I would not be honest if I sat here and didn't say that  
9 Ms. Schultz doesn't have a point with this. So I would, at this point, given the  
10 fact that she came in and testified as she did, with respect to the 404B motion,  
11 I'm just not gonna pursue uh, Kristen Nunley as a potential witness.

12 THE COURT: Okay. All right. Okay, well, wait a minute. Let's see.  
13 Any other questions for Bill?

14 THE STATE: I do.

15 THE COURT: All right.

16  
17 STATE RESUMES DIRECT EXAMINATION:

18 Q Detective Wibbles, in investigating those seventy-five uh, sex crimes,  
19 were any of those involving children?

20 A Yes.

21 Q And has there ever..., and you were hear earlier and you heard Annie  
22 Young testify?

23 A Yes, I was.

24 Q Okay. And you heard her describe what uh, Mr. Nunley did to her?

25 A Yes, I did.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And you were also here when you heard uhm, Kimberly Simler testify?

2 A Yes, I did.

3 Q And you heard what Mr. Nunley did to her?

4 A Yes.

5 Q Okay. And then in connection with the investigation of these seventy-five  
6 sex crimes, have you ever uh, seen a child molesting case with that type  
7 set of facts, involving an adult video and oral sex on the child and having  
8 the child perform oral sex on the adult?

9 A I cannot any that I have investigated being like that.

10 Q Okay. And based on your training and experience, would you say that  
11 that is an unusual fact pattern in a child molest case?

12

13 MS. SCHULTZ: Objection, your Honor. I don't know how this  
14 witness can testify as to that.

15 THE STATE: Well, I think he's testified he's investigated uh,  
16 seventy-five cases and I think he could at least be a skilled witness on that fact.  
17 If he can't be an expert, I think he can be a skilled witness and tell the Court if  
18 this is some sort of pattern or signature, if he's ever seen it before.

19 THE COURT: Well, I think he can talk about whether he's ever  
20 seen it before. Yeah. Uh, but I don't know about, you know, whether he could  
21 say that it's a uh, this or that. But uh, I think he certainly could testify about his  
22 own, the things that he's investigated. So I would consider his testimony in that  
23 manner. And otherwise, I will overrule the objection.

24 WITNESS: Would you repeat the question, please?

25

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 STATE RESUMES DIRECT EXAMINATION:

2 Q I think you already answered it. I said, in all those seventy-five cases,  
3 you've never seen a fact pattern as described by Annie Young and  
4 Kimberly Simler.

5 A Just in the approximate cases that I have uh, investigated before, I have  
6 not seen the same uh, with the pornography, the children's movies, and  
7 then the facts given out by Miss Young and Miss Simler.

8 Q Okay. And how about pornographic movies shown to children of that  
9 age?

10 A I can't recall any at this time.

11 Q Okay. And were you, have you had any special training on sex crimes,  
12 Detective Wibbels?

13 A I've been to uh, Finding Words uh, and to other schools. Uh, off the top of  
14 my head uh, Finding Words. Uh, I went to a sexual assault nurse  
15 examiner's course at I.U.S. and uh, other training, experience.

16

17 THE STATE: Okay. That's all I have, Judge.

18

19 CROSS EXAMINATION BY DEFENSE:

20 Q Officer Wibbels, do you have any idea how many sex crimes are  
21 committed in the State of Indiana every year of people who are arrested  
22 and charged with sex crimes?

23 A I couldn't tell you.

24 Q Would it be safe to say that it's a whole lot more than seventy-five?

25 A I would say so.



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q We'd be lucky if it was only seventy-five, wouldn't we?

2 A In a perfect world it would be only seventy-five, or even less.

3 Q So even if all of the seventy-five cases that you've did not involve  
4 pornographic movies being shown to children, and if none of them  
5 involved that, that doesn't mean that aren't other cases like that in the  
6 state, does it?

7 A No, it does not mean that.

8 Q And it wouldn't, it wouldn't surprise you to find that there were multiple  
9 cases in the State of Indiana where a person showed a kid dirty movies  
10 and then abuse them sexually, would it?

11 A I think if you coupled the pornographic movies with the Disney movies and  
12 the sexual abuse, that is a pattern.

13 Q You think it's a unique pattern?

14 A I think it is.

15 Q Do you have any, have you ever seen any studies to back that up?

16 A No, I didn't.

17 Q This is just, this case is unique to the cases that you've evaluated?

18 A Yes, it is unique.

19

20 MS. SCHULTZ: No other questions.

21 THE STATE: That's all, Judge.

22 THE COURT: Okay. Thank you.

23 THE STATE: And, Judge, with respect to the 404B evidence, that's  
24 all that the State has at this time. I will withdraw the motion with respect to uh,  
25 Kayla Barnes. She has not appeared today. I have not had luck subpoenaing

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 her. So what I'm presenting to the Court is the one uh, witness, Kimberly Simler,  
2 to consider under 404B.

3 THE COURT: Kimberly Simler is, is it.

4 THE STATE: Who was the, the..., that's it.

5 THE COURT: Okay.

6 THE STATE: And, at this point, given the lateness of the time, I  
7 didn't know if you want me to just move on to the...

8 THE COURT: I'd say keep going.

9 THE STATE: Okay.

10 THE COURT: How long do you think it's gonna be?

11 THE STATE: Very..., I have just short witnesses, Judge, on the  
12 child hearsay.

13 THE COURT: Okay. Let's keep going.

14 THE STATE: Okay. Judge, we just need to recall Annie Young  
15 briefly.

16 THE COURT: All right.

17 THE COURT: Judge, the State will recall Annie Young. I would  
18 move to admit, I think that this witness touched on almost all her reporting to  
19 people in the last part of her testimony. But I'll ask Ms. Wheatley to start again,  
20 after this happened, who she, who she told.

21

22 DIRECT EXAMINATION BY STATE (MS. WHEATLEY):

23 Q Okay...

24 A Can you put this seat up? It's sort of low.

25 Q It's a little low?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yeah.

2 Q Okay. I'll move it up a little bit for you.

3

4 THE COURT: Okay, you'll probably have to get up out of it, Miss  
5 Young, and let her sit in it and...

6 MS. WHEATLEY: Scoot you on up real quick, okay?

7 WITNESS: Like that?

8 MS. WHEATLEY: It rose up, you think?

9 WITNESS: Yeah.

10 MS. WHEATLEY: All right. That better?

11 WITNESS: Yeah.

12 MS. WHEATLEY: Okay...

13 WITNESS: Scoot..., there.

14

15 STATE RESUMES DIRECT EXAMINATION:

16 Q Okay, Annie, now remember, we talked about telling the truth, okay?

17 A Yeah.

18 Q And remember when the Judge put you...

19 A It's not so scary any more after I talked about it already.

20 Q Okay, that's good. Now you remember, the Judge put you under oath and  
21 you still promise to tell the truth, okay?

22 A Uh huh.

23 Q Okay. Now I'm going to take you back to that day when you spent the  
24 night at Ed's.

25 A Okay.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q All right. And you, you woke up.
- 2 A Yeah.
- 3 Q Were you wearing pajamas?
- 4 A Uhm, a tee shirt, like always.
- 5 Q Like always. Okay. Did you have on panties?
- 6 A Yeah.
- 7 Q Okay. Did you have on panties when Ed was licking your pee pee?
- 8 A No.
- 9 Q Okay. Who took your panties off of you?
- 10 A Ed.
- 11 Q Ed did?
- 12 A Uh huh.
- 13 Q Okay. You stated that you took a bath at his house. Uh, did you put your  
14 pajamas on?
- 15 A I only put a tee shirt on because that's all they sent for me, because that's  
16 what I wanted because it's usually hot at night.
- 17 Q Okay, it was hot at night, okay. Did you put your panties on after the  
18 bath?
- 19 A Yeah.
- 20 Q Okay. Did you ever take your tee shirt off?
- 21 A No.
- 22 Q Did Ed take your tee shirt off?
- 23 A No.
- 24 Q Did you put your panties back on?
- 25 A Yeah.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q Now, whenever you, your mommy came to pick you up the next morning,  
2 right?
- 3 A Uh huh.
- 4 Q Okay...
- 5 A Yeah.
- 6 Q And I believe you told us earlier that you watched Scooby Doo.
- 7 A Yeah.
- 8 Q And uh, you said your mommy came in the door.
- 9 A Yeah.
- 10 Q Okay, and then what happened?
- 11 A And then I went to her and she brought me to the car, and then I wrote  
12 down the thing, like I sucked on his weeny-bob and stuff. And then my  
13 mommy got mad, went over there and beat the windows out of his truck.  
14 It was funny.
- 15 Q Okay. Now I want to stop you real quick, because you're talking so fast.  
16 All right, we're going to slow down a little bit, okay?
- 17 A Okay.
- 18 Q All right.
- 19 A Is this the last court thing so we can play?
- 20 Q We can play here in a minute, okay?
- 21 A Okay.
- 22 Q All right. Now, you got in the car. Who was in the car with you?
- 23 A Daddy and Mommy.
- 24 Q Okay, and who was driving?
- 25 A Mommy.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q Okay. And where, were you in the back seat?
- 2 A Yes.
- 3 Q Okay, and so you started to go. Were you headed towards home?
- 4 A Yeah.
- 5 Q Okay. So what happened?
- 6 A When I was writing it down, we was, we was already on the highway,
- 7 when I wrote it down. And then she got a place to turn around and...
- 8 Q Why did you write it down? What, what made you write something down?
- 9 A Well, because I was afraid to tell them, and write..., they made me write it
- 10 down because I really didn't want to tell. So I wanted it write it down
- 11 because I was a tiny bit afraid to get in trouble.
- 12 Q Okay. You were a tiny bit afraid to get in trouble. Did you want to tell your
- 13 mommy as soon as you got in the car?
- 14 A Yes.
- 15 Q Okay...
- 16 A But I wanted to write it down. But Ed Nunley should never done that.
- 17 Q Right.
- 18 A I think he done it to more kids too.
- 19 Q We don't want to talk about that, all right? Let's, you and me having a
- 20 conversation, okay?
- 21 A Okay.
- 22 Q So you get in the car and you want to tell your mom.
- 23 A Yes.
- 24 Q But you don't want to tell her out loud?
- 25 A No.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay. Because you were afraid.

2 A Yeah.

3 Q All right. You said that you wrote it on a piece of paper. Who gave you  
4 that piece of paper?

5 A Uh, my Daddy.

6 Q Okay, and what did you write it with?

7 A I wrote it with, Ed Nunley, he gave me like a little red pen.

8 Q Okay.

9 A And that, not a pen, but a pencil.

10 Q Okay.

11 A Like colored pencils, you know?

12 Q Okay. So you wrote, you wrote it on that?

13 A Yeah.

14 Q Okay, and who, and what did you write?

15 A I wrote...

16 Q It's okay. Big deep breath. All right, now what did you write on that piece  
17 of paper?

18 A I wrote...

19 Q It's just you and me talking.

20 A Okay, I wrote I sucked on his weeny-bob.

21 Q Okay.

22 A Because I remembered this twice.

23 Q Okay, you remembered that, okay. So you wrote that you sucked on his  
24 weeny-bob?

25 A Yeah.

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 Q Did you write anything about your pee-pee on there?
- 2 A No, that was pretty much all I wrote. I was gonna write because he made  
3 me, but I forgot that.
- 4 Q You forgot it? Okay.
- 5 A Yeah. How do you say what I say?
- 6 Q Okay.
- 7 A I don't see how you say what I say. I guess you know what I'm gonna  
8 say. That's cool.
- 9 Q All right. So after you wrote that, who did you hand that, who did you  
10 hand that piece of paper to?
- 11 A Uh, I handed that to Mommy, and she read it when we was on the  
12 highway. And then she turned around, (witness making screeching  
13 sound)...
- 14 Q Was your Mommy upset?
- 15 A Yeah. She was...
- 16 Q Have you seen your Mommy...
- 17 A And she got the baseball bat, and bang.
- 18 Q Okay, all right. Had you seen your Mommy get upset before?
- 19 A No.
- 20 Q No, okay. Now, so then what happened? What did your Mommy do?
- 21 A Uh...
- 22 Q What did she with...
- 23 A Beat him up.
- 24 Q Did she go right to Ed Nunley's house?
- 25 A Yeah. And she, bang, bang.



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q What did she bang with?

2 A A baseball bat.

3 Q A baseball bat, okay. Were you able to see this?

4 A No. We just pulled up like in the woods where he...

5 Q Okay. So she didn't park the car all the way up?

6 A No. We was past his house a tiny bit.

7 Q Okay. All right. And you could hear some of the stuff that she was doing?

8 A Yeah. And I heard her say, "Why did you make my daughter suck on...", I

9 don't want to say it.

10 Q Okay. All right. So then...

11 A And he was like, "No, I didn't."

12 Q Okay. What happened, did you ever speak to a police officer?

13 A Yeah. After Mommy beat him up, she took the paper to a police officer at

14 the Comfort House.

15 Q Okay. Did you speak to a police officer the next day?

16 A No.

17 Q No?

18 A Right when that day happened, when she beat up Ed.

19 Q Okay, so later on that day you spoke to a police officer?

20 A No. Right after she beat him up, we (witness makes screeching sound).

21 Q You went straight to the police station?

22 A Yeah.

23 Q Okay. So did you tell the police officer what he did to you?

24 A Yeah.

25 Q Okay. And did you tell the police officer about the weeny-bob?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yeah.

2 Q And did you tell the police officer about your pee-pee?

3 A Yeah.

4 Q And what, what about the pee-pee did you tell him?

5 A I told him that he licked it.

6 Q And did you see the piece of paper that you wrote on?

7 A He pointed to it and he said, "What happened before this happened?"

8 Q Okay, and you told the police officer everything?

9 A Yeah.

10 Q Everything you could remember?

11 A Uh huh. I could remember everything because that was the same day it  
12 happened.

13 Q Okay. And you're pretty smart, aren't you?

14 A Yep.

15 Q Okay. Now at some other point in time, later on, much later, did you go to  
16 the Comfort House?

17 A The Comfort House?

18 Q Uh huh, do you remember that?

19 A Yeah. I went to, and I went, I went to Lifesprings and the Comfort House.

20 Q Okay. Do you remember at the Comfort House, do you remember that  
21 they drew pictures for you?

22 A Yeah. And you could put your hand like on a tree.

23 Q Okay. And do you remember talking to a person there?

24 A Uh huh. There's a girl and a man. There's one days..., I can't remember  
25 though.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay. Do you remember telling them everything that happened to you at  
2 Ed Nunley's house?

3 A Really I didn't talk to them much. Mommy had to talk to them a lot.

4 Q Mommy talked to them?

5 A And then I went to Lifesprings and it's real fun because they had toys  
6 everywhere.

7 Q All right. And you like toys, right? Okay. You remember at the Comfort  
8 House, do you remember talking to some people?

9 A Yeah.

10 Q Okay, and you had to tell them what happened...

11 A Yeah.

12 Q ... at Ed Nunley's house?

13 A Yeah.

14 Q Okay. And did you tell the truth then?

15 A Yep.

16 Q Okay. And...

17 A How many more questions?

18 Q Not very many. I...

19 A Five?

20 Q I don't know. I don't want to give you a number because I know you're  
21 gonna count.

22 A Four, three, two, one, three, three, two?

23 Q Okay. Now, at any point in time, did anybody tell you what to say in these  
24 interviews that you gave?

25 A No.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay.

2 A They just told me to tell the truth.

3 Q Right. And is that what you've done this whole time?

4 A Yep, nothing but the truth, truth, truth, truth, truth.

5 Q Right, okay.

6 A Truth.

7 Q And so when you talked to the officer, the policeman, you were telling the  
8 truth?

9 A Yeah.

10 Q And when you talked to the lady at the Comfort House, where you put  
11 your hands up on the wall, you were telling the truth?

12 A Yeah. You put your hands up on the wall and you have paint, and you...  
13 (witness makes crunching sound).

14 Q Okay. And right now when you're talking to me and the Judge, you're  
15 telling the truth?

16 A Yeah.

17 Q Okay. And no one's told you what to say?

18 A No.

19 Q Okay, all right.

20 A No, no, no, no, no, no, no.

21

22 MS. WHEATLEY: Thank you, Annie. I think Ms. Susan may have a  
23 couple of questions for you, okay?

24 WITNESS: Oh.

25

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 CROSS EXAMINATION BY DEFENSE:

2 Q I know you don't want to see me anymore, do you?

3 A I bet it's horrible sitting by Ed Nunley.

4 Q Well, when you used to go to his house, did you mind sitting by him?

5 A No.

6 Q When you'd go to visit at his house, did you mind sitting by him then?

7 A Well, before that happened uh, I didn't mind.

8 Q Okay. And it's only since this happened, since you're in court in the hot  
9 seat, since you have to answer our questions, then it's a problem for you.

10 Is that right?

11 A Uh huh, and I don't want to sit by..., I don't even want to see him.

12 Q Well, you can be sure that we're not gonna ask you sit in a chair next to  
13 Ed, okay? Do you remember when you went out to the first time, the day  
14 this happened, and talked to the police officer? Do you remember that?

15 A No.

16 Q You don't remember talking to the police officer? The same day that this  
17 happened? After your mom picked you up?

18 A Huh uh. Police officer, huh?

19 Q It was after this happened, you talked to a police officer.

20 A No, I can't remember.

21 Q So you don't remember, after your mom went up and beat Ed's house and  
22 the...

23 A Oh yeah, that one guy. I remember.

24 Q Okay, now you remember that. Was your mom there with you all the time  
25 you were talking to that police officer?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A I wanted her to go out. I wanted it to be private. You know, I don't like to  
2 talk in front of..., because like a whole bunch of crowd everywhere, like  
3 there is right now.

4 Q So the day you talked to the police officer, were you talking privately with  
5 the police officer, just you and him?

6 A Yeah.

7 Q Your mom wasn't in the room at the same time you were talking to him?

8 A No.

9 Q And before this happened with Ed Nunley, with Ed Nunley and you, had  
10 you ever heard about anything like this happening to anybody else?

11 A No.

12 Q Do you know uh, Kim Simler?

13 A No.

14 Q You never met her before that you know of?

15 A No. I saw her today in court. Was she wearing a gray coat and a gray  
16 shirt?

17 Q Yes.

18 A Did he do it to her too?

19 Q Well, I get to ask you the questions. You don't get to ask me, okay? Did  
20 anybody tell you anything that happened to her? Has anybody ever told  
21 you what happened to her?

22 A No.

23 Q Has anybody ever told you that Eddie, that Ed did this to anybody else?

24 A No.

25 Q But you said, when Lauren was asking questions a little while ago, you

**HEARING ON 404B AND HEARSAY EVIDENCE**

1           said, "I think Ed did it some other kids too."

2 A           I think, but I never heard of it. I think, think, think.

3 Q           What do you think he did to other kids?

4 A           The same thing he did to me.

5 Q           He did exactly the same thing?

6 A           Yes.

7 Q           And why do you think that that's true?

8 A           Because he did it to me. He had to do it to some other kids. I'm pretty  
9           sure, because if he wasn't in jail like, if he wasn't in jail now, he should be.

10           But like, he wasn't in jail back then, he still probably still got it, but he just

11           had a (unintelligible), and then he did it more because he thought he

12           wasn't gonna get caught. So he probably did it more because he didn't

13           caught the first time he did it. So he thought if he did it more he wouldn't

14           get caught. So he probably did it more, because he thought he wouldn't

15           get caught. And he got caught by my Mommy. And I think..., I don't

16           know.

17 Q           So if you think that every time that somebody does something bad once,  
18           they're usually going to keep doing that bad thing until they get caught?

19 A           Uh huh.

20 Q           Have you ever done anything bad?

21 A           Well, I haven't done anything that bad.

22 Q           Okay. Have you ever taken something from one of your friends or  
23           somebody else that didn't belong to you?

24 A           No.

25 Q           Without permission?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A No.

2 Q Have you ever told your mom a little fib? Yes, you have. Okay. So think  
3 about telling your mom a little fib. If you told your mom a little fib...

4 A Like if I told her like, like if, Eddie Foreman did that to me, that would be a  
5 fib.

6 Q That would be a lie, right?

7 A Yeah. Like if I tell her, like if I told her, like if I did like, if I spilled soup and  
8 I told her my brother did it, that would be a lie, and a fib is something kind  
9 of like a lie too.

10 Q But not quite as bad?

11 A No. A fib is like you're telling her like stuff, like somebody else did, and  
12 stuff that they didn't do. And a fib is like you're crying and fibbing and  
13 telling them a fib.

14 Q Okay. Have you ever told a lie ever in your life? Yes, you have. What  
15 kind of things have you lied about? Have you ever lied about Ed Nunley?  
16 You have to talk out loud so the Judge can hear you.

17 A No.

18 Q No, you have not lied about Ed Nunley?

19 A No.

20 Q Did anybody else tell you what was the truth about Ed Nunley so that you  
21 could tell somebody else what he did to you?

22 A No. I already knew the truth.

23 Q So did your mom remind you at any point in time, any time after...

24 A She told me, she told me, "don't say nothing but the truth to the end, but  
25 the truth."



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q So did your mom ever tell you what the truth was?

2 A No. I already knew it was. The truth is something that if you tell the truth,  
3 then you're not telling a lie. The truth is you won't get in trouble. And a  
4 lie, the difference between a lie and truth; truth is better. You don't get in  
5 trouble. A lie, you get in trouble a lot.

6 Q Well, sometimes you get in trouble if you tell the truth. If you did  
7 something bad and then told the truth you did it, you might get in trouble,  
8 right?

9 A Yeah. But you won't get in as much as trouble as you did if you tell a lie.

10 Q So when you...

11 A Like if I have five minutes off my recess, and I said I didn't, I would be  
12 telling a lie. I'd get in trouble and I'll have the whole recess off.

13 Q Did you ever tell about a lie about anything important to get somebody in  
14 trouble?

15 A No.

16 Q You'll have to talk a little bit louder.

17 A No.

18 Q No?

19 A No.

20 Q You never told a lie about something important?

21 A No.

22 Q If it's not important, why would you lie about it? Well, if it's important...

23 A I don't know.

24 Q You don't like these questions, do you?

25 A Huh uh.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q So, when you went to talk to the police officer the day this happened,  
2 when your mom took you, after she beat up on Ed's car and stuff, your  
3 mom was there with you?

4 A Yes.

5 Q Did she go into the, in to talk with the officer with you?

6 A No.

7 Q Did uh, Richard, was Richard Caves there with you when you went to the  
8 police?

9 A He wasn't in, but he was there with me, yeah. But he wasn't in to talk to  
10 the police officer.

11 Q Did he wait in the car?

12 A No. They waited outside the door.

13 Q So your mom and, and your dad waited outside the door, and you went  
14 into the room alone with the police officer?

15 A Yeah. They was waiting outside the door, but they was still inside the  
16 Comfort House, the house, the place. I'm sorry, but I have to take a deep  
17 breath.

18 Q So you..., and Donna at the Comfort House, that was when you put your  
19 hands on the wall?

20 A Yeah.

21 Q But that was a long time after this happened, wasn't it?

22 A Yeah.

23 Q A whole year after.

24 A Like three years, or five, maybe fifty. Well, not fifty.

25 Q When you talked to Donna at the Comfort House, did you have any

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 trouble remembering what happened, what Ed did to you?

2 A Donna? No, I didn't have any...., only a little bit of trouble, yeah.

3 Q And you remember when you talked to me a couple of weeks ago, when  
4 we were across the hall?

5 A Uh huh, yeah.

6 Q Did you have some trouble then remembering what happened?

7 A What?

8 Q Did you have some trouble when you talked to me before, remembering  
9 what happened?

10 A Yeah. A little bit.

11 Q So has anybody done anything to help you remember what happened  
12 since then?

13 A Uh, no, because I thought I didn't need it really. I mean the stuff with the  
14 questions, because there's so many questions you guys are asking me,  
15 I'm getting tired. You done asked me them once. I guess you're gonna  
16 make sure I've done the same thing. Is this gonna be the last thing of  
17 court?

18 Q I doubt it. Okay. I don't have any more questions.

19 A Oh.

20

21 MS. LAUREN WHEATLEY: Judge, did you have any questions for  
22 her?

23 THE COURT: No.

24 MS. LAUREN WHEATLEY: Okay, Annie, you're done.

25 MS. FLANIGAN: Judge, I'll call Donna Black to the stand.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE COURT: Do you solemnly swear or affirm the testimony you're  
2 about to give shall be the truth and nothing but the truth, so help you God?

3 WITNESS: I do.

4 THE COURT: Have a seat.

5  
6 DIRECT EXAMINATION BY STATE (MS. FLANIGAN):

7 Q Your name is Donna Black. Is that correct?

8 A It is.

9 Q And do you currently work at the Comfort House?

10 A I do.

11 Q Can you describe for the court your educational background?

12 A Actually I have a bachelor's degree in business, but a master's in tax.

13 And I've done training for the job at Comfort House.

14 Q We'll get to that in a little bit. Let me ask you about your work experience.

15 What did you do before you came to the Comfort House?

16 A Well, I worked in public accounting uh, I sub-taught at the North Harrison  
17 Schools. I drove a bus for North Harrison schools. Uhm, I've done some  
18 ad-junc teaching at I.U.S.

19 Q When did you come to be employed at the Comfort House, Ms. Black?

20 A March of 2006.

21 Q Have you attended uh, Finding Words Training?

22 A I have.

23 Q Can you explain to the Court what that is?

24 A Finding Words is a forensic interviewing protocol uh, technique that  
25 anybody that interviews, does forensic interviewing at Comfort House is

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 required to go through.

2 Q And when did you attend that?

3 A July of 2006.

4 Q And where did you attend that?

5 A In Hammond, Indiana.

6 Q Are there any additional conferences you've attended about interviewing  
7 children since then?

8 A Uhm, I've been two years in a row to the uh, Crimes Against Children  
9 Conference in Dallas, which is made up of a bunch of workshops, and so  
10 you can choose the workshops that you want to do. So I have done some  
11 classes on the forensic interviewing there. Also I have attended Beyond  
12 Finding Words uh, which is a growth of the Finding Words program. And  
13 I've done individual training through the National Children's Alliance.

14 Q And when you say "Finding Words" uh, when you interview children at the  
15 Comfort..., in connection with your job now at the Comfort House, do you  
16 uh, find occasions to interview children?

17 A I do.

18 Q Do you use the Finding Words method?

19 A Yes, we do.

20 Q Okay. And what is the goal or the protocol of the Finding Words method?

21 A It's to give the child the opportunity to talk to us about anything that's  
22 happened without us leaving them or making suggestions to them about  
23 what might or might not have happened.

24 Q And was that protocol used when you interviewed..., let me ask you this.

25 Did you interview Annie Young?

**HEARING ON 404B AND HEARSAY EVIDENCE**

- 1 A Yes.
- 2 Q And that was on April the 18<sup>th</sup> of 2008?
- 3 A Yes.
- 4 Q And did you use the Finding Words protocol then?
- 5 A Yes.
- 6 Q You would not have suggested any answers to Annie?
- 7 A No. I wouldn't have.
- 8 Q And was it your goal in any way to get her to either admit or deny any
- 9 allegations of child abuse?
- 10 A No.
- 11 Q Okay, what was your goal that day?
- 12 A To talk to Annie and let Annie talk to me.
- 13 Q And did Annie indeed talk to you?
- 14 A Yes, she did.
- 15 Q Did she uh, actually disclose that she was molested by Ed Nunley?
- 16 A Yes, she did.
- 17 Q And there was a DVD made of that interview?
- 18 A Yes, there was.
- 19 Q And can you tell the Court, you were in a room with Annie. Is that
- 20 correct?
- 21 A That's correct.
- 22 Q And there was an easel there with some pictures?
- 23 A That's correct.
- 24 Q And in another room there was a multi-disciplinary task force.
- 25 A That's correct.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Listening on head sets. Is that correct?

2 A Yes.

3 Q But Annie could not see those people.

4 A That's correct.

5 Q Those people could see and hear the interview?

6 A Yes.

7 Q They could, you could also hear questions from on an earpiece. Is that  
8 right?

9 A Yes.

10 Q Uhm, but Annie could not hear what they were asking.

11 A No, no.

12 Q And at some points did they suggest questions for you?

13 A Yes.

14 Q Okay, and you would ask them in the Finding Words method?

15 A Yes.

16 Q So the goal at the Comfort House is not to get every kid to come in and  
17 say they've been molested?

18 A No, absolutely not.

19 Q Let me ask you this. A DVD was produced of that interview?

20 A Yes, there was.

21 Q Is there any way to..., is that burned directly off the hard drive at the  
22 Comfort House?

23 A Yes. It's burned actually as the interview is going on. Or, I'm sorry, it's  
24 copied as the interview is going on, and then burned from that copy  
25 directly to a DVD and presented to the team.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And in this case, was a copy of that interview burned and brought to  
2 Detective Wibbels here?

3 A It was.

4 Q Okay, and would there have been any way to alter that interview?

5 A Not to my knowledge.

6 Q So that the interview done at the Comfort House would be the same one  
7 that was provided to Detective Wibbels?

8 A Yes.

9 Q Okay.

10

11 THE STATE: Judge, I don't have anything else. Except at this time  
12 would uh, I know that the Court has already listened to the video, and I would  
13 move the admission of the video uh, into evidence.

14 MS. SCHULTZ: Well, we would certainly object to that. Uh, and I  
15 understand the, the uh, prior statement statute. Uh, if the Court were inclined to  
16 let this prior statement of Annie be admitted, then I would, I would suggest to the  
17 Court that it should certainly be the video and not this witness or any other  
18 witnesses' recollection of what has been said. However, we would object to the  
19 admission of the statement. I believe that my client has the right to confrontation  
20 under the uh, constitutional, the Constitution of both the State and the uh,  
21 Federal Government. And we believe that if the Court admits it, it would be a  
22 violation of his right to confrontation of the witness. Uh, I understand that we  
23 have had the right to cross examine her, both in a deposition and in this  
24 courtroom. Uh, however, it is my belief that some of the statements that she  
25 made in that reported interview are different than what she told me in the



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 deposition, and it's certainly different than what she has said here in court today.  
2 And for those reasons, we would object to that. And furthermore, I think the  
3 Court has to consider the reliability, and I've got some of the uh, the information  
4 or the, the factors here. I just have to find the right case notes.

5 THE STATE (MS. FLANIGAN): But, Judge, I might save Ms.  
6 Schultz some time. I understand that there would be arguments against  
7 introducing this at trial, and I think that's why we're having this reliability hearing  
8 here now. I simply wanted to make the DVD a part of the evidence of this  
9 hearing so that it's part of the record.

10 MS. SCHULTZ: Oh...

11 THE STATE (MS. FLANIGAN): I think that the ultimate issue of  
12 whether it comes in at trial is exactly why we're here and we're having all of this  
13 hearing. But I think that given the fact that the Judge has looked at it, that it  
14 needs to be made a part of the record of the hearing.

15 MS. SCHULTZ: Oh, I don't have any objection.

16 THE COURT: Okay. You're gonna have that marked?

17 THE STATE (MS. FLANIGAN): Yes.

18 MS. SCHULTZ: I have no objection to making it a part of this  
19 hearing. I thought she was moving to have it admitted for purposes of the trial.

20 THE COURT: Okay.

21 THE STATE (MS. FLANIGAN): That's why we're here ultimately.

22 THE COURT: That's going to marked as...

23 COURT REPORTER: Two.

24 THE COURT: State's Exhibit "2". So the uh, video of the, of Annie  
25 Young's statements to Donna Lloyd Black of April the 18<sup>th</sup>, 2008, are admitted

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 into evidence for the purpose of this hearing today only.

2 THE STATE (MS. FLANIGAN): That's all I have. I don't know if  
3 you any other questions.

4 MS. SCHULTZ: I don't have any questions for this witness.

5 THE STATE (MS. FLANIGAN): Okay. That's all I have, Judge.

6 THE COURT: Okay, thank you.

7 THE STATE (MS. FLANIGAN): Judge, at this time I would call  
8 Richard Caves to the stand.

9 THE COURT: Okay.

10 THE STATE (MS. FLANIGAN): Judge, if I could be excused for one  
11 moment. I need to make a phone call.

12 THE COURT: Sure.

13 MS. SCHULTZ: Judge, could we just take a little break? I, I could  
14 use the facilities.

15 THE COURT: Sure. Sounds like a great idea.

16 (OFF RECORD)

17 THE COURT: The record will reflect the defendant is present, the  
18 defendant's attorney is present, the prosecutors are present. Sir, raise your  
19 hand to be sworn. Do you solemnly swear the testimony you shall give shall be  
20 the truth, the whole truth and nothing but the truth, so help you God?

21 WITNESS: Yes sir.

22 THE COURT: Okay, state your name, please.

23 WITNESS: My name is Richard Caves.

24 THE COURT: All right. Go ahead, Ms. Prosecutor.

25

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 DIRECT EXAMINATION BY STATE (MS. FLANIGAN):

2 Q Mr. Caves, I'm gonna your call your attention back to uh, April the 14<sup>th</sup> of  
3 2007. Do you recall that day?

4 A Yes.

5 Q Uh, did you have uh, are you, first of all, are you familiar with Edward  
6 Nunley?

7 A Myself, no.

8 Q You are not...

9 A I don't know him.

10 Q Okay.

11 A I just heard stuff about him, him and Tonya was friends, supposedly.

12 Q All rightie. On April the 14<sup>th</sup>, 2007, did you have occasion to..., let me ask  
13 you this. Are you some..., how does Annie Young refer to you?

14 A I'm her dad.

15 Q Okay, not her biological dad, but you're her...

16 A Yeah.

17 Q Her father?

18 A Yeah.

19 Q So if she would testify as to her dad, that would be referring to you. Is that  
20 correct?

21 A Yes.

22 Q On April the 14<sup>th</sup>, 2007, did you have occasion to go with Tonya and pick  
23 up Annie somewhere?

24 A Yes.

25 Q Could you tell the court about that?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A We went to uh, Ed's house and picked up Annie. And we was on the way  
2 back to Salem. And Annie told Tonya, she said uh, "Me and Ed has a  
3 secret." And Tonya said, "What is it?" And uh, Annie wouldn't say  
4 nothing. Then uh, Tonya finally tricked her out of it. She said uh, "I  
5 already know what it is. You can go ahead and tell me." She said, "No.  
6 I'm not gonna tell you. I'm gonna write it down on a piece of paper." So  
7 Tonya got her a piece of paper and a pencil and she wrote on it that uh,  
8 "Ed made me suck his weedy-bob", and done something to her pee-pee.  
9 I can't remember exactly what it said...

10 Q Okay...

11 A About the pee-pee deal.

12 Q Mr. Caves, where were you in the vehicle?

13 A I was in the passenger seat.

14 Q Where was Tonya in the vehicle?

15 A She was driving.

16 Q Where was Annie?

17 A She was in her car seat in the back seat.

18 Q Okay, were you able to clearly hear Annie when she was talking to Tonya  
19 about the secret?

20 A Yes.

21 Q Okay, and you heard that. Did you see the note?

22 A Yes.

23 Q Okay uh, as you sit here today, do you remember uh, if it was written in  
24 pencil or pen?

25 A I think it was in pencil. I'm, I mean I..., don't hold me to that, but I think it

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 was. I can't exactly remember. I think it was. Either in pencil..., I think it  
2 was in pencil.

3 Q Okay. After uhm, did she, did Tonya look at the note and then show it to  
4 you?

5 A Tonya wouldn't show it to me right off the bat. She, when she read it, I  
6 could see something was the matter. And I said, "What is it? What is it?  
7 Let me see the note." Then she finally gave it to me, and I read it, and it  
8 just went through me like a knife.

9 Q Okay. Once you saw that, Mr. Caves, uhm, what, what did Tonya do  
10 next?

11 A When she read it, she turned around and went back to Mr. Nunley's  
12 house and got out and went up there and took the ball bat to his trailer,  
13 his door, his Harley, his truck. I think that's all she hit.

14 Q And I'm gonna break this down for you. In that time period when you  
15 were in the vehicle from the time you picked up Annie, do you remember  
16 what time of the day that was?

17 A No, I don't.

18 Q Okay. And that time until the time you saw the..., well, let me talk about  
19 first when she said she had a secret. Did either you or Tonya tell Annie  
20 anything or coach her in any way?

21 A No.

22 Q Okay. Do you personally have any reason to have anything against Mr.  
23 Nunley?

24 A No, I don't know him.

25 Q Okay. Uh, between the time that she said she had a secret and the time

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 she wrote the note, did either you or Tonya coach her on what to write?

2 A No.

3 Q Okay. Did either you or Tonya tell her what to write?

4 A No.

5 Q Okay. Uhm...

6 A Because she, it was, she said it was her and Ed's secret, and like I said,  
7 her Mommy tricked her and said, "Oh, I already know it. Ed already told  
8 me about it." And then she got, when she said, "Well, Mommy, I won't say  
9 it. I'd rather write it down on a piece of paper." Then that's what she  
10 wrote.

11 Q Okay. Uh, after you went up to uh, Ed's house and Tonya took the ball  
12 bat to the property uhm, were you there when the police arrived?

13 A No.

14 Q Okay, did you, where did you guys go next?

15 A We went back to uh, well, we went to the Salem Police Station.

16 Q And tell me, this took place, Ed's trailer was in Harrison County, but why is  
17 it that you guys went to Salem?

18 A I have, I have no clue why she did it. I tried to get her to come down here  
19 that day. I said, "We need to go down there because that's where it  
20 happened at."

21 Q But at the time you lived up in Washington County, right?

22 A Yes, I did.

23 Q Okay, so you went to Washington uh, County. And did you or Tonya  
24 request the state police? Do you know how the state police got there?

25 A No. We went and talked to the police station and told them what

**HEARING ON 404B AND HEARSAY EVIDENCE**

1           happened, and told them we needed to make a statement. And they said,  
2           I think they said it would be best to do it uh, a state trooper, and they said  
3           there was one in Livonia. And they had to call him and it took him a little  
4           bit to get there because I think he was working, was busy. Then he came  
5           and then Annie gave..., first, me, Annie and Tonya all three was in the  
6           room. And Annie was talking to the cop. And then he said he would like  
7           to talk to her by herself, but which Annie didn't like that. So her Mommy  
8           stayed in there with her.

9 Q       Okay. So you were not present uh, when Annie told the officer what had  
10         happened?

11 A       Yes, the first time.

12 Q       You were present?

13 A       And I think he..., yes. Yeah, the first time I went in there, yes. That's  
14         when he did it. And then he wanted to talk to her by herself.

15 Q       Okay. So the first time you go in and talk, is it Trooper Bowling we're  
16         talking about?

17 A       I think that's his name. I couldn't remember. I think he's sitting out there.

18 Q       Okay. Did Trooper uh..., when you and Tonya and Annie were all in  
19         talking to Trooper Bowling uh, did Tonya give the trooper the note?

20 A       Yes.

21 Q       Okay. And then did Annie tell Trooper Bowling what happened?

22 A       Yes.

23 Q       And you...

24 A       Told him everything.

25 Q       Okay. And then he wanted to further interview Annie alone?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yes.

2 Q And you were not privy to that?

3 A No.

4 Q Okay. So is it correct to say that you uh, the first time you heard of what  
5 Ed Nunley did to her was a note that you saw?

6 A Yes.

7 Q And the second time was when she recounted that to Trooper Bowling?

8 A Yeah.

9 Q Okay. But you were not privy to any of the more lengthy interview?

10 A No. I was out in the hallway.

11 Q Okay. Between the time Tonya uhm, took the ball bat to the Ed's property  
12 and the statement at the police station, was there any uh, did she coach  
13 her in any way or tell her what to say?

14 A No.

15 Q Were you present that whole time with Annie?

16 A Yes.

17 Q You've got to wait for me to finish. Were you present in the car the whole  
18 time with Tonya and Annie?

19 A Yes.

20 Q So if there was any coaching going on, you would've seen it?

21 A Yes.

22 Q Uh, after this happened uhm, between the time that happened and the  
23 time from May of '07, she then came and gave a statement at the Comfort  
24 House in May of '08, or April of '08. During that time uh, was Annie living  
25 with you or with Tonya or both?



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Well, she was living with Tonya. But I would get her like on the week-  
2 ends and on the summer break, and for like Thanksgiving vacation or  
3 Christmas vacation.

4 Q Okay. How soon after this happened in April of '07 did you and Tonya  
5 move out, no longer lived together?

6 A We didn't live together then.

7 Q Okay, so you were not living together at the time?

8 A No.

9 Q All right. Uhm, any time that you were present..., were there times  
10 between April of '07 and April of '08 that you were present where Annie  
11 and Tonya were, were together?

12 A Not together, no. Because there was, me and Tonya wasn't allowed  
13 around each other. And I would only see her like, for her Nanna would  
14 bring her up to me, or I'd meet them and pick Annie up, or meet her and  
15 pick Annie up or...

16 Q So you never saw Tonya coach Annie or talk to her about this after it  
17 happened?

18 A No.

19 Q And when did Annie move in with you full time, Richard?

20 A In August of this year.

21 Q Okay. Since that happened, have you talked to Annie about what  
22 happened?

23 A No.

24 Q Have you told her what to say when she came here to court today?

25 A No.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE STATE (MS. FLANIGAN): That's all I have, Judge.

2

3 CROSS EXAMINATION BY DEFENSE:

4 Q Mr. Caves, what was your relationship with Tonya Caves in April of 2007?

5 A We're husband and wife.

6 Q You are still married?

7 A Yes. We ain't never got divorced yet.

8 Q All right. But you were not living together in April of 2007?

9 A No.

10 Q And although Annie isn't your biological child, she thinks of you as her dad  
11 and you've always treated her as your daughter?

12 A Yes. Me and Tonya got back together like she was like thirteen months  
13 old. And she started calling me "Daddy" on her own. And I've accepted  
14 that she's mine. I'm the only daddy that she knows.

15 Q But she doesn't ever see her biological father?

16 A No.

17 Q All right.

18 A And she knows who he is. But she told me, she said, "I told you to be my  
19 Daddy and you're gonna be my Daddy." That's what she told me.

20 Q Have you ever done anything formally to adopt her or anything like that?

21 A Not yet. But I have checked into it. I mean I need to get it done.

22 Q Okay. So on the night in April that Tonya left Annie at Ed's house, were  
23 you involved in that transfer in dropping Annie off at his house?

24 A No. I wasn't involved until the next day. Then we went and picked Annie  
25 up.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q So then the next day, how did it happen that you and Tonya were together  
2 the next day?

3 A She called me and told me we had to go pick up Annie. And then we  
4 went, and I said, "Where's Annie at?" And she told me. Then I went and  
5 picked up Tonya and then we went and picked up Annie.

6 Q Do you recall if it was before or after noon that you would've gone to pick  
7 her up?

8 A No, I couldn't remember.

9 Q Do you recall if after you picked her up and the incident happened with the  
10 property damage, did you go directly to the police station after that?

11 A Yes.

12 Q And if the police report indicates that uh, Tonya told the police, it was  
13 approximately two-thirty in the afternoon when she picked her up, you  
14 think that would be accurate?

15 A Like I said, I couldn't remember if it was that time.

16 Q When you went there to the house to pick her up, did, who was driving at  
17 that point?

18 A Tonya was.

19 Q So Tonya drove to Ed's house to pick Annie up?

20 A She drove down there and drove back, yeah.

21 Q And when she, did she go inside the house to pick her up?

22 A I can't remember.

23 Q Do you recall if you waited..., well, let me back up for a second. You  
24 waited in the car for Tonya to go and retrieve Annie so to speak. Is that  
25 right?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yes.

2 Q And do you recall if it was a lengthy period of time that you had to wait?

3 A I don't think it was, no.

4 Q And do you recall when Annie came out, what kind of a mood she  
5 appeared to be in?

6 A To me she acted like she was afraid. I mean the look on her face, she  
7 acted like she was glad that her mommy had got there to pick her up.  
8 She was ready to go. She acted like to me she was ready to get out of  
9 there.

10 Q When she parked the car to go and get her, was it in close proximity to the  
11 house, near the house where she parked?

12 A I think it was..., Ed's truck was in front of the car, I think.

13 Q Could you see the house from where you were in the car?

14 A I could see the house, but I couldn't see the front door or nothing like that  
15 from where I was at.

16 Q So then you left with Tonya still driving?

17 A Uh huh.

18 Q And this is in Palmyra. You left and headed towards Salem?

19 A Uh huh.

20 Q Okay, that's a "yes"?

21 A Yes.

22 Q All right. And do you recall approximately where you were when Tonya  
23 turned around and went back to Ed's house? How far had you gotten  
24 from his house?

25 A We was on 135. I think we was almost like to Shorts Corner, I think.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q So it's approximately halfway between uh, Palmyra and Salem?

2 A Almost, yeah. Shorts Corner is almost halfway, yeah.

3 Q So then she turned around and came back?

4 A Yes.

5 Q And when Annie wrote the note, did she ask you for any help in writing the  
6 note?

7 A No.

8 Q How to spell words?

9 A No.

10 Q So what she wrote in the note, she wrote herself without asking for any  
11 help?

12 A Yes.

13 Q You went back to Ed's house. You, as a passenger in the car at that  
14 time...

15 A Yes.

16 Q ...and Tonya was driving. And when you got there, did she park the car in  
17 the driveway?

18 A No. She parked it down the road.

19 Q So could you...

20 A Ed's driveway was right here. She parked it right here, right there by his  
21 driveway.

22 Q All right. So where you were at in the car, was the view of the house  
23 blocked by trees or any other obstacles?

24 A It was blocked by trees. I didn't see nothing. I just heard it. I heard the,  
25 something, it sounded like something metal was hitting something else

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 that was metal.

2 Q Could you hear any voices from where you were at?

3 A I could hear Tonya hollering, yes.

4 Q Could you understand the words that she was saying?

5 A No, no. I just knew she was hollering.

6 Q Did you see or hear anything from Ed during that confrontation?

7 A I think I heard Ed come out and said, "What's wrong with you?", or  
8 something, or, "What's going on?", or something. I think is what he said.

9 Q Did you hear anything from Tonya uh, any words of Tonya's accusing Ed  
10 of being a child molester or anything of that nature?

11 A I couldn't hear. Like I said, I couldn't make out the words.

12 Q And do you believe that you have normal hearing?

13 A Yes.

14 Q So a person with average hearing would've, would've heard what you  
15 heard, I guess what I'm trying to get at.

16 A Yeah. Just hollering.

17 Q All right. So then you left there, and when you left Ed's house, was Tonya  
18 again driving?

19 A Yes.

20 Q And she was in probably a pretty bad mood?

21 A She was in a, yes, a very bad mood.

22 Q In a rage, would you say?

23 A Yes.

24 Q And did she appear to be highly excited?

25 A I don't know about highly excited, but she was pretty mad, upset.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And did you drive directly from there to the police station?

2 A Yes.

3 Q And then you had to wait at the police station for a little while for the police  
4 to get there?

5 A Yes, because he was in, I think he was in Livonia, they said. And he, they  
6 had contacted him and he was busy at the time or something. I mean we  
7 had to wait there on him.

8 Q And when you went in, if I understood correctly what you said before, the  
9 three of you went into the police station and talked to Officer Bowling, or  
10 to the state trooper when you got there.

11 A Well, we talked to the officer, the dispatcher there at the window. The  
12 lady at the window, Tonya told her that they needed to talk to, that she  
13 needed to talk to somebody because her daughter, her daughter just got  
14 molested.

15 Q And then...

16 A And then said that uh, I think that lady said, "Well, there's a state trooper  
17 in Livonia and I'll call him. And you can make it out to him since it  
18 happened down here in Harrison County." Because there wasn't no such  
19 a document, I think that lady said there ain't no sense making a statement  
20 out to the Washington County cop.

21 Q Okay. So, so they understood the jurisdiction problem?

22 A Yeah.

23 Q And they directed it to the state police initially because they didn't want to  
24 have to take a statement and then send everything down to Harrison  
25 County, is that right?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Yeah.

2 Q So, so the state trooper got there. Did he take the three of you into a  
3 room or something?

4 A Yes.

5 Q So all three of you go into a room...

6 A Yes.

7 Q ...and talk to the trooper.

8 A Yes.

9 Q And Annie gave him details of the incident...

10 A Yes.

11 Q ...while you and Tonya were sitting there?

12 A Yes.

13 Q And then the trooper wanted to talk to Annie alone?

14 A Yes.

15 Q Do you believe that there was any time during that interview that Annie  
16 actually talked to the officer without either you or her mother present?

17 A I, if I remember right, we both, me and Tonya both came out. And then  
18 Annie was in there talking to him. Then I think Annie started crying and  
19 wanted her mommy back in there. So he let Tonya go back in there with  
20 her.

21 Q Okay. And you guys took the note to the trooper?

22 A Yes.

23 Q Do you know whatever happened to the note?

24 A No. We gave it to him.

25 Q He never gave it back to you?



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A No.

2 Q And you do not recall exactly what the note said?

3 A It, I don't remember nothing, well, exactly what it said about the pee-pee  
4 part, but it said that uh, "Ed made me suck his weedy-bob", and  
5 something about her pee-pee. I couldn't remember exactly what it said.

6 Q Okay. And since that day have you ever seen the note?

7 A No.

8 Q Has Annie talked to you specifically about what happened that day?

9 A No. I've tried not to say nothing because she don't bring it up and, I mean  
10 she's, when I told her that we was gonna have to come down here, she  
11 was terrified because she didn't want to see him.

12 Q She was upset about having to come in?

13 A Yes, and facing him.

14 Q Did you bring her down when she came for her deposition?

15 A Yes.

16 Q And was she upset about that also?

17 A Yes.

18

19 MS. SCHULTZ: I don't have any other questions.

20 THE STATE (MS. FLANIGAN): No, nothing else, Judge.

21 THE COURT: Thank you, sir.

22 THE STATE (MS. FLANIGAN): The State would call Tonya Caves.

23 THE COURT: Do you solemnly swear the testimony you shall give  
24 shall be the truth, the whole truth and nothing but the truth, so help you God?

25 WITNESS: Yes.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 DIRECT EXAMINATION BY STATE (MS. FLANIGAN):

2 Q Tonya, how old are you?

3 A Thirty-two.

4 Q Okay. And what's your full name, including any other names besides  
5 Tonya Caves that you've been known by?

6 A Tonya Jean Fentress.

7 Q Is that your maiden name?

8 A Yes.

9 Q And you're currently Tonya Caves?

10 A Yes.

11 Q You're married to a Richard Caves?

12 A Yes.

13 Q Is he the gentleman that just left the courtroom?

14 A Yes.

15 Q Okay. Are you the mother of Annie Young?

16 A Yes.

17 Q Would Annie Young consider Richard Caves her father?

18 A Yes.

19 Q Are you familiar with Edward Nunley?

20 A Yes.

21 Q Do you see Edward Nunley here in the courtroom?

22 A Yes.

23 Q Tonya, I know this is difficult, but you need to listen until I finish the  
24 question to answer, okay? Is he seated there next to Ms. Schultz?

25 A Yes.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q On April the 14<sup>th</sup>, 2007, did you pick up Annie from Eddie, Ed Nunley's  
2 house?

3 A Yes.

4 Q Okay. Uh, do you remember what time of the day that was?

5 A It was before noon, around noon.

6 Q Who was with you when you picked her up?

7 A Richard.

8 Q Okay, can you tell the Court uhm, were you driving?

9 A Yes.

10 Q Was Richard in the passenger seat?

11 A Yes.

12 Q Did you go to get Annie from the house?

13 A Yes.

14 Q Uhm, when Annie came into the car, did she say anything to you?

15 A At first she did not. It was a little later as we got down the road. And she  
16 told me that her and Ed had a secret.

17 Q Okay. Would she tell you what that secret was, Tonya?

18 A Not at first. And she didn't act like it was a big deal either. So at first,  
19 nothing bad even entered my mind. And so I kind of played reverse  
20 psychology on her. You know, "It's okay. I know what the secret is." To  
21 try to get her to tell me, and she still wouldn't tell me. She asked me if she  
22 could write it down. She said it was too bad to say. Could she write it on  
23 a piece of paper.

24 Q Did somebody give uhm, Annie a..., where was Annie in the car?

25 A She was in the back seat.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay, did somebody give her a piece of paper?

2 A Yes.

3 Q Who was that?

4 A It was me or Richard one, gave her a pen and paper to write down what  
5 she had to say.

6 Q You're, you're familiar with uh, Annie's, how she does in school, Tonya?  
7 In kindergarten uh, this would've been late kindergarten. Is it your belief  
8 that Annie could've written a note?

9 A She could write words. I had taught her. She went to head-start, or not  
10 head-start. She actually went to a preschool that we had to pay so send  
11 her through. And she could sound out words and try to write them by  
12 sounding them out.

13 Q So she couldn't necessarily spell everything perfectly?

14 A No, she couldn't spell anything perfectly, no.

15 Q But she could sound things out with phonics and kind of write it out?

16 A Right.

17 Q And that's what she did that day?

18 A Right.

19 Q Okay. And it's your belief as her mom that, that she was able to do that?

20 A Yes.

21 Q Okay. So you give her the pen and the pencil, or someone does, either  
22 you or Richard since you're the only two in the car and uh, what does she  
23 write?

24 A I can't remember exactly what it was, but it was something to the extent of  
25 he's, "he licked my pee-pee". And something to the extend of, "he made

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 me suck my weedy-bob or his weedy-bob." I can't remember the exactly  
2 words on the paper. But the state police officer that we took her to that  
3 day does have that as evidence.

4 Q Okay. So...

5 A We turned it over to him.

6 Q Okay, Tonya, so you gave uh, Trooper Bowling that note?

7 A Yes.

8 Q Okay. Uh, let me ask you this. "Pee-pee", would that have been uh, your  
9 daughter referring to her vagina?

10 A Right.

11 Q That's what she would've called it?

12 A Right.

13 Q And "weeny-bob", would that have been a male's penis?

14 A Right.

15 Q And that's what Annie had called it, even before this?

16 A Right. Because she had an older brother and that's what we referred to it  
17 as. I know it's strange, but instead of putting out the adult words there,  
18 you know, I mean we called it "weedy-bob".

19 Q Okay. So that wouldn't have been unusual for Annie to use those words?

20 A No.

21 Q All right. And you knew exactly what she meant when she wrote that  
22 note?

23 A Right.

24 Q Okay. Annie passes you the note and you read it. What do you do next?

25 A It shocked me. It's hard to describe exactly how I felt. It was shock,

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 disbelief, hurt. Every kind of emotion that you can imagine as a parent,  
2 rolled into one. And I just had to take a minute and think about what I was  
3 gonna do and what to do.

4 Q Did you show the note to Richard?

5 A Later I did, yeah. Not, not right off the bat I didn't, no. I just, I don't know  
6 why I didn't.

7 Q Did you show him the note in the car that day?

8 A I believe so, yes.

9 Q Okay...

10 A Because after it was all said and done, we took her to the police station.

11 Q All right. So after you saw the note, Tonya, where did you go?

12 A It took me a minute. I went back to Ed's and confronted him with it, with  
13 what he had done. And he denied every bit of it.

14 Q Did you tear up some of his property?

15 A Yes, I did.

16 Q Okay. And did, do you know if somebody called the police?

17 A I know that he didn't call the police because I waited at the end of the road  
18 forever for the police to come, and they never showed up.

19 Q So to your knowledge, you're not aware of any police report that was  
20 taken?

21 A No.

22 Q And if the police came, you were gone before they got there?

23 A Right. And I didn't leave in a hurry. When I did finally leave the road, I  
24 didn't drive erratically. I didn't drive fast. I drove just like a normal person.  
25 That way if they did, if they were called, they would have a chance to

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 catch up with me, because I wasn't gonna lie about what happened.

2 Q Okay. Where did you head...

3 A I took her to the police station.

4 Q Which one?

5 A Washington County, believe I lived in Pekin at the time. But I asked for a  
6 state police officer to take her statement because Ed lived in Harrison  
7 County.

8 Q Okay. Did a state trooper arrive?

9 A Yes.

10 Q Did he talk to you and, or who did he talk to first?

11 A Basically he talked to Annie.

12 Q Okay, but when he first talked to you, do you remember who was in the  
13 room? When you first talked to the officer, do you remember who all was  
14 in the room?

15 A I think it was just me, Annie and the officer.

16 Q Okay, you don't have a memory of Richard being there?

17 A Yeah, Richard was, Richard was there with us. But when he took Annie's  
18 actual statement, it was just me and Annie and the officer.

19 Q Okay. You don't remember a time when you were all in the room and  
20 Annie gave her statement?

21 A No.

22 Q Okay. Uh, did you give Trooper Bowling or the officer you spoke to..., do  
23 you know him to be Trooper Bowling or is...

24 A I can't remember his name, but I know his face and he's right outside the  
25 courtroom now.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay. Did you give him the note?

2 A Yes.

3 Q Did you hear Annie tell him what happened?

4 A Yes.

5 Q What did Annie tell him had happened?

6

7 MS. SCHULTZ: Objection. Hearsay.

8 THE STATE (MS. FLANIGAN): I'll just have him say what  
9 happened.

10

11 STATE RESUMES DIRECT EXAMINATION:

12 Q Let's, let me talk about what went on. Between the time you picked up  
13 Annie and she told you that she had a secret, did you coach her or tell her  
14 what to say in any way?

15 A No, I did not.

16 Q Did you have any reason to be made at Ed that day?

17 A No, I did not.

18 Q Okay. After, after the talk about the secret and when she wrote the note,  
19 did you tell her or coach her on what to write?

20 A No, I did not.

21 Q Okay. After you saw what was written on the note and you went to Ed's  
22 house, did you coach her or tell her anything?

23 A No, I did not.

24 Q Okay. Between the time you left his house and went up to the Salem  
25 Police, did you coach her or tell her what to say to the police?



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A No, I did not.

2 Q When you were there and she gave the statement to Trooper Bowling uh,  
3 did you coach her or tell her what to say?

4 A No, I did not. As a matter of fact, he was having problems because he  
5 had never dealt with children, I guess. And I wouldn't even, because I  
6 don't want, you know, I want everything that comes out of her mouth to be  
7 her words and her statement in what happened. She was the one that  
8 was there. And I, I think he wanted me to be of more help of trying to get  
9 her to tell him what happened, and I wouldn't because of that fact.

10 Q Okay. But were you present in the room uh, and not saying what Annie  
11 said, but were you present when she told Trooper Bowling what  
12 happened?

13 A Yes. And that was only because Annie threw a fit and wanted one of her  
14 parents there present. I mean this is when it initially happened.

15 Q Okay. Was there a time that you and Richard both tried to leave her with  
16 Trooper Bowling?

17 A Yes.

18 Q And that didn't work out?

19 A No.

20 Q Okay, and then you went back in?

21 A Right.

22 Q Okay. Uh, and then there was a time period, Tonya, between then and  
23 about a year later, you took her to the Comfort House for an interview. Is  
24 that correct?

25 A Yes.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay. Uh, between that time, was there ever a time that you uh, coached  
2 Annie or told her what she would need to say if she was ever interviewed  
3 again?

4 A No.

5 Q Did you...

6 A As a matter of fact I..., (witness begins crying)..., I kind of wished it would  
7 just go away.

8 Q Is that why you didn't uh, follow up a whole lot with C.P.S. and the police?

9 A I just wanted it to go away. You just wish things like that..., you don't, as a  
10 parent, you go through all these emotions. You go through, you go  
11 through shock, you go through anger, you go through disbelief, you go  
12 through blaming yourself. And you think there was something that you  
13 should've seen. And you just want it to go away. So you just don't talk  
14 about it.

15 Q But there came a time then when you decided that something needed to  
16 be done. Is that right?

17 A It wasn't gonna go away.

18 Q And did you contact C.P.S.? Or who, do you remember who you called,  
19 Tonya?

20 A I can't remember who I called first. I believe Ray Saylor.

21 Q Okay. And was, Ray's a police officer in Milltown?

22 A Yes.

23 Q And what did Ray tell you you needed to do?

24 A Ray was the one that helped get the ball going on. And he was the one  
25 who helped me come to terms just with my own emotions as a parent

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 really.

2 Q And as a result of that, you ended up taking Annie to the Comfort House  
3 here in Corydon?

4 A Right.

5 Q And she was interviewed there that day?

6 A Yes.

7 Q You were not present for that interview?

8 A Yes, I was there.

9 Q You were in the building, but you were not...

10 A I was in the building, yeah.

11 Q But Annie couldn't see you...

12 A I wasn't, I wasn't sitting in on it, no.

13 Q Okay. And you were not in the room with the task force. In other words,  
14 you couldn't watch her on video?

15 A No.

16 Q Or offer questions?

17 A No.

18 Q No? You had no part in asking her these questions?

19 A No.

20 Q Okay.

21

22 THE STATE (MS. FLANIGAN): That's all I have, Tonya.

23

24 CROSS EXAMINATION BY DEFENSE:

25 Q If I understand correctly, you said you came back to Ed's house about,

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 before noon to pick Annie up? That's a "yes"?

2 A Yes.

3 Q And then from there you, you left. How long were you at his house when  
4 you picked her up?

5 A Not very long.

6 Q A couple of minutes, five minutes?

7 A A few minutes.

8 Q Okay, and what occurred during the time that you were there?

9 A Nothing. I picked her up and that was about it.

10 Q Did you go inside the house?

11 A Yes.

12 Q What was Annie doing when you got there?

13 A I believe she was playing video games, waiting on me to get there.

14 Q Did you have any conversations with Ed that day?

15 A No. He had told me that she'd had her bath and, you know, he asked me  
16 what I'd done. That's about it. I got her and left because Richard was  
17 waiting out in the car.

18 Q So, can you give me an estimate of the length of time that you were  
19 there?

20 A Maybe ten minutes.

21 Q And when you got there, was Annie uh, you said she was playing video  
22 games?

23 A I believe so, yes.

24 Q Did she...

25 A I'm not positive.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Did she appear to be upset or distraught or anything?

2 A No, she did not.

3 Q And when the two of you left the house, did she appear to be anything  
4 other than normal Annie?

5 A No.

6 Q So when you left the house, were you driving?

7 A Yes.

8 Q And Richard was sitting in the front seat with you?

9 A Yes.

10 Q Annie was in the back seat?

11 A Yes.

12 Q Did she have a child restraint at that point?

13 A Yes.

14 Q And is she, was she big enough then for what, a booster seat?

15 A A booster seat. I believe so, yes.

16 Q And she was in kindergarten when that happened. Is that right?

17 A Yes.

18 Q So at approximately what location were you physically, what part of the  
19 road were you on when you found out...

20 A I believe I was on Voyles Road.

21 Q And where is that? I mean I'm familiar with the way..., you were going to...

22 A He lives on 150 by Uhl Truck Sales, I think was, I think is where, close to  
23 where he was at. And if you turned out the road, I think the road that he  
24 lived on was called Rennirt Way or something like that. If you turned left,  
25 it was just like less than a mile to the caution lights in Palmyra.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Okay...

2 A And then you turned right at the caution lights in Palmyra and Voyles  
3 Road was there when you get, get to Greenville. It's on the left.

4 Q So when you left his house...

5 A Or 135. He lived on 135. I'm sorry.

6 Q When you initially left his house, right after you picked Annie up, where  
7 were you going?

8 A Home, to Pekin.

9 Q To Pekin. And where, at some point in time you turned around then and  
10 went back to Ed's house right? And do you recall approximately where  
11 you were on the highway when...

12 A On Voyles Road.

13 Q And how far...

14 A I don't remember how far down or where I was at. No, I do not.

15 Q Approximately how far is Voyles Road from Palmyra?

16 A Well, however far Greenville is.

17 Q Okay, it's near Greenville. And when you left there, you went, when you  
18 turned around, you went directly to Ed's house?

19 A Yes.

20 Q And did you turn around shortly after you saw the note?

21 A Yes.

22 Q So you went back to Ed's house. You have a baseball bat?

23 A Yes.

24 Q And you went and you said you confronted him. Specifically, what did you  
25 do to confront him?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A I tried to get him to come out of his house. He wouldn't come out. So I  
2 beat on his motorcycle with it, and he wouldn't come out. And then I beat  
3 on his truck and he wouldn't come out. And then I started beating on the  
4 doors and finally he opened the door.

5 Q And was...

6 A And he heard me. He knew I was there the whole time I was beating,  
7 because you cannot live in a trailer with windows this thin and not know  
8 somebody's outside with a baseball bat beating on your bike, when your  
9 bike is only sitting less than ten feet away from your living room window.

10 Q And what exactly did you say to him when he came out the door?

11 A I asked him why he did it.

12 Q Is that, are those the exact words you used?

13 A I told him that I knew what he fucking did and I wanted to know why he  
14 fucking did it.

15 Q And you believe those were the words you used?

16 A Yes, I believe...

17 Q Did you ever...

18 A ...those were close to the words that I used.

19 Q Did you use the word "molestation" or anything like that.

20 A Yes. He said, "I didn't do anything." I said, "You know what you did."  
21 "What did I do?", he said. "What did I do?", playing it all so charmingly  
22 and so coy, I guess would be the word. I told him that he molested my  
23 daughter.

24 Q And you were very angry at that point.

25 A Yes.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Is that right?

2 A Yes.

3 Q Were you making, were you speaking to him in a very loud tone of voice?

4 Screaming, in other words?

5 A Yes, I'm sure I was.

6 Q And do you think your daughter was able to hear you?

7 A No.

8 Q She was in the car?

9 A She may have heard me, but I parked her, I parked the car away from his  
10 property where she couldn't see what was going on.

11 Q Okay. And how long do you believe that you were at Ed's house at that  
12 point? I mean before you left? How long were you there?

13 A Before, from the time I stepped foot there until the time I left?

14 Q Right.

15 A Maybe fifteen or twenty minutes, if that.

16 Q Okay. So originally you picked Annie up. You arrived before noon to pick  
17 Annie up. You left, you drove to Greenville, close to Greenville, and then  
18 turned around and came back. So about how long did that take?

19 A Probably about that same amount of time, twenty, thirty minutes maybe.

20 Q All right. And then you get back to his house. You were there maybe  
21 twenty minutes or so then?

22 A Maybe, yeah.

23 Q And then after that...

24 A I can't remember exact times. When you're that angry, you're not worried  
25 about what time it is and you're not worried about how long it takes you to



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 do something and to get from one destination to the next. You don't even  
2 think about it.

3 Q Did you go directly from there to the police station?

4 A Yes. And you don't even, you don't even think about how long it takes  
5 you to get from one destination to the next. Time was the least of my  
6 worries at that point.

7 Q During the trip from Ed's house, when you left after that incident, the last  
8 time you were there, during the trip from there to the police station, was  
9 there any conversation going on in the car at all?

10 A None that I can remember, that I can recall.

11 Q Nobody said a word to anybody?

12 A I'm sure maybe Richard and I talked about the steps what we had to take,  
13 you know. But I can't remember it. So I'm not gonna sit here and tell you,  
14 yes, this is what we said when I can't remember it.

15 Q Do you believe that there were any derogatory comments made about Ed  
16 during that trip in the car?

17 A Oh, I'm sure.

18 Q Okay. And Annie was in the car with you, was she not?

19 A Yes, she was.

20 Q So by the time you guys got to the police station, Annie, a kid with normal  
21 intelligence, would've known that both you and your husband were  
22 extremely unhappy with Ed?

23 A Probably so, yes.

24 Q Okay. Do you recall during the trip if anything was said about any  
25 specifics as to what had happened to Annie?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A No.

2 Q Did either you or your husband ask Annie any questions about what had  
3 happened?

4 A Not that I can remember. I remembered telling her that I was gonna take  
5 her to the police station, that way she would know what was gonna  
6 happen. Because I feel like that's important for a kid to know what's  
7 gonna happen next and what to expect. And I remember telling her just to  
8 tell the police officer everything that happened, you know, not to  
9 exaggerate, not to add on to anything. Just tell him exactly what  
10 happened.

11 Q You remember telling her that?

12 A I remember telling her that before I took her into the police station.

13

14 THE COURT: Just a minute, hang on just a minute. Okay. Go  
15 ahead.

16

17 DEFENSE RESUMES CROSS EXAMINATION:

18 Q Okay. So you remember talking to her about that?

19 A I remember, I can't remember if I told her that on the way there or if I told  
20 her that as I was taking her in. But I did tell her that.

21 Q Do you recall whether she asked either you or Richard to assist her in  
22 spelling any words on the note that she wrote?

23 A She did not ask me or Richard.

24 Q So is it your testimony today that when you left Ed's house, you went to  
25 the police station with Annie and Richard, without going anywhere else in

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 between? You went directly there?

2 A Yes, that's my testimony.

3 Q And once you got there, do you recall if there was a delay while you  
4 waited for the state trooper?

5 A We waited forever. It seemed like we waited forever and ever for the  
6 state trooper to get there. Because whenever we got there, I had told  
7 Richard that we were gonna have to ask for a state trooper, beings that  
8 Ed lived in Harrison County and we were going to Washington County to  
9 file the charges. I knew that we would have to ask for a state trooper.  
10 And it seems like we waited there for eons before he showed up. But it  
11 may not have been either, you know. In a situation like that, it seems like  
12 things are drug way out.

13 Q So, when you were talking to the police, you know, you and Annie went  
14 and talked to him, told him what happened...

15 A Right.

16 Q Did the police give you any indication if this was something they wanted to  
17 follow up on or not follow up on?

18 A He led me to believe that he had all he needed, and he gave me a card.  
19 And I believed I talked to him once or twice. I believe I did. And, I mean  
20 he never said that there was..., he said that it would have to be  
21 investigated. He did say that.

22 Q Okay. They're not gonna just run out and take on person's word.

23 A Right.

24 Q They're gonna talk to...

25 A Right, I know that, yeah.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And did you do any follow-up calls with this police officer?

2 A I believe I talked to him on the phone once or twice.

3 Q And when nothing happened, did you make any inquiries as to why  
4 nothing was happened?

5 A I was told, at a later date, I was told that it was under investigation. I  
6 called the State Police Post a couple of times and was told that the case  
7 was still being investigated.

8 Q And then ultimately you talked...

9 A And a few months after this went on, I also found out about other  
10 accusations from other children. And I believe I called the State Police  
11 Post then and was told it was still under investigation.

12 Q Did the police ask you to do anything?

13 A No.

14 Q Did they ask you to take her for a physical evaluation?

15 A No, he did not.

16 Q Did they ever ask you whether uh, you would take her to have DNA uh,  
17 tests to see whether his DNA test, DNA was on her body?

18 A They didn't ask me that. No, they did not.

19 Q Has Annie ever talked to you uh, since that day about any of the details of  
20 what happened to her?

21 A No.

22 Q So she's never told you...

23 A She rarely, rarely even brings it up.

24 Q How long has it been since Annie has lived with you?

25 A Uhm, this is November. Since August, I think.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q And she's been living with Mr. Caves since then?

2 A Yes, her dad.

3

4 MS. SCHULTZ: No other questions.

5 THE STATE (MS. FLANIGAN): Nothing, Judge.

6 THE COURT: Okay, thank you, ma'am.

7 WITNESS: Thank you.

8 THE COURT: Oh, counsel approach. And Mr. Wibbels. I have a  
9 note for you. I wrote that. It's my personal evaluation.

10 DETECTIVE WIBBELS: That's my boss, that's my boss.

11 THE COURT: You can tell uh, you can tell the Prosecutor what that  
12 means later, Mr. Wibbels.

13 DETECTIVE WIBBELS: Okay.

14 THE STATE (MS. FLANIGAN): I think I probably can guess.

15 THE COURT: Yeah.

16 MS. SCHULTZ: I know.

17 THE COURT: Ms. Schultz knows. Okay, so your next witness is...

18 THE STATE (MS. FLANIGAN): Uh, Trooper Kevin Bowling.

19 THE COURT: Okay. Do you solemnly swear the testimony you  
20 shall give shall be the truth, the whole truth and nothing but the truth, so help you  
21 God?

22 WITNESS: I do.

23 THE COURT: Please be seated, sir.

24

25 DIRECT EXAMINATION BY STATE OF INDIANA (MS. FLANIGAN):

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 Q Can you state and spell your name for the record?

2 A Uh, yes. It's Kevin Edward Bowling.

3 Q And can you spell that for the record?

4 A K-e-v-i-n, middle name is Edward, E-d-w-a-r-d, last B-o-w-l-i-n-g.

5 Q How are you employed?

6 A With the Indiana State Police.

7 Q How long have you been with the I.S.P.?

8 A Uh, eight years.

9 Q And how are you currently assigned by them?

10 A Uh, road patrol at this time.

11 Q In April of 2007, Trooper Bowling, were you also assigned to road patrol?

12 A Uh, yes, at that time.

13 Q Okay, and would Washington County have been one of your counties?

14 A Yes, it is.

15 Q Okay. And do you recall conducting an investigation or speaking with a  
16 family by the name of "Caves"?

17 A Yes, I do.

18 Q Did that interview take place on April 14<sup>th</sup>, 2007?

19 A Yes, it did.

20 Q And I notice you're looking at...

21

22 THE COURT: Let me stop you there. Do you remember uh,  
23 whether the Highway 135 was closed between Palmyra and Salem during that  
24 time period?

25 WITNESS: Uh, it's, yes, it has been. At that time period there, no, I

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 not. Uh...

2 THE COURT: It's been closed off and on...

3 WITNESS: For, for what, three and a half to four years in time.

4 THE COURT: A long time. Sometimes it's open and sometimes it's  
5 closed.

6 WITNESS: Correct.

7 THE COURT: And when it's closed, it takes a long time to get from  
8 New Sals..., from Palmyra to Salem.

9 WITNESS: That is correct.

10 THE COURT: But you couldn't say specifically about that particular  
11 day?

12 WITNESS: Uhm, not...

13 THE COURT: Not without researching it?

14 WITNESS: Correct.

15 THE COURT: Okay. Go ahead.

16 THE COURT: Thank you, Judge.

17

18 STATE RESUMES DIRECT EXAMINATION:

19 Q And you have your report there. Is that correct?

20 A Uh, yes, I do.

21 Q And do you, I note there that you indicated that it was uh, report at sixteen  
22 hundred hours. Is that correct?

23 A Uh, that is what I have in the report here, yes.

24 Q Okay. Trooper does that mean that, that once, when you would've gotten  
25 to the..., and we're talking about the Washington County Jail.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A Correct.

2 Q Okay. That's the Salem Police Station, would be known as, also the  
3 Washington County Courthouse, the Washington County Jail?

4 A Uh, the Sheriff's Department and the Court there, yes.

5 Q Okay. So...

6

7 THE COURT: Let me stop you for a minute. There's a Salem City  
8 Police Station.

9 WITNESS: That is correct.

10 THE COURT: And then there's the Washington County Sheriff's  
11 Department, which are two different things.

12 WITNESS: Correct.

13 THE COURT: Isn't that right?

14 WITNESS: Yes.

15 THE COURT: Okay. Just so there's no confusion.

16 THE STATE (MS. FLANIGAN): Right.

17 THE COURT: Okay. Go ahead.

18

19 STATE RESUMES DIRECT EXAMINATION:

20 Q And we're talking about the Washington County Courthouse police  
21 station?

22 A The uh, Sheriff's Department.

23 Q Not the Salem City...

24

25 THE COURT: It's not at the courthouse.



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 WITNESS RESUMES ANSWER:

2 A Not, not the City Police, the Sheriff's Department.

3 Q There is a court, there's...

4

5 THE COURT: It's separate from the courthouse downtown.

6

7 STATE RESUMES DIRECT EXAMINATION:

8 Q Right. There's a, Superior Court is in the jail in Washington County,  
9 right?

10 A Correct.

11 Q Okay. So you were at Washington Superior Court, at the jail, and the  
12 Washington Sheriff's Office?

13 A That is correct.

14 Q Okay. Would it be four, and sixteen hundred hours for uh, in military time  
15 is four o'clock in the afternoon.

16 A Four o'clock p.m.

17 Q Okay. Would that have been the time that you made it there to the police  
18 station?

19 A Uh, that is the time that uh, approximately the time that I spoke with uh,  
20 the individuals on this, yes.

21 Q Okay. So you don't know what time they actually would've arrived at the  
22 Washington County Jail?

23 A Uh, no. They, I, no, that's about what time I met with them or first made  
24 contact with them.

25 Q Uh, Trooper Bowling, do you remember where you were that day when

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 you got the call to come?

2 A No, it's not documented. And I do not uh, since it's been a year and a  
3 half.

4 Q Okay. Do you remember, so you don't have any memory if it took you a  
5 long time or a little bit of time to get there?

6 A I do not recall.

7 Q Okay. Once you arrived at the police station uh, who did you meet with?

8 A Uh, once I arrived at the uh, Sheriff's Department, I uh, met with a young  
9 female, Annie Young uh, her mother, Tonya, and her step-father, Richard.

10 Q Okay. And Tonya and Richard's last name is Caves?

11 A Yes.

12 Q Okay. Who did you speak with first?

13 A Uh, with uh, Tonya and uh, her daughter, Annie.

14 Q Okay. What did uh, what did Annie tell you?

15 A Uh, that she had had some, had had some problems or something. Uh,  
16 she was kind of hesitant as uh, sometimes kids are at that age as far as  
17 speaking or coming forth. And uh, her mother kind of broke the ice, if you  
18 would, as far as what had occurred or what had allegedly occurred at that  
19 time.

20 Q And how did she do that?

21 A Uh, there was an envelope that she uh, provided.

22 Q Okay. You actually physically saw this envelope?

23 A Yes, I did see the envelope.

24 Q Okay. And that was, was that given to you, Trooper?

25 A Uh, the envelope was presented to me by her mother. Uh, I do not know

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 if it was given to me or what. I do not have any record here of it as far as  
2 being taken by myself.

3 Q Okay. But you have, as you sit here today, you have an independent  
4 memory of seeing that envelope?

5 A That is correct. It was white envelope.

6 Q Okay, and can you tell the Court what was written on that envelope?

7 A What uh, what was written on the back of the white envelope was, "I was  
8 sucking his weeny-bob and he licked my pee-pee."

9 Q Okay. The handwriting, Trooper Bowling, was that uh, did it appear to be  
10 an adult's handwriting or child's handwriting?

11 A Uh, no. It appeared to be a uh, kid's handwriting.

12 Q Okay. Can you recall if it was written in pen or pencil or something else?

13 A The best of my knowledge, it was written in a pencil.

14 Q Okay. Did anyone tell you who had written that note?

15 A Uh, yes.

16 Q And who told you?

17 A Uh, Annie had actually written the note. Uh, Annie had told me. And  
18 Tonya had also told me that uh, Annie had written the note.

19 Q Okay. After you saw the note, Trooper, what did you do?

20 A I continued to talk with Annie and her mother, Tonya, as far as what had  
21 occurred. Uh, and that's when the allegations were brought up.

22 Q Okay. Can you tell me, were you in a separate room with Annie?

23 A Uh, no. I was in a room with Annie and her mother, Tonya, at that time.

24 Q Okay. Was there a time that you tried to interview Annie alone and that  
25 didn't go so well? She got upset and had to get Tonya back in the room?

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 A I do not recall. And it's not documented. Uh, but since, due to her age,  
2 her mother would've been there with her.

3 Q Okay. So when Annie uh, let me ask you this. Did Annie disclose  
4 something that Ed Nunley did to her? Did she disclose that to you?

5 A Uh, yes. There was a few things uh, brought up, yes.

6 Q Okay. And those, the people present there would've been Tonya Caves,  
7 Annie Young and yourself?

8 A That is correct.

9 Q Okay. Were you talking directly to Annie?

10 A Uh, yes, I was.

11 Q Okay, and was Annie responding to your questions?

12 A Uh, yes. She was responding as well as she could under those  
13 circumstances.

14 Q Okay. Was Tonya at any time telling her what to say or coaching her?

15 A No. Tonya was not.

16 Q So this was Annie telling you what happened?

17 A Yes.

18 Q Okay, what did Annie tell you happened?

19 A Uh, Annie stated that uh, she had stayed the night at Mr. Nunley's  
20 resident uh, that she had watched a movie, or that she was forced to  
21 watch a movie. Uh, when I say "forced", he had told her that he would call  
22 the police, and then he later stated that he would call her mom if she did  
23 not watch it.

24 Q Did she say where she watched the movie?

25 A Yes, she did. Uh, she stated that was in his bedroom.

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1 Q Okay. And did she say where she was sitting?

2 A Uh, on his bed.

3 Q Okay. Did she describe the type of T.V. that uh, she watched it on?

4 A Uh, she stated that it was a very small T.V.

5 Q Okay. Then what did she describe anything that Ed made her, Mr. Nunley  
6 made her do?

7 A At that time uh, she stated that uh, Mr. Nunley made her, made her lick  
8 his wiener and then he put, then he made her put it in her mouth.

9 Q And did you, you asked her to approximate how much time, how long that  
10 went on?

11 A That is correct.

12 Q And what did she tell you, Trooper?

13 A Uh, she stated four minutes.

14 Q Okay. Uhm, what did she say that uh, Mr. Nunley did to her next?

15 A Uh, at that time uh, she stated the next event, or events that took place  
16 was Mr. Nunley took her panties off and started licking her pee-pee while  
17 they were in bed.

18 Q Okay, and what did you understand her pee-pee to be?

19 A Uh, would be her genital area.

20 Q Okay. And when she wrote "weeny-bob" on the note and talked about  
21 "wiener", did you ask her what she was referring to, or were you able to  
22 determine what she was referring to?

23 A I was able to determine what was she was referring to.

24 Q Okay, and what was that?

25 A Uh, Mr. Nunley's penis.

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1 Q Okay. Uh, did you also ask her if she had uh, taken a bath?

2 A Yes, I did.

3 Q And do you know why that would've been important?

4 A Uh, that is something that I like to find out in these kind of cases uh, as  
5 whether or not there has been a bath by the victim, as far as any evidence  
6 that may be with the victim.

7 Q Okay. And did Annie actually tell she had taken a bath?

8 A Uh, yes. She stated that she had taken a bath.

9 Q Okay. She also told you that she knew something her mother had done  
10 and her mom would get in trouble for it. Is that right?

11 A Uh, yes, that is correct.

12 Q And what did she disclose that her mother had done?

13 A Uh, after her mother found out apparently what had went on uh, her  
14 mother had went back to Mr. Nunley's uh, and had taken a bat or some  
15 kind of club and had struck an item or two at the residence, and I believe it  
16 was the vehicle as well.

17 Q All right. And uh, as we sit here today, Trooper, you do not know what  
18 happened to the note?

19 A That is correct.

20 Q You don't recall if you collected that or not?

21 A I, I do not. I remember seeing the note uh, that was presented to me by  
22 Tonya and that's the last that I recall of the note.

23 Q Okay.

24

25 THE STATE (MS. FLANIGAN): That's all I have, Judge.

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1 CROSS EXAMINATION BY DEFENSE:

2 Q So, Officer, you indicated that when you first started talking to them, it was  
3 you and Tonya and Annie, and that Annie, and I'm paraphrasing, but as I  
4 understood it, Annie was reluctant to help, and Tonya helped?

5 A No, I did not say uh, reluctant to help. Reluctant to speak up uh, as  
6 happens a lot of times with kids of that age.

7 Q Okay. Could you be a little bit more uh, explain a little bit more what you  
8 mean by that?

9 A Yes. Uh, a lot of times when kids of this age uh, they, they want to hang  
10 their head and don't want to say anything at first until someone, maybe a  
11 parent or whoever is with them, is like, you know, tells them it's all right,  
12 "you need to tell the truth of what's happened here". Uh, to get them  
13 talking.

14 Q So do you have an independent recollection of what happened in this  
15 case?

16 A Independent recoll..., as far as what?

17 Q Other than what's written in your report, do you have a memory in your  
18 mind of actually being there talking to these people, remembering what  
19 was going on?

20 A Uh, I remember being there, talking with them. But again, we're looking at  
21 a year and a half ago. So without being documented in a report...

22 Q Uh huh. So it's a little bit tough..., I mean I run into the same thing myself.  
23 You talk to people, and if you don't write down the notes, you can't  
24 remember what happened. But and sometimes I remember actually  
25 sitting in a room talking to a person, and sometimes I don't even

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1 remember that. In your case you actually remember sitting in a room,  
2 talking to them?

3 A Yes, I do.

4 Q And do you recall at any time that Mr. Caves is in the room talking with,  
5 was there when you were talking to Annie?

6 A That, I'm sorry? Who? Mr...

7 Q Mr. Caves.

8 A Uh, he may have been at first uh, because it was those three that showed  
9 up there. Uh, so it is very possible that he was brought back to the room.  
10 Uh, that's, you know, it's possible that he was back at the room uh, briefly,  
11 yes.

12 Q Okay. So when you start an interview like this, and thinking of the  
13 procedure that you used in this particular case, the parents come in with  
14 the kid and they are there to tell you, "We have a complaint because  
15 something's happened to the kid." Is that what happened in this case?

16 A Yes.

17 Q And did anyone other than the child say to you, "My child has been  
18 molested by Mr. Nunley", before the child told you what happened?

19 A I, it's, I do not have it documented if anything like that was said.

20 Q When you first talked to Annie, at the time you asked her the first  
21 question, were you aware of the allegations that Mr. Nunley had done  
22 something sexually inappropriate with her?

23 A No. Not until I met with them that evening.

24 Q Okay. So the first, when you asked Annie the first question, at the time  
25 you asked Annie the first question, had anybody told you before that what



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1 Ed was accused of doing to her?

2 A I do not have it documented uh, but as a parent myself, it's possible that a  
3 parent would say something uh, when they show up. But there's, I do not  
4 have it documented in this report.

5 Q Did you at any point in time talk to the parents, either of the parents  
6 without Annie being there before you talked to Annie?

7 A No, no.

8 Q Okay. So when the parent brings the child in, and you are making your  
9 initial uh, inquiry into what's going on, would you normally ask the parents  
10 why they are there, or would you ask this five-year-old kid, or six-year-old  
11 kid?

12 A Usually, a kid at that age, it's usually, it's the parent, or some, sometimes  
13 the kid may say something to where you pick up on it as to why they are  
14 there.

15 Q But you don't, you don't have any independent recollection of who you  
16 talked to in this particular case initially, or who told you what?

17 A Uhm, not initially, uh, no.

18 Q But I think it's safe to assume from what you've told us that if one of the  
19 parents said to you, "We're here because Ed Nunley did this to our  
20 daughter", that the child would've heard that conversation. Is that right?

21 A If the child is there, yes.

22 Q The child came into the station with the parents when you were there?

23 A That is correct.

24 Q And you had no point in time talked to the parents without the child being  
25 present?

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1 A Not that I recall.

2 Q And you saw the note.

3 A That is correct.

4 Q Were you able to read the words on the note?

5 A Yes, I was.

6 Q And is the kind of evidence that you would normally think is important to  
7 preserve in a case of this kind?

8 A Uh, yes, it would be.

9 Q But you don't know what happened to it?

10 A As I stated earlier uh, I saw the envelope at that time, the white envelope  
11 with writing. Uh, as far as where it went to or what happened to it, at that,  
12 a year and a half ago, I have no ideal. Uh, I do not have it documented  
13 here as far as being any evidence in this case. So, I don't know if it went  
14 back..., I have no ideal where it went.

15 Q So after you talked to them, they left. Did you take any other further  
16 action that day to investigate this incident?

17 A Uh, that, I had made contact with uh, oh, on that day uh, either that  
18 evening, I believe it was the next day because of the time that evening.  
19 But uh, I notified the Harrison County C.P.S.

20 Q And is that something that is required as a police officer if you receive a  
21 report that a child is being harmed and you have to report it to C.P.S.?

22 A Yes, that would be.

23 Q Okay. And so you actually did that immediately?

24 A Uh, yes uh, I did.

25 Q Okay. And it was your understanding that C.P.s. was going to interview

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1 the child the first working day after the report was made?

2 A Uh, yes. What I have documented here uh, would interview on Monday,  
3 April the 16<sup>th</sup>.

4 Q Do you know whether that interview occurred?

5 A I do not.

6 Q Was there any follow-up uh, between you and the C.P.S. officer after you  
7 made the initial contact?

8 A Uh, after the initial, I, I do not have it documented. Uh, if there was, I do  
9 not have it documented.

10 Q And did you also meet and talk to Mr. Nunley as to what happened?

11 A Uh, yes, I did.

12 Q And he denied any...

13

14 THE STATE (MS. FLANIGAN): Objection. Relevance as to this  
15 hearing. I don't think what Mr. Nunley said is relevant to whether or not Annie's  
16 statements to this trooper can come in.

17 MS. SCHULTZ: Yeah, she's probably right.

18 THE COURT: Okay.

19

20 DEFENSE RESUMES CROSS EXAMINATION:

21 Q Did you uh, do any, did you tape this interview with Annie?

22 A Uh, no, I do not believe it was.

23 Q Okay. Did you tape the interview with Ed later on?

24 A Uh, no.

25 Q So other than what you've written in your report, do you have any memory

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1 or recollection of anything that Annie said to you about this incident?

2 A Uh, what's in the report uh, is what transpired.

3 Q So if you were to come to court and testify in this case, what you would  
4 tell us about Annie's conversation with you is exactly what's written in the  
5 report?

6 A What's in the report, yes. I, because of the time frame, I do not recall a  
7 year and a half ago what was said.

8 Q Okay.

9

10 MS. SCHULTZ: I don't have any other questions.

11

12 REDIRECT EXAMINATION BY STATE (MS. FLANIGAN):

13 Q Trooper Bowling, one thing additionally. There's no mention in the report  
14 about the note, right? There's no...

15 A Uh, yes. The, you're referring to the envelope?

16 Q Right. It's that, it's, you wrote here, "Tonya then said Annie wrote out 'I  
17 was sucking on his weeny-bob and he licked my pee-pee.'" This was  
18 written on the back of a white envelope. Is that your notation, Trooper,  
19 that you saw the envelope?

20 A Yes, that is.

21 Q Okay. I did not understand, so that clarifies that.

22

23 THE STATE (MS. FLANIGAN): That's all I have.

24

25 RECROSS EXAMINATION BY DEFENSE:

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1 Q I just have a follow-up. This conversation that you had with them was on  
2 the 14<sup>th</sup> of April. Is that right?

3 A Uh, yes. That is what's uh, documented here.

4 Q And then when did you actually write up your report on it?

5 A It has the date uh, completed by the officer uh, the next day, which is the  
6 15<sup>th</sup>.

7 Q Okay. And on the 14<sup>th</sup>, when you talked to them or shortly after you talked  
8 to them, did you make handwritten notes as to what uh, the conversation  
9 was?

10 A Uh, I'm sure I probably had a note or two. Uh, any time you speak with  
11 somebody, there's always a chance you're gonna write something.

12 Q Okay. And then you use your handwritten notes to compile this typed  
13 report?

14 A Uh, yes, that can happen.

15 Q Do you know if that's what happened in this case?

16 A As far as referring to some notes that may have been taken, yes, that is a  
17 possibility.

18 Q But you don't recall specifically in this case having done it?

19 A Uh...

20 Q You may have done this from your memory?

21 A Uh, on these kind of cases, we have somebody that comes in, as I stated,  
22 you are gonna have some type of documentation or notes, shorthand or  
23 something was far as what's went on. And, yes, and you would refer to  
24 those uh, when you write the report.

25 Q What do you do after you write the report? Do you pitch those notes or do

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1           you keep them?

2 A           Uh, they usually are kept uh, in a, possibly a notebook that we may carry  
3           with us. I have several different notes from whatever.

4 Q           So is this your own private notebook?

5 A           Uh, yes, that would be correct.

6 Q           So you are free when the notebook is full to pitch it, preserve it, do  
7           whatever you want to with it?

8 A           Yes.

9 Q           Okay. And so do you know if you have any notes of, of this conversation  
10           with the Youngs, Annie Young and the Caves on that particular day?

11 A           I do not know. You know, you're gonna have to go and eight years of  
12           notes are...

13 Q           Yeah, I understand that. Okay.

14

15                       MS. SCHULTZ: No, no other questions.

16                       THE STATE (MS. FLANIGAN): I have nothing further, Judge.

17                       THE COURT: Okay. Thank you.

18                       THE STATE (MS. FLANIGAN): Oh, Judge, there's one thing  
19 before, unrelated to this hearing, as far as the trial. Trooper Bowling has  
20 informed me that uh, he is having uh, his wife is having a baby next Wednesday,  
21 which is the day the trial has started. He indicated that he could be available to  
22 testify by, by Friday. I think with jury selection in this kind of case that it's realistic  
23 to think we'll still be in the State's case in chief at that time. But I did want to  
24 make the Court and Ms. Schultz aware of that potential, that we may either have  
25 to taken him out of order in the defense case, or..., I just wanted to let you know

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1 that that's what I've found out, and I feel like I need to let the Court know that.

2 THE COURT: So is it going to be by Cesarean?

3 TROOPER BOWLING: Yes, it is.

4 THE COURT: And that'll be on Wednesday?

5 TROOPER BOWLING: Yes, the 19<sup>th</sup>.

6 THE COURT: Where, what would be the location, sir?

7 TROOPER BOWLING: Floyd County.

8 THE COURT: Floyd County? Well, here's kind of what occurs to  
9 me. If you need Officer Bowling, you wouldn't necessarily need him on  
10 Wednesday. Uh, but Friday might be getting a little late. Uh, but I think that uh,  
11 what time is your wife scheduled, sir?

12 TROOPER BOWLING: Seven-thirty in the morning.

13 THE COURT: Okay. Uhm, I realize that's very important. But uh,  
14 Floyd County is only a twenty-minute drive from here. Uh, I think you should be  
15 available Wednesday afternoon or Thursday, whenever the Prosecutor tells you  
16 to show up. Uh, and I'm ordering you to be available on Wednesday afternoon  
17 or Thursday, any time the prosecutors tell you to show up. Is there anything  
18 unclear about that, sir?

19 TROOPER BOWLING: No sir.

20 THE COURT: Does that clarify the matter?

21 THE STATE (MS. FLANIGAN): It does, Judge. It does. But I, if  
22 t'll...

23 THE COURT: I, I...

24 THE STATE (MS. FLANIGAN): Okay.

25 THE COURT: It's as simple as that.

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1 THE STATE (MS. FLANIGAN): Okay.

2 THE COURT: I know it's important uh, what's going on with his  
3 wife. But this is also important. And if he comes, he won't be here half a day or  
4 ten hours or anything like that. Okay?

5 THE STATE (MS. FLANIGAN): Yes.

6 THE COURT: Okay. Anything else?

7 THE STATE (MS. FLANIGAN): No, Judge.

8 MS. SCHULTZ: No, Judge.

9 THE COURT: You're released, sir. Oh, Bill, here's another note for  
10 you.

11 THE STATE (MS. FLANIGAN): Judge, that's all the witnesses the  
12 State has. I don't know if Ms...

13 THE COURT: Okay, that's all the witnesses?

14 THE STATE (MS. FLANIGAN): That's it.

15 THE COURT: Okay, Ms. Schultz?

16 MS. SCHULTZ: I don't have any other witnesses.

17 THE COURT: Okay. Argument?

18 THE STATE (MS. FLANIGAN): Judge, I'll start with the child  
19 hearsay issues. As I indicated earlier, there are uh, four witnesses and three  
20 statements I am attempting to have uh, admitted under 35-37-4-6. And...

21 THE COURT: The Comfort House DVD, the contents of the note,  
22 and the statement to Kevin Bowling?

23 THE STATE (MS. FLANIGAN): That's correct, Judge.

24 THE COURT: Okay...

25 THE STATE (MS. FLANIGAN): Under the statute, uhm, and let me



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1 ask this, before we have argument, I want to make sure we can release the  
2 Caves and Annie. I think they're still waiting here.

3 THE COURT: I think so. Uh, is there anything you need?

4 MS. SCHULTZ: No. I don't have any problem if they go.

5 THE STATE (MS. FLANIGAN): The statute required her presence  
6 at the hearing, and I think that the State has satisfied that. Uhm, at this hearing  
7 where we're talking about the reliability of the out-of-court statements uh, the  
8 statute requires that they be uhm, reliable as to time, content and circumstances.  
9 And the case law I gave you, Judge, the three cases, Agulera, Johnson and  
10 Serber talk about that. And actually Agulera laid out six considerations. One is  
11 the time and circumstances of the statement. Two, whether there was any  
12 significant opportunity for coaching. Three, nature of the questioning. Four,  
13 motive to fabricate. Five, use of the questioning. Four, motive to fabricate. Five,  
14 use of age-appropriate terminology. And six, spontaneity repetition. And I would  
15 argue to you starting with the statement to Richard Caves, that he stated they  
16 picked Annie up, she got into the car. She said she had a secret. She didn't  
17 want to say what it was, and that she wrote it on the piece of paper. Uhm, I  
18 would submit that the time and circumstances of the statement are, show that it's  
19 reliable. It was immediately after she was picked up and came into contact with  
20 Richard uhm, and Tonya actually. There was not significant opportunity for  
21 coaching. Uh, I think both of them came in and testified virtually to the same,  
22 Annie doing the same thing in the car. These are not people who are married  
23 and living together. These are not people who got together and put their story  
24 together. They both came in and I think were credible and told the Court exactly  
25 what Annie did in the car. And I think that they were fairly uhm, identical

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1 statement. Uh, there was no questioning. As to the nature of the questioning  
2 really, she said, "I have a secret." And both of them said Tonya kind of played it  
3 off. "Oh, I know what your secret is." And then she said, "I'm gonna write it on a  
4 piece of paper." So this really wasn't in response to questioning. Uhm, and  
5 there was no motive to fabricate. There's nothing that came out in all of this that  
6 really said that Tonya, Richard or Annie had anything against Ed Nunley before  
7 this happened, that there was no bad blood, that there was no reason that she  
8 wanted to tell a lie on Ed Nunley. There's just no evidence of that in the record.  
9 Certainly the note used age-appropriate terminology, which is the language  
10 about the pee-pee and the weeny-bob. And it was spontaneous. She wrote it  
11 right when she got into the car. Uhm, I would submit that it's kind of like the  
12 Agulera case where the child told his mother and grandmother about the incident  
13 pretty much immediately after it happened. So I would submit that that would be  
14 the argument as to the reliability to the, of the note to Tonya and was that also  
15 seen by Richard.

16 THE COURT: And you're purporting, you're planning to offer, the  
17 testimony you're planning to offer with respect to the note would be Tonya  
18 Caves, Richard Caves and Officer Bowling, if he can remember anything.

19 THE STATE (MS. FLANIGAN): Yes, well, yes. He saw the note.  
20 But I was gonna address Officer Bowling coming in a different argument because  
21 think he said more to him. She said more to Officer Bowling than just the note.

22 THE COURT: I think he went back and forth about whether he had  
23 personal knowledge. Uh, I mean at times it sounded like he had personal  
24 knowledge of certain things, and at other times it sounded like he didn't. And uh,  
25 so that needs to be clarified. And I guess, are you telling me he didn't put

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1 anything in his report about the note?

2 THE STATE (MS. FLANIGAN): There is something in the report  
3 about the note, Judge.

4 THE COURT: Okay. I guess it needs to be clarified whether he  
5 remembers anything.

6 MS. SCHULTZ: Well, the report doesn't indicate that he saw the  
7 note. It indicates that Tonya said Annie wrote out the note with the words on it.  
8 This was written on the back of a white envelope. He never says in the report  
9 that he saw the note.

10 THE STATE (MS. FLANIGAN): But I clarified that, Judge. I said,  
11 "Does mean that you actually saw the..."

12 THE COURT: He said it here though.

13 THE STATE (MS. FLANIGAN): Yes. "You actually saw the note."  
14 And...

15 THE COURT: So maybe he did remember something beyond what  
16 he put in his..., because he testified to something beyond what he put in his  
17 report is what you're saying.

18 THE STATE (MS. FLANIGAN): That's what I, that's the State's  
19 argument.

20 THE COURT: That's, you're saying he, it didn't say that he saw it in  
21 the report. So he must've remembered something beyond what he put in his  
22 report.

23 MS. SCHULTZ: Now I don't know what he said here. In essence...

24 THE COURT: Well, I know what he said. But, you know, he said  
25 some conflicting things about what he remembered. So I think that's something

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1 that would have to be clarified maybe outside the presence of the jury about his  
2 personal recollection uh, you know.

3 THE STATE (MS. FLANIGAN): But Judge, I think that that goes, on  
4 this, one of the prongs of that Agulera case as to the note itself. This idea of  
5 repetition, that each of these witnesses say that they saw the note. So I think  
6 that that's...

7 THE COURT: I understand...

8 THE STATE (MS. FLANIGAN): Okay.

9 THE COURT: ...where you're coming from there, yeah.

10 THE STATE (MS. FLANIGAN): And, and it's the same, and it's the  
11 same argument with respect to the officer. She goes there. It's immediately  
12 following when Tonya has taken the ball bat to Mr. Nunley's property. They go  
13 there. I had both Tonya Caves and Richard Caves testify that there was no  
14 coaching of Annie in the vehicle on the way up to Salem, that they didn't tell her  
15 what to say. You could see, you could witness Tonya's demeanor, and  
16 Richard's demeanor when they were testifying and judge their credibility. But  
17 they said that they did not coach her on what to say on the way up to the, up to  
18 the courthouse. And what uh, the officer said is that Annie told him that they  
19 watched a dirty movie. This is the first we hear that. Uhm, that she, they  
20 watched a...

21 THE COURT: Is that in his report?

22 THE STATE (MS. FLANIGAN): It is in his report.

23 THE COURT: Okay. Here again, the problem you have with him is,  
24 is it has to be clarified, it seems to me, assuming it would otherwise be  
25 admissible under these rules that he actually remembers something uh, besides

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1 what's in his report, that he has an independent recollection of it. Uhm, aside  
2 from he wrote it in his report. And now he doesn't remember anything at all. "I  
3 don't know nothing." You know, Sergeant Schultz's routine, "I know nothing, I  
4 know nothing. And uh, but uh, what's in the report, but I don't have an  
5 independent recollection of it." I think that's the problem. I mean he was back  
6 and forth, and I never did really get a straight answer. Uh, uh..., but with the  
7 other people, as it sometimes is unfortunately the case, the ordinary people  
8 know things, but the police officers don't know anything uh, on some occasions it  
9 appears. But that's your problem, I think, with him, is whether he knows anything  
10 beside from what he put in his report, and then probably forgot it all.

11 THE STATE (MS. FLANIGAN): That being said, Judge, if, if that's  
12 your...

13 THE COURT: Aside from that problem, okay...

14 THE STATE (MS. FLANIGAN): Aside from that, I think that it's the  
15 same argument that I made and I don't want to belabor it, but the time and  
16 circumstances, it's right after this allegedly happened. Uh, there was no  
17 significant opportunity for coaching. Uhm...

18 THE COURT: Okay. I think you made a good argument on the  
19 child hearsay. You're talking about uh, now the video DVD, the Comfort House,  
20 the contents of the note. Now the contents of the note would be the testimony of  
21 Richard Caves, Tonya Caves, the child and the officer, if he can remember  
22 anything.

23 THE STATE (MS. FLANIGAN): That's correct, Judge.

24 THE COURT: Okay. All right, I understand that. And then the  
25 statements to Kevin Bowling would, separate from the note, that's the other,

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1 those are the other, that's the third thing.

2 THE STATE (MS. FLANIGAN): Right.

3 THE COURT: Correct?

4 THE STATE (MS. FLANIGAN): Right.

5 THE COURT: Okay. Your point?

6 MS. SCHULTZ: With respect to the note, I think we have a big  
7 problem with the note. I think if they had the note, it wouldn't be such a big deal.  
8 But without the note, this is what I see as the problem. The kid says, Richard  
9 Caves told her how to spell the words, and she said the only thing she  
10 remembers writing is, "I sucked his weeny-bob." Other people say the notes  
11 says something else. Richard doesn't remember what the note said. Mom  
12 doesn't remember exactly what the note said. And the only thing we have as to  
13 what the note said is what is in the officer's report, which he doesn't remember, it  
14 appears, exactly what the note said. So I don't think it's clear that the note is  
15 admissible or the contents of the note is admissible because nobody seems to  
16 remember exactly what the note said. If we knew that the note said precisely  
17 something, and it was clear what that precise note said, then I think it would be a  
18 not stronger case for the State to let it in, in particular if they had the note. But  
19 even aside from that, I think there's a problem with letting this in. You know, the  
20 factors that have been set out are very specific, where there was an opportunity  
21 for coaching, whether there was a motive to fabricate, age-appropriate  
22 terminology, spontaneity, repetition, time and circumstances of the State, I  
23 understand what the State is saying, but I see it a totally different way.

24 THE COURT: I'm gonna stop you right there and take a break, and  
25 you all can think about the rest of your argument. I'll be back.

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1 (RECESS; OFF RECORD)

2  
3 THE COURT: Okay. We're on the record. Uh, I wanted to just let  
4 you all go back and forth as much as you feel like you need to, to make the  
5 arguments that you want to make. And, and uhm, just to reiterate, be clear in my  
6 mind. We've got the DVD at Comfort House, April 18<sup>th</sup>, '08, we've got the  
7 contents of the note from April 14<sup>th</sup>, '07, which amounts to testimony of Richard  
8 Caves, Tonya Caves, possibly Bowling, if he remembers anything independently.  
9 Uh, then we've got the April 14<sup>th</sup>, 2007 statement to Kevin Bowling, if he  
10 remembers anything, because, and I'm..., just as I've already said to you, from  
11 listening to his testimony, I think that he said conflicting things about whether or  
12 not he had a independent recollection of uh, aside from his uh, report. So uh, so  
13 think, you know, anything that I would rule about that would be kind of  
14 dependent upon him, there being able to be some clarification regarding that.  
15 Uhm, so, okay. Now, Susan...

16 MS. SCHULTZ: So my argument on the issues of the prior  
17 statements of the child uh, first of all, I think that we have to look at them and see  
18 whether they're testimonial or non-testimonial in nature. And the Court does a  
19 pretty good job of developing the argument on that in the Purvis case, which is a  
20 uh, Court of Appeals decision, transferred denied on August 11<sup>th</sup>, 2005. Uh, and  
21 in that particular case, they talk about the two types of statements. And I would  
22 say that based on the Court's distinction between testimonial and non-testimonial  
23 statements, in this particular case, the contents of the note and what was seen  
24 or heard by the parents would be non-testimonial in nature and would be subject  
25 to one type of evaluation. The statements made to the police officers and to the

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1 Comfort House on the video tape would be testimonial because those are things  
2 that are gathered, with the idea that they're gonna be used in a prosecution.

3 THE COURT: Now let's stop right there. Do you agree with that,  
4 Julie?

5 THE STATE (MS. FLANIGAN): With her analysis of the type of  
6 statements?

7 THE COURT: Right.

8 THE STATE (MS. FLANIGAN): Yes. I would agree that Comfort  
9 House, testimonial; statements to Bowling, testimonial; to parents, non-  
10 testimonial, yes.

11 THE COURT: Yeah. And I think we all, that's kind of the way I see  
12 it. Everybody agrees about that. Okay, go ahead.

13 MS. SCHULTZ: And then when you, when you look at the uh,  
14 Federal Constitutional Rights as set forth in the Crawford case, and cited by our  
15 courts in Serber versus State, which was decided in May of this year by our  
16 Court of Appeals, and also in uh, the Purvis case that I talked about earlier, what  
17 the courts have said in those is that Crawford overruled Roberts, which was a  
18 prior federal case, by requiring that testimonial out-of-court statements may be  
19 admitted as evidence in a criminal trial only if the witness is unavailable and the  
20 defendant had prior opportunity to cross-examine the witness. So the only way  
21 the testimonial statements would be admissible would be if this witness were  
22 unavailable, and that is what is set forth in the statute that we're talking about  
23 here today. And that, that uh, rule was also set forth in the Serber case, which  
24 again, is a 2008 case. And again uh, they're, they're quoting Howard versus  
25 State, which is a uh, Indiana Supreme Court case from 2006, and they say the



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1 court emphasized that if testimonial evidence is at issue, then the Sixth  
2 Amendment demands what the common law required, unavailability and a prior  
3 opportunity for cross examination. So it is our position that any statements that  
4 are testimonial are certainly not admissible unless for some reason this witness  
5 becomes unavailable. And we certainly agree that we've had an opportunity to  
6 cross examine her. But if she is available to testify at trial, then those statements  
7 are not admissible in court. As to the non-testimonial...

8 THE COURT: Why don't we stop right there. Let's piece-meal that  
9 a little bit. What do you say to that argument? She's saying, "Okay, testimonial  
10 uh, right to confrontation and uh, and also unavailability." What do you say to  
11 that?

12 THE STATE (MS. FLANIGAN): Judge, the way I read this Agulera  
13 case, which I gave you, which specifically addressed uhm, this child's statement,  
14 there was two statements in that that were non-testimonial, and two that were  
15 testimonial.

16 THE COURT: Okay.

17 THE STATE (MS. FLANIGAN): That the ones that were testimonial  
18 were to a detective and to a forensic interviewer. And what the Court of Appeals  
19 says in that case is uh, with respect to K.E., that's the child in the Agulera's case,  
20 statements to Detective Buttrum, the trial court correctly found the statements  
21 are testimonial in nature under Crawford and implicate the Sixth Amendment  
22 confrontation clauses". But it goes on to say, "However, because K.E. was found  
23 competent to testify, was made available for cross examination and did in fact  
24 testify at trial, her testimonial statements are admissible. As well, K.E.'s  
25 statements to the forensic interviewer were testimonial in nature as the interview

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1 was conducted at the request of law enforcement for the primary purpose of  
2 establishing or proving past event potentially relevant to a later criminal  
3 prosecution," and cites Davis, "for the same reasons that K.E.'s statements to  
4 Detective Buttrum were admissible, she was found competent to testify, was  
5 subject to cross examination and testified at trial. The trial court found that her  
6 testimonial statement to the forensic investigator admissible. We agree. Thus,  
7 we find Agulera's Sixth Amendment confrontation clause rights were not violated  
8 and the trial court did not abuse its discretion by admitting K.E.'s statements to  
9 her mother, grandmother, Detective Buttrum and the forensic investigator." And  
10 that's...

11 THE COURT: Okay. So you're saying the Agulera case, is an  
12 exception to that, if the witness is competent and testifies at trial, you follow the  
13 statute, and that's an exception to Crawford?

14 THE STATE (MS. FLANIGAN): That is correct, Judge. I think that's  
15 exactly what the case law says.

16 THE COURT: Is there anything in the language of Crawford that  
17 supports the idea that, that uh, contrary to what Ms. Schultz's said?

18 THE STATE (MS. FLANIGAN): I don't think so, because I think that  
19 Agulera specifically, which came after Crawford uhm..., well, let me go back a  
20 little bit. Uhm, okay, Judge, this whole part I'm reading from this Agulera case  
21 kind of addresses Crawford in the context of the very type...

22 THE COURT: What page are you at?

23 THE STATE (MS. FLANIGAN): Three o six, page...

24 THE COURT: Three o six?

25 THE STATE (MS. FLANIGAN): Well, it's nine of twelve. And I

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1 would, I would...

2 THE COURT: Right. But 306 on the uh, case?

3 THE STATE (MS. FLANIGAN): Right. And I would refer you to the  
4 subsection "D", testimonial nature of K.E.'s statements. This specifically, Judge,  
5 talks about Crawford and what it says is Crawford wouldn't even apply to these  
6 non-testimonial statements. And with respect to the testimonial statements,  
7 because the child's available to testify at trial, we find that the Six Amendment  
8 confrontation clauses were not violated, so Crawford would not apply. So the  
9 way I read it is, this, our Court of Appeals is specifically addressing the Crawford  
10 issue and the confrontation clause issue.

11 MS. SCHULTZ: And, Judge, I think what the problem is that we  
12 have here, Agulera says that, and I would agree with the State that, that they are  
13 correctly quoting what Agulera said. However, that was a 2007 case and then  
14 we come back with another panel, I presume it's another panel of the Court of  
15 Appeals in 2008, which says exactly the opposite.

16 THE COURT: Which one is that?

17 MS. SCHULTZ: And that's the Serber case.

18 THE STATE (MS. FLANIGAN): And where is that in Serber?  
19 Because I read Serber to be the same.

20 MS. SCHULTZ: If you look at uhm, the subsection one-four...

21 THE COURT: Let me catch up with you. Serber uhm...

22 MS. SCHULTZ: They're talking about, well..., it's the subsection,  
23 yeah, four. There's a subsection that's entitled "Confrontation Clause".

24 THE STATE (MS. FLANIGAN): What, at the top, Susan? What  
25 does it say as far as page...

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1 MS. SCHULTZ: I, I have, I have my own copy. But now yours...

2 THE COURT: Uh, what page is the opinion or whatever? Where,  
3 where are you at?

4 MS. SCHULTZ: It's, it's on page eight-sixty-four.

5 THE COURT: Eight-sixty-four, okay.

6 MS. SCHULTZ: Yeah.

7 THE COURT: Let me get, let me catch up with you. Eight-sixty-  
8 four, okay, eight-sixty-four.

9 MS. SCHULTZ: And, and there, right at the, towards the bottom of  
10 that page is the confrontation clause section.

11 THE COURT: All right.

12 MS. SCHULTZ: And...

13 THE COURT: Confrontation Clause.

14 MS. SCHULTZ: When you look at the end of the first paragraph,  
15 they are quoting the Supreme Court's state, or case of *Howard versus State*, and  
16 this particular panel of the Court of Appeals says, quotes, "The Court  
17 emphasizes that if testimonial evidence is at issue, and the Sixth Amendment  
18 demands what the common law required, unavailability and a prior opportunity  
19 for cross examination." Quoting Crawford. So it looks to me like we have two  
20 panels of the Court of Appeals saying opposite things.

21 THE STATE (MS. FLANIGAN): And, Judge, I would respectfully  
22 disagree with Ms. Schultz because I think it says, when you read that  
23 confrontation clause section, it says exactly the opposite. Subert is talking again  
24 about a child who was made available at trial. In this case it was C.S. "C.S. was  
25 found competent to testify, was made available for cross examination, and did in

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1 fact testify at trial. Because he testified and was cross examined, the ruling  
2 announced in Crawford is not applicable. Serber's Sixth Amendment  
3 confrontation rights were not violated, see Agulera, holding that a defendant's  
4 Sixth Amendment clause rights were not violated by the admission of the child  
5 victim's statement to her mother, grandmother or detective and forensic  
6 investigator." So I would disagree respectfully with Ms. Schultz's reading of  
7 Serber and say that it in fact cites Agulera and supports the State's position.

8 THE COURT: And in Serber, the, maybe the statements to the  
9 mother and the grandmother and non-testimonial, but the detective and the  
10 forensic investigator are probably in that case.

11 MS. SCHULTZ: That's what I would, that's the way that I would  
12 read it.

13 THE COURT: Yeah. That's the way I would read it too. Okay.

14 MS. SCHULTZ: And, and, you know, one of the other problems  
15 that we have here is one of the problems that was brought out in the Serber case  
16 if you have the kid on the stand saying it one time, that's one thing. But if you  
17 have the kid on the stand saying something and we have this drum beat of  
18 repetition, as they call it in Serber, we've got six other witnesses, or five other  
19 witnesses coming in and saying, "yeah, the kid told me this, the kid told me this."  
20 And really emphasizing that. And where you particularly have a problem is if a  
21 kid is testifying in the trial and says one thing, and then these other people that  
22 are repeating other's statements are not only cumulative, but they're adding to it,  
23 adding to what the child is saying in trial. Then you're really getting into a  
24 problem where it magnifies itself. I really think that the statements that were  
25 made that are testimonial in nature should not be admitted in this case. I don't

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1 I think the non-testimonial statements should either, but for different reasons. I  
2 think the testimonial statements shouldn't be admitted under Crawford. And I  
3 also think they should not be admitted because they're cumulative.

4 THE COURT: Okay.

5 MS. SCHULTZ: But as the non-testimonial, I think we've got a  
6 problem with them and the reliability. And contrary to what the State says, you  
7 know, I think we've got a big issue here because we obviously know the child  
8 was with the mother, according to the mother's testimony, from prior to noon until  
9 four o'clock. And we also know that the mom was madder than whatever at Mr.  
10 Nunley. She says that...

11 THE COURT: Sure. She took a ball bat to everything, yeah, yeah.

12 MS. SCHULTZ: Yeah. I mean we know there's no doubt she was  
13 mad.

14 THE COURT: Yeah.

15 MS. SCHULTZ: I mean we know why she said she was mad. But  
16 we also know that witnesses don't always tell everything. So we know there was  
17 some anger there. And she admitted that whenever driving in the car from Ed's  
18 house to the police station that they weren't mum the whole time. They were  
19 talking and she admitted they probably said some pretty bad stuff about Ed  
20 Nunley. So, based on that, we know that by the time that she gets the kid to the  
21 police station, the kid's gotta know that mom hates Ed Nudley, Nunley, and the  
22 kid's gonna be effected by that. They always are. She's with her mom. She  
23 went to be with her mom. So that has a great deal of effect on her. I think for  
24 that reason, it makes the statements that she's made less reliable than they  
25 would be otherwise. And if mom had calmly just taken her to the police station

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1 after she realized there was a problem, rather than to go back to Ed's and, you  
2 know, do what she did, and have the kid witness the anger that was going on  
3 there. So I think for those reasons, that all of these statements should be non-  
4 admissible.

5 THE COURT: Well, for Mr. Nunley's sake, probably uh, he probably  
6 should be lucky that she didn't have a gun with her, you know, or we wouldn't be  
7 having a trial.

8 MS. SCHULTZ: Well, we might be having one, but we might have a  
9 different...

10 THE COURT: But it wouldn't be him, yeah. Well, okay, all right.  
11 Uh, with respect to the hearsay issues in the Crawford, and the testimonial and  
12 non-testimonial, any more argument, Ms. Schultz?

13 MS. SCHULTZ: No. I think I'm...

14 THE COURT: Okay, any more from the State?

15 THE STATE (MS. FLANIGAN): No, Judge. I'd just ask you to look  
16 at the fact pattern in the Subert, Serber case and Agulera. I think they're similar  
17 to the case at hand and they said Crawford didn't apply in either of those cases.  
18 And as to the drum beat repetition, I'd ask you to look in Serber about, they talk  
19 a lot about the witnesses, how they're called in trial. And I can submit to you that  
20 it would be our intention, like we did today, to call uh, her first. And, and that,  
21 you'll see why that's important when you look at the case...

22 THE COURT: The child?

23 THE STATE (MS. FLANIGAN): Yes.

24 THE COURT: Okay.

25 THE STATE (MS. FLANIGAN): So, that's all on that.

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1 THE COURT: Okay. Here's where I'm at right now.

2 MS. SCHULTZ: Well, you, you...

3 THE COURT: I've read these cases uh, this morning, and the  
4 statute and I've been thinking about it. And uh, and I'm gonna read Crawford  
5 again over the week-end. But right now, it seems to me that uh, first with respect  
6 to, and I agree with your evaluation about what's testimonial and what's not  
7 testimonial. Uh, and with respect to the statements and the video tape that the  
8 State is uh, wanting to offer into evidence, subject, right now subject to  
9 qualification about Officer Bowling and his memory. You know, because his  
10 testimony is uh, it's uh, uhm, kind of back and forth about what he could  
11 remember. Uh, but except for that uh, the Court finds that the defendant,  
12 Lawrence Nunley, is charged with sex crimes in Counts 1, 2, 3 and 4, and that  
13 the evidence relating to Count 5, Count 5 is not included in the statute, I don't  
14 think..., I don't think it's in here. I didn't see it in here anywhere in 35-37-4-6 "A"  
15 or "B". But the Court finds that Counts 1 through 4 against the defendant in this  
16 case are offenses that are described in 35-37-4-6-A-1, sex crimes. The Court  
17 further finds that the uh, alleged victim uh, Anna, Annie Young, that's her name  
18 isn't it? Annie Young?

19 THE STATE (MS. FLANIGAN): Yes, Judge.

20 THE COURT: Annie Young, A.Y., is a protected person uh, for the  
21 simple reason that she's less than fourteen years of age. I think she said she's  
22 eight years of age at this time. Isn't that right? Eight now?

23 THE STATE (MS. FLANIGAN): Yes, Judge.

24 THE COURT: Okay. As uh, is required in 35-37-4-6-C. Uh, and  
25 uh, what I'm being told and the way things are going to go is that the child is



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1 going to testify first. Uh, based on everything I've heard so far and based upon  
2 that representation, then I think the statements and the video tape fulfill the  
3 requirements of subsection "D" because they're made by a person who, at the  
4 time of the trial, is a protected person, concerns an act that is a material of an  
5 offense or offenses listed in subsection "A" is allegedly committed against the  
6 person, Annie Young. Uh, and is arguably not otherwise admissible into  
7 evidence, or at least part are not.

8 Now, to the subsection "E", these statements and video tape uh, there's  
9 uh, the Court finds that adequate notice has been given to the defendant of the  
10 hearing that was held today. The defendant has a right to be present, and has  
11 been present the entire time. And uh, the hearing today was conducted outside  
12 the presence of the jury. It was attended by the protected person, Annie Young.  
13 She was here the entire time, not in the courtroom, but here in the courthouse,  
14 available to testify and subject to cross examination. And uh, the Court is of the  
15 understanding from representations of the Prosecutor that she's going to testify  
16 at trial, which will satisfy "E-2", and the Court believes and finds that the time and  
17 circumstances of the statements and the uh, DVD video tape provides sufficient  
18 indications of reliability.

19 And uh, it's my intention at this point to allow all this into evidence. But  
20 I'm gonna read Crawford again. Like I said, it's been awhile since I've read  
21 Crawford. Uh, and, of course, it's, some of this is subject to Officer Bowling's uh,  
22 his situation. But uh, and, and I think probably uh, with respect to the mother  
23 and her anger toward Mr. Nunley, what would've been unusual is if she wasn't  
24 angry at him. In fact, I'd say a lot of people, if they had a gun with them,  
25 would've probably went back and shot him. Uh, but, and that would be in a trial

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1 about something else. So I would say if he was assuming that he's guilty of  
2 anything, then, if he's guilty of what the mother thinks he's guilty of, then uh, then  
3 uh, that means that uh, he was a very lucky fellow that day. Uh, so that's kind of  
4 where I'm at right now uh, on that.

5 And uh, and uh, with respect to these factors and thinking about, as I've  
6 been thinking about uh, thinking about these uh, these factors in making that  
7 reliability determination uh, there's no evidence that there was any motive to  
8 fabricate. The information indicates age-appropriate terminology. Uh, the time  
9 and the circumstances of the statement, particularly the, particularly the uh, the  
10 uh, child writing on the uh, envelope, writing the note on the envelope uh, and  
11 particularly with respect to that, there's no evidence of any coaching, no  
12 evidence of any motive to fabricate uhm, no opportunity for coaching. Uh, in a  
13 way it was a spontaneous matter. The child wasn't uh, asked. The child  
14 volunteered that she had a secret. Uh, and uh, certainly with respect to that,  
15 there's no repetition issues. And uh, now there's no evidence, there's no  
16 evidence obviously, there's a possibility for opportunity for coaching between  
17 April the 14<sup>th</sup>, 2007 and April the 18<sup>th</sup>, 2008 for the DVD with Comfort House, and  
18 Donna Black, Donna Lloyd Black; she changed her name at some point. I don't  
19 know. I know that she's Donna Lloyd and Donna Black. But uh, she may be  
20 referred to two different ways on the video or on, or in the testimony today. But  
21 it's one and the same person. And obviously there's, but there's no evidence  
22 that there was any uh, coaching. The testimony was affirmatively the opposite,  
23 that there was no coaching. Uh, there's no evidence at any point in time of uh,  
24 motive to fabricate. Uh, and I've, I've watched the video tape, the DVD video  
25 and uh, part of the determination with respect to the reliability depends upon

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1 reviewing the video tape in order to assess the way the questioning took place,  
2 how it look place. Of course, Ms. Schultz, you've seen it, so you know. But for  
3 the Court of Appeals or the Indiana Supreme Court or any other court to review  
4 it, it would be, of course, appropriate and important for them to review the video  
5 tape in order to assess the uh, determination of reliability with respect to the DVD  
6 video uh, at the Comfort House uh, April the 18<sup>th</sup>, 2008.

7 And uh, so I'm considering everything, and I think, I think these  
8 statements are, at this point, admissible. I'm, I'm, those are the only two  
9 qualifications. I'm going to read Crawford again over the week-end. And then  
10 Officer Bowling, what he can remember. Uh, whether he can remember. I mean  
11 obviously if he has no independent recollection of anything, then, you know, what  
12 can he say? You know, and you know, if something refreshes his memory, then  
13 that might be another matter. Uh, so I don't know where you're gonna be with  
14 that. So that's kind of where I'm at on that part of it.

15 Now, let's talk about the argument on the rest of it. Uh, and that is, we're  
16 just down to Kimberly Simler with respect to 404B. That's where we are, isn't it,  
17 Ms. Prosecutor?

18 THE STATE (MS. FLANIGAN): Yes, Judge.

19 THE COURT: Okay. So, all right, so what do you say about that?

20 THE STATE (MS. FLANIGAN): What I say is that the cases I've  
21 reviewed, and to be candid to you and Ms. Schultz, I gave you four cases. The  
22 first is uhm, the first case is the..., let me make sure I have that right, is the  
23 Pendley case, which is actually a 404B modus operandi case. And that, in that  
24 case there were the uh, five rapes, and the Court of Appeals found that only one  
25 came in under modus operandi. And it recounted how similar the two, the two

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1 rapes were in that case. And he set, they set forth certain factors uhm, that said  
2 how close they are. And what Pendley said, and to be candid, the Court did  
3 throw out..., let, let one of the rapes in under another prong of plan or scheme,  
4 which I'm not trying to argue in this case. I'm simply arguing modus operandi so  
5 you know what I'm arguing, Judge, and did not allow in uh, some of the other  
6 rapes. But the one they did let in, they said, "The question we have to ask is,  
7 Are these crimes so strikingly similar that one can say with reasonable certainty  
8 that one and the same person committed them." And in that Pendley case, I will  
9 go through the factors because I think it's similar to what we have here uh,  
10 between Kimberly Simler and Annie Young. In Pendley, it was the same house,  
11 will admit. Uh, it was two-thirty in the morning. And the case that was at bar,  
12 the one that was being tried, the rapist talked in a voice soft voice, told her it was  
13 okay. Said that the mother knew he was there. Told her not to get loud. Told  
14 her to disrobe, put a finger in the vagina, told her to touch his penis, had a knit  
15 cap over his face, and forced intercourse and told her he would be back. And  
16 the Court of Appeals, or the Court said in the, that the rape that was similar  
17 enough to show modus operandi with that uhm, was with this victim's sister. It  
18 was the same house. It was one month before. The sister was home alone and  
19 awakened her between three and four a.m., he had a nylon stocking on his  
20 head, hand over the mouth, told her to shut up, told her it was okay, the mother  
21 knew he was there, put a finger in her vagina and began to undo her pants and  
22 he was interrupted. So, what I'm saying to you, Judge, that in the one pure case  
23 that I could find a case in Indiana uh, those, those were seen as similar enough  
24 to show a signature. And I would say we have that here.

25 And the other three cases I gave you are joinder cases that where cases

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1 can be joined because they had the same modus operandi, and they talk about  
2 uhm, what is similar enough for joinder. And they refer to Pendley. So I don't  
3 want you to get the impression that I'm trying to pull something over on the court  
4 and say these other three cases I've given you are 404B cases. I think they're  
5 just instructive as to what modus operandi is in a child sex-abuse case. And  
6 that's why I gave those to the Court. But I think in this case, what we're asking  
7 is, are these crimes so similar that one could say with reasonable certainty that  
8 one and the same person committed them. You saw Annie Young testify and  
9 you saw Kimberly Simler testify. And you saw Annie say that, "He took me in his  
10 bedroom. He had a portable DVD player. He played a movie with naked people.  
11 He sucked on my vagina and made me suck on his penis." Uhm, she was alone  
12 with him, isolated in his bedroom. Her age at the time was six. Uh, she was a  
13 white, female child that was under Ed's care and alone with him.

14 You had Kimberly Simler come in. She said that this was uhm, 2006.  
15 This happened all of the time. But on many of the occasions, and one in  
16 particular I'd argue to the Court is the tree-house incident, because that that is  
17 instructor, because it's exactly like this case. They're along in a tree house,  
18 which she described. You can just see the swing set. They're in there. He's got  
19 the portable DVD player with the pornographic video, DVD. He's playing that.  
20 He had oral sex, performed oral sex on her, had him, had her perform oral sex  
21 on him. They're isolated, alone, no one else is around. Uh, he's with her...,  
22 they're so similar that, that it's a signature. And you heard Detective Wibbels say  
23 that he's never..., and her age, and she's a white female. And uh, both of them  
24 said, Judge, that he told them not to tell anybody. Both of those girls said that  
25 Ed told them not to tell anybody. So I would submit that specifically in the tree

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1 house incident, but I think you could pick any number of the ones that Kimberly  
2 Simler talked about, that he had the portable DVD, that he's in his bedroom, that  
3 he would show her these videos and do these exact sex acts that he did on  
4 Annie. I, I think it's a signature. I think it's enough for you to decide that, that it  
5 shows that it's one person, that it's Ed Nunley that committed both of these  
6 crimes. I think it's, I think it's how he..., I mean how he isolated them, their age,  
7 how he showed them porn, the act he committed on them, telling them not to tell  
8 anybody. When you take Kimberly Simler's tree-house incident and you put it  
9 next to what Annie Young told you, it's the same thing and it's distinct.

10 MS. SCHULTZ: Well, I certainly disagree with that. And I also  
11 disagree with her interpretation of the Pendley case, when she was talking about  
12 uh, where the uh, one of the cases was admitted. And the reason that I disagree  
13 with that is because in the Pendley case, the one that, the identification or the  
14 other act that they let in dealt with the identification of the victims' rapist. It did  
15 not involve actually any sex acts between the party, but rather the identification  
16 of who had actually perpetrated the offense against another person. And that's  
17 not what we have in this case. This case is totally different than that. We're not  
18 talking about an identification issue here. Everybody knows who Ed Nunley is.  
19 And the issue is whether there was a crime that was committed, not who the  
20 identification of the bad actor is. And that's what the problem is in comparing  
21 Pendley to the case where. And when they...

22 THE COURT: Let's stop right there. What about that? They're  
23 saying in the Pendley case it was identification of the person. Ms. Schultz is  
24 saying everybody knows who Ed Nunley is. There's no question about who  
25 we're talking about. The question is whether he did it or not. Are you using

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 modus operandi for a different purpose than the Pendley case, and does it make  
2 any difference?

3 THE STATE (MS. FLANIGAN): I think that uh, to be candid with the  
4 Court, I think that you have to, the only way modus operandi comes in in these  
5 cases is under the identity prong, Judge. I think that's the way I read all the  
6 cases.

7 THE COURT: Identity of guilt or identity of the person?

8 THE STATE (MS. FLANIGAN): Identity period. So I'm, I'm going  
9 on.

10 THE COURT: Okay.

11 THE STATE (MS. FLANIGAN): I think that you have to be under  
12 the identity prong. So I am under the identity prong. But I think that I have to  
13 prove identity in every case. And, and as part of proving identity of, of the  
14 person identity of the crime, that's how I can use modus operandi. It's not that  
15 there's a question here who Ed Nunley is, as you say. But it's proving identity of  
16 the crime, and this is the crime that was committed. And so it's slightly different  
17 than Pendley, but it is under the identity prong. That is correct. I think to have it  
18 come in, it has to be to show identity. Because it has to be show to something  
19 under the enumerated exceptions. But I think in every case, the State has to  
20 prove identity. And I'm not told how I have to prove it. And I think I can use  
21 modus operandi to prove, to prove that he did it, and that it was Ed Nunley that  
22 did it.

23 THE COURT: Okay. Go ahead, Ms. Schultz.

24 MS. SCHULTZ: Well, and to go on further in the Pendley case,  
25 what the Court talks about there is when you're talking about admitting similar

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 acts to prove the identity, you have to show that the, the similarities between the  
2 two crimes are so strong and the methods so clearly unique that it is highly  
3 probable that the perpetrator both is the same person. And then the Court goes  
4 on later to say, "The repeated commission of similar crimes is not enough to  
5 qualify for the exception to the general rule. The acts or methods employed  
6 must be so similar, unusual and distinctive as to earmark them as the acts of the  
7 accused." Now when I discussed this with my client, the example that I used  
8 with him is if we have a corpse that turns up with the second toe missing, and we  
9 convict somebody of it, and then we find another corpse that also has a second  
10 toe missing, then this is something that is very similar and very unique. Or  
11 whether you have somebody that cut out the pancreas or something when they  
12 murder somebody, then you've got a similarity and uniqueness. What we have  
13 here is two kids who have alleged that they have been molested in similar ways,  
14 but not unique ways. Uh, there is nothing about the two crimes here that makes  
15 them so unique that they would most likely have been committed by the same  
16 person. We have uh, a distinct difference in time and we have uh, Annie saying  
17 that this is the first time..., I've heard no evidence if it was other than the first  
18 time, the first time she was with, around Ed overnight was when this happened.  
19 Uh, Kim said that he did things to her many times before he showed her the  
20 movies. He only showed her the movies at his house, not at her mom's house.  
21 There's a lot of distinctions between the two of these. And I don't see them as  
22 being crimes that are very similar in nature. I mean they're similar in nature, but  
23 they're certainly not unique. And I think that they have to show more uniqueness  
24 in order to show this uh, identity or modus operandi. And I really don't see how  
25 the identity comes into play in this. Uh, as I said before, I think the, if one is to



**HEARING ON 404B AND HEARSAY EVIDENCE**

1 believe the, the witness in this case, Annie Young, that she was molested, she  
2 placed the finger clearly at Ed. She doesn't point it at anybody else. We're not  
3 talking about it may have been Ed or it may have been somebody else. What  
4 we're talking about is, is Ed the person that..., was this act committed on her by  
5 Ed? Not did somebody do it, but did Ed do it to her? Was it done to her? So I  
6 don't, I don't think the similarity of the crimes uh, or the similarity of the acts  
7 establishes that at all. It would appear to me that the only thing that this  
8 evidence would do would be establishing the jury's mind that Ed is likely to  
9 commit this offense because he's been accused of doing it more than once. And  
10 that's the problem we have here. The prejudicial value of this evidence is it's, or  
11 the prejudicial risk is very, very great. And if we let it in, it's gonna affect Ed's  
12 right to a fair trial. So we would certainly be asking the Court not to let it in.

13 THE COURT: Anything else?

14 THE STATE (MS. FLANIGAN): No, Judge.

15 THE COURT: Do you have any cases you'd like for me to take a  
16 look at?

17 MS. SCHULTZ: Well, I have a whole bunch of them. But...

18 THE COURT: Were there uh, a few that you want specifically?

19 THE STATE (MS. FLANIGAN): The three I gave you, Judge, I think  
20 as I said earlier, give examples of modus operandi in child abuse cases. They're  
21 joinder cases, but one involves showering with the children. One involves uhm,  
22 something involving saying there was a taste test of certain kids in a Brownie  
23 troop. Uhm, and the other one was just laying in bed with them. And I will admit  
24 in that case that the two victims came up with gonorrhoea. So I would submit that  
25 in this case, it's just, it's striking to me how similar these girls' stories are, enough

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 to be a signature.

2 THE COURT: Okay. I've got your cases. Do you have any that  
3 you want to leave me with to read over the week-end reading?

4 MS. SCHULTZ: Well, Judge..., week-end reading, okay.

5 THE COURT: Because I'm, I'm gonna have to think about this  
6 issue. This is not...

7 MS. SCHULTZ: Do you want my copies that I have uh...

8 THE COURT: Whatever you want to offer. Uh, you know, if we can  
9 make copies of whatever you want to offer. I...

10 MS. SCHULTZ: I'm looking through the exact ones that I have  
11 here. I've marked up my copies of that.

12 THE COURT: Well, it ain't just your markings. Just let the  
13 prosecutors know what it is you're, you're giving me. And if they want a copy of  
14 them, they can have that too.

15 MS. SCHULTZ: We're not talking about the common scheme,  
16 we're talking about identity, right?

17 THE COURT: Well, that's what they said. I don't know whether  
18 that might change or not next week.

19 THE STATE (MS. FLANIGAN): I think they both fall under identity.  
20 And you have to pick one or the other, so...

21 MS. SCHULTZ: Well, the common scheme of plan and identity?  
22 The common scheme of plan, this is, in a common scheme of plan, you have to  
23 have the, the two events so tied together that they are part of a continuous  
24 operation.

25 THE STATE (MS. FLANIGAN): Right. And I'm not trying...

HEARING ON 404B AND HEARSAY EVIDENCE

1 MS. SCHULTZ: And we certainly don't have that here.

2 THE STATE (MS. FLANIGAN): And I'm not trying to argue that.

3 I'm arguing modus operandi.

4 MS. SCHULTZ: Well, I guess, Judge, the cases that I would cite  
5 the Court to is uh, there are two cases, Manuel, which is uh, 793 NE 2<sup>nd</sup>, page  
6 1215, and that is the uh, Court of Appeals decision. And also *Hicks versus State*  
7 *of Indiana*, and that's a Supreme Court decision, 690 NE 2<sup>nd</sup>, 215. And those  
8 both...

9 THE COURT: And can you, can I get copies of those before you  
10 leave?

11 MS. SCHULTZ: Yep, be happy to.

12 THE COURT: All right.

13 THE STATE (MS. FLANIGAN): And, Judge, I had a, I don't know  
14 your practice in this having never tried a jury trial with you. So I know that you  
15 give the jurors questions when they come in. And I don't know that, what your  
16 policy is with respect to any special questions I would want asked.

17 THE COURT: Oh, we've done that many times before.

18 THE STATE (MS. FLANIGAN): So I have a suggested one that I  
19 would, I wanted to give it to you and Susan before Tuesday. So, if you want to  
20 just take that up Monday?

21 THE COURT: You mean for the Court to ask?

22 THE STATE (MS. FLANIGAN): It would be for to add to the uh, jury  
23 questionnaire.

24 THE COURT: To the questionnaire?

25 THE STATE (MS. FLANIGAN): Yes.

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 THE COURT: Okay. Well, I guess let's see it and take a look at it.  
2 Okay. Can you see that, Susan?

3 MS. SCHULTZ: Uh huh.

4 THE COURT: Any objections to that?

5 MS. SCHULTZ: No. But I'm now having..., she could..., oh, you  
6 want this uh, included in the packet they give them to fill out?

7 THE STATE (MS. FLANIGAN): Yes, Judge. And the reason is,  
8 Susan, and my thought being that sometimes people are more willing to answer  
9 that in writing than if when we ask them out loud. And there may be some that  
10 we have..., I don't know what your practice is, Judge, but some of them may feel  
11 more comfortable if we talk to them...

12 THE COURT: Uh, yeah.

13 THE STATE (MS. FLANIGAN): ...outside the presence, if it's them  
14 or their wife or husband.

15 THE COURT: Right. We've done that before too. Yeah, and I'd be  
16 willing to do that.

17 MS. SCHULTZ: Yeah, I don't have any problem with that.

18 THE COURT: Well, what I would ask you to do..., okay, then we'll  
19 add this one. But take the part off of uh, about State's proposed questions for  
20 jurors. And uh, you might just say uh, well, just put additional, why don't you just  
21 call it an additional question for jurors. And uh, then we can just make copies of  
22 that and add it on to the questionnaire that we hand them. And, and then that  
23 would probably be the simplest thing to do. Okay, what do you think? Anything  
24 else?

25 THE STATE (MS. FLANIGAN): Judge, do you want me to uh, there

**HEARING ON 404B AND HEARSAY EVIDENCE**

1 is one more thing. As far as the Comfort House DVD, that's in evidence as to  
2 this hearing. Do you want me to have another one burned, or may I use that at  
3 trial?

4 THE COURT: You can use it. I mean uh...

5 MS. LAUREN WHEATLEY: Would you like us to mark it, your  
6 Honor?

7 THE COURT: It's marked right now. But the packet is marked, not  
8 the DVD itself.

9 COURT REPORTER: No.

10 THE COURT: Okay. What we would probably need to do, if we  
11 use that particular one, is what we would probably need to do is make sure that  
12 we make a record sometime outside the presence of the jury that State's Exhibit,  
13 whatever it turns out to be, is the same as State's Exhibit, was it two? The same  
14 as State's Exhibit "2" at the hearing on November the 14<sup>th</sup>, 2008. Just so that we  
15 need to clarify the record, if we're gonna use the same one. I don't have any  
16 problem. I don't think it's necessary to make another copy of it, but you're  
17 welcome to do that. But I think that would be the only thing, we need to make  
18 sure it's in the record somewhere that this is one and the same.

19 THE STATE (MS. FLANIGAN): Okay. I can do that.

20 THE COURT: So that there's no question about it. Or issues.  
21 Okay. I guess that's it.

22 (OFF RECORD)

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COUNTY OF HARRISON  
IN THE HARRISON SUPERIOR COURT

STATE OF INDIANA

VS.

LAWRENCE E. NUNLEY

CAUSE NO. 31D01-0805-FA-389

**REPORTER'S CERTIFICATE**

I, Karen Hamilton, Court Reporter of the Harrison Superior Court, Harrison County, State of Indiana, do hereby certify that I am the Court Reporter of said court, duly appointed and sworn to report the evidence of causes tried therein.

That upon the Pretrial Hearing of this cause, beginning on the 14<sup>th</sup> day of November, 2008, I recorded and transcribed all statements of counsel, the evidence given during said hearing, the objections of counsel and the rulings of the Court upon such objections.

I further certify that the foregoing transcript, as prepared, is full, true correct and complete of the Pretrial Hearing.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal this 17<sup>th</sup> day of May, 2009.

  
KAREN HAMILTON,  
COURT REPORTER  
HARRISON SUPERIOR COURT  
HARRISON COUNTY, INDIANA

SEAL

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IN THE HARRISON SUPERIOR COURT

STATE OF INDIANA

VS.

LAWRENCE E. NUNLEY

CAUSE NO. 31D01-0805-FA-389

TRANSCRIPT OF JURY TRIAL

NOVEMBER 18 through NOVEMBER 21, 2008

BEFORE THE HONORABLE ROGER D. DAVIS

REGULAR JUDGE OF THE HARRISON SUPERIOR COURT

THE APPEARANCES:

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Deputy Prosecuting Attorney  
Phone: 812-738-4241

Mrs. Karen Hamilton  
Court Reporter

**VOIR DIRE**

1 THE COURT: Thank you for your patience. I know you've seen the  
2 movie, so I'll try to shorten this up a little bit. Uhm, the Supreme Court wants me  
3 to uh, give you also a little summary about what to expect and uh, I'll try to do  
4 that fairly quickly.

5 Before the trial begins, the jury will be selected. The Judge and the  
6 attorneys will ask you questions after you've taken an oath or affirmation that  
7 your answers will be truthful. These questions are not intended to be offensive in  
8 any way or prying or personal, but necessary to uh, select a group of individuals  
9 that can fairly and impartially resolve their responsibility. I'm sure that you could  
10 understand, for example, that any person having knowledge of the case or the  
11 parties might not be able to be impartial and thus might not be able to serve as a  
12 juror in a particular case. So, for that reason, among others, you might be  
13 subject to exclusion.

14 You should not be offended if you're excused for no apparent reason.  
15 The law allows the parties to excuse a certain number of people for no particular  
16 reason. You'll be paid fifteen dollars a day if you're not selected. Uh, forty  
17 dollars a day if you are, plus mileage. At the conclusion of the trial, a list will be  
18 prepared and submitted to the County Auditor and you should receive a check  
19 uh, sometime within a week or two after that uh, is over with.

20 Some of you may need statements verifying your serve as jurors for your  
21 employers. Forms will be furnished to you by the Bailiff or the Court Reporter,  
22 these ladies right up here. If you're not selected, when you leave at some point  
23 in time today, this morning or this afternoon, you can get it, get that information  
24 from them before you go.

25



**VOIR DIRE**

1           The trial of the case will proceed as follows: First uh, after a jury is  
2 selected, the Court will give Preliminary Instructions concerning the case and the  
3 law that applies to it. The attorneys will have an opportunity to make opening  
4 statements, which are not evidence, but are considered a preview of what the  
5 attorneys expect the evidence will be. Following opening statements, witnesses  
6 will be called to testify. They'll be placed under oath and questioned by the  
7 lawyers. Exhibits may also be received into evidence. When the evidence is  
8 completed, the lawyers will make final arguments. These arguments are not  
9 evidence either. The attorneys are permitted to characterize the evidence,  
10 discuss the law in an attempt to persuade you to a particular verdict. Before the  
11 jury begins deliberations, you will receive Final Instructions on the law if you're  
12 on the jury.

13           The Court and the attorneys expect the trial to last no longer than uh,  
14 through the end of the week. Is that fair?

15                   THE STATE (MS. FLANIGAN): That's fair, yes.

16                   MS. SCHULTZ: Yes.

17           THE COURT: Most days we'll attempt to begin by nine a.m. and  
18 conclude no later than five p.m. There may be times when we'll finish sooner  
19 than five p.m. There may be times, because of emergencies or circumstances  
20 beyond our control that we do not start promptly at nine a.m. On the day the  
21 case is sent to the jury, you may be here past five p.m., and that's for the simple  
22 reason that it's up to the jury to take the time that it considers necessary to  
23 deliberate concerning the case.

24           If any uh, prospective juror has any information, any information or

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**VOIR DIRE**

1 concerns that you feel should be addressed privately, you should let the Court  
2 know either when you're called into the jury box to be questioned by the  
3 attorneys or at a later time. If necessary, your concerns will be addressed  
4 outside the presence of other jurors. The Judge, the attorneys and court  
5 personnel will take up your concerns privately, if that is necessary.

6       You must not talk among yourselves or with anyone else about the case.  
7 Do not talk to any of the parties, the lawyers or any of the witnesses. If anyone  
8 tries to talk to you in your presence about the case, you should tell the Bailiff  
9 immediately and privately.

10       If there's any publicity about the trial, you must not read, listen to, or watch  
11 it. You should focus your attention on the court proceedings, keep an open mind  
12 and not form or express an opinion on the case.

13       Generally, there are two ways that jurors may be excused or challenged.  
14 Uh, for-cause challenges are based on legal rules requiring that jurors be  
15 excused for certain reasons. Peremptory challenges are the number of  
16 challenges that I mentioned to you earlier, that allow each side in the case to  
17 excuse a certain number of jurors without giving any particular reason.  
18 Depending upon the case, each side may be permitted to excuse a certain  
19 number. In this case it's ten each. And uh, and then there's some additional  
20 ones if there's alternates that are selected.

21       Now, I want to ask each of you uh, please stand and raise your hand to  
22 take an oath. Do you and each of you solemnly swear or affirm under the  
23 penalties of perjury that you'll give true answers to all questions put to you  
24 concerning your qualifications to sit as jurors in this case which is now the

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**VOIR DIRE**

1 subject for trial, so help you God? If so, say, "I do".

2 VENIRE OF JURORS: I do.

3 THE COURT: Please be seated, ladies and gentlemen. Now, I  
4 meant to mention uh, most of you probably know, my name is Roger Davis and  
5 I'll be the Judge in this case. And the attorneys will introduce themselves. Let's  
6 start with the prosecution.

7 THE STATE (MS. FLANIGAN): My name is Julie Flanigan. I'm a  
8 Deputy Prosecutor here in Harrison County.

9 MS. LAUREN WHEATLEY: Good morning. My name is Lauren  
10 Wheatley. I'm also a Deputy Prosecutor.

11 MS. SCHULTZ: Good morning, ladies and gentlemen. My name is  
12 Susan Schultz. I am (unintelligible).

13 THE COURT: Okay. And uh, now I'm going to uh, call some of you  
14 up to uh, take seats in the jury box. And uh, as I call your name, come on up  
15 and take a seat in the uh, front row, first seat closest to the front of the  
16 courtroom. Malcolm Etell. If I mispronounce anyone's name, let me know so  
17 that I can get it right and the lawyers can get it right. Okay? And uh, Mark  
18 Temple. First seat, first row closest to the front of the courtroom, sir. Terry  
19 Crone. Brian Hildebrand. Craig Hunter. Try to stay in order, that way the  
20 lawyers can keep track of who you are and uh, match up your questionnaires  
21 and the answers and uh, make it a little easier for them to ask questions to you.  
22 So I've got Mr. Etell, Mr. Temple, in the third seat Mr. Crone, fourth seat Mr.  
23 Hildebrand, and the fifth seat uh, Mr. Hunter. Kenneth Downey. Conrad  
24 Marjoram. And uh, and the next, starting in the uh, second row, Heather Snyder.

25

**VOIR DIRE**

1 And uh, Heather and any of the rest of you in the second row, if you come  
2 around, walk around in front of the first row, and it's easier for you to get into the  
3 second row there and have the proper seat. And there's plenty of room to get  
4 through there. And then, Heather Land-Spells. Kimberly Tuell. Peggy  
5 Bussabarger. Christine Lewis. Okay, in the second row we should have in the  
6 first seat Heather Snyder uh, Heather Land, Kimberly Tuell, Peggy Bussabarger  
7 and uh, Christine Lewis. Stephanie Ferree. And Michael Schickles.

8 Now, I have some questions for all of you. Those of you up front and  
9 those of you here in the back. And what we're going to do uh, before the lawyers  
10 ask you questions, I'm going to ask some general questions of all of you. And  
11 uh, and uhm, and then what's going to happen after that, the lawyers are gonna  
12 ask questions of the group up front. But when they start to ask questions of the  
13 group of front, I'm gonna release the rest of you and have you come back this  
14 afternoon because I'm sure you could find something other than sitting around  
15 the courtroom. However, you're welcome to stay. And uh, what will happen is,  
16 you will either be on the jury or off before the day is out. The group that is up  
17 here in the front, you'll either be on the jury or off before the morning is over with,  
18 or maybe shortly after lunch, after noon. But uh, we will not stop for lunch until  
19 we finish with the questioning of the first group. And then after lunch we'll start  
20 with the rest of the group and go as long as it takes until we have a jury. And uh,  
21 because of the number of challenges, that's the reason there's quite a few of you  
22 here.

23 And uh, so, now uh, in order, if any of you hear something that I say that  
24 you think applies to you, raise your hand. Now some of these may seem silly

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**VOIR DIRE**

1 questions, but trust me, they're not. Uh, the first one, are you a citizen of the  
2 United States? And because the jury list is taken from drivers license and  
3 income tax records uh, just the last trial we had, we had a uh, permanent  
4 resident individual that was here on the panel. So you have to be a citizen. If  
5 you're not, raise your hand. You have to be at least eighteen years of age. You  
6 must be a resident of Harrison County as of today. You might've been on the list  
7 and moved in the meantime. We've had that as well. You must be able to read,  
8 speak and understand the English language. You must not be suffering from a  
9 physical or mental disability that prevents you from serving on the jury. You must  
10 uh, not be under a guardianship appointment because of some mental  
11 incapacity. You must not be a person that's had your rights to vote revoked  
12 because of a felony conviction and not restored. If you're a law enforcement  
13 officer uh, you're not eligible to serve on this jury because it is a criminal case. Is  
14 anyone a law enforcement officer? Now if you have been on a jury within the  
15 last twenty-four months where you actually decided a case, got picked to sit on  
16 the jury, then uh, raise your hand. Uh, if you have, you can claim an exemption.  
17 If you uh, have been called to the courtroom within the last year, but you didn't  
18 get picked, if you physically showed up, just like some of you that are here today  
19 are going to be on the jury and others are not. Those of you that showed up  
20 today and don't end up on the jury, if you were in that position within the last  
21 year, then raise your hand. Okay. None of that applies to anyone. So none of  
22 you have served on a jury or have been called to the courthouse within the last  
23 two years.

24 If, now I should say that this case is titled the State of Indiana versus

25

**VOIR DIRE**

1 Lawrence E. Nunley. The State of Indiana has filed a five-count Information uh,  
2 and four counts of that Information allege uh, the defendant committed the  
3 offenses of Child Molesting, and the fifth count alleges a count of Dissemination  
4 of Matter Harmful to Minors. Now is there anyone who has formed or expressed  
5 an opinion about the outcome of the case, is unable to set aside that opinion and  
6 render an impartial verdict based on the law and the evidence? I wouldn't think  
7 that would apply unless you knew Mr. Nunley or knew something about the case.  
8 Does anyone know Mr. Nunley or know something about the case? Raise your  
9 hand if you do. None of you know Mr. Nunley. All right. Is anyone related within  
10 the fifth degree to any of the parties, the attorneys or the witnesses subpoenaed  
11 in the case? Now, let's forget about the witnesses. Anyone related to Mr.  
12 Nunley, to any of the lawyers that have been introduced?

13 Now, with respect to the witnesses, you have a perspective witness list?

14 THE STATE (MS. FLANIGAN): Yes, Judge.

15 THE COURT: Okay. Could you read those names very loudly to  
16 the perspective jurors? I think you've filed it and I don't have it in front of me. If  
17 you don't mind, go ahead and read that to them.

18 THE STATE (MS. FLANIGAN): The first witness will be Annie  
19 Young. Annie Young. Richard Caves. Tonya Caves. Tonya's maiden name  
20 was Tonya Fentress. Did anyone know her as Tonya Fentress? The Indiana  
21 State Trooper Kevin Bowling. Indiana State Trooper Detective William Wibbels.

22 THE COURT: Stand up, Mr. Wibbels, so they know who you are.

23 THE STATE (MS. FLANIGAN): Judge, juror number one.

24 THE COURT: Okay, sir?

**VOIR DIRE**

1 JUROR: Uh, I moved up in Harrison County in 1978 and I became  
2 friends with Little Billy. He's not that little.

3 THE COURT: We call him Little Bill, yeah. Okay. A lot of other  
4 people do too.

5 JUROR: Uh, I know his family. I know him.

6 THE COURT: Okay. You , you know him?

7 JUROR: He also helped me, he helped me. I had a flat tire.

8 THE COURT: You had a flat tire and he helped you with the flat  
9 tire?

10 JUROR: Well, he pulled up behind me and my jack was broken.  
11 He got his jack out of his cruiser and positioned his uh...

12 THE COURT: Okay. All right, now then so you're not related to  
13 him, but you know him?

14 JUROR: I know him. I know the family.

15 THE COURT: Okay, you know the family. All right. Okay. Now  
16 then uh, I appreciate you letting me know that. Now the fact that you know him,  
17 is that gonna effect your ability to render a fair and impartial verdict based on the  
18 law and the evidence?

19 JUROR: Uh, I like him a lot.

20 THE COURT: You like him a lot. Well...

21 JUROR: But I...

22 THE COURT: Well, you know uh...

23 JUROR: He's a nice guy. I really uh, I don't know how to answer  
24 that really.

**VOIR DIRE**

1 THE COURT: Okay. Well, let me put it to you this way.

2 JUROR: It could, it could. I mean I don't...

3 THE COURT: It could? Okay, now, Mr. Etell, let me put it to you  
4 this way. This is uh, and to everybody. Here in the courtroom, this a very  
5 serious matter, of course. Not only for the defendant, but also for the State. And  
6 if you're on the jury, it's a very serious job.

7 JUROR: Yes. I realize that. That's why I told you...

8 THE COURT: I understand that. Now, and you'll get these  
9 instructions from the Court. One of them would be how you evaluate the  
10 credibility of the witnesses and also evaluate the evidence. And so uh, the  
11 question has to do with, and, and, the lawyers are probably gonna ask you some  
12 more questions on this, I suspect. But my question is, would you able to follow  
13 the Court's instructions and evaluate his testimony the same as any other  
14 witness? Are you just gonna go ahead and believe anything that he says  
15 because you know him?

16 JUROR: I, I believe I could uh, follow those uh, those procedures.

17 THE COURT: Now, for example...

18 JUROR: Hopefully.

19 THE COURT: Hopefully. All right, now for...

20 JUROR: Yeah, hopefully. I, you know, I just didn't want to  
21 incriminate myself with the detective. You know, persuasive...

22 THE COURT: I understand. Okay, now Mr. Etell, and of course it's  
23 easy for the lawyers because the lawyers are used to this adversarial process  
24 and they're used to the idea that we uh, you know, have strong differences of

25



**VOIR DIRE**

1 opinion in the courtroom all the time. And uh, even though there are strong  
2 disagreements, you know, don't go away mad even if uh, you know, I've ruled  
3 against the lawyers and all these lawyers are all the time, you know, and they  
4 might get mad for a little bit and then they get over it. You know uh, so we're  
5 used to that. Uh, but...

6 JUROR: Could I ask...

7 THE COURT: So the question would be, if he didn't really, if they  
8 didn't really prove their case, then surely you're not gonna vote uh, on his side  
9 just because you know him, are you?

10 JUROR: No.

11 THE COURT: All right. So that's the crux of it. That's kind of really  
12 the crux of it. Are you just gonna go with one side or the other because you  
13 know Bill and apparently like him just because he's on this side of the case?

14 JUROR: I'd also like to be dismissed because my wife has terminal  
15 cancer. And I'd like...

16 THE COURT: That's an altogether different matter there, sir. Okay.  
17 And uh, so you're in the, is that pretty far along?

18 JUROR: Well, she's in remission right now. But it's, it's not  
19 curable. And she goes to the doctor quite often. Every four to six weeks she  
20 has...

21 THE COURT: Okay.

22 JUROR: And uh, cancer is sort of like fighting a war against the  
23 enemy. You shoot the first valley, regroup and come back and you shoot the  
24 second and the third.

25

**VOIR DIRE**

1 THE COURT: Okay, okay. Mr. Etell, why don't you come around  
2 here?

3  
4 BENCH CONFERENCE:

5 THE COURT: I'm sorry about your wife, sir. Uh, so, Mr. Etell, is it  
6 uh, fair to say that you're uh, don't want to be bothered with this?

7 JUROR: I don't have the, the capac..., due to the pressure from  
8 this...

9 THE COURT: Right.

10 JUROR: I've been married to the same lady for forty-one years  
11 almost

12 THE COURT: Okay.

13 JUROR: I don't think I could think uh...

14 THE COURT: Clearly?

15 JUROR: Clearly. All right.

16 JUROR: Because it's been, it's been a great pressure on my wife  
17 and I. I married a great woman and it's, I really, I mean this is a thing that...

18 THE COURT: Okay. You want to be doing something other than  
19 hanging around the courthouse?

20 JUROR: Yes. I want to be with her because she goes to the doctor  
21 every, every sixty..., I was with her from day one and let me say, your Honor, I  
22 hope she buries me. The day that, you know, they tell her she's got it, I cut her  
23 hair. Whenever she was in, you know, she had chemotherapy. And uh, so it  
24 wouldn't fall out. And I don't, I don't uh, I want to be there.

25

**VOIR DIRE**

1 THE COURT: Okay.

2 JUROR: If they tell her again, that's what I'm saying.

3 THE COURT: All right. I understand. Okay. Why don't you just  
4 step back for just a moment, sir?

5 JUROR: Yes sir.

6 THE STATE (MS. FLANIGAN): No objection.

7 MS. SCHULTZ: No objection.

8 (BENCH CONFERENCE ENDS)

9

10 THE COURT: Okay, Mr. Etell. Sir, you're excused.

11 JUROR: Thank you.

12 THE COURT: Uh, Virginia Collier. Is Virginia present? Come on  
13 up, Ms. Collier. Take that empty chair there. Okay, now then, let's see, okay,  
14 we were uh, okay, we were at uh, Little Bill, I think, as he's sometimes known.  
15 All right. Okay, the next witness?

16 THE STATE (MS. FLANIGAN): Donna Lloyd Black. Harrison  
17 County Officer Chris Walden. Kirsten Sanders. Kristen Nunley. That's all,  
18 Judge.

19 THE COURT: Okay. Perspective witnesses, Ms. Schultz?

20 MS. SCHULTZ: Judge, I think that the State has pretty much  
21 covered every one that we would have listed, other than uh, Kyle Nunley, who is  
22 also, also may be a witness in this case.

23 THE COURT: Kyle Nunley. Okay.

24 MS. SCHULTZ: And he is uh, Lawrence Nunley's son.

25

**VOIR DIRE**

1 THE COURT: All right, okay. And uh, all right, so if anyone is  
2 related within the fifth degree to the parties, the attorneys or any of their  
3 witnesses, perspective witnesses whose names who now have been mentioned  
4 to you, raise your hand. Nobody knows any of those people. Is there anyone  
5 that has a personal interest in the result of the trial in any way, shape or form? Is  
6 there anyone that's biased or prejudiced for or against either side in the case? Is  
7 there anyone on the jury panel that's been subpoenaed as a witness? All right.  
8 Is there anyone who is a defendant in a pending criminal case? You know, say  
9 you've got a pending check deception charge, or driving while suspended or, or  
10 drunken driving or anything. Anybody have a pending criminal case? Is there  
11 anyone who's formed or expressed an opinion about the outcome of this case  
12 either based on a conversation with a witness or reading or hearing about the  
13 testimony, or report of testimony, or for any other reason?

14 And..., all right, is there uh, is there anyone that's uh, under a sentence  
15 imposed for an offense? What I'm talking about there, let's say you got a  
16 reckless driving or a check deception or a shoplifting or drunken drive or uh, any  
17 kind of a uh, offense, it would probably be a uh, a less serious case, and you  
18 were placed on probation, had a suspended sentence and you were out of jail,  
19 you would still be under a sentence imposed for an offense, if you were on a  
20 suspended sentence. Does any of that apply to anybody? Is there anybody  
21 that's on probation, or parole or anything like that? Nothing like that.

22 And uhm, now I want to preface my next question with a little information.  
23 Uh, now you know, you've heard me say what the charges are against the  
24 defendant. So you all know it's a serious case. Serious for the defendant,

25

**VOIR DIRE**

1 serious for the State. And uh, none of you probably really want to be here today.  
2 You would rather probably be uh, on with your own lives. But now if uh, if any of  
3 you or your family members were victimized, then you'd want ordinary citizens to  
4 show up to serve on a jury. On the other hand, if you were accused of  
5 committing a crime, that you felt you were innocent of, you'd want ordinary  
6 people to show up to serve on a jury, so that a good fair and impartial jury could  
7 be found to try your case. Uh, and this is a very basic and important part of our  
8 system of government where ordinary people decide whether someone is guilty,  
9 and therefore subject to going to jail or prison or not. The ordinary people  
10 decide, not the government bureaucrats. All right? So this is a very important  
11 part of our government, not to be taken lightly. Uh, and regardless of what side  
12 you might be on, whether you or a family member were a defendant or whether  
13 you or a family member or uh, a victim, so this is very important. It can't happen  
14 unless you show up. Now, I want you to think about it in that context. So this is  
15 inconvenient, pretty much for everybody. But my question does not refer to mere  
16 inconvenience. Uh, but it's something more than that. Now, if anyone thinks that  
17 they have a hardship, an extreme inconvenience or some necessity that they  
18 cannot serve on this jury, you should raise your hand. All right. Nobody's raising  
19 their hand, all right, okay.

20 Now then uh, is there anyone that thinks that they uh, can't serve on this  
21 jury for any other reason? Anything that I haven't mentioned? Okay, there's a  
22 couple of people. Come on up here. Just come right up front and we'll talk  
23 about it, both of you. Come on up here. And I'll tell you what, why don't you, if  
24 you would, sir, tell me your name.

25

**VOIR DIRE**

1 JUROR: James Wiseman.

2 THE COURT: Mr. Wiseman, what, do you remember your number?

3 JUROR: Uh, thirty-four, I think.

4 THE COURT: Thirty uh..., Wiseman. What was your first name?

5 JUROR: James

6 THE COURT: James Wiseman.

7 COURT REPORTER: Three-thirty-two, Judge.

8 THE COURT: Three-thirty-two, three-thirty-two, okay. Mr.

9 Wiseman, sir, what's the nature of it, if you can tell the Prosecutors and me what,  
10 what's going on? Why do you...

11 JUROR: I've got diabetes real bad, and I've got high blood  
12 pressure real bad. And...

13 THE COURT: Okay...

14 JUROR: It's hard for me to sit still very long because, you know,  
15 going to the bathroom and stuff like that. And uh...

16 THE COURT: Sometimes we're in and out of the court so often I  
17 feel like we can't get anything done, you know.

18 JUROR: Yeah.

19 THE COURT: I'll tell you what uh, now let me ask you this. Here's  
20 the thing that I would say. We will accommodate anyone. If you were to be  
21 selected on the jury, all you would have to do to go to the bathroom, we'd put  
22 you over here on the end and, and you can just raise your hand and say, "Judge,  
23 I'm going to the bathroom", and just walk right out the door and go to the jury  
24 room and go to the bathroom.

25

**VOIR DIRE**

1 JUROR: Yeah.

2 THE COURT: Uh, uh, and...

3 JUROR: I get nervous and I get sick a lot of times.

4 THE COURT: I'm sorry?

5 JUROR: I get nervous a lot and it goes up and down when I do  
6 that.

7 THE COURT: Right.

8 JUROR: I've got to get to my pills or get a, you know, or...

9 THE COURT: Well, we would supply you with sugar and food and  
10 uh, right in the jury room. You know, we always have stuff right there in the jury  
11 room, drinks and everything. Are you type one or type two? If you...

12 JUROR: One.

13 THE COURT: One?

14 JUROR: Yeah.

15 THE COURT: Okay, do you have to give yourself shots then?

16 JUROR: No. I just take uh, a couple of pills a day.

17 THE COURT: Okay...

18 JUROR: And...

19 THE COURT: Do you..., I know some people say they have  
20 difficulty with memory. Are there issues with that?

21 JUROR: I do, I do. Because a lot of times I'll get real dizzy and I'll  
22 get real weak and stuff like that. But then I either have to go, you know, some  
23 place or do something like that.

24 THE COURT: Okay. Now, I guess what I want to say to you is, with

25

**VOIR DIRE**

1 respect to any kind of disability or any kind of medical issues or anything, if you  
2 needed to stand up, we'd put you on the end. You could stand up during the  
3 trial, if you wanted to. We'll take frequent breaks. We'll have uh, food available  
4 for you, with or without sugar. We'll have nuts. We'll have something that  
5 doesn't have a lot of sugar. We'll do whatever it takes uh, to accommodate you.  
6 If you feel like there's any that you could...

7 JUROR: I still like to, you know, I really don't want to put myself  
8 through that. But, you know, I don't want to sit here and, you know, it's not that I  
9 don't want to help none. It's just I don't want to sit here and I don't want to sit  
10 here sick. You know, I don't want to be all nervous and all upset and, you  
11 know...

12 THE COURT: Okay...

13 JUROR: I won't be no good to nobody like that.

14 THE COURT: All right, okay.

15 JUROR: I'm just trying to be honest.

16 THE COURT: I understand. And I appreciate you coming out and  
17 coming forward and telling me. And uh, and now, Mr. Wiseman, sir, you have  
18 type one. And uh, you, you have to take your blood sugar several times a day,  
19 don't you?

20 JUROR: Then I take my blood pressure. I've got to take it.

21 THE COURT: Okay, okay. Certainly stress of making an important  
22 decision, that would, stress of any kind makes it worse, doesn't it?

23 JUROR: Yes, it does. It makes it worse.

24 THE COURT: Yeah, okay, all right. Well, I'll tell you what. Uh, why  
25



**VOIR DIRE**

1 don't you pull up a chair. I'm gonna let the lawyers think about that for a minute.

2 Before..., they may want to ask you questions. So grab that chair over there.

3 And then, sir, what's your name and number?

4 JUROR: Joseph McPhillips.

5 THE COURT: McPhillips? What number, if you remember?

6 JUROR: I don't know.

7 THE COURT: Okay. McPhillips. Three-sixty-seven, maybe?

8 COURT REPORTER: Yes, Judge.

9 THE COURT: Yes, Joseph McPhillips. Okay, sir, what's going on  
10 with you?

11 JUROR: Uh, just financial, money. I just work hourly. And this is  
12 going to put me in a really bad bind, as far as like this week I'll be missing all..., I  
13 don't get paid if I'm not at work. Then if this goes for a week, as you're talking  
14 about, and then next week is another short week for me, which makes it tough  
15 on me to make my bills.

16 THE COURT: Okay. Well, we're not gonna be here..., this is  
17 Indiana, not California or New York or some place. We're gonna be done by the  
18 end of the week, and that's the latest. We might even be done before the end of  
19 the week. What do you all think? You think Thursday or... Thursday would be  
20 the earliest or maybe Friday.

21 THE STATE (MS. FLANIGAN): Yes, Judge.

22 THE COURT: Okay. So it might go through Friday. Okay, well,  
23 who do you work for, sir?

24 JUROR: I'm a sheet metal worker, construction work.

25

**VOIR DIRE**

1 THE COURT: Where, do you work self-employed or are you...

2 JUROR: I work for someone.

3 THE COURT: Who, who do you work for, sir?

4 JUROR: ...Haas Heating and Air out of Henderson, Kentucky.

5 THE COURT: Out of Henderson, Kentucky. Okay.

6 JUROR: Yes. I'm working in Louisville. It's...

7 THE COURT: What uh, does your wife work, sir?

8 JUROR: Yes.

9 THE COURT: Okay, what kind of work does she do?

10 JUROR: A dental assistant.

11 THE COURT: Okay. But you're, you're, you're saying you're  
12 stretched in right at the moment?

13 JUROR: Very much so. I mean if you..., you cut me a week off this  
14 week, and then a short week next week, then I'm really gonna be stretched.

15 THE COURT: You're really gonna be stretched.

16 JUROR: That's it. I, you know...

17 THE COURT: But I don't have anything to do with next week, you  
18 understand?

19 JUROR: I understand. I'm...

20 THE COURT: We're not going to next week.

21 JUROR: I understand. I'm just telling you...

22 THE COURT: That next week is gonna be a short week anyhow?

23 JUROR: That's what...

24 THE COURT: Okay, next week is gonna be a short week anyhow.

25

**VOIR DIRE**

1 Okay, and you're gonna lose four day's worth of work. Well, you're actually  
2 gonna lose three days because you're gonna be losing today anyhow. Or most  
3 of it.

4 JUROR: I've already lost a day.

5 THE COURT: You've already lost a day.

6 JUROR: ...having the trial...

7 THE COURT: Okay, how much do you make, sir?

8 JUROR: I make uh, twenty-seven dollars an hour.

9 THE COURT: Okay. And uh, are you stretched within? You'll not  
10 be able to make your mortgage payment?

11 JUROR: Well, my mortgage is in foreclosure. That's stretched  
12 pretty thin.

13 THE COURT: Yeah, if you're in foreclosure, that's stretched pretty  
14 thin. So you're in foreclosure right now?

15 JUROR: Yes sir.

16 THE COURT: Okay. All right. Uhm, you lawyers want to ask Mr.  
17 McPhillips some questions?

18 MS. LAUREN WHEATLEY: Sir, would you uh, be able to listen to  
19 what is being presented to you during the trial? Or would you be concentrated  
20 on your financial status and the bills that need to be paid and the money that you  
21 could be making?

22 JUROR: Well, probably that. But I mean I'd probably have that too.

23 MS. LAUREN WHEATLEY: Okay. And would that maybe cloud  
24 your thinking a little bit? Maybe paying more attention to that than what was

**VOIR DIRE**

1 being said?

2 JUROR: I wish I could say no. But probably.

3 MS. LAUREN WHEATLEY: We appreciate your honesty and that's  
4 what we ask for. Thank you.

5 THE COURT: Ms. Schultz?

6 MS. SCHULTZ: If you were sitting in deliberation and you felt firmly  
7 convinced one way or the other, and everybody else was against you, would you  
8 change your opinion just to get out of, out of the jury room?

9 JUROR: Yes, yeah.

10 MS. SCHULTZ: I don't have any further questions.

11 THE COURT: Okay. Uhm, does uh, the State or the defendant  
12 have any uh, objection to excusing Mr. McPhillips?

13 MS. SCHULTZ: I don't object.

14 THE STATE (MS. FLANIGAN): The State does not object, Judge.

15 THE COURT: All right, Mr. McPhillips, you're excused, and, and if  
16 you need anything..., well, it's not gonna help you because they're not gonna pay  
17 you anyhow. But if you want anything to document that you were here...

18 JUROR: Okay.

19 THE COURT: All right, okay. Now, Mr. Wiseman, I believe it was.

20 JUROR: Yes.

21 THE COURT: Come on back up here and let's see whether the  
22 lawyers have any questions for you. Uh, you all have any questions for Mr.  
23 Wiseman?

24 THE STATE (MS. FLANIGAN): Mr. Wiseman, did you hear what

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**VOIR DIRE**

1 Ms. Wheatley asked the other gentleman, would he be unable to sit and think  
2 about the trial and listen carefully because of his situation?

3 JUROR: I couldn't, because, like I said, you know, I'm nervous and  
4 wouldn't be, I wouldn't be committed to that. You know, I probably would.

5 THE STATE (MS. FLANIGAN): So you couldn't sit here in the box  
6 and listen to the evidence as it's presented?

7 JUROR: I doubt it. I mean right now, having to stand here...  
8 (unintelligible), so I doubt it.

9 THE STATE (MS. FLANIGAN): Okay.

10 THE COURT: Ms. Schultz?

11 MS. SCHULTZ: You're a person that's not used to standing up in  
12 front of other people and talking. Is that right?

13 JUROR: No. Right.

14 MS. SCHULTZ: That makes you really nervous?

15 JUROR: It makes me really nervous. And when it does, it makes  
16 me sick and makes my blood pressure go up. And I, you know, I just...

17 MS. SCHULTZ: Whacks your whole system out?

18 JUROR: Yeah, my whole system.

19 MS. SCHULTZ: All right. I have no other questions.

20 THE COURT: Any objections to excusing Mr. Wiseman?

21 THE STATE (MS. FLANIGAN): No, Judge.

22 MS. SCHULTZ: No.

23 THE COURT: Sir, you're excused. Thank you very much for  
24 coming. Okay, ma'am, tell me...

**VOIR DIRE**

1 JUROR: Three-six-one. Sasena, S-a-s-e-n-a.

2 THE COURT: Okay, three-sixty-one. I'm sorry? You are three-  
3 fifty-nine. Deborah Sasena?

4 JUROR: Right.

5 THE COURT: Okay.

6 JUROR: I've hardly heard anything that you've said.

7 THE COURT: Okay.

8 JUROR: I have hearing aides and...

9 THE COURT: Oh, well, you know what? We've got these hearing  
10 assist devices.

11 JUROR: You have a special thing for me?

12 THE COURT: Yeah, absolutely. Yes, we do. Why don't you come  
13 right over here? They'll fix you up with it and uh, uh, then you'll be able to hear  
14 things better. I tell you what, have a seat right there. They're gonna get that,  
15 and then we'll come back to you. And then after you use this a little bit, then you  
16 can see whether or not it works, you know, and if it seems like it works well  
17 enough for you, then you can hang around. Okay?

18 JUROR: Uh huh.

19 THE COURT: Is that the only issue?

20 JUROR: Yeah. I can only if I'm facing you. But I didn't hear  
21 anything that anybody said that was up here.

22 THE COURT: Okay. We'll come back to you on that. Uh, let them  
23 fix you up with that and then we'll see how things go. Anybody else? Yes sir?  
24 Come up front. Uh, sir, your name and number, if you remember it?

25

**VOIR DIRE**

1 JUROR: My name is Willis Jantzen.

2 THE COURT: Jantzen, okay.

3 JUROR: I think I'm three-ninety-eight, I believe, or three-eighty-  
4 nine.

5 THE COURT: Willis Jantzen, three-ninety-eight. Okay, Mr.  
6 Jantzen, sir, what's up?

7 JUROR: Uh, the only thing, the problem I have is I work third shift,  
8 and we start at seven o'clock and uh...

9 THE COURT: Do you...

10 JUROR: I have no problem with coming here and doing this. Just  
11 as long as I have documentation that gets me off work from being here all day  
12 and then having to go in at night.

13 THE COURT: Who do you work for, sir?

14 JUROR: IKON Metal Forming.

15 THE COURT: That won't be a problem. That's won't be a problem.  
16 I'll call them up personally if necessary.

17 JUROR: Okay, sir.

18 THE COURT: You just give me the name of the guy running the  
19 place and I'll call him up. It won't be a problem.

20 JUROR: That would be Lorinda Sturgeon.

21 THE COURT: Uh, Lorinda Sturgeon. Uh, Lorinda...

22 JUROR: Nicole Sturgeon.

23 THE COURT: Nicole, all right. Okay, Nicole...

24 JUROR: I just don't want to have to...

25

**VOIR DIRE**

1 THE COURT: I understand.

2 JUROR: ...be here all day and...

3 THE COURT: No, I won't, wouldn't want you to.

4 JUROR: Go all night, and that's, that's a lot of me.

5 THE COURT: Okay, and what's the phone number down there?  
6 738...

7 JUROR: Uh, fifty-nine hundred.

8 THE COURT: Fifty-nine hundred. That won't be a problem. If you  
9 get selected on the jury, I'll call them up and tell them that "Willis is gonna be  
10 with us a few days. Don't expect him. If you try to cause him any trouble, you're  
11 gonna have to answer to me. You won't like it."

12 JUROR: Yes sir.

13 THE COURT: That's what I'll be telling them, if necessary. Okay?

14 JUROR: Okay.

15 THE COURT: All right, thank you. Anybody else? Okay. Uhm,  
16 well, uh, you think, what do you think, Ms. Sasena?

17 JUROR: It's not working for me, and I can't use it with my hearing  
18 aide in, while it's in my ear.

19 THE COURT: Oh, oh...

20 JUROR: It's in my ear.

21 THE COURT: Okay, you've got a uh, is it in both ears? The  
22 hearing aides?

23 JUROR: I'm hard of hearing in both ears.

24 THE COURT: Okay. You have hearing aides in both?

25



**VOIR DIRE**

1 JUROR: I, I don't wear both because this one is broke.

2 THE COURT: Okay. But what about, what about, can you use it,  
3 use it...

4 COURT REPORTER: We turned it up and they make real loud  
5 noises.

6 JUROR: Buzz, when I turn it up louder so I can hear. I just get  
7 buzz.

8 THE COURT: So you can't really tell what I'm saying unless you  
9 read my lips?

10 JUROR: Yes, look this way.

11 THE COURT: This way. Okay, all right.

12 JUROR: I read lips.

13 THE COURT: Okay, come on up here, Ms. Sasena. So you think  
14 that doesn't work for you? Okay, so...

15 JUROR: I'm afraid I would make a decision if I didn't hear. And I  
16 don't know if I could keep saying, "Excuse me, what did he say?"

17 THE COURT: Would the lawyers come forward please?

18 JUROR: It's very important.

19 THE COURT: Yes, that's right. It's very important. It's very  
20 important to hear everything. Okay. So uh, you really are..., is this something  
21 that happened, or is it something that happened...

22 JUROR: It's hereditary.

23 THE COURT: Hereditary? Okay, you were born with it, okay.

24 JUROR: And I'm a waitress and I have a hard time. Sometimes

**VOIR DIRE**

1 people go like...

2 THE COURT: Oh, yeah...

3 JUROR: Yeah, I gotta look around like..., I count on seeing what  
4 their lips are...

5 THE COURT: Right. You've learned to read lips from early age,  
6 okay.

7 JUROR: I was wishing you had closed captioning here. That would  
8 be really cool, you know.

9 THE COURT: Closed captioning. Well, well, maybe we could go to  
10 the county council and see whether they'd want to spend on that. I have a  
11 feeling the answer would be no, I don't think so. But...

12 JUROR: But I would be afraid that I wouldn't hear something and I  
13 wouldn't able to make the right decision by not hearing what somebody said.  
14 Especially if it pertains to the...

15 THE COURT: Okay. Of course, I regularly tell people that are a  
16 little bit hard of hearing that we can accommodate them with the hearing assist  
17 device. We'll ask people to repeat the questions, repeat the answers. I always  
18 tell the people that are on the jury, any time you don't hear anything, raise your  
19 hand and make them talk louder. Usually it's not a problem with lawyers. But  
20 uh, so it's way beyond that for you?

21 JUROR: I'm a eighty-loss, sixty-loss.

22 THE COURT: Okay, all right. Questions?

23 MS. SCHULTZ: No, I don't have any questions.

24 THE COURT: What do you think, Ms. Schultz?

**VOIR DIRE**

1 MS. SCHULTZ: I think that since we're involved with a child here,  
2 and sometimes it's rather difficult to uh...

3 THE COURT: Hear.

4 MS. SCHULTZ: Get kids to talk loudly enough to hear, that it would  
5 probably be a problem.

6 THE COURT: Okay. So you do not object to excusing Ms.  
7 Sasena?

8 MS. SCHULTZ: No, I don't. We'd love to keep her. But I want to...

9 THE STATE (MS. FLANIGAN): And I agree with Ms. Schultz. So...

10 THE COURT: Okay. All right, let's see, Ms. Sasena, what was your  
11 number, ma'am?

12 JUROR: Three-five-nine.

13 THE COURT: Three-fifty-nine, okay. All right, Ms. Sasena, okay,  
14 all right, you're excused. Thank you very much for coming. I'm sorry we couldn't  
15 keep you. All right. Okay, is there anybody else that thinks they have an issue?  
16 Anybody else? All right, then uh, uhm, okay. Now the lawyers are going to uh,  
17 have questions for you. And uh, now then, for those of you that are in the back  
18 of the courtroom, I'd like for you to come back at one-thirty. Uh, because I don't  
19 think you want to sit around here and listen to these questions, and then come  
20 back in the afternoon and listen to the same ones. And uh, I don't want to uh,  
21 take any of your time that's unnecessary. And it won't benefit anybody for you to  
22 be here listening to the same questions that you may be asked this afternoon.  
23 So you're free to go. Come back no later than one-thirty. Hopefully we'll be  
24 ready at one-thirty. It might be a little later. But one-thirty, come back at one-

25

**VOIR DIRE**

1 thirty. Go to lunch, go read the newspaper, go shopping or whatever you want to  
2 do. Just come back at one-thirty. Okay? And then, those of you that are up  
3 front, you get hang around and uh, and the lawyers are going to have some  
4 questions for you, and you'll either be on or off by the time you eat lunch today.  
5 All right. And uh, the State ready to proceed?

6 THE STATE (MS. FLANIGAN): Yes, Judge. Good morning. Uh,  
7 as I said earlier, my name is Julie Flanigan. I'm a Deputy Prosecutor here in  
8 Harrison County. And I'll reintroduce the people who you'll be sitting, see, who  
9 you'll see sitting at the table with you. This is Lauren Wheatley. She's also a  
10 Deputy Prosecutor in our office. And she is uh, working on this case with me.  
11 And Detective William Wibbels is with the Indiana State Police. Uh, I've  
12 introduced ourselves. I'd like to go through each of you and make sure that I  
13 have you uh, written down on my cheat sheet right so I can ask you questions  
14 directly. And that I'm pronouncing your names right. Uh, Ms. Collier?

15 MS. COLLIER: Yes.

16 THE STATE (MS. FLANIGAN): And you're Mark Temple, sir?

17 MR. TEMPLE: Yes.

18 THE STATE (MS. FLANIGAN): Mr. Crone? Brian Hildebrand?

19 MR. HILDEBRAND: Yes.

20 THE STATE (MS. FLANIGAN): Did I say that right? Hildebrand?

21 MR. HILDEBRAND: Yes.

22 THE STATE (MS. FLANIGAN): Craig Hunter? Mr. Downey?  
23 Conrad Marjoram?

24 MR. MARJORAM: Correct.

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**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Okay, great. Heather Snyder. And  
2 have Heather Land-Spells. Do you say both of your last names?

3 MS. SPELLS: It's just "Spells" now.

4 THE STATE (MS. FLANIGAN): Just Spells, okay. Kimberly Tuell?

5 MS. TUELL: Yeah.

6 THE STATE (MS. FLANIGAN): Peggy, is it Peggy Bussabarger?

7 MS. BUSSABARGER: Uh huh.

8 THE STATE (MS. FLANIGAN): Christine Lewis. Stephanie Ferree.  
9 And Michael Schickle. This is really my chance or the State's chance to ask you  
10 guys some questions. Uh, as the Judge said, we don't want to pry into your  
11 personal lives. You may already have felt like we did that with the questionnaire.  
12 Uh, does anyone know why we get to ask these questions or why I'm standing  
13 up here? Does anyone have any idea? Uh, I won't make you sit there and raise  
14 your hand. I'll tell you, it's so that we can have a fair trial, or the defendant, and  
15 for the State. And we need to find jurors that can listen to the evidence and  
16 apply them to the charges that the Judge, the Judge will tell you. So it's in order  
17 to get, to have a fair trial that we get to ask you questions and select a jury that  
18 we think would do the fair thing.

19 I'm going to ask you some questions as a panel. And as I do that, I may  
20 say, "Please raise your hand if...", or uh, I might ask you questions as an  
21 individual. For example, I might say, uh, "Mr. Temple, have you ever served on a  
22 jury before?" If I ask that to Mr. Temple, and you would like to say something  
23 different than Mr. Temple says, I would ask that you raise your hand. Or if you  
24 disagree with Mr. Temple. Because really we can have a discussion. You don't

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**VOIR DIRE**

1 have to sit there and remain silent if you really think it's something important that  
2 we should know about you or your thoughts. Uh, the other time I'd like for you to  
3 try to raise your hand, if you don't understand that I'm asking, or if I ask a  
4 question that's confusing, or you don't know what I'm trying to get, please raise  
5 your hand. Last night I was having dinner and was kind of explaining to my son  
6 what I would be doing today. And he said, "Oh, Mommy, please just ask them  
7 one question at a time because sometimes it's very hard to understand you." So  
8 would just ask that you please, if you don't know where I'm going, raise your  
9 hand and say, "Julie", or "Ms. Flanigan, could you restate that? I don't know  
10 where you're going with that." And I'm gonna start with some simple questions  
11 that I referred to with Mr. Temple earlier. Is there anyone on this panel who's  
12 ever served on a jury before? Ms. Bussabarger?

13 JUROR: No, I'm Lewis.

14 THE STATE (MS. FLANIGAN): Ms. Lewis, I'm sorry.

15 JUROR: Chris Lewis.

16 THE STATE (MS. FLANIGAN): I'm one over. Ms. Lewis, what type  
17 of jury was that?

18 JUROR: It was in Ohio. And uh, I mean I don't know...

19 THE STATE (MS. FLANIGAN): Do you remember what kind of  
20 case it was?

21 JUROR: It was a case of uh, Theft.

22 THE STATE (MS. FLANIGAN): Okay, how many years ago was  
23 that?

24 JUROR: Oh, heavens, probably before you were born. Uh, back,

25

**VOIR DIRE**

1 back in uh, late seventies.

2 THE STATE (MS. FLANIGAN): Uh, do you remember what  
3 happened with the case? Was there a conviction or...

4 JUROR: Yes, there was.

5 THE STATE (MS. FLANIGAN): Okay. And how did you find that  
6 experience? Did you enjoy being on the jury?

7 JUROR: Yes. I mean it was..., you know.

8 THE STATE (MS. FLANIGAN): No bad feelings from that?

9 JUROR: No.

10 THE STATE (MS. FLANIGAN): Thank you. Anyone else ever  
11 served on a jury? And, and now I'm going to shift gears, and it's a really big shift  
12 of gears. And, and I, I really hope that you all will answer these questions  
13 honestly because the Judge told you uh, this is a case involving uh, allegations  
14 of child molesting. And the Judge asked you if there was anyone who didn't  
15 think they could sit and listen to that. And I'm going to ask you again uh, is there  
16 anyone who's sitting on this panel who doesn't think that they could listen to that  
17 type of evidence? So everyone thinks that they could sit here and uh, listen to a  
18 child get on the stand and describe what she says happened to her?

19 JUROR: It would be hard, but...

20 THE STATE (MS. FLANIGAN): Okay. Mr. Crone?

21 JUROR: Yes.

22 THE STATE (MS. FLANIGAN): It would be hard, but could you  
23 listen to it?

24 JUROR: Uh, yeah.

25

**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Okay. And if the Judge instructed  
2 you on the law, could you apply the facts to the law and reach a verdict?

3 JUROR: Uh, I'd like to think so.

4 THE STATE (MS. FLANIGAN): Anyone else? And thank you for  
5 your honesty, Mr. Crone.

6 JUROR: I've got three granddaughters living with me, you know.

7 Uh, if something was done to them, I don't know what would happen there.

8 THE STATE (MS. FLANIGAN): Anyone else feel like Mr. Crone? I  
9 want to make sure I've got this right. Mr. Downey?

10 JUROR: Yeah.

11 THE STATE (MS. FLANIGAN): Mr. Downey, what are your  
12 thoughts?

13 JUROR: Uh, it would be hard to sit there and listen to it because I  
14 have a uh, step-son who was abused, and to keep from getting emotional about  
15 it.

16 THE STATE (MS. FLANIGAN): Uh, was that case prosecuted?

17 JUROR: Uh huh.

18 THE STATE (MS. FLANIGAN): And what happened with that  
19 case?

20 JUROR: Uh, the gentleman went to uh, jail. Uh, my sister was also  
21 abused.

22 THE STATE (MS. FLANIGAN): And what happened with her case?

23 JUROR: Uh, nothing became of that.

24 THE STATE (MS. FLANIGAN): Uh, knowing that about you, do you

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**VOIR DIRE**

1 think you could still sit here and listen to the evidence and apply it to the law?

2 JUROR: It would be hard to listen to it.

3 THE STATE (MS. FLANIGAN): But once you did listen to it, do you  
4 think you could take that and apply it to the law and reach a verdict?

5 JUROR: I would hope so. But...

6 THE STATE (MS. FLANIGAN): Thank you. Anyone else want to,  
7 to comment on that? Uhm, the other thing about this case is that there will be  
8 some testimony of, of a sexual nature, of a, what I would say would be a graphic  
9 sexual nature. Is there anyone who just thinks that they couldn't sit here and  
10 listen to that type of testimony and actually listen to it with an open mind? Mr.  
11 Crone, given what you said earlier, is there, what are your thoughts on that?

12 JUROR: It would be hard. I don't..., I mean it would uh, the, my  
13 grandchildren were placed with us. They was taken uh, by C.P.S. from their  
14 parents. Uh, they're in prison now. It uh, I don't know, you know. I'd like to say  
15 uh, I could sit here and do it, but I, you know, I'm not for sure, you know.

16 THE STATE (MS. FLANIGAN): And, Mr. Downey, is that, you feel  
17 kind of the same way?

18 JUROR: Uh, I hope I wouldn't be biased.

19 THE STATE (MS. FLANIGAN): Okay. That's fair enough. That's  
20 all, all I can ask you is to tell me the honest answers and to let me know. Uh, let  
21 me ask this a little bit differently. Is there anyone here on the panel who doesn't  
22 think that once you go back in the jury room and you have to sit down and  
23 discuss the evidence, that you could discuss testimony of a sexual nature with  
24 other people? Could anybody be too shy to talk about the evidence because of

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**VOIR DIRE**

1 the nature of it? Everyone thinks they could sit back in the jury room and, and  
2 use the words that were used at trial and not be too embarrassed to put in what  
3 they think when they're speaking? Ms. Tuell, do you think you could do that?

4 JUROR: Yeah. I mean if there's a little tear shed or something, is  
5 that gonna be a problem? I mean you have a little kid, and I don't know how old  
6 the child is, but if you have a kid up there, I mean..., I think there may be a tear  
7 shed. I mean I can't promise you that's not gonna happen.

8 THE STATE (MS. FLANIGAN): That, that's fair enough that there  
9 might be a tear shed.

10 JUROR: But I wouldn't be biased. I mean...

11 THE STATE (MS. FLANIGAN): Okay. And the real Ms.  
12 Bussabarger is next to you.

13 JUROR: Yes.

14 THE STATE (MS. FLANIGAN): Not Ms. Lewis. Ms. Bussabarger?

15 JUROR: No, I mean it would be hard to have to listen to what's  
16 said. And like she said, not, you know, I'm like her. I might shed a tear too. It  
17 will be hard, but you know, I hope I do my best and, and come to a clear  
18 conclusion.

19 THE STATE (MS. FLANIGAN): Okay. You think you could, even  
20 though it will be hard and may produce a tear or two, you could listen to it and  
21 apply that to the law?

22 JUROR: Yes.

23 THE STATE (MS. FLANIGAN): There's also uh, a charge in this  
24 case called Dissemination, and it has to do with uhm, pornography. Uh, is there

25

**VOIR DIRE**

1 anyone..., I'm gonna ask the same two questions. Is there anyone here who  
2 doesn't think that they could sit and listen to evidence about pornography? Is  
3 there anyone who would be too shy to discuss the evidence about the  
4 pornography back in the jury room? Mr. Hildebrand, do you think you could go  
5 back and discuss that?

6 JUROR: Yes, yes.

7 THE STATE (MS. FLANIGAN): Okay. So basically what I've seen  
8 through head shakes and people I've spoken is that as a panel, you think it might  
9 be difficult to listen to some of this, it may be emotional, but you can listen to the  
10 evidence, apply it to the law and reach a fair verdict. Is, is there anyone who  
11 doesn't think that they could do that? Okay. How about, has anyone uh, had  
12 any, has anyone ever worked with children? Uhm, and I'm not talking about how  
13 work with my children at my house every night doing their homework and uh,  
14 packing their lunches. I'm talking about, has anyone worked outside of the home  
15 uh, with children in a job involving children?

16 JUROR: You mean like volunteering or...

17 THE STATE (MS. FLANIGAN): Yes.

18 JUROR: Yeah, I have. School, yeah.

19 THE STATE (MS. FLANIGAN): Okay, Mr. Schickel, can you tell us  
20 how?

21 JUROR: Uh, just at my son's daycare. And it's like going to the,  
22 hosting the Halloween party last month or uh, working at the Trunk or Treat or  
23 something like that.

24 THE STATE (MS. FLANIGAN): Okay, how old is your son?

25

**VOIR DIRE**

1 JUROR: Five.

2 THE STATE (MS. FLANIGAN): All right. Uh, have you ever, did  
3 you receive any special training to do those kind of things? Or it's just as a  
4 parent you go to volunteer?

5 JUROR: Just volunteer.

6 THE STATE (MS. FLANIGAN): Okay. Uh, Mr. Crone?

7 JUROR: Yeah. We went through uh, foster parenting classes or  
8 whatever. Uh, and in that you go through uh, classes from uh, or they tell you  
9 about abused children uh, just everything to try to look for in children, you know,  
10 things that might, the children might do whatever later.

11 THE STATE (MS. FLANIGAN): Let me ask you this, Mr. Crone.  
12 Have you, you have custody of your grandchildren now?

13 JUROR: Right.

14 THE STATE (MS. FLANIGAN): Have you fostered other children?

15 JUROR: No.

16 THE STATE (MS. FLANIGAN): So this training you took just to  
17 become their foster parents?

18 JUROR: Right. Well, we've got one child that's not relation. It's a  
19 half-brother to the girl.

20 THE STATE (MS. FLANIGAN): A half-brother to one of your  
21 grandchildren?

22 JUROR: To two of the girls, right.

23 THE STATE (MS. FLANIGAN): All right, so you took all...

24 JUROR: But we didn't want to split the kids up, so we took him too.

25

**VOIR DIRE**

1 So...

2 THE STATE (MS. FLANIGAN): And you did go through some  
3 specialized training for that, some special...

4 JUROR: Uh, yeah.

5 THE STATE (MS. FLANIGAN): Okay, anyone else ever go through  
6 any special training to work with children? Okay. And how about other, like Mr.  
7 Schickel? Has anyone volunteered at their child or their grandchildren's uh,  
8 school? Ms. Lewis, what have you done?

9 JUROR: Uh, I did volunteer work in the mornings before going to  
10 work uh, with children uh, that were students, but this was when my own children  
11 were in school. My youngest one is gonna be thirty-three.

12 THE STATE (MS. FLANIGAN): Okay...

13 JUROR: So, we are going back. But uh, I was a volunteer teacher  
14 in the mornings, reading classes.

15 THE STATE (MS. FLANIGAN): How did you find that experience  
16 working with kids?

17 JUROR: Uhm, tell me what you...

18 THE STATE (MS. FLANIGAN): Well, did you enjoy it? Or was it  
19 something you, you enjoyed or you worked with the kids and decided, "that's not  
20 for me"?

21 JUROR: Oh, no. I enjoyed it. But I didn't, I wasn't paid, so I didn't  
22 have to go if I didn't enjoy it.

23 THE STATE (MS. FLANIGAN): Okay...

24 JUROR: I could understand why some of those kids had problems,

25

**VOIR DIRE**

1 because they have a lot of problems at home.

2 THE STATE (MS. FLANIGAN): And was it, was it Mr. Downey?

3 Did you raise your hand?

4 JUROR: Yes. Volunteered through Boy Scouts. I'm on the  
5 committee. And uh...

6 THE STATE (MS. FLANIGAN): Uh, were you with a troupe leader  
7 or...

8 JUROR: I'm just on the committee, and my son is in scouting also.

9 THE STATE (MS. FLANIGAN): How old is your son?

10 JUROR: Thirteen.

11 THE STATE (MS. FLANIGAN): Have you done that for a long  
12 time?

13 JUROR: Uh, six years.

14 THE STATE (MS. FLANIGAN): Is that something you really enjoy  
15 doing with them?

16 JUROR: Uh huh.

17 THE STATE (MS. FLANIGAN): I'm going to ask you, has anyone  
18 on this panel ever been involved uh, with a criminal case? You personally, have  
19 you ever been involved in a criminal case? Okay. Mr. Downey?

20 JUROR: With my, my uh, step-son.

21 THE STATE (MS. FLANIGAN): Okay, how were you involved  
22 there?

23 JUROR: Well, we were just uh, witnesses to some of the events  
24 that the abuse had had to him.

25

**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): How long ago was that?

2 JUROR: Uhm, about sixteen years.

3 THE STATE (MS. FLANIGAN): Anybody else here uh, Mr. Crone?

4 JUROR: Yeah. I have a son and his wife or whatever, you know,  
5 was arrested for drugs, convicted for uh, drugs and stuff.

6 THE STATE (MS. FLANIGAN): Was that here in Harrison County?

7 JUROR: Yes.

8 THE STATE (MS. FLANIGAN): And did you have any uh, bad  
9 feelings about that towards either the Prosecutor's Office or the police?

10 JUROR: No. I think Officer Wibbels arrested him, I think, one time.

11 THE STATE (MS. FLANIGAN): Okay...

12 JUROR: But, no.

13 THE STATE (MS. FLANIGAN): And you think uh, Detective  
14 Wibbels might've arrested him, but that doesn't that color your opinion on...

15 JUROR: No.

16 THE STATE (MS. FLANIGAN): ...what kind of work Mr. Wibbels  
17 would do on this case?

18 JUROR: Right, no.

19 JUROR: I had OWI's and stuff.

20 THE STATE (MS. FLANIGAN): Okay, that's fine. Let's talk about  
21 that a little bit. Have you had an OWI?

22 JUROR: Yeah.

23 THE STATE (MS. FLANIGAN): Was there here in Harrison  
24 County?

**VOIR DIRE**

1 JUROR: Yeah.

2 THE STATE (MS. FLANIGAN): And would that experience make  
3 you not be able to uh, give us a fair shake in this trial?

4 JUROR: No.

5 THE STATE (MS. FLANIGAN): And you didn't have a particularly  
6 bad experience with our office?

7 JUROR: Yeah. I mean I was in the wrong. So, I guess...

8 THE STATE (MS. FLANIGAN): Okay. Anybody else? Ms. Collier?

9 JUROR: My mother, she went to jail for drugs.

10 THE STATE (MS. FLANIGAN): Was that through Harrison County?

11 JUROR: Meade County.

12 THE STATE (MS. FLANIGAN): Meade County, over in Kentucky?

13 JUROR: Yeah.

14 THE STATE (MS. FLANIGAN): And would that color the way you  
15 would look at this trial? Not at all? You'd be able to give a fair look to our side  
16 and to the defendant's side?

17 JUROR: Yes.

18 THE STATE (MS. FLANIGAN): Yes?

19 JUROR: (male): How do you mean uh, what, rephrase the  
20 questions.

21 THE STATE (MS. FLANIGAN): Okay. Thank you. Thank you for  
22 asking me to do that. I guess the first part of that question being, have you ever  
23 been a defendant in a criminal case?

24 JUROR: Yes.



**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Okay, and how, what kind of a case  
2 was that?

3 JUROR: It was a federal case.

4 THE STATE (MS. FLANIGAN): What kind of a federal case?

5 JUROR: Uhm, drugs.

6 THE STATE (MS. FLANIGAN): Okay, how long ago was that?

7 JUROR: Twenty-nine years ago.

8 THE STATE (MS. FLANIGAN): Okay. Uh, what happened with that  
9 case?

10 JUROR: As far as...

11 THE STATE (MS. FLANIGAN): Were you convicted, found not  
12 guilty?

13 JUROR: Convicted.

14 THE STATE (MS. FLANIGAN): Did you serve any time on that?

15 JUROR: Yes.

16 THE STATE (MS. FLANIGAN): And you've been off probation, I  
17 guess, for a long time probably?

18 JUROR: Uhm, probably eighteen, fifteen years.

19 THE STATE (MS. FLANIGAN): So it was a one-time deal and you  
20 haven't been in any trouble since?

21 JUROR: That's correct.

22 THE STATE (MS. FLANIGAN): Okay. Tell me this uh, would that  
23 color your ability to give the State a fair chance in this trial?

24 JUROR: No.

25

**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Okay, would it color your desire to  
2 give Mr. Nunley a fair chance?

3 JUROR: No ma'am.

4 JUROR (male): Now does probation mean anything? Because I  
5 was on probation last month.

6 THE STATE (MS. FLANIGAN): I think the Judge asked you, and he  
7 asked you if you're...

8 THE COURT: You still on probation?

9 JUROR: No. I just got off last month.

10 THE STATE (MS. FLANIGAN): Oh, last month. Okay. Well, if  
11 you're off, you're off. So that's okay.

12 JUROR: I didn't know if there was any kind of period I had to have.

13 THE COURT: No. No, you're on or off, yeah. Okay, you're good to  
14 go as far as that's concerned.

15 JUROR: All right.

16 THE STATE (MS. FLANIGAN): Anybody else who directly uh, has  
17 been prosecuted? Any how about uh, anybody's immediate family? I think  
18 some people have shared that. And when I say "immediate family", I would  
19 mean, you know, wife, spouse, husband, children. Anybody who hasn't told me  
20 about something like that already? Okay, Ms. Schneider?

21 JUROR: Yeah, as far as the prosecution, it was a divorce trial, my  
22 husband. So his ex-wife was suing as far as that goes, some child care and  
23 things of that nature. So I was indirectly related to it, being married.

24 THE STATE (MS. FLANIGAN): Okay, so you divorced your ex-

25

**VOIR DIRE**

1 husband?

2 JUROR: No. My husband's ex-wife. So he was being sued. So I  
3 was encompassed into it because of the marriage.

4 THE STATE (MS. FLANIGAN): And when you say he was sued,  
5 that was a civil kind of thing?

6 JUROR: Correct.

7 THE STATE (MS. FLANIGAN): Never any criminal type case?

8 JUROR: No, no. Just civil.

9 THE STATE (MS. FLANIGAN): All right. I'm just trying focusing on  
10 criminal since that's why we're here.

11 JUROR: Yeah.

12 THE STATE (MS. FLANIGAN): Uh, anybody else? All right. How  
13 many of you or who on this jury panel watches any kind of legal show on  
14 television? C.S.I. or Law and Order? Me too. I like Law and Order. I don't  
15 know what you like. But uh, and you like..., Ms. Lewis, what's your favorite?

16 JUROR: Well, okay. My son is a prosecutor.

17 THE STATE (MS. FLANIGAN): Okay. Where is that?

18 JUROR: Well, he now works for the State of Kentucky. And my  
19 daughter-in-law is a prosecutor for Jefferson County. So these shows, they kind  
20 of chuckle at how real life isn't quite like that.

21 THE STATE (MS. FLANIGAN): And that's my point. This is not like  
22 Law and Order. This is not C.S.I. This case is not going to be over in an hour.  
23 Uh, I bet on Law and Order no one has ever seen someone stand up here and  
24 try to go through all these questions and try to pick a jury. You just have twelve

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**VOIR DIRE**

1 people in a box that some great opening, that some great speech writer wrote for  
2 them, evidence, conviction. That's how that goes. That's not what's going to  
3 happen here. And the other part of that and what I want to ask you about is uh,  
4 in a lot of those shows, there's scientific evidence that there's DNA in every  
5 case. And I want to make sure, and I'm gonna go through this with each of you,  
6 if I can. Uh, if there's not scientific evidence in a case like fingerprints or DNA  
7 uhm, are you not gonna listen to my case? Would that make you less inclined to  
8 convict in a case? Ms. Collier, would you be... if I couldn't bring fingerprints or  
9 DNA in this case uh, would you be less likely to believe the State's version of the  
10 events?

11 JUROR: No, not really. As long as you've got good evidence.

12 THE STATE (MS. FLANIGAN): Okay. So maybe if there's  
13 something else that's good evidence, would it bother you that there's no scientific  
14 evidence? Okay, how about you, Mr. Temple?

15 JUROR: Based, it's got to be based on the evidence that you bring  
16 forward.

17 THE STATE (MS. FLANIGAN): Okay, Mr. Crone?

18 JUROR: Yeah, probably the same.

19 JUROR: All right, Mr. Hildebrand?

20 JUROR: About the same.

21 THE STATE (MS. FLANIGAN): Mr. Hunter?

22 JUROR: Uh, yeah. Actually if it was all based on witness testimony  
23 and no, no physical evidence, I would probably have a little harder time with that.

24 THE STATE (MS. FLANIGAN): Okay, good. Thanks for being

25

**VOIR DIRE**

1 honest about that. You would want to see something more than just witness'  
2 statements?

3 JUROR: Yes, ma'am.

4 THE STATE (MS. FLANIGAN): Okay. Uh, Mr. Downey?

5 JUROR: I would want it to be uh, the testimony, see what the  
6 testimony is. Uh, if it's all one person's testimony, it almost needs something to  
7 back it up a little bit.

8 THE STATE (MS. FLANIGAN): Okay. Mr. Marj..., is it Marjoram?

9 JUROR: Marjoram, yes ma'am.

10 THE STATE (MS. FLANIGAN): How about you?

11 JUROR: Uhm, evidence and testimony, and I think both.

12 THE STATE (MS. FLANIGAN): So you'd like to see, not like some  
13 of these people who said if the testimony was there, they might, that might be  
14 enough. You would like to see some testimony and maybe some sort of  
15 scientific evidence.

16 JUROR: Yes.

17 THE STATE (MS. FLANIGAN): Okay, Ms. Schneider?

18 JUROR: I think what the evidence, whatever you provide would be  
19 sufficient.

20 THE STATE (MS. FLANIGAN): Okay, how about you, Ms. Spells?

21 JUROR: I agree with her.

22 THE STATE (MS. FLANIGAN): Okay, you agree with Ms.  
23 Schneider, that what we bring is what you have to listen to?

24 JUROR: Right.

**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): You wouldn't hold me to the burden  
2 or bringing in scientific evidence or DNA?

3 JUROR: As long as you've got the rest of it backed up.

4 THE STATE (MS. FLANIGAN): How about you, Ms. Tuell?

5 JUROR: That's kind of how I feel too. It would be nice to have  
6 scientific evidence, but you have to listen to all the evidence and take it from  
7 there.

8 THE STATE (MS. FLANIGAN): Okay. Ms. Bussabarger?

9 JUROR: Now I could go with listening to the evidence and what the  
10 witnesses have to say.

11 THE STATE (MS. FLANIGAN): How about you, Ms. Lewis?

12 JUROR: Okay, I can go without the scientific. I know that in real life  
13 that's not quite as easy to come by as they do on T.V. They have more money  
14 for it, let's face it. But if all you have is eye-witness, I know eye-witness is not  
15 your best..., how do I want..., it's not your best evidence. Uh, I would hope that  
16 you have something more than just eye-witness.

17 THE STATE (MS. FLANIGAN): Okay. Fair enough. Ms. Ferree?

18 JUROR: I would uh, listen to all the evidence and hopefully I would  
19 be able to feel comfortable with that.

20 THE STATE (MS. FLANIGAN): Okay. How about you, Mr.  
21 Schickel?

22 JUROR: I would have to go by way of the evidence given.

23 THE STATE (MS. FLANIGAN): Okay.

24 JUROR (Lewis): May I add one more thing?

25

**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Yes, please.

2 JUROR: I know that if all you have is eye-witness, and it's not that  
3 good, you wouldn't be here because you wouldn't have enough to get this far. I  
4 mean I know that because I am involved enough to know that. You have to have  
5 something.

6 THE STATE (MS. FLANIGAN): All right. Uhm, I'm gonna talk  
7 about some, some different types of evidence now. I'm going to talk about uh,  
8 direct evidence and circumstantial evidence. And I want to make sure that you,  
9 that everyone, just like I did with the physical or scientific evidence versus  
10 testimony, that everyone is comfortable understanding what the difference is  
11 between direct evidence, which is what someone saw or experienced, and  
12 circumstantial evidence. Uh, here's an example that I would use about  
13 circumstantial evidence. Sunday night my family had gone to a football game,  
14 and we came back and uh, this dog that we have that is just this dog we got at  
15 the pound, that is notoriously not good, was in the kitchen. And when we came  
16 in, my son's homework folder was ripped into little bitty pieces and it was all over  
17 the floor. And when we walked in, there was no direct evidence. There was no  
18 video tape of the dog eating the folder. Uh, the dog can't talk, so he couldn't tell  
19 us that he'd ate the folder. But that was circumstantial evidence that the dog  
20 ripped up the folder. And what I ask is, would you be comfortable with that kind  
21 of evidence, or would you need more? Would you need to find some of the  
22 folder in the dog's bed? Would you need to find some in his mouth? How much  
23 would you need to convict the dog of ripping up that folder? And, and uh, let's  
24 start with Mr. Schickel this time. Do you have any thought about that?

25

**VOIR DIRE**

1 JUROR: Uh, well, I think you would need a little more. I mean I  
2 would have to, once again, it would be whatever the other people say too,  
3 balancing it all. So I think as far as circumstantial goes, if it's just that, it would  
4 be hard for me. Uh, I couldn't, I couldn't just go with that.

5 THE STATE (MS. FLANIGAN): Okay. It wouldn't be enough to  
6 come in the door and the dog had been there and the folder is ripped up. You  
7 would need somebody who had maybe seen it or...

8 JUROR: Something, at least something else. Maybe, you know, if  
9 there was, I don't know, maybe other circumstantial evidence maybe. I don't  
10 know. But uh, not just that, I don't think.

11 THE STATE (MS. FLANIGAN): Okay. Anybody else want to  
12 comment on that or have a thought? Ms. Tuell? You're laughing. You'd convict  
13 the dog on the evidence...

14 JUROR: Was there only one dog there or was there two dogs?

15 THE STATE (MS. FLANIGAN): There was only one dog. Only one  
16 dog.

17 JUROR: I probably would be able to do that.

18 JUROR (male): I, I couldn't. I couldn't do that. I honestly couldn't.  
19 There's not enough evidence there. I mean anything can happen. We've  
20 learned this in life, and that wouldn't be enough to bring it to the table.

21 THE STATE (MS. FLANIGAN): Okay. What else would you need,  
22 would you think?

23 JUROR: Uh, let's see, paper hanging out of the dog's mouth. That  
24 would obviously be a good one. Uh...

25



**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Okay...

2 JUROR: Uhm, history of this, of a dog doing such a thing. That  
3 might be a good indicator. But once again, even with the history you can't that  
4 one hundred percent without knowing. So it's not enough.

5 THE STATE (MS. FLANIGAN): Okay.

6 JUROR: I can't punish my own dog if they do something wrong, if I  
7 don't know which one did it. You know, so...

8 THE STATE (MS. FLANIGAN): If I showed you the shoes I have  
9 one, if you looked real close, they're chewed up too? The heels of them, and I  
10 told you the dog did do that, and then the paper evidence, would that maybe...

11 JUROR: Not enough to sway me, no, still.

12 THE STATE (MS. FLANIGAN): Okay. All right, anybody else feel  
13 like Mr. Temple, that they need more?

14 JUROR (female): A dog can shred it, shred a folder, and the dog, it  
15 doesn't make the dog automatically guilty. I'm sorry.

16 THE STATE (MS. FLANIGAN): And Mr. Hunter?

17 JUROR: Yes.

18 THE STATE (MS. FLANIGAN): What would you think?

19 JUROR: Yeah, pretty much the same.

20 THE STATE (MS. FLANIGAN): All right. You'd need more.

21 JUROR (male): I'd need more too.

22 THE STATE (MS. FLANIGAN): Okay, Mr. Crone, you'd need more.

23 And I'm gonna move on now to what I do have to prove in this case. And this  
24 may be a little more difficult to uh, to listen to. But uh, what is it that I have to

25

**VOIR DIRE**

1 prove? Does anybody know what the standard is in a criminal case? What do I  
2 have to prove that my case...

3 JUROR (male): Beyond a reasonable doubt.

4 THE STATE (MS. FLANIGAN): All right. But what does that mean?  
5 Do you know, Mr. Crone? What's, what's beyond a reasonable doubt?

6 JUROR: It would mean that I wouldn't have any questions in my  
7 mind.

8 THE STATE (MS. FLANIGAN): Would it be, would you say it'd  
9 have to be a hundred percent sure?

10 JUROR: Yeah, before I could convict somebody of something, it  
11 would have to be.

12 THE STATE (MS. FLANIGAN): Definitely a hundred percent sure.  
13 But if the Judge instructed you that you only had to be firmly convinced. Okay, I  
14 see Mr. Temple shaking his head. You think you'd have to be a hundred...

15 JUROR: I can't put somebody or effect their lives to such a degree  
16 without being a hundred percent. I have to say that. I couldn't take it off of...,  
17 you must be mostly right because that's not a fair decision.

18 THE STATE (MS. FLANIGAN): Okay, how about Ms. Collier?  
19 You're shaking your head.

20 JUROR: I feel the same way, yes.

21 THE STATE (MS. FLANIGAN): Okay. So, Ms. Collier and Mr.  
22 Temple, Mr. Crone and Mr. Hunter...

23 JUROR (female): I would have to say that I'd have to be a hundred  
24 percent too.

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**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Let me give you an example of this,  
2 and let me see if this, if this, if it makes it any different for you. Uh, what two  
3 things that go on the top of it? What is that? Ms. Collier?

4 JUROR: Well, I can't see it very well, so...

5 THE STATE (MS. FLANIGAN): Okay, can anybody see it very  
6 well?

7 JUROR (male): It's the American flag.

8 THE STATE (MS. FLANIGAN): And it's an American flag. But how  
9 do you know it's an American flag.

10 JUROR (male): I've seen it for twenty-eight years.

11 THE STATE (MS. FLANIGAN): Okay. But I didn't bring it out and  
12 unroll it and count the fifty stars and the thirteen stripes, did I? No. Is everybody  
13 here firmly convinced that that's an American flag? Yes? And if there was, that  
14 was the type of evidence or if that was the type of evidence presented to you,  
15 could you convict?

16 JUROR (male): Okay, I have a problem for the simple fact that the  
17 flag and convicting somebody is two totally different things. I don't see it the  
18 same way you're seeing it there. That, okay, if you want me to examine the flag  
19 for evidence, I'll examine the flag to see if it's really an American flag. I assume  
20 it is. But that's still, once again, that compared to what's gonna happen to  
21 somebody's life is two totally different things to me.

22 THE STATE (MS. FLANIGAN): Ms. Collier, do you still feel the  
23 same way?

24 JUROR: Well, I'd have to see it, see if, I mean.

25

**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Mr. Hunter?

2 JUROR (Collier): If it's the flag, now that I can see it.

3 THE STATE (MS. FLANIGAN): Anybody else who wouldn't say that  
4 that's an American flag? All right. I'm gonna give you, there are five charges in  
5 this case of what I have to prove beyond a reasonable doubt. Five counts that I  
6 have to leave you firmly convinced that Mr. Nunley committed, okay? And the  
7 first one is uhm, Child Molesting. And the elements of that are that a person  
8 twenty-one years of age or older who, with a child under fourteen years of age,  
9 performs or submits to deviate sexual conduct. Now, the Judge with define  
10 deviate sexual conduct for you later. But that's what I have to prove, those  
11 elements. And if I'm able to firmly convince you of those elements, that's, those  
12 are the elements I would have to prove for count one, do you think that you could  
13 return a guilty verdict? Ms. Collier?

14 JUROR: Yes.

15 THE STATE (MS. FLANIGAN): Mr. Temple?

16 JUROR: If you can prove it.

17 THE STATE (MS. FLANIGAN): If I can prove it. And I'm going  
18 back to these three because they were the ones who indicated that they might  
19 need a little more proof or a hundred percent proof. Uh, how about you, Mr.  
20 Hunter? If I proved those elements to you...

21 JUROR: Yes ma'am. If I'm hundred percent certain, I would have  
22 no problem.

23 THE STATE (MS. FLANIGAN): All right. But how about if you were  
24 just firmly convinced, if you weren't a hundred percent certain?

25

**VOIR DIRE**

1 JUROR: I would honestly have a hard time.

2 THE STATE (MS. FLANIGAN): And does everyone understand  
3 that those are the elements that I have to prove? I don't have to prove other  
4 things that you might want to know, such as what did he have on that day. I  
5 don't have to prove that. Or what the alleged victim had on that day? Does  
6 everyone understand that only those elements, that's all I have to prove to you.  
7 Ms. Schneider, does that, do you understand that? Anybody disagree with that  
8 or think that's wrong, that I should have to prove more than, than those  
9 elements? Does anyone have any..., I've read you the statute or what uh, child  
10 molesting, the first count, will entail. Does anyone have any problem with the  
11 fact that the Legislature has made that a crime? And we all agree here that the,  
12 with the Legislature that that's appropriate, that the Legislature has made that a  
13 crime in the State of Indiana? Everybody a "yes"?

14 So, I'm gonna go back to the idea of a perfect case just a little bit. Uh,  
15 and I'm gonna focus maybe starting with Ms. Collier. Uh, do you, Ms. Collier,  
16 would you say that in a case you would need all of the information, all of the  
17 information or just most of the information in order to make a decision?

18 JUROR: I'd like to have all of it, if I could have all of it.

19 THE STATE (MS. FLANIGAN): Okay, what if you can't have all of  
20 it?

21 JUROR: Then you'd need to convince me that the information you  
22 have is right. And there's no doubt.

23 THE STATE (MS. FLANIGAN): If you could take what I've given  
24 you and you're, you're firmly convinced and don't have any doubt, you could

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**VOIR DIRE**

1 convict? How about you, Mr. Temple? Be a hundred percent?

2 JUROR: A hundred percent would definitely nice. If you could  
3 convince me a hundred percent, that's a different story. But a hundred-percent  
4 evidence would be the best scenario.

5 THE STATE (MS. FLANIGAN): What if there was less than a  
6 hundred percent?

7 JUROR: Than it leaves a little road for, you know, questioning, you  
8 have to see where those gaps were filled.

9 THE STATE (MS. FLANIGAN): Okay. Mr. Crone, what are your  
10 thoughts on that?

11 JUROR: I mean I would want to know that you're not presenting all  
12 the evidence to us anyway.

13 THE STATE (MS. FLANIGAN): Well, when I'm done I'm done, and  
14 that'll be up to you to use your common sense to see if, should there be more  
15 evidence. I mean what would make you think that I wasn't giving you all the  
16 evidence?

17 JUROR: Uh, I don't know. I mean, I don't know, I mean..., it uh, I  
18 would hope that you would uh, present all the evidence that there is in a case  
19 and not hold something back.

20 THE STATE (MS. FLANIGAN): Okay. I'm not talking about holding  
21 something back. I'm talking about if for some reason some of it, something  
22 doesn't exist in the case or I can't prove it uh, would you still be able to look at  
23 the evidence that I've given you and reach a verdict?

24 JUROR: Uh, yeah, I think so.

**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): Okay. How about you, Mr.  
2 Hildebrand?

3 JUROR: Questions?

4 THE STATE (MS. FLANIGAN): Yes.

5 JUROR: No. Your question?

6 THE STATE (MS. FLANIGAN): Right. My question is, if I, do you  
7 have, do I have to prove everything one hundred percent, everything, the whole  
8 case to leave you firmly convinced?

9 JUROR: It'd be nice if you're gonna make a conviction.

10 THE STATE (MS. FLANIGAN): But if I can't, is that automatically  
11 that you would find him not guilty?

12 JUROR: It would be the evidence in the case, I guess. What all  
13 you, what all you all put out there and they put out there.

14 THE STATE (MS. FLANIGAN): Let me ask you this. If I present my  
15 case and uh, it's enough evidence, it may not be a hundred percent of what you  
16 want, but it's enough to leave you firmly convinced of his guilt, would you be able  
17 to render a guilty verdict? How about you, Mr. Hunter?

18 JUROR: Uh, if I wasn't a hundred percent, I just, honestly would  
19 have a hard time.

20 THE STATE (MS. FLANIGAN): How about you, Mr. Downey?

21 JUROR: I would hope I didn't have to..., if you give enough  
22 evidence that we could make a decision one way or the other. Uh, just from the  
23 testimony and uh, the relevance of that testimony.

24 THE STATE (MS. FLANIGAN): So you think, Mr. Downey, you

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**VOIR DIRE**

1 could look at all the evidence or the testimony I give you and apply it to the law  
2 the Judge gives you and return a guilty based.., either guilty or not guilty based  
3 on what I've given you?

4 JUROR: Yes.

5 THE COURT: How about you, Mr. Marjoram?

6 JUROR: Yes.

7 THE STATE (MS. FLANIGAN): Do you have any, do you think so?

8 Okay. Anybody else? Let's just go through here, because I'm getting near the  
9 end and I just want to make sure. Ms. Schneider uh, if you're firmly convinced of  
10 the defendant's guilt uh, would you be able to return a guilty verdict?

11 JUROR: Absolutely.

12 THE STATE (MS. FLANIGAN): And how about you, Ms. Spells?

13 JUROR: Yes.

14 THE STATE (MS. FLANIGAN): Okay, Ms. Tuell?

15 JUROR: Yes.

16 THE STATE (MS. FLANIGAN): Ms. Bussabarger?

17 JUROR: Yes.

18 THE STATE (MS. FLANIGAN): Okay, how about you, Ms. Lewis?

19 JUROR: If I'm firmly convinced, yes, I can.

20 THE STATE (MS. FLANIGAN): Ms. Ferree?

21 JUROR: Yes.

22 THE STATE (MS. FLANIGAN): Okay. Mr. Schickel? All right. I'm  
23 going to ask you a couple more things, and one is uh, if an adult and a child were  
24 to give different versions of an event, would you tend to believe one more than

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**VOIR DIRE**

1 the other? I'm gonna start backwards again, because Mr. Schickel gets to sit  
2 back there. Would you, would you..., a child and an adult give different versions  
3 of an event...

4 JUROR: That's kind of tough, but yeah, I'd have, I think I would  
5 have to believe the child, I think. That's kind of tough because they don't..., but  
6 the, the adult, to me, understands the meaning of being under oath where a child  
7 may not, depending on the age of the child.

8 THE STATE (MS. FLANIGAN): Okay...

9 JUROR: But I would have to lean towards the child...

10 THE STATE (MS. FLANIGAN): Okay...

11 JUROR: Just because it's harder for them, I think.

12 THE STATE (MS. FLANIGAN): How about if the child was able to  
13 explain to you that she knew the meaning of the oath or she knew what it meant  
14 to...

15 JUROR: That would help, that would help.

16 THE STATE (MS. FLANIGAN): Ms., Ms. Ferree?

17 JUROR: I would have to listen to both sides. You can always tell  
18 too about, if they're fidgeting. I mean my kid's only two. So, he tells, he tells me  
19 "no" for everything. So uhm, yeah, I mean would have to listen to both sides.

20 THE STATE (MS. FLANIGAN): So it would depend on what each  
21 version was?

22 JUROR: Yeah.

23 THE STATE (MS. FLANIGAN): How about you, Ms. Lewis?

24 JUROR: I think that I would have to agree with her, that I can't sit

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**VOIR DIRE**

1 here and tell you that I'm gonna believe one over the other until I hear it all.

2 THE STATE (MS. FLANIGAN): Ms. Bussabarger, how about you?

3 JUROR: I'll have to agree with that, that I have to listen to each one  
4 to, for myself, to see who was telling the truth, or how it was.

5 THE STATE (MS. FLANIGAN): Ms. Tuell?

6 JUROR: That's how I feel.

7 THE STATE (MS. FLANIGAN): Ms. Spells?

8 JUROR: I want to hear both sides.

9 THE STATE (MS. FLANIGAN): Ms. Schneider?

10 JUROR: Listen to the both of them the same.

11 THE STATE (MS. FLANIGAN): Ms. Collier, I'm gonna come down  
12 here to you. What do you think?

13 JUROR: I'd have to listen to both of them and watch their actions.

14 THE STATE (MS. FLANIGAN): Okay. So it's a little more that you  
15 would want to see how, what their mannerism is or how they appear when they  
16 testify. Is that right? That's something that would be important to you. How  
17 about you, Mr. Temple?

18 JUROR: I'd have to listen to both. Uh, children are prone to lying.  
19 Usually they don't understand the ramifications of lying. Adults lie to get out of  
20 trouble. So it's a little hard either way you look at it.

21 THE STATE (MS. FLANIGAN): Okay, how about you, Mr. Crone?

22 JUROR: The same. I'd have to look at them both.

23 THE STATE (MS. FLANIGAN): Mr. Hildebrand?

24 JUROR: Listen to them and the emotions in the courtroom, I guess.

25

**VOIR DIRE**

1 THE STATE (MS. FLANIGAN): I'm sorry?

2 JUROR: The emotions in the courtroom.

3 THE STATE (MS. FLANIGAN): Maybe how the person acts?

4 JUROR: Yeah.

5 THE STATE (MS. FLANIGAN): All right, fair enough. Mr. Hunter?

6 JUROR: Uh, I don't think I would give anyone more credence over

7 the other one. But that's where I would like to have some physical evidence, or

8 scientific evidence to maybe push it in one direction.

9 THE STATE (MS. FLANIGAN): Mr. Downey?

10 JUROR: I would weigh them both the same. I'd want to see how

11 their testimony would relate to the evidence, other evidence that's presented.

12 THE STATE (MS. FLANIGAN): So you'd maybe take what each of

13 them says and look at all the other things that's come into evidence and make

14 your decision?

15 JUROR: If it fits, you know.

16 THE STATE (MS. FLANIGAN): Mr. Marjoram?

17 JUROR: I must agree. I'm gonna have to hear both sides.

18 THE STATE (MS. FLANIGAN): All right. I'm going to uh, tell you

19 that in the State of Indiana uh, your job, as the Judge will tell you, is to apply the

20 facts to the law. Uh, your job is not to determine what happens after that. In

21 other words, in Indiana, you do not sentence people. Uh, does that bother you

22 at all, that you would only get to apply the law to the facts and render a verdict?

23 Does it bother you that you're not able to sentence? Is there anyone who would

24 raise their hand and say, "Yeah, I think I should be able to render a verdict and

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**VOIR DIRE**

1 then say what the sentence should be"? No? How about, does anybody, does  
2 that relieve anyone, that after you decide guilt or innocent, that you do not have  
3 to impose a sentence? Does that make anybody kind of relieved about the job  
4 they have today? I see..., Ms. Ferree? You're shaking your head.

5 JUROR: Yes.

6 THE STATE (MS. FLANIGAN): Why is that?

7 JUROR: Because I don't want anybody's life in my hands. I mean  
8 their future or regardless of what they've done or haven't done.

9 THE STATE (MS. FLANIGAN): So you don't want to have to  
10 impose the sentence?

11 JUROR: No.

12 THE STATE (MS. FLANIGAN): But you don't, would you have  
13 problems listening to the evidence and applying it...

14 JUROR: No. I mean...

15 THE STATE (MS. FLANIGAN): ...to the charges?

16 JUROR: I could make a fair judgment on whatever I hear or what I  
17 don't hear. But I wouldn't want to make a decision on where somebody will be,  
18 you know, in the future.

19 THE STATE (MS. FLANIGAN): You don't want to sentence  
20 someone?

21 JUROR: No.

22 THE STATE (MS. FLANIGAN): Okay, anyone else that that kind of  
23 relieves? And I'm gonna ask you all to..., really the most important thing that you  
24 all can bring into this courtroom, and I think you've all displayed it through the

25