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31A01-1703-PC-547

IN THE
INDIANA COURT OF APPEALS

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

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

TRANSCRIPT OF EVIDENCE

VOLUME II OF IV

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JUL 17 2009



VOIR DIRE

1 answers to your questions, is your common sense. Uh, does everyone think that
2 bringing your common sense into here, and listen to the evidence uh, apply it to
3 the charges or the elements that I read you on, that the Judge will give you at the
4 end of the trial, and uh, if I've left you firmly convinced, that you could return a
5 verdict of guilty? Uh, I'm gonna go out of order this time. Mr. Hunter, if I do that,
6 can you return a guilty verdict?

7 JUROR: Yes, ma'am. But I would still like to be one hundred
8 percent.

9 THE STATE (MS. FLANIGAN): How about you, Ms. Lewis?

10 JUROR: I, I don't think you can be one hundred percent unless
11 we're there watching what happened. So you'd have to convince me beyond a
12 doubt.

13 THE STATE (MS. FLANIGAN): Okay, firmly convinced. Is that
14 what you would need?

15 JUROR: Yes.

16 THE STATE (MS. FLANIGAN): Okay. How about you, Ms. Ferree?

17 JUROR: Yes. I would have to be firmly convinced.

18 THE STATE (MS. FLANIGAN): How about Ms. Tuell?

19 JUROR: Firmly convinced.

20 THE STATE (MS. FLANIGAN): Mr. Temple?

21 JUROR: Yes.

22 THE STATE (MS. FLANIGAN): Would that be yes, you'd have to
23 be firmly convinced?

24 JUROR: Yes.

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1 THE STATE (MS. FLANIGAN): But if you're firmly convinced, you
2 wouldn't have any problem of returning a verdict of guilty?

3 JUROR: No.

4 THE STATE (MS. FLANIGAN): Ms. Collier? How about you, Ms.
5 Schneider?

6 JUROR: Yes.

7 THE STATE (MS. FLANIGAN): And Ms. Spells?

8 JUROR: Uh huh.

9 THE STATE (MS. FLANIGAN): Mr. Downey?

10 JUROR: Firmly convinced.

11 THE STATE (MS. FLANIGAN): Okay. But no problem of returning
12 a verdict of guilty if you're firmly convinced? Is that right? No problem?

13 JUROR: Yeah.

14 THE STATE (MS. FLANIGAN): Mr. Marjoram?

15 JUROR: No, ma'am.

16 THE STATE (MS. FLANIGAN): How about Mr. Hildebrand?

17 JUROR: No, ma'am.

18 THE STATE (MS. FLANIGAN): Mr. Crone?

19 JUROR: No problem.

20 THE STATE (MS. FLANIGAN): Mr. Schickel? All right. Finally to
21 you, Ms. Bussabarger. Any problem?

22 JUROR: No. As long as you present it and I'm convinced, I can,
23 you know, say guilty, as long as I believe what all has been said is the truth.

24 THE STATE (MS. FLANIGAN): All right. I'm going to give Ms.

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1 Schultz to ask you all some questions.

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3 EXAMINATION BY DEFENSE:

4 MS. SCHULTZ: Good morning, ladies and gentlemen. I always
5 feel that I get thrown off kilter when I have to sit here and listen to them go first.
6 As the State told you, we ask you these questions to find out if there's any bias
7 that would prevent you from being fair in rendering an impartial verdict in the
8 case, and coming back with preconceived ideas. I'm going to give you an
9 example of what a preconceived idea is. I've been an attorney for about twenty-
10 seven years, something like that. And I have never been a prosecutor. I have
11 always been a defense attorney. So if I was sitting in that box and the State was
12 charging somebody, I would look at it from the prospective of a defense attorney,
13 and they wouldn't want me sitting on the jury, because I look at it with the
14 doubting attitude of a defense attorney. On the other hand, if I were trying a
15 case and the prosecutor is sitting in there, or someone who had been a police
16 officer or something like that, I certainly wouldn't want them on a criminal case
17 either because they already have preconceived ideas. And these are not
18 necessarily bad things. But it's just things that have happened in your life that
19 have caused you to uh, look at different things with a different attitude than what
20 the normal public does because of what you're exposed to. And one of the
21 people that uh, I heard some information from and I want to ask about is Ms.
22 Lewis. You said your son and daughter-in-law are both prosecutors?

23 JUROR: Yes. My son, white-collar crime. And quite honestly, my
24 daughter-in-law is, I don't know the type of cases she takes, I just know she goes

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1 every day and handles a zoo every day.

2 MS. SCHULTZ: Okay...

3 JUROR: You know, I mean if you've ever gone over there, you
4 know what I'm saying.

5 MS. SCHULTZ: I've never went over in Jefferson County and
6 practiced there.

7 JUROR: It's an experience. But uh...

8 THE COURT: Yeah, that's what they call it. That's District Court.

9 JUROR: It's a zoo.

10 THE COURT: District Court. It's a huge volume of people. The
11 room's filled up and everything happens very fast.

12 JUROR: It does.

13 THE COURT: And there's no room to sit down.

14 JUROR: Yeah. I...

15 THE COURT: They call it the zoo, yeah. District Court.

16 JUROR: It is, District Court Zoo.

17 THE COURT: It's like that in every big city in the United States.

18 MS. SCHULTZ: And they wouldn't give them all morning to pick a
19 jury like we...

20 JUROR: Okay. We'd have been through, through twenty cases by
21 now.

22 MS. SCHULTZ: So, do uh, your son and daughter-in-law come and
23 talk to you about their cases and their experiences in court?

24 JUROR: Uh, my daughter-in-law has never. That's why I said I

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1 don't really know..., I, okay, I work security. I get subpoenaed over there on uh,
2 for the banking, financial. That's how I've seen the zoo. Uh, I don't really know
3 what she does. No, she doesn't talk about her cases.

4 MS. SCHULTZ: Okay.

5 JUROR: She was a, she was a uhm, a defense attorney oh, uh, for
6 someone that, what do I want to say..., if you can't afford a lawyer, they will...

7 MS. SCHULTZ: Pro bono?

8 JUROR: She would...

9 MS. SCHULTZ: Public defender?

10 JUROR: Public defender for a good while.

11 MS. SCHULTZ: Okay...

12 JUROR: And how she's on the other side. But she never talks
13 about her cases. I don't know.

14 MS. SCHULTZ: So the fact that they're prosecutors doesn't swing
15 your opinion or your...

16 JUROR: No. And, and my son does not, well, I won't say he
17 doesn't handle criminals, because it all is.

18 MS. SCHULTZ: Uh huh.

19 JUROR: What he handles is on uh, right now what he's
20 investigating are quite honestly uh, like, you know, the governor and the state
21 attorney. He's the judicial system, so he's not your every-day...

22 MS. SCHULTZ: He does more of the white-collar stuff?

23 JUROR: Yeah.

24 MS. SCHULTZ: A little bit more sophisticated?

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1 JUROR: Yeah. It's not in uh..., a little more complicated.

2 MS. SCHULTZ: Okay. Very good. And Mr. Downey?

3 JUROR: Yes.

4 MS. SCHULTZ: I want to disclose to the State that you have been
5 a client of mine. Is that right?

6 JUROR: Yes.

7 MS. SCHULTZ: And I think did an adoption or a guardianship,
8 something years and years ago?

9 JUROR: Uh huh.

10 MS. SCHULTZ: I also hired you to do some work on my broken
11 water line?

12 JUROR: Yes.

13 MS. SCHULTZ: Okay. I'm not gonna ask you about your
14 experience of that. But would that effect how you would go on this case?

15 JUROR: No.

16 MS. SCHULTZ: Okay. And you'd indicated on your questionnaire, I
17 believe that you were getting over the flu?

18 JUROR: I've been having a runny nose and cough. I'm taking
19 some medicine right now.

20 MS. SCHULTZ: Are you feeling a little bit better than you had
21 been?

22 JUROR: Sitting in a warm room helps.

23 MS. SCHULTZ: Okay. Okay, I want to ask all of you here if any of
24 you have any police officers that are personal friends of yours, or members of

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1 the family. Nobody does?

2 JUROR (female): I mean I deal with them. But they're not personal
3 friends.

4 MS. SCHULTZ: Well, when you deal with police officers, do you
5 think that uh, the fact that a police officer obviously believes something would
6 have an effect on you because of your dealing with police officers? Let me give
7 you an example. When, when charges are filed against a defendant, it's typically
8 because the police officer that's investigating thinks something happened. Do
9 you think the fact that you knew the police officer that charged someone would
10 have an effect on whether you thought the person was guilty or not?

11 JUROR: Uh, no. I don't think so.

12 MS. SCHULTZ: Okay. Does anybody feel that way? Does
13 anybody feel like the fact that somebody has been charged with a crime makes
14 them guilty of something? You don't think that if they're charged that they
15 must've done something? But nobody here feels that way? Have any of you
16 had any uh, training in criminal law as a police officer, attorney, legal aide or
17 anything of that nature? Nobody? Any of you ever been a victim of a crime?
18 House broken into? Mr. Hunter?

19 JUROR: Yes, ma'am.

20 MS. SCHULTZ: And what kind of a crime...

21 JUROR: It was uh, someone broke in our barn when I was in high
22 school, and stole pretty much everything out of. That's pretty much all that was.

23 MS. SCHULTZ: ...property crime, not, not a...

24 JUROR: That wasn't a violent crime.

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1 MS. SCHULTZ: Didn't assault you or anything like that?

2 JUROR: No.

3 MS. SCHULTZ: Do police ever arrest the wrong person for a
4 crime? In other words, do you ever see innocent people sitting right here at this
5 table in this courtroom? How many people think that sometimes people are
6 charged with crimes with which they're really innocent? All agree? I think we've
7 seen a lot of that with the death row, things that (unintelligible)...., and gone and
8 overturning the death row sentences of people. At times people, our system isn't
9 perfect, but it's better than what it was. And do all of you believe, or do any of
10 you believe, I should say, that everybody sits over here at this table here in court
11 (unintelligible). How many people think there are people who lie in the
12 courtroom? Okay. And that could be adults, right? It could be kids. It could
13 anybody that takes the stand. I know I have clients that come and talk to me and
14 they'll say, "Well, let's get them in court and put them under oath and they'll have
15 to tell the truth." We all know what happens. People lie to save their skin. Or
16 people lie because they want to (unintelligible). So not everybody tells the truth.
17 So how can you tell if somebody is telling the truth or not? I'm going to pick on
18 somebody here. Heather Land-Spells. How do you tell?

19 JUROR: Just watch their reactions and how they make eye contact
20 and things like that.

21 MS. SCHULTZ: Okay. Any other signs you look for? Anybody
22 else?

23 JUROR (female): Nervous?

24 MS. SCHULTZ: Sure. Can't answer the question straight?

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1 JUROR: Yeah.

2 MS. SCHULTZ: Or sometimes they forget if they told you one time,
3 and then they tell you something ...

4 JUROR: Yeah.

5 MS. SCHULTZ: You also look at uh, the reason they might want to
6 have to lie. To get somebody in trouble, or they want to stay out of trouble
7 themselves, that type of thing. How many of you have children? All right.
8 Everybody but Mr. Marjoram and me. I don't have any either. Okay. Uh, any,
9 or uhm, let's start that over again. How many have kids at home right now? So
10 the rest of your kids, they're all grown up and out of the house. When your kids
11 were little, did they ever lie to you? Let's uh, the kids between say the age of
12 four and ten. Do they lie to you then? How could you tell if they were lying?

13 JUROR (female): I'd like to know so I can know whenever...

14 MS. SCHULTZ: Oh, so you're the one with the...

15 JUROR: Yeah, mine's only two.

16 MS. SCHULTZ: Okay. Mr. Temple, how can you tell if your kids
17 are lying to you?

18 JUROR: That's kind of a hard question. I mean they all have their
19 own uh, tells, I guess you might say. Or every person has some, some degree
20 of it. Uh, but actually since I have two, a lot of times it's been the other one
21 turning one in, you know. So that's been the fact. I don't, honestly I don't have a
22 lot of problems with that. It's either so uh...

23 MS. SCHULTZ: So they pretty much know they're gonna tell you
24 the truth or else?

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1 JUROR: Oh yeah.

2 MS. SCHULTZ: Okay. Mr. Crone, how can you tell if your kids, or
3 your grandkids?

4 JUROR: Uh, I said the youngest one, whenever his lips is moving
5 uh, he's telling a lie. You all laugh, but we've got him in counseling right now.

6 MS. SCHULTZ: So you are in dealing with them, sometimes they
7 just don't, they're just typically not honest.

8 JUROR: Right.

9 MS. SCHULTZ: They have a hostel reputation...

10 JUROR: Yeah.

11 MS. SCHULTZ: Okay. How about all of the other ones?

12 JUROR: Uh, they all seem to be truthful, you know.

13 MS. SCHULTZ: And, Mr. Hildebrand, how would you tell?

14 JUROR: Well, it's not my kids. It's my girlfriend's. And I've only
15 been dating her about, oh, five or six months. So...

16 MS. SCHULTZ: So you're not around them very much.

17 JUROR: I'm around. But that's her kids, and you know, I stay out
18 of it.

19 MS. SCHULTZ: So you would probably have more trouble telling if
20 a child were lying than the child's mother?

21 JUROR: Uhm, if I spent more time with her. I mean I spend time
22 with her, but I mean about if she's lying to me or nothing like that. It's just, she's
23 a kid, you know.

24 MS. SCHULTZ: Okay. Do you think that kids ever lie about being

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1 molested? Does anybody think that every child who says they're molested has
2 really been molested? Who believes that? Anybody? So you all think that kids
3 sometimes, and I'm not saying every kid, but sometimes kids make up uh,
4 allegations of molestation. Everybody agree with that? Anybody that doesn't?
5 And can you think of any reasons why they might do that? Let's see..., Ms.
6 Davis, why do you think children make up something about being molested?

7 JUROR: I mean, you know, kids, if they're hearing it from
8 somebody else and not understanding what the actual meaning is, may copy
9 another child. You know, if there's a divorce and there's a not good situation
10 between the exes, the stories stated, kids pick up things like that, if it's, or can
11 pick up that kind of a thing.

12 MS. SCHULTZ: True. Or somebody could coach them to say it?

13 JUROR: Anything's possible, as far as that goes.

14 MS. SCHULTZ: All right. Do you think that sometimes the
15 allegations can be planted in their mind by coaching?

16 JUROR: I don't know. I don't know about the planting. I mean I
17 have a two-year-old. But I don't think you can really plant anything in their mind.
18 They're gonna, they still, depending on the age, they can still make up their own
19 mind and they know the differences. So, I don't know that you can actually plant
20 something and get them to stage it and say it, you know, repeat things. They're
21 not that predictable.

22 MS. SCHULTZ: Okay. Have any of you known anybody personally,
23 any kids that have been victimized by molestation? Now, you were talking about
24 uh, your child or...

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1 JUROR (male): My step-son.

2 MS. SCHULTZ: Your step-son had been a victim of abuse. Was
3 this sexual abuse?

4 JUROR: Yes.

5 MS. SCHULTZ: Okay. And was that situation where the child came
6 forward and said what happened?

7 JUROR: Yes.

8 MS. SCHULTZ: And you indicated in that case that the person was
9 prosecuted and convicted?

10 JUROR: Yes.

11 MS. SCHULTZ: But you also indicated that your girl..., your sister, I
12 think you said, had been uh, abused.

13 JUROR: Yes.

14 MS. SCHULTZ: Was that also a sexual abuse situation?

15 JUROR: Yes.

16 MS. SCHULTZ: And nothing happened to the person that did it to
17 her?

18 JUROR: No. It didn't come out until years later.

19 MS. SCHULTZ: Okay. So it was like when she was an adult when
20 it came out?

21 JUROR: Uh huh.

22 MS. SCHULTZ: Has anybody else been uh, in a situation where
23 either themselves, the child uh, a close family member, somebody that's been
24 close to them had been victimized? Any sexual molestation? We briefly talked

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1 about, or the State briefly talked about pornography. Uh, when they were talking
2 about this dissemination of matter harmful to children, that's one of the charges
3 against my client. Specifically, he's charged with showing a dirty movie to a
4 child. And I, I guess I would like to inquire a little bit. We all have different ideas
5 of what pornography is. And uh, Ms. Tuell, can you tell me what you think is
6 pornography?

7 JUROR: When you get into a sexual act, and depending on the age
8 of the child.

9 MS. SCHULTZ: Okay. So you would say that something that
10 maybe is okay for your teenager to see, and it's certainly not okay for your four-
11 year-old?

12 JUROR: Exactly.

13 MS. SCHULTZ: Okay, okay.

14 JUROR: I mean it depends on what it is. I mean if there's people
15 engaging in sex, I just don't, I don't think that's appropriate.

16 MS. SCHULTZ: That would probably be considered pornography
17 for an adult as well as for..., I mean, well, for teenagers as well as a four-year-
18 old.

19 JUROR: I mean, teenagers, you're gonna sneak and do things like
20 that. But, I mean like a four-year-old, absolutely not.

21 MS. SCHULTZ: Okay. At least more acceptable for the teenager
22 than the four-year-old, you think?

23 JUROR: I'm not saying that it's right, but it's more acceptable, I
24 guess.

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1 MS. SCHULTZ: Okay. And do any of you have really, really strong
2 feelings about pornography? Feelings that if a person has pornography in their
3 home, they're a bad person? Does anybody feel like that? Does anybody think
4 that the use of pornography has anything to do with molestation with children?
5 Mr. Hildebrand, I'll pick on you for now. Do you think that if a person has
6 pornography in their home, they're more likely to commit uh, victimize children
7 sexually than if they had no pornography?

8 JUROR: No. But it should be put up.

9 MS. SCHULTZ: Kids shouldn't be exposed to it.

10 JUROR: ...(unintelligible)..., I don't know.

11 MS. SCHULTZ: Just because it's there doesn't mean that the
12 person, the adult that has it would want to molest a kid.

13 JUROR: They shouldn't, no.

14 MS. SCHULTZ: Uh, Ms. Lewis, what, what do you think? Do you
15 think that pornography in the home is an indication that the person could be a
16 child molester?

17 JUROR: No, I don't think so. I've never really given that a thought.

18 MS. SCHULTZ: Okay. And what about you, Ms. Ferree? Do you
19 think that pornography has any connection to molestation?

20 JUROR: As long as the pornography doesn't have kids in it. I
21 mean as long as it's adult and uhm, it should be put away where kids can't have
22 access to it.

23 MS. SCHULTZ: So if we have pornography that depicts children
24 doing sexual things, then, then it makes sense it would be more likely that the

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1 adult that's watching it or owns it would be...

2 JUROR: It would make you uneasy. And, yeah, possibly think that,
3 that person is doing that, yes.

4 MS. SCHULTZ: Okay. Anybody else have any strong feelings
5 about pornography? I want to hear about it. So I want to make sure that all of
6 you can look at this objectively and nobody has a preconceived idea about a
7 person who owns pornography.

8 JUROR (female): I just don't think it should, myself, I wouldn't allow
9 it in my home.

10 MS. SCHULTZ: Okay...

11 JUROR: I mean, I mean there's movies that do get out of hand
12 nowadays. I mean you're gonna see a lot of that stuff. But uh, if your child is
13 very young, I don't think it should be allowed, you know.

14 MS. SCHULTZ: Right. And if you had a choice, it wouldn't be in
15 your house at all? If you had a choice, it wouldn't be at all. Earlier on your
16 questionnaire, you had indicated that your daughter works for Davis and Davis?

17 JUROR: Uh huh.

18 MS. SCHULTZ: And what's your daughter's name?

19 JUROR: Melissa Bussabarger.

20 MS. SCHULTZ: Okay.

21 JUROR: She does title work.

22 MS. SCHULTZ: Yes, I know her. I have lunch with her a couple of
23 times a week. That's why I wondered which one was your daughter. I didn't
24 know her last name. One of the things that happens in a criminal case is that a

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1 person who has been charged with a crime has a right to remain silent. And they
2 cannot be forced to testify if they don't want to. But if they want to, they have the
3 right to. If uh, we go through with this trial and my client chooses not to testify,
4 what do you think that means? Let me pick on somebody here. Let's go to the
5 back row. Ms. Tuell, what do you think that means? If my client chooses not to
6 take the stand and tell you his version of what happened?

7 JUROR: That could mean more than one thing. I mean he could
8 be hiding something or that it may end up into more questioning.

9 MS. SCHULTZ: There's a lot of reasons why people wouldn't want
10 to get up and...

11 JUROR: Exactly. And some people may just, being nervous and
12 trip up on the questions, and can't answer that.

13 MS. SCHULTZ: Some people think the prosecutor might be trying
14 to set them up, trick them into saying something they didn't mean. Some people
15 may listen to their attorney and decide not to testify. Does anybody here think
16 that the fact that if a person doesn't testify means they're guilty? Anybody think
17 that? If my client does testify, are you willing to look at his testimony in the same
18 way that you would look at any other witness? I mean we have a few witnesses
19 in this case. You've heard the list. But if my client testified, can you look at him
20 in the same fashion and say, "Okay, so we look at the other person, we look at
21 the clues." In fact we talked about some of them, can you look him in the eye, is
22 he nervous, telling the same thing throughout, contradicting himself. Can you
23 look at his testimony in the same way as you would, for example, the child that's
24 testifying in this case, to make a decision as to whether he's telling the truth?

VOIR DIRE

1 Mr. Hunter, can you do that?

2 JUROR: Yes, ma'am.

3 MS. SCHULTZ: And, Mr. Marjoram, can you do that?

4 JUROR: Yes, ma'am.

5 MS. SCHULTZ: Is there anybody that would have any problem at
6 all in doing that? Is there anybody that would have any problem at all if he did
7 not take the stand? That's one of the things that I'm always concerned about. I
8 go home and I talk to my husband, and he always says, "Well, what does he say
9 happened?" Well, sometimes you don't get to hear what he says that happened.
10 So, I always tell him, "You can't ask that question, you can't ask that question."
11 "Well, I want to know." And you've got to make a decision without being able to
12 ask that question sometimes. Can you all do that? Can you all hold the State to
13 their burden of proof? When I, I walked into this case, and child-molesting cases
14 are really, really tough cases to try. Because it's a subject that nobody wants to
15 talk about. It's a subject that you always a victim. I don't care if a person is
16 guilty or not guilty, you always have a victim. If the person is guilty, you have a
17 victim that's a child that's been molested. And if the child has made something
18 up and brought it here into court, then you have a victim who has been falsely
19 accused. So, these are not pleasant cases to try because (unintelligible). So,
20 are there, is there anybody here that would have a problem with holding the
21 State to their burden of proof? Is there anybody that thinks that my client is guilty
22 right now? Anybody think that because he's here in court, it's an indication of his
23 guilt? Thank you. I have no further questions.

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VOIR DIRE

1 EXAMINATION BY STATE OF INDIANA:

2 MS. LAUREN WHEATLEY: Good morning. I know it's getting
3 close to lunchtime and I just have a couple more questions for you. Again, let
4 me intro..., re-introduce myself. My name is Lauren Wheatley and I have the
5 privilege for working for the State of Indiana. And unfortunately you're on a very
6 serious case and you guys are well aware of that. I'm gonna ask a couple of
7 more follow-up questions to what's already been asked. And to give you a little
8 bit more a sense of beyond a reasonable doubt. Has anybody ever watched
9 Perry Mason? Yeah. Ms. Lewis, I know growing up, I used to sit on my Dad's
10 lap and I'd watch Perry Mason. And that may be one reason why I'm an attorney
11 today. And I always remember Perry Mason saying, "beyond a shadow of a
12 doubt." Do you remember that, when he said, "beyond a shadow of a doubt".
13 And he made such a grand thing, scheme of things. And I'll be the first one to
14 say, I am not Perry Mason. I'm not Matlock. And certainly I'm not near as cute
15 as the, as the attorneys on Law and Order. But really, and Ms. Lewis, would you
16 agree with me that there are very few things in this world that we know for
17 certain?

18 JUROR: True.

19 MS. LAUREN WHEATLEY: Right. And, in fact some would say uh,
20 Ms. Schneider, death and taxes. That's about, that's about the only thing you
21 can guarantee any more. You certainly can't count on the economy, can you,
22 Mr. Downey?

23 JUROR: No.

24 MS. LAUREN WHEATLEY: And you can't count on, on certain

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1 people in your life and you can't count on certain things that's gonna happen. I
2 never thought that I'd see the, see the auto industry go away down like it is, and I
3 honestly never thought I'd see gas prices go down to less than two dollars a
4 gallon. Do you agree with that, Ms. Spells? Right. But there's not too many
5 things in life that are a hundred percent certain, are there? And so, Ms.
6 Bussabarger, when, when we tell you that..., if the Judge tells you that the
7 standard that we have to prove to you is firmly convinced, it's not ninety percent,
8 it's not a hundred percent, it's not even a percentage. It's certainly not a shadow
9 of a doubt. It leaves your firmly convinced. And if we've left you firmly
10 convinced, can, can you convict?

11 JUROR: If I'm convinced, yes.

12 MS. LAUREN WHEATLEY: Okay.

13 JUROR: If you've presented it.

14 MS. LAUREN WHEATLEY: Right. And again, we're not talking...,
15 just, let's face it. You'll have questions. Sitting right here, we have questions.
16 You may be thinking, "Why? Why would he want to do such a thing?" Mr.
17 Downey, unfortunately, you've had to talk a little bit about what, what your family
18 has gone through. And I bet that question went through your head a few times,
19 "why". What would make someone do that? You probably never got that
20 answered, did you?

21 JUROR: No.

22 MS. LAUREN WHEATLEY: Right. And, and, and you may not get
23 that answer. You may wonder what in the world was going through that person's
24 head. What in the world was that person wearing? What, was it cold outside?

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VOIR DIRE

1 You may have questions in your head. Would you agree with that, Mr.
2 Hildebrand? But, but, Mr. Crone, if we've left you firmly convinced of the
3 elements of the crime, that the defendant committed these elements of the crime
4 that we have to prove to you, even though you may have some other questions
5 out there, why in the world would that happen, how could that happen?

6 JUROR: I think they would have to be answered for me.

7 MS. LAUREN WHEATLEY: They'd have to be answered?

8 JUROR: Yeah.

9 MS. LAUREN WHEATLEY: And that's fine. That's a logical thing.

10 If the Judge instructed you that you had to be firmly convinced...

11 JUROR: That means...

12 MS. LAUREN WHEATLEY: And life isn't perfect, is it?

13 JUROR: That means to me, not having any doubt.

14 MS. LAUREN WHEATLEY: Not having any doubt. What about
15 you, Ms. Schneider? If you're firmly convinced? You may have some questions
16 out there as to why. Could you come back with a guilty?

17 JUROR: Yes.

18 MS. LAUREN WHEATLEY: Ms. Spells? Ms. Tuell?

19 JUROR: I think if both sides do their job, I think that there should
20 be, it should be firmly convinced when you're done.

21 MS. LAUREN WHEATLEY: Okay. Ms. Bussabarger? Ms. Lewis?

22 JUROR: Yes, I could.

23 MS. LAUREN WHEATLEY: Ms. Ferree?

24 JUROR: Yes.

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VOIR DIRE

1 MS. LAUREN WHEATLEY: Mr. Schickel?

2 JUROR: Yes.

3 MS. LAUREN WHEATLEY: Now the Judge is also going to instruct
4 you that, that we've talked a lot about evidence. Now who here is a fan of
5 C.S.I.? Yeah. It's pretty good, isn't it, Mr. Schickel? What's your favorite one?

6 JUROR: Individual one?

7 MS. LAUREN WHEATLEY: Yeah. There's like three of them, I
8 think now. There's Vegas and Miami and New York.

9 JUROR: Oh, the original one, the original one.

10 MS. LAUREN WHEATLEY: The original one, okay. And I'll admit,
11 just as a spectator, I'm a fan of C.S.I. It's interesting to me. I like it when they
12 always confess, that they seem to get fingerprints off of everything. And I think
13 any police officer will tell you, that doesn't happen. It doesn't happen at all. So
14 we all understand, we're definitely not in Vegas. We're in Harrison County,
15 Indiana. Wouldn't you agree, Ms. Collier? And, and our uh, our means aren't
16 near as great as those in Las Vegas, or maybe even Louisville, Kentucky. I'll tell
17 you, that I did practice in Indianapolis for awhile, and they had a lot more
18 technology than we have down here. But, but either way, the Judge will instruct
19 you that testimony is evidence. Would you agree with that, Mr. Hildebrand?

20 JUROR: Yeah.

21 MS. LAUREN WHEATLEY: Okay. If I came into courtroom and I
22 swore under oath that I know Billy Wibbels, I've known Billy Wibbels for years
23 now, I can even consider Billy Wibbels a friend, but on this day Billy Wibbels took
24 my purse. Would anybody need fingerprints? Or would my testimony be

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VOIR DIRE

1 considered evidence? How do you feel about that, Mr. Schickle?

2 JUROR: I think it would be your statement.

3 MS. LAUREN WHEATLEY: Correct. Would anyone be, want me to
4 have more than that?

5 SEVERAL JURORS: Yeah. Yes.

6 MS. LAUREN WHEATLEY: Okay. Is it my fault that that's all there
7 is? Would you punish me and not believe me? I know this man. I've got no
8 reason to lie, and he took my purse.

9 JUROR (male): What's his story?

10 MS. LAUREN WHEATLEY: And Ms. Schultz said you may not
11 always hear the defendant's story. But if you've got no reason not to believe me,
12 that's what you hear and that's what you know. You think you could come back
13 if I've left you firmly convinced, Ms. Schneider?

14 JUROR: Yes.

15 MS. LAUREN WHEATLEY: Anybody not firmly convinced?

16 JUROR: By just your word?

17 MS. LAUREN WHEATLEY: Just my word.

18 SEVERAL JURORS: Yes. Yeah. No, I don't think I could.

19 JUROR (female): You'd have to give me some pretty strong words.
20 don't think just your word against his.

21 MS. LAUREN WHEATLEY: You may not hear his word. You've got
22 mine. I'm sworn under oath.

23 JUROR (male): Did they find a purse?

24 MS. LAUREN WHEATLEY: Do they need a purse? What if they

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VOIR DIRE

1 didn't find a purse? That's not enough just for me as an eye witness? Just
2 something to think about. Think about if it was you. Would you want someone
3 believing you? It's something to think about.

4 Another something that you cannot think about, and Ms. Flanigan talked
5 about this a little bit. And Mr. Temple, I listened to what you were saying. And
6 again, we appreciate everything that, that you guys tell us, because we want to
7 make sure that we have someone is going to be a good fit for this jury. But, you
8 talked about, "Well, that's their life." Uh, I can't, I can't, I've not, I can't uh, and
9 forgive me if I'm misquoting you, "But I can't..., I'm not in charge of someone's
10 life to have to take this seriously." And you're talking about a hundred percent
11 and what you would need to convict someone. But as we talked a little bit about
12 before, and Ms. Ferree, I think you said, "I'm glad that I don't have to sentence."
13 You can't consider that. If the Judge instructs you, Mr. Marjoram, that you
14 cannot consider what will happen to the defendant; you don't know if he would
15 get probation, community service or prison; we do know that it's not a death-
16 penalty case; but you can't consider that. It's not your job. Can you do that?
17 Can you just say guilty or not guilty? You can't go any further.

18 JUROR: Yes.

19 MS. LAUREN WHEATLEY: Can you do that, Mr. Marjoram?

20 JUROR: Yes, ma'am.

21 MS. LAUREN WHEATLEY: Mr. Downey?

22 JUROR: Yes.

23 MS. LAUREN WHEATLEY: Mr. Hunter?

24 JUROR: Yeah, I think so.

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VOIR DIRE

1 MS. LAUREN WHEATLEY: Mr. Hildebrand?

2 JUROR: Yes, ma'am.

3 MS. LAUREN WHEATLEY: Mr. Crone? Mr. Temple?

4 JUROR: Uh, yeah.

5 MS. LAUREN WHEATLEY: A little hesitant?

6 JUROR: I honestly, I have something completely, completely
7 different personally, as a personal thing. Children, crimes against children, to
8 me, are the worst thing that can ever happen personally. So I'm kind of like, you
9 know, if you look at the whole case, I have to hear everything as much as
10 possible, make sure I've made the best decision. But still, once again, you've
11 got somebody's life in your hands, no matter what you do. So you have to truly,
12 you'd want the same thing to happen to you if you were on the other side of the
13 table, that people consider everything that they possibly can to make sure they
14 are definitely one hundred percent, without a doubt.

15 MS. LAUREN WHEATLEY: Okay. Even though that's not the
16 standard?

17 JUROR: No.

18 MS. LAUREN WHEATLEY: Okay. So the Judge gives you a
19 standard, you're telling us you could not follow the Judge's standard? In fact,
20 would not?

21 JUROR: Possibly, yeah.

22 MS. LAUREN WHEATLEY: Ms. Collier? Because in fact, you don't
23 have someone's life in your hands. That's not your call at all. And that's a good
24 thing, isn't it? We all make choices, don't we? I made the choice to wear this

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VOIR DIRE

1 suit today. You guys made the choice to even come in here. We have a lot
2 more people who are on the list that made the choice not to come in here. And
3 we appreciate it. You've made the choice to, to answer our questions. And
4 really, at the end of the day, we're just responsible for our own lives, aren't we?
5 Would you agree with that, Ms. Collier? And you're, if you were chosen as a
6 juror, it is your job to judge the law and the facts, and that's it. Not the person,
7 not what's gonna happen to him, not what should happen to him. Just the law
8 and the facts. Now, uh, Ms. Spells, you have two children, ages six and three?

9 JUROR: Yes.

10 MS. LAUREN WHEATLEY: And you probably are the best person
11 to judge your children. Would you agree with that?

12 JUROR: yeah.

13 MS. LAUREN WHEATLEY: Okay. Certainly, if your child walked
14 up to me and said something, I, I, I wouldn't know your child. I wouldn't know the
15 mannerisms, would I?

16 JUROR: No.

17 MS. LAUREN WHEATLEY: Would you agree that a parent is
18 probably the best person to, to judge the child?

19 JUROR: Yes.

20 MS. LAUREN WHEATLEY: Mr. Schickel, you're probably the best
21 person to, to tell if your son is telling the truth or not. And you stated earlier that
22 children generally aren't prone to make things up. It's just not in their mind-set.
23 Would you agree with that, at the age of five?

24 JUROR: Well, I guess from my perspective, yeah, they have

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VOIR DIRE

1 imaginations and they make things up. But with my, my particular situation, I can
2 tell actually by looking at his mannerisms, if he looks at me. I mean his story is
3 the same fifteen minutes from now.

4 MS. LAUREN WHEATLEY: You can, you can tell. If your son
5 came home and told you something pretty serious, you could probably tell if he's
6 telling the truth or not.

7 JUROR: Uh huh.

8 MS. LAUREN WHEATLEY: And, Mr. Crone, I know that you've got
9 a grandchild that, that you said if his lips are moving, he's probably not telling the
10 truth.

11 JUROR: Right.

12 MS. LAUREN WHEATLEY: You probably know your grandchild
13 enough to, on certain things you can probably tell.

14 JUROR: Yeah.

15 MS. LAUREN WHEATLEY: And we'd all agree with that, right? Mr.
16 Hildebrand, you talked about your girlfriend's children. You know, she can
17 probably tell you boom, boom, boom, all...

18 JUROR: She can. But, you know, I don't...

19 MS. LAUREN WHEATLEY: ...pull one over.

20 JUROR: I don't try to pry into their...

21 MS. LAUREN WHEATLEY: Right, exactly, exactly. But she can tell
22 a lot better than you can. Right?

23 JUROR: Yeah.

24 MS. LAUREN WHEATLEY: It's hard to plant things into someone's

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VOIR DIRE

1 mind, isn't it? Just like, I can't plant into your mind, Mr. Hunter, as much as I'd
2 like to, that, that we don't have to prove to you by a hundred percent. And the
3 same for you, Mr. Temple. It's, you know how your mind's made up. I think it's
4 also the same when it goes to children. It's hard to plant things in their mind,
5 isn't it? And actually get it right?

6 JUROR (male): I think a parent can plant things in a child's mind.
7 And they can, they can stick to it too.

8 MS. LAUREN WHEATLEY: They can stick to it?

9 JUROR: To protect uh, if they may be told that this is gonna
10 happen if you don't say this, or that, you know, whatever. And they can stick to
11 it.

12 MS. LAUREN WHEATLEY: Can you tell when a child is lying like
13 that? Maybe they use words that doesn't sound like a child would say? You
14 know, when kids use adult words. Have you ever heard that? Kids come home
15 and maybe quotes a teacher. You've heard that, Ms. Lewis?

16 JUROR: I've had a niece that I thought this kid doesn't have a clue
17 what she's even saying. Her parents fed this to her, to feed me to get me to feel
18 different toward them. And...

19 MS. LAUREN WHEATLEY: Because it doesn't, it doesn't sound
20 right.

21 JUROR: It wasn't, it wasn't child language.

22 MS. LAUREN WHEATLEY: I've heard children quote T.V. before.
23 And I'm like, "You don't even know the words that you're saying, do you?" It's a
24 little bit different when they're actually talking in their own talk, isn't it? You tend

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VOIR DIRE

1 to believe them more. Would you agree with that, Mr. Downey? When they're
2 actually using words that a kid would use.

3 JUROR: Yeah.

4 MS. LAUREN WHEATLEY: I know we talked a little bit about
5 pornography. And unfortunately, we're gonna have to talk a little bit more about
6 it. And would you agree there's a difference between someone showing your
7 five-year-old son, Mr. Schickle, a Playboy as to someone showing an x-rated
8 film?

9 JUROR: There's a difference, but neither one of them are right.

10 MS. LAUREN WHEATLEY: Exactly. You wouldn't like that either
11 way, would you?

12 JUROR: No. Not even a PG-13 movie.

13 MS. LAUREN WHEATLEY: Right. Because that's something that
14 you don't allow in your home. Everyone agree with that? You know, I believe
15 that a Justice on the Supreme Court said, "Pornography, we'll know it when we
16 see it." I think we can all agree with that to some extent, and maybe your
17 children can even more, you know. I've heard kids, "Oh, I saw his butt", you
18 know. But they know it when they see it. And that's kind of how we all are,
19 aren't we? You know it when you see it. We all can agree, something you
20 shouldn't probably show to children. Do you agree with that, Ms. Ferree?

21 Wrapping up a little bit here, I've just got a few more questions. If the
22 State of Indiana has left you firmly convinced that the defendant has committed
23 the crime, we have proven to you the elements of the crime, and you're firmly
24 convinced that the defendant committed the crime, can you come back with a

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VOIR DIRE

1 guilty verdict? Mr. Schickel?

2 JUROR: Yeah.

3 MS. LAUREN WHEATLEY: Ms. Ferree?

4 JUROR: Yes.

5 MS. LAUREN WHEATLEY: Ms. Lewis?

6 JUROR: Yes.

7 MS. LAUREN WHEATLEY: Ms. Bussabarger?

8 JUROR: Yes.

9 MS. LAUREN WHEATLEY: Ms. Tuell?

10 JUROR: Yes.

11 MS. LAUREN WHEATLEY: Ms. Spells?

12 JUROR: Yes.

13 MS. LAUREN WHEATLEY: Ms. Snyder?

14 JUROR: Yes.

15 MS. LAUREN WHEATLEY: Ms. Collier? Mr. Temple?

16 JUROR: Yes.

17 MS. LAUREN WHEATLEY: Mr. Crone?

18 JUROR: Yes.

19 MS. LAUREN WHEATLEY: Mr. Hildebrand?

20 JUROR: Yes, ma'am.

21 MS. LAUREN WHEATLEY: Mr. Hunter? Mr. Downey?

22 JUROR: If the law says that's my guideline, yes.

23 MS. LAUREN WHEATLEY: And Mr. Marjoram?

24 JUROR: Yes, ma'am.

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VOIR DIRE

1 MS. LAUREN WHEATLEY: Okay. Thank you so much, ladies and
2 gentlemen. Does anyone have any questions for me, for the State of Indiana?
3 Thank you so much.

4 THE COURT: Ms. Schultz?

5 MS. SCHULTZ: I've just got a couple of quick questions. Does
6 anybody here belong to any organizations that deal with child molesting? That
7 would include Comfort House here in town and...

8 JUROR (male): Uh, my wife's a CASA worker. I don't know if that...

9 MS. SCHULTZ: That's specifically directed to child molesting,
10 abuse and neglect of children.

11 JUROR: Some of her children have been.

12 MS. SCHULTZ: Right, okay. Does anybody belong to any,
13 anybody else belong to anything like that? Any organizations that deal with
14 registration of sex offenders or have anything else to do with sex offenses?
15 Okay. Thanks. I have no other questions.

16 MS. LAUREN WHEATLEY: Permission to approach, your Honor.

17 THE COURT: Yes. Wait a minute.

18

19 BENCH CONFERENCE:

20 THE COURT: Ms. Collier is out of order. There's fourteen people
21 in there. Do you want to strike on all of them or do you want to strike in order?

22 THE STATE (MS. FLANIGAN): Yeah, I'll strike, I'll strike on all of
23 them.

24 MS. SCHULTZ: I'll, uh huh...

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VOIR DIRE

1 THE COURT: Strike on all of them, okay.

2 (END OF BENCH CONFERENCE)

3

4 THE COURT: Okay. Now, all right uh, any for-cause challenges
5 with respect to the individuals seated in the jury box at this time by the State or
6 the defense?

7 MS. SCHULTZ: No, Judge.

8 THE COURT: No? Okay, now they're gonna be thinking about uh,
9 who they're gonna strike off the list. And if you're uh, if you're off, then, of
10 course, you get to go home. And if you get called up on uh, for jury duty within
11 the next year by the Superior Court or the Circuit Court, make sure you let them
12 know, "Well, I was over here in uh, Superior Court on November the 18th. The
13 Judge said if I come up here and put up with this uh, within the last year, I didn't
14 have to come back." Okay? That gives other people a chance to uh, serve on a
15 jury. And uh, to make sure we don't end up with the same people. It's possible.
16 It's a random selection by computer of uh, from those two data bases. So if you
17 were to get summoned again, either the rest of this year or the next year by the
18 Superior Court or the Circuit Court, let me know that you were here on November
19 the 18th. All right? If you end up on the jury, that time period is two years. If
20 you're not on the jury, and you're uh, struck, then you can get documentation
21 right now before you leave from one of these ladies right here. Okay uh, for your
22 employer, if you need it. And uh, and so if you're excused, and you're finished,
23 then you don't have to uh, put up with this. If you're selected, of course you
24 need to hang around. If you're selected on the jury, then I'm gonna ask you to

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VOIR DIRE

1 come back tomorrow morning. Not wait around uh, you know, most of the
2 afternoon, because that's what it'll be. You would be, you'd be waiting around
3 most of the afternoon. Uh, we try to uh, we have the luxury of not uh, being as
4 overwhelmed as they are, say in Louisville or Chicago or New York or Los
5 Angeles or some other big city. So uh, we've got more time, okay? So uh, those
6 of you that end up on the jury, I'll have some more instructions for you, and I'll be
7 asking you to come back tomorrow morning. We'll try to start at nine o'clock, like
8 I said. Uh, Sharon will show you where the jury room is before you leave today.
9 You can come at uh, the uh, office opens at eight o'clock. Sometimes some
10 people are uh, here earlier than that. But if you want to come in at eight-fifteen
11 or eight-thirty or whatever, she'll have the coffeepot going and she'll probably
12 gather up some doughnuts or something. And uh, if you want to bring a
13 newspaper or a magazine or a book to read, that's fine. You cannot bring any
14 newspapers that have anything to do with this case. Since most of the
15 newspapers have uh, reduced their staff, they hardly report on anything
16 anymore. So there's not much danger of them reporting on the trial. I noticed
17 they haven't been here, and I don't think there's much danger that they will be
18 here. They hardly ever report on much of anything anymore. Uh, so uh, I don't
19 think that'll be a problem. But if there was anything in a newspaper, you can't
20 bring that with you. You're not to read, listen to or watch any media attention
21 about the case, if there were any, which is probably highly unlikely, in any event.
22 But sometimes if you're on the jury, sometimes it'll be, you know, a lunch break
23 or a morning break, you may want to, you know, bring a newspaper to read or
24 something uh, to occupy your time. Sometimes there'll be some breaks. Uh,

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VOIR DIRE

1 and uh, things are going on beyond our control that might be uh, you know, a
2 little bit of time. I usually tell people that it's a good idea to bring a light jacket or
3 a sweater or something like that because uh, I have a tendency to keep the
4 courtroom cool no matter what time of the year it is. It keeps people from falling
5 to sleep after lunch. It keeps people awake and attentive. And uh, so I get
6 accused of that. I'm guilty, absolutely. Guilty of keeping the courtroom cool
7 most of the time. Not too cool this morning, I don't think. But most of the time it
8 is. And uh, so if you're on the jury, then we're gonna show you where the jury
9 room is before you go. Come back in the morning no later than nine o'clock. No
10 later than nine o'clock. And uh, if you need to uh, call anybody before you leave
11 uh, for lunch to let them know you're on the jury or if you need anything from us,
12 if you need us to contact your employer, if there's anything you need before you
13 leave, let us know, if you're on the jury. What did I forget, Sharon? I said, what
14 did I forget? Anything? Oh, okay, all right.

15 Okay, the following individuals are excused, of course that means you can
16 leave. You don't have to worry about coming back. Uh, Mr. Temple, sir, you're
17 excused. Mr. Crone, you're excused. Mr. Marjoram, you're excused. Uhm, Mr.
18 Hunter, you're excused. Uhm, Mr. Downey, you're excused. Let's see uh,
19 Temple, Hunter, Crone, Marjoram, Downey. Ms. Bussabarger, you're excused.
20 Uhm, Ms. Lewis, you're excused. Who's Lewis? Ms. Lewis, yes, you're
21 excused, okay. Uhm, Mr. Schickel uh, sir, you're excused. And uhm, Ms. Tuell,
22 Ms. Tuell, you're excused. Let's see, let's see, who have I got left? Okay, the
23 people that were excused, Temple, Hunter, Crone, Marjoram, Downey,
24 Bussabarger, Lewis, Schickel and Tuell. And so I'm left with uh, Ms. uh, Mr. uh,

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VOIR DIRE

1 Hildebrand, you're gonna be with us Mr. Hildebrand.

2 JUROR: Yeah.

3 THE COURT: Ms. Spells uh, Ms. Ferree and Ms. Collier, and Ms., I
4 didn't say your name, did I, Ms. Snyder? But you're gonna be hanging around a
5 little longer too. And Ms. Snyder. Okay, so we've got five of you. And uh, okay,
6 as I mentioned to you uh, those, you folks have gotta come back. If you need
7 anything today, if you need us to make a call to your employer, if there's anything
8 you need before you go today, I don't want to waste your time, so I'm not gonna,
9 you know, ask you to come back this afternoon because after we go to lunch,
10 and then the lawyers ask questions of the other jurors, and we take care of a few
11 other things, most of the afternoon is gonna be gone. So we're just gonna come
12 back tomorrow morning at nine o'clock. We're gonna try to start at nine o'clock.
13 I'd like for you to come just a little before that. I mean if you don't want to come
14 a half an hour before, that's fine. Even if you just come five or ten minutes
15 before nine, that's great. But the coffeepot will be on. Bring you a newspaper, if
16 you want to, or a magazine or something. Uh, that'll be great. And uh, anybody
17 have any questions, you folks that are here? Yes, Ms. Snyder?

18 JUROR: A quick question. Uh, normally be out by five? If not, I'm
19 gonna have to work out child pick-up.

20 THE COURT: Right. Yes, we're gonna finish by five. And the only
21 day that that would not be the case would be the last day that you're here, and
22 that'll be more than likely, you all expect that to be Friday or Thursday?

23 MS. LAUREN WHEATLEY: In a perfect world, Thursday, maybe
24 Friday.

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VOIR DIRE

1 THE COURT: It might be Thursday. It won't be tomorrow. And it
2 could be Friday, and it could be Thursday. So that's a good question. So you
3 can kind of plan on taking care of things that you need to take care of. And as I
4 mentioned earlier, on that day when the jury gets the case, you deliberate as
5 long as you as a group decide, so that might be two hours or ten hours, you
6 know. That's up to you what you as a group decide to do. Uh, and that's the
7 reason I can't tell you, you know, what time you're gonna finish or anything.
8 Anybody else have any questions? Uh, uh, one last little thing. Uh, I'd
9 mentioned it repeatedly, but I'll say it one more time. Of course, you know you're
10 going to be on the jury. So do not permit anyone to talk to you or in your
11 presence on any subject matter connected with the trial. It's your duty not to
12 form or express an opinion on the case until it's finally submitted to you. Do not
13 read, listen to or watch any media attention, if there were any, about this case.
14 I've already told you I don't think there will be. Uh, and I don't expect that. But if
15 there were, do not pay any attention to it. And uh, certainly if there were
16 something in a newspaper or otherwise, do not bring it with you to the
17 courthouse. And don't even read it at all, okay? Any questions, folks? No
18 questions? Anybody need anything before we go? Sharon is gonna show you
19 where the jury room is and then she's gonna walk you back out the office that
20 way. And uh, you can just go right through that door and Sharon will meet you
21 right there. And uh, thank you very much for your time. We'll see you tomorrow
22 morning.

23 (JURORS EXIT COURTROOM)

24 THE COURT: Okay. Uh, try to be back and ready to go no later
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VOIR DIRE

1 than one-thirty. Is that okay with everybody?

2 MS. LAUREN WHEATLEY: Sure, Judge. Thank you.

3 THE STATE (MS. FLANIGAN): Yep.

4 MS. SCHULTZ: We'll be here.

5 THE COURT: Okay.

6

7 (LUNCH RECESS)

8

9 THE COURT: Okay. The uh, individuals that are next up on the
10 list, come on up and have a seat, the seat closest to the front of the courtroom.
11 The first seat uh, for the first person. Alan Richmer, Sheila Kinslow, Carl
12 Vaughn, Susie Atkins, Michael Thomas, Steven Engleman, Jerry Carman.
13 Okay, the second row, closest to the front of the courtroom, uhm, Robin Gunther,
14 that'll be the first seat up here, ma'am. And you can walk around the front row.
15 Bonnie Woertz, David Neiter, John Hoback. Let's see, you're Jerry Carman,
16 aren't you, sir? Yeah, okay. Robin Gunther, you're Robin. You're Bonnie.
17 David Neiter, you're David. Uh, and John Hoback. You're Mr. Hoback. Okay.
18 And then also uh, Robert Schultz.

19 MS. LAUREN WHEATLEY: Judge, did you have Joseph
20 McPhillips?

21 THE COURT: He got excused. He's the guy that was in
22 foreclosure.

23 MS. LAUREN WHEATLEY: Oh, okay. Sorry. That's it.

24 THE COURT: Uh, Robert uh, Moore. Is Robert Moore here?

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VOIR DIRE

1 Come on up, sir. And Wilma Helms. Okay uh, right now, I know there's still folks
2 that are out here. And some of you may be called upon. So don't go away.
3 However, if you wish to leave for a few minutes, you know, feel free to, to uh, you
4 know, if you wanted to leave for a half an hour even, that would be fine. But, you
5 know, just don't go away and not come back. Okay? Now, an hour from now or
6 forty-five minutes from now, don't leave for a half an hour. Okay, I'm saying right
7 now, if you want to leave for a half an hour, because it's gonna be at least a half
8 an hour, probably closer to an hour. But uh, don't go away because we may
9 need you. The lawyers, as I've told you before, have a certain number of strikes.
10 And we try to get enough people here that we, you know, we don't always know
11 what we're gonna run into uh, in terms of how many people we're gonna, going
12 to need and so forth. But if you feel like, you know, you need to leave, you're
13 welcome to go back and forth. Just don't go away, all right? Okay. Uh, now
14 then, I hope you had uh, a good lunch and all that. And uh, so, is the State
15 ready to proceed with questioning?

16 THE STATE (MS. FLANIGAN): Sure, Judge.

17 THE COURT: Okay.

18

19 EXAMINATION BY THE STATE OF INDIANA (MS. FLANIGAN):

20 Ladies and gentlemen, thank you for coming back this afternoon. Uh, as
21 we've mentioned earlier this morning, my name is Julie Flanigan. I'm a Deputy
22 Prosecutor here in Harrison County. Uh, here at my table, at the table with me,
23 not my table, but the State's table I should say, is Lauren Wheatley and
24 Detective William Wibbels from the State Police.

25

VOIR DIRE

1 This is really uh, my chance or the State's chance, and Ms. Schultz's
2 chance to ask you all some questions. Uh, we're not trying to embarrass you or
3 pry into your lives. I don't know if you've felt like that even when you were filling
4 out your questionnaire, that we may be asking things that you have, we have no
5 business knowing. But there's a reason for this, and there's a reason we do uh,
6 jury selection like this. And that is to make sure that we have a fair trial, and a
7 fair trial for the State and a fair trial for Mr. Nunley. Uh, both parties here are
8 entitled to a fair trial and that's why we have to ask you some questions that you
9 may not really want to answer in front of a bunch of people. But it's really
10 important uh, that you listen and answer these questions honestly.

11 I'm gonna ask you some questions as a panel uh, ask general feelings. I
12 might call on you individually to see how each of you might feel about something.
13 If I'm speaking to uhm, Ms. Kinslow, is it?

14 JUROR: Uh huh.

15 THE STATE (MS. FLANIGAN): If I'm speaking to Ms. Kinslow and I
16 ask her a question and Mr. Schultz in the back has a question, he'd like to add
17 something, please raise your hand. If you'd like to add something or you have a
18 different opinion, we would like to hear that, because what we're trying to do here
19 again is to uh, have a fair trial. Another time I'd like to raise your hand, please, is
20 if you don't understand what I'm asking, if I've gone too fast, if I've asked a two-
21 part question that you don't understand. I was telling the panel this morning, last
22 night when I was trying to explain to my son what I'd be doing today, he said,
23 "Oh, Mommy, please make sure you just ask them one question at a time. It is
24 very hard to understand you when you ask such big questions." So if I have

25

VOIR DIRE

1 gone beyond, and you are not understanding where I'm going, please raise your
2 hand and say, "Ms. Flanigan or Julie, I don't get it. Could you rephrase that?"
3 And we're gonna start simply uh, I'm gonna ask you, has anybody on this jury
4 panel ever served on a jury before? That's two. Uh, Ms. Gunther?

5 JUROR: Uh huh.

6 THE STATE (MS. FLANIGAN): Is it Robin Gunther?

7 JUROR: Yes.

8 THE STATE (MS. FLANIGAN): Where did you serve on a jury?

9 JUROR: Uh, in Corydon here.

10 THE STATE (MS. FLANIGAN): Okay, at this courthouse or
11 downtown?

12 JUROR: Downtown.

13 THE STATE (MS. FLANIGAN): Okay, what kind of jury was that?

14 JUROR: Uhm, what is the, just the minor stuff. It wasn't superior.

15 THE STATE (MS. FLANIGAN): Was it a criminal case or a civil
16 case?

17 JUROR: Uh, I'm not sure of the difference.

18 THE STATE (MS. FLANIGAN): Do you know what it was about?

19 JUROR: Uh, maybe something like embezzlement or something
20 like that.

21 THE STATE (MS. FLANIGAN): Okay. So it may have been a
22 misdemeanor crime case, something like that?

23 JUROR: Probably.

24 THE STATE (MS. FLANIGAN): How many years ago was it?

VOIR DIRE

1 THE STATE (MS. FLANIGAN): Oh, it's been several. Can't tell
2 exactly.

3 THE STATE (MS. FLANIGAN): Do you remember what happened
4 in the case?

5 JUROR: Uh, no. Not exactly.

6 THE STATE (MS. FLANIGAN): So you don't know if there was a
7 conviction or he was found not guilty or...

8 JUROR: I'd hate to say, because it's been so long, I can't
9 remember.

10 THE STATE (MS. FLANIGAN): Okay. Did you enjoy your
11 experience as a juror?

12 JUROR: it was different, yeah.

13 THE STATE (MS. FLANIGAN): Okay. And is it Ms. Woertz?

14 JUROR: Yes.

15 THE STATE (MS. FLANIGAN): Bonnie, is it Bonnie Woertz?

16 JUROR: Uh huh, uh huh.

17 THE STATE (MS. FLANIGAN): Okay, where were you a juror?

18 JUROR: This court.

19 THE STATE (MS. FLANIGAN): Here in Harrison Superior?

20 JUROR: Yes.

21 THE STATE (MS. FLANIGAN): What kind of case was it?

22 JUROR: Child molesting.

23 THE STATE (MS. FLANIGAN): Okay. Uh, how many years ago
24 was that?

25

VOIR DIRE

1 JUROR: Uhm, I think about ten.

2 THE STATE (MS. FLANIGAN): Do you remember what happened
3 in that case?

4 JUROR: Yes.

5 THE STATE (MS. FLANIGAN): Can you tell us?

6 JUROR: It was a guilty verdict.

7 THE STATE (MS. FLANIGAN): Okay. And did you uh, I guess to
8 ask if you enjoyed that experience would not be appropriate in a child-molest
9 case. But was it something that uhm, after you were done, how did you feel
10 about it? Let me ask you that way.

11 JUROR: Honestly, it was probably one of the most stressful things I
12 had ever been through, just because of the subject matter.

13 THE STATE (MS. FLANIGAN): It was the subject matter more than
14 anything else?

15 JUROR: Yes.

16 THE STATE (MS. FLANIGAN): Well, that's fair, and thank you for
17 sharing that. That's uh, some luck to be called for another child-molest case,
18 because I think if you all understand that, that's what we're here for today. And
19 I'm going to..., did anybody else serve on a jury? Okay.

20 I'm gonna move on to something much more complex and really kind of
21 talk about uh, the nature of this case. And it kind of speaks to what Ms. Woertz
22 was talking about. But uh, this is not a pleasant subject matter. It is not pleasant
23 for the State or Detective Wibbels and Ms. Wheatley and I. It is not pleasant for
24 Ms. Schultz and it is not pleasant for Mr. Nunley to be here. And it's probably not

25

VOIR DIRE

1 pleasant for the jurors to be here. And I would like to ask you if anyone uhm,
2 thinks that they would find it difficult or impossible to sit here and fairly listen to
3 the evidence uh, in a case like this? Is there anyone who feels like they couldn't
4 listen to this type of case and apply the facts to the law and render a verdict?
5 Let me ask some more specific questions. Is there anyone who uhm, if I told you
6 there's going to be graphic uh, sexual testimony involving a child uh, would
7 anybody find it too, absolutely too difficult to sit here and listen to that to the point
8 they could not listen to it with an open mind? Nobody? Okay. Is there anybody
9 who would be too shy or embarrassed to go back in the jury room, if you're
10 selected, and discuss graphic sexual details with basically, I would assume,
11 mostly complete strangers? Anybody who would find that impossible to do?
12 How about even difficult? Anybody think that would be difficult? Okay, Ms.
13 Woertz, why don't you speak today? You think it would be hard...

14 JUROR: Well, I just think it's uncomfortable. So difficult would be,
15 you know, uncomfortable. It is uncomfortable to talk about it. And to listen to it
16 all day long and then talk about it.

17 THE STATE (MS. FLANIGAN): But it's not something that would
18 prevent you from being able to actually go back there and talk about what you've
19 heard?

20 JUROR: No.

21 THE STATE (MS. FLANIGAN): Anybody else think they might just
22 be not able to do that? This also, there's a count in this case called
23 "dissemination", and that is the dissemination of material that's harmful to a
24 minor. In this specific case it involves pornography uh, an allegation of showing

25

VOIR DIRE

1 pornography to a child. Uh, is there anybody who would have difficulty
2 discussing pornography with the other jurors in the jury room? No? You feel like
3 if that's what the evidence is, it's what you've taken an oath to do and you could
4 go back and discuss it? Okay? Good.

5 Let me ask you, have any of you ever had uh, have you ever worked with
6 children? And I don't mean like when I said, I said this morning, like when I go
7 home and I work with my children on homework or on getting their backpacks
8 ready. I mean have you ever had an occupation or volunteered in a position uh,
9 that involved working with children? Okay, and it's Ms. Kinslow?

10 JUROR: Yes.

11 THE STATE (MS. FLANIGAN): What was that?

12 JUROR: I was a foster parent.

13 THE STATE (MS. FLANIGAN): Okay, how many years were you a
14 foster parent?

15 JUROR: I was a foster parent for three years. And it was about
16 eight years ago.

17 THE STATE (MS. FLANIGAN): How old were..., how many foster,
18 how many foster children did you have?

19 JUROR: I had seven total.

20 THE STATE (MS. FLANIGAN): Uh, what were the age ranges?

21 JUROR: Uhm, I think my youngest was six months, and my oldest
22 was fifteen.

23 THE STATE (MS. FLANIGAN): Fifteen years old?

24 JUROR: Uh huh.

25

VOIR DIRE

1 THE STATE (MS. FLANIGAN): Uh, did you find that to be a
2 rewarding experience? Okay. Uh, did you have any special training regarding
3 children to become a foster parent?

4 JUROR: I went through foster parent school. I had children of my
5 own, and so we had to go through courses before we became foster parents.

6 THE STATE (MS. FLANIGAN): Would you consider yourself,
7 besides just being a parent, being somehow of an expert on children now that
8 you've had additional classes?

9 JUROR: I understand them.

10 THE STATE (MS. FLANIGAN): Okay...

11 JUROR: And I have the one girl now. So...

12 THE STATE (MS. FLANIGAN): What are the age ranges of your
13 own children?

14 JUROR: Oh, one's about to be twenty-one, one's about to turn
15 sixteen, and I have a one-year-old.

16 THE STATE (MS. FLANIGAN): Okay. So you have a whole,
17 you've seen it all basically?

18 JUROR: I have an adult, teenager and a baby.

19 THE STATE (MS. FLANIGAN): All right. Uh, anybody else work
20 with children? And is it Mr. Carman?

21 JUROR: Yes.

22 THE STATE (MS. FLANIGAN): And what is that?

23 JUROR: That was about thirty years ago. I was a police juvenile
24 officer.

VOIR DIRE

1 THE STATE (MS. FLANIGAN): Okay, where were you an officer?

2 JUROR: Uh, St. Louis.

3 THE STATE (MS. FLANIGAN): All right, how many years?

4 JUROR: Six years.

5 THE STATE (MS. FLANIGAN): Uhm, so it would be safe for me to
6 say, you've had a lot of training in dealing with children?

7 JUROR: Yes.

8 THE STATE (MS. FLANIGAN): Okay, what age did you work with?

9 JUROR: Well uh, my uh, what I got involved in mostly was the old
10 uh, police officer in the school routine, the ride-along programs uh, you know,
11 that sort of thing.

12 THE STATE (MS. FLANIGAN): What age kiddos did you mostly...

13 JUROR: Uh, junior high.

14 THE STATE (MS. FLANIGAN): Junior high?

15 JUROR: Uh huh.

16 THE STATE (MS. FLANIGAN): So you didn't really do any work
17 with say the four-to-eight-year-old range?

18 JUROR: No, not at all.

19 THE STATE (MS. FLANIGAN): You never worked with them in
20 connection with your job?

21 JUROR: No.

22 THE STATE (MS. FLANIGAN): Anybody else? Okay, Mr. Neiter
23 (pronounced Needer)?

24 JUROR: Neiter (pronounced Nider).

25

VOIR DIRE

1 THE STATE (MS. FLANIGAN): Neiter.

2 JUROR: I was a reserve officer with the county for nine years.

3 THE STATE (MS. FLANIGAN): Here in Harrison County?

4 JUROR: Yes, ma'am.

5 THE STATE (MS. FLANIGAN): All right. And you never worked
6 with my on anything. Is that right?

7 JUROR: No.

8 THE STATE (MS. FLANIGAN): Have you ever worked with Ms.
9 Wheatley on anything that you remember?

10 JUROR: No.

11 THE STATE (MS. FLANIGAN): Okay. So you have never done
12 any kind of work with either of us?

13 JUROR: No.

14 THE STATE (MS. FLANIGAN): Have you ever done work with
15 Detective Wibbels?

16 JUROR: Yes.

17 THE STATE (MS. FLANIGAN): Okay. And would that prevent you
18 from being able to look at the evidence in this case and judge it?

19 JUROR: No.

20 THE STATE (MS. FLANIGAN): No? You think you could look at
21 the facts, apply the law and render a verdict?

22 JUROR: Yes, ma'am.

23 THE STATE (MS. FLANIGAN): Anyone else?

24 JUROR (female): Uhm, I just work with children on a volunteer

VOIR DIRE

1 basis.

2 THE STATE (MS. FLANIGAN): Okay...

3 JUROR: Four-H and church and teaching Bible school and stuff

4 like that.

5 THE STATE (MS. FLANIGAN): And what age, what age ranges

6 would you work with?

7 JUROR: Typically uh, probably under ten.

8 THE STATE (MS. FLANIGAN): So would you work with any say

9 six-year-olds?

10 JUROR: I probably have in Bible school and stuff like that. Just

11 teaching classes.

12 THE STATE (MS. FLANIGAN): Did you enjoy that work?

13 JUROR: Uh huh.

14 THE STATE (MS. FLANIGAN): Let me ask this. Uhm, and this is

15 not pleasant to ask, it's maybe embarrassing. But has anybody ever been a

16 criminal defendant? Have you ever been accused of a crime or arrested for a

17 crime? Okay. Mr. Engleman?

18 JUROR: Yes.

19 THE STATE (MS. FLANIGAN): What kind of charges were that,

20 sir?

21 JUROR: Criminal related.

22 THE STATE (MS. FLANIGAN): What kind of...

23 JUROR: Possession of marijuana.

24 THE STATE (MS. FLANIGAN): When was that?

25

VOIR DIRE

1 JUROR: Four years ago.

2 THE STATE (MS. FLANIGAN): Four years ago? Were you
3 prosecuted by this office?

4 JUROR: Uh, yes. I actually went with a plea bargain.

5 THE STATE (MS. FLANIGAN): Okay, so you were arrested and
6 you had dealings with the Harrison County Prosecutor's Office?

7 JUROR: Yes.

8 THE STATE (MS. FLANIGAN): Do you think that that would effect
9 your ability to uh, look at the evidence we put in fairly? Would that color your...

10 JUROR: No.

11 THE STATE (MS. FLANIGAN): You think you could look at it fairly?

12 JUROR: Yes.

13 THE STATE (MS. FLANIGAN): You didn't have such a bad
14 experience with us that you would say, "No matter what they say, I'm not buying
15 it"?

16 JUROR: No.

17 THE STATE (MS. FLANIGAN): All right. And you said the plea had
18 probation, I would take it?

19 JUROR: Yes ma'am.

20 THE STATE (MS. FLANIGAN): And that's completed?

21 JUROR: Yes ma'am.

22 THE STATE (MS. FLANIGAN): Okay. Who else raised their hand?
23 Mr. Hoback?

24 JUROR: Yeah. Possession of marijuana, about thirty years ago,

25

VOIR DIRE

1 twenty-nine I think exactly. Here in Harrison County.

2 THE STATE (MS. FLANIGAN): Okay. So it's safe to say that you
3 didn't deal with either Mr. Wheatley or I...

4 JUROR: No.

5 THE STATE (MS. FLANIGAN): Or Mr. Wibbels?

6 JUROR: No. Also uh, a burglary charge uh, thirty years ago here in
7 Harrison County.

8 THE STATE (MS. FLANIGAN): Okay. How old were you then?

9 JUROR: Uh, I was nineteen.

10 THE STATE (MS. FLANIGAN): So barely an adult?

11 JUROR: Right.

12 THE STATE (MS. FLANIGAN): Okay. Have you had any brushes
13 with the law since then?

14 JUROR: No.

15 THE STATE (MS. FLANIGAN): And let me ask you the same
16 question that I asked him. Would that color your ability to listen to our evidence
17 and, and apply it to the, to the law in this case?

18 JUROR: No. I wouldn't have no problem with that.

19 THE STATE (MS. FLANIGAN): Who else? Okay. Ms. Helms?
20 What kind of case was that?

21 JUROR: It was uh, driving under the influence.

22 THE STATE (MS. FLANIGAN): All right. Was that here in Harrison
23 County?

24 JUROR: Yes ma'am.

25

VOIR DIRE

1 THE STATE (MS. FLANIGAN): Uhm, was it recently?

2 JUROR: It was in 2001, after my grandmother died.

3 THE STATE (MS. FLANIGAN): All right. And is that your one
4 experience with the law?

5 JUROR: Yes ma'am. That was my first offense, only offense.

6 THE STATE (MS. FLANIGAN): Did you plea bargain that case?

7 JUROR: It was prosecution deferred. So it never, I never actually
8 had to come to court.

9 THE STATE (MS. FLANIGAN): Did you ever have any problems
10 with the prosecutor's office that would color your...

11 JUROR: No. Everyone was very nice.

12 THE STATE (MS. FLANIGAN): Okay, thank you. Anyone else?
13 Okay, Mr. Moore?

14 JUROR: Yes. Uh, mine was much the same. It was a driving
15 under the influence about ten years ago, and it was here in Harrison County.
16 And uh, it was a first offense, and it was never uh, tried or anything. There was
17 a, I guess you would call it, plea bargained outside, where being a first offense, it
18 was uh...

19 THE COURT: Pretrial Diversion?

20 JUROR: Pretrial Diversion, yes. And I completed classes and uh,
21 that was how it was resolved.

22 THE STATE (MS. FLANIGAN): Okay. So you wouldn't, do you
23 now have any bad feelings towards the Harrison County Prosecutor's Office?

24 JUROR: No, no.

25

VOIR DIRE

1 THE STATE (MS. FLANIGAN): Anyone else have any criminal
2 charges against them? How about members of your immediate family? And
3 when I say that, I mean like a spouse or a child? Okay, Ms. Helms?

4 JUROR: Yes. Uh, it was two years ago. My son was a senior. He
5 had gone to a party uhm, where there were minors being served alcohol. So the
6 neighbor called the officers and they came to the house, and uh, so everyone
7 was just taken to jail. And Jacob was still a minor. Uh, he had had one beer.
8 He blew a point-o-four, I believe, or maybe a two. And so I took him home. He
9 did his classes uhm, and that was his only offense too. It was a learning
10 experience for him.

11 THE STATE (MS. FLANIGAN): I bet. So is it fair to say that you
12 didn't have any bad feelings towards our office because of that experience?

13 JUROR: No. We were both actually thankful that it happened, how
14 it happened, when it happened, because Jacob did learn. He learned a very
15 valuable lesson. So...

16 THE STATE (MS. FLANIGAN): I'm sorry to pick on you, but thank
17 you for your honesty. I just kind of have to know these things. Uh, anyone else?
18 All right, Ms. Woertz?

19 JUROR: Well, my husband was, I guess, was arrested about
20 twenty-five years ago, right after our first year of marriage, for drinking. And then
21 I've got a couple of brothers who have been arrested a couple of times for...,
22 years ago for drinking, and other than that...

23 THE STATE (MS. FLANIGAN): And, let me say, the reason I'm
24 going this way is to find out if you have any or harbor any ill feelings towards

VOIR DIRE

1 either the Harrison County Police or the State Police or our office. So, would it
2 be fair to say that you don't harbor any ill feelings? Is there anyone that I haven't
3 talked to that for any reason has any ill feelings about either the Harrison County
4 Police, or the Indiana State Police, or the Harrison County Prosecutor's Office?

5 I'm gonna shift gears a little bit and talk about something a little more
6 pleasant. How many of you watch uh, legal shows on T.V.? You're off of them
7 now since you served on that jury? Uh, so I think that Ms. Woertz can tell you,
8 that that is not real life. And that is not how this day, how this week is gonna go
9 for the people selected on this jury. I am not, Ms. Wheatley and I are not gonna
10 be able to open and close this case in a day. Uhm, it is gonna go on for awhile.
11 It is not gonna be necessarily neat and compact. Uh, does anyone here think
12 that this trial should be like what you see on T.V.? Now, there are shows like
13 C.S.I. Is anybody a C.S.I. fan?

14 JURORS: Uh huh, yeah. Uh huh.

15 THE STATE (MS. FLANIGAN): And you know in those, those
16 shows that there's usually some sort of scientific or physical evidence, almost in
17 every case. It's a miracle. I mean I wish I prosecuted on that show because that
18 would make my life a lot easier. But, what I want to go through, and I'm gonna
19 ask each of you this individually, because I think this is an important point for our
20 case. I'm gonna ask you, if there's a case that had say testimonial evidence,
21 which is evidence, but no physical evidence or scientific evidence, would that
22 trouble you? Or would you not be able to return uh, a verdict of guilty in a case
23 without scientific or physical evidence? And, we'll start with you. Is it Mr.
24 Richmer?

25

VOIR DIRE

1 JUROR: Yeah.

2 THE STATE (MS. FLANIGAN): What do you think?

3 JUROR: Can you say that again?

4 THE STATE (MS. FLANIGAN): Would it be difficult, or could you, in
5 a case where there's only testimonial evidence, evidence that's given through a
6 witness uh, as long as you were firmly convinced as to the truth of that evidence,
7 could you convict in a case if there was not physical or scientific evidence, there
8 was no DNA?

9 JUROR: I would say so.

10 THE STATE (MS. FLANIGAN): Okay. How about you, Ms.
11 Kinslow?

12 JUROR: I could.

13 THE STATE (MS. FLANIGAN): Okay, Mr. Vaughn?

14 JUROR: I believe so.

15 THE STATE (MS. FLANIGAN): You believe so?

16 JUROR: Yeah.

17 THE STATE (MS. FLANIGAN): Okay. Ms. Atkins? Okay, Mr.
18 Thomas/

19 JUROR: Yes ma'am.

20 THE STATE (MS. FLANIGAN): How about you, Mr. Engleman?

21 JUROR: I believe it would be difficult for me.

22 THE STATE (MS. FLANIGAN): Okay. Thank you for being honest
23 about that. If it would be difficult for you, that's what I need to know. So you
24 would prefer more than just testimonial evidence. How about you, Mr. Carman?

25

VOIR DIRE

1 JUROR: I'd agree. I'd say it would be difficult.

2 THE STATE (MS. FLANIGAN): Ms. Gunther?

3 JUROR: Yeah.

4 THE STATE (MS. FLANIGAN): You think you could?

5 JUROR: Yeah.

6 THE STATE (MS. FLANIGAN): All right. Uh, Ms. Woertz?

7 JUROR: Yeah. It would depend on the witnesses and the
8 statements.

9 THE STATE (MS. FLANIGAN): Okay. But if that's what there was,
10 you'd be okay with that?

11 JUROR: Uh huh.

12 THE STATE (MS. FLANIGAN): Okay. How about you, Mr. Neiter?

13 JUROR: It would be difficult.

14 THE STATE (MS. FLANIGAN): It would be difficult, okay. Mr.
15 Hoback?

16 JUROR: I could do it. It'd be all right.

17 THE STATE (MS. FLANIGAN): All right. Mr. Schultz?

18 JUROR: After reading the case, aside from (unintelligible)..., it
19 would be difficult for me.

20 THE STATE (MS. FLANIGAN): Okay, it would be difficult?

21 JUROR: Yes.

22 THE STATE (MS. FLANIGAN): Okay. Uh, Mr. Moore?

23 JUROR: I, I think I could do it. I mean verbal evidence is still
24 evidence. You know, and if you listen.

25

VOIR DIRE

1 THE STATE (MS. FLANIGAN): All right. And how about you,
2 finally, Ms. Helms?

3 JUROR: If that's all that there was and that's all that there was to
4 go on uhm, yes, I would have to do it. Uh, would it be difficult? I'm not sure.
5 This is my first experience. I've never gone through anything like this. So I
6 honestly don't know.

7 THE STATE (MS. FLANIGAN): That's fair enough. I'm gonna talk
8 about some kinds of evidence uh, that you might see. One being direct and
9 circumstantial evidence. And I, I tried this morning, and I was kind of surprised
10 with the results. So I'll try it again. Uh, Sunday, my family went to a football
11 game, and we came back, and let me give you some background on this. Uh,
12 we have one, a single dog, and he was locked in the kitchen and he was the
13 only..., locked in, so no one could come in. No one else has keys to our house
14 and no one else has access to our house. We came home and my daughter's
15 folder was ripped into tiny shreds. So, to me, that says circumstantially that the
16 dog ate the folder. And what I want to know from you is, is that enough for you
17 to convict this dog? Or would you need more than just finding the ripped up
18 piece of paper and the dog there? And how much more? Would you need to
19 find some paper in his mouth? Uhm, would you need to find some in his bed?
20 How do you feel about that, Mr. Richmer?

21 JUROR: Do you have mice?

22 THE STATE (MS. FLANIGAN): See, that's kind of how it went this
23 morning. Uh, so for this example, let's say no, there are no mice.

24 JUROR: Yeah, I think that'd be enough.

25

VOIR DIRE

1 THE STATE (MS. FLANIGAN): Okay. How about you, Ms.
2 Kinslow?

3 JUROR: Based on the testimony, I'd think the dog did it.

4 THE STATE (MS. FLANIGAN): Okay. I'm gonna go back to Mr.
5 Neiter.

6 JUROR: Uh, I'd convict him.

7 THE STATE (MS. FLANIGAN): Okay. Is there anyone who
8 wouldn't convict the dog based on that evidence? Okay. So that's, what I'm
9 showing you is that sometimes there's direct evidence, which would be what a
10 person observed or experienced. And there will be some of that in this case.
11 But there's also circumstantial evidence, and that is things you have to use your
12 common sense to determine if it's, if it's true or false. So I want to explain that.
13 Does that make sense to everyone, the difference between those two?

14 And then what I also want to talk to you about briefly is what I have to
15 prove. Uh, what's the standard in a criminal case? And I'm sure that Ms.
16 Woertz knows this when she rolls her eyes at me. I have to prove he's guilty of
17 what? Beyond a reasonable doubt, right?

18 JUROR (male): Beyond a reasonable doubt.

19 THE STATE (MS. FLANIGAN): Okay. Uh, and what the Judge will
20 tell you that that means is that you must be firmly convinced as to the
21 defendant's guilt. I don't have to prove anything one hundred percent because
22 there's nothing in life that is one hundred percent. Except as Ms. Wheatley
23 usually will point out uh, death and taxes. Right? I just can't prove something a
24 hundred percent. What I have to prove to you is that you need to be firmly

VOIR DIRE

1 convinced as to Mr. Nunley's guilt to return a verdict on guilty. And what I have
2 to prove are the elements. I don't have to prove what the weather was like that
3 day. I don't have to prove what he had on. I don't have to prove why he did it.
4 Things that you would probably really love to know. All I have to hone in on are
5 these elements of the crime, and there are five charges in this case. And I'll talk
6 about the first one and ask you about that.

7 The elements are that, that there's a person twenty-one-years of age or
8 older, who with a child under fourteen years of age, performs or submits to
9 deviate sexual conduct. And the Judge will define the sexual conduct for you.
10 But that's it. A person over twenty-one, a person under fourteen, performs or
11 submits to deviate sexual conduct. Does everybody understand that that's what
12 would have to prove on Count one? Is there anyone who's sitting there that
13 thinks I should have to prove more than that? That I'd have to prove why he did
14 it? Okay. And does anybody have trouble with the concept that I only have to,
15 to give you enough evidence that you're firmly convinced as to each element of
16 that crime? But I can't, I can't prove something to a hundred percent. Is there
17 anyone who, is there anyone who would just raise their hand and say, "Ms.
18 Flanigan, I, I need a hundred percent"? "Firmly convinced doesn't get it for me. I
19 need a hundred percent"? Ms. Gunther, would you need a hundred percent?

20 JUROR: No. Can you explain that again?

21 THE STATE (MS. FLANIGAN): Okay. What the Judge will tell you
22 is that beyond a reasonable doubt is that you're firmly convinced as to his guilt.

23 JUROR: Uh huh.

24 THE STATE (MS. FLANIGAN): Okay? And what I'm saying is, I

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VOIR DIRE

1 can't prove that to a hundred percent because we weren't there. And I would
2 submit that only if we were there and could see what happened would we
3 understand, or be a hundred percent sure. So I can't give you that. What I can
4 give you is that you're firmly convinced as to his guilt. If you were firmly
5 convinced, would, would you be able to return a guilty verdict?

6 JUROR: Yes.

7 THE STATE (MS. FLANIGAN): Okay. You wouldn't hold me to a
8 higher standard than that?

9 JUROR: no.

10 THE STATE (MS. FLANIGAN): Okay. Is there anyone who
11 thinks..., and there are people, I've had people say, "I would just have to be a
12 hundred percent certain." And that's okay if you feel that way. Is there anyone
13 that..., Mr. Schultz, you look kind of puzzled.

14 JUROR: It's all perturbing to me, you know, going through this
15 whole process and what history I've read. So uh, and there's a lot more in
16 understanding it from your prospective as a prosecutor, not as the uh, defense.

17 THE STATE (MS. FLANIGAN): Okay.

18 JUROR: Okay...

19 THE STATE (MS. FLANIGAN): All right. Uh, let me ask you.
20 Would you be able to listen to the evidence and apply it to the law, and if you
21 were convinced of Mr. Nunley's guilt, could you return a guilty verdict?

22 JUROR: Yes, ma'am.

23 THE STATE (MS. FLANIGAN): Okay. That's all I can ask of you.

24 So you understand, that I am not required, or is there any..., well, let me ask you

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VOIR DIRE

1 this. Does anyone think that I should be required to prove a perfect case? That
2 in order to convict uh, Mr. Nunley, I should have to bring in a video tape as to
3 what happened? No? Okay. Uh, and we've already talked about, would you be
4 okay, and some of you said "yes" and some said "no", as to if there was just
5 testimonial evidence. Okay. Let me ask you this.

6 If a child and an adult give different versions of a story; the child gives one
7 version and an adult gives a version of the story, is there anyone in the jury
8 panel..., I'm gonna ask you this one-on-one because this is something important
9 for the case. But is there anyone who thinks that they would tend to believe one
10 more than the other? And I'm gonna start down with Mr. Carman this time and
11 go a little different. Mr. Carman?

12 JUROR: Well uh, somebody's been taken into custody for
13 something. And uh, as far as I'm concerned uh, he's innocent until you prove
14 otherwise. I mean without a doubt, to me.

15 THE STATE (MS. FLANIGAN): Okay. But let me ask you this. If, if
16 have, say the defendant testifies and a child, an adult and a child would testify,
17 and they give different versions of what happened, would you tend to believe one
18 more than the other?

19 JUROR: Uh, no. It would depend on everything that's, that's uh, I
20 can't say, you know.

21 THE STATE (MS. FLANIGAN): You don't have a predisposition, I'd
22 say, to believe kids or grown-ups?

23 JUROR: No, not necessarily, no. Not this, not something serious,
24 no.

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VOIR DIRE

1 THE STATE (MS. FLANIGAN): How about you, Mr. Engleman?

2 JUROR: I don't believe that I would believe one or the other without
3 knowing more.

4 THE STATE (MS. FLANIGAN): All right. How about you, Mr.
5 Moore? Child or adult?

6 JUROR: No, I wouldn't be, as you said, predispositioned to believe
7 one or the other. I would...

8 THE STATE (MS. FLANIGAN): Listen to everything that's said...

9 JUROR: Yes. And then make a decision, you know, from the
10 evidence and all. But I wouldn't go into it saying, "I'm going to believe this one
11 over that one."

12 THE STATE (MS. FLANIGAN): Maybe you'd want to look at how
13 the child behaves on the stand, or how the child acts here in the courtroom?

14 JUROR: Right.

15 THE STATE (MS. FLANIGAN): Or the defendant testifies, how he,
16 he acts. Or if there's other adults who come in and support one side of the story
17 or the other.

18 JUROR: Right. I mean if there are other people, you know, if there
19 are..., well, I mean if there isn't just one person telling the same story. You know
20 what I mean? If there's uhm, supporting evidence or something like that. I mean
21 you wouldn't come into it saying, "I'm going to believe this one over that person."
22 You would have to listen to all of it.

23 THE STATE (MS. FLANIGAN): Okay. Uh, Ms. Helms, how about
24 you?

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VOIR DIRE

1 JUROR: I would be able to listen. I'd be fair. I wouldn't be
2 predisposed to believe one over the other. Uhm, there's been different
3 instances, situations I've been exposed to where, you know, you always have
4 this side or this side. And, you know, you listen and you listen. And then you
5 have to decide, okay, well, who's, you know, which one, which story do you
6 believe, and I'll just have to make a decision, but I'm not predisposed to either
7 side.

8 THE STATE (MS. FLANIGAN): So you four I've talked to down
9 here, all of you feel like, and you've heard a lot about what this case is about and
10 the kind of evidence that may come in. You think that you can listen to the
11 evidence, take what the Judge tells you the law is, apply that and return a guilty
12 verdict if you're firmly convinced as to his guilt?

13 JURORS: Sure. Uh huh.

14 THE STATE (MS. FLANIGAN): Okay. Let me ask..., let me, I was
15 just gonna go down here for a little bit. Ms. Gunther, would you tend to believe a
16 child or a grown-up more?

17 JUROR: I'd have to listen to both sides, not one over the other.
18 Just depended on how it goes.

19 THE STATE (MS. FLANIGAN): Okay. Ms. Kinslow?

20 JUROR: I would have to listen to both sides. Because they both
21 can be untruthful. I'd say you'd have to hear to find out which one you'd choose
22 to believe.

23 THE STATE (MS. FLANIGAN): How about you, Mr. Richmer?

24 JUROR: I'd have to listen to both sides.

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VOIR DIRE

1 THE STATE (MS. FLANIGAN): All right. Ms. Woertz?

2 JUROR: Well, honestly, I mean it's just, the honest truth, I think
3 there's a big difference between a thirteen-year-old and a five-year-old. And I
4 think a child that's been abused or molested, it's hard for them to say that. So
5 quite honestly, if it was a very young child, I would have a tendency to believe
6 what they were saying uh, right off the bat. You know..., more, but that's just my
7 honest opinion. It would be hard for a child to say something like that if it were
8 true. Now I could be wrong. I'm just saying that...

9 THE STATE (MS. FLANIGAN): I'm just asking what your opinions
10 and thoughts are, and I just you need to say it because that's what we need to
11 hear. Uh, and how about you, Mr. Neiter?

12 JUROR: I don't think I would uh, make a decision based on age. I
13 could listen to either of them fairly, both fairly.

14 THE STATE (MS. FLANIGAN): You do think you could listen to
15 them?

16 JUROR: Yes.

17 THE STATE (MS. FLANIGAN): Uh, and, is it Mr. Vaughn?

18 JUROR: Yes.

19 THE STATE (MS. FLANIGAN): What do you think?

20 JUROR: Yeah, I would say to listen to both of them to see what
21 they have to say, and see their reactions and what their story tells. You know, to
22 listen and make a..., I don't think I would prefer one over the other until you
23 heard whatever they had to say.

24 THE STATE (MS. FLANIGAN): So you six I've talked to down here,

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VOIR DIRE

1 you've heard the kind of evidence where I've alluded to the kind of evidence that
2 there'll be in this case, and kind of the type of case that it is. Uh, hearing what
3 you've heard, do you think that if I left you firmly convinced after my case, that
4 Mr. Nunley committed this crime uh, that you could return a verdict of guilty in
5 this case? Do you all think that's true? Mr. Richmer? You think?

6 JUROR: Yeah, pretty much.

7 THE STATE (MS. FLANIGAN): Pretty much, but you're not quite
8 sure.

9 JUROR: It's just difficult to answer a question like that when you
10 don't know what's being presented. I mean it's...

11 THE STATE (MS. FLANIGAN): Well, let me put it..., right. I can't
12 really tell you exactly what I'm gonna put on...

13 JUROR: Right, right.

14 THE STATE (MS. FLANIGAN): I've given you some clues that
15 there might not be any physical evidence or scientific evidence. There's going to
16 be some testimony. Uh, do you think you can listen to that with an open mind?

17 JUROR: Sure.

18 THE STATE (MS. FLANIGAN): Okay, and then comply that to the
19 law and render a verdict?

20 JUROR: Uh huh.

21 THE STATE (MS. FLANIGAN): And if you're firmly convinced as to
22 his guilt, you could return a guilty verdict?

23 JUROR: I believe so.

24 THE STATE (MS. FLANIGAN): Okay. And uh, I'm going to go into

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VOIR DIRE

1 the middle here and just go through all of you. Uh, Ms. Atkins, would you tend to
2 believe a child or an adult more?

3 JUROR: I would pretty much have to hear both.

4 THE STATE (MS. FLANIGAN): Okay. Uh, how about you, Mr.
5 Thomas?

6 JUROR: I don't think I'd believe one more than the other.

7 THE STATE (MS. FLANIGAN): Okay. Mr. Schultz, do you have
8 any thoughts?

9 JUROR: I can be impartial.

10 THE STATE (MS. FLANIGAN): All right. How about Mr. Hoback?

11 JUROR: I wouldn't believe one over the other, you know. Just see
12 what they had to say.

13 THE STATE (MS. FLANIGAN): And you four heard what I asked
14 these others. I've kind of alluded to the kind of evidence that might be in this
15 case. And do you think that if I left you firmly convinced as to the defendant's
16 guilt after my case, would you be able to return a verdict of guilty?

17 JUROR: Yes.

18 THE STATE (MS. FLANIGAN): Any problem?

19 JUROR: No.

20 THE STATE (MS. FLANIGAN): Is there anybody who just thinks
21 now that they've heard part of these questions, you're gonna say, "I, I've
22 changed my mind. I just don't think I can do this. I don't think I have the
23 stomach for it"? Okay. In Indiana, your role is to apply the facts to the law uh,
24 and to render a verdict, which is why I asked each of you if you could listen

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VOIR DIRE

1 carefully and you could, if you're firmly convinced, and which I said is not a
2 hundred percent, because I can't do that. I can't bring a hundred percent. But if
3 you're firmly convinced, you'll return a verdict of guilty. Your job is not to
4 sentence. It's to return a verdict of guilty or not guilty. In Indiana, jurors do not
5 sentence defendants. Does that trouble any of you?

6 JUROR (female): I'm thankful, in a way.

7 THE STATE (MS. FLANIGAN): That's well, you could've heard my
8 questions, because my next question is, are you relieved?

9 JUROR (female): Yes.

10 THE STATE (MS. FLANIGAN): Okay...

11 JUROR (female): I am.

12 THE STATE (MS. FLANIGAN): Okay. Ms. Helms, tell, why are you
13 relieved?

14 JUROR: Well, I don't know. Uh, I would not want that responsibility
15 as to why. To me, I don't know. I think consciously, because I'm a very uh, self-
16 conscious person. And, and I think a lot about things and I just wouldn't want
17 that responsibility.

18 THE STATE (MS. FLANIGAN): But, that being said, you would be
19 okay with uh, judging the evidence?

20 JUROR: The evidence I can judge. The actual sentencing, to me
21 that's God's job, in a way. You know what I mean? It's..., I'm, I don't know that I
22 would ever have enough information to actually sentence somebody.

23 THE STATE (MS. FLANIGAN): Okay. Anybody else feel uh, like
24 Ms. Helms? That you're relieved that you don't have to sentence?

VOIR DIRE

1 JUROR (male): Yes.

2 THE STATE (MS. FLANIGAN): Yes? Mr. Schultz, you're relieved
3 that that wouldn't be part of the job?

4 JUROR: Yes. Unwisely we can just reduce ourselves to lynch
5 mobs and vigilantes.

6 THE STATE (MS. FLANIGAN): So, all your job is to listen to the
7 evidence and apply it to the law. All right? Uh, I'm gonna ask you if uh, and I'm
8 wrapping up here. The most important thing that I can, that I believe that a juror
9 brings into the courtroom is common sense. Your everyday life experiences are
10 not left at the door, whether you be a foster parent, or whether you've uh, been
11 through a criminal prosecution that was just a mistake and a one-time thing. You
12 bring that all here with you. And you can't leave that at the door. You have to
13 bring that common sense into the courtroom. And I'm gonna ask you, can
14 everybody think that they can bring their common sense and their life
15 experiences here and listen fairly to this evidence?

16 JUROR (male): Uh huh.

17 JUROR (male): Sure.

18 JUROR (male): Yes.

19 JUROR: Yeah.

20 THE STATE (MS. FLANIGAN): Does anybody have any uh,
21 questions they'd like to ask me before Ms. Schultz gets a chance? Okay. Thank
22 you very much.

23

24 EXAMINATION BY DEFENSE:

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VOIR DIRE

1 MS. SCHULTZ: Good afternoon, ladies and gentlemen. My name
2 is Susan Schultz. And I realize that there is a person on this jury panel with the
3 same last name.

4 JUROR (female): Do you mind to speak up just a little?

5 MS. SCHULTZ: Okay. I'll try.

6 JUROR: Thank you.

7 MS. SCHULTZ: And Mr. Schultz in the back row, we don't know
8 each other, do we?

9 JUROR: No, ma'am.

10 MS. SCHULTZ: Well, actually my in-laws are all from Michigan and
11 out of town, so I don't have anybody, any relatives that live here.

12 JUROR: We're rare.

13 MS. SCHULTZ: We're rare. We spell our names the same.

14 JUROR: Okay.

15 MS. SCHULTZ: First of all, I'd like to ask if there's anybody here
16 that has a close friendship with any police officers? Mr. Neiter? And Mr.
17 Engleman and Mr. Carman. Okay, Mr. Neiter, you said you were a reserve
18 officer?

19 JUROR: Yes, ma'am.

20 MS. SCHULTZ: And how long was that?

21 JUROR: It was for nine years.

22 MS. SCHULTZ: And when did you stop doing that?

23 JUROR: Uh, two years ago.

24 MS. SCHULTZ: Okay. So you know a lot of police officers in the
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VOIR DIRE

1 area. Is that right?

2 JUROR: Yes, ma'am.

3 MS. SCHULTZ: Did you work directly with the county police or the
4 state police or...

5 JUROR: I was reserve with the county police.

6 MS. SCHULTZ: With the county. So you would deal, you would
7 interact with the State Police, but you didn't go in the car with them and ride
8 around or anything like that?

9 JUROR: No.

10 MS. SCHULTZ: Okay. And, Mr. Engleman, what's your
11 relationship with police officers?

12 JUROR: Uh, I've, I'm uh, pretty close friends with uh, Officer Gilley.

13 MS. SCHULTZ: With the Sheriff's department here?

14 JUROR: Yes.

15 MS. SCHULTZ: Okay. And do you see him on a regular basis?

16 JUROR: Yes, ma'am. I also come into the jail every Tuesday and
17 uh, bring the N.A. program in here. So I know a lot of the officers, but I'm not
18 actually friends with them.

19 MS. SCHULTZ: Okay. So you're quite, you're quite active in the
20 N.A. program?

21 JUROR: Yes, ma'am.

22 MS. SCHULTZ: Okay. And Mr. Carman?

23 JUROR: Uh, no one in the area. But Chicago, I have a couple of
24 friends.

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VOIR DIRE

1 MS. SCHULTZ: Were you ever a police officer yourself?

2 JUROR: Yes. In St. Louis, '76, thirty-three years ago.

3 MS. SCHULTZ: Oh, okay. So how long did you do that?

4 JUROR: Six years.

5 MS. SCHULTZ: Six years, okay. So since then you've moved
6 down to other things? (Unintelligible)

7 JUROR: No, I'm a regular person, yeah.

8 MS. SCHULTZ: Okay. And what have you done since then?

9 JUROR: Uh, we own a grocery store now.

10 MS. SCHULTZ: Okay, considerably different than being a cop?

11 JUROR: Yeah, definitely different, yeah.

12 MS. SCHULTZ: Okay. Have any of you ever had any training uh,
13 in criminal law as an attorney, a legal aid or anything of that nature? Anybody
14 else have any training as a police officer? No? How many of you have ever
15 been victims of a crime? Okay, is it Bonnie Woertz?

16 JUROR: Yes.

17 MS. SCHULTZ: And what kind of a crime was that?

18 JUROR: I had a car stolen.

19 MS. SCHULTZ: Did they catch the person that took it? Did you
20 ever get your car back?

21 JUROR: Yeah, I got the car back. Trashed.

22 MS. SCHULTZ: Okay. You said you were on a jury with a uh,
23 sexual misconduct case about ten years ago?

24 JUROR: Uh huh.

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VOIR DIRE

1 MS. SCHULTZ: Okay, was I the attorney on that case?

2 JUROR: No.

3 MS. SCHULTZ: Okay. I wanted to check with you on that. Uh,
4 who else has been a victim in a crime?

5 JUROR (female): It was just a break-in of uh, my family farmhouse
6 that I moved back to. It was broken into twice. Uh, they never caught anyone.
7 The first time it was basically ransacked. And the second time they only took a
8 couple of things.

9 MS. SCHULTZ: Okay. And I noticed on your uh, your
10 questionnaire, you talked about your job.

11 JUROR: Yes ma'am.

12 MS. SCHULTZ: You work at the hospital?

13 JUROR: Yes, ma'am.

14 MS. SCHULTZ: And can you tell me what your title is?

15 JUROR: Uhm, I'm an R.N. that circulates in surgery. And the
16 number one job that I do, I'm a patient advocate. And I'm to ensure that my
17 patients' needs uhm, from start to finish are met, and that everything is done
18 safely, and all the checks and balances are in order for the patient.

19 MS. SCHULTZ: Sort of quality control in the operating room?

20 JUROR: Well, that yes. I guess that's the way to put it.

21 MS. SCHULTZ: So is it going to be a problem if you're not at work?

22 JUROR: It's gonna for be, I think, work, although uhm, because I
23 feel like this is a duty that if we're called to be had uh, someone, they'll just have
24 to make do, I guess.

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VOIR DIRE

1 MS. SCHULTZ: If you were sick, they would, wouldn't they?

2 JUROR: Yeah. But I don't get sick usually. So they don't usually
3 have to worry about it. But if they were here today, they would tell you it would
4 be an imposition.

5 MS. SCHULTZ: Okay. But you're, you're more than happy to go
6 ahead and fulfill your responsibilities?

7 JUROR: Yes ma'am, I am now.

8 MS. SCHULTZ: Okay. Do any of you or all of you believe that a,
9 that the police sometimes makes mistakes and arrest the wrong person? How
10 many think that happens? Ms. Atkins, you don't think that happens?

11 JUROR: I'm sure it probably does, but I'm not familiar.

12 MS. SCHULTZ: You haven't been involved in the criminal justice
13 system?

14 JUROR: And I noticed on your uh, questionnaire that you had
15 mentioned that you have uh, a back problem?

16 JUROR: Yes. I've got titanium rods in my back and sometimes it
17 gets pretty painful sitting through long periods of time. I need to get up and kind
18 of walk it out, because it's almost like it locks up.

19 MS. SCHULTZ: Okay...

20 JUROR: But I mean it is painful.

21 MS. SCHULTZ: Okay. But the Judge is going to tell you that if you
22 have a problem like that, he'll let you get up and move around and...

23 JUROR: Okay.

24 MS. SCHULTZ: And he won't make you just sit there and...

VOIR DIRE

1 JUROR: No.

2 MS. SCHULTZ: ...in your chair for eight hours at a time. I we would
3 take (unintelligible)...

4 JUROR: Okay.

5 MS. SCHULTZ: So that's not going to be a major issue if you can
6 get up and move around?

7 JUROR: No.

8 MS. SCHULTZ: Everybody else believes that sometimes the police
9 get the wrong person, right? And I think they do. And I think that the facts bear
10 that up. And I think about, my husband and I used to have arguments about
11 death penalty. And he was pro-death-penalty and I was anti-death-penalty. And
12 we would have these discussions at home until Barry Scheck came long, and
13 Barry Scheck got a lot of people freed from death row because they were
14 wrongfully convicted when they had their DNA evidence. And I, and I think that's
15 an example there. It shows us that sometimes the police, the good intentions
16 that they have, sometimes they make a mistake and sometimes the wrong
17 person is uh, arrested and charged with a crime. Do you, do any of you believe
18 that all of the people that come in this courtroom and take an oath and get on the
19 stand and tell the truth? Does anybody believe that? I, I have clients that come
20 into my office every once in awhile and they'll say, "Well, let's take them to court
21 and put them under oath make them tell the truth." And that doesn't always
22 happen. So we do have people that take the witness stand, take the oath and
23 they don't always tell the truth. And even though they have, you and I aren't
24 going to be able to tell right away who's not telling the truth and who is, but when

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VOIR DIRE

1 you have one person say this, and another person say it was a lie, and it can't be
2 both, you know, somebody's wrong. So can, can you think of reasons why
3 people might not tell the truth on the stand? And I'll pick on you, Mr. Schultz?

4 JUROR: Uh, they just have an inclination of lie and really want to
5 keep their butts out of the fire at all cost.

6 MS. SCHULTZ: Do you think it might also sometimes happen if
7 people are really mistaken? For example, eye-witness uh, identification of
8 someone. They saw someone commit a crime, they ran down the street, they
9 thought that John Doe was really someone else.

10 JUROR: Oh, sure it happens.

11 MS. SCHULTZ: It happens, right?

12 JUROR: Yeah, it sure does.

13 MS. SCHULTZ: And sometimes uh, people uh, might forget. It's
14 been a long time since the crime happened and (unintelligible)... they testimony
15 about, they might just forget. So, sometimes everything we hear from the
16 witness stand isn't uh, the truth. Sometimes people aren't intentionally lying.
17 We can all understand that happens. And how many of you sitting here have
18 children? Mr. Moore, you don't have any kids?

19 JUROR: No.

20 MS. SCHULTZ: And I don't either. Do kids always tell the truth?
21 Let me ask it the easy way. Does anybody here think that kids always tell the
22 truth?

23 JUROR (female): No, ma'am.

24 JUROR (male): No.

VOIR DIRE

1 MS. SCHULTZ: We all know that they sometimes make stuff up.
2 They want to stay out of trouble. Want to get somebody else in trouble. Lots of
3 reasons. Do you think that children are capable of making up allegations of
4 molestation? For example, do you think a child is capable of saying that
5 someone sexually molested them when it did not happen to make a false
6 allegation? Mr. Hoback, do you think that happens?

7 JUROR: I guess it could be possible.

8 MS. SCHULTZ: It happens sometimes?

9 JUROR: Yeah.

10 MS. SCHULTZ: Uh, what about you, Mr. Neiter? Do you think it
11 ever happens, that it can happen?

12 JUROR: Yes.

13 MS. SCHULTZ: Mr. Vaughn?

14 JUROR: Anything is possible when you have kids.

15 MS. SCHULTZ: Well, I don't know if anybody sitting in this group
16 up here yet, but has anybody here ever been a victim themselves or have an
17 immediate family member that's been a member of a sexual offense against a
18 child? Okay. Mr. Engleman, what, what kind of a relative was that?

19 JUROR: Granddaughter.

20 MS. SCHULTZ: She was the victim?

21 JUROR: Yes.

22 MS. SCHULTZ: Was the person that did it to her caught?

23 JUROR: Uh, no.

24 MS. SCHULTZ: Okay. So there was no one every punished for

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VOIR DIRE

1 that?

2 JUROR: No.

3 MS. SCHULTZ: Does that have any uh, effect on the way you think
4 about the legal system and how they protect kids?

5 JUROR: I'm not sure.

6 MS. SCHULTZ: Do you think it would have any effect on the way
7 you were able to judge whether or not Mr. Nunley is guilty of the crimes he's
8 been charged with?

9 JUROR: I..., I'd have to say I'm not sure.

10 MS. SCHULTZ: I appreciate that. And, you know, we talk about
11 sometimes biases that we have. Our experiences in life tend to make us think
12 one way or another sometimes. For example, I've been a defense attorney for
13 twenty-seven years. I've never been a prosecutor. I look at things from the
14 defendant's point of view. If somebody has been a prosecutor for a long time,
15 they look at it from a prosecutor's point of view. And that's what..., so sometimes
16 we have these things that happen. So, I guess from what you're telling me that
17 your granddaughter was molested, and it may have an effect on how you feel
18 about this type of offense?

19 JUROR: It could.

20 MS. SCHULTZ: Okay. And I think I'm gonna need my cheat sheet
21 here. Ms. Gunther, what has been your experience?

22 JUROR: My nieces, two of my nieces.

23 MS. SCHULTZ: Two of your nieces?

24 JUROR: Uh huh.

VOIR DIRE

1 MS. SCHULTZ: Was anybody punished for that?

2 JUROR: Yes.

3 MS. SCHULTZ: Okay. And, and was that in this county?

4 JUROR: Uh huh.

5 MS. SCHULTZ: Did you feel that the uh, justice system worked
6 justice in that case?

7 JUROR: I guess so. I don't know that there really is uh, I don't
8 know.

9 MS. SCHULTZ: Well, the sad fact is that there's always a victim in
10 this kind of a case. It's either the child, or if we have somebody that's falsely
11 accused, a person who's falsely accused is a victim. And these things go with
12 whichever side it is, they go with them for the rest of their life. There's always an
13 injured party. So, justice, I guess is a good question. Do you think that
14 experience would effect your ability to decide a case like this?

15 JUROR: I don't know. I'd hope not. I mean it brings up bad things,
16 bad memories and stuff. I seen what my family went through.

17 MS. SCHULTZ: Okay. Were you uh, the beneficiary of the gore
18 details of your nieces' cases?

19 JUROR: Uhm, I knew most of what happened.

20 MS. SCHULTZ: Most of what had happened, all right. Does
21 anybody here belong to any organizations that deal with uh, child molesting or
22 protection of, of children such as the uh, sex offenders registration uh, list?

23 JUROR (female): Well, I work for Blue River Services and we have
24 two youth shelters. The Wyandotte House and...

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VOIR DIRE

1 MS. SCHULTZ: But you don't deal directly with...

2 JUROR: I don't deal with the children.

3 MS. SCHULTZ: Are some of the people that you deal with uh,
4 handicapped uh, individuals?

5 JUROR: Not the children in the homes. But we also deal with
6 adults with disabilities.

7 MS. SCHULTZ: Okay. And, and would that have any effect on
8 your decision-making ability in this case?

9 JUROR: No.

10 MS. SCHULTZ: You will be hearing about pornography in, during
11 the trial here too. And I'm wondering about the attitudes on pornography. For
12 example, we had a lady this morning who was, you know, she says, "Absolutely
13 no pornography in my home." Some people feel that way. So I'm wondering if
14 there are any of you who have very, very strong feelings about pornography.
15 Anybody that does? Is there anybody here that feels that a person having
16 possession of pornographic materials makes it more likely that that person will
17 be a child molester? One of the things that happens in criminal cases in this
18 country is that the defendant has the right to remain silent, and cannot be forced
19 to testify in a trial. And I would like to ask if any of you can think of any reasons
20 why people may not want to testify at a trial. Mr. Richmer, can you think of any
21 reasons why maybe not want to, if a person's on trial?

22 JUROR: Perjure them self.

23 MS. SCHULTZ: Because of perjury, you're saying?

24 JUROR: Possibly.

25

VOIR DIRE

1 MS. SCHULTZ: Okay. Any other reasons?

2 JUROR: Is it the Fifth Amendment or something like that?

3 MS. SCHULTZ: Okay, they have the right not to. Uh, Ms. Kinslow,
4 can you think of any reason?

5 JUROR: Sometimes they can't articulate what they want to say,
6 they get things twisted. It might appear different than what they're meaning to
7 say.

8 MS. SCHULTZ: Well, that's true. Okay. And some people listen to
9 advice their attorneys give them, tell them not to testify.

10 JUROR: Uh huh.

11 MS. SCHULTZ: Uh, Mr. Thomas, if my client decided not to take
12 the stand in this case, he didn't testify, would you form any conclusion based on
13 that?

14 JUROR: I don't believe I would, no.

15 MS. SCHULTZ: Okay, you think you can look at the case without...

16 JUROR: I'd just have to listen to what is presented and make my
17 decision based on that.

18 MS. SCHULTZ: And if he did testify, would you be able to look at
19 his testimony and scrutinize it the same way you did everyone else's?

20 JUROR: Yes, ma'am.

21 MS. SCHULTZ: Ms. Atkins, would you be able to do that?

22 JUROR: I believe so.

23 MS. SCHULTZ: Is there anybody here that believes that if he
24 doesn't testify, it means that he must be guilty? Does anybody think that?

VOIR DIRE

1 JUROR (female): It makes me wonder.

2 MS. SCHULTZ: It makes you wonder?

3 JUROR (female): But uh, like I said, I'm not familiar with any of this.

4 MS. SCHULTZ: Okay. You kind of think of what you would do if
5 you were in that situation?

6 JUROR: Yeah.

7 MS. SCHULTZ: I've heard a lot of people say, "If I were there, I
8 would be jumping up on the witness stand telling everybody I'm not guilty."

9 JUROR: Right.

10 MS. SCHULTZ: But sometimes it's not the best thing to do.

11 JUROR: I understand that.

12 MS. SCHULTZ: You would, you would, do you think you would be
13 able to overlook it if he didn't and make a fair decision based on the rest of the
14 evidence?

15 JUROR: I feel like if a person was innocent, he wouldn't have to
16 lose to take the stand.

17 MS. SCHULTZ: Okay.

18 JUROR: I mean, like I said, I, I don't really have any experience in
19 anything like this. If I was innocent, I know I'd try to defend myself.

20 MS. SCHULTZ: Well, that's good you haven't had any experience.
21 Is this the first time you've ever been in a courtroom?

22 JUROR: Uh huh.

23 MS. SCHULTZ: Okay. Well, it's a lot easier after you've been here
24 a long time. Now I've been in, doing it for a long time so it's not so hard to get up

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VOIR DIRE

1 and talk. Now, the prosecution talked for some period of time about uh, being
2 firmly convinced of the defendant's guilt. And the Court is going to give you a
3 definition of reasonable doubt, and it's fairly long. But the way the Court will
4 describe it to you is that a reasonable doubt is a fair, actual and logical doubt
5 based upon reason and common sense. A reasonable doubt is a, a reasonable
6 doubt may arise either from the evidence or from lack of evidence. A reasonable
7 doubt exists when you are not firmly convinced of the defendant's guilt after you
8 have weighed and considered all the evidence. A defendant must not be
9 convicted on suspicion or speculation. It is not enough for the State to show that
10 the defendant is probably guilty. Now that's the full definition that the Court gives
11 on reasonable doubt. Do you all think that you can follow that? And I'm going to
12 go through the list. Mr. Richmer, if, if the State doesn't show beyond a
13 reasonable doubt that Mr. Nunley is guilty, would you have any problem finding
14 him not guilty?

15 JUROR: No.

16 MS. SCHULTZ: Ms. Wins..., is it Kinslow?

17 JUROR: Kinslow.

18 MS. SCHULTZ: Kinslow. I keep thinking Winslow. Would you
19 have any problem of finding him not guilty?

20 JUROR: No.

21 MS. SCHULTZ: Mr. Vaughn?

22 JUROR: No.

23 MS. SCHULTZ: Ms. Atkins?

24 JUROR: No.

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VOIR DIRE

1 MS. SCHULTZ: Mr. Thomas?

2 JUROR: No.

3 MS. SCHULTZ: Mr. Engleman?

4 JUROR: No.

5 MS. SCHULTZ: Mr. Carman?

6 JUROR: Nope.

7 MS. SCHULTZ: Ms. Helms?

8 JUROR: No.

9 MS. SCHULTZ: Mr. Moore?

10 JUROR: No.

11 MS. SCHULTZ: Mr. Schultz?

12 JUROR: No.

13 MS. SCHULTZ: Mr. Hoback?

14 JUROR: No.

15 MS. SCHULTZ: Mr. Neiter?

16 JUROR: No.

17 MS. SCHULTZ: Ms. Woertz?

18 JUROR: No.

19 MS. SCHULTZ: And, Ms. Gunther?

20 JUROR: No.

21 MS. SCHULTZ: Thank you very much.

22

23 EXAMINATION BY THE STATE:

24 MS. LAUREN WHEATLEY: Good afternoon, ladies and gentlemen.

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VOIR DIRE

1 appreciate your patience, and I appreciate the fact that you've been sitting here
2 and, and answering some questions that quite frankly maybe at times have been
3 a little touchy and a little sensitive subject matter. And again, we appreciate your
4 honesty. And I have just a couple more questions.

5 You know, we haven't tried to ram down your throat this whole issue of
6 beyond a reasonable doubt, but it is confusing. I'll admit to you, when I started
7 law school, well over ten years ago uhm, I had no idea what it was. Because,
8 let's face it, the T.V. shows doesn't really tell you about that, do they? Uh, is
9 anybody a fan of Perry Mason?

10 JUROR (male): Yeah.

11 MS. LAUREN WHEATLEY: Mr. Engleman?

12 JUROR: Yes.

13 MS. LAUREN WHEATLEY: You know, I used to watch Perry
14 Mason with my dad. And I always recall uh, Perry Mason said beyond a shadow
15 of a doubt. And that's not really what we're talking about today, is it, Mr.
16 Schultz? You know, you know, as, as Ms. Flanigan pointed out, and I say this all
17 the time, the only thing for certain any more is death and taxes. We can't count
18 on the economy. That's for sure. Isn't that right? Ms. Kinslow? We can't count
19 on the auto industry any more, can we now? You know, nothing is for certain
20 any more. And so there's no such thing as a perfect case. Would you agree
21 with that, Mr. Neiter? Having worked in law enforcement, you, you can agree,
22 nothing is perfect, is there? Even there's a signed and sealed confession, it's
23 still not perfect, right?

24 JUROR: Correct.

VOIR DIRE

1 MS. LAUREN WHEATLEY: Mr. Carman, I'm sure you can agree
2 with that, working in law enforcement.

3 JUROR: Yes, ma'am.

4 MS. LAUREN WHEATLEY: And, and C.S.I. these days, that's not
5 logical, is it? I think I watched on C.S.I. episode where they got a fingerprint off
6 of the air. It's hard to get a fingerprint off a weapon, isn't it?

7 JUROR: Sure.

8 MS. LAUREN WHEATLEY: Yeah. And to get it off the air. And I'm
9 like, oh, these shows are entertaining, that's for sure. But man, do they make
10 our jobs difficult. Now, I know that a lot of you are, are parents. Uh, Ms.
11 Kinslow, I believe that you, you had children in your household at some point in
12 time of all ages, it sounds like, being a foster parent. Have you ever heard two
13 stories?

14 JUROR: Oh yes.

15 MS. LAUREN WHEATLEY: Does that mean if you hear two stories
16 today, or in the next few days if you're a juror, does that mean not guilty? If you
17 hear two separate and distinct stories?

18 JUROR: Uh, as a foster parent, I wasn't there to judge. I was there
19 to take care of the child. So, I tried to stay separate from that.

20 MS. LAUREN WHEATLEY: Tried to stay separate?

21 JUROR: Uh huh.

22 MS. LAUREN WHEATLEY: If something happened maybe where
23 you worked, and you hear two different stories, does that mean nobody did it?

24 JUROR: No.

VOIR DIRE

1 MS. LAUREN WHEATLEY: Uh, Ms. Woertz, would you agree with
2 that?

3 JUROR: In my work, there's always two stories.

4 MS. LAUREN WHEATLEY: And how do you decipher which one is
5 the correct story?

6 JUROR: You just have to make your best judgment.

7 MS. LAUREN WHEATLEY: And what do we use for that? We use
8 a lot of common sense, don't we, Mr. Moore? You're kind of nodding like that.
9 You have to use your judgment, right? Uh, Mr. Richmer, I know that you're the
10 father of an eleven-year-old?

11 JUROR: Uh huh.

12 MS. LAUREN WHEATLEY: Is that correct? Eleven-year-old
13 daughter. Do you think you're probably the best person to judge if she's telling
14 the truth or not?

15 JUROR: I would think so, yeah.

16 MS. LAUREN WHEATLEY: You, you've known her endo-secrecies,
17 if you would.

18 JUROR: Yeah.

19 MS. LAUREN WHEATLEY: You know how she is.

20 JUROR: Uh huh.

21 MS. LAUREN WHEATLEY: Uh, I'm not privileged enough to have
22 children yet, but I have a God-son who I try to spoil. And uh, the other day I was
23 at his birthday party. And he comes up and he asks for a cookie. And I was like,
24 "Trey, have you had a cookie yet?" And he's like, "No." And so, of course, I give

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VOIR DIRE

1 him a cookie. And his mom, my best friend, comes out and she's like, "He just
2 had a cookie. He knows better than that." He also knows that he can probably
3 just fib a little bit like that to me. But I don't really know the difference. Now
4 we're not talking about something like child molest, we're talking about a cookie.
5 But again, his mom knows him best. Ms. Gunther, I believe you have children?

6 JUROR: Uh huh.

7 MS. LAUREN WHEATLEY: You probably know your children best.

8 JUROR: Yes.

9 MS. LAUREN WHEATLEY: You know if they're telling the truth or
10 not.

11 JUROR: Pretty much, yeah.

12 MS. LAUREN WHEATLEY: And, and Ms. uh, Helms? Is it you
13 have a son?

14 JUROR: Yes.

15 MS. LAUREN WHEATLEY: You know, you know, when he did get
16 in trouble and you said that was probably the best thing for him.

17 JUROR: Yes.

18 MS. LAUREN WHEATLEY: You would've known if he tried to lie
19 his way out of that, wouldn't you?

20 JUROR: Yes.

21 MS. LAUREN WHEATLEY: Because, let's face it, as parents,
22 you've seen your children grow and you know what they may try to get out of.
23 But then you also know what are serious subjects. Would you agree with that,
24 Ms. Atkins?

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1 JUROR: Yeah.

2 MS. LAUREN WHEATLEY: Ms. Woertz, I believe you even said
3 younger children have a ten..., you have a tendency to believe what they're
4 saying. They really haven't been, they haven't been tainted, have they?

5 JUROR: Well, I think depending on the subject matter too.

6 MS. LAUREN WHEATLEY: Right, right. Would you agree with
7 that, Mr. Carman?

8 JUROR: Uhm...

9 MS. LAUREN WHEATLEY: Maybe it just depends?

10 THE STATE: Maybe, yeah.

11 MS. LAUREN WHEATLEY: On the child?

12 JUROR: Sure.

13 MS. LAUREN WHEATLEY: It would be a lot more harder to believe
14 someone if they were using adult words, wouldn't it? Like when kids come
15 around and they're, you can tell when they're quoting something off of T.V., can't
16 you? Because they use words that just doesn't sound right. But no, you don't
17 talk like that. Kids don't talk like that. You've gotten that off of T.V. You don't
18 know what you're saying. Would you agree with that, Ms. Kinslow?

19 JUROR: Yes.

20 MS. LAUREN WHEATLEY: Mr. Engleman, I know that
21 unfortunately your family's had some uh, sad experience with different things.
22 And that the person who uh, may have hurt your granddaughter has not been
23 prosecuted or caught. Did you believe your granddaughter?

24 JUROR: Actually she was too young to talk at the time, but I

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VOIR DIRE

1 I believe it happened.

2 MS. LAUREN WHEATLEY: Okay. It's not something that you want
3 to believe, is it?

4 JUROR: No.

5 MS. LAUREN WHEATLEY: You never want to think that.

6 JUROR: No.

7 MS. LAUREN WHEATLEY: Would you agree with that, Mr.
8 Thomas?

9 JUROR: Yes.

10 MS. LAUREN WHEATLEY: I noticed on your questionnaire too that
11 you may have had someone in your family that has been victimized as well?

12 JUROR: I don't believe so, no.

13 MS. LAUREN WHEATLEY: Okay...

14 JUROR: I knew someone, I worked with someone that...

15 MS. LAUREN WHEATLEY: Okay, you worked with someone?

16 JUROR: Yes.

17 MS. LAUREN WHEATLEY: Okay. Uh, Mr. Richmer, I saw on your
18 questionnaire that, that uh, you went to high school with someone who was
19 actually charged and convicted.

20 JUROR: Uh huh.

21 MS. LAUREN WHEATLEY: Knowing that person in high school,
22 would you have thought at the time that...

23 JUROR: Absolutely not.

24 MS. LAUREN WHEATLEY: Right. I mean because unfortunately

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1 they're not stamped, are they?

2 JUROR: Huh uh.

3 MS. LAUREN WHEATLEY: When you take your kids trick or
4 treating, there's not a stamp on their forehead that says, "I'm a child molester."
5 When you're looking for babysitters or daycare providers, they don't have that
6 stamp, do they? And it could be anyone, couldn't it? But our job to prove to you
7 is to leave you firmly convinced. And, unfortunately, and like life in general, you
8 will have questions. There may not be answers for some of your questions. We
9 may not be able to answer why. What was going on in that person's mind. What
10 he was wearing. What color the bedroom was. You may have these questions.
11 But, Mr. Richmer, if I've left you firmly convinced that on the elements of the
12 crime the defendant committed that crime, can you come back with guilty?

13 JUROR: Uh huh.

14 MS. LAUREN WHEATLEY: Ms. Kinslow?

15 JUROR: Yes.

16 MS. LAUREN WHEATLEY: Mr. Vaughn?

17 JUROR: Yes.

18 MS. LAUREN WHEATLEY: Ms. Atkins? Mr. Thomas?

19 JUROR: Yes.

20 MS. LAUREN WHEATLEY: Mr. Engleman?

21 JUROR: Yes.

22 MS. LAUREN WHEATLEY: Mr. Carman?

23 JUROR: Yes, ma'am.

24 MS. LAUREN WHEATLEY: Ms. Helms?

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VOIR DIRE

1 JUROR: Yes, ma'am.

2 MS. LAUREN WHEATLEY: Mr. Moore? Mr. Schultz?

3 JUROR: Yes.

4 MS. LAUREN WHEATLEY: Mr. Hoback?

5 JUROR: Yes.

6 MS. LAUREN WHEATLEY: Mr. Neiter? Ms. Woertz?

7 JUROR: Yes.

8 MS. LAUREN WHEATLEY: Ms. Gunther?

9 JUROR: Yes.

10 MS. LAUREN WHEATLEY: Does anyone have any questions for
11 me or the State of Indiana? Thank you, ladies and gentlemen.

12 MS. SCHULTZ: No other questions.

13 THE COURT: No other questions? Okay, counsel uh, come up,
14 please.

15

16 BENCH CONFERENCE:

17 THE COURT: Okay, you've got five people. I'm gonna ask you to
18 strike on the first seven. It will be the first row. And then we'll have to start on
19 the next one, two, three, or whatever.

20 THE STATE (MS. FLANIGAN): Okay.

21 MS. LAUREN WHEATLEY: Okay.

22 (BENCH CONFERENCE ENDS)

23

24 THE COURT: Okay, now, for-cause challenges by the State or the

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1 defense on the first row.

2 THE STATE (MS. FLANIGAN): None from the State, Judge.

3 MS. SCHULTZ: None.

4 THE COURT: Okay, now, they're gonna be thinking about their uh,
5 challenges or strikes uh, that they don't have to give a reason for. Uh, while
6 they're thinking about that, I'm gonna talk to you about, you know, what's gonna
7 happen next. And uh, one of two things is gonna happen; either you're gonna be
8 on the jury or you're gonna be off. If you're off, then uh, then uh, you can go
9 home, go back, go on about your business. If you do not get picked on the jury,
10 then if you get called again for jury duty uh, within one year of this date, then you
11 just call up, whether it's Superior Court or Circuit Court and tell them that the
12 Judge said I came the courthouse and they questioned me and one thing and
13 another, and if it was within one year, I didn't have to uh, be on the jury. And so
14 you wouldn't have to serve, okay? If you end up on the jury, then it's two years.
15 You don't have to serve on the jury if it's been, if it's been within two years.
16 That's, of course, to give other people an opportunity to uh, do their time as
17 jurors. And uh, now, if you're not on the jury, you need some documentation
18 from us that you were here today, you can get that from these ladies right here,
19 right after I tell you you're not on the jury. Okay, and uh, if you need us to call
20 somebody, if you need us to do something more than that, let us know and we'll
21 take care of that. If you're on the jury, if you end up on the jury, then I'll uh, we'll
22 give you some more instructions, and they're gonna strike more than once.
23 There was some people selected this morning, and then they're gonna strike on
24 you folks in the first row, and then depending on how many of you are left, and

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VOIR DIRE

1 they're gonna strike on the next group of people and so on until we get our uh,
2 the number of people we need. All right, and uh, if you end up on the jury, then
3 just in terms of scheduling, just in terms of scheduling and doing things and uh,
4 we're gonna ask you to come back tomorrow morning, but before you uh, before
5 Sharon takes you to the jury room, and you, she's going to, if you're on the jury
6 tomorrow morning, she's gonna have the coffee pot going. She'll buy some
7 doughnuts or something. And uh, the office opens at eight o'clock. Sometimes
8 people are here most days, well before then. But uh, I want you to be, if you're
9 on the jury, I want you to be ready to go at nine a.m. I don't care whether you
10 show up at eight or eight-thirty or a quarter till nine, but try to be here no later
11 than nine a.m., ready to go. If you want to bring a newspaper, book or
12 magazine, you know, you want to come early and sit down and read the
13 newspaper and drink a cup of coffee, come ahead, you know. We'll be here. If
14 you bring any reading material, do not bring anything that has anything to do with
15 this case. I don't think any newspaper reporters are here and don't expect them
16 to be. Uh, but, of course, you cannot read, listen to or watch anything
17 concerning the trial. Uh, and uh, if you're on the jury, I usually get accused, and
18 it's not the case today, I usually get accused of keeping the courtroom cool. And
19 I'm guilty of that usually. You can bring a light jacket or sweater. Uh, I don't
20 know, was it cool back then ten years ago or...

21 JUROR (female): I don't remember it being cool then. I was cold
22 this morning.

23 THE COURT: Okay. Well, okay, but sometimes it is. And uh, and
24 uh, so, but anyhow uh, so, it'll usually start, we try to start as much as possible

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1 than we can from nine a.m. and end no later than five p.m. If you're on the jury,
2 the day the case goes to the jury, you, I can't tell you how long you're gonna be
3 here. You might deliberate for two hours or ten hours. I can't say. I could tell
4 you it'll probably be Thursday, maybe more likely Friday. Uh, okay, the following
5 individuals are excused, Alan Richmer, Sheila Kinslow, Jerry Carman, Susan
6 Atkins. And anything that you need, get it before you go. If you need something
7 in writing, if you need anything, and you folks are free to go. So, let's see, so
8 that leaves us with uh, Carl Vaughn, Michael Thomas, and Mr. Engleman. Okay,
9 you're gonna be with us. Okay, and uh, now uh, I'm gonna next ask the lawyers
10 to uh, let's see..., strike with respect to..., with respect to, let's see, you're Robin,
11 aren't you ma'am?

12 JUROR: Uh huh.

13 THE COURT: Robin uh, Gunther, Bonnie Woertz, David Neiter and
14 uh, John Hoback. You're Mr. Hoback, sir?

15 JUROR: Yes.

16 THE COURT: Okay, with respect to these four individuals, is there
17 any for-cause challenge with respect to any of these four individuals by the State
18 or the defense?

19 THE STATE (MS. FLANIGAN): None from the State, Judge.

20 MS. SCHULTZ: No, Judge.

21 THE COURT: All right. I'm gonna ask you to strike with respect to
22 uh, Robin Gunther, Bonnie Woertz, David Neiter and John Hoback. Okay, the
23 following individuals are excused uh, David Neiter and Bonnie Woertz. Okay,
24 and uh, next, are there any for-cause challenges..., let's just, are there any for-

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1 cause challenges with respect to any of the three individuals?

2 THE STATE (MS. FLANIGAN): None from the State, Judge.

3 MS. SCHULTZ: None, Judge.

4 THE COURT: And then I'm gonna ask you to strike with respect to

5 uh, Robert Schultz and Robert Moore. Okay uh, Mr. Schultz, you're excused.

6 And there are no uh, for-cause challenges with respect to Ms. Helm. Is that

7 right?

8 THE STATE (MS. FLANIGAN): None from the State, Judge.

9 MS. SCHULTZ: None from us.

10 THE COURT: Ms. Helms, I should say Ms. Helms. Okay, I'm

11 gonna ask you to strike with respect to Ms. Helms. Okay, and uh, all right.

12 Okay, it looks like all of you get to stay with us for the next few days. I know

13 you're thrilled about that. And uh, we're going to try to make things as

14 convenience as we can. We'll try not to waste any of your time. I mentioned it a

15 couple of times. Sometimes things go on around the courthouse that are beyond

16 our control. Nothing uh, everything else doesn't stop. Everything else just keeps

17 going when we're having a trial. So sometimes things come up. Uh, but we'll try

18 not to waste any of your time. And uh, and try to start promptly at nine o'clock.

19 We're gonna not go past five except on the day the case goes to the jury. That'll

20 probably be Friday. There's a possibility that it'll be Thursday. We don't always

21 know exactly sometimes how long things are gonna take. And uh, before I send

22 you folks home for the day and ask you to come back tomorrow morning, be

23 ready to go at nine o'clock, do you have any questions? Any questions about

24 anything? All right. And then if, if you need us to call an employer or anything

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1 like that uh, if there's anything you need, let us know before, let Sharon know or
2 let me know right now.

3 JUROR: For work.

4 THE COURT: You need something in writing for work?

5 JUROR: Yes, please.

6 THE COURT: Okay. Write her...

7 BAILIFF: I've got it all...

8 THE COURT: Put it on there that she's on the jury and that she's
9 expected to be on the jury through Friday, okay.

10 JUROR (female): I need the same thing.

11 THE COURT: You need the same thing, ma'am?

12 JUROR: Yes.

13 THE COURT: Okay. All right, and then uh, you know, and, and if
14 they don't believe you or something uh, let us know. Get a name and a phone
15 number and I'll call, I'll call them and uh, I'll personally call them. And uh, okay,
16 any other questions? Any other issues of any kind? Okay, now they're gonna
17 write that up and uh, and then you all are gonna go through this door. Sharon is
18 gonna show you where the jury room is. Of course, she'll have the coffee pot
19 going and all that kind of stuff. And uh, go in and out the office, she'll tell you,
20 show you where you to go when you come for tomorrow morning and while
21 you're here for the next few days. So you all can just go ahead. And remember,
22 uh, one last thing. Uh, since you're going to be, since you are going to be on the
23 jury, then you're not to permit anyone to talk to you or in your presence on any
24 subject matter connected with the trial. It's your duty not to form or express an

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VOIR DIRE

1 opinion on the case until it's finally submitted to you. Uh, there shouldn't be any
2 publicity, but if there is of any kind, do not read, listen to or watch it. Don't bring
3 any newspapers with anything about the case in it. I don't think there are, will be
4 anything like that. Uh, go ahead and go with Sharon and then we'll see you
5 tomorrow morning. Thank you very much.

6 (JURY EXITS COURTROOM)

7 THE COURT: Uh, come on up, lawyers. Let's see...,

8

9 BENCH CONFERENCE:

10 THE COURT: Well, okay, by my count we've got twelve. You all
11 got the same thing?

12 THE STATE (MS. FLANIGAN): Uh huh.

13 THE COURT: Okay. How many alternates do we want? One is
14 enough?

15 MS. LAUREN WHEATLEY: I'd say one. We'll be done by Friday
16 either way.

17 MS. SCHULTZ: Yeah.

18 THE COURT: Friday is the maximum?

19 MS. LAUREN WHEATLEY: Yeah.

20 THE COURT: It'll probably be Friday.

21 THE STATE (MS. FLANIGAN): Uh huh, uh huh.

22 THE COURT: Uh, okay. Uh, all right, one strike, one alternate.

23 How many people you want to talk to? Put five or six of them up there and see?

24 MS. LAUREN WHEATLEY: I'd say just three or four, I don't care.

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VOIR DIRE

1 They've all heard it.

2 THE COURT: I always put about a half a dozen up there and see...

3 MS. LAUREN WHEATLEY: There's only four left.

4 THE COURT: Yeah. Okay.

5 (BENCH CONFERENCE ENDS)

6
7 THE COURT: Okay uh, the following individuals uh, come on up
8 and take a seat in the front row. We're getting really close, okay? Claude
9 Rottet. I don't know if I mispronounced your name uh, but if I have, let me know
10 and let the lawyers know. Megan Reynolds, Danny McCubbin, Linda McDonald,
11 Kelly Cooper, Willis Jantzen. Now, more than likely we're gonna get our jury
12 from these individuals that are coming up. I know there's still a few of you left
13 out here. It's just the luck of the draw.

14 JUROR (male): Do I have time to use the restroom real quick?

15 THE COURT: Yeah, yeah, sure. Absolutely, go ahead. You know,
16 just where you randomly came up with the computer. And uh, and, and uh, uhm,
17 perhaps if you don't want to be a part of making a really serious decision, you're
18 just, you know, you're thinking, "Well, that's just great. I'm towards the end of the
19 list and I may not be on the uh, jury." Now, once again, it's probably gonna be at
20 least fifteen or twenty minutes. If you feel like getting up and walking outside or
21 whatever, but don't go away completely because you never know. One of the
22 things that always happens in these kinds of cases is sometimes you get
23 surprised about uh, somebody has had a relative or uh, you know, that was an
24 alleged victim or one thing or another. Just sometimes it'll surprise you. You

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VOIR DIRE

1 know, I might have a half a dozen people and it turns out that almost all of them,
2 you know, can't be on the jury or something. So unusual things happen. So uh,
3 all right. And uh, all of you, I'll simply remind you, you're still under oath this
4 morning to answer questions truthfully. And uh, when you're ready, Ms.
5 Prosecutor.

6
7 EXAMINATION BY THE STATE:

8 THE STATE (MS. FLANIGAN): Uh, is it Rottet?

9 JUROR: Rottet.

10 THE STATE (MS. FLANIGAN): Rottet. And Megan Reynolds, and
11 Danny McCubbin, and Linda McDonald, Kelly Cooper and Willis Jantzen.

12 JUROR: Yes ma'am.

13 THE STATE (MS. FLANIGAN): All right. Was everyone here when
14 went through the last set of questions? Uh, would it be fair of me to ask you if
15 you were listening to those questions or you heard most of those questions?
16 Uhm, let me start a little bit backwards because I'm not gonna put you all through
17 that. I think it's getting towards the end of the day and you might appreciate it.
18 But uh, you heard uh, let me start with, you heard me talking about, this is not
19 going to be like the shows on television. And I made some reference that there
20 might not be physical or scientific evidence of, in this case, that there might be
21 evidence of a testimonial kind of nature. In other words, someone might get on
22 the stand and give you information, but there might not be DNA and there might
23 not be fingerprints. And uh, I'd like to ask each of you, Mr. Rottet, would that
24 cause you any problems?

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VOIR DIRE

1 JUROR: I don't believe so, no.

2 THE STATE (MS. FLANIGAN): How about you, Ms. Reynolds?

3 JUROR: No.

4 THE STATE (MS. FLANIGAN): Mr. McCubbin? Ms. McDonald?
5 Mr. Cooper? Mr. Jantzen?

6 JUROR: No ma'am.

7 THE STATE (MS. FLANIGAN): Okay. So uh, assuming the fact
8 that, that I put on the case and you heard me talk about that you need to be
9 firmly convinced. Did you understand that when I was explaining it? Does
10 anybody not understand "firmly convinced"? That the standard is beyond a
11 reasonable doubt and I have to leave you firmly convinced? Uhm, did you
12 understand or you heard me say that I can't prove this a hundred percent
13 because the only way I could do that would to be if we were all there to see what
14 went on? Uh, would you agree that I can't prove it a hundred percent? Anybody
15 disagree with that? Let me ask you some things I do need to ask you about. Uh,
16 you've heard that this is a child-molesting kind of case and we're gonna have
17 some graphic sexual testimony and some testimony about pornography. Would
18 any of you not be able to sit here and listen to that? Would any of you have
19 trouble going back and talking to the other jurors about that kind of event?
20 Anyone think they'd be too shy or embarrassed to talk about that? When I talked
21 about the elements of the crime. For example, I gave Count one, and I indicated
22 what the State would have to prove, and I gave those elements. And I said that
23 a person twenty-one years of age or older who, with a child under fourteen years
24 of age, performed or submits to deviate sexual conduct. And I said that we'll

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VOIR DIRE

1 define deviate sexual conduct. But that's all I have to prove. I have to leave you
2 firmly convinced that that happened. Uh, does it bother any of you that I don't
3 have to prove other things you might want to know like why it happened? Or
4 what someone might've worn that day? Or what the weather was like?

5 JUROR (male): That has nothing to do with it.

6 THE STATE (MS. FLANIGAN): Okay.

7 JUROR (male): It really doesn't.

8 THE STATE (MS. FLANIGAN): Thank you, Mr. Jantzen. Does
9 anybody else think that it does have something to do with it? So like I did, when
10 separated that jury box and I'm gonna put you all together and I'm gonna say, if
11 present evidence or if the State of Indiana presents evidence that leaves you
12 firmly convinced that the defendant committed those elements, would you be
13 able to return a verdict of guilty in this case? Mr. Rottet?

14 JUROR: Yes.

15 THE STATE (MS. FLANIGAN): Ms. Reynolds?

16 JUROR: Yes.

17 THE STATE (MS. FLANIGAN): Mr. McCubbin? Uh, Ms.
18 McDonald? Mr. Cooper? And Mr. Jantzen?

19 JUROR: Without a doubt.

20 THE STATE (MS. FLANIGAN): Anything else that I haven't, and
21 I'm not running through you all because it's the end of the day, but I know you've
22 listened to that. And is there anything that I haven't asked this panel personally
23 that you think that I should know about you or your thoughts on the case that I
24 haven't gotten yet? Okay, thank you.

VOIR DIRE

1 EXAMINATION BY DEFENSE:

2 MS. SCHULTZ: Good afternoon. As I mentioned before, my name
3 is Susan Schultz. And sometimes people have trouble hearing me in the back of
4 the courtroom. When we were talking earlier, could you hear me in the back of
5 the courtroom?

6 JUROR (female): Yes.

7 MS. SCHULTZ: Some people say I speak loudly and other people.
8 Was there anything that came out that you would have responded to had you
9 been sitting on the, in the box at the time it was asked? No victims here of uh,
10 molestation, or family members what were? Okay. Now, I think, when I looked
11 at the uh, let me look at my cheat sheet here. I thought when I had looked at the
12 questionnaires that Ms. McDonald, there was some experience in your life with
13 respect to someone...

14 JUROR: I had a nephew who was accused of statutory rape. And
15 he, I believe he was on probation for it.

16 MS. SCHULTZ: Oh, okay. Okay, so it was a family member that
17 was accused?

18 JUROR: Yes.

19 MS. SCHULTZ: So you understand that sometimes people are
20 accused when they're not really guilty?

21 JUROR: Sure. In his case he was guilty. He probably should've
22 received more punishment.

23 MS. SCHULTZ: Sometimes they are (unintelligible)..., right? Is
24 there anybody here who doesn't believe that people are sometimes accused of

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VOIR DIRE

1 crimes that they're not guilty of? Everybody agrees that that happens? Anybody
2 have any problem with it being the State's burden to prove to you that my client
3 is guilty as opposed to my responsibility to show you that he is not? And that's
4 the way our system works, okay. Uh, anybody that has a very close relationship
5 with a police officer? No? Nothing remarkable that you've heard about when
6 you were sitting back there that you think you should talk about? If Mr. Nunley
7 does not testify, Mr. Ro...

8 JUROR: Rottet.

9 MS. SCHULTZ: Rottet?

10 JUROR: Yeah.

11 MS. SCHULTZ: Would you hold that against him?

12 JUROR: No.

13 MS. SCHULTZ: If he does testify, would you give the same benefit
14 as you would other witnesses in determining whether he was telling the truth or
15 not?

16 JUROR: Yes, I would.

17 MS. SCHULTZ: And uh, Ms. Reynolds, if the State proves, fails to
18 prove their case, would you have any difficulty in returning a not-guilty plea?

19 JUROR: No.

20 MS. SCHULTZ: Mr. McCubbin, would you have any difficulty in not,
21 in returning a not-guilty verdict if the State fails to prove? Ms. Donald? And Mr.
22 Cooper?

23 JUROR: No.

24 MS. SCHULTZ: And Mr. Jantzen?

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VOIR DIRE

1 JUROR: No ma'am.

2 MS. SCHULTZ: Now Mr. Cooper, you uh, work at the school. Is
3 that right?

4 JUROR: Yes.

5 MS. SCHULTZ: If there were a kid in your school that were a victim
6 of this kind of an offense, would that be brought to your attention?

7 JUROR: Uhm, as in what way?

8 MS. SCHULTZ: Because you're an employee of the school. Are
9 you a teacher? Is that what it is?

10 JUROR: Yes, yes.

11 MS. SCHULTZ: Okay, so if it was a kid in your room, you might
12 know about it?

13 JUROR: Possibly, yes.

14 MS. SCHULTZ: But it wouldn't be general knowledge if there were
15 some child that wasn't in any of your classes?

16 JUROR: No.

17 MS. SCHULTZ: You're not a counselor or anything like that?

18 JUROR: No.

19 MS. SCHULTZ: Does your working with kids every day effect the
20 way you think about them and would analyze the testimony?

21 JUROR: It would have no influence. I mean I'm just used to
22 working with them and different things like that. But would have no influence.

23 MS. SCHULTZ: What age groups do you...

24 JUROR: Uh, middle school.

VOIR DIRE

1 MS. SCHULTZ: Middle school?

2 JUROR: Twelve to fourteen.

3 MS. SCHULTZ: Okay. So the child in this case is a bit younger
4 than that. So your kids are older.

5 JUROR: Yes.

6 MS. SCHULTZ: Okay...

7 JUROR: I've never taught that young.

8 MS. SCHULTZ: Okay. Is there anything that comes to anyone's
9 mind that would effect their ability to be fair in this case? Everybody thinks they
10 can be fair? If you were the person on trial, would you want a person with your
11 mind set to be on the jury?

12 JUROR (male): Yes, I would.

13 JUROR (male): Yes.

14 MS. SCHULTZ: Okay. Thank you.

15 THE STATE (MS. FLANIGAN): The State doesn't have any more
16 questions.

17 THE COURT: Okay. Ms. Schultz, any second thoughts about other
18 questions?

19 MS. SCHULTZ: No, Judge.

20 THE COURT: Okay. Any for-cause challenges with respect to any
21 of these individuals?

22 THE STATE (MS. FLANIGAN): No, Judge.

23 MS. SCHULTZ: No, Judge.

24 THE COURT: None, no for-cause, okay. Okay, well, Mr. Rottet, did

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VOIR DIRE

1 say your name right?

2 JUROR: Yes.

3 THE COURT: Okay, Mr. Rottet, with respect to Mr. Rottet. Okay
4 uh, all right, Mr. Rottet, you're gonna be staying with us. The rest of you, you're
5 free to go. Remember, if you've been here, you know, if you get, happen to get
6 called again within a year uh, and that applies to the folks, you didn't actually get
7 questioned, but you had to put up with coming to the courthouse and waiting
8 your turn to be questioned, the same thing applies to you. If you get called
9 within a year, Circuit or Superior Court, call and let them know, "Hey, I was up
10 here and had my day interrupted and so forth. The Judge said if I come up here,
11 within a year I don't have to come back." Uh, okay, thank you very much. You
12 folks are excused. If you need anything to document that you were here, come
13 on up and get it. That applies to the few of you that are left here in the back.
14 You hang around for a moment, Mr. Rottet. And uh, for a few more minutes.
15 And uh, as I, you probably heard me say, you heard me say all that pitch to the
16 other people earlier, do you have any questions, Mr. Rottet?

17 JUROR: No sir.

18 THE COURT: Okay. So uh, now nine o'clock tomorrow morning.
19 No later than nine. She'll have the coffee pot on. You can come at eight or
20 eight-thirty, a quarter till nine. Whatever you do, just try to be here and be ready
21 to go by nine. And uh, I mentioned this earlier, you probably heard it. Uh, when
22 you're uh, away from the courtroom, of course, this evening, you're not to permit
23 anyone to talk to you or in your presence on any subject matter connected with
24 the trial. It's your duty not to form or express an opinion on the case until it's

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VOIR DIRE

1 finally submitted to you. Uhm, don't read, listen to or watch any media attention
2 about the case. If there were any, I don't think there will be any, but if there, and
3 don't bring any newspapers with any uh, anything about the case. I don't think
4 there will be, but if there were, do not. Otherwise, you're welcome to bring
5 newspapers, magazines, books. But, you know, if there's a break, you might
6 have a little something to read or whatever. And uh, or maybe at the lunch hour
7 or whatever. So uh, okay, Mr. Rottet, any questions about anything, sir?

8 JUROR: Uh, I don't think so.

9 THE COURT: Okay. As soon as uh, as soon as this gentleman
10 finishes up with them, they're gonna show you where the jury room is and where
11 you'll come in and out tomorrow. And, and uh, otherwise uh, otherwise we're uh,
12 ready to go. Uh, she'll be just a minute. Thank you for coming, Mr. Willis. Okay.
13 Yeah, go ahead, Mr. Rottet, show him about the jury, and uh, about the jury
14 room and, and uh, okay. We're on?

15 COURT REPORTER: Yes.

16 THE COURT: Okay. We'll let the record reflect that all the jurors,
17 the prospective jurors, anybody that's connected with the case, everybody's
18 gone except uh, the uh, the attorneys and Mr., Little Bill, as some people like to
19 refer to the detective, from his uh, kiddingly from his uh, stature. Not little or
20 small, but rather tall. And the defendant, and the defendant's attorney. Okay,
21 uhm, I was just gonna say, the, I'm working on the Preliminary Jury Instructions.
22 want you to hang around until I get those finished up. The one charge was uh,
23 think it's referred to in the books as uh, as Child Exploitation, but is charged as
24 Disseminating, Dissemination of Matter Harmful to Minors. Is there any objection

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VOIR DIRE

1 to just leaving that the way it was charged and calling it that, even though the
2 statute says something a little, slightly bit different, for the State or the defense?
3 is there any problem with that, Ms. Schultz? Or...

4 MS. SCHULTZ: No. Let's see..., that's Count 5, is what you're
5 talking about?

6 THE COURT: Count 5, yeah. Okay, that's fine.

7 THE STATE (MS. FLANIGAN): Judge uh, Detective Wibbels is
8 telling me that Exploitation might be putting them in a movie and Dissemination
9 might be showing them. That might be the difference.

10 THE COURT: Yeah, it might be. But, you know, the statute is uh,
11 is written up, there's all, you know, there's, there's more than one way. But the
12 statute itself is called Child Exploitation. And then it's got several different ways
13 that you can be found guilty. Uh, I don't really care. I don't think it's a big deal
14 one way or the other. Uh, if Ms. Schultz doesn't care, we can just leave the
15 name the way it is.

16 MS. SCHULTZ: Now, let's see...

17 THE COURT: I don't know if the subheading..., disseminate
18 actually means, is actually defined in the statute as..., dissemination means to
19 transfer possession for free or for a consideration. Matter is defined,
20 performance is defined, sexual conduct is defined in that Child Exploitation
21 statute.

22 THE STATE (MS. FLANIGAN): Judge, I'm, I'm having trouble..., I'm
23 looking at 35-49-3-3, which he's charged...

24 THE COURT: Oh, I'm looking at the wrong one then.

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VOIR DIRE

1 THE STATE (MS. FLANIGAN): Yeah.

2 THE COURT: Excuse me. 39, 35-49..., I was looking at 42-4-4.

3 Excuse me, 39, 49-3-3. Okay, you've got me on a technicality. I was looking at
4 the wrong one. All right, 49-3-3. Well, and it's odd too how they uh, you know,
5 there's a, okay, yeah, and it talks about disseminating in that statute too, doesn't
6 it? Uh, yeah. Uh, a person who knowingly or intentionally disseminates matter
7 to minors, matter to minors that is harmful to minors, displays, so forth and so
8 on. Oh, uh, uhm, so I guess instead of what I said...

9 MS. SCHULTZ: So the...

10 THE COURT: It's more like providing obscene matter and
11 performances before a minor.

12 MS. SCHULTZ: What he is charged with is subsection A two.

13 THE COURT: You think it's two, B two? Do you agree with that,
14 Julie?

15 THE STATE (MS. FLANIGAN): I'm gonna look.

16 MS. SCHULTZ: It's A two.

17 THE COURT: A two?

18 MS. SCHULTZ: That's where the allega..., the factual allegation is.

19 THE COURT: Oh, yeah, A two, yeah, A two, yeah.

20 MS. SCHULTZ: Displays matter that is harmful to minors in an area
21 to which minors have visual, auditory or physical access.

22 THE STATE (MS. FLANIGAN): Right. And, Judge, we had done
23 up some final. We had noticed that there were definitions in the statute too, and
24 had done them up as, there's a definition of minor, of uh, what else did we find?

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VOIR DIRE

1 Matter...

2 THE COURT: Are you okay with the way that's uh, the way that's
3 charged, what it's called? Dissemination of Matter Harmful to Minors?

4 MS. SCHULTZ: Yeah, I don't have any problem with that. I mean
5 that's the, that's the name of the statute as I see it.

6 THE COURT: Okay, okay. Uh, all right. So uh, all right, you've got
7 some proposed instructions? You got them saved on Word or something, or
8 Word Perfect?

9 THE STATE (MS. FLANIGAN): I think Lauren does, because the
10 def..., we just did up the three definitions, Judge, for you or matter, and minor
11 and matter or performance harmful to minors. They're all defined right in the
12 code.

13 MS. SCHULTZ: Let me see how you did that one.

14 THE COURT: All right. Yeah, take a look at those. Uh, I looked at
15 the wrong thing. Uh, well, why don't we all take a break and let's get copies of
16 those, and then we'll get to working on these uh, we'll get to working on these uh,
17 definitions and, and uh, Mr. Nunley? Do you want him to go downstairs for a
18 little while and then come back? Do you want him to stay here, Ms. Schultz?

19 MS. SCHULTZ: It wouldn't matter to me. I don't care. The only
20 thing I would say, Judge, before we send him back down there, he has brought
21 to my attention that he would like to be able to call his family to bring him some
22 other clothes. And he does not have the ability to call them collect and he
23 doesn't have any money on his phone card. We would ask...

24 THE COURT: He wants to call his family to bring some clothes?

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VOIR DIRE

1 MS. SCHULTZ: Yes. We would ask that the Court instruct the
2 Sheriff to permit him to use the phone to make the call.

3 THE COURT: Yes. You go ahead and let him make a, make some
4 calls, okay? Okay. And then, officer uh, the defendant is never to be seen in
5 front of the jurors in handcuffs.

6 OFFICER: Yes.

7 THE COURT: And when he walks in the courtroom, he should
8 always walk in the courtroom, if the jurors are in the courtroom, he should always
9 walk in the courtroom with his lawyer. Uh, I know that was, you know, you
10 probably don't do these trials very often or maybe you've never done one. But
11 it's a little bit different when we're selecting the jury than after we've got a jury,
12 because after we've got a jury, now tomorrow, they're gonna be back there in the
13 jury room, so you can bring him in through this door just like you would prisoners.
14 And you don't need to worry about that. Although I would ask you to take the
15 handcuffs off back there just in case somebody wanders into the courtroom or
16 something uh, when you get through that next-to-the-last door. Uh, and uh, uhm,
17 and uh, is there anything..., now you said he needs to be able to make phone
18 calls to get clothes.

19 MS. SCHULTZ: That's correct.

20 THE COURT: Okay, anything else?

21 DEFENDANT: No.

22 THE COURT: I think it's probably gonna be a half an hour or so. I
23 would suggest that Mr. Nunley go ahead downstairs and make some phone
24 calls. Then when we sort all of this out, and if you need to talk to him some

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VOIR DIRE

1 more, we can have him brought back up.

2 MS. SCHULTZ: All right.

3 THE COURT: Okay? All right, let's do that then. Because we need
4 to work on these instructions a little bit.

5 THE STATE (MS. FLANIGAN): Judge, do you want me to give you
6 these definitions that she looked at?

7 THE COURT: Yeah, yeah. Why don't you bring them back, yeah.

8 (COURT ADJOURNED)

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VOIR DIRE

1 NOVEMBER 19, 2008:

2 THE COURT: Okay, the record will reflect that the uh, attorneys
3 and the Judge have uh, have been talking about jury instructions uh, yesterday
4 afternoon, evening. Uh, I'd given you a copy of them yesterday evening. The
5 latest version, I'll go through and point out what's different than last, uh, than
6 what you had last night in terms of corrections. If you'll look at number five,
7 Preliminary Jury Instruction Number Five uhm, on paragraph number three, a
8 comma after "namely", namely, comma. Uh, and then if you'll go to uh,
9 Preliminary Jury Instruction Number Six, some of these changes, I can't
10 remember if we made them last night or not. Jury Instruction Number Six,
11 paragraph three, namely, comma, had A.Y., had A.Y., I think was added at some
12 point. Okay. Uh, Jury Instruction Number Nine uh, I don't know whether I asked
13 Karen to type it this way or not, but when I read this last night, paragraph four, I
14 believe the word "when" needs to be added, "when A.Y. was not accompanied
15 by a parent or guardian". Anyhow, I added that. Do you all agree that that's
16 appropriate?

17 MS. SCHULTZ: Right.

18 THE STATE (MS. FLANIGAN): Yes, Judge.

19 THE COURT: That refers to the time period when the alleged
20 harmful matter was displayed. Uh, and then if you'll go to number fourteen,
21 there was some margin issues there. Some things were over to the left. Uh, the
22 previous Instruction Number Fifteen uh, that was tendered by the State, I'm not
23 gonna give that.

24 THE STATE (MS. FLANIGAN): Uh, okay.

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VOIR DIRE

1 THE COURT: They were really planning on using it as a Final. And
2 when they emailed their, some of their definition instructions that we knew we
3 needed, it got in there, I guess. But I'm not gonna give it. Uh, certainly not
4 gonna give it now. I may not give it later. I don't know. That's not an issue for
5 now, I don't think. You're not really requesting it right now, Ms. Prosecutor?

6 THE STATE (MS. FLANIGAN): No, Judge.

7 THE COURT: Okay. And so that renumbered all the..., and then
8 we get to uh, the last instructions, there was previously an instruction that
9 typically is a, is a Final Instruction about sympathy and bias. And I didn't put it in
10 there. I struck it out of there because I didn't think it really needed to be in the
11 uh, preliminaries. Now that you all have had the evening to think about it and
12 look these over, I realize you didn't have too awful long yesterday to dwell on
13 these, except that most of these instructions, practically all of them are the
14 standard instructions that are always used, and uh, most of them are Pattern
15 instructions. And so, so uh, at this point I'd kind of like to have an indication, first
16 from the State. Does the State have any Preliminary Instructions? Are they
17 satisfied with the ones that are here for the...

18 THE STATE (MS. FLANIGAN): The State is satisfied with these,
19 Judge.

20 THE COURT: Ms. Schultz?

21 MS. SCHULTZ: The defense is also satisfied with these.

22 THE COURT: Okay. So no Preliminary Instructions by the State or
23 the defense. And does the State have any objections to the Court's proposed
24 preliminaries?

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VOIR DIRE

1 THE STATE (MS. FLANIGAN): No, Judge.

2 THE COURT: And does the defendant have any objection?

3 MS. SCHULTZ: No objections.

4 THE COURT: No objections by the State or the defense. Okay uh,
5 okay, then uh, now, Mr. Nunley uh, there's something that I know you're
6 probably, your attorney, Ms. Schultz, has told you, but something I also needed
7 to make a record of was, there was the 404B issue that we had a hearing on
8 Friday, and I said I was gonna go think about it over the weekend and read those
9 cases. And I did. And I told your lawyer on Monday uh, that uh, and the
10 Prosecutor together that I was denying the State's request to introduce extrinsic-
11 act evidence, namely the uh, I think after it was all said and done, the only
12 witness they were able to get was, who was it? Was it K.S. or...

13 THE STATE (MS. FLANIGAN): K.S., Judge.

14 THE COURT: Okay, the ten-year-old child.

15 THE STATE (MS. FLANIGAN): Yes.

16 THE COURT: That came in here on Friday and testified that the
17 defendant molested her repeatedly. Uh, and I reviewed those cases and then, I
18 don't remember all the details right now. One of them, I think, could be fairly
19 described as the gonorrhea case, another one might be the massage-shower
20 case. And, but I just didn't think they had enough uniqueness to uhm, to uh,
21 qualify. That was the one problem I had with them, not necessarily the only one,
22 but that's the one, one problem. So, the State's Notice and Request to introduce
23 the, the uh, other acts of molestation alleged by the, against the defendant is
24 denied. So the State's request concerning the others acts of 404B evidence uh,

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VOIR DIRE

1 is denied. The State is uh, not allowed to mention that or refer to it. Uh, and uh,
2 and that request is denied. Okay, now...

3 THE STATE (MS. FLANIGAN): Judge, on that point, could I bring
4 something up? Uh, with respect to uh, the State's witnesses, Annie Young, and
5 Tonya and Richard Caves uhm, I would ask, outside the presence of the jury,
6 before we call them, that you uh, instruct them that they're not to bring that up. I
7 don't want to be accused of coaching them or telling them what to testify to. But
8 the State would request that you give them an instruction that they're not to
9 mention any other abuse uh...

10 THE COURT: Oh, I'll do that. Yeah, I'll do that. And you probably
11 ought to remind me of that, when we get to them, you know, and remind me
12 about what it is that we need to tell them. And then there were several other
13 alleged incidents. The one uh, the daughter of Mr. Nunley who allegedly told the
14 State Police Trooper that she had been molested. But then she came in here
15 under oath and denied it. Uh, so uhm, so anyhow, I mean there was her, and
16 then there was another girl that you couldn't get subpoenaed or whatever.
17 Right?

18 THE STATE (MS. FLANIGAN): That's right.

19 THE COURT: So, and there may even been more. So I need to,
20 you know, I'm gonna need your all's help to, to tell them all about what they can't
21 say. Uh, and I would ask you..., now, so you think that's Tonya? And probably
22 Richard Caves as well.

23 THE STATE (MS. FLANIGAN): We probably should.

24 THE COURT: Probably every one of them. Well, it's probably a

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1 good idea. And uh, so every one of them, we'll try to start uh, with an empty
2 courtroom and uh, and uh, and have a little talk about what they are not to say.

3 MS. SCHULTZ: There, there is one other witness, that the State
4 gave me some supplemental discovery a couple of days ago uh, with respect to
5 their witness that they have listed. I'm not sure if they'll even call her. Kirsten
6 Sanders. And in the report that they've given to me they indicated that my client,
7 she, she stated that my client had sex with her when she was uh, seventeen
8 years old. Now, that clearly is something that they didn't raise in their 404B
9 motion. But I would also, if they call her as a witness, I'd like her to be instructed
10 that she's not to talk about those other acts.

11 THE STATE (MS. FLANIGAN): But the State had no intention of
12 bringing that into the 404B, and we, if we decide to call Ms. Sanders, certainly
13 she should be instructed not to bring that up.

14 THE COURT: Okay. Just remind me of that also. And that's
15 certainly a reasonable request. And I'll uh, likewise you need to remind me as
16 well, Susan. Both of you are on, it's the obligation of both of the lawyers, State
17 and defense, to remind me..., sometimes I need a reminder about to uh,
18 admonish these people about what they can't say. So, but that's, those are my
19 intentions.

20 Now, okay, now the other things is uh, or several things. Okay, now there
21 was some arguments the other day, and then it was discussed again last night. I
22 think it was on the record about the State's Motion in Limine about uh, four
23 items. One, alleged drug use or activities of Tonya and Richard Caves. Any
24 employment of Tonya Caves. Any living arrangement of Tonya Caves. Any

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1 domestic alterations, altercations between Richard and Tonya Caves. We had a
2 hearing on that, didn't we?

3 THE STATE (MS. FLANIGAN): We didn't, we had, we discussed it
4 in your office with Ms. Schultz on the speaker phone, Judge. And so there's
5 nothing on the record.

6 THE COURT: Nothing on the record on that. Now let's see, there
7 was something else. Oh yes, the hearsay issue uh, that we had the hearing on
8 on Friday. And I told you off the record that I was going to allow that. Uhm, uh, I
9 don't think there was ever a record made about what I was gonna do about it.
10 No, I did say on the rec..., the only thing I said on the record was I was gonna
11 think about it over the weekend after I read those cases again. But this is what I
12 thought, where I thought I was with it, and uh, I didn't think that was gonna
13 change, and I haven't changed my mind and don't expect to. Now I want to also
14 say that all these rulings on Motions in Limine and these 404B stuff, all of it is
15 subject to change, and that could change by one side or the other opening the
16 door in opening statements, in cross examination, direct examination. All that, all
17 that could, there's ways that that could change. But assuming nobody does
18 anything to, to bring that up, to fairly bring that up. And now if you think that
19 somebody's done something to bring that up, I'm ordering both sides to not bring
20 it up. But the first, get the Court's permission to bring that up if you think the
21 other side has opened the door or some such thing as that. Uh, okay?

22 THE STATE (MS. FLANIGAN): And that's the 404B?

23 THE COURT: That's the, that's the 404B. That's the Tonya..., all
24 this stuff I'm about to rule on.

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1 THE STATE (MS. FLANIGAN): Okay.

2 THE COURT: I thought about what you all said about that. And I
3 know you need to make some arguments. Now let's talk about this uh, I think
4 the easiest one, for me the easiest one is any employment of Tonya Caves. Uh,
5 and then there was one thing, there was another thing about Annie Young, the
6 alleged victim this case that was talked about in the office last night. Let's talk
7 about the employment of Tonya Caves. She works for a peep place or a strip
8 place or something like that, which uh...

9 MS. SCHULTZ: She did, at the time.

10 THE COURT: At the time that this happened. But she didn't take
11 her, there's no evidence she took her daughter there. There's no evidence that it
12 had any impact on her daughter. And I think you told me last evening, Ms.
13 Schultz, that in her deposition she testified that her daughter knew nothing about
14 it, and that you have no evidence that, that it effected her daughter in any way.

15 MS. SCHULTZ: That's correct. I do not have any evidence that it
16 effected her daughter.

17 THE COURT: Okay. Now do you have any argument? I'm
18 planning to grant that motion in limine, but I want to hear what other argument
19 you want to put on the record regarding that motion. As I see that as an easy
20 one, if you don't have any evidence to connect that somehow or another. And I
21 don't know if you were even planning on using it or not.

22 MS. SCHULTZ: Judge, it would not be my intention to bring that up
23 unless some other uh, evidence were presented that uh, made it a relevant
24 factor.

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1 THE COURT: Okay. All right. Okay, so the State's Motion in
2 Limine with respect to the employment of Tonya Caves is granted. And uh, now
3 uh, maybe the next easiest one, I'm not sure, any domestic altercations between
4 Tonya and Richard Caves. Do you have any...

5 MS. SCHULTZ: Judge, I don't know of any.

6 THE COURT: You don't know of any? Okay. You don't know of
7 any. And do you know of any?

8 THE STATE (MS. FLANIGAN): I know that Richard Caves was
9 prosecuted for that by our office.

10 THE COURT: Okay.

11 THE STATE (MS. FLANIGAN): And that's why I didn't want it
12 brought up.

13 THE COURT: Is there evidence that you know of that would make
14 that relevant to this trial somehow or another, Ms. Schultz?

15 MS. SCHULTZ: No.

16 THE COURT: No?

17 MS. SCHULTZ: I had no intention. I didn't even know there was a
18 problem there until they put it in this motion in limine.

19 THE COURT: Okay. So...

20 MS. SCHULTZ: And then the only, the only information that I have
21 about it is when uh, Mr. Caves was testifying in Court the other day. He said
22 something about he wasn't supposed to be around her that day. That's the only
23 thing that I know about it. He mentioned it himself when he was testifying. I
24 didn't bring it up. I didn't know about it before that.

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1 THE COURT: Right. Okay. But you don't know of any way or
2 another that it would be relevant?

3 MS. SCHULTZ: No, I don't.

4 THE COURT: And I, now I can't think of any. Can you think of
5 any? Okay. Then that, any other argument on this issue, Ms. Schultz?

6 MS. SCHULTZ: No.

7 THE COURT: All right. Then number four is granted. The State's
8 Motion in Limine with respect to any domestic altercations between Tonya and
9 Richard Caves. And now any living arrangements of Tonya Caves. What do
10 you want to say about that one, Ms. Schultz?

11 MS. SCHULTZ: Well, I think that that, there is a possibility that
12 could be tied in, because I think what we're talking about here is Tonya Caves'
13 activities on the day that this incident allegedly happened. And that may have
14 some relevance at some point. I don't know of any specific relevance at this
15 point. Uh, but I certainly don't want to be precluded from being able to ask her
16 where she was living and why she was dropping this kid off at uh, Ed's house
17 and things like that.

18 THE STATE (MS. FLANIGAN): I don't think why Tonya took her to
19 Mr. Nunley's house has any relevance whatsoever to whether or not he molested
20 Annie Young. It doesn't..., it's simply irrelevant why she took her there.

21 MS. SCHULTZ: Well, Judge, if we took out everything that was
22 simply irrelevant, we would not, we, we could try this case in five minutes. We
23 get Annie Young up there and what happened and that's it. I mean you've got to
24 have some background information.

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1 THE COURT: Okay. Well, let me ask you this. What do you
2 expect that would, what's that gonna be anyhow? Let's say that Ms. Schultz did
3 delve into her living arrangements that on or about the time of the alleged
4 occurrence of this, of events that are the subject of trial. What would that be?

5 THE STATE (MS. FLANIGAN): I would imagine that she would
6 either be living with Annie alone, or it's during that time she may have been living
7 with a boyfriend by the name of Eddie Foreman. I'm not sure what that would
8 be.

9 THE COURT: Okay. Okay, uhm...

10 THE STATE (MS. FLANIGAN): Judge, if I could, more specifically
11 with respect to this motion uh, and not, not taking into account what we talked
12 about, about the extrinsic evidence last night in the office. But this, this specific
13 motion in limine was more geared towards the fact that during her deposition she
14 said she's homeless and living in a car right now. And I don't think that the jury
15 uh, needed to hear that. And that's really specifically why I made this motion. I
16 think some other things that Annie said, like that she's lived with a series of,
17 different series of men is also irrelevant uh, as well. I don't know how that has
18 any relevancy to this. But I would not be candid to the Court if I didn't say really
19 what I was trying to keep out with this is the fact that she's homeless now. And,
20 and I also have to tell you that I've re-watched the Comfort House interview. And
21 in that Annie is asked, at the time of the interview, which was April of '08, "Where
22 do you live?" And she says, "I live with my mom and Eddie Foreman and my two
23 dogs." So I don't want to be in a position where by playing evidence that I violate
24 my own Motion in Limine as well. So I wanted to put that on the record for the

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1 Court's consideration when we're talking about what, which parts of Tonya's
2 living arrangements we can talk about.

3 THE COURT: Okay. You're talking about, right now this motion is
4 talking about that she is homeless at this point in time.

5 THE STATE (MS. FLANIGAN): That she is homeless, or that we
6 don't really know where she's living now.

7 THE COURT: Or that you don't really know where she lives, okay.
8 All right. What about that, Ms. Schultz?

9 MS. SCHULTZ: Well, Judge, you know, a lot of times we put in
10 background information so that these people are human for the jury. And we
11 don't handicap attorneys by saying, "Well, you can't ask about this or that." I
12 mean every witness that gets on the stand you say, "Give us your name and your
13 address." And basically what they're saying to us is that we can't ask her what
14 her address is. This is background information. Granted it may not be
15 particularly relevant to the issue before the Court whether my client molested this
16 kid or not. But I certainly can't see where it would do any harm for a jury to have
17 this background information.

18 THE STATE (MS. FLANIGAN): And I disagree, Judge. I think all
19 evidence that comes before a trier of fact has to be relevant. And you don't
20 know if there's one of these twelve people that are gonna say, "Oh, she's
21 homeless. That's an unfit mom and I'm not gonna believe anything she says."

22 MS. SCHULTZ: Well, quite frankly I don't think it matters whether
23 the jury believes her or not. I mean the only person whose credibility is really at
24 issue here is Annie, because they don't have anybody that has any eye, there's

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1 no eye witnesses, there's no physical evidence. If the jury doesn't believe Annie,
2 we get a not-guilty verdict. If they believe her, we get a guilty verdict. I mean
3 that's the way it is. The rest of this stuff doesn't mean much.

4 THE COURT: Okay. Number three is granted as to Tonya Caves'
5 living arrangements at this time.

6 MS. SCHULTZ: So, does, does that mean that I cannot ask her her
7 address or where she's living when she takes the stand? Is that what we're
8 saying?

9 THE COURT: Yeah. You can ask her outside the presence of the
10 jury. And let's see what she says, if I think it's something that's uh, important for
11 the jury or somehow relevant in some way or another, then sure.

12 MS. SCHULTZ: Okay.

13 THE COURT: Because we need to warn them about things
14 anyhow. So you can ask her some questions outside the presence of the jury.
15 And then I can make a decision about the specific questions before the jury
16 comes in.

17 MS. SCHULTZ: Well, you know, Judge, I don't think it's a very vital
18 part of this trial or anything like that. But the problem is, is when there are so
19 many nit-picky little things that I can't talk about, I don't want to set myself up to
20 accidentally slip. I mean if you've got all this list of things that we can't talk about,
21 things that are normally uh, pretty trivial in a trial, and I slip, what's gonna
22 happen? I mean things happen. We're not perfect.

23 THE COURT: Sure.

24 MS. SCHULTZ: And I certainly don't intend to do anything to violate

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1 the Court's order. But if I accidentally do uh, is the State gonna, you know, come
2 hammer on me for awhile because I've accidentally slipped?

3 THE COURT: I expect them to not accidentally slip about the 404B
4 evidence as well.

5 MS. SCHULTZ: Okay.

6 THE COURT: Uh, okay, the last one in this list is what they've uh,
7 number one, any alleged drug use or activities of Tonya or Richard Caves. Now
8 like I told you last night informally when we were talking about this in the office
9 uh, was that obviously if you had any evidence to indicate that Richard or Tonya
10 Caves were high or drunk or were under the influence of drugs or alcohol on the
11 date uh, of the events that they will testify to, then obviously that's relevant as to
12 the ability to the, in the sense that it would've uh, arguably affect their perception
13 and so forth. So...

14 MS. SCHULTZ: And, Judge, under Rule 608 uh, there are some
15 cases that they cite in that which uh, specifically pointing out that evidence that a
16 witness was using alcohol or drugs at the time of events about which there are
17 testifying is bearing upon their ability to observe and recall events is uh,
18 admissible. And I think that's what we have here.

19 THE COURT: I agree. I agree. I think that that is absolutely
20 admissible. And I think you can ask them about that. Uh, and uh, do you, have
21 you asked them that question in depositions?

22 THE STATE (MS. FLANIGAN): I don't recall doing that.

23 MS. SCHULTZ: I haven't, I haven't taken Richard's deposition.

24 THE COURT: I guess what I would ask you to do, since we're

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1 gonna be instructing every single one of these people about what they can and
2 cannot say is uh, when we have that admonishment, you can ask them those
3 questions. We'll know what the answers are. You can ask them any kind of
4 question. I don't care. Ask them anything outside the presence of the jury. And
5 then uh, you know, if you get something that you think you can use uh, then we
6 can talk about it and uh, and I'll rule on it at that time. But what I think right now
7 is uh, here's what I would say about Tonya and Richard Caves. I think it's
8 perfectly appropriate for you to ask Tonya or Richard Caves. "Now uh, on the
9 day that you went over and picked up Annie from Mr. Nunley's house, were you
10 high on drugs?"

11 MS. SCHULTZ: Well, I know what she's gonna say, "No". Because
12 even if she was, she won't admit it.

13 THE COURT: "Were you drunk? Were you under the influence of
14 any alcohol or drugs?" You know, I think, if you had a basis to ask that question,
15 that would be a perfectly good question. Now if you don't have any basis to ask
16 that question, then it wouldn't be. And I don't know whether you do or you don't.
17 But I think if you don't already, then you could certainly try to find out whenever
18 we do the admonishment, then you'll have one more opportunity to see whether
19 you have any basis for that.

20 THE STATE (MS. FLANIGAN): Because I'm unaware of any basis
21 for her to believe that at this point.

22 THE COURT: And, I mean, and then, you know, then the other
23 thing is, if you had evidence to indicate that a person was such an alcoholic, for
24 example, that they drank every single day, because some alcoholics do. They

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1 never go through a day without drinking extensively. You know, and some
2 people, as we know, literally kill themselves uh, uhm, uh, early in their life by
3 drinking themselves to death quite literally. And other people kill themselves with
4 drugs. Uh, you know, some people choose to kill themselves with cigarettes. I
5 mean others run themselves, you know, jump off of bridges. People have got
6 their own ways of killing themselves. Uh, so, you know, I mean, obviously, if you,
7 for example, had evidence that one of these people was such an alcoholic that
8 all they..., every single day, not a day went by they didn't do drugs or alcohol,
9 then it'd be a pretty good assumption uh, that they was drugging or drinking that
10 day.

11 MS. SCHULTZ: True.

12 THE COURT: So, but I don't know if you have anything about that.
13 But what I would say about that is, I'm gonna grant that motion. However, I'm
14 gonna give you chance, when we do the admonishment outside the presence of
15 the jury, to see if you have any basis to ask any of these questions. Uh, but I
16 don't want you to be asking without permission. And since, at this time, what I'm
17 hearing from both the State and the defense, I mean what I'm hearing from you
18 is that uh, I don't have any basis to ask that question. But I'd like to maybe.

19 MS. SCHULTZ: Well, Judge I do have a reason to believe that she
20 was under the influence of drugs the night that she dropped Annie off and the
21 morning that she picked her up.

22 THE COURT: Okay...

23 MS. SCHULTZ: But the only way I'm gonna get that in is if my client
24 testifies.

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1 THE COURT: All right...

2 MS. SCHULTZ: And I'm not telling you at this point that's he gonna
3 testifying or he's not going to testify, but...

4 THE COURT: Well, then I think that means that you can ask the
5 question if you have a legitimate basis for that.

6 MS. SCHULTZ: And, yeah, what my client has told me is why I
7 believe that she was under the influence of drugs or alcohol. And if she denies it
8 when we ask her either out of the presence of the jury or in the presence of the
9 jury, and my client takes the stand, I sure don't want to be handicapped from
10 asking him, "What was her condition when she arrived to drop the kid off?"

11 THE COURT: Well, he can testify to that. Sure. And that's, if you
12 have a legitimate basis for that, you can, you can ask the question too. I mean if
13 you have a reason to believe that she was high or drunk, you can ask that
14 question. Uh, I think you can, yeah. What I'm just saying is, why don't you let
15 me know what kind of question you're planning on asking uh, before you ask it.

16 MS. SCHULTZ: All right.

17 THE COURT: Uh, but I'm telling you in advance that since you're
18 saying the basis on the information from your client, that you have a legitimate
19 basis to ask a question about her being high and/or drunk on the day that she
20 picked up her daughter, then I think that's uh, you know, arguably a question that
21 you can ask. And I will plan to let you ask it.

22 MS. SCHULTZ: Okay.

23 THE COURT: But I just want, you know, some, I want to know what
24 it is that you want to ask first before you bring it up.

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1 MS. SCHULTZ: All right.

2 THE COURT: Uh, so that the State has an opportunity to, to uh,
3 see what they think about the details of the nature of the question.

4 THE STATE (MS. FLANIGAN): And I assume, Judge, that Mr.
5 Nunley has provided some details to Ms. Schultz why he thinks that, and I'd be
6 entitled to a proffer. He's not just saying, "I think she was high." Or, "I think she
7 was drunk." That certainly wouldn't be enough for a good-faith basis, I don't
8 think.

9 THE COURT: Or maybe he would say, "I know she was using
10 drugs every day because we used to do it together". You know, I mean
11 sometimes that's the case. So I don't know, you know. I don't know. I really
12 don't know. Uhm, that is oftentimes the case, you know, with uh, substances,
13 legal and illegal. Uh, so, but for the time being I'm granting it. I'm telling you in
14 advance, you know, just let me know what it is you're planning on asking, of
15 course. And uh, but I'm gonna allow you to get into it if you just let me know.
16 And then we can talk about it as these witnesses come up. For the time being
17 I'm granting all those items in the Motion in Limine with the understanding that
18 I'm gonna lift that with respect to some of them. I just want a little notice. I want
19 to know in advance, outside the presence of the jury.

20 MS. SCHULTZ: Okay.

21 THE COURT: Okay. Now then, then there was another item that
22 wasn't the subject of a written motion uh, about impeaching the alleged victim m
23 on a collateral matter uh, that was discussed last night off the record.

24 MS. SCHULTZ: Judge, specifically what I would like to be able to
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1 do, and I believe that it is admissible under Rule 401, under the definition of
2 relevant evidence. I would like to be able to uh, ask Annie questions about her
3 previous false report to the police that uh, Eddie Foreman had physically abused
4 her. Now the reason that I think that it is admissible is because under 401,
5 evidence relating to witness' ability and willingness to state facts accurately, that
6 is to the witness' credibility is relevant. And there is a case that is cited in the uh,
7 courtroom handbook on evidence.

8 THE COURT: Wait a minute. What rule are you looking at? Four...

9 MS. SCHULTZ: Rule 401, Rule 401.

10 THE COURT: 401, relevant evidence, okay. Okay.

11 MS. SCHULTZ: And, and I believe that her credibility, I mean
12 obviously her credibility is at issue in this case.

13 THE COURT: Sure. I agree.

14 MS. SCHULTZ: And the fact that she has lied previously to get
15 somebody in trouble is certainly relevant to whether she is going to be telling the
16 truth now. So, that's why I believe that that is uh, relevant in this particular case.
17 And I should be, we should be able to inquire into the fact that she has lied
18 before about serious matters.

19 THE STATE (MS. FLANIGAN): Judge, that, it may be relevant, but
20 it has to also be admissible. And under rule 608B, it's not admissible. You, it
21 says for the purpose or attacking or supporting the witness' credibility, other than
22 a conviction of a crime is provided in Rule four, 609, which we're not talking
23 about here. Specific instances may not be inquired into or proven by extrinsic
24 evidence. So although it may be relevant, it's inadmissible. And that's, I can't

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1 say that 608B couldn't get more clear on the point.

2 THE COURT: Okay. Okay, well, I uh, I took my rule book home
3 last night. And uh, and I did read 608. And uh, I thought about this for a period
4 of time. And, and uh, now of course, if, Ms. Schultz, if you had witnesses with
5 respect to the uh, Annie Young's reputation for truthfulness, I think you could
6 bring those character witnesses in to attack her credibility. That would be one
7 way of doing it. Uh, but I believe that there are limitations in the rules with
8 respect to how you can attack uh, a witness' credibility. And uh, and of course,
9 now as with many things, sometimes a door could be opened. And uh, but with
10 respect to these collateral matters uh, generally extrinsic proof of specific
11 instances of conduct is not allowed on these collateral matters. And uh, of
12 course, criminal convictions under 609 are different. Uh, general reputation
13 evidence for uh, the trait of truthfulness is another possibility uh, of impeaching
14 credibility. And uh, but I don't, I don't find that it's uh, from what was described
15 to me, and if you would, describe what it is you think the situation is uh, Ms.
16 Prosecutor.

17 THE STATE (MS. FLANIGAN): Yes, Judge. Uhm, in early June of
18 2008, Tonya Caves was the victim of a domestic altercation with Eddie Foreman.
19 Uhm, Annie Young, who is the victim in this case, was a witness to that. She
20 witnessed, and Ms. Schultz has agreed, that witnessed him violently attack uhm,
21 her mother. She then uh, indicated she ran away and fell. But when the police
22 arrived, she indicated that uh, Eddie Foreman had also uh, assaulted her. "Her"
23 being Annie. Uh, she later came to the pros..., wrote a note and came to the
24 Prosecutor's Office. Uh, I would, I estimate in my memory it was about six

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1 weeks later, and indicated that although she uh, had seen the attack on her
2 mother, and it was exactly described that Eddie Foreman had not uh, attacked
3 her, and that she did not want to see him get in trouble for something he didn't
4 do. And she came in to inform us of that.

5 THE COURT: And that was a physical, not a sexual assault.

6 THE STATE (MS. FLANIGAN): It was not a sexual assault. So it
7 would not fit within that rule.

8 THE COURT: Okay. That's pretty much what I heard last night.
9 Uhm, okay, I don't, I don't really think that uh, that under the rules that you get to
10 uh, go into that, Ms. Schultz. Uh...

11 MS. SCHULTZ: Well, Judge, perhaps maybe, no, I don't agree with
12 the ruling of the Court, obviously. I think we should be able to inquire into those
13 kind of things. Maybe not the specifics of it. But what I would inquire of the
14 Court at this point is the Court is inclined not to let me get into that specific
15 incident. Am I permitted to ask this witness, when she takes the stand, whether
16 she has ever lied in the past, and if she has lied in the past, has it been to get
17 someone else in trouble?

18 THE STATE (MS. FLANIGAN): Judge, the rule speaks to that.
19 They may not, specific instances may not be inquired into or proven by extrinsic
20 evidence. It's not just that they can't be proven up, the rule specifically states
21 that she can't inquire into them.

22 MS. SCHULTZ: Well, the problem is, how the heck are you gonna
23 attack the credibility of a kid who admits she lied if you can't ask her if she lied?

24 THE STATE (MS. FLANIGAN): I'm just reading the rule as it's

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1 written. And that's what it says, you can't...

2 THE COURT: I understand what you're saying, Ms. Schultz. I, I
3 really do. But I, and I thought about that. That's the reason I, you know, when
4 we left last night, I listened to what you all said, and I thought I needed to take a
5 rule book. I'm gonna go take this home tonight and look at it, which is exactly
6 what I did.

7 MS. SCHULTZ: And that's what I did too.

8 THE STATE (MS. FLANIGAN): And I did too.

9 THE COURT: All right. And I went home and looked at the rule
10 book and, and uh, that we're all bound by, about how things are supposed to
11 happen, and that's what it says. What Ms. Flanigan just said, specific instances
12 may not be inquired into or proven by extrinsic evidence.

13 MS. SCHULTZ: But that doesn't say that I can't ask her about the
14 specific evidence. That means that I can't bring in the note to show..., if I ask her
15 the question and she says, "No, I've never lied about anybody", the extrinsic
16 evidence prohibition means I can't bring in the note to show that she said she did
17 before. But it doesn't say that you can't inquire of a witness if they've ever lied or
18 stuck with their answer, whatever the answer is.

19 THE STATE (MS. FLANIGAN): Judge, I have to respectfully
20 disagree with Ms. Schultz. I think it specifically says in the rule, may not be
21 inquired into. That means you can't inquire of the witness, "Did you ever lie to
22 get someone in trouble?"

23 THE COURT: I think that's what it means, Ms. Schultz.

24 MS. SCHULTZ: Well, then I would like to know how you can

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1 establish that somebody lied if you can't ask them when they're testifying if
2 they've lied. I mean that's the whole issue of credibility here.

3 THE COURT: I understand. But the way the Indiana Supreme
4 Court has structured these rules of evidence uh, there are limited ways that you
5 can attack the uh, there are limited numbers of ways that you can impeach the
6 credibility of a witness. Uh, and they've told us that you're not supposed to be
7 allowed, you or the Prosecutor, not supposed to be allowed to uh, attack or
8 support a witness' credibility other than conviction of a crime as provided in Rule
9 609, specific instances may not be inquired into or proven by extrinsic evidence.
10 Part of the concern, I think, is to get into every time that a person ever lied about
11 anything in their entire life. And uh, have a uh, you know, have a series of mini
12 trials about uh, any instances that a person might've lied in their entire lifetime so
13 that there wouldn't be a trial about a hundred collateral matters. Uh, and they've
14 made the decision. I didn't write these rules. They're the ones that wrote these
15 rules and they expect me to follow them. I try to do that as best as I can. Just
16 like the 404B one. You know, the Prosecutor doesn't like that. They'd like to
17 have this parade of young girls come in, and truthfully, the ten-year-old was
18 pretty persuasive to me, but uh, I can't allow it, you know, under the rules, I don't
19 think it's permissible. And likewise, I don't think I'm permitted to allow uh, you to
20 inquire into specific instances where she lied about something and didn't have
21 anything to do with this case.

22 MS. SCHULTZ: So is the Court telling me that I cannot ask her the
23 question of whether she's ever lied about anything in the past?

24 THE COURT: I think that's exactly what the rule is getting to.

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1 MS. SCHULTZ: Well, if you're asking a general question, that's not
2 inquiring into a specific...

3 THE STATE (MS. FLANIGAN): Judge, wouldn't a specific instance
4 be a lie?

5 THE COURT: A specific instance would be a..., yeah. I think that's
6 exactly what the rule is getting into. You're, you're saying, can I ask the question
7 of, "Have you ever lied about anything in your entire life?" And that's the exactly
8 the kind of question I think they don't want you to ask.

9 MS. SCHULTZ: Well, you know the...

10 THE COURT: Because anything is all the different hundred
11 instances that uh, that they don't want uh, the trial to be about. I think that's
12 exactly what it is. That's why you're limited to uh, the ways that you can, you
13 know, prior inconsistent statements. There are rules, specific rules about
14 bringing prior inconsistent statements up. There's these rules about reputation
15 evidence for truthfulness. And they, the Supreme Court has made the decision
16 that you can't inquire into specific instances, but what you can do is have a
17 parade of witnesses on their character for truthfulness, or lack thereof. That's
18 what they've done in 608A. Uh, then if you have a parade of reputation
19 witnesses, then you can say, "Well...", and if they, if somebody says that uh,
20 Annie Young is a truthful witness, then you can say, "Did you know...", and then
21 you can ask the "Did you know" question. "Did you know that Annie Young liked
22 about..., Did you know that Annie Young liked about..., Did you know that Annie
23 Young liked about..., Did you know that...", you know, you can do all that. But
24 uh, I don't know if you or the Prosecutor is gonna offer up any uh, reputation

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1 witnesses concerning her truthfulness. But that's the way I see the rules. Now
2 oftentimes we don't follow these rules so closely. Uh, because nobody files
3 motions in limine or the Prosecutors and defense attorneys don't object to every
4 little thing. And, but if you ask me for a ruling on something, then I need to be
5 following the rules. So that's where I'm at about the Annie Young specific
6 instance, it may not be inquired into.

7 MS. SCHULTZ: And so I can't even ask her then? I just want to
8 make sure I'm clear.

9 THE COURT: You ask...

10 MS. SCHULTZ: I cannot ask her if she lies about stuff.

11 THE COURT: You cannot ask her if she lies about specific
12 instances.

13 MS. SCHULTZ: Now I'm talking about a general question, "Do you
14 ever lie about things to get other people in trouble?"

15 THE COURT: Okay. What do you say to that, Ms...

16 THE STATE (MS. FLANIGAN): That's a specific instance.

17 THE COURT: I, I think...

18 MS. SCHULTZ: No, it's not. If I said, "Did you lie about Eddie
19 Foreman to get him trouble?", that would be a specific instance. If I asked it in a
20 general way...

21 THE COURT: It's just a way to get around it.

22 MS. SCHULTZ: Yeah.

23 THE COURT: It's just a way to get around it.

24 MS. SCHULTZ: In, in all the times that we have confronted Annie,

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1 the State has always asked, "Are you telling the truth? Are you telling the truth?"
2 And she always says, "Yes." And...

3 THE COURT: Now if they ask her that this time, if they ask her that
4 this time, I think they're gonna be opening the door if they do that in front of the
5 jury? Don't you think?

6 THE STATE (MS. FLANIGAN): I, I agree.

7 THE COURT: If they keep pounding on that, "Are you telling the
8 truth?", and I think that opens the door to Ms. Schultz saying, "Isn't is true that
9 you have lied before?" They have to be very careful about how they ask their
10 questions, don't they?

11 MS. SCHULTZ: I certainly would agree with that, yes.

12 THE COURT: Right. You know, I mean I think they have to be very
13 careful. You all both have to be very careful about what you say, otherwise
14 you're gonna open the door on something. Careful is the watch word.
15 Otherwise you're opening the doors. Well, that's where I'm at with all that.
16 Those are my rulings. Don't get into it without the Court's permission. Uh, okay,
17 what else do we need to deal with?

18 MS. SCHULTZ: Judge, while we're on preliminary matters, I have
19 uh, with me the depositions, the sealed copies of the depositions of Annie and
20 Tonya Caves, which I would ask that the Court publish. I may be uh, using them
21 at a later date on cross examination. So I choose to do it now.

22 THE COURT: All right, okay. Motion to publish the original
23 depositions of Annie Young and Tonya Caves...

24 THE STATE (MS. FLANIGAN): That's fine. I think they went in

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1 without them actually even reading and signing them. So...

2 THE COURT: Okay.

3 MS. SCHULTZ: And, and one other thing that I would like to bring
4 up. It is my understanding that the State has a vast quantity of video tapes that
5 they seized from the home of the storage building of my client over one year
6 after this incident occurred. And I would ask that the Court prohibit them from
7 entering them into evidence in this case, unless and until they can show that
8 these uh, video tapes were present at uh, on the date of this incident.

9 THE STATE (MS. FLANIGAN): Well, I, I don't think that we would
10 be required to prove that these are the exact video tapes. I can tell you what
11 happened, Judge, is that uh, Detective Wibbels got a consent to search Mr.
12 Nunley's apartment at the Harrison House, which admittedly was not his uh,
13 trailer in Palmyra. Uh, he found both uh, VHS tapes and DVD tapes of
14 pornography. Uhm, I believe there was even one DVD in the uh, one DVD in the
15 DVD player uh, there. Uh, I think that I'm allowed to prove in my case that they
16 were in his possession. He had moved from the place in Palmyra. Obviously
17 uh, they were in his possession. I think the jury is allowed to know that when,
18 that when he was uh, I wouldn't say when he was taken into custody, that
19 wouldn't be fair. But when he had encountered the police, that he had these
20 DVDs in his possession. It would be up to the jury what weight to give those. I
21 think they would be admissible to show the dissemination charge when he's, he
22 had this pornographic videos, or especially DVDs. I think that's specifically what
23 Annie talked about. And I can also tie them to the defendant because they
24 executed a search warrant in a uh, storage unit that belonged to Mr. Nunley.

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1 And in that was a locked safe, which was opened by the Indiana State Police.
2 And if Mr. Nunley is going to try to say these weren't his DVDs or somehow they
3 were left at the Harrison House by someone else, in that safe with personal
4 letters from his son uh, was a cover for one of the exact DVDs that was found in
5 his apartment at the Harrison House. So, I think the fact that he had
6 pornography in his possession at the one place he lived is relevant to my
7 dissemination charge. And that it would be up to the jury with what weight to
8 give that. But I can certainly tie at least one of those DVDs direct to Mr. Nunley.

9 MS. SCHULTZ: Well, the problem is the time period here. We're
10 talking about an event that occurred in April of 2007. And we're talking about a
11 search of his residence in Ap..., in May of 2008. It's over a year later. Uh,
12 unless they can show some relevance, how is it relevant what he had in his
13 possession uh, over a year later as to what happened in April of 2007 are simply
14 no relevancy there. If they can show that these were uh, in his possession as of
15 April of 2007, or something like that, that's fine. Because they don't even have
16 the name of the video that Annie supposedly watched. They don't have any
17 identification of it. What they are trying to do is to say, because a year and three
18 months after the incident, he possesses evidence that uh, he is guilty of
19 dissemination. And I don't, I don't get the relevance. I mean we don't have
20 something there is any tie to it. It's not like we have evidence of murder, when
21 we have the knife that we can tie to the crime. There's nothing to tie these things
22 to the incident that happened in April of 2007. Totally irrelevant.

23 THE COURT: Well, this reminds me of a story. Uh, a woman gets
24 murdered. The last place she was known to be alive uh, the police find about

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1 fairly quickly, yet it takes them approximately two weeks to go to the scene of the
2 crime. The first detective that made that decision to not to go the scene of the
3 crime reminds me of this case. The police officer finds out about it on the day or
4 the next day uh, you know, and then nothing happens. And the note gets lost.
5 It's been talked about and testified to on Friday. Uh, it reminds me of that.
6 That's what I was getting at the other day when I showed you that note, you
7 know. Bill knows what I'm talking about. Uh, that reminds me of that. Well,
8 okay, here's what I think about the video tapes. First of all, they're video tapes.
9 If it was a DVD, then video tapes are out.

10 THE STATE (MS. FLANIGAN): I, I had no intention of trying to put
11 in video tapes.

12 THE COURT: Now if it's a DVD, then you still have to have some
13 evidence or foundation to show that the, that the, I mean I'm afraid Ms. Schultz
14 has got a point. I mean the fact that somebody had something in their
15 possession over a year later, I mean it may be..., it's arguably relevant to show
16 that the defendant possessed uh, pornography. But uh, but how do you know
17 which, how you gonna pick out what, how many were found? How many DVDs
18 were found? One, fifteen, twenty, thirty?

19 THE STATE (MS. FLANIGAN): I think it's about..., Ms. Schultz and
20 looked at them. I think there's seven or eight in a uh, case that are in plastic
21 sleeves. The type that you would flip through.

22 THE COURT: I think without some proof, over a year later, I mean I
23 think you're gonna have a hard time getting that into evidence. I mean without
24 some foundation testimony. I mean how do I know, how would I know or how

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1 would the jury know that he didn't buy them in 2008?

2 THE STATE (MS. FLANIGAN): Here's my thought, here's two
3 thoughts, and I think, my two thoughts..., one..., how...

4 THE COURT: And, and for several reasons, for several reasons.
5 First of all, they're arguably unduly prejudicial, if we don't even..., and then we
6 don't even know whether these are the video tapes that were shown to Annie
7 Young, because that's what you're talking about, you've charged him with
8 showing Annie Young this pornographic video DVD. Well, how do we know that
9 this is the one he showed her? Now if the police officer had, had thought, "Ah
10 ha, child molesting, molesting an eight-year-old child, that's important. That's
11 more important than writing speeding tickets. We ought to get right on this and
12 make sure somebody looks into this." Kind of like the detective, whenever the
13 woman is murdered. "Oh, excuse me, maybe we ought to go to the scene of the
14 crime." And shouldn't wait two weeks to do it. Uh, but uh, see, that's the
15 problem. It's not Bill's problem because I know Bill wouldn't do something like
16 that. Uh, I'm not getting on you, Bill. But...

17 DETECTIVE WIBBELS: No offense taken, Judge.

18 THE COURT: But I mean uh, whenever, whenever there's poor
19 police work, these are the kinds of problems uh, that occur. Uh, and so you
20 didn't finish. I didn't give you a chance to finish. But how do I know? I mean
21 should I just let you introduce a parade of DVDs that we have no idea whether
22 these were the ones that were shown because they were found in his
23 possession a year and three months later? How in the world do I know that? I
24 mean is Annie Young gonna testify that certain things were seen in the video

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1 tape that we can tie into? See, that's the kind of problem you have with a young
2 witness. Now if you had an adult witness or somebody that was older. So, okay,
3 what do you say to that, Ms. Flanigan?

4 THE STATE (MS. FLANIGAN): Well, there's two things. One is, I
5 certainly somewhat anticipated this argument, and do not think..., I think it would
6 be irresponsible. I couldn't sit Annie down and make her look at these DVDs and
7 say, "Did you see these?" I think that that would be, it would be putting her
8 through it again. So I did not show her these videos. Uhm, that being said uhm,
9 what I could do, what I could prove, Judge, is that when Mr. uh, Nunley moved
10 out of the trailer in Palmyra, he moved his items to a storage shed. Part of the,
11 one of those items was a safe. In that was a DVD insert, and in that safe were
12 some letters from his son and a notice from C.P.S. in Floyd County dated right
13 around the time that he would've, that this incident took place, that those were
14 placed from, that they would've been taken from Palmyra and put into the, the
15 storage unit. And therefore this would be the DVDs that he would've had at
16 Palmyra. It would be a circumstantial type of argument that they would be the
17 DVDs he had at Palmyra at the time of this incident.

18 THE COURT: Okay. All right. Well...

19 MS. SCHULTZ: Well, but, you know, we...

20 THE COURT: I haven't heard it yet, but then now it sounds like
21 they're trying to get somewhere. Okay.

22 MS. SCHULTZ: Well, I don't that she has any documentation or
23 anything to show when he moved. And I don't think..., he didn't move until April
24 of 2008.

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1 THE COURT: I can see from all this testimony, that's gonna mean
2 the defendant is not going to testify, because if he were to testify, then there'd be
3 the question, "Now, was this the DVD you had uh, in April of '07?" And things
4 like that, you know. And so I think his likelihood of him testifying is pretty close to
5 none. But anyhow, go ahead.

6 MS. SCHULTZ: Well, Judge, I think one of the other problems that
7 the State has in this case with respect to the allegations that they filed of
8 showing the pornography to the child is in order for the jury to determine whether
9 this was a matter of, I forget the words we used uh...

10 THE COURT: Right.

11 MS. SCHULTZ: That he shouldn't have shown her. They'd have to
12 show it to the jury because the jury has to be able to evaluate it. And if they
13 don't know what he showed her, how can they show it to the jury and how can
14 the jury evaluate it?

15 THE STATE (MS. FLANIGAN): Because she says in her Comfort
16 House interview that she saw a movie with a naked man and with whipped
17 cream coming out of his weenie-bob. And I would submit to the Court that that's
18 plenty evidence for the jury.

19 THE COURT: Okay. Is there more than one uh, DVD that fits that
20 description?

21 MS. SCHULTZ: I didn't see any that did actually, when we looked
22 at them.

23 THE STATE (MS. FLANIGAN): There was a lot of, a lot of movies
24 watched, Judge. And I cannot say whether there's gonna be one or more that

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1 would, that would depict that. It was a long day.

2 MS. SCHULTZ: The reason that I say that she's gonna have to
3 show it to them because of the definition is that considered as a whole, the
4 matter of performance lacks serious literary, artistic, political or scientific value
5 for minors. How can you consider it as a whole if you don't see it?

6 THE COURT: If you don't watch the movie. Sure, you gotta watch
7 the movie to see whether there's anything to it.

8 MS. SCHULTZ: That's right. You have to see the movie.

9 THE COURT: Yeah.

10 MS. SCHULTZ: And if you don't know what movie it is, how can
11 you, I mean you can show the whole box and say, "Which one did she see?" But
12 I'm sure that the State doesn't want to do that. I mean I certainly don't want to sit
13 here and, and watch ten or fifteen filthy movies.

14 THE COURT: Well, we'll do whatever we have to do. But I don't
15 know whether we're gonna get there or not. It may, all I'm saying to the
16 Prosecutor is, you're gonna have to have a foundation. Uh, and it's gotta be
17 more than, well, a year and three months later he had these movies in his
18 possession. It certainly has to be way more than that. Uh, so I don't know
19 where that leaves you. But you know more about your case than I do. I don't
20 know.

21 THE STATE (MS. FLANIGAN): That's fair, Judge. I'll work on,
22 knowing that I will need some more foundation, I will work on that. I think it's
23 possible that we can put that together. But I will certainly not..., I guess what I'm
24 getting from the Court now is that I probably should not mention all these video

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1 tapes that were mentioned in Mr. Nunley's apartment in my opening.

2 THE COURT: I think you probably shouldn't mention fifteen,
3 because you know he didn't show fifteen of them to the girl. He only showed
4 one.

5 THE STATE (MS. FLANIGAN): Yes. Fairly, I think I can say that
6 she, the evidence will show that he showed her a video tape. I'm not sure given
7 your ruling...

8 THE COURT: Right.

9 THE STATE (MS. FLANIGAN): ...that I can't say now that Detective
10 Wibbels executed a search warrant and found them in his apartment a year later.

11 THE COURT: I don't think that's, it's arguably relevant, of course.
12 But it doesn't really uh, I mean it's uh, it's relevant that he had them in his
13 possession fifteen months later, but it doesn't necessarily make it admissible.

14 THE STATE (MS. FLANIGAN): I, I need foundation. I understand
15 what you're saying.

16 THE COURT: Right. So I think, you know, Ms. Schultz's point
17 about the video tapes is well taken. And then uh, you know, now here again, if a
18 search warrant had been executed within days, or maybe within a week or two or
19 whatever, I'm just giving examples uh, you know, the police go get a search
20 warrant. A child has been molested here at this particular location. Video tape
21 shown. Something happened here. Uh, go execute a search warrant and there
22 it is. This is what we find. Then, you know, it's a whole lot different than finding
23 something a year and three months later, you know. It's like the cop that
24 wouldn't go to the scene of the murder for two weeks. It's stupid. So the stupid

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1 label applies to brown and blue, to certain people, not to Bill. I've never seen
2 anything out of Bill that it would apply to. Okay, what else?

3 MS. SCHULTZ: I think that's all I have right now.

4 THE COURT: Anything else, Ms. Julie?

5 THE STATE (MS. FLANIGAN): No.

6 MS. LAUREN WHEATLEY: Judge, we do have one issue that I just
7 thought of, mentioning it now. Uh, because A. is a child and she is what we
8 believe blatantly honest, we have not advised her to say..., the other day when
9 she testified, Mr. Nunley was in uh, stripes. And I think she said he needs to
10 stay in prison. We have not advised her not to talk about that, which we believe
11 if someone were to ask her, "Has anyone talked to you about your testimony
12 today?" She would say, "Yeah, Lauren not to say uh, Eddie's in prison." So
13 we're gonna ask that you admonish her before she testifies.

14 THE COURT: I think that's a good idea, yeah. That'll be, that'll be
15 fine.

16 MS. LAUREN WHEATLEY: Okay.

17 THE COURT: Okay. Uh, all right, where are we? Anything else?

18 THE STATE (MS. FLANIGAN): Could we take a, I need a short
19 break.

20 THE COURT: A little break? Sure, absolutely. Sure, we'll take a
21 little break. And uh, and then we'll be ready to start. Okay, then we need to
22 make copies of these, Sharon. Make them on Cherie's copier so they come out
23 a little bit clearer.

24 (RECESS)

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1 THE COURT: We're on the record. The jurors are not present.
2 The Prosecutor and defense are present. Uh, by count, the uh, oh, I mean to
3 ask you, does the State accept the jury?

4 THE STATE (MS. FLANIGAN): Yes.

5 THE COURT: And the alternate?

6 THE STATE (MS. FLANIGAN): Yes.

7 THE COURT: Does the defense accept the jury and the alternate?

8 MS. SCHULTZ: Yes.

9 THE COURT: And I've got defense used ten challenges on the
10 jurors. And none on the alternate.

11 MS. SCHULTZ: That's correct.

12 THE COURT: And the State used eight on the uh, jury and none on
13 the alternate. And that's right, isn't it?

14 THE STATE (MS. FLANIGAN): That's correct, Judge.

15 THE COURT: Okay, read to go? Bring them in. Nothing else
16 before we bring them in?

17 MS. SCHULTZ: No.

18 THE COURT: All right. The jury questionnaires for the people that
19 were not selected, I need all those back. Did you already give them back to
20 Karen?

21 MS. SCHULTZ: I gave them back to somebody yesterday.

22 THE COURT: Okay.

23 MS. SCHULTZ: They went in the dump box.

24 THE COURT: Okay. Does the jury questionnaires that were not,

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1 people that were not selected, did you all give, cough them up?

2 THE STATE (MS. FLANIGAN): Pardon me, Judge?

3 THE COURT: The jury questionnaires that were not, jurors were
4 not selected, have you coughed those up?

5 MS. LAUREN WHEATLEY: Yeah, I turned those in yesterday.

6 THE COURT: Okay. Thank you very much. And at the end of the
7 trial, if you'll please turn those in, the jury questionnaires. Remember to turn
8 those in, okay?

9 (JURY ENTERS COURTROOM)

10 THE COURT: It looks like Sharon's got you all lined up again.
11 She'll do that. Please be seated, ladies and gentlemen. You know what, you
12 don't actually need that chair, but you can stay there right now. Use it if you like,
13 or not. Uh, I think there'll be an extra chair. But you..., and now, is there
14 anybody that needs a particular spot? Is there anybody that needs to stand up
15 uh, because of their back or anything like that? Anybody..., now if there's some
16 kind of issue like that, you know, where, then the good place for you to be would
17 be over on the end so that you can stand up and stretch. If anybody has an
18 issue like that, you let me know and we'll switch where you're seated, okay? All
19 right. All right, now the uh, you folks are the result of the selection process. And
20 the first order of business today is uh, we were busy doing other things while you
21 were back there. And I told you, of course, I warned you that we might not start
22 on time. Uh, and of course, that didn't happen. We'll try not to do that, but
23 sometimes it just happens.

24 First thing, stand up and raise your hand to be sworn. Do you and each of

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1 you solemnly swear or affirm under the penalties for perjury that you will truly try
2 and determine this case that is now the subject for trial and return a true verdict
3 according to the law and the evidence as it is presented to you during this trial,
4 so help you God? If so, say "I do".

5 JURY: I do.

6 THE COURT: Please be seated, ladies and gentlemen. Now uh,
7 the first order of business after that is to go over the Preliminary Instructions.
8 Uh, things are done differently than they used to be. So hand them out the
9 books. You're each gonna get a binder, and you'll have a copy of the
10 Preliminary Instructions that the Court will read to you. So pass those around.
11 There's notebooks in there for you to make notes during testimony. Uhm,
12 there's a small pad for you to uh, write out questions for witnesses, if you have
13 any. Uh, and uh, the first thing we're gonna do, some people uh, listen better
14 and some people are more visual and they like to see it. Now if you want to
15 follow along, you'll see in your packet "Preliminary Instructions." And if you want
16 to follow along in writing what I'm going to read to you...

17 BAILIFF: Judge, the instructions aren't in the notebooks.

18 THE COURT: Oh, well, go ahead and give them to them. I'm sorry.
19 I thought you already put them in there, Sharon. Excuse me. Okay? She's got
20 uh, the instructions. Basically the rules about how things are done and uh, the
21 charges and so forth. Pay no attention to the color of the paper. That means
22 nothing. That's just what happened to come up in the copier when the copies
23 were made. It might be white the next time when you get finals. So, when you
24 all get a chance to..., when everybody has a copy of those and everyone has,

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1 has it in their binder and everybody is ready to go, then we'll go over the uh,
2 Preliminary Instructions. Okay, I think everybody is ready to go.

3 Ladies and gentlemen, you have been selected as jurors and you're
4 bound by your oath to try this case fairly and honestly. You are permitted to
5 discuss the evidence among yourselves in the jury room during recesses from
6 trial only when all jurors are present. You should keep an open mind. You
7 should not form or express any conclusion or judgment about the outcome of the
8 case until the Court submits the case to you for your deliberations. You must not
9 talk about this case with anyone else. Do not talk to any of the parties, their
10 lawyers or any of the witnesses. If anyone tries to talk to you about the case in
11 your presence, you should tell the Bailiff immediately and privately. If there's any
12 publicity about this trial, you must not read, listen to or watch it. You should
13 focus your attention on the Court proceeds and the evidence, and reach a
14 verdict based upon what you hear and see in this Court. You are to consider all
15 the instructions together. Do not single out any certain sentence or any
16 individual point or instruction and ignore the others. Under the Constitution of
17 Indiana, the jury has a right to determine both the law and the facts. The Court's
18 instructions are your best source in determining the law.

19 In this case, the State of Indiana has charged the defendant with the
20 following counts: Count 1, Child Molesting. William Wibbels, a police officer,
21 affirms under the pains and penalties of perjury, that on or about the 13th day of
22 April, 2007, in Harrison County, State of Indiana, one Lawrence E. Nunley, a
23 person of at least twenty-one years of age, who with a child under fourteen years
24 of age, identified as A.Y., did perform or submit to deviate sexual conduct, to-wit:

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1 Lawrence E. Nunley was born October 23rd, 1966, touched the vagina of A.Y.,
2 who was born June 24th, 2000, with his mouth, which is contrary to the form and
3 the statute and such cases made and provided, and against the peace and
4 dignity of the State of Indiana.

5 Count 2, William Wibbels, a police officer, affirms under the pains and
6 penalties of perjury, that on or about the 13th day of April, 2007, in Harrison
7 County, State of Indiana, one Lawrence E. Nunley, a person of at least twenty-
8 one years of age, who with a child under fourteen years of age, identified as
9 A.Y., did perform or submit to deviate sexual conduct, to-wit: Lawrence E.
10 Nunley who was born October 23rd, 1966, had A.Y., who was born June 24th,
11 2000, put her mouth on his penis, which is contrary to the form and the statute
12 and such cases made and provided, and against the peace and dignity of the
13 State of Indiana.

14 Count 3, Child Molesting. William Wibbels, a police officer, affirms under
15 the pains and penalties of perjury, that on or about the 13th day of April, 2007, in
16 Harrison County, State of Indiana, one Lawrence E. Nunley, a person of at least
17 twenty-one years of age, who with a child under fourteen years of age, identified
18 as A.Y., did perform or submit to deviate sexual conduct, to-wit: Lawrence E.
19 Nunley who was born October 23rd, 1966, put his hand in the vagina of A.Y., who
20 was born June 24th, 2000, which is contrary to the form and the statute and such
21 cases made and provided, and against the peace and dignity of the State of
22 Indiana.

23 Count 4, Child Molesting. William Wibbels, a police officer, affirms under
24 the pains and penalties of perjury, that on or about the 13th day of April, 2007, in

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1 Harrison County, Indiana, one Lawrence E. Nunley, did then and there with a
2 child less than fourteen years of age, identified as A.Y., did perform or submit to
3 any fondling or touching of either the child or himself with the intent to arouse or
4 satisfy the sexual desires of either the child or himself, to-wit: Lawrence E.
5 Nunley touched the vagina of A.Y., who was born June 24th, 2000, with his penis,
6 which is contrary to the form and the statute and such cases made and provided,
7 and against the peace and dignity of the State of Indiana.

8 Count 5, Dissemination of Matter Harmful to Minors. William Wibbels, a
9 police officer, affirms under the pains and penalties of perjury, that on or about
10 the 13th day of April, 2007, in Harrison County, State of Indiana, one Lawrence E.
11 Nunley, did then and there display matter that was harmful to a minor in an area
12 to which the minor had visual auditory or physical access, and that the minor was
13 not accompanied by a parent or guardian, to-wit: Lawrence E. Nunley showed a
14 pornographic movie to A.Y., who was born June 24th, 2000, and who was not
15 accompanied by her parent or guardian, which is contrary to the form and the
16 statute and such cases made and provided, and against the peace and dignity of
17 the State of Indiana.

18 The crime of Child Molesting is defined by law as follows: A person at
19 least twenty-one years of age, who with a child under fourteen years of age,
20 performs or submits to deviate sexual conduct, commits Child Molesting, a Class
21 A Felony, as charged in Count 1. Before you may convict the defendant, the
22 State must have proved each of the following elements beyond a reasonable
23 doubt: Number one, the defendant, Lawrence E. Nunley; number two, knowingly
24 or intentionally; number three, performed or submitted to deviate sexual conduct

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1 with A.Y., namely touched the vagina of A.Y. with his mouth, when A.Y. was a
2 child under fourteen years of age, and when Lawrence E. Nunley was at least
3 twenty-one years of age. If the State failed to prove each of these elements
4 beyond a reasonable doubt, you must find the defendant not guilty of the crime
5 of Child Molesting, a Class A Felony, as charged in Count 1.

6 Of course, there's a separate one of these for every single charge. And
7 you've just gone through the first one, and we're gonna go through each one.
8 They're a little different, as you could clearly see.

9 Number six. The crime of Child Molesting is defined by law as follows: A
10 person at least twenty-one years of age, who with a child under fourteen years of
11 age, performs or submits to deviate sexual conduct, commits Child Molesting, a
12 Class A Felony, as charged in Count 2. Before you may convict the defendant,
13 the State must have proved each of the following elements beyond a reasonable
14 doubt: Number one, the defendant, Lawrence E. Nunley; number two, knowingly
15 or intentionally; number three, performed or submitted to deviate sexual conduct
16 with A.Y., namely had A.Y. put her mouth on his penis; number four, when A.Y.
17 was a child under fourteen years of age, and when Lawrence E. Nunley was at
18 least twenty-one years of age. If the State failed to prove each of these
19 elements beyond a reasonable doubt, you must find the defendant not guilty of
20 the crime of Child Molesting, a Class A Felony, as charged in Count 2.

21 The crime of Child Molesting is defined by law as follows: A person at
22 least twenty-one years of age, who with a child under fourteen years of age,
23 performs or submits to deviate sexual conduct, commits Child Molesting, a Class
24 A Felony, as charged in Count 3. Before you may convict the defendant, the

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1 State must have proved each of the following elements beyond a reasonable
2 doubt: Number one, the defendant, Lawrence E. Nunley, knowingly or
3 intentionally, performed or submitted to deviate sexual conduct with A.Y., namely
4 put his hand in the vagina of A.Y. when A.Y. was a child under fourteen years of
5 age, and when Lawrence E. Nunley was at least twenty-one years of age. If the
6 State failed to prove each of these elements beyond a reasonable doubt, you
7 must find the defendant not guilty of the crime of Child Molesting, a Class A
8 Felony, as charged in Count 3.

9 The crime of Child Molesting is defined by law as follows: A person at
10 least twenty-one years of age, who with a child under fourteen years of age,
11 performs or submits to any fondling or touching of either the child or the older
12 person with the intent to arouse or satisfy the sexual desires of the child or the
13 older person, commits Child Molesting, a Class C Felony, as charged in Count 4.
14 Before you may convict the defendant, the State must have proved each of the
15 following elements beyond a reasonable doubt: The defendant, Lawrence E.
16 Nunley, knowingly or intentionally, performed or submitted to any fondling or
17 touching of A.Y. or Lawrence E. Nunley with the intent to arouse or satisfy the
18 sexual desires of A.Y. or Lawrence E. Nunley, when A.Y. was a child under
19 fourteen years of age. If the State failed to prove each of these elements
20 beyond a reasonable doubt, you must find the defendant not guilty of the crime
21 of Child Molesting, a Class C Felony, as charged in Count 4.

22 The crime of Dissemination of Matter Harmful to Minors is defined by law
23 as follows: A person who knowingly or intentionally displays matter that is
24 harmful to minors in an area to which minors have visual auditory and physical

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1 access, unless each minor is accompanied by the minor's parent or guardian,
2 commits Dissemination of Matter Harmful to Minors, a Class D Felony, as
3 charged in Count 5. Before you may convict the defendant, the State must have
4 proved each of the following beyond a reasonable doubt: The defendant,
5 Lawrence E. Nunley, knowingly or intentionally, displayed matter that is harmful
6 to minors in an area to which A.Y. had visual, auditory or physical access when
7 A.Y. was not accompanied by a parent or guardian. If the State failed to prove
8 each of these elements beyond a reasonable doubt, you must find the defendant
9 not guilty of the crime of Dissemination of Matter Harmful to Minors, a Class D
10 Felony, as charged in Count 5.

11 Intentionally and knowingly are defined by statute as follows: A person
12 engages in conduct intentionally when, if he engages in the conduct, it his
13 conscious objective to do so. A person engages in conduct knowingly if, when
14 he engages in this conduct, he is aware of a high probability that he is doing so.

15 The term deviate sexual conduct means an act involving one, a sex organ
16 of one person and the mouth or anus of another person. Or, number two, the
17 penetration of the sex organ or anus of a person by an object.

18 The term minor means any individual under the age of eighteen years.

19 The term matter means any book, magazine, newspaper, or other printed
20 or written material, any picture, drawing, photograph, motion picture, digitized
21 image or pictorial representation, any statute or other figure, any recording,
22 transcription, or mechanical, chemical or electronic, electrical reproduction, or
23 any other articles, equipment, machines or materials. A matter or performance is
24 harmful to minors if it describes or represents in any form nudity, sexual conduct,

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1 sexual excitement or sado-masochistic abuse, considered as a whole it appeals
2 to the prurient interest in sex of minors. It is patently offensive to the prevailing
3 standards in the adult community as a whole with respect to what is suitable
4 matter for or performance before minors. And considered as a whole, it lacks
5 serious literary, artistic, political or scientific value for minors.

6 The charges which have been filed is a formal method of bringing the
7 defendant to trial. The filing of a charge or the defendant's arrest is not to be
8 considered by you as any evidence of guilt. A plea of not guilty has been
9 entered on behalf of the defendant. Under the law of this state, a person
10 charged with a crime is presumed to be innocent. To overcome the presumption
11 of innocence, the State must prove the defendant guilty of each essential
12 element of the crime charged beyond a reasonable doubt. The defendant is not
13 required to present any evidence to prove his innocence, or to prove or explain
14 anything.

15 The burden is upon the State to prove beyond a reasonable doubt that the
16 defendant is guilty of the crimes charged. It is a strict and heavy burden. The
17 evidence must overcome any reasonable doubt concerning the defendant's guilt.
18 But it does not mean that a defendant's guilt must be proved beyond all possible
19 doubt. A reasonable doubt is a fair, actual and logical doubt, based upon reason
20 and common sense. A reasonable doubt may arise either from the evidence or
21 from a lack of evidence. A reasonable doubt exists when you are not firmly
22 convinced of the defendant's guilt, after you have weighed and considered all the
23 evidence. A defendant must not be convicted on suspicion or speculation. It is
24 not enough for the State to show that the defendant is probably guilty. On the

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1 other hand, there are very few things in this world that we know with absolute
2 certainty. The State does not have to overcome every possible doubt. The
3 State must prove each element of the crime by evidence that firmly convinces
4 each of you and leaves no reasonable doubt. The proof must be so convincing
5 that you rely and act upon in this matter of the highest importance. If you find
6 that there is a reasonable doubt that the defendant is guilty of the crime, you
7 must give the defendant the benefit of the doubt and find the defendant not guilty
8 of the crime under consideration.

9 You are the exclusive judges of the evidence, which may be either witness
10 testimony or exhibits. In considering the evidence, it is your duty to decide the
11 value you give to the exhibits you receive and the testimony you hear. In
12 determining the significance of a witness' testimony, some facts you may
13 consider are the witness' ability and opportunity to observe, the behavior of the
14 witness while testifying, any interest, bias or prejudice the witness may have, any
15 relationship with people involved in the case, the reasonableness of the
16 testimony considering the other evidence, your knowledge, common sense and
17 life experiences. You should disregard the testimony of any witness without a
18 reason and without careful consideration. If you find conflicting testimony, you
19 must determine which of the witnesses you will believe and which of them you
20 will disbelieve. The quantity of evidence or the number of witnesses need not
21 control your determination of the truth. You should give the greatest value to the
22 evidence you find most convincing.

23 During the trial, the Court may rule that certain questions may not be
24 answered, and/or that certain exhibits may not be allowed into evidence. You

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1 must not concern yourselves with the reasons for the rulings. The Court's rulings
2 are strictly controlled by law. Occasionally, the Court may strike evidence from
3 the record after you have already seen or heard it. You must not consider such
4 evidence in making your decision. Your verdict should be based only on the
5 evidence admitted and the instructions on the law. Nothing I say or do is
6 intended to recommend what facts or what verdict you should find. You must
7 decide the facts from your memory of the testimony and exhibits admitted for
8 your consideration. You may take notes during the trial. However, do not
9 become so involved in note-taking that you fail to listen carefully and observe the
10 witnesses as they testify. If at any time you realize you know something about
11 the case, or know a witness or the defendant, you must inform the Bailiff
12 privately at your earliest opportunity.

13 The trial of the case will proceed as follows: First, the attorneys will have
14 an opportunity to make opening statements. These statements are not
15 evidence. They should be considered only as a preview of what the attorneys
16 expect the evidence will be. Following the opening statements, witnesses will be
17 called to testify. They will be placed under oath and questioned by the attorneys.
18 Exhibits may also be received as evidence. If an exhibit is given to you to
19 examine, you should examine it carefully, individually and without comment.

20 When the evidence is completed, the attorneys may make final
21 arguments. These final arguments are not evidence. The attorneys are
22 permitted to characterize the evidence, discuss the law in an attempt to
23 persuade you to a particular verdict. You may accept or reject those arguments
24 as you see fit.

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1 Finally, just before you begin your deliberations, I will give you further
2 instructions on the law.

3 Under the Constitution of Indiana, the jury is given the right to decide both
4 the law and the facts. Jurors may ask questions of witnesses. Questions must
5 be asked before a witness leaves the courtroom. Should any juror have a
6 question for a witness, you should put it in writing and deliver it to the Bailiff. The
7 Judge will review the question and determine whether it is an appropriate
8 question. Rules of evidence strictly control the kinds of questions and matters
9 that may be brought before the jury. If the Judge rules your question is not
10 appropriate, such ruling should not be considered as any evidence for or against
11 either side in this cause.

12 Okay, and of course you'll have these instructions with you the entire time
13 uh, of the trial. And final instructions, when it's over. Now, the next item of
14 business, opening statements, as you already know. Uh, is the State ready to
15 proceed with opening?

16 THE STATE (MS. FLANIGAN): Yes, Judge.

17 THE COURT: You may proceed.

18

19 OPENING STATEMENT BY STATE OF INDIANA:

20 THE STATE (MS. FLANIGAN): Members of the jury, thank you for
21 your time and attention to this matter. Now is the time that I get to tell you uh,
22 what this case is about. You got little snippets yesterday. But I will let you know
23 that Annie Young, on April the 13th, 2007, was six years old. She was in
24 kindergarten. It should be a magical time for a child. And what the State of

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1 Indiana believes the evidence will show is that the defendant, Lawrence Nunley,
2 took that from her, that magical time. On April the 13th, 2007, Annie Young at the
3 time was six, wanted to go play or spend the night with a girlfriend named Kiki.
4 Kiki is, or the evidence will tell you, is the girlfriend of one of Mr. Nunley's... and I
5 should let you know now to prevent confusion, that Lawrence E. Nunley is also
6 known as Ed Nunley or Eddie Nunley. Ed's son, Kyle, and his girlfriend was
7 known by Annie as "Kiki". And she had asked her mother if she could go spend
8 the night at Kiki's house. It was a Friday night in April, and that was arranged.
9 And Annie's mother, Tonya Caves, took Annie to the house and dropped her off.
10 The next morning or around noon, the evidence will show that Tonya and Annie's
11 father, Richard Caves, came to pick her up. Annie got in the car and indicated
12 that she had a secret that she couldn't tell. She couldn't even say it out loud.
13 She finally wrote part of what happened on a note and handed that to her mom.
14 That note had indicated what Ed Nunley had done to her. Tonya became so
15 enraged by this note that she was headed from Palmyra where Mr. Nunley lived,
16 she was headed uh, home to Pekin. She turned the car around and went right
17 back down to Mr. Nunley's house, took a baseball bat out of her trunk, beat the
18 windshield out of his truck, beat the windshield off of his motorcycle, started to
19 beat on his house and accused him of molesting her daughter. After that, Tonya
20 took Annie up to the police station in Salem because she lived at Pekin and
21 asked for a State Police Officer. And the note was turned over to the State
22 Police. The evidence will show, and I will go through each of these. Count one,
23 that Lawrence E. Nunley, who was born on October 23rd, 1966, which makes him
24 a person over twenty-one, touched the vagina of A.Y. with his mouth. Annie will

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1 tell you, and you'll meet Annie. She's coming in here this morning. You're
2 gonna meet her. She will tell you that Ed Nunley licked her pee-pee, using a
3 child's words. The next count, that Ed Nunley put, had Annie put her mouth on
4 his penis. She will state that, "he made me suck on his weenie-bob." Again, a
5 child's language. There will be evidence that Ed Nunley penetrated the vagina of
6 the child with his hand. The evidence will show that he placed his penis outside
7 of her vagina and touched it. And Annie will come in here and she will tell you
8 that when he did this to her, he had a portable DVD player. He took her back to
9 his bedroom. Nobody was home. Kyle and Kiki weren't there. He took her back
10 to his bedroom and got out a pornographic DVD that depicted naked people.
11 She called it a "bad" movie or, or a movie she shouldn't be watching. And he
12 showed her that movie. She'll be able to point out that movie to you. You'll get a
13 chance to look at it. The State of Indiana believes that once you hear the
14 testimony of Annie and her mom, who she told right away. She just couldn't say
15 it out loud, but wrote it on a note just right away, instantly told her what had
16 happened.

17 You'll hear from her dad who was in the car and saw the note too. And
18 after you hear all of this evidence, ladies and gentlemen, when the trial is over,
19 you're gonna be able to take all five of those counts and you're gonna be able to
20 check off ever single element that the State has proved every single element of
21 every single one of those offenses to you. And once you're able to do that, I'll
22 stand back up here at the end of the trial and I'm gonna ask you to return a
23 verdict of guilty on all five counts. Thank you.

24

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1 OPENING STATEMENT BY DEFENSE:

2 MS. SCHULTZ: Good morning, ladies and gentlemen. Thank you
3 for being here.

4 MS. LAUREN WHEATLEY: Susan, I'll turn this off.

5 MS. SCHULTZ: I don't know how to use all this audio/visual stuff.
6 I'm technologically retarded. We appreciate you being here yesterday and again
7 today and throughout this week. It's people like you that make these kind of
8 trials possible where we have someone, a member of their own peers, or
9 members of their own peers that make a decision in these cases as to whether
10 or not they're guilty. I know it's not an easy job for you to do. But we certainly
11 appreciate you being here. There are basically two kinds of criminal cases that
12 we have that are prosecuted. And the first kind is what I like to refer to as the
13 who-done-it case. We know that some crime has been committed, and a person
14 is accused, and the issue in the case is whether the accused person is the
15 person that committed the crime, the crime that we know has occurred. That's
16 not the kind of a case that we have here. We have the other kind here. In this
17 particular case we have an accusation, and we have a finger pointed at a
18 specific person. And the issue is whether any crime was actually committed.
19 So, in other words, if you believe that a crime was committed, they know who the
20 accuser is, and there's only one possibility of who uh, the person is that
21 committed the crime, and that's what we're talking about in this case. The key
22 issue in this kind of case is whether you can believe the accuser. And I would
23 suggest to you that in this particular case, there is only one basic question for
24 you to answer, and that is, "Can you believe what Annie Young tells you when

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1 she testifies and when she has told other people what happened to her?" If you
2 believe her, then I think you have a guilty verdict. If you cannot believe her, then
3 you will have to find my client, Mr. Nunley, not guilty. So when you're, when
4 you're listening to the testimony in this case, I believe it is very, very important for
5 you to listen to what Annie says and to observe her. And remember when we
6 talked about her, about kids yesterday, we talked about some of the signs as to
7 whether or not they're telling the truth, and that's what we need to look at in this
8 particular case. We don't have any eye-witnesses to this offense. The only
9 people who were there that night would be Annie Young and Lawrence Nunley,
10 or Ed Nunley as we all call him. And they're the only ones that really know what
11 happened. We don't have any other scientific evidence. We don't have any
12 DNA on her body that shows that Ed touched her. We don't have any
13 fingerprints of any kind. We have uh, no uh, bodily fluids, specimens that have
14 been tested. We have absolutely nothing in this case to say that a crime was
15 committed other than Annie Young's statement to the police. So that's why it is
16 so very, very important that we determine whether Annie is telling the truth or
17 not. And there will not be any medical evidence in this case either. There was
18 no, no evidence that anybody violated her body. And sometimes you hear of
19 kids that are penetrated and we you have medical evidence to come in. We
20 don't have anything like that in this case. I think it is important, when you listen
21 to this case, that you listen to what Annie has told before. The State's going to
22 present evidence to you of a note that was written by Annie. It's a little bit
23 unclear as to how this note was written. You have to remember that this is a
24 child that was in kindergarten when this happened. And you'll have to determine

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1 whether Annie wrote the note, if Annie wrote the note, what the contents were of
2 the note. We don't have the benefit of having this note. The note has
3 disappeared. So was there actually a note in existence? That's going to be one
4 of the things that we have to decide. Was there a note? Who wrote the note?
5 Who provided the words for the note? What went on with the note? So the note
6 was Annie's first statement to anybody of what happened, in the note it says.
7 The next statement that she made is when she went to the police station in
8 Washington County and she talked to uh, Officer Bowling. And she gave
9 Bowling her story then of what happened. And then, for some unknown reason,
10 we lapse a full year. This event happened in April of 2007, April 13th, 2007. So
11 the night of April 13th, she went and talked to a police officer on April the 14th,
12 2007. And then we fast forward to her next statement which is a full year later,
13 nothing happened for a full year, and a full year later Annie goes to a place that's
14 called Comfort House. If any of you are familiar with that, it is a uh, agency here
15 in this county, and what they do is they talk to child victims of uh, molestation.
16 And I'm sure they do other things. But that's one thing I know that they do. And
17 frequently they video tape them, they get a statement from them as to what
18 happened to the child during the time that the child was alleged to be abused.
19 And they go through a process and ask them questions. Now, when that
20 happened with Annie, a year after the incident happened, she gave another
21 story. And in part of the preparation for the case here, attorneys have an
22 opportunity to take what we call depositions of witnesses. And that's where we
23 put a witness under oath and we bring them in and we ask them questions about
24 what happened. And I did that with Annie, and Annie told me another story. And

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1 Annie is going to be here in Court today and she's going to tell you in her own
2 words what happened. And I, of course, don't know what she's going to say
3 today. But what I think is important in this particular case is that you look at all
4 the different statements that she has made to the different officers, different
5 people. I mean she has talked to a lot of people, and you look at what she says
6 and you see what kind of consistencies there is. And I suggest to you that you're
7 going to find a lot of variation in what she said, how much detail she..., and uses
8 the same words over and over. "He licked my pee pee." Uh, but she isn't able to
9 provide details. There's a lot of variation in her stories. And from her actions, I
10 think you'll be able to determine whether or not she's telling the truth, or you
11 believe that she's telling the truth.

12 Now with respect to the uh, charges that have been filed against Mr.
13 Nunley uhm, you will notice there's three, the first three counts all allege the
14 same thing. And they're all "A" felonies. I would like to explain to you a little bit
15 about the felony system that we use. You are the ones that determine whether
16 or not uh, a defendant committed the crime. But the Judge is the one that
17 determines the punishment. The punishment is based on the (unintelligible)
18 felonies. And in this particular case, we have a charge of three "A" felonies, one
19 "C" felony and one "D" felony. And in Indiana, an "A" felony is the worst. It gets
20 the worst punishment. A "D" felony is the less serious so it has least punishment
21 than "B" and "C" or "A". So in this particular case, it's three "A" felonies that are
22 charged. And the difference between them is the specific act that is charge. All
23 the charges are, the three "A" felonies are identical except that in Count one, he
24 is charged with performing oral sex on the child. In Count two, he's charged with

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1 uh, having her perform oral sex on him. And in Count three, he is charged with
2 having put his hand in her vagina, which is a penetration of her sexual part by a
3 part of his body. Uh, so that's the difference between the three of those. They
4 all have the same elements, except there's a different fact in each one, as each
5 one of them occurred. The uh, "C" felony Child Molesting that he is charged with
6 is a, what I would refer to as a fondling or touching charge, meaning he touched
7 her in a sexual way, but there was no penetration. And then, of course, the
8 Count four is the uh, dissemination of matter harmful to minors, which means
9 that he uh, displayed something to her that was uh, harmful to her, and
10 specifically in this case he's alleged of showing her a pornographic movie.

11 The Judge is going to give you some definitions, and I think you've
12 already got them, as to what sexual deviate conduct means. And in this state,
13 deviate sexual conduct is defined as conduct involving a sex organ of one
14 person (unintelligible) of another person. In this particular case we're not talking
15 about anything to do with penises when we're talking about sex organs. And
16 then the second phase of that, or the second part of the definition uh, of deviate
17 sexual conduct involves the penetration of a sex organ of a person by an object.
18 So those are the definitions the Court has given to you. On the matter that is
19 harmful to a minor, there's a couple of things that I would like to mention to you
20 about that. There's a four-part task, a four-part definition that's given in the
21 instructions that you have with you. And it talks about four things that have to be
22 found in order for it to be a matter harmful to a minor. And what, what is
23 important to me is that you have to find all four of those things exist, rather than
24 just find one, two or three. You have to find all four exist in order for that crime to

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1 have been committed.

2 Again, I'd like to emphasize what's so important in this case is what you
3 believe or don't believe of Annie's statement. This whole case, the whole issue
4 revolves around whether she's a credible witness, whether you can believe her
5 or not. And as I said, if you believe her, then my client should be found guilty. If
6 you don't believe her, then he should be found not guilty. So that's going to be
7 something that you're going to have to pay attention to, and I'm asking you to do
8 that. And I am, I also believe that what you're going to see in this case is a
9 variety of stories from this child, a variety of things that she has said happened,
10 totally inconsistent. And I believe that once you've had a chance to listen to the
11 evidence in this case, you'll agree with me that the State has not proven their
12 case beyond a reasonable doubt and we will be asking for a verdict of not guilty.

13

14 THE COURT: Okay. Uh, is the State ready to proceed with its uh,
15 first witness?

16 MS. LAUREN WHEATLEY: Your Honor, our first witness will be
17 Annie Young, and we will need a couple of minutes.

18 THE COURT: All right, okay. Now we're gonna take a, a short
19 break before we start with the first witness, ladies and gentlemen. During this
20 period, it's your duty not to permit anyone to talk to you or in your presence on
21 any subject matter connected with this trial. Do not form or express any opinion
22 on the case until it's finally submitted to you. You'll be with the Bailiff for a few
23 minutes.

24 (JURY EXITS COURTROOM)

25

1 THE COURT: Okay, the jury is outside the courtroom. Okay.

2 MS. LAUREN WHEATLEY: And then, Judge, I'm going to bring her
3 in. And if you don't mind admonishing her about the things we've previously
4 discussed.

5 THE COURT: Sure.

6 MS. LAUREN WHEATLEY: And then I'll probably take her back out
7 and then bring her in again. In the meantime, Shawn can also take that down.

8 THE COURT: Okay.

9 MS. SCHULTZ: And, Judge, I would also at this point in time move
10 for separation of witnesses.

11 THE COURT: Okay...

12 MS. SCHULTZ: I intended to do that and forgot to do that earlier.

13 MS. LAUREN WHEATLEY: We have no objection to that, Judge.
14 We've already advised all...

15 THE COURT: The motion for separation of witnesses granted. And
16 the attorneys are requested to uh, assist the Court because I don't know all
17 these witnesses. I know some of them, but not all of them. Make sure they don't
18 get in the uh, courtroom and don't talk to each other about what's going on in the
19 courtroom.

20 (WITNESS ENTERS COURTROOM)

21 MS. LAUREN WHEATLEY: We're gonna take that down. We're
22 not gonna be watching that.

23 WITNESS: What's that?

24 MS. LAUREN WHEATLEY: That's a board. We're not gonna be

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 using that today either.

2

3 BENCH CONFERENCE:

4 THE COURT: Refresh my memory. What am I supposed to tell her
5 not to talk about? It's a whole list of...

6 MS. LAUREN WHEATLEY: I would tell her not to talk about jail or
7 prison, that he's in jail or prison.

8 THE COURT: Okay.

9 MS. LAUREN WHEATLEY: Uhm, she has a slight, just from being
10 here the other day, she may have a slight thinking that he's done this to other
11 girls. You may want to tell her not to talk about that too.

12 THE COURT: Other girls and jail or prison.

13 MS. LAUREN WHEATLEY: Uh huh. Can you think of anything
14 else?

15 THE STATE (MS. FLANIGAN): No.

16 MS. LAUREN WHEATLEY: And, again, we haven't talked to her
17 about any of that stuff.

18 (BENCH CONFERENCE ENDS)

19 **TESTIMONY OF WITNESS #1: ANNIE YOUNG**

20 THE COURT: Okay, we on?

21 COURT REPORTER: Yes.

22 THE COURT: Okay. Annie, you're a little bit short, so I'm gonna
23 lean over here where you can see me a little better. Okay, I'm in these black
24 gigs today. All right, Annie, look up here at me. Uh, now there's some rules uh,

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 and lots of special reasons why we have rules in courtrooms. And, and uh, when
2 we have a trial, we have lots of special rules. And some things cannot be talked
3 about.

4 WITNESS: Uh huh.

5 THE COURT: And you can't bring certain things up. And uh,
6 there's a couple of things that you cannot talk about when the lawyers ask you
7 questions.

8 WITNESS: Uh huh.

9 THE COURT: Okay, now there's two things that I don't want you to
10 be talking about or volunteering, even if you think one of the lawyers have asked
11 you a question that maybe refers to that, you're not to mention it. And uh, one
12 thing is, you know, when Ed was in here the other day, he was wearing those
13 horizontal stripes.

14 WITNESS: Uh huh.

15 THE COURT: Because he's in jail. You knew that, that he was in
16 jail, of course. And, but you can't mention that he is in jail or that he was wearing
17 horizontal stripes on Friday or anything like that. Or that you think he needs to
18 be in prison or any such thing. Okay? That's for the jury and the Judge to
19 decide. Uh, and the second thing that you can't talk about, if I don't know that
20 you know this or think it or whatever, if you think, if you think that he may have
21 done bad things to other girls, then you can't say that either. You understand?

22 WITNESS: Uh huh.

23 THE COURT: Now, one last thing, Annie. If you think that uh, if
24 you think that one of the lawyers has asked you a question that maybe uh, the

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (DIRECT)

1 answer should refer to something like that, uh, or if you have a question in you
2 mind about it, then you can just hold up your hand and say, "I need to talk to the
3 Judge." Okay?

4 WITNESS: Okay.

5 THE COURT: Just hold up your hand and say, "I need to talk to the
6 Judge." And uh, and what we'll do is the lawyers will come over here, and you
7 can stand up..., go ahead and stand up, stand up. You can come right over
8 here. Take a step over here. You see, you can come right over here where you
9 can get real close, and then the lawyers will come over here and we'll talk about
10 any questions you might have. Okay?

11 WITNESS: Okay.

12 THE COURT: All right. So that's the way we're gonna do it, all
13 right? And so if you have any concerns about anything uh, that I've talked about
14 or anything else, you can just say, I've raised my hand, you can just raise your
15 hand, you can stop the lawyers any time that you want to and say that you need
16 to talk to the Judge.

17 WITNESS: Okay.

18 THE COURT: All right?

19 WITNESS: Okay.

20 THE COURT: Any uh, specific instructions from the Prosecutor?
21 Ms. Wheatley, anything?

22 MS. LAUREN WHEATLEY: No, Judge.

23 THE COURT: Anything from Ms. Schultz?

24 MS. SCHULTZ: No.

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 THE COURT: Okay. All right, then, okay then we're ready to uh,
2 start with uh, with uh, testimony of the first witness.

3 MS. LAUREN WHEATLEY: Yeah, we're ready.

4 THE COURT: She's gonna testify from here?

5 MS. LAUREN WHEATLEY: Yes, Judge. And I'm gonna take her
6 out real quick and then we'll bring her in once the jury comes in. We may go run
7 in place a little bit so we can get, release some energy real quick, get ready for
8 the jury.

9 THE COURT: All right, okay. Okay, Annie, now it looks like you're
10 going for a little short walk with...

11 MS. LAUREN WHEATLEY: Just a short little walk.

12 THE COURT: A short walk with Ms. Wheatley, and then you're
13 coming back.

14 (OFF RECORD)

15 THE COURT: Is she still in the courtroom?

16 BAILIFF: She's right here, Judge. The lady in the pink.

17 THE COURT: Where? Uh...

18 BAILIFF: Right here.

19 THE COURT: Ma'am, come up here. Uh, yeah, come on up.
20 Come on closer. Now you're, you're related to Annie or something?

21 MELISSA ALBERTSON: Yes.

22 THE COURT: Okay.

23 MELISSA ALBERTSON: I'm Annie's aunt.

24 THE COURT: You're Annie's aunt?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 MELISSA ALBERTSON: Yes.

2 THE COURT: Okay, what's your name, ma'am?

3 MELISSA ALBERTSON: Melissa Albertson.

4 THE COURT: Ms. Albertson? Okay, now Ms. Albertson uh, one
5 thing that you cannot do, nor anyone else, you uh, cannot be making gestures to
6 the witness while she testifies. You cannot be nodding "yes" or "no", or doing
7 anything.

8 MS. ALBERTSON: Okay.

9 THE COURT: You cannot do anything at all, okay?

10 MS. ALBERTSON: Okay.

11 THE COURT: Nothing to encourage her or suggest that she
12 answer a certain way or anything.

13 MS. ALBERTSON: Right.

14 THE COURT: Is that clear?

15 MS. ALBERTSON: Yes. I understand.

16 THE COURT: Now if, if I see or somebody tells me that you're
17 doing anything, then you're gonna be out the door.

18 MS. ALBERTSON: That's fine.

19 THE COURT: Do you understand that?

20 MS. ALBERTSON: Yes, I do.

21 THE COURT: Okay. So uh, now this sometimes happens. And
22 sometimes it's, it's uh, understandable uh, and you may be feel empathy for the
23 witness or something like that, and you're going like this or you're doing things...,
24 none of that in the courtroom.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 MS. ALBERTSON: Okay. I understand.

2 THE COURT: Okay, absolutely none of it. All right?

3 MS. ALBERTSON: Right.

4 THE COURT: Okay, thank you, ma'am.

5 MS. ALBERTSON: Thank you.

6 THE COURT: Uh, Ms. Flanigan, whenever Ms. Wheatley is ready,
7 then we'll start.

8 THE STATE (MS. FLANIGAN): I think we're ready, Judge. You
9 can go ahead and bring in the jury.

10 THE COURT: Are you ready to bring the jury in?

11 THE STATE (MS. FLANIGAN): Yes.

12 THE COURT: All right, okay.

13 (JURY ENTERS COURTROOM)

14 THE COURT: Okay, please be seated, ladies and gentlemen. The
15 State's first witness?

16 THE STATE (MS. FLANIGAN): The State will call Annie Young,
17 Judge.

18 THE COURT: All right, Annie, raise your hand. Do you solemnly
19 swear or affirm the testimony you're about to give shall be the truth, and nothing
20 but the truth, so help you God?

21 WITNESS: Yes.

22

23 DIRECT EXAMINATION OF ANNIE YOUNG BY STATE OF INDIANA (MS.
24 WHEATLEY):

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q Good morning.

2 A Good morning.

3 Q Can you tell us your name?

4 A Annie Young.

5 Q Your last name?

6 A Annie Young.

7 Q Okay. And, Annie, how old are you?

8 A Eight.

9 Q Eight years old. When's your birthday?

10 A June 24th.

11 Q What year were you born?

12 A 2000.

13 Q Okay, what grade are you in?

14 A Second.

15 Q Are you missing school today?

16 A Uh huh.

17 Q Okay. Now, Annie, I know that the Judge had you uh, raise your hand
18 and swear to tell the truth. Do you know the difference between the truth
19 and a lie?

20 A Yes.

21 Q What is that?

22 A The truth is you won't ever get in trouble. You might get in a trouble a little
23 bit. And a lie, you'll get in trouble more than you usually do.

24 Q Okay. Now, let's talk about that a little bit. If I were to say that my jacket

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 is green, would I be telling the truth or a lie?

2 A A lie.

3 Q Why? Because my jacket is pink. Right?

4 A Yeah.

5 Q Okay. And if I were to say that you were a girl, is that a truth or a lie?

6 A True.

7 Q Okay, because you are a girl, right?

8 A Uh huh.

9 Q Okay. Now, speaking of the truth and talking about girls, do girls have
10 different body parts than boys?

11 A Yes.

12 Q Okay. Now I'm gonna show you this picture, okay?

13 A Uh huh.

14 Q And I'm gonna get a pen. And can you tell me what this is a picture of?

15 A A girl.

16 Q A girl? And how do you know that it's a girl?

17 A Because of the body parts and stuff.

18 Q Okay, all right. Now uh, do girls have different body parts than boys?

19 A Yes.

20 Q Okay. And what do you call a girl's private parts?

21 A Pee pee.

22 Q Okay. Do you see a girl's private parts on this picture?

23 A Yes.

24 Q Can you circle it for me? Okay. Now I'm gonna show you this picture.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 You can keep the pen. And, and uh, do boys have private parts?

2 A Yes.

3 Q And what are boys' private parts called?

4 A Weenie-bob.

5 Q Okay, and can you circle a boy's private parts for me? Thank you.

6 A You're welcome.

7 Q Now, Annie, do you know a person by the name of Eddie Nunley?

8 A Yes.

9 Q Do you see him today?

10 A Yeah.

11 Q Okay, can you tell me where he is and what he's wearing?

12 A He's wearing a white shirt, brown pants and he's sitting right over there by
13 that lady.

14 Q Okay.

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

17 THE COURT: Any objection, Ms. Schultz?

18 MS. SCHULTZ: No objection.

19 THE COURT: The record will so reflect the witness has identified
20 the defendant.

21 MS. LAUREN WHEATLEY: Thank you.

22

23 STATE RESUMES DIRECT EXAMINATION OF ANNIE YOUNG:

24 Q Now, once upon a time, was Ed Nunley your friend?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 A Uh huh.

2 Q Okay. And, and had you been to his house before?

3 A Yes.

4 Q Okay. Who would you have gone to his house with?

5 A Mommy and Daddy.

6 Q Okay. And uh, who else, was there anybody else that was at Ed's house?

7 A Huh uh.

8 Q What, did you ever go there before with your Mommy and there were
9 other people there?

10 A Yeah. Kiki and Kyle.

11 Q And uh, do you know how old Kiki and Kyle were?

12 A Uh, no.

13 Q Okay, were they older than you?

14 A Yeah. They was teenagers.

15 Q Teenagers, okay. And, and did, did you hang out with Kiki sometimes?

16 A Yeah.

17 Q Okay. Did you and Kiki have fun?

18 A Yeah.

19 Q What sort, what sort of stuff did you and Kiki used to do?

20 A We used to like play the Nintendo on Eddie's T.V. and play Mario and
21 stuff like that.

22 Q Was that fun?

23 A Uh huh.

24 Q Okay. Did you have one of those at your house?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 A No.

2 Q Okay. So it was kind of fun to play that at, with Kiki, right?

3 A Yeah.

4 Q And Kiki lived there at Eddie's house?

5 A Uhm, yeah.

6 Q Okay. All right. Now, the last time that you went to Eddie's house, do you
7 remember that?

8 A Yeah.

9 Q Okay. And did you stay the night?

10 A Yes.

11 Q Had you ever stayed the night before?

12 A No.

13 Q Okay. So that was the only time you stayed the night?

14 A Yes. The only time.

15 Q Why did you, why did you, why did you stay the night that night?

16 A Well, I just wanted to get out my house really.

17 Q Get out of your house?

18 A Yeah.

19 Q Did you think that Kiki was gonna be there?

20 A Yeah. She was supposed to be watching me, but she left.

21 Q She left? Okay. So when you went to his house, was Kiki there?

22 A No.

23 Q No?

24 A Yeah. And she left a couple minutes.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q Okay. So she wasn't there very long?

2 A No.

3 Q Okay. Now do you remember the grade that you were in whenever you
4 went to stay the night at his house?

5 A I think I was a kindergartner and I was six.

6 Q Okay, all right. And you were six years old.

7 A Yeah.

8 Q Can you read and write now?

9 A Uh huh.

10 Q Okay. And uhm, could you read and write then?

11 A No. I can write, but I couldn't read very well. Not like huge words, but I
12 could read.

13 Q Okay. You're probably a much better reader now, aren't you?

14 A Yeah.

15 Q Because you're in second grade, right?

16 A Uh huh.

17 Q Okay. But you could write a little bit then?

18 A Uh huh.

19 Q Okay. Now, when you got to his house that, what time do you remember
20 you got there? Do you remember, was it day or night?

21 A Day.

22 Q Day, okay. And you said that Kiki was there and then she left. Is that a
23 "yeah"?

24 A Yeah.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q Okay, so uh, did you play while you were there?

2 A Yeah.

3 Q Well, what, what did you play?

4 A Nintendo.

5 Q Nintendo?

6 A Uh huh.

7 Q Was that fun? Yeah? Okay. Now at nighttime uh, did you bring a
8 change of clothes?

9 A Yeah.

10 Q Okay. And at nighttime do you sleep in your pajamas? Yeah? Okay. I
11 need you to speak up so all these people over here can hear you. Okay?

12 A Okay.

13 Q Okay, thank you. And if you need to take a drink, you just let me know,
14 okay? All right, we'll take a big drink right now then. Okay. If you need to
15 take any, you just let me know, all right?

16 A Okay.

17 Q Okay. So uh, where was the Nintendo that you played at Eddie's house?

18 A In the living room hooked up to the T.V.

19 Q Okay. So were there bedrooms in Ed's house?

20 A Yes.

21 Q Do you remember how many?

22 A Two.

23 Q Two, okay. And did Ed have a certain bedroom?

24 A Yeah.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q Did you go in it that night?

2 A Yeah.

3 Q Yeah? Okay. And can you tell me why you went in there?

4 A No.

5 Q Okay. Can you tell me what, what was in his bedroom? Yeah?

6 A There was a big bed and there wasn't no T.V. in there, I don't think. And
7 there was a drawer. That's all I remember.

8 Q Okay, all right. Did you go in Ed's bedroom that night?

9 A Yeah.

10 Q Yeah? Okay, remember we've got to speak out loud, okay? I know this
11 isn't fun, all right?

12 A Uh huh.

13 Q Okay. Now you said there wasn't a T.V. in his bedroom, but did you
14 watch anything in his bedroom?

15 A Yeah.

16 Q Okay. And, and, and what did you watch it on?

17 A A little mini T.V.

18 Q A mini T.V.? Okay. Annie, I'm going to show you what we're gonna have
19 marked as State's Exhibit "1". Do you know what this is?

20 A Uh huh.

21 Q What is this?

22 A It's that mini T.V.

23 Q Okay. It's the mini T.V. that you watched?

24 A Yeah.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q Okay. And then did you watch this in Ed's bedroom?

2 A Yes.

3 Q Okay. And, and does this mini T.V. play movies?

4 A Yeah.

5 Q Annie, that night that you were in Ed's bedroom, did he show you a
6 movie?

7 A Yeah.

8 Q And can you tell me about that movie? Okay, can you tell me, what did
9 that movie show?

10 A Bad stuff.

11 Q Okay. What do you mean by bad stuff? It's okay. It's you and me
12 talking. You just tell me, and take your time, and you tell me what you
13 mean by bad stuff.

14 A Like boys and girls were doing bad stuff to each other.

15 Q Okay. Did those boys and girls have clothes on?

16 A No.

17 Q Okay. Annie, had you ever that bad stuff before?

18 A No.

19 Q No? Okay. Do you have a favorite movie that you like?

20 A Yeah.

21 Q Yeah? What is that?

22 A Scooby Doo.

23 Q Scooby Doo. The movie that Ed show you that night in his bedroom, was
24 that anything like your Scooby Doo movie?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 A No.

2 Q Okay, did you want to watch that movie?

3 A No.

4 Q Okay. And you said that the boys and girls were naked?

5 A Yeah.

6 Q Yeah? Okay. Did you see any of the boys' and girls' private parts?

7 A Yeah.

8 Q Can you tell me what you saw?

9 A No.

10 Q Okay. Do you just not want to talk about it?

11 A I don't want to talk about it.

12 Q Okay. Did you see that DVD that he showed you?

13 A Yeah.

14 Q Annie, I'm gonna show you what's gonna be marked as State's Exhibit
15 "2". Can you tell me what this is?

16 A Yeah. It's a DVD that has bad stuff on it.

17 Q Okay. Is that the DVD that Ed showed you that night in his bedroom?

18 A Yeah.

19 Q Okay. You want to take another drink? Okay, take a deep breath. All
20 right. Now, Annie, after you watched that DVD, did anything else happen
21 in Ed's bedroom?

22 A Yeah.

23 Q Can you speak up for me?

24 A Yeah. (WITNESS BEGINS TO CRY)

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q Can you tell me what happened?

2 A Yeah.

3 Q Okay. I need you to kind of speak up. I know it's not easy, okay? All
4 right, we'll just take our time, all right? But I need you, I need you to tell
5 me and I need you to tell these people what happened in Ed's bedroom
6 that night.

7 A (WITNESS IS CRYING).

8 Q How about you, just you and me have a little talk, okay? All right? Can
9 you tell me what happened? Take a deep breath. Did something happen
10 to you? Okay. I need you to speak out loud, okay? Annie, did something
11 happen to you?

12 A (WITNESS IS CRYING)

13 Q Okay, you're nodding your head "yes". Is that a yes?

14 A Yeah.

15 Q Okay. What happened to you?

16 A (WITNESS IS CRYING)

17 Q You can just look at me, okay? You just look at me. You want a
18 Kleenex?

19 A Yeah.

20 Q There you go. You okay? You just look at me, all right? We won't worry
21 about anybody else in this room.

22 A (WITNESS IS CRYING)

23

24 BENCH CONFERENCE:

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (DIRECT)

1 THE COURT: Now unless you want to go on, now we're gonna
2 take a break.

3 MS. LAUREN WHEATLEY: Okay.

4 (BENCH CONFERENCE ENDS)

5 THE COURT: Okay. We're gonna take a break for a few minutes.
6 Ladies and gentlemen, during this recess it's your duty not to uh, talk to anyone
7 or allow anyone to talk to you in your presence on any subject matter connected
8 with the trial. It's your duty not to form or express an opinion on the case until it's
9 finally submitted to you. You'll be in the jury room for a little bit.

10 (JURY EXITS COURTROOM)

11 THE COURT: You want to take a break too?

12 MS. LAUREN WHEATLEY: Yeah.

13 (OFF RECORD)

14 (JURY RETURNS TO COURTROOM)

15 THE COURT: Please be seated, ladies and gentlemen. Okay, all
16 right, Annie uh, you're still under oath and you're obligated to tell the truth, of
17 course. And uh, and uh, you may proceed, Ms. Wheatley.

18 MS. LAUREN WHEATLEY: Thank you.

19

20 STATE RESUMES DIRECT EXAMINATION OF ANNIE YOUNG:

21 Q Okay, Annie, you're still under the promise to tell the truth to the Judge.

22 You remember that?

23 A Uh huh.

24 Q Okay. Now, we're gonna go back to the night that you spent at Ed

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (DIRECT)

1 Nunley's house. Okay?

2 A Okay.

3 Q You remember that?

4 A Yes.

5 Q Okay. All right. Uhm, and you remember, were you in his room?

6 A Yes.

7 Q Did something happen to you?

8 A Yes.

9 Q Okay, can you tell me what happened?

10 A Yes.

11 Q What happened?

12 A He...

13 Q Okay. Can you tell me what happened? Okay. What happened?

14 A It's hard to say it. I can only write it.

15 Q I understand. Did you have to do that before?

16 A Yeah.

17 Q Yeah? When did you do that before? When did you write it?

18 A The last time when Mommy, when I, I wrote it on a piece of paper

19 because I didn't want to tell her because I was too scared. And then

20 Mommy saw it and she went to Eddie's house and beat him up.

21 Q She beat him up, okay. So let's skip over what exactly happened. So that

22 night, did you spend the night?

23 A Yes.

24 Q Okay. And the next day, what did you do?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 A My Mommy came and picked me up after I watched Scooby Doo. Me and
2 Eddie was supposed to go, we was gonna go to the grocery store, but
3 Mom came soon, and then I, and then when Mommy came to pick me up,
4 I went to the car and stuff. And I told her me and Ed has a secret. And
5 she said, "What secret?" And I said I don't want to tell. And then I said I'll
6 write it on a piece of paper. So I wrote it on a piece of paper and my
7 Mommy got mad.

8 Q Okay. You were talking very fast. So I'm gonna slow you down a little bit,
9 all right? So you got in the car.

10 A Yeah.

11 Q Yeah, okay. And you said you had a secret?

12 A Yeah.

13 Q Why was it a secret?

14 A Because Eddie wanted it to be a secret.

15 Q Is that what he told you?

16 A Yeah.

17 Q What did he say?

18 A He said not to tell Mommy.

19 Q Did he say what would happen if you told Mommy?

20 A Yeah.

21 Q What did he say? Did he say something to you?

22 A Uh huh.

23 Q What did he say?

24 A He said he'll call the cops.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q He said he'll call the cops if you told? Did you end up telling Mommy what
2 happened?

3 A Uh huh.

4 Q How did you tell her?

5 A On a piece of paper, writing it.

6 Q Do you remember what you wrote on that piece of paper?

7 A Yeah, yeah.

8 Q What did you write? Now you take a big, deep breath. Does that help?

9 No? Okay. Do you remember what you wrote? Yes, you do remember?

10 Is it hard to talk about it? Is that a "yes"?

11 A Yeah (WITNESS IS CRYING).

12 Q Okay. Is your nose itching? Is that better? Okay. Can you tell me what
13 you wrote on the piece of paper?

14 A (WITNESS BEGINS SNEEZING)

15 Q God bless you, God bless you. God bless you. You all right? God bless

16 you. Goodness. All right. Let's get you another Kleenex. Okay. You

17 think all the sneezing is out? Yeah? Okay. All right. You need to get a

18 little piece of candy that you brought? Better? Take a drink of Pepsi?

19 Okay. So that day, after you spent the night at Eddie's, who was in the
20 car?

21 A The car?

22 Q Uh huh, who was in the car with you? Did Mommy pick you up?

23 A And Daddy.

24 Q And Daddy. Who was driving the car?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 A Mommy.

2 Q Okay. Where was Daddy sitting?

3 A In the second seat beside Mommy.

4 Q Okay, where were you sitting?

5 A In the back seat.

6 Q In the back seat, okay. So when you wrote the note, who gave you the
7 piece of paper to write the note on?

8 A Daddy.

9 Q Okay. And what did you write the note with?

10 A A pencil Ed Nunley gave me.

11 Q A pencil Ed Nunley gave you? Okay. And can you look at me and tell me
12 what you wrote on that note? You think you can do it? You need to ask a
13 question? You have a question for the Judge?

14

15 BENCH CONFERENCE:

16 WITNESS: I can't answer it. It's too scary.

17 THE COURT: Okay. Well, maybe we'll talk about some other
18 things. And uh, if you uh, they probably have some other questions for you. You
19 answered those questions the other day. Well, all they want you to do is answer
20 the question.

21 WITNESS: It's just all the people. I can't answer it in front of these
22 people.

23 THE COURT: Well, that doesn't really make any difference.
24 There's always people in here. That's the same thing, whether these people are

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 here or not. You just uh, get that out of your mind. Don't pay any attention to all
2 them people. Just tell the truth. Uh, if you need to take another break and go for
3 another walk. You need to do that? Uh, is that what you want to do?

4 WITNESS: Yes.

5 THE COURT: Okay. So uh, you remember answering these
6 questions the other day?

7 WITNESS: Uh huh.

8 THE COURT: It's all the same thing you did the other day. It's not
9 any different.

10 WITNESS: Okay.

11 THE COURT: You want to take a walk first? Or do you want to go
12 ahead now?

13 WITNESS: Take a walk.

14 THE COURT: All right.

15 (BENCH CONFERENCE ENDS)

16
17 THE COURT: Okay. Ladies and gentlemen..., you may step down.
18 Go ahead.

19 MS. LAUREN WHEATLEY: Okay.

20 DEFENDANT: We're gonna take a short recess. And uh, as usual,
21 you'll probably have it memorized after a couple of days. It's your duty not to
22 permit anyone to talk to you or in your presence on any subject matter connected
23 with the trial. It's your duty not to form or express an opinion on the case until it's
24 finally submitted to you. And you'll be with the Bailiff. Thank you.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 (JURY EXITS COURTROOM)

2 THE COURT: Just let me know when you're ready to proceed
3 again.

4 THE STATE (MS. FLANIGAN): Okay. Thank you, Judge.

5 (OFF RECORD)

6 THE COURT: Are you ready to proceed?

7 THE STATE (MS. FLANIGAN): Yes, Judge. You can bring in the
8 jury.

9 THE COURT: All right. Bring the jury in.

10 (JURY ENTERS COURTROOM)

11 WITNESS: Are we still gonna do the writing deal?

12 MS. LAUREN WHEATLEY: You want your Smarties?

13 MS. SCHULTZ: I don't have any objection.

14 THE COURT: Any objections? You can do it later.

15 MS. LAUREN WHEATLEY: Are we on the record, Judge?

16 THE COURT: We're on the record?

17 COURT REPORTER: Yes.

18 THE COURT: Okay.

19

20 STATE RESUMES DIRECT EXAMINATION OF ANNIE YOUNG:

21 Q Okay, Annie, remember, we took a little run out there, didn't we? You out
22 of breath a little bit? Yeah? Okay. You take a drink. Annie, do you
23 remember a minute ago when we were talking, and we talked about the
24 girl parts?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (DIRECT)

1 A Yes.

2 Q What did you call that?

3 A Pee pee.

4 Q Pee pee, okay. Uh, okay, you remember when we talked about the boy
5 parts?

6 A Uh huh.

7 Q What did you call that?

8 A Weenie bob.

9 Q Okay. Did you see a weenie bob when you were at Ed Nunley's house?

10 A Yes.

11 Q Whose?

12 A Ed Nunley's.

13 Q Okay. All right. So where was Ed Nunley when you saw his weenie bob?

14 A I want to write it.

15 Q You want to write it? Can you tell me where you were?

16 A Uh huh.

17 Q Where were you?

18 A I want to write that too.

19 Q You want to write that down? You feel more comfortable writing it down?

20 A Yeah.

21 Q Okay. All right. I've got a tablet right here with the white paper, okay?

22 A Okay.

23 Q Can you write down to us what happened that night? You just take your
24 time. I'm right here. I'm not going anywhere. How are you doing down
25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 there? Okay. You have very good handwriting. Do you have, do you
2 take reading in school?

3 A Uh huh.

4 Q Can you sit up for me and tell me what you just said? Do you take
5 reading in school?

6 A Yeah.

7 Q Okay. All right. Would you feel better if we put on these glasses? Okay.
8 That way it's just you and me, okay? Nobody can see you. How about
9 that? No? All right. Can you read to me what you wrote? Okay. Would
10 you feel better writing down what happened to you that night? Okay. I'm
11 right..., do you want to use a blank piece of paper? The same piece of
12 paper? Okay. Take a big, deep breath for me. How's the writing going?
13 Hard? Okay. Can you do it?

14 A I messed up.

15 Q You messed up? Okay. Let me see the...

16 A I'd feel better if I could just write and show.

17 Q Okay. Well, how about, here's a blank piece of paper.

18 A And write the both things and I can show it to them?

19 Q That's fine. You, you just write down what happened.

20 A And show it.

21 Q How's it going? You just..., we'll take all the time in the world. It's just like
22 you and me are the only ones in here, okay? Take a deep breath for me,
23 okay? Thank you. You can use as many pieces of paper you want. You
24 finished? No? Okay. You want another piece of paper then? Okay. All

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 right. This isn't fun, is it? Can you answer out loud on that one? Is this
2 fun?

3 A No.

4 Q What is fun? Playing with Hannah Montana? Is that fun?

5 A Yeah.

6 Q Yeah, okay. Let's sit back up here. Okay, all right. Now, Annie, can you
7 look at me? Okay. What you wrote down on here, did that happen to
8 you?

9 A Yes.

10 Q Did anything else happen to you that you would like to write down?

11 A Uh huh (WITNESS IS CRYING).

12 Q Okay. I'll tell you what, let's get another blank piece of paper. Let's show
13 the jury it's blank. You've got your pen? Okay, all right.

14 A (WITNESS IS CRYING)

15 Q Do you need to take a drink of Pepsi? No? Would you take a big, deep
16 breath for me? Let me get you a Kleenex.

17 A (WITNESS IS CRYING)

18 Q All right. I'll tell you what, how about you sit..., I'll tell you what, let's talk
19 about, did you go and talk to a police officer?

20 A Yeah.

21 Q Yeah?

22 A (WITNESS IS CRYING)

23 Q Are you okay? Or do you need a break?

24 A I want a break.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q Okay, all right. We'll take a break. How does that sound? Okay.

2 THE COURT: Okay. The witness uh, may leave the courtroom.

3 MS. LAUREN WHEATLEY: Thank you, Judge.

4 THE COURT: All right. And uh, the paper uh, I need the paper.

5 MS. LAUREN WHEATLEY: It's right here.

6 THE COURT: All right.

7 MS. LAUREN WHEATLEY: Okay, let's go on out here, okay?

8 Come with me. (WITNESS IS CRYING)

9 THE COURT: Okay, the record will reflect there are two sheets of
10 paper uh, that were written on. And uh, these can be marked as uh, Joint
11 Exhibits or Court's Exhibits because they're in effect testimony. Did you get a
12 chance to see these, Susan, yet?

13 MS. SCHULTZ: No, I have not seen nothing.

14 THE COURT: Here. You take a look at these. And uh, these are,
15 I'm not gonna leave these with the Prosecutors or anybody. They're gonna be
16 with their evidence so they go with the Court Reporter until at some point in time
17 I assume the State will request the jury view them.

18 THE STATE (MS. FLANIGAN): That's correct, Judge.

19 THE COURT: And uh, but in the meantime, now it's lunchtime. So
20 you all are gonna go to lunch. Now here's the deal with lunch. And we're gonna
21 get to your questions. I haven't forgotten about that. If you go to lunch with
22 Sharon, the Bailiff, then she's gonna buy your lunch. Uh, well, she's not. The
23 County is going to. And if you go to lunch on your own, then you're on your own
24 and you're paying for your lunch. And so it's up to you, whatever you want to do.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (DIRECT)

1 Uh, it's probably going to take a little more than an hour to go to lunch with a
2 group. It usually takes a little longer with a group. Uh, so if you're going to lunch
3 on your own, is anybody going on their own? Okay, Mr. Engleman, I think uh,
4 and maybe this gentleman also. If you're going to lunch on your own, I'd say
5 probably one-fifteen, Sharon? An hour and fifteen minutes. Somewhere
6 between an hour and fifteen minutes and an hour and a half. When you go in a
7 group uh, it takes a little longer. So those of you that are going on your own,
8 come back in about an hour and fifteen minutes, an hour and a half. And uh,
9 you all uh, remember, as I've told you before, it's your duty not to permit anyone
10 to talk to you or in your presence on any subject matter connected with the trial.
11 It's your duty not to form or express an opinion on the case until it's finally
12 submitted to you. Okay, off to lunch.

13 (JURY EXITS COURTROOM; LUNCH RECESS)

14 THE COURT: These are joint not in the sense that uh, Ms. Schultz
15 is agreeing to it, but in the sense of identify it as the pieces of paper the witness,
16 Annie Young, wrote on, which is in effect her test..., part of her testimony. Did
17 you get a chance to see this, Susan?

18 MS. SCHULTZ: Yes, I did.

19 THE COURT: Okay. And did you get a chance to see this? I'm
20 taking it back from you. I'm just giving it to you to show you that it's marked, and
21 how it's marked. And uh, the Court Reporter will have that. All right, here you
22 are, Court Reporter. Okay, we'll see you in about an hour and fifteen.

23 THE STATE (MS. FLANIGAN): Judge, one thing uh, Annie will
24 have to come back, obviously, after lunch. She's here with her parents. I know

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 there's a separation of witnesses. Do you want to..., have they already left?

2 MS. LAUREN WHEATLEY: I've..., uh, no. I've advised them, they
3 do not talk about anything. She's obviously hugged her parents. No one talked
4 about anything about this trial, about..., they don't even mention his name.

5 THE COURT: Well, if you want to be absolutely certain uh, that
6 nothing happens, then perhaps it's the important thing to do, or one thing that
7 you could do, I don't think you're required to do it, but maybe one of you, Ms.
8 Wheatley, maybe you could go to lunch with the parents and Annie.

9 MS. LAUREN WHEATLEY: I have no problem doing that.

10 THE COURT: That way you'll know whether or not something
11 happened and...

12 MS. LAUREN WHEATLEY: That'll be fine.

13 THE COURT: Uh, whether anybody tried to talk to them, and you
14 can represent to the Court that it did not happen because you were at lunch with
15 them.

16 MS. LAUREN WHEATLEY: That's fine.

17 THE COURT: Ride in the same car.

18 MS. LAUREN WHEATLEY: Okay.

19 THE COURT: All right. Anything else?

20 THE STATE (MS. FLANIGAN): That's it, Judge.

21 THE COURT: Anything, Ms. Schultz?

22 MS. SCHULTZ: No, Judge.

23 THE COURT: Okay, see you after lunch.

24 (OFF RECORD)

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 THE COURT: Are we on, Karen?

2 COURT REPORTER: Yes.

3 THE COURT: The jury is not present. The defendant, the
4 defendant's attorney, the prosecutors are present. Anything before we uh, begin
5 again?

6 MS. LAUREN WHEATLEY: No, Judge.

7 THE COURT: All right.

8 MS. SCHULTZ: Nothing else.

9 THE COURT: Bring the jury in, Ms. Bailiff. No objections to these
10 questions, right?

11 MS. SCHULTZ: No.

12 THE COURT: Okay, we'll...

13 MS. SCHULTZ: Are those the ones you showed us before?

14 THE COURT: Yeah.

15 MS. SCHULTZ: Okay.

16 THE COURT: We'll get to those here in a little while.

17 (JURY RETURNS TO COURTROOM)

18 THE COURT: Please be seated, ladies and gentlemen. Okay.

19 Ready to proceed again, Ms. Flanigan?

20 THE STATE (MS. FLANIGAN): Yes, Judge. The State will recall
21 Annie Young.

22 MS. LAUREN WHEATLEY: Okay, let's go sit up here. You
23 remember the Judge, right? Okay, come on around here.

24 THE COURT: Come on up here, Annie.

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STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 MS. LAUREN WHEATLEY: Go see the Judge. Look, he's already
2 over there. Come on. I'll go with you.

3 WITNESS: I wish you'd be beside me.

4 MS. LAUREN WHEATLEY: Okay. Well, I can be beside you.
5 That's no problem.

6 WITNESS: Right there.

7 MS. LAUREN WHEATLEY: Okay, I can do that. How about that?
8 How about that? Okay.

9 THE COURT: Okay. Okay uh, Annie, okay, look up here at me. All
10 right? You remember when you've been in here this morning...

11 WITNESS: Uh huh.

12 THE COURT: We talked about telling the truth, okay?

13 WITNESS: Uh huh.

14 THE COURT: All right. Now uh, you're still under the promise to
15 tell the truth. Okay?

16 WITNESS: Uh huh.

17 THE COURT: Okay. Now Ms. Wheatley is going to ask you some
18 questions, okay?

19 MS. LAUREN WHEATLEY: Okay. Here I am right here.
20

21 STATE RESUMES DIRECT EXAMINATION OF ANNIE YOUNG:

22 Q Okay. So uh, we just went to lunch, didn't we?

23 A Uh huh.

24 Q Is that a "yes"?

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STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 A Yeah.

2 Q Okay. There's you go.

3 A Yeah!

4 Q There you are. All right.

5 A Oh, I thought it wasn't on.

6 Q Oh, it's on. We can all hear you. Okay, so do you remember when you
7 spent the night at Ed Nunley's house?

8 A Uh huh.

9 Q Okay. And do you remember that next day?

10 A Yeah.

11 Q Okay. And you were in the car with your Mommy and Daddy?

12 A Yeah.

13 Q And I think you told us earlier that you wrote down what happened.

14 Right?

15 A Yeah.

16 Q Okay, do you want to tell us that today?

17 A Uh huh.

18 Q Okay, what happened?

19 A Can I write it again?

20 Q Can you tell me again?

21 A Can I write it and then read it?

22 Q Okay. Okay, do you want to read it?

23 A There. I forgot the period.

24 Q That's okay. Good job. I bet Ms. Prichard, your second-grade teacher,

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 would be proud that you put the period on there, wouldn't she?

2 A Uh huh.

3 Q All right. Can you read it for us?

4 A Uh huh.

5 Q Okay, go ahead.

6 A He made me suck on his weenie-bob.

7 Q Okay, did anything else happen to you that night?

8 A That one, I'll write that down too.

9 Q Okay.

10 A Hey, I'm doing pretty good with these sunglasses on.

11 Q You are. Okay, did you write it down?

12 A Yeah.

13 Q Can you read it for us?

14 A He licked my pee pee.

15 Q Okay. Did he do all that at his house?

16 A Yes, in the bed.

17 Q In the bed?

18 A Yeah.

19 Q Okay. Did you like that at all?

20 A No.

21 Q No, okay. Did he do anything else to your pee pee?

22 A No.

23 Q Okay, all right. And the next day, when you got in the car, and did you tell
24 your Mommy and Daddy out loud like you told us today?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 A Yes.

2 Q You did

3 A No! I wrote it down.

4 Q You wrote it down?

5 A Uh huh.

6 Q Okay. And did you give them the note?

7 A Yes.

8 Q Okay. And then, then what happened?

9 A Then my Mommy went over there and she started cussing and stuff. And

10 she got the baseball bat and she beat out Eddie's windows. Did you see

11 the windows out of his house when you went there?

12 Q I did not go there. I did not see that. So, what did you see? You tell us

13 what you saw?

14 A I didn't see anything, but my Mommy told the story to Daddy.

15 Q Okay...

16 A She said she beat the windows, she beat his motorcycle. And Eddie

17 came out and said, "Tonya, what are you doing?" And she said, "I'm

18 beating your stuff up for doing that to your daughter." And then he...

19 Q I'm going to stop you real quick.

20 A Okay.

21 Q Were you still in the car?

22 A Yes.

23 Q But you didn't see that?

24 A No.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 Q Where was the car parked?

2 A Uh, it was parked a little bit past his house.

3 Q Okay, so you couldn't see it...

4 A No.

5 Q ...what was going on.

6 A I couldn't.

7 Q And, and then some point in time did your Mommy get back in the car?

8 A Yeah. After she beat the heck out of his house and his motorcycle, and

9 then when Mommy saw Eddie come out, his eyes was in rage. And she

10 was like, if I let him see this baseball bat, then...

11 Q Okay. All right. You tell me what you saw. What happened when

12 Mommy got back in the car?

13 A We up and...

14 Q Did you go somewhere?

15 A Yeah. We went to the police officer.

16 Q Okay, and did you talk to a police officer?

17 A Yes.

18 Q Did you tell him what happened?

19 A Yeah. And they gave him the note that I wrote to Mommy.

20 Q Okay, all right. And then awhile later, do you remember going to a place

21 called the Comfort House?

22 A Uh huh.

23 Q And what did you do there?

24 A Oh, we talked about that, and I played with toys they had. And then there

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 was like paint stuff, and we mixed it up and I had purple in it, and we put it
2 up on a tree.

3 Q Did you put your hands on a tree?

4 A Uh huh.

5 Q Okay. Did you also draw some pictures while you were there?

6 A Yeah, on the board that they had.

7 Q Okay...

8 A A couple of pictures and stuff.

9 Q Okay. And the lady there, she had you draw some stuff?

10 A Yeah, and I drew a couple of things. I just wanted to draw really.

11 Q Okay, all right. Annie, did anybody tell you what to say today?

12 A No.

13 Q Did anybody tell you what to say about Eddie Nunley?

14 A No. They just said to tell me the truth.

15 Q Okay...

16 A To tell the truth.

17 Q All right. Can I have this piece of paper please?

18 A Yes ma'am.

19 Q Okay.

20 MS. LAUREN WHEATLEY: Your Honor, at this point in time, the
21 State moves to admits into evidence State's Exhibit "3"...

22 WITNESS: Hey, Lauren, can I draw a picture of Eddie real quick?

23 MS. LAUREN WHEATLEY: Just a second.

24 WITNESS: Can I draw a picture of something?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 MS. LAUREN WHEATLEY: You sure can.

2 WITNESS: While I'm waiting on you?

3 MS. LAUREN WHEATLEY: Yes, you may. You absolutely may.

4 The State moves to admit State's Exhibits "3, "4", "5", and then I believe Court's
5 "1" and "2" into evidence.

6 THE COURT: Uh, Ms. Schultz uh...

7 MS. SCHULTZ: You said the last, the last, is that the last note that
8 she wrote?

9 MS. LAUREN WHEATLEY: Yes.

10 MS. SCHULTZ: That's State's Exhibit "5"?

11 THE COURT: Yes.

12 MS. SCHULTZ: The one that you just read...

13 MS. LAUREN WHEATLEY: The one that she read from.

14 MS. SCHULTZ: I don't object. No, I don't object to any of them.

15 THE COURT: "3", "4" and "5" are admitted into evidence. Five, uh,
16 the Court finds that "5" is her testimony. All right?

17 MS. LAUREN WHEATLEY: Okay.

18 THE COURT: And the others, the others, which were marked as
19 Joint Exhibits "1" and "2" uh, those are her testimony.

20 MS. LAUREN WHEATLEY: Okay. Permission to publish to the
21 jury.

22 THE COURT: All five?

23 MS. LAUREN WHEATLEY: "3", "4", "5", and Joint "1" and "2".

24 THE COURT: Granted. Here, take a look at these while they're

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (DIRECT)

1 looking at that.

2 MS. LAUREN WHEATLEY: Okay.

3 THE COURT: That..., there's a couple of more there. Okay.

4 (EXHIBITS ARE DISPLAYED TO THE JURY)

5 MS. LAUREN WHEATLEY: No objection, I believe on either side,
6 Judge.

7 THE COURT: No objection, Ms. Schultz?

8 MS. SCHULTZ: No objection.

9 THE COURT: All right.

10 WITNESS: Lauren, how do you spell "Julie"?

11 THE COURT: It's, it's going to take the jurors a little bit of time to
12 look at those. Thirteen people. So if you want to take the witness, if the witness
13 wants to step down, if you want to take her for a walk...

14 MS. LAUREN WHEATLEY: Okay.

15 THE COURT: That's fine.

16 MS. LAUREN WHEATLEY: Okay.

17 THE COURT: And then uh, somebody will come and get you uh,
18 when we're ready to come back again. Okay?

19 (WITNESS EXITS COURTROOM)

20 (OFF RECORD)

21 THE COURT: Okay. I want to inform the jury uh, that it's the
22 Court's practice that all the exhibits that are admitted into evidence, at the
23 conclusion of the trial, are sent to the jury room. Okay? I just wanted you to
24 know that. So, that uh, that helps your process of reviewing the exhibits. Uh, go

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (DIRECT)

1 off the record.

2 (OFF RECORD)

3 THE COURT: Okay. You want to get the witness back, please?

4 WITNESS: Are you going to be beside me again?

5 MS. LAUREN WHEATLEY: I want you to go right up there, okay?

6 WITNESS: I want you there beside me.

7 MS. LAUREN WHEATLEY: Okay.

8 WITNESS: Right here.

9 MS. LAUREN WHEATLEY: I'll tell you what. I'm all done asking
10 you questions right now. Okay?

11 WITNESS: Okay.

12 MS. LAUREN WHEATLEY: Now, remember we talked about Ms.
13 Susan is going to ask you some questions now. Okay?

14 WITNESS: Yeah.

15 MS. LAUREN WHEATLEY: And maybe the Judge. Okay?

16 WITNESS: Okay.

17 MS. LAUREN WHEATLEY: Feel free to put on your sunglasses.

18 All right.

19 THE COURT: Okay. All right. Uh, Miss Annie Young uh, there's
20 some questions I have here.

21

22 QUESTIONS BY JURY:

23 Q The first one uh, where was your father while mother was breaking out
24 windows?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (JURY QUESTIONS)

1 A Oh, he was in the car.

2 Q All right. And uh, if Kiki was to watch Annie, why did she leave and where
3 did she go?

4 A I think she went over to the store and something and she never came
5 back till, I guess, I don't know when she came back. She was supposed
6 to have went to the store and then come back. But I guess she went to
7 the store and then went somewhere else.

8 Q Uh, and did Kiki and Kyle come back?

9 A No, because I haven't saw them come back, really.

10 Q The day that all this happened, they didn't come back to the house. Is
11 that right?

12 A Right.

13 Q Okay. Uh, and I think you answered this question earlier, but uh, earlier,
14 but referring to that same day, why did you want to get out of your house?

15 A Oh, because it started getting real boring there and stuff.

16 Q All right, okay. And uh, okay, here's a question. You answer this the best
17 you can. How did Ed make you suck his penis or weenie-bob?

18 A Uh..., he said..., that one's hard to answer.

19 Q I'm sorry. I didn't hear you.

20 A That one's hard to answer.

21 Q Okay. Well...

22 A Can we skip that one and come back to it?

23 Q Yeah. We'll skip that one and come back to it. Uh, uh...

24

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 THE COURT: That's all the questions. We'll come back to that one
2 in a little bit. We'll come back to that one. Okay, uh, do you want to talk about...

3 MS. LAUREN WHEATLEY: No, Judge. Annie, I don't have any
4 further questions for you right now. And, like we said, Ms. Susan will now.

5 WITNESS: Okay.

6 THE COURT: All right.
7

8 **CROSS EXAMINATION BY DEFENSE OF ANNIE YOUNG:**

9 Q Hi, Annie. You remember talking to me before?

10 A Yep.

11 Q A couple of times, right?

12 A Uh huh.

13 Q In this courtroom once I...

14 A Yeah.

15 Q Okay. And you said you wanted to get out of your house because it was
16 kind of boring there.

17 A Yeah.

18 Q Who lived in your house?

19 A Who lived in my house? My brother, my Mommy and my Daddy and me.

20 Q Okay. So that the was day that this happened, it was your Mom, your
21 Dad, your brother and you?

22 A My brother, he wasn't there. He was like with one of his friends.

23 Q And when you talk about your dad, you're talking about your dad's name
24 was Richard Caves?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A Yes.

2 Q Okay, and your mom is Tonya Caves?

3 A Yes.

4 Q Okay. So you wanted to get out of the house that day because it was
5 boring?

6 A Uh huh. Because it, because I do the same stuff and do the same stuff
7 there all the time. Sleep in the same bed and play with the same toys.

8 Q And you knew if you went to Nunley's house, you figured you'd be able to
9 play with some other things?

10 A Yeah.

11 Q So did you ask your Mom if you could go there, or did...

12 A We went there to visit. And then I asked her if I could stay the night, and
13 she said, "Yeah." But first we had to go get my clothes.

14 Q Okay. So you were there that day earlier. And then you left and came
15 back?

16 A Yeah.

17 Q And who was there when you were there the first time?

18 A The first time, Kiki and Kyle was there, and then when I left, and when we
19 came back the second time, they was gone.

20 Q So when you went there the first time, do you know whether it was in the
21 morning or the afternoon?

22 A When I came there the first time it was, it was in the afternoon. It was, it
23 was, it was close to the morning.

24 Q So like lunchtime or something?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A Uh huh, close to the morning.

2 Q Okay. And, of course, it was daylight then, wasn't it?

3 A Yes.

4 Q And then you left and how long were you gone? Do you know?

5 A Oh, it was about fifteen minutes.

6 Q Oh, so you were there and then you left and came right back?

7 A Yeah, so I could get my clothes and stuff to spend the night.

8 Q Okay. So when you were telling me when you were there the first time,
9 Kirsten, or Kiki and Kyle were there?

10 A Yeah.

11 Q And then you left and came back fifteen minutes and they were still both
12 there?

13 A No, they was gone.

14 Q They were gone. And was it still daylight when you got back the second
15 time?

16 A Uh huh.

17 Q Did your Mom talk to Kiki about watching you that night when she was
18 there the first time?

19 A Well, Ed Nunley told her to watch me, just like to play the Nintendo and
20 stuff so it wouldn't get broken and stuff.

21 Q When your Mom left you there, was it because Kiki was gonna be there
22 and watch you?

23

24 MS. LAUREN WHEATLEY: Objection. Speculation.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 MS. SCHULTZ: I'll rephrase the question.

2 MS. LAUREN WHEATLEY: You don't have to answer anything
3 until she asks you another question.

4

5 DEFENSE RESUMES CROSS EXAMINATION OF ANNIE YOUNG:

6 Q Did you hear your Mom talk to uh, Kiki about watching you that night?

7 A Uh, yeah. Yeah.

8 Q Okay. So, they left you sometime, it was still daylight, your Mom left you
9 there.

10 A Uh huh.

11 Q And Kir..., Kiki was already gone?

12 A Uh huh.

13 Q And what did you do after your Mom left?

14 A Right after my Mom left uh, I played the Nintendo. Well, I played it a little
15 bit and then it started getting boring, so I quit.

16 Q And what did you do after that?

17 A I can't remember. I can't remember because it was such a long time. I
18 was six years old. I'm eight right. Six, seven, eight. About two years ago.

19 Q Did you have anything to eat there?

20 A Yeah, but I never got hungry so never pretty much wanted to eat anything.

21 Q Well, do you remember if you ate anything while you were there that
22 night?

23 A No, not really.

24 Q You don't remember or you didn't eat?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A I didn't eat at all. I didn't, I never got hungry.

2 Q Okay. So you played Nintendo for awhile. And did you do, do you
3 remember doing anything else before it got dark?

4 A Uhm, just regular T.V., and that's all I watched, that's all I did was watch
5 regular T.V.

6 Q So you played Nintendo and watched regular T.V.?

7 A Uh huh.

8 Q And you said you brought clothes along to spend the night?

9 A Yeah.

10 Q Do you remember what you brought?

11 A Yeah. I brung my pajamas. I brought tee shirts. Okay, and oh, I can't
12 remember what I brought for the next day.

13 Q Do you remember if it was warm enough to wear shorts?

14 A It was, but I don't think I brought shorts to wear.

15 Q So you brought other clothes so you could put on clean clothes the next
16 day after you got up?

17 A Yeah.

18 Q Do you remember what time you went to bed that night?

19 A No.

20 Q Did you take a bath before you went to bed?

21 A Yeah.

22 Q Brush your teeth?

23 A Yeah.

24 Q Did all the things your Mom told you to do at home?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A Yeah.

2 Q Okay. And where did you think you were gonna sleep that night?

3 A I thought I was gonna sleep on the couch.

4 Q Did you lay down on the couch and go to sleep?

5 A Uh, I didn't go to sleep, but I laid on the couch and watch a little bit of T.V.
6 before, before I'd gone to sleep.

7 Q Did you have a regular bedtime?

8 A A regular bedtime?

9 Q Yeah. When you were at your Mom's, did she make you go to bed at a
10 certain every night?

11 A Yeah. Only if it was on school nights.

12 Q And were you up past your regular bedtime that night?

13 A No, because it wasn't a school night.

14 Q So this was a Friday or Saturday night?

15 A Yeah.

16 Q So, do you know what time it was when you laid down on the couch?

17 A No.

18 Q You don't remember what you watched on T.V. or what time it wouldn't
19 been when...

20 A No. I don't remember any other time, I don't remember any times at all
21 pretty much really.

22 Q Not important things to remember, is it?

23 A No.

24 Q So when you laid down on the couch, sometime you ended up back in the

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (CROSS)

1 bedroom. So, tell me what happened that you ended up going back to the
2 bedroom?

3 A Eddie told me to go there.

4 Q He told you to go to bed in the bedroom?

5 A He told me to come there. He didn't tell me I had to go to bed in there.

6 Q Well, up to the point in time when you went to uh, his bedroom, what was
7 Ed doing?

8 A Laying on the bed, that's all.

9 Q He was just laying on the bed?

10 A Yeah.

11 Q He was just laying on the bed?

12 A Yeah.

13 Q Had he been out watching T.V. with you or anything?

14 A No.

15 Q So you were out, you were out in the living room watching T.V. all by
16 yourself and he was in the bedroom?

17 A Yes.

18 Q And then he told you to come back to the bedroom?

19 A Yeah.

20 Q Was that after you took your bath?

21 A No.

22 Q Did you have your pajamas on yet?

23 A Yes.

24 Q Did you put your pajamas on before you took a bath?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A No. I didn't put my pajamas on before I took a bath.

2 Q Okay. Well, you told me a few minutes ago that you took a bath before
3 you went to bed.

4 A Yeah.

5 Q And you told me you had your pajamas on before you went into Ed's
6 bedroom.

7 A Yeah. After I took a bath I put my pajamas on.

8 Q And that was before you went back to the bedroom?

9 A Yeah.

10 Q Okay. Did you only take one bath that day while you were there?

11 A Yeah, that's all I had to take.

12 Q You took a bath before you went to bed, but you didn't take one in the
13 morning?

14 A No.

15 Q So Ed told you to come back into the bedroom, and you went back to the
16 bedroom. Am I right?

17 A Yeah.

18 Q And was Ed in the bedroom when you got back there?

19 A Yeah.

20 Q Did he leave the bedroom for anything after you got there?

21 A I don't remember. But not...

22 Q You don't remember he did? And you said that he had a mini T.V.

23 A Yeah.

24 Q And that was the thing that, well, I don't see it. But it's a little uh, thing that

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 they show you earlier here in the courtroom?

2 A Yeah.

3 Q Okay. And where, where was that? Did you see that when you got to the
4 house?

5 A Uh, no. I didn't see that. I think it was in the back bedroom, and I guess it
6 was hidden somewhere.

7 Q When was the first time you saw the mini T.V. that day?

8 A The first time?

9 Q When was the first time you saw it that day?

10 A I can't remember.

11 Q Had you ever seen that mini T.V. before you went to his house before
12 that?

13 A No. Not even..., yeah. I seen it before, one time when I was watching a
14 movie. He had it on like to put a DVD in it so it'd be on the big T.V. too,
15 the day I saw it.

16 Q So when you saw the mini T.V. that day, it was in Ed's bedroom?

17 A Yeah. And another day too. I don't know what day it was. I don't
18 remember what time it was. I know it happened.

19 Q When you saw the T.V. that day in Ed's bedroom, the mini T.V., was the
20 movie already in it?

21 A What?

22 Q Was the movie that Ed showed you already in the mini T.V. that day when
23 you saw it?

24 A No.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 Q So did you see where the movie, where he got the movie?

2 A No.

3 Q Did you see the movie before he put it in the T.V. to play it?

4 A Yeah. For like...

5 Q How do you put the movies in that T.V.?

6 A You have to push a button or something. You press on the DVD player.

7 There's a button or you press on the DVD thing, or you press a button,
8 and it pops up.

9 Q It pops up? It doesn't slide out?

10 A No.

11 Q Do you have it? And you think this was the T.V. that you were looking at?

12 A Yeah.

13 Q Show me how to do it. I'm not real smart when it comes to these things.

14 A You open it...

15 Q Okay...

16 A Here's the button for it.

17 Q Okay, so there's a button. You have to have a battery or something to
18 use it, right?

19 A Uh, if you turn the power on, it probably will. Let's try that. There. I guess
20 it doesn't need batteries.

21 Q Okay. So, if it's working right, you turn the power on, you push on this
22 button and then what happens?

23 A And then, and then you put the movie in, then you close it and you press
24 like play or something. Well, there ain't no play on this. But you press like

25

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1 these..., well, you wait for the movie to come on. And sometimes you'll
2 see a commercial, and you skip over this.

3 Q Okay. So when you go to put the movie in, when you push on this button,
4 there's a part of the thing that pops up and you slide the movie in?

5 A Yeah.

6 Q And push it back down?

7 A You, no, you just put the movie in it. And then you push it back down and
8 then it plays. And you can skip the commercials like this. And then go to
9 play and then I think you do that. You press that and play. And the movie
10 will come on.

11 Q And when you watch the movie, you watch it on this little T.V. screen. Is
12 that right?

13 A Yeah.

14 Q It looks a little dusty now, doesn't it?

15 A Yeah. Probably hasn't used this thing in a long time.

16 Q Okay. So that night when Ed showed you the movie, did he have the
17 movie inside the T.V. case when you...

18 A Yeah.

19 Q And then he just turned it on and started to play it?

20 A Well, yeah.

21 Q And did you ever see the movie, the movie disc when it was outside of
22 this?

23 A Yeah.

24 Q And where did you see it?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A Inside this thing.

2 Q You saw it inside of there?

3 A Yeah. I saw the actual disc inside this. When he had it open.

4 Q Okay, what did you see on the disc that was inside of that? What was on
5 that, what was on the disc? Do you remember?

6 A Huh uh, I don't..., I gotta look at the CD one more time.

7 Q Okay. You sure it was that CD that he had in it?

8 A I'm sure.

9 Q Okay. What was it about that CD that makes you so sure that that was
10 the one that was in it?

11 A Because it showed like naked men and stuff, the women and stuff like
12 that. Like women was sucking on guys' weenie-bob and stuff. And stuff
13 like that. And it, and it was a CD. I had it memorized, but I don't
14 remember it now. But it showed that, and I knew that was it.

15 Q Okay. That's what you saw when he was playing the movie, or what you
16 saw on the outside of the disc?

17 A On the outside of the disc, because I knew it had that.

18 Q Okay. You might want to sit down, because you need the mike so
19 everybody can be sure to hear you when you talk.

20 A Uh huh.

21 Q Okay?

22 A I need a drink real quick.

23 Q So, do you remember whether he played a long part of the movie for you,
24 or a short part of the movie?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A A long part, like the whole entire movie.

2 Q Okay. So the movie that we showed you earlier, it says that it plays for
3 five hours. Did you watch five hours of movies that night?

4 A It wasn't five hours, about four hours.

5 Q You watched four hours of the movie in Ed's bedroom. Is that what you're
6 telling me?

7 A Yeah. Four hours. It was a four-hour movie. The whole entire movie.

8 Q You watched the whole thing?

9 A Yeah.

10 Q Did you go to sleep that night?

11 A I was trying to go to sleep when I was watching the movie. But I couldn't
12 for some way because the lights was on and stuff.

13 Q So was anything else going on while Ed was showing you the movie for all
14 this time?

15 A No, not really. Well, yeah.

16 Q What was going on while he was showing the movie? Well, first of all,
17 where were you when you were watching the movie?

18 A I was on the bed.

19 Q Just laying on the bed?

20 A Uh, sitting on the bed.

21 Q Sitting on the bed, okay. And what were...

22 A I better get ready to write something. What?

23 Q Where was Ed?

24 A On the bed, laying down.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 Q He was laying on the bed?

2 A Yeah. No, he was sitting on the bed too.

3 Q And now, was this a bed that was big enough for two people to sleep in?

4 A Uh, about three.

5 Q So it was a big bed?

6 A Yeah. About a queen-size bed.

7 Q Okay. And you know, sometimes when you go in, people's beds are
8 made and sometimes their beds aren't made. Do you know if the bed was
9 made or not made?

10 A It wasn't made.

11 Q It was not made. Did you get under the blankets?

12 A No. It was a little bit hot. H-o-t, hot.

13 Q Okay. Was it a warm day outside that day? The weather was hot?

14 A Yeah.

15 Q Okay. So you sat on the bed and watched the movie for four hours?

16 A Uh huh. Because that's how long it was.

17 Q Did you have anything to eat or drink while you were watching the movie?

18 A Well, I didn't want to eat or drink anything because I never got hungry or
19 thirsty.

20 Q Now when Ed was on the bed watching this movie, did he have all of his
21 clothes on?

22 A What?

23 Q Did Ed have all of his clothes on when he was watching the movie with
24 you?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

- 1 A He, yep.
- 2 Q And did you have your clothes on?
- 3 A I had a tee shirt on.
- 4 Q Did you have anything else?
- 5 A Yeah, panties. That's all.
- 6 Q Okay. Did Ed do anything to you while you were watching the movie?
- 7 A Uh, yeah.
- 8 Q You remember the notes you wrote before?
- 9 A Uh huh.
- 10 Q Was that what he did while you were watching the movie? Or did he do
- 11 something else?
- 12 A Uh, that's what he did while I was watching the movie.
- 13 Q Okay. Did he do that before you watched the movie, or just during the
- 14 movie?
- 15 A During.
- 16 Q And you said you had your tee shirt and panties on while you were
- 17 watching the movie. Did you have a tee shirt and panties on all of the
- 18 time?
- 19 A No. He got my panties and he threw them.
- 20 Q Where did he throw them?
- 21 A He threw them on the drawer.
- 22 Q Like on a dresser you mean?
- 23 A Yeah, like on a dresser.
- 24 Q Okay. And was that at the beginning of the movie?
- 25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A No, later on.

2 Q Did he ever hand your panties back for you to put on?

3 A Yeah.

4 Q When was that?

5 A Right after the movie.

6 Q After the movie was over?

7 A Uh huh.

8 Q Okay. So after you watched the movie, what happened in the house?

9 Did you go to sleep someplace?

10 A What?

11 Q After you watched...

12 A Oh, after I watched the movie, did I go to sleep? Uh huh.

13 Q Where at?

14 A I fell asleep in the bed.

15 Q And where was Ed when you fell asleep on the bed?

16 A In the bed too. I fell asleep on..., I said I was trying, I was going to the
17 couch, but I fell asleep. I was about ready to go to the couch. And I got
18 turned, I guess I'll sleep in here.

19 Q Did Ed, did Ed do anything bad to you after you fell asleep that you know
20 of?

21 A No.

22 Q And the next morning, did you wake up early?

23 A Uh, no.

24 Q Do you remember, was it like daylight when you woke up?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A Yeah, it was daylight.

2 Q And did you do anything after you woke up before your Mom got there?

3 A Well, yeah, I watched Scooby Doo, where are you, Scooby Doo too. But
4 it isn't the cartoon.

5 Q Did you watch the whole movie?

6 A Yeah. Yeah, no.

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

8 A No.

9 Q You did not watch the whole movie?

10 A I did not watch the whole movie. I'm evening writing down on the page.

11 Q And was that because your Mom got there? You had to stop watching it
12 because your Mom was there?

13 A Yeah, yeah. But I did get dressed for one, because that's one thing that I
14 didn't get to watch all of it, and I think is Mom got there.

15 Q Whose Mom got there?

16 A What?

17 Q You said his Mom got there or your Mom got there?

18 A My Mom got there.

19 Q All right. So when your Mom got there, what were you doing then?

20 A I was just watching regular T.V.

21 Q You'd stopped watching Scooby Doo and started watching regular T.V.?

22 A I, I was watching Scooby Doo, I meant. And then Mom came, so I had to
23 turn it off, and then go home.

24 Q When your Mom came, did she come in the house?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (CROSS)

1 A No. She just came to the door.

2 Q Did she talk to Ed at all?

3 A Uh, she didn't talk to him at all.

4 Q She did not talk to him at all?

5 A Not at all.

6 Q Okay...

7 A Not that I know of.

8 Q Now when you go into Ed's house, do you go to the living room?

9 A What?

10 Q When you go into Ed's house, when you walk in Ed's house from the
11 outside into the house, you walk into the living room, or do you go to
12 another room?

13 A Uh, walk into the living room.

14 Q So if somebody came in while you were watching T.V., you would see
15 them because you would be in the room that they came into?

16 A What?

17 Q If somebody was outside and came into the house, they would come into
18 the living room. Correct?

19 A Correct.

20 Q And you were in the living room watching T.V. Correct?

21 A Yes.

22 Q So if your Mom came into the house from outside, you would've seen her
23 because you were in the living room. Is that correct?

24 A Yes.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 Q And you did not see...

2 A No, I didn't see her. Because I was back in Eddie's room watching
3 Scooby Doo.

4 Q So you were, you were watching T.V. in...

5 A Eddie's room.

6 Q ...his bedroom...

7 A Yeah.

8 Q ...when your Mom got there?

9 A Yeah.

10 Q So do you, you don't know if your Mom came in the house or not?

11 A Uh, no.

12 Q When you left, did you take your clothes with you that you brought?

13 A Yes.

14 Q And what did you have them in?

15 A I had them, I had them in a bag.

16 Q Not a suitcase, but a bag?

17 A Yeah, a suitcase.

18 Q And you took that with you?

19 A Yeah.

20 Q When your Mom came to pick you up, was your Dad with her?

21 A Yes.

22 Q And when your Mom took you over and dropped you off the day before,
23 was your Dad with her then?

24 A I can't remember.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 Q Do you think, do you know if anybody was with your Mom when she
2 dropped you off at Ed's the day before?

3 A No.

4 Q You don't remember?

5 A I don't remember.

6 Q Okay. But your Dad, you remember your Dad being there when your
7 Mom picked you up?

8 A Yes.

9 Q He was in the car?

10 A Yes.

11 Q All right. So when you got in the car and left, how far did you go before
12 you told your Mom that you had a secret?

13 A Two miles. No, not very far.

14 Q Okay. Do you remember where you were when you told your Mom?

15 A No.

16 Q Do you, can you tell me about how long it was that you were gone before
17 you told your Mom?

18 A No.

19 Q You think it was more than ten minutes?

20 A No. Probably about five.

21 Q About five minutes? And you told your Mom you had a secret.

22 A Yes.

23 Q And what was, what as your Dad doing while you were telling your Mom
24 you had a secret?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A He..., I kept on telling uh, I told I didn't want to tell them. And Dad said,
2 "You have to tell."

3 Q So your Dad told you you had to tell your Mom what your secret was?

4 A Uh huh. So, so I wrote it on a piece of paper.

5 Q And what kind of paper did you have to write on?

6 A An envelope.

7 Q Did you see where your Mom got the envelope?

8 A No.

9 Q Was it an envelope that uh, she had gotten some mail in maybe?

10

11 MS. LAUREN WHEATLEY: Objection. Speculation.

12 THE COURT: Sustained. That means you don't have to answer

13 that question.

14 WITNESS: Okay.

15

16 DEFENSE RESUMES CROSS EXAMINATION OF ANNIE YOUNG:

17 Q Did you see where your Mom got the envelope?

18 A No.

19 Q Was it a used envelope or a new one?

20 A I don't know.

21 Q Was it whole or ripped?

22

23 THE COURT: Just, just a minute...

24

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 WITNESS RESUMES ANSWER:

2 A Whole. It was whole.

3

4 THE COURT: Okay. Ladies and gentlemen, I told you earlier on
5 that if you don't hear an answer to raise your hand. I don't know if you're able to
6 hear or not. Any problem hearing? No problem hearing. Okay, raise your hand
7 if you have a problem hearing. Okay. Okay, go ahead, Ms. Schultz.

8

9 DEFENSE RESUMES CROSS EXAMINATION OF ANNIE YOUNG:

10 Q So, you, you said it was a whole envelope or a part of an envelope?

11 A It was a whole envelope.

12 Q Okay. And when you wrote on it, you said you wrote it with what?

13 A I wrote it with a pencil that Eddie gave me.

14 Q You were in kindergarten then. Is that right?

15 A Yeah.

16 Q And you told Lauren, when she was asking you questions a little bit
17 earlier, that uh, you could write better than you could read then. Is that
18 right?

19 A Yes. Right, Lauren?

20 Q So when, when you would write, did you have to ask somebody how to
21 write the words you wanted?

22 A Uh huh.

23 Q And did anybody help you write what you wrote on that envelope?

24 A Uh, I just had to ask them to spell a word.

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (CROSS)

- 1 Q And what word..., who did you ask to spell a word for you?
- 2 A Dad.
- 3 Q And what word was it you wanted him to spell?
- 4 A Weenie-bob. Weenie.
- 5 Q Weenie?
- 6 A Yeah.
- 7 Q And did he spell it for you?
- 8 A Yeah. He wasn't suspicious.
- 9 Q He wasn't suspicious?
- 10 A No. Just usually he would be.
- 11 Q After you wrote that, did you give the envelope to your Mom right away?
- 12 A Uh huh. At first I read it to make sure it made sense, and then I gave it to
- 13 her.
- 14 Q Okay. So you could read it? You could read your own writing then?
- 15 A Uh huh.
- 16 Q You knew what you had written?
- 17 A Uh huh.
- 18 Q Did your Mom have any trouble reading what you wrote for her?
- 19 A No.
- 20 Q Did you have really good writing when you were in kindergarten like you
- 21 do now?
- 22 A No, not very good.
- 23 Q And was "weenie-bob" the only, "weenie" the only word you had to ask
- 24 your Dad for help to spell?

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (CROSS)

1 A Uh huh.

2 Q Okay. And you think that that note was given to the policeman?

3 A Yes, yes, yes, yes.

4 Q Did you give it to the policeman or did somebody else?

5 A My Mom.

6 Q Your Mom. And you saw her give it to him?

7 A Uhm, no.

8 Q Did you ever seen the policeman looking at the envelope and reading
9 what was written on it?

10 A Yes.

11 Q And that was the policeman, the first policeman that you talked to. Am I
12 right?

13 A Yes.

14 Q So after, after you gave your Mom the envelope and you read, and she
15 read it, and did she let your Dad read it right away?

16 A No. He, no, because Dad read it while Mom was holding it.

17 Q So do you think they read it about the same time?

18 A Yeah.

19 Q And then your Mom did what?

20 A She went to Eddie's house, beat the windows out of his house, beat his
21 motorcycle up and tried to beat him up.

22 Q So as soon as she read the note, did she turn around and go back?

23 A Yes.

24 Q Did it take very long to drive back to his house?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A No.

2 Q And you were waiting in the car all the time she was up there at his house.

3 Is that right?

4 A Uh, yes.

5 Q And you could not see anything that she did?

6 A I didn't see anything she did. That is true, yes.

7 Q And could you hear what the words that she was saying?

8 A Yes. She said cuss words and stuff like that.

9 Q And you could actually hear the words that she said?

10 A Yeah. Because, you want me to write them down?

11 Q No. Well, we'll skip the cuss words today. We don't need to have those
12 written down.

13 A Okay.

14 Q And then when she came back in the car uh, was she still pretty mad?

15 A Yes.

16 Q And that's when she took you to the police?

17 A Yes.

18 Q When she came to pick you up at Eddie's that day after you'd spent the
19 night uh, when you left that day, was she mad at Ed then?

20 A No.

21 Q Was she, did she talk to him or anything?

22 A No.

23 Q How do you know that she wasn't mad at him?

24 A Well, because she had a smiley face on and stuff like that, and smiling at

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 him.

2 Q And when came to get you that day, were you smiling too?

3 A No.

4 Q You were not smiling?

5 A No.

6 Q And why were you not smiling?

7 A Because the night he did that to me, when he did that to me.

8 Q When you went and talked to the first policeman, he's the one that got the
9 note?

10 A Yes.

11 Q And on the way to talk to the policeman, was your Mom talking about
12 anything with your Dad in the car?

13 A Uh, no.

14 Q Did she talk about being mad at Ed on the way there?

15 A Yes, no.

16 Q They did or did not?

17 A Did not.

18 Q They talk about anything?

19 A No.

20 Q Did they tell you where you were going?

21 A Yes. They told me I was going to the police officer place.

22 Q And did they tell you why you were going there?

23 A Yes, because of what Ed Nunley did to me.

24 Q And what did they tell you that you should tell the policeman?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A The truth.

2 Q Did they tell you what the truth was?

3 A Yes, yes.

4 Q They told you what the truth was? And what did they tell you the truth
5 was?

6 A It was something that you don't get in trouble with. If you tell the truth, you
7 won't get in trouble, maybe sometimes, but not all the time. My Mommy
8 and Daddy told me that.

9 Q Okay. But they told you what, what I'm asking you is, did they tell you
10 what you could say that would be the truth? Do you know what I mean?

11 A What?

12 Q Did they tell you what to say that would be the truth when you went and
13 talked to the police officer?

14 A No way.

15 Q They just told you to tell the truth?

16 A Yes.

17 Q Did they talk to you at all about what Ed had done to you other than what
18 you wrote on the paper?

19 A No.

20 Q So when they went and took you to the police, to see the first policeman,
21 did they know that Ed had done anything to you except what was on the
22 paper?

23

24 MS. LAUREN WHEATLEY: Objection. Speculation.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 THE COURT: Sustained. That means you don't have to answer
2 the question.

3

4 DEFENSE RESUMES CROSS EXAMINATION OF ANNIE YOUNG:

5 Q When they took you to policeman the first time, had you told them that Ed
6 had done anything to you other than what you wrote on the paper here in
7 Court?

8 A No.

9 Q So when they took you to the policeman, they didn't know that Ed had
10 made you watch the nasty movie?

11 A I told them, so that's a yes.

12 Q And when did you tell them that?

13 A They figured that out when I told the police.

14 Q So you didn't tell them before they took you to the police?

15 A I did not tell them before I, they took me to the police.

16 Q So the only thing they knew about, what had happened to you, was when
17 you wrote on the paper before they took you to the police. Is that what
18 you're telling us?

19 A What?

20 Q When they took you to the police, the only thing that your Mom or Dad
21 knew had happened to you was what you wrote on the paper?

22 A Yes.

23 Q And they didn't know anything about the movie then?

24 A No.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 Q After you talked to the police, did you go and talk to anybody else right
2 after that?

3 A No.

4 Q And that was about a year later when you went and talked at Comfort
5 House?

6 A Yes.

7 Q And that's, that would be only the second time you talked to somebody
8 about it?

9 A Yes.

10 Q And you talked to a lady named Donna Black at the Comfort House?

11 A Yes.

12 Q And then after that, who else did you talk to about...

13 A I talked to a guy, I can't remember his name, but I think it was Dave.

14 Q Was he at C.P.S., Child Protective Services?

15 A He was at Lifesprings.

16 Q Oh, Lifesprings. Okay. Is he your counselor?

17 A Yes.

18 Q Okay. And did you talk to anybody else about this?

19 A No. So then, that's yes, because it's, this, this is who I talked to right now,
20 so yes.

21 Q And you've talked to Lauren and you've talked to me.

22 A Yes. So that's a yes, I did talk to somebody else about this. And it's you,
23 Lauren and Julie.

24 Q You said that you had to write this on paper because you didn't want to

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 say it out loud. Is that what you said?

2 A Yes.

3 Q And why was it you didn't want to say it out loud?

4 A Because I was too scared.

5 Q Okay. It's not a nice thing to have to talk about out loud. But what was
6 scary about it

7 A I just don't want to tell them because I thought I'll get in trouble.

8 Q Why, why did you think you'd be in trouble?

9 A Because they probably thought that Ed Nunley didn't make me.

10 Q Oh, so you thought maybe your Mom would think that you wanted to do a
11 bad thing?

12 A Yeah. But I didn't.

13 Q And you said that Ed told you that if you told your Mom, he'd do
14 something. And I didn't understand what you said he would do.

15 A He would call the cops.

16 Q So did you think that he would?

17 A Yes.

18 Q And what did you think the cops would do to him if you, to you if he called
19 them?

20 A I thought, not to me, but I meant my parents, like arrest them or
21 something.

22 Q So you thought that...

23 A Lauren, would you put that out of the way?

24 Q I'll give it back to you, okay? So, did you think that the police would come

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 and arrest your parents if, if Ed called them?

2 A Yeah.

3 Q Okay. When you were in the bedroom, do you remember what Ed did to

4 you first? Did he uh, lick you first, or did he have you do it to him first?

5 Do you remember?

6 A Do it to him first.

7 Q Okay. And was that something that happened for a short time or a long

8 time?

9 A A short time.

10 Q And can you tell me what his weenie-bob looked like when you were doing

11 that?

12 A No.

13 Q Do you remember what it looked like?

14 A Yes, but I don't want to talk about it.

15 Q Okay. Well, can you show me with your fingers how long it was? You

16 can't do that?

17 A No.

18 Q Can you ask the, answer some "yes" or "no" questions if I ask you?

19 A Huh uh. What are you gonna ask me?

20 Q What color was it?

21 A Peach.

22 Q Peach colored, like skin color?

23 A Yeah.

24 Q Okay. And did you, did it feel hard or soft?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A Soft.

2 Q And did anything ever come out of it?

3 A No.

4 Q And were you able to put the whole thing in your mouth?

5 A I want to take a break.

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

7 A No. Can I take a break?

8

9 THE COURT: Yes, you can take a break. During this recess it's
10 your duty not to permit anyone to talk to you or in your presence on any subject
11 matter connected with the trial. It's your duty not to form or express an opinion
12 on the case until it's finally submitted to you, ladies and gentlemen. You can get
13 up uh, Annie.

14 (JURY EXITS COURTROOM)

15 THE COURT: Okay, we'll take a little bit of time.

16 (OFF RECORD)

17 MS. SCHULTZ: I mean how, how did he...

18 THE COURT: The question was, how did he make her suck his
19 penis.

20 MS. LAUREN WHEATLEY: Okay, the one that she said that she...

21 THE COURT: She didn't want to answer it right now.

22 MS. LAUREN WHEATLEY: Okay.

23 MS. SCHULTZ: And, "ask me that later".

24 MS. LAUREN WHEATLEY: "Ask me that later".

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 THE COURT: I'm not saying that you can't ask it, Ms. Schultz. But
2 was gonna suggest it. Ms. Schultz, or Ms. Wheatley ask.

3 MS. LAUREN WHEATLEY: Okay.

4 THE COURT: Okay. So anything before we bring the jurors in?
5 No?

6 MS. SCHULTZ: No.

7 THE COURT: Okay, bring them in.

8 (JURY RETURNS TO COURTROOM)

9 THE COURT: Please be seated, ladies and gentlemen. Here.

10

11 BENCH CONFERENCE:

12 MS. LAUREN WHEATLEY: It's a question?

13 THE COURT: No, it's not a question. It's a statement.

14 MS. LAUREN WHEATLEY: All right, okay.

15 THE COURT: Anything you want me to do about that?

16 MS. SCHULTZ: I don't know what we can do about it.

17 THE STATE (MS. FLANIGAN): I don't know who wrote that, Judge.

18 Maybe... (unintelligible) is being blocked. We can try to make him available

19 because I think they have a right to observe his demeanor. So uh, whose

20 blocking him could get some, move our, refigure ourselves.

21 MS. SCHULTZ: You guys have got too many people at your table.

22 THE COURT: Okay...

23 MS. SCHULTZ: Maybe you want to inquire...

24 THE COURT: Okay.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 (BENCH CONFERENCE ENDS)

2 THE COURT: I don't know who wrote this last note. I will simply
3 say that uh, if you want to sit in a different chair, that's up to the thirteen of you to
4 switch chairs around. You're welcome to sit in a different chair, you know, if you
5 would prefer to sit in a different chair. If somebody wants to just sit in a different
6 chair, you're to allow them to sit in a different chair, Sharon. If somebody wants
7 to..., now don't tell me anything. I don't want to hear it. I don't want to hear it. If
8 somebody wants to switch chairs, you're welcome to switch chairs. If you want
9 to do that now, you want to do it later, if you don't want to do it at all, I don't care
10 what chair you sit in. Jurors, you know, if there's a particular juror or one or more
11 that wants to move chairs, it's fine with me. I don't care. Does anybody want to
12 switch chairs?

13 (JURORS SWITCH CHAIRS)

14 THE COURT: Sharon, you'll have to let the jurors sit where they
15 want to. You can't be too big of a boss with them, okay?

16 BAILIFF: Oh, I wasn't bossing them. No way.

17 THE COURT: Oh I know you boss them around sometimes. You
18 march them in a certain file and one thing and another. She's kind of bossy
19 sometimes. But anyhow, that's part of her job to be bossy once in awhile. That's
20 all right. Okay. So uh, the record will reflect the jurors are present, the witness is
21 present. We're continuing with cross examination.

22 WITNESS: Okay. I heard you described it on a piece of paper.
23 That's all I remember.

24

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 DEFENSE RESUMES CROSS EXAMINATION OF ANNIE YOUNG:

2 Q Okay. I had you before how long it was, and you wrote on this note to
3 describe how long it was. Is that what you're doing there?

4 A Yeah. I wrote the color it was, stuff like that. And that's why I wrote the
5 note, because I know the numbers on a ruler and I wrote the numbers
6 here. Because one, split, two, split, three, split, four, split, five, split, six,
7 split, seven, split, eight, split, nine, split, ten.

8 Q Okay. So you think it was about...

9 A Ten.

10 Q Ten inches long?

11 A Yeah.

12 Q Okay. So let me ask you this question on the picture you drew. Is this
13 picture about the size of what you saw?

14 A Yeah.

15 Q Okay. And you wrote a note. Can you read me what this note says?

16 A I know it, I know it is ten inches long because I counted a ruler's number
17 because I know how far they split, one inch. They split about an inch
18 apart.

19 Q Okay. But you think that the picture you've drawn is about, about the
20 same length as what his weenie-bob is?

21 A Yeah.

22 Q All right. And you wrote "peach" on there, you mean that this part of it, the
23 bottom part was peach?

24 A Yeah.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 Q And you've got "red, light red at the top". Right?

2 A Yeah, right there.

3 Q Okay. And what is this scribbled thing on the side?

4 A Oh, I was scribbling out the numbers.

5 Q Okay. You wrote the numbers wrong the first time, so you re-wrote them
6 on the other side. Is that what you're talking about?

7 A Yeah.

8 Q Okay, so the scribbles on the side don't really mean anything?

9 A No.

10 Q Okay.

11

12 MS. SCHULTZ: We would probably want to mark this as the

13 Court's exhibit or...

14 THE COURT: Yeah.

15 MS. SCHULTZ: The exhibit for the testimony?

16 THE COURT: Yeah, yes. Okay.

17 WITNESS: Let me get a better picture.

18 THE COURT: Well, no. That's okay. If anybody wants a better

19 picture, they'll ask. Okay. Let that be Joint Exhibit "3", Karen?

20 COURT REPORTER: Yes.

21 THE COURT: Okay.

22 MS. SCHULTZ: Perhaps we should wait to exhibit that until later.

23 THE COURT: Okay.

24 MS. SCHULTZ: I don't know if I have to move for admission or

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 whether the Court automatically admits it because it's testimony.

2 THE COURT: I, I, unless there's an objection, I'm gonna consider
3 this uh, drawing and note, Joint Exhibit "3" to be part of the witness' testimony.

4 MS. LAUREN WHEATLEY: No objection.

5 THE COURT: No objection?

6 MS. SCHULTZ: No. I don't think I have any basis to object to it.

7 THE COURT: All right.

8

9 DEFENSE RESUMES CROSS EXAMINATION OF ANNIE YOUNG:

10 Q Okay. So you saw it and it looked like where you drew the picture?

11 A Yeah.

12 Q ...of when you'd seen it?

13 A Yes.

14 Q And do you remember, when this was going on, uh, did Ed have his
15 clothes on or..., oh, well, he didn't have all his clothes on obviously if you
16 saw that part of him, did he?

17 A No. He, he didn't, he didn't have all of his clothes on. He didn't have all.
18 He did have some of his clothes on.

19 Q But he didn't have the clothes on that would've covered up his private
20 parts. Is that what we're talking about?

21 A Uh huh.

22 Q And when this was going on, did you have your clothes on or off?

23 A On.

24 Q And do you know what he was doing with his hands while you were doing

25

STATE'S WITNESS – WITNESS #1, ANNIE YOUNG (CROSS)

1 this, while he wanted you to do this to him?

2 A No.

3 Q I think you're gonna have to sit up and...

4

5 THE COURT: I think the answer was "no". Is that...

6 MS. SCHULTZ: The answer is "no".

7 WITNESS: Yeah, no.

8 THE COURT: The answer was "no" to the last question, ladies and
9 gentlemen.

10

11 **DEFENSE RESUMES CROSS EXAMINATION OF ANNIE YOUNG:**

12 Q So you didn't see what he was doing with his hands?

13 A No.

14 Q And then after he did this to you uh, did you tell me that this just went on
15 for a short time?

16 A Yes.

17 Q And then after this went on, did he do the other thing to you, where the
18 other thing you wrote in your note?

19 A Yes.

20 Q And can you tell me how that happened? Did, did you have your clothes
21 on when that happened?

22 A No.

23 Q Did you have all of your clothes off when that happened?

24 A No.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 Q What part of your clothes did you still have on?

2 A My tee shirt.

3 Q And was after he threw your panties on the dresser?

4 A Yes.

5 Q Okay. So you had a tee shirt on. Was that the only piece of clothes you
6 had on?

7 A Uh, yes.

8 Q And can you tell me exactly what he did to you?

9 A Uhm, yes. But I don't want to write it and then read it.

10 Q Well, let me, let me ask you another question. When this happened to
11 you, were you still sitting on the bed?

12 A Yes. No, I was lying.

13 Q You have to sit up and talk into the mike so the people can hear what...

14 A No.

15

16 THE COURT: The answer was, "I was lying on the bed." Isn't that
17 right, Ms. Schultz?

18 MS. SCHULTZ: Yes.

19 THE COURT: Okay, that was the answer, ladies and gentlemen.

20

21 **DEFENSE RESUMES CROSS EXAMINATION OF ANNIE YOUNG:**

22 Q So you were lying on the bed when that happened?

23 A Yes.

24 Q And did you see what he was doing with his hands when that happened?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A No.

2 Q Okay. And did that go on for very long?

3 A No.

4 Q When I talked to you before uh, I asked you if you had asked him to stop,
5 and I think you told me that he did. Is that right? Did you ask him to stop
6 when he was doing this?

7 A Yeah.

8 Q And did he stop when you asked him to?

9 A No.

10 Q And what, what happened to make him stop?

11 A What happened to make him stop? Well, he just got tired and he wanted
12 to stop.

13 Q Okay. And what, did all this happen before or after you watched the
14 movie?

15 A After. I mean at the same time.

16 Q Okay. So this was going on while you were watching the movie?

17 A Yeah.

18 Q Okay. Could you see the movie when, when he was doing this to you?

19 A Yes.

20 Q And where did he have the uh, mini T.V. that was playing the movie?

21 A On the bed.

22 Q It was on the bed?

23 A Uh huh.

24 Q And you were on the bed and he was on the bed?

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (CROSS)

1 A Yeah.

2 Q When you were there that night, from the time your Mom dropped you off
3 that night before until she picked you up the next morning, did you see
4 any other people at all at Ed Nunley's house?

5 A What?

6 Q Did you see any other people at all at Ed Nunley's house...

7 A No.

8 Q ...between the time your Mom dropped you off and...

9 A No.

10 Q ...picked you up?

11 A No.

12 Q Nobody else? You didn't see Kiki and uh, Kyle there?

13 A No.

14 Q You didn't see Michelle there?

15 A No.

16 Q And...

17 A Who's Michelle?

18 Q You don't know Michelle?

19 A No.

20 Q You didn't see anybody at all?

21 A No.

22

23 MS. SCHULTZ: I don't have any more questions at this point, but I

24 would like to reserve the right to recall her uh, if the other statements are

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (REDIRECT)

1 submitted into evidence as we talked about previously.

2 THE COURT: Okay.

3 MS. LAUREN WHEATLEY: Judge, permission to approach.

4 THE COURT: Yes.

5 MS. LAUREN WHEATLEY: And I will ask that question again. And
6 for the record, all the other questions you had asked?

7 THE COURT: Yes, they were all...

8 MS. LAUREN WHEATLEY: The juror questions?

9 THE COURT: Yeah.

10 MS. LAUREN WHEATLEY: Okay.

11

12 **REDIRECT EXAMINATION OF ANNIE YOUNG BY STATE OF INDIANA:**

13 Q Annie, this is the question that the Judge asked you earlier, and I'm gonna
14 re-ask it, okay?

15 A Okay.

16 Q All right. Now sit up here. How did he make you suck his penis?

17 A Because he said he'll hurt Mommy and Daddy.

18 Q Okay. And uhm, did he tell you how to do it?

19 A No.

20 Q Okay.

21

22 MS. LAUREN WHEATLEY: No further questions.

23 THE COURT: Any more questions?

24 MS. SCHULTZ: I just have a quick follow-up.

25

STATE'S WITNESS - WITNESS #1, ANNIE YOUNG (RECROSS)

1 RECROSS EXAMINATION OF ANNIE YOUNG BY DEFENSE:

2 Q Annie, did I understand you correctly, you said that he said that he would
3 hurt your Mommy and Daddy if you didn't do it?

4 A Uh huh.

5 Q Did he say what he would do to them?

6 A No.

7 Q He just said he'd hurt them?

8 A What?

9 Q He just said he'd hurt them?

10 A Yeah.

11 Q If you didn't do it?

12 A Uh huh. And I didn't want Mommy and Daddy to get hurt.

13 Q Okay, but you don't know what he would've done to them?

14 A No.

15

16 MS. SCHULTZ: Okay, nothing else.

17 MS. LAUREN WHEATLEY: No further questions, Judge.

18 THE COURT: For the Jury?

19 MS. SCHULTZ: Oh, that, yeah, that'll be fine.

20 MS. LAUREN WHEATLEY: We have no objection.

21 THE COURT: Ms. Bailiff, Joint Exhibit "3" to be exhibited to the

22 jury. Okay, all right, the witness uh, may step down.

23 MS. LAUREN WHEATLEY: Annie, you can come with me. You

24 want to get your Pepsi?

25