

31A01-1703-PC-547

IN THE
INDIANA COURT OF APPEALS

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

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

TRANSCRIPT OF EVIDENCE

VOLUME III OF IV

PAGES 501 TO 750

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22 COURT REPORTER

23 HARRISON SUPERIOR COURT

24 RECEIVED

25 STATE OF INDIANA

CLERK OF COURTS

JUL 17 2009



1 WITNESS: Are we gonna come back?

2 MS. LAUREN WHEATLEY: You don't have to come back today, I
3 don't think. So if you want to get your stuff, that's fine. I'll get all that for you.

4 WITNESS: Can we stay a little bit more?

5 MS. LAUREN WHEATLEY: We may have to.

6 WITNESS: Okay.

7 (OFF RECORD)

8 BENCH CONFERENCE:

9 THE COURT: Well, have you got Bauman next?

10 THE STATE (MS. FLANIGAN): No. Tomorrow, that's...

11 THE COURT: That's the blue version about...

12 THE STATE: Oh my. She's reserved the right to recall Annie. But
13 asked if she would have any intention of doing that today, and she said no. So
14 I'm just gonna let her go home.

15 THE COURT: That's all right, isn't it?

16 MS. SCHULTZ: Yeah, that's fine.

17 THE STATE (MS. FLANIGAN): And uh...

18 THE COURT: Probably kind of need to know when you want to
19 possibly want her back.

20 MS. SCHULTZ: Well, you know, I wouldn't want to, I don't think I'd
21 want to recall her until after you put on the other statements, if you're doing that.

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

23 MS. SCHULTZ: And so when those are all over with, and since I
24 don't know when you're going to be doing that. I mean...

25

1 THE STATE (MS. FLANIGAN): It'll be this afternoon and then
2 tomorrow morning. So if she needs to come out of...

3 THE COURT: It could be tomorrow afternoon?

4 THE STATE (MS. FLANIGAN): Uh, afternoon. So if I could let her
5 aunt and dad know to have her back tomorrow afternoon.

6 MS. SCHULTZ: Or have her available.

7 THE STATE (MS. FLANIGAN): Available. She'll be at school.
8 Missy could probably pick her up at school.

9 THE COURT: I think they can keep her at school until somebody
10 calls.

11 MS. SCHULTZ: Yeah.

12 THE STATE (MS. FLANIGAN): Okay.

13 MS. SCHULTZ: Yeah, that's fine with me.

14 THE COURT: All right.

15 THE STATE (MS. FLANIGAN): And one more thing. I need to
16 go..., I'll tell Lauren to do it. We're gonna call Richard Caves. And you wanted
17 to admonish him about other...

18 THE COURT: Richard...

19 THE STATE (MS. FLANIGAN): Richard, the dad.

20 THE COURT: Oh, okay.

21 THE STATE (MS. FLANIGAN): So you want to admonish him?

22 THE COURT: Yeah.

23 (BENCH TRIAL ENDS)

24 THE COURT: Okay. All right uh, we're gonna stop for just a couple

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STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 of minutes. Uh, go to the uh, you all are gonna be in the jury room. You're not
2 to permit anyone to talk to you or in your presence on any subject matter
3 connected with the trial. It's your duty not to form or express an opinion on the
4 case until it's finally submitted to you. Just a few minutes, ladies and
5 gentlemen. Take a walk. Have a stretch. We'll be back shortly.

6 (JURY EXITS COURTROOM)

7 THE COURT: The jury's outside the courtroom.

8 THE STATE (MS. FLANIGAN): I'll get Richard Caves, Judge.

9 THE COURT: Okay, we'll have a little admonishment about Mr.
10 Caves, needs to make sure he doesn't say...

11 (WITNESS ENTERS COURTROOM)

12 **TESTIMONY OF WITNESS #2: RICHARD CAVES:**

13 THE COURT: Come on up behind the chair up here. Are we on,
14 Karen?

15 COURT REPORTER: Yes.

16 THE COURT: Okay. Uh, you're Richard Caves?

17 WITNESS: Yes.

18 THE COURT: Okay. Mr. Caves, there's some things that uh, that
19 can't be mentioned. And uh, probably the Prosecutor has told you. But I just
20 want to reiterate uh, that certain things you're not to uh, get into. Now one thing
21 you're not to get into is uh, the question of whether uh, Mr. Nunley is in jail or not.
22 You know, you're not to talk about that. You're not to volunteer anything about,
23 "Well, that S.O.B. is in jail", or, "Ed's in jail and that's where he belongs." Or, "I
24 hope he goes to prison", or anything of that kind. All right? Nothing like that.

25

STATE'S WITNESS – WITNESS #2, RICHARD CAVES (DIRECT)

1 WITNESS: Okay.

2 THE COURT: Okay. All right, now let's see, what else do I need to
3 remind him not to talk about?

4 THE STATE (MS. FLANIGAN): Not to mention any possibility that
5 some other children may have been...

6 THE COURT: Oh, there'll be no discussion about any other
7 children that Nunley is accused of molesting other children or child, another child
8 or children, no gratuitous that Nunley has molested three other kids or one other
9 child or that he needs to hang for molesting other children, or that uh, whatever.
10 Nothing.

11 WITNESS: Okay.

12 THE COURT: Along those lines in any way, shape or form about
13 any other children.

14 WITNESS: Okay.

15 THE COURT: Okay?

16 WITNESS: Okay.

17 THE COURT: And then there's not to be any mention of drugs or
18 alcohol uh, use uh, about anybody without my permission.

19 WITNESS: Okay.

20 THE COURT: And if you think that somebody has asked you a
21 question that gets into that, I'm ordering you not to answer the question. All you
22 gotta do is just raise your hand and uh, and then we're gonna come over here
23 and have a private discussion with you and the lawyers about, you know, if you
24 have an issue about something at any point in time when any of the lawyers are

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STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 asking you questions, all you gotta do is raise your hand and say, "Excuse me. I
2 need to talk to you about that, Judge." Uh, and then the lawyers and I and you
3 will have a private discussion over here outside the hearing of the jury.

4 WITNESS: Okay.

5 THE COURT: Okay?

6 WITNESS: Okay.

7 THE COURT: If you have any question at all about whether you're
8 to answer a particular question or anything like that. Uh, or if you need to go to
9 the bathroom, you know, you let me know, okay?

10 WITNESS: Okay.

11 THE COURT: Anything else?

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

13 THE COURT: Anything else we need to remind Mr. Caves about,
14 Susan?

15 MS. SCHULTZ: Not that I recall.

16 THE COURT: Okay, all right. Nothing about kids, nothing about
17 Mr. Nunley being jail, you know, any other alleged victims, him being in jail or
18 anything like that, or deserves to be in jail or whatever. Okay?

19 WITNESS: Okay.

20 THE COURT: Okay, we ready to go then?

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

22 THE COURT: All right. Okay, Sharon, round up the jurors.

23 (JURY ENTERS COURTROOM)

24 THE COURT: Please be seated, ladies and gentlemen. Okay, the

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STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 State, call your next witness.

2 THE STATE (MS. FLANIGAN): The State would call Richard
3 Caves.

4 THE COURT: Mr. Caves, do you solemnly swear the testimony you
5 shall give shall be the truth, and nothing but the truth, so help you God?

6 WITNESS: Yes sir.

7 THE COURT: Okay.

8

9 **DIRECT EXAMINATION OF RICHARD CAVES BY STATE OF INDIANA (MS.
10 FLANIGAN):**

11 Q Mr. Caves, will you tell the jury uh, your name?

12 A My name is Richard Caves.

13 Q Do you know an Annie Young?

14 A Yes.

15 Q How do you know Annie?

16 A She is my uh, step-daughter.

17 Q Okay, when Annie refers to somebody as her Dad, Mr. Caves, would that
18 be you?

19 A Yes.

20 Q Okay. Are you familiar with Ed Nunley?

21 A I'm not too familiar with him, no.

22 Q Okay. So before April the 13th uh, 2007, you had not had any dealings
23 with Mr. Nunley?

24 A No.

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 Q On April the four..., April the 14th, 2007, did you go with Tonya Caves to
2 pick up Annie at Mr. Nunley's house?

3 A Yes.

4 Q Could you tell the members of the jury where everybody was, where you
5 and Tonya were sitting in the car?

6 A Tonya was driving and I was sitting in the passenger seat, and Annie was
7 in her booster seat in the back seat.

8 Q Okay. That's when you picked her up. I'm talking about on your way
9 there. Was it just you and Tonya in the car?

10 A Yes.

11 Q Okay. You were in the passenger seat?

12 A Yes.

13 Q And Tonya was driving?

14 A Yes.

15 Q When you arrived, who went to get Annie?

16 A Tonya.

17 Q Do you know how long she was gone in getting her?

18 A Probably approximately five, a little over five minutes probably, five or ten
19 minutes.

20 Q Do you know what time of the day it was when you...

21 A No, no, I don't.

22 Q When Annie uh, came out of the house and got into the car, can you tell
23 the members of the jury where everyone sat. Again, I know I'm asking
24 again, but to let them know.

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 A Uh, Tonya was driving, I sat in the passenger seat and Annie was in the
2 back seat in her booster seat.

3 Q At that time Annie was six years old?

4 A Yes.

5 Q She was in kindergarten?

6 A Yes.

7 Q Mr. Nunley's house is in Harrison County, Indiana?

8 A Yes.

9 Q Did Annie say anything?

10 A Yes. She said uh, "Mommy, me and Ed has a secret."

11 Q Did you hear her say that, Mr. Caves?

12 A Yes.

13 Q What happened next?

14 A And uh, her Mom kept trying to get her to tell us and she wouldn't do it.

15 And finally Tonya tricked her into telling us. She said that uh, Ed done

16 told the secret, and then she said uh, her Mommy said, "Why don't you go

17 ahead and tell us?" And she said, "I don't want to say it. I'd rather write it

18 down on a piece of paper." So we gave her a piece of paper and a pencil,

19 I think it was. And she wrote down that uh, Ed made her suck her, his

20 weenie-bob and he did something to her pee-pee. I can't remember

21 exactly what it said about the pee-pee though.

22 Q Okay. Mr. Caves, do you have any memory of who gave, may have given

23 Annie the paper?

24 A No, I ain't sure.

25

STATE'S WITNESS – WITNESS #2, RICHARD CAVES (DIRECT)

1 Q Okay. Do you have any idea of who might've given her the pencil?

2 A No.

3 Q When Annie written, finally had written that note, was Tonya driving?

4 A Yes.

5 Q Did Annie hand you the note?

6 A No. She handed her Mommy the note. And uh, Tonya read it, and I knew

7 it was something bad by the expression on Tonya's face, and she

8 wouldn't let me see it right off. And she finally let me read it and, and I

9 read it.

10 Q At that time were you heading from Palmyra up to Pekin?

11 A Yes.

12 Q And when you read the note, can you tell the jury what you read?

13 A It said uh, "Ed made me suck his weenie-bob", and uh, he did something

14 to her pee-pee. I can't remember exactly what was said about the pee-

15 pee deal.

16 Q Once you saw the note, Mr. Caves, what did you do next?

17 A It went through me like a knife. I mean I didn't do nothing. And when

18 Tonya read it, she turned around and went to uh, confront Ed about the

19 situation.

20 Q When you arrived at Mr. Nunley's house, where did Tonya park the car?

21 A Uh, Ed's driveway is like this, so she parked it like right here in the gravel

22 road.

23 Q Could you maybe stand up so..., I don't know if all the members of the jury

24 can see that. Stand up...

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 A Like Ed's driveway is right here, she parked like right here.

2 Q Could you see Ed's house from where she parked the car?

3 A No.

4 Q Did she leave uh, you and Annie in the car?

5 A Yes.

6 Q And did you stay with Annie the entire time?

7 A Yes.

8 Q Okay. Could you see anything Tonya was doing up at the house?

9 A I didn't see, but I heard it. I heard, sounded like something metal hitting
10 something metal. And I heard a bunch of hollering and I couldn't make
11 out the words or nothing. I just could hear a bunch of hollering.

12 Q Okay. How long do you think Tonya was up there?

13 A Ten or fifteen minutes, probably.

14 Q While you were in the car with Annie, did you talk about the note at all?

15 A No.

16 Q Between the time uh, she showed you all the note and you got to Ed's
17 house, did anyone in the car talk about the note?

18 A No.

19 Q When Tonya came back to the car, what did she do?

20 A She was very upset. She got back in the car and uh, we left.

21 Q You uh, did you know where she was headed?

22 A We was going to the police station up in Salem.

23 Q Did you pick Salem because you lived in Pekin?

24 A I don't know why. I mean it was her decision. I told her we ought to come

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 down here, and she said no, that she wanted to go up there. So we did. I
2 think part of the reason why she did it is because that's where they was
3 living.

4 Q Okay. At the time, if you remember uh, you and uh, Tonya were married.
5 Is that correct?

6 A Yes.

7 Q Do you remember if you were actually uh, living in the house with them at
8 the time?

9 A No, I wasn't.

10 Q Okay. But you were still married?

11 A Yes.

12 Q right now uh, let me ask you this. Does Tonya live with you or her mom?
13 Or does Annie live with you or her mother?

14 A She lives with me.

15 Q And how long has she lived with you?

16 A Since August.

17 Q August of '08?

18 A Yes.

19 Q When you got to the Salem Police Station uh, what happened when you
20 got there? Tell the jury what happened.

21 A We walked in and there's a lady there kind of at a window, at a desk. And
22 Tonya told her the situation and told her we needed to talk to somebody.
23 So they called a state trooper in. He had to come from Livonia. We had
24 to wait probably forty-five minutes to an hour before we came. We told

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STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 him what happened. Then he talked to us, all three of us, and Annie told
2 him what happened. And then he wanted to talk to Annie by herself. And
3 then Annie wanted her Mommy back in there, so he let her Mommy go
4 back in there with her. And they, he wrote down everything and
5 interviewed her, and then we left.

6 Q Okay. Let me break that down a little bit. When you talk about the Salem
7 Police Department, are you talking about the Washington County Sheriff's
8 Office?

9 A Yes.

10 Q And do you remember if the trooper that came was a Kevin Bowling?

11 A Yes.

12 Q And you described that the three of you talked to him at first.

13 A Yes.

14 Q Okay, and then he decided to interview Annie alone?

15 A Yes, yes.

16 Q That didn't work out so well, did it?

17 A No.

18 Q She wanted her Mom in there?

19 A Yeah.

20 Q Where was the note during this time? Who had the note?

21 A Tonya had it. And then we got to the police station and when the officer
22 came in, I'm pretty sure she gave it to him.

23 Q Okay. So you were not able to hear anything that Annie might've told the
24 police officer about this incident?

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (DIRECT)

1 A No. I was, I mean I didn't want to hear it again.

2 Q Since that time, Mr. Caves, have you talked to Annie about this?

3 A No.

4 Q So there's no time that you, as you sit here today, you can tell the
5 members of this jury that there's no time that you discussed this matter
6 with Annie?

7 A No, because she don't bring it up and I don't mention it. I mean she's a
8 kid. Let her live her happy life.

9

10 THE STATE (MS. FLANIGAN): That's all I have, Judge.

11

12 BENCH CONFERENCE:

13 THE STATE (MS. FLANIGAN): I think that goes beyond the
14 motion...

15 MS. SCHULTZ: (Unintelligible).

16 THE COURT: Do what?

17 MS. SCHULTZ: That is addressed in the motion for limine.

18 THE COURT: I'm sorry?

19 THE STATE (MS. FLANIGAN): Annie said her mother is the only
20 one that... (unintelligible)..., that she needed to go to school.

21 THE COURT: Okay. Uh, it's really question that's not to be asked.
22 And then after, of course, you can make a record on anything you want to uh, go
23 into about that. Uh, all right?

24 MS. SCHULTZ: I don't know what...(unintelligible) ask him about.

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 THE COURT: I understand.

2 (BENCH CONFERENCE ENDS)

3 THE COURT: Okay. Uh, ladies and gentlemen of the jury, you'll
4 remember in Instruction "19" I mentioned to you that uh, during the trial the court
5 may rule that certain questions may not be answered or allowed into evidence.
6 And the latest question is uh, one of those questions that uh, that is not uh, is not
7 gonna be answered. Okay. All right, any other questions from the State?

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

9 THE COURT: Uh, cross examination?

10 MS. SCHULTZ: Thank you.

11

12 **CROSS EXAMINATION OF RICHARD CAVES BY DEFENSE:**

13 Q Mr. Caves uh, back on April the 14th, 2007, you indicated you went with
14 Tonya to pick Annie up?

15 A Yes.

16 Q Were you also with her when she dropped Annie off the night before?

17 A No.

18 Q And how did it happen that you were with her to pick her up on, on the
19 14th?

20 A Because I had the car, and she called me and told me we had to go pick
21 up Annie from Ed's.

22 Q Okay. And you don't recall what time of the day that was?

23 A No.

24 Q Do you know if it was before noon?

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 A No, I don't remember. The only thing I remember about that day it was
2 raining, I think. It was gloomy out and I think it was raining.

3 Q Okay. So when you got there, did you go into Ed's house with Tonya to
4 pick her up?

5 A No.

6 Q Did Tonya go inside the house?

7 A I don't think she went in the house, no. I think she was just on the front
8 porch.

9 Q Okay. And when she got Annie, was, did Annie bring any personal items
10 out of the house with her?

11 A Her uh, clothes that she had, her pajamas and her outfit of clothes that
12 she wore over there the night before.

13 Q And did she have them in some kind of a container?

14 A They was in a Jay C bag, I believe.

15 Q Like a plastic grocery bag that you're talking about?

16 A Yeah.

17 Q Okay. You don't remember seeing a suitcase?

18 A No.

19 Q Do you know, let me rephrase that. When you went to pick Annie up, did
20 you pull into Ed's driveway so that you could see the house from where
21 you were in the car?

22 A Where I was, I couldn't see the trailer because we was parked behind
23 Ed's truck. And I couldn't see. I mean I could see the, I couldn't see the
24 front door. I mean I could see the trailer, but I couldn't see the front door.

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 Q Oh, okay. So when, when you went there, Tonya was driving when you
2 went there. Is that right?

3 A Yeah.

4 Q And you pulled, she pulled up behind Ed's truck. You, you stayed in the
5 car while she went to retrieve Annie?

6 A Yes.

7 Q You could see the house, but not the front door?

8 A Yes.

9 Q So you're not sure if she went in or not because you weren't in a position
10 to see whether she did or not?

11 A Uh, she, I'm pretty sure she didn't go in.

12 Q And did you see or hear any conversations going on at that point between
13 her and Ed?

14 A I didn't hear nothing, no. Not then.

15 Q Did you, did you see Ed at all when you went to pick Annie up?

16 A No.

17 Q When Annie came out of the house, how was she acting?

18 A I knew something was going on with her by the way she acted. I mean
19 she had that look on her face and uh, like she was trying to hide
20 something. I mean I could tell because I've been around her since she
21 was thirteen months old.

22 Q So what kind of a look are we talking about here?

23 A Like a scared look.

24 Q And you've seen that look on her face before?

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 A Yes. Like when she's going to get in trouble or something like that.

2 Q When she's going to get in trouble?

3 A Well, she's, like bringing a bad note home from school or something and
4 she don't want me to read it or something like that. Then she acts like she
5 gets afraid because she thinks she's gonna get a whooping.

6 Q Okay.

7 A Or grounded.

8 Q Well, you certainly wouldn't whip her for doing, for something like this
9 happening, would you?

10 A No. Lord, no.

11 Q And when you went to pick her up that day, what kind of a mood was
12 Tonya in?

13 A She seemed like she was in a good mood.

14 Q Generally cheerful mood?

15 A Yeah.

16 Q And when she came back and got into the car after getting Annie from
17 Ed's house, what kind of a mood did she appear to be in?

18 A She acted like she was in the same mood as she was before?

19 Q Did she exhibit any signs of anxiety or anything at that point?

20 A No.

21 Q No behavior changes from when...

22 A No.

23 Q She was in the car before she picked her up. Okay, so you head back, all
24 three of you were in the car when you leave.

25

STATE'S WITNESS – WITNESS #2, RICHARD CAVES (CROSS)

1 A Yes.

2 Q And after you left, can you give me an estimate of how long it was that
3 you were in the car driving before Annie started talking about the secret?

4 A We probably wasn't two or three minutes down the road.

5 Q And did that conversation go on for a little bit about the secret?

6 A No.

7 Q If I understood you correctly earlier, you said that Tonya kind of tricked her
8 into revealing the secret?

9 A Yes.

10 Q And, and explain again how that happened.

11 A Well, Annie said that her and Ed had a secret. And Tonya kept saying,
12 "What is it? What is it?" And she wouldn't tell us. Then uh, finally she
13 said, "Oh, I done know about it. Ed done told me the secret. What is it,
14 you know, to make sure it's the same thing that Ed told me." And uh, she
15 said, "I don't want to say it. I want to write it down on a piece of paper."

16 Q And the paper that she wrote on, was it an envelope?

17 A No.

18 Q What kind of a paper was it?

19 A I think it was a, like a previous paper that one of us had written down
20 directions on to go somewhere, and it was in the paper, I mean it was in
21 the car.

22 Q Okay. So it was just a scrap of paper that was in the car?

23 A Yeah.

24 Q And did you ever have that piece of paper actually in your hand and look

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 at it?

2 A I had it in my hand when I read the note, yes.

3 Q And were you able to read the note and understand what the note said?

4 A Yes.

5 Q You didn't have to ask Annie to interpret it for you?

6 A No.

7 Q And during the time she was writing the note, did she ask you for any
8 assistance in spelling to write the note?

9 A No.

10 Q Did she ask her mother for any help in spelling to write the note?

11 A No.

12 Q So she just wrote the note on her own and you and her mother would've
13 had no hint from her as to what was going into the note while she was
14 writing it?

15 A No.

16 Q And then when she finally got the note completed and gave it to her
17 mother, can you give me an estimate of where you were, how far away
18 you were from Ed's home at that point?

19 A Well, we was probably, we was around Short's Corner.

20 Q Okay, are you talking about the Shorts Corner where it intersects Highway
21 135?

22 A Yeah.

23 Q North of uh, Palmyra?

24 A Yes.

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 Q And can you give, can you estimate for me how many miles that is from
2 Palmyra?

3 A Probably, I'd say it's about five miles probably, six miles.

4 Q Okay. So it's across into Washington County, correct?

5 A Yes.

6 Q And what did Tonya do after she wrote the note?

7 A Well, I could tell it was something bad by the reaction on her face. And
8 she, I mean she just acted like she was mad and didn't know what to do.
9 And then I said, "What is it? What is it?" And we went down the road and
10 she kept saying, "Nothing, nothing." Then she finally gave me the note
11 and let me read it.

12 Q So, up until the time when she gave you the note to let you read it, she
13 continued driving down the road?

14 A Yeah.

15 Q And going further away from Palmyra?

16 A Yes.

17 Q And after you read the note, what happened? Did you make any
18 suggestions to her as to what you should do or anything?

19 A No. Yeah, I did. I said, "We need to go to the police station right, I mean
20 as soon as possible." That was the only thing I said.

21 Q And did she indicate that she agreed to you with that suggestion?

22 A Do what now?

23 Q Did she give you any indication that she agreed with your suggestion, that
24 you should go to the police?

25

STATE'S WITNESS – WITNESS #2, RICHARD CAVES (CROSS)

1 A She never, no, she never said nothing. Then she just turned the car
2 around out of nowhere. I said, "What are we doing?" And she said that
3 she was gonna go ask Ed about this.

4 Q Okay. So the decision to go back to Ed's house was Tonya's and not
5 yours?

6 A Yes.

7 Q She did not consult with you or discuss it with you before she went back?

8 A No.

9 Q And she drove immediately back to Ed's house?

10 A Yes.

11 Q Didn't stop anyplace along the way or do anything else?

12 A No.

13 Q Okay. And when you got there, she parked the car uh, down the road a
14 little bit from the driveway?

15 A Yes.

16 Q And are there trees, or is there other growth there that prevents you from
17 seeing the house from where the car is parked?

18 A Trees.

19 Q Okay. And while she was gone up to the house, did you stay in the car
20 the entire time?

21 A Yes, with Annie.

22 Q And you, neither you nor Annie got out of the car at all?

23 A No. Annie didn't get out of the car, no.

24 Q Okay. And do you recall approximately how long she was gone?

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 A I'd say probably five or ten minutes, I'd say.

2 Q And during that period of time was when you heard the loud crashing...

3 A Booming and hollering, that was all I heard.

4 Q And could you understand any of the words that she was saying?

5 A No.

6 Q Now, Mr. Caves, do you have normal hearing?

7 A No.

8 Q Okay, you've not ever been diagnosed as being hard of hearing or
9 anything?

10 A No.

11 Q And a person with normal hearing that was in your uh, position that day
12 would probably not have heard the individual words?

13 A No.

14 Q Okay. So then after, after all this happened, did you ever see Ed during
15 this incident?

16 A I never seen him, no. Because, like I said, I was in the car with Annie and
17 there was trees blocking. I couldn't see. Like I said, all I heard was noise
18 and hollering.

19 Q Okay. So it sounds to me, my conclusion is, from what you've told us
20 today, that you never actually saw Ed at all that day. Is that right?

21 A Yes.

22 Q Okay. You, she came back to the car. Is that right?

23 A Yes.

24 Q Did she bring the baseball bat back with her?

25

STATE'S WITNESS – WITNESS #2, RICHARD CAVES (CROSS)

1 A Yes.

2 Q And did you see where she got the baseball in the first place?

3 A It was in the back floorboard and I didn't know nothing, I didn't even know
4 it was back there.

5 Q It was in the back seat of the car is what you're talking about?

6 A It was in the back floorboard.

7 Q Okay. And whose car was this?

8 A Tonya's.

9 Q Oh, all right. Okay. I misunderstood you earlier. I thought you had
10 explained that you had the car and she...

11 A I had the car that next day because I was working. We wasn't together,
12 but she was letting me use the car to get back and forth to work.

13 Q Oh, I see, okay. So even though you weren't living together as husband
14 and wife, you still shared the car?

15 A Yes.

16 Q All right. Okay. And after you left Ed's house, you went promptly to the
17 police station?

18 A Yes.

19 Q And when you got there, or on the way there, where was the note when
20 you were on the way there?

21 A Tonya had it in her hand the whole time.

22 Q Okay. And was there any conversation going on in the car on the way to
23 the police station?

24 A Just saying that we couldn't believe this happened to her, to Annie, and

25

STATE'S WITNESS – WITNESS #2, RICHARD CAVES (CROSS)

1 we needed to get, do something about it. That's why we was going to the
2 proper authorities.

3 Q Okay. Was there any discussion at all of any of the details of the
4 incidents that had happened to Annie?

5 A No.

6 Q So by the time you arrived at the police station, did you know anything
7 about the incident other than what Annie had put in the note?

8 A No.

9 Q And when you went into the police station, I believe you indicated you had
10 to wait awhile for the state trooper to get there.

11 A Yeah.

12 Q And during the time that you were waiting, did you have any discussion
13 about this incident with Annie or with uh, Tonya?

14 A No.

15 Q And when the police officer came, the three of you went in to talk to him
16 initially together?

17 A Yes.

18 Q And was that in some kind of a conference room or something at the
19 police station?

20 A It was like in a little office type deal.

21 Q So it had a desk and a couple of chairs in there?

22 A Yeah.

23 Q And the three of you went in there?

24 A Yes.

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 Q And at that point in time, when you went in, where was the note?

2 A In..., Tonya had it. I think, if I recall, as soon as we walked in that room,
3 that's when she gave the note to the cop.

4 Q Okay, immediately gave it to him?

5 A Yes.

6 Q And after you went to the police station that day, did you ever see the note
7 again?

8 A No.

9 Q Did Tonya ever tell you what she had done with the note?

10 A No.

11 Q Were there any conversations that you heard in the police station where
12 Annie detailed anything that happened to her other than what was written
13 in the note?

14 A When we all three went in there, yes, that's when she told the cop details.

15 Q Okay. So you were actually there when the details were provided to the
16 police officer?

17 A Yes, the first time.

18 Q The first time.

19 A Then he wanted to interview her again by herself. And I didn't hear that
20 one.

21 Q All right. Were you in the room at the time when uh, Tonya explained to
22 the police officer the incident at Ed's house when she used her baseball
23 on his motorcycle and truck?

24 A Yes.

25

STATE'S WITNESS – WITNESS #2, RICHARD CAVES (CROSS)

1 Q So you heard that part?

2 A Yes.

3 Q And at the time that this happened, was Annie living with you at that
4 point?

5 A No, she was living with her mom. But I was getting her like on the week-
6 ends and stuff like that.

7 Q Okay. Were, did any of the police officers ever contact you for any follow-
8 up on this investigation?

9 A No. They didn't me, no.

10 Q They did not you, all right. And since this uh, report to the police officer on
11 April the 14th, has, has there been any occasion when you've been in the
12 room where Annie has talked about the details of what happened to her?

13 A No.

14 Q Have you ever talked to her about what she should say when she goes to
15 talk to these various people that interview her?

16 A No.

17 Q And do you to this day know the details of everything that happened to
18 her?

19 A I remember some parts as she told that cop, yes. But I, I mean I don't, I
20 didn't, I try not to hear everything, because what I heard was bad enough.

21 Q Okay. It's an unpleasant thing for a parent to hear...

22 A Yes.

23 Q When they tell those things.

24 A Yes.

25

STATE'S WITNESS - WITNESS #2, RICHARD CAVES (CROSS)

1 Q And she has never talked to you about it.

2 A No.

3 Q She's never mentioned the details?

4 A No.

5

6 MS. SCHULTZ: Thank you. I don't have any other questions.

7 THE STATE (MS. FLANIGAN): The State has no redirect, Judge.

8 THE COURT: Okay. Uh, it bears reminding that you can't ask
9 questions of a witness once they leave, because usually they're gone, not to
10 come back. That's not a hundred percent true, but oftentimes it is. So, ladies
11 and gentlemen of the jury have any questions for this witness? No. All right,
12 thank you very much, sir. Next witness?

13 THE STATE (MS. FLANIGAN): The State will call Tonya Caves,
14 Judge. But I think you wanted to talk to her before, outside the presence of the
15 jury too.

16 THE COURT: Okay. So you're gonna be in the jury room for just a
17 couple of minutes. It won't be long. It won't be long enough for you to take a
18 walk probably. So, during this recess, it's your duty not to permit anyone to talk
19 to you or in your presence on any subject matter connected with this trial. It's
20 your duty not to form or express an opinion on the case until it's finally submitted
21 to you.

22 (JURY EXITS COURTROOM)

23 **TESTIMONY OF WITNESS #3, TONYA CAVES:**

24 THE COURT: All right. Okay, we on, Karen?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 COURT REPORTER: Yes.

2 THE COURT: Okay. Uh, all right, Ms. Caves, good afternoon.

3 WITNESS: Good afternoon.

4 THE COURT: Now, Ms. Caves, there's some things that you
5 cannot talk about. Uhm, and they fall into categories. Number one, you cannot
6 talk about Ed Nunley's jail, or he's in prison, or he ought to be in prison or he
7 ought to be in jail, or he ought to rot in hell or anything of that kind. None of
8 those comments are appropriate. Even if you think, this is a free country. You
9 can think anything you want to. But while this trial is going on, there's some
10 things that you cannot bring up, okay? So don't bring up any jail stuff or any
11 prison stuff or anything like that.

12 WITNESS: Okay.

13 THE COURT: You got that?

14 WITNESS: Yes sir.

15 THE COURT: Now there's a second thing that you cannot bring up,
16 and that is you cannot refer to uh, Ed Nunley molested other girl or girls, or he
17 uh, did the same or similar things to some other girl or girls. None of that at all,
18 period.

19 WITNESS: Yes, your Honor.

20 THE COURT: You understand that?

21 WITNESS: Yes, your Honor.

22 THE COURT: Now, that's the case, even if you think that one of the
23 lawyers ask you a question that that's the right answer to it, you still cannot say
24 that unless I give you permission to do so.

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STATE'S WITNESS – WITNESS #3, TONYA CAVES (DIRECT)

1 WITNESS: Okay.

2 THE COURT: Now you understand that?

3 WITNESS: Yes, your Honor.

4 THE COURT: Now, one more thing, if you think that there's
5 something that you have to say that might be a problem, you just raise your
6 hand, you don't even have to say anything, just raise your hand up in the air and,
7 and uh, we'll have a private conversation over here, you and I and the lawyers.

8 WITNESS: Okay.

9 THE COURT: Okay?

10 WITNESS: Okay.

11 THE COURT: All right. Anything at all, any question whatsoever,
12 any concern that you have whatsoever, if you have a concern about anything,
13 raise your hand and we'll talk about it, okay?

14 WITNESS: Okay.

15 THE COURT: So that the jury can't hear.

16 WITNESS: Okay.

17 THE COURT: Okay, now is there anything else we need to, any
18 other warnings or admonishments that the State needs me to give to Ms. Caves?

19 THE STATE (MS. FLANIGAN): Not that I know of, Judge.

20 THE COURT: Uh...

21 MS. SCHULTZ: I don't believe so.

22 THE COURT: Oh, I know. One other thing, we're not gonna talk
23 about where you live, we're not gonna talk about whether or not you use alcohol
24 or drugs or anything like that on the day that you picked up Annie from Mr.

STATE'S WITNESS – WITNESS #3, TONYA CAVES (DIRECT)

1 Nunley's house and went back and allegedly beat the motorcycle, car, house,
2 whatever in front of him. We're not gonna talk about whether you were using
3 drugs or alcohol or anything like that. Uhm, none of that kind of stuff.

4 WITNESS: Okay.

5 THE COURT: No discussion about alcohol or drugs unless I say
6 so. No discussion about other girls, no discussion about Ed Nunley uh, he's in
7 jail or ought to be in jail or anything of the kind.

8 WITNESS: Okay.

9 THE COURT: Is there anything else? Let's see, were there any
10 other uh, we're not gonna talk about where you work or where you worked.
11 We're not gonna talk about you getting into any fights with uh, with uh, with
12 Richard. None of that kind of stuff. Okay?

13 WITNESS: Okay.

14 THE COURT: And if anybody asks you that question, just raise up
15 your hand and we'll talk about it first.

16 WITNESS: Okay.

17 THE COURT: Okay?

18 WITNESS: Okay.

19 THE COURT: All right. Anything, Ms. Schultz?

20 MS. SCHULTZ: Nothing else.

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

22 THE COURT: All right. You ready to bring the jury in? Okay, bring
23 them in. Again, I mean if you want to go into certain things, just let me know
24 what it is you want to go into, Susan, and we'll do that. Okay?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 MS. SCHULTZ: Okay.

2 THE COURT: The Court is instructing the defendant, if they want to
3 go into certain things, just ask me first, and uh, that's just a temporary ban on
4 certain things, unless and until somebody wants to go into something, and then
5 we'll see.

6 (JURY RETURNS TO COURTROOM)

7 THE COURT: Please be seated, ladies and gentlemen. Okay, the
8 State calls its next witness.

9 THE STATE (MS. FLANIGAN): The State will call Tonya Caves.

10 THE COURT: Ms. Caves, raise your hand to be sworn. Do you
11 solemnly swear the testimony you shall give shall be the truth, and nothing but
12 the truth, so help you God?

13 WITNESS: Yes, your Honor.

14 THE COURT: Okay. Now speak up so that people can hear you,
15 all right?

16

17 **DIRECT EXAMINATION OF TONYA CAVES BY STATE OF INDIANA (MS.
18 FLANIGAN):**

19 Q Ms. Caves, you've got to speak up so I can hear and all these folks can
20 hear you, okay?

21 A Okay.

22 Q Ms. Caves, how are you related to Annie Young?

23 A She's my daughter.

24 Q What is her date of birth?

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (DIRECT)

1 A Six-twenty-four, two-thousand.

2 Q How old is she now?

3 A Eight.

4 Q On April the 13th, 2007, how old was Annie?

5 A Seven.

6 Q Think again.

7 A Six, sorry.

8 Q Okay. When she was six, would she have been uh, in kindergarten?

9 A Yes.

10 Q And can you tell the members of this jury if Annie could write when she
11 was in kindergarten?

12 A Not very well. Just like she could sound things out when she wrote things
13 out. But she couldn't spell correctly.

14 Q But she could actually...

15 A But she could actually write, yes.

16 Q She could write out words?

17 A Yes.

18 Q All right, and that would be kind of phonetically spelled out?

19 A Right.

20 Q She'd gone to preschool? Is that right?

21 A Yes.

22 Q So she'd had some formal education before kindergarten?

23 A Right.

24 Q And actually she would've been a little older than your normal

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 kindergartner. Is that right?

2 A Yes.

3 Q She would've started a year late maybe?

4 A Right.

5 Q So when we say kindergarten, she was really the age of a first grader?

6 A Right.

7 Q Do you know Richard Caves?

8 A Yes.

9 Q And is Richard Caves who Annie would consider her father?

10 A Yes.

11 Q If Annie was in here talking to the jury about her Dad or Daddy, would that
12 be Richard Caves?

13 A Yes.

14 Q Was he the gentleman here at the courthouse today?

15 A Yes.

16 Q Did there come a time on April the 13th, 2007, Mrs. Caves, that Annie
17 asked you if she could spend the night somewhere?

18 A Yes.

19

20 MS. SCHULTZ: Objection, leading question.

21 THE STATE (MS. FLANIGAN): Let me rephrase that.

22

23 STATE RESUMES DIRECT EXAMINATION OF TONYA CAVES:

24 Q Let me rephrase that. On April the 13th, 2007, did Annie ask you to do

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 anything special?

2 A She had been wanting to spend the night somewhere, yes.

3 Q And where was that?

4 A At Ed Nunley's house.

5 Q Do you see Ed Nunley here in the courtroom today?

6 A Yes.

7 Q Can you point him out for the jury?

8 A Right there.

9 Q Can you...

10

11 THE STATE (MS. FLANIGAN): Judge, could the record reflect
12 she's pointed out the defendant?

13 THE COURT: Any objections?

14 MS. SCHULTZ: No, Judge.

15 THE COURT: The record will reflect the witness has pointed out
16 the defendant.

17

18 STATE RESUMES DIRECT EXAMINATION OF TONYA CAVES:

19 Q Did Annie know uh, somebody else who stayed at Ed Nunley's house?

20 A Yes.

21 Q Tell the jury who that was.

22 A Uh, her nickname was Kiki. I believe her real name is Kristen. And on
23 occasion she would watch Annie for me. And she was just, Annie loved
24 her to death. She loved going over there.

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 Q Do you know how Kiki would be, was Kiki related to Mr. Nunley?

2 A No, I don't think so. It was his son's girlfriend.

3 Q So would it be a son, which son?

4 A Kyle.

5 Q Kiki was Kyle's girlfriend?

6 A Yes.

7 Q Do you know approximately what age Kyle and Kiki were?

8 A Kiki was almost eighteen, seventeen. I think Kyle was maybe sixteen. I'm
9 not for sure, positive of his age.

10 Q When uh, Annie asked you to spend the night over at Ed Nunley's house,
11 did you expect that Kiki would be there?

12 A Yes.

13 Q And when you arrived there, do you remember if she was there or not
14 there?

15 A She was not there right then, but she was supposedly on her way.

16 Q Did anyone tell you that?

17 A Yes.

18 Q Who told you that?

19 A Ed Nunley.

20 Q So Ed indicated to you that Kiki would be there shortly.

21 A Yes.

22 Q At the time, did Ed Nunley live in Harrison County, Indiana?

23 A Yes.

24 Q Were you uh, friends with Ed at the time?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 A Yes.

2 Q Do you remember, Mrs. Caves, if you brought clothes for Annie that
3 night?

4 A Yes.

5 Q Do you remember how they would've been packed?

6 A In a Walmart sack.

7 Q Do you remember what was in the sack?

8 A Just an extra change of clothes, an extra change of clothes for the next
9 day. I can't remember if I packed pajamas or not. I would say that I did.

10 But I can't remember specifically if I did or not.

11 Q Did you go to pick up Annie the next day?

12 A Yes.

13 Q Do you remember about what time that was?

14 A It was around noon or a little after.

15 Q Who went with you to pick up Annie?

16 A Richard.

17 Q How is it that you ended up going with Richard, if you remember?

18 A We were maybe trying to work things out in our marriage at the time.

19 Q Okay. Uh, did Richard have the car that day?

20 A It was my car.

21 Q Okay, would Richard have had the car that day, if you remember?

22 A I don't remember.

23 Q So you don't remember where the car was when you took...

24 A I know I had the, I had the car. It was my car.

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 Q Okay. And Richard, do you think Richard would've been at your house
2 that day?

3 A Yes, he was at my house that morning, yes.

4 Q Uhm, when you arrived at Mr. Nunley's house, where did you go?

5 A I went in to get Annie.

6 Q What happened then?

7 A Not much. I just picked her up and I was there just a few minutes and left.
8 When I come in, she was, you know, bummed out about having to leave,
9 and just like a kid would be, and nothing significant happened. You know,
10 he told me he, she had a bath and what-not. And nothing significant at
11 that time.

12 Q Did you and Annie then leave and go get in the car?

13 A Yes.

14 Q Were you driving the car?

15 A Yes.

16 Q Uh, do you remember where Richard was in the car?

17 A He was in the passenger seat.

18 Q Where was Annie?

19 A In the back seat, in a booster.

20 Q Did Annie say anything to you when you got to the car?

21 A Not immediately, she didn't. It was later as I got down the road. She told
22 me that her and Ed had a secret. And I asked her what the secret was.
23 And she said she couldn't tell me. So I played the reverse psychology on
24 her, and I said, "That's okay. I know what the secret is." And of course,

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 that made her want to tell me. And, but she told me that she couldn't
2 speak it. So I gave her a pen and paper and she wrote it down.

3 Q Do you remember who gave her the pen?

4 A I can't remember if I gave her the pen and paper, or if Richard gave the
5 pen and paper. I can't remember that specifically. If I remember
6 correctly, maybe it was both of us. You know, "I need a pen and paper." I
7 can't remember exactly. But I know one of us gave her a pen and paper.

8 Q How long do you think it took Annie to write this note, Mrs. Caves?

9 A Maybe three, four minutes, if that long.

10 Q Did either you or Richard tell Annie what to write in that note?

11 A No.

12 Q Did you help her write the note in any way?

13 A No.

14 Q After Annie finished writing the note, who did she give it to?

15 A She handed it to me.

16 Q Were you driving at the time?

17 A Yes. I did kind of the reach-around like that, glancing at her in the
18 rearview when she handed it to me.

19 Q When you saw the, when you saw the note, were you able to read what
20 Annie had written on it?

21 A Yes.

22 Q Would you tell the members of the jury what the note said?

23 A I can't remember her exact words, but it was, "He licked my pee-pee", and
24 something to the extent of sucking his weenie-bob.

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 Q Would "weenie-bob" have been a word that Annie would've used to
2 describe penis at that...

3 A Yes.

4 Q It's something you'd heard her say before?

5 A Right. She had an older brother and, you know, two kids in a household,
6 and he referred to it as the weenie-bob.

7 Q So that's not something she just came up with that day?

8 A No.

9 Q When you saw this note, Mrs. Caves, what did you do next?

10 A At first it threw me, it shocked me, and I had, it took me a minute to kind of
11 get my bearings, so to speak. And I drove for a little bit and just held the
12 note. And I decided to turn around and go back to Ed's.

13 Q At some point did you show the note to Richard?

14 A Yes.

15 Q When you were still driving up towards Pekin?

16 A I can't remember if I showed it to him before I turned around or after. But
17 I know I was driving.

18 Q Did you speak anything to Richard when you showed him the note?

19 A At that time, I didn't have a whole lot to say, other than I was going back
20 to confront Ed.

21 Q Do you know, as you sit here today, did Richard see what was on that
22 note?

23 A I know he seen it.

24 Q You were going to head back and confront Mr. Nunley?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 A Yes.

2 Q When you got back there, where did you park the car?

3 A I didn't park it in his driveway. (Witness is crying). I parked...,there's this
4 road, in the road more or less, I parked off the road a little ways. I didn't
5 pull into his driveway. That way Annie couldn't see up into everything that
6 was going on.

7 Q So it was your intention to confront Mr. Nunley.

8 A Yes.

9 Q And you didn't want Annie seeing that.

10 A Right.

11 Q Did you take anything with you?

12 A Yes.

13 Q What did you take?

14 A A bat.

15 Q Where did you get the bat?

16 A It was in my car. Just a baseball bat.

17 to his house, Mrs. Caves?

18 A I wanted him to come out. I'm sorry.

19

20 THE COURT: Come up here. Let's talk.

21

22 BENCH CONFERENCE:

23 WITNESS: ...about what I did to his motorcycle or anything in

24 answer to the question.

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 THE COURT: You can, no, you can, no, you can talk about..., it's
2 been alleged that you took a baseball bat to his...

3 WITNESS: So I have to say I...

4 THE COURT: No.

5 WITNESS: I'm sorry.

6 THE COURT: It's been, it's been said that you took a baseball bat
7 to his motorcycle, to his truck, to the windows to the side of the..., I don't know,
8 what and all. That's fine. You can talk about that.

9 WITNESS: Okay. I'm sorry. I didn't...

10 THE COURT: That's all right.

11 (BENCH CONFERENCE ENDS)

12

13 STATE RESUMES DIRECT EXAMINATION OF TONYA CAVES:

14 Q Mrs. Caves, when you got out to Mr. Nunley's house, what did you do?

15 A I tried to get him to come out and he wouldn't come out.

16 Q Let me stop you there. How did you try to get him to come out?

17 A I don't remember. Honestly, I don't. All I remember is beating on his
18 motorcycle with the baseball bat when he wouldn't come out, because I
19 thought for sure that would get him to come out of the house, because I
20 felt like the motorcycle..., it was sitting, it was sitting within ten feet of his
21 living room window, in a trailer, and I felt like that he would definitely hear
22 somebody beating on his motorcycle, and he would come out to at least
23 see what was going on.

24 Q Mrs. Caves, at that time, were you saying anything?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 A At the time I was beating on the bike, I don't honestly, I don't really
2 remember if I was saying something. But more than likely, I was saying
3 something. I was probably screaming at him to come out.

4 Q Did you uh, take the baseball bat to any other of his property?

5 A His truck.

6 Q Tell the jury what you did to his truck?

7 A I just, I just uh, beat the window, beat the windows out of the truck. And I
8 think that's all I did.

9 Q Do you remember at any time when you, anything you may have said?

10 A Uh, I took the bat and I beat on his door with it, after he still didn't come
11 out. And I was screaming then for him to come out. And finally he
12 opened the door just a tiny bit and asked me what I was doing. And I told
13 him that he knew why I was there. You know, I just expressed my
14 disbelief that he could do that. (Witness is crying). And he acted, he
15 acted like he didn't know what I was talking about. So I told him, "You
16 molested my daughter."

17 Q Do you remember any other things you might've said to him?

18 A That's basically it. I mean probably not in those exact words. I know not
19 in those exact words. But basically the conversation was, "You molested
20 my daughter. I can't believe you did this. And you need to come out
21 here."

22 Q Let me ask you this, are you not telling the members of the jury what you
23 said...

24 A Do you want me to tell you?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 Q I, I do want you to.

2 A I told him that he fucking molested my daughter and he needed to come
3 out.

4 Q Okay, did he come out?

5 A Yeah, after he told me to back off of the porch and that he would come
6 out, and that's when he come out.

7 Q Was anything said then?

8 A Yeah, we had words with each other. I can't remember exactly what. I
9 had the bat and he wouldn't get too close to me. And I just kept
10 screaming at him because I couldn't believe he done it. (Witness is
11 crying. And I just kept screaming at him because I couldn't believe he
12 done it. And he kept saying that he didn't do it.

13 Q At some point, Tonya, did you decide to leave?

14 A Yes.

15 Q Okay, tell the members of the jury what you did.

16 A I was, I wasn't there a long time because when, when something like
17 that's going on, it doesn't take a whole lot of time to do the things that I
18 did. And finally I was about to the point of exhaustion trying to..., I just
19 wanted him, to hear him admit it to me. And finally I left and I told him I
20 was leaving. And he said, "You can't leave. You're going to jail for what
21 you done." And I told him that that was fine, that I would go to jail for what
22 I had just done, but he was gonna go to jail too for what he did to my
23 daughter.

24 Q At some point did you, did you wait for the police to come?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 A Yes. Whenever I went to pull, before I pulled out onto Highway 135, I
2 waited at the end of his road for a good twenty minutes, waiting for the
3 police officers to arrive. That way, if he did call them, I wasn't trying to run
4 and hide from them. You know, I was gonna tell them, "Yes, I did it, and
5 this is why I did it." (Witness is crying). And they never showed up, so I
6 left.

7 Q Where did you go?

8 A I went to Washington County Police Department because I lived in Pekin
9 at the time. And I, I took her there to give a statement, and, but I waited
10 there for a long time because I asked for a state police officer, because I
11 knew that there would be, since I lived in Washington County and it
12 happened in Harrison County, I knew it would have to be reported to the
13 State Police instead of the County.

14 Q Did a State Police..., let me ask you this. On the way from Mr. Nunley's
15 house up to the Washington County Sheriff's Office uhm, did you and
16 Richard talk about what happened?

17 A Yes.

18 Q What did you talk about?

19 A We talked about what our next move should be. You know, what we had
20 to do, just things like that.

21 Q Did you discuss the details of what was written in the note?

22 A No, I did not say that out loud. It was on paper. We could both read it.
23 We didn't have to say that out loud.

24 Q Did at any time...

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (DIRECT)

1 A I did ask Annie if there was any more. I remember asking her that. And
2 she said no.

3 Q Did you uhm, tell Annie what to tell the police?

4 A No, I did not. I told her to tell the police officer the truth. I told her not to
5 exaggerate on it, not to add anything to it. I expressed as greatly as I
6 could how important it was for her to tell nothing but the truth to the police
7 officer when she gave her statement.

8 Q When you got to the police station, did you speak to the Indiana State
9 Police?

10 A Yes.

11 Q And uh, how, you said it took awhile for the officer to come?

12 A Yeah.

13 Q Do you remember..., it was not Detective Wibbels who's here in the
14 courtroom?

15 A No.

16 Q Was it uh, Officer, was it uh, Trooper Kevin Bowling?

17 A Kevin Bowling.

18 Q When you first spoke with Trooper Bowling, who was there?

19 A Initially when I told them what, you know, I just told them I was bringing
20 my daughter in. It was all three of us. And then he had to interview her.
21 And she had not told me everything at that point. You know, I didn't hear
22 everything until she told it to the Trooper.

23 Q All right. So you first talked about it with Richard and you and Annie and
24 the trooper?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 A Right. But we didn't talk about everything that happened. Just giving, you
2 know, we told him, "Look, my daughter has been molested and we need
3 to report this."

4 Q Did you give Trooper Bowling the note?

5 A Yes.

6 Q Okay, and was that the last time you saw the note?

7 A Yes.

8 Q Once uhm, did Trooper Bowling decide to take a more formal statement
9 from Annie?

10 A Yes.

11 Q Did he try to do that without you in there?

12 A Yes.

13 Q And that didn't go so well, did it?

14 A No.

15 Q She wanted you in there?

16 A Right.

17 Q Did you go in there?

18 A Yes.

19 Q And...

20 A At first I did try to get Annie to do it without me. But it just, you know, I
21 tried to get her, both her Dad and I tried to get her to be able to sit in there
22 without one of us. But finally one of us had to go in.

23 Q And when you went in, were you part of the interview or were you only
24 there...

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 A No. I was only there.

2 Q So you did not give any information to the officer?

3 A No.

4 Q Do you remember what Annie told the police officer?

5 A I can't remember everything from A to Z. No, I cannot. But I remember
6 the main details.

7 Q Okay. And what was that?

8 A She said that... (witness is crying)..., he showed her porn, and that he put
9 her on a camera on the computer. And I had been at Ed's house, and as
10 far as I knew, he didn't have a computer. But I'm thinking maybe she..., I
11 don't know if I'm allowed to say this or not. But...

12 Q Well, let's...

13

14 BENCH CONFERENCE:

15 WITNESS: (unintelligible).

16 THE COURT: Do what?

17 WITNESS: Or a camera on a T.V. I mean...

18 THE COURT: I don't...

19 WITNESS: It's just my opinion. I didn't know if I was allowed to...

20 MS. SCHULTZ: So where is it?

21 THE COURT: Uh, that's, you can say whatever you think you need
22 to say in response to the question, if the answer has to do with a camera, a T.V.
23 or DVD or whatever.

24 WITNESS: Okay.

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 (BENCH CONFERENCE ENDS)

2

3 STATE RESUMES DIRECT EXAMINATION OF TONYA CAVES:

4 A I'm thinking maybe it was just a camera, like a video camera is what she
5 meant. And maybe she seen her image on the screen.

6

7 MS. SCHULTZ: I'm gonna object to this uh, line of answer to the
8 question. What the witness is giving us is her suppositions of what this meant.
9 And I would object on the basis of relevancy.

10 THE STATE (MS. FLANIGAN): That's fine, Judge. We'll, we'll
11 move on.

12 THE COURT: Okay. That last answer you're not to consider. Next
13 question.

14

15 STATE RESUMES DIRECT EXAMINATION OF TONYA CAVES:

16 Q If I could have just one moment, Judge. Was there anything else that she
17 told Trooper Bowling?

18 A She told him what she had wrote down in the note. And like I said, mostly
19 the main details is what sticks out in my mind. I can't sit here and quote
20 her, you know, what was said from beginning to end, word-for-word.
21 There's no way. I mean I don't want to say something that I'm not positive
22 of.

23 Q Mrs. Caves, there then came a time that you did not follow up with this
24 case. Is that true?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (DIRECT)

1 A Yes.

2 Q And would you tell the jury why it is that you waited to follow up with this?

3 A I had second thoughts...(witness is crying)... just because of the fact of
4 putting my daughter through this. And not only that, but as a parent, when
5 something like this happens to one of your kids, there's a side of you that
6 thinks maybe if you just don't acknowledge it, that it'll go away.

7 Q Did there come a time when it just would not go away?

8 A Right. I had to come to, I had to come to terms with it myself, so to speak.
9 Because as a parent, you think I should've seen this, or I should've seen
10 that. And you look back on situations and you think, "Is it something I
11 missed or something I did?" And finally I had to just come to terms with it,
12 that something had to be done, and that I had to go forward.

13 Q So who did you, do you remember anybody specifically you called or
14 contacted?

15 A Ray Saylor.

16 Q And is Ray Saylor an officer in Milltown?

17 A Yes.

18 Q Okay, and did you decide after talking to Ray Saylor that you needed to
19 pursue this?

20 A Yes.

21 Q Okay. Do you remember who you called then, Mrs. Caves?

22 A Honestly, I don't. I remember he helped set the ball in motion for me
23 though.

24 Q Did it uh, eventually end up that uh, you brought Annie to the Comfort

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (DIRECT)

1 House for an interview?

2 A Yes.

3 Q And that was this past April. Is that right?

4 A Yes.

5 Q And when you were there at the Comfort House so that she could be
6 interviewed uhm, were you allowed in the room with her?

7 A No.

8 Q And, actually, could you even watch the video on T.V.?

9 A No ma'am.

10 Q Could you listen to what the questions were?

11 A No ma'am.

12 Q Would it be fair to say that she was in one room with the interviewer and
13 you were out in the lobby?

14 A Yes.

15 Q And she had no contact with you during that time?

16 A Right, no contact.

17 Q And Annie had mentioned on her direct uh, that she had been in
18 counseling. Was, is that as a result of this?

19 A Well, I had decided to put her..., yeah. Yeah, the victim advocate, and I
20 think maybe the lady at the Comfort House had uh, what's the word, she
21 told me it might be a good idea to put her in counseling over it. And I
22 thought so as well too.

23 Q So this was, she was in counseling after this past April...

24 A Right.

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (CROSS)

1 Q Of '08.

2 A Right.

3 Q Okay. Could I have just a moment, Judge?

4

5 THE STATE (MS. FLANIGAN): I have nothing further, Judge.

6 THE COURT: Cross?

7 MS. SCHULTZ: Yes.

8

9 **CROSS EXAMINATION OF TONYA CAVES BY DEFENSE:**

10 Q Going back to the day that you dropped Annie off, which was April 13th.

11 Correct?

12 A Right.

13 Q And it was a Friday?

14 A Yes.

15 Q Had Annie gone to school that day?

16 A Yes.

17 Q And what time did she normally get home from school?

18 A In the evenings, around three-thirty or four maybe.

19 Q Okay. And after she got home from school uh, was there any activity in
20 your household before you took her over to Ed's house?

21 A The normal afternoon activities, supper uh, go through the backpack,
22 T.V., movies, whatever.

23 Q Do you, do you recall what time of the day it was when you took her over
24 to Ed's house?

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (CROSS)

1 A I was thinking it was right at dark, like around six o'clock, six-thirty, seven.

2 Q Okay. It's hard to remember what time it gets dark in April.

3 A Right. It was, well, it was a long time ago too. So...

4 Q So, she would've had dinner at your house and done the normal things
5 that a kid does...

6 A Right.

7 Q ...at home after school before she went over there?

8 A Right.

9 Q Okay. And who all was living in your house at that point?

10 A Me and Hank Nicholson and her.

11 Q When you took her to Ed's house, who was with you when you took her
12 there?

13 A Richard.

14 Q Okay. And it would've been close to dark when you took her there?

15 A Yes.

16 Q Did you go in and have any conversations with Ed at that point?

17 A Not any major conversations. Of course, I walked in, when I took her in,
18 and she immediately started in on the video games. And, you know, I
19 asked him about Kiki, and there was nothing, nothing really significant.

20 There were no significant conversations. He asked me if I was gonna to
21 be doing anything and I think I, you know, we made sure, you know how
22 when you take one of your kids somewhere, you make sure your phone
23 numbers are all straight. And, but no, nothing significant.

24 Q Did you tell him what time you would be back?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (CROSS)

1 A No.

2 Q Did he have any...

3 A I mean he knew she was coming to spend the night. But we didn't set no
4 certain time for me to pick her up the next day or anything like that.

5 Q Okay. And going to his house was a place that she looked forward to
6 going to?

7 A Yes.

8 Q And why was that?

9 A She just loved going over there. Actually, he was good with her. And she
10 loved Kyle. She loved Kiki. When she went over there, she pretty much
11 got to do whatever she wanted.

12 Q She always played the video games there?

13 A The video games and they always had cookies and candy and...

14 Q So did she have video games at your house?

15 A Yes, but she had more free reign of them at his house.

16 Q A bigger variety and she could play...

17 A Right.

18 Q ...without competition in his house?

19 A Right.

20 Q Okay. So do you remember whose idea it was that she went over there
21 that night?

22 A She had been wanting to spend the night. And they had been telling me,
23 bring her over and let her spend the night, you know, bring over her over...

24 Q Who's "they"?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (CROSS)

1 A ...let her spend the night. Ed, Kiki, Kyle, all of them. You know, it's not a
2 big deal. She can spend the night. And I never had any qualms about
3 her staying the night there.

4 Q Did you talk to anybody specifically before you went there that day to drop
5 her off about her spending...

6 A I talked to Ed.

7 Q You talked to Ed specifically?

8 A Yes.

9 Q You didn't, you didn't have occasion to talk to Kiki and ask her if she was
10 gonna be home so she could watch her?

11 A I was, I was under the impression that Kiki was going to be watching her
12 that night, yes.

13 Q But you didn't...

14 A I think that was talked about a couple of days before the fact.

15 Q But that particular day, you didn't speak to Kiki personally?

16 A No.

17 Q Okay. And when you went there, you went there with Richard?

18 A Yes.

19 Q Did you go into the house at that point?

20 A Yes, when I dropped her off, yes.

21 Q And do you recall approximately how long you were there?

22 A Not very long. Maybe ten minutes.

23 Q Okay. And when you dropped her off, was there anyone there in the
24 house other than Ed, you and Annie?

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (CROSS)

1 A No.

2 Q And Richard was waiting in the car?

3 A Yes.

4 Q Did Richard know Ed?

5 A He had met him a couple of times, but no, they didn't really know each
6 other.

7 Q And so you left with Richard?

8 A Yes.

9 Q And were you driving on that occasion too?

10 A Yes.

11 Q And that would have been about dark on Friday, the 13th?

12 A Yes.

13 Q And then you came back to pick her up with Richard on Saturday, the
14 14th?

15 A Yes.

16 Q Do you recall how you and Richard contacted the next morning in order to
17 go pick her up?

18 A No, not exactly.

19 Q Okay. But you had the car and Richard didn't have a car?

20 A Right.

21 Q When you got to Ed's house, when you picked her up, did you, you
22 indicated you went into the house?

23 A Yes.

24 Q And could you give me an idea of how long you were inside the house?

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (CROSS)

1 A Not very long. Maybe ten minutes, if that long.

2 Q When you testified earlier, you said that she was bummed out about
3 having to leave.

4 A Yes.

5 Q Like a normal kid.

6 A Yeah.

7 Q When you got there, what was she doing?

8 A Playing video games. "Oh, Mom. I want to play this game. Let me play
9 this game. Let me finish this game before we leave."

10 Q Was that a game that you did not have at home?

11 A I'm sure it was.

12 Q All right. Did she appear to be upset at all when...

13 A At that time, no, she did not.

14 Q She looked like her normal self?

15 A Yes.

16 Q Is Annie usually a kid that's pretty boisterous and happy acting?

17 A Yes.

18 Q Okay, and that's how she seemed to be that morning?

19 A Yes.

20 Q No indication before you left the house that anything in, in appropriate had
21 gone on?

22 A No.

23 Q And when she went out and got into the car, was she her normal self
24 then?

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (CROSS)

1 A Initially yes, she was.

2 Q Any indication from the look on her face that she had any deep, dark
3 secrets or anything she was hiding?

4 A No.

5 Q Okay. In what room of the house was she in when you got there? Do you
6 remember?

7 A The living room.

8 Q Okay. And that's where she played the video games, in the living room?

9 A Yes.

10 Q Okay. She got in the car. Was she in the back seat?

11 A Uh huh, yes.

12 Q And you were still driving, Richard was in the front seat with you?

13 A Yes.

14 Q All right. Did she immediately, after you pulled out of Ed's driveway, tell
15 you about the secret?

16 A No.

17 Q It took her awhile to tell you that she had a secret?

18 A Yes.

19 Q Was there any conversation going on before that in the car?

20 A Just the typical, "Did you have a good time", and..., and she was giving
21 me, "Oh yeah. I ate these cookies and they had this kind of candy and
22 this is what I ate this morning." And just the normal chatter.

23 Q Did she talk about anybody else being there at all that day while she was
24 there?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (CROSS)

1 A I asked her, you know, what time did Kiki got there, and she told me Kiki
2 never got there.

3 Q Okay. So that was the first that you learned that Kiki hadn't been there all
4 night?

5 A I didn't learn that first-off, no. But I learned it in that drive.

6 Q Okay. But during the drive...

7 A Right.

8 Q ...was the first time you found that out?

9 A Right.

10 Q Had you ever, had you asked Ed about it when you were at his house?

11 A No.

12 Q All right. So you had been driving for a few minutes before she told you
13 that she had a secret?

14 A Yes.

15 Q And it took awhile for you to pry the secret out of her to write it on the
16 paper?

17 A Right.

18 Q And while this was going on, was there any conversation going on
19 between you and Richard or Richard and Annie?

20 A No.

21 Q All right. And tell me, if you will, what kind of a piece of paper this was
22 written on?

23 A I believe it was an envelope, I believe.

24 Q And...

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (CROSS)

1 A It was some kind of scratch piece of paper that I had in my car.

2 Q Okay. So it wasn't a new envelope?

3 A No.

4 Q And it probably wasn't a new piece of paper?

5 A No.

6 Q Was it a full-size sheet of paper?

7 A I believe it was a torn-off piece.

8 Q All right. And it was written in pencil or ink? Do you recall?

9 A I don't remember exactly.

10 Q The note was legible?

11 A Yes.

12 Q And you were able to read it without her explaining it to you what the
13 words were?

14 A Yes.

15 Q And did, she did not ask either you or Richard for assistance in spelling
16 any of the words?

17 A No.

18 Q When you went back to Ed's house, after you read the contents of the
19 note uh, and you parked the car away from the end of his driveway...

20 A Right.

21 Q When you left the car, were they both still in the car?

22 A Yes.

23 Q And specifically, where in the car was the baseball bat?

24 A Honestly, I can't remember if it was in the back seat floorboard or if it was

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (CROSS)

1 in my trunk.

2 Q Okay...

3 A But it was in either or. Honestly, I can't remember.

4 Q Was it a metal bat or a wooden bat?

5 A It was a metal bat. I bel..., if I remember correctly, it was in my floorboard.

6 Q So that would be in the back seat of your car?

7 A Right.

8 Q And during the time that you were out of the car while this incident was
9 going on, did you ever see Richard out of the car?

10 A No.

11 Q Did Richard know what you were doing when you left to go back up to the
12 house?

13

14 MS. LAUREN WHEATLEY: Objection, speculation.

15 MS. SCHULTZ: Well, let me rephrase the question.

16

17 DEFENSE RESUMES CROSS EXAMINATION OF TONYA CAVES:

18 Q Before you went up to the house, did you tell Richard what you were going
19 to do?

20 A I told him that I was gonna go confront Ed.

21 Q All right. Between the time you left the car and you got back in the car,
22 did you ever see Richard out of the car?

23 A Not that I recall.

24 Q You didn't see him in the driveway or coming up to help you or anything?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (CROSS)

1 A Not that I recall.

2 Q Okay. And I believe you indicated it was just a couple of minutes that you
3 were out of the car and...

4 A It wasn't very long I was there, no.

5 Q Kind of hard to judge the time when you...

6 A Right, it is.

7 Q Well, at the point in time when you picked Annie up that day uh, were you
8 angry with Ed or upset with Ed, or in any way concerned about Ed's
9 conduct?

10 A No.

11 Q Had you asked Ed for any favors that he failed to uh, grant you?

12 A No.

13 Q Okay. When you went to pick Annie up, did you sit down in the house
14 and have any conversations with Ed?

15 A No. I don't think I ever sat down when I picked her up. I was there just a
16 few minutes whenever I picked her up.

17 Q You didn't talk to him about whether he'd given her lunch or anything like
18 that?

19 A Well, he told me that she'd had her bath, and you know, she was good
20 and just the normal..., there wasn't anything out of the way or significant
21 that would pique my attention at that time.

22 Q Okay. When you got to the police station, you had the note in your
23 possession?

24 A Yes.

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (CROSS)

1 Q And during the time that you left the car and went up to the house, where
2 was the note?

3 A I believe I had gave it to Richard at that point.

4 Q When you went into the police station, you took the note in?

5 A I can't remember if I had the note in my hands or if he had it in his hands.
6 I just know one of us had it. And whichever one of us had it, it went
7 straight to the police officer.

8 Q And you never saw the note again after that?

9 A No.

10 Q And to the best of your knowledge, he did not return it to you or to Annie
11 or to...

12 A He did not return it to me, to Annie, or to Richard.

13 Q And after that meeting that day with Officer Bowling, did you ever have
14 any contact from Officer Bowling with respect to this case?

15 A I believe I talked to him one other, once, maybe twice on the phone after
16 that.

17 Q And...

18 A Or I had at least talked to somebody from the State Police Post, I know
19 that.

20 Q And when that have been within a short period of time following the
21 report?

22 A Right. Just to see what was going on with the case. And...

23 Q Okay. When, when you went there to talk to Officer Bowling, all three of
24 you went in to talk to him initially?

25 562

STATE'S WITNESS - WITNESS #3, TONYA CAVES (CROSS)

1 A Well, all three of us went into the police station. I knew that they were
2 gonna have to interview her, you know, or at least try to interview her by
3 herself. So, I mean I was ready for that. But it didn't work out that way.
4 So, yes, I guess all three of us initially at first talked to him.

5 Q And during that initial con, conversation with Officer Bowling, when all
6 three of you were there, were there any details provided to him as to
7 what...

8 A By me or Richard you mean?

9 Q Anybody. Did he get any of the details of what was going on?

10 A No. I just told him, you know, that my daughter had been molested, and
11 that we needed to report it.

12 Q And at that point he wanted to talk to her alone?

13 A Right.

14 Q Okay. So while Richard was in the room with you and Annie and the
15 police officer, was there any conversation that came up about the baseball
16 and the damage at Ed's house?

17 A When Richard was in the room?

18 Q That's correct.

19 A No, not that I remember. Uh, whenever he was interviewing Annie, after I
20 had to go in and sit there, Annie did tell him, "And then my Mom did
21 something too." And the police officer looked at me. And I said, "Yes. I
22 went up there and I confronted Ed with the bat."

23 Q And you admitted what you did to his property?

24 A Right.

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (CROSS)

1 Q Okay. You do not believe that Richard was there when that
2 conversation...

3 A I don't believe he was. He may have been, but I don't think he was, no.

4 Q So on the trip from Ed's house, after the damage was done there, and the
5 time you got to the police office, what kinds of things were you discussing
6 in the car?

7 A Basically what the next step should be. And should we go ahead and
8 press charges. And I know that sounds crazy, but that is something that
9 you ponder, just because you have formed opinions in your head.

10 Q And Annie was sitting in the back seat while these conversations were
11 going on?

12 A Yes.

13 Q And she would have been able to hear what you were talking about?

14 A Yes.

15 Q And the conversations that you and Richard were having were pretty
16 negative about uh, Ed Nunley?

17 A You could say they were negative, but as far as Ed-bashing, so to speak,
18 right out Ed-bashing, no. We were not right out just derogatorily talking
19 about Ed specifically. The conversation was more leaned towards, "What
20 do we do next?" And, "Should we go forth with this?" And, but I'm sure
21 there were derogatory, derogatory remarks made about Ed. But for the
22 most part, that was not the whole extent of the conversation.

23 Q It would've been obvious to anyone listening to the conversation that you
24 weren't happy with Ed at that point.

25

STATE'S WITNESS – WITNESS #3, TONYA CAVES (CROSS)

1 A Right.

2 Q Okay. And was this a two-way conversation with you and Richard both
3 participating?

4 A Yes.

5 Q Okay. And I believe you said you did not talk about the details of the uh,
6 of Annie's allegation on your trip to the police station?

7 A Right. I did not.

8 Q But you also indicated that you had asked Annie, and she said there was
9 nothing else that he did to her, other than what she wrote in the note.

10 A Right.

11 Q Okay. And when did she come up with the uh, the nasty movie event?

12 A That was uh, that was what she told the police officer. I heard, I heard, I
13 heard the details just at the same time as the police officer was hearing
14 them. I heard the whole A to Z thing at the same time the police officer
15 heard it.

16 Q So before she told the police officer what happened, you had no
17 information from her other than the note?

18 A Other than what she wrote on the note.

19 Q Okay. And did she have any trouble talking to the police officer and telling
20 him what had happened when you were there in the room

21 A I felt like, yes, she was having trouble.

22 Q Did she seem to have any problem remembering what happened?

23 A No, not at that time.

24 Q Okay.

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (CROSS)

1 A She seemed embarrassed, to me.

2 Q Do you recall at any time hearing Annie say that Ed had threatened you
3 and Richard if she didn't perform sex acts for him?

4 A No, I do not recall that.

5 Q Okay.

6

7 MS. SCHULTZ: I believe that's all the questions I have now.

8 THE COURT: Redirect?

9 THE STATE: None, Judge.

10 THE COURT: Counsel approach.

11

12 BENCH CONFERENCE:

13 THE COURT: Here's the first category of questions. Here's the
14 second category of questions. Any objections to any of these? No, no, don't go
15 away.

16 MS. LAUREN WHEATLEY: Oh...

17 THE COURT: There's more.

18 MS. LAUREN WHEATLEY: Oh, okay.

19 THE COURT: Any objections to those?

20 MS. SCHULTZ: I don't see anything.

21 THE COURT: Here's the next category.

22 MS. SCHULTZ: No, I don't have any, I don't have any objections to
23 any of those.

24 THE COURT: All right.

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (QUESTIONS BY JURY)

1 THE STATE (MS. FLANIGAN): I don't know if she'll know the
2 answer to that one. I thought she already...

3 MS. SCHULTZ: Well, I don't care if you...

4 THE COURT: I don't know if she'll know either. But no objections?
5 would say it's probably been answered. But, no objections to those. All right.

6 MS. SCHULTZ: No objection to any of them.

7 (BENCH CONFERENCE ENDS)

8

9 THE COURT: Okay. Uh, the jurors have some questions uh, Ms.
10 Caves.

11

12 **QUESTIONS BY JURY TO TONYA CAVES:**

13 Q The first question, how did you and Ed become friends?

14 A Exactly, I don't remember. I know he just hung around the same people
15 that I hung around.

16 Q Okay...

17 A I don't, I can't pinpoint the exact day we met or the exact time or the exact
18 place or anything like that.

19 Q Okay. Uhm, you answer this as best you can, any of these questions.

20 The next question is uh, want information about her friendship with Ed.

21 How did she know him? Referring to you, how did you know him; more
22 information about your friendship with Ed.

23 A Just like I said, he run around the same group that I ran around with pretty
24 much. And, honestly, I always thought he was a good person. He had

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (QUESTIONS BY JURY)

1 custody of his son from his divorce. I just really thought he was a good
2 person. He comes across as a really good person.

3 Q All right. How long have you known Ed?

4 A I think I had known him about six months.

5 Q You mean before this day in question?

6 A Yeah.

7 Q Okay. Uh, all right, here's another question. Probably you may have
8 already answered it. But, how long, how many years had Annie known or
9 been around Ed Nunley?

10 A The same amount of time I had.

11 Q About six months?

12 A Yeah.

13 Q All right. Okay. Now the next question uhm, before you answer this
14 question, I'm gonna tell you what the question is and then uh, don't
15 answer it right away. Why did it take two years before anything was
16 done? That's the question. Now, some questions you know the answer
17 to, others you don't know the answer to. Others you know the answer to,
18 but you have an explanation. For the record, the Court will instruct the
19 jury that the charges were alleged to have occurred April the 13th, 2007.
20 We're now at November the 19th, 2008. It hasn't been two years yet. So I
21 would say that the question is intended to mean, why did it take the period
22 of time that it has before anything was done, if you know?

23 A Well, I already answered part of that question earlier. They asked me why
24 I didn't do the follow-up immediately. And I told you, I answered that

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (QUESTIONS BY JURY)

1 question earlier. And second, when I did finish with the follow-up, it took,
2 it took the police officers and the investigators that long to complete the
3 investigation. They couldn't just run out and arrest him because my
4 daughter said or because I said. They had to actually do a thorough
5 investigation before they could go arrest him.

6 Q And so, actually what you testified to today is really within...

7 A Within a year.

8 Q Within an hour you were at the police station?

9 A Yeah. Yes, I was. Within an hour I was at the police station.

10 Q You went basically straight to the police station after stopping off to beat
11 up his property and confront him.

12 A Right.

13 Q Okay. So uh, then the next question is, what made you continue to think
14 about it? What, was it brought up by Annie? A year is a long time.

15 A No, it wasn't brought up by Annie. It was brought up by other people.

16 Uhm, there were other allegations that I had heard about.

17

18 MS. SCHULTZ: Objection, your Honor. And I think we need...

19 THE COURT: Okay.

20 MS. SCHULTZ: ...to have a conversation outside the presence of
21 the jury.

22 THE COURT: Okay. All right, you're gonna be in the jury room. It's
23 your duty not to form or express an opinion on the case until it's finally submitted
24 to you. You're not to talk to anyone or allow anybody to talk to you in your

25

1 presence on any subject matter connected with the trial.

2 (JURY EXITS COURTROOM)

3 THE COURT: Okay. The record will reflect the jury is outside the
4 presence of the uh, courtroom, outside the site hearing and so forth.

5 MS. SCHULTZ: Judge, we would move for a mistrial. This is
6 precisely what the Court instructed the witness not to talk about. I do not know
7 how we can possibly repair the damage.

8 THE STATE (MS. FLANIGAN): She didn't say allegations of what,
9 Judge. Just that there were other allegations. The State didn't open this door.
10 This was a note by the jury. She then instructed, she said, "I'd heard there were
11 other allegations." Not by other children, not of sexual molestation, just other
12 allegations. The State would ask that you strike the response and we move
13 forward.

14 MS. SCHULTZ: I don't think it can be cured.

15 THE COURT: Okay. Any other argument?

16 MS. SCHULTZ: It's, it's, it's one of those things you're kind of
17 damned if you do and damned if you don't, because if you give them an
18 instruction, it's going to reinforce what was said. And so, I guess I don't have
19 any other argument. I just...

20 THE COURT: Okay. Your motion for a mistrial is denied. And the
21 reason for that is uh, the reasons are several. Number one, the answer did not
22 bring up girls, it didn't bring up sexual allegations. All she said was there were
23 other allegations. For all I know, it could've been other allegations by Annie.
24 Uhm, it could've been..., I have no idea what it is. Uh, if the defense requests

25

1 that the Court admonish the jury to disregard the last uh, answer, I will do that. If
2 the defense requests and instruction, I'll do that. If the defense requests that I
3 strike the last answer and tell the jury to ignore it, I'll do that. Whatever you want
4 to request. But the answer doesn't refer specifically. For all I know it could've
5 referred to other allegations by Annie. Uh...

6 MS. SCHULTZ: Judge, you know, it's, it's really hard to remember
7 exactly what the words were that she used.

8 THE COURT: I remember. But uh, we can replay it back and you
9 can listen to it. You want to listen to it?

10 MS. SCHULTZ: Yes. I would like to do that.

11 THE COURT: Okay. We'll stop and come up here and you can run
12 it back and find it, Karen.

13 (OFF RECORD; PARTIES LISTEN TO TAPED TESTIMONY OF TONYA
14 CAVES)

15 THE COURT: Uh, when you get the..., okay, we're on?

16 COURT REPORTER: We're on.

17 THE COURT: Okay, Ms. Caves, uhm, don't do that again, okay?
18 Don't talk about other allegations from someone else or uh, in any way, shape or
19 form, okay?

20 WITNESS: Yes, your Honor.

21 THE COURT: Uh, okay, now the record will reflect, Ms. Schultz,
22 you've had an opportunity to hear the question and answer, correct?

23 MS. SCHULTZ: That is correct.

24 THE COURT: Okay. Anything further regarding that situation?

25

1 MS. SCHULTZ: I would ask that the Court instruct the jury to
2 disregard the last answer from the witness.

3 THE COURT: Just the jury will be instructed to disregard the last
4 answer from the witness. Anything else? Any other request?

5 MS. SCHULTZ: No, Judge.

6 THE COURT: Bring the jury in.

7 THE STATE (MS. FLANIGAN): Oh, Judge, I might ask this, and I
8 don't know if Ms. Schultz would agree or not agree. But given the, what
9 happened the last time that question was asked, I don't know if you want to ask
10 Mrs. Caves that question to see what she's gonna say to make sure that nothing
11 else like that comes out.

12 THE COURT: What made you continue to think about it?

13 THE STATE (MS. FLANIGAN): Yes, because my concern is if, if
14 that's the only reason she continued to think about...

15 THE COURT: What's your re..., now that the jury is not in here...

16 WITNESS: That's one of the main reasons...

17 THE COURT: ...you can say anything you want to.

18 WITNESS: That's one of the main reasons why I decided it was
19 important to go forward.

20 THE COURT: Okay...

21 WITNESS: Because I felt like it's still happening.

22 THE COURT: Well, actually you called the police two times before
23 they even bothered to call you back, didn't they?

24 WITNESS: Yes.

25

1 THE COURT: I think that's why I understood your testimony..., and
2 that's right, isn't it?

3 WITNESS: Right.

4 THE COURT: So here you are, you went immediately to the police
5 station, you called them a couple of times and nobody did anything...

6 WITNESS: Well, I did get to talk to somebody from the State Police
7 Post pretty quick after, shortly after I initially reported it, and I was told it was
8 under investigation.

9 THE COURT: Okay. And so they told you they're looking into it
10 and it's gonna take awhile, more or less.

11 WITNESS: Right, right.

12 THE COURT: Okay, and so, so far as you knew, they were looking
13 into it and investigating it. So it really wasn't, you know, they stay at it from the
14 get-go, really. It wasn't you trying to stop them from investigating it.

15 WITNESS: Right. I never tried to stop the investigation. I just
16 didn't take her in for the follow-up.

17 THE COURT: But they never asked you to, did they?

18 WITNESS: Now I did believe miss one appointment, but I called to
19 reschedule the appointment and they never got back with me on the reschedule
20 date.

21 THE COURT: Okay...

22 WITNESS: And that's when I really started to feel like, that's when I
23 kind of let off the gas a little bit, so to speak.

24 THE COURT: Okay, all right. So, now you can't say that you heard

25

1 about allegations of other girls or other allegations period, nothing.

2 WITNESS: Okay.

3 THE COURT: Uh, I think it would probably be best if you all didn't
4 even go any further into this. Uh, I think if you wanted to ask uh, "Did you call
5 the police a couple of times?" And, "Did you follow up?" And, yes, and, and uh,
6 and so forth. But uh, you know, to try to go very far into this is gonna get into,
7 "Well, yeah, I finally just uh, kept after them because I heard that he'd molested
8 other girls", you know which is the true, a true answer, I suspect.

9 WITNESS: It's a true answer.

10 THE COURT: So uh, is the true answer to why she wanted to
11 pursue it. And I don't think you can really go there. Uh, so you need to very
12 careful about how you ask questions on this question.

13 MS. SCHULTZ: Well, Judge, I think the Court's perception of what
14 occurred is not exactly accurate. There was a reference, referral to C.P.S. and
15 a, an obligation of the mother to go to C.P.S. and cooperate with C.P.S. in their
16 investigation.

17 WITNESS: Excuse me, that was for a Comfort House appointment.
18 That was the, the, the appointment that was missed.

19 MS. SCHULTZ: And the C.P.S. reports that I have gotten where
20 the investigation was put on hold because the mom wasn't cooperative. So, on
21 this, I'm not planning to bring this up in front of the jury, but I wanted to let the
22 court know...

23 THE COURT: Well, you're welcome to do so, and she can explain
24 that she missed an appointment, and then called eventually to reschedule it. But

25

1 you can't say anything about, "I decided to make sure I rescheduled the
2 appointment because I heard about other allegations."

3 WITNESS: Right.

4 THE COURT: You can't say that, Ms. Caves. You understand
5 that?

6 WITNESS: Yes.

7 THE COURT: You can't say, "I heard about him molesting other
8 girls. I uh, I heard about other allegations." None of that, okay?

9 WITNESS: Yes, your Honor.

10 THE COURT: You got that?

11 WITNESS: Yes.

12 THE COURT: Okay. I'm not gonna stop you from asking
13 questions, but just, I would suggest you be careful about how you ask the
14 questions. You might open the door.

15 MS. SCHULTZ: I know.

16 THE COURT: Okay. Okay?

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

18 THE COURT: What other? Anything else?

19 THE COURT: No.

20 THE COURT: Okay, bring the jury in. You want me to tell the jury,
21 "You're not to consider the last answer from this witness"?

22 MS. SCHULTZ: Yeah. Just the very last one.

23 THE COURT: And it's stricken from the record. All right.

24 (JURY RETURNS TO COURTROOM)

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (QUESTIONS BY JURY)

1 THE COURT: Please be seated, ladies and gentlemen. Okay,
2 ladies and gentlemen of the jury, go ahead and give that note, somebody left a
3 notebook. Okay, all right, that's fine, okay. Ladies and gentlemen of the jury,
4 the last answer uh, given by the witness is stricken from the record. You're
5 ordered to disregard that and not consider it. Okay, the next question...

6
7 **QUESTIONS BY JURY:**

8 Q Were charges pressed against Tonya, were charges pressed against you
9 for the motorcycle and truck windows?

10 A Not that I know of.

11 Q Uh, did Mr. Nunley file charges against you for damage to his property?

12 A Not that I know of.

13 Q Do you have any porn movies in your house?

14 A No.

15

16 THE COURT: Questions on these questions by the State?

17 THE STATE (MS. FLANIGAN): None, Judge.

18 THE COURT: By the defendant?

19

20 **CROSS EXAMINATION ON JURY QUESTIONS BY DEFENSE:**

21 Q With respect to the porn movies, have you ever had porn movies or
22 pornographic materials in your house?

23 A No.

24 Q Never at all?

25

STATE'S WITNESS - WITNESS #3, TONYA CAVES (QUESTIONS BY JURY)

1 A No.

2 Q And do you know if the police were actually contacted about the damage
3 to uh, Mr. Nunley's property?

4 A Not, not that I know of.

5 Q They never came and talked to you?

6 A No.

7

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

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

10 THE COURT: Okay. Any uh, any other questions from the State?

11 THE STATE (MS. FLANIGAN): No.

12 THE COURT: No? Any other questions from the jury? Okay.

13 Thank you. You may step down. Well, I'd say that's pretty much a day. Does
14 anybody, you don't have any short witnesses or anything, do you?

15 THE STATE (MS. FLANIGAN): No.

16 THE COURT: All right. It's about time to quit then. Okay, ladies
17 and gentlemen of the jury, during the overnight recess, you're ordered not to
18 permit anyone to talk to you or in your presence on any subject matter connected
19 with this trial. And, of course, you are not to converse with anyone else about
20 the trial or the testimony or any matter connected with the trial. And it's your duty
21 not to form or express an opinion on the case until it's finally submitted to you.
22 You do not uh, you're not to read, listen to or watch any uh, media attention
23 about the matter. And I would say, I think there might've been a newspaper
24 person in here today. So, tomorrow, the local newspaper comes out. If there

25

1 should be anything in the newspaper, you're not to read, listen, read it or bring it
2 to the courthouse or anything of the kind. Okay? Don't read it. You already
3 know more than they do anyhow, because they weren't here very long and you,
4 they couldn't possibly know more than you do uh, about it, because they haven't
5 been here. They only came for a short time and left.

6 MS. LAUREN WHEATLEY: And, Judge, for the record, it's
7 Wednesday. The Corydon Democrat came out today.

8 THE COURT: Oh, that's right. So it couldn't have come out in this
9 week's paper. Never mind, excuse me. That's right, it did come out. So it
10 couldn't come out till next week. You're home free. I didn't see anybody from
11 the Courier Journal here either. All right. So I think you're home free on that.
12 But if there should be anything, no, don't pay any attention to anything. If it were
13 to come on the T.V., you shut it off, change the channel. Good evening, ladies
14 and gentlemen. Now, you leave these, your notes and so forth. Don't be taking
15 them home. Leave them with Sharon. She's gonna take care of them. Nobody
16 is gonna see them. That's it. She's gonna take care of it. All right? And they'll
17 be there for you tomorrow morning. The same drill as before. We want to try to
18 start promptly at nine. The door, the office will be open at eight. Come as soon
19 as you want to, after eight. Sharon will have the coffee pot going. We'll try to
20 start at nine as, and uh, and uh, and hopefully we will be able to do that. All
21 right? See you tomorrow. Thank you very much.

22 (JURY EXITS COURTROOM)

23 THE COURT: Anything before we go for the day?

24 MS. SCHULTZ: No.

25

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

2 THE COURT: Uh, I have a draft of finals. I'd like to leave you a
3 copy with. It's just a rough draft of finals, instructions. So before you go, wait
4 around for a little bit. I'll get you a copy of these. Uh, Sharon..., okay, then uh,
5 do uh, I guess I'll see you a few minutes before nine then, and ready to go.
6 Okay, thank you.

7 (COURT ADJOURNED)

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1 November 20, 2008:

2 THE COURT: We're on, Karen?

3 COURT REPORTER: Yes.

4 THE COURT: Okay. The record will reflect that we're present in
5 the courtroom. The jury is not present. Okay, are there any preliminary issues
6 by the State or the defense?

7 THE STATE (MS. FLANIGAN): Judge, I, I need to let the Court
8 know, and I've let Ms. Schultz know, yesterday Ms. Schultz had made a
9 comment in the beginning in the morning that she was unaware of the domestic
10 case between Tonya and Richard Caves. And that was curious to me as I had
11 thought we would've sent her the criminal records as part of discovery. Uhm, I
12 was aware that they'd had some. So, after court ended, we went back and
13 checked and we did not have their criminal records in our file. I had Mr.
14 Donahue run them. I called Ms. Schultz's office and left her a message and
15 faxed them to her right away when I got them. I would let the Court know, some
16 of the things that were on it, I did know about. Uh...

17 THE COURT: Whose criminal history?

18 THE STATE (MS. FLANIGAN): Tonya and Richard Caves.

19 THE COURT: Okay. Did you get it, Ms. Schultz?

20 MS. SCHULTZ: They gave it to me this morning. I didn't go to my
21 office yesterday after I got out of court.

22 THE COURT: Was there anything that you could've used?

23 MS. SCHULTZ: Yes. Uh, Tonya has been convicted of a uh,
24 Check Deception charge, I believe it is. And Mr. Caves has been convicted of

1 False Informing.

2 THE COURT: Mr. Caves has been convicted of False Informing.

3 She's been convicted of Check Deception.

4 MS. SCHULTZ: Yes.

5 THE COURT: Okay. Well, Check Deception, I don't think you can
6 impeach on that. Can you?

7 THE STATE (MS. FLANIGAN): Judge, I have to say that Ms., I
8 knew about the Check Deception. I'll be candid to the Court, because I was here
9 the day that Ms. Caves pled to that. It was in October. And I had a discussion
10 with Ms. Wheatley and she said that that issue had been raised before this very
11 Court, and that Ms. Schultz had actually argued the case, but it was not an
12 impeachable offense. So I wasn't particularly con...

13 THE COURT: Oh, was that one of the trials in the last couple of
14 months?

15 MS. LAUREN WHEATLEY: Wilfong, yes.

16 MS. SCHULTZ: Oh, I don't remember that. Short memory. I
17 mean...

18 THE COURT: Well, I certainly don't remember it either. But I think
19 probably uh, you know, that's my first reaction to it. If you think that there's some
20 basis to uh, to impeach with the Check Deception uh, that...

21 THE STATE (MS. FLANIGAN): Judge, I'm gonna stop, because I
22 think I ethically also have to say I checked the rule last night, and there was a
23 case that did say in some cases check deceptions can be an impeachable thing.
24 So I, I think I have to let...

25

1 THE COURT: Check Deception or Theft.

2 MS. LAUREN WHEATLEY: Check..., it goes under Check
3 Deception, Judge, but it, with the Check Deception, it's uh, analogized like a
4 Theft, because it's not a bright line rule that a Check Deception conviction comes
5 in. It says it may come in, and you have to look at the facts.

6 THE COURT: Okay. Well, uh, these people can still be uh,
7 collected. You know how to get a hold of them, don't you?

8 MS. LAUREN WHEATLEY: Absolutely.

9 THE STATE (MS. FLANIGAN): Yes.

10 THE COURT: Okay. If Ms. Schultz wants them, then you get a
11 hold of them and get them back here.

12 THE STATE (MS. FLANIGAN): That was my intention, Judge. And
13 just wanted to make the Court aware of that error. I certainly didn't want to
14 cause a mistrial and I certainly didn't want it to look like I was trying to hide
15 anything from the defense.

16 THE COURT: Okay. So you simply let them know. You need to let
17 them know pretty quick so they can plan to get them back here.

18 MS. SCHULTZ: Okay.

19 THE COURT: Uh, I would say by no later than noon today, you
20 need to let them know.

21 MS. SCHULTZ: All right.

22 THE STATE (MS. FLANIGAN): If you want them. And uh, I, I don't
23 really know. I haven't looked at the cases. And I don't remember from Wilfong.
24 But, you know, right off the top of my head, I, I think Deception is different than

25

1 Check Deception. The crime of Deception is a crime of dishonesty. I don't, now
2 don't know about Check Deception. I haven't really thought..., my off-the-cuff
3 reaction is that it is not, but False Informing is. That's just an off-the-cuff
4 reaction. I haven't read the rule or looked at the case. But you all probably
5 know. So..., all right, any other matters?

6 THE STATE (MS. FLANIGAN): Yes, Judge. I have a couple of
7 other things. On the Comfort House video, there are two things I wanted to flag
8 before we start. And I don't, Ms. Schultz may want to clear this up as well. In
9 the beginning, as I said in our Motion in Limine, Donna Black asked Annie Young
10 where she's living at the current time, which was April of 2008, she was living
11 with her mother and her mother's boyfriend, whose name was Eddie. It's not Mr.
12 Nunley. That is cleared up later in the video, but it will, it may leave the
13 impression that Ms. Caves was living with Mr. Nunley. I don't think Ms. Schultz
14 wants that impression in their mind. I certainly don't want that impression in their
15 mind, and I was gonna clear the...

16 THE COURT: Does Donna Black know that?

17 THE STATE (MS. FLANIGAN): Yes.

18 THE COURT: Okay. Well, why don't you just ask her that
19 question? Well, why don't you just uh, clarify that, that you know that the Eddie
20 that she was living with at that point in time was not Ed Nunley. Is that okay with
21 you?

22 MS. SCHULTZ: Yes.

23 THE COURT: Okay. What else have we got going?

24 THE STATE (MS. FLANIGAN): Okay. Uh, Ms. Wheatley and I

25

1 watched the video one more time to make sure that it wouldn't run afoul of the
2 Motions in Limine and the 404B. Donna Black does ask Annie if she knows if
3 this had happened to anyone else, and Annie says "no".

4 THE COURT: Okay. Well, I don't guess you're bothered by that,
5 are you, Ms. Schultz?

6 MS. SCHULTZ: No.

7 THE COURT: What Annie knows or doesn't know, is you know,
8 okay.

9 THE STATE (MS. FLANIGAN): And we'd filed, the last thing,
10 Judge, is we'd filed a Final Jury Instruction, which is the one that had snuck into
11 the Preliminaries. And I...

12 THE COURT: Yeah, I've got that.

13 THE STATE (MS. FLANIGAN): Okay.

14 THE COURT: Okay, we can deal with that later.

15 THE STATE (MS. FLANIGAN): And, and I want to flag something
16 so I don't forget it too. The child hear-say statute requires a special Final Jury
17 instruction, and I didn't know if you wanted the State to draw it up or if you
18 wanted to.

19 THE COURT: I've already got a preliminary drafted. It should be in
20 the packet that you already received. I know you've been busy and haven't had
21 a chance to look at it. But...

22 THE STATE (MS. FLANIGAN): Okay, all right. Thank you.

23 THE COURT: You're not thinking about getting done today are
24 you?

25

1 THE STATE (MS. FLANIGAN): Am I?

2 THE COURT: Yeah.

3 MS. LAUREN WHEATLEY: Well, the State might.

4 THE COURT: Okay. Well, I doubt if the trial will. But anyhow,
5 okay. All right, what else? Anything else?

6 MS. SCHULTZ: The only other, the only thing that I would say,
7 Judge, is from yesterday, and I'm not sure if this is important or not, but I wanted
8 the State to know that I talked on the telephone to Kristen Nunley this morning,
9 who is the witness that was here yesterday, and she indicated to me..., I said
10 something to her about coming back to court today. And she indicated to me
11 that she does not have a car and she's not going to be able to be here. And she
12 indicated that the State was supposed to call her. So I just wanted to be, them
13 to be aware. If they want her here as a witness, they may have to get
14 transportation for her because she indicated she does not have a car.

15 THE STATE (MS. FLANIGAN): That's fine, Judge. If we do decide
16 to call her, we'll do that. And it's the same with Miss Sanders. We know that
17 she doesn't have transportation either.

18 THE COURT: Okay...

19 THE STATE (MS. FLANIGAN): So if we do decide to call them,
20 we'll go get them.

21 THE COURT: All right. Okay. Anything else?

22 MS. SCHULTZ: Nothing from us.

23 THE STATE (MS. FLANIGAN): Nothing from the State.

24 THE COURT: Okay. All right. Uh, where did Sharon go? All right,

25

STATE'S WITNESS – WITNESS #4, DONNA BLACK (DIRECT)

1 we'll go ahead and get started then.

2 (JURY RETURNS TO COURTROOM)

3 THE COURT: Good morning, ladies and gentlemen. Please be
4 seated. Okay, is the State ready to proceed?

5 THE STATE (MS. FLANIGAN): Yes, Judge. The State will call
6 Donna Lloyd Black.

7 **TESTIMONY OF WITNESS #4, DONNA LLOYD BLACK:**

8 THE COURT: Do you solemnly swear the testimony you shall give
9 shall be the truth, and nothing but the truth, so help you God?

10 WITNESS: I do.

11 THE COURT: Please be seated, ma'am.

12 **DIRECT EXAMINATION OF DONNA LLOYD BLACK BY STATE (MS.**

13 **FLANIGAN):**

14 Q Can you state your name for the record?

15 A Donna Lloyd Black.

16 Q Okay. And when I address you today, should I..., Ms. Lloyd, is that fine?

17 A That's fine.

18 Q Okay. Ms. Lloyd, how are you employed?

19 A Uh, I'm the executive director and a forensic interviewer with Com,
20 Comfort House Child Advocacy Center.

21 Q Would you pull the microphone up a little bit? You'll have to speak up.

22 A Better?

23 Q Yes.

24 A Is that better?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 Q Okay. You are the executive director of Comfort House?

2 A Yes.

3 Q And a forensic interviewer there?

4 A That's correct.

5 Q Uh, could you let the members of the jury know what your education is?

6 A I have a Bachelor's Degree in Business, and a Master's in Federal
7 Taxation.

8 Q And before coming to the Comfort House, where did you work?

9 A Uhm, well, I drove a school bus for North Harrison Community Schools. I
10 sub-taught for North Harrison. I am adjunct professor at Indiana
11 University Southeast. And I worked in public accounting.

12 Q What do you teach at I.U.S.?

13 A Accounting.

14 Q And when you came into, what I guess would call, a second career? Is
15 that fair?

16 A That's fair.

17 Q Where did, when you come into that career?

18 A In March of 2006.

19 Q How were you first hired into the Comfort House? Into what position?

20 A Uhm, the executive director right off.

21 Q What, what is your, what are your duties as executive director of Comfort
22 House?

23 A Uhm, I manage the day-to-day operations of the Child Advocacy Center.

24 Q Can you tell the members of the jury where the Comfort House is located?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 A Uhm, the Harrison County facility is located on Concord Avenue, which is
2 behind Culver's in Corydon.

3 Q Uh, it, and are there any other employees there?

4 A Uh, yes. We have one other employee. Her name is Melissa Kast.

5 Q And what's her role there?

6 A She's a program director, and she also is trained as a forensic interviewer.

7 Q What is the function of the Comfort House?

8 A The Comfort House is a child advocacy center. And the child advocacy
9 centers are set up to be a neutral uh, non-threatening location in which to
10 conduct forensic interviews of children who have alleged to be physically
11 or sexually assaulted or abused.

12 Q Have you had any specialized training, Ms. Lloyd, as a forensic
13 interviewer?

14 A I have.

15 Q Can you tell the members of the jury what that training is

16 A Uhm, in July of 2006, I attended what's called the Finding Words Training
17 in Hammond, Indiana. And uh, it's a forty-hour course that teaches
18 specifically forensic interviewing.

19 Q And let the members of the jury, because I'm sure there are some of them
20 there that don't know what forensic interviewing is, or what Finding Words
21 is.

22 A Okay. Finding Words uhm, teaches how to talk to children in a non-
23 leading, non-suggestible manner that allows the child to tell what events
24 have occurred without the interviewer uh, guiding them or suggesting

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 things to them.

2 Q Okay. Since you attended Finding Words in July of '06, have you
3 attended any other training?

4 A I have. I've attended uh, Crimes Against Children Conference the last two
5 years, which is a series of workshops that you can choose from. Uh, I
6 generally do anything I can that has to do with the forensic interviewing,
7 whether it's linguistics of how to talk with a child at their level uh,
8 developmental stages of the kids. Anything that has to do with uh,
9 forensic interviewing. I've also attended uhm, Beyond Finding Words,
10 which is just an extension of the Finding Words training. Actually I've
11 done close to two hundred hours of training.

12 Q Is, is there any agenda of the Comfort House? In other words, are you
13 trying to get the child to say one thing or another there at the Comfort
14 House?

15 A No.

16 Q What is the goal of talking to the child at the Comfort House?

17 A Uhm, the objective of Comfort House and the staff of Comfort House is to
18 ensure the best interest of the child. I can elaborate, but...

19 Q Okay. Well, let me ask you this: Are there cases at Comfort House where
20 children do not disclose?

21 A Yes.

22 Q Okay, and there are some cases where they do?

23 A That's correct.

24 Q And you're not trying to get them to do one thing or another?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 A No.

2 Q Are you familiar with Annie Young?

3 A Yes.

4 Q Okay. Did you conduct a forensic interview of her?

5 A I did.

6 Q What was the date of that, if you remember?

7 A I believe it was April 18th of this year, 2008.

8 Q That interview uh, who was in the room with Annie during that interview?

9 A Just Annie any myself.

10 Q Can you describe the room for the members of the jury?

11 A Uh, we have a room that's set up. We have three cameras. And,
12 obviously, we have uh, speakers, or uh, microphones similar to what you
13 have over the jury box. And there's two chars. There's a white board
14 where we put paper to do drawings. And there's a sink for washing your
15 hands. And basically that's it.

16 Q Okay. How is there a need to be a sink in there?

17 A Uh, because after we talk to the kids, we let them put paint on their hands
18 and put their handprints on the wall.

19 Q Okay...

20 A So we have to offer them a place to clean up.

21 Q So is that a much different setting than this courtroom?

22 A Uh, much different, much different. Very child friendly.

23 Q And uhm, besides you asking questions, is there anyone else that Annie
24 would've had contact with during that interview?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 A No.

2 Q Were you able to uh, listen to some other people through some listening
3 device while you interviewed Annie?

4 A Yes. The, what we call the multi-disciplinary team is in what is called the
5 observation room, separate from the interview room. And we use two-way
6 radios, and I use a bug in the ear, what we call a bug in the ear, which is
7 just a microphone attached to the two-way radio, so that while the team
8 members in the observation room who can view the interview in progress
9 uh, can communicate with me during the interview.

10 Q Could Annie in any way see the members of the team?

11 A No.

12 Q Could Annie in any way hear the questions that the team were suggesting
13 to you?

14 A Uh, she should not have been able to because the bug is in my ear, and
15 it's not played loud for..., in the room.

16 Q Okay. Uhm, what, what type of people would be in that team setting?
17 Who would be in the team?

18 A Okay. Our multi-disciplinary team is made up of uhm, obviously
19 somebody from the Prosecutor's Office, generally uh, someone from law
20 enforcement, either local or Indiana State Police, someone from the
21 Department of Child Services, generally a representative from Comfort
22 House, which I'm, I would be part of the multi-disciplinary team, but I'm in
23 the interview. Uh, we also bring in a child advocate or a victim advocate
24 that sits with the family in the waiting room.

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 Q Was this procedure followed during the interview of Annie Young?

2 A Yes, it was.

3 Q During the interview with Annie, Ms. Lloyd, was she given an opportunity
4 to make any drawings?

5 A Yes, she was.

6 Q Okay. And if I show you the drawing, would you recognize that?

7 A I believe I would.

8 Q Okay.

9

10 THE STATE (MS. FLANIGAN): Judge, I'd ask to have this marked
11 as State's "6".

12 THE COURT: Well, bring it over here for the Court Reporter.

13

14 STATE RESUMES DIRECT EXAMINATION OF DONNA LLOYD BLACK:

15 Q Ms. Lloyd, I've shown you what's been marked as State's Exhibit "6", and
16 can you tell the members of the jury if you recognize this as the uh,
17 drawing or the paper that you and Annie would've written on during the
18 interview?

19 A Yes, that's the paper.

20

21 MS. SCHULTZ: Judge, I need to ask that this not be displayed to
22 the jury until it's submitted into evidence.

23 THE COURT: Granted.

24 THE STATE (MS. FLANIGAN): Okay.

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 STATE RESUMES DIRECT EXAMINATION OF DONNA LLOYD BLACK:

2 Q After she finished her interview, after Annie Young finished her
3 interview..., well, let me ask you about two more. Were there also some
4 drawings of uh, young children that were shown to Annie Young during
5 the interview?

6 A Yes.

7 Q And if I showed them to you, could you recognize them?

8 A I believe so.

9 Q I'll show you what's been marked as State's Exhibits "7" and "8", that
10 would indicate that those were the uh, papers on which you wrote where
11 Annie identified the body parts?

12 A Yes, that's what it is.

13 Q After the interview was completed, Ms. Lloyd, after the interview was
14 completed uh, did you give, immediately give those papers that I've shown
15 you, "6", "7" and "8", to State Police Detective, William Wibbels?

16 A We did.

17 Q And uh, did you make a video, an audio recording of this interview?

18 A We did.

19 Q Okay, can you indicate to the jury if there's any way to alter or tamper with
20 that type of video?

21 A To my knowledge, there's no way to uh, manipulate it. It's, it's video
22 taped while in progress.

23 Q Okay. Can you just explain briefly to the members of the jury how the
24 video tape is made and how the copies are burned?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 A Okay. The, the uh, interview is taped in progress uh, onto the hard drive
2 of a computer in a separate room. And immediately after the interview is
3 finished, we take it from that hard drive and transfer it to a DVD.

4 Q Okay. Did you provide a copy of the DVD of this uh, interview to Detective
5 William Wibbels immediately after...

6 A Yes.

7 Q And there's an item that I need to clear up with you on the video uh, Ms.
8 Lloyd. In the beginning of this interview with Annie, she mentioned at the
9 time, April of '08, she was living with her mother and her mother's
10 boyfriend by the name of Eddie. Is that correct?

11 A It is.

12 Q Okay. Is that this Ed Nunley who's seated here in the courtroom?

13 A No, not according to Annie.

14 Q Okay. Well, there's, on the video there will be two different Eds
15 discussed?

16 A Yes.

17 Q Okay. If I could just have a moment, Judge.

18

19 THE STATE (MS. FLANIGAN): Judge, could Ms. Schultz and I
20 approach?

21 THE COURT: Uh huh.

22

23 BENCH CONFERENCE:

24 THE STATE (MS. FLANIGAN): The DVD, I need to get the DVD in

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 through Ms. Lloyd, but you had said in the hearing, it's already into evidence in
2 that, and that we would need to make a record of the one that is number uh,
3 State's Number "1" or "2", whatever it was from the hearing, and is now going to
4 be State's Exhibit, I guess it would be "9" in this. I didn't know if you wanted to...

5 THE COURT: Do we have it?

6 THE STATE (MS. FLANIGAN): It should, it should, yes. It was part
7 of the evidence of the hearing.

8 THE COURT: Karen? Were you in the hearing the other day on
9 the DVD? Karen, I need Karen. You were in the hearing the other day when we
10 had the DVD.

11 COURT REPORTER: Yes.

12 THE COURT: Do you have that?

13 COURT REPORTER: It's in evidence.

14 THE COURT: Okay.

15 THE STATE (MS. FLANIGAN): Our intention, Judge, is to just go
16 through entering it through her and then we'll make sure that it was the same
17 exhibit that was used in the hearing, if that would be okay with the Court.

18 THE COURT: Sure.

19 THE STATE (MS. FLANIGAN): Okay.

20 THE COURT: Wait just a minute.

21 (BENCH CONFERENCE ENDS)

22

23 THE STATE (MS. FLANIGAN): I would ask that this marked as...,
24 Lauren's got the stickers. This would be State's Exhibit "9".

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 STATE RESUMES DIRECT EXAMINATION OF DONNA LLOYD BLACK:

2 Q Ms. Lloyd, I'm showing you what's been marked here as State's Exhibit
3 "9". Do you recognize the writing on that?

4 A Uh, I do.

5 Q And whose handwriting, whose handwriting is that?

6 A Uh, that's the handwriting of Melissa Kast, the other girl in the, our office.

7 Q Okay, do you recognize this as the uh, DVD of the interview of Annie
8 Young? Do you recognize this as a cover marked with a specific number
9 and the name "Annie Young"?

10 A Yes.

11 Q Would this specific number correlate with something at Comfort House?

12 A Yes, it does. It's our medical record number.

13 Q Okay. Would that number correlate with Annie Young's medical record
14 number?

15 A Yes.

16 Q Okay. So this would be the DVD of Annie Young's interview?

17 A Yes.

18

19 THE STATE (MS. FLANIGAN): I'd move this into evidence.

20 THE COURT: Uh, Ms. Schultz?

21 MS. SCHULTZ: We would object, Judge, for the same reasons that
22 were stated in the previous motion that was heard before the Court.

23 THE COURT: Okay. And you rely upon the record previously
24 made?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 MS. SCHULTZ: That is correct.

2 THE COURT: Okay. And the Court uh, incorporates all that uh,
3 arguments of both sides, the State and the defendant. Uh, and overrules the
4 objection. And uh, it's what? State's...

5 THE STATE (MS. WHEATLEY): State's "9", Judge.

6 THE STATE (MS. FLANIGAN): State's Exhibit "9". And then
7 State's Exhibit "9" into evidence. And uh, you'll see this later. But this particular
8 uh, item is marked with two different stickers. One of them is marked State's
9 Exhibit "9" with a case number. The other one is marked State's Exhibit "2", 11-
10 14-08. That's because there was a separate about the admissibility issues of
11 this particular DVD on November the 14th, 2008. That's why there's two stickers
12 on it. Okay?

13 THE STATE (MS. FLANIGAN): If Ms. Schultz and I could have a
14 moment, Judge.

15

16 BENCH CONFERENCE:

17 THE STATE (MS. FLANIGAN): So it may take a little bit to get it up.
18 So...

19 THE COURT: Well, I don't know how..., have him to come on up
20 here. Unless it's gonna take awhile. It might not take very long.

21 BENCH CONFERENCE ENDS)

22

23 THE STATE (MS. FLANIGAN): Judge, he indicates five or ten
24 minutes.

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 THE COURT: Okay, it's gonna be a few minutes because they've
2 got to get the computer going again. So, you might as well uh, you know, relax
3 in the jury room. Uh, during this recess it's your duty not to permit anyone to talk
4 to you or in your presence on any subject matter connected with the trial. Do not
5 form or express an opinion on the case until it's finally submitted to you. Stand
6 up, stretch. Take a walk. Don't be gone too long. Okay, come on up and get
7 the computer going.

8 (JURY EXITS COURTROOM)

9 THE COURT: You can step down, too, if you want to, Ms. Lloyd.
10 Whatever you want to do. Sit, stand, walk.

11 (OFF RECORD)

12 (JURY RETURNS TO COURTROOM)

13 THE COURT: Have a seat, folks. That didn't take too long. You
14 didn't even get a chance to take a walk. All right. Okay, we back on, Karen?

15 COURT REPORTER: Yes.

16 THE COURT: Okay.

17 THE STATE (MS. FLANIGAN): Judge, I'd just ask permission to
18 publish the contents of the video to the jury.

19 THE COURT: Granted.

20 (STATE'S EXHIBIT "9", DVD, PLAYED TO THE JURY)

21

22 STATE RESUMES DIRECT EXAMINATION OF DONNA LLOYD BLACK:

23 Q Ms. Lloyd, is that a true copy of the interview that you had with Annie
24 Young on April the 18th, 2008?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 A Yes, it is.

2 Q Okay. And did it start at the beginning and we played it till the end? Is
3 that correct?

4 A That's correct.

5 Q Okay. Without showing them to the jury, I'm going to show you some
6 pictures. I'm going to ask you if you can identify this as the drawings that
7 you and Annie made on the video that we just watched.

8 A That's what we did.

9 Q Okay. And can you indicate if this right here what I'm pointing to now, was
10 that the picture of the weenie-bob that she drew?

11 A It was, or it is.

12 Q Okay. Is this where she wrote what he did, made her do to his weenie-
13 bob?

14 A It is.

15 Q And what did she write there?

16 A "Suck".

17 Q And over here is the drawing of the uh, Ed Nunley's trailer?

18 A That's correct.

19 Q Is there anything on there that is different than what was written during
20 that interview?

21 A No.

22

23 THE STATE (MS. FLANIGAN): At this point, Judge, I would ask to
24 move this uh, State's Exhibit "6" into evidence.

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 MS. SCHULTZ: No objection in addition to what we've already
2 expressed with respect to the entire interview.

3 THE COURT: Okay. Anything you want to say about that?

4 THE STATE (MS. FLANIGAN): The State will renew their
5 arguments that I made, that we made in the prior hearing.

6 THE COURT: Okay, the arguments of the State and the defendant
7 are incorporate by reference. And the defendant's objections are overruled and
8 State's Exhibit..., what's the number on it?

9 THE STATE (MS. FLANIGAN): Six, Judge.

10 THE COURT: State's Exhibit "6" is admitted over the objections of
11 the defendant.

12

13 STATE RESUMES DIRECT EXAMINATION OF DONNA LLOYD BLACK:

14 Q Ms. Lloyd, without showing this to the jury, I'm going to ask if State's
15 Exhibit "7" is the drawing of the little girl that you worked on with Annie
16 Young.

17 A It is.

18 Q Is all the handwriting on this uh, all the words that are written, would that
19 be your handwriting?

20 A Yes, it is.

21 Q Okay. And do you recall if Annie made any marks or drawings on this?

22 A She did the circles around the parts of the body she thought no one else
23 should touch.

24 Q That would be the lips, and the nipple, the pee-pee, the hand and the butt

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 A That's correct.

2 Q The words you wrote you in?

3 A The words are my writing.

4 Q Is that a true and accurate representation of the drawing uh, from the date
5 of that interview?

6 A It is.

7 Q Are there any additions or deletions to that?

8 A No.

9

10 THE STATE (MS. FLANIGAN): Okay. The State would move uh,
11 Exhibit "7" into evidence.

12 MS. SCHULTZ: The same objection, Judge.

13 THE STATE (MS. FLANIGAN): The same arguments from the
14 State.

15 THE COURT: Overruled. Admitted. What was the number?

16 THE STATE (MS. FLANIGAN): Seven.

17 THE COURT: Seven, State's Exhibit "7" admitted over the
18 objections of the defendant.

19

20 STATE RESUMES DIRECT EXAMINATION OF DONNA LLOYD BLACK:

21 Q And without showing this to the jury, I will show uh, the drawing of the little
22 boy, State's Exhibit "8", and ask if this is uh, the paper that you worked on
23 with Annie during that interview?

24 A It is.

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 Q And is that a drawing of a little boy?

2 A It is.

3 Q Can you indicate if the handwriting or the words all written on there would
4 be uh, your handwriting?

5 A That's all my handwriting.

6 Q These would've been the words that Annie told you that she called these
7 body parts?

8 A Yes.

9 Q Okay. Are there any marks on there that Annie made?

10 A Annie uh, would circle the parts of the little boy that she thought that no
11 one else should touch.

12 Q And that would be the mouth, the nipples, the hands, the weenie-bob and
13 the butt?

14 A That's correct.

15 Q Okay. Any additions or deletions to this drawing since the time you saw it
16 at the Comfort House?

17 A No.

18

19 THE STATE (MS. FLANIGAN): Okay. The State would move to
20 admit State's Exhibit "8" into evidence.

21 MS. SCHULTZ: The same objection.

22 THE STATE (MS. FLANIGAN): And the same arguments, Judge.

23 THE STATE (MS. FLANIGAN): State's Exhibit "8" is admitted into
24 evidence over the objections of the defendant.

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 THE STATE (MS. FLANIGAN): At this time, Judge, I'd ask that we
2 publish these items to the jury.

3 THE COURT: Okay.

4 (EXHIBITS PUBLISHED TO THE JURY)

5 THE COURT: Ms. Schultz?

6

7 BENCH CONFERENCE:

8 THE COURT: Okay. What...

9 THE STATE (MS. FLANIGAN): Have you told them before that
10 they could take all the evidence back with them?

11 THE COURT: I did. But uh, I suspect that the uh, am I correct that
12 the DVD cannot be played in any regular DVD player?

13 THE STATE (MS. FLANIGAN): Just on a laptop.

14 THE COURT: Okay. So it's not like something else that they can
15 see. Uh, so, I...

16 MS. SCHULTZ: And, judge, we would certainly object to them
17 taking this back into the room..., because I think if you let them (unintelligible)...,
18 the testimony of this child in this particular instance where everybody else
19 (unintelligible)...

20 THE COURT: I think that uh, I think that basically the problem is
21 that uh, it's a special thing that has to be set up. And uh, but I would propose to
22 instruct them uh, like I do in the uh, final jury instruction about the testimony,
23 about re-reading or re-playing it, and tell them if they have a dispute about the
24 contents of this particular exhibit, that it will be replayed or uh, for them in the

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 courtroom. But if they do not indicate that there's a dispute, then it will not be. If
2 you will look at instruction number..., if you look at this first paragraph right here.

3 MS. LAUREN WHEATLEY: And I think, Judge, that not allowing
4 them to have it as evidence is just (unintelligible)..., stressing the importance of
5 everything else over this. They're getting every other piece of evidence. I think it
6 should be offered...

7 THE COURT: Well, they'll have it, but they can't really play it
8 without having a computer and setting it up and...

9 MS. LAUREN WHEATLEY: Well, then I think it should be offered
10 that it can be set up, if they do want to.

11 THE STATE (MS. FLANIGAN): Judge, I just don't..., not to follow
12 on Lauren's argument, but I just think it's..., just because technology has
13 advanced to a point where we aren't equipped to handle it, this would be no
14 different than say if they had recorded it on a regular DVD or a VCR tape or an
15 audio tape. They would be allowed to have it, but you're kind of handicapping...

16 THE COURT: Oh, I'm gonna send the physical DVD back, but they
17 can't really do anything without a computer. Uh, I'm not gonna stop them from
18 seeing it again if they want to see it.

19 THE STATE (MS. FLANIGAN): But if we, what if we...

20 THE COURT: But there's not point in seeing it if there's not a
21 dispute about it.

22 MS. LAUREN WHEATLEY: No, but I think telling them that they
23 can only see it if there's a dispute...

24 THE COURT: Well, they wouldn't need to see it if there wasn't a

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (DIRECT)

1 dispute of what was on it.

2 MS. LAUREN WHEATLEY: Judge, that's putting words in their
3 mouth and I don't think you can do it, if they want to look at all the evidence
4 again period.

5 THE COURT: Well...

6 MS. SCHULTZ: Well, this is kind of like listening to testimony
7 again. You know, you can't just, we don't just let them to re-listen to witnesses'
8 testimony without listening to the whole thing. Because that's (unintelligible)...,
9 witnesses' testimony.

10 THE COURT: Well, I'll tell you what, we can continue this outside
11 the presence of the jury.

12 THE STATE (MS. FLANIGAN): Are you gonna read that to them
13 about...

14 THE COURT: Yeah. You all have a copy of this. That's what my
15 thought is.

16 (BENCH CONFERENCE ENDS)

17 THE STATE (MS. FLANIGAN): The Judge, or, Judge, the State
18 has no further questions of Ms. Lloyd.

19 THE COURT: Okay. We'll wait until the jury gets a chance to look
20 at the exhibits. Are they already finished? Okay. Did everybody get a chance to
21 see those exhibits? Okay, all right. Uh, okay uh, cross examination?

22 MS. SCHULTZ: Thank you.

23

24 **CROSS EXAMINATION OF DONNA LLOYD BLACK BY DEFENSE:**

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (CROSS)

1 Q Ms. Black, you talked several times about or used the term forensic
2 interview. And the Prosecutor asked you what it meant, but I don't think
3 you ever answered the question. Can you tell me what a forensic
4 interview is?

5 A Uh, from the training provided through Finding Words, it's a method or we
6 use a certain protocol to talk to people or talk to children primarily about
7 uh, alleged physical or sexual abuse.

8 Q So, are you telling me that Finding Words is a forensic interview, they are
9 one and the same thing?

10 A It's a forensic interviewing technique, yes.

11 Q Okay. But on a broader sense, what is a forensic interview?

12 A It's the interview of an alleged victim of uh, physical or sexual assault,
13 then following the Finding Words protocol.

14 Q Okay. When Annie came to your office for this interview, who brought
15 her?

16 A I believe it was her mother.

17 Q And was her mother, her mother was not present in the interview room?

18 A No.

19 Q Was her mother permitted to watch the interview?

20 A No.

21 Q Did Annie know that there were people watching the interview as she
22 gave it?

23 A Uh, I believe I told her that, that we had the cameras and that there were
24 other people that could observe us.

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (CROSS)

1 Q That would've been in the beginning of the interview?

2 A Yes.

3 Q Did you explain anything to her about the interview before the tape
4 started?

5 A I don't believe so.

6 Q Now you indicated that you have worked for Comfort House since 2006?

7 A March of 2006.

8 Q Has Comfort House been in operation continuously since that time?

9 A Yes.

10 Q So this offense is alleged to have occurred in April of 2007. At that point
11 in time Comfort House was in operation. Is that correct?

12 A That's correct.

13 Q And Comfort House was available for an interview of a, of an alleged
14 victim in any point in April of 2007?

15 A That's correct.

16 Q Who was it that contacted you to set up this interview?

17 A We do referrals from the Department of Child Services.

18 Q Otherwise known as Protective Services?

19 A That's correct.

20 Q And were they the ones that set up this interview?

21 A Yes.

22 Q Had this interview been scheduled previously and canceled?

23 A I believe it was.

24 Q Do you recall the uh, circumstances surrounding that? Was it a no-show

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (CROSS)

1 or a call-in and cancellation with an excuse, or do you recall?

2 A I don't. We would've gotten notification from the Department of Child
3 Services that the interview had been canceled.

4 Q Okay. And when the Department of Child Services contacted you to set
5 up an interview, what's the time lag normally before you can conduct it?

6 A We, we'll try to set it up immediately, if they want us to.

7 Q So if they call you within a day or two, you do the interview?

8 A We attempt to have the team brought together, yes, as quickly as
9 possible.

10 Q And who selects the members of the team?

11 A Uhm, the teams are, well, they consist of Department of Child Services,
12 and Department of Child Services contacts law enforcement. And then
13 they generally call us. We contact the Prosecutor's Office, so that the
14 team is, just involves members of that multi-disciplinary team.

15 Q So if you were doing an interview today of a child, and then a subsequent
16 interview tomorrow, but a different child, you may have different team
17 members?

18 A That's correct.

19 Q But they would all be from the same organization?

20 A That's correct.

21 Q You indicated that you had been through approximately two hundred
22 hours of training in order to uh, to do the, provide the services of your job?

23 A Uhm, that, that's correct.

24 Q You do not have any other formal education in, you know, any psychology

25

STATE'S WITNESS – WITNESS #1, DONNA BLACK (CROSS)

1 or uh, sociology or therapy counseling or anything of that nature?

2 A No, I don't, no.

3 Q So the only thing that you have done to prepare for this job is to go
4 through the training, which is approximately two hundred hours you spent
5 in that?

6 A Two hundred hours over the last almost three years, that's correct.

7 Q Do they have regular continuing education uh, updates for you in this job?

8 A For a forensic interviewer, I'm not aware of any continuing education
9 requirements, no.

10 Q But do you have to have a certificate or any kind of a license in order to
11 have this job?

12 A No.

13 Q Okay, so they can hire anyone off the street they feel is capable of
14 learning, sending them through the school and then they, they can do the
15 job? Is that what you're talking about?

16 A Yes.

17 Q And you indicated that you had a little bit less than two hundred hours of
18 training now. Do you know how much you had at the time you did this
19 interview?

20 A Honestly, I don't have a clue. Uhm, if it was April of this year, uh, maybe,
21 I'm guessing I've had twenty hours over the course of this year, or thirty
22 hours this year.

23 Q Okay. When you were talking to Annie during the interview, could you
24 clearly understand everything that she was saying to you?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (CROSS)

1 A During the interview in the room, I could understand her. There, I believe
2 you'll, you might have saw a time or two where I had to say, asked her to
3 repeat it.

4 Q And you, you sat here with us today as we watched this?

5 A Uh huh.

6 Q And it's very difficult to understand her in some places on the...

7 A On the recording, that's correct.

8 Q And do you know if there's any technology available from your office that
9 would increase the ability to hear what she says in the interview?

10 A I'm not aware of any.

11 Q Okay.

12

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

14

15 **REDIRECT EXAMINATION OF DONNA LLOYD BLACK BY STATE (MS.**

16 **FLANIGAN):**

17 Q Where was uh, the Comfort House located in April of 2007? Was it here
18 in Corydon?

19 A No. At that time we only had an office in Milltown.

20 Q So there was not one here?

21 A No. We didn't move to Corydon until January of 2008.

22 Q Okay. And during that process, was there any time that the Comfort
23 House was shut down for the move?

24 A Uhm, no. Not really.

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (REDIRECT)

1 Q So in April of 2007, if Annie had gone to do a forensic interview, it
2 would've been in the Milltown office?

3 A We would've had to have did it at Milltown, that's correct.

4 Q And Ms. Schultz asked you if you could clearly understand Annie on the
5 video, or during the interview.

6 A In the interview room with Annie, yes.

7 Q Okay. And today it was difficult to understand some of what she said.

8 A Yes.

9 Q Do you have a memory of what Annie told you during that interview?

10 A Some memory, yes.

11 Q Okay. And could you share with the jury what your memory of what Annie
12 told you was?

13

14 MS. SCHULTZ: Judge, I want to object to the question. Hearsay. I
15 don't, I believe that the video speaks for itself, and I would ask that the Court not
16 permit this witness to uh, comment on what was in the video.

17 THE STATE (MS. FLANIGAN): And I think Ms. Schultz opened the
18 door by asking if she understood Annie during the video and couldn't understand
19 it here. The video doesn't actually speak for itself and we have a witness here
20 who was there during the interview who could comment on that.

21 THE COURT: I think that's a rather broad question. Uh, and uh, so
22 I'm gonna sustain the objection.

23 THE STATE (MS. FLANIGAN): Would the Court permit me to ask it
24 in a more narrow fashion?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (REDIRECT)

1 THE COURT: You might ask another question in a more narrow
2 fashion.

3 THE STATE (MS. FLANIGAN): Okay.

4

5 STATE RESUMES REDIRECT EXAMINATION OF DONNA LLOYD BLACK:

6 Q Did, during the interview, did Annie Young uh, make allegations that
7 Edward Nunley uh, abused her in any way?

8

9 MS. SCHULTZ: Objection, your Honor. First of all, I believe that
10 the question is based on uh, fact not in evidence. I believe that the child
11 identified the person as Eddie Unley, not Edward Nunley.

12 THE COURT: Okay. I'm gonna sustain the objection.

13 THE STATE (MS. FLANIGAN): Okay.

14

15 STATE RESUMES REDIRECT EXAMINATION OF DONNA LLOYD BLACK:

16 Q Did Ann, did Annie Young indicated, indicate to you that someone had
17 touched her in a place that should not be touched?

18 A Yes.

19 Q Did she indicate who had done that?

20 A Yes.

21 Q And who did she indicate?

22 A She said "Ed Unley".

23 Q Did she indicate that Ed Unley had uh, used his hand to touch her pee-
24 pee?

25

STATE'S WITNESS - WITNESS #4, DONNA BLACK (REDIRECT)

1 MS. SCHULTZ: Objection, leading.

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

3 THE COURT: Sustained.

4 THE STATE (MS. FLANIGAN): I'll rephrase it.

5

6 STATE RESUMES REDIRECT EXAMINATION OF DONNA LLOYD BLACK:

7 Q What did Annie Young, Annie Young tell you, if anything, how, how did
8 Annie Young tell you that Ed Unley touched her?

9 A She said that he had touched her on her pee-pee with his weenie-bob, his
10 hand and his tongue.

11 Q Did she indicate uhm, that Eddie Unley made her touch him in any way?

12 A Yes.

13 Q And how was that?

14 A She, Annie said he made her put his weenie-bob in her mouth and suck it.

15 Q Did Annie Young describe any videos that Eddie Unley made her watch?

16 A She did.

17 Q What were those videos?

18 A She just said they had naked people in it.

19

20 THE STATE (MS. FLANIGAN): That's all I have, Judge.

21 THE COURT: Any other questions, Mr. Schultz?

22 MS. SCHULTZ: No, Judge.

23 THE COURT: No?

24 MS. SCHULTZ: No questions.

25

1 THE COURT: Uh, we're gonna take a short break. During this time
2 it's your duty not to allow anyone to talk to you or in your presence about any
3 subject matter connected with this trial. Do not form or express an opinion on
4 the case until it's finally submitted to you.

5 (JURY EXITS COURTROOM)

6 THE COURT: Okay uh, one of the jurors had this question. We're
7 still on the record, Karen?

8 COURT REPORTER: Yes.

9 THE COURT: The question was, "Will we get to see this again?"
10 This was a note that was handed to the Bailiff during the playing of the video
11 tape. And Ms. Lloyd, we're finished with Ms. Lloyd, aren't we?

12 THE STATE (MS. FLANIGAN): Yes.

13 THE COURT: Okay, you can step down. Thank you. And then the
14 second question is, "Can't hear the child clearly." Uh, all right, and uh, okay,
15 what does the State have to say about all this?

16 THE STATE (MS. FLANIGAN): Judge, the State would ask that the
17 uhm, the jury be allowed to take the DVD back into the jury room with them as
18 it's already in evidence. It is, it can be played on a laptop computer, which the
19 State has and can furnish to the jury. The State would submit that it's no
20 different..., we will find a computer that it can be played on. Uh, something that
21 they can take back there. I will indicate that it is no different than if there were to
22 be a video tape on VCR or cassette tape or a DVD that they could watch on the
23 TV, if they took it back. So in effect, because this is new technology, I don't think
24 they should be handicapped from being able to view uhm, the, view the evidence

25

1 in the, in the jury room like they would be able to view those other items.

2 MS. SCHULTZ: Well, Judge, I would certainly object to that. First
3 of all, in looking at the procedure that you have to use in order to view it, I know I
4 have one, a copy of the video tape. And it is not simply putting it in and pushing
5 a go button. There would have to be someone there to be able to play it for
6 them, if they had it there, to be able to stop and start it, to know the technology,
7 to know what's going on in order to do it. It took me a long time to figure these
8 things out.

9 Secondly, it is no more easy to hear on a computer, from my experience,
10 than what it was to hear it here in this courtroom. There is a lot of the tape that
11 is just simply inaudible. You can have your ear glued right to the computer and
12 have it turned up maximum volume and you still cannot understand it clearly.

13 The third objection that I would have is that I believe this is a testimonial
14 type uh, piece of evidence. And if we were to allow the jury to have that and
15 repeatedly look at it and go through it, it would uh, distress that this is a very
16 more important piece of evidence than the other witnesses they've heard from in
17 the courtroom, and we would certainly object to that. If the jury has a problem
18 hearing it and wants to hear it again because they can't agree on the contents of
19 it, I certainly wouldn't have any objection to bringing them back into the
20 courtroom and playing it through one more time, the same as it's happened this
21 time. I, I think it would be improper to let them have it in the jury room and be
22 able to go through it and re-listen to it as often as they wanted to.

23 THE STATE (MS. FLANIGAN): Judge, if I could just comment. I
24 think if this had been captured on a VCR tape and we had gone through the

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1 hearing we did last Friday, there would be no question that they could take it
2 back and look at it, and start it and stop it wherever they wanted, because it's in
3 evidence. I think it's just the, the special technology that might be an issue. And
4 don't think the, you know, the State should be handicapped by that. And I think
5 we could work around the issues that Ms. Schultz brings up about how do they
6 play it and teaching them how to play it. I think there's ways we could work
7 around it. This is a new technology and it's something we have to, to deal with.

8 MS. SCHULTZ: Well, Judge, I certainly don't agree that if it was a
9 video tape we'd just give it to them and let them go back there and play it as
10 often as they wanted to. I have been involved in other trials where there had
11 been video tapes admitted as evidence, for example, in an armed robbery that I
12 was involved in, in Crawford County. And in those particular cases, and I don't
13 recall the exact reason why, but every time the jury wanted to see the uh, video
14 of the incident again, they had to come back into the courtroom and view it in the
15 courtroom in the presence of the defendant. Now I think that would be the
16 appropriate way. They're listen to evidence again, oral evidence, and I think if
17 they're going to do it, they have to do it in the courtroom in the presence of the
18 defendant.

19 THE COURT: Anything else you want to say?

20 THE STATE (MS. FLANIGAN): No.

21 THE COURT: Okay. Uh, uh, we have uh, had situations before uh,
22 and I've modified my jury, final jury instructions. Uh, I remember this one trial
23 where we had uh, jurors uh, asked to replay the testimony of a certain witness.
24 And then they were instructed they couldn't hear that unless they had a

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1 disagreement or a dispute about the testimony, which was uh, the law. And then
2 they decided they didn't want to hear it. So I guess they just wanted to pass the
3 time, maybe get to lunch or dinner or something, I don't know. But uh, after they
4 were instructed, what it was they needed to do to be able to hear it again, they
5 didn't want to hear it. And ever since then uh, I've got a special paragraph in my
6 final jury instructions, which you all have, and uh, and it reads that when there's
7 a disagreement among jurors concerning the nature of testimony given during a
8 trial, jurors may request the Court to have the disputed testimony reread or
9 replayed for the jury. If there's no disagreement or dispute among the jurors
10 about testimony, the Court will not reread or replay the testimony. If the jury
11 requests the Court reread or replay testimony without indicating there's a dispute
12 or disagreement among the jurors about the testimony, the Court will not reread
13 or replay testimony. If the jury indicates or states that there is a disagreement or
14 dispute among the jurors about certain testimony, the Court will reread or replay
15 that testimony for the jury. You have to go through all these manipulations so
16 that if they ask this way or they ask that way or they ask that way, this is what's
17 gonna happen. Because they didn't really get it, I guess. Or maybe they just
18 wanted to get to dinner or something, I don't know. But I think the right way to
19 handle this..., and I understand about the technology issues. And it is true that
20 there are times during the video tape, because of the, because for various
21 reasons that it is difficult to hear the child uh, at certain points. Uh, so it's
22 possible that some of the jurors, you know, may not have heard certain portions,
23 and might have some dispute or uh, a concern about what exactly was said.
24 And I think that the thing to do is for me to instruct them, "Will we get to see this

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1 again?" Uh, yes, if you make an appropriate request, you'll get to see it again,
2 but not during the trial. During deliberations, if you wish to see it again, you'll
3 have to make a particular request and you'll be brought back into the courtroom
4 and it'll be replayed for you. Uh, uhm, and uh, I would tell them that if there's a
5 disagreement among the jurors about what was said during the uh, video tape
6 interview at the Comfort House, the disagreement or dispute among the jurors
7 about what was said or if they uh, simply want to listen to it and see it again in
8 order to clearly understand, in order to more clearly understand what is on the
9 DVD, the interview at the Comfort House, that they would have to make that
10 request in writing, and then they would be brought back into the courtroom and it
11 would be replayed for them. But that if they don't make an appropriate request,
12 it will not. And that will put it in the hands of the jury uh, to make that decision. It
13 won't leave it up to the Court or the defense or the State to make that decision.
14 Because they may decide, and that might've been what happened with the other
15 jury from years ago. I don't even remember what trial it was. They might've
16 talked a little more and decided, "Well, you know, there's other evidence that
17 convinces me about this point or that point and I don't really need to listen to
18 that", after they waited around on us to decide for twenty minutes, they decided
19 they had the answer themselves without relistening to it, which is also uh,
20 probably I suspect the real reason why they didn't want to really replay the
21 testimony. I think at first they thought maybe they did, and then as we went
22 further along, they decided well, they didn't really need that. You know, so that's
23 the way I'm prepared to handle that. Do you disagree with that? Uh, I know you
24 all uh, the State disagrees. But does the defense disagree?

25

1 MS. SCHULTZ: No. That's fine.

2 THE COURT: Okay. Then I would propose to answer their
3 question that way. I'll talk to them about it in that fashion. And uh, and uh,
4 handle it that way. Okay. Now then, so uh, you all want to take just a couple
5 minutes break and then start with your next witness?'

6 MS. LAUREN WHEATLEY: Yes, Judge.

7 THE STATE (MS. FLANIGAN): Yes, please.

8 MS. LAUREN WHEATLEY: And uh, we've released uh, Donna uh,
9 Lloyd Black from her subpoena. Is she released on your side?

10 MS. SCHULTZ: Oh, that's fine with me.

11 MS. LAUREN WHEATLEY: Okay.

12 THE COURT: Okay. All right, let's take a couple of minutes and
13 then we'll uh, revisit. Uh, here, could somebody hand this exhibit up to Karen?
14 (OFF RECORD)

15 THE STATE (MS. FLANIGAN): Judge, this is going to be Trooper
16 Bowling testifying. And you had, you had indicated uh, in your prior ruling on a
17 uh, child hearsay that you'd wanted to make sure he had some independent
18 recollection of that day. I don't know if you still have those concerns and want
19 him brought in or...

20 THE COURT: I absolutely do.

21 THE STATE (MS. FLANIGAN): Okay.

22 THE COURT: It depends on how he testifies, of course. You know,
23 he was back and forth. He reminded me of particular witness that didn't know
24 anything in a different trial. You know, so yeah, of course I have those concerns.

25

1 don't know how he's gonna testify today. Uh...

2 THE STATE (MS. FLANIGAN): I only asked because I didn't know
3 if you wanted to have a hearing outside the presence of the jury before you rule
4 or...

5 THE COURT: I don't care. It's up to you all. Whatever you want to
6 do. I mean, you know, a witness has to have personal knowledge.

7 MS. LAUREN WHEATLEY: He's got it, Judge.

8 THE COURT: And, of course, a witness' recollection can be
9 refreshed, but he still has to, you know, have an independent personal
10 knowledge or recollection of what happened before he can testify. He can't just
11 look at his police report and say, "Well, that's what I wrote down in the police
12 report. That's all I know. Otherwise I know nothing." Like Sergeant Schultz. It
13 has to be more than Sergeant Schultz, from my favorite childhood uh, T.V.
14 program.

15 MS. LAUREN WHEATLEY: Okay, Judge, we're ready.

16 THE COURT: All right. You ready to bring the jury in?

17 MS. LAUREN WHEATLEY: Yes.

18 THE COURT: All right. Are we off the record, Karen?

19 (OFF RECORD)

20 (JURY RETURNS TO COURTROOM)

21 THE COURT: Please be seated, ladies and gentlemen. Okay,
22 ladies and gentlemen of the jury, someone asked a question during the playing
23 of the uh, Comfort House interview DVD. And the question was this, "Will we get
24 to see this again? Can't hear the child clearly." Well, it is true that there were

25

1 some places on the DVD you couldn't hear the child as clear as you would've
2 liked to, that's for sure. Uh, will you get to see it again? Now I told you before
3 that I would send all exhibits to the jury room and there's no exception with that
4 exhibit. However, this particular exhibit is a little bit different because it has to be
5 played..., it can't be played on a regular DVD player. You all know there's all
6 these different formats for certain, certain things can be played on a computer on
7 a certain format, and others are on another format. Uh, I think the big-money
8 people just decided on the blue-ray disc format for high-definition or something.
9 Some of you probably know more about that than I do. But anyhow, there are all
10 these different formats. And you'd have to have a computer to play it. Now, uh,
11 let me explain to you the general rules with respect to testimony. Uhm, I'm
12 gonna instruct you later in the Final Instructions, that when there's a
13 disagreement among jurors about the nature of the testimony given during a trial,
14 jurors can request to have disputed testimony reread or replayed. That's the
15 general rule. But it's also true that if there is no dispute or disagreement among
16 jurors about a particular testimony, the Court will not reread or replay testimony
17 for a jury. I've had this happen where a jury has actually requested to replay
18 testimony of a particular witness without saying that there's a dispute or
19 disagreement. And when they do that, under the law, I cannot reread or replay it
20 unless they request it and say there's a dispute or disagreement. So a jury has
21 to affirmatively say that there's a good legal reason why they want to reread or
22 replay testimony. Now, the answer to this question is, I don't know, maybe. "Will
23 we get to see this again?" Maybe. It depends upon you as a jury. If you decide
24 that there's a dispute or disagreement about what was said on the tape, then you

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STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (DIRECT)

1 can request the Court to replay it, and we'll replay it for you. I think another
2 option, other than a dispute or disagreement about what is said is that you feel
3 like you need to have it replayed in order to clearly understand it because you
4 didn't really, you know, there were some parts of it you were not sure about, and
5 you'd like to hear it to be clear about it. I think that's like a dispute or a
6 disagreement if you didn't, if you didn't hear some of it clearly the first time and
7 you want to hear it again because you want to be sure, as much as you, about
8 what certain parts of it, what was said at certain parts of it. Then I believe that
9 would be uh, a good reason to replay it also. So the answer is, if you make an
10 appropriate request during your deliberations, then yes. You'll be brought back
11 into the courtroom, we'll set it up on the computer and we'll replay it. Okay? Any
12 objection to any of that? Anything that needs to be added?

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

14 THE COURT: By the State or the defense?

15 MS. SCHULTZ: No.

16 THE COURT: No? No problem? Okay. All right, your next
17 witness?

18 **TESTIMONY OF WITNESS #5, KEVIN BOWLING:**

19 THE STATE (MS. FLANIGAN): Thank you. The State would call
20 Kevin Bowling.

21 THE COURT: Sir, do you solemnly swear or affirm the testimony
22 you're about to give shall be the truth and nothing but the truth, so help you
23 God?

24 WITNESS: I do.

25

STATE'S WITNESS - WITNESS #3, KEVIN BOWLING (DIRECT)

1 THE COURT: Please be seated, sir.

2

3 **DIRECT EXAMINATION OF KEVIN BOWLING BY STATE (MS. WHEATLEY):**

4 Q Good morning, sir.

5 A Good morning.

6 Q Would you please introduce yourself to the jury?

7 A I'm Kevin Edward Bowling.

8 Q And where are you employed?

9 A With the Indiana State Police.

10 Q How long have you been so employed?

11 A Eight years.

12 Q And what areas uh, do you normally work?

13 A I normally uh, Washington, Scott County area.

14 Q On April 13th, 2007, were you working that day?

15 A Uh, yes, I was.

16 Q Okay. And I noticed that you're not in uniform today. Are you normally in
17 uniform?

18 A Uh, that is correct.

19 Q Okay. April 14th, 2007, were you working?

20 A Uh, yes, I was.

21 Q In uniform?

22 A Yes.

23 Q Okay. Do you have a specific title or rank?

24 A Uh, Trooper.

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (DIRECT)

1 Q Okay, Trooper. And what are your normal everyday duties?

2 A Normal everyday duties are patrolling the road and investigating uh, what
3 uh, criminal cases may come along, or initiate in a case.

4 Q Okay. And have you had uh, schooling?

5 A Yes.

6 Q Could you please tell the jury what that was?

7 A Uh, schooling that I've had in my field uh, would be for traffic and criminal
8 law. Uhm, such as traffic enforcement and speed. Uh, the criminal part
9 would for D.U.I. enforcement uh, burglaries and uh, some theft cases.

10 Q April 14th, 2007, did you have the occasion to go to the Washington
11 County Sheriff's Department?

12 A Yes, I did.

13 Q What was the reason for that?

14 A I had uh, received a call uh, to speak with some individuals on the uh, on
15 a case of a child being molested.

16 Q Okay, once you got to the Sheriff's Department, who did you see?

17 A Uh, once I arrived at the Sheriff's Department uh, I met with uh, a young
18 female, Annie Young, her mother Tonya Caves, and uh, a Mr. Richard
19 Caves.

20 Q Okay. And who did you believe that to do?

21 A Uh, at the time uh, I thought it was her father. However, it was her
22 stepfather.

23 Q Whom did you speak with while you uh, were meeting with those three
24 individuals?

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (DIRECT)

1 A I spoke with uh, Annie and her mother.

2 Q Okay. What, if anything, did Annie say to you?

3 A Uh, Annie stated that uh, she had...

4

5 MS. SCHULTZ: Judge, just for the record, I want to uh, interject my
6 objection here uh, as a hearsay. And also for the reasons stated in the previous
7 hearing that we held before the Court.

8 THE COURT: Okay. State's...

9 MS. LAUREN WHEATLEY: As the first one, hearsay, I believe that
10 that person has already testified. We've already had somewhat of an argument
11 on Friday as to what Trooper Bowling can say, and right now he's testifying as to
12 what he remembers, Judge. There's nothing saying that he does not remember
13 it.

14 THE COURT: Okay. With respect to the objections uh, uhm, your
15 objections of the record that was previously made, that's what you're relying
16 upon, Ms. Schultz?

17 MS. SCHULTZ: That is correct.

18 THE COURT: Okay, and the State is relying upon the same?

19 MS. LAUREN WHEATLEY: Yes.

20 THE COURT: All right. Your objections are overruled. Okay, we're
21 talking about the same scope that we talked about uh, before uhm, Ms.

22 Flanigan?

23 THE STATE (MS. FLANIGAN): Yes.

24 THE COURT: Okay.

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (DIRECT)

1 STATE RESUMES DIRECT EXAMINATION OF KEVIN BOWLING:

2 Q What, what do you specifically recall Annie saying to you?

3 A Uh, Annie had told me that she had stayed at uh, Ed's house the night
4 before.

5 Q Okay, did she say who Ed was? Did she give a last name of Ed?

6 A Ed is uh, how she referred to him as.

7 Q Okay, all right. Did she say what happened when she stayed at Ed's
8 house the night before?

9 A Uh, she stated that she had stayed at Ed's house and that uh, he made
10 her watch a bad movie. And I inquired as to what she meant by a bad
11 movie, and she stated a "naked movie".

12 Q Okay. At any point in time uh, did you speak with Tonya?

13 A Uh, yes, I did, briefly.

14 Q Did, what did Tonya say to you?

15 A Uh, Tonya told me that her daughter, Annie, and uh, Ed had a secret uh,
16 and that secret was wrote out.

17 Q Okay, did you know what it was wrote out on?

18 A Yes. It was wrote out on a white envelope?

19 Q Did you see this white envelope?

20 A Yes, I did.

21 Q Do you specifically recall what that white envelope said?

22 A The white envelope had wrote on it, "I was sucking his weenie-bob and he
23 was licking my pee-pee."

24 Q Was it handwritten?

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (DIRECT)

1 A Yes, it was.

2 Q Uh, describe the writing.

3 A The writing uh, it was wrote in pencil, as it was a kid's writing.

4 Q And you do recall seeing that note?

5 A Yes, I do.

6 Q Do you recall what happened to that note?

7 A No, I do not.

8 Q Did Annie say anything else to you about what happened to her at Ed's
9 house?

10 A She did. Uh, and after she stated she had been uh, forced to watch the
11 movie, uh, she stated that uh, Ed had made her lick his weenie.

12 Q Did she say anything else happened?

13 A Uh, she stated that Ed had also taken her panties off.

14 Q Did you have any other conversations with Tonya?

15 A No. Just initially and that was it.

16 Q At any point in time uh, during that uh, discussion that you had with Annie
17 and Tonya, did, was it ever relayed to you who Ed was?

18 A Uh, yes, it was. Ed uh, Nunley.

19 Q Did you have any conversation with Annie or Tonya about Ed Nunley's
20 home or what happened on April 14th, 2007?

21 A Yes, I did.

22 Q What was that?

23 A Uh, as far as I spoke with Annie, as far as how uh, things may have been
24 laid out in the home. Uh, also there was an altercation uh, that day. Uh...

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (DIRECT)

1 Q Describe to the jury what you mean by altercation that day.

2 A When uh, Tonya, and when her and Richard had picked her daughter up,
3 Annie, they had left. Uh, that is when Annie told Tonya that uh, her and
4 Ed had a secret uh, she could not tell, and the secret was what she wrote
5 on the envelope for her mother, Tonya. Once Tonya seen that or
6 discovered that uh, she turned around and went back to the residence
7 and uh, vandalized some property of Ed Nunley's.

8 Q And did you question her about that?

9 A Uh, I, I didn't have any reason to question her because she spoke right up
10 and, "Yes, I did do that."

11 Q Uh, based upon you reading the note, did you ask Annie about her pee-
12 pee?

13 A Uh, yes.

14 Q And what did she say?

15 A Uh, she stated that that is how she refers to her, her parts.

16 Q At any time was a bath mentioned?

17 A I did. Uh, I asked if there was a bath taken or if Annie had taken a bath.

18 Q Why did you ask that question, Trooper?

19 A To see if there would be any evidence possibly left uh, with her.

20 Q Okay. And what did, what was the response when you asked that
21 question?

22 A Her response was that she had taken a bath.

23 Q At the time, when you were speaking with Annie and Tonya uhm, was
24 Annie willing to talk to you?

25

STATE'S WITNESS – WITNESS #5, KEVIN BOWLING (DIRECT)

1 A Uh, yes, she was.

2 Q Was Tonya willing to talk to you?

3 A Yes.

4 Q Do you recall any specific conversation that you had with Richard Caves?

5 A No, I do not.

6 Q Just one moment, sir.

7

8 MS. LAUREN WHEATLEY: No further questions.

9 THE COURT: Cross?

10

11 **CROSS EXAMINATION OF KEVIN BOWLING BY DEFENSE:**

12 Q Officer, do you recall approximately what time of the day this uh, contact
13 with uh, Tonya Caves and Annie Young occurred?

14 A Uh, approximately uh, four o'clock p.m.

15 Q And from your contacts with them, did you get any perception of what time
16 the, Tonya had picked Annie up from Ed's house?

17 A Uh, approximately around two to two-thirty p.m.

18 Q Okay. So there had been about an hour and a half lag or so from the time
19 she told you she picked up the child and the time that you actually talked
20 to the child?

21 A That is correct.

22 Q And did you get any indication of when the actual alleged molestation
23 occurred?

24 A Uh, just the evening prior. Uh, after ten-thirty p.m., the evening before.

25

STATE'S WITNESS – WITNESS #3, KEVIN BOWLING (CROSS)

1 Q Okay. So in a case of this sort where a, an accused has had physical
2 contact with a child, in some particular, in some cases you have evidence
3 on the body of the child that you can find to implicate the accused. Is that
4 what you're talking about?

5 A I'm sorry now?

6 Q Well, my question was a little convoluted. We'll start again. When you
7 have someone who is accused of touching a child or another person for
8 that matter, and you have occasion to meet with the child shortly after that
9 happened, is there a potential that there is evidence on the body of the
10 child that you could collect to verify that a crime has been committed?

11 A There is a potential, yes.

12 Q Okay. And that would be DNA evidence?

13 A Uh, could be.

14 Q And have you been trained in the collection of that type of evidence?

15 A Uh, not as far as uh, child cases, no.

16 Q Okay. In the Indiana State Police organization, what type of an officer is
17 typically the person who would collect that kind of information?

18 A Uh, these cases are usually uh, referred to a detective. Uh, and they will
19 sometimes collect the evidence.

20 Q And it is vitally important that that evidence be collected immediately, is it
21 not?

22 A Uh, yes, it is.

23 Q If much time goes by, you could lose the evidence completely?

24 A There is a possibility, yes.

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 Q Okay. And so that was the reason for you asking or inquiring whether
2 Annie had taken a bath at Ed's house?

3 A Yes, it was.

4 Q And did you make any inquiries as to whether, what time of the day she
5 had taken that bath?

6 A Uh, I did not inquire. Uh, but what I remember she had told me was that
7 morning, after she had woke up.

8 Q All right. Did you refer this case to a detective uh, for further investigation
9 immediately?

10 A It uh, was immediately forwarded to uh, Child Protective Services, and uh,
11 at that time uh, I do not recall immediately referring it to a detective, but
12 uh, detectives did get a hold of the case and take it over.

13 Q Okay. So you, when you referred it to the uh, Protective Services, that's a
14 requirement of your job. Is that right?

15 A Yes, that is correct.

16 Q Any time you see a child that has been abused, neglected, that type of
17 thing, you're required to refer it to Protective Services?

18 A Any time there's allegations with a kid, yes.

19 Q And do you recall whether you did that the same day you received the
20 report?

21 A Uh, I spoke with uh, C.P.S., I believe it was late that evening. Uh, usually
22 there's someone, if it's on a weekend, there's usually someone on call
23 that we can contact.

24 Q And did you do anything else to follow up on your investigation of this
25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 case?

2 A Uh, not uh, after it was referred to uh, C.P.S., no.

3 Q Okay. Well, did you talk to Ed Nunley at one point?

4

5 THE STATE (MS. FLANIGAN): Your Honor, can we approach?

6 THE COURT: Yeah.

7

8 BENCH CONFERENCE:

9 THE COURT: I don't know she's gonna try to get into Ed Nunley's
10 statements to this officer. But if she is, it would be hearsay because
11 (unintelligible).

12 MS. SCHULTZ: I asked him about his process of the investigation.
13 That's all I'm asking about.

14 THE COURT: Okay. Well, keep going.

15 (BENCH CONFERENCE ENDS)

16

17 THE COURT: Why don't you restate your question, Ms. Schultz?

18

19 DEFENSE RESUMES CROSS EXAMINATION:

20 Q Officer, did you do anything else to investigate this case after you
21 received the report?

22 A Uh, yes, I did. I spoke with uh, Ed Nunley.

23 Q And how did you initiate that contact?

24 A I uh, had called Ed Nunley uh, who lived in Harrison County at the time.

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 And I briefly spoke to him and he agreed to meet me uh, for an interview.

2 Q And where was that interview?

3 A It was at the uh, Washington County Sheriff's Department.

4 Q Okay. Did you record that interview?

5 A Uh, no, I did not.

6 Q And do you recall when that interview occurred

7 A That interview uh, was uh, late that evening uh, the same evening.

8 Q The same evening that you talked to Tonya Caves and Annie Young?

9 A Yes.

10 Q All right. And did he come to the interview alone?

11 A Uh, no. He had uh, another, he had a son with him when he showed up.

12 Q And when you talked to him, did you talk to him alone?

13 A Yes, I did. Uh, I told him that I needed to speak him and only him at that
14 time.

15 Q Okay. Did you place him under arrest or file any charges against him
16 based upon that interview?

17 A No ma'am.

18 Q And did you have any further contact with Ed Nunley uh, with respect to
19 this case after that date?

20 A No, I did not.

21 Q Did you attempt to locate any other witnesses or speak with any other
22 witnesses about this case?

23 A Uh, no, I did not. It was turned over to C.P.S. and then a detective uh,
24 became involved.

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 Q Okay. And do you recall uh, when it was that there was further
2 investigation on the case by other detectives, if you know?

3 A I do not know.

4 Q Okay. In your conversation with Tonya Caves, did she give you any
5 indication of when she had taken Annie to uh, Ed's house?

6 A Uh, of course the uh, the night before uh, this allegedly occurred. And to
7 the best of my knowledge, of what I recall, it was around ten to ten-thirty
8 that night.

9 Q When she dropped Annie off?

10 A Yes.

11 Q Okay. And then she indicated that she picked her up sometime about
12 two-thirty then the next afternoon?

13 A Uh, yes, two to two-thirty.

14 Q Okay. Was there any occasion when you were meeting with the Caves
15 and Annie at the Sheriff's Department that Mr. Caves was actually in the
16 room when any details of this incident occurred?

17 A Uh, no, not that I recall.

18 Q And did you talk to Annie at any time without one of her parents being
19 present?

20 A Uh, no. That, that I remember it was Annie and uh, her mother.

21 Q Okay, did you attempt to talk to Annie alone?

22 A Not that I recall. It was her and her mother.

23 Q Now you indicated you saw the note.

24 A Yes.

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 Q The note was written on a white envelope?

2 A That is correct.

3 Q Was this uh, did it appear to be a used envelope?

4 A Uh, it appeared to be a uh, white envelope. Uh, and it was wrote on the
5 back of a white envelope.

6 Q Okay, and you said it was written in pencil?

7 A Yes.

8 Q And were the words spelled correctly?

9 A Uh, the best that I recall, there was uh, some misspelling. Uh, that's why,
10 again, it was a kid's handwriting, how the words were wrote in.

11 Q Were you able to decipher the words without assistance from either
12 Tonya or Mr. Caves?

13 A Yes. Uh, you were definitely able to decipher what was wrote.

14 Q Okay. And I believe one of the words on it was "weenie-bob"?

15 A Uh, yes, that is correct.

16 Q And can you tell me how she spelled the word "weenie"?

17 A I cannot tell you exactly how it was wrote. No, I don't have it here in front
18 of me.

19 Q Okay. What happened to the envelope?

20 A I do not know.

21 Q Do you believe you retained it?

22 A I do not have a record of it. Uh, I remember the envelope being on the
23 desk uh, when it was presented. And it was laying on the desk, and that's
24 the last time that I remember seeing the envelope.

25

STATE'S WITNESS - WITNESS #3, KEVIN BOWLING (CROSS)

1 Q Okay. And you don't recall seeing Tonya take it with her or anything of
2 that nature?

3 A I do not recall, but I do not know where it's at.

4 Q When you got through with this, with the investigation that day, then did
5 you immediately turn it over to uh, a detective with the State Police?

6 A Uh, again, immediately uh, with it being a weekend, I don't know when
7 exactly when the detectives uh, took it over or what, but it was turned over
8 to uh, C.P.S. uh, or actually C.P.S. was contacted that evening. Uh, with
9 it being on a weekend, I believe it may have been Monday. But as far as
10 a detective, I do not know exactly what day or how many days.

11 Q Would it have been within a couple of days after that happened?

12 A It could've been. Uh, I do not recall.

13 Q Okay. So when you refer this case to a detective, what is the general
14 procedure for doing that?

15 A If we refer a case or ask for help on a case uh, then we would speak to
16 uh, their Sergeant or First Sergeant, whichever is around at the time. Uh,
17 and they will usually see what kind of case we have uh, and decide where
18 it's gonna go or who they're gonna assign it to at that time. Uh, all cases
19 aren't immediately assigned. Sometimes cases are, you know, assigned
20 because something happens or what-not. Uh, cases can be reassigned.

21 Q Okay. Do you have particular officers in the, in your area of the State
22 Police that deal with sex crimes against children?

23 A Uh, yes. There are officers that uh, deal with that uh, yes, and are trained
24 in that.

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 Q It's kind of their specialty?

2 A Yes.

3 Q So if, if you get a report of this nature and you're going to refer it to
4 someone, it doesn't go just any other person like another road trooper or
5 anything like that; it would go to someone who has some additional
6 training and specializes in the molestation cases?

7 A It, that is correct. It could go to a road trooper if they have that training.
8 Uh, it could uh, but it will usually go to a detective or someone who has
9 that training.

10 Q And is it a fair assumption that you don't have that training?

11 A Uh, yes, I, I do not have uh, that training.

12 Q And do you work out of the Sellersburg Post?

13 A That is correct.

14 Q And do you have officers there who do have that training?

15 A Uh, yes. There, I'm sure that there is there at the Post.

16 Q Had you ever investigated a molestation case before this?

17 A Only uh, two or three.

18 Q And were those cases that you received an initial report and then turned it
19 over to somebody else to handle the case?

20 A Uh, yes, that would be correct.

21 Q So when you turned the case over to another officer to handle it, do you
22 physically deliver to the Post or to the other officer the reports that you've
23 generated and the evidence you have?

24 A Uh, as far as the reports uh, those reports are available to all officers or

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 detectives. So yes, that is something they can uh, get.

2 Q And how are those available? Are they on computer or do you have hard
3 copies?

4 A Uh, it's electronic format uh, that the State has.

5 Q So you put your report into the computer, and then when somebody else
6 needs it, they can just access it?

7 A Uh, when someone else, right, with the, with the State uh, yes, they can
8 access it.

9 Q All right. Annie told you that she wrote this on the envelope?

10 A Uh, yes, she did.

11 Q And did she tell you why she wrote on the envelope?

12 A Uh, it was wrote on the envelope uh, because, again, what uh, I stated
13 earlier, she had told her mother that she had a secret, her and Ed had a
14 secret and she cannot tell. Uh, so she wrote it on the envelope uh, for her
15 mother.

16 Q And did she tell you in her own words orally that this had happened to
17 her?

18 A Yes, she did.

19 Q So although she wasn't able to tell her mother and had to write it on the
20 envelope, she was able to tell you orally what happened?

21 A Yes. And this was after uh, she had wrote this envelope. And, you know,
22 her mother had talked to her. Uh, yes, she was able to uh, tell me.

23 Q So was it obvious to you that her mother had talked to her before she
24 came to talk to you?

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 A Her mother and stepfather uh, brought her to meet me. So, yes, I would
2 think they had spoke about something.

3 Q And when you were talking to Annie, you said that Tonya was, her mother
4 was in the room all the time.

5 A Yes. As I stated uh, that is what I recall, yes.

6 Q Did Tonya prompt Annie with respect of what to say to you?

7 A No, she did not. Uh, I think she had told Annie uh, you know, again that
8 she needed to tell me what had exactly occurred.

9 Q And what words did Annie use to describe the male anatomy?

10 A On the envelope uh, it was "weenie-bob", and she later told that, stated,
11 excuse me, she later stated "wiener" when she was referring to another
12 incident there.

13 Q So she used both of those terms for you?

14 A Yes, that is correct.

15 Q And you indicated that Tonya freely admitted to you that she was the one
16 that had done the personal property damage at Ed's house?

17 A Yes. Uh, she told me that she had done that.

18 Q Did Annie tell you what had happened there?

19 A Uh, no. Annie just stated that uh, she knew something that Mommy had
20 done, and you know, I told her that, you know, I needed to know what had
21 happened. And Tonya spoke up and told me that she had returned to
22 Ed's residence and vandalized some stuff.

23 Q When you talked to uh, Mr. Nunley, did you tell him the specifics of the
24 allegations against him?

25

STATE'S WITNESS – WITNESS #5, KEVIN BOWLING (CROSS)

1 A Uh, yes, I believe uh, I did, yes.

2 Q He did not tell you that he had done any of these things, did he?

3

4 THE STATE (MS. FLANIGAN): Objection.

5 THE COURT: Counsel approach.

6

7 BENCH CONFERENCE:

8 THE STATE (MS. FLANIGAN): I'm renewing my same objection
9 earlier. That would be hearsay what Ed Nunley told.

10 MS. SCHULTZ: Well, I'm not asking what he told him. I asked him
11 if he didn't tell him.

12 THE STATE (MS. FLANIGAN): That's the same.

13 MS. LAUREN WHEATLEY: The same thing, Judge.

14 THE COURT: Uh, no, I don't think it is. Uh, what he didn't say. Uh,
15 whether he didn't say something.

16 MS. LAUREN WHEATLEY: She's still trying to illicit testimony
17 regard..., and it's hearsay.

18 THE COURT: Uh, whether he didn't say something is one thing.
19 Whether he did say something and what he said is another matter. You've got to
20 ask your question carefully.

21 MS. SCHULTZ: Uh huh.

22 THE COURT: Mr. Bowling, come here. Okay, now this next series
23 of questions, I want you to listen to the question and I want you to wait before
24 you answer it.

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 WITNESS: Okay.

2 THE COURT: And uh, I'll nod to you that you can answer it uh, to
3 give them an opportunity to object. Okay?

4 WITNESS: Okay.

5 THE COURT: I want you to listen to the question carefully and, and
6 uh, you know, they may or may not object. Okay.

7 (BENCH CONFERENCE ENDS)

8

9 THE COURT: Okay, okay, Ms. Schultz.

10 MS. SCHULTZ: Okay. Officer, I'm going to ask you...

11 THE COURT: Restate the question, yeah.

12 MS. SCHULTZ: Okay.

13

14 DEFENSE RESUMES CROSS EXAMINATION OF KEVIN BOWLING:

15 Q I'm going to ask you, restate the question, but it's a "yes" or "no" question,
16 and I want you to just to give me a "yes" or "no" answer. Is that okay?
17 Can you do that?

18 A Yes.

19 Q All right. When you interviewed Ed, did he admit to you that he had done
20 the acts that were described to him?

21

22 MS. LAUREN WHEATLEY: Objection, Judge. She's trying to illicit
23 hearsay testimony.

24 THE COURT: You want to say anything about that, Ms. Schultz?

25

STATE'S WITNESS - WITNESS #5, KEVIN BOWLING (CROSS)

1 MS. SCHULTZ: Well, Judge, I'm not asking what he said; I'm
2 asking if he admitted something.

3 MS. LAUREN WHEATLEY: She's asking, she put the whole
4 sentence out there, Judge.

5 THE COURT: Okay. I'm gonna sustain that objection. Next
6 question.

7

8 DEFENSE RESUMES CROSS EXAMINATION OF KEVIN BOWLING:

9 Q If Mr. Nunley had admitted these offenses to you, would you have
10 arrested him on the spot?

11 A Yes ma'am.

12

13 MS. SCHULTZ: I believe that's all the questions I have.

14 MS. LAUREN WHEATLEY: No questions, Judge.

15 THE COURT: Okay, ladies and gentlemen of the jury, just a
16 reminder, you know. You can't ask questions after they leave. Because uh,
17 you're taxpayers, you know, they've got things to do. So uh, it'll be more difficult
18 to get people back. Anybody have any questions? No questions from the jury.
19 Thank you, Officer. Okay. Bill..., and your next witness, will it be, the next
20 witness be pretty short?

21 THE STATE (MS. FLANIGAN): No, Judge. It'll be Detective
22 Wibbels. It'll be somewhat lengthy.

23 THE COURT: Somewhat lengthy. Okay, it's probably time to stop
24 for lunch then. Okay, now then this is the same deal as yesterday. First, that

25

1 admonishment that you all have remembered uh, have memorized now. It's your
2 duty not to permit anyone to talk to you or on any subject matter connected with
3 the trial. Do not form or express any opinion on the case until it's finally
4 submitted to you. Lunch is on the county if you go with Sharon. Lunch is on
5 you. You know where you're going to lunch because you all talked about that
6 with the Bailiff, right? You're all going to Cracker Barrel today. Okay, uhm, okay,
7 you leave the uh, books and notes and everything uh, with Sharon. And uh,
8 nobody else will have access to them. And uhm, all right, we'll see you after
9 lunch.

10 (JURY EXITS COURTROOM)

11 THE COURT: The jury leave? Anything by the State or defense?

12 MS. SCHULTZ: Well, the Judge had asked he about recalling
13 Tonya Caves and Richard, you know. I, at this point, you know, I'd love to have
14 them in here to be able to ask them if they had any prior convictions. But, you
15 know, that would be the only thing at this point that I'd want to be an option.
16 So...

17 THE COURT: Well, I told you earlier, you'd just have to make up
18 your mind and they're gonna get them. Uh, it's as simple as that.

19 MS. SCHULTZ: Well, in that case, if they want to have them here,
20 then I will ask them.

21 THE COURT: All right. And when do you want them? This
22 afternoon?

23 MS. SCHULTZ: Who else do you have left? Officer Wibbels...

24 THE COURT: You, you could do it as a matter of recalling them as
25

1 a part of your cross examination for omitted questions.

2 MS. SCHULTZ: Okay.

3 THE COURT: I'll allow that. I mean you want them this afternoon?

4 f we can get them, Ms. Schultz?

5 MS. SCHULTZ: Yeah, that would be fine.

6 THE STATE (MS. FLANIGAN): We'll try, Judge. I'll let the Court

7 know immediately after lunch.

8 THE COURT: See if you can get them this afternoon. If not this

9 afternoon, then tomorrow morning. Okay?

10 MS. SCHULTZ: Okay, that's fine.

11 THE COURT: All right. Okay, anything else before we turn the tape

12 off? No? Okay.

13 (OFF RECORD)

14

15 THE COURT: We're on the record.

16 THE STATE (MS. FLANIGAN): Uh, with respect to Tonya Caves,

17 her only arguable crime is the Check Deception. I didn't know if your Honor

18 really wants us to get her in here.

19 THE COURT: Well uh, what about the Check Deception? Do you

20 have any cases on the Check Deception?

21 MS. SCHULTZ: Well, oh...

22 THE COURT: Six-o-nine, you got a case on Check Deception?

23 THE STATE (MS. FLANIGAN): There's a case cited in the, in our

24 book, Judge, in the notes, and I'm trying to think...

25

1 THE COURT: Uh, tell me where at.

2 THE STATE (MS. FLANIGAN): Page, well, I have the 2007.

3 THE COURT: Yeah. Page what?

4 THE STATE (MS. FLANIGAN): One-eighty-three.

5 THE COURT: One-eighty-three? Is it this year's version of Miller?

6 THE STATE (MS. FLANIGAN): No. It's the...

7 THE COURT: What, what paragraph? Paragraph...

8 THE STATE (MS. FLANIGAN): Paragraph two, specific crimes
9 admissible. And I...

10 THE COURT: Crimes, crimes admissible, okay. Specific crimes
11 admissible, okay. Let me read paragraph two in the most recent one. Uh,
12 Susan, do you have any uh...

13 MS. SCHULTZ: No, because I didn't know this was gonna come up
14 until we came in here.

15 THE COURT: Theft encompasses a wide range of offenses. Now,
16 here I'm reading from the..., it says if Theft, if the Theft conviction arose from a
17 factual situation, it does not indicate a lack of veracity on the witness' part.
18 Counsel must make the underlying facts known to the Court through pretrial
19 motion in limine accompanied by appropriate affidavits. I don't know. Crimes
20 not admissible, you said that was under crimes not admissible or...

21 THE STATE (MS. FLANIGAN): No, Judge. I think Check
22 Deception is listed under...

23 THE COURT: Crimes not admissible?

24 THE STATE (MS. FLANIGAN): Uhm, no. It says more recent

25

1 forms of these crimes also may be used for impeachment. And that cites this
2 Winger case.

3 THE COURT: Winger. Well, what's, what's the case...

4 THE STATE (MS. FLANIGAN): I thought I'd printed it, Judge,
5 actually. I'm trying to...

6 THE COURT: Well, I'll tell you what, why don't you plan on trying to
7 get them. In the meantime, try to get any case law that you have on it so that
8 before we..., I mean let's plan on trying to get her uh, and him uh, and then let's
9 uh, and then we'll see. I mean if we bring her in here and we don't end up using
10 her, then it won't be the end of the world. Uh...

11 THE STATE (MS. FLANIGAN): Judge, I can I say read, I read the
12 Winger case and the way I read it is Check Deception sometimes can be used
13 and...

14 THE COURT: It depends on the details.

15 THE STATE (MS. FLANIGAN): It depends on the circumstances of
16 the case.

17 THE COURT: Well, that means I need the case. And I need...

18 MS. SCHULTZ: I don't even see it. Do you have...

19 THE COURT: Do you have a cite for Winger? Can you give me a
20 cite?

21 THE STATE (MS. FLANIGAN): Yes, 455 N. E. 2nd, 398.

22 THE COURT: N.E. 2nd, 398. Now, can, you know, I don't know, I've
23 got some of the newer cases. I don't know if I have them old ones. But can you
24 print one out for Ms. Schultz and I? Get Shawn to go on line and print one out.

25

1 THE STATE (MS. FLANIGAN): It actually, Judge, is this 2008?

2 MS. SCHULTZ: No, yeah, that's the new...

3 THE STATE (MS. FLANIGAN): Actually Wininger is left out of the
4 2008/2009 book, which makes me curious if it might be overruled. So I want to
5 check that too.

6 THE COURT: Yeah.

7 MS. LAUREN WHEATLEY: I know that Ms. Schultz herself argued
8 that Check Deception was not something that could be used in the Daniel
9 Wilfong trial.

10 THE COURT: Of course she's arguing the opposite now. Uh...

11 MS. LAUREN WHEATLEY: Yeah, I know.

12 MS. SCHULTZ: I don't even remember that argument, but shoot, I
13 don't know.

14 THE COURT: Well, it was probably convincing since it came from
15 the defense.

16 MS. LAUREN WHEATLEY: Please.

17 THE STATE (MS. FLANIGAN): I'll pull that case, Judge, and any
18 history.

19 THE COURT: Well, why don't you pull it? And uh, let's find out
20 what we can about it. And let's just tentatively plan on having them both come
21 back either this afternoon or tomorrow morning the first thing, and then we'll go
22 from there. Okay?

23 MS. SCHULTZ: Fine.

24 THE COURT: All right. Thank you very much.

25

1 (LUNCH RECESS)

2

3 THE COURT: Are we on, Karen?

4 COURT REPORTER: Yes.

5 THE COURT: Okay, so we've been talking about the Check
6 Deception uh, False Informing uh, convictions of Richard and Tonya Caves. And
7 uh, I did read the case over uh, over lunch and, and so there's no further
8 arguments one way or another about the, about the uh, convictions by the State
9 or the defendant?

10 MS. SCHULTZ: The only thing that I would add is that the State
11 has uh, shown me the charge or the bad check and it was on an account closed,
12 I believe. So I think that further goes to the fact that it's a crime of dishonesty if
13 you're writing a check on a closed account.

14 THE COURT: All right. What's proposed.., I think they're uh, I think
15 it's uh, admissible and something that the defendant would be entitled to ask the
16 witness.

17 THE STATE (MS. FLANIGAN): And, Judge, I wrote this and if you
18 can't read my handwriting, I'll read it. But...

19 THE COURT: The State and the defense stipulate that Tonya
20 Caves has an October 22nd, 2008 conviction for Check Deception as a Class "A"
21 Misdemeanor. The State and the defense stipulates that Richard Caves has a
22 May 1, 2008 conviction for False Informing as a Class "B" Misdemeanor. Okay.
23 All right, let me simply proceed that by saying that there was an omitted uh, there
24 were a couple of omitted matters on some previous witnesses that the...

25

1 MS. LAUREN WHEATLEY: Yes, Judge. And we would ask that
2 you do that first before we go to our next witness, if that's possible.

3 THE COURT: Uh, I don't know why not. Any problem with that?

4 MS. SCHULTZ: No.

5 THE COURT: Okay.

6 THE STATE (MS. FLANIGAN): Judge, we also need the T.V.
7 brought in.

8 THE COURT: You need the T.V.? Okay.

9 THE STATE (MS. FLANIGAN): I'm gonna have to, I'll let everybody
10 know, just so there's no surprises. I have, I think to prove the dissemination, I
11 have to at least play a little bit of this for the jury, this video. And uh, it's not
12 gonna be much, but...

13 THE COURT: I think you, my reaction is you'd have to play more
14 than a little bit. Uh, how long is it? Is it really four hours or is it...

15 MS. SCHULTZ: Five hours, I think.

16 THE STATE (MS. FLANIGAN): Five.

17 THE COURT: Five hours?

18 THE STATE (MS. FLANIGAN): I, I think the way I read the statute,
19 Judge, as it taken as a whole, it has no redeeming value basically. And my
20 argument would...

21 THE COURT: For minors, right?

22 THE STATE (MS. FLANIGAN): Right. And my argument will be,
23 once you see the clip I show, even if it was four and a half hours of War and
24 Peace or an English lesson, that couldn't possibly be taken as a whole with what

25

1 show them, as something that's socially appropriate for minors.

2 THE COURT: Okay. So what you're saying is, if you show ten
3 minutes or thirty minutes of it uh, that uh, that no matter what else is in the rest of
4 it, it would be overwhelming proof that it wouldn't be uh, there wouldn't be any
5 redeeming value in it or whatever. That's what you're saying?

6 THE STATE (MS. FLANIGAN): That is exactly what I'm saying,
7 Judge.

8 THE COURT: You're saying that it would meet all of the uh,
9 elements and so forth, and, and you're satisfied with that? You're gonna stand
10 on that?

11 THE STATE (MS. FLANIGAN): I am not gonna make this jury
12 watch five hours of this video. So I'm gonna stand on that.

13 THE COURT: Okay. I think that that, that if the defense requested,
14 that uh, that I would be obligated to require them to watch, watch it as a whole.
15 Uhm...

16 MS. SCHULTZ: Well, I guess it would be our argument that there is
17 no way that they can convict him without seeing the whole thing under the
18 definition. I don't particularly want the jury to watch five hours of hardcore porn.
19 I certainly don't want to.

20 THE STATE (MS. FLANIGAN): Right.

21 MS. SCHULTZ: But in order to prove their case, they've chosen to
22 file it. I mean it's our argument that that's what they have to do.

23 THE STATE (MS. FLANIGAN): If that's the case, Judge, it's an
24 awful lot to swallow and we'll...

1 THE COURT: Well, I would suggest then uh, why don't you start at
2 the beginning and uh, present as much of it as you feel is necessary. And then if
3 the defense is requesting that uh, more of it be displayed, then we'll keep going.

4 THE STATE (MS. FLANIGAN): I just don't want to find myself in a
5 position where I'm gonna be saddled with a directed verdict if I pick a certain
6 point and...

7 THE COURT: Well, that's up to, that's uh, I guess that's a decision
8 I would have to make if we get to that point. And uh, since I haven't seen it, I
9 can't speak to that. Uh, I mean I suppose if it's as you've described, and uh, you
10 know, one way to, one way to deal with this..., I think, I think we've dealt with this
11 in a fashion before. One way to deal with this would be to, I mean I presume
12 that you, that uh, that you as a Prosecutor have watched it in order to determine
13 what's on it.

14 THE STATE (MS. FLANIGAN): I've watched it with Ms. Schultz.

15 MS. SCHULTZ: We watched snippets. We didn't sit down and
16 watch the whole thing because there was too much stuff to watch.

17 THE COURT: Well, if you've watch enough of it that you're satisfied
18 uh, based on what you've watched or, in Ms. Schultz's case, based upon what
19 you've watched and discussed it with your client, that, that the portions that you
20 watched are representative of what's on the uh, DVD, then, I mean in other
21 words, if you're convinced that it's representative of what's on the DVD, then I
22 think you could watch uh, you could show a portion of it without showing all of it.
23 If there's an agreement that it's representative of what is on the DVD. Now I
24 mean if there's a disagreement about it, and you stop at a certain point and the

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1 defense requests the rest of it be shown, then uh, then without any agreement,
2 my first reaction is I probably would be obligated to show them the whole thing.
3 Uh, that would be kind of what I would be thinking. That's my first reaction to it.
4 Uh, because how do you know what's, what's, what's, what the rest of it is
5 without..., because the law does describe, does describe it considered as a
6 whole. And uh, uh, considered as a whole, uses that language twice in the uh,
7 description, the legal definition of a matter or performance that's harmful to
8 minors, if one, two, three, four, considered as a whole, considered as a whole.
9 Uhm, you know, from a defendant's standpoint, I would think that the defendant,
10 you know, on the one hand, if there's something redeeming in there somewhere,
11 probably would want the jury to see it. On the other hand uh, the defendant
12 might wonder whether or not it would leave the jury so disgusted that, that the
13 uh, deliberations would be really relatively short. But I don't know. That's a
14 matter for the defendant and the defendant's attorney to uh, to uh, make in
15 regard to deciding how much they want the jury to see or what they're gonna
16 request the Court.

17 MS. SCHULTZ: Judge, I certainly don't want to be put into the
18 position of having to say in the front of the jury whether we think the State has
19 fulfilled its burden. I mean it...

20 THE COURT: No, I'm not gonna require you to say something in
21 front of the jury.

22 MS. SCHULTZ: It's their, you know, my point it's their burden to go
23 forward.

24 THE COURT: Exactl.

25

1 MS. SCHULTZ: It's their problem if the jury has to watch this
2 disgusting stuff because they're the ones that filed the charge. I mean...

3 THE COURT: Absolutely. They're the ones that filed the charge
4 and it's their burden. And if they stop playing it at some point, then, then uh, and
5 there's a motion at some point, then I'll have to rule on it.

6 MS. SCHULTZ: Then I am, I'm not certainly prepared to stipulate to
7 anything, unless the...

8 THE COURT: You know, I don't know, maybe they have a witness
9 that's watched the whole thing and the witness could testify that this is
10 representative of what's on the entire five hours, if that's what it is. I don't know
11 what they've got. You all know more about the case than I do. Perhaps you've
12 got a, you're gonna show clips of it that last twenty minutes, and you have a
13 representative, you have a witness that's physically, that has in fact observed the
14 entire uh, thing and can testify that this is uh, representative of what's on the
15 whole thing. Uh, you know, so now that might be a different case than just
16 showing twenty minutes of it and saying nothing else. Uh, because I remember
17 this problem from before. Uh, it's been several years. I think it was Cheryl's
18 case. And I forget who the defendant was. I don't remember. There's been too
19 many sex cases. It's hard to know. But, so it'd be up to you. Now, of course, on
20 the other hand, the defense would certainly be entitled to play the redeeming
21 portions of it, if there were any. You know, I think.

22 MS. SCHULTZ: Well, Judge, I, I haven't seen the whole thing. I
23 mean this video...

24 THE COURT: Okay...

25

1 MS. SCHULTZ: ...or a copy of it was never turned over to me,
2 which I didn't expect it to be because it's evidence.

3 THE COURT: Well...

4 MS. SCHULTZ: And I didn't come over and sit here for five hours
5 and watch the whole thing. So I don't know if there's any redeeming value to it.

6 THE COURT: Well, I can't make a decision on something that's not
7 before me. Right now it's not before me, okay? Uh, in other words you're just
8 talking about a theoretical issue. I don't know what the State is gonna do. I don't
9 know what their evidence is gonna be. I have no idea uh, exactly what they're
10 gonna do. I don't know whether they have a witness that's watched all five hours
11 of it that's gonna testify that they did, and that what the jury saw was
12 representative. I don't know.

13 MS. SCHULTZ: They could bring Annie back. She said she
14 watched four hours of it.

15 THE COURT: Who?

16 MS. SCHULTZ: Annie. She watched four hours of it.

17 THE COURT: So uh...

18 MS. SCHULTZ: I'm not convinced it was the same video. But...

19 THE COURT: Okay. Well, the witness said it was. So...

20 MS. SCHULTZ: She said from the cover of it, it was the same one.

21 THE COURT: Right.

22 MS. SCHULTZ: But she didn't see the contents of it here.

23 THE COURT: So, so...

24 THE STATE (MS. FLANIGAN): Judge, what, given what you've

25

1 indicated here, my strong preference, and you can tell me absolutely not, would
2 be to have somebody view it and testify that way. Detective Wibbels has
3 watched segments of it. There's chapters. And we have scanned through
4 chapters of it. There has not been somebody who sat down and watched each
5 minute. Uhm, given what the Court has indicated, my preference would be to
6 start with, I have to enter it through Detective Wibbels. I'll start with his testimony
7 now. I'll stop when I get to the video. I will have him, overnight, watch it or have
8 some witness watch it, and we'll pick it up in the morning. Because in the
9 alternative, we're gonna be sitting through, it seems like it will take us longer,
10 make the trial go longer, but really it will probably save time, because otherwise
11 I'm stuck with the position that I'm gonna have to play the entire thing for the jury.

12 THE COURT: Yeah. I won't even offer, I uh, it's your case. You do
13 your case any way you want to, present your case any way you want to present it
14 that's uh, appropriate. I, I'm just offering my reflections and recollections of a
15 previous sex case that involved uh, what was arguably pornography. And uh, so
16 I can't say what uh, you know, what someone might find after they watched it or
17 what their testimony would be or..., I don't know. Uh, and I'm not saying that
18 that's how you should proceed. I just remember that that was something that
19 was done before. Uh, but I think that uh, in order for somebody to say that this,
20 that and the other was representative, they'd have to watch it.

21 THE STATE (MS. FLANIGAN): I understand. Could I, could we, I
22 have a moment just to go out and speak with Ms. Wheatley about it?

23 THE COURT: Sure, absolutely.

24 THE STATE (MS. FLANIGAN): A brief recess.

25

1 THE COURT: Yeah.

2 (OFF RECORD)

3

4 THE COURT: Okay.

5 SHAWN DONAHUE: We can hook up the player up without the
6 projector, Judge.

7 THE COURT: If we can play it on the T.V., then we'll just do that.

8 THE STATE (MS. FLANIGAN): Are we back on, Judge?

9 THE COURT: You're on the record.

10 COURT REPORTER: You are.

11 THE STATE (MS. FLANIGAN): After consulting with the members
12 of my office, and given what the Court has indicated, I think that the rules or
13 statute would require us to play all five hours for the jury. So I'd propose to play,
14 to begin two and a half hours..., I'll enter it immediately, Judge, play two and a
15 half hours this afternoon, and then two and a half hours in the morning.

16 THE COURT: Okay. We probably need to start earlier tomorrow.
17 Eight o'clock.

18 THE STATE (MS. FLANIGAN): Okay.

19 THE COURT: Uh, how many more witnesses do you think you're
20 gonna have?

21 THE STATE (MS. FLANIGAN): Judge, I would say at the most two.
22 And if I call them at all, they'll be short. So...

23 THE COURT: Okay. All right. Now don't go all the way over there,
24 Sharon. Come back here. Somewhere in there will be fine. Maybe back this

25

1 way just a little bit. There, that's good. Okay, and then you all can move your
2 chairs over whenever we get to that point so that the defendant and Ms. Schultz
3 can move over.

4 THE STATE (MS. FLANIGAN): Judge, do you want us to put some
5 sort of note the door or something that says "No one under eighteen should
6 come in here." I know that kids don't usually come in, but...

7 THE COURT: I don't think any kids are gonna come in anyhow.

8 THE STATE (MS. FLANIGAN): Okay.

9 MS. LAUREN WHEATLEY: If any do, we'll...

10 THE COURT: It's a public trial. Anybody that wants to can come.

11 MS. LAUREN WHEATLEY: Okay, Judge, we're ready.

12 THE COURT: All right. Hang on just a minute. Okay, now uh, the
13 first thing I'm gonna do is uh, give the, read the jury the stipulation concerning
14 Tonya and Richard Caves. And uh, and then if we're gonna go for two and a
15 half hours, I think that uh, we're probably going to uhm, need to uhm, take a
16 break at some point. And I'm going to, I'm proposing to tell the jury that if they
17 get to a point where they feel like they need to stop, to raise their hand and let
18 uh, me know, let the Court know that they need to take a break. Is there any
19 objection to that by the State or the defense?

20 MS. SCHULTZ: No, Judge.

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

22 THE COURT: All right. And uh, and I'm, I also propose to tell them,
23 also propose to tell them that, that they've heard testimony, which it's up to
24 them what they decide to believe or not, but they've heard testimony that this

25

1 particular movie..., you're gonna, I suppose you're gonna uh, call Mr. Wibbels,
2 identify the DVD, then talk about playing it. Uh, I'm gonna remind, I propose to
3 remind them that the uh, that the law requires uhm, that they make a
4 determination regarding certain things concerning anything that's alleged to have
5 been harmful to a minor. Uh, and that in order to make that determination, they
6 have to consider the movie, the, consider it as a whole. Uh, and refer them to all
7 the jury instructions with respect to the, but with respect to the accusation of
8 dissemination of matter harmful to a minor, that they should refer to the
9 Preliminary Instruction number nine uh, twelve, thirteen, and fourteen. And
10 specifically uh, they have to make a determination to and for, consider it as a
11 whole, it lacks serious literary, artistic, political or scientific value, considered as a
12 whole it appears to the prurient interest of sex and sex of minors, and that it's
13 patently offensive, prevailing, stands in the adult community as a whole with
14 respect to what is suitable..., I'll just refer them, I'll ask them to turn their, to look
15 in their books and refer to these specific instructions and remind them that in
16 order for them to determine whether it meets the definitions under the law, it has
17 to be considered as a whole. Uh, so that they understand the purpose of telling
18 them is to, so that they understand that uh, we're not trying to offend them
19 particularly or anything. And I wouldn't use that word. But, but uh, in order for
20 them to determine, make a determination required by law, that they have to
21 consider this as a whole. Any objection to that?

22 MS. SCHULTZ: No, Judge.

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

24 THE COURT: All right. So that's what I'm thinking that I would do.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 All right?

2 THE STATE (MS. FLANIGAN): Okay.

3 THE COURT: All right, bring them in.

4 (JURY RETURNS TO COURTROOM)

5

6 THE COURT: Please be seated, ladies and gentlemen. Okay, now

7 the first of order of business this afternoon, the parties uh, have brought to the

8 Court's attention with respect to two previous witnesses, there were some

9 omitted questions, some omitted matters with respect to two previous witnesses.

10 And the Prosecutor and the defendant uh, the Prosecutor and the defendant and

11 the defendant's attorney have agreed to the following stipulations: The first one

12 is with respect to Tonya Caves. And the stipulation is as follows: The State and

13 the defense stipulate, that means agree, stipulate that Tonya Caves has an

14 October 22nd, 2008 conviction for Check Deception as a Class "A" Misdemeanor.

15 Okay, the next stipulation is concerning Richard Caves, and it is as follows: The

16 State and the defense stipulate that Richard Caves has a May 1, 2008 conviction

17 for False Informing as a Class "B" Misdemeanor. All right. Okay, your next

18 witness?

19 **TESTIMONY OF WITNESS #6, WILLIAM WIBBELS:**

20 THE STATE (MS. FLANIGAN): Your Honor, the State will call

21 Detective William Wibbels to the stand.

22 THE COURT: All right. Do you solemnly swear or affirm the

23 testimony you're about to give shall be the truth and nothing but the truth, so help

24 you God?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 WITNESS: I do, sir.

2 THE COURT: Please be seated.

3 **DIRECT EXAMINATION OF WILLIAM WIBBELS BY STATE OF INDIANA (MS.**
4 **FLANIGAN):**

5 Q Detective, I'm gonna stand where I can see you. It's hard to believe I
6 can't see you. Uh, by whom are you employed?

7 A I'm employed by the Indiana State Police, Sellersburg Post.

8 Q How long have you been there?

9 A I'm been employed since August 24th, 1997. I'm in my eleventh year.

10 Q How are you currently assigned by the Indiana State Police?

11 A I'm assigned to the Criminal Investigations Division uh, which is assigned
12 by headquarters, but I'm assigned to the Sellersburg Post.

13 Q Have you uh, been assigned or have you become involved in the uh, case
14 involving Lawrence Nunley that we're here about today?

15 A Yes, I have.

16 Q When did you became, when did you become assigned to that?

17 A I became assigned to the case concerning on Friday, April 18th, 2008.

18 Q And as part of the investigation of Mr. Nunley uhm, did you go to his
19 home?

20 A Yes, I did.

21 Q Okay. Did you go to his home that you've heard testimony about, which
22 was in Palmyra?

23 A No, I did not.

24 Q Okay. Where was Mr. Nunley living at the time that you came into contact

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 with him?

2 A Mr. Nunley was living at the Harrison House, that is an apartment house
3 on Oak Street in Corydon. It's uh, behind basically where the Chase Bank
4 is uh, near Beanblossom Cesar Funeral Home.

5 Q Did you uh, have contact with Mr. Nunley at that address?

6 A Yes, I did.

7 Q When you talked to Mr. Nunley, did you receive consent from him to
8 search his home?

9 A Yes, I did.

10 Q And when you searched his home, did you uhm, locate a DVD?

11 A Yes, I did.

12 Q Okay. Detective, I'm gonna show you what's been marked as State's
13 Exhibit "2" and ask if you can identify that.

14 A This is a DVD. It's entitled "Sex Ed Tutor". Uh, it was in Mr. Nunley's
15 home.

16 Q Can you indicate for the members of the jury where exactly that was
17 located in his home?

18 A It was in a case on a shelf in his apartment.

19 Q And did you then take possession of that?

20 A Yes, I did.

21 Q Okay. And has it been in possession of the State Police since you found
22 it on that date?

23 A Yes, it has.

24 Q And were you here when Annie Young testified, Detective?

25

STATE'S WITNESS – WITNESS 16, WILLIAM WIBBELS (DIRECT)

1 A Yes, I was.

2 Q And did you see her identify State's Exhibit "2" as the movie that Eddie,
3 that Mr. Nunley showed her?

4 A Yes, I did.

5

6 THE STATE (MS. FLANIGAN): At this time, your Honor, I would
7 ask to admit State's Exhibit "2" into evidence and publish it to the jury.

8 THE COURT: Any objection by the defense?

9 MS. SCHULTZ: In as much as this is the video that Annie identified
10 as the one she watched, I would not have an objection to it.

11 THE COURT: No objection by the defendant. Granted. Okay, now
12 ladies and gentlemen uh, I don't know, because I haven't seen this DVD. But I'm
13 told that it may be graphic. And uh, so, there's a couple of things to keep in
14 mind. Uh, of course you have in your binder, and I want you to open your binder
15 to the Preliminary Instructions. The first thing to say is all, nearly always the first
16 thing to say when a Court is talking to a jury about instructions is number two,
17 you're to consider all the instructions together. Do not single out a certain
18 sentence or an individual point or instruction and ignore the others. Having said
19 that uh, you realize, of course, Instruction Number "4", there's a description of
20 each count. And Count Number Five is Dissemination of Matter Harmful to
21 Minors. And uh, Preliminary Instruction Number "9" tells you what it is uh, that
22 the State must prove beyond a reasonable doubt to convict the defendant of
23 displaying, or excuse me, disseminating matter harmful to minors. That's, that's
24 the elements instruction. And in order to, to make that determination, you have

25

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 to look at some other definitions. For example, Preliminary Jury Instruction
2 Number "12", "13" and "14". Now with respect to Preliminary Jury Instruction
3 Number "14", this, Number "14" is the way that the Legislature, the way the law
4 has described whether a matter or performance is harmful to minors. It has to
5 meet all these requirements, one, two, three and four. You'll notice that more
6 than once in this description, it says "considered as a whole", twice it says that.
7 Number two and number four, and also in three. Is you have to make a
8 determination if it's patently offensive, prevailing community, stands in the adult
9 community as a whole, and so forth. But in order to consider whether something
10 uh, as a whole lacks serious literary, artistic, political, scientific value for minors
11 or whether as a whole it appeals to the prurient interest in sex of minors, you
12 wouldn't know what's on it unless you watched the whole thing. And that is uh,
13 what's about to happen. Now it might take awhile, because I'm told that it's
14 several hours long. Now, given that it's apparently going to be graphic, uh, it,
15 and also given that it's gonna be hours long apparently, then it might be uh, well,
16 it almost certainly would be the case that you'll need to take a break once in
17 awhile to go to the bathroom, whether you're watching some graphic or
18 otherwise. So uh, I would simply ask you, if we do not take a break in an
19 appropriate period of time and you need to take a break, that you simply raise
20 your hand and indicate that you need to do so. All right? Uh, so uh, any
21 objections to anything, Ms....

22 MS. SCHULTZ: No, Judge.

23 THE COURT: Okay.

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

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 THE COURT: Any other matters before we proceed?

2 THE STATE (MS. FLANIGAN): Since I anticipate testimony, that
3 this will be uh, quite lengthy, I'd ask that Detective Wibbels not have to sit up on
4 the stand the whole time.

5 THE COURT: Right. You can come down from there. And then
6 also uh, if you all move over, don't block the jurors, but move over. And then Ms.
7 Schultz and your client, move over, move your chairs over to where you can
8 observe what is going on. You can move that back a little more if you need to.
9 Uh...

10 THE STATE (MS. FLANIGAN): Well, Judge, do you want the State
11 to move the...

12 THE COURT: I think..., yeah, you can...

13 THE STATE (MS. FLANIGAN): We'll move down by Sharon.

14 THE COURT: You can move over here if you like, yeah. That's
15 fine. Yeah, you all, everybody needs to be in a position where they can see.
16 Uh...

17 (STATE'S EXHIBIT "2" DISPLAYED TO THE JURY)

18 MS. LAUREN WHEATLEY: Judge, I think now would be a good
19 time for a break.

20 THE COURT: Okay. Let's pause it right there. We'll stop for a little
21 bit and take a break. Ladies and gentlemen of the jury, during this time, it's your
22 duty not to permit anyone to talk to you or in your presence on any subject
23 matter connected with the trial. It's your duty not form or express a final opinion
24 on the case until it's submitted to you. It's probably time to stop for a little bit.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Okay, you know where the jury room is. Sharon...

2 (JURY EXITS COURTROOM)

3

4 THE COURT: It would be good to have a witness to view the rest of
5 the uh, movie and testify uh, about whether, what they've seen so far is
6 representative. Is the State interested? Is the defendant interested?

7 THE STATE (MS. FLANIGAN): Judge, if the defendant would
8 stipulate that that would be, that we could do that and say it's representative, the
9 State would be interested in that. But without that agreement from Ms. Schultz, I
10 don't think I can do it.

11 MS. SCHULTZ: Well, I think I can stipulate to permit someone else
12 to view it and testify that the portion that we've watched is representative of the
13 whole, but not to offer the ultimate opinion that there's, whatever the language is
14 in the...

15 THE COURT: Right, right, right, right, right.

16 MS. SCHULTZ: They can..., I, I don't have any objection. The only
17 other thing I was gonna suggest is maybe we could put it on fast speed or
18 something so you don't have to sit there..., there's obviously not much dialogue
19 going on here.

20 THE COURT: I haven't heard hardly any.

21 MS. SCHULTZ: I know. That's, I mean a lot of moaning and
22 groaning. But other than that. I certainly do not wish to have this jury have to sit
23 here through five hours of this crap.

24 THE COURT: Well, okay. Well, why don't you think about that and

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 see whether you can get somebody that would be willing to watch the rest of it
2 and testify about whether or not this portion of it is representative of the
3 remainder. Uh, and if it is, I think that that would satisfy uh, satisfy the situation.
4 But if the defendant objects, then, you know, then that's another matter. Okay?
5 All right, so let's stop for a little bit.

6 (OFF RECORD)

7 THE COURT: Okay, we're on the record. The jury is not present.
8 And do you know the uh, location where we are in this movie, so to speak?

9 BAILIFF: They want you to read that one first, and they've got
10 another coming.

11 THE COURT: Okay.

12 THE STATE (MS. FLANIGAN): I will, as an officer of the Court,
13 when we're done, take Billy in..., I know exactly where it ended and I can show
14 him where we...

15 THE COURT: Well...

16 MS. LAUREN WHEATLEY: They all signed it.

17 THE STATE (MS. FLANIGAN): Okay.

18 MS. LAUREN WHEATLEY: Tell them that we made the decision
19 before they sent that note in.

20 WILLIAM WIBBELS: What does it say?

21 THE STATE (MS. FLANIGAN): It says, "Can we stop now? We've
22 all decided this is inappropriate for children."

23 THE COURT: Uh, okay. Uh, I..., the record will reflect that first of
24 all, while we were taking a break, the parties agreed uh, the parties agreed to uh,

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Susan, here, take this note to Susan.

2 THE STATE (MS. FLANIGAN): It says, "Can we see it in fast...", it's
3 not get fast-forward.

4 MS. SCHULTZ: Oh, it's, oh...

5 THE STATE (MS. FLANIGAN): Here, there's two.

6 MS. SCHULTZ: Oh, I didn't see the other one. Okay. They'll be
7 happy with our...

8 THE COURT: Uh, the jury is not present. The parties are present.
9 The defendant is present. The attorneys are present. Okay uhm, during the
10 break I'm informed that the uh, State of Indiana and the defendant agree that
11 Detective Wibbels can take this movie home and watch all of it, come back
12 tomorrow and testify about whether or not the first..., what did we watch? Forty-
13 five minutes or an hour?

14 THE STATE (MS. FLANIGAN): I believe a little over forty-five
15 minutes, I believe, Judge.

16 THE COURT: You agree with that, Ms. Schultz?

17 MS. SCHULTZ: Yes.

18 THE COURT: A little over forty-five minutes of it is representative of
19 the whole. If it's, and if it's not, then uh, if there's some other parts that are not
20 representative of the whole..., you have a copy of this, Ms. Schultz?

21 MS. SCHULTZ: No.

22 THE COURT: Okay. And uh, uhm, but you've, but you've watched
23 part of it before. Did you fast forward through it or...

24 MS. SCHULTZ: Well, we did snippets of it. But we would just put

25

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 them in the player to make sure that is what the label had on it basically. We
2 didn't watch them through completely because the, I mean I don't know how
3 many...

4 THE COURT: You fast forwarded it around and then watched
5 different pieces of it?

6 MS. SCHULTZ: Yeah.

7 THE COURT: Okay, to get an idea. But you also must know
8 something about it, from what your client has told you. You don't have to say
9 anything. But I'm...

10 MS. SCHULTZ: It is my belief that this whole movie is hardcore
11 porn. And it is my belief that there is nothing of any socially redeeming value on
12 it.

13 THE COURT: Okay, all right.

14 MS. SCHULTZ: And in what, what we had talked about in our
15 agreement to have Officer Wibbels look at this, if there is any portion that is
16 significantly different or that the first hour isn't representative of that, then he
17 would flag that portion so we could watch that portion later.

18 THE COURT: All right. He'd flag that portion. And so, Mr. Wibbels,
19 you understand what we're talking about? If something, if there's something
20 different than the first forty-five minutes uh, something in any way significantly
21 different than the first forty-five minutes uh, then you would make a note about
22 where that's at, and then we could play that to the uh, jury, if we need to do that.
23 And then be prepared to testify tomorrow morning, that yes, you in fact watched
24 the whole five hours or however long it was, that yes, the first forty-five minutes

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 of it was representative of the whole, and that it was uh, just more of the same
2 basically. Uh, and uh, is that pretty much the agreement of the parties?

3 MS. SCHULTZ: Yes.

4 THE STATE (MS. FLANIGAN): And, Judge, I was gonna also uh,
5 put it into his possession while he's on the stand and then I will, in our office,
6 show him where we left..., I don't know that he was in the courtroom where we
7 stopped, but I'll show him that scene that we stopped with, and then ask him to
8 review the entire video so that he can accurately represent that what we watched
9 in court was what's on the rest of the video.

10 THE COURT: All right, okay. And then uh, now, Mr. Nunley, you've
11 been present. Sir, have you had an opportunity consult with your attorney about
12 this agreement?

13 DEFENDANT: Yes sir.

14 THE COURT: And do you agree with the procedure that your
15 attorney and the Prosecutor have talked about?

16 DEFENDANT: Yes sir.

17 THE COURT: You do? Okay, all right. Then uh, okay, and then
18 the record will also reflect that uh, the Court has received two notes, which the
19 lawyers have seen. The new, the two notes uh, read as follows, the first one:
20 "Do we have to continue to watch? We already feel this is inappropriate for
21 children." And it's signed by every single juror and the alternate. And then the
22 next note is, "Can we review and fast forward to see if it is the same material?"
23 Signed by every single person again. Yes, by every single person. And uh, so
24 what I would propose to uh, since you all have made this agreement, and I'm

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 glad you've finally taken me up on my offer uh, then we'll, I'll, I'll inform the jury
2 that the State of Indiana and the defendant have reached an agreement and uh,
3 what the agreement is, and then we'll uh, and then you can talk to Mr. Wibbels
4 while he's on the stand, that you're gonna..., and Ms. Schultz, you can go with
5 uh, the Prosecutor and put it in the uh, player and show Mr. Wibbels where you
6 left off. Is that right?

7 THE STATE (MS. FLANIGAN): Yes.

8 THE COURT: You want to be present so you can see that she's
9 showing him the correct spot, so that he can testify that it's representative of uh,
10 from this point up to here? Okay? All right, and then as you mentioned earlier,
11 you're finished for today. Correct?

12 THE STATE (MS. FLANIGAN): Yes.

13 THE COURT: Then we'll start tomorrow morning. You want to start
14 eight-eighty or nine, or what do you want to do?

15 THE STATE (MS. FLANIGAN): I think it would be safe to start at
16 nine, Judge, given that we've cut out five hours of tape, or four.

17 MS. SCHULTZ: That's fine.

18 THE COURT: Nine o'clock is fine. All right, bring the jury in. And I
19 think I ought to tell them, you know, that I've instructed you repeatedly that you
20 shouldn't form a final opinion until the case is finally submitted to you because
21 uh, the police officer and look at something and I realize you've expressed your
22 opinion now, but I would ask you to uh, uh, to reconsider your opinion, keep an
23 open mind and wait until it's all in and all done. Is that all right, Ms. Schultz?

24 MS. SCHULTZ: Sure.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 THE COURT: All right.

2 (JURY RETURNS TO COURTROOM)

3

4 THE COURT: Please be seated, ladies and gentlemen. All right.

5 Uh, okay, Officer uh, Wibbels, why don't you come on up here and take the
6 stand again. And uh, now uh, uhm, a couple of things. Uh, the good news is,
7 the State of Indiana and the defendant have made an agreement, and the nature
8 of the agreement, correct me if I'm wrong, anyone, is that Officer Wibbels is
9 going to uh, with the agreement of the State of Indiana and the defendant, is
10 gonna take this DVD home and watch it from beginning to end, and then come
11 back tomorrow morning and testify, under oath, about whether the portion that
12 you have seen is representative of the whole, and whether there's anything in
13 any way significantly different than what you've seen so far. Uh, before he
14 leaves the building, the Prosecutor and the defendant's attorney are gonna go
15 across the hall uh, fast forward to the spot where we left off, so that they can
16 show Officer Wibbels, because he wasn't in here the entire time, show him
17 where they left off so that he'll be able to compare what you've seen so far with
18 the rest of it, and tell you, under oath, whether it's representative of the whole, so
19 as to uh, save time and uh, uh, avoid you having to spend all the time watching
20 uh, another four hours or whatever it is, three or four hours, or whatever it is, of
21 the uh, DVD. Did I misrepresent anything, Ms. Prosecutor?

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

23 THE COURT: Ms. Schultz, any...

24 MS. SCHULTZ: No.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 THE COURT: All right. And the parties agree. Now, and the State
2 and the defendant agree that this, what is it? State's Exhibit...

3 THE STATE (MS. FLANIGAN): State's "2".

4 THE COURT: State's Exhibit "2" uh, they agree that this will be
5 turned over to Officer Wibbels for this procedure for the evening.

6 MS. SCHULTZ: That is correct.

7 THE COURT: Okay. And all right, okay. Now, so now, one other
8 thing that I need to uh, of course, this..., I, I received your note about fast
9 forwarding. That presumably should resolve that issue. Now this other one
10 you've written to me and you've said uh, "Do we have to continue to watch? We
11 already feel this is inappropriate for children." And I understand and I appreciate
12 and respect your opinion. However, you remember, I've repeatedly told you uh,
13 something like uh, when I told you you're not to permit anyone to talk to you or in
14 your presence on any subject matter connected with this trial. And it's your duty
15 not to form or express an opinion on the case until it's finally submitted to you.
16 So I would ask you to keep that in mind and uh, I don't know what's on the rest
17 of the DVD. Uh, I saw the first of it when you saw the first of it. You may think
18 that it's all gonna be the same, and I might think that, but I don't really know that.
19 So uh, Officer Wibbels is gonna watch it all. The defendant's attorney has had
20 an opportunity to uh, see this and see portions of it uh, before we ever started
21 the trial. And uh, you know, you may think that, I might think that. What I think
22 means absolutely nothing. What you think uh, after you have all the evidence, is
23 what's important. But right now you don't have all the evidence. And there might
24 be something different in the other portion of it. I don't know. And neither do you

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 at this point. So I would caution you uhm, to take the Court's instruction
2 seriously about withholding your judgment until it's all said and done. Okay?
3 Uhm, now is there any additional cautionary instruction or request by the State or
4 the defense with respect to this note that I received so far?

5 MS. SCHULTZ: No, not from me, Judge.

6 THE STATE (MS. FLANIGAN): Not from the State, Judge.

7 THE COURT: And uh, so, all right, you would, you want, Officer
8 Wibbels, you're still under oath. And uh, okay, and Officer Wibbels, you've been
9 present, and you've heard what, what we've talked about.

10 WITNESS: Yes sir.

11 THE COURT: Okay. And so you and Ms. Schultz and, and Ms.
12 Flanigan are gonna go over to the Prosecutor's Office and they're gonna find the
13 spot where we left off with the jury. And, and then you're gonna have to watch
14 all of it. And uh, if there's anything that's significantly different than the first
15 portion of it, then you need to flag those parts so that we can uh, play those for
16 the jury and be prepared to answer those questions, which should basically be
17 whether or not the first portion of it is representative of what the rest of it is. Uh,
18 and uh, you know, maybe make some notes about, in a general way, what is,
19 men having sex with women, women doing this, that and the another. Uh, I
20 mean there was a whole variety of things there in the first portion uh, which I
21 won't describe in graphic detail. But uh, I think you should be prepared to
22 answer in a general way, the questions the lawyers might have of you with
23 respect to, you know, what the first portion included and what the rest of it
24 included in a general way.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 WITNESS: Yes sir. I understand.

2 THE COURT: Okay. Ms. Flanigan, anything?

3

4 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

5 Q Just uh, Detective Wibbels, I'm handing you what's been marked as
6 State's Exhibit Number "2", and I'd ask you to identify that one more time
7 for the record.

8 A It's a DVD movie uh, "Sex Ed Tutor." It's marked State's Exhibit "2" on the
9 outside.

10 Q Okay. Is that the DVD that we had previously shown to the jury?

11 A Yes.

12 Q And I'm now placing it into your possession.

13 A Yes.

14 Q And under oath you're testifying that you will take that into your
15 possession and return it in the same condition tomorrow?

16 A Yes.

17

18 THE COURT: Okay, any instructions or anything for Mr. Wibbels
19 before we finish, Ms. Schultz?

20 MS. SCHULTZ: No.

21 THE COURT: All right. Okay, all right uh, all right, now then uh,
22 we're gonna go ahead and finish early since uh, Officer Wibbels is gonna, you
23 know, take care of this project for us. And uh, and since we're not watching the
24 whole five hours, we're gonna reconvene tomorrow, or whatever it is, four or five

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 hours, we're gonna reconvene tomorrow at nine a.m. During this overnight
2 recess, you know what I'm gonna say, it's your duty not to permit anyone to talk
3 to you or in your presence on any subject matter connected with this trial. It's
4 your duty not to form or express an opinion on the case until it's finally submitted
5 to you. I'd ask you to withhold judgment until you know what all the evidence is
6 with respect to all or any part of the case. Okay? And uh, okay, then, and then
7 of course, as you know, if there's any media attention about the case, you're not
8 to read, listen to or watch it. And, again, Sharon will take care of your notes and
9 notebooks and make sure that nobody else has access to them. All right?
10 Thank you very much, ladies and gentlemen. See you tomorrow morning. We'll
11 be ready to go at nine o'clock. Now tomorrow, remember, tomorrow we expect
12 the case to conclude. Now tomorrow is the day that you don't know when you're
13 gonna finish. Okay? You know, you might be here late, you might not be,
14 because that'll be up to the jury to decide how long you deliberate about the
15 case. Okay? So make arrangements appropriately.

16 (JURY EXITS COURTROOM)

17

18 THE COURT: Is there anything else before we go?

19 MS. SCHULTZ: No, Judge.

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

21 MS. LAUREN WHEATLEY: No, Judge.

22 THE COURT: All right. Now that's the only exhibit that you all
23 have, isn't it? Just that one. Bill has got it.

24 MS. LAUREN WHEATLEY: Yes.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 THE STATE (MS. FLANIGAN): Yes.

2 MS. LAUREN WHEATLEY: I think the Court has the rest.

3 THE STATE (MS. FLANIGAN): It's not in yet.

4 MS. LAUREN WHEATLEY: Number "1" has not been admitted. It's
5 been identified.

6 THE COURT: The player hasn't been...

7 MS. LAUREN WHEATLEY: Correct.

8 THE COURT: It's just identified. Okay. All right, thank you very
9 much. Oh uh, you've got the Finals, right?

10 THE STATE (MS. FLANIGAN): Yes.

11 THE COURT: Okay. And then uh, I know you haven't had a
12 chance to look at them. But be, be looking at those, if you have a chance. And
13 uh, so we can, you know, because we're gonna have to, you know, do some
14 things tomorrow. All right. Thank you.

15 (COURT ADJOURNED)

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STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 November 21, 2008

2 THE COURT: Okay. The record will reflect the jury is not present.
3 The defendant, the defendant's attorney, the prosecutors are present. Any
4 preliminary matters before we start?

5 THE STATE (MS. FLANIGAN): No, Judge. Not from the State.

6 MS. SCHULTZ: No.

7 THE COURT: Okay. All right, I guess we'll continue with Officer
8 Wibbels, yeah. All right, bring the jury in, Sharon.

9 (JURY RETURNS TO COURTROOM)

10

11 THE COURT: Please be seated, ladies and gentlemen. Okay uh, I
12 think we left off, Officer Wibbels was on the stand. Officer Wibbels, I'll simply
13 remind you that you're still under oath. All right, okay, and continue with your
14 direct examination.

15

16 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

17 Q Detective Wibbels, I think yesterday I failed to ask you to make the record
18 your name and the spelling of your name.

19 A It's William Wibbels. Wibbels is spelled W-i-b as "boy" -b as in "boy" -e-l-
20 s, Junior.

21 Q Okay. And when we left off yesterday, you had been uh, asked or we had
22 stipulated that you would go home and watch the rest of the video that we
23 started watching in court. Is that correct?

24 A Yes ma'am, that's correct.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Q Do you have a copy of that with you?

2 A Yes, I do, ma'am.

3 Q And, Detective Wibbels, I'm showing you what's been marked as State's
4 Exhibit Number "2", and ask you to identify that for the record.

5 A This is a DVD of the movie "Sex Ed Tutor".

6 Q Is that the DVD that I handed you yesterday in court in front of the jury?

7 A Yes, it is.

8 Q And you took it to your home. Is that correct?

9 A Yes.

10 Q And you watched the entire movie?

11 A Yes.

12

13 THE STATE (MS. FLANIGAN): Okay. Judge, I'm gonna turn this
14 back over to the Court Reporter.

15 THE COURT: Okay.

16

17 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

18 Q And, Detective Wibbels, that is the movie you found in Ed Nunley's home.

19 Is that correct?

20 A Yes. I found it in his apartment at the Harrison House. It's located on
21 Oak Street in Corydon, Indiana.

22 Q Did you uh, could you, before we get moving too much further about the
23 movie uh, do you know uh, Lawrence E. Nunley's date of birth?

24 A Yes. Mr. Nunley's date of birth is October 23rd, 1966.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Q Okay. And you were in Court when uh, Annie identified that as the movie
2 that Mr. Nunley had shown her?

3 A That is correct.

4 Q Before last night, Detective Wibbels, had you watched portions of that
5 movie?

6 A Yes, I have.

7 Q And had you uh, fast forwarded through most of it actually?

8 A I would go from scene to scene and basically it's the same plot in every
9 scene, and I would fast forward it to the end and go to the next scene and
10 watch it.

11 Q That was before you were asked to watch the entire thing by the Court?

12 A Yes, that is correct.

13 Q Okay. Last night when you watched the movie, did you re-watch the
14 entire movie?

15 A I watched it from the beginning to the end with the uh, gallery at the end,
16 and there's advertisements at the end.

17 Q Did you re-watch the part that we watched in court?

18 A Yes.

19 Q And did you then watch the remainder of the movie?

20 A Yes.

21 Q How long was this movie?

22 A Four hours, approximately over four hours and ten minutes of actual
23 movie, and then there was actually a gallery at the end of pictures. And
24 there was also advertisements at the end for like uh, I guess phone sex

25

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 lines, would be the easiest way to uh, say it.

2 Q Was the movie broken down into any chapters or titles?

3 A I don't know if they had specific titles, but I counted approximately twenty-
4 one separate chapters or scenes in the movie.

5 Q Detective, would it be correct that we watched five, just five of those in
6 court yesterday?

7 A I believe so, yes ma'am.

8 Q Did you make notes as you watched this movie, Detective?

9 A Yes, I did.

10 Q Can you indicate just briefly, if you could go through those for the jury,
11 what you saw when you observed the movie?

12 A Uh, scene one was two girls in a pool, or at a pool. Scene two was a man
13 and woman in a bedroom with a woman and a Bay Watch lifeguard uh,
14 outfit, and there was an ejaculation in that uh, scene. Scene three was
15 two men and one woman in a bedroom. Ejaculation in the woman's
16 mouth on scene three. Scene four was one man and one woman on a
17 couch, ejaculation in the mouth and on the woman's hair. And the woman
18 said at the very end, "I hope Mom's not awake still." Scene five, two men
19 and one woman at a bed and breakfast. Both ejaculate in mouth. Scene
20 six, two girls at a cabin. No ejaculation there. Scene seven, man and
21 woman on a snowy mountain, ejaculated on breast. Scene eight, two
22 women and one man on a couch. He ejaculated in one's mouth and
23 kissed the other female with the mouth she had been ejaculated in.
24 Scene nine, one man, one woman in a warehouse on a, what appeared to

25

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 be bubble wrap, and ejaculated on female's stomach. Scene ten, man
2 and woman with people in watching in a booth via camera, and he
3 ejaculated on her. Scene eleven, female and male on bed, ejaculated on
4 face and mouth. Scene twelve, two men and one female in closet,
5 ejaculated on hand. Scene thirteen, nurse female and man with a broken
6 leg. He ejaculated on genitals and uh, the female's uh, behind or butt.
7 Scene fourteen, man and woman on couch, ejaculated on couch. Scene
8 fifteen, two men, one woman watching sports with a cat walking in the
9 background. Uh, two had both ejaculated in her mouth. Scene sixteen is
10 a woman in a shower and then it cuts to a man and woman on a couch
11 and he ejaculated on her breast. Scene seventeen, two women sharing
12 what appeared to be a dildo. Scene eighteen, man and woman,
13 ejaculated in mouth. Scene nineteen, man and woman, the woman
14 wearing pigtails, and he ejaculated on face. Scene twenty, two women
15 uh, one being African-American woman, and then one had uh, what
16 appeared to be a strap-on dildo, using it on the other woman. Scene
17 twenty-one, oil-covered, what I'd call an orgy in a pit. At least seven
18 females with strap-on dildos, many dildos, one very large dildo. Five
19 males who ejaculated onto a group of women who were from an elevated
20 position, down on the women into a pit. And on the gallery, there is a
21 series of ten still, approximately ten still pictures with scenes and scenes
22 from other pornographic films. And then there were triple-x phone sex
23 ads uh, with people having sex and ejaculations in uh, during the uh, in
24 the advertisements. And also the menu screen shows live action uh, if

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 you put it on menu, it'll show each of the scenes that I told you about. As
2 it runs on one side, you can pick which scene you want to watch.

3 Q Detective Wibbels, based on what you reviewed last night, can you tell the
4 members of the jury what they were shown in court, was that
5 representative of the entire uh, film?

6 A The first five scenes that you all saw in court is consistent with the rest of
7 the film.

8 Q Thank you. Detective Wibbels, let's, let's start again with uh, your training
9 and experience. How long have you been with the Indiana State Police?

10 A I was appointed on August 24th, 1997. I'm in my eleventh year.

11 Q Can you describe your educational background for the members of the
12 jury?

13 A I graduated from South Central High School in Elizabeth, and also I've
14 graduated from Indiana University in Bloomington with a bachelor's
15 degree. I've also graduated from the Indiana State Police Academy. And
16 uh, I've had numerous field training uh, extra training along the way.

17 Q Okay. And you're currently what, what we would commonly know, what
18 people would commonly know as a detective?

19 A Yes. I'm assigned to the Criminal Investigations Division. I'm assigned as
20 an investigator. My rank is still trooper, but I've been, I guess, I don't
21 know if it's an elevation, but investigator.

22 Q And uh, Detective, where do you primarily investigate crimes?

23 A Primarily in Harrison, Floyd County, sometimes in Washington, Clark, and
24 Scott, and sometimes in Crawford.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Q Detective, in connection with your job, have you had opportunity to
2 investigate cases of sexual abuse?

3 A Yes, I have.

4 Q Approximately how many such cases have you investigated during your
5 tenure?

6 A Approximately seventy-five. It could be more, it could be less. That's
7 including uh, child molesting, sexual misconducts with minors, rapes uh,
8 homicides involving rape uh, all sex crimes basically.

9 Q Of those seventy-five cases, could you indicate for the jury how many of
10 those may have involved children?

11 A If we're talking under eighteen, half or maybe even more than half
12 approximately.

13 Q Have you had any specialized training in sexual assault cases?

14 A Yes. I have uh, attended Finding Words, which you heard Ms. Black talk
15 about. I went to that school in Ft. Wayne, Indiana. I've also uh, went to a
16 sexual assault nurse examiner's class that was forty hours at Indiana
17 University Southeast. I've had numerous uh, extra training at Reid's
18 School of Interrogation and Interview. Uh, multiple schools.

19 Q Detective, have you had any training in the collection of DNA evidence?

20 A I've had some practical, but a lot of O.T.J., on-the-job training. Uh, I've
21 processed a lot of burglary scenes by myself uh, in which I collect my own
22 DNA evidence at.

23 Q Would the uh, forty-hour class you took, would that have involved
24 discussion of collecting evidence in sex cases?

25

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 A Yes, it did.

2 Q Detective, tell the members of the jury when you became involved in this
3 investigation.

4 A I became involved on April 18th, which was a Friday, 2008, when Ms.
5 Young came to the Comfort House for her interview.

6 Q How is it that you came to be involved in this investigation? Do you
7 remember how you were contacted?

8 A I believe I was contacted by Teresa Kerber, who was the Child Protective
9 Services Investigator for the Division of Family and Children, which is here
10 in Corydon.

11 Q When you arrived at the Comfort House uh, do you recall if Annie Young
12 and her mother were there?

13 A A person that would be later identified as Annie Young's mother, and
14 Annie Young were there. Yes, they were.

15 Q Did you proceed uh, to a room when you arrived?

16 A Yes, I did.

17 Q Describe that room for the members of the jury.

18 A The room is probably about half the size of your jury box there. Uh, it has
19 a table with chairs around it. There's a couple of monitors, or a monitor
20 on the screen, computer on one side. And what we do is we have uh,
21 headphones that we put on that we can hear while the interview is going
22 on. Uh, when the interview, say the interview room is, on one side of the
23 jury box there is a window and a mirror, and we're on the other side. So
24 the children cannot see or hear us from the other side of the interview

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 room.

2 Q And you heard Ms. Black describe a team. There would've been a team
3 in there with you?

4 A That is correct.

5 Q You would have the opportunity to uh, suggest questions to Ms. Black. Is
6 that correct?

7 A Yes. I mean nobody can remember everything, and sometimes it helps
8 out when you have people talk in your ear. Uh, there are different
9 disciplines there. There's police, there's Child Protective Services, a
10 prosecution team there. And every person kind of has their own niche in
11 what they need. And that way we can ask people or ask the person doing
12 the interview to uh, what questions we need to ask basically.

13 Q And when you do that, it goes into a..., you've actually, have you actually
14 done interviews at the Comfort House?

15 A Yes, I have.

16 Q So can you describe for the jury, there's a little, as Ms. Black described, a
17 bug in the ear?

18 A It's kind of like a news anchor. You have a bug in your ear. If your
19 producer or director tells you something, you can hear it. And that's
20 basically, we can talk on via two-way radio to uh, the person giving the
21 interview. And only the person interviewing can hear the questions.

22 Q What is the reason that Annie Young would've been taken to the Comfort
23 House?

24 A Well, the name itself, Comfort House, it's a more comfortable setting for
25

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 the child. It's non-confrontational. It's uh, it's basically, it's made for
2 children. Uh, there's drawings on the wall, toys out front. It's very
3 different than being inside of a sterile police station or prosecutor's office
4 or a courtroom. It's very conducive for the child.

5 Q And, Detective, we heard Ms. Black about a forensic interview. Can you
6 tell the members of the jury what, what that is and why that would be
7 important?

8 A We are trying not to suggest anything to the child, and for the child talk
9 itself, talk themselves. Uh, there's also uh, you have to be able to rapport
10 with the child. You go through anatomy with the child, that they know their
11 anatomy so when they say "weenie-bob", you know what they're talking
12 about. Uh, you're trying to basically, a non-leading, a very comfortable
13 setting for the child so that you can get the most information without
14 leading the person. And it, so it'll stand up better when it comes further
15 down the line as far as judicial process.

16 Q Did you observe Annie Young's Comfort House interview?

17 A Yes, I did.

18 Q Okay, were you able to hear uh, everything that was being said?

19 A Annie is a soft spot, soft speaker and uh, the microphone system wasn't
20 the best at the time with the uh, Comfort House. And I heard, yes, I heard
21 it. But sometimes you could, it was hard to hear.

22 Q Uh, could you observe her the entire time?

23 A Yes, I could.

24 Q Have you had an opportunity to observe children at the Comfort House

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 who have appeared coached?

2 A Yes.

3 Q Okay. And based on your training and experienced, when you observed

4 Annie, did she appear coached?

5

6 MS. SCHULTZ: Objection. It calls for speculation.

7 THE STATE (MS. FLANIGAN): I think Detective Wibbels is either

8 an expert or is still the witness on that, Judge. He can indicate to the Court if

9 Annie appeared to be coached.

10 THE COURT: I think you need more foundation for that.

11 THE STATE (MS. FLANIGAN): Detective...

12 THE COURT: I'll sustain the objection so far.

13

14 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

15 Q Detective, have you had opportunity to watch other interviews of other

16 children at the Comfort House?

17 A Yes, I have.

18 Q Can you tell the members of the jury about how many you've seen there?

19 A I wouldn't want to put a number on it. There's, it's been a significant

20 number. Uh, at the location in Corydon, I'd say maybe twenty or thirty

21 approximately.

22 Q Okay. And do you uh, have you observed children that have been

23 interviewed outside of the Comfort House, other children that have been

24 interviewed?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 A Yes, I've interviewed many people in my career.

2 Q Okay, but specifically children?

3 A Yes.

4 Q Okay. And have you come to uh, form an opinion on what would show
5 that somebody would be coached?

6 A There are indications, yes.

7 Q And can you share some of those with the jury?

8 A Uh, some indications are they answer the question before asked, uh,
9 before the entire question is asked. Sometimes the children seem too
10 polished. Uh, it seems like they've been told what to say, things like that.
11 And I did not feel that with Annie.

12 Q Did Annie disclose sexual abuse during this interview?

13 A Yes, she did.

14 Q Okay. And did Annie uh, disclose additional details of sexual abuse?

15 A Yes.

16 Q And do you recall what those additional uh, allegations were?

17 A She had uh, told Ms. Black that uh, Ed Nunley had licked her pee-pee and
18 uh, made her, forced to suck his weenie-bob, which is her name for penis.
19 Uh, pee-pees are name for uh, vagina. And uh, also touched her pee-
20 pee. And also she described Mr. Nunley's penis as being peachy and
21 squishy. And she also drew a picture of the, what appeared to be a penis,
22 a circumcised penis on the board.

23 Q Did she actually indicate to Ms. Black some uh, additional things that Mr.
24 Nunley had done to her?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 A He also made her watch pornographic uh, movie.

2 Q Did she indicated that he had done anything with his hand?

3 A Touched her uh, pee-pee, which would be vagina uh, inside and outside.

4 Q Okay. Anything additional he did with his pee-pee? Or with his weenie-
5 bob? I'm sorry.

6 A If you'll give me a second here. I believe he also said that uh, he'd
7 touched her pee-pee with his weenie-bob.

8 Q And that would've been on the outside?

9 A Yes.

10 Q Uhm, based on your training and experience, Detective, is it common for
11 children to give additional details or uh, add more at the Comfort House?

12 A Children, I find that children interviewed at the Comfort House are more
13 thorough and uh, give most details when at the Comfort House as
14 opposed to being in a police station, in a police car, at a courtroom. Uh,
15 they're more comfortable there, hence the name Comfort House.

16 Q After the interview, Detective Wibbels, did you take possession of the
17 drawings uh, that Annie Young had made?

18 A Yes, I did.

19 Q Did uh, I'm gonna ask if I could see those...
20

21 THE COURT: Karen, have you got the exhibits?
22

23 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

24 Q Detective, I'm going to show you what's been admitted as State's Exhibits
25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 "6", "7" and "8" and ask you to look at those. With respect to "7" and "8",
2 are those uh, drawings that Ms. Lloyd and Annie worked on at the
3 Comfort House?

4 A Yes, they are.

5 Q And did you take those into possession?

6 A Yes, I did.

7 Q Those have been in the exclusive control of the Indiana State Police since
8 the day of this interview?

9 A Until the court proceeding began.

10 Q And I'm going to show you what's been marked as State's Exhibit "6". Is
11 this the, the drawing on the paper that Annie and Ms. Black worked on?

12 A Yes, it is.

13 Q You testified that she drew an uncircumcised penis. Could you point that
14 out?

15 A I said circumcised penis, ma'am. It's right there.

16 Q Okay.

17 A It appears to be a circumcised penis.

18

19 THE COURT: Why don't you turn around so the jury can see what
20 you're pointing to?

21

22 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

23 Q Did uh, you take this into your custody and control after the interview?

24 A Yes, I did.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Q Has it been in the exclusive custody and control of the Indiana State
2 Police since the interview?

3 A Yes.

4 Q Detective Wibbels, after the Comfort House interview, did you have an
5 opportunity to further this investigation?

6 A Basically after the Comfort House interview, I, to use the proverbials, I
7 picked up the ball and ran with it.

8 Q Okay, and what, what was the first thing you would've done?

9 A Attempt to locate Mr. Nunley.

10 Q Okay, did you have an opportunity to see if there were any other reports
11 about Mr. Nunley in the Indiana State Police computer?

12 A Yes. What we have at the State Police is we have a system called E-
13 case. I can go and type your name in and it'll tell me any time your name
14 is mentioned in any report the State Police generate, whether it be from
15 northern Indiana, the Indianapolis area, here, I could type in John Doe,
16 and it'll pull up every case. Either you've been a witness, you were
17 mentioned as a suspect, you were arrested or whatever, it'll be in there.

18

19 THE COURT: Okay. Just a minute. Come up here, please.

20

21 BENCH CONFERENCE:

22 THE COURT: Bill, come..., I assume you're doing this just so that
23 you can try to show how you found him. But don't be mentioning it about any
24 other arrests or anything like that. Okay?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 THE STATE (MS. FLANIGAN): Oh, no, no.

2 THE COURT: Okay.

3 (BENCH CONFERENCE ENDS)

4

5 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

6 Q Detective Wibbels, did you locate a uh, report in the database regarding

7 Annie Young and uh, Lawrence E. Nunley?

8 A Yes, I did.

9 Q Do you remember what the date of that report was?

10 A That was uh, Trooper Bowling's report. It was a couple of days after he
11 had interviewed uh, Ms. Young, mid-April in 2007, I'd say.

12 Q How many criminal reports are put into the database of Indiana State
13 Police in a given year?

14 A I can just speak for the Sellersburg Post. It would be anywhere from a
15 thousand to two thousand a year.

16 Q And you were able to locate this one report?

17 A Yes.

18 Q Did you speak to Trooper Bowling?

19 A Yes.

20 Q Did he uh, did you specifically ask him about uh, the note that was
21 mentioned?

22

23 MS. SCHULTZ: Objection, leading.

24 THE STATE (MS. FLANIGAN): What did..., I'll rephrase it, Judge.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

2 Q What did you ask him about?

3 A I asked him the basically the uh, the particulars of the case and if he did
4 have the note that uh, Ms. Young had written.

5 Q What did Trooper Bowling indicate about the note?

6 A He...

7

8 MS. SCHULTZ: Objection, hearsay.

9 THE COURT: Sustained.

10

11 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

12 Q Was the note ever located at Indiana State Police, Detective?

13 A No.

14 Q Have you ever been able to locate the note?

15 A No.

16 Q What was your, after that step, what was your next step in the
17 investigation?

18 A I attempted to locate Nunley.

19 Q Were you eventually successful in locating him?

20 A Yes.

21 Q Where did you locate him?

22 A Harrison House, which is an apartment uh, apartments you can either rent
23 by the week, month uh, down in Corydon. It's on Oak Street. Uh, near
24 Beanblossom Funeral Home, downtown Corydon.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Q Was he the only one living at that apartment at the time?

2 A Yes, he was.

3 Q And that was the apartment that you located the DVD that we've looked
4 at?

5 A That is correct.

6 Q Okay. Did you locate a portable DVD player in that apartment?

7 A No, I did not.

8 Q At some point did you learn that Mr. Nunley had a storage unit?

9 A Yes, I did.

10 Q Did you learn why he had a storage unit?

11 A He'd been evicted from his home in Palmyra. And he had moved his
12 items to a storage unit.

13 Q Do you know about what time that was that he moved up there?

14 A I can't tell you specifically.

15 Q Where did you locate the storage unit?

16 A I located it at Palmyra Storage, which is on State Road 135, just north of
17 Palmyra, in Washington County.

18 Q Did you uh, confirm that that unit was rented to Edward uh, or to Ed
19 Nunley?

20 A Yes, I did.

21 Q Did you obtain a search warrant to search the unit?

22 A Yes. I applied for one and received a search warrant.

23 Q What was the date of that search warrant, Detective?

24 A I believe it was on the, the 30th of May, 2008, which was also a Friday.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Q Did you locate any personal effects of Ed Nunley in that storage unit?

2 A Yes.

3 Q I'm gonna show you what's been marked as State's Exhibit "1" and ask
4 you if you could identify that for the members of the jury.

5 A This is a Polaroid portable DVD player. It's silver in color.

6 Q Did you locate that in Ed Nunley's storage unit?

7 A Yes, I did.

8 Q Did you take it into your possession at that time?

9 A Yes, I did.

10 Q And that is the Polaroid DVD, portable DVD player that Annie identified
11 here in court?

12 A That is correct.

13 Q What about the previous month, Detective? Could have anyone also
14 obtained, the month prior to the execution of the search warrant, were you
15 aware if anyone else could have gained access to that storage unit?

16

17 MS. SCHULTZ: Objection, speculation.

18 THE COURT: Uh, well, I don't know if it is or not. Overruled.

19

20 WITNESS RESUMES ANSWER:

21 A Mr. Nunley was behind on his rent at the storage unit. And therefore a
22 second lock had been placed on the storage unit by owners of the storage
23 unit, so to prevent anyone from going in and retrieving any items, until the
24 bill had been paid.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 Q So when you executed the search warrant, you had to actually go through
2 two locks?

3 A That is correct.

4 Q Has that portable DVD player been in the uh, sole custody of the Indiana
5 State Police since the execution of that search warrant?

6 A It's been in my custody since Friday, May 30th, 2008.

7

8 THE STATE (MS. FLANIGAN): At this point, Judge, the State
9 would move admission of State's Exhibit Number "1".

10 MS. SCHULTZ: No objection.

11 THE COURT: State's Exhibit "1", it was "1", is admitted without
12 objection.

13

14 WITNESS RESUMES ANSWER:

15 A I should rephrase that. It has been in the possession of Indiana State
16 Police, not in my sole possession. We turn it into evidence and it's stored
17 at the Post. Not in my sole possession since May 30th, 2008. I wanted to
18 clarify that.

19

20 THE STATE (MS. FLANIGAN): I'd ask to publish it to the jury,
21 Judge.

22 THE COURT: Okay, granted.

23 (STATE'S EXHIBIT "1" PUBLISHED TO JURY)

24

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

2 Q Detective Wibbels, based on your training and experience, is it common to
3 get DNA in a child-molesting case?

4 A Not in this type, no.

5 Q Okay. And in this case in particular, are there any specific details that
6 you've learned that would indicate it would've been difficult to get DNA in
7 this case?

8 A Annie had been a consensual visitor to Ed Nunley's home. Among that
9 she's either sat on the couch, sat on the floor uh, sat on the bed, laid on
10 the bed, laid underneath the blanket, laid underneath a sheet. And I
11 would expect even if Mr. Nunley didn't, has not done the alleged acts, still
12 if you would've swabbed Annie Young's body the whole time, from the
13 time she'd been there, some DNA from Ed Nunley would've been there,
14 because you're transferring DNA when you sit at someone's house uh,
15 notwithstanding also, she took a bath in Ed Nunley's bathtub, either
16 before or after. It really doesn't matter. Because you know as well as you
17 do, water comes into places when you sit in a bathtub. And a bathtub is
18 basically a DNA stew if you get down to it. Because every time you take a
19 bath, you're washing off dead skin cells. And those skin cells either
20 collect at the side of the bathtub, go down the drain. But basically, you're
21 gonna transfer DNA inside someone's house, regardless of whether an
22 assault happened or not. And if it would come back a positive DNA even
23 in her vaginal area, it wouldn't be uh, nothing, I don't think, outstanding
24 you could've, you could've talked away as far as being in his bathtub.

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 You'd expect Mr. Nunley's DNA to be in that bathtub or in his house.

2 Q And Detective, do you recall if there's any allegations by Annie Young that
3 Mr. Nunley ejaculated at any time?

4 A No.

5 Q And so there would not be any DNA from ejaculation?

6 A Different uh, you know, as far as ejaculation inside of a person or on the
7 outside, ejaculation..., I'm not a DNA expert by any means, but different,
8 different makeup of ejaculation and skin cells and saliva. Uh, ejaculation
9 and blood are more hardy than, than uh, skin cells and saliva, and stand
10 up and stay long better.

11 Q But there was no allegation of ejaculation in this case.

12 A That is correct.

13 Q How about getting fingerprints from Annie Young's body?

14 A Unlike C.S.I., which you watch on T.V., gathering fingerprints from a
15 human body is, I would say, very difficult. It's difficult to get it off of a lot of
16 surfaces. And skin, I would say, would probably be one of the most
17 difficult.

18 Q How about examining her body, and I'm talking about when she went to
19 see Trooper Bowling, observing her body for any injury?

20 A I don't believe he, that he alleged that Ms. Annie Young had alleged
21 penetration by Mr. uh, Nunley's finger into her vagina. Therefore uh, any
22 physical exam would probably be for nil.

23 Q So that came, that allegation actually later at the Comfort House?

24 A Yes. And by the time that Comfort House had come along, the interview,
25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (DIRECT)

1 which was a year later uh, tissue would've grown back, been healed,
2 etcetera.

3 Q Let's go back to the pornographic movie unfortunately. You actually
4 heard Annie Young's interview at the Comfort House?

5 A Yes.

6 Q And you watched the whole movie?

7 A Yes.

8 Q Uh, did Annie allege or state certain things at the Comfort House that she
9 saw in that movie that matched the actual movie?

10 A Yes. There were uh, naked people licking each other's, licking other
11 men's weenie-bobs and whipped cream coming out of these men's
12 weenie-bobs.

13

14 THE STATE (MS. FLANIGAN): That's all I have, Judge.

15 THE COURT: Cross?

16

17 **CROSS EXAMINATION OF WILLIAM WIBBELS BY DEFENSE:**

18 Q Officer, in addition to that, didn't she describe men licking other men's
19 weenie-bobs in the video that she saw?

20 A Yes.

21 Q And did you see any of that in the movie?

22 A I don't know if I actually saw men licking. There was a lot of co-
23 mingulation a lot of times. Uh, whether someone could've licked a
24 weenie-bob during that time is quite possible.

25

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (CROSS)

1 Q And she didn't talk in her statement about seeing any people having
2 actual intercourse, did she?

3 A I don't know if she would know what intercourse would be, ma'am.

4 Q Okay. Did she talk anything about men putting their weenie-bobs into
5 women's pee-pees?

6 A I don't recall her saying that.

7 Q Okay, and that was pretty prevalent in the movie that you watched, was it
8 not?

9 A That is correct.

10 Q Okay. But she didn't mention that?

11 A Like I said, I wouldn't know, you know, speaking from having children, I
12 don't know if they would know actually what was going on...

13 Q Okay...

14 A As far as putting it into another person.

15 Q So if she talked about naked people in the movie and she talked about uh,
16 it appearing that whipped cream was coming out of penises and people
17 licking weenie-bobs, that was on the cover on this DVD, was it not?

18 A There was a cover of a woman that looked to be performing oral sex, yes.

19 Q Okay. So on the cover we have naked people. Is that right?

20 A It appears to be two naked females, or nude females, or appear to be
21 nude.

22 Q And we see a penis?

23 A It appears to be one.

24 Q And what appears to be, what I presume Annie was calling the whipped
25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 cream dripping down the chest of the naked woman. Is that right?

2 A It appears to be, yes ma'am.

3 Q Okay. So when Annie saw a cover of a movie like this, it's conceivable
4 that she would've seen those things from the cover.

5

6 MS. LAUREN WHEATLEY: I'm going to object. This is
7 speculation, Judge.

8 THE COURT: Sustained.

9

10 DEFENSE RESUMES CROSS EXAMINATION OF WILLIAM WIBBELS:

11 Q And just to be clear, you didn't see any men doing, obviously sucking the
12 men in the movie?

13 A I can't recall specifically any men giving other men oral sex. But like I
14 said, there was a lot of co-mingulation amongst a lot of these movies, and
15 it could've been possible that somebody would've licked on one at one
16 time. It's possible.

17 Q Okay. Now, with respect Exhibit, I believe it's "1", the DVD player...

18 A Yes.

19 Q Did, you found that in the storage building?

20 A That is correct.

21 Q And did you attempt to turn that DVD player on and see if it worked?

22 A I tried, I believe I tried. Either the batteries were dead or it didn't have the
23 AC adapter with it.

24 Q Okay. So when you found it, it was not operational?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 A I don't believe so, ma'am.

2 Q Okay. And you don't have any idea how long it had been in that storage
3 building?

4 A I know at least it'd been there a month because the second lock had been
5 on there.

6 Q The second lock was on the storage building for a month?

7 A At least a month, yes ma'am.

8 Q Okay...

9 A Approximately a month.

10 Q And were you able to ascertain whether there was anything in that storage
11 building that belonged to anyone other than Ed Nunley?

12 A There was some uh, other articles there, yes. And there was some
13 children's movies also.

14 Q Okay. But were you able to determine the owner of the property that was
15 in the movie? For example, did any of it belong to his kids?

16 A I couldn't tell you specifically, ma'am.

17 Q Okay. So the storage building was rented in Ed's name?

18 A Yes.

19 Q And there was a bunch of stuff in the storage building?

20 A That is correct.

21 Q And you assumed that the things that were in the storage building
22 belonged to Ed?

23 A I would assume if a person rented a storage unit, that the things inside the
24 storage unit rented in that person's name would be his.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 Q Okay. But you have no evidence to determine whether he permitted
2 someone else to put items in that storage building. Is that right?

3 A No ma'am.

4 Q Okay. When you received the report on this case on April 18th, 2008,
5 there was approximately a year and a week after this incident had
6 happened?

7 A Yes ma'am.

8 Q And you said you got the referral from Teresa Kerber?

9 A I believe so, yes ma'am.

10 Q From C.P.S.?

11 A Yes ma'am.

12 Q And was this the first time that you had ever heard anything about this
13 case?

14 A Yes ma'am, it was.

15 Q Is that rather unusual in your job, that a major uh, child molesting is
16 reported and it sits there for a year and nothing happened?

17 A Well, there's different ways uh, basically every trooper should be self-
18 sufficient, in my opinion, that they could handle any crime up to murder.
19 Uh, and like I say, if I'm not told about it, it would be, I would equivocate it
20 to you knowing every filing that happens in the Harrison Superior and
21 Circuit Court for a year. You wouldn't know that unless you were
22 specifically told about it.

23 Q Now I'm not suggesting that you knew anything about it.

24 A Uh huh.

25

STATE'S WITNESS – WITNESS #6, WILLIAM WIBBELS (CROSS)

1 Q But what I'm asking you is if it's unusual for this happen in an "A" felony
2 uh, molestation case?

3 A We get these things every day, ma'am. Every day we get major crimes
4 uh, throughout the Post.

5 Q Okay, so sometimes they just sit there for an extended period of time with
6 nothing happening?

7 A I can't uh, tell you about every crime, but I try to work my crimes as they
8 come and get it done and move on to the next one.

9 Q Okay. Are you the only detective in the Sellersburg Post that handles sex
10 crimes?

11 A No.

12 Q How many other people do you have that have the sort of training that you
13 do at that Post?

14 A As far as Finding Words and Sexual Assaults, Sexual Assault Nurse
15 Examiner's Training, I might be the only one. But I know of one other
16 detective. Our temporary detective just went to Finding Words. He works
17 out of Scott County though.

18 Q If you had been given the case immediately, would you have investigated
19 it differently than Officer Bowling did?

20 A Hindsight is always twenty-twenty, and I would've taken a few steps
21 different. But, like I say, you can't put the cow back in the barn.

22 Q Do you have any information as to why there was a one-year time lag
23 between the time it was initially reported and the time you got involved in
24 the case?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 A Yes.

2 Q And what is that explanation?

3 A I believe uh, that uh, Ms. Young was brought into the Comfort House for
4 an interview.

5 Q So there was a lack of follow-up through, with, on the part of her mother?

6 A Either that or missed appointments, and therefore yes.

7 Q Okay. In a case like this, who's responsibility would it be to carry through?
8 Would it be the parents' responsibility to get the child there for an
9 interview? Or is it more the responsibility of the investigating officer to
10 push these people into doing something?

11 A You can only do so much, Ms. Schultz. You can't grab somebody by the
12 hand or grab somebody by the hair and pull them down to the Comfort
13 House. Uh, when they make appointments and don't make them, or don't
14 make...., we can only do so much. We can't grab a hold people and say,
15 "You're coming with me to the Comfort House."

16 Q So the parent has a great deal of responsibility to see that these things
17 are done?

18 A I believe the responsible parent has, basically had to live up to their side
19 of the bargain and follow through for their child.

20 Q Okay. Now there have been cases that you have investigated or in this
21 area where DNA has been used to link people to sex crimes. Is that
22 correct?

23 A Yes.

24 Q And there have been DNA cases that have been investigated where

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 you've had DNA results that only involved touching a person's lips on the
2 other person?

3 A That I have had?

4 Q Or a victim. Have you had that?

5 A I can't say that I have, no ma'am.

6 Q That does occur sometimes though?

7 A Yes, it could. It's possible. Anything's possible.

8 Q Okay. And you indicated that taking a bath would interfere with the ability
9 to obtain DNA?

10 A I believe it would, yes.

11 Q What is the time frame that you're talking about with respect to taking a
12 bath? Uh, if Annie had, had gone to Nunley's house and not had a bath
13 at all that night and gone to the police station, it would've been more likely
14 that the DNA would've been uh, found or not?

15 A It would be more likely, yes. But if you're talking about oral sex on her,
16 that, you know, it was, as you know, you urinate through the same area.
17 There's a lot of wiping, defecation, things like that. It could've been wiped
18 away very easily.

19 Q It could've been, but wouldn't necessarily would have had to have been.
20 Is that right?

21 A I can't tell you a hundred percent. I'm, like I said, I'm not a DNA expert.
22 I've got a lot of on-the-job training on it, but I'm not an expert.

23 Q Okay. So if you had been involved in this case from the beginning, would
24 you have taken her to have DNA samples taken?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 A If a bath had been taken, as I said earlier, you have cross contamination
2 problems. She's taken a bath inside of Ed Nunley's bathtub. Which like I
3 said, it's a DNA stew. And you're gonna probably get Mr. Nunley's DNA
4 profile in that bathtub uh, his daughter's, son's, daughter's boyfriends,
5 son's girlfriends, etcetera. You're gonna get what you call multiple
6 profiles. And if we do a DNA swab on something and it comes back that
7 six people assaulted her, what's gonna, you know, what's that say?

8 Q So is your answer to my question, no, you would not have done it?

9 A If she had taken a bath, no. Because of cross contamination problems
10 and washing away of evidence.

11 Q So it doesn't matter whether she took a bath before or after?

12 A I think once you get in that bathtub at someone's house, that you are
13 basically exposing yourself to that person's DNA because of the skin cells,
14 skin cells, DNA, water. It goes in places of our body.

15 Q So I guess the crux of my question to you is, if you had been involved in
16 this initially and you had the information that Officer Bowling had initially,
17 would you have made any effort to get DNA samples on this child?

18 A As I answered earlier, because of the bath.

19 Q No, it's a "yes" or "no". Yes or no.

20 A Well, you can't answer it that way. You have to qualify it, was it with bath,
21 without bath, come to the house, not come to the house. It's not a "yes"
22 or "no" answer. It's, you've got to qualify it. If she had a bath or not get
23 one, or she didn't have a bath, that's, that's what we need to ask.

24 Q You were in court when Officer Bowling testified. Is that right?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 A That is correct.

2 Q And you heard what he indicated was the information provided to him?

3 A Yes ma'am.

4 Q If that precise information had been provided to you, the same thing he
5 testified that he had, would you or would you not have attempted to obtain
6 DNA swabs in this instance?

7 A I still think the bath, regardless if it was before or after the alleged
8 molestation, taints the DNA test, because of cross contamination
9 problems.

10 Q So the answer to your question is no, you would not have attempted to
11 obtain DNA?

12 A With the bath present, no.

13 Q Okay. Would you have attempted to have any medical examination of
14 this child?

15 A If she had not alleged penetration, no.

16 Q Officer, you testified earlier that kids don't always reveal everything in their
17 initial uh....

18 A Uh huh.

19 Q ...disclosures to the police when they're in the police station.

20 A That is correct.

21 Q So, knowing that, and with the experience that you have in investigating
22 sex cases, you would not have suggested that the mother take her for a
23 medical evaluation?

24 A If there was no penetration alleged, I would not. I don't want to subject a

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 child to an evaluation uh, to have to get their genitals look at if there's no
2 penetration.

3 Q And when she talked to the Comfort House, she actually indicated, I
4 believe her statement in the Comfort House interview was that Ed Nunley
5 put his hand in her vagina, did he not?

6 A Yes.

7 Q Or is not, that's what she said?

8 A Hand, yes ma'am. Which still does not mean penetra..., it could be hand
9 like that. That could be into your vagina, been non-penetration.

10 Q Okay. So, so you're suggesting that a hand in the vagina doesn't
11 necessarily mean that the vagina was penetrated by the hand?

12 A Possibly couldn't. It could've been like that, or, you know, the labia comes
13 down like this. He could've went like that, but no penetration.

14 Q Okay. When you went to the Comfort House to watch the interview, were
15 you sitting in a room..., I was a little confused by your testimony. Was
16 there a one-way mirror uh, into the interview room where Annie was so
17 could you watch, actually watch live?

18 A There was actually mirror, the best I recall. But it's got a closet door. You
19 don't watch the mirror. You watch on a screen on the wall in the video.

20 Q So what you saw while you were in that room is similar to what we saw
21 here in the courtroom?

22 A The same thing.

23 Q Okay, now what we saw here in the courtroom was kind of...

24 A Jumpy.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 Q Jerky.

2 A Uh huh.

3 Q It was like five-second...

4 A And basically if uh, the way that video system is set up, the computer was
5 trying to read three separate videos at one time. If we just click on one
6 frame or one video and watch it, it'll be like a movie.

7 Q So when you were watching in that room, were you seeing all three
8 cameras at once?

9 A I believe we just saw one angle on the wall.

10 Q So what you saw actually looked more like a movie with people actually
11 moving more naturally than this five-second group stuff.

12 A That is correct, ma'am.

13 Q And the other thing that I noticed with the movie, the movie, the video
14 when we watched it was that approximately every five minutes it would
15 stop and then it would start again.

16 A Uh huh.

17 Q And that obviously did not happen while you were watching.

18 A Well, it goes to different chapters. I don't know if the way the software is
19 set up..., we've got a better system now thankfully. It goes to different
20 chapters. And uh, you know, maybe ten chapters every once seven or
21 eight minutes long.

22 Q Okay. And you indicated that there were times where you were actually
23 watching this the ear phones on that you had difficulty understanding
24 Annie?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (CROSS)

1 A Sometimes you can barely hear her. She's very soft spoken, as any
2 seven-year-old probably would be.

3

4 MS. SCHULTZ: That's all the questions I have.

5

6 **REDIRECT EXAMINATION OF WILLIAM WIBBELS BY STATE OF INDIANA**

7 **(MS. FLANIGAN):**

8 Q Detective Wibbels, were you here when Tonya Caves testified?

9 A Yes.

10 Q And did you hear her explanation of why she didn't come forward for a
11 year or why she didn't pursue this for a year?

12 A Just basically wanting it to go away, if she didn't talk about it, maybe if
13 Annie wouldn't talk about it, maybe it would just all be forgotten.

14 Q Okay. Is it common in sex abuse cases for the parent to have reluctance
15 to go forward after the initial disclosure?

16 A Yes.

17 Q And I'm gonna ask you, on that, that DVD Ms. Schultz..., I believe Ms.
18 Schultz asked you if uh, Annie could've just seen the cover of this and
19 come up with the disclosure she made at the Comfort House. Is that
20 correct?

21 A I believe she asked me that, yes.

22 Q And I'm gonna, and I guess the jury is gonna get a chance to look at it, but
23 if you look at that, does it appear in this picture that there is whipped
24 cream coming out of that penis?

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (REDIRECT)

1 A It looks like it's already come out of the penis and..., however it looks like
2 an ejaculate on her chest. And it's kind blurry, some on her chin also.

3 Q So it's kind of down on her chin and down on her chest. Is that right?

4 A It looks, it appears to me like that, yes.

5 Q Okay. So it's not on that picture coming out of her, out of the penis?

6 A No.

7 Q And, had that uh, had that DVD been recovered prior to her Comfort
8 House interview?

9 A No.

10 Q Had not been shown to her by Detective Bowling?

11 A No.

12 Q And had not been shown to her before she went into the Comfort House?

13 A That is correct.

14 Q Detective, Detective, when you indicated that the hand, when she said the
15 hand had gone into the vagina or into the pee-pee uh, you indicated it
16 could've just been some sort of penetration into the labia...

17 A Yes.

18 Q ...of the vagina?

19 A That's correct.

20 Q Is that right?

21 A Yes, that's correct.

22

23 THE STATE (MS. FLANIGAN): That's all I have, Judge.

24 MS. SCHULTZ: I don't have any further questions.

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (REDIRECT)

1 BENCH CONFERENCE:

2 THE COURT: Any objections?

3 MS. SCHULTZ: The problem that we have with this Harrison House
4 thing is that I don't want to say anything if he's testified. It makes it look my guy
5 is (unintelligible). You know, out of luck, unemployed and, what he is doing now
6 is not relevant to...

7 THE COURT: Well...

8 MS. SCHULTZ: I don't have any problem with you telling me. It's
9 just not going to be happening.

10 THE COURT: Okay. It's privately owned. You know that, Bill. Do
11 you know about, do know whether the Harrison House is government owned or
12 private owned?

13 WITNESS: I think it's a private organization. It's rented by the
14 week or month.

15 THE COURT: Okay. I think they already answered that. Okay.
16 Any objections?

17 THE STATE (MS. FLANIGAN): No.

18 (BENCH CONFERENCE ENDS)

19

20 THE COURT: Okay. There was some questions from the jury. Uh,
21 think they may have been answered uh, or at least one of these questions may
22 have been answered.

23

24 QUESTIONS BY JURY:

25

STATE'S WITNESS - WITNESS #6, WILLIAM WIBBELS (QUESTIONS BY JURY)

1 Q Uh, the first question, why was Ed Nunley living at the Harrison House
2 instead of his own house?

3 A He had been evicted from his trailer in Palmyra.

4 Q Is Harrison House a regular apartment complex or some sort of
5 government-run facility?

6 A Harrison House is a uh, basically it's an apartment house that you can
7 rent by the week or month, month-to-month or week-to-week lease, or uh,
8 rentals for there. I can't recall if anybody signed any long-term leases.
9 They might. But it's uh...

10 Q Private or government run?

11 A I believe it's private-run, yes sir.

12

13 THE COURT: Okay, all right. Uh, any additional questions for the
14 witness?

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

16 MS. SCHULTZ: None.

17 THE COURT: All right. Thank you.

18 WITNESS: Thank you, sir.

19 THE COURT: Next witness?

20 THE STATE (MS. FLANIGAN): Judge, at this point the State will
21 rest its case.

22 THE COURT: All right. Ms. Schultz?

23 MS. SCHULTZ: Judge, could we take up a couple of matters
24 outside the presence of the jury?

25

1 THE COURT: Sure. During this recess, it's your duty not to permit
2 anyone to talk to you or in your presence on any subject matter connected with
3 the trial. Do not form or express a final opinion on the case until it's finally
4 submitted to you. You'll be with the Bailiff.

5 (JURY EXITS COURTROOM)

6
7 THE STATE (MS. FLANIGAN): Judge, before we take up these
8 matters, could I have a slight break?

9 THE COURT: Sure. Yeah.

10 (OFF RECORD)

11
12 THE COURT: Ms. Schultz?

13 MS. SCHULTZ: Yes.

14 THE COURT: Uh, all right.

15 MS. SCHULTZ: Judge, off the record, or away from the jury, what
16 we wanted to do, is I've talked to the State about this. We have reserved the
17 right to call Annie Young to recross uh, but I don't think that I want to do that.
18 There is one thing that I need Annie Young for, and that is to make a separate
19 record as to what she would have said had I permitted to ask her about lying to
20 the police on a prior occasion. And that was, and you had already made a ruling
21 that I could not get into that. I want to have a separate record to preserve that
22 for appeal. So that would be the only thing at this point that I want to bring her
23 back for. I did ask her about that in her deposition that was taken on uh, let me
24 find the date...

25

1 THE COURT: Okay. So...

2 MS. SCHULTZ: On September 30th. And that's been admitted into,
3 or been published.

4 THE COURT: Yeah. It, it's been published. And so shall I open it
5 up and...

6 MS. SCHULTZ: That would be fine.

7 THE COURT: And..., do you have a letter opener over there,
8 Karen?

9 COURT REPORTER: I've got scissors.

10 THE COURT: Okay. Annie Young's deposition, page what?

11 MS. SCHULTZ: Uhm, it's on page nine. It's on sheet three of the
12 mini one.

13 THE COURT: Okay.

14 MS. SCHULTZ: It starts where I'm asking her about Eddie
15 Foreman. And then on page ten where I ask her uh, "Did you tell the police that
16 Eddie hurt you?" And she said, "Yeah." "Was that true?" "No."

17 THE COURT: Let me take a look at this. Okay.

18 MS. SCHULTZ: What I had talked to the State about was to uh,
19 use these pages of the deposition, place these pages of the deposition in the
20 record in lieu of calling her back into court to ask her that question.

21 THE COURT: Which pages?

22 MS. SCHULTZ: Page nine and ten.

23 THE COURT: Nine and ten, okay.

24 MS. SCHULTZ: Where she's talking about the incident with Eddie

25

1 Foreman.

2 THE STATE (MS. FLANIGAN): And, Judge, the State would only
3 ask that we would start maybe, it might start at the bottom of eight. Ms. Schultz,
4 "Okay, do you remember somebody that was named Eddie Foreman? Do you
5 remember him?" To give the whole...

6 MS. SCHULTZ: Oh, okay.

7 THE STATE (MS. FLANIGAN): Give the whole version.

8 THE COURT: Starting with uh, page eight, line twenty-four. "Okay,
9 do you remember somebody that was named Eddie Foreman? Do you
10 remember him?" And, okay.

11 MS. SCHULTZ: That through the end of page ten.

12 THE COURT: Through the end of page, page ten.

13 MS. SCHULTZ: If the Court would admit that into the record as a
14 separate record relative to Annie's statement about lying to the police.

15 THE COURT: That would be part of your offer of proof and...

16 MS. SCHULTZ: Yes.

17 THE COURT: Okay.

18 THE STATE (MS. FLANIGAN): And the State would just renew the
19 original objections that I made uh, on that date we argued it. That would be my
20 response to this offer of proof. So I just incorporate my arguments made.

21 THE COURT: All right. Okay. Well, yeah, I don't see anything
22 wrong with making a record if, so the, you know, if there's a conviction, that you
23 can argue that to the Court of Appeals or the Supreme Court or whatever, yeah.

24 MS. SCHULTZ: Right. That's the purpose of it. I'm not asking the

25

1 Court at this time. The Court has already ruled. And I'm asking that it be
2 admitted in this trial.

3 THE COURT: Yeah. The, okay, so we're talking about, for the
4 record, the tape's running, the deposition of Annie Young, the alleged victim in
5 this case, taken on September the 30th, 2008. Uh, the original deposition is filed
6 with the Court, published, opened this, just in the last of couple of minutes. And
7 uh, part of the offer of proof will be page eight of the deposition, beginning at line
8 twenty-four, through page ten through the entire part of page ten. Uh, beginning
9 line twenty-four, page eight, all of page nine and all of page ten is part of the
10 defendant's offer of proof. Did you get that, Karen?

11 COURT REPORTER: Yes.

12 THE COURT: Okay.

13 MS. SCHULTZ: Thank you, Judge.

14 THE COURT: All right. Okay. Okay, are there any other matters?
15 Did you all get a chance to look at the finals? The ones that I've started with,
16 there was a number nine about the defendant testifying. I don't know if the
17 defendant's gonna testify or not. That's an instruction that can't be given unless
18 the defendant requests it.

19 MS. SCHULTZ: I understand that, Judge.

20 THE COURT: I mean, you know, and then there's a separate one
21 for uh, for if a defendant does testify that has to be given, if requested. So I
22 don't know.

23 MS. SCHULTZ: Judge, on the, on your proposed Final Jury
24 instruction Number "12"...

25

1 THE COURT: Twelve?

2 MS. SCHULTZ: Uh, that's the one about the prior statements that
3 have been admitted into evidence.

4 THE COURT: Yeah. That's right out of the statute. And you may
5 want to look at seeing about modifying that or describing the video tape in a little
6 more detail.

7 MS. SCHULTZ: That, that's what I was thinking. I think that you
8 have to give an instruction along that line. But I think that what we need to do is
9 to put in there something that says that when the jury...

10 THE COURT: That's what we're talking about.

11 MS. SCHULTZ: ...considers the statement that was made...

12 THE COURT: The statement and video tape from the Comfort
13 House.

14 MS. SCHULTZ: That is correct.

15 THE COURT: Uh, April, what was the date of that?

16 MS. SCHULTZ: April 8th.

17 THE COURT: The weight to be given, given to statement or video
18 tape uh, video tape made at the Comfort House, made at the Comfort House uh,
19 on, what was the date of that? April 18th or...

20 MS. SCHULTZ: I believe it was April 18th.

21 THE COURT: Is that right, Bill?

22 THE STATE (MS. FLANIGAN): I have...

23 MR. WILLIAM WIBBELS: Yes sir.

24 THE COURT: April 18th is the correct date?

25

1 MR. WILLIAM WIBBELS: Yes sir. Friday, April 18th, 2008.

2 THE COURT: Made at, made at the Comfort House on April 18th,
3 2008, 2008. I think that'll be sufficient to identify that so that they're not talking
4 about..., okay. So it would, you're suggesting, and I agree with that. I think
5 that's appropriate. It is for the jury to determine the weight and credit to be given
6 to the statement or video tape. I probably should say statements or video tape,
7 statements or video tape made at the Comfort House on April 18th, two
8 thousand..., and in making that determination, the jury shall consider the
9 follow..., where that come from is right out of the statute, 35-37-4-6(h),
10 subparagraph "H".

11 MS. SCHULTZ: Right. Yeah, I think your language just follows the
12 statute.

13 THE COURT: It simply follows the statute here. If you want to take
14 a look at it.

15 MS. SCHULTZ: I have.

16 THE COURT: Yeah.

17 MS. SCHULTZ: I brought a copy of it.

18 THE COURT: And uh, I don't know if you want to make any other
19 changes to...

20 MS. SCHULTZ: Well, and Judge, the other thing with respect to
21 that is when the State filed their motion under the, that statute, the statements
22 that they were asking to be admitted, and the statements I believe that were
23 admitted included the uh, Comfort House statement as well as the statements
24 made to Officer Bowling and to Tonya Caves and Richard Caves by the child.

25

1 So I think that somehow we have to convey that to the jury that all of those
2 statements fall into the same category. So what my thought was is maybe we
3 could say that any statements made to witnesses prior to the trial of this case
4 have to be considered like this.

5 THE STATE (MS. FLANIGAN): I, I don't know about that. I would
6 rather focus it in on Annie. And I think maybe the way Ms. Schultz just proposed
7 is what we asked for, which is it is for the determine, the jury to determine the
8 weight and credit given, the statements of A. Y., or I think we can't put Annie
9 Young, I don't know, Judge, what we have to do about a minor's name. A.Y. or
10 Annie Young uh, to Trooper Bowling, Tonya Caves and Richard Caves, or that,
11 to just say it that way.

12 MS. SCHULTZ: Oh, okay. And the video tape.

13 THE STATE (MS. FLANIGAN): Because I don't think the other
14 witnesses fall under the statute and that may confuse the jury.

15 MS. SCHULTZ: Yeah, you're right. Yeah, that could.

16 THE COURT: So uhm, say that again. Where do you think I ought
17 to add the different uh...

18 THE STATE (MS. FLANIGAN): Uhm, I would say credit to be given
19 the statements made by...

20 THE COURT: Made by...

21 THE STATE (MS. FLANIGAN): A.Y. or Annie Young.

22 THE COURT: Made by A.Y...

23 THE STATE (MS. FLANIGAN): To...

24 THE COURT: To...

25

1 THE STATE (MS. FLANIGAN): Trooper Bowling.

2 THE COURT: To, to, to Trooper Kevin Bowling, Trooper Kevin
3 Bowling.

4 THE STATE (MS. FLANIGAN): And Tonya Caves and Richard
5 Caves.

6 THE COURT: Tonya Caves and Richard Caves.

7 THE STATE (MS. FLANIGAN): And I would say, and...

8 THE COURT: Richard Caves and...

9 THE STATE (MS. FLANIGAN): The video tape made at Comfort
10 House.

11 THE COURT: Tonya Caves, Richard Caves..., and...

12 THE STATE (MS. FLANIGAN): And, Judge, could we say the...

13 THE COURT: And, and the video tape, and the video tape made at
14 Comfort House on April 18th, 2008.

15 THE STATE (MS. FLANIGAN): How about, and the, and A.Y.'s, I'm
16 sorry, I think this is more clear. And A.Y.'s video taped statement given at
17 Comfort House.

18 THE COURT: And, and A.Y.'s, A.Y.'s video, video-taped statement
19 at the Comfort House. Is that right?

20 THE STATE (MS. FLANIGAN): Statement made at the Comfort
21 House on...

22 THE COURT: Video-taped statement, statements made at the
23 Comfort House on April 18th, 2008. Okay, all right.

24 MS. SCHULTZ: So you have Officer Bowling in your list of people

25

1 at the beginning of that?

2 THE COURT: Yeah, yeah.

3 MS. SCHULTZ: Caves and...

4 THE COURT: Let's make some changes to that, and then work on
5 it some more after we get those changes made.

6 MS. SCHULTZ: And then, Judge, there is one minor type-o in
7 instruction twenty.

8 THE COURT: Twenty, okay.

9 MS. SCHULTZ: Where, on the next to the last line, it says "her
10 recollection", and I think it should be "his".

11 THE COURT: Yes. His recollection, yeah. Okay.

12 THE STATE (MS. FLANIGAN): And it's, and cause her to
13 participate too, Judge. "Her" is in there twice.

14 THE COURT: Yeah.

15 MS. LAUREN WHEATLEY: And, Judge, did you get our proposed
16 Final?

17 THE COURT: Uh, it seems like I did. You want to take that up
18 now?

19 MS. SCHULTZ: Sure, we can. I would object to it. And uh, the
20 reason that I would object to it, there are a few cases..., number one, the case
21 they cite uh, at the bottom is not a jury case. This is not a jury instruction. It is
22 simply a matter of the Court of Appeals stating a law. I mean the, the rule of law
23 in their opinion. There are cases that indicate that language in an appellate
24 opinion stating the rationale for a decision is not necessarily proper for use in a,

25

1 as a jury instruction. This specifically applies to appellate opinions holding that
2 certain evidence was sufficient to support a conviction. And there a couple of
3 cases that talk about this specific language. One of them is the Higgins case,
4 which is uh, a 2003 Court of Appeals case. And they talk about uh, specifically
5 about inferences, instructions relating to inferences. They talk about permissive
6 versus mandatory inferences. Uh, and then the other case would be Stoteman
7 uh, which is another 2003 Court of Appeals case, which again discusses the uh,
8 the jury instructions. And this is the one that specifically..., let's see what this
9 one tells us. I believe this is the one that talks about uh, an instruction as to
10 what evidence warrants and inference of guilty clearly invades the jury's
11 province. Now the instruction that they, that has been proposed by the State
12 doesn't say that they have to make an inference, but, you know, when you read
13 it, they're just using different words. It justifies an inference. I think that that may
14 be a correct statement of the law, but I don't believe it is a proper jury instruction.
15 And I did uh, print out copies of those two cases that I cited for the Court, if the
16 Court would like to look at the...

17 THE COURT: I've read them.

18 MS. SCHULTZ: Oh, you've read them?

19 THE COURT: I remember this. This has been going on for about
20 twenty years. Uh...

21 MS. SCHULTZ: Okay.

22 THE COURT: Go ahead.

23 THE STATE (MS. FLANIGAN): Judge, the...

24 THE COURT: Not this particular instruction, but this line of stuff.

25

1 MS. SCHULTZ: Right.

2 THE COURT: Okay.

3 THE STATE (MS. FLANIGAN): As Ms. Schultz said, this doesn't
4 tell the jury what they have to find. It just tells them that, what intent to arouse or
5 satisfy sexual desires, what they can use, what they can evaluate to come to that
6 decision. It's a Court of Appeals decision with the status of the law. It's not been
7 overturned or, it's still good case law in the State of Indiana, and I think the jury is
8 entitled to, to know how that they can come to that conclusion based on, on that
9 type of evidence.

10 THE COURT: Okay. Anything else?

11 MS. SCHULTZ: No.

12 THE COURT: The State's proposed instructions are refused. I
13 don't even think it's an issue in this case anyhow. Uh..., if it was an issue, it
14 might be different. But I don't think it's, I don't think it's an issue, based on the
15 evidence. Do you have any tendered instructions?

16 MS. SCHULTZ: No, I don't.

17 THE COURT: For Finals? So from this discussion, I don't want to
18 tighten you down, but I guess the State has rested. Does the defense plan to
19 call some witnesses? You want to think about that a little bit more?

20 MS. SCHULTZ: Judge, yeah. I would like, I would like to have, if I
21 could talk to my client in somewhere where we don't have an audience for a little
22 bit.

23 THE COURT: Right. I think that's uh, okay. Why don't you uh,
24 there's a room over here.

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 MS. SCHULTZ: Okay. If we could do that, that would be...

2 THE COURT: Yeah. Officer, you take Mr. Nunley and his attorney
3 to the room right here at the end, you know, out the door right to the end. And
4 uh, you can go with them, Mr. Wibbels. Provide additional security as they walk
5 out in the lobby. I don't know who's out there. Sometimes people have bad
6 feelings about defendants. And uh...

7 (OFF RECORD)

8 THE COURT: Are we ready to start again? Okay. And uh, are we
9 gonna, you gonna have some witnesses, you think, Ms. Schultz?

10 MS. SCHULTZ: I have one witness.

11 THE COURT: Huh?

12 MS. SCHULTZ: I will have one witness.

13 THE COURT: Okay. All right, so bring the jury in uh, Ms. Bailiff.

14 (JURY RETURNS TO COURTROOM)

15 THE COURT: Okay, please be seated, ladies and gentlemen.
16 Okay, ladies and gentlemen uh, the State has rested their case. And uh, so Ms.
17 Schultz, is the defense ready to proceed?

18 MS. SCHULTZ: Yes, your Honor.

19 THE COURT: Call your first witness.

20 **DEFENSE PRESENTS ITS EVIDENCE**

21 **TESTIMONY OF WITNESS #1, LAWRENCE E. NUNLEY:**

22 MS. SCHULTZ: We would call Lawrence Nunley.

23 THE COURT: All right. Do you solemnly swear or affirm the
24 testimony you're about to give shall be the truth and nothing but the truth, so help

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 you God?

2 WITNESS: Yes sir, I do.

3 THE COURT: Please be seated, sir.

4

5 **DIRECT EXAMINATION OF LAWRENCE NUNLEY BY DEFENSE:**

6 Q Would you tell us your name, please, and spell your last name?

7 A Lawrence Edward Nunley, -u-n-l-e-y.

8 Q And you are also known as "Ed", are you not?

9 A Yes ma'am.

10 Q Most of your friends call you "Ed"?

11 A Yes ma'am.

12 Q Okay, and I've been calling you "Ed" through the trial?

13 A Yes.

14 Q Are you aware of the charges that have been filed against you?

15 A Yes ma'am.

16 Q And Count "1" of the Information alleges, and I'm going to be a little bit
17 short on this, that you uh, performed or submitted to deviate sexual
18 conduct, in that you touched the vagina of A.Y. with your mouth. Did you
19 do that?

20 A No, I did not.

21 Q Count "2" of the Information alleges in similar language that you had A.Y.
22 put her mouth on your penis. Did you do that?

23 A No ma'am, I did not.

24 Q Count "3" of the Information alleges that you had, you put your hand in the

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 vagina of A.Y. Did you do that?

2 A No ma'am, I did not.

3 Q Count "4" of the Information alleges that with in..., that you performed or
4 submitted to fondling or touching of the child or yourself with the intent to
5 arouse or satisfy the sexual desires of either the child or yourself.

6 Specifically that you touched the vagina of A.Y. with your penis. Did you
7 do that?

8 A No, I did not.

9 Q Count "5" of the Information alleges that you showed a pornographic
10 movie to A.Y. when she was not accompanied by her parent or guardian.
11 Did you do that?

12 A No ma'am, I did not.

13 Q Have you sexually molested Annie Young in any fashion?

14 A Absolutely not.

15 Q On the night of April the 13th, 2007, was Annie Young at your house?

16 A Yes ma'am, she was.

17 Q And how was the arrangement for her to come to your house made?

18 A Uh, her mother called me around, I guess around eight, eight or nine
19 o'clock, said, asked me if I would watch her for a little bit while she went to
20 Corydon with her and her husband.

21 Q And what time did Annie get to your house?

22 A I'd say right around ten, between ten and ten-thirty.

23 Q When she came there, what was your expectation of the length of her
24 visit?

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 A They said they were running up to Corydon and back, and so I figured
2 maybe an hour, a hour and a half, because it doesn't take that long to get
3 there from Palmyra, but I figured they would be there for a little bit.

4 Q Okay. Did Annie bring any extra clothes with her?

5 A No ma'am, she did not.

6 Q Did you anticipate that she would spend the night?

7 A Absolutely not.

8 Q Did you take her into your bed to sleep in your bed?

9 A No ma'am, I did not. She slept on the couch.

10 Q What time did her mother arrive to pick her up the next day?

11 A It was right around noon, about..., jury prior to noon, I would say.

12 Q And when she arrived, what was Annie doing?

13 A She was uh, back in my room watching a video cassette, because the
14 only place that you could watch a video cassette at my house would be in
15 room because I had the small television with a cassette player in it. And
16 she had went through the videos and stuff that were in the living room,
17 and wanted to watch Scooby Doo. So that's where she was when her
18 mom got there.

19 Q So, she couldn't have watched Scooby Doo in the living room. She had to
20 watch it on the bedroom T.V.

21 A Correct. She couldn't have done it there.

22 Q And when her mother got there, did she come in the house?

23 A Yes, she did.

24 Q How long was she there?

25

DEFENSE WITNESS – WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 A Maybe ten, fifteen, twenty minutes tops.

2 Q And while she was there, Annie was in the bedroom?

3 A Yeah, until her mother got there. Then she came in too.

4 Q Okay. And was there any conversation between you and Tonya Caves
5 when she was there that day?

6 A Yes.

7 Q And when she left, what was, what was her state when she left?

8 A She was a little bit upset.

9 Q And why was that?

10 A Well, she had gotten there, she had wanted to move in because...

11

12 MS. LAUREN WHEATLEY: Objection. That calls for hearsay.

13 MS. SCHULTZ: Judge, this is not offered to prove the content of
14 the, the statement, I don't believe, or the truth of the statement. So I don't
15 believe that it is hearsay.

16 THE COURT: Uhm, okay. Well, come over here. Let's talk about
17 it.

18

19 BENCH CONFERENCE:

20 THE COURT: What do you expect to offer on this?

21 MS. SCHULTZ: That was she mad at him because he wouldn't let
22 her move, he wouldn't let her move...

23 THE COURT: Because he what?

24 MS. SCHULTZ: She was angry with him because he wouldn't let

25

DEFENSE WITNESS – WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 her move into his house. She wanted to move in and he said no. And she was
2 mad when she left.

3 MS. LAUREN WHEATLEY: And that's going uh, into the Motion in
4 Limine that you've already granted regarding her uhm, residence.

5 MS. SCHULTZ: No, it isn't.

6 MS. LAUREN WHEATLEY: I believe it is. And Ms. Schultz is now
7 also opening the door to other statements.

8 THE COURT: She wasn't homeless then.

9 MS. LAUREN WHEATLEY: No, she wasn't. But it's still...

10 THE COURT: Okay. Your objection is overruled.

11 (BENCH CONFERENCE ENDS)

12

13 THE COURT: Okay, restate your last question, Ms. Schultz.

14

15 DEFENSE RESUMES DIRECT EXAMINATION OF LAWRENCE NUNELY:

16 Q Why was Tonya upset with you when she left?

17 A She wanted to move in with me, and I told her that she couldn't.

18 Q Okay. So she left and took Annie with her?

19 A Yes, yes ma'am.

20 Q And then she came back later?

21 A Yes.

22 Q And where were you when she came back later?

23 A I was toward the back of the mobile home because I was doing my
24 laundry.

25

DEFENSE WITNESS – WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 Q Okay. And what did she do when she got there?

2 A Well, when..., the first, you know, the sign that I knew she was there, I
3 heard a loud popping sound as I was coming down the hallway, and I
4 could see the windshield of my motorcycle fly past the picture window at
5 the end, and I thought maybe a tree had hit it. I didn't even know she was
6 there.

7 Q And you ultimately went out and talked to her?

8 A Yeah. I went out, about the time she hit the side window of my pick-up
9 truck and moving to the tail lights of my pick-up truck, and I asked her
10 what she was doing.

11 Q How long had you known her before this happened?

12 A I met her in either late January or early February of uh, 2007.

13 Q So approximately two or three months?

14 A Yes ma'am.

15 Q And had you ever been to her home?

16 A Yes. I went to her uh, she lived in a mobile home on Tee Road uh, just as
17 you turn off uh, 135 towards Crandall.

18 Q And...

19 A I went there twice.

20 Q Okay. Did you observe any pornography in her home?

21 A Yes ma'am. There was pornography everywhere. Uh, magazines and
22 DVDs. Actually she gave me on the DVDs that came from the magazine.

23 Q Okay. The police contacted you initially the day after this incident
24 happened. Is that right?

25

DEFENSE WITNESS – WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 A Yes ma'am.

2 Q And you voluntarily talked to the police officer?

3 A Yes ma'am. I drove up there to Salem in the truck that she busted the
4 window out of. I had plastic, plastic over the window. I liked to have
5 froze.

6 Q And then you later talked to Officer Wibbels?

7 A Officer Wibbel?

8 Q Yes.

9 A Uh, yeah, when he came to my, when I was living in Harrison House, he
10 came there. I talked to him briefly as he was, you know...

11 Q And that was about a little over a year later?

12 A Yes.

13 Q Okay. Now I'd liked to talk a little bit about the DVD player that was
14 admitted in evidence. I believe it was uh, Exhibit Number "1". Who did
15 that DVD player belong to?

16 A It belonged to my son's girlfriend. She lived there with me and my son.

17 Q And did it work at the time?

18 A It works if you have it hard wired into the AC adapter, because the battery
19 doesn't hold the charge. There's something wrong with the battery.

20 Q And was there a way to use that video player in your bedroom?

21 A I could've if I hard wired to, you know, I could've plugged it into the wall,
22 the AC adapter, if I wanted to.

23 Q Where did you...

24 A But that was always left in the living room so we could watch DVDs. We

25

DEFENSE WITNESS – WITNESS #1, LAWRENCE NUNLEY (DIRECT)

1 didn't have a DVD player in the living room.

2 Q Okay. So you had it normally wired into your big television to watch
3 DVDs?

4 A Yes.

5 Q Or did you watch them on that little screen?

6 A No. We, we just ran it through the, run that, used that as a DVD player so
7 we can watch it on the big television.

8 Q Okay. And if you tried to use it today, you would have to have an AC
9 adapter?

10 A Yes ma'am, you'll have to have an AC adapter because it doesn't work
11 otherwise.

12 Q And did you have an AC adapter in your home that day?

13 A Yeah. I had one hooked up to the television because that's where the
14 DVD player was at. That's where it always was at.

15

16 MS. SCHULTZ: Okay. I have no other questions.

17 MS. LAUREN WHEATLEY: Your Honor, just one moment.

18

19 **CROSS EXAMINATION OF LAWRENCE NUNLEY BY STATE (MS.**

20 **FLANIGAN):**

21 Q Mr. Nunley, is it your contention that Annie Young was not to spend the
22 night at your house?

23 A That was not what she was supposed to do, no.

24 Q Did you hear Tonya Caves indicate that she had plans to bring her over

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 so Kiki could watch her?

2 A Yes, I heard her say that.

3 Q Were Kiki and Annie friendly with each other?

4 A Well, what few times that she come over, Kirsten was really friendly with
5 everybody, and she was a child, so yeah. I mean they, they weren't
6 buddies or nothing, because the child was never there that many times.
7 You know, she was there a few times.

8 Q Really? How many times was Annie there?

9 A She may have been there four or five times, probably. Her mother
10 brought her.

11 Q What kind of things would Annie do when she'd come over to your house?

12 A She'd either jump on the trampoline uh, or she would play the Nintendo
13 with Kyle and Kirsten.

14 Q Uh, and you're stating that Tonya said she'd be back in a couple of hours?

15 A Actually what she stated, she'd be right back. They were going to
16 Corydon and back. I assumed that it would be about an hour, an hour
17 and a half because I had a good idea where they were going.

18 Q I want you to go through, for the jury, from the time that Annie go dropped
19 off at your house until the time she left, what you remember happened.

20 A Okay. Uh, Tonya showed up, her and uh, Richard. Uh, Richard stayed in
21 the car. She brought her in. She said that they'd be right back. Said they
22 were going to Corydon and back. So uh, I put a DVD in for Annie to
23 watch. I think it was Ice Age or something of that, in the living room. And
24 there was already a pillow and blanket on the couch because my, you

25

DEFENSE WITNESS – WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 know, my son and daughter-in-law or actually the mother of my child, my
2 grandchild uh, was staying there. And so they usually had blankets and
3 pillows on the couch. So the little girl just got up on the couch. She was
4 asleep before the movie actually got good and started.

5 Q Okay. So she fell asleep when she was on the couch?

6 A Yes ma'am.

7 Q And what, what did you say happened next or, what...

8 A What happened next?

9 Q What, what did you do? When she fell asleep, what did you do?

10 A Well, I sat there, I sat on the uh, uh, loveseat, which is opposing the
11 couch. And I talked on the phone with uh, a friend of mine, named
12 Michelle, and went back to my room.

13 Q Okay. What did you do when got back to your room, Mr. Nunley?

14 A I waited for Michelle to show up.

15 Q You waited for Michelle to show up?

16 A Uh huh. That's where I was supposed to be going when Tonya called and
17 asked me to watch her kid for a little bit.

18 Q Okay. Uh, did Michelle ever show up that night?

19 A Yes ma'am, she did.

20 Q She did?

21 A Yes ma'am.

22 Q Hum. When did she show up?

23 A Around ten-thirty, a quarter till eleven.

24 Q Okay. Where did uh, she go?

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 A Where did she go?

2 Q Uh huh. Where did Michelle go when she got there?

3 A She went back there to talk to me.

4 Q Okay, in your bedroom?

5 A Yes.

6 Q Was Annie still there on the couch?

7 A Yes ma'am.

8 Q Would you be surprised to know, Mr. Nunley, that Michelle Cayton has
9 told Detective...

10

11 MS. SCHULTZ: Objection. It, this is uh, not a fact in evidence in
12 this case.

13 THE STATE (MS. FLANIGAN): The fact in evidence now, Judge.

14 MS. SCHULTZ: Not what she has told someone else is not. It calls
15 for hearsay within hearsay.

16 THE STATE (MS. FLANIGAN): I'm not offering it for the truth of the
17 matter. I'm offering it to impeach Mr. Nunley.

18 MS. SCHULTZ: You're certainly offering it for the truth of the matter
19 then.

20 THE COURT: Overruled.

21

22 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

23 Q Mr. Nunley, would you be surprised to know that Michelle Cayton has
24 recently told Detective Wibbels that she was not at your trailer that night?

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 A I would not be surprised at anything she said.

2 Q Would you be surprised to know that at one point she said she was there
3 and then called him back several weeks ago and said that she was not
4 there?

5 A No, that wouldn't surprise me.

6 Q So it's your testimony that Michelle came to your house that night?

7 A Yes ma'am.

8 Q And what did you two do?

9 A We sat and talked. She'd recently lost her father. Her father died and
10 was buried..., I don't know when he died, but he was buried on Valentine's
11 Day on that year. And I sat and talked to her. I had just, I hadn't known
12 her very long either.

13 Q Okay, how long do you think you talked with her?

14 A We talked all uh, she cried most of the time.

15 Q So it's your testimony to this jury that Michelle Cayton came to your house
16 and you stayed up and talked to her all night long?

17 A Yes ma'am.

18 Q Where was Annie during this time?

19 A She was asleep on the couch.

20 Q Mr. Nunley, you have talked to three police officers in this case. You have
21 talked to Detective Wibbels....

22 A I talked to Detective Wibbels briefly, yes.

23 Q And you have talked to uh, Kevin Bowling.

24 A Yes ma'am.

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 Q And you talked to a Chris Walden about your motorcycle being hit. Is that
2 correct?

3 A Yes ma'am.

4 Q And each of those times there was discussion about whether or not uh,
5 about these allegations Tonya had made against you. Is that correct?

6 A Yes ma'am.

7 Q And those are very, very serious allegations. Very serious, right?

8 A Absolutely.

9 Q And in one, one of those discussions with one of those police officers, did
10 you ever mention that Michelle Cayton had been at your house that night?

11 A No ma'am, I did not. But I told, I told Mr. Walden, Officer Walden that uh,
12 Tonya accused me of that as she was leaving my driveway laughing. I did
13 tell him that.

14 Q Mr. Nunley, you're gonna sit here and have these people believe that you
15 have had somebody who could basically say this never happened? For
16 eighteen months you've had this person and you have never once
17 identified her to a police officer.

18 A Absolutely. Because the first time that I was asked about it is when I went
19 up to the Salem Police Office. I didn't know Michelle very long. I thought
20 he just pretty dismissed it, Officer Bowling pretty much dismissed the
21 whole thing when he talked to me. He didn't, he said if he needed
22 anything, he would get a hold of me. Uh, I didn't hear about any of it in for
23 a year and uh, a year and a week, I suppose. And I didn't, wasn't, you
24 know, given the opportunity to say anything then. Uh, Wibbels, Officer

25

DEFENSE WITNESS – WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 Wibbels uh, asked me if I did it, asked me if I ever thought about
2 molesting kids and stuff like that, and I told him no. And I was pretty
3 irritated. It didn't come up...

4

5 THE STATE (MS. FLANIGAN): Judge, may we approach?

6

7 BENCH CONFERENCE:

8 THE STATE (MS. FLANIGAN): Judge, I would say that at this point
9 Mr. Nunley has opened the door. He's stated that Mr. Wibbels had asked him if
10 I'd ever thought about molesting kids, and I told him no". I think that...

11 THE COURT: And, "I told him no".

12 THE STATE (MS. FLANIGAN): "And I told him no." And I think that
13 opens the door to Kimberly Simler.

14 MS. SCHULTZ: Judge, they have elicited the testimony. He can't,
15 , he cannot be held responsible for opening the door to something when they
16 elicited the testimony. They're going beyond the scope of direct examination
17 anyway.

18 THE STATE (MS. FLANIGAN): I'm not. He's the one that said...

19 THE COURT: No, not yet.

20 THE STATE (MS. FLANIGAN): Okay.

21 BENCH CONFERENCE ENDS)

22

23 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

24 Q Okay, I'm just gonna ask you direct questions then, Mr. Nunley. Did you

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 ever uh, tell, and these are "yes" and "no" questions. Did you ever uh, tell
2 and these are "yes" and "no" questions. Did you ever tell Officer Walden
3 that Michelle Cayton was there with you all night, yes or no?

4 A No ma'am.

5 Q Did you ever tell Officer Bowling, Trooper Bowling, that Michelle Cayton
6 had been there all night?

7 A No.

8 Q Did you ever tell Detective Wibbels that Michelle Cayton had been there
9 all night?

10 A No.

11 Q Did Kyle and Kiki come home that night?

12 A No ma'am, they did not.

13 Q Did you not tell Detective Wibbels, when you spoke with him, that no one
14 had been at your house other than Kyle and Kiki stopping at home for a
15 short time? Is that not what you told him during that interview?

16 A No, it was not. I did not say that.

17 Q So if that's in Detective Wibbels' report, that's completely made up?

18 A Correct.

19 Q Okay. You said that you'd got pornography at Tonya Caves' home?

20 A Yes ma'am.

21 Q What home would that be?

22 A The one that was, she lived in a mobile home on Tee Road, just uh, just
23 off of 135. It's not quite to Crandall or, I'm assuming that it's, you know,
24 New Salisbury.

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 Q Where did Tonya have that pornography at her house?

2 A Uh, that, this was actually laying on the coffee table. I picked it up and
3 looked at it. She told me I could have it. It came out of a magazine that
4 she had, that was also laying there.

5 Q Was it a DVD or was it a...

6 A It was a DVD, yes ma'am.

7 Q Do you know what it was?

8 A Yes ma'am. It's College Co-eds, I think is what it was called. It should've
9 been in that case that Detective Wibbels found.

10 Q Okay. So Detective Wibbels find a whole case of pornography at your...

11 A Yeah. He found six like he'd stated in his testimony earlier yesterday.

12 Q Hum, that's funny. Detective Wibbels wasn't allowed to say that. He
13 didn't say that he'd found six, Mr. Nunley.

14 A Yes ma'am, he did. He said he'd found it in, on a shelf. And he didn't find
15 it on a shelf. He found it in a box inside the metal cabinet where I told him
16 it was.

17 Q Okay. But Detective Wibbels testified to us that he found it in a case. He
18 didn't mention six other videos, did he?

19 A He found it in a case on the shelf.

20 Q But Detective Wibbels did not say that he found six other DVDs, did he?

21

22 MS. SCHULTZ: Objection. If the...

23 THE COURT: That's asked and answered. Next question.

24

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

2 Q So did you have uh, multiple pornographic DVDs...

3

4 MS. SCHULTZ: Objection. It goes beyond the extent of the direct
5 examination.

6 THE COURT: Overruled.

7

8 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

9 Q Did you have multiple pornographic DVDs at your apartment at the
10 Harrison House?

11 A Yes ma'am. I think there was six altogether.

12 Q And did you have pornographic material at your trailer in Palmyra?

13

14 MS. SCHULTZ: Objection. It goes beyond the extent of the direct
15 examination.

16 THE STATE (MS. FLANIGAN): Judge, I think he opened the door.

17 THE COURT: Uh, I'm gonna...

18 MS. LAUREN WHEATLEY: Judge, you've got the static again on

19 your...

20 THE COURT: Oh, sometimes it gets uh..., I'm gonna sustain the
21 objection. You can re-ask your question. Let's see if it..., it's still going, isn't it? I

22 don't know what's causing that. Okay. I leave that uh, we'll leave that uh,

23 amplification off for a moment and uh..., let's see, if you have any problem

24 hearing, ladies and gentlemen, let me know. Raise your hand, okay?

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

2 Q Mr. Nunley, did you have Sex Ed Tutor in your apartment at Harrison
3 House?

4 A Not that I'm aware of. Harrison House, I'm sorry? Your question? Yes, at
5 the Harrison House, yes, I did.

6 Q Okay. What other uh, pornographic DVDs did you have there?

7 A I'm not sure of the titles.

8 Q Is it your testimony, or did you have those at the trailer in Palmyra?

9 A Which ones?

10 Q The six that were there....

11 A I'm not sure exactly how many I had at that time. It's been like a year and
12 a half, or a year and..., I'm not sure exactly which ones that I had.

13 Q Okay. So is it your testimony that you did have pornographic DVDs in
14 Palmyra?

15

16 MS. SCHULTZ: Objection. It goes beyond the scope of direct
17 examination.

18 THE COURT: You're referring to in general or these particular
19 ones?

20 THE STATE (MS. FLANIGAN): These particular ones.

21 THE COURT: Okay. Re-ask your question that one.

22

23 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

24 Q Did you have these particular six pornographic DVDs at your trailer in
25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 Palmyra?

2 A Uhm, I'm not sure if I had those particular six or not.

3

4 THE COURT: It's still staticky.

5

6 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

7 Q Okay, so let's go through this again. So Michelle came over and you
8 talked all night.

9 A Yes ma'am.

10 Q And Annie stayed on the couch the entire time?

11 A Yes, she slept the entire time.

12 Q She didn't even wake up when Michelle came in the front door?

13 A No, she didn't. Michelle wasn't aware that she was there, because I was
14 supposed to be going to Michelle's. We were going out running around.

15 Q Okay. At what point did you decide to call Michelle and tell her you
16 weren't coming?

17 A Well, whenever Tonya showed up, it was probably that she, earlier she
18 had called and she made it sound like she was on her way. Uh, she didn't
19 show up until like ten or ten-thirty. She called just before she showed up
20 again and said that she was pulling into my..., where I lived at, there was a
21 gravel road that accessed my driveway. So she called and said she was
22 pulling in there.

23 Q Mr. Nunley, she said that when Tonya brought to Annie, that she, they
24 were going to run to Corydon and be right back?

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 A Yes.

2 Q Uhm, so when did you call Michelle and tell her you couldn't come over?

3 A Uhm, I called just shortly after Tonya had left. I told her I would be late. I
4 didn't tell her I wasn't coming.

5 Q And how late did you expect to be?

6 A Uh, I figured it'd probably take her about an hour and a half to run up
7 there and back, her and Richard.

8 Q At what point did you call Michelle Cayton, or did you call Michelle Cayton
9 and say that Tonya had not come back?

10 A I didn't call her and told her that. I told her that Tonya had dropped her,
11 just had dropped her kid off and that uh, they were running to Corydon
12 and back. So she came over.

13 Q So you weren't just gonna wait the hour and a half that...

14

15 THE STATE (MS. FLANIGAN): Judge, there's static again. I don't
16 know what it is.

17 THE COURT: You'd rather have it on or off, ladies and gentlemen
18 of the jury?

19 JURY: Off, off.

20 THE COURT: Off? Okay.

21 MALE JUROR: But please have him speak up.

22 FEMALE JUROR: Have him to speak up.

23 THE COURT: Speak up a little bit, sir.

24

25

DEFENSE WITNESS – WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

2 Q So, Mr. Nunley, when she dropped her off, you immediately told Michelle,
3 you didn't tell Michelle you would just be a little bit late?

4 A No. I told her that Tonya had just dropped her kid off.

5 Q So you expected Annie to leave?

6 A Yes.

7 Q So you didn't say, "I'll be over in an hour and a half"?

8 A No. Michelle only lived about a half a mile from me. And she said, "Well,
9 I'll just come over there."

10 Q Okay...

11 A I think is how she said it. It's been a year and a half.

12 Q I want you to describe to the, could you describe to this jury uh, so you
13 and Michelle stayed in the bedroom all night. What time did Michelle
14 leave in the morning?

15 A Uh, she left shortly uh, before Tonya got there, because she called me
16 and told me that she'd passed Tonya and Richard on the way, because
17 she was heading to go pick up her son. Her son stayed with her dad, his
18 dad in Corydon.

19 Q Did Annie have any discussions or talk to Michelle Cayton that morning?

20 A Uh, I don't know of any discussions or anything, but I'm sure she said
21 something to her. I mean the kid was up and around.

22 Q Okay, what was she doing up and around?

23 A Watching T.V., and she ate breakfast.

24 Q Michelle was there this entire time?

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 A Yeah.

2 Q I want to go back..., Mr. Nunley, did Annie know Michelle?

3 A No ma'am. Not that I'm aware of anyway.

4 Q And did you introduce her to Michelle that morning?

5 A I'm not sure if I did or if she told her who she was. I'm not really sure. I
6 was kind of irritated that her mother didn't bother to come back and get
7 her.

8 Q Did you hear Ms. Schultz ask Annie if Michelle was there that night?

9 A Uhm, did I hear her ask that?

10 Q Uh huh.

11 A No.

12 Q You didn't hear Annie say, "Michelle who?" when she was asked if
13 Michelle was there that night?

14 A Uh, she may have. I don't know.

15 Q Who lived, who was living in your trailer at this time?

16 A Myself, my son, Kyle, and his girlfriend, Kirsten.

17 Q Okay. Uh, how old was Kyle?

18 A Uhm, I think he was sixteen, almost seventeen.

19 Q And how old was Kirsten?

20 A Uh, seventeen, almost eighteen.

21 Q And she was actually living there with you?

22 A Yes ma'am.

23 Q Uhm, you said you may or may not have had those pornographic DVDs at
24 your place in Palmyra.

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 A I'm not sure if I had those exact ones, no.

2 Q Did you have some?

3 A It's possible. I'm not sure exactly. It's been a year and a half ago.

4 Q Do you remember talking to Detective Wibbels about pornography?

5 A Yes. I was the one that told him where they was that, whenever he came
6 to my apartment.

7

8 FEMALE JUROR: Judge, can you have him speak up?

9 THE COURT: Speak up, sir.

10

11 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

12 Q You remember talking to Detective Wibbels about pornography?

13 A Yes ma'am.

14 Q Do you remember telling Detective Wibbels that you didn't, that you
15 weren't really into pornography?

16 A Yes ma'am.

17 Q You remember telling Detective Wibbels that you did not have
18 pornography at the trailer?

19 A No, I do not remember telling him that.

20 Q Were there any children living in your trailer that time?

21 A Only my son and my son's girlfriend, Kirsten.

22 Q You had quite a bit of children's movies there though, didn't you?

23 A Yes ma'am, I raised three kids.

24

25

DEFENSE WITNESS - WITNESS #1, LAWRENCE NUNLEY (CROSS)

1 MS. SCHULTZ: Judge, I'm going to object. This certainly exceeds
2 the scope of direct examination.

3 THE COURT: Overruled.
4

5 STATE RESUMES CROSS EXAMINATION OF LAWRENCE NUNLEY:

6 Q You had quite a few children's videos and DVDs at your trailer, didn't you?

7 A Yes ma'am.

8 Q What were some of those?

9 A Uh, there was some Disney movies uh, I'm not really sure. They
10 belonged to my son and my daughter that used to live with me. She
11 moved back home with her mother.

12 Q Your daughter, how old was she?

13 A She was eighteen.

14 Q Did you have uh, you don't remember any of the titles of these?

15 A Uhm, not right off the top of my, you know, right off the bat, no.

16 Q And you're just, it's your testimony that these some that your nineteen-
17 year-old daughter had left?

18 A Well, they belonged to my son, my daughter and Kirsten. They were just
19 accumulation over the years. I raised three kids.

20 Q So you are telling this jury there is, you're not making an argument here
21 today that that, those six pornographic DVDs found at the Harrison House
22 were yours?

23 A Well, they were, actually they were confiscated. I confiscated some of
24 them from my son, just to be honest with you. He uh, was, he had them, I

25