

STATE'S REBUTTAL - WITNESS #1, WILLIAM WIBBELS (DIRECT)

1 THE COURT: Okay, have a seat, ladies and gentlemen. I hope
2 lunch was good. All right. Uh, we're with the defendant. The next witness?

3 MS. SCHULTZ: Judge, we would rest at this point.

4 THE COURT: Okay. Ladies and gentlemen of the jury, the
5 defendant rests its case. Rebuttal by the State?

6 THE STATE (MS. FLANIGAN): Yes, Judge. The State would call
7 Detective William Wibbels.

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

11 WITNESS: I do, sir.

12 THE COURT: Please be seated, Officer.

13
14 **REBUTTAL EVIDENCE BY STATE OF INDIANA:**

15 **DIRECT EXAMINATION OF WILLIAM WIBBELS BY STATE OF INDIANA (MS.
16 FLANIGAN):**

17 Q Detective Wibbels, did you take a statement from Ed Nunley?

18 A Yes, I did.

19 Q When was that?

20 A That was on Thursday, May 29th, 2008.

21 Q Did you complete a report reflecting the interview?

22 A Yes, I did.

23 Q Did you ask him who was present in his home the night Annie slept over?

24 A Yes, I did.

25

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1 Q Who did he tell you?

2 A Kyle Nunley, and his girlfriend, Kirsten Sanders, for a short period of time.

3 Q Did he tell you that any other person was present?

4 A No.

5 Q Did he ever mention Michelle Cayton was present that night?

6 A No.

7 Q Did you locate six pornographic DVDs in Ed's house, including Sex Ed
8 Tutor?

9 A Yes, I did.

10 Q Did Ed Nunley tell you where he got the six DVDs?

11 A Yes.

12 Q Where did he state he got those pornographic DVDs?

13 A He received them from a man named Mike, unknown last name, that had
14 previously lived at the Harrison House.

15 Q Did he ever mention to you that he got one of the six pornographic DVDs
16 from Tonya Caves?

17 A No.

18 Q Did he tell you that he wasn't really into porn?

19 A Yes.

20 Q Did he ever tell you that he got pornography from Tonya Caves?

21 A No.

22 Q During the course of another investigation, did you have the opportunity to
23 speak with Michelle Cayton?

24 A Yes, I did.

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1 Q When was that?

2 A June 14th, 2008.

3 Q Was Ed Nunley mentioned?

4

5 THE COURT: What was the date?

6 WITNESS: June 14th, 2008.

7 THE COURT: Okay.

8

9 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

10 Q Was Ed Nunley mentioned?

11 A Yes.

12 Q What...

13 A Excuse me, it was June 12th, I'm sorry. June 12th, 2008.

14 Q Was Ed Nunley mentioned during that?

15 A Yes.

16 Q What did she say about Ed Nunley?

17

18 MS. SCHULTZ: Objection, hearsay.

19

20 BENCH CONFERENCE:

21 THE COURT: Uh, okay, where are we going with that? What do

22 you think he's gonna say?

23 THE STATE (MS. FLANIGAN): I know what he's gonna say. That

24 she told him that she was there the night that (unintelligible).

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1 THE COURT: So, he's gonna say that she was there?

2 THE STATE (MS. FLANIGAN): That's what she told Bill on June
3 12th.

4 THE COURT: That would be consistent with the defendant's
5 testimony.

6 THE STATE (MS. FLANIGAN): Uh huh, right.

7 THE COURT: Okay. What's the point of that anyhow?

8 THE STATE (MS. FLANIGAN): If she then uh, recanted that on
9 October 30th, 2008, without prompting by the State, she called us out of the blue
10 and said she wasn't there. So that is inconsistent. In order to present the entire
11 picture of that to the jury, I think we have to put in both sides.

12 MS. SCHULTZ: I have to think they have to call her if they want to
13 do that, because that's hearsay.

14 THE STATE (MS. FLANIGAN): But it's all opened by his case.

15 MS. SCHULTZ: He didn't know if they were (unintelligible)..., she
16 told the police. ...thought that.

17 THE STATE (MS. FLANIGAN): He's the one that brought up
18 Michelle Cayton today though.

19 MS. SCHULTZ: Yeah, but he hasn't brought up everything she told
20 everybody else in their lifetime.

21 THE COURT: Okay. All right. Uh, what's the basis for, are you
22 offering it for the truth of the matter?

23 THE STATE (MS. FLANIGAN): I'm offering it to impeach the
24 defendant, that she was not there, to impeach his statement. And in order to do

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1 that, I can put on that she called on October 30th, 2008 and said she wasn't
2 there. That's clearly okay to impeach him. But in order to put in the full picture, I
3 think you have to put in both the calls.

4 MS. SCHULTZ: Whether that's impeachable, what she said...

5 THE COURT: Okay. Was there..., okay.

6

7 (BENCH CONFERENCE ENDS)

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9 THE COURT: Okay. Uh, restate your uh, question. Hang on here
10 a minute before you answer it. And uh, you..., go ahead. Restate your question.
11 Ms. Schultz, you can put on the record the nature of your objection.

12

13 STATE RESUMES DIRECT EXAMINATION OF WILLIAM WIBBELS:

14 Q What did Michelle Cayton tell you when you spoke to her on July, June
15 12th, 2008 about whether, about Ed Nunley?

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17 MS. SCHULTZ: And, Judge, we would object to that on the basis of
18 hearsay. If the State wants to bring in what she said, then they should have her
19 here and ask her whether she was there or not. They should not bring it in
20 through this officer.

21 THE COURT: Okay. And your response to that?

22 THE STATE (MS. FLANIGAN): This is being offered, Judge, this
23 and another question, to impeach the defendant. Uhm, that they have to viewed
24 together by the jury in order to give a fair picture of what happened. Uh, so I'm

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1 offering this and the other to impeach the defendant.

2 THE COURT: Okay. I'm gonna allow it over the defendant's
3 objection. You may answer the question.

4
5 WITNESS RESUMES ANSWER:

6 A Ms. Cayton told me that she was at Ed Nunley's house the night that
7 Annie came over.

8 Q Was that the only time you spoke to Michelle Cayton?

9 A No.

10 Q When did you uh, when did you speak to her again?

11 A I spoke to her..., she called me on the telephone on October 30th, 2008 at
12 two-ten in the afternoon.

13 Q Was that, had you tried to get in touch with her?

14 A No ma'am.

15 Q Okay, and what did she tell you then?

16 A She told me that she was mistaken. She was not at Ed Nunley's house
17 that night. And I uh, and she was not there that night. *Nunley p. 737*

18 Q Okay. Other than Michelle Cayton's recanted story, during the course of
19 the investigation, did you ever hear that Michelle Cayton was present at
20 Ed Nunley's house April 13th, 2007?

21 A No, I did not. The victim did not mention it. The victim's mother did not
22 mention it. She did not tell Trooper Bowling. She didn't say it at the
23 Comfort House. Ed Nunley didn't tell it to me. And, most importantly, he
24 did not say he was, that Michelle Cayton was at his house.

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

2 THE COURT: Okay. Cross?

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4 **CROSS EXAMINATION OF WILLIAM WIBBELS BY DEFENSE:**

5 Q Officer, do you, would you have expected the victim's mother to know?

6 She wasn't there that night either, was she?

7 A No. But uh, she would've, maybe Annie would've said, "Hey, this girl
8 named Michelle was there or a woman was there, or somebody was
9 there."

10 Q Did anybody ask Annie if Michelle was there?

11 A Well, it's been asked multiple times. "Was anyone else at the home?"
12 Kirsten and Kyle was the only answer.

13 Q And the victim, Annie, has given various statements as to whether Kyle
14 and Kirsten were there and when they were there, has she not?

15 A There are some things that maybe they were there for a short period. Uh,
16 a short period of time, but maybe not. But the meat and the potatoes are
17 the same though.

18 Q And did you verify whether Kyle and Kirsten were there?

19 A Yes.

20 Q And were they there that night?

21 A They both said uh, they, one said they couldn't recall, and the other one
22 said, "We may have left early to go to a date."

23 Q Okay.

24

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1 MS. SCHULTZ: No other questions.

2 THE STATE (MS. FLANIGAN): Nothing further, Judge.

3 THE COURT: Any questions by the Jury? All right. Oh, wait a
4 minute. There is a question. Hang on.

5

6 BENCH CONFERENCE:

7 THE COURT: It's hard to really make out. I may have to just ask
8 them to say what the question was. What do you think the question is?

9 MS. SCHULTZ: Why he would've contacted her in the first place.

10 THE STATE (MS. WHEATLEY): And he stated earlier, and he
11 could say it again. If not, that's gonna open the door that he was on another
12 investigation.

13 THE STATE (MS. FLANIGAN): He was talking to her in another
14 investigation.

15 THE COURT: "...did not state Michelle was present." In other
16 words, why were they talking to her?

17 THE STATE (MS. FLANIGAN): Yeah.

18 MS. SCHULTZ: Uh huh.

19 THE COURT: Okay.

20 BENCH CONFERENCE ENDS)

21

22 THE COURT: Okay. Uh, I think I understand the question.

23

24 QUESTION BY JURY:

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STATE'S REBUTTAL – WITNESS #1, WILLIAM WIBBELS (JURY QUESTIONS)

1 Q If the defense did not state Michelle was present the night A.Y. was at the
2 house, then when was she mentioned so she could be contacted? So I
3 think the question is getting at, how did Michelle come up. And I think that
4 was kind of answered. Is that sort of the question? Okay, all right. Uh, in
5 other words, why did Michelle come up..., I think you already answered
6 this.

7 A It was part of another investigation.

8 Q Okay, that's how you ended up talking to Michelle?

9 A Yes.

10

11 THE COURT: All right, okay. That answers the question. All right.

12 Okay uh, all right, any other questions, ladies and gentlemen of the jury? Any

13 questions by the State or the defendant?

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

15 THE COURT: All right. You may step down.

16 WITNESS: Thank you, sir.

17 THE STATE (MS. FLANIGAN): Judge, the State will rest its rebuttal

18 case.

19 THE COURT: All right. And uh, okay, in view of that then uh, we're

20 gonna stop for a few minutes before we move on to the next part. Uh, during

21 this recess, it's your duty not to permit anyone to talk to you or in your presence

22 on any subject matter connected with the trial. Do not form or express an

23 opinion on the case until it's finally submitted to you. Okay, you'll be in the jury

24 room for a few minutes.

25

1 (JURY EXITS COURTROOM)

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3 THE COURT: The jury is out of the courtroom. The defense is
4 rested. The State has rested its rebuttal. Uh, any further final instructions from
5 the State?

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

7 THE COURT: Any final instructions from the defense?

8 MS. SCHULTZ: No.

9 THE COURT: Now I assume you want me to take that one out
10 about the defendant not testifying?

11 MS. SCHULTZ: Absolutely.

12 THE COURT: Okay. And that'll be taken out. Any other changes
13 requested in the proposed final instructions?

14 THE STATE (MS. FLANIGAN): No.

15 THE COURT: None by the State. By the defense? And you...

16 MS. SCHULTZ: No, I don't believe so, Judge.

17 THE COURT: Okay, and then we've got that, those verdict forms.
18 Any issues with the verdict forms?

19 MS. SCHULTZ: I would ask that you put the not-guilty ones on top.
20 Or, or have, when you give them, to give them to them together, Count "1" with
21 the guilty and not-guilty together, and then Count "2" with the guilty and not-guilty
22 together.

23 THE COURT: Okay. We'll give them together concerning counts.
24 Uh, anything else about, about anything else?

25

1 THE STATE (MS. FLANIGAN): Yes, Judge. There is one issue
2 that we did not address, and that's this, the question of this Comfort House DVD.
3 It's got the State's Exhibit "2" and State's Exhibit "9". Two was from last Friday's
4 hearing, nine is from today. You wanted us...

5 THE COURT: Oh, they were told that when we talked about it.

6 THE STATE (MS. FLANIGAN): Right. But you wanted us to make
7 a record for, in case there's any appellate issues that they're one and the same
8 exhibit, and I didn't know if we, that you thought we had covered that when we
9 talked about it earlier.

10 THE COURT: Well, I did. But we can talk about it again. Okay,
11 you're saying that State's Exhibit "2"..., is that what it is?

12 THE STATE (MS. FLANIGAN): State's Exhibit "2" from 11-14-08 is
13 the Comfort House DVD. That's one and the same of State's Exhibit "9" of the
14 trial exhibits.

15 DEFENDANT: All right. And then, and then the record..., we're on,
16 aren't we Karen?

17 COURT REPORTER: Yes.

18 THE COURT: And then the record should reflect that we had a
19 hearing on Friday, November the..., what was the date?

20 THE STATE (MS. FLANIGAN): Fourteenth, Judge.

21 THE COURT: November the 14th, and that was the hearing to take
22 up a variety of issues, including the uh, video tape issues under Indiana Code
23 35-37-4-6, and that very video tape was marked and introduced into evidence.
24 That's why it's got an evidence sticker from November the 14th. And it's also got

25

1 an evidence sticker for the trial on uh, not on the DVD itself, but on the uh, but on
2 the uh, on the package that it was in. So, okay, all right. Are there any other
3 issues you all think..., is there anything else?

4 MS. SCHULTZ: No, Judge.

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

6 THE COURT: Uh, so we simply need to uh, take one instruction
7 about the defendant not testifying out of there, re-run those, get copies made for
8 the jury uh, come back for final arguments. We're ready to go basically. Is that
9 right?

10 THE STATE (MS. WHEATLEY): Judge, we need to set up the,
11 Elmo. So if we could have at least fifteen minutes.

12 THE COURT: You'll have it.

13 MS. LAUREN WHEATLEY: Thank you.

14 THE COURT: Okay.

15 (OFF RECORD)

16

17 THE COURT: So uh, all right. Uh, everybody is ready to go with
18 final arguments?

19 MS. LAUREN WHEATLEY: Yes, Judge.

20 DEFENDANT: All right, Susan, you ready to go?

21 MS. SCHULTZ: Yes. The only thing that I would inquire is it's my
22 understanding that the State intends to uh, divide this up between the two
23 attorneys, and I would like some guidance from the Court as to how their time is
24 going to be split up or what they're doing?

25

1 MS. LAUREN WHEATLEY: I'm going to do a kick-butt job.

2 THE COURT: Uh, the only I ever thought about putting the time
3 limit on uh, lawyers talking in closing arguments was after suffering through
4 several hours of incoherent closing argument. Uh, but I got over that. Uh, so
5 that's been several years ago. I'm still over it. So I really wasn't planning on
6 putting any time limits on either side.

7 MS. SCHULTZ: Well, you know, when they do that, sometimes I
8 feel like I'm a little handicapped because they both did their, their crack and
9 there's no limitation on it. You know what I mean?

10 THE STATE (MS. FLANIGAN): Well, Ms. Schultz, I can say that I,
11 in rebuttal, and I know that I am to restrain from anything but what you've
12 brought up in your closing, since rebuttal argument. And I, as an officer of the
13 court, I think I have to stick to that. So you think that Lauren and I both are going
14 to give the same closing, that's not what's...

15 MS. SCHULTZ: Oh, no. That's not what I mean.

16 MS. LAUREN WHEATLEY: And I can tell the court that I'm not
17 gonna be up there for hours.

18 MS. SCHULTZ: Okay.

19 MS. LAUREN WHEATLEY: We're just as tired as you are, Susan.

20 MS. SCHULTZ: Good.

21 THE COURT: The particular argument I was thinking about, it was
22 so long and incoherent that we had to have a break in between the one lawyer's
23 closing argument.

24 MS. SCHULTZ: You had to take a break during the closing?

25

1 THE COURT: Not the two lawyer's closing arguments.

2 MS. SCHULTZ: You had to take a break during one of them's
3 closing...

4 THE COURT: That's right, that's exactly right.

5 MS. SCHULTZ: You won't have to do that with...

6 THE STATE (MS. FLANIGAN): You want to share with us who that
7 was?

8 THE COURT: No, I don't. I'm sure there are people that
9 remember. I thought, I believe they thought less of it than I did.

10 THE STATE (MS. FLANIGAN): Was it Jenny?

11 THE COURT: No, it wasn't Jenny.

12 MS. LAUREN WHEATLEY: Was it Shawn Donahue?

13 THE COURT: No, it wasn't Shawn. Okay, so are you ready?

14 MS. SCHULTZ: We're ready.

15 MS. LAUREN WHEATLEY: Yes, Judge.

16 THE COURT: All right.

17 (JURY RETURNS TO COURTROOM)

18

19 THE COURT: Please be seated, ladies and gentlemen. All right,
20 ladies and gentlemen of the jury, we have now reached the point where the
21 lawyers will make their final arguments to you. And first will be the State of
22 Indiana.

23 MS. LAUREN WHEATLEY: Thank you, Judge.

24

25