

**State of Michigan  
In the Supreme Court**

**The People of the State of Michigan**

Plaintiff-Appellee,

MSC No. 163805

v.

COA No. 351791

**Damon Earl Warner**

Eaton County Circuit Court

Defendant-Appellant.

Case No. 16-20296 FC

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**Appendix to  
Damon Earl Warner's  
Supplemental Brief**

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Date: December 16, 2022

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STATE OF MICHIGAN

IN THE 56A DISTRICT COURT FOR THE COUNTY OF EATON

PEOPLE OF THE STATE OF MICHIGAN,

16-296-FC

v

File No. 16-1411-FY

DAMON EARL WARNER,

Defendant.

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE JULIE H. REINCKE

Charlotte, Michigan - Friday, October 14, 2016

APPEARANCES:

For the People:

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EXHIBITS:

IDENTIFIED

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None

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Charlotte, Michigan

Friday, October 14, 2016 -- 2:51 p.m.

THE COURT: People versus Damon Warner, 16-1411-FY. Ms. Pollard's here for the People, Mr. Carter with the defendant.

Are we ready to proceed with the exam?

MS. POLLARD: We are, Your Honor.

MR. CARTER: We are, Your Honor. We'd ask that all witnesses be sequestered.

THE COURT: Mm-kay.

Is that okay?

MS. POLLARD: Absolutely, Your Honor. My only other witness, other than Detective Maltby, who is here and this is his, set the charges, would be Pearl Giffen. She is out in the hallway.

I did have a preliminary issue I would like to ask of this court.

THE COURT: Okay.

MS. POLLARD: Would be that the courtroom be closed. Due to the nature of the proceedings, I think it's appropriate. My victim won't have her support people here, there won't be any other people from the public in here. I just think that that's probably the most appropriate given the circumstances.

THE COURT: Any objection, Mr. Carter?

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MR. CARTER: No.

THE COURT: Okay. We will have the bailiff close the court.

Is she gonna testify first?

MS. POLLARD: Yes, Your Honor. And I can certainly go get her now if that would be okay with you.

THE COURT: Mm-kay.

You may be seated.

Okay, are you ready to call a witness?

MS. POLLARD: Yes, Your Honor. And thank you for that consideration.

My first witness would be Pearl Giffen.

THE COURT: Okay. Pearl, why don't you come on forward.

Pearl, do you want to raise your right hand for me, please? Do you promise to tell the truth and nothing but the truth under penalty of perjury?

MS. GIFFEN: I do.

THE COURT: Okay. Please be seated and state your name.

THE WITNESS: Pearl Giffen.

THE COURT: How do you spell Pearl?

THE WITNESS: Spell it?

THE COURT: Mm-hmm.

THE WITNESS: P-E-A-R-L.

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1 THE COURT: And Giffen?

2 THE WITNESS: G-I-F-F-E-N.

3 THE COURT: Thank you.

4 Ms. Pollard.

5 MS. POLLARD: Thank you.

6 PEARL GIFFEN

7 (At 2:53 p.m. sworn by the court, testified)

8 DIRECT EXAMINATION

9 BY MS. POLLARD:

10 Q Pearl, how old are you today?

11 A Eighteen.

12 Q What's your date of birth?

13 A 6/10 of '98.

14 Q And where are you currently living?

15 A In Hastings.

16 Q And how long have you lived in Hastings?

17 A About ten months now.

18 Q Ten months. Prior to that time, where were you living?

19 A With my mom and Damon.

20 Q And who is Damon?

21 A Um, right there.

22 Q When you say right there, you're pointing to whom? Can  
23 you describe him for me?

24 A He's got a beard.

25 Q Okay. Anything else? What color shirt is he wearing?



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1 A A bluish black one.

2 MS. POLLARD: All right, Your Honor, if the  
3 court could reflect that the witness has identified the  
4 defendant in this case.

5 THE COURT: So reflect.

6 MS. POLLARD: Thank you.

7 BY MS. POLLARD:

8 Q Pearl, you said that you were living with your mom and  
9 Damon until about ten months ago; is that correct?

10 A Mm-hmm.

11 Q Is that a yes?

12 A Yes.

13 Q All right. What happened ten months ago?

14 A December 23rd I told my mom what he did to me. Um,  
15 yeah.

16 Q Okay. So when you say he, who do you mean?

17 A Damon.

18 Q And when you say what he did to you, what do you mean by  
19 that?

20 A He tried raping me.

21 Q All right. So I wanna take you back to when that  
22 happened. You said he tried to rape you. Did this  
23 happen once or more than once?

24 A Once.

25 Q Okay. I wanna go back. When did this happen?

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1 A About when I was 13.

2 Q All right. And when you were 13, where were you living?

3 A At the same house with them.

4 Q And do you remember what time of year it was?

5 A No.

6 Q Were you in school or out of school during this time?

7 A In.

8 Q In school?

9 A (No audible response).

10 Q Is that a yes?

11 A Yes. Sorry.

12 Q It's all right. She's recording everything, so we have  
13 to make sure everything's verbal; okay?

14 You said that you were in school. So is it safe to  
15 say that it was some time between September and May of  
16 the next year?

17 A Yes.

18 Q And you said that it happened about four or five years  
19 ago?

20 A Yes.

21 Q So would that have been in about 2011, 2012?

22 A Yes.

23 Q I wanna -- you said you were at your house. And is this  
24 the same house you were living at until about ten months  
25 ago?

1 A Yes.

2 Q Who was living with you at the time?

3 A Me, Damon and my little sister.

4 Q And whose your little sister?

5 A Sable.

6 Q How old was Sable at the time?

7 A Almost one.

8 Q Now you said that Damon tried to rape you. Tell me in  
9 your own words what happened.

10 A He tried to stick his penis into my vagina.

11 Q Okay. Where were you in your house at that time?

12 A In my bedroom and -- well, in my sister and mine's  
13 bedroom.

14 Q What had happened previously that day?

15 A I went to school, I had a half a day. I was supposed to  
16 go to my step-mom and dad's house that weekend and I was  
17 in my room packing.

18 Q All right. And then what happened?

19 A He came into my room.

20 Q Okay. After he came into your room, did he say  
21 anything?

22 A No.

23 Q What happened? Did he come and physically touch you, or  
24 something else?

25 A He came in and I was on my bed packing and he pulled

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1 down my pants.

2 Q All right. Then what happened?

3 THE COURT: He pulled down what?

4 THE WITNESS: My pants.

5 THE COURT: Kay.

6 BY MS. POLLARD:

7 Q What kind of pants were you wearing?

8 A I was wearing sweatpants.

9 Q You were wearing sweatpants?

10 A Yes.

11 Q What happened after he pulled down your pants?

12 A He tried sticking his penis into me.

13 Q Okay. What part of his body touched what part of your  
14 body?

15 A His hands touched my side.

16 Q Your sides. And when you say your sides, was it towards  
17 your shoulders or more towards your legs?

18 A More towards my legs.

19 Q All right. And did any other part of his body touch any  
20 other part of your body?

21 A No.

22 Q You said that he tried to rape you. What do you mean by  
23 that?

24 A He tried sticking his self into me.

25 Q Okay. When you say he tried to stick his self into you,

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1 did -- what part of his body are you talking about?

2 A His penis.

3 Q And did his penis at any time touch you?

4 A Yes.

5 Q Was -- and what part of your body did his penis touch?

6 A My vagina.

7 Q All right. Was it on the outside? Was it on the  
8 inside? Or something else?

9 A He tried to stick it in me.

10 Q Okay.

11 A And when I made a noise he stopped.

12 Q And what kind of noise did you make at that time, Pearl?

13 A I really don't know.

14 Q Kay. But you remember making a noise?

15 A Yes.

16 Q And do you remember what else -- you said you were  
17 wearing sweatpants on the bottom. Where you wearing  
18 anything on top?

19 A I was wearing a shirt. I don't remember what shirt.

20 Q All right. This was all in your bedroom?

21 A Yes.

22 Q Or did it happen elsewhere in the house?

23 A Nowhere.

24 Q Nowhere else? Was anyone else in the house at the time?

25 A My little sister.

- 1 Q And where was Sable at at that time?
- 2 A She was in the living room, but I heard her coming down  
3 the hallway.
- 4 Q You heard her coming down the hallway?
- 5 A (No audible response).
- 6 Q Did she ever come into your room ...
- 7 A No.
- 8 Q ... when this was happening?
- 9 A No.
- 10 Q Pearl, did you tell anybody about this after it  
11 happened?
- 12 A Yes.
- 13 Q Who did you tell?
- 14 A My grandmother.
- 15 Q And when was that?
- 16 A Like a year or two after it happened.
- 17 Q Okay. Did you tell anybody else about that?
- 18 A No.
- 19 Q You said that he tried to rape you in this incident that  
20 you've talked about. Was there ever any other time that  
21 he touched you inappropriately?
- 22 A Yes.
- 23 Q And can you tell me about that?
- 24 A About four, about two or four months ago he touched me.
- 25 Q Two or four months ago, like two or four months from

1 today?

2 A No, after that incident.

3 Q Okay. So tell me a little bit more about that.

4 A It was night and my mother was sleeping and my little  
5 sister was sleeping, and I was getting ready to go to  
6 bed.

7 Q Okay. And so tell -- when everybody was kind of in bed  
8 and they were sleeping, where were you?

9 A I was by the table.

10 Q By the -- which table?

11 A In the dining room.

12 Q All right. So you're in your dining room, your mom's in  
13 the bedroom, Sable's in the bedroom; was anyone else in  
14 the house?

15 A No.

16 Q Was Damon in the house?

17 A Yes.

18 Q And where was he?

19 A He was in the living room.

20 Q All right. Now explain to me, is your living room and  
21 dining room connected? Are they separate?

22 A Yes.

23 Q Is it like one big space or are there walls between  
24 them?

25 A There's like, there's a trash room, but other than that

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- 1 it's just like a circle, other than the trash room's  
2 right in the middle.
- 3 Q Okay. And you said you were in the dining room. What  
4 were you doing in the dining room?
- 5 A I stopped at the table for something and then I proceed  
6 to the kitchen. But he came up behind me.
- 7 Q Okay. Now what happened?
- 8 A He stuck his hands down my pants and up.
- 9 Q Okay. So tell me a little bit more about that.
- 10 A I was at the table for some reason, and he came up  
11 behind me and stuck his hands down my pants and up into  
12 my vagina.
- 13 Q All right. So did he stick his hands down the front of  
14 your pants, the back of your pants ...
- 15 A Back.
- 16 Q ... or something else?
- 17 So he stuck his hands down the back of your pants.  
18 Did he touch your bottom?
- 19 A No.
- 20 Q All right. But you said that his hands went into your  
21 vagina?
- 22 A Yes.
- 23 Q And did this happen once or more than once?
- 24 A Once.
- 25 Q Did he say anything to you when this happened?



1 A No.

2 Q Did you say anything to him when this happened?

3 A No. All I did was said good night and I went to bed.

4 Q Okay. What, what stopped the situation? You said that  
5 he to-- he put his fingers in your vagina. What, what  
6 stopped it; or did he stop?

7 A He just stopped.

8 Q He just stopped.

9 What did you do after that happened?

10 A I got a drink of water and went to bed.

11 Q Okay. Did you tell anybody?

12 A No.

13 Q And can you tell me, you said that you told your grandma  
14 a couple years after that. Why did you tell your  
15 grandma?

16 A Because she asked me one day about if he has ever done  
17 anything to me and I don't lie to my grandma, I tell her  
18 things.

19 Q Okay. Do you ever tell your mom?

20 A I told her that that day that I told her last year.

21 Q All right. And that was the day that you left?

22 A Yes.

23 Q Did you ever tell any of your friends around the same  
24 time that this happened?

25 A No.

1 Q And why didn't you tell 'em?

2 A Because it was none of their business.

3 Q Okay. Were those -- the two times that you've talked  
4 about today, were those the only times that he ever  
5 touched you in this way?

6 A Yes.

7 Q Had he ever become physi-- excuse me -- physical with  
8 you in any other kind of way?

9 A No.

10 Q There was some indication when you interviewed with  
11 Detective Maltby -- do you remember that? You remember  
12 Jim.

13 A Mm-hmm.

14 Q When you interviewed with him you mentioned sometimes  
15 you guys would wrestle.

16 A Yes.

17 Q Can you explain that to me?

18 A We used to watch wrestling a lot together, and when I  
19 was smaller and we lived in another house we would  
20 wrestle a lot and then when we moved we would wrestle  
21 sometimes but not so often. And we would like, I would  
22 try to kick him and he would try like to hit away, and I  
23 thought I was big and bad so I would mess around and  
24 play with him.

25 Q Okay. And during those wresting events, did anything

1 like what you've talked about today happen?

2 A No.

3 Q Did he touch you inappropriately at all during those  
4 time?

5 A No.

6 MS. POLLARD: All right. Your Honor, I don't  
7 believe I have any other questions at this time for this  
8 witness.

9 THE COURT: Mr. Carter, cross.

10 MR. CARTER: Thank you.

11 CROSS-EXAMINATION

12 BY MR. CARTER:

13 Q Hi, Pearl. My name is David Carter and I'm gonna ask  
14 you a series of questions. I'm gonna do my very best to  
15 make those questions as clear as possible. But  
16 unfortunately, sometimes I don't do that; okay?

17 A Kay.

18 Q And if I do screw up, or there's a question you don't  
19 understand, please stop me and just say, 'Mr. Carter, I  
20 don't understand' or something. Just signal me. Okay?

21 A Mm-hmm.

22 Q And that's another thing. We can't do uh-huh's, mm-hmm;  
23 we have to say yes or no.

24 A Okay.

25 Q Because we're recording everything, and uh-huh's, mm-

1           hmm's can be open to interpretation and we wanna know if  
2           you actually mean yes or no. Okay?

3   A       Okay.

4   Q       Can we do that?

5   A       Yes.

6   Q       All right. Now, let's move onto the first incident.  
7           You indicated that that was during the school year;  
8           correct?

9   A       Yes.

10   Q       And you remember that it was during the school year  
11           because of why?

12   A       Because it was getting towards my little sister's  
13           birthday.

14   Q       Okay. And when is your little sister's birthday?

15   A       May 7th.

16   Q       May 7th. So when you say it was getting close to your  
17           little sister's birthday, was it then after Christmas  
18           break?

19   A       Yes.

20   Q       Okay. Do you remember if it was before Easter?

21   A       No.

22   Q       Okay. That, that's not --

23   A       Oh, wait. It's April. Yeah. Yeah, it was before  
24           Easter. Sorry.

25   Q       Okay. So it was before Easter ...

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1 A Yes.

2 Q ... correct?

3 So it was some time before Easter but after  
4 Christmas; correct?

5 A Yes.

6 Q And you indicated that you were in your bedroom ...

7 A Yes.

8 Q ... correct?

9 And you had gone to school earlier that day;  
10 correct?

11 A Yes.

12 Q And you -- I think you indicated you were packing; is  
13 that correct?

14 A Yes.

15 Q And how were you, what were you packing for?

16 A I pack for my dad's house. Every other weekend to go to  
17 my dad's house.

18 Q Okay. So every other weekend you would, I'm assuming  
19 there's a custody agreement, so you do ...

20 A There was.

21 Q ... parenting time with --

22 A Yes.

23 Q That's another rule that we have to remember. You gotta  
24 wait until I stop before you start talking. Okay? Can  
25 we do that?

- 1 A (No audible response).
- 2 Q All right. So there's a parenting agreement where you  
3 go every other weekend with your father; correct?
- 4 A Yes.
- 5 Q And this was one of those weekends; correct?
- 6 A Yes.
- 7 Q And do you remember what time of day this occurred at?
- 8 A It was afternoon.
- 9 Q And was it in late afternoon?
- 10 A Early.
- 11 Q And how do you remember it to be early afternoon?
- 12 A Because I had a half a day and I usually got off the bus  
13 around noon.
- 14 Q And what, what causes you to remember that you had a  
15 half a day that day?
- 16 A Because I wore my pajamas that day.
- 17 Q You, you wore your pajamas to school that day?
- 18 A Yes.
- 19 Q Is that because it was some type of spirit week or  
20 something like that?
- 21 A No.
- 22 Q Okay. Now, were you still in your pajamas at this time  
23 ...
- 24 A Yes, I had sweatpants ...
- 25 Q ... when this occurred?

- 1 A ... on.
- 2 Q Okay. So your pajamas are actually sweatpants?
- 3 A Yes.
- 4 Q All right. And just before Damon came into your  
5 bedroom, what were you doing?
- 6 A Packing.
- 7 Q Okay. So you were literally in the process of packing;  
8 correct?
- 9 A Yes.
- 10 Q You weren't layin' on your bed then?
- 11 A No.
- 12 Q All right. So you were packing. Were you facing the  
13 doorway that Damon came in or --
- 14 A Yes.
- 15 Q Okay. So you saw him enter into your bedroom; correct?
- 16 A Yes.
- 17 Q Did he say anything?
- 18 A No.
- 19 Q Who else was home at that --
- 20 A My little sister.
- 21 Q Your little sister. Who else lived there at that time?
- 22 A My step dad, me, my little sister and my grandmother.
- 23 Q And what about your mom? Did she --
- 24 A My mom -- yeah, my mom too.
- 25 Q Okay. So your grandma lived there, your mom lived

1           there, Damon lived there and your little sister, Sable I  
2           think you testified ...

3   A       Yes.

4   Q       ... correct?

5           Now, where was mom at the time?

6   A       Mom was at work.

7   Q       Where was she working at the time; do you recall?

8   A       No.

9   Q       All right. And what about grandma? Where was grandma?

10   A       She was at work too.

11   Q       Do you know where grandma worked?

12   A       She worked at Mount Hope and Lansing.

13   Q       Okay, that's a vicinity. Do you know the name of the  
14           business at all?

15   A       That was the business. She worked at Mount Hope Church.

16   Q       Oh, okay, Mount Hope Church.

17           And it's your testimony she was at work ...

18   A       Yes.

19   Q       ... during this time; correct?

20           And what -- how did you get to your dad's house?

21   A       My step mom came and picked me up.

22   Q       And do you know what time of day that was?

23   A       About 3:00 ish.

24   Q       Okay. So we know that this occurred between 12:00,  
25           because that's what time you got off the bus; correct?



1 A Yes.

2 Q And 3:00 o'clock, that's when step mom came and picked  
3 ya up; right?

4 A Yes.

5 Q Do you remember now, was this real close to the time  
6 that mom came, step mom came and picked you up?

7 A It was about an hour.

8 Q So this, so we're somewhere around 2:00 o'clock;  
9 correct?

10 A Yes.

11 Q All right. And when Damon came into your room, you were  
12 facing him; correct?

13 A Yes. I was sitting on my bed, packing, facing the door.

14 Q Okay. So you were sitting on your bed packing.

15 A Yes.

16 Q Where -- how is your bed situated as far as the door  
17 goes?

18 A The -- we don't have a door on -- we didn't have a door,  
19 so it was like the frame. And my bed was long ways and  
20 we had a hutch right in front of it.

21 Q Okay. That's a lot of information that we gotta build  
22 in our own minds. And I can appreciate that.

23 Let's -- if this -- how big is your bedroom?

24 A I have no idea. Let's just say it fit a crib and my bed  
25 and a hutch, that's it.

- 1 Q Okay. So it's smaller than this area here?
- 2 A Yes.
- 3 Q All right. And let's say you're sitting on your bed,  
4 where would the doorway be?
- 5 A About to the corner of that stand right there.
- 6 Q Okay. So right in front of you; correct?
- 7 A Yes.
- 8 Q And is the -- would the bed separate you from the  
9 doorway?
- 10 A No.
- 11 Q Okay. So it would be a straight walk to you, all right.  
12 And what did you do when Damon came into the room?
- 13 A Nothing. I was still packing.
- 14 Q Okay. So you were packing, sitting on your bed;  
15 correct?
- 16 A Yes.
- 17 Q And that's when he came up behind you -- no?
- 18 A No.
- 19 Q What did he do?
- 20 A He came in and he didn't say anything and he pushed me  
21 on my bed and did that.
- 22 Q Okay. He pushed you on your bed and did that. Okay.  
23 So he pushed you over on your bed?
- 24 A Yes.
- 25 Q Did you fall back?

- 1 A Yes.
- 2 Q Did you say anything?
- 3 A No.
- 4 Q And this was the first time somethin' like this has ever  
5 happened; right?
- 6 A Yes.
- 7 Q Okay. And then what did he do at that point?
- 8 A He stuck his penis into my vagina.
- 9 Q Okay. So was your pants down at this point?
- 10 A No.
- 11 Q All right. So how'd your pants come down?
- 12 A He pulled them down.
- 13 Q Okay. And how far did he pull 'em down to?
- 14 A To my knees.
- 15 Q And were your knees bent over the bed then?
- 16 A They were up.
- 17 Q They were up. And how did they get up?
- 18 A He did it. He pulled them up.
- 19 Q Okay.
- 20 A When he pulled my pants down.
- 21 Q So when he pulled your pants down he also pulled up your  
22 legs?
- 23 A Yes.
- 24 Q And then what happened?
- 25 A Then he did what he did.

1 Q Okay. Did you, did you scream or squirm or anything  
2 like that?

3 A No.

4 Q All right. Did you try to close your legs?

5 A No.

6 Q And you said at some point you heard Sable; correct?

7 A Yes.

8 Q Coming down the hall?

9 A Yes.

10 Q And when did this, when did Damon stop doing what he was  
11 doing?

12 A When we heard Sable.

13 Q Kay. And how old was Sable at the time?

14 A Almost one.

15 Q After this happened, then what happened?

16 A Two or four months ago, or two to four months ago after  
17 that --

18 Q Okay. And I'm sorry, that's my fault, I didn't ask that  
19 question very well.

20 I mean that day what happened? So this happened  
21 around 2:00 o'clock, then what happened?

22 A Then just everything went back to normal. I went to my  
23 dad's house.

24 Q Okay. Everything went back to normal. What did you do  
25 between 2:00 and 3:00? You had an hour now, right?

- 1 A Yes.
- 2 Q What did you do during that time?
- 3 A To be honest, I don't remember.
- 4 Q Okay. You didn't call anybody?
- 5 A No.
- 6 Q All right. Now, you said that your -- well, let's move  
7 onto the second incident.
- 8 The second incident you indicated was about two to  
9 four months after?
- 10 A Yes.
- 11 Q This incident?
- 12 A Yes.
- 13 Q So was this, this was past Sable's birthday then?
- 14 A Yes.
- 15 Q Were you still in school?
- 16 A Not that I know of, no.
- 17 Q Okay. So this was in the summer? During spring break?
- 18 A Yes.
- 19 Q And what time of day was this one, this incident?
- 20 A Night.
- 21 Q At night?
- 22 A Yes.
- 23 Q Can you give me a round about time?
- 24 A About 11:00 ish.
- 25 Q Okay, 11:00 at night. And is it fair to say that the

- 1 same people were livin' in the house; grandma, mom ...
- 2 A Yes.
- 3 Q ... Damon and, and Sable?
- 4 A Yes.
- 5 Q Okay. And where was, where were these peop-- the people  
6 living in the house, where were they at this time?
- 7 A My grandma was out. My mom was sleeping, and so was my  
8 little sister.
- 9 Q Okay. When you say grandma was out, where was grandma?
- 10 A I don't know, probably doing whatever grandma's do best.
- 11 Q Okay. Maybe shoppin' or something. All right.  
12 She wasn't working at the church, though; right?
- 13 A She was still working, but she wasn't working that late;  
14 no.
- 15 Q Right, not at, not at the church. So she's out  
16 somewhere, but you don't know where; right?
- 17 A Yes.
- 18 Q And this is at 11:00 at night; right?
- 19 A Yes.
- 20 Q And mom is sleeping.
- 21 A Yes.
- 22 Q And so is Sable; correct?
- 23 A Yes.
- 24 Q Were you sleeping before this occurred?
- 25 A No.

- 1 Q Okay. So you'd been up for a while.
- 2 A Yes.
- 3 Q And you entered into the kitchen; is that correct?
- 4 A I went into the dining room to go to the kitchen; yes.
- 5 Q Okay. From where?
- 6 A From -- what do you mean?
- 7 Q Well, before you went into the dining room to go into  
8 the kitchen, where did you come from?
- 9 A I am pretty sure I came from my bedroom to say goodnight  
10 and then I went to go get a drink around.
- 11 Q Okay. To say goodnight to whom?
- 12 A Damon.
- 13 Q Okay. Is this something you regularly would do?
- 14 A Yes.
- 15 Q What about mom? Did you say goodnight to mom?
- 16 A No, cause she was already in bed.
- 17 Q Okay. And does mom usually in bed by 11:00?
- 18 A She's usually in bed by, earlier because she has to go  
19 to work early in the morning.
- 20 Q It -- do you know if Damon was working during this  
21 period of time?
- 22 A Not that I know of.
- 23 Q So you entered -- you went from your bedroom, into the  
24 dining room, to go into the kitchen get somethin' to  
25 drink; correct?

1 A No.

2 Q Okay. And I'm sorry. I don't mean to mess it up. Tell  
3 me your procedures then from your bedroom.

4 A I went into the living room, and then I went to the  
5 dining room and kitchen.

6 Q Okay. So you went from your bedroom, to the living  
7 room, to the dining room?

8 A Yes.

9 Q And the second incident occurred in which, which ...

10 A The dining room.

11 Q ... portion of the house? I'm sorry?

12 A The dining room.

13 Q Okay, the dining room.

14 And where was -- when you -- when you went from  
15 your bedroom to the dining room, where was Damon at?

16 A Sitting in his chair.

17 Q Sitting in his chair?

18 A Yes.

19 Q Does he have like a special chair that he sits in?

20 A No, not really.

21 Q Okay. Not like me, I have -- the kids know my chair is  
22 my chair; right? So it's just a chair; correct?

23 A Yes.

24 Q Was he watchin' tv?

25 A Yes.



1 Q Okay. Do you know what he was watching at that time?

2 A I am pretty sure it was Monday, so of course he was  
3 watching WWE.

4 Q Okay. So you know that this occurred on a Monday, is  
5 that what you're saying?

6 A Yeah.

7 Q Okay. And you entered into the living room and then  
8 into the dining room?

9 A Yes.

10 Q And he was sitting in his chair. Did you see him get  
11 up?

12 A No, I did not.

13 Q Okay. And, and this occurred, this, this second  
14 incident occurred in the dining room; correct?

15 A Yes.

16 Q Is this where he came up from behind you?

17 A Yes.

18 Q Okay. Did he say anything as he's coming up behind you?

19 A No.

20 Q And were you in your pajamas at this time?

21 A Yes.

22 Q And is it fair to say you're pajamas are just basically  
23 sweatpants, right?

24 A Yeah.

25 Q Okay. Sweatpants and maybe a t-shirt?

1 A Yes.

2 Q And so he came up behind you in the dining area;  
3 correct?

4 A Yes.

5 Q And he stuck his hand, you said, down the, the back of  
6 your sweatpants?

7 A Yes.

8 Q Did you say anything at that time?

9 A No.

10 Q You didn't scream? You didn't say anything in shock or  
11 anything?

12 A No.

13 Q Okay. And you indicated that his, his hand went down  
14 your pants and went into your vagina?

15 A Yes.

16 Q Was it his hand or a finger, or?

17 A It was a finger.

18 Q Okay. And it was from the back, not from the front?

19 A It was from the back, yes.

20 Q Okay. And after this occurred, what happened?

21 A I ended up gettin' my drink of water and going to bed.

22 Q All right. Now, and this was, we're, we're still  
23 talking about, let's see, in 2012; correct?

24 A Yes.

25 Q And because we know that because it happened during the

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1 2011 school year in 2012, but you said it was after  
2 Christmas; correct?

3 A I'm confused. Yes. Sorry.

4 Q Okay. So we're in 2012, it's after Christmas, the  
5 second incident happened after you were released from  
6 school and you're on spring break; correct?

7 A Yes.

8 Q Or I mean not spring break, but summer break; right?

9 A Yes.

10 Q All right. And when was the -- you indicated that you  
11 told your grandma because she asked; right?

12 A Yes.

13 Q And you don't lie to your grandma. When she asked ya,  
14 you told her; correct?

15 A Yes.

16 Q And when did, when was the first time you told grandma?

17 A About two years ago.

18 Q About two years ago. So 2014?

19 A Yes.

20 Q So two-- when -- do you recall what time of the year  
21 that was?

22 A No, I don't.

23 Q Do you recall if you were in school?

24 A Yes.

25 Q You -- okay. That's kind of a loaded answer, or an

- 1 answer that can be either way. You remember whether you  
2 were in school, so were you in school or you remember  
3 that you weren't in school?
- 4 A Yes, I was in school.
- 5 Q Okay. Do you recall if this was in the spring time or  
6 in the fall time?
- 7 A It was in the fall.
- 8 Q Okay, in the fall time. And is this the grandma that  
9 you're living with, or is this a different grandma?
- 10 A Yes, she was living with us.
- 11 Q Okay. So this is the grandma that lived with you back  
12 in 2012 too?
- 13 A Yes.
- 14 Q All right. Is this fair -- is it fair to say that this  
15 grandma is your mom's mom?
- 16 A Yes.
- 17 Q All right. And you, and you ended up telling grandma  
18 because she asked you and that, and you don't lie to  
19 grandma; right?
- 20 A Yes.
- 21 Q Has grandma ever asked you about this prior to that?
- 22 A No.
- 23 Q Has grandma ever told you that if anything were to ever  
24 happen you need to tell somebody prior to this?
- 25 A Yes.

1 Q Okay. And how often did she tell ya that?

2 A A lot.

3 Q I'm sorry?

4 A A lot.

5 Q Okay. And so let me, let me try and understand this.  
6 When, when, in 2012 up to 2014, grandma never asked ya  
7 about it, this was the first time and you told her;  
8 right?

9 A Yes.

10 Q All right. And it's your testimony that these are the  
11 only two inappropriate times that you ever had with,  
12 with Damon and you; correct?

13 A Yes.

14 Q All right.

15 MR. CARTER: One moment, Your Honor.

16 THE COURT: Okay.

17 MR. CARTER: I have nothing further. Thank  
18 you.

19 THE COURT: Any redirect?

20 MS. POLLARD: Just very briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. POLLARD:

23 Q Pearl, I wanna clarify a couple things.

24 You said during that first incident, happened  
25 between Christmas break and it was before Easter; is

1 that correct?

2 A Yes.

3 Q And in your testimony with me you said that Mr. Warner  
4 attempted to put his penis in your vagina. When you  
5 were speaking with the defense attorney, you said that  
6 he did stick his penis in your vagina. Which one is it?

7 A He did.

8 Q He did?

9 A Yes.

10 Q Or didn't?

11 A He did-- he didn't, but he tried.

12 Q He tried?

13 A Yes.

14 Q But his penis did touch your vaginal area; is that  
15 correct?

16 A Yes.

17 Q All right.

18 MS. POLLARD: Thank you, Your Honor.

19 THE COURT: Okay. Pearl, thank you so much  
20 for your testimony. You're excused.

21 MS. POLLARD: Your Honor, may I take her to  
22 her family out in the hallway?

23 THE COURT: Yes.

24 MS. POLLARD: Thank you so much.

25 (At 3:22 p.m. witness excused)

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THE COURT: Next witness.

MS. POLLARD: Thank you. I would call  
Detective Jim Maltby.

THE COURT: Do you promise to tell the truth  
and nothing but the truth under penalty of perjury?

DETECTIVE MALTBY: I do.

THE COURT: Please be seated and state your  
name, and spell your last name.

THE WITNESS: James Maltby, M-A-L-T-B-Y.

THE COURT: Ms. Pollard.

DETECTIVE JAMES MALTBY

(At 3:23 p.m. sworn by the court, testified)

DIRECT EXAMINATION

BY MS. POLLARD:

Q Detective Maltby, where are you currently employed?

A Eaton County Sheriff's Department

Q And in what capacity are you employed?

A I'm a detective.

Q How long have you held that position?

A Since two thousand -- January 1st of 2009.

Q Prior to 2009 did you work in any other areas of law  
enforcement?

A Yes.

Q And what areas were those?

A For the sheriff's department and for Mason Police

1 Department.

2 Q How long did you hold those positions?

3 A Altogether I've been a police officer approximately 19  
4 years.

5 Q And were you working on the road, or what was your  
6 position when you were working for Mason and then the  
7 sheriff's department?

8 A Road officer, road deputy.

9 Q Do you have any particularized areas of training as a  
10 detective?

11 A Yes, I do.

12 Q What areas are those?

13 A Interviewing. Evidence collection. I was also a  
14 evidence technician for approximately 12 to 13 years.  
15 And other various SWAT training, stuff like that.

16 Q Do you have any particular areas of focus in being a  
17 detective? Do you only investigate certain types of  
18 crimes or all?

19 A All call-- all kinds.

20 Q Did you have reason to become involved in a case  
21 involving Damon Warner?

22 A Yes, I did.

23 Q Can you tell me a little bit about how you became  
24 involved in this case?

25 A I was assigned the case by my sergeant in January of



1 2016.

2 Q Okay.

3 A And I was assigned to work with CPS and investigate the  
4 case.

5 Q And what were the particularized allegations in this  
6 case?

7 A That victim, or complainant, had, she was alleging that  
8 she had been touched by her step father, Damon Warner.

9 Q In preparation for a case like this, when you're going  
10 out to work on a CSC, what are your goals and objectives  
11 for your interviews?

12 A To establish rapport with all the subjects I'm  
13 interviewing to find out if they're telling the truth.  
14 And just to gain as much background information as I can  
15 on each subject.

16 Q What was your first step in investigating this  
17 particular complaint?

18 A I believe my first step was I, along with a CPS officer,  
19 we went and spoke with the victim at her high school in  
20 Olivet.

21 Q And where was this, these alleged events, where did they  
22 occur?

23 A They occurred on Butterfield Highway in Eaton County.

24 Q And Butterfield Highway is located in which city?

25 A Olivet.

1 Q In Olivet. When you went to go meet with the victim,  
2 you indicated that you were investigating allegations  
3 that she had been sexually abused; is that correct?

4 A Yes.

5 Q And did she -- do you have any initial suspects when  
6 you're given these cases?

7 A Sometimes. I -- the initial suspect we had in this case  
8 was her step father, Mr. Warner.

9 Q And obviously, without going into any of the allegations  
10 that she made, as they would be hearsay, what -- did you  
11 develop a suspect that was different from Mr. Warner  
12 after you interviewed Pearl?

13 A No, I did not.

14 Q And what did you do following your interview with Pearl?

15 A I believe I conducted follow -- I conducted interviews  
16 with Pearl's real father and her step mother, and did  
17 background, did background work on basically all the  
18 subjects involved.

19 Q Okay. What, what did you do after that?

20 A I eventually interviewed Mr. Warner.

21 Q And where was that interview located?

22 A The first interview took place at the sheriff's office  
23 in a video recorded room.

24 Q At that point was he detained?

25 A No.

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1 Q Did you advise him of his rights at that time, or?

2 A No, I advised him that he was free to go, didn't have to  
3 speak with me if he didn't want to, and could get up and  
4 leave at any time.

5 Q And tell me about your interview with him.

6 A The interview, the first interview was mainly just to  
7 build rapport and to get his side of the story. And  
8 just to see if he was, if I could tell if he was gonna  
9 be truthful or, or if he was gonna be dishonest with me.  
10 And to just, just basically build a relationship and go  
11 from there, anticipating that I would want a second or  
12 maybe even third interview with him.

13 Q And when did this interview take place?

14 A I believe the first interview was on April 4th of 2016.

15 Q What, what allegations did you confront him with during  
16 the course of this interview?

17 A Excuse me. With the original allegations that Pearl had  
18 made with the improper touching, I think is, I didn't  
19 get too specific with him, I don't think, in the first  
20 interview. But it was improper touching, I think is  
21 what we kinda went over.

22 Q And what did he say?

23 A He denied it. And I believe in that interview he talked  
24 a little bit about wrestling and other stuff, but he  
25 denied the allegations.

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1 Q And with regard to where he was residing at that time,  
2 where was he living in April of 2016?

3 A At the same residence on Butterfield Highway.

4 Q In your course of your investigation did you get any  
5 information with regard to the age of, or like a time  
6 frame when this, these alleged incidents occurred?

7 A Yes. It was -- it's a little more difficult in this  
8 case because it happened approximately four years ago.  
9 So trying to pinpoint an exact date and the age of the  
10 victim, realized she wasn't exactly maybe the best at  
11 remembering her dates. So the best I could tell was  
12 sometime between the fall of 2011 and spring of 2012 is  
13 how I take it.

14 Q Okay. When you, after you had your first interview with  
15 the defendant in this case did you have opportunity to  
16 interview him, as you said you wanted to, a second time?

17 A Yes, I did.

18 Q And when did that interview occur?

19 A I believe that happened on May 5th.

20 Q And with respect to the interview on May 5th, during the  
21 course of your interview did he make any admissions to  
22 anything, or what was said during that interview?

23 A He did make admissions in that interview that he had had  
24 his hand stuck down Sabl-- or I'm sorry, Pearl's pants,  
25 the victim's pants, by the victim; and that he had

1 touched her vagina with four of his fingers and went  
2 inside the "lips" with one of his fingers before  
3 removing, before removing his hand. And went, went  
4 through that in pretty lengthy detail about describing  
5 it different ways.

6 Q Describing the actual incident?

7 A Yes.

8 Q With regard to, I guess, the time frame, did he provide  
9 any time frame for when this would have occurred?

10 A I don't remember. I don't remember if he did or not in  
11 that interview.

12 Q Okay. Did you ever have opportunity to speak with him  
13 following this interview?

14 A I did.

15 Q And when was that?

16 A That was a couple weeks later. I believe it was on May  
17 16th.

18 Q Okay. And then, I guess, what was said in that  
19 interview?

20 A It was Mr. Warner basically backtracking on what he had  
21 said in the second interview a little bit, and also  
22 trying to explain the incident a little differently, how  
23 the two were wrestling. He claimed that they were  
24 wrestling and that's when it happened, the incident.

25 Q When you say it, can you explain?

1 A Yeah, the incident that I'm referring to is when he said  
2 during the second interview that she put her, his hand  
3 down her pants, the front of her pants or front of her  
4 pants. He said that stemmed from a wrestling incident.  
5 And that, during the third interview he actually stood  
6 up in the interview and gave a demonstration of how he  
7 was wrestling with her and had -- meaning her, Pearl --  
8 had her in a bear hug from behind and was showing me  
9 that and demonstrating it physically for me.

10 Q Thank you.

11 MS. POLLARD: Your Honor, I don't believe I  
12 have any other questions at this time.

13 THE COURT: Cross, Mr. Carter.

14 MR. CARTER: I have nothing further.

15 THE COURT: Okay.

16 MR. CARTER: Or nothing at all, rather.

17 THE COURT: Any other witnesses?

18 MS. POLLARD: I have no other witnesses, Your  
19 Honor. Thank you.

20 THE COURT: Any defense witnesses?

21 MR. CARTER: No, Your Honor.

22 THE COURT: And brief argument. Ms. Pollard.

23 MS. POLLARD: Thank you. Your Honor, I would  
24 ask for bind over on the criminal sexual conduct in the  
25 first degree and criminal sexual conduct in the second

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1 degree charges as they are charged. I would ask for  
2 bind over on an amended date range. I believe that  
3 there was a date certain that was listed on that, and I  
4 believe that testimony today presented indicates that  
5 this likely occurred sometime in the fall of 2011  
6 sometime through the summer of 2012.

7 Thank you.

8 THE COURT: Mr. Carter, anything you want to  
9 say?

10 MR. CARTER: Well, we would be opposed at a  
11 bound over, but as far as the dates go, I believe the  
12 testimony was sometime after Christmas of 2011, which  
13 would put it at 2012 in the summer time of 2012. So as  
14 far as a date on or about, the amendment shouldn't read  
15 as the prosecutor has indicated in the fall of 2011 to  
16 the spring of 2012; it should really be the spring of  
17 2012 to the summer of 2012.

18 THE COURT: Ms. Pollard?

19 MS. POLLARD: I wouldn't necessarily object  
20 to that, Your Honor. I believe that that is the  
21 appropriate testimony that's been presented today.

22 THE COURT: Well, this isn't a trial where  
23 there's a, a trial by judge or jury where there needs to  
24 be proof of guilt beyond a reasonable doubt, it's a  
25 preliminary hearing to determine if a case should go to

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trial.

I do defendant's (sic) met her burden of establishing probable cause, some evidence of each of the elements of criminal sexual conduct in the first degree and criminal sexual conduct in the second degree with a 13 year old who was living in the household of defendant. This happened in Eaton County sometime between the spring and summer of 2012.

So defendant is bound over to circuit court. Status conference is -- is November 18th okay?

MR. CARTER: It, it is.

THE COURT: 8:30. Circuit court arraignment, November 10th. Are you waiving that or having it?

MR. CARTER: We are, Your Honor.

THE COURT: You're waiving it?

MR. CARTER: Yes.

THE COURT: Okay. The forms are here.

MR. CARTER: May I approach?

THE COURT: You may.

Bond is continued with conditions.

MR. CARTER: May I approach?

THE COURT: You may.

MR. CARTER: For the record, we have executed the arraignment, the waiver of circuit court arraignment and ask the court to forward that with the file.



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THE COURT: I don't think there's been a no contact order in here.

Anyone object if I enter a no contact order?

MS. POLLARD: Your Honor, I believe I requested one at the arraignment. If one hasn't been entered, I think we've all been acting under the assumption that there was one with the victim. I would certainly, if there isn't one, ask that one be instituted.

MR. CARTER: We have no issues with that. Matter of fact, my client, when I repre-- when I took on representing him, I indicated to him that he needed no contact with 'em and he's always followed that. So we don't have an issue with that.

I don't think there's been any complaints of contact.

MS. POLLARD: I haven't been advised of any, at least at this time, Your Honor.

THE COURT: So no contact and not to come within 1,320 feet -- that's a quarter mile -- of the home or place of employment, school of Pearl Giffen.

I don't see a need of any other bond conditions. Does anybody else?

MR. CARTER: No. I've been strictly, told my client that he's not to contact witnesses, interfere

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with the justice system, contact the victim in this matter. And it's my understanding that he's been complying with that request.

THE COURT: Thank you.

Okay. He is bound over to circuit court. Anything else we need to address today?

MR. CARTER: No, Your Honor.

MS. POLLARD: No, thank you.

THE COURT: Okay. Thank you.

MR. CARTER: Thank you. Have a good weekend.

THE COURT: You too.

(At 3:37 p.m. proceedings concluded)

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STATE OF MICHIGAN )  
 ) ss  
COUNTY OF EATON )

I certify that this transcript, consisting of 48 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case by Shannon Rogers, on Friday, October 14, 2016.

March 7, 2017

*Angela L. Curtiss*  
ANGELA L. CURTISS, CER#6183  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, MI 48813  
(517) 543-4325

<b>STATE OF MICHIGAN</b> 56A JUDICIAL DISTRICT 56th JUDICIAL CIRCUIT		<b>INFORMATION</b> FELONY		<b>CASE NO.: 16-020296-FC</b> <b>POLICE: 23ECSD 16-352</b> <b>DISTRICT: 16-1411-FY</b> <b>CIRCUIT:</b>	
District Court ORI: MI-MI230025J 1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500		Circuit Court ORI: MI- 56TH 1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500		STATE OF MICHIGAN, COUNTY OF EATON	
<b>THE PEOPLE OF THE</b>		Defendant's name and address V <b>Damon Earl Warner W/M</b> <b>AKA Damon Huff</b> <b>5480 W Butterfield Hwy</b> <b>OLIVET, MI, 49076</b>		Victim or complainant <b>OCT 31 2016</b>	
<b>STATE OF MICHIGAN</b>				Complaining Witness <b>DIANA BOSWORTH</b> EATON COUNTY CLERK	
Co-defendant(s)				Date: On or about <b>SPRING-SUMMER 2012</b>	
City/Twp./Village <b>City of Olivet</b>	County in Michigan <b>EATON</b>	Defendant TCN <b>U916532524J</b>	Defendant CTN <b>23-16003234-01</b>	Defendant SID <b>1712924T</b>	Defendant DOB <b>10/10/1974</b>
Police agency report no. <b>23ECSD 16-352</b>	Charge <b>See below</b>	DLN Type:	Vehicle Type	Defendant DLN <b>W656135162780</b>	

A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.

Witnesses

**Detective Maltby**  
**Sharon Griffen**

**Corey Wood**  
**James Griffen**

**D/Sgt Jordan**  
**Pearl Giffen**

**STATE OF MICHIGAN, COUNTY OF EATON**

**IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:** The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described above, the defendant:

**COUNT 1: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE (Relationship)**

did engage in sexual penetration to-wit: digital-vaginal, with a child who was at least 13 but less than 16 years of age and the defendant and victim were members of the same household; contrary to MCL 750.520b(1)(b). [750.520B1B]

**SORA NOTICE**

This is a Tier III Offense under the Sex Offender Registration Act (SORA) unless the court finds that the victim was between the ages of 13 to 15 inclusive, consented to the conduct, and the defendant was not more than 4 years older than the victim. MCL 28.722(w)(iv).

**HIV/STD TESTING NOTICE**

Take notice that pursuant to MCL 333.5129, upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.

**FELONY:** Life; mandatory lifetime electronic monitoring; mandatory AIDS/STD testing; DNA to be taken upon arrest. The Court may impose a consecutive sentence under MCL 750.520b(3).

**COUNT 2: CRIMINAL SEXUAL CONDUCT - SECOND DEGREE (Relationship)**

did engage in sexual contact with: a child who was at least 13 but less than 16 years of age, and the defendant and victim were members of the same household; contrary to MCL 750.520c(1)(b). [750.520C1B]

**SORA NOTICE**

This is a Tier II offense under the Sex Offender Registration Act (SORA). It is a Tier III offense if the defendant has a prior conviction for a Tier II offense. MCL 28.722(u)+(v).

**HIV/STD TESTING NOTICE**

Take notice that pursuant to MCL 333.5129, upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or

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exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.; contrary to MCL 750.520c(1)(b). [750.520C1B] **FELONY:** 15 years; mandatory AIDS/STD testing; DNA to be taken upon arrest.

Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling samples.

**HABITUAL OFFENDER - FOURTH OFFENSE NOTICE**

Take notice that the defendant was previously convicted of three or more felonies or attempts to commit felonies that on or about 12/10/1993, he or she was convicted of the offense of Attempt-Felony Forgery in violation of 750.248; in the 37th Circuit Court for Calhoun County, State of Michigan;

And on or about 03/12/2001, he or she was convicted of the offense of Criminal Sexual Conduct-3rd Degree (Force or Coercion) in violation of 750.520D1B; in the 37th Circuit Court for Calhoun County, State of Michigan;

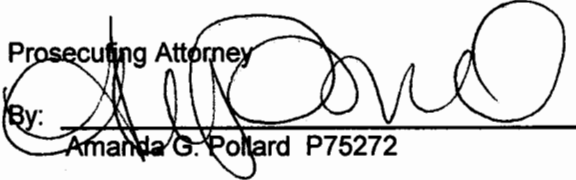
And on or about 03/12/2001, he or she was convicted of the offense of Attempt-Felony Criminal Sexual Conduct-3rd Degree (Force or Coercion) in violation of 750.520D1B; in the 37th Circuit Court for Calhoun County, State of Michigan;

Therefore, defendant is subject to the penalties provided by MCL 769.12. [769.12]

**PENALTY: COUNT 1 - LIFE  
COUNT 2 - LIFE**

and against the peace and dignity of the State of Michigan.

10/24/2016  
Date

Prosecuting Attorney  
By:   
Amanda G. Pollard P75272

STATE OF MICHIGAN, COUNTY of EATON  
**FILED**  
OCT 31 2016  
DIANA BOSWORTH  
EATON COUNTY CLERK

16-296 FC

2016003234 AGP

<b>STATE OF MICHIGAN</b> 56A JUDICIAL DISTRICT 56th JUDICIAL CIRCUIT	<b>BIND OVER/TRANSFER AFTER PRELIMINARY EXAMINATION FELONY</b>	<b>CASE NO.: 2016003234</b> <b>POLICE: 23ECSD 16-352</b> <b>DISTRICT: 2016003234</b> <b>CIRCUIT:</b>
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District Court ORI: MI- MI230025J 1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500	Circuit Court ORI: MI- 56TH 1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500
---	---

<b>THE PEOPLE OF THE STATE OF MICHIGAN</b>	Defendant's name and address V <b>Damon Earl Warner W/M</b> <b>AKA Damon Huff</b> <b>5480 W Butterfield Hwy</b> <b>OLIVET, MI, 49076</b>	Victim or complainant <b>JANICE K. CUNNINGHAM</b>
		Complaining Witness

Co-defendant(s)	Date: On or about <b>01/01/2011</b>
-----------------	--

City/Twp./Village <b>City of Olivet</b>	County in Michigan <b>EATON</b>	Defendant TCN	Defendant CTN <b>23-16003234-01</b>	Defendant SID	Defendant DOB <b>10/10/1974</b>
--	------------------------------------	---------------	--	---------------	------------------------------------

Police agency report no. <b>23ECSD 16-352</b>	Charge <b>See below</b>	DLN Type:	Vehicle Type	Defendant DLN <b>W656135162780</b>
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[ ] A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.

Date: \_\_\_\_\_ District Judge: \_\_\_\_\_

Reporter/Recorder	Cert. no.	Represented by counsel	Bar no.
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**EXAMINATION WAIVER**

1. I, the defendant, understand:

- a. I have a right to employ an attorney.
- b. I may request a court appointed attorney if I am financially unable to employ one.
- c. I have a right to a preliminary examination where it must be shown that a crime was committed and probable cause exists to charge me with the crime.

STATE of MICHIGAN, COUNTY of EATON  
**FILED**

2. I voluntarily waive my right to a preliminary examination and understand that I will be bound over to circuit court on the charges in the complaint and warrant (or as amended).

**OCT 17 2016**

Defendant attorney \_\_\_\_\_ Bar no. \_\_\_\_\_ Defendant \_\_\_\_\_  
**DIANA BOSWORTH**  
**EATON COUNTY CLERK**

**ADULT BIND OVER**

- 3. Examination has been waived on \_\_\_\_\_ Date \_\_\_\_\_
- 4. Examination was held on 10-14-16 and it was found that probable cause exists to believe both that an offense not cognizable by the district court has been committed and that the defendant committed the offense. CCT 11-10-16
- 5. The defendant is bound over to circuit court to appear on 11-18-16 at 8:30 m.  
Date Time
- on the charge(s) in the complaint.
- on the amended charge(s)
- of \_\_\_\_\_

MCL/PACC Code \_\_\_\_\_

6. Bond is set in the amount of \$ 50,000.00 . Type of bond: Julie R... Judge (P31523) Bar no. \_\_\_\_\_  
10-14-16 Date

Certification of transmittal and bind over/transfer for juvenile are printed on reverse side.  
 MC 200 (6/15) FELONY SET, Bind Over/Transfer After Preliminary Examination  
 MCL 764.1 et seq., MCL 766.1 et seq., MCL 767.1 et seq., MCR 6.110

RECEIVED by MSC 12/28/2022 2:41:49 PM

<b>STATE OF MICHIGAN</b> 56A JUDICIAL DISTRICT 56th JUDICIAL CIRCUIT		<b>AMENDED INFORMATION</b>		<b>CASE NO.: 16-020296-FC</b> <b>POLICE: 23ECSD 16-352</b> <b>DISTRICT: 16-1411-FY</b> <b>CIRCUIT:</b>	
District Court ORI: MI-MI230025J 1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500			Circuit Court ORI: MI- 56TH 1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500		
THE PEOPLE OF THE  STATE OF MICHIGAN		Defendant's name and address V <b>Damon Earl Warner W/M</b> <b>AKA Damon Huff</b> <b>5480 W Butterfield Hwy</b> <b>OLIVET, MI, 49076</b>		Victim or complainant  Complaining Witness	
Co-defendant(s)		Date: On or about <b>SPRING-SUMMER 2012</b>			
City/Twp./Village <b>City of Olivet</b>	County in Michigan <b>EATON</b>	Defendant TCN <b>U916532524J</b>	Defendant CTN <b>23-16003234-01</b>	Defendant SID <b>1712924T</b>	Defendant DOB <b>10/10/1974</b>
Police agency report no. <b>23ECSD 16-352</b>	Charge <b>See below</b>	DLN Type:	Vehicle Type	Defendant DLN <b>W656135162780</b>	

A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.

Witnesses

**Detective Maltby**  
**Sharon Giffen**

**Corey Wood**  
**James Giffen**

**D/Sgt Jordan**  
**Pearl Giffen**

**STATE OF MICHIGAN, COUNTY OF EATON**

**IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:** The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described above, the defendant:

**COUNT 1: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE (Relationship)**

did engage in sexual penetration to-wit: digital-vaginal, with a child who was at least 13 but less than 16 years of age and the defendant and victim were members of the same household; contrary to MCL 750.520b(1)(b).

[750.520B1B]

**SORA NOTICE**

This is a Tier III Offense under the Sex Offender Registration Act (SORA) unless the court finds that the victim was between the ages of 13 to 15 inclusive, consented to the conduct, and the defendant was not more than 4 years older than the victim. MCL 28.722(w)(iv).

**HIV/STD TESTING NOTICE**

Take notice that pursuant to MCL 333.5129, upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.

**FELONY:** Life; mandatory lifetime electronic monitoring; mandatory AIDS/STD testing; DNA to be taken upon arrest. The Court may impose a consecutive sentence under MCL 750.520b(3).

**COUNT 2: CRIMINAL SEXUAL CONDUCT - SECOND DEGREE (Relationship)**

did engage in sexual contact with: a child who was at least 13 but less than 16 years of age, and the defendant and victim were members of the same household; contrary to MCL 750.520c(1)(b). [750.520C1B]

**SORA NOTICE**

This is a Tier II offense under the Sex Offender Registration Act (SORA). It is a Tier III offense if the defendant has a prior conviction for a Tier II offense. MCL 28.722(u)+(v).

**HIV/STD TESTING NOTICE**

Take notice that pursuant to MCL 333.5129, upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or

0053a

exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.; contrary to MCL 750.520c(1)(b). [750.520C1B] **FELONY:** 15 years; mandatory AIDS/STD testing; DNA to be taken upon arrest.

Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling samples.

**HABITUAL OFFENDER - THIRD OFFENSE NOTICE**

Take notice that the defendant was twice previously convicted of a felony or an attempt to commit a felony in that on or about 12/10/1993, he or she was convicted of the offense of Attempted-Forgery in violation of 750.248 in the 37th Circuit Court for Calhoun County, State of Michigan.

And on or about 03/12/2001, he or she was convicted of the offense of Attempted-Criminal Sexual Conduct-3rd Degree (Force or Coercion) in violation of 750.520D1B in the 37th Circuit Court for Calhoun County, State of Michigan;

Therefore, defendant is subject to the penalties provided by MCL 769.11. [769.11]

**PENALTY: COUNT 1 - LIFE  
COUNT 2 - 30 YEARS**

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney

By: Adrienne K. Van Langevelde  
Adrienne K. Van Langevelde P72488

3-6-17  
Date



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STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant.

JURY TRIAL - VOLUME I OF IV

BEFORE THE HONORABLE JANICE K. CUNNINGHAM, CIRCUIT JUDGE

Charlotte, Michigan - Monday, June 19, 2017

APPEARANCES:

For the People:

ADRIANNE K. VAN LANGEVELDE (P72488)  
ADAM H. STRONG (P74650)  
Eaton County Prosecutor's Office  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-7500

For the Defendant:

DAVID B. CARTER, JR. (P54862)  
PO Box 54  
Charlotte, Michigan 48813  
(517) 256-3886

Recorded and transcribed by:

Kathy Bond, CSR/CER-2779  
Certified Electronic Recorder  
(517) 543-4327

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EXHIBITS:

None

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1 Charlotte, Michigan

2 Monday, June 19, 2017 - At 11:02 a.m.

3 THE COURT: All right, we are on the list (sic) of  
4 the People of the State of Michigan versus Damon E. Warner,  
5 file 16-296-FC.

6 Ms. Van Langevelde and Mr. Strong are here on behalf  
7 of the People. Mr. Carter's here with the defendant.

8 Where's your client?

9 MR. CARTER: Right here.

10 THE COURT: Oh, sorry.

11 MR. CARTER: Come on up to the table.

12 Perhaps during one of the breaks, the tech can come  
13 and take a look at --

14 THE COURT: Can you raise your right hand, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you swear to tell the truth, the whole  
17 truth, and nothing but the truth, so help you God?

18 THE DEFENDANT: Yes.

19 (At 8:42 a.m., defendant sworn by the Court)

20 THE COURT: Is Jake -- what -- what's --

21 LAW CLERK: Jake is resetting it. He's gonna e-mail  
22 me as soon as it resets.

23 MR. CARTER: Oh, okay. I'm sorry.

24 LAW CLERK: That's okay.

25 MR. CARTER: It's not important during the beginning,

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1           anyways.

2                   THE COURT:   Okay.   Okay, and just to make sure I have  
3           -- Detective Maltby is at counsel table.   Good morning.

4                   DETECTIVE MALTBY:   Morning.

5                   THE COURT:   And then, you're gonna call Corey Wood,  
6           Detective Sergeant Jordan?

7                   MS. VAN LANGEVELDE:   Yeah, Corey, actually, may not  
8           end up being called, but he's on there just in case, unless it  
9           Mr. -- he's, basically, on reserve.   And if Mr. Carter would  
10          like him to testify, as well, he knows that he's been  
11          subpoenaed and needs to be available if necessary, but.

12                   THE COURT:   Okay.   Is that right, Mr. Carter?

13                   MR. CARTER:   Yes.

14                   THE COURT:   James Giffen, Pearl Giffen, Detective  
15          Aaron Roberts, Amanda Williford, Harvey Lee Issac, Henrietta  
16          Hopkins, Doug Willbar, Linda Willbar, and Ericka Boeneman.

17                   Is that right, Mr. Carter?   Did I --

18                   MR. CARTER:   How do you -- is that --

19                   THE DEFENDANT:   Boeneman.

20                   MR. CARTER:   Boenerman?

21                   THE DEFENDANT:   Boeneman.

22                   MR. CARTER:   Boeneman?

23                   THE COURT:   Boeneman, okay.

24                   The record should also reflect that prior to going on  
25          the record the prosecutor gave the Court one, two, three, four,

0058a

1 five, six names of individuals who have been subject to  
2 prosecution by the prosecutor's office. And pursuant to People  
3 v Eccles, the Court dismissed them for cause and did not even  
4 have them come up. They are Cassandra Briseno, Alycia  
5 McIntyre-Johnson, Patsy Lou Parsons, Lance Queen, Dane Smith,  
6 and Megan Stanton.

7 Megan Stanton is not on the printout that the Court  
8 received. So, I assumed she did not show up, and I will talk  
9 with our jury clerk about that as to what happened there.

10 Each side is entitled to 12 peremptory challenges.  
11 We have the recorder set up in the back room in case any jurors  
12 want to talk privately about any issues that would concern them  
13 about jury service.

14 Ms. Van Langevelde, anything else you would like to  
15 put on the record before we bring the jury pool up?

16 MS. VAN LANGEVELDE: Just that if -- obviously, I'd  
17 have all my witnesses ques -- sequestered. And they're,  
18 actually, not coming until later this morning. So, I'd ask any  
19 other witnesses be sequestered.

20 And once -- obviously, once Pearl is done testifying,  
21 since she is the victim, she has a right to stay in the  
22 courtroom during the rest of the proceedings. And so, I -- I  
23 think she's going to elect to do that.

24 THE COURT: Okay.

25 MS. VAN LANGEVELDE: Other than that, at this time, I

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1 don't believe I have anything else.

2 THE COURT: Mr. Carter, do you have any preliminary  
3 issues you'd like to place on the record before we bring the  
4 jury pool up?

5 MR. CARTER: No.

6 THE COURT: And I assume that the woman in the  
7 courtroom is not gonna be a witness.

8 MR. CARTER: No.

9 THE COURT: Okay. Then, let's bring the jury up.

10 LAW CLERK: (Inaudible).

11 THE COURT: Yeah.

12 MR. CARTER: You might want to sit all the way over  
13 here because this is gonna fill up.

14 THE COURT: Yeah, let's -- thank you. Actually, I'd  
15 like her to go sit in the back corner until after we pick a  
16 jury, so that the proposed jurors have all the front row seats.

17 LAW CLERK: Are we ready?

18 THE COURT: We are ready.

19 (At 8:52 a.m., prospective jurors enter courtroom)

20 THE COURT: Please be seated. Good morning.

21 Ladies and gentlemen, I would like to welcome you to  
22 the 56th Circuit Court. My name is Judge Cunningham. It is  
23 both my privilege and pleasure to have you here this morning.

24 For some of you, jury duty may be a new experience.

25 Jury duty is one of the most serious duties that -- hmm?

0060a

1 Good morning.

2 PROSPECTIVE JURORS: Good morning. How are you?

3 THE COURT: Did you take the elevator up?

4 PROSPECTIVE JURORS: Yup. Yes.

5 THE COURT: Okay. Let me start over.

6 Ladies and gentlemen, I am Judge Cunningham. It is  
7 my pleasure and privilege to welcome you to the 56th Circuit  
8 Court.

9 For some of you, jury duty may be a new experience.  
10 Jury duty is one of the most serious duties that members of a  
11 free society are asked to perform. Our system of self-  
12 government could not exist without it. The jury is a very  
13 important part of this court. The right to a jury trial is an  
14 ancient tradition, and it is part of our heritage.

15 The law says that both a person who is accused of a  
16 crime and the prosecutor have the right to a trial, not by one  
17 person but by a jury of 12 impartial individuals.

18 Jurors must be as free as humanly possible from bias,  
19 prejudice or sympathy for either side. Each side in a trial is  
20 entitled to jurors who will keep an open mind until the time  
21 comes to decide the case.

22 The trial begins with jury selection. The purpose of  
23 this process is to obtain information about you that will help  
24 us choose a fair and impartial jury to hear this case. During  
25 jury selection, the lawyers and I will ask you questions. This

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1 is called voir dire. The questions are meant to find out if  
2 you know anything about the case. Also, we need to find out if  
3 you have any opinions or personal experiences that might  
4 influence you for or against the prosecutor, the defendant or  
5 any of the witnesses. One or more of these things could cause  
6 you to be excused in this particular case even though you are  
7 otherwise qualified to serve as a juror. The questions may  
8 probe deeply into your attitudes, your beliefs and your  
9 experiences. They are not meant to be unreasonably prying into  
10 your private life, but the law requires that we get this  
11 information so that an impartial jury can be selected.

12 If you do not hear or understand a question, please  
13 say so. If you do understand it, you should answer it  
14 truthfully and completely. Please do not hesitate to speak  
15 freely about anything you think that we should know.

16 Now, jur -- during the jury selection process, you  
17 may be excused in one of two ways. First, I may excuse you for  
18 cause; that is, I may decide there is a valid reason why you  
19 cannot or should not serve in this case. Or, a lawyer, from  
20 one side or the other, may excuse you without giving a reason  
21 for doing so. This is called a peremptory challenge. The law  
22 gives each side the right to choose a certain number -- excuse  
23 me, to excuse a certain number of jurors in this way. If you  
24 are excused, you should not feel bad or take it personally. It  
25 simply means that there is something that causes you to be



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1 excused in this particular case.

2 I am now going to ask you to stand and to swear that  
3 you will answer truthfully, fully and honestly all of the  
4 questions that you will be asked about your qualifications to  
5 serve as a juror in this case. Now, if you have a religious  
6 belief against taking an oath, you may simply affirm that you  
7 will answer the questions truthfully, fully and honestly.

8 Would you all please stand and raise your right  
9 hands? Do you solemnly swear or affirm that you will  
10 truthfully and completely answer all questions about your  
11 qualifications to serve as a juror in this case?

12 PROSPECTIVE JURORS: I do.

13 (At 8:58 a.m., prospective jurors sworn by the Court)

14 THE COURT: Thank you. Please be seated.

15 All right, ladies and gentlemen, what I'm going to do  
16 now is I'm gonna call 14 names. As I call your name, you need  
17 to come up and get -- sit in the jury box. The first six  
18 individuals will sit in the back row starting with the first  
19 name I'm gonna call closest to me. So, you may want to come  
20 and go in this way; it might be easier.

21 So, Gloria Farr. And like I said, Ms. Farr, you'll  
22 go in the first seat up there, okay? Lindsey Sulpher,  
23 Christine Simon, Jeffrey Byle, Rachelle Pratt, Scott McLennan,  
24 Lewis Hillard. And, Mr. Hillard, if you would just take the  
25 first seat closest to me, on the bottom. Thomas Kellicut,

0063a

1 Valerie Marshall, Alycia McIntyre-Johnson.

2 MS. VAN LANGEVELDE: Well, Your Honor, we excused  
3 Juror McIntyre --

4 THE COURT: Oh, I missed that one. I'm sorry.

5 Toni Townsel, Norma Hancock, Zachary Ramer, Sherrie  
6 Drzik. And if you sit in the top right -- top, right-hand  
7 seat, please. Geralynn Jackson.

8 Good morning.

9 JURORS: Good morning.

10 THE COURT: I'd like to start by introducing to you  
11 the members of the court, here. This is Miss Kathy Bond. She  
12 is required to take down everything that is said in the  
13 courtroom. My law clerk and the jury bailiff, who brought you  
14 up here this morning, is Miss Lauren Ykimoff.

15 Now, ladies and gentlemen, this is a criminal case,  
16 and it involves the charge of criminal sexual conduct - first  
17 degree, with a relationship, and criminal sexual conduct -  
18 second degree, with a relationship. I am gonna explain the  
19 charges more fully later.

20 These charges have been made against the defendant,  
21 who is Mr. Damon Earl Warner, also known as Damon Huff. And  
22 this is his lawyer, Mr. Carter.

23 MR. CARTER: Good morning.

24 JURORS: Morning.

25 THE COURT: The lawyers for the State of Michigan are

0064a

1 Assistant Prosecuting Attorney Adrienne Van Langevelde and  
2 Assistant Prosecuting Attorney Adam Strong.

3 MS. VAN LANGEVELDE: Good morning.

4 MR. STRONG: Good morning.

5 THE COURT: Sitting with them at counsel table and  
6 individual who will be called as a witness is Detective Jim  
7 Maltby with the Eaton County Sheriff's Department.

8 The other witnesses that may be called in this case  
9 are Corey Wood, Eaton County DHHS, Detective/Sergeant Jordan,  
10 Michigan State Police, the Lansing post, James Giffen, Pearl  
11 Giffen, Detective Aaron Roberts with the Eaton County Sheriff's  
12 Department, Amanda Williford, Harvey Lee Issac, Henrietta  
13 Hopkins, Doug Willbar, Linda Willbar, and Ericka Boeneman.

14 So, let's start there. Does anybody know anybody  
15 here, in the courtroom?

16 JURORS: (No verbal response).

17 THE COURT: Okay. Did any of you recognize any of  
18 the witness names that I called as somebody that you've known  
19 or had contact with?

20 JUROR TOWNSEL: Could you repeat the Williford, the  
21 first name?

22 THE COURT: The Willi -- Willbar?

23 JUROR TOWNSEL: Oh, did you say Williford?

24 THE COURT: Oh, Amanda Williford. Just sounds  
25 familiar?

0065a

1 JUROR TOWNSEL: It sounds familiar. I'm not quite  
2 sure.

3 THE COURT: Okay. Well, and the attorneys are gonna  
4 get a chance to ask questions, and they may know a little more  
5 about her, to be able to let you know if it's somebody that you  
6 may know, okay?

7 JUROR TOWNSEL: (No verbal response).

8 THE COURT: Now, ladies and gentlemen, this trial is  
9 going to take two to three days. We know we'll be here today  
10 until two o'clock, and we know we will go all day tomorrow. It  
11 could possibly go into Wednesday.

12 Does anybody have prepaid airline tickets?

13 JURORS: (No verbal response).

14 THE COURT: Anybody have a prepaid vacation?

15 JURORS: (No verbal response).

16 THE COURT: Anybody having surgery the next three --  
17 three days?

18 JURORS: (No verbal response).

19 THE COURT: Okay. Now, if anybody has a health  
20 problem that would prevent you from serving on the jury, you --  
21 I need to know now. And by health problem, you can anticipate  
22 you'll sit for two hours at a time, and we'll take frequent  
23 breaks, but two to two and-a-half hours. So, sometimes  
24 individuals say their back -- they have a back such that they  
25 can't sit for that long. There will probably be exhibits,

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1 possibly, things put up on the screen if anybody has a sight  
2 issue. Or, you have to be able to hear the witnesses that are  
3 gonna take the stand if any of you think you'd have a hearing  
4 issue of hearing a witness testifying.

5 JURORS: (No verbal response).

6 THE COURT: Okay. Now, as I said, this is a criminal  
7 case. The paper that is used to charge a defendant with a  
8 crime is called the Information. The Information in this case  
9 reads and alleges that, in the spring or summer of 2002 (sic)  
10 the defendant, Damon Earl Warner, did engage in sexual  
11 penetration, to-wit: Digital-vaginal, with a child who was at  
12 least 13 but less than 16 years of age and the defendant and  
13 the victim were members of the same household; contrary to  
14 Michigan law.

15 Count two alleges that the defendant did engage in  
16 sexual contact with a child who at least 13 but less than 16  
17 years of age and that the defendant and the victim were members  
18 of the same household.

19 And it is alleged that this occurred in Eaton County.

20 Now, the defendant has pled not guilty to these  
21 charges.

22 You should clearly understand that the Information  
23 that I have just read is not evidence. The Information is read  
24 in every criminal trial so that the defendant and the jury can  
25 hear the charges. You must not think that it is evidence of

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1 his guilt or that he must be guilty simply because he was  
2 charged. A person accused of a crime is presumed to be  
3 innocent. This means that you must start with the presumption  
4 that the defendant is innocent, and that presumption continues  
5 throughout the trial and entitles the defendant to a verdict of  
6 not guilty unless you are satisfied beyond a reasonable doubt  
7 that he is guilty.

8 Every crime is made up of parts called elements. The  
9 prosecutor must prove each element of the crime beyond a  
10 reasonable doubt. The defendant is not required to prove his  
11 innocence or to do anything. If you find that the prosecutor  
12 has not proven every element beyond a reasonable doubt, then  
13 you must find that the defendant is not guilty.

14 A reasonable doubt is a fair, honest doubt growing  
15 out of evidence or lack of evidence. It is not merely an  
16 imaginary or possible doubt, but a doubt based on reason and  
17 common sense. A reasonable doubt is just that, a doubt that is  
18 reasonable after a careful and considered examination of the  
19 facts and circumstances of the case.

20 So, let me start by asking whether any of you have  
21 ever served on a jury before. Okay, could you raise your  
22 hands? All right. Oh, several of you, okay.

23 So, Miss Townsel, when did you serve on a jury  
24 before?

25 JUROR TOWNSEL: Gosh, probably at least about 10

0068a

1 years ago.

2 THE COURT: Okay. Was it here, in Eaton County?

3 JUROR TOWNSEL: Yes, yes.

4 THE COURT: What kind of case was it?

5 JUROR TOWNSEL: It was a criminal case, I believe.

6 THE COURT: Was it up here, on the second floor --

7 JUROR TOWNSEL: Yes.

8 THE COURT: -- in Circuit Court?

9 JUROR TOWNSEL: Yes.

10 THE COURT: Okay. And did you reach a verdict in  
11 that case?

12 JUROR TOWNSEL: Yes.

13 THE COURT: What was the verdict?

14 JUROR TOWNSEL: Guilty.

15 THE COURT: Okay. Anything about your past  
16 experience being on a juror (sic) that would impact you being  
17 able to be open-minded and hear the facts of this case?

18 JUROR TOWNSEL: No.

19 THE COURT: Okay. Miss Hancock, did you have your  
20 hand up?

21 JUROR HANCOCK: Yes.

22 THE COURT: When did you serve on a jury before?

23 JUROR HANCOCK: About 10 years ago.

24 THE COURT: Ten years ago. And was it also here, in  
25 Eaton County?

0069a

1 JUROR HANCOCK: Yes.

2 THE COURT: Was it up here, on the second floor?

3 JUROR HANCOCK: Yes.

4 THE COURT: What kind of case was it?

5 JUROR HANCOCK: CSC.

6 THE COURT: Okay. And did you reach a verdict in  
7 that case?

8 JUROR HANCOCK: Yes.

9 THE COURT: What was that?

10 JUROR HANCOCK: Guilty.

11 THE COURT: Anything about that experience impact you  
12 on this case?

13 JUROR HANCOCK: No.

14 THE COURT: Were the two of you on the same jury?

15 JUROR HANCOCK: No.

16 JUROR TOWNSEL: No.

17 THE COURT: Okay. And, Miss Sulpher, you had your  
18 hand up?

19 JUROR SULPHER: Yes.

20 THE COURT: When did you serve on a jury before?

21 JUROR SULPHER: It was about three years ago and  
22 about eight years ago.

23 THE COURT: So, two other times. You play the lotto?

24 JUROR SULPHER: No, but maybe I should.

25 THE COURT: Was it up here that you served on a jury?



0070a

1 JUROR SULPHER: Yes.

2 THE COURT: And what kind of case?

3 JUROR SULPHER: I believe three years ago, an  
4 assault.

5 THE COURT: Okay. And what was it eight years ago?

6 JUROR SULPHER: Embezzlement. Sorry, I didn't --

7 THE COURT: Okay.

8 JUROR SULPHER: -- get the right --

9 THE COURT: Did you reach a verdict in both cases?

10 JUROR SULPHER: Three years ago, yes. Eight years  
11 ago, I was excused at the last minute. I was the extra juror.

12 THE COURT: Oh, okay. So, three years ago, yes.  
13 What was the verdict?

14 JUROR SULPHER: Guilty.

15 THE COURT: Okay. Anything about your past  
16 experience influence you in this case to be a juror?

17 JUROR SULPHER: No.

18 THE COURT: Did anybody else have their hand up on  
19 prior jury duty?

20 Okay, now, did -- did I say your name right? Is it  
21 Drzik?

22 JUROR DRZIK: Drzik.

23 THE COURT: Drzik, okay. When did you serve on the  
24 jury before?

25 JUROR DRZIK: About 15 years ago.

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THE COURT: Eighteen?

JUROR DRZIK: Fifteen.

THE COURT: Was it here, in Eaton County?

JUROR DRZIK: Yes.

THE COURT: And did you reach a verdict?

JUROR DRZIK: Yes.

THE COURT: What was the verdict?

JUROR DRZIK: Guilty.

THE COURT: Guilty?

JUROR DRZIK: Yes.

THE COURT: What kind of case was it?

JUROR DRZIK: I think it was an assault case.

THE COURT: Okay. Anything about that experience that would influence you?

JUROR DRZIK: No.

THE COURT: Okay. Now, do any of you know each other that are sitting in the proposed pool here?

JURORS: (No verbal response).

THE COURT: Okay. Have any of you ever been a witness in a case before where you've taken the stand to testify?

JURORS: (No verbal response).

THE COURT: Have -- oh, okay, Mr. Byle --

JUROR BYLE: Um-hum.

THE COURT: -- when were you a witness?

0072a

1 JUROR BYLE: Oh, about 10 years ago.

2 THE COURT: What kind of case was it?

3 JUROR BYLE: It was an employee embezzlement.

4 THE COURT: Okay. And who did you testify on behalf  
5 of?

6 JUROR BYLE: The person that was employed by us.

7 THE COURT: Okay, so you testified on behalf of the  
8 person accused of embezzling?

9 JUROR BYLE: Right.

10 THE COURT: Okay. And did that case go to a verdict?

11 JUROR BYLE: I think they settled out of court --

12 THE COURT: Okay.

13 JUROR BYLE: -- with him. Yeah.

14 THE COURT: Anything about your experience testifying  
15 in court that would impact your ability to be fair and  
16 impartial in this case?

17 JUROR BYLE: Nope.

18 THE COURT: Okay. Have any of you been a party to a  
19 case? And what I mean by that, have you -- have you ever been  
20 sued or have you ever sued somebody where you've had to go to  
21 court?

22 JURORS: (No verbal response).

23 THE COURT: Do any of you have a relative or a close  
24 friend or yourself that has been a victim of a crime?

25 Okay, Mr. Hillard, what kind of -- well, what

0073a

1 situation did you have or are you aware of?

2 JUROR HILLARD: My uncle was put in prison for  
3 molesting his grandchildren.

4 THE COURT: Your uncle was put in prison for  
5 molesting his grandchildren. Were you involved in the case,  
6 all?

7 JUROR HILLARD: No.

8 THE COURT: Were you close to him?

9 JUROR HILLARD: Yes.

10 THE COURT: Is he still in prison?

11 JUROR HILLARD: No, he's dead now.

12 THE COURT: He's dead. Anything about that  
13 experience that would impact your ability to be fair and  
14 impartial in this case?

15 JUROR HILLARD: No.

16 THE COURT: Anybody else have their hand up?

17 And you are Miss Marshall?

18 JUROR MARSHALL: Yes.

19 THE COURT: Okay.

20 JUROR MARSHALL: I was involved in a drunk driving  
21 accident when I was 13.

22 THE COURT: When you were 13. Did the case go to  
23 trial?

24 JUROR MARSHALL: Um-hum.

25 THE COURT: Did you have to testify?

0074a

1 JUROR MARSHALL: No.

2 THE COURT: Anything about that experience would  
3 impact your ability to be fair and impartial in this case?

4 JUROR MARSHALL: No.

5 THE COURT: And, Mr. McClullan.

6 JUROR MCLENNAN: McLennan.

7 THE COURT: McLennan. How about you, sir?

8 JUROR MCLENNAN: Once was -- someone attempted to rob  
9 me at gunpoint.

10 THE COURT: Oh, my gosh, that must've been scary.

11 JUROR MCLENNAN: It was awkward. It was a kid.

12 THE COURT: Okay. Anything about that experience  
13 would impact your ability to be fair and impartial in this  
14 case?

15 JUROR MCLENNAN: No.

16 THE COURT: Okay. Now, do any of you have friends or  
17 family members that are involved with law enforcement?

18 Okay, Miss Townsel.

19 JUROR TOWNSEL: A nephew who is an Ann Arbor  
20 policeman.

21 THE COURT: Okay. And he -- he currently is a  
22 policeman?

23 JUROR TOWNSEL: Yes.

24 THE COURT: Are you close to your nephew?

25 JUROR TOWNSEL: Yes.

0075a

1 THE COURT: Do you see him frequently?

2 JUROR TOWNSEL: Just saw him, yes.

3 THE COURT: Okay. Do you talk about his job?

4 JUROR TOWNSEL: Oh, he may talk about cases from time  
5 to time.

6 THE COURT: Okay. Is the fact that your nephew is a  
7 police officer -- would that impact you in this case?

8 JUROR TOWNSEL: I don't think so.

9 THE COURT: You're gonna hear testimony from members  
10 of law enforcement, and I will be instructing you that you're  
11 to treat their testimony as you would any other witness. Would  
12 you be able to do that?

13 JUROR TOWNSEL: I think so, yes.

14 THE COURT: Okay. And, Ms. Hancock, you had your  
15 hand up?

16 JUROR HANCOCK: I'm a corrections officer.

17 THE COURT: Okay. Where are you a correc -- where do  
18 you work?

19 JUROR HANCOCK: Bellamy Creek Correctional Facility  
20 in Ionia.

21 THE COURT: Okay. Does the fact that you're a  
22 corrections officer -- would that impact your ability to serve  
23 on a jury?

24 JUROR HANCOCK: No.

25 THE COURT: Okay. And, Miss Farr.

0076a

1 JUROR FARR: My husband is a retired department of  
2 corrections employee.

3 THE COURT: Okay. He's retired?

4 JUROR FARR: Retired this year.

5 THE COURT: Where did he -- what -- which facility  
6 was he at?

7 JUROR FARR: He started in Jackson, but then he ended  
8 up in Central Office in Lansing.

9 THE COURT: Okay. And you would talk about his job  
10 I assume.

11 JUROR FARR: Um-hum.

12 THE COURT: Anything about the fact that your husband  
13 worked as a corrections officer -- would that influence your  
14 ability to be fair and impartial?

15 JUROR FARR: No.

16 THE COURT: Did anybody else -- all right, and you  
17 are Miss Pratt; correct?

18 JUROR PRATT: Correct. My cousin's husband is an MSU  
19 university detective.

20 THE COURT: Okay, your cousin's husband.

21 JUROR PRATT: Yes, cousin-in-law.

22 THE COURT: I -- he's your cousin-in-law. Are you  
23 close to him?

24 JUROR PRATT: (No verbal response).

25 THE COURT: Do you see him frequently?

0077a

1 JUROR PRATT: Yeah.

2 THE COURT: I mean, does he talk about his job?

3 JUROR PRATT: Not very often.

4 THE COURT: Would that influence you in this case?  
5 Would you be able to be fair and impartial?

6 JUROR PRATT: Yes.

7 THE COURT: Okay. All right. Have any of you have  
8 friends or family members that have been involved in -- in  
9 criminal defense? In other words, been on the other side of  
10 the prosecutor.

11 JURORS: (No verbal response).

12 THE COURT: Okay. One of the things that a juror has  
13 to do, by the very nature of the fact that you would be serving  
14 as jurors, is you will be passing judgment on one of your  
15 fellow citizens. Do any of you have a concern about being able  
16 to do that?

17 JURORS: (No verbal response).

18 THE COURT: So, you will be asked to listen to all of  
19 the facts, not form an opinion until you've heard everything,  
20 and then, collectively, you would go back to the jury room and  
21 discuss your individual opinions, and then try to reach a  
22 unanimous decision. Does everybody think they could do that if  
23 they were chosen?

24 JURORS: (No verbal response).

25 THE COURT: Is there anything that you think I should



0078a

1 know that would impact your ability to be fair and impartial?

2 JURORS: (No verbal response).

3 THE COURT: Okay. Now, as I explained to you in the  
4 opening instructions, this process is called voir dire, and  
5 both the prosecutor and the defense attorney are gonna have the  
6 chance to ask you some questions. And we'll start with the  
7 prosecutor, Ms. Van Langevelde.

8 MS. VAN LANGEVELDE: Thank you, Your Honor.

9 Good morning, again. You guys are kinda quiet.  
10 Happy Father's Day belated to all of you fathers out there.

11 And because Ms. Bond has to type out what you're  
12 saying, so I need you to use verbal yes and nos, unless I ask  
13 you to raise your hand. Can everybody do that?

14 JURORS: Yes.

15 MS. VAN LANGEVELDE: Thank you. And if you are out  
16 there, you're not off the hook yet; you may end up in this box.  
17 So, I will try and speak up as -- as loud as I can, and listen  
18 to the questions that myself and Mr. Carter are asking 'cause  
19 you may end up having to answer those, as well; all right?

20 PROSPECTIVE JURORS: (No verbal response).

21 MS. VAN LANGEVELDE: Thank you.

22 So, again, today's not meant to make you -- any of  
23 you feel uncomfortable. At this time, we're just trying to  
24 make sure that both sides have a fair jury panel.

25 So, I guess I'll just start right off the bat. Does

0079a

1 anybody know anyone who's been a victim of sexual assault?

2 Please raise your hand.

3 JURORS: (Some hands raised).

4 MS. VAN LANGEVELDE: A few of you.

5 All right, sir, was that your uncle's grandchildren?

6 JUROR HILLARD: Yes.

7 MS. VAN LANGEVELDE: Was that here, in Eaton County?

8 JUROR HILLARD: Yes.

9 MS. VAN LANGEVELDE: Okay. Was that -- ended up

10 being prosecuted?

11 JUROR HILLARD: Yes.

12 MS. VAN LANGEVELDE: Do you think that -- well, did

13 that go to trial, I guess?

14 JUROR HILLARD: Yeah, there was a trial.

15 MS. VAN LANGEVELDE: There was a trial? Do you know

16 if he pled or if there was a trial?

17 JUROR HILLARD: He didn't plea.

18 MS. VAN LANGEVELDE: Didn't plea, okay. Based on

19 that, I guess, scenario and circumstance in your family, did

20 that make you feel one way or the other?

21 JUROR HILLARD: I felt if he got convicted of it,

22 then justice was done.

23 MS. VAN LANGEVELDE: Okay. Did the victims ever talk

24 to you about it?

25 JUROR HILLARD: Yes.

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1 MS. VAN LANGEVELDE: Okay. They talked to you about  
2 what happened?

3 JUROR HILLARD: Yes.

4 MS. VAN LANGEVELDE: How old were they?

5 JUROR HILLARD: Eleven and 13.

6 MS. VAN LANGEVELDE: And that's when it happened?

7 JUROR HILLARD: Yes.

8 MS. VAN LANGEVELDE: Did they disclose that they had  
9 been sexually assaulted later?

10 JUROR HILLARD: (No verbal response).

11 MS. VAN LANGEVELDE: That being said, like did it  
12 happen when they were younger and then talk about it later?

13 JUROR HILLARD: No, it happened when they were --

14 MS. VAN LANGEVELDE: When they were young?

15 JUROR HILLARD: -- that age, yes.

16 MS. VAN LANGEVELDE: Okay. Anything about that  
17 experience that would make you feel like you couldn't be fair  
18 and impartial to both sides?

19 JUROR HILLARD: Yes. In a way, yes. I'd feel --  
20 (inaudible).

21 MS. VAN LANGEVELDE: Okay. Tell me about that.

22 JUROR HILLARD: Well, if they're in -- actually in  
23 court, would be a sign that they're guilty.

24 MS. VAN LANGEVELDE: Okay. Well, I appreciate your  
25 honesty. Thank you, sir.

0081a

1 Anybody else know anyone who was a victim of sexual  
2 assault?

3 JURORS: (No verbal response).

4 MS. VAN LANGEVELDE: Not a victim? Okay. Did you  
5 have your hand up, ma'am?

6 JUROR: (No verbal response).

7 MS. VAN LANGEVELDE: Can you tell me -- I'll get to  
8 you, I promise.

9 Can you tell me a little bit about your experience?

10 JUROR SULPHER: It was myself.

11 MS. VAN LANGEVELDE: Yourself? How old were you when  
12 it happened?

13 JUROR SULPHER: Twelve.

14 MS. VAN LANGEVELDE: Did you disclose right away and  
15 tell the police?

16 JUROR SULPHER: No.

17 MS. VAN LANGEVELDE: How long did it take you before  
18 you disclosed to anybody?

19 JUROR SULPHER: Almost four years.

20 MS. VAN LANGEVELDE: Four years? So, you were about  
21 16. Who did you tell?

22 JUROR SULPHER: School counselor.

23 MS. VAN LANGEVELDE: Is there a reason why you waited  
24 to tell somebody?

25 JUROR SULPHER: Just a lot of variables.

1 MS. VAN LANGEVELDE: Lots of variables. Was it easy  
2 to tell somebody?

3 JUROR SULPHER: No.

4 MS. VAN LANGEVELDE: Do you think that being a victim  
5 of sexual assault, that that could make you, in this particular  
6 case where you are not the victim, would that make you feel  
7 like you couldn't be fair to both sides?

8 JUROR SULPHER: I would like to think not.

9 MS. VAN LANGEVELDE: Are you -- I'm sorry?

10 JUROR SULPHER: I said I would like to think that I  
11 could be impartial.

12 MS. VAN LANGEVELDE: Okay. Do you think you could be  
13 impartial and objective?

14 JUROR SULPHER: (No verbal response).

15 MS. VAN LANGEVELDE: Thank you.

16 Who else had their hand up? Mr. McClellan. Is it --  
17 am I saying that right?

18 JUROR MCLENNAN: McLennan.

19 MS. VAN LANGEVELDE: McLennan. McLennan, thank you.  
20 Who have you known that was a victim of sexual assault?

21 JUROR MCLENNAN: My wife.

22 MS. VAN LANGEVELDE: Okay. And can you tell me how  
23 old she was when that happened to her?

24 JUROR MCLENNAN: She was eight-years-old.

25 MS. VAN LANGEVELDE: And when did she first disclose

0083a

1 or tell anybody what happened?

2 JUROR MCLENNAN: It was caught in the process of  
3 happening after she had fought for several minutes.

4 MS. VAN LANGEVELDE: And who was the perpetrator?

5 JUROR MCLENNAN: A family friend.

6 MS. VAN LANGEVELDE: Okay. So -- so, she didn't have  
7 to disclose; somebody caught him in the act, basically?

8 JUROR MCLENNAN: Yes, her father did.

9 MS. VAN LANGEVELDE: Oh, it was her father, okay.  
10 Anything about that, you know, being so personal with your wife  
11 being a victim, that would make you feel like you could not be  
12 fair or impartial in this particular case?

13 JUROR MCLENNAN: I don't think it would interfere  
14 with me being impartial in this case.

15 MS. VAN LANGEVELDE: Okay, thank you.

16 Anybody else?

17 JURORS: (No verbal response).

18 MS. VAN LANGEVELDE: I think I got everybody. Okay.  
19 Has anybody ever had somebody, close friend or -- or  
20 family member, actually tell them, hey, I've been a victim of  
21 sexual assault? Except for Mr. Hillard. I know that you've  
22 talked to your family members. Anybody else ever been like a  
23 close friend or family that they've confided in them, like I  
24 was a victim of a sexual assault?

25 JURORS: (No verbal response).

0084a

1 MS. VAN LANGEVELDE: Anybody have that experience?

2 JURORS: (No verbal response).

3 MS. VAN LANGEVELDE: No. Okay. Anyone known someone  
4 who was accused of sexual assault?

5 And I forgot your name. I'm so sorry.

6 JUROR MARSHALL: Marshall.

7 MS. VAN LANGEVELDE: Miss Marshall?

8 JUROR MARSHALL: Yes.

9 MS. VAN LANGEVELDE: Is that right? Okay. Miss  
10 Marshall, who did you know that was accused?

11 JUROR MARSHALL: The man I live with.

12 MS. VAN LANGEVELDE: The man you live with now?

13 JUROR MARSHALL: (No verbal response).

14 MS. VAN LANGEVELDE: Did that end up going anywhere?  
15 Go to the police, go to trial?

16 JUROR MARSHALL: It went to the police, but it -- I  
17 don't think it ever went to trial.

18 MS. VAN LANGEVELDE: Okay. Do you know if -- was it  
19 -- was it a child? Was it a peer? Anything like that? Or an  
20 -- and adult?

21 JUROR MARSHALL: He was like 17, and she was 16.

22 MS. VAN LANGEVELDE: Okay. Okay. Anything about  
23 that experience that would -- think you couldn't be fair or  
24 impartial --

25 JUROR MARSHALL: No.

0085a

1 MS. VAN LANGEVELDE: -- in this case? All right,  
2 thank you.

3 Mr. Byle? Okay.

4 JUROR BYLE: Yup, that's correct.

5 MS. VAN LANGEVELDE: Who --

6 JUROR BYLE: A good friend of mine, and he's past  
7 away now, but --

8 MS. VAN LANGEVELDE: Okay.

9 JUROR BYLE: -- he was accused of sexual assault.

10 MS. VAN LANGEVELDE: When -- how old was he when he  
11 was accused?

12 JUROR BYLE: Oh, he had to be around 55.

13 MS. VAN LANGEVELDE: Okay. And who was the person  
14 that was accusing him?

15 JUROR BYLE: One of the neighbor girls.

16 MS. VAN LANGEVELDE: Okay. Any -- was that here, in  
17 Eaton County?

18 JUROR BYLE: No, that was in Fowlerville. I don't  
19 know what county is that.

20 MS. VAN LANGEVELDE: Maybe -- maybe livingston.

21 JUROR BYLE: Yeah, I think so.

22 MS. VAN LANGEVELDE: Okay.

23 JUROR BYLE: Yeah, I think Livingston, yeah.

24 MS. VAN LANGEVELDE: All right. Anything about that  
25 experience that would make you feel like, gosh, you know, I



0086a

1 just -- I -- I don't think I could be fair?

2 JUROR BYLE: No. This was a pretty upstanding  
3 person. It's hard to believe that it, you know, went that far  
4 I think he got kinda railroaded, but that's just my own  
5 opinion.

6 MS. VAN LANGEVELDE: Okay. What --

7 JUROR BYLE: And it got settled out of court.

8 MS. VAN LANGEVELDE: So, it didn't go to trial?

9 JUROR BYLE: Didn't go to trial, no.

10 MS. VAN LANGEVELDE: Okay. Thank you --

11 JUROR BYLE: Yup.

12 MS. VAN LANGEVELDE: -- for telling me about that.

13 So, can anyone give me some reasons why you think a  
14 -- a victim, particularly, maybe, a child or a teen-ager, might  
15 not want to report that they've been a victim of sexual assault  
16 right away?

17 And I'm gonna start down here, 'cause this side's a  
18 little quiet.

19 JUROR JACKSON: Fear.

20 MS. VAN LANGEVELDE: Fear. How about you, sir?

21 JUROR RAMER: I would say the same thing. They're  
22 scared.

23 MS. VAN LANGEVELDE: Scared. What do you think they  
24 could be scared of?

25 JUROR RAMER: Just people knowing. I guess knowing

0087a

1 that it happened or, you know, of the person that -- that  
2 would've done it to 'em.

3 MS. VAN LANGEVELDE: Sure. How about you? Miss  
4 Hancock; right?

5 JUROR HANCOCK: Yes.

6 MS. VAN LANGEVELDE: Can you give me -- think of any  
7 reasons why a victim may be, you know --

8 JUROR HANCOCK: Ashamed.

9 MS. VAN LANGEVELDE: Ashamed. Think it might be  
10 their fault even though --

11 JUROR HANCOCK: Yup.

12 MS. VAN LANGEVELDE: -- it's not.

13 How about you, Ms. Towns --

14 JUROR TOWNSEL: Say the same thing, that they are  
15 ashamed.

16 MS. VAN LANGEVELDE: Okay. How about you, Mr.  
17 Kellicut?

18 JUROR KELLICUT: Embarrassed.

19 MS. VAN LANGEVELDE: Embarrassed. You have to talk  
20 about some pretty intimate details; right?

21 JUROR KELLICUT: Yup.

22 MS. VAN LANGEVELDE: I'll start in the back now.  
23 Miss Farr.

24 JUROR FARR: They could be threatened by the person.

25 MS. VAN LANGEVELDE: Threatened by the person. I'll

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1 skip you because you gave me a multitude of reasons.

2 Miss Simon.

3 JUROR SIMON: I would say fear, also, because --  
4 (inaudible) -- kids are really scared of, you know, if they're  
5 being threatened or, you know.

6 MS. VAN LANGEVELDE: What about, kind of, fear of the  
7 unknown, like what would happen if I tell?

8 JUROR SIMON: Well, yes. End up tellin' one person  
9 and then you have to get into a courtroom and tell everybody.

10 MS. VAN LANGEVELDE: Sure.

11 JUROR SIMON: You know, it's shameful, I'm sure.

12 MS. VAN LANGEVELDE: Right. How about Miss Pratt,  
13 can you give me any reasons?

14 JUROR PRATT: Fear was my number one thought, but  
15 then just unsure of what happened, what's right, what's wrong.  
16 They're children; they shouldn't know.

17 MS. VAN LANGEVELDE: Sure. Who -- who teaches us  
18 what's right and wrong?

19 JUROR PRATT: Family.

20 MS. VAN LANGEVELDE: Parents, people in authority;  
21 right? People in your house.

22 How about Ms. Drzik? Did I say it right?

23 JUROR DRZIK: You did.

24 MS. VAN LANGEVELDE: Perfect, okay. Any other reason  
25 you can think of?

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1 JUROR DRZIK: Fear and embarrassment.

2 MS. VAN LANGEVELDE: Okay. So, would anybody be  
3 surprised to learn if a victim of sexual assault didn't tell  
4 right away? Would anybody be like, oh, my gosh, why wouldn't  
5 they tell right away? Especially if they were young teen-  
6 agers.

7 JURORS: (No verbal response).

8 MS. VAN LANGEVELDE: Okay, how about --

9 THE COURT: I need everyone to please turn their cell  
10 phones off.

11 MS. VAN LANGEVELDE: All right. How about if  
12 somebody was going to sexually --

13 THE COURT: Thank you.

14 MS. VAN LANGEVELDE: -- abuse -- sorry, Your Honor.  
15 Sexually abuse a child or a young person -- I'm gonna say like  
16 a teen-ager, middle schooler, your child -- how would that  
17 person do it, to get away with it?

18 JURORS: (No verbal response).

19 MS. VAN LANGEVELDE: Can you think of -- how about  
20 Ms. Jackson? I'm gonna pick on you again.

21 JUROR JACKSON: Can you repeat that?

22 MS. VAN LANGEVELDE: Yeah. If someone was -- was  
23 going to sexually abuse a child or like, you know, a teen,  
24 young teen-ager, how would they do it?

25 JUROR JACKSON: They would make sure that they had

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1 all of their tracks covered and tell the child that, you know  
2 somebody else will pay if they tell or something like that.

3 MS. VAN LANGEVELDE: Sure.

4 JUROR JACKSON: I don't know.

5 MS. VAN LANGEVELDE: Yeah, telling them not to tell  
6 things like that.

7 JUROR JACKSON: Right.

8 MS. VAN LANGEVELDE: How about would there be a lot  
9 of witnesses around?

10 JUROR JACKSON: No.

11 MS. VAN LANGEVELDE: Would anybody expect somebody to  
12 do this in front of a lot of witnesses?

13 JUROR JACKSON: No.

14 MS. VAN LANGEVELDE: All right. How about -- I've  
15 seen -- I think we've seen a lot of news. Sometimes there's  
16 like teachers. Or, like the example we had was like the  
17 grandfather, people in authority. Does any -- would that  
18 surprise anybody if -- if it was a person of authority doing  
19 that to a child?

20 JUROR TOWNSEL: No.

21 MS. VAN LANGEVELDE: No. Teachers -- I think there's  
22 a lot of that in the news sometimes.

23 What about if somebody picked the easiest victim?  
24 Wouldn't you think that, if somebody was gonna do this --  
25 easiest target? Does that make sense?

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1 JURORS: (No verbal response).

2 MS. VAN LANGEVELDE: What would make someone an easy  
3 target? How about you, Miss Simon?

4 JUROR SIMON: Just somebody young --

5 MS. VAN LANGEVELDE: Some --

6 JUROR SIMON: -- easily influenced by an authority  
7 figure.

8 MS. VAN LANGEVELDE: Sure. How about you, Miss  
9 Pratt, can you think of anything?

10 JUROR PRATT: I would say someone that they trust,  
11 that the child trusts.

12 MS. VAN LANGEVELDE: Somebody that they trust.  
13 How about you, Mr. Ramen, can you think of any?

14 JUROR RAMEN: Basically, what they said.

15 MS. VAN LANGEVELDE: What makes someone an easier  
16 target? What about somebody that's not, necessarily,  
17 believable; right?

18 JURORS: (No verbal response).

19 MS. VAN LANGEVELDE: How many of you have kids at  
20 home? Kids at home.

21 JURORS: (No verbal response).

22 MS. VAN LANGEVELDE: How many of you have kids who  
23 are grownups and don't live at home anymore?

24 JURORS: (No verbal response).

25 MS. VAN LANGEVELDE: Okay, kinda both. Who has boys?

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1 JURORS: (No verbal response).

2 MS. VAN LANGEVELDE: I don't have boys. I have  
3 girls. Who has girls?

4 JURORS: (No verbal response).

5 MS. VAN LANGEVELDE: Okay. All right, so most of you  
6 have kids. Of those of you who have kids, have your kids ever  
7 lied to you about not doing their homework?

8 JURORS: (No verbal response).

9 MS. VAN LANGEVELDE: Say it for the recorder.

10 JURORS: Yes.

11 MS. VAN LANGEVELDE: Okay. Have your kids ever lied  
12 to you about, you know, stupid stuff, like I got home at  
13 midnight when they really didn't?

14 JURORS: Yes.

15 MS. VAN LANGEVELDE: Okay. Can all of us agree that  
16 kids lie about stuff like that in their lives?

17 JURORS: Yes.

18 MS. VAN LANGEVELDE: Does that mean that somebody is  
19 lying about being sexually assaulted?

20 JURORS: No. Not necessarily.

21 MS. VAN LANGEVELDE: Okay, fair enough. Not  
22 necessarily. And I think only one of you had -- who's actually  
23 come into court? Mr. Byle, I know you said you were a witness  
24 in a case, but did you actually have to come into court to  
25 testify?

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1 JUROR BYLE: Yeah, I did.

2 MS. VAN LANGEVELDE: You did?

3 JUROR BYLE: Yup.

4 MS. VAN LANGEVELDE: Okay. Anybody else have that  
5 experience, where you had to come before 12, 14 people and have  
6 to testify? Anybody else have to -- ever have to do that?

7 JURORS: (No verbal response).

8 MS. VAN LANGEVELDE: I'm gonna pick on you, Miss  
9 Hancock. How would you expect a young person to come and feel  
10 having to come in and testify?

11 JUROR HANCOCK: Afraid.

12 MS. VAN LANGEVELDE: Afraid. Anybody else have any  
13 -- just shout 'em out at me. How would a young person feel?

14 JUROR MCLENNAN: Ashamed.

15 MS. VAN LANGEVELDE: Ashamed.

16 JUROR MARSHALL: Embarrassed.

17 MS. VAN LANGEVELDE: Embarrassed.

18 JUROR SIMON: Nervous.

19 MS. VAN LANGEVELDE: Nervous. Any other feelings?

20 JURORS: (No verbal response).

21 MS. VAN LANGEVELDE: What can that look like?

22 JURORS: (No verbal response).

23 MS. VAN LANGEVELDE: Physically, what could being  
24 ashamed look like? I'll pick on you, Mr. McLennan.

25 JUROR MCLENNAN: They could cower, they could look



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1 around, hold their hands in a defensive position.

2 MS. VAN LANGEVELDE: Okay. How about you, Miss  
3 Hancock? What can afraid physically look like?

4 JUROR HANCOCK: Shaking.

5 MS. VAN LANGEVELDE: Shaking.

6 JUROR HANCOCK: Not looking up, like the -- speaking  
7 softly.

8 MS. VAN LANGEVELDE: Speaking softly. How about  
9 nervous, what does that look like?

10 JUROR SIMON: I don't know. I'm nervous right now.

11 MS. VAN LANGEVELDE: I'm sorry, I wouldn't have  
12 picked on you. So, you're kinda quiet. How about, you know,  
13 kind of fidgety?

14 JUROR SIMON: Yes, fidgety.

15 MS. VAN LANGEVELDE: Okay. What does lying look  
16 like?

17 JUROR SIMON: Hard to tell. Some people are pretty  
18 good at it.

19 MS. VAN LANGEVELDE: Some people can be good. Some  
20 people can look you right in the eye; true?

21 JUROR SIMON: Um-hum.

22 MS. VAN LANGEVELDE: So, can everyone kind of agree,  
23 though, that a lot of these emotions: Looking down, shaking,  
24 cowering, or just kind of being, you know, soft spoken, those  
25 things can look like nervousness and aren't, necessarily, lies?

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1 Can everybody agree with that?

2 JUROR SIMON: Yes.

3 MS. VAN LANGEVELDE: Okay. Okay, let's talk about  
4 memory or a minute. Of those of you who have kids or had kids  
5 what's the -- what has been your experience as far as a child  
6 sense of time? Yes.

7 JUROR SIMON: They have no sense of time.

8 MS. VAN LANGEVELDE: How about even like middle-  
9 schoolers?

10 JUROR MARSHALL: They don't know till they get their  
11 first job.

12 MS. VAN LANGEVELDE: They don't really know. Like --  
13 and I like to use this example. Has anybody ever been in like  
14 a deer/car accident before?

15 JUROR TOWNSEL: Yes.

16 MS. VAN LANGEVELDE: Okay. Doesn't that feel like it  
17 takes a really long time?

18 JURORS: (No verbal response).

19 MS. VAN LANGEVELDE: Like looking back, you know, it  
20 took forever. Sometimes those experiences are kind of weird,  
21 aren't they?

22 JURORS: (No verbal response).

23 MS. VAN LANGEVELDE: How about, though, when, like,  
24 things happen in a kid's life and they're trying to tell a  
25 story? What has -- what has been like your experience?

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1 JURORS: (No verbal response).

2 MS. VAN LANGEVELDE: So, who are my people with kids  
3 in the house right now?

4 JURORS: (No verbal response).

5 MS. VAN LANGEVELDE: Yeah. All right, I'm gonna pick  
6 on you, sir. When you ask your son or daughter about, you  
7 know, hey, remember Christmastime, they remember that; right,  
8 'cause they remember something special; right?

9 JUROR RAMER: Yes.

10 MS. VAN LANGEVELDE: What if you ask 'em about, like,  
11 hey, what'd you do a year ago on June 21st?

12 JUROR RAMER: Can't remember.

13 MS. VAN LANGEVELDE: They can't remember the date and  
14 time.

15 JUROR RAMER: No.

16 MS. VAN LANGEVELDE: Do you kind of remember the date  
17 of what you were doing maybe a year ago or two years ago or six  
18 years ago?

19 JUROR RAMER: (No verbal response).

20 MS. VAN LANGEVELDE: Can anybody remember what  
21 exactly happened on that date? Unless it was something  
22 special; right?

23 JURORS: (No verbal response).

24 MS. VAN LANGEVELDE: And all of us have that  
25 experience. Does anybody expect the victim to come in and say

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1 it happened exactly on this date, at this time, I know exactly  
2 Does anybody expect that?

3 JURORS: No.

4 MS. VAN LANGEVELDE: Who are my CSI and NCIS  
5 watchers? Who watches those TV shows?

6 JURORS: (No verbal response).

7 MS. VAN LANGEVELDE: Miss Simon?

8 JUROR SIMON: (No verbal response).

9 MS. VAN LANGEVELDE: All right, does everybody  
10 understand that that's TV?

11 JURORS: (No verbal response).

12 MS. VAN LANGEVELDE: Okay. And that this -- this is  
13 not -- I'm sorry, it's not gonna take an hour with commercial  
14 breaks. It's just not, I'm sorry.

15 I will tell you, I expect that there's to be photos  
16 and exhibits. But I'll just tell you straight up, there is no  
17 DNA, there is no fingerprints. There's just none of that  
18 science stuff.

19 Where are my science people who work in science?

20 JURORS: (Hands raised).

21 MS. VAN LANGEVELDE: Does everybody -- are you guys  
22 okay with that?

23 JURORS: Um-hum.

24 MS. VAN LANGEVELDE: Okay. Without DNA and without  
25 fingerprints and without GPS tracking, does everybody still

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1 feel like they can make a decision based on testimony?

2 JURORS: (No verbal response).

3 MS. VAN LANGEVELDE: And, really, based on testimony  
4 alone. Is everybody okay with that?

5 JUROR JACKSON: Um-hum.

6 MS. VAN LANGEVELDE: 'Cause Judge is going to  
7 instruct you that you may find someone guilty based on the  
8 victim's testimony and it need not be corroborated with  
9 anything else. Is everybody okay with that?

10 JURORS: (No verbal response).

11 MS. VAN LANGEVELDE: You guys are quiet on me again.

12 JURORS: Yes.

13 MS. VAN LANGEVELDE: Okay, all right. Anybody think  
14 no? You know what, I'm sorry, I need DNA. If you're that  
15 person, please tell me.

16 JURORS: (No verbal response).

17 MS. VAN LANGEVELDE: And you feel like you need  
18 fingerprints.

19 Can anybody give me a reason -- I'm gonna pick on  
20 you, Miss Sulpher -- why DNA might not be there two, three,  
21 four years later?

22 JUROR SULPHER: I think it depends on the level of  
23 the examination following --

24 MS. VAN LANGEVELDE: Do you think somebody showers in  
25 two, three, four years?

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1 JUROR SULPHER: Yeah.

2 MS. VAN LANGEVELDE: Do you think DNA can be washed  
3 away?

4 JUROR SULPHER: (No verbal response).

5 MS. VAN LANGEVELDE: Bodies heal; right? Can anybody  
6 give me a think -- a reason why you think there might not be  
7 injury in two, three, four years after an event takes place?

8 JUROR HILLARD: Bodies heal.

9 MS. VAN LANGEVELDE: Bodies heal. Okay.

10 So, this is the witness stand. And this is where  
11 people come and testify. Can anybody give me any reason why  
12 they think the witness stand is by you guys?

13 JUROR SIMON: So we can hear what they say to us.

14 MS. VAN LANGEVELDE: So you can hear what they're  
15 saying.

16 JUROR SIMON: Observe them.

17 MS. VAN LANGEVELDE: Observe them. Because it's the  
18 jury's job to decide if somebody is telling the truth or not;  
19 right? Does everybody feel like they can do that?

20 JUROR MCLENNAN: I don't think anyone can know that,  
21 but I think everyone has a fair chance of making that judgment.

22 MS. VAN LANGEVELDE: Okay, that's fair. Anybody else  
23 feel like they could not make a decision?

24 JURORS: (No verbal response).

25 MS. VAN LANGEVELDE: 'Cause that's what -- that's

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1 your job as a juror, okay?

2 JUROR TOWNSEL: I'm just having difficulty with it  
3 being a child. I work in Lansing Public Schools --

4 MS. VAN LANGEVELDE: Um-hum.

5 JUROR TOWNSEL: -- and I work with children. So, I  
6 don't think I'm comfortable or could make an impartial decision  
7 about this case.

8 MS. VAN LANGEVELDE: Okay, well, do you feel --  
9 obviously, both Mr. Carter and I will have an opportunity to  
10 present our evidence --

11 JUROR TOWNSEL: Um-hum.

12 MS. VAN LANGEVELDE: -- and present our testimony.

13 JUROR TOWNSEL: Um-hum.

14 MS. VAN LANGEVELDE: And that the defendant has the  
15 right, absolute right, to come in here, you know, presumed  
16 innocent. And it's my job -- I have the burden to prove to you  
17 beyond a reasonable doubt. So, we're walkin' in clean slate.

18 JUROR TOWNSEL: Um-hum.

19 MS. VAN LANGEVELDE: Do you feel like you can give  
20 the defendant that? Presume that he is innocent until you hear  
21 the testimony, until you hear -- see the evidence?

22 JUROR TOWNSEL: It may be hard.

23 MS. VAN LANGEVELDE: May be hard, but do you think  
24 you could -- you could do that, give him a presumption?

25 JUROR TOWNSEL: Yeah, I could try.

1 MS. VAN LANGEVELDE: Okay. All right. Let's talk  
2 about who has heard the term "proof beyond a reasonable doubt"  
3 or "beyond a reasonable doubt"?

4 JURORS: (No verbal response).

5 MS. VAN LANGEVELDE: Okay, all of -- I think most all  
6 of you have.

7 So, as Judge -- I have that burden, and that's --  
8 that's my job, to prove to you the case beyond a reasonable  
9 doubt. And -- but, I want you to understand, as Judge read to  
10 you, reasonable doubt is a doubt based on common sense and  
11 reason.

12 So, do you all feel like you have common sense?

13 JUROR MCLELLAN: Yes.

14 JUROR TOWNSEL: Yes.

15 MS. VAN LANGEVELDE: Okay. You are reasonable  
16 people?

17 JURORS: Yes.

18 MS. VAN LANGEVELDE: Okay. Good. But, a reasonable  
19 doubt, it infer -- I think sometimes it's hard to grasp that  
20 concept. It's not a mathematical certainty. Okay, it's not a  
21 hundred percent. Does everybody understand that?

22 JUROR SIMON: I believe so.

23 MS. VAN LANGEVELDE: Okay. And it's not -- it's not  
24 like 75 percent. It's just -- it's a doubt based on common  
25 sense or reason or not. Make sense?



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1 JURORS: (No verbal response).

2 MS. VAN LANGEVELDE: Okay. So, I like to think --  
3 so, I have a four-year-old, and think about making a puzzle,  
4 okay. And you're putting -- the pieces of evidence are a  
5 puzzle, and you're making a picture. And let's just say you  
6 don't know what the puzzle is, and you're just finally putting  
7 the pieces together. It's pretty hard to do that. But, let's  
8 say the puzzle has -- and you're like, oh, hey, that's an ear  
9 -- it's a sound puzzle. It says meow. There's some whiskers  
10 But, you're missing the back end. You're missing what's --  
11 whatever's on the bottom. Does everybody still know what that  
12 is?

13 JURORS: (No verbal response).

14 MS. VAN LANGEVELDE: What is it?

15 JURORS: A cat.

16 MS. VAN LANGEVELDE: A cat, okay. So, you -- I'll  
17 just say this. You may be missing some puzzle pieces. You may  
18 be wondering, well, what about this or what about that, but if  
19 you can still see the big picture and know what the picture is  
20 beyond a reasonable doubt -- you know it's a cat; right? You  
21 don't need every single piece. Does that make sense?

22 JURORS: (No verbal response).

23 MS. VAN LANGEVELDE: Okay, all right. And so, if I  
24 -- if I am able to prove to you beyond a reasonable doubt each  
25 of the elements, which a crime is made up of elements, what

1 would your verdict be?

2 JUROR MCLENNAN: Guilty.

3 MS. VAN LANGEVELDE: Guilty. Would everybody be able  
4 to find someone guilty? If I meet my burden and I prove to you  
5 my case beyond a reasonable doubt, would everybody feel like  
6 they could do that?

7 JURORS: Yes.

8 MS. VAN LANGEVELDE: Despite -- you know, I  
9 understand, these kind of cases are tough, they're hard. And  
10 is everybody, again, okay with I -- I can make a decision based  
11 on just witness testimony alone? Everybody okay with that?

12 JURORS: Yes.

13 MS. VAN LANGEVELDE: All right, thank you, all, so  
14 much.

15 THE COURT: Mr. Carter.

16 MR. CARTER: Thank you. Good morning.

17 JURORS: Good morning.

18 MR. CARTER: I'd -- I'd like to first thank you for  
19 your time and effort. You know, I've been doing this for some  
20 time, and I've noticed that, after we're done with the trial,  
21 things are hectic and I don't get to talk to the jury and thank  
22 them for their service, whether win, lose or draw.

23 And I'd like to thank you folks, too. Now, you may  
24 not be called up here, and you think, oh, man, I just wasted my  
25 whole morning, but you really didn't. It's very important that

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1 my client see, basically, a sea of individuals that could  
2 randomly be put in place here to serve in judgment over this  
3 case. So, your -- we really thank you for that. Even though  
4 you may not get called, we really thank you for your time and  
5 paying attention.

6 And as the prosecutor said, is that please try to pay  
7 attention. Even though we have our direction towards the  
8 sitting -- the people sitting here, your attentiveness is very  
9 important because, if you end up getting picked and thrown back  
10 in here, we don't have to go over and reiterate a lot of the  
11 things.

12 But, I really wanted to take the opportunity to thank  
13 you all for your time and effort.

14 Now, when I first started trying cases, I -- I sat up  
15 all night thinkin', you know what, I've got to ask these really  
16 important questions to the jury because my client's life hangs  
17 in the balance of the jury. And I really concentrated on that.  
18 But as I learned and tried more cases, I've learned to -- to  
19 discover that I can really narrow down my questions because  
20 jurors tend to do the right thing. They tend to do and follow  
21 the Judge's instruction. So -- and, usually, we have adult  
22 jurors. We don't have kids. And I know kids tend not to  
23 follow instructions very well, but adults can, too.

24 Can you all follow the instructions that the Judge  
25 gives you?

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1 JURORS: Yes, yeah.

2 MR. CARTER: Okay. What if -- what if the Judge  
3 gives you an instruction and you're like, man, I don't think  
4 that's a good instruction, I've got a better instruction? Can  
5 you follow what the Judge says? Can you put aside your own  
6 biases?

7 JURORS: Yes.

8 MR. CARTER: Can you all do that? Okay.

9 Now, before I forget, I'm a -- I'm a pacer, but I try  
10 -- I've learned to project my voice because I -- I know that  
11 I'm -- I'm hard to hear sometimes. And since I like to walk  
12 around, I do try to speak up loudly. If you don't hear me, let  
13 me know, and I'll try to -- I'll try to, you know, give you  
14 more of attention and -- and more face-to-face.

15 Miss Couns -- Townsel.

16 JUROR TOWNSEL: Yes.

17 MR. CARTER: Is it Townsel?

18 JUROR TOWNSEL: Townsel.

19 MR. CARTER: Thank you so much for your candidness  
20 about being a teacher and having a hard time sitting over a  
21 case like that because you deal with children. And we're not  
22 here to force you into putting away all your biases --

23 JUROR TOWNSEL: Um-hum.

24 MR. CARTER: -- and all that.

25 JUROR TOWNSEL: Um-hum.

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1 MR. CARTER: We just want to make sure that you can  
2 actually sit and just start with a clean slate. And even  
3 though I -- I think the prosecutor kind of walked you down the  
4 road to see --

5 JUROR TOWNSEL: Um-hum.

6 MR. CARTER: -- if you could, I -- I have some  
7 reservations. Do you still have some reservations?

8 JUROR TOWNSEL: Yes.

9 MR. CARTER: Okay, because you indicated -- she  
10 asked, you know, can you start with a clean slate. You said  
11 you could try. That's -- that's -- can you be a hundred  
12 percent sure?

13 JUROR TOWNSEL: I guess so, yes.

14 MR. CARTER: Okay. So -- so, you -- would you feel  
15 comfortable if you were on a trial and you were the juror for  
16 you in a case like this?

17 JUROR TOWNSEL: Probably not.

18 MR. CARTER: Okay. So, those biases are pretty  
19 strong.

20 JUROR TOWNSEL: Yes.

21 MR. CARTER: Okay. And it would be extremely hard  
22 for you to set that aside?

23 JUROR TOWNSEL: Not extremely hard, but I would try.

24 MR. CARTER: Okay. Do you think you can?

25 JUROR TOWNSEL: Yeah.

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1 MR. CARTER: Okay. But, why would you not want to be  
2 a juror, then, if you were on trial?

3 JUROR TOWNSEL: I don't know. I guess I would want  
4 somebody who could really be more open.

5 MR. CARTER: Okay. And you don't believe you could  
6 be more open?

7 JUROR TOWNSEL: I can, but not a hundred percent.

8 MR. CARTER: Okay. There's no right or wrong answer.

9 JUROR TOWNSEL: Right.

10 MR. CARTER: We're not gonna --

11 JUROR TOWNSEL: Right.

12 MR. CARTER: -- look down upon you --

13 JUROR TOWNSEL: Right.

14 MR. CARTER: -- if you can't.

15 JUROR TOWNSEL: Right.

16 MR. CARTER: We just want to make sure you can be --

17 JUROR TOWNSEL: Yup.

18 MR. CARTER: Do -- do --

19 JUROR TOWNSEL: I would try, yes.

20 MR. CARTER: You would try.

21 JUROR TOWNSEL: Yes.

22 MR. CARTER: But, can you?

23 JUROR TOWNSEL: Yes.

24 MR. CARTER: All right. Now, obviously, I -- I start  
25 with a list of questions that I want to ask, but a lot of times

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1 the prosecutor hits on those already, so I don't -- I don't  
2 ask. I don't ask them. I don't beat a dead horse. But, I do  
3 have some questions here. And some of the questions the  
4 prosecutor asked is -- is do you have kids and have they ever  
5 lied about things. Do you recall that? Everybody, pretty  
6 much, said yes. And what are some of the reasons why kids lie

7 JUROR TOWNSEL: Don't want to get in trouble.

8 MR. CARTER: Don't want to get in trouble.

9 JUROR FARR: Fear.

10 MR. CARTER: Pardon?

11 JUROR FARR: Fear.

12 JUROR CARTER: Fear. What about to deflect off of  
13 what they've done wrong to somebody else? That be a reason to  
14 lie?

15 JUROR MCLENNAN: Yes.

16 JUROR JACKSON: Yes.

17 MR. CARTER: Probably a big one, huh?

18 JUROR JACKSON: Yes.

19 MR. CARTER: All right. And the prosecutor went  
20 through some -- some definitions or -- or how you can tell if  
21 somebody's nervous when they're testifying, they're shaking or  
22 they're defensive, with their hands. I think you indicated  
23 their body language would be defensive. They're fidgety.

24 Wouldn't you all agree that those are kinda  
25 characteristics of people lying, also?

0109a

1 JURORS: (No verbal response).

2 MR. CARTER: Couldn't those be? Very defensive,  
3 maybe looking down at the ground.

4 JUROR MCLENNAN: Yes.

5 MR. CARTER: Those are also characteristics of  
6 somebody not telling the truth; right?

7 JUROR MCLENNAN: Yes.

8 MR. CARTER: How many of you all have children?

9 JURORS: (Hands raised).

10 MR. CARTER: Okay. How many have more than one  
11 children (sic)?

12 JURORS: (Hands raised).

13 MR. CARTER: Okay. How many have brothers and  
14 sisters?

15 JURORS: (Hands raised).

16 MR. CARTER: Okay. Did -- did -- did anybody not  
17 raise their hand on those two questions?

18 JUROR MARSHALL: I'm an only child.

19 MR. CARTER: Man, that proposes a problem for my next  
20 questions, but maybe you can follow along. What do you do for  
21 a living?

22 JUROR MARSHALL: Work, work in a factory.

23 MR. CARTER: Okay, thanks. Well, maybe you could  
24 follow along. You know, I have -- I grew up with a family of  
25 six kids. And I knew that when there was a conflict between me



0110a

1 or one of my brothers and sisters, whoever got to Mom first and  
2 told their story, boy, they had the advantage. You all can  
3 relate to that?

4 JUROR HILLARD: I don't think so.

5 MR. CARTER: No, you can't --

6 JUROR HILLARD: No.

7 MR. CARTER: -- relate to that?

8 JUROR BYLE: You think that now he was in trouble  
9 because somebody --

10 MR. CARTER: Ah, so, you can relate to it but on the  
11 other side; right?

12 JUROR BYLE: Right.

13 MR. CARTER: Right. Now, isn't that true? Whoever  
14 gets their story out first tends to -- to be at an advantage  
15 and puts the other side at a disadvantage. That's just how  
16 life is. We see it in politics all the time, don't we?

17 JUROR BYLE: Yup.

18 MR. CARTER: What's important here is -- and I -- I  
19 probably will -- will date myself a little bit. You all know  
20 -- do you all remember Paul Harvey?

21 JUROR TOWNSEL: Um-hum.

22 JUROR RAMER: Yes.

23 MR. CARTER: He used to have that incredible radio  
24 station, that radio show. And he's start off, and he'd tell a  
25 story, and then he'd flip it around. And then, at the end,

0111a

1 he'd say, "Now you know the rest of the story." Do you --

2 JUROR RAMER: Yeah.

3 MR. CARTER: Those were so neat. I guess what I'm  
4 trying -- trying to get across here is we know that when  
5 there's two sides to the story, that the person that tells  
6 their story, they tend to look really good because they're  
7 telling their story. But, can you wait until you hear the  
8 other side before you pass judgment? Can you do that?

9 JURORS: (No verbal response).

10 MR. CARTER: Can you just -- just wait and hear, and  
11 then compare?

12 JURORS: (No verbal response).

13 MR. CARTER: Can you do that?

14 JUROR KELLICUT: Yes.

15 JUROR MARSHALL: Um-hum.

16 MR. CARTER: All right. Now, I have a little  
17 daughter who, bless her heart, she's such a marshmallow. You  
18 know, you look -- you can convince her that the sky is durango.  
19 You just can. She -- she's just very convincing. I bring that  
20 up is can everyone of you guys stick to your guns? If you  
21 listen to all the evidence and let -- whether it's guilty or  
22 not guilty, I don't care, but you're in the minority. Maybe  
23 you're the last holdout. And all your fellow jurors are trying  
24 to convince you to flip. But in your heart and sole, you know  
25 that your position is right and you feel that way. Can you

0112a

1 stick to your guns no matter how much pressure is given to you

2 JURORS: (No verbal response).

3 MR. CARTER: Can you all do that?

4 JURORS: Yes, um-hum.

5 JUROR MCLENNAN: Feeling is hard.

6 MR. CARTER: Pardon?

7 JUROR MCLENNAN: Feelings are not the determining  
8 factor. It would be if I thought my argument was sound and I  
9 was not convinced by the argument of the other jurors, then I  
10 would stick to my side.

11 MR. CARTER: Sure. Yeah, you don't want to just  
12 throw away reason, but -- but if you felt you had a good reason  
13 and you were sound in it, can you stick to your guns?

14 JUROR MCLENNAN: Yes.

15 MR. CARTER: What if it's -- what if it's at five  
16 o'clock and you -- and you're -- you're hungry and you want to  
17 go home, can you still stick to your gun?

18 JURORS: (No verbal response).

19 MR. CARTER: Can you do that?

20 JURORS: (No verbal response).

21 MR. CARTER: All right. Now, what would you imagine  
22 the most difficult part of defending yourself against a false  
23 allegation? What do you think that would be?

24 JURORS: (No verbal response).

25 MR. CARTER: Any takers?

0113a

1 JURORS: (No verbal response).

2 MR. CARTER: What about if there's no witnesses?  
3 Wouldn't that be tough to defend yourself against a false  
4 allegation?

5 JURORS: (No verbal response).

6 MR. CARTER: Was a he said/she said.

7 JUROR MCLENNAN: That's also an advantage in  
8 defending yourself.

9 MR. CARTER: And why is that?

10 JUROR MCLENNAN: Because there's no witness for the  
11 accuser either.

12 MR. CARTER: Right. It could go both ways. Right?

13 JUROR MCLENNAN: Right.

14 MR. CARTER: How would you prove something did not  
15 happen?

16 JURORS: (No verbal response).

17 MR. CARTER: It's very difficult, isn't it?

18 JURORS: (No verbal response).

19 MR. CARTER: It's hard to prove a negative, isn't it?

20 JURORS: (No verbal response).

21 MR. CARTER: Can you think of a way to prove that  
22 something didn't happen?

23 JUROR MCLENNAN: If it cannot happen at all.

24 MR. CARTER: Yeah, that would be one way. Any other  
25 ways?

0114a

1 JURORS: (No verbal response).

2 MR. CARTER: It's very hard, isn't it?

3 JURORS: (No verbal response).

4 MR. CARTER: For example, if you were in a room with  
5 a person that claimed that you sexually assaulted them, how  
6 would you prove that you didn't do it?

7 JURORS: (No verbal response).

8 MR. CARTER: You're on trial. How would you prove  
9 that?

10 JURORS: (No verbal response).

11 MR. CARTER: If there's no witnesses, and the  
12 allegations are four years later, no DNA, can you do that?

13 JURORS: (No verbal response).

14 MR. CARTER: How would you do that?

15 JUROR MCLENNAN: Are you asking me?

16 MR. CARTER: Yes, I'm asking you. I'm sorry, I  
17 didn't --

18 JUROR MCLENNAN: I would describe the offense and  
19 hope that your story was found credible.

20 MR. CARTER: Okay.

21 JUROR FARR: You'd hope that the other person would  
22 back down.

23 MR. CARTER: Pardon?

24 JUROR FARR: Hope that the other person backed down  
25 and told the truth.

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1 MR. CARTER: Okay.

2 JUROR FARR: If the person making the allegation --

3 MR. CARTER: What if you're -- what if you're saying  
4 it just never happened? How -- how would you prove that?

5 JURORS: (No verbal response).

6 MR. CARTER: It's extremely hard, isn't it?

7 JUROR TOWNSEL: Um-hum.

8 MR. CARTER: It's extremely hard to prove something  
9 that didn't happen. For instance, it's pretty hard for me to  
10 prove to you guys that I went to -- that I did not go to  
11 Florida three years ago. Wouldn't that be hard for me to do,  
12 to prove that to you?

13 JURORS: (No verbal response).

14 MR. CARTER: How would you do that?

15 JURORS: (No verbal response).

16 MR. CARTER: It's extremely hard. That's why the  
17 burden is on the prosecution. Because the prosecution must  
18 prove their case beyond a reasonable doubt. The defendant  
19 doesn't have to prove anything. He doesn't have to prove his  
20 innocence. The prosecution must prove that he's guilty.

21 Some people feel that a child would never falsely  
22 accuse anyone of doing something. Do you believe in that?

23 JUROR MCLENNAN: No.

24 MR. CARTER: Of course not. Other people feel that a  
25 child would falsely accuse someone of doing something no matter

0116a

1 what. Do you believe that?

2 JUROR MCLENNAN: No.

3 JUROR MARSHALL: No.

4 JUROR HANCOCK: No.

5 MR. CARTER: It's kind of -- you kinda have to go as  
6 -- you kind of have to go along as you see it, don't you?  
7 Because a child, children, can falsely accuse people, and they  
8 -- and they can also tell the truth. It's up to you guys to  
9 decide; correct?

10 JURORS: (No verbal response).

11 MR. CARTER: What are some of the reasons why a child  
12 would falsely accuse someone of a sexual assault?

13 JURORS: (No verbal response).

14 MR. CARTER: Attention? What else?

15 JUROR MCLENNAN: Possibly payback for some other  
16 disagreement or slight.

17 MR. CARTER: Sure. Specially in a stepparent  
18 household. You can see some conflict between that; right?

19 JUROR HANCOCK: Sure.

20 MR. CARTER: Jealousy, maybe they don't like their  
21 rules or their authority; correct?

22 JURORS: (No verbal response).

23 MR. CARTER: Maybe they like being at the non-  
24 custodial parent's house better; right?

25 JURORS: (No verbal response).

0117a

1 MR. CARTER: Try to get -- tryin' to get rid of 'em  
2 In this case, we have a stepchild who's accusing  
3 their stepfather of sexually assaulting them. The stepfather  
4 obviously, is claiming that that didn't happen. What would be  
5 im -- important to you in deciding who was telling the truth in  
6 something like that?

7 JUROR SIMON: Character witnesses.

8 MR. CARTER: Character witnesses. What else?

9 JURORS: (No verbal response).

10 MR. CARTER: Anything else?

11 JUROR MCLENNAN: The length and history of their  
12 other interactions.

13 MR. CARTER: Okay. Anything else?

14 JURORS: (No verbal response).

15 MR. CARTER: In a he said/she said situation, because  
16 that's, basically, what we're gonna have here, what would be  
17 important to you in deciding who's actually telling the truth?

18 JUROR BYLE: You'd have to have some character  
19 witnesses to -- to substantiate the, you know, person alleging  
20 that crime.

21 MR. CARTER: Would you give more credence to the  
22 younger individual making the claim than you would the other  
23 person?

24 JUROR BYLE: Not necessarily. I'd -- I -- I'd have  
25 to, you know, look at the facts. But, some people have a



0118a

1 vendetta, you know --

2 MR. CARTER: Sure.

3 JUROR BYLE: -- against somebody, and they just want  
4 to get rid of them.

5 MR. CARTER: Okay. What about would you give more  
6 credence to the female than a male?

7 JUROR BYLE: No, I'd have to see the evidence.

8 JUROR MCLENNAN: The adult, in that situation, tends  
9 to have more power. I would be inclined to give more credence  
10 to the person who had less power.

11 MR. CARTER: Any why is that?

12 JUROR MCLENNAN: Because I would believe that they're  
13 -- I guess that there's a lesser chance of them getting a fair  
14 hearing. So, I would want to give great consideration to their  
15 complaint, take it very seriously.

16 MR. CARTER: Okay. But, do you see the crux of that  
17 problem? Now, you've given less chance of the -- the adult  
18 getting a fair shake because you're giving the younger child  
19 more credence. Isn't that a dilemma now?

20 JUROR MCLENNAN: In a particular case, it is a  
21 dilemma. In general, I think it is more common for power to be  
22 abused than for somebody to, you know, seek to --

23 MR. CARTER: All right. Go -- go ahead. I didn't  
24 want to --

25 JUROR MCLENNAN: Seek to attack someone in the

0119a

1 position of power over them.

2 MR. CARTER: Okay. So, if I'm hearing your -- if I  
3 hearing you right, you're going to give a child, or a  
4 stepchild, more credence right from the get-go.

5 JUROR MCLENNAN: Unless the nature of their testimony  
6 would lead me to doubt that, but --

7 MR. CARTER: So, you -- you'd -- you'd get -- you'd  
8 start off giving them more credence without hearing anything,  
9 just because of their position in life; correct?

10 JUROR MCLENNAN: I feel like I shouldn't, but I think  
11 that might be the case.

12 MR. CARTER: Well, what if the Judge told you you  
13 can't do that?

14 JUROR MCLENNAN: Then, I'd try my best to not do  
15 that.

16 MR. CARTER: Okay. When you say you'd try your best,  
17 though -- I mean, sometimes our best isn't good enough. Can  
18 you?

19 JUROR MCLENNAN: I think I can.

20 MR. CARTER: How would your friends or family members  
21 react to you if they found that you had been sitting on a CSC  
22 case, trial, and you came back with a not verdict? I mean --  
23 not verdict -- a not guilty verdict.

24 JURORS: (No verbal response).

25 MR. CARTER: Do you think you'd get razzed?

0120a

1 JUROR HANCOCK: No.

2 MR. CARTER: Okay. Now, in our system, the accused  
3 doesn't, necessarily, have to take the stand. Now, my wife,  
4 bless her heart, she hates that I do criminal defendant work.  
5 She thinks that if you -- if the defendant never takes the  
6 stand, he's hiding something and is guilty as sin. So, for the  
7 prosecutor, if she's ever on the jury, you should keep her on  
8 the jury. Do any of you guys believe that?

9 JUROR HILLARD: Yes.

10 JUROR MCLENNAN: No.

11 JUROR TOWNSEL: No.

12 MR. CARTER: Who said -- hold on. Who said yes?

13 JUROR HILLARD: I said yes.

14 MR. CARTER: You said yes. What -- so, you believe  
15 that if the defendant doesn't --

16 JUROR HILLARD: He should be willing to go up there  
17 and try to plead for himself.

18 MR. CARTER: Okay. So, you -- you would hold that  
19 against him?

20 JUROR HILLARD: Yeah.

21 MR. CARTER: Right from the get-go?

22 JUROR HILLARD: Yeah.

23 MR. CARTER: What if the Judge told you you can't do  
24 that? Would you still hold it against him?

25 JUROR HILLARD: It's my opinion. Yeah, it's my

0121a

1 opinion, not hers.

2 MR. CARTER: Okay. So, you -- you'd definitely --  
3 you must hear from the defendant.

4 JUROR HILLARD: (No verbal response).

5 MR. CARTER: Who else said yes?

6 JURORS: (No verbal response).

7 MR. CARTER: What if the Judge told you you can't do  
8 that?

9 JUROR MARSHALL: It's still your opinion. I mean --

10 MR. CARTER: So, you -- you would --

11 JUROR MARSHALL: Yes.

12 MR. CARTER: You -- you'd start off with that  
13 opinion, that you've --

14 JUROR MARSHALL: No, it's --

15 MR. CARTER: -- got to hear from him?

16 JUROR MARSHALL: I wouldn't start off with that.

17 But, I mean, wouldn't you want to, you know, stand up and tell  
18 your story?

19 MR. CARTER: Well --

20 JUROR MARSHALL: When you're --

21 MR. CARTER: -- there's -- there's lots of different  
22 reasons why one would not want to take the stand. Maybe, you  
23 know, they're a fidgety person and they're scared.

24 JUROR MARSHALL: Right.

25 MR. CARTER: Maybe they feel like they don't present

0122a

1 well. Could you -- would you still hold that against him?

2 JUROR MARSHALL: No, I guess not.

3 MR. CARTER: Okay. Who -- who else raised their  
4 hand? What about you?

5 JUROR HANCOCK: He has a right to defend himself.  
6 mean, if he doesn't go up there to defend himself --

7 MR. CARTER: Then, what? You just defeat him  
8 automatically?

9 JUROR HANCOCK: Not necessarily.

10 MR. CARTER: Do you feel like you must hear from him?  
11 You must hear his side of the story?

12 JUROR HANCOCK: I think it would present better in  
13 court.

14 MR. CARTER: Okay, but -- but that's not my question,  
15 though. And I can appreciate that. I guess what I'm asking  
16 you is -- is that, if he chose not to testify, would you hold  
17 that against him?

18 JUROR HANCOCK: It would be hard not to.

19 MR. CARTER: Okay. But, what if the Judge told you  
20 you can't hold it against him, would you still hold it against  
21 him?

22 JUROR HANCOCK: It's my opinion.

23 MR. CARTER: Is that a yes?

24 JUROR HANCOCK: Yes.

25 MR. CARTER: What would you -- can you guys think of

0123a

1 reasons why a person, who's falsely accused, may not take the  
2 stand?

3 JUROR MCLENNAN: They may feel that their emotions  
4 would overcome them, that they could get angry or upset in a  
5 way that wouldn't show their situation accurately.

6 MR. CARTER: Okay. Good, good answer. Anybody else?

7 JUROR FARR: They might not want the cross-  
8 examination. It might confuse 'em.

9 MR. CARTER: Okay. Anything else?

10 JURORS: (No verbal response).

11 MR. CARTER: Now, the prosecutor, she made a -- a  
12 neat little thing about the puzzle, you know, trying to explain  
13 reasonable doubt to you. And, you know, it's, pretty much, all  
14 of the pieces together except one way down there. You all  
15 understand that there are elements of a crime; right?

16 JURORS: (No verbal response).

17 MR. CARTER: And the Judge is gonna tell you what  
18 those elements are. And she has the duty to prove each and  
19 every one of those elements beyond a reasonable doubt.

20 Now, let's suppose that one piece way down below  
21 doesn't look real, real significant. You, pretty much, can  
22 figure out that it's a cat. But, what if that's not what  
23 you're trying to figure out, that the puzzle isn't actually a  
24 cat, but the puzzle is a cat with a certain background? And  
25 that little piece is very important to determine exactly what

0124a

1 that background is. Now, you wouldn't just say close enough  
2 for her and -- and return a verdict of guilty because it's just  
3 a little piece of the background missing. I can make out that  
4 it's a cat. You wouldn't -- you wouldn't do that now, would  
5 you?

6 JUROR MCLENNAN: No.

7 MR. CARTER: Wouldn't you want the whole puzzle at  
8 that point?

9 JURORS: (No verbal response).

10 MR. CARTER: I mean, we're talkin' about a jigsaw  
11 puzzle. Would you accept buyin' a -- purchasing a jigsaw  
12 puzzle from a store and coming home and puttin' it together and  
13 say, oh, it's just missing one piece, that's good enough?

14 JURORS: (No verbal response).

15 MR. CARTER: No. We're talking about a crime, not a  
16 jigsaw puzzle. It's important that you hold her to her  
17 standard beyond a reasonable doubt on every single element.

18 Now, I just have one last question. Is -- well,  
19 maybe a couple. Is there anything that I didn't ask or the  
20 Judge didn't ask or the prosecutor didn't ask that you believe  
21 is important, that we should know about?

22 JURORS: (No verbal response).

23 MR. CARTER: So, there's nothing?

24 JURORS: (No verbal response).

25 MR. CARTER: Is there anybody here that would be

0125a

1 uncomfortable being -- having you as a juror if you were on  
2 trial?

3 JURORS: (No verbal response).

4 MR. CARTER: Anybody?

5 JURORS: (No verbal response).

6 MR. CARTER: All right, thank you.

7 THE COURT: Ms. Van Langevelde, any challenges for  
8 cause?

9 MS. VAN LANGEVELDE: I do -- I do not. Thank you.

10 THE COURT: Mr. Carter, any challenges for cause?

11 MR. CARTER: Yes, I think Mr. Hillard, Your Honor.

12 THE COURT: And on what basis?

13 MR. CARTER: Well, he indicated that if the defendant  
14 were not to testify, he could not put that aside, and that even  
15 if it was told by the Judge that he shouldn't use that against  
16 him, he indicated that he would and it would be his opinion.

17 THE COURT: What do you think about that, Mr.  
18 Hillard?

19 JUROR HILLARD: What do I think?

20 THE COURT: And we want jurors to have opinions, but  
21 I will be giving an instruction that the defendant has a right  
22 to not take the stand. And if the defendant exercises that  
23 right, you must not think of it as evidence of his guilt.

24 Do you believe that you would be able to do that?

25 JUROR HILLARD: I don't think so in this case.



0126a

1 THE COURT: Okay. I thank you very much for being  
2 here. The Court does find that the juror does show a state of  
3 mind that would prevent him from reaching a just verdict.

4 Thank you, sir. Have a nice day.

5 Okay, Doreen Catherine Earle. And how are you this  
6 morning?

7 JUROR EARLE: I'm good. How are you?

8 THE COURT: Good. So, were you able to hear all of  
9 the questions that have been asked this morning?

10 JUROR EARLE: Yes.

11 THE COURT: There was a lot of 'em, huh?

12 JUROR EARLE: Yes.

13 THE COURT: So, I'm just gonna talk about my  
14 questions.

15 JUROR EARLE: All right.

16 THE COURT: Would you have answered yes to any of the  
17 questions I asked, which, really, have to do with have you been  
18 on a jury before?

19 JUROR EARLE: No, I haven't been on a jury before.

20 THE COURT: Do you know anybody here?

21 JUROR EARLE: Nope.

22 THE COURT: Know anybody in the jury already?

23 JUROR EARLE: Nope.

24 THE COURT: Ever had any dealings with the  
25 prosecutor's office, in any way?

0127a

1 JUROR EARLE: No.

2 THE COURT: Or, a prosecutor's office --

3 JUROR EARLE: No.

4 THE COURT: -- actually. Okay. Have any family  
5 members that are involved in the criminal justice system?

6 JUROR EARLE: No.

7 THE COURT: Okay. Any reason that you can think of  
8 that you would have -- that you would be unable to be fair and  
9 impartial?

10 JUROR EARLE: No.

11 THE COURT: Ms. Van Langevelde.

12 MS. VAN LANGEVELDE: Thank you, Your Honor.

13 Ms. Earle, were you able to hear me okay?

14 JUROR EARLE: Oh, yes.

15 MS. VAN LANGEVELDE: Okay. So, you're a teacher.

16 JUROR EARLE: Yes.

17 MS. VAN LANGEVELDE: What do you teach?

18 JUROR EARLE: Middle school.

19 MS. VAN LANGEVELDE: So, you deal with the middle  
20 school, 13, 14 --

21 JUROR EARLE: Yes.

22 MS. VAN LANGEVELDE: -- 15 --

23 JUROR EARLE: Yes.

24 MS. VAN LANGEVELDE: -- 12, that age range.

25 JUROR EARLE: Yup.

0128a

1 MS. VAN LANGEVELDE: Okay. And you're a mandated  
2 reporter. And I feel bad. Is anybody else a mandated reporter  
3 because of their job?

4 JURORS: (No verbal response).

5 MS. VAN LANGEVELDE: Have you ever had to call in a  
6 -- a complaint to Child Protective Services?

7 JUROR EARLE: Yes.

8 MS. VAN LANGEVELDE: For -- how about or sexual  
9 assault?

10 JUROR EARLE: No.

11 MS. VAN LANGEVELDE: Ever had any friends or close  
12 relatives, anybody that you know been a victim of sexual  
13 assault?

14 JUROR EARLE: Yes.

15 MS. VAN LANGEVELDE: Who's that?

16 JUROR EARLE: It was a co-worker. It was a date rape  
17 situation.

18 MS. VAN LANGEVELDE: Okay. So, was she your -- I'm  
19 assuming it was a she.

20 JUROR EARLE: Yes.

21 MS. VAN LANGEVELDE: Was an adult at the time?

22 JUROR EARLE: Yes.

23 MS. VAN LANGEVELDE: Ever know a child victim of  
24 sexual assault?

25 JUROR EARLE: Yes.

0129a

1 MS. VAN LANGEVELDE: Do you know if that person told  
2 right away?

3 JUROR EARLE: I work with so many kids, honestly,  
4 there's several that have been victims. So, I've -- I was not  
5 part of when they reported it, though.

6 MS. VAN LANGEVELDE: Okay.

7 JUROR EARLE: So -- but, I was aware of it at the  
8 time they were my students, so which is middle school.

9 MS. VAN LANGEVELDE: So, you were, essentially -- you  
10 became aware of it at the time it was reported? Not --

11 JUROR EARLE: Or after the fact.

12 MS. VAN LANGEVELDE: Okay.

13 JUROR EARLE: Because of their history, yes.

14 MS. VAN LANGEVELDE: Okay. Did you ever learn later  
15 on that a student that you had had actually came out and said  
16 she was a vic -- or, he -- he or she was a victim of sexual  
17 assault and thought, well, that makes sense?

18 JUROR EARLE: Because of their behaviors, you mean?

19 MS. VAN LANGEVELDE: Um-hum. Yes.

20 JUROR EARLE: Yes.

21 MS. VAN LANGEVELDE: Okay.

22 JUROR EARLE: Yes.

23 MS. VAN LANGEVELDE: But, did you -- you did not know  
24 it at the time.

25 JUROR EARLE: No.

0130a

1 MS. VAN LANGEVELDE: And didn't think about it at the  
2 time.

3 JUROR EARLE: No.

4 MS. VAN LANGEVELDE: Okay. Do you know of any  
5 reasons why a victim might not want to report sexual assault  
6 right away?

7 JUROR EARLE: Everything that they've said so far,  
8 yeah.

9 MS. VAN LANGEVELDE: Okay, anything different?

10 JUROR EARLE: Probably embarrassment of what they  
11 would have to go through explaining to their parents, very  
12 personal information being shared.

13 MS. VAN LANGEVELDE: Okay. What if someone were  
14 going to, say, victimize a young person, maybe a child --

15 JUROR EARLE: Um-hum.

16 MS. VAN LANGEVELDE: -- in a sexual assault, how  
17 would they do it?

18 JUROR EARLE: Meaning like in secret when no one's  
19 around --

20 MS. VAN LANGEVELDE: Right.

21 JUROR EARLE: -- kind of thing?

22 MS. VAN LANGEVELDE: Yeah --

23 JUROR EARLE: Is that what you're --

24 MS. VAN LANGEVELDE: -- secret, no --

25 JUROR EARLE: -- gettin' at?

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MS. VAN LANGEVELDE: -- witnesses.

JUROR EARLE: Right.

MS. VAN LANGEVELDE: Would it surprise you that the person that would do that wouldn't have witnesses around or would do it in private, wouldn't do it around other people?

JUROR EARLE: No, that's -- no.

MS. VAN LANGEVELDE: Okay. How -- and being a teacher, how do you find that -- you have kids around that age? How are their memories, as far as remembering back dates or things like that?

JUROR EARLE: Right. I -- like was said before, they remember the important things in detail. Like you said, the car crash, the deer, kind of was in slow motion, remember things, events. Specific dates through years gone, I don't remember.

MS. VAN LANGEVELDE: Yeah. Okay. Are you -- why do you think that we might not have DNA evidence in a case where it happened --

JUROR EARLE: Because of --

MS. VAN LANGEVELDE: -- three or four years ago?

JUROR EARLE: -- exactly that; it's too long ago.

MS. VAN LANGEVELDE: Okay. Would you expect that?

JUROR EARLE: No.

MS. VAN LANGEVELDE: Do you feel like you could judge somebody's credibility, whether they were telling the truth or

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1 not?

2 JUROR EARLE: I hope so.

3 MS. VAN LANGEVELDE: Okay. Do you feel like you'd be  
4 able to do that?

5 JUROR EARLE: Um-hum.

6 MS. VAN LANGEVELDE: What if somebody changed their  
7 story? What if, in the beginning, they're like no, no, that  
8 didn't happen, that didn't happen, and then, all of a sudden,  
9 it was like, well, maybe something happened?

10 JUROR EARLE: I guess it --

11 MS. VAN LANGEVELDE: How would that affect you?

12 JUROR EARLE: -- depends on the circumstances of what  
13 was being said. I don't know if it was I don't remember to,  
14 oh, yeah, I do remember. I guess I would have to see.

15 MS. VAN LANGEVELDE: What if someone was insistent,  
16 no, nothing happened, nothing happened, and then said, well,  
17 yeah, maybe something did happen?

18 JUROR EARLE: I guess that makes you question where  
19 the real truth is.

20 MS. VAN LANGEVELDE: Sure. Would that make you  
21 question somebody's credibility?

22 JUROR EARLE: Yeah. Yes.

23 MS. VAN LANGEVELDE: Okay. Presumption of innocence.

24 JUROR EARLE: Um-hum.

25 MS. VAN LANGEVELDE: Can you come to the table

0133a

1 presuming that the defendant's guilty and get -- and make sure  
2 that I meet my burden?

3 JUROR EARLE: Could I come to the table as --

4 MS. VAN LANGEVELDE: Oh, assuming he is not guilty.

5 JUROR EARLE: Yes. I was gonna say --

6 MS. VAN LANGEVELDE: Did I say it weird?

7 JUROR EARLE: You said it wrong.

8 MS. VAN LANGEVELDE: I'm sorry. I'm so sorry.

9 JUROR EARLE: I've been taught wrong all along.

10 MS. VAN LANGEVELDE: No, no. Presume the defendant  
11 is innocent.

12 JUROR EARLE: Innocent, yes.

13 MS. VAN LANGEVELDE: I have the burden to --

14 JUROR EARLE: Yes --

15 MS. VAN LANGEVELDE: -- prove that to you.

16 JUROR EARLE: -- you have the burden.

17 MS. VAN LANGEVELDE: Okay. And you're okay with  
18 that?

19 JUROR EARLE: Yes.

20 MS. VAN LANGEVELDE: Ever have any problems making  
21 decisions or coming to a decision?

22 JUROR EARLE: I'm kind of the decision-maker at --

23 MS. VAN LANGEVELDE: Okay, all right.

24 Anybody else think I am the worst at making  
25 decisions?



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1 JURORS: (No verbal response).

2 MS. VAN LANGEVELDE: Okay, anybody else? You are,  
3 Miss Drzik?

4 JUROR DRZIK: (No verbal response).

5 MS. VAN LANGEVELDE: Okay. Any particular reason  
6 why?

7 JUROR DRZIK: I don't think I'd be, you know, just  
8 again, sometimes I can't make a decision at all but --

9 MS. VAN LANGEVELDE: I might be like that about  
10 vacation things, like where we're gonna go, what we're gonna  
11 do, but not about like serious things.

12 Does anybody think like I am the -- I am the worst at  
13 making decisions, and I just can't come to a decision? Anybody  
14 like that?

15 JURORS: (No verbal response).

16 MS. VAN LANGEVELDE: No, okay. Thank you so much.

17 THE COURT: Mr. Carter.

18 MR. CARTER: Thank you. Hi, Ms. Earle.

19 JUROR EARLE: Hi.

20 MR. CARTER: What would you imagine the most  
21 difficult part would be in defending yourself against false  
22 accusations?

23 JUROR EARLE: Like you guys said where it's a he  
24 said/she said, kind of if no witnesses are around, credibility,  
25 as well.

0135a

1 MR. CARTER: Okay. So, you're just -- you're kind of  
2 at the mercy of who the proof's gonna believe or not.

3 JUROR EARLE: I -- yeah, I guess I'm -- I'm --  
4 really, I'm not understanding your question.

5 MR. CARTER: Yeah. Well, it's -- it's very hard to  
6 prove something --

7 JUROR EARLE: Right.

8 MR. CARTER: -- isn't it? A false allegation, isn't  
9 it?

10 JUROR EARLE: It's -- like you said, the prosecutor  
11 has the burden.

12 MR. CARTER: That's right. So, you wouldn't -- if  
13 Mr. Warner decided not to take the stand, would you hold that  
14 against him?

15 JUROR EARLE: No, I don't think so.

16 MR. CARTER: Even if it's such a serious case as  
17 this?

18 JUROR EARLE: Well, I -- I don't know. I mean, I  
19 don't think so.

20 MR. CARTER: Okay. How would you go about proving  
21 that something didn't happen?

22 JUROR EARLE: Honestly, hiring a -- an attorney to  
23 help me, because I don't know how to begin with that. I don't  
24 even know how to begin answering the question.

25 MR. CARTER: Wouldn't you agree that it's almost

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1 impossible to prove yourself --

2 JUROR EARLE: Difficult, yes.

3 MR. CARTER: -- didn't happen?

4 JUROR EARLE: Um-hum.

5 MR. CARTER: You'd almost have to have a videotape  
6 running 24/7; isn't that correct?

7 JUROR EARLE: Yeah, I suppose.

8 MR. CARTER: Do you believe that children make false  
9 allegations?

10 JUROR EARLE: Yes.

11 MR. CARTER: You're a teacher; right?

12 JUROR EARLE: Yes.

13 MR. CARTER: You heard of -- you -- you heard me say  
14 a child that tells their side of the story first. And you  
15 probably relate to that almost every day, don't you?

16 JUROR EARLE: Yes. I've had a -- I've had a student  
17 who's made a false allegation against someone before, so  
18 that's --

19 MR. CARTER: It's important to hear everything.

20 JUROR EARLE: Yes.

21 MR. CARTER: How would you go about proving that  
22 something is the truth and not a lie?

23 JUROR EARLE: Asking questions, making sure that the  
24 person's true to their story, from different -- you know,  
25 asking it in different ways, I guess.

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1 MR. CARTER: Have you ever heard of the term "the  
2 devil's in the details?"

3 JUROR EARLE: Um-hum.

4 MR. CARTER: Well, what does that mean to you?

5 JUROR EARLE: Not -- you know, I've heard it. I  
6 don't know that I know exactly what --

7 MR. CARTER: Okay. It's -- it's hard to be  
8 consistent in the details, isn't it, and lie?

9 JUROR EARLE: Okay, yup.

10 MR. CARTER: As a liar --

11 JUROR EARLE: Yes, that's --

12 MR. CARTER: -- when you say that the devil's in the  
13 details, you start lookin' at the actual details and maybe --  
14 maybe details that's outside of the -- the big lie, itself, to  
15 see if there's consistency.

16 JUROR EARLE: Um-hum.

17 MR. CARTER: And so, you've heard that term?

18 JUROR EARLE: Yes, I've heard of the term. I  
19 understand what you're saying now.

20 MR. CARTER: When you have a stepchild and a  
21 stepfather, and one -- what -- what would be some of the  
22 reasons why a stepdaughter would make false allegations against  
23 a stepfather?

24 JUROR EARLE: I think people have already said that  
25 they were unhappy with the person being in their life, the

1 rules, wanted their parents back together, the other person out  
2 of the picture.

3 MR. CARTER: In a he said/she said situation, what  
4 would be important to you in deciding who was telling the  
5 truth?

6 JUROR EARLE: I think you just have to hear all the  
7 information.

8 MR. CARTER: What if you heard two -- two stories,  
9 and they were both, pretty much, logical and reasonable.

10 JUROR EARLE: Um-hum.

11 MR. CARTER: Would that be reasonable doubt to you?

12 JUROR EARLE: If both stories seemed feasible?

13 MR. CARTER: Yeah.

14 JUROR EARLE: I guess it would be reasonable doubt,  
15 yes.

16 MR. CARTER: I have nothing further.

17 THE COURT: Challenges for cause, Ms. Van Langevelde?

18 MS. VAN LANGEVELDE: None for cause. Thank you.

19 THE COURT: Challenges for cause, Mr. Carter?

20 MR. CARTER: Thank you. Your Honor, I would  
21 challenge for cause Miss Hancock based on the same argument of  
22 Mr. Hillard. When I asked whether or not she would hold it  
23 against the defendant from testifying, she, basically, said  
24 yes, and that it's her opinion even if the Judge were to  
25 instruct her otherwise.

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1 THE COURT: Well, is that what you said, Ms. Hancock  
2 or did you just say that, from a common sense point of view,  
3 you would like to hear it, but would you understand that you  
4 couldn't find the defendant guilty simply because he didn't  
5 testify; right?

6 JUROR HANCOCK: I would think he was hiding  
7 something.

8 THE COURT: Okay, but -- so, you would hold it  
9 against the defendant if he did not testify?

10 JUROR HANCOCK: I would try not to, but, basically,  
11 yes.

12 THE COURT: Okay. Thank you very much, Ms. Hancock,  
13 you are excused.

14 Miss Marshall, I have these delicious sugar-free  
15 lemon Halls. Would you like one?

16 JUROR MARSHALL: Yes, please.

17 THE COURT: Would you please take this to her?

18 LAW/JURY CLERK: (Inaudible).

19 THE COURT: I get it, too, and -- just 'cause I, you  
20 know, know that it's not good for your teeth, I went to the  
21 sugar-free. So, I'm sorry about that.

22 JUROR MARSHALL: That's all right. Thank you.

23 THE COURT: Okay, Christopher Rutenber.

24 MR. CARTER: I'm sorry, Your Honor, I didn't catch  
25 the last name.

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1 THE COURT: Christopher Rutenber, R-u-t-e-n-b-e-r.  
2 Did I say your last name right?

3 JUROR RUTENBER: It's Rutenber.

4 THE COURT: Rutenber. And how are you today?

5 JUROR RUTENBER: Very well.

6 THE COURT: Were you able to hear all of my  
7 questions?

8 JUROR RUTENBER: Yes.

9 THE COURT: Okay. Would you have answered any of  
10 them in the affirmative?

11 JUROR RUTENBER: No.

12 THE COURT: So, you've not been a juror before.

13 JUROR RUTENBER: No.

14 THE COURT: Don't have friends or relatives that are  
15 police officers, haven't been involved with the prosecutor's  
16 office anywhere, don't know anybody in the jury. All right.  
17 Okay.

18 Is there anything that you think I need to know that  
19 would impact your ability to be fair and impartial and not make  
20 a decision regarding this case until after you have heard all  
21 of the facts, I give you final instructions, and you go back to  
22 the jury room?

23 JUROR RUTENBER: No, there would not be.

24 THE COURT: Ms. Van Langevelde.

25 MS. VAN LANGEVELDE: Thank you. Good morning, Mr.

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1 Rutenber.

2 JUROR RUTENBER: Morning.

3 MS. VAN LANGEVELDE: Good morning. Were you able to  
4 hear me okay?

5 JUROR RUTENBER: Yes.

6 MS. VAN LANGEVELDE: Okay. Any answers to any of the  
7 questions that I asked the panel that I should know or that  
8 you'd like to share?

9 JUROR RUTENBER: I don't believe so.

10 MS. VAN LANGEVELDE: Okay. How about have you ever  
11 known a person who was a victim of a sexual assault?

12 JUROR RUTENBER: Not anyone close to me.

13 MS. VAN LANGEVELDE: Okay. Anybody ever -- that you  
14 know, ever been accused of a sexual assault?

15 JUROR RUTENBER: No.

16 MS. VAN LANGEVELDE: In listening to your -- what do  
17 you do for a living?

18 JUROR RUTENBER: I'm currently unemployed.

19 MS. VAN LANGEVELDE: Okay. Do you have any education  
20 background?

21 JUROR RUTENBER: No.

22 MS. VAN LANGEVELDE: Okay.

23 JUROR RUTENBER: I -- I was a teacher's assistant.

24 MS. VAN LANGEVELDE: Okay. So, you worked -- okay.  
25 So, you've worked in the schools. Where? What age group?



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1 JUROR RUTENBER: College students.

2 MS. VAN LANGEVELDE: College students, okay. And  
3 anybody ever confide in you that they were a victim of sexual  
4 assault and that experience?

5 JUROR RUTENBER: No.

6 MS. VAN LANGEVELDE: Let's see. If -- if someone  
7 were going to assault a child or a young person, young teen-  
8 ager, how do you think they'd do it?

9 JUROR RUTENBER: In a -- as people up there said, a  
10 place where there is no witnesses, secluded.

11 MS. VAN LANGEVELDE: So, a lot of times, would it  
12 make sense to you that, maybe years later, it would -- it would  
13 take years for somebody to come forward about what happened to  
14 them?

15 JUROR RUTENBER: Right. It can be an embarrassing or  
16 a fearful experience.

17 MS. VAN LANGEVELDE: Okay. And you wouldn't expect a  
18 person would tell right away?

19 JUROR RUTENBER: They could. They very well could.  
20 But, also, they very well could not.

21 MS. VAN LANGEVELDE: Okay. How about, do you have  
22 any children?

23 JUROR RUTENBER: No.

24 MS. VAN LANGEVELDE: Any nieces, nephews, brothers or  
25 sisters?

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1 JUROR RUTENBER: Cousins.

2 MS. VAN LANGEVELDE: Cousins, okay. Ever play with  
3 your cousins and somebody's, you know, done something and like  
4 -- I'm trying to think of an example. My cousin broke a window  
5 one time. And it wasn't me.

6 JUROR RUTENBER: I have not had that experience.

7 MS. VAN LANGEVELDE: Okay.

8 JUROR RUTENBER: I understand.

9 MS. VAN LANGEVELDE: Okay. So, you understand where  
10 I'm comin' from?

11 JUROR RUTENBER: Yes.

12 MS. VAN LANGEVELDE: Okay. Eventually, the law came  
13 out, though. The truth came out, yes?

14 JUROR RUTENBER: Not always.

15 MS. VAN LANGEVELDE: Not always? Okay. Are you one  
16 of those CSI, NCIS -- do you ever watch those shows?

17 JUROR RUTENBER: I don't watch those shows.

18 MS. VAN LANGEVELDE: How about beyond a reasonable  
19 doubt; how do you feel about that?

20 JUROR RUTENBER: Well, I -- I kind of agree with, for  
21 the most part, with -- if there's a -- if the argument's there  
22 and it's solid, if there's a detail missing, I don't think it's  
23 incredibly important, but I would also consider that.

24 MS. VAN LANGEVELDE: Okay. If you see the big  
25 picture --

1 JUROR RUTENBER: I under -- I understand it, yes.

2 MS. VAN LANGEVELDE: Okay. How do you feel about,  
3 basically, having the Judge tell you victim testimony does not  
4 need to be corroborated? And what that means is there doesn't  
5 have to be DNA, there doesn't have to be injury, there doesn't  
6 have to be anything but the victim saying this happened to me  
7 Are you okay with that?

8 JUROR RUTENBER: Yes.

9 MS. VAN LANGEVELDE: Okay. I want to go back to you  
10 Ms. Earle, for a second, because you gave an example about a  
11 student who made a false allegation.

12 JUROR EARLE: Um-hum.

13 MS. VAN LANGEVELDE: How did you find out that it was  
14 a false allegation?

15 JUROR EARLE: That one was reported to me. The  
16 student was upset, didn't want to go home. We went to the  
17 principal's office, the story continued. She -- we called  
18 Protective Services, and they came and investigated, you know.  
19 And through further investigation, they determined that it was  
20 a false accusation.

21 MS. VAN LANGEVELDE: Okay. So, that person -- do you  
22 know if that person actually came forward with the truth, like,  
23 hey, yeah, I made -- I made this up?

24 JUROR EARLE: I'm assuming that's what happened after  
25 I left.

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1 MS. VAN LANGEVELDE: Okay.

2 JUROR EARLE: I brought it down to the principal.  
3 And after the call was made, then I kind of was out of the  
4 picture, so.

5 MS. VAN LANGEVELDE: Okay. So, it may have been that  
6 that person that was making the allegation actually came  
7 forward and said, well, no, this didn't happen?

8 JUROR EARLE: They could have, yes.

9 MS. VAN LANGEVELDE: Okay.

10 JUROR EARLE: I wasn't there for that part.

11 MS. VAN LANGEVELDE: Okay. And going -- I'm sorry.  
12 And going back to --

13 JUROR RUTENBER: Um-hum.

14 MS. VAN LANGEVELDE: -- Mr. Rutenber.

15 JUROR RUTENBER: Yes.

16 MS. VAN LANGEVELDE: Did I say it right?

17 JUROR RUTENBER: Yeah.

18 MS. VAN LANGEVELDE: I know, I'm Van Langevelde. I  
19 totally get that.

20 JUROR BYLE: I want to be excused to go to the  
21 bathroom a minute.

22 MS. VAN LANGEVELDE: Oh, maybe we should --

23 THE COURT: Well, you know what?

24 MS. VAN LANGEVELDE: -- take a break?

25 THE COURT: I was -- we were -- at ten-thirty, we

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1 were gonna take a break. I was just tryin' to, possibly, get  
2 through the last questions, but this is probably a great time

3 It is ten-thirty, according to the courthouse clock  
4 I'm gonna give everybody 10 minutes, and then I'd like you to  
5 come back, please, and resume your seats.

6 JUROR BYLE: I'm not the only one.

7 (At 10:29 a.m., off the record)

8 (At 10:42 a.m., back on the record)

9 THE COURT: Thank you. Please be seated.

10 All right, I think, Miss Van Langevelde, you were  
11 asking questions.

12 MS. VAN LANGEVELDE: I was.

13 THE COURT: We're back on the record in the People of  
14 the State of Michigan versus Damon Warner.

15 Go ahead, Ms. Van Langevelde.

16 MS. VAN LANGEVELDE: Thank you. And, Mr. Rutember, I  
17 was at you. Okay. Any reason why you feel like you wouldn't  
18 be able to weigh somebody's credibility, and that being whether  
19 they were telling the truth or not?

20 JUROR RUTENBER: Ah, no. I mean, I -- it's  
21 understandable with nervousness and -- and lying, they tend to  
22 overlap in the body language. So, that does make things  
23 difficult, but I don't think it would be impossible.

24 MS. VAN LANGEVELDE: Okay. And I failed to ask does  
25 anybody ask -- I know I asked everybody about kids. Any

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1 stepkids?

2 JURORS: (No verbal response).

3 MS. VAN LANGEVELDE: Any -- have any stepkids or are  
4 going to have stepkids?

5 JUROR RUTENBER: No.

6 MS. VAN LANGEVELDE: No, okay. Thank you so much.

7 THE COURT: Mr. Carter.

8 MR. CARTER: Thank you. Mr. Rutenber, I just have a  
9 few questions for -- for you. How would you prove something  
10 that didn't happen?

11 JUROR RUTENBER: It's very difficult. I think you  
12 have to rely mostly on the charac -- on your character. And  
13 other than that, it's impossible to prove something that --

14 MR. CARTER: It's most -- it's difficult, isn't it?

15 JUROR RUTENBER: (No verbal response).

16 MR. CARTER: How would you go about proving an  
17 allegation where somebody is making, say, against you and it  
18 was only just the two of you and that was it?

19 JUROR RUTENBER: You'd have to compare the -- the two  
20 testimonies and look for inconsistencies in details.

21 MR. CARTER: You've heard the devil's in the details.  
22 You understand that concept?

23 JUROR RUTENBER: (No verbal response).

24 MR. CARTER: All right. Any brothers or sisters?

25 JUROR RUTENBER: No.

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1 MR. CARTER: None?

2 JUROR RUTENBER: Half siblings, but I've never met  
3 them.

4 MR. CARTER: Oh, okay. You're a TA, though; right?

5 JUROR RUTENBER: I was.

6 MR. CARTER: And you heard the example of the first  
7 child who comes to the parent or the teacher, kind of, with  
8 their story, kind of puts the other one on -- on the defensive

9 JUROR RUTENBER: Um-hum.

10 MR. CARTER: Can you reserve judgment until you hear  
11 everything?

12 JUROR RUTENBER: Yes.

13 MR. CARTER: What if Mr. Warner decides not to take  
14 the stand? Would you use that against him?

15 JUROR RUTENBER: Not against him, no. I think it  
16 would be easier if someone were to take the stand, but I  
17 understand, and I wouldn't hold it against him.

18 MR. CARTER: Okay. If the -- if the prosecutor had  
19 to -- to produce a whole puzzle, the whole thing, that was her  
20 burden, would you give her a break if she was missing a piece?

21 JUROR RUTENBER: If it was in -- if it was  
22 inconsequential.

23 MR. CARTER: But, if her burden was to produce the  
24 whole puzzle, the whole --

25 JUROR RUTENBER: In that case, yes.

0149a

1 MR. CARTER: You'd hold that against her; right?  
2 That would be fair, wouldn't it?

3 JUROR RUTENBER: Um-hum.

4 MR. CARTER: Even if you knew what the puzzle looked  
5 like.

6 JUROR RUTENBER: Um-hum.

7 MR. CARTER: Do -- you understand the concept of  
8 beyond a reasonable doubt; right?

9 JUROR RUTENBER: Yes.

10 MR. CARTER: Okay. It doesn't have to be a hundred  
11 percent certain.

12 JUROR RUTENBER: Right.

13 MR. CARTER: You -- you do understand.

14 JUROR RUTENBER: Right.

15 MR. CARTER: But, you understand that it's -- because  
16 it's so hard to prove innocence or prove a negative, that's why  
17 we have that on the prosecutor; correct?

18 JUROR RUTENBER: Um-hum.

19 MR. CARTER: Can you hold the prosecutor to that  
20 burden?

21 JUROR RUTENBER: Yes.

22 MR. CARTER: What does a guilty person look like to  
23 you?

24 JUROR RUTENBER: Could be -- could be anything,  
25 anyone.



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MR. CARTER: Could look like me; right?

JUROR RUTENBER: Right.

MR. CARTER: What does an innocent person look like?

JUROR RUTENBER: Likewise.

MR. CARTER: Likewise. You wouldn't judge somebody just by the way they dress or walk. I notice you have a beard. There's some people who think that people with beards are actually untrustworthy. You don't believe that, do you?

JUROR RUTENBER: (No verbal response).

MR. CARTER: Thank you.

THE COURT: Challenges for cause, Ms. Van Langevelde?

MS. VAN LANGEVELDE: No, none for cause.

THE COURT: Challenges for cause, Mr. Carter?

MR. CARTER: Yes, I would challenge Miss Townsel. Again, when asked -- she was a teacher. She indicated that she would find it extremely hard to put -- to not give more credence to a child's testimony because she worked with child (sic). She did indicate that she would try to do that, but I don't think that that's sufficient. I think it needs to be that she can.

THE COURT: So, Miss Townsel, do you believe that you would be able to listen to the facts of this case and render a just verdict?

JUROR TOWNSEL: Yes.

THE COURT: And at this time, have you formed an

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1 opinion on what the outcome of this case should be?

2 JUROR TOWNSEL: No.

3 THE COURT: Challenge for cause is denied.

4 Peremptory to you, Ms. -- oh, did you have any other  
5 challenges for cause? I'm sorry, Mr. Carter.

6 MR. CARTER: No.

7 THE COURT: Ms. Van Langevelde, peremptory challenge

8 MS. VAN LANGEVELDE: Thank you, Your Honor. The  
9 People would thank and excuse Mr. Byle. Thank you, sir, for  
10 your service here today.

11 THE COURT: All right, thank you very much, Mr. Byle.  
12 Have a nice day.

13 Shannon Stauffer or Stoffer. Is it Stoffer or  
14 Stauffer?

15 JUROR STAUFFER: It's Stauffer.

16 THE COURT: Stauffer.

17 JUROR STAUFFER: Stauffer.

18 THE COURT: And how are you today?

19 JUROR STAUFFER: Good. If I can get through here.

20 THE COURT: Were you able to hear all of the  
21 questions that have been being asked this morning?

22 JUROR STAUFFER: Yes.

23 THE COURT: Were there any questions that I asked  
24 that you would answer yes to?

25 JUROR STAUFFER: No.

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1 THE COURT: Is there any reason that you believe that  
2 you cannot be fair and unprejudiced, that you can listen to  
3 everything and then make an opinion once you've heard all the  
4 evidence?

5 JUROR STAUFFER: Yes.

6 THE COURT: Do you have any preconceived notions  
7 right now?

8 JUROR STAUFFER: No.

9 THE COURT: Ms. Van Langevelde.

10 MS. VAN LANGEVELDE: Thank you. Miss Stauffer, you  
11 never sat as a juror before?

12 JUROR STAUFFER: Never.

13 MS. VAN LANGEVELDE: Okay. Do you -- have you ever  
14 known anybody who was a victim of sexual assault?

15 JUROR STAUFFER: No.

16 MS. VAN LANGEVELDE: Ever have any close friends or  
17 relatives been accused of sexual assault?

18 JUROR STAUFFER: No.

19 MS. VAN LANGEVELDE: How about -- now, I see you're a  
20 front desk receptionist; is that correct?

21 JUROR STAUFFER: Front desk at a hotel, yes.

22 MS. VAN LANGEVELDE: Okay. Ever had any -- have to  
23 call the police on anybody when you're doing that?

24 JUROR STAUFFER: (No verbal response).

25 MS. VAN LANGEVELDE: How were your interactions with

1 the police?

2 JUROR STAUFFER: Pretty cordial.

3 MS. VAN LANGEVELDE: Never had any problems with --  
4 with a police officer or anything like that?

5 JUROR STAUFFER: No.

6 MS. VAN LANGEVELDE: Okay. Sometimes I get a lot of  
7 cases out of hotels.

8 Do you have any children?

9 JUROR STAUFFER: No.

10 MS. VAN LANGEVELDE: Any stepchildren?

11 JUROR STAUFFER: No.

12 MS. VAN LANGEVELDE: Ever -- do you have any brothers  
13 or sisters?

14 JUROR STAUFFER: Yes.

15 MS. VAN LANGEVELDE: Okay. (Indiscernible) -- can  
16 you understand that kids sometimes lie about stupid stuff?

17 JUROR STAUFFER: Yes.

18 MS. VAN LANGEVELDE: Like what? Can you give me some  
19 examples?

20 JUROR STAUFFER: Like, oh, she took my toy and stuff  
21 like that.

22 MS. VAN LANGEVELDE: Yeah. Big difference. Would  
23 you agree it's a big difference between lying about stupid  
24 stuff, like late, coming in on curfew, or not doing your  
25 homework, as opposed to coming to court?

0154a

1 JUROR STAUFFER: Yes.

2 MS. VAN LANGEVELDE: And making allegations. Big  
3 difference, okay.

4 Do you watch TV shows like NCIS?

5 JUROR STAUFFER: Yes.

6 MS. VAN LANGEVELDE: Yes. You're one of my -- one of  
7 my people. So, are you okay with the fact that we don't have  
8 DNA?

9 JUROR STAUFFER: Yes.

10 MS. VAN LANGEVELDE: You okay with the fact we don't  
11 have doctors coming in talking about injuries?

12 JUROR STAUFFER: Yes.

13 MS. VAN LANGEVELDE: Okay. Do you feel like -- the  
14 Judge is gonna instruct you that, based on the vic -- you --  
15 you can find someone guilty of criminal sexual assault based on  
16 testimony alone, that being the victim's testimony. Are you  
17 okay with that?

18 JUROR STAUFFER: Yes.

19 MS. VAN LANGEVELDE: Okay. Do you feel like you  
20 could do that, that you could weigh somebody's credibility?

21 JUROR STAUFFER: Yes.

22 MS. VAN LANGEVELDE: What kind of factors would you  
23 consider in weighing somebody's credibility?

24 JUROR STAUFFER: It's like the same as what the other  
25 potential jurors have said, based on character witnesses and

0155a

1 things like that.

2 MS. VAN LANGEVELDE: Okay. What about -- what if  
3 somebody's story was consistent? Would that be a factor for  
4 them?

5 JUROR STAUFFER: Yes, I would think so.

6 MS. VAN LANGEVELDE: Okay. As opposed to somebody  
7 whose story changes every time they talk about it.

8 JUROR STAUFFER: It would make it more difficult to  
9 believe like which story is the truth.

10 MS. VAN LANGEVELDE: Okay. Fair enough. I bet  
11 you've heard the phrase "beyond a reasonable doubt."

12 JUROR STAUFFER: Yes.

13 MS. VAN LANGEVELDE: Have you heard that phrase?  
14 Okay. And as Judge instructed you, that I have the burden to  
15 prove to you --

16 JUROR STAUFFER: Yes.

17 MS. VAN LANGEVELDE: beyond a reasonable doubt, and  
18 that is a doubt based on common sense and reason. How do you  
19 feel about that?

20 JUROR STAUFFER: I feel like I could do that.

21 MS. VAN LANGEVELDE: Okay. You understand it's not a  
22 mathematical certainty, it's not 100 percent, it's not 75  
23 percent. It's just -- it's common sense and reason.

24 JUROR STAUFFER: Yes.

25 MS. VAN LANGEVELDE: And that -- that's your --

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1 that's your job, as a juror, if you were sittin' in this. Are  
2 you okay with that?

3 JUROR STAUFFER: Yes.

4 MS. VAN LANGEVELDE: All right. Thank you so much,  
5 ma'am.

6 JUROR STAUFFER: Thank you.

7 THE COURT: Mr. Carter.

8 MR. CARTER: Thank you. It's Stauffer?

9 JUROR STAUFFER: Stauffer, yes.

10 MR. CARTER: Stauffer. Good. I'm terrible at names,  
11 so I'm pretty glad I hit that one.

12 The prosecutor asked you that kids -- kids lie about  
13 stupid stuff, don't they?

14 JUROR STAUFFER: Yes.

15 MR. CARTER: I was growin' up; I lied about stupid  
16 stuff. Did you ever lie about stupid stuff?

17 JUROR STAUFFER: Oh, I'm sure I have.

18 MR. CARTER: Sure. Kids also lie about stuff that  
19 aren't -- isn't stupid, don't they?

20 JUROR STAUFFER: Yes.

21 MR. CARTER: They -- they -- why would someone lie  
22 about something serious and not something that we would  
23 consider stupid?

24 JUROR STAUFFER: Something like they were unhappy  
25 with a situation maybe.

0157a

1 MR. CARTER: Sure. There's a big -- the prosecutor  
2 said there's a big difference about lying about stupid stuff  
3 and being in court. Why would you think that somebody would  
4 continue to lie even if they were in court?

5 JUROR STAUFFER: I would feel because they were  
6 already in court because they want to continue with the lie --

7 MR. CARTER: Sure.

8 JUROR STAUFFER: -- and not switch it over, 'cause  
9 then it's questionable whether they were telling the truth --

10 MR. CARTER: Sure. Like the snowball effect.

11 JUROR STAUFFER: Yes.

12 MR. CARTER: Can't stop that snowball from going down  
13 the hill; right?

14 JUROR STAUFFER: (No verbal response).

15 MR. CARTER: Maybe they feel like they've gone too  
16 far, they can't recant at this point.

17 JUROR STAUFFER: So, they just have to keep going  
18 with it.

19 MR. CARTER: They can't change their mind; right?

20 JUROR STAUFFER: Yes.

21 MR. CARTER: That's what's, you know -- okay.

22 Now, how would you defend yourself against a false al  
23 -- allegation when it's just you and somebody else? Nobody  
24 else saw it.

25 JUROR STAUFFER: I would just tell the truth and hope



0158a

1 that they would believe me.

2 MR. CARTER: Now, the prosecutor also indicated about  
3 looking at someone's story that changes. I'm gonna give you an  
4 example. My wife and I tend to go to the movies quite a bit.  
5 And there's been times where I kinda gathered with my friends  
6 and she gathered with her friend at the same outing. And she  
7 telling this story about the movie and I'm overhearing it, and  
8 I'm thinking, man, is that the same movie that I heard.

9 Can you agree that people can actually have a  
10 different version or -- or tell a story that sounds different  
11 and -- and not quite right to you, even though you witnessed  
12 the same event?

13 JUROR STAUFFER: Yes.

14 MR. CARTER: Okay. Have you ever told a story and  
15 then remembered details later and changed it?

16 JUROR STAUFFER: I'm pretty sure I have.

17 MR. CARTER: Or added to it?

18 JUROR STAUFFER: I'm sure I have.

19 MR. CARTER: That didn't mean you were lying; right?

20 JUROR STAUFFER: Correct.

21 MR. CARTER: The mind is a -- is -- is a complex  
22 thing; isn't that true? That things will trigger things that  
23 maybe you should've said and now you want to add it or say it  
24 now. That doesn't, necessarily, mean it was a lie; correct?

25 JUROR STAUFFER: Correct.

0159a

1 MR. CARTER: Thank you, Your Honor. Nothing further

2 THE COURT: Challenges for cause, Ms. Van Langevelde

3 MS. VAN LANGEVELDE: I have none for cause. Thank  
4 you.

5 THE COURT: Challenges for cause, Mr. Carter?

6 MR. CARTER: None.

7 THE COURT: Peremptory to you, Mr. Carter.

8 MR. CARTER: One moment. We would like to thank and  
9 excuse juror number two, Miss -- and I -- I apologize if I  
10 pronounce it wrong -- Sulpher? Sul -- Sulpher?

11 JUROR SULPHER: Yes.

12 THE COURT: Thank you very much, Miss Sulpher. You  
13 are free to go.

14 Leonard King. How are you this morning, Mr. King?

15 JUROR KING: Fine, thank you.

16 THE COURT: Were you able to hear all of the  
17 questions that were being asked?

18 JUROR KING: Yes.

19 THE COURT: Would you have answered yes to any of the  
20 questions that I asked?

21 JUROR KING: Yes.

22 THE COURT: Which ones?

23 JUROR KING: I have a lot of friends who was police  
24 officers.

25 THE COURT: Okay. Are they local?

0160a

1 JUROR KING: My best friend, a DEA officer, he's out  
2 -- he's out of Washington. I got some in Lansing and some in  
3 Detroit.

4 THE COURT: Anything about the fact that you have  
5 friends that are in law enforcement, would that influence your  
6 ability --

7 JUROR KING: No.

8 THE COURT: -- to be fair and impartial? Any other  
9 questions I asked you would you answer in the affirmative?

10 JUROR KING: I served on jury duty before.

11 THE COURT: Where at?

12 JUROR KING: Wayne County.

13 THE COURT: What kind of case was it?

14 JUROR KING: Criminal.

15 THE COURT: How long ago?

16 JUROR KING: Fifteen, 20 years.

17 THE COURT: Okay. What kind of criminal case was it?

18 JUROR KING: Murder.

19 THE COURT: What was the verdict?

20 JUROR KING: Guilty.

21 THE COURT: Anything about your previous jury service  
22 impact your ability to be fair and impartial on this jury?

23 JUROR KING: No.

24 THE COURT: Is there anything you think I need to  
25 know about you or your experiences that would impact your right

0161a

1 and ability to be fair and impartial?

2 JUROR KING: No.

3 THE COURT: Thank you.

4 Ms. Van Langevelde.

5 MS. VAN LANGEVELDE: Thank you. Good morning, Mr.  
6 King.

7 JUROR KING: Good morning.

8 MS. VAN LANGEVELDE: Do you know, or have any close  
9 friends or relatives, anyone who's been the victim of a sexual  
10 assault?

11 JUROR KING: I don't know anyone but with my job, you  
12 know -- I'm an AP rep for General Motors, and I've heard some  
13 stories about people that was victims of criminal sexual  
14 conduct.

15 MS. VAN LANGEVELDE: What -- what do you do there?  
16 'Cause I don't know what that --

17 JUROR KING: I'm -- I'm a -- it's a -- it's a work --  
18 employee assistant program. You know, so if I provide --  
19 members at the plant may have had -- you know, went through  
20 drugs or had health problems or any type of crisis, they come  
21 to us, 'cause we just make referrals to the agencies to get  
22 some help with treatment centers.

23 MS. VAN LANGEVELDE: Okay, great. So, you -- you've  
24 worked with some victims of sexual assault?

25 JUROR KING: I haven't personally.

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1 MS. VAN LANGEVELDE: But you've -- but you've  
2 referred them.

3 JUROR KING: Referred them, yes.

4 MS. VAN LANGEVELDE: Got it, got it. When you were  
5 talking to those folks, did they -- did they share all the  
6 details --

7 JUROR KING: Yes.

8 MS. VAN LANGEVELDE: -- with you? Okay. Would that  
9 impact you, at all, to be fair and impartial in this case?

10 JUROR KING: I can be fair, although it's --

11 MS. VAN LANGEVELDE: It's hard --

12 JUROR KING: It's hard --

13 MS. VAN LANGEVELDE: -- I'm sure.

14 JUROR KING: -- yes, I'm sure.

15 MS. VAN LANGEVELDE: But you understand that we have  
16 a justice system and we have to play by the laws, play by the  
17 rules and --

18 JUROR KING: Absolutely.

19 MS. VAN LANGEVELDE: -- and the laws that are  
20 provided. And you can do that?

21 JUROR KING: Yes, I could.

22 MS. VAN LANGEVELDE: Okay. When someone told you  
23 that they have been a victim of sexual assault, do you make  
24 them provide you with physical evidence of it?

25 JUROR KING: No.

0163a

1 MS. VAN LANGEVELDE: Do you say I need to see DNA  
2 before I make you a referral?

3 JUROR KING: No.

4 MS. VAN LANGEVELDE: Okay.

5 JUROR KING: I saved my life.

6 MS. VAN LANGEVELDE: That's all right. All right.  
7 Do you -- can you understand why a victim might not report  
8 right away --

9 JUROR KING: Absolutely.

10 MS. VAN LANGEVELDE: -- especially a child?

11 JUROR KING: Yes.

12 MS. VAN LANGEVELDE: Why might they not?

13 JUROR KING: Fear. Same ques -- answers that they  
14 give: Fear, afraid.

15 MS. VAN LANGEVELDE: Okay.

16 JUROR KING: Embarrassed.

17 MS. VAN LANGEVELDE: Embarrassed. Feel like it's  
18 their fault, maybe --

19 JUROR KING: Absolutely.

20 MS. VAN LANGEVELDE: -- even though it's not?

21 How about have you ever known anybody accused of  
22 sexual assault?

23 JUROR KING: No, not personally.

24 MS. VAN LANGEVELDE: Okay. Have any children?

25 JUROR KING: Yes, I do.

0164a

1 MS. VAN LANGEVELDE: How many?

2 JUROR KING: One.

3 MS. VAN LANGEVELDE: Boy or girl?

4 JUROR KING: Boy. As a matter of fact, he's --  
5 Lansing post department for the CS -- the CSI unit right now.

6 MS. VAN LANGEVELDE: Oh, really?

7 JUROR KING: Yes.

8 MS. VAN LANGEVELDE: All right.

9 JUROR KING: Yes.

10 MS. VAN LANGEVELDE: MSP?

11 JUROR KING: Excuse me?

12 MS. VAN LANGEVELDE: Is it with Michigan State Police  
13 or is it Lansing?

14 JUROR KING: No, no, he's goin' to Lansing for the --

15 MS. VAN LANGEVELDE: Okay, great. So, has your son  
16 ever lied to you about some -- something before?

17 JUROR KING: I'm sure he has.

18 MS. VAN LANGEVELDE: Okay. Does that make him a liar  
19 all the time?

20 JUROR KING: No, it doesn't.

21 MS. VAN LANGEVELDE: All right. How about when he  
22 was growing up, does -- and his sense of time and when things  
23 happened, did -- did -- did he have -- how was his sense of  
24 time when he was little, growing up, and then as he got older?

25 JUROR KING: Oh, I want to say when he was little, he

0165a

1 told little white lies, yes.

2 MS. VAN LANGEVELDE: Okay. How about like did you  
3 ever go to the movie with your son --

4 JUROR KING: Yes.

5 MS. VAN LANGEVELDE: -- first of all? Could he tell  
6 you the exact date and time that you guys went to a movie --

7 JUROR KING: Yes.

8 MS. VAN LANGEVELDE: -- three years ago?

9 JUROR KING: Oh, no.

10 MS. VAN LANGEVELDE: Okay, how about six years ago?

11 JUROR KING: No.

12 MS. VAN LANGEVELDE: Could he give you a ballpark,  
13 like, hey, maybe it was summertime or maybe it was wintertime?

14 JUROR KING: A ballpark.

15 MS. VAN LANGEVELDE: Okay. And would that be  
16 reasonable for a kid to be able to give up like seasons?

17 JUROR KING: Yes.

18 MS. VAN LANGEVELDE: Okay. How do you feel about  
19 Judge instructing you that testimony does not need to be  
20 corroborated? Meaning, if you believe the victim's testimony,  
21 that's enough to find him guilty.

22 JUROR KING: Yes.

23 MS. VAN LANGEVELDE: Do you feel like that's enough?

24 JUROR KING: Yes.

25 MS. VAN LANGEVELDE: You could find somebody guilty



0166a

1 just based on victim's testimony?

2 JUROR KING: No, ma'am.

3 MS. VAN LANGEVELDE: You don't? Just based on  
4 testimony alone?

5 JUROR KING: I mean, it's still with the parameters  
6 of the Judge, you know.

7 MS. VAN LANGEVELDE: So, if she tells you -- if she  
8 gives the instruction victim's testimony does not need to be  
9 corroborated with things like DNA --

10 JUROR KING: Yes.

11 MS. VAN LANGEVELDE: -- or fingerprints --

12 JUROR KING: Yes.

13 MS. VAN LANGEVELDE: -- do you think you could --

14 JUROR KING: Yes.

15 MS. VAN LANGEVELDE: -- still find somebody guilty?

16 JUROR KING: Yes.

17 MS. VAN LANGEVELDE: All right. Thank you, sir.

18 THE COURT: Mr. Carter.

19 MR. CARTER: Thank you. Mr. King, did you hear all  
20 my questions?

21 JUROR KING: Yes, I did. Yes.

22 MR. CARTER: Is there anything that you would like to  
23 draw to my attention --

24 JUROR KING: No.

25 MR. CARTER: Do you know how difficult it is to prove

0167a

1 a negative?

2 JUROR KING: Yes.

3 MR. CARTER: Do you understand that's why the burden  
4 is on the prosecutor?

5 JUROR KING: Absolutely.

6 MR. CARTER: How would you go about trying to prove  
7 something didn't happen?

8 JUROR KING: It'd be difficult.

9 MR. CARTER: It would be very difficult, wouldn't it?

10 JUROR KING: Yes.

11 MR. CARTER: If Mr. Warner decided not to take the  
12 stand, would you hold that against him?

13 JUROR KING: Not really. I mean, if I'm innocent, I  
14 would have no problems with doing it, but I wouldn't hold it  
15 against him.

16 MR. CARTER: Okay. Do you understand that he has the  
17 right not to --

18 JUROR KING: Absolutely.

19 MR. CARTER: And do you know why that is?

20 JUROR KING: His right.

21 MR. CARTER: Right. That's because the burden is on  
22 the prosecution, not the defendant; correct?

23 JUROR KING: (No verbal response).

24 MR. CARTER: Because he doesn't have to prove his  
25 innocence; right?

0168a

1 JUROR KING: Yes.

2 MR. CARTER: And the prosecution has to prove his  
3 guilt; right?

4 JUROR KING: Yes.

5 MR. CARTER: You understand that concept?

6 JUROR KING: Absolutely.

7 MR. CARTER: This is gonna be a silly question, but  
8 can you follow the instructions the Judge gives you?

9 JUROR KING: Yes, I could.

10 MR. CARTER: Even if it's something that you disagree  
11 with?

12 JUROR KING: I can follow her instructions.

13 MR. CARTER: All right. Would you feel comfortable  
14 bein' a juror on your own case if you were accused of a crime?

15 JUROR KING: Yes.

16 MR. CARTER: Can you keep an open mind?

17 JUROR KING: Yes.

18 MR. CARTER: Nothing further.

19 THE COURT: Challenges for cause, Miss Van  
20 Langevelde?

21 MS. VAN LANGEVELDE: None for cause, thank you.

22 THE COURT: Challenges for cause, Mr. Carter?

23 MR. CARTER: None.

24 THE COURT: Peremptory to you, Ms. Van Langevelde.

25 MS. VAN LANGEVELDE: Thank you. The People would

0169a

1 thank and excuse Ms. Marshall. Thank you for your --

2 JUROR MARSHALL: Thank you.

3 MS. VAN LANGEVELDE: -- service today.

4 THE COURT: Thank you, Miss Marshall.

5 Ronald Millbrook.

6 MS. VAN LANGEVELDE: Your Honor, I believe that --

7 JUROR EARLE: Do you need to know that I know Mr.

8 King? He's my neighbor.

9 JUROR KING: We know one another. We know one

10 another.

11 THE COURT: Oh --

12 JUROR EARLE: I just --

13 THE COURT: -- I forgot to ask that question.

14 JUROR EARLE: No, I just -- when he was talking -- I

15 had his son in class years ago.

16 JUROR KING: Yes.

17 THE COURT: Sure. And you're neighbors?

18 JUROR KING: Yes.

19 JUROR EARLE: Yes.

20 THE COURT: Do you socialize frequently?

21 JUROR EARLE: No, 'cause we didn't even recognize

22 each other.

23 THE COURT: Okay.

24 JUROR EARLE: I just wanted to make sure you knew.

25 THE COURT: The only reason we ask that is we want to

0170a

1 make sure that, you know, when you're hearing the case --

2 JUROR EARLE: Right.

3 THE COURT: -- that you're not, like, you know,  
4 talkin' over the proverbial --

5 JUROR EARLE: Yes.

6 THE COURT: -- hedge, yard hedge --

7 JUROR EARLE: Yes.

8 THE COURT: -- talkin' about the case. That's why we  
9 ask that --

10 JUROR EARLE: Yes.

11 THE COURT: -- question.

12 JUROR EARLE: Just wanted to make sure you knew.

13 THE COURT: Thank you.

14 So, Mr. Millbrook, how are you this morning?

15 JUROR MILLBROOK: Fine, thank you.

16 THE COURT: Were you able to hear all of the  
17 questions?

18 JUROR MILLBROOK: I've worked in a printing business  
19 for 40 years, so my hearing, I catch here and there.

20 THE COURT: So, you weren't able to hear everything  
21 that -- that was said.

22 JUROR MILLBROOK: Well, most of it.

23 THE COURT: Most of it, all right. Well, do you --  
24 have you ever been on a jury before?

25 JUROR MILLBROOK: No.

0171a

1 THE COURT: Okay. Did you know any of the people in  
2 the courtroom?

3 JUROR MILLBROOK: No.

4 THE COURT: Did you recognize any of the names of any  
5 of the witnesses?

6 JUROR MILLBROOK: No.

7 THE COURT: Have you ever been involved with the  
8 prosecutor's office before --

9 JUROR MILLBROOK: No.

10 THE COURT: -- at any prosecutor's office? Do you  
11 have family or friends or relatives that are in law  
12 enforcement?

13 JUROR MILLBROOK: No.

14 THE COURT: Okay. Is there any reason or anything  
15 you think that I should know that would make you unable to be  
16 fair and listen to all of the evidence and then make a decision  
17 about the verdict?

18 JUROR MILLBROOK: I don't think so.

19 THE COURT: Do you think you can be fair and  
20 impartial?

21 JUROR MILLBROOK: Yes.

22 THE COURT: Ms. Van Langevelde.

23 MS. VAN LANGEVELDE: Thank you, Your Honor.

24 Mr. Millbrook, were you able to hear me okay?

25 JUROR MILLBROOK: Yes.

0172a

1 MS. VAN LANGEVELDE: Okay. Because I know my great  
2 uncle sometimes has trouble hearing me. Just the level of my  
3 pitch, I guess, is hard. But you were able to hear all the  
4 questions that I asked?

5 JUROR MILLBROOK: Pretty much.

6 MS. VAN LANGEVELDE: All right. You were retired,  
7 sir?

8 JUROR MILLBROOK: Yes.

9 MS. VAN LANGEVELDE: What are you retired from?

10 JUROR MILLBROOK: Printing business.

11 MS. VAN LANGEVELDE: Oh, printing, that's right. I'm  
12 sorry. Did you print newspapers? What'd you print?

13 JUROR MILLBROOK: Magazines and all kinds of stuff.

14 MS. VAN LANGEVELDE: Okay. Was it with a particular  
15 business, or did you have your own?

16 JUROR MILLBROOK: It was my dad's business.

17 MS. VAN LANGEVELDE: Dad's business? Okay, awesome.  
18 So, have you ever known anybody who's been the victim of sexual  
19 assault?

20 JUROR MILLBROOK: Yes.

21 MS. VAN LANGEVELDE: Who is it?

22 JUROR MILLBROOK: Her last name was Bradshaw.

23 MS. VAN LANGEVELDE: Was she a friend or relative?

24 JUROR MILLBROOK: She was the daughter of our  
25 secretary.

0173a

1 MS. VAN LANGEVELDE: Oh, daughter of secretary, okay  
2 So, not a family member. Did you ever talk to the victim about  
3 it?

4 JUROR MILLBROOK: No.

5 MS. VAN LANGEVELDE: Okay. And she -- and she never  
6 confided in you or said anything?

7 JUROR MILLBROOK: No.

8 MS. VAN LANGEVELDE: So, it was -- was it your --  
9 your sec -- I want to make sure I got this right -- your  
10 secretary's daughter?

11 JUROR MILLBROOK: Yes.

12 MS. VAN LANGEVELDE: Okay, okay. Did that go to  
13 court?

14 JUROR MILLBROOK: Yes.

15 MS. VAN LANGEVELDE: Was it Eaton County?

16 JUROR MILLBROOK: I'm not sure. I think so.

17 MS. VAN LANGEVELDE: Okay. Anything about that  
18 experience that would make you biased one way or the other, for  
19 my office, against my office, anything like that?

20 JUROR MILLBROOK: I don't think so.

21 MS. VAN LANGEVELDE: Okay, all right. I feel like  
22 most people are like either it is or it isn't, you know.

23 JUROR MILLBROOK: It's all new to me, so.

24 MS. VAN LANGEVELDE: Oh, that's okay. Never heard  
25 anything -- do -- do you know if that particular case went to



0174a

1 trial?

2 JUROR MILLBROOK: Yes.

3 MS. VAN LANGEVELDE: And did the victim have to  
4 testify?

5 JUROR MILLBROOK: I'm not sure.

6 MS. VAN LANGEVELDE: Okay. Do you know if -- if the  
7 defendant was found guilty in that --

8 JUROR MILLBROOK: Guilty, yes.

9 MS. VAN LANGEVELDE: -- particular case? Okay, okay.  
10 But, nothing about that experience that you feel like would  
11 affect you to be biased one way or the other?

12 JUROR MILLBROOK: I actually worked with the guy, so  
13 I don't know. I -- I had difficulties with him.

14 MS. VAN LANGEVELDE: Okay. But nothing -- so, you  
15 had -- you knew the actual -- the -- the defendant in that  
16 case, as well.

17 JUROR MILLBROOK: Yeah.

18 MS. VAN LANGEVELDE: Okay. Was it -- was it a child  
19 victim?

20 JUROR MILLBROOK: It was his own daughter.

21 MS. VAN LANGEVELDE: His own daughter, okay.  
22 Position of authority over his daughter, yeah?

23 JUROR MILLBROOK: Yeah.

24 MS. VAN LANGEVELDE: Okay. And you said you had  
25 problems with him?

0175a

1 JUROR MILLBROOK: Yes.

2 MS. VAN LANGEVELDE: Okay. Did -- did you feel like  
3 justice was served in that case?

4 JUROR MILLBROOK: Yes.

5 MS. VAN LANGEVELDE: Okay. Did the daughter -- do  
6 you know if that daughter disclosed right away?

7 JUROR MILLBROOK: No, I think it happened over a few  
8 years.

9 MS. VAN LANGEVELDE: Okay. She came out with it a  
10 a few years after it started?

11 JUROR MILLBROOK: Yeah, I think a teacher or a friend  
12 she confided in.

13 MS. VAN LANGEVELDE: Okay. Do you think that would  
14 be unusual?

15 JUROR MILLBROOK: No.

16 MS. VAN LANGEVELDE: That -- that a child might wait  
17 a few years before they actually disclosed what was happening  
18 to them?

19 JUROR MILLBROOK: No.

20 MS. VAN LANGEVELDE: No? Why might a -- why -- when  
21 a person that wants to sexually abuse a child, would they do it  
22 in front of other witnesses?

23 JUROR MILLBROOK: (No verbal response).

24 MS. VAN LANGEVELDE: Would they do it out in the  
25 open?

0176a

1 JUROR MILLBROOK: I don't think so.

2 MS. VAN LANGEVELDE: What -- what characteristics  
3 might they look for in a victim if somebody was gonna sexually  
4 abuse a child?

5 JUROR MILLBROOK: I don't know.

6 MS. VAN LANGEVELDE: How about easy target?

7 JUROR MILLBROOK: Yeah, she -- she was -- she had MS  
8 too.

9 MS. VAN LANGEVELDE: Easy target.

10 JUROR MILLBROOK: Easy target, yeah.

11 MS. VAN LANGEVELDE: Maybe, you know, you're in a  
12 position of authority over that person; true?

13 JUROR MILLBROOK: Yes.

14 MS. VAN LANGEVELDE: Okay. Do you watch CSI?

15 JUROR MILLBROOK: No.

16 MS. VAN LANGEVELDE: Are you okay with no DNA  
17 evidence?

18 JUROR MILLBROOK: Yes.

19 MS. VAN LANGEVELDE: Are you okay with Judge's  
20 instruction? Would you be able to follow her instruction if  
21 she told you testimony need not be corroborated? You can find  
22 someone guilty just based on victim's testimony. You okay with  
23 that?

24 JUROR MILLBROOK: Yes.

25 MS. VAN LANGEVELDE: I don't have any other

0177a

1 questions. Thank you, sir.

2 Oh, wait, I do. I'm so sorry, Judge.

3 THE COURT That's okay.

4 MS. VAN LANGEVELDE: Do you have children of your  
5 own?

6 JUROR MILLBROOK: Yes.

7 MS. VAN LANGEVELDE: How many?

8 JUROR MILLBROOK: I have a daughter and stepdaughter.

9 MS. VAN LANGEVELDE: Daughter and a stepdaughter.

10 How -- how far apart are they?

11 JUROR MILLBROOK: About four, five years.

12 MS. VAN LANGEVELDE: Okay. How old's your daughter?

13 JUROR MILLBROOK: She's 28.

14 MS. VAN LANGEVELDE: Now. And how old's your  
15 stepdaughter, now?

16 JUROR MILLBROOK: About 30, a little over 30.

17 MS. VAN LANGEVELDE: Oh, she's older?

18 JUROR MILLBROOK: Yes.

19 MS. VAN LANGEVELDE: Any problems with your  
20 stepdaughter?

21 JUROR MILLBROOK: Nope.

22 MS. VAN LANGEVELDE: Ever have -- either of the girls  
23 ever lie to you about stupid stuff?

24 JUROR MILLBROOK: Not really.

25 MS. VAN LANGEVELDE: No? Good kids.

0178a

1 JUROR MILLBROOK: I can't think of anything.

2 MS. VAN LANGEVELDE: Okay, sure. Well, thank you,  
3 sir.

4 JUROR MILLBROOK: Yup.

5 THE COURT: Mr. Carter.

6 MR. CARTER: Thank you. Mr. King, something came to  
7 light after I asked you some questions, so I want to ask you a  
8 -- a few things and Miss Earle, is it?

9 JUROR EARLE: Um-hum.

10 MR. CARTER: You guys are neighbors; right?

11 JUROR KING: Yes.

12 JUROR EARLE: Yeah, he lives a street over from me.

13 MR. CARTER: A street over. So, not real close?

14 JUROR EARLE: No.

15 MR. CARTER: If -- if you guys are back in the jury  
16 deliberation room and you're on opposing views on where you  
17 come down, is that gonna affect your relationship as neighbors  
18 or --

19 JUROR KING: No.

20 MR. CARTER: Okay, just wanted to make sure.

21 JUROR KING: Yes.

22 MR. CARTER: That's one of the other reasons --

23 JUROR EARLE: Um-hum.

24 MR. CARTER: -- we want to know about neighbors,  
25 because we don't want you to be influenced about that. Okay,

0179a

1 thank you.

2 I have nothing further.

3 THE COURT: Challenges for cause, Ms. Van Langevelde?

4 MS. VAN LANGEVELDE: No, none for cause. Thank you.

5 THE COURT: Challenges for cause, Mr. Carter?

6 MR. CARTER: None.

7 THE COURT: Mr. Carter, peremptory to you.

8 MR. CARTER: Yes, we'd like to thank and excuse juror  
9 number nine, Mr. Millbrook.

10 THE COURT: Thank you very much, Mr. Millbrook.

11 JUROR MILLBROOK: Thank you.

12 THE COURT: Scott Kemp. Good morning. And how are  
13 you this morning, Mr. Kemp?

14 JUROR KEMP: I'm -- I'm well. How are you?

15 THE COURT: I'm good. I'm good. So, we know each  
16 other.

17 JUROR KEMP: Yes, we do.

18 THE COURT: Okay. The fact that you know me, would  
19 that influence your ability to be fair and impartial?

20 JUROR KEMP: No.

21 THE COURT: Did you -- would you have answered yes to  
22 any of the questions that --

23 JUROR KEMP: Yes.

24 THE COURT: Go ahead, tell me which ones.

25 JUROR KEMP: I was on a jury about 10 or 12 years

0180a

1 ago, a civil case.

2 THE COURT: Okay.

3 JUROR KEMP: My brother-in-law's the undersheriff of  
4 Ingham County.

5 THE COURT: Would that impact your ability to be fair  
6 and impartial?

7 JUROR KEMP: No.

8 THE COURT: Okay. The jury that you -- was that  
9 here, in Eaton County?

10 JUROR KEMP: Yes.

11 THE COURT: And it was a civil case. Did you  
12 deliberate to ver -- a verdict?

13 JUROR KEMP: We did.

14 THE COURT: What was the verdict?

15 JUROR KEMP: Well, it was monetary.

16 THE COURT: Yup. But in favor of the plaintiff?

17 JUROR KEMP: It was, yes.

18 THE COURT: Okay. Is there anything that you think  
19 would impact your ability to not be able to be fair and  
20 impartial?

21 JUROR KEMP: No.

22 THE COURT: Can you hear all the evidence and wait  
23 until it's time to deliberate?

24 JUROR KEMP: Yes.

25 THE COURT: Okay. Ms. Van Langevelde.

0181a

1 MS. VAN LANGEVELDE: Thank you. Mr. Kemp, I can't  
2 find your sheet, so I'm just gonna ask you do you have any --  
3 what do you do for a living?

4 JUROR KEMP: I'm in sales.

5 MS. VAN LANGEVELDE: Okay. And do you have any  
6 children at home?

7 JUROR KEMP: I have one left at home, yes,

8 MS. VAN LANGEVELDE: Okay, how old are your children?

9 JUROR KEMP: I have 30-year-old, 23 and 17.

10 MS. VAN LANGEVELDE: Boys, girls?

11 JUROR KEMP: All girls.

12 MS. VAN LANGEVELDE: All girls, okay.

13 JUROR KEMP: Yup.

14 MS. VAN LANGEVELDE: No stepchildren?

15 JUROR KEMP: No.

16 MS. VAN LANGEVELDE: Okay. I've seen my picture with  
17 the girls, but we'll see.

18 You have -- have you ever known anybody who was the  
19 victim of sexual assault?

20 JUROR KEMP: No.

21 MS. VAN LANGEVELDE: Ever known anybody accused of  
22 sexual assault?

23 JUROR KEMP: No.

24 MS. VAN LANGEVELDE: Can you understand why a victim  
25 might not tell right away about what's happening?



1 JUROR KEMP: Sure.

2 MS. VAN LANGEVELDE: If someone were going to, say,  
3 sexually assault a child or, you know, a middle schooler, a  
4 child -- when I use child, I'm kinda talkin' about, basically  
5 anybody under the age of 17 -- how would they do it?

6 JUROR KEMP: (No verbal response).

7 MS. VAN LANGEVELDE: And I -- what I mean by that is  
8 how do they -- you know, how do -- what would make someone an  
9 -- a target for sexual assault?

10 JUROR KEMP: Well, like -- like everybody said, they  
11 have a position of power or authority over someone.

12 MS. VAN LANGEVELDE: Have you ever had to testify  
13 before?

14 JUROR KEMP: No.

15 MS. VAN LANGEVELDE: Have your girls ever lied to you  
16 about anything?

17 JUROR KEMP: Oh, I'm sure.

18 MS. VAN LANGEVELDE: How did -- how did you know they  
19 were lying? Or, did you catch 'em in a lie?

20 JUROR KEMP: I think so, over the years. Between the  
21 three of 'em, I think that -- sayin' they're at this friend's  
22 and not that friend's and --

23 MS. VAN LANGEVELDE: Yes, little stuff.

24 JUROR KEMP: Yeah.

25 MS. VAN LANGEVELDE: Big -- big difference between

0183a

1 comin' into court and testifying --

2 JUROR KEMP: Sure.

3 MS. VAN LANGEVELDE: -- tellin' police officers;  
4 wouldn't you agree?

5 JUROR KEMP: Right.

6 MS. VAN LANGEVELDE: How might lying look?

7 JUROR KEMP: How might it look?

8 MS. VAN LANGEVELDE: Yeah, just like physically.

9 JUROR KEMP: Like they wouldn't want to make eye con  
10 -- contact with ya or nervous reactions to questions and things  
11 like that, or just whatever Dad type stuff.

12 MS. VAN LANGEVELDE: How about comin' in and  
13 testifying --

14 JUROR KEMP: Pretty much the same, I'd think.

15 MS. VAN LANGEVELDE: Could look the same.

16 JUROR KEMP: Sure.

17 MS. VAN LANGEVELDE: How might you be able to decide  
18 if someone's tellin' the truth or not?

19 JUROR KEMP: It can be difficult. We'd have to  
20 listen to all the evidence and -- and hear both sides.

21 MS. VAN LANGEVELDE: Okay. Would -- would it be  
22 important to you to know who's, basically, been consistent and  
23 who hasn't?

24 JUROR KEMP: I -- I think, yeah, to better understand  
25 their -- their, you know, testimony.

0184a

1 MS. VAN LANGEVELDE: Sure. Sometimes you --  
2 sometimes you can remember --

3 JUROR KEMP: Sure.

4 MS. VAN LANGEVELDE: -- things. How do you feel  
5 about -- if Judge instructs you that the victim's testimony  
6 does not need to be corroborated, how do you feel about that?  
7 No DNA --

8 JUROR KEMP: Okay.

9 MS. VAN LANGEVELDE: Are you okay with that?

10 JUROR KEMP: Yeah.

11 MS. VAN LANGEVELDE: That you could still find  
12 somebody guilty even just based on testimony alone?

13 JUROR KEMP: Based on the evidence, yes.

14 MS. VAN LANGEVELDE: Okay. And you understand  
15 testimony is evidence.

16 JUROR KEMP: (No verbal response).

17 MS. VAN LANGEVELDE: Okay. And I -- I have the  
18 burden --

19 JUROR KEMP: Understand.

20 MS. VAN LANGEVELDE: -- to prove beyond a reasonable  
21 doubt. Are you okay with that?

22 JUROR KEMP: Yes.

23 MS. VAN LANGEVELDE: Do you understand it's not 100  
24 percent?

25 JUROR KEMP: Yes.

0185a

1 MS. VAN LANGEVELDE: Not 75 percent.

2 JUROR KEMP: Yes.

3 MS. VAN LANGEVELDE: Based on common sense and  
4 reason?

5 JUROR KEMP: (No verbal response).

6 MS. VAN LANGEVELDE: All right, thank you so much,  
7 sir.

8 JUROR KEMP: You're welcome.

9 THE COURT: Mr. Carter.

10 MR. CARTER: Thank you. Mr. Kemp, I -- I just have a  
11 few questions. Did you hear all my questions?

12 JUROR KEMP: Yes.

13 MR. CARTER: Anything you want to say, hey, I  
14 might've answered differently?

15 JUROR KEMP: No, I don't think so.

16 MR. CARTER: Okay. I thought of a -- a unique  
17 question. You -- you're -- I've heard the prosecutor, several  
18 times, ask, you know, what would be a way that someone would  
19 take advantage over somebody sexually. They want to make sure  
20 there's no witnesses around or --

21 JUROR KEMP: Right.

22 MR. CARTER: -- that sort of --

23 JUROR KEMP: Sure, I would think so.

24 MR. CARTER: Right?

25 JUROR KEMP: Okay.

0186a

1 MR. CARTER: Just about any crime; right?

2 JUROR KEMP: Right. Yeah, you don't want to do it  
3 in --

4 MR. CARTER: Right. And to make a lie more  
5 believable, wouldn't you want to set it up to where there was  
6 no witnesses in order to get your lie to be believed?

7 JUROR KEMP: I suppose.

8 MR. CARTER: Yeah. If you wanted to lie about  
9 something, accuse somebody, you wouldn't do it when you knew  
10 there was witnesses who --

11 JUROR KEMP: Right.

12 MR. CARTER: -- heard; right?

13 JUROR KEMP: Right.

14 MR. CARTER: Or other evidence; right?

15 JUROR KEMP: (No verbal response).

16 MR. CARTER: So, how would you decipher them?

17 JUROR KEMP: It'd be difficult.

18 MR. CARTER: It would.

19 JUROR KEMP: Yes.

20 MR. CARTER: Would you agree it's very hard to prove  
21 a negative?

22 JUROR KEMP: Yes.

23 MR. CARTER: Pretty hard to prove something didn't  
24 happen?

25 JUROR KEMP: Right.

0187a

1 MR. CARTER: How would you go about tryin' to prove  
2 that something didn't happen on a he said/she said --

3 JUROR KEMP: I would -- I -- again, with character  
4 witnesses and people in my background and my history and --

5 MR. CARTER: All right. Kind of just -- you're at  
6 the mercy of the person making judgment; right?

7 JUROR KEMP: Can be.

8 MR. CARTER: Thank you. No further questions.

9 THE COURT: Challenges for cause, Ms. Van Langevelde?

10 MS. VAN LANGEVELDE: I have none for cause. Thank  
11 you.

12 THE COURT: Challenges for cause, Mr. Carter?

13 MR. CARTER: None.

14 THE COURT: Peremptory to you, Ms. Van Langevelde.

15 MS. VAN LANGEVELDE: Thank you. Your Honor, the  
16 People would thank and excuse Miss Earle. Thank you so much  
17 for your time and service today, ma'am.

18 THE COURT: Thank you, Miss Earle. Enjoy your  
19 summer.

20 JUROR EARLE: Thank you.

21 THE COURT: Frederick McCauley.

22 JUROR KEMP: Hey, Judge. Mrs. Farr and I do know  
23 each other.

24 THE COURT: How do you know each other?

25 JUROR KEMP: Grand Ledge community.

0188a

1 THE COURT: Okay. How are you?

2 JUROR MCCAULEY: Fine. You?

3 THE COURT: Good. I just found out that Mr. Kemp and  
4 Miss Farr know each other. So, you heard the question Mr.  
5 Carter asked before. If you are -- are both selected to be on  
6 the jury and you get in the jury room and you have differing  
7 opinions, would that have any negative effect on your  
8 friendship?

9 JUROR KEMP: No.

10 THE COURT: Okay. How are you this morning, Mr.  
11 McCauley?

12 JUROR MCCAULEY: I'm well.

13 THE COURT: Were you able to hear all of my  
14 questions?

15 JUROR MCCAULEY: Yes.

16 THE COURT: Would you have answered yes to any of  
17 them?

18 JUROR MCCAULEY: Just one. My daughter works  
19 downstairs.

20 THE COURT: Okay. And where does she work  
21 downstairs?

22 JUROR MCCAULEY: A supervisor in district court.

23 THE COURT: Okay.

24 JUROR MCCAULEY: Megan.

25 THE COURT: Pardon?

0189a

1 JUROR MCCAULEY: Megan.

2 THE COURT: Yes, okay. Would that affect your  
3 ability to be fair and impartial in this case?

4 JUROR MCCAULEY: No.

5 THE COURT: No? She ever talk about Eaton County in  
6 any way that would impact a jury trial in my courtroom?

7 JUROR MCCAULEY: Nope.

8 THE COURT: Okay. Anything you think I need to know  
9 about you?

10 JUROR MCCAULEY: No.

11 THE COURT: It's kind of a big question, isn't it?

12 JUROR MCCAULEY: I'm a pretty complex guy but --

13 THE COURT: Okay. But, you can be fair and  
14 impartial.

15 JUROR MCCAULEY: Yes, ma'am.

16 THE COURT: And you're gonna have a -- you have -- do  
17 you have an open mind right now?

18 JUROR MCCAULEY: Yes, ma'am.

19 THE COURT: Okay. And you would wait until all of  
20 the evidence was in before you started deliberating to make a  
21 decision; is that true?

22 JUROR MCCAULEY: Absolutely.

23 THE COURT: Okay. Go ahead, Ms. Van Langevelde.

24 MS. VAN LANGEVELDE: Thank you. Mr. McCauley, I'm  
25 not gonna ask you if Megan's ever lied to you.



0190a

1 JUROR MCCAULEY: She has.

2 MS. VAN LANGEVELDE: Oh, I was hoping -- no, okay.  
3 So, have you ever known a -- a victim of criminal sexual  
4 conduct?

5 JUROR MCCAULEY: No.

6 MS. VAN LANGEVELDE: Sexual assault. No? Ever know  
7 anybody accused of it?

8 JUROR MCCAULEY: No.

9 MS. VAN LANGEVELDE: Obviously, you have a daughter  
10 Does Megan have any siblings?

11 JUROR MCCAULEY: Yes, I have sons.

12 MS. VAN LANGEVELDE: Okay. Ever lie to you about  
13 stupid stuff?

14 JUROR MCCAULEY: Both of them? I would say so, yeah.

15 MS. VAN LANGEVELDE: Okay. Does that mean that they  
16 lie about everything?

17 JUROR MCCAULEY: No.

18 MS. VAN LANGEVELDE: How do you feel about not having  
19 DNA and not having any physical evidence?

20 JUROR MCCAULEY: No problem.

21 MS. VAN LANGEVELDE: Do you feel like you could make  
22 a decision based on witness testimony alone?

23 JUROR MCCAULEY: Sure.

24 MS. VAN LANGEVELDE: Okay. And --

25 JUROR MCCAULEY: I don't watch CSI.

0191a

1 MS. VAN LANGEVELDE: No? Okay. And if Judge told  
2 you that you could find someone -- find the defendant guilty  
3 you believe the victim's testimony, that's enough. Are you  
4 okay with that?

5 JUROR MCCAULEY: Yes.

6 MS. VAN LANGEVELDE: All right. And if I meet my  
7 burden of proof to you beyond a reasonable doubt, what would  
8 your verdict be?

9 JUROR MCCAULEY: If it was beyond a reasonable doubt  
10 guilty.

11 MS. VAN LANGEVELDE: Okay. Do you understand that  
12 reasonable doubt isn't 100 percent, it's not a mathematical  
13 certainty?

14 JUROR MCCAULEY: I understand.

15 MS. VAN LANGEVELDE: All right. Thank you so much,  
16 sir.

17 JUROR MCCAULEY: You're welcome.

18 THE COURT: Mr. Carter.

19 MR. CARTER: No questions.

20 THE COURT: Challenges for cause, Ms. Van Langevelde?

21 MS. VAN LANGEVELDE: I have none for cause.

22 THE COURT: Challenges for cause, Mr. Carter?

23 MR. CARTER: None.

24 THE COURT: All right. And I believe it is to you,  
25 Mr. Carter, for peremptory.

0192a

1 MR. CARTER: Yes, we'd like to thank and excuse juror  
2 number 10, Miss Townsel.

3 THE COURT: Thank you, Miss Townsel.

4 JUROR TOWNSEL: Okay, thank you.

5 THE COURT: Charlene Fahie.

6 MS. VAN LANGEVELDE: You lost some money right here

7 JUROR TOWNSEL: Okay. Oh dear, thank you.

8 JUROR FAHIE: It's Foy.

9 THE COURT: It's what?

10 JUROR FAHIE: Foy.

11 THE COURT: Foy?

12 JUROR FAHIE: Um-hum.

13 THE COURT: Okay, thank you.

14 JUROR FAHIE: It's one of those.

15 THE COURT: Well, I'm like Mr. Carter; I'm not that  
16 good with names. And I would not have got Foy from F-a-h-i-e.

17 JUROR FAHIE: Right.

18 THE COURT: Right?

19 JUROR FAHIE: Um-hum.

20 THE COURT: That's interesting. Okay. Were you able  
21 to hear all of the questions this morning?

22 JUROR FAHIE: Yes.

23 THE COURT: Would you have answered yes to any of my  
24 questions?

25 JUROR FAHIE: No.

0193a

1 THE COURT: So, you haven't been on a jury before.

2 JUROR FAHIE: No.

3 THE COURT: Don't have friends or family in law  
4 enforcement.

5 JUROR FAHIE: No.

6 THE COURT: Okay. Can you be fair and impartial when  
7 hearing the evidence of this case?

8 JUROR FAHIE: Yes.

9 THE COURT: Okay. Ms. Van Langevelde.

10 MS. VAN LANGEVELDE: Thank you. Miss Fahie, I see  
11 you're a teacher.

12 JUROR FAHIE: Yes.

13 MS. VAN LANGEVELDE: And what grade? Or, what ages?

14 JUROR FAHIE: Four and five, preschool.

15 MS. VAN LANGEVELDE: So, you have the little ones.

16 JUROR FAHIE: Yes.

17 MS. VAN LANGEVELDE: Okay. Ever known any victims of  
18 sexual assault?

19 JUROR FAHIE: No.

20 MS. VAN LANGEVELDE: Okay. Ever have anybody confide  
21 in you or any friends or relatives ever tell you that they were  
22 a victim?

23 JUROR FAHIE: No.

24 MS. VAN LANGEVELDE: Okay. How about anybody you  
25 know ever been accused of sexual assault?

0194a

1 JUROR FAHIE: No.

2 MS. VAN LANGEVELDE: Okay. Being a teacher, you're  
3 mandated reporter.

4 JUROR FAHIE: Yes.

5 MS. VAN LANGEVELDE: Have you ever had to make a call  
6 to CPS or DHS?

7 JUROR FAHIE: Yes.

8 MS. VAN LANGEVELDE: How -- did you feel like it --  
9 or, police. I guess police agencies, as well. Did you ever  
10 have to call them?

11 JUROR FAHIE: Yes, I've called. We're re -- we are  
12 required to call the agency.

13 MS. VAN LANGEVELDE: Okay.

14 JUROR FAHIE: I mean to call Protective Services.

15 MS. VAN LANGEVELDE: Sure. That experience, was that  
16 an okay experience? Did you feel like they did a good job?

17 JUROR FAHIE: Yes. They did investigate, and they  
18 didn't find anything.

19 MS. VAN LANGEVELDE: Okay.

20 JUROR FAHIE: Um-hum.

21 MS. VAN LANGEVELDE: Do you feel like justice was  
22 served in that particular incident?

23 JUROR FAHIE: Yes.

24 MS. VAN LANGEVELDE: Okay. You have two children at  
25 home?

0195a

1 JUROR FAHIE: Yes.

2 MS. VAN LANGEVELDE: How -- what are their ages?

3 JUROR FAHIE: Seventeen and 20 -- 21.

4 MS. VAN LANGEVELDE: Okay.

5 JUROR FAHIE: Um-hum.

6 MS. VAN LANGEVELDE: Ever have kids lie to you about  
7 stupid stuff?

8 JUROR FAHIE: Yes.

9 MS. VAN LANGEVELDE: Okay.

10 JUROR FAHIE: Um-hum.

11 MS. VAN LANGEVELDE: Ever have any kids lie to you  
12 about big stuff?

13 JUROR FAHIE: No.

14 MS. VAN LANGEVELDE: Think there's a difference  
15 between not lying about your homework, not doing your homework,  
16 and lying to police officers?

17 JUROR FAHIE: Yeah, lyin' stuff to put it out there.  
18 Yeah, that's major.

19 MS. VAN LANGEVELDE: Okay. Do you watch CSI?

20 JUROR FAHIE: No. I used to, but I don't anymore.

21 MS. VAN LANGEVELDE: Not anymore, okay. Are you okay  
22 with the fact that there's not gonna be DNA evidence, no  
23 physical evidence?

24 JUROR FAHIE: Yes.

25 MS. VAN LANGEVELDE: And why wouldn't there be

0196a

1 physical evidence after two, three, four years?

2 JUROR FAHIE: 'Cause it probably won't exist, um-hum

3 MS. VAN LANGEVELDE: Right.

4 JUROR FAHIE: Too long.

5 MS. VAN LANGEVELDE: Right.

6 JUROR FAHIE: Um-hum.

7 MS. VAN LANGEVELDE: And if Judge instructs you that

8 testimony is enough to find the defendant guilty, that if you

9 believe the victim's testimony, that that is enough to find hi

10 guilty, are you okay with that?

11 JUROR FAHIE: I want to hear everything first, um-

12 hum.

13 MS. VAN LANGEVELDE: Sure.

14 JUROR FAHIE: Yes.

15 MS. VAN LANGEVELDE: Sure. But if the Judge says,

16 you know, don't have to have DNA, don't have -- doesn't have to

17 be corroborated --

18 JUROR FAHIE: Um-hum.

19 MS. VAN LANGEVELDE: -- are you okay with that?

20 JUROR FAHIE: Yes.

21 MS. VAN LANGEVELDE: All right. And you can follow

22 instructions pretty well?

23 JUROR FAHIE: Yes.

24 MS. VAN LANGEVELDE: All right. Thank you so much,

25 ma'am.

0197a

1 JUROR FAHIE: Okay.

2 THE COURT: Mr. Carter.

3 MR. CARTER: Thank you. Miss -- Miss Fahie, you  
4 heard all my --

5 JUROR FAHIE: Yes.

6 MR. CARTER: -- questions? Anything that would raise  
7 a question or want me to know about?

8 JUROR FAHIE: No.

9 MR. CARTER: All right. There was a question posed  
10 to you about there's a difference about lying about stupid  
11 stuff and lying about a police officer.

12 JUROR FAHIE: Um-hum.

13 MR. CARTER: I'd agree with that, too. Wouldn't you?

14 JUROR FAHIE: Right.

15 MR. CARTER: Does that mean that people don't lie to  
16 police officers?

17 JUROR FAHIE: No, people probably do.

18 MR. CARTER: Yeah --

19 JUROR FAHIE: Yeah, I know they --

20 MR. CARTER: -- people lie all the time; right?

21 JUROR FAHIE: Right, um-hum.

22 MR. CARTER: Doesn't matter the degree of lie. It  
23 happens --

24 JUROR FAHIE: Right.

25 MR. CARTER: -- doesn't it?



0198a

1 JUROR FAHIE: Yes.

2 MR. CARTER: Okay. So, just because people tend to  
3 lie about stupid stuff doesn't, necessarily, mean they don't  
4 lie about serious stuff either; right?

5 JUROR FAHIE: True. Yes.

6 MR. CARTER: Why would someone continue a lie even  
7 after -- even if they come to court and we're this far?

8 JUROR FAHIE: They probably don't want to be found  
9 guilty or don't want to get in trouble.

10 MR. CARTER: Okay.

11 JUROR FAHIE: Um-hum.

12 MR. CARTER: What if it's, you know, the victim or  
13 something. Why -- why would they continue to lie?

14 JUROR FAHIE: I guess they wouldn't want to feel  
15 embarrassed. They don't want to mention -- they don't want  
16 people to not lose trust in them.

17 MR. CARTER: Sure.

18 JUROR FAHIE: Um-hum.

19 MR. CARTER: And maybe they -- they carried it on too  
20 far, and they don't know how to turn back?

21 JUROR FAHIE: True, that could be one, too.

22 MR. CARTER: Kinda like the snowball bein' rolled  
23 down the hill; right?

24 JUROR FAHIE: Yes.

25 MR. CARTER: Thank you. Nothing further.

0199a

1 THE COURT: Challenges for cause, Ms. Van Langevelde?

2 MS. VAN LANGEVELDE: I have none for cause. Thank  
3 you.

4 THE COURT: Challenges for cause, Mr. Carter?

5 MR. CARTER: None.

6 THE COURT: Peremptory to you, Ms. Van Langevelde.

7 MS. VAN LANGEVELDE: Thank you, Your Honor. The  
8 People would thank and excuse Miss Farr. Thank you so much,  
9 ma'am, for your time today.

10 THE COURT: Thank you very much, Miss Farr.

11 Linda Surato. Good morning.

12 JUROR SURATO: Good morning.

13 THE COURT: So, Miss Surato, were you able to hear  
14 all of my questions?

15 JUROR SURATO: Yes.

16 THE COURT: Would you have answered yes to any of  
17 them?

18 JUROR SURATO: No.

19 THE COURT: No? Do you believe that you can be fair  
20 and impartial?

21 JUROR SURATO: Yes.

22 THE COURT: And you can keep an open mind until all  
23 of the evidence has been heard?

24 JUROR SURATO: Yes.

25 THE COURT: Ms. Van Langevelde.

0200a

1 MS. VAN LANGEVELDE: Thank you. Ms. Surato, were you  
2 able to hear me okay?

3 JUROR SURATO: Yes.

4 MS. VAN LANGEVELDE: Okay. And do you have any  
5 children?

6 JUROR SURATO: Yes, I do, two.

7 MS. VAN LANGEVELDE: And how old are they?

8 JUROR SURATO: Forty and 41.

9 MS. VAN LANGEVELDE: Do you have any grandchildren?

10 JUROR SURATO: I have seven of 'em.

11 MS. VAN LANGEVELDE: Seven grandchildren, wow. And  
12 what are their ages?

13 JUROR SURATO: They range in age from seven to 21.

14 MS. VAN LANGEVELDE: Oh, okay. Grandchildren or  
15 children ever lie to you?

16 JUROR SURATO: Oh, yes.

17 MS. VAN LANGEVELDE: Yeah. Does the lie usually come  
18 out?

19 JUROR SURATO: Yeah, usually.

20 MS. VAN LANGEVELDE: Okay. Ever known anybody that  
21 was a victim of sexual assault?

22 JUROR SURATO: No.

23 MS. VAN LANGEVELDE: Ever know anybody who was  
24 accused of sexual assault?

25 JUROR SURATO: No.

0201a

1 MS. VAN LANGEVELDE: Have -- if Judge were to tell  
2 you that testimony is evidence, the victim's testimony need not  
3 be corroborated in order for you to find the defendant guilty  
4 are you okay with that?

5 JUROR SURATO: Yes.

6 MS. VAN LANGEVELDE: You okay with no DNA?

7 JUROR SURATO: Yeah.

8 MS. VAN LANGEVELDE: Okay with no physical evidence?

9 JUROR SURATO: Yes.

10 MS. VAN LANGEVELDE: Feel like you could weigh  
11 somebody's testimony and determine whether they were telling  
12 the truth or not?

13 JUROR SURATO: Yes.

14 MS. VAN LANGEVELDE: All right. Thank you, ma'am.

15 THE COURT: Mr. Carter.

16 MR. CARTER: No questions.

17 THE COURT: Challenges for cause, Ms. Van Langevelde?

18 MS. VAN LANGEVELDE: Oh, none. None for cause.

19 Thank you.

20 THE COURT: Challenges for cause, Mr. Carter?

21 MR. CARTER: None.

22 THE COURT: Mr. Carter, peremptory to you.

23 MR. CARTER: We'd like to thank and excuse Mr. Kemp.

24 THE COURT: Well, thank you, Mr. Kemp. Have a nice  
25 day.

0202a

1 JUROR KEMP: You, too.

2 THE COURT: Lance Queen.

3 MS. VAN LANGEVELDE: Oh, he was on our list to  
4 excuse.

5 THE COURT: Oh, he was already marked off. Sorry.

6 MS. VAN LANGEVELDE: That's all right.

7 THE COURT: Rachelle, or is it Raquel, Escutia? R-a-  
8 q-u-e-l, last name E-s-c-u-t-i-a.

9 Can you find out from our jury clerk why that -- did  
10 anybody see anybody go out to use the restroom, perhaps?

11 MR. CARTER: I -- I did, but I don't know if they  
12 came back.

13 THE COURT: Lauren, would you please go check? No?  
14 Okay.

15 Amos Endsley. How are you today, sir?

16 JUROR ENDSLEY: Good. How you doin'?

17 THE COURT: Good. Were you able to hear all of the  
18 questions?

19 JUROR ENDSLEY: Yes, ma'am.

20 THE COURT: Were there any of my questions that you  
21 would've answered in the affirmative?

22 JUROR ENDSLEY: No, ma'am.

23 THE COURT: Do you believe that you can be fair and  
24 impartial?

25 JUROR ENDSLEY: Yes.

0203a

1 THE COURT: Keep an open mind?

2 JUROR ENDSLEY: Yes, ma'am.

3 THE COURT: Ms. Van Langevelde.

4 MS. VAN LANGEVELDE: Thank you. Ms. Endsley, were  
5 you able to hear me okay?

6 JUROR ENDSLEY: Yup.

7 MS. VAN LANGEVELDE: All right. You have two  
8 children at home?

9 JUROR ENDSLEY: Yup, two of them went with my ex-  
10 wife.

11 MS. VAN LANGEVELDE: Okay.

12 JUROR ENDSLEY: So, I got three kids.

13 MS. VAN LANGEVELDE: Three kids, okay. Boys, girls?

14 JUROR ENDSLEY: Two girls.

15 MS. VAN LANGEVELDE: Two girls, all right. Busy dad?

16 JUROR ENDSLEY: Yup, pretty much.

17 MS. VAN LANGEVELDE: How old are they now?

18 JUROR ENDSLEY: Fifteen, nine, and I got a boy that's  
19 seven.

20 MS. VAN LANGEVELDE: Okay. Well, happy belated  
21 Father's Day. Ever known anybody who's a victim of sexual  
22 assault?

23 JUROR ENDSLEY: Nope.

24 MS. VAN LANGEVELDE: Ever know anybody accused of  
25 sexual assault?

O204a

1 JUROR ENDSLEY: Nope.

2 MS. VAN LANGEVELDE: Can you understand why a victim  
3 might not disclose right away?

4 JUROR ENDSLEY: Yup.

5 MS. VAN LANGEVELDE: Would that be unusual?

6 JUROR ENDSLEY: Nope.

7 MS. VAN LANGEVELDE: All right. Are you okay with  
8 physical evidence?

9 JUROR ENDSLEY: Yup.

10 MS. VAN LANGEVELDE: No DNA, no injuries, no doctors,  
11 are you --

12 JUROR ENDSLEY: Yes, ma'am.

13 MS. VAN LANGEVELDE: -- okay with that? All right.  
14 And are you okay with the -- the beyond a reasonable doubt?

15 JUROR ENDSLEY: Yup.

16 MS. VAN LANGEVELDE: Feel like you can make a  
17 decision based upon common sense and reason?

18 JUROR ENDSLEY: Yes, ma'am.

19 MS. VAN LANGEVELDE: All right. And you can -- you  
20 think you could listen to testimony?

21 JUROR ENDSLEY: Yup.

22 MS. VAN LANGEVELDE: All right. Thank you so much.

23 THE COURT: Mr. Carter.

24 MR. CARTER: Thank you. Mr. Endsley, you heard all  
25 my questions?

0205a

1 JUROR ENDSLEY: Yes, sir.

2 MR. CARTER: Anything that you want to draw to my  
3 attention?

4 JUROR ENDSLEY: No, sir.

5 MR. CARTER: Nothing further.

6 THE COURT: Challenges for cause, Ms. Van Langevelde?

7 MS. VAN LANGEVELDE: None for cause. Thank you.

8 THE COURT: Challenges for cause, Mr. Carter?

9 MR. CARTER: None.

10 THE COURT: Peremptory to you, Ms. Van Langevelde.

11 MS. VAN LANGEVELDE: Thank you, Your Honor. The  
12 People would thank and excuse Mr. Kellicut. Thank you, sir.

13 THE COURT: Thank you very much, sir.

14 Okay, James Kareckas. Good morning.

15 JUROR KARECKAS: Good morning.

16 THE COURT: How are you today?

17 JUROR KARECKAS: I'm good. How about yourself?

18 THE COURT: Good. Did you hear all of my questions?

19 JUROR KARECKAS: I did.

20 THE COURT: Would you have answered yes to any of  
21 them?

22 JUROR KARECKAS: I would've. Ten years ago, I did  
23 jury duty for a drinking and driving.

24 THE COURT: Oh, was it here in Eaton County?

25 JUROR KARECKAS: Ingham County.



0206a

1 THE COURT: Ingham?

2 JUROR KARECKAS: Yes.

3 THE COURT: And did you deliberate to a verdict?

4 JUROR KARECKAS: We did.

5 THE COURT: What was your verdict?

6 JUROR KARECKAS: Guilty.

7 THE COURT: Is there anything about that experience  
8 that would impact you to serve as a jury (sic) in this case?

9 JUROR KARECKAS: No.

10 THE COURT: A juror. Do you believe that you can be  
11 open-minded till you hear all of the facts of the case?

12 JUROR KARECKAS: I'm hoping so.

13 THE COURT: Okay, why are you only hoping to?

14 JUROR KARECKAS: To answer a couple of her  
15 questions --

16 THE COURT: Um-hum.

17 JUROR KARECKAS: -- the mother of my four-year-old  
18 was a victim --

19 THE COURT: Okay.

20 JUROR KARECKAS: -- herself. And in 2014, I had to  
21 go through a custody battle to keep my four-year-old away from  
22 a registered tier three sex offender.

23 THE COURT: Okay. So, did you -- so, the mother of  
24 your child.

25 JUROR KARECKAS: Yes.

0207a

1 THE COURT: Did you know her at the time of the  
2 sexual assault?

3 JUROR KARECKAS: No, I didn't. It happened when she  
4 was a kid.

5 THE COURT: Oh.

6 JUROR KARECKAS: Her stepfather.

7 THE COURT: Okay. And did she report that?

8 JUROR KARECKAS: She did to her mother, but her  
9 mother did nothing.

10 THE COURT: Okay. And so, was he ever charged?

11 JUROR KARECKAS: No.

12 THE COURT: Okay. Did she report it to her mother at  
13 the time it happened?

14 JUROR KARECKAS: It was a while afterwards, for the  
15 very same reasons I heard, embarrassed, scared.

16 THE COURT: Okay. Like years afterwards type of  
17 thing?

18 JUROR KARECKAS: It happened when she was about 11,  
19 12. She reported it at 15, 16 to her mom.

20 THE COURT: Okay. And then, her mom didn't do  
21 anything about it.

22 JUROR KARECKAS: No, she didn't believe her.

23 THE COURT: So, does she still have a relationship  
24 with her mother?

25 JUROR KARECKAS: She does. And she's also the same

0208a

1 -- there's a lot that goes into it, the psychiatric (sic).  
2 But, she's also the same mom I had to go to court with. We  
3 were split up. And she's also the same one that tried to bring  
4 another registered tier three sex offender into my daughter's  
5 life.

6 THE COURT: Okay. So, it was Grandma who was dating  
7 individuals that had a criminal history, and you didn't want  
8 your child around Grandma's boyfriends or -- is that the way to  
9 put it?

10 JUROR KARECKAS: No. It's just confusing. When --  
11 she's my ex-girlfriend now. But when we were together, it was  
12 her stepdad that did it to her. If you look in the impact  
13 panel studies of victims, they end up going three way: Either  
14 hatin' against it, growin' up thinkin' nothing's wrong with it  
15 because their parents didn't teach 'em otherwise, or become an  
16 abuser themselves. She's the one that kind of followed in --  
17 she chose a man that was like her dad. It was my girlfriend  
18 that brought in another tier three that -- in my daughter's  
19 life.

20 THE COURT: Okay. Did anything happen in court?

21 JUROR KARECKAS: I lost the custody battle itself,  
22 but there was a court order put in place that my daughter was  
23 not to be exposed to him until she was of 18 years old. She is  
24 four-years-old now. And if it is proven that she is being  
25 exposed to him, then I gain full custody.

0209a

1 THE COURT: Okay. And was that here, in Eaton  
2 County?

3 JUROR KARECKAS: That was Ingham County, also.

4 THE COURT: Ingham?

5 JUROR KARECKAS: Yes.

6 THE COURT: Okay. Were you satisfied with the results  
7 of the -- how the judicial system handled it?

8 JUROR KARECKAS: Yes and no.

9 THE COURT: Okay.

10 JUROR KARECKAS: I was happy about the court order  
11 bein' put in place, but, until it can be proven otherwise --  
12 and I mean no disrespect, but it's kind of a piece of paper.  
13 Know what I mean?

14 THE COURT: Okay.

15 JUROR KARECKAS: If she can hide it, then she can  
16 hide it.

17 THE COURT: All right. So, that sounds like it was a  
18 horrible experience.

19 JUROR KARECKAS: Yes.

20 THE COURT: Do you think that would influence you in  
21 this case?

22 JUROR KARECKAS: I would hope not, but I can't make a  
23 guarantee.

24 THE COURT: Well what do you mean you can't make a  
25 guarantee? There are no guarantees in life, we all know that;

0210a

1 right?

2 JUROR KARECKAS: Right.

3 THE COURT: But --

4 JUROR KARECKAS: I would like to say yes but -- or,  
5 would like to say no, that it wouldn't influence me, but it  
6 does kind of hit home, I guess, and, you know -- (inaudible).

7 THE COURT: Well, if you had to vote right now  
8 innocent or guilty, how would you vote?

9 JUROR KARECKAS: Right now, what would -- probably  
10 guilty, and that's because of the questions bein' asked by him  
11 of him not taking the stand himself.

12 THE COURT: Well, if you had to vote right now --  
13 and, again, -- let me ask everybody. If you had to vote right  
14 now innocent or guilty, how would you vote?

15 JURORS: Innocent.

16 THE COURT: Did everybody say innocent? I couldn't  
17 hear everybody.

18 JURORS: Innocent, yes.

19 THE COURT: Okay.

20 JUROR KARECKAS: What makes me wonder is this --

21 THE COURT: You haven't heard any evidence, so he  
22 would have to be found not guilty right now.

23 JUROR KARECKAS: Right.

24 THE COURT: Okay. But, you would -- but, you  
25 answered that, really, right now, you would vote guilty.

0211a

1 JUROR KARECKAS: Right.

2 THE COURT: Okay. Thank you very much for being  
3 here, sir. I am dismissing you for cause.

4 JUROR KARECKAS: Thank you.

5 THE COURT: Okay,, that then takes us to Craig  
6 Jaglowski.

7 JUROR JAGLOWSKI: Hello.

8 THE COURT: Did I say your name right?

9 JUROR JAGLOWSKI: You did very well.

10 THE COURT: Excellent. Now, I noticed that you were  
11 sitting all the way in the back row.

12 JUROR JAGLOWSKI: I was.

13 THE COURT: Were you able to hear all of the  
14 questions?

15 JUROR JAGLOWSKI: I could hear all the -- the  
16 lawyers' but some of the people I couldn't hear everything.

17 THE COURT: Okay. I'm more concerned that you could  
18 hear their questions --

19 JUROR JAGLOWSKI: Right.

20 THE COURT: -- and my questions. Would you have  
21 answered yes to any of my questions?

22 JUROR JAGLOWSKI: Yes, I recognize you. I have a  
23 brother-in-law that works for -- he's a circuit court judge in  
24 PawPaw.

25 THE COURT: Um-hum.

0212a

1 JUROR JAGLOWSKI: And I think that's it.

2 THE COURT: Is the -- your brother is the circuit  
3 court judge in PawPaw?

4 JUROR JAGLOWSKI: No, brother-in-law.

5 THE COURT: Brother-in-law. Would that influence  
6 your ability to be fair and impartial?

7 JUROR JAGLOWSKI: No.

8 THE COURT: Okay. And would you go into this with an  
9 open mind? Do you have an open mind right now?

10 JUROR JAGLOWSKI: Yes.

11 THE COURT: All right. Is there anything that you  
12 think we would need to know about you that would impact whether  
13 you could be fair and impartial in this case?

14 JUROR JAGLOWSKI: No.

15 THE COURT: Ms. Van Langevelde.

16 MS. VAN LANGEVELDE: Thank you. Mr. Jazlowski, did I  
17 say that right?

18 JUROR JAGLOWSKI: That's close enough.

19 MS. VAN LANGEVELDE: Okay. Van Langevelde -- I  
20 totally get the last name syndrome.

21 Did -- have you ever known a victim of sexual  
22 assault?

23 JUROR JAGLOWSKI: No.

24 MS. VAN LANGEVELDE: Okay. Ever known anybody  
25 accused of sexual assault?

0213a

1 JUROR JAGLOWSKI: No.

2 MS. VAN LANGEVELDE: Okay. And do you feel like you  
3 would need DNA, you would need physical evidence, or do you  
4 feel like you can make a decision based on testimony alone?

5 JUROR JAGLOWSKI: Yes.

6 MS. VAN LANGEVELDE: Okay. What kind of -- what kind  
7 of things would factor -- factor into your decision? I mean,  
8 as far as the evidence. What -- like the other panelists said  
9 would it matter to you, as far as position of authority, or  
10 what -- you know, what kind of makes a -- a victim vulnerable?

11 JUROR JAGLOWSKI: I've -- yeah, I think the typical  
12 authority or kids are scared, things like that.

13 MS. VAN LANGEVELDE: Okay. Any answers to any of the  
14 questions that I asked that would be different or that I should  
15 know or Mr. Carter should know?

16 JUROR JAGLOWSKI: Nope, not that I can think of.

17 MS. VAN LANGEVELDE: Okay. Do you have any children?

18 JUROR JAGLOWSKI: I have two.

19 MS. VAN LANGEVELDE: Two. Boys, girls?

20 JUROR JAGLOWSKI: Boys, 29 and 27.

21 MS. VAN LANGEVELDE: Any stepchildren?

22 JUROR JAGLOWSKI: No.

23 MS. VAN LANGEVELDE: No? Okay. And do you have any  
24 grandchildren?

25 JUROR JAGLOWSKI: Nope.



O214a

1 MS. VAN LANGEVELDE: All right. Well, thank you,  
2 sir.

3 THE COURT: Mr. Carter.

4 MR. CARTER: You heard all my questions?

5 JUROR JAGLOWSKI: (No verbal response).

6 MR. CARTER: Anything you'd want to draw to my  
7 attention?

8 JUROR JAGLOWSKI: No, not today.

9 MR. CARTER: Would you feel comfortable being a juror  
10 on your own case?

11 JUROR JAGLOWSKI: Sure.

12 MR. CARTER: Think you could keep an open mind?

13 JUROR JAGLOWSKI: I can.

14 MR. CARTER: Are you a Paul Harvey fan?

15 JUROR JAGLOWSKI: I used to listen to him. I'm old  
16 enough to remember him.

17 MR. CARTER: Can you wait till -- can you -- can you  
18 wait until you hear the rest of the story?

19 JUROR JAGLOWSKI: I can.

20 MR. CARTER: Yeah, all right. Thank you. Nothing  
21 further.

22 THE COURT: Challenges for cause, Ms. Van Langevelde?

23 MS. VAN LANGEVELDE: No, none for cause.

24 THE COURT: Challenges for cause, Mr. Carter?

25 MR. CARTER: None.

0215a

1 THE COURT: Mr. Carter, peremptory's to you.

2 MR. CARTER: We'd like to thank and excuse juror  
3 number six, Scott McLennan.

4 THE COURT: Thank you very much, Mr. McLennan. Have  
5 a good day.

6 Jennifer Driver. And how are you this morning? It  
7 is --

8 JUROR DRIVER: Fine, thank you.

9 THE COURT: -- still morning; right?

10 JUROR DRIVER: It is.

11 THE COURT: Were you able to hear all of my  
12 questions?

13 JUROR DRIVER: Yes.

14 THE COURT: Would you have answered yes to any of  
15 them?

16 JUROR DRIVER: No.

17 THE COURT: Okay. Do you think that you can be fair  
18 and impartial in deciding this case?

19 JUROR DRIVER: Yes.

20 THE COURT: Ms. Van Langevelde.

21 MS. VAN LANGEVELDE: Thank you. Miss Driver, were  
22 you able to hear me okay?

23 JUROR DRIVER: Yes, I was.

24 MS. VAN LANGEVELDE: I can't find her sheet.

25 MR. CARTER: I don't have her sheet, either.

0216a

1 MS. VAN LANGEVELDE: Can we approach?

2 THE COURT: Let me see if I have the master sheet.

3 Nope.

4 LAW/JURY CLERK: (Inaudible).

5 THE COURT: Well, call and make -- make sure she's  
6 there.

7 LAW/JURY CLERK: Okay.

8 MS. VAN LANGEVELDE: I'll just ask you a bunch of  
9 questions.

10 THE COURT: Yeah.

11 MS. VAN LANGEVELDE: All right, where do you work?

12 JUROR DRIVER: State of Michigan.

13 MS. VAN LANGEVELDE: And what do you do there?

14 JUROR DRIVER: I'm a website administrator.

15 MS. VAN LANGEVELDE: Okay. And so, do you work for a  
16 particular department with the State?

17 JUROR DRIVER: State Budget Office.

18 MS. VAN LANGEVELDE: Okay. Do you have any children?

19 JUROR DRIVER: I do.

20 MS. VAN LANGEVELDE: How old?

21 JUROR DRIVER: Thirteen, 11 and six.

22 MS. VAN LANGEVELDE: Boys, girls?

23 JUROR DRIVER: Girl, girl, boy.

24 MS. VAN LANGEVELDE: Girl, girl, boy. Okay. Have  
25 you ever known a victim of sexual assault?

0217a

1 JUROR DRIVER: No.

2 MS. VAN LANGEVELDE: Ever known anybody accused of  
3 sexual assault?

4 JUROR DRIVER: No.

5 MS. VAN LANGEVELDE: Any stepchildren?

6 JUROR DRIVER: No.

7 MS. VAN LANGEVELDE: If Judge instructs you that  
8 testimony is enough to find somebody guilty, are you okay with  
9 that?

10 JUROR DRIVER: (No verbal response).

11 MS. VAN LANGEVELDE: I'm summarizing the instruction  
12 but --

13 JUROR DRIVER: Yes.

14 MS. VAN LANGEVELDE: Okay. And, basically, we're not  
15 gonna have DNA, we're not gonna have physical evidence. Are  
16 you okay with that?

17 JUROR DRIVER: Correct, yes.

18 MS. VAN LANGEVELDE: Do you think you could weigh  
19 somebody's testimony and decide whether they're telling the  
20 truth and whether you believe them?

21 JUROR DRIVER: Yes.

22 MS. VAN LANGEVELDE: Thank you, ma'am. I don't have  
23 any other questions.

24 THE COURT: Mr. Carter.

25 MR. CARTER: Miss Driver, you heard my questions?

0218a

1 JUROR DRIVER: Yes, I did.

2 MR. CARTER: Okay. Is there anything you'd like me  
3 to know?

4 JUROR DRIVER: Nope, I guess not.

5 MR. CARTER: You wouldn't have answered anything  
6 negative?

7 JUROR DRIVER: No.

8 MR. CARTER: You have four children?

9 JUROR DRIVER: Three.

10 MR. CARTER: Three. Girl, girl, boy?

11 JUROR DRIVER: Yes.

12 MR. CARTER: All right. You heard my analysis of the  
13 first one gettin' to the parent to tell them their side of the  
14 story kind of puts the other one at the defense?

15 JUROR DRIVER: Perhaps.

16 MR. CARTER: Perhaps.

17 JUROR DRIVER: Both -- both parties are questioned --

18 MR. CARTER: Sure. I mean, that's -- that's --

19 JUROR DRIVER: -- before I make a decision.

20 MR. CARTER: That's the ideal way; right?

21 JUROR DRIVER: Yup.

22 MR. CARTER: And that's -- and that's, basically,  
23 what we're asking you to do.

24 JUROR DRIVER: Correct.

25 MR. CARTER: Can you do that?

0219a

1 JUROR DRIVER: Yes, absolutely.

2 MR. CARTER: Okay. Can you think of reasons why  
3 someone would lie about something and then continue to lie?

4 JUROR DRIVER: Oh, yes.

5 MR. CARTER: Even to the nth degree?

6 JUROR DRIVER: Yes.

7 MR. CARTER: And what would those reasons be?

8 JUROR DRIVER: Their credibility, knowing they  
9 wouldn't be believed again, being scared, just getting in too  
10 deep to the point of no return.

11 MR. CARTER: All right. Just can't figure out a way  
12 to come clean, so-to-speak?

13 JUROR DRIVER: Correct.

14 MR. CARTER: I have nothing further.

15 THE COURT: Challenge for cause, Ms. Van Langevelde?

16 MS. VAN LANGEVELDE: No, none for cause. Thank you.

17 THE COURT: Mr. Carter, challenge for cause?

18 MR. CARTER: None.

19 THE COURT: Peremptory to you, Ms. Van Langevelde.

20 MS. VAN LANGEVELDE: I thought I just went.

21 THE COURT: Didn't you do Mr. McLennan?

22 MS. VAN LANGEVELDE: Oh, you're right.

23 MR. CARTER: Yeah.

24 MS. VAN LANGEVELDE: I'm so sorry.

25 THE COURT: Okay.

0220a

1 MS. VAN LANGEVELDE: You are correct, Judge.

2 THE COURT: It's okay.

3 MS. VAN LANGEVELDE: As usual. Sorry. Thank you.  
4 The People would thank and excuse Miss Jackson. Thank you,  
5 ma'am, for your service today.

6 THE COURT: Thank you, Miss Jackson.

7 Forrest Wellman. Good morning, Mr. Wellman.

8 JUROR WELLMAN: Good morning.

9 THE COURT: And how are you today?

10 JUROR WELLMAN: Just fine, thanks.

11 THE COURT: Were you able to hear all of the  
12 questions?

13 JUROR WELLMAN: Yes.

14 THE COURT: Would you have answered yes to any of my  
15 questions?

16 JUROR WELLMAN: I'm a retired corrections officer.

17 THE COURT: Pardon me?

18 JUROR WELLMAN: I'm a retired corrections officer.

19 THE COURT: All right. What facility did you serve  
20 in?

21 JUROR WELLMAN: The Cotton Facility in Jackson.

22 THE COURT: Okay. Would that experience have any  
23 impact on your ability to be fair and impartial?

24 JUROR WELLMAN: No.

25 THE COURT: All right. Do you think that you can be

0221a

1 fair and impartial?

2 JUROR WELLMAN: I think so.

3 THE COURT: All right. You come -- do you have an  
4 open mind right now?

5 JUROR WELLMAN: Yes.

6 THE COURT: Ms. Van Langevelde.

7 MS. VAN LANGEVELDE: Thank you. Mr. Wellman, were  
8 you able to hear me okay?

9 JUROR WELLMAN: Yes, I was.

10 MS. VAN LANGEVELDE: All right. Any answers, to any  
11 of the questions that I asked, that I should know or Mr. Carter  
12 should know?

13 JUROR WELLMAN: No.

14 MS. VAN LANGEVELDE: Ever known a victim of sexual  
15 assault?

16 JUROR WELLMAN: No.

17 MS. VAN LANGEVELDE: Are you okay with no DNA, no --  
18 basically, no physical evidence? It's all gonna be based on  
19 testimony.

20 JUROR WELLMAN: Yes.

21 MS. VAN LANGEVELDE: And you're okay with that?

22 JUROR WELLMAN: Yes.

23 MS. VAN LANGEVELDE: Feel like you can make a  
24 decision on somebody's credibility?

25 JUROR WELLMAN: Yes.



0222a

1 MS. VAN LANGEVELDE: It's hard sometimes. Do you  
2 think you can do it?

3 JUROR WELLMAN: I hope so.

4 MS. VAN LANGEVELDE: All right. Thank you, sir.

5 THE COURT: Mr. Carter.

6 MR. CARTER: Thank you. You heard all my questions

7 JUROR WELLMAN: Yes.

8 MR. CARTER: Anything you'd draw to my attention?

9 JUROR WELLMAN: No.

10 MR. CARTER: I notice you're carrying a book. What  
11 are you reading?

12 JUROR WELLMAN: The Millionaires by Brad Meltzer.  
13 It's a mystery.

14 MR. CARTER: You -- you understand how hard it is to  
15 prove a negative?

16 JUROR WELLMAN: Yes.

17 MR. CARTER: Pretty difficult, isn't it?

18 JUROR WELLMAN: Um-hum.

19 MR. CARTER: Do you understand that that's why we  
20 have the burden on the prosecution?

21 JUROR WELLMAN: Yes.

22 MR. CARTER: You don't have any issues with that?

23 JUROR WELLMAN: No.

24 MR. CARTER: You wouldn't give more weight to a  
25 child's testimony than an adult's testimony, would you?

0223a

1 JUROR WELLMAN: No, I don't think so.

2 MR. CARTER: Children can lie just as much as adults  
3 right?

4 JUROR WELLMAN: Yes.

5 MR. CARTER: Nothing further.

6 THE COURT: Challenge for cause, Ms. Van Langevelde

7 MS. VAN LANGEVELDE: No, none for cause.

8 THE COURT: Challenge for cause, Mr. Carter?

9 MR. CARTER: None.

10 THE COURT: Mr. Carter, peremptory to you.

11 MR. CARTER: We'd like to thank and excuse juror  
12 number two, Mr. King.

13 THE COURT: Thank you very much, Mr. King.

14 JUROR KING: Yes.

15 THE COURT: Have a nice day.

16 JUROR KING: You, too. Thank you.

17 THE COURT: Tonia France. Good morning.

18 JUROR FRANCE: Good morning.

19 THE COURT: And how are you?

20 JUROR FRANCE: Good.

21 THE COURT: Were you able to hear all of my  
22 questions?

23 JUROR FRANCE: Yes.

24 THE COURT: Would you have answered yes to any of  
25 them?

O224a

1 JUROR FRANCE: No.

2 THE COURT: Do you believe that you can be fair and  
3 impartial?

4 JUROR FRANCE: Yes.

5 THE COURT: Do you have an open mind at this point?

6 JUROR FRANCE: Yes.

7 THE COURT: You'll wait to hear all of the evidence  
8 before you start thinking or deliberating on a decision?

9 JUROR FRANCE: Yes.

10 THE COURT: Ms. Van Langevelde.

11 MS. VAN LANGEVELDE: Thank you, Your Honor.

12 Miss France, were you able to hear me okay?

13 JUROR FRANCE: Yes.

14 MS. VAN LANGEVELDE: All right. Do you have -- you  
15 said one child at home?

16 JUROR FRANCE: Yes.

17 MS. VAN LANGEVELDE: And boy, girl?

18 JUROR FRANCE: Boy.

19 MS. VAN LANGEVELDE: And do you have any other  
20 children?

21 JUROR FRANCE: No.

22 MS. VAN LANGEVELDE: Any stepchildren?

23 JUROR FRANCE: No.

24 MS. VAN LANGEVELDE: Currently married, not married?

25 JUROR FRANCE: Yes, married.

0225a

1 MS. VAN LANGEVELDE: Okay. Know anybody that's been  
2 a victim of sexual assault?

3 JUROR FRANCE: I have two cousins that were.

4 MS. VAN LANGEVELDE: Who -- who was the perpetrator?

5 JUROR FRANCE: The one cousin, it was her father.  
6 The other cousin, it was her stepfather.

7 MS. VAN LANGEVELDE: Okay. Any reason that that  
8 experience, of knowing your cousins went through that, that  
9 would cause you to be biased one way or the other?

10 JUROR FRANCE: No.

11 MS. VAN LANGEVELDE: All right. Did -- was that  
12 here, in Eaton County?

13 JUROR FRANCE: No, it was down in like Jonesville,  
14 somewhere around in there.

15 MS. VAN LANGEVELDE: Do you know if it went to court,  
16 to trial?

17 JUROR FRANCE: I -- it happened when I was five. So,  
18 I don't think it did go to trial, but he went to prison.

19 MS. VAN LANGEVELDE: Okay. So, they -- did they have  
20 to testify, or do you know if they -- he pled?

21 JUROR FRANCE: I -- I'm not sure.

22 MS. VAN LANGEVELDE: Okay. That's okay.

23 JUROR FRANCE: The one cousin was two, and the other  
24 one was, maybe, 12 or 13.

25 MS. VAN LANGEVELDE: Okay.

1 JUROR FRANCE: But, I was so young. I only know, y  
2 know --

3 MS. VAN LANGEVELDE: Sure, family --

4 JUROR FRANCE: Yeah, yeah.

5 MS. VAN LANGEVELDE: Yup. Did -- do you know if the  
6 older cousin -- if she waited to disclose?

7 JUROR FRANCE: I believe she did, because I know I  
8 was closer to my younger cousin when it happened. I believe it  
9 started when she was nine months and went till she was two.

10 MS. VAN LANGEVELDE: My goodness. Okay, wow. That  
11 experience, would it make you biased in this particular case  
12 for or against?

13 JUROR FRANCE: No.

14 MS. VAN LANGEVELDE: Okay. Do you feel like you need  
15 DNA or physical evidence, at all?

16 JUROR FRANCE: No.

17 MS. VAN LANGEVELDE: Feel like you can make a  
18 decision based on testimony?

19 JUROR FRANCE: Yes.

20 MS. VAN LANGEVELDE: All right, thank you, ma'am.

21 THE COURT: Mr. Carter.

22 MR. CARTER: No question.

23 THE COURT: Challenges for cause, Ms. Van Langevelde?

24 MS. VAN LANGEVELDE: No, none for cause.

25 THE COURT: Challenges for cause, Mr. Carter?

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1 MR. CARTER: None.

2 THE COURT: Peremptory to you, Ms. Van Langevelde.

3 MS. VAN LANGEVELDE: Can I just have a moment here?

4 THE COURT: Yup.

5 MS. VAN LANGEVELDE: All right, thank you. The  
6 People would thank and excuse Miss Drzik. Thank you, ma'am,  
7 for your service today.

8 THE COURT: Thank you very much, ma'am.

9 All righty, and that takes us to Cassandra Bri --  
10 Briseno -- Briseno. Cassandra -- oh, wait. Nope, sorry.

11 Tirrel Wood. Good afternoon.

12 JUROR WOOD: Good afternoon.

13 THE COURT: Well, almost; right?

14 JUROR WOOD: Almost.

15 THE COURT: How are you today?

16 JUROR WOOD: Good.

17 THE COURT: Have you been able to hear all the  
18 questions that have been asked?

19 JUROR WOOD: Yes, I have.

20 THE COURT: Would you have answered yes to any of my  
21 questions?

22 JUROR WOOD: Yes, I would. I know Amos from -- he  
23 went to the school where I work, and I knew his mother.

24 THE COURT: Okay.

25 JUROR WOOD: I also was on a jury before. It was in

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1 a civil case.

2 THE COURT: Here, in --

3 JUROR WOOD: In --

4 THE COURT: -- Eaton County?

5 JUROR WOOD: -- Eaton County, yes.

6 THE COURT: What kind of -- what -- what was the  
7 subject matter?

8 JUROR WOOD: A custody type.

9 THE COURT: Okay. And did you testify?

10 JUROR WOOD: No, I was on the jury.

11 THE COURT: Okay. And what did the jury -- was it  
12 downstairs, in probate court?

13 JUROR WOOD: Yes, it was in probate.

14 THE COURT: Okay. What was the verdict that was  
15 reached?

16 JUROR WOOD: I don't know. I was the alternate and  
17 sent home.

18 THE COURT: Okay. Now, so you have known Mr. Endsley  
19 since he was a -- did you say --

20 JUROR WOOD: In middle school. I worked with his  
21 mother, also.

22 THE COURT: Okay, where's that at?

23 JUROR WOOD: Bellevue.

24 THE COURT: Okay. Would the two of you -- if you  
25 were both selected to be on the jury, would that be awkward for

0229a

1 the --

2 JUROR WOOD: No, I didn't even recognize him.

3 JUROR ENDSLEY: Me either.

4 THE COURT: Okay. Do you believe that you can be  
5 fair and impartial?

6 JUROR WOOD: Yes.

7 THE COURT: Ms. Van Langevelde.

8 MS. VAN LANGEVELDE: Thank you. Ms. Wood, were you  
9 able to hear me okay?

10 JUROR WOOD: Yes, I was.

11 MS. VAN LANGEVELDE: Okay. Ever known any victims of  
12 sexual assault?

13 JUROR WOOD: None of 'em close. Know of people, yes.

14 MS. VAN LANGEVELDE: Okay. In what capacity did you  
15 know about 'em?

16 JUROR WOOD: A friend of a friend type thing.

17 MS. VAN LANGEVELDE: Okay. Never, ever talked to you  
18 about what happened, no details or anything like that?

19 JUROR WOOD: No, I don't know details.

20 MS. VAN LANGEVELDE: Okay. Ever know anybody accused  
21 of sexual assault?

22 JUROR WOOD: Yes, it was a 19-year-old with his 16-  
23 year-old girlfriend.

24 MS. VAN LANGEVELDE: Okay. Do you know if that went  
25 to trial?



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1 JUROR WOOD: Yes, it did, and he went to jail.

2 MS. VAN LANGEVELDE: Okay. With a 16-year-old  
3 person?

4 JUROR WOOD: Yes.

5 MS. VAN LANGEVELDE: Were they in a relationship?

6 JUROR WOOD: Yes.

7 MS. VAN LANGEVELDE: Do you think that justice was  
8 was that here, in Eaton County?

9 JUROR WOOD: No.

10 MS. VAN LANGEVELDE: Did you know the person well?

11 JUROR WOOD: The accused, yes. He grew up with my  
12 children.

13 MS. VAN LANGEVELDE: Okay. So, would you hold that  
14 against me or my office?

15 JUROR WOOD: No, 'cause he -- he was guilty.

16 MS. VAN LANGEVELDE: Okay, okay. So, you feel like  
17 if Judge gave you the law to follow, you would be able to  
18 follow the law?

19 JUROR WOOD: Yes.

20 MS. VAN LANGEVELDE: Okay. And do you feel like you  
21 would need DNA or any physical evidence to -- to find somebody  
22 guilty, that you have to have that?

23 JUROR WOOD: No.

24 MS. VAN LANGEVELDE: Do you feel like you could make  
25 a decision based on testimony?

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JUROR WOOD: Yes.

MS. VAN LANGEVELDE: All right, thank you, Miss Wood.

THE COURT: Mr. Carter.

MR. CARTER: No questions.

THE COURT: Challenges for cause, Ms. Van Langevelde?

MS. VAN LANGEVELDE: No, none for cause.

THE COURT: Mr. Carter?

MR. CARTER: None.

THE COURT: Peremptory to you, Mr. Carter.

MR. CARTER: We'd like to thank and excuse juror  
number two, Miss France.

THE COURT: Thank you, Miss France. Have a nice day.  
Is it Zeljko?

JUROR MRKIC: Yes.

THE COURT: And how do you say your last name?

JUROR MRKIC: Mrkic.

THE COURT: Mrkic. And how are you today?

JUROR MRKIC: Good. How are you?

THE COURT: Good. Were you able to hear all of my  
questions, sir?

JUROR MRKIC: Yes.

THE COURT: Would you -- would you would've answered  
any yes?

JUROR MRKIC: Just one. A friend of mine is a  
retired police officer for the Lansing police.

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1 THE COURT: Okay. Would that impact your ability to  
2 be fair and impartial?

3 JUROR MRKIC: No.

4 THE COURT: Do you believe that you can be fair and  
5 impartial?

6 JUROR MRKIC: Yes.

7 THE COURT: Ms. Van Langevelde.

8 MS. VAN LANGEVELDE: Thank you. I -- Mr -- Mrkic?

9 JUROR MRKIC: Mrkic.

10 MS. VAN LANGEVELDE: Mrkic, okay.

11 JUROR MRKIC: One more k.

12 MS. VAN LANGEVELDE: I'm so sorry.

13 JUROR MRKIC: No, no problem.

14 MS. VAN LANGEVELDE: The white girl is coming out.  
15 Sir, do you have any children?

16 JUROR MRKIC: I -- I do not. I have a dog.

17 MS. VAN LANGEVELDE: You have a dog, okay. That can  
18 be close to like a child. Married, have any stepchildren?

19 JUROR MRKIC: Married, no stepchildren.

20 MS. VAN LANGEVELDE: Okay. And you are a produce  
21 manager at Horrocks?

22 JUROR MRKIC: Yes.

23 MS. VAN LANGEVELDE: Okay. Ever know anybody who was  
24 a victim of sexual assault?

25 JUROR MRKIC: Not a victim. I have -- it was later

0233a

1 found out that there was a gentleman that wasn't -- or, had  
2 spent some jail time for such offenses, yes.

3 MS. VAN LANGEVELDE: And was this a friend of yours?

4 JUROR MRKIC: No.

5 MS. VAN LANGEVELDE: Okay. How did you know this  
6 person?

7 JUROR MRKIC: Once he worked there for about six  
8 months, then some of his stories, they were stuff he was doing  
9 mission work, and then he would forget what he said, and things  
10 would kind of come -- become inconsistent. And, eventually, he  
11 kind of slipped and said he was in jail time. And then once  
12 that came out, they picked -- did a background check on him and  
13 found that information on him.

14 MS. VAN LANGEVELDE: Okay. Anything about that  
15 experience or knowing that person that would cause you to be  
16 biased either way?

17 JUROR MRKIC: No.

18 MS. VAN LANGEVELDE: No, okay. Did you hear my  
19 questions about DNA, physical evidence? Are you okay without  
20 having that?

21 JUROR MRKIC: Yes.

22 MS. VAN LANGEVELDE: Are you okay with weighing  
23 credibility of witnesses, that you may have to decide who's  
24 telling the truth and who may not be telling the truth?

25 JUROR MRKIC: Yes.

O234a

1 MS. VAN LANGEVELDE: Okay. Anything else that I  
2 should know about you, that Mr. Carter and I should know, based  
3 on any of the questions that we asked?

4 JUROR MRKIC: No.

5 MS. VAN LANGEVELDE: Okay, thank you, sir.

6 THE COURT: Mr. Carter.

7 MR. CARTER: No questions.

8 THE COURT: Challenges for cause, Ms. Van Langevelde?

9 MS. VAN LANGEVELDE: I have none for cause.

10 THE COURT: For -- for cause, Mr. Carter?

11 MR. CARTER: None.

12 THE COURT: Peremptory to you, Ms. Van Langevelde.

13 MS. VAN LANGEVELDE: Can I just have a moment?

14 THE COURT: Um-hum.

15 MS. VAN LANGEVELDE: Thank you, Your Honor. At this  
16 time, the People are satisfied.

17 THE COURT: Mr. Carter.

18 MR. CARTER: One moment, Your Honor. Defense is  
19 satisfied.

20 (At 12:00 noon, jury impaneled)

21 THE COURT: Okay. So, ladies and gentlemen in the  
22 galley -- look at the smiles. Thank you so much for your  
23 attention this morning and for being here. I do truly  
24 appreciate it, as do the prosecutor and the defense. You are  
25 released. You may go.

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1           For those of you that, you know, have day jobs, we  
2 don't call and let anybody know when we got done today. So,  
3 hope you go and enjoy the rest of your afternoon.

4           All right, ladies and gentlemen, we're only gonna go  
5 until two o'clock. And so, I'm now in a quandary. We normally  
6 would have ordered lunch in for you. But given the pace things  
7 were going, we did not do that. So, I guess I need to know if  
8 any of you, of the 14, need a full hour to get lunch and come  
9 back, or could you -- there -- there are vending machines  
10 downstairs; right?

11           LAW/JURY CLERK: Um-hum.

12           THE COURT: Could you have a snack? We'll just -- I  
13 -- I'll swear you in, give you a break to get settled in and  
14 call, and then we can come in and get going, and you'll be  
15 dismissed at two today.

16           So, well, let me put it this way. Does anybody need  
17 to leave the building to go eat lunch and come back, or can we  
18 handle it a little bit different? Tomorrow, we'll bring lunch  
19 in for you.

20           JURORS: (No verbal response).

21           THE COURT: Okay. Then, what I would like you to do  
22 is all rise. I'm gonna give you your jury oath.

23           Do each of you solemnly swear or affirm that, in the  
24 action now before you, you will justly decide the questions  
25 submitted to you, that, unless you are discharged by the Court

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1 from further deliberation, you will render a true verdict, and  
2 that you will render your verdict only on the evidence  
3 introduced and in accordance with the instructions of the  
4 Court, so help you God?

5 JURORS: I do.

6 (At 12:02 p.m., jurors sworn by the Court)

7 THE COURT: Have a seat, please.

8 All right, ladies and gentlemen, you are not allowed  
9 to discuss this case with anyone, including family or friends  
10 You may not even discuss it with the other jurors until the  
11 time comes for you to decide the case. When it is time for you  
12 to decide the case, I will send you to the jury room for that  
13 purpose. Then, you should discuss the case among yourselves  
14 but only in the jury room and only when all of the jurors are  
15 present.

16 I am going to call a recess, and I'm gonna let you go  
17 back to the jury room and, also, if you want to go outside or  
18 to the vending machines.

19 You may not discuss this case with anyone. Do not  
20 let anyone discuss it with you or in your presence. If someone  
21 tries to do that, tell him or her to stop, explain that you're  
22 a juror, that you are not allowed to talk about the case. If  
23 he or she continues, please come and report it to me as quickly  
24 as possible.

25 You may not talk to the defendant, the lawyers, or

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1 the witnesses about anything, at all, even if it has nothing to  
2 do with this case.

3 It is important that the only information that you  
4 get about this case is when you are acting as a jury, you are  
5 all together, the prosecutor's here, the defendant is here, and  
6 his attorney's here, and I'm here.

7 Now, that's what we call a recess instruction, and  
8 you will be getting that any time I let you leave the courtroom  
9 so that I make sure that you understand that we really need you  
10 not to talk to anybody about the case and not let anybody talk  
11 to you. And at two o'clock, I'll give you an instruction about  
12 staying away from any kind of media that might be talking about  
13 the case.

14 The jury room will be locked when you are not in  
15 there, so you may leave books, purses, bags, whatever you want.  
16 When we're go -- when you're going back and forth, we will keep  
17 it locked.

18 Ms. Ykimoff will now take you back to the jury room,  
19 and then she'll also explain to you how to get downstairs and  
20 how the door -- there's -- why don't we -- how about twelve-  
21 thirty? We'll take a half-an-hour break. You can call anybody  
22 you need to call, let 'em know you're on a jury.

23 Today, two o'clock. Tomorrow, five o'clock. We'll  
24 see if we're done by then or not.

25 Thank you very much. Miss Ykimoff, would you please



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1 take the jury back?

2 LAW/JURY CLERK: Watch your step.

3 THE COURT: And watch your step, yes, I'm gonna say  
4 that. Watch your step when you go down there.

5 (At 12:05 p.m., jury exits courtroom)

6 THE COURT: All right, Ms. Van Langevelde, is there  
7 anything that you need to place on the record?

8 MS. VAN LANGEVELDE: No. Thank you, Your Honor.

9 THE COURT: Mr. Carter, is there anything you need to  
10 place on the record?

11 MR. CARTER: No.

12 THE COURT: So, we'll take a 30 minute recess. We'll  
13 come back, I'll give instructions, opening, and then I'm sure  
14 that'll be it.

15 MR. CARTER: Okay.

16 THE COURT: Okay, thank you, everybody.

17 MS. VAN LANGEVELDE: Oh, that -- so, you don't think  
18 we'll start on the victim's testimony today?

19 THE COURT: Well, I mean, I would have a witness  
20 available because --

21 MS. VAN LANGEVELDE: Sure.

22 THE COURT: -- just like we didn't order the pizza --

23 MS. VAN LANGEVELDE: I know.

24 THE COURT: -- and then, boom, you guys got your  
25 jury. So, I'm just estimating that, by the time I instruct

0239a

1 them and you do openings, but we may very well. We will go  
2 right to two. I want to use all of the time we have available

3 MS. VAN LANGEVELDE: Okay. Thank you, Judge.

4 THE COURT: Um-hum.

5 (At 12:06 p.m., off the record)

6 (At 12:31 p.m., back on the record)

7 (Court, Mr. Strong and Mr. Carter present)

8 THE COURT: We are back on the record in People of  
9 the State of Michigan versus Damon Warner. Oh, sorry.

10 MR. STRONG: Judge, may I approach on a different  
11 matter?

12 THE COURT: Sure.

13 (At 12:32 p.m., off the record)

14 (At 12:33 p.m., back on the record)

15 (Court, counsel and defendant present)

16 THE COURT: All right, as I indicated, we are on the  
17 record in People of the State of Michigan versus Damon Warner.

18 Ms. Van Langevelde and Mr. Strong are present for the  
19 prosecution. Mr. Carter's here and the defendant.

20 When the jury went back to get settled in and Ms.  
21 Ykimoff was showing them around, juror -- it's Mrkic?

22 JUROR MRKIC: Mrkic.

23 THE COURT: Mrkic, Juror Mrkic, juror number two,  
24 indicated to Lauren that he had just received a text message  
25 from his brother. Apparently, his father has kidney failure,

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1 and his brother found the father unresponsive on the floor, and  
2 he's being transported by an ambulance to the hospital.

3 MR. CARTER: Oh, Your Honor, we would consent to let  
4 him go and leave right now, fast, haste.

5 THE COURT: Yup.

6 MS. VAN LANGEVELDE: Yeah.

7 MR. STRONG: No objection.

8 MS. VAN LANGEVELDE: No ob -- that's fine, Judge.

9 THE COURT: Okay.

10 MR. CARTER: We have 14 jurors.

11 THE COURT: Right.

12 MR. CARTER: We still have enough to --

13 THE COURT: Right. I just needed to do it on the  
14 record with your approval.

15 MR. CARTER: I -- I can --

16 THE COURT: I knew that you would both -- I would've  
17 been shocked if any other reaction but --

18 You may -- you're free to go, sir.

19 JUROR MRKIC: Thank you very much.

20 THE COURT: Okay. Now, if you need a few minutes to  
21 regroup 'cause I called you in here pretty fast --

22 MR. CARTER: Yeah, I -- I just -- I just want --  
23 didn't want to waste anymore time.

24 MR. STRONG: Yes.

25 MR. CARTER: I thought it was of the essence.

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1 THE COURT: Yeah.

2 MR. CARTER: I didn't mean to cut you off.

3 THE COURT: No, that's okay. Do you -- you have like  
4 five more minutes.

5 MR. CARTER: Yeah.

6 MR. STRONG: I think that would be good.

7 THE COURT: Or, thereabouts. Okay.

8 MS. VAN LANGEVELDE: Thank you, Judge.

9 (At 12:35 p.m., off the record)

10 (At 12:44 p.m., back on the record)

11 THE COURT: We are back on the record in the People  
12 of the State of Michigan versus Damon Warner, file 16-296-FC.

13 Anything to place on the record, Ms. Van Langevelde,  
14 before we bring the jury in?

15 MS. VAN LANGEVELDE: No. Thank you, Your Honor.

16 THE COURT: Mr. Carter, anything you need to place on  
17 the record before we bring the jury in?

18 MR. CARTER: No.

19 THE COURT: Let's bring the jury in, please.

20 I am gonna let them know that the juror was excused  
21 because of a family emergency, 'cause they'll wonder what  
22 happened and how'd that work.

23 MS. VAN LANGEVELDE: Um-hum.

24 THE COURT: Hmm?

25 MS. VAN LANGEVELDE: I indicated that we did not

1 dispose of him.

2 (At 12:46 p.m., jury enters courtroom)

3 THE COURT: Please be seated.

4 Okay, ladies and gentlemen, you have been chosen to  
5 decide a criminal charge made by the State of Michigan against  
6 one of your fellow citizens. And I'm now going to explain some  
7 of the legal principles you need to know and the procedure that  
8 we are going to follow.

9 Before I do that, let me just -- I don't know if you  
10 know, but juror number two had a family emergency. And so, we  
11 had to let him leave. So, he's excused. So, you are now 13  
12 instead of 14.

13 The trial will follow this procedure:

14 First, the prosecutor will make an opening statement  
15 where she will give her theories of the case. The defendant's  
16 lawyer does not have to make an opening statement, but he may  
17 make an opening statement after the prosecutor makes hers or he  
18 can wait until later. These statements are not evidence. They  
19 are only meant to help you understand how each side views the  
20 case.

21 To prove the charges, the prosecutor must prove the  
22 following beyond a reasonable doubt:

23 Count one, criminal sexual conduct - first degree,  
24 relationship:

25 First, that the defendant engaged in a sexual act

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1 that involved entry into Pearl Giffen's genital opening by the  
2 defendant's finger. Any entry, no matter how slight, is  
3 enough. It does not matter whether the sexual act was  
4 completed or whether there was semen ejaculated.

5 Second, that Pearl Ann Giffen was 13, 14 or 15-years  
6 old at the time of the alleged act.

7 And third, that, at the time of the alleged act, the  
8 defendant and Pearl Giffen were living in the same household.

9 Count two, criminal sexual conduct - second degree,  
10 relationship:

11 First, that the defendant intentionally touched Pearl  
12 Giffen's genital area or the clothing covering that area.

13 Second, that this was done for a sexual purpose or  
14 could reasonably be construed as to having been done for a  
15 sexual purpose.

16 Third, that Pearl Giffen was 13, 14 or 15-years-old  
17 at the time of the alleged act.

18 And fourth, that, at the time of the alleged act, the  
19 defendant and Pearl Giffen were living in the same household.

20 Next, the prosecutor presents her evidence. The  
21 prosecutor may call witnesses to testify, and she may show you  
22 exhibits, documents or objects. The defendant's lawyer has the  
23 right, then, to cross-examine the prosecutor's witnesses.

24 After the prosecutor has presented all of her  
25 evidence, the defendant's attorney may also offer evidence but

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1 does not have to. By law, the defendant does not have to prove  
2 his innocence or produce any evidence. If the defense does  
3 call any witnesses, the prosecutor, then, has the right to  
4 cross-examine them.

5 The prosecutor may also call witnesses to contradict  
6 the testimony of a defense witness.

7 After all the evidence is presented, the prosecutor  
8 and the defendant's lawyer will make closing arguments. Like  
9 the opening statement, these are not evidence. They are only  
10 meant to help you understand the evidence and the way each side  
11 sees the case. You must base your verdict only on the  
12 evidence.

13 You have been given a written copy of the  
14 instructions that I'm reading to you. You may refer to them  
15 during trial. Since no one can predict the course of a trial,  
16 these instructions could change at the end of the trial. At  
17 the close of the trial, I'll give you a copy of the closing  
18 instructions for you to use during your deliberation.

19 My responsibility as the judge in this trial is to  
20 make sure the trial is run fairly and efficiently, to make  
21 decisions about evidence, and to instruct you as the law (sic),  
22 as it applies to this case. You must take the law as I give it  
23 to you. Nothing I say is meant to reflect my own opinions  
24 about the facts of the case.

25 As jurors, you are the ones who will decide this

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1 case. Your responsibility, as jurors, is to decide what the  
2 facts of this case are. This is your job and no one else's.  
3 You must think about all the evidence and how important you  
4 think it is. This includes how much you believe what each of  
5 the witnesses said. What you decide about any fact in this  
6 case is final.

7 When it is time for you to decide the case, you are  
8 only allowed to consider evidence that was admitted into the  
9 case. Evidence will include the sworn testimony of witnesses  
10 exhibits admitted into evidence, and anything else I tell you  
11 that you can consider as evidence.

12 It is your job to decide what the facts of this case  
13 are. And you must decide which witnesses you believe and how  
14 important you think their testimony is. You do not have to  
15 accept or reject everything a witness says. You are free to  
16 believe all, none, or a part of any person's testimony. In  
17 deciding which testimony you believe, you should rely on your  
18 own common sense and your every day experience.

19 However, in deciding whether you believe a witness's  
20 testimony, you must set aside any bias or prejudice you have  
21 based on race, gender, or the national origin of a witness.

22 There are no fixed rules for judging whether or not  
23 you believe a witness, but it may help if you think about these  
24 questions:

25 Was the witness able to see and hear clearly? How



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1 long was the witness watching or listening? Was anything else  
2 going on that might've distracted the witness?

3 Does the witness seem to have a good memory?

4 How does the witness look and act while testifying?

5 Does the witness seem to be making an honest effort  
6 to tell the truth, or does the witness seem to evade the  
7 questions and argue with the lawyers?

8 Does the witness's age or maturity affect how you  
9 judge his or her testimony?

10 Does the witness have any bias or prejudice or any  
11 personal interest in how the case is decided?

12 Have there been any promises, threats, suggestions,  
13 or other influences that affect how a witness testifies?

14 In general, does the witness have any special reason  
15 to tell the truth or any special reason to lie?

16 All in all, how reasonable does the witness's  
17 testimony seem when you think about all the evidence in the  
18 case?

19 Now, the questions that the lawyers ask the witnesses  
20 are not evidence. Only the answer is evidence. You should not  
21 think something is true just because one of the lawyers asks a  
22 question that assumes that it is.

23 I may ask some of the witnesses questions myself.  
24 These questions are not meant to reflect my opinion about the  
25 evidence. If I do ask a question, my only reason would be to

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1 ask about things that may not have been fully explored.

2 Now, during the trial, the lawyers may object to  
3 certain questions or statements made by the other lawyer or a  
4 witness. I will rule on these objections according to the law.  
5 My rulings for or against one side or the other are not meant  
6 to reflect my opinion about the facts of this case.

7 Sometimes the lawyers and I will have discussions out  
8 of your hearing. Also, when you're back in the jury room,  
9 there may be other matters that we're taking care of. Please  
10 try to pay no attention to any interruptions that occur.

11 You must not discuss this case with anyone including  
12 your family or friends. You must not even discuss it amongst  
13 each other until the time comes for you to decide the case.  
14 When it's time for you to decide the case, I will send you back  
15 to the jury room for that purpose. Then, you should discuss  
16 the case amongst yourselves, but only in the jury room, and  
17 only when all jurors are present. When the trial's over, you  
18 can talk to anybody that you want about the case.

19 When I call for a recess during trial, you'll either  
20 be sent back to the jury room or you'll be allowed to leave the  
21 courtroom and go about your business. You must not discuss  
22 this case with anyone or let anyone discuss it with you or in  
23 your presence. If someone tries to do that, tell him or her to  
24 stop, explain you are a juror, and that you are not allowed to  
25 discuss the case. If he or she continues, leave and report the

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1 incident to me as soon as you return to court.

2 You must not talk to the defendant, the lawyers, or  
3 any witnesses about anything, at all, even if it has nothing to  
4 do with the case. It is very important that the only  
5 information you get about this case is in court, when you are  
6 all acting together as a jury, and when the defendant, the  
7 lawyers, and I are present.

8 The restrictions that I'm about to describe are meant  
9 to ensure that the parties get a fair trial. In our judicial  
10 system, it is crucial that jurors are not influenced by  
11 anything or anyone outside the courtroom.

12 Now that many jurors have easy access to information  
13 through handheld devices and other technology, jurors may be  
14 tempted to use these devices to learn more about some aspect of  
15 the case. But if a juror were to do this, it would harm the  
16 parties. The parties' attorneys would have no way of knowing  
17 that a juror has gotten outside information and would have no  
18 chance to object to it if the information was false,  
19 untrustworthy, or irrelevant.

20 Remember, no matter how careful or conscientious news  
21 reporter (sic), family members, friends, and other people are  
22 outside the courtroom may be, information about this case from  
23 television, radio, Internet, or the social media is,  
24 inevitably, going to be incomplete, and it could be incorrect.

25 So, please bear in mind, as I read the following

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1 instructions, that they apply from this moment on until the  
2 case is over.

3 You must decide this case based solely on the  
4 evidence you see and hear in this courtroom. You must not  
5 consider information that comes from anywhere else. That  
6 means, during the trial, you must not read, watch, or listen to  
7 a news report about the case, whether in newspapers, on  
8 television, on radio, or on the Internet.

9 You must not research any aspect of this case during  
10 trial. This means using a cellular phone, computer, or other  
11 electronic device to search the Internet, as well as research  
12 with traditional sources like a dictionary, a reference manual,  
13 a newspaper, or a magazine.

14 You must not investigate the case on your own or  
15 conduct any experiment concerning this case, including  
16 investigation or experiments using the Internet, computer,  
17 cellular phone, or other electronic devices.

18 You may not visit the scene of any event that is at  
19 issue in this trial. If it is necessary for you to visit a  
20 scene, court staff will take you there as a group and under  
21 court supervision.

22 You must not consider, as evidence, any personal  
23 knowledge you have of the scene.

24 Before your deliberations, you must not discuss this  
25 case with anyone, including your fellow jurors. After you

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1 begin deliberation, you will discuss the case with your fellow  
2 jurors, but you still might -- must not discuss the case with  
3 anyone until you are discharged from your jury service. Until  
4 I have discharged you from jury service, you must not share any  
5 information about the case by any means, including cellular  
6 phones or social media.

7 Now, if you discover that a juror has violated this  
8 instruction, please report it to the bailiff immediately.

9 Now, you are allowed to take notes during the trial  
10 if you want. You do not have to. If you do take notes, you  
11 should be careful that it does not distract you from paying  
12 attention to all of the evidence. When you go to the jury room  
13 to decide your verdict, you may use your notes to help you  
14 remember what happened in the courtroom. If you take notes, do  
15 not let anyone except your fellow jurors see them during  
16 deliberation. You must turn them over to the bailiff during  
17 recesses. Your notes will not be examined by anyone. And when  
18 your jury service concludes, your notes will be collected and  
19 destroyed.

20 Now, each of you should've received your notebook  
21 with your juror number on the side, and you should have a  
22 notepad in there and a utensil. You leave those in the jury  
23 room when you go home at night or if you go out of the  
24 building. We'll keep it locked. When you're done, we will  
25 take your notes. We will not read them, and we will shred

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1 them. So, they will be destroyed as soon as the case is over

2 Well, we chose 14 jurors. Now we're down to 13.

3 After all the evidence is heard and I give closing instructions

4 I will draw a lot to see which one of you will be dismissed, so

5 that a jury of 12 will actually decide the case.

6 Do not concern yourself during the trial or during

7 your deliberations with what the possible penalty might be if

8 you find the defendant guilty. The question of guilt and the

9 question of penalty are decided separately. It is the duty of

10 the judge to fix the penalty whenever a defendant is found

11 guilty. Possible penalty should not influence your decision.

12 I may give you more instructions during the trial.

13 As I said, at the end of the case, I'm gonna give you detailed

14 instructions about the law. You should consider all of the

15 instructions as a connected series. Taken all together, this

16 is the law that you must follow.

17 After all the evidence has been presented and the

18 lawyers have given their argument, you will get detailed

19 instructions of the law to apply to this case. You will then

20 go back to the jury room to decide your verdict.

21 A verdict must be unanimous. That means that every

22 juror must agree on it, and it must reflect the individual

23 decision of each juror.

24 It is important for you to keep an open mind and not

25 make a decision about anything in this case until you go to the

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1 jury room to decide the case.

2 Well, now, ladies and gentlemen, as I said way at the  
3 beginning of the instructions, we are going to start with the  
4 opening statement by Ms. Van Lange -- Van -- Ms. Van  
5 Langevelde.

6 Ms. Van Langevelde, please.

7 MS. VAN LANGEVELDE: Thank you, Your Honor.

8 Members of the jury, we're here today because the  
9 defendant sexually assaulted his 13-year-old stepdaughter,  
10 Pearl, by putting his finger into her vagina and putting his  
11 penis onto her vagina.

12 Today, you're gonna meet Pearl, who is now 19-years-  
13 old. And you will hear that the defendant's been in Pearl's  
14 life since she was seven-years-old. You'll hear that Pearl's  
15 parents got a divorce when she was younger, that Mom started  
16 dating the defendant, and, eventually, the defendant and Pearl  
17 -- or, excuse me, the defendant and Pearl's mom moved in  
18 together with Pearl.

19 Now, you'll hear that Pearl was with her mom and the  
20 defendant, that they were the custodial parents. That's really  
21 where she lived. But, she has visitation with her dad every  
22 other weekend.

23 And you'll hear, eventually, Pearl's mom became  
24 pregnant with Baby Sable, who is the defendant's daughter. And  
25 that before Sable was born, they moved into a house, the three

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1 of them, Pearl, Mom and the defendant, into a new house on  
2 Butterfield Highway in Olivet, Michigan.

3 You'll hear that Pearl and Sable are about 12 years  
4 apart. And that when Sable was born, Pearl and Sable shared a  
5 bedroom and that, eventually, Grandma, Pearl's mom's mom, move  
6 in with them, as well, into the three bedroom house on  
7 Butterfield Highway.

8 And Pearl will tell you that the first time that she  
9 was sexually assaulted by the defendant it was a half day. She  
10 was packing in her room, in Baby Sable's room, which they  
11 shared together. Baby Sable's crib was in the room. She was  
12 packing up her clothes to go to her father's house for the  
13 weekend, and the defendant was staying home with Baby Sable,  
14 and he was home with her, as well. You'll hear that he comes  
15 by the room and says, "Pearl, you ready to go to your dad's?"  
16 She says something like "yeah," and she's sitting on the bed.  
17 You'll hear that he comes up to her, pushes her back on the  
18 bed, pulls down her pants, pulls down his pants, and puts his  
19 penis on her vagina and says, "This is gonna hurt." Pearl will  
20 tell you she screamed, and she'll tell you that she could hear  
21 Baby Sable coming down the hallway. Pearl will tell you that  
22 the defendant got off of her, that he left the room. And Pearl  
23 will tell you she sat there in shock.

24 Later that afternoon, her stepmom came and picked her  
25 up. She could've told somebody, but she didn't.



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1           You'll hear the next time, the second time, the  
2 defendant sexually assaulted Pearl she'll tell you it was --  
3 she thinks it was about summertime. She's about 13-years-old  
4 Baby Sable, again, was the baby in her room, sleeping in a  
5 crib. You'll hear she had gotten up to get a drink of water,  
6 went into the kitchen, and was actually standing in the dining  
7 room area. Mom was sleeping, and the defendant was in the  
8 living room watching TV. And you'll hear that he came up  
9 behind her, put his hand down the back of her pants and put his  
10 finger into her vagina. And Pearl will tell you again she was  
11 shocked.

12           Again, she didn't tell anybody. She didn't -- she  
13 didn't know what to do. And so, you'll hear that she waited.  
14 And she waited until she was about 17-years-old when she  
15 finally told somebody.

16           Now, as we talked about in jury selection, it might  
17 be weird or strange or you think, in hindsight, why didn't you  
18 tell anybody right away. But as we talked about in voir dire,  
19 it's really not that unusual for kids to wait to tell people  
20 about being assaulted.

21           She was -- basically, she didn't know what to do.  
22 And she will tell you she was scared. She didn't what -- if  
23 she told, what would happen.

24           And as we also talked about in jury selection,  
25 there's no DNA. There's no physical evidence. Because it

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1 wasn't until Pearl was 17-years-old when she disclosed.

2 Pearl's now 19. It's taken us a couple years to get  
3 to trial. But, you'll hear that, through the years, Pearl's  
4 not backed down. This happened to her. She'll tell you that  
5 this happened to her.

6 Now, the evidence will show that the defendant was  
7 willing to come in and have an interview with Detective Maltby.  
8 And he voluntarily came in to -- with that interview. He also  
9 gave a voluntary statement to Detective Sergeant Derrick Jordan  
10 from Michigan State Police, and you'll meet him, as well.

11 And in that initial interview with Detective Maltby,  
12 you'll hear that the defendant denied that anything  
13 inappropriate had ever happened between him and Pearl, that --  
14 Detective Maltby actually asked him ever been wrestling with  
15 Pearl, ever accidentally touch her. No, the defendant said.  
16 You'll hear the defendant say, "When we wrestle, I don't touch  
17 anything down there. I stay away from touchin' anywhere down  
18 there." Detective Maltby asked him ever -- Pearl come on to  
19 you in any way, had Pearl ever flirt with you. No. The  
20 defendant said, "No, no, no."

21 What was interesting is that, when Detective Sergeant  
22 Jordan, from MSP, talked to the defendant, he changes his  
23 story. And you'll hear that. He says one time, when he and  
24 Pearl was wrestling, when Pearl was younger and Sable was a  
25 baby, Pearl put his hand down her -- put -- Pearl put his hand

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1 down her -- down her pants. The defendant told Detective  
2 Sergeant Jordan that Pearl said she was horny, that her pussy  
3 was on fire. The detective also told Detective Jordan four of  
4 his fingers touched her vagina, he touched the inside of her  
5 lips, and that it was wet. The defendant, you'll hear, go on  
6 and on blaming Pearl and making her out to be some over-  
7 sexualized kid.

8 Members of the jury, the evidence will show the  
9 defendant has done this before. You'll hear that the defendant  
10 has been previously convicted of criminal sexual conduct.

11 MR. CARTER: Your Honor, I'd object, and I think I  
12 need some time outside the jury hearing.

13 THE COURT: Okay, Miss Bond, since Ms. -- I know that  
14 Ms. Ykimoff is probably tied up, if you know what I mean.

15 Would you please, ladies and gentlemen, go out with  
16 Miss Bond? And then, you'll come right back in.

17 You left it running; correct?

18 COURT RECORDER: I did.

19 THE COURT: Okay. Yeah, you should probably take  
20 your notebooks with you. Watch your step. Watch your step,  
21 please.

22 (At 1:08 p.m., jury exits courtroom)

23 THE COURT: Yeah, okay. All right, the record should  
24 reflect that Miss Bond has escorted the jury back to the jury  
25 room, and we are back on the record.

0257a

1           Because I just gave them the recess instruction, I  
2 wasn't gonna read it to 'em again.

3           MR. CARTER: That's fine.

4           MS. VAN LANGEVELDE: Right.

5           THE COURT: Is everybody okay with that?

6           MR. CARTER: Yes.

7           MS. VAN LANGEVELDE: Yes, Your Honor.

8           THE COURT: Mr. Carter, your objection.

9           MR. CARTER: I thought I was supposed to get notice  
10 of prior bad acts.

11          MS. VAN LANGEVELDE: We filed a notice.

12          MR. CARTER: I didn't receive notice, proper notice  
13 of this.

14          MS. VAN LANGEVELDE: Yes, we file -- I filed a  
15 notice. It's dated February 14th, 2017, and I included the  
16 Judgment of Conviction, as well as the police report from  
17 Homer.

18          MR. CARTER: How did you serve it on me? I didn't  
19 receive service.

20          MS. VAN LANGEVELDE: Renee Bartlett from our office  
21 sent notice to David Carter, to your PO Box 54, Charlotte,  
22 Michigan, 48813.

23          MR. CARTER: To my PO box?

24          MS. VAN LANGEVELDE: Yes.

25          MR. CARTER: I received nothing.

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1 MS. VAN LANGEVELDE: Oh, by sending copy for a name  
2 or his agent at the e-mail address on record.

3 MR. CARTER: Well, e -- e-mail's not proper service  
4 Court rule doesn't -- that.

5 THE COURT: Do you have an agreement with Mr. Carter  
6 that you can serve him by e-mail, an agreement in writing?

7 MS. VAN LANGEVELDE: I don't -- I don't know that,  
8 Your Honor. I guess I'd have to ask my office.

9 THE COURT: I believe that Mr. Carter is correct, and  
10 I believe that's what the court rule requires.

11 So, he was served by e-mail; is that correct, Ms. Van  
12 Langevelde?

13 MS. VAN LANGEVELDE: Well, I'm looking at the notice.  
14 And what it says is -- and it's probably in the file. It says:

15 "Upon David Carter, Jr."

16 And it lists his PO Box, but then it says:

17 "By sending a copy of the aforementioned document to  
18 the above named, or his agent, at the e-mail address on  
19 record."

20 MR. CARTER: I never received it.

21 MS. VAN LANGEVELDE: We -- I -- I think we talked  
22 about it at a final settlement conference that I had filed  
23 another acts notice.

24 MR. CARTER: I'm sorry, but I don't believe so.

25 THE COURT: I'm just looking for the proof of service

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1 to see what it shows.

2 MR. CARTER: E -- e-mail's not proper service.

3 THE COURT: Well, it can be.

4 MR. CARTER: It can be if we --

5 THE COURT: I think that's what the --

6 MR. CARTER: -- that is correct.

7 THE COURT: -- court rule says. I just want to  
8 check. But, I'm trying to, actually, find the proof of  
9 service.

10 What was the date, Ms. Van Langevelde?

11 MS. VAN LANGEVELDE: February 14th, 2017.

12 THE COURT: Okay, here it is:

13 "Notice pursuant" -- "People give notice to introduce  
14 evidence."

15 Got it. Got it.

16 MS. VAN LANGEVELDE: Your Honor, I guess also for the  
17 record, we served Mr. Carter all of the discovery documents.  
18 We served the original report, the lab reports, the  
19 supplemental reports, everything that --

20 THE COURT: So, the service was by e-mail. I have  
21 the proof of service.

22 MS. VAN LANGEVELDE: Yes.

23 THE COURT: It says:

24 "I send the document to the above named, or his  
25 agent, at the e-mail address on record."

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1           So, now let me find the service court rule. Two-one  
2 oh-five is what I think it is, Ms. Van Langevelde or Mr.  
3 Strong, whoever's -- some or all the -- I'm looking at 2.107,  
4 large C, which is manner of service. Says:

5           "Service of a copy of a paper on an attorney must be  
6 made by delivery or" -- "or mailing to the attorney at his  
7 last known address or, if the attorney does not have a  
8 business address, then to his or her last known  
9 residence."

10           Okay, then it says:

11           "E-mail," which is paren four. "Some or all the  
12 parties may agree to e-mail service among themselves by  
13 filing a stipulation in that case. Some or all of the  
14 parties may agree to e-mail service by a court by filing  
15 the agreement with the court to do so. E-mail service  
16 shall be subject to the following conditions:

17           "The stipulation or agreement shall set forth the e-  
18 mail addresses of the parties or the attorneys."

19           I guess I can stop right there because, Mr. Carter,  
20 you're saying you don't have a written -- you don't have an  
21 agreement to accept service by email?

22           MR. CARTER: No, I don't.

23           THE COURT: Okay.

24           MR. CARTER: And it's -- it's improper service.

25           THE COURT: Now what do we do?

0261a

1 MR. CARTER: I had -- I had an issue with this on  
2 service in front of you when I delivered it to the Clerk's  
3 office and they claimed that wasn't proper service, even though  
4 we knew they actually had the motion well-beforehand, you ruled  
5 that it was improper service.

6 THE COURT: I did, and that was the argument made by  
7 the prosecutor's office.

8 MR. CARTER: And that was their stance, it wasn't  
9 proper service.

10 MS. VAN LANGEVELDE: Well, I guess I need to check  
11 with my office if we do have something in writing. But, I --  
12 my issue is, Judge, we gave him everything by email,  
13 everything.

14 THE COURT: That doesn't matter. This is the -- this  
15 is a very specific issue here, which is the requirement to give  
16 proper notice of other bad acts. Do you know what I'm saying?  
17 That -- not -- not -- do you know what I'm saying?

18 MS. VAN LANGEVELDE: Yes.

19 THE COURT: I'm saying this -- this is very specific.  
20 And -- and the -- and Mr. Carter is saying he was not given  
21 notice. So, the question, then, if he was not properly served,  
22 does that mean that you cannot --

23 MS. VAN LANGEVELDE: Well --

24 THE COURT: -- introduce the evidence? That's the  
25 question.



0262a

1 MR. STRONG: Your Honor, I guess the one thing that  
2 I'm a little confused about is it seems, at this point in time  
3 while there may not -- and, again, we'll have to check with our  
4 office to see if there is a previous written stipulation. But  
5 for Mr. Carter to object to one aspect, when he's received  
6 everything else that we've served him by e-mail, is it not a  
7 waiver of that, at that point in time? It's a little  
8 disingenuous to wait until the eve of trial when this witness  
9 is -- the other acts witnesses have been on our list since the  
10 beginning, that we've given him these things by e-mail just  
11 like we've given him everything else, and then he waits until a  
12 jury is impaneled and a mistrial would be necessary to raise  
13 this issue.

14 MS. VAN LANGEVELDE: And --

15 MR. STRONG: I think, at that point in time, the --  
16 the issue has certainly been waived by the defense.

17 MS. VAN LANGEVELDE: I guess the other issue I have,  
18 too, is this is a very specific statute about notice, and I  
19 need to look into what the statute actually requires of notice.  
20 Because, yes, notice is required and absolutely, but sometimes  
21 notice on these things can be verbal. There was, actually,  
22 just a change in the statute, and I can't remember --

23 THE COURT: You want to look up MCL 768 --

24 MS. VAN LANGEVELDE: Yes.

25 THE COURT: -- 27A?

0263a

1 MR. CARTER: Well --

2 THE COURT: Go ahead, Mr. Carter.

3 MR. CARTER: I -- I'm sorry, but I didn't waive any  
4 notice. I did not receive this. I mean, did I have a gut  
5 feeling? Maybe. I knew something was out there, but it's not  
6 my duty to assume what the prosecutor is going to do. And I  
7 did not receive proper notice. They argued this same point in  
8 front of you on a motion that I had. And it seems disingenuous  
9 that, because it favored them that time, that, somehow, I  
10 waived notice here. They -- on that other case, they actually  
11 admitted to getting a pleading. As a matter of fact, the court  
12 clerk came in here and said, "Oh, yeah. Matter of fact, they  
13 called me and said that Mr. Carter filed this motion. Could  
14 you please tell him not to do that anymore?" And they stood by  
15 their argument saying that that was not service, and Your Honor  
16 granted it.

17 THE COURT: I don't recall if either Mr. Strong or  
18 Ms. Van Langevelde were part of that but --

19 MR. CARTER: So --

20 THE COURT: -- I do recall that, Mr. Carter, because  
21 some counties you can leave a copy for the prosecutor if they  
22 have a box there where they pick up. And Mr. Carter had left  
23 the pleading for the prosecutor there, and the clerks had taken  
24 it down to the prosecutor's office. And then, I believe Miss  
25 Bartlett called and told them don't do that anymore. But,

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1 then --

2 MR. STRONG: Well, I guess, Your Honor --

3 THE COURT: -- your office refused to go forward,  
4 saying that they didn't get proper notice, even though they  
5 actually had the motion because it wasn't -- apparently, it  
6 wasn't, you know, delivered --

7 MR. STRONG: Right.

8 THE COURT: -- to the office.

9 I don't know that that's relevant but --

10 MR. STRONG: I think it's --

11 THE COURT: -- since you weren't here and I was --

12 MR. STRONG: Right.

13 THE COURT: -- I'm just letting you know that I think  
14 his argument is tech -- if you're gonna be technical, then you  
15 have to be technical.

16 MR. STRONG: Okay.

17 THE COURT: That's what he's arguing. And you're  
18 arguing, well, if you got everything else by e-mail, then you  
19 waived it.

20 MR. STRONG: Right.

21 THE COURT: I --

22 MR. STRONG: I understand, Your Honor.

23 THE COURT: I don't know if that flies, but I -- I do  
24 know that Ms. Van Langevelde is correct that sometimes you have  
25 to look at the exact statute to say if -- if it's generic, then

0265a

1 there has not been proper service.

2 MS. VAN LANGEVELDE: Right. And I'm looking at the  
3 exact statute language, Judge, and it says:

4 "If the prosecuting attorney intends to offer  
5 evidence under this section, the prosecuting attorney  
6 shall disclose the evidence, including the statements of  
7 the witness or a summary of the substance of any testimony  
8 that is expected to be offered, to the defendant not less  
9 than 15 days before the scheduled date of trial or at a  
10 later time as allowed by the court for good cause shown.

11 It does not say specifically anything about specific  
12 service. And I -- and I do recall something coming down. I'll  
13 have to -- need to have research it, because sometimes just  
14 verbally talking about it is enough notice.

15 MR. STRONG: Your Honor, what I would say to that is,  
16 given the nature of that statute and it says, "Shall disclose  
17 the evidence," which would be the same thing that we did with  
18 all the other evidence that we had through discovery, which we  
19 provided that in the exact same manner as we've provided  
20 discovery.

21 THE COURT: I'm not --

22 MR. CARTER: Unfortunately, I didn't get it. They  
23 may have emailed it to me. The problem with your guys's e-mail  
24 system, if I get something through e-mail, I got to -- I've got  
25 to sit there and punch through different codes and all that.

0266a

1 And sometimes I didn't go -- get back to my e-mail, and then  
2 expires in the link, and then I have no idea what was in there  
3 And I would suspect that this happened here, because I didn't  
4 get notice of it.

5 THE COURT: But, you're saying you did not get  
6 notice.

7 MR. CARTER: Right. Their -- their e-mail system  
8 stinks when I tried it.

9 THE COURT: But, I mean -- you mean the county.

10 MR. CARTER: Yeah, the way they --

11 THE COURT: Not the --

12 MR. CARTER: -- do -- the way we have to key in a  
13 password and all that. And if I'm usin' my cell phone, I do it  
14 wrong, and I only get so many chances.

15 THE COURT: Well, I guess the question is what do we  
16 do today. Obviously, if you didn't get notice -- if it's  
17 decided that you did not get notice, then the prosecutor cannot  
18 introduce prior bad acts. And, obviously, Ms. Van Langevelde  
19 just talked about prior bad acts.

20 THE DEFENDANT: Um-hum.

21 THE COURT: So, we can't unring that bell, and you're  
22 gonna be asking for a mistrial.

23 MR. CARTER: I am.

24 THE COURT: So, that's pretty significant.

25 MR. CARTER: I would agree.

0267a

1 THE COURT: And so, I think that, in fairness, I'm  
2 gonna bring the jury back in. I'm gonna send 'em home, and I  
3 gonna have 'em come back tomorrow at eight-thirty. And I'm  
4 gonna allow -- I believe the burden has shifted to the  
5 prosecutor, because I think Mr. Carter is correct. He said he  
6 didn't get service. The proof of service in the file says it  
7 was e-mailed to him. And he says there's no agreement for e-  
8 mail service, which I know is required by the court rule.

9 So, I will give the prosecutor -- so, I need to --  
10 and I need to read all of this and be prepared to make a  
11 decision in the morning. So, is that one-twenty?

12 MS. VAN LANGEVELDE: Yes, Your Honor.

13 MR. STRONG: Yes.

14 THE COURT: All right. How about -- if they get  
15 something to you by three o'clock, can you respond by five  
16 o'clock?

17 MR. CARTER: I'll do my extremely best.

18 THE COURT: All right.

19 MS. VAN LANGEVELDE: What -- I'm sorry.

20 THE DEFENDANT: But, when?

21 MS. VAN LANGEVELDE: And what are -- I -- and I can  
22 -- I just printed out the notice. And I guess I'm -- I -- I  
23 think we almost need to look back at some of these final  
24 pretrials because I think that we talked about this, because we  
25 talked about who these witnesses were on our list, and I know I

0268a

1 -- I've mentioned that they were prior acts witnesses.

2 THE COURT: Well, your pretrial statement from April  
3 25th, you say:

4 "Judgment of conviction for prior CSC conviction," as  
5 a possible exhibit.

6 And --

7 MR. STRONG: We also requested the jury instruction  
8 of evidence of other offenses relevance limited to a particular  
9 issue, the other acts instruction.

10 THE COURT: Right. But, those are generic. Do you  
11 know what I mean? I don't see where --

12 MS. VAN LANGEVELDE: Well --

13 MR. CARTER: Well, they are, because I don't know, if  
14 I were to put my client on the stand, those things might be  
15 able to come in on other grounds. I -- I don't know. I mean,  
16 those, you know -- but, I didn't have notice of it. And until  
17 I put my -- my client in that position, they don't come in, and  
18 I need to have notice. I didn't get notice.

19 THE COURT: In the February pretrial, the Judgment of  
20 Conviction for prior -- possible exhibits by the People:  
21 Judgment of Conviction --

22 MS. VAN LANGEVELDE: Right.

23 THE COURT: -- for prior CSC conviction.

24 MS. VAN LANGEVELDE: Your Honor, we also sent a  
25 witness list back -- by e-mail -- on January 31st, by Ms.

0269a

1 Bartlett, which lists -- that was our original witness list.  
2 And Amanda Ratcliff who was -- that was the vic -- prior act  
3 victim's maiden name, is listed there, as well as Detective  
4 Aaron Roberts.

5 MR. CARTER: Did it -- did it say what she was gonna  
6 testify to? She's just a witness. I don't know what she's  
7 gonna testify to.

8 MR. STRONG: But if -- I think the issue there, Your  
9 Honor, is that the -- something like that, a witness list,  
10 served on the de -- on the defendant through his counsel, by e-  
11 mail, two weeks prior to the same notice that he says he didn't  
12 get, it would be like if we dropped it off at his office and he  
13 just never picked it up. That is no longer on the prosecution.  
14 If we've given him everything else via e-mail --

15 THE COURT: I know you're arguing a waiver, and I --  
16 I -- I don't -- I'm not -- I don't have enough information  
17 right now.

18 MR. STRONG: Sure.

19 THE COURT: That's why I'm not -- this is not the  
20 kind of ruling you wing, okay? But, my guess is that that's  
21 not gonna be a waiver, that you -- that the requirement was to  
22 give notice, and that proper notice wasn't given, but I could  
23 be wrong. But, I don't think, simply, because everything else  
24 was served e-mail and he may have gotten it, gives the right to  
25 -- I just -- I think -- to me, the question is more, Ms. Van --



0270a

1 I agree with Ms. Van --

2 MS. VAN LANGEVELDE: It's Monday.

3 THE COURT: It's Monday. I gotta -- by the time I  
4 to teach tonight, I might as well just like start, you know,  
5 makin' a motorboat noise.

6 I think the only -- the issue that I want to wait and  
7 have resolved before I decide what -- whether to grant the  
8 mistrial is whether or not there's any exception to it  
9 statutorily. Is there a case that says, hey, if the prosecutor  
10 tells you verbally I'm callin' this witness, whatever, then  
11 we'll have to have more discussion.

12 I'm gonna bring the jury in. I'm gonna give them a  
13 recess instruction.

14 I would ask for the prosecutor to get me something by  
15 three o'clock. Mr. Carter, get it to me by five o'clock. And  
16 I'll decide in the morning whether we continue with opening  
17 statement or whether I let the jury go.

18 MR. CARTER: I -- I would indicate that, because of  
19 the timeline, I would consent to an e-mail of back and forth.

20 THE COURT: Okay. So, for the purposes on the  
21 record, in open court, the prosecutor is to e-mail Mr. Carter,  
22 and then Mr. Carter is to e-mail the prosecutor, and  
23 everybody's to e-mail Lauren, my law clerk.

24 MS. VAN LANGEVELDE: Yes, Your Honor.

25 THE COURT: All right, Ms. Bond, will you please

0271a

1 bring the jury back in? You can tell them they can leave their  
2 notebooks on the table because I'm gonna let 'em go.

3 Where's my recess instruction? I usually have a tab  
4 Got it. Not that anybody seemed concerned for me, did they,  
5 Detective?

6 DETECTIVE MALTBY: I was. I was right with you. You  
7 saw me.

8 COURT RECORDER: All rise.

9 (At 1:27 p.m., jury enters courtroom)

10 THE COURT: Please be seated.

11 Well, ladies and gentlemen, something has come up,  
12 and we are -- I'm going to be sending you home now for the rest  
13 of the day. It's just a little bit earlier than what we had  
14 planned. I would like you all to be back here at eight-thirty.  
15 We'd like to get on the record starting right at eight-thirty.  
16 We'll take a break around 10, ten-thirty, wherever's there's a  
17 natural break, then we'll take a lunch break. We'll be  
18 bringing in pizza and salad for you. So, if you don't like  
19 pizza and/or salad, you can bring something else if you would  
20 like, because we like to take pretty short lunch breaks, like  
21 40 minutes, because it's hard letting 13 people leave and get  
22 back. And we just find it works a little bit better. Then,  
23 we'll take a mid-afternoon break, that three, three-thirty  
24 range, and we'll be going until five o'clock tomorrow.

25 Now, I'm calling for a recess. You must not discuss

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1 this case with anyone or let anyone discuss it with you or in  
2 your presence. If someone tries to do that, tell him and her  
3 to stop, explain you are a juror, and that you are not allowed  
4 to discuss the case. If he or she continues, leave and report  
5 the incident to me as soon as you return to court.

6 You may not talk to the defendant, the lawyers, or  
7 the witnesses about anything, at all, even if it has nothing to  
8 do with the case. It is very important that the only  
9 information that you get about this case is when you are all in  
10 court together, acting as a juror, and the defendant, the  
11 lawyers, and I are present.

12 I hope you have a very nice afternoon and evening,  
13 and I'll see you back here bright and early at eight-thirty.

14 You can leave anything you want in the jury room.  
15 When the last of you leaves, we will lock the door until  
16 tomorrow morning, okay? Thank you and watch your step.

17 (At 1:29 p.m., jury exits courtroom)

18 THE COURT: Ms. Van Langevelde, is there anything  
19 else you need to place on the record before we recess for the  
20 day?

21 MS. VAN LANGEVELDE: I don't believe so. Thank you.

22 THE COURT: Anything for you, Mr. Carter?

23 MR. CARTER: No.

24 THE COURT: Excellent. I will see everybody in the  
25 morning.

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1 MR. CARTER: Thank you.

2 (At 1:30 p.m., proceedings concluded for the day)

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CERTIFICATION OF COURT RECORDER

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STATE OF MICHIGAN )  
COUNTY OF EATON )

I certify that this transcript consisting of 221 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Monday, June 19, 2017.

Dated: November 15, 2017

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Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

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STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant.

JURY TRIAL - VOLUME II OF IV

BEFORE THE HONORABLE JANICE K. CUNNINGHAM, CIRCUIT JUDGE

Charlotte, Michigan - Tuesday, June 20, 2017

APPEARANCES:

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Kathy Bond, CSR/CER-2779  
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Charlotte, Michigan

Tuesday, June 20, 2017 - At 8:39 a.m.

THE COURT: Okay, we are on the record in the People  
in the State of Michigan versus Damon Warner, file 16-296-FC.

On behalf of the prosecution, Ms. Van Langevelde and  
Mr. Strong are here. On behalf of the defendant, Mr. Carter'  
here. The defendant is here.

Sir, raise your right hand. Do you swear to tell the  
truth, the whole truth, and nothing but the truth, so help you  
God?

THE DEFENDANT: Yes.

(At 8:39 a.m., defendant sworn by the Court)

THE COURT: The preliminary issue before the Court is  
whether or not the Court should grant the defense's request for  
a mistrial.

Yesterday, when Ms. Van Langevelde was giving her  
opening statement, she began to talk about a prior criminal  
conviction, a prior act. The defense counsel objected. We let  
the jury go for the rest of the day.

I received, as requested, a memorandum from the  
People on the issue, and I received a response from the  
defendant.

Your motion, I guess, initially, Mr. Carter, for the  
mistrial. Anything else you'd like to say? Like I said, I  
heard your oral argument yesterday. I have your response to

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1 the People's motion. Anything else you'd like to put on the  
2 record?

3 Then, I'll let you, Ms. Van Langevelde, then the  
4 Court will make its ruling.

5 MS. VAN LANGEVELDE: Thank you.

6 MR. CARTER: Okay, I -- I guess what my -- the only  
7 issue that popped up last night, after I sat through all of  
8 this and -- and prepared my response, is there -- there's a  
9 witness on the witness list. Nowhere, on the witness list,  
10 does it indicate what this individual is going to say or  
11 testify to. And, somehow, the prosecutor is trying to  
12 extrapolate that. If I -- I mean, if I couldn't -- if I didn't  
13 get the -- their notice, intent, somehow I had other notice  
14 throughout that.

15 However, when I asked about that witness and asked if  
16 they were ever interviewed by them, they said no. And that  
17 prior conviction was over 17 years ago. So, how in the world  
18 could they anticipate what their testimony was going to be?

19 Even if their notice was sufficient, it's defective  
20 in that way. Nothing -- they were never interviewed, this  
21 witness, at least according to them when I asked them that.  
22 So, there arises another problem.

23 I -- I think there's all sorts of issues with this  
24 so-called notice or disclosure, if you want --

25 THE COURT: Well, I believe, though, what the

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1 prosecution's -- well, I'll let Miss Van Langevelde speak for  
2 herself.

3 MS. VAN LANGEVELDE: Thank you. May I respond?

4 Thank you, Your Honor. Under the statute, as this  
5 Court is well-aware, the People are -- shall disclose the  
6 evidence to the defendant at least 15 days before the scheduled  
7 date of trial.

8 So, back in August, when Mr. Carter filed his  
9 appearance with our office, we sent him all the discovery via  
10 e-mail, including the Homer PV report, which was included in a  
11 series of e-mails by Liz Briscoe.

12 There's been no argument that the defense hasn't  
13 received any of the other discovery. It's, basically, just the  
14 discovery that's most damaging to his client.

15 Now, in my pretrial statement -- the first final  
16 pretrial that we had in -- on February 15th, the day before I  
17 had filed a notice, which is not required under the statute.  
18 All we have to do is disclose the evidence.

19 So, if you like, by filing notices, we kind of go  
20 above and beyond that.

21 THE COURT: All right, I under -- Miss -- Ms. Van  
22 Langevelde -- and I'm not trying to cut you off, but I read  
23 your memo.

24 MS. VAN LANGEVELDE: Well --

25 THE COURT: Yeah, this is -- you're -- you're

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1 restating everything that I --

2 MS. VAN LANGEVELDE: Okay.

3 THE COURT: -- read last night. I want -- I'm asking  
4 you more to respond to what Mr. Carter just indicated, that --  
5 that he asked, and that the response, apparently, from the  
6 prosecutor was that we did not interview the witness and that  
7 no summary's been provided. I think that's what he just said

8 MS. VAN LANGEVELDE: Well, and I guess my point is,  
9 Judge, is that, in the original report, even, and in the  
10 original discovery -- actually, Detective Maltby, in his  
11 original report, talks a little bit about how the defendant has  
12 a prior conviction for CSC, that Detective Roberts was the one  
13 who interviewed him.

14 And even in the defendant's interview with Detective  
15 Maltby, which was provided as discovery, and Mr. Carter  
16 received those discs of the defendant's interviews, the  
17 defendant talks about his prior conviction for CSC, talks about  
18 being on SORA, talks about what happened, or at least his  
19 version of events about what happened.

20 So, there's no surprise here to the defense that  
21 there are other act -- there's another act of CSC. It's on the  
22 Information.

23 And at the final pretrial, we actually discussed the  
24 amendment of the Information, because when we looked at the  
25 Judgment of Sentence from Calhoun County, it had on there one

1 count of CSC - third, which his CCH says two counts of CSC -  
2 third that he was guilty of. And we talked about that on the  
3 record in amending the Information. And on that Information  
4 the notice that he was convicted of attempted CSC - third  
5 degree, force or coercion, in the serty -- Thirty-Seventh  
6 Circuit Court of Calhoun County.

7 That's notice. That's producing the evidence. That  
8 -- I mean, that's -- and that's a summary of the evidence.

9 I also had an opportunity -- and I apologize for not  
10 you know -- I -- I did a little bit of research last night, as  
11 well. I have some cases that are unpublished and published.

12 THE COURT: If they're unpublished, I don't want to  
13 hear about 'em.

14 MS. VAN LANGEVELDE: Okay. Well --

15 THE COURT: Today. I mean, we're -- this was --  
16 'cause now -- you see, the problem is now you try to give me  
17 something, now I -- we have another delay because now Mr.  
18 Carter has a right -- that's why I set deadlines. So, I think  
19 we're better off not going down --

20 MS. VAN LANGEVELDE: Okay.

21 THE COURT: -- that rabbit hole.

22 MS. VAN LANGEVELDE: Then, I do want to talk a little  
23 bit about I had an opportunity to read People versus Doback  
24 (phonetic), which is published. And a lot of unpublished cases  
25 rely on People versus Doback. And they talk about, basically,

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1 that they can't claim surprise when there -- when there's, you  
2 know, notice about this. And I don't think that Mr. Carter can  
3 claim surprise when it's in all of the discovery. It's on the  
4 information, so.

5 THE COURT: Okay. All right, Mr. Carter.

6 MS. VAN LANGEVELDE: Thank you.

7 MR. CARTER: Thank you. The issue here is whether or  
8 not they're going to use this at trial, and they didn't do --  
9 they didn't notice me for that. To say that, oh, well, you  
10 could look at the CCH and -- and find out that there's a charge  
11 there, that -- that doesn't mean that I know that the  
12 prosecutor has wit -- has interviewed these witnesses, and,  
13 yes, there's credible testimony that they're gonna use at  
14 trial, and therefore, they're going to give me notice that,  
15 yes, this is what they're going to do, and this is a summary of  
16 what they're going to say. That's what the notice requirement  
17 is supposed to be, the disclosure requirement is supposed to  
18 be.

19 You're talking about a 17-year-old case or longer.  
20 What is this witness gonna say? We don't know what that  
21 testimony is. They didn't even interview that witness.

22 THE COURT: Okay. I'm -- the focus of this motion  
23 raised by the defense, the focus is a section in the code of  
24 criminal procedure, 768.27A. It requires the prosecutor to  
25 disclose the evidence to the defendant at least 15 days before

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1 the scheduled date of trial.

2 There -- it can be no doubt that the prosecutor has  
3 done that. If you go back to August 26th, 2016, the prosecutor  
4 provided the defense with the Homer police report, the  
5 Judgement of Sentence, the BIR, and other documents related to  
6 this previous adjudication.

7 It goes on to say, then, that the prosecutor has to  
8 include the statement of the witness or a summary of the  
9 substance of any testimony that is expected to be offered.

10 Again, the prosecutor provided the police reports  
11 which contain the statement, or statements, of this witness  
12 from the time that she was interviewed. Then, on January 31st  
13 -- well, so let me just stop there.

14 The defense argued that this provision, 768.27A,  
15 somehow rises to the level of an actual written document called  
16 a notice that rose to the level of being a pleading and,  
17 therefore, MCR 2.107 becomes applicable.

18 It is not analogous to a pleading. It does not rise  
19 to the level of a pleading. And the actual statutory language  
20 doesn't really provide specifics on how the notice is to be  
21 given. In fact, one could argue that the disclosure 15 days  
22 before trial could very well be verbal; but, certainly, it  
23 isn't required to be given in the form of a pleading.

24 Now, no one gave me any case law on this yesterday in  
25 the briefs that I asked for. But, I do find analogous to the

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1 -- this case, People versus Gaines, 306 Mich App 289, which is  
2 a published 2014 case, because, in that case, the prosecutor  
3 had given their notice but, instead of giving a summary, which  
4 is really what Mr. Carter is arguing this morning, the notice  
5 referred defense counsel to police reports and discovery. And  
6 the court specifically found that the prosecutor is not  
7 precluded from incorporating into their disclosure, hey, go  
8 look at this other stuff that we gave you, that that was  
9 sufficient notice.

10 So, that published case tells me that it does not  
11 rise to the level of a pleading.

12 So, now the question is did the defense have notice.  
13 Is there any kind of surprise? Well, on January 31st, 2017,  
14 the prosecutor provided their witness list, which the defense  
15 has never claimed they did not get, which listed the witness  
16 that would be testifying.

17 And then on February 15th, we had a final pretrial.  
18 That wit -- the witness was listed. Also, the Judgment of  
19 Conviction was listed. In addition to that, we went over jury  
20 instructions, and the two jury instructions were listed that  
21 would be consistent with the prosecutor admitting other acts  
22 committed by the defendant.

23 What I found -- find very compelling is what was on  
24 the record. And the Court was going over, again -- this was at  
25 the final pretrial back in February. And the Court asked:

*56th Circuit Court  
Charlotte, Michigan*



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1 "Is this an alleged confession?

2 "MS. VAN LANGE VELDE: Yes."

3 This is a portion of the transcript I had Ms. Bond  
4 prepare for me.

5 "THE COURT: Judgment of Conviction for prior CSC, do  
6 you anticipate any objections to the hand -- defendant's  
7 handwritten statement, Mr. Carter?

8 You know, I tried to find something. I'm still  
9 working on it.

10 Right now you don't?

11 MR. CARTER: But as of right now, I can't find  
12 anything.

13 THE COURT: Okay, then, the Judgment of Conviction, I  
14 assume there's no objection to that.

15 MR. CARTER: Well, that's, you know -- the law is  
16 quite clear on that."

17 So, the record is replete with evidence that the  
18 defense knew about this witness was going to testify. In fact,  
19 the witness list, at one point, had to be amended because the  
20 witness got married and her last name changed. And I recall,  
21 initially, defense being concerned about a late amendment of  
22 the witness list until they were advised that it was really  
23 just the name change because the person got married.

24 So, we have a witness list that has consistently put  
25 that witness's name on there. We have exhibit lists that

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1 consistently has had the Judgment of Conviction. We have  
2 discovery that's provided, police reports, and other evidence  
3 of this prior act. We have jury instructions that have  
4 consistently been listed. And finally, the prosecutor did file  
5 their notice. It's in the court file. And it was sent by e-  
6 mail to defense counsel in the same manner that all of the  
7 other discovery was sent.

8 The Court finds that, based on all of this evidence  
9 that the prosecutor has met the requirement of section 768.27A  
10 and the defense's motion for a mistrial is denied.

11 Now, the prosecutor requested a special instruction.  
12 At this point, I am not inclined to grant it for the following  
13 reasons: Number one, it's my intent to get the jury in here in  
14 the next two minutes, and we're just gonna start over with your  
15 opening.

16 MS. VAN LANGEVELDE: Okay.

17 THE COURT: At the conclusion of the trial, if you  
18 want to renew a request for a special instruction, I'll allow  
19 you to do it. Right now, quite honestly, I think it puts too  
20 much of a spotlight on the issue. Jurors are lay people. They  
21 know that Mr. Carter stood up and objected, but they probably  
22 aren't really sure what happened. If we proceed and now you  
23 are gonna talk about this prior act in your opening and you're  
24 gonna be introducing evidence, I'm not sure that they need a  
25 curative instruction that you did something wrong. And I think

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1 I would almost be highlighting the prior act, at this point.

2 So, I am denying without prejudice your request for  
3 curative instruction in that regard.

4 I guess I'll leave it up to you, Ms. Van Langevelde.  
5 If you don't want to start over at the beginning of your  
6 opening, that's up to you. I --

7 MS. VAN LANGEVELDE: I would like to.

8 THE COURT: I realize I just kind of made that --

9 MS. VAN LANGEVELDE: No, I -- I -- I would like to.

10 THE COURT: Just because that way -- so, that is the  
11 ruling of the Court.

12 Anything else you need to put on the record before we  
13 bring the jury in and you start your opening, Ms. Van  
14 Langevelde?

15 MS. VAN LANGEVELDE: Not as to this issue, no.

16 THE COURT: Okay. I really do want to get started  
17 with our jury.

18 MS. VAN LANGEVELDE: Sure.

19 THE COURT: Mr. Carter, anything else you need to put  
20 on the record before we get started?

21 MR. CARTER: When do they plan on playing the tape?  
22 Because there was -- there's one section in the tape that was  
23 not redacted about a polygraph.

24 MS. VAN LANGEVELDE: I -- and I caught that this  
25 weekend, and I had -- I can -- I was gonna have Mr. Seratt

1 actually testify, not in front of the jury but in front of Your Honor,  
2 about the redactions that he's made and about the -- the  
3 video that he's made. And I was -- but I was gonna play that  
4 during Detective Maltby's testimony.

5 THE COURT: Okay, so not right away.

6 MS. VAN LANGEVEDLE: Not right away, yes. Yes. And  
7 I do -- and I did have -- provide that. I'm -- and I caught  
8 that this weekend when I watched that disc again. And -- and  
9 that's why Mr. Seratt is in the courtroom, and he'll be able to  
10 testify about the redactions that he made.

11 THE COURT: Do you have issues with the redactions,  
12 Mr. Carter?

13 MR. CARTER: Just -- no. Just -- just one. When --  
14 when I got the redacted copy, listening to the whole thing,  
15 there was -- in one section, at -- at one hour, two minutes and  
16 54 seconds --

17 THE COURT: Um-hum.

18 MS. VAN LANGEVELDE: Yes.

19 MR. CARTER: -- it mentions a polygraph, and that  
20 should be redacted.

21 THE COURT: And that has -- and you're saying that  
22 has been redacted. So, if that ends up being the case, then  
23 you're okay?

24 MR. CARTER: Yes, right.

25 THE COURT: Okay.

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1 MR. CARTER: I just wanted to draw that --

2 MS. VAN LANGEVELDE: Sure.

3 MR. CARTER: -- because I was reviewing --

4 THE COURT: Anything else before we bring the jury  
5 in?

6 MS. VAN LANGEVELDE: No, I don't believe so. And I  
7 guess if we're talking about that, the other -- the first  
8 interview with Detective Maltby, at -- I wasn't going to play  
9 that for the jury, but I was going to admit it. But, we --  
10 what Mr. Seratt did, and I can have him testify before the  
11 Court, is I had him stop it when Detective Maltby walks out of  
12 the interview room the first time, because it's when he comes  
13 back that they talk about setting up the appointment for the  
14 polygraph. So, I just had Mr. Seratt end it when Detective  
15 Maltby walks out of the interview room the first time.

16 But, I'm not anticipating playing that video to the  
17 jury.

18 THE COURT: Okay --

19 MR. CARTER: I -- I --

20 THE COURT: -- we don't need to deal with this right  
21 now --

22 MS. VAN LANGEVELDE: Right, I know.

23 MR. CARTER: Well, I think it --

24 THE COURT: -- because he's not testifying first;  
25 correct?

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1 MS. VAN LANGEVELDE: Correct.

2 THE COURT: All right. Anything that we need to deal  
3 with before I bring -- let the jury in --

4 MS. VAN LANGEVELDE: No.

5 THE COURT: -- and do opening statements and call the  
6 first witness?

7 MS. VAN LANGEVELDE: No.

8 THE COURT: Excellent, let's bring 'em in.

9 MS. VAN LANGEVELDE: Oh, Your Honor, I did print out  
10 I guess, a copy of our notice with the Judgment of Conviction  
11 on it. So, I'm just gonna hand that to Mr. Carter right now.

12 MR. CARTER: Thank you.

13 (At 8:59 a.m., jury enters courtroom)

14 THE COURT: Good morning.

15 JURORS: Morning.

16 THE COURT: Please be seated. All right, ladies and  
17 gentlemen, good morning.

18 JURORS: Good morning.

19 THE COURT: We are going to now begin. And, Ms. Van  
20 Langevelde, we will start with your opening statement, please.

21 MS. VAN LANGEVELDE: Thank you.

22 Good morning, members of the jury.

23 JURORS: Good morning.

24 MS. VAN LANGEVELDE: We're gonna start from the  
25 beginning again, okay?

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1 Members of the jury, we are here today because the  
2 defendant sexually assaulted his stepdaughter, Pearl, when she  
3 was 13-years-old, when he put his finger into her vagina and  
4 when he put his penis on her vagina.

5 Today, you're gonna meet -- today, you are going to  
6 meet Pearl. She's 19-years-old now. And you will hear that  
7 the defendant has been in her life since she was seven-years-  
8 old. You'll hear that Pearl and her parents -- or, Pearl's  
9 parents got a divorce when she was young, and that her mother  
10 started to date the defendant. And when she was about seven,  
11 almost eight-years-old, they moved in together. And you'll  
12 hear that, then, her mother became pregnant with Baby Sable,  
13 and that Sable is the defendant's daughter. And that before  
14 Sable was born, they moved into this house in (sic) Butterfield  
15 Highway, in Olivet, Michigan. And you'll hear that when Sable  
16 was born, Pearl and Sable shared a bedroom. Her crib was in  
17 there, and Pearl's bed was in there, as well.

18 And you'll hear, obviously, that even though Pearl's  
19 parents were divorced, she had visitation with her dad every  
20 other weekend. And so, on -- usually on Fridays, Pearl would  
21 go to her dad's house. Or, every other Friday, she'd go to her  
22 dad's house.

23 Now, you'll hear that Pearl and Sable are about 12  
24 years apart. And that so, at the time, when they were living  
25 on Butterfield Highway, as well, Grandma Esther, Pearl's mom's

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1 mom, moved in with them. And so, she had the third bedroom in  
2 the house. That's why the girls shared the room.

3 Now, you'll hear the first time that the defendant  
4 sexually assaulted Pearl was in the bedroom that she shared  
5 with Sable. You'll hear she remembers it was a half day at  
6 school. She was packing up to get her stuff ready to go to her  
7 dad's house, and it was just the defendant, Baby Sable, and  
8 Pearl in the house. Mom was working. Grandma Esther was  
9 working. Pearl remembers that the defendant asked her if --  
10 are you ready to go, something like that, then he comes into  
11 the bedroom. And you'll hear that the defendant pushes Pearl  
12 back on the bed, pulls down her pants, pulls down his pants,  
13 puts his penis on her vagina, and tells her, "This is going to  
14 hurt." And Pearl screams. And you'll hear that Pearl hears  
15 her baby sister coming down the hallway to the bedroom, and  
16 that the defendant then gets off of her and leaves her in the  
17 room. And you'll hear that Pearl is shocked. She doesn't know  
18 what to do.

19 And later that afternoon, her stepmom comes and picks  
20 her up, takes her to their house. And Pearl could've told, but  
21 she didn't because she was scared. She didn't know what would  
22 happen if she told.

23 Frankly, she'll tell you she likes the defendant.  
24 Despite what he did, they always had an okay relationship.

25 But, you will hear, also, about the second time that



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1 Pearl was sexually assaulted by the defendant. And this time  
2 it was in the nighttime. She believes it was about summertime  
3 Again, 13-years-old. She's in the house at Butterfield, and  
4 Mom is sleeping, Baby Sable is sleeping. She can't really  
5 remember where Grandma was. But, she remembers she walked into  
6 the kitchen/dining room area. She was standing by the table.  
7 Defendant had been watching TV. She remembers, specifically,  
8 he was watching WWE. And she'll (sic) hear that he came up  
9 behind her, put his down her pants, the back of her pants, and  
10 put his finger in her vagina. And, again, Pearl will tell you  
11 she was shocked. She was surprised. She didn't know what to  
12 do. Here's a person in her house that she liked, that she  
13 trusted, and he's violating her.

14 She didn't tell anybody. She didn't tell anybody  
15 that this happened to her until she was about 17-years-old.

16 Now, as I talked about in jury selection, we're not  
17 gonna have DNA, we're not gonna have physical evidence. And,  
18 frankly, because it was years later, we just wouldn't have  
19 that.

20 But, Pearl will tell you, after all these years, she  
21 will never back down. It happened to her. And she'll tell you  
22 this happened to me.

23 Now, the evidence will show that Detective Maltby,  
24 who's seated at counsel table, interviewed the defendant. He  
25 came in voluntarily. He was willing to speak with the

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1 defendant (sic). In the first interview, he says, no, nothing  
2 happened. Nothing inappropriate ever happened between him and  
3 Pearl. Detective Maltby specifically asked him ever been like  
4 wrestling, horseplaying, wrestling with her, any --  
5 accidentally ever touched anywhere down there. The defendant  
6 says, "No. When I wrestle, I always stayed away from touching  
7 anywhere down there." Maltby asked him, "Ever had Pearl come  
8 on to you in any way?" The defendant said, "No, no."

9 What's interesting and important is that, after his  
10 interview with Detective Maltby, Detective Maltby sets him up  
11 with a special interview with Detective Sergeant Jordan from  
12 MSP, who you'll meet, and the defendant changes his story. He  
13 says there was one time, when he was wrestling with Pearl and  
14 Baby Sab -- and Sable -- we call her baby. She's older now,  
15 but Sable was a baby -- Pearl took his hand and put it down her  
16 pants. This was Pearl's fault. The defendant told Detective  
17 Jordan that Pearl was -- said she was horny. Told him he was  
18 -- she was horny. Told him her pussy was on fire, and that the  
19 defendant had touched her vagina with four of his fingers and  
20 touched the inside of her lips and that it was wet. But, he  
21 goes on to say this was Pearl's fault, that she's an over-  
22 sexualized kid. Pearl came on to me. Thirteen-years-old.

23 So, members of the jury, the evidence will show that  
24 the defendant has done this before. You'll hear the  
25 defendant's been previously convicted for criminal sexual

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1 conduct in the third degree. Attempted -- excuse me, attempted  
2 criminal sexual conduct in the third degree. You'll hear that  
3 the victim in that case was 12 and 13-years-old at the time,  
4 and he was 25-years-old. In that case, you'll hear from  
5 Detective Roberts, who will be here to testify. First, he told  
6 Detective Roberts they were just friends. They had just  
7 kissed, never had sex. You'll hear Detective Roberts tell you  
8 that he, then, in his second interview, he changes his story.  
9 He says he was drunk. She came on to him.

10 Now, as Judge explained to you, the defendant is  
11 charged with two counts. The first count is criminal sexual  
12 conduct in the first degree. That's the digital penetration.  
13 That's the actual going into the vag -- or, excuse me, the  
14 genital opening, the vagina. And this -- and the last element  
15 is that the defendant and the victim were members of the same  
16 household. They lived together.

17 The second count is CSC second. That's the sexual  
18 touching. That's putting his penis on her vagina, sexual  
19 touching of a person between the ages of 13 and 15-years-old,  
20 that the -- and that the defendant and the victim were members  
21 of the same household.

22 So, I don't believe that there's any disagreement  
23 that Pearl was 13-years-old. In the State of Michigan, you  
24 can't consent to have sex under 16. So, I don't think there's  
25 any dispute that Pearl was 13, 14 or 15-years-old during this

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1 time period.

2 I, also, don't think that there's any dispute that  
3 the defendant and Pearl lived together. And the first -- that  
4 they were in the same household. And he had Baby Sable, and  
5 eventually they had Baby Noah.

6 So, the most important element that's, obviously, for  
7 you to decide is whether the defendant engaged in sexual  
8 penetration. That's the digital one, penetration with his  
9 finger. And in count two, whether the defendant intentionally  
10 touched Pearl's genital area for a sexual purpose.

11 And as we go through this trial, I want you just to  
12 remember, use your common sense. And I believe that, after  
13 you've heard all the testimony and evidence in this case, I  
14 believe you'll reach the just verdict. And I'm gonna ask you  
15 to find the defendant guilty on both counts. Thank you.

16 THE COURT: Thank you, Miss Van Langevelde.

17 Mr. Carter, do you choose to make an opening  
18 statement at this time?

19 MR. CARTER: Yes. I'll be brief.

20 We are not here today because Mr. Warner sexually  
21 assaulted his stepdaughter, Pearl. We're here today because  
22 his stepdaughter, Pearl, has falsely accused Mr. Warner of  
23 sexually assaulting her.

24 Now, you're going to hear the evidence. And during  
25 voir dire, I questioned you how do you prove something that

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1 didn't happen. The devil is in the details.

2 You're gonna listen to the testimony. Pay attention  
3 to details. They're important.

4 And after you hear all the evidence, I'm sure you'll  
5 come back with a just verdict, which is not guilty. Thank you

6 THE COURT: Thank you, Mr. Carter.

7 Miss Van Langevelde, please call your first witness

8 MS. VAN LANGEVELDE: I'm gonna call -- actually, Mr  
9 Seratt, can you get her? Thank you.

10 THE COURT: Please come right up here. There's a  
11 step right before you get to the witness box.

12 Raise your right hand. Do you swear to tell the  
13 truth, the whole truth, and nothing but the truth, so help you  
14 God?

15 MS. GIFFEN: I do.

16 THE COURT: Please have a seat. Please state your  
17 full name for the record.

18 THE WITNESS: Pearl Giffen.

19 THE COURT: Could you spell your last name?

20 THE WITNESS: G-i-f-f-e-n.

21 THE COURT: Thank you.

22 Go ahead, Ms. Van Langevelde.

23 MS. VAN LANGEVELDE: Thank you.

24 PEARL GIFFEN

25 at 9:11 a.m., sworn as a witness, testified as follows:

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DIRECT EXAMINATION

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BY MS. VAN LANGEVELDE:

Q Now, Pearl, just a reminder, Miss Bond is typing what you say  
So, you got to make sure you say yeses and nos, okay?

A Yes.

Q Thank you. Pearl, how old are you right now?

A Nineteen.

Q And when is your birthday?

A June 10th, 1998.

Q Okay. You have to speak up because --

A Okay.

Q -- everybody has to hear what you say, okay?

A Okay.

Q All right. So, Pearl, do you have any learning disabilities or  
anything like that?

A I'm ADHD.

Q Okay. And does that make it hard for you, sometimes, to  
concentrate?

A Yes.

Q Okay. So, when we come to court, the most important rule is to  
tell the truth. Do you promise to tell the truth?

A Yes.

Q And another rule of court is that if you don't know the answer  
to something, don't -- don't guess, okay? So, if I ask you  
what is my dog's name --

0300a

1 A I would say I don't know.

2 Q All right. 'Cause you don't even know if I have a dog; right?

3 A Yes.

4 Q Okay. So, and another thing to do is if there's something that  
5 you can't remember, it's okay to say I don't remember, okay?

6 A Yes.

7 Q And if I get something wrong or if the Judge or even Mr. Carter  
8 gets something wrong in our questions, it's okay to correct us.  
9 Can you do that?

10 A Yes.

11 Q So, if I say, Pearl, how do you feel being 21-years-old --

12 A I'd say I don't know.

13 Q Why is that?

14 A 'Cause I'm not 21.

15 Q Okay. So, how old are you?

16 A Nineteen.

17 Q All right. So, correct me if I get something wrong, okay?

18 A Yes.

19 Q Thank you. So, Pearl, who -- what's your mom's name?

20 A Bridget.

21 Q What's her last name?

22 A Warner.

23 Q And who is your dad?

24 A James.

25 Q What's his last name?

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1 A Giffen.

2 Q And are your mom and dad currently married to each other?

3 A No.

4 Q Who is your dad married to?

5 A My stepmom.

6 Q What's her name?

7 A Sharon.

8 Q And who is your mom married to?

9 A No one.

10 Q All right, who was your mom mar -- who was your mom married to?

11 A Damon.

12 Q Do you see Damon in the courtroom today?

13 A Yes.

14 Q Can you point him out and describe what he's wearing?

15 A He's wearing a long gray shirt.

16 Q Okay, thank you.

17 MS. VAN LANGEVELDE: Okay, thank you.

18 Let the record reflect the witness has identified the  
19 defendant.

20 THE COURT: The record will so reflect.

21 MS. VAN LANGEVELDE: Okay, thank you.

22 BY MS. VAN LANGEVELDE.

23 Q Pearl, how old were you when your mom and the defendant started  
24 dating?

25 A About seven and-a-half.



0302a

1 Q Okay. And how -- do you know how they met?

2 A My mom and Damon worked together.

3 Q Where did they work?

4 A At a hotel in Marshall.

5 Q And at some point, did the defendant start living with you and  
6 your mom?

7 A Yes.

8 Q Do you remember what house that was at?

9 A At Baseline.

10 Q Baseline. What town?

11 A Olivet.

12 Q And do you know how old you were about when this -- when the  
13 defendant started living with you and your mom?

14 A About, maybe, eight.

15 Q Okay. Do you know, at some point -- well, did -- do -- let me  
16 ask you this: Does your mom and the defendant have any  
17 children together?

18 A Yes.

19 Q Do you know -- I guess, tell me what their names are.

20 A Sable and Noah.

21 Q Do you know when Sable's birthday is?

22 A In 2011, May 7th.

23 Q Okay. Do you know when Noah's birthday is?

24 A I don't know the year, but September 6th.

25 Q Okay. I can't -- can you speak up please, Pearl?

1 A Yes.

2 Q Okay.

3 A September 6th, but I'm not sure of the year.

4 Q Okay. And you said Sable's birth day. When is the actual day?

5 A May 7th.

6 Q Okay. Do you know what year she was born?

7 A Maybe 2011. I know they're a year apart, so.

8 Q Okay. Are we -- are we guessing?

9 A Yeah, I don't --

10 Q Okay.

11 A -- know when their birthdays --

12 Q Remember not just --

13 A -- are, really.

14 Q -- to guess. Okay. How many years are you and Sable apart; do  
15 you know?

16 A Twelve.

17 Q Okay. And how many years are you and Noah apart?

18 A Thirteen.

19 Q Okay. So, before Sable was born, where -- where were you  
20 living?

21 A On Butterfield, in Olivet.

22 Q Butterfield, in Olivet. Do you remember the exact address?

23 A 5480 West Butterfield Highway.

24 Q Okay. So, do you know if that's located in Eaton County?

25 A Yes.

0304a

1 Q Can you tell us who all moved into the house on Butterfield  
2 with you when you first moved in there?

3 A Me, my mom, Damon and, shortly after, my Grandma did.

4 Q Okay. So, at some point, your grandma moved in pretty --  
5 pretty close after you guys moved in?

6 A Yes.

7 Q What's your grandma's name?

8 A Esther.

9 Q Even though you lived -- did you -- who did you live primarily  
10 with, I guess, at that point?

11 A My mom.

12 Q And did you still see your dad?

13 A Yes.

14 Q When did you see your dad?

15 A Every other weekend.

16 Q Did you have regular times when you would see your dad?

17 A Yes.

18 Q So, let's talk about why we're here today. Do you remember the  
19 first time that the defendant sexually assaulted you?

20 A Yes.

21 Q How old were you?

22 A Thirteen.

23 Q Where were you the first time that he sexually assaulted you?

24 A In my bedroom.

25 Q In what house?

0305a

1 A In Butter -- yeah, Butterfield.

2 Q Do you know if your sister, Sable, had been born?

3 A Yes.

4 Q Do you know if your brother Noah had been born?

5 A No.

6 Q Tell me -- you said it was in your bedroom. What -- what was  
7 all in your bedroom?

8 A My bed, my -- and my sister's crib.

9 Q Any other furniture?

10 A My vanity.

11 Q What's a vanity?

12 A It's like a thing that we put stuff in. I used to put books in  
13 it.

14 Q Okay.

15 MS. VAN LANGEVELDE: Your Honor, can I use the white  
16 board for a moment?

17 THE COURT: You may.

18 MS. VAN LANGEVELDE: Thank you. Thank you.

19 (Inaudible). A lot of stuff on it.

20 MR. CARTER: Do you need this unplugged?

21 MS. VAN LANGEVELDE: Maybe just for minute, yeah.

22 BY MS. VAN LANGEVELDE:

23 Q Okay, Pearl, I'm gonna ask you to draw, for us -- basically, on  
24 one side, in blue, can you draw the bedroom for us?

25 A Yes.

0306a

1 Q And then on the other side, can you, kind of -- so, we'll just  
2 call this "bedroom." And this will be your bedroom and Sable  
3 bedroom. And then, this is like, basically -- well, what --  
4 what kind of house did you guys have on Butterfield?

5 A (No verbal response).

6 Q Was it a one-story house, two-story house?

7 A Had a basement. I would say it was a one-story, even though  
8 had a basement.

9 Q Okay. So, I just went -- I'll just have you draw the ground  
10 level. It didn't have an upstairs; right?

11 A (No verbal response).

12 Q It had a basement --

13 A Yeah.

14 Q -- and ground level. Okay. So, I'll just have you draw ground  
15 level of the house; how about that?

16 A Okay.

17 Q Can you do that for us?

18 A Um-hum.

19 Q Doesn't have to be perfect.

20 MS. VAN LANGEVELDE: May she approach the white  
21 board, Judge?

22 THE COURT: Yes.

23 MS. VAN LANGEVELDE: Thank you.

24 THE WITNESS: (Drawing on white board).

25 MS. VAN LANGEVELDE: Okay, great.

0307a

1 BY MS. VAN LANGEVELDE:

2 Q Okay, so this is your room, and then this -- when you say  
3 "bed," is that your bed?

4 A Yes.

5 Q And "v" is for?

6 A Vanity.

7 Q Okay. And so, you have Sable in here, and that's why you put  
8 that?

9 A That's her crib.

10 Q Okay. And then, the door to the room's here?

11 A Um-hum.

12 Q Okay. So, can you draw, for me, just a basic outline? You can  
13 use like k for kitchen, l for living room. It doesn't have to  
14 be perfect.

15 A (Drawing on white board).

16 Q Is that living room?

17 A (No verbal response).

18 Q Okay. Okay, so let me just go through these from this side of  
19 the house on.

20 A Okay.

21 Q Thank you. You can sit down now. This room here is -- that  
22 says "Damon and Mom's room."

23 A Um-hum.

24 Q Okay. Next to it, it says "SP room," and that's Sable and  
25 Pearl; is that right?

0308a

- 1 A Yes.
- 2 Q Okay. Next room is "G" room.
- 3 A Grandma's room.
- 4 Q Okay. And the next room says "walk-in." What's that mean? A
- 5 big walk-in --
- 6 A When you walk into the house.
- 7 Q Oh, I see. So, like the front door is right here?
- 8 A Yeah.
- 9 Q Okay. I'll put F -- FP, okay? And "L room" is for?
- 10 A Living room.
- 11 Q Okay. And this is a big dining room?
- 12 A Um-hum.
- 13 Q Is that a yes?
- 14 A Yes, sorry.
- 15 Q Next to the dining room is the kitchen?
- 16 A Yes.
- 17 Q And then, you guys had like a dining area here; is that right?
- 18 A Yes.
- 19 Q Okay. So, you kind of had two dining areas; is that right?
- 20 A Yes.
- 21 Q This is an l. Is that for --
- 22 A The laundry room.
- 23 Q Okay. And then this next to the laundry room is a --
- 24 A A bathroom.
- 25 Q And then another?

0309a

1 A Yes.

2 Q Two bathrooms?

3 A Yeah.

4 Q Okay.

5 A One was in my mom and dad's room.

6 Q Okay.

7 A Damon's.

8 Q So, one is connected to Mom and Damon's room, and one is --  
9 basically, has a door to the hallway; is that right?

10 A Yes.

11 Q All right, thank you. Okay, so, I think you just called Damon  
12 Dad.

13 A Yes.

14 Q Do you sometimes call Damon Dad?

15 A Yes.

16 Q Why is that?

17 A Because he was a stepdad for -- to me for a while.

18 Q And did you sometimes call him Dad?

19 A Yes.

20 Q Now, you stated the first time that he sexually assaulted you,  
21 you were in your bedroom. Where were you in your bedroom?

22 A On my bed.

23 Q And was anybody else in the bedroom with you --

24 A No.

25 Q -- before it happened?



0310a

1 A No.

2 Q What were you doing?

3 A I was packing for my dad's house.

4 Q Do you remember what time of day it was?

5 A In the afternoon.

6 Q How do -- how do you know it was in the afternoon?

7 A Because I had school that day, and I had a half a day.

8 Q Okay. Do you remember what you were wearing?

9 A I had sweatpants on.

10 Q Do you remember if you wearing -- if you were wearing a top?

11 A I was wearing a t-shirt.

12 Q Okay. Did you have a bra and underwear on?

13 A Yes.

14 Q Who else -- who else was in the house, as you were packing?

15 A My little sister.

16 Q Anybody else?

17 A No.

18 Q Where do you think your mom was?

19 A At work.

20 Q How about Grandma?

21 A At work.

22 Q Do know if, at this point, your grandma was living with you

23 guys?

24 A Yes.

25 Q Okay. Can you tell me what happened as you were packing your

0311a

1 stuff in your room, to go to your dad's house?

2 A I was --

3 Q Tell us what happened.

4 A I was packing my stuff to go to my dad's house that day, for  
5 the weekend, and Damon came into my room and pushed me on the  
6 bed and stuck -- pulled down my pants and stuck his penis into  
7 my vagina.

8 Q Okay. Did he -- did he have clothes on?

9 A Yes.

10 Q What was he wearing; do you remember?

11 A No.

12 Q Do you know if he had a skirt on or any -- what was he wearing  
13 on his bottom half?

14 A Jeans.

15 Q How about his top half?

16 A I don't remember.

17 Q Okay. How did he put his penis in your vagina if he had pants  
18 on?

19 A He took his pants off, not completely off, but he slid 'em  
20 down.

21 Q Okay. How did he -- how far did he slide 'em down; do you  
22 remember?

23 A No, I do not.

24 Q What -- how did he get to the -- how did he -- you said he  
25 pushed you back on the bed?

0312a

1 A Yes.

2 Q How did he do that? Can you describe what he did with his  
3 body?

4 A I don't recall.

5 Q What happened, as he put his penis on your vagina?

6 A What do you mean? I don't understand.

7 Q Okay. Well, did you do anything?

8 A No.

9 Q Did you even say anything?

10 A No.

11 Q Did you make any noises?

12 A I said that it hurt after a while.

13 Q Okay. Did he say anything to you?

14 A No.

15 Q Do you remember if he said anything to you?

16 A No.

17 Q What happened next?

18 A I don't remember.

19 Q Do you remember where Sable was?

20 A Yes.

21 Q Where was Sable?

22 A She was in the living room. But when the incident was happen  
23 (sic), I heard her coming down the hallway.

24 Q What happened when Sable was coming down the hallway, when you  
25 heard her coming down the hallway?

0313a

1 A He got up.

2 Q What happened after he got up?

3 A He just left the room.

4 Q What did you do after he left the room?

5 A Just -- as I recall, I finished packing and just sat in my  
6 room.

7 Q At some point, did you leave the house that day?

8 A Yes.

9 Q How did you leave the house?

10 A My stepmom came and picked me up.

11 Q And did you tell your stepmom that day --

12 A No.

13 Q -- what Damon had done?

14 A No.

15 Q Why not?

16 A Because I was scared.

17 MR. CARTER: I'm sorry, I didn't hear that.

18 THE WITNESS: I was scared.

19 BY MS. VAN LANGEVELDE:

20 Q Is there a reason why you were scared?

21 A No.

22 Q Okay. Was there another time when the defendant sexually  
23 assaulted you?

24 A Yes.

25 Q Can you tell me how old you were?

1 A Just 13.

2 Q And do you remember what -- well, let's see, what time of day  
3 it was?

4 A Night.

5 Q It was nighttime?

6 A (No verbal response).

7 Q Sorry, I can't -- I'm having trouble hearing you.

8 A It was night.

9 Q Do you remember what season, what time of year it was?

10 A No.

11 Q And what were you -- how did the night start? How -- what were  
12 you doing?

13 A I was getting ready to go to bed. I went and told Damon  
14 goodnight, and he was watching WWE. And I told him goodnight,  
15 and I went to the kitchen, through the dining room, to go get a  
16 drink of water, stopped at the table for some reason, and he  
17 came up behind me and put his hands down my pants and up into  
18 my vagina.

19 Q Okay. So, tell me what room, 'cause you got two dining rooms  
20 here; right?

21 A Yes.

22 Q Where were you standing?

23 A In the big dining room, by the table. Yes.

24 Q So, there's a table in this room?

25 A Yes.

0315a

1 Q Is the dining room tached -- attached to the kitchen?

2 A Yes.

3 Q Okay. So, you were standing by the table for some reason. Is  
4 the living room and dining room attached?

5 A Yes.

6 Q Okay. So, you said -- is Damon here --

7 A Yes.

8 Q -- in the -- in the living room? Okay. Did he say anything  
9 you before he came up behind you?

10 A No.

11 Q Did you say anything to him?

12 A Other than walking past him and saying goodnight, no.

13 Q And you said you got -- you got a --

14 A I went to the kitchen to get a drink of water, but I stopped at  
15 the table for some reason.

16 Q Okay. How do you know he put his finger in your vagina?

17 A Because I felt him go in.

18 Q Did you say anything to him?

19 A No.

20 Q Did you make a noise or anything?

21 A No.

22 Q Did he say anything to you?

23 A No.

24 Q What did -- what were you feeling when this happened? What was  
25 your reaction?

0316a

1 A I don't recall what I was feeling.

2 Q Okay. What did you do?

3 A I ended up going to bed. Getting a drink of water and going to  
4 bed.

5 Q Did you tell your mom?

6 A No.

7 Q Where was your mom?

8 A Sleeping.

9 Q Was Baby Sable born?

10 A Yes.

11 Q Where was she?

12 A Sleeping in her crib.

13 Q Was Grandma living with you guys at the time?

14 A Yes.

15 Q Do you remember where Grandma was?

16 A Out.

17 Q Okay. She wasn't sleeping?

18 A No.

19 Q Okay. Did you wake your mom up?

20 A No.

21 Q Did you tell her what happened?

22 A No.

23 Q Why not?

24 A Because I was scared.

25 Q Do you know why you were scared?

1 A No.

2 Q Did you ever say anything to the defendant that night about -  
3 anything about it?

4 A No.

5 Q Is there a reason why?

6 A No.

7 Q Did the defendant ever bring this up or talk to you about these  
8 incidents?

9 A Yes.

10 Q More than once?

11 A Yes.

12 Q Where would you be when he would talk to you about this?

13 A In the car or alone with him.

14 Q I can't hear what you said, I'm sorry.

15 A In the car or alone with him.

16 Q What would he say to you?

17 A He would ask if I told anyone.

18 Q What did you say?

19 A No.

20 Q Had you told anyone?

21 A No.

22 Q What was your relationship with Damon, the defendant, like  
23 before these assaults took place?

24 A We had a good relationship. He became my stepdad right away,  
25 even though my mom and him didn't get married until nine years



1 later. We had a good relationship because -- I don't know --  
2 my mom and dad just got a divorce, and I needed a manly figure  
3 in my life, and he just became my stepdad right away. And it  
4 didn't take me long to call him Dad 'cause I felt close to him.

5 Q And even when -- was that when you were little?

6 A Yes.

7 Q All the way through -- all the way, basically, up until these  
8 incidents?

9 A Yes.

10 Q Even after these incidents took place, how was your  
11 relationship with the defendant?

12 A I ignored what happened, and he was still a father to me  
13 because we still had fun together. And when I say fun, I mean  
14 he took me out, he let me do what I wanted to do, and he was  
15 just there for me.

16 Q Do you guys ever play wrestle together when you were growing  
17 up?

18 A Yes.

19 Q Did you guys both kind of like wrestling?

20 A Yes.

21 Q You -- I know you testified he was watching WWE. Is that  
22 something that you guys would watch together?

23 A Yes, when my mom would -- wouldn't have to work late, she would  
24 stay up with us and we would all watch wrestling together.

25 Q Okay. When you and the defendant would play wrestle, would

0319a

1 anybody else kinda be around?

2 A Yes, my mom would watch us.

3 Q Okay. Did you ever play wrestle when your mom wasn't around?

4 A No.

5 Q Who -- who would usually win when you guys were play wrestling?

6 A He would.

7 Q Was there ever a time when you and the defendant didn't play  
8 wrestle with each other so much anymore?

9 A Yes.

10 Q When was that?

11 A When we moved in to Butterfield.

12 Q So, what -- you would've been about how old?

13 A About 16.

14 Q When you guys moved in to Butterfield?

15 A Yeah. No. I don't recall.

16 Q Okay. That's okay if you don't remember exactly how old you  
17 were. Do you remember ever play wrestling around with the  
18 defendant when you had friends over?

19 A Yes.

20 Q Do you know how old you would've been or what school age you  
21 would've been about that time --

22 A No --

23 Q -- when you had friends over?

24 A -- I don't.

25 Q Okay. Who won when you and the defendant were play wrestling

0320a

1 in front of your friends?

2 A He would.

3 Q Pearl, was there ever a time when you and the defendant were  
4 play wrestling that you put his hand down your pants?

5 A No.

6 Q Was there ever a time -- so, I guess, if the defendant told the  
7 detective that, would that be a truth or a lie?

8 A A lie.

9 Q Was there ever a time when you were play wrestling with the  
10 defendant that you told him that you were horny?

11 A No.

12 Q Was there ever a time where you were play wrestling with him  
13 that you told the defendant your pussy was on fire?

14 A No.

15 Q So, if the defendant made -- told the detective that was  
16 something you said, would that be a truth or a lie?

17 A A lie.

18 Q When you were in elementary school and living with the  
19 defendant, did he do your laundry?

20 A Yes.

21 Q Was there a time when he stopped doing your laundry?

22 A Yes.

23 Q Do you recall about how old you would've been?

24 A About nine or 10.

25 Q Okay. Do you know why he stopped doing your laundry?

1 A Yes.

2 Q Why is that?

3 A 'Cause I'd turned into a woman, and he didn't like washing my  
4 underwear.

5 Q Okay. What do you mean by you "turned into a woman?"

6 A I started my period.

7 Q Okay. So, would -- he knew that you had started your period?

8 A Yes.

9 Q Pearl, who's the very purse -- first person that you told about  
10 the defendant sexually assaulting you?

11 A My grandma.

12 Q Do you remember how old you were when that was?

13 A No.

14 Q And when you say your grandma, who do you mean?

15 A Esther, my mom's mom.

16 Q Okay. This is the same grandma that was -- had been living  
17 with you at Butterfield?

18 A Yes.

19 Q Was your Grandma Esther still living with you when you told her  
20 that the defendant had sexually assaulted you?

21 A No.

22 Q Okay. Had Noah, your -- you have a -- you have a little  
23 brother; right?

24 A Yes.

25 Q And his name is Noah.

0322a

1 A Yes.

2 Q Who's his dad?

3 A Damon.

4 Q So, Damon has two kids with your mom; is that right?

5 A Yes.

6 Q Okay. So, when you told your Grandma Esther, had Noah been  
7 born?

8 A Yes.

9 Q What exac -- did you tell your grandma all the exact details  
10 that you've told all of us today?

11 A No.

12 Q Is there a reason why?

13 A No, not really.

14 Q Who is the next person that you told that the defendant had  
15 sexually assaulted you?

16 A My mom.

17 Q Do you remember when you told your mom?

18 A Yes.

19 Q What day was that?

20 A The night before Christmas Eve.

21 Q Do you remember what year or how old you were?

22 A 2015, I was 17.

23 Q Was this right after you told your grandma or a little bit  
24 after? Do you remember how long in between it was?

25 A A while after.

0323a

1 Q Is there a reason why you waited a while after to tell your  
2 mom?

3 A Because my grandma told me to tell my counselor before I told  
4 my mom, but I told my mom and then I told my counselor.

5 Q Why did you -- why did you do it in that order?

6 A Because every -- there was a lot of things going on that night  
7 and it just -- it, pretty much, just came out.

8 Q When you say "counselor," where does this counselor work at?

9 A At my school.

10 Q So, the school counselor?

11 A Yes.

12 Q At some point, you did tell your school counselor; is that  
13 true?

14 A Yes.

15 Q When did -- when do you -- or, when did you tell her; do you  
16 remember?

17 A After I went -- went back to school from Christmas break.

18 Q So, when you told your mom, were you on Christmas break yet?

19 A Yes.

20 Q When you told your mom, who was all at home?

21 A Just me, my mom, and my little sister and brother.

22 Q The defendant, was he home?

23 A No.

24 Q How did you tell your mom?

25 A I told her after an argument we were having.

0324a

1 Q What were you arguing about?

2 A She wanted to take my electronics, and I didn't want to give  
3 'em up to her.

4 Q Why did she want to do that?

5 A Because I either posted something recently about an argument,  
6 or I got tagged in stuff that she didn't like, and she wanted  
7 to confiscate 'em.

8 Q Okay. Did you and your mom sometimes argue about your  
9 electronics?

10 A Yes.

11 Q Did you still love your mom?

12 A Yes.

13 Q So, as you guys are arguing, how did this come up?

14 A (No verbal response).

15 Q How did -- how did the sexual assault come up?

16 A I told her she didn't understand what was going on, and she  
17 freaked out and asked what, and I came out and told her.

18 Q Okay. So, then what happened?

19 A She slapped me and went to her bedroom and called my uncle.

20 Q Okay. And what happened then?

21 A She talked on the phone for a while, and I went to my room and  
22 got my things.

23 Q And then what happened?

24 A I was gonna leave 'cause I didn't want to be there. So, my mom  
25 came out and started yelling at me some more, telling me why

0325a

1 didn't I tell her, and I told her that I was scared and she  
2 wouldn't have understood. And then I went back to my room and  
3 started packing more, and I told her I was gonna leave, and she  
4 said that I wasn't leaving. And that if I was gonna leave,  
5 then she was gonna call my dad. So, she went and called my dad  
6 and told him to come get me.

7 Q And did your dad come and get you?

8 A Yes.

9 Q Did anything happen before your dad came and got you?

10 A No. Just a lot of emotion, crying and -- with my brother and  
11 sister seeing everything, they were upset and didn't  
12 understand. And they just were scared.

13 Q Before you left to go to your dad's house, did the defendant  
14 come home?

15 A Yes.

16 Q Did he say anything to you?

17 A Not right away, no.

18 Q Okay. At some point, did he say something to you?

19 A Yes.

20 Q What did he say?

21 A Him and my mom got into a little argument, and then he left  
22 again, but he came back. And right before I left, he came --  
23 he went to come after me, and, at that time, my brother came  
24 over with my dad and my stepmom. And when I was arguing with  
25 my dad to get into the car, 'cause I didn't want to go



1 anywhere, I just wanted to run away, he came after me and told  
2 me that he was gonna slit my throat, and my brother, Robert,  
3 was stopping him.

4 Q Now, did you like living with your mom up until this point?

5 A Yes.

6 Q Even though the defendant had sexually assaulted you?

7 A Yes.

8 Q Why did you like living with your mom?

9 A Because my brother and sister were there, and, even though he  
10 did what he did, I still enjoyed having a father figure, 'cause  
11 there was a point in my time that I couldn't see my dad for a  
12 while.

13 Q Do you love your brothers and sisters?

14 A Yes.

15 Q What do you like to do with them?

16 A I like -- I -- I like taking care of 'em and being a little mom  
17 to 'em.

18 Q Do you like to play with 'em?

19 A Yes.

20 Q What do you like to play?

21 A She -- Sable likes the ponies. So, I used to play the ponies a  
22 lot with her. And then Noah just liked watching Ninja Turtles  
23 and playing with 'em, so I'd play with him.

24 Q Okay.

25 A They were crazy of them.

0327a

1 Q Did they have a lot of energy?

2 A Yes.

3 Q Did you love your mom?

4 A Yes.

5 Q Did you love living with your mom?

6 A Yes.

7 Q What did you like about living with your mom?

8 A Even though me and my mom had our arguments and she's had her  
9 past -- even though her past was messed up and she did things  
10 to me, I ignored it, and me and my mom just -- even though we  
11 weren't close, 'cause she worked a lot, we still had our  
12 moments that we would take some time off and go to the store or  
13 go up to Lansing and hang out and -- I just love her.

14 Q Did you enjoy living with the defendant sometimes?

15 A Yes.

16 Q A lot of the time?

17 A Most of the time, yes.

18 Q What did you like to do with him?

19 A We would hang out, and we would talk and just -- we didn't do  
20 much. We just mostly would talk about things. And I just felt  
21 like if I couldn't talk to my mom about things, I would tell  
22 him things.

23 Q Did you feel close with him?

24 A Yes.

25 Q Even though these two incidents happened?

1 A Yes.

2 Q Are you making this up, Pearl, because you don't like the  
3 defendant for any reason?

4 A No.

5 Q Are you making this up or lying about this because you wanted  
6 to move back with your dad?

7 A No.

8 Q How old were you when you disclosed to -- I'm sorry, it was 17

9 A Yes.

10 Q Pearl, have you had to talk to a lot of people about this?

11 A Yes.

12 Q What kind of people have you had to talk about the sexual  
13 assaults with?

14 A Detective Moby (sic), CPS, you, Amanda.

15 Q A lot of people, basically, in the criminal justice system?

16 A Yes.

17 Q Okay. And talk to your counselor?

18 A Yes.

19 Q Did anybody ever tell you what to say?

20 A No.

21 Q Anybody ever tell you that you needed to say something or do  
22 something?

23 A No.

24 Q Are you testifying to the best of your ability?

25 A Yes.

0329a

1 MS. VAN LANGEVELDE: Your Honor, I'm showing opposing  
2 counsel what's been pre-marked as People's Proposed Exhibit 1.  
3 May I approach the witness?

4 THE COURT: You may.

5 BY MS. VAN LANGEVELDE:

6 Q Pearl, I'm showing you what's been pre-marked as People's  
7 Proposed Exhibit 1. Do you recognize that photograph?

8 A Um-hum.

9 Q Is that a yes?

10 A Yes.

11 Q Okay. And can you tell me what's that a photograph of?

12 A Me.

13 (At 9:44 a.m., PX#1 identified)

14 BY MS. VAN LANGEVELDE:

15 Q Do you know how old you were?

16 A No.

17 Q Do you know what grade you were in?

18 A No.

19 Q Okay. Is that you this past year, your senior year?

20 A No.

21 Q Is that the year before?

22 A No.

23 Q Okay. But, you don't know how old you were?

24 A No.

25 Q Okay.

0330a

1 A I miss that shirt, though.

2 Q You miss that shirt? Okay. Pearl, I -- I want to go back to  
3 that -- that first incident, the sexual assault that happened  
4 in your bedroom. You remember it was a half day. Do you  
5 remember what season it was? Like, was it close to the end of  
6 the school year? Was it the beginning of the school year? Do  
7 you remember what season?

8 A It was almost close to the end.

9 Q End of the school year?

10 A Yes.

11 Q Do you remember what grade or what school you were going to?

12 A I was going to Olivet, but I don't remember what grade I was  
13 in.

14 Q Okay, when you say Olivet, do you mean elementary school,  
15 middle school?

16 A Middle school.

17 Q Middle school, okay. You said you felt -- in the second  
18 incident, that you felt his finger go into your vagina?

19 A Yes.

20 Q Did you feel his penis, at all, go into your vagina?

21 A No.

22 Q How did you -- how -- how did it -- I guess, what part of your  
23 body was his penis touching?

24 A My vagina, but it didn't go -- it -- he didn't puncture it.

25 Q Okay. Did you feel anything --

0331a

1 A No.

2 Q -- when his penis was on your vagina?

3 A (No verbal response).

4 Q Did it hurt?

5 A Yes.

6 Q Did it feel good?

7 A Yeah --

8 Q I mean --

9 A -- it hurt.

10 Q What did it feel -- okay, what did it feel like?

11 A It hurt.

12 Q Oh, Pearl, the -- the night that you disclosed to your mom, you  
13 said your brother stopped him. That wasn't Noah, was it?

14 A No, that was my brother Robert. That was my -- well, he was  
15 the middle child for a while. He is the middle child,  
16 actually.

17 Q Whose -- whose son is he?

18 A My dad's.

19 Q Which dad?

20 A James.

21 Q Last name?

22 A Giffen.

23 Q Not the defendant's son.

24 A No.

25 MS. VAN LANGEVELDE: Just a -- I'm sorry. Just a

1 moment, Your Honor. Thank you.

2 BY MS. VAN LANGEVELDE:

3 Q Pearl, when -- when you say it hurt when his penis was on your  
4 vagina, did that cause you to do anything?

5 A I screamed.

6 Q Do you remember what you screamed or if you used words or if it  
7 was just a noise?

8 A It was just a noise.

9 Q Thank you, Pearl.

10 MS. VAN LANGEVELDE: I don't have any other questions  
11 at this point, Your Honor.

12 THE COURT: Mr. Carter.

13 MR. CARTER: Thank you.

14 CROSS-EXAMINATION

15 BY MR. CARTER:

16 Q Hi, Pearl.

17 A Hi.

18 Q My name is David Carter. I'm gonna ask you a series of  
19 questions. If there's a question you don't understand, please  
20 let me know and I'll try to rephrase that; fair enough?

21 A Yes.

22 Q 'Cause it's important that -- that you understand the question  
23 before you answer it, because we're all going to assume that,  
24 okay?

25 A Yes.

0333a

1 Q All right. Now, you indicated -- I'm gonna go back to the --  
2 the first incident. You said you were on your -- your bed  
3 already when Mr. Warner came in?

4 A Yes.

5 Q And what were you doing on your bed?

6 A I was sitting on my bed --

7 Q Okay.

8 A -- packing.

9 Q Okay. So, did you have your -- well, your whole body on the  
10 bed, or were your legs dangling on the floor? What was going  
11 on?

12 A My legs were dangling on the floor.

13 Q And so, you were -- you were packing. How were you packing?  
14 What was on your bed that you were packing?

15 A I wasn't -- I was on my bed, but my bag was on the floor.

16 Q Okay. So, you're on your bed with your legs dangling, but your  
17 bag is on the floor and you're packing.

18 A Yes.

19 Q So, how are you doing that? Explain to the jury how you're  
20 sitting on your bed with your bag on the floor, packing.

21 A I was bent over on -- sitting on my bed with the bag on the  
22 floor.

23 Q Okay, how tall is your bed?

24 A It's on the floor.

25 Q Okay, so your -- your bed is actually on the floor?



0334a

- 1 A Yes.
- 2 Q You don't have a box spring or -- I mean, a bed frame?
- 3 A No.
- 4 Q So, it's a mattress on the floor?
- 5 A It's a box spring -- box on -- on the floor.
- 6 Q Okay. And can you kinda show us how high that would be, then?
- 7 A About at least to my knees.
- 8 Q Okay. So, about three feet high?
- 9 A Yes.
- 10 Q All right. So, you're sitting on the -- the bed, and your --
- 11 your feet aren't actually dangling, then, is -- are they?
- 12 A No, they're touching the floor.
- 13 Q They're touching the floor. And your bag is where, to the
- 14 left, to the right? Where are you?
- 15 A In front of me.
- 16 Q Okay, in front of you. And what are you putting in the -- in
- 17 the bag?
- 18 A Clothes.
- 19 Q And how big is this bag?
- 20 A Little bigger than my purse.
- 21 Q Okay, can I see your purse? I -- I don't -- okay, so your bag
- 22 is a little bigger than your purse. And it's fair to say your
- 23 purse is about a foot by six inches?
- 24 A Yeah.
- 25 Q So, it's a little bigger than that, and you're putting clothes

1 in it?

2 A Um-hum.

3 Q All right. What kind of clothes are you putting in it?

4 A I only had to pack a little bit of clothes for that week.

5 Q Sure, but what were they?

6 A Pants, two pairs of pants and two shirts.

7 Q Okay, so you're actually putting two pairs of pants and a shirt  
8 in this bag that's a little bigger than a foot by six inches;  
9 right?

10 A Um-hum.

11 Q All right. And you're sitting on the bed, and Mr. Warner comes  
12 in; correct?

13 A Yes.

14 Q And what does he do, at that point?

15 A He pushes me onto the bed and pulls down my pants.

16 Q Okay. So, he -- he pushes you on the bed. Did he use both  
17 hands?

18 A Yes.

19 Q On the chest area?

20 A On my shoulders.

21 Q On the shoulders. And then he pulls down your pants?

22 A Yes.

23 Q And was that in a one swoop motion?

24 A No.

25 Q Okay. How did he pull down your pants?

0336a

1 A He pushed me out by -- he pushed me on my shoulders, and then  
2 he pulled down my pants.

3 Q Okay. And -- and I get that. So, tell me how he pulled down  
4 your pants. Did you fight? Did you squirm? What --

5 A No.

6 Q Did you say what -- did you ask him what he was doing?

7 A No.

8 Q Did you -- so, you're laying -- I'm trying to picture this.  
9 You're laying down on the bed now; right?

10 A Um-hum.

11 Q And he pulls -- pulls down your pants.

12 A Yes.

13 Q Were you wearing underwear at that time?

14 A Yes.

15 Q Did he pull down your underwear separate from pulling down your  
16 pants?

17 A No.

18 Q So, he was able to do that all in one --

19 A Yes.

20 Q -- one motion? And so, you're not standing up?

21 A No.

22 Q And he pulls them down. How far down does he go?

23 A A little past my knees.

24 Q Okay, a little past your knees. And where are your knees at  
25 this point?

1 A I really don't remember.

2 Q Okay. Are -- is it -- are they bent over the mattress?

3 A Yes.

4 Q Okay. So, he pulls them down to your knees, and your knees are  
5 bent over the mattress; correct?

6 A Yes.

7 Q So, they're about down to here; correct?

8 A Yes.

9 Q And what is he wearing?

10 A Jeans.

11 Q And what was he -- when he walked into the bedroom, did he have  
12 his jeans on?

13 A Yes.

14 Q Did he have his zipper up?

15 A Yes.

16 Q Okay, at what point in time does he take his penis out of his  
17 jeans?

18 A I don't remember.

19 Q Okay, so you don't remember that. And do you ever recall  
20 seeing him take his penis out of his jeans?

21 A Yes.

22 Q Okay. So, when did he do that?

23 A Sometime during when he was pulling down my pants.

24 Q Okay. So, he pushes you down by pushing your shoulders --

25 A Yes.

1 Q -- onto the bed. He pulls down your pants and underwear in on  
2 swoop to the knees.

3 A Yes.

4 Q And during that time, he's taking his penis out of his pants?

5 A Yes.

6 Q Okay. And did -- how did he take his penis out of his pants?  
7 Did he unzip his pants and take it out? Did he pull down his  
8 pants? What did he do?

9 A I don't remember.

10 Q You don't remember that, okay. And then, what does he do at  
11 that point?

12 A He sticks his penis into my vagina.

13 Q Okay. And did he spread your legs? How did that happen?

14 A He didn't.

15 Q He didn't. Okay, so you're laying down with your knees bent  
16 over, with your pants down to here, basically; right?

17 A Yes.

18 Q And he sticks his penis in your vagina; is that correct?

19 A Yes.

20 Q All right. Do you recall testifying at a previous hearing?

21 A Yes.

22 Q Do you recall testifying that he didn't penetrate you or didn't  
23 put the penis in your vagina?

24 A Yes.

25 Q Okay. And what made him stop?

0339a

1 A I made a noise.

2 Q What kind --

3 A And I --

4 Q What kind of noise did you make?

5 A It was like a scream.

6 Q It was like a scream?

7 A Yes.

8 Q Well, when you say "like a scream," what's like a scream? Can  
9 you describe that a little bit better for me?

10 A It wasn't loud, but it wasn't quiet, either.

11 Q Okay. Do you recall testifying, again, earlier?

12 A Yes.

13 Q Do you recall me asking you: Okay, did you -- did you scream  
14 or squirm or anything like that? Do you recall me saying that?

15 A Yes.

16 Q Do you re -- recall answering no?

17 A No.

18 Q You don't? If I were to show you the transcript and you were  
19 to read that, could you -- would that refresh your memory?

20 A Yes.

21 Q Okay.

22 MR. CARTER: May I approach the witness?

23 THE COURT: You may.

24 BY MR. CARTER:

25 Q You want to go ahead -- and I'm referring to the preliminary

0340a

1 exam transcript, page 25. Q is me. If you could read that -  
2 and A is you. If you could read those two lines and look up  
3 when you're done.

4 A Out loud?

5 Q No.

6 A Okay.

7 Q Does that refresh your memory?

8 A Yes.

9 Q Did you tes -- did you say no, that you never screamed?

10 A Yes.

11 Q So, this happened at about what time of the day?

12 A Mid afternoon.

13 Q Okay, can you -- I'm sorry I asked this, but mid afternoon can  
14 mean twice at a different times frames (sic), and I'm trying to  
15 figure out when this exactly happened. Can you kinda narrow it  
16 down better than that?

17 A Like one.

18 Q Okay, one o'clock?

19 A Yes.

20 Q And you remember it being on a specific day because you were  
21 packing to go to your father's house; right?

22 A Yes.

23 Q And this happened. He came in there. You indicated that it  
24 hurt.

25 A Yes.

0341a

1 Q Okay. But you also indicated that he never penetrated you;  
2 correct?

3 A Yes.

4 Q So, why did it hurt?

5 A Because he had tried to.

6 Q Okay, because he tried to. What was hurting you?

7 A Him sticking his penis into my vagina.

8 Q Even though you said that he didn't do it, but it did hurt  
9 because that's what he did?

10 A Yes.

11 Q Okay. And after this happened, he just leaves the bedroom;  
12 correct?

13 A Yes.

14 Q He doesn't say anything to you?

15 A No.

16 Q He doesn't tell you not to tell anybody?

17 A No.

18 Q He just leaves.

19 A Yes.

20 Q And this is just before you're gonna go outside of him watching  
21 you, to your father's house; correct?

22 A Yes.

23 Q All right. Now, what time did your -- who came and picked you  
24 up?

25 A My stepmom.



0342a

1 Q Okay. And who's your stepmom?

2 A Sharon.

3 Q Sharon who?

4 A Giffen.

5 Q Giffen. You didn't say anything to her; right?

6 A No.

7 Q Okay. She didn't ask you if there was anything wrong?

8 A No.

9 Q Okay. So, she didn't detect there was something wrong;  
10 correct?

11 A No.

12 Q Okay. And during that weekend with your dad and -- and your  
13 stepmom, did they ever ask you why you were -- you were not  
14 yourself?

15 A No.

16 MS. VAN LANGEVELDE: Well, Your Honor, I'm gonna  
17 object to hearsay.

18 THE COURT: Mr. Carter?

19 MR. CARTER: I don't -- I don't know if that's  
20 hearsay. I'm just asking -- I'm not asking for anything that  
21 -- I'm just asking if they asked questions, not the actual  
22 response.

23 THE COURT: I agree. Overrule, go ahead.

24 MR. CARTER: Okay.

25 BY MR. CARTER:

0343a

1 Q Did they ever ask you why you were not yourself?

2 A No.

3 Q Okay. You -- do you know why Mr. Warner stopped trying to  
4 assault you, so-to-speak in better words?

5 A Yes.

6 Q Why?

7 A 'Cause my little sister was coming down the hallway, and we  
8 heard her.

9 Q Okay. So, you guys heard her. What -- did you say "uh-oh,  
10 here comes Sable?"

11 A No.

12 Q What was Sable doing?

13 A She was crawling.

14 Q Okay. So, that was the reason why he stopped?

15 A Yes.

16 Q Not because you made a noise or anything like that?

17 A No.

18 Q Okay. So, now let's move on to the second incident that you  
19 claim happened. How long ago was this incident, the second  
20 one, from this first one?

21 A Two or three months.

22 Q Two to three months. And you remember it was at night; right?

23 A Yes.

24 Q Do you remember what time of day it was?

25 A (No verbal response).

1 Q I mean -- well, that -- that sounded really bad; right? It was  
2 night. Do you remember what time of night it was?

3 A Yes.

4 Q What time?

5 A About 11.

6 Q About 11. And it's my understanding Grandma's living there at  
7 that time?

8 A Yes.

9 Q Mom is living there at that time?

10 A Yeah. Yes.

11 Q Damon is living there at that time?

12 A Yes.

13 Q Sable and Noah were.

14 A Noah, no.

15 Q Okay.

16 A Sable, yes.

17 Q Okay. Was Noah not born yet?

18 A Yes.

19 Q But that was --

20 A Yes, he was not born yet.

21 Q Yes, he was not born yet. Okay, thank you. And Mom's  
22 sleeping, and Grandma's out; right?

23 A Yes.

24 Q And you don't know where Grandma is.

25 A No, she was out.

0345a

1 Q Okay. And it's your testimony that you came into the kitchen  
2 -- I mean, you came into the living room to say goodnight --

3 A Yes.

4 Q -- correct? And did you say goodnight?

5 A Yes.

6 Q And what was Mr. Warner doing at that time?

7 A Watching TV.

8 Q And do you -- he was watching?

9 A Wrestling.

10 Q Wrestling. And did he respond back to you?

11 A Yes.

12 Q What did he say?

13 A Goodnight.

14 Q He said goodnight.

15 A Yes.

16 Q And was -- did you walk past him to say goodnight? Did you hug  
17 him goodnight? Did you do any pleasantries?

18 A I walked past him.

19 Q You walked past him.

20 A Yes.

21 Q You said goodnight. Was that your purpose of going into that  
22 room --

23 A Yes --

24 Q -- to say goodnight?

25 A -- of saying goodnight, yes.

0346a

1 Q Okay. So, where was -- we're gonna look here. This is the  
2 living room?

3 A Yes.

4 Q Is that where he was?

5 A Yes.

6 Q And your bedroom is down here?

7 A Yes.

8 Q Did you -- did you come out of your bedroom, or were you  
9 watching TV with him?

10 A I came out of my bedroom.

11 Q And what were you doing in the bedroom prior to deciding to go  
12 say goodnight to Mr. Warner?

13 A Getting ready to go to bed.

14 Q Okay. And so, you exited the room. You came down to the  
15 living room to say goodnight?

16 A Yes.

17 Q And that was your purpose; correct?

18 A Yes.

19 Q And you say goodnight. What do you do at that point?

20 A I walked to the -- I go to the -- I wanted to go to the  
21 kitchen, but I stopped at the table to do something.

22 Q Okay. So, you -- so, the purpose wasn't really to say  
23 goodnight. You had another purpose?

24 A I had a purpose to go get a drink of water, but I was gettin'  
25 ready to go to bed. So, every night I say goodnight to him, so

0347a

1 I just made my through and back to my room.

2 Q So, you made your way through and then back to your room?

3 A Yes.

4 Q Okay, and -- so, you say goodnight to him, and you go back to  
5 your room?

6 A I did a circle. I went out of my room, I went through the  
7 living room to say goodnight, went through the dining room,  
8 kitchen, and then went back to my room.

9 Q Okay. And how long did it take you to do that full circle?

10 A I don't recall.

11 Q Okay. And that's fair. Was it more than a minute?

12 A Yes.

13 Q Was it more than two minutes?

14 A Yes.

15 Q Was it more than five minutes?

16 A No.

17 Q Okay. So, you exited your room, you say goodnight, you go into  
18 the kitchen. Did you get a drink of water?

19 A Yes.

20 Q And you -- did you drink the water there, or did you take the  
21 water back to your room?

22 A I took it back to my room.

23 Q Okay. And you did this all within five minutes?

24 A Yes.

25 Q All right. So, you testified that, when you were going into

1 the kitchen, you stopped in the -- in the dining room, was it?

2 A Yes.

3 Q At the table; correct?

4 A Yes.

5 Q And what caught your attention there? Why'd you stop there?

6 A Like I said, I don't remember why I stopped at the table; I  
7 just did.

8 Q You just did.

9 A Yes.

10 Q Okay. Do you recall if you were looking at something at the  
11 table?

12 A Yes.

13 Q So, you were facing the table?

14 A Yes.

15 Q And what were you wearing at this point in time?

16 A My sweatpants and a pajama shirt.

17 Q And do you know what month this was?

18 A No.

19 Q Do you know if it was in the -- were you still in school?

20 A Yes.

21 Q Okay. So, do you know when you got out of school for the  
22 summer?

23 A No.

24 Q No? All right. So, was it real close to the end of the school  
25 year?

0349a

1 A Yes.

2 Q All right. And so, you do all this within a matter of five  
3 minutes; correct?

4 A Yes.

5 Q And you don't recall what you were looking at, at the kitchen  
6 table; correct?

7 A No.

8 Q And, at what point in time, did Mr. Warner come up to you?

9 A A little after I said goodnight to him.

10 Q A little after. Did you hear him get out of his chair?

11 A No.

12 Q Okay. And what kind of chair was it?

13 A A rock -- I'd say an old rocking chair.

14 Q Did it make a lot of noise?

15 A No, it didn't.

16 Q Okay. So, you go to the dining room. Where are you facing  
17 when Mr. Warner comes up to you?

18 A We had a window above the table, so I was facing the window.

19 Q Okay. Now, were you -- was the table in between you and the  
20 window?

21 A Yes.

22 Q So, I'm -- I'm trying to picture this. You -- something caught  
23 your attention at the table. You're lookin' at the table.

24 A Um-hum.

25 Q And the win --



0350a

1 A And there's a window in front of me, yes.

2 Q And the window in front of you. And that's when you claim that  
3 Mr. Warner came up behind you?

4 A Yes.

5 Q And what did he say to you?

6 A Nothing.

7 Q Absolutely nothing?

8 A Nope.

9 Q And what did he do?

10 A He stuck his hands down from behind and up into my vagina.

11 Q Okay. And did you -- how did you react to that?

12 A I didn't say anything.

13 Q Did you flinch?

14 A No.

15 Q You just stood there?

16 A Yes.

17 Q Okay. And did he -- what -- what -- where did he come from?

18 From your left or from your right?

19 A From behind.

20 Q Right. Directly behind?

21 A Left.

22 THE COURT: What's your answer?

23 THE WITNESS: Left, he came in from left, and then --

24 MR. CARTER: Okay.

25 THE WITNESS: -- stood behind me.

1 BY MR. CARTER:

2 Q You're actually pointing right when you're saying left. Is  
3 that what you mean?

4 A Yes, sorry. He -- yes.

5 Q He came from the right?

6 A Yes.

7 Q Okay. So, he came from -- from the right. So, he's -- is he  
8 more towards your right than your left?

9 A Yes.

10 Q And do you know which hand he used?

11 A No.

12 Q And he came up behind you. He stuck your -- his hand down your  
13 -- your pants; correct?

14 A Yes.

15 Q Your sweatpants. Did you have underwear on, too?

16 A Yes.

17 Q And did he go through -- did he -- did he -- was he in between  
18 the sweatpants and the underwear or the underwear and bare  
19 body?

20 A Underwear and bare body.

21 Q And he -- he did that in one motion?

22 A Yes.

23 Q And how long did this take?

24 A I don't know.

25 Q Well, was it a second, two seconds, 30 seconds, a minute?

0352a

1 A Probably a second.

2 Q Okay, a second. And it's your testimony that he penetrated  
3 your vagina with a -- with his finger?

4 A Yes.

5 Q He says nothing to you?

6 A No.

7 Q And you don't flinch?

8 A No.

9 Q And then he just leaves?

10 A Yes.

11 Q Does he say anything to you at that point?

12 A No.

13 Q And then, you continued your circle; right? Then, you  
14 continued -- you went to the dining room into the kitchen --

15 A Yes.

16 Q -- correct?

17 A Yes.

18 Q And got your water.

19 A Yes.

20 Q And then went into your bedroom?

21 A Yes.

22 Q Okay.

23 MR. CARTER: One moment, Your Honor.

24 THE COURT: Sure.

25 BY MR. CARTER:

0353a

1 Q All right. And so, that was the -- the end of that incident;  
2 correct?

3 A Yes.

4 Q Anything else happen from that point till today? Is there any  
5 other sexual contact between you two?

6 A No.

7 Q Okay. So, those are the only two incidences that you're  
8 alleging against Mr. Warner; correct?

9 A Yes.

10 Q Now -- and you were 13-years-old?

11 A Yes.

12 Q And when did you first tell anybody about this incident?

13 A When I told my grandma.

14 Q And Grandma's name is?

15 A Esther.

16 Q Esther?

17 A Stevens.

18 Q Stevens. Did she give you any advice?

19 A She told me that I should tell my counselor and to stay away  
20 from him.

21 Q Do you have any knowledge whether or not Grandma reported it to  
22 anybody?

23 A No, she's not that kind of woman.

24 Q Did you report it to a counselor at school?

25 A Yes, after I told my mom.

0354a

1 Q Okay. So, you didn't do it right away?

2 A No.

3 Q When you told Grandma, do you remember when that was?

4 A No.

5 Q Let me try to put it in more of a -- a time frame for you. Do  
6 you recall telling your mom?

7 A Yes.

8 Q And it was around Christmastime; correct?

9 A Um-hum.

10 Q And it was during an incident in which she was going to take a  
11 valuable privilege away from you; correct?

12 A Yes.

13 Q And that was your electronics; correct?

14 A Yes.

15 Q And what was this electronic?

16 A It was my phone and my Tablet.

17 Q Okay, so she was gonna take two things away from you; right?

18 A Yes.

19 Q Pretty serious, huh?

20 A Yes.

21 Q You didn't like that, did you?

22 A Well, not so serious about my phone 'cause that was broken,  
23 anyway. She can keep that.

24 Q You didn't tell her it was broke, did ya?

25 A No, she found out.

0355a

- 1 Q Okay.
- 2 A I broke it a month after my birthday.
- 3 Q Okay. But, I mean, that night, when she was taking it away,  
4 she thought she was taking away a good phone; correct?
- 5 A No.
- 6 Q No?
- 7 A She knew it was broken.
- 8 Q Okay.
- 9 A I just didn't want her to take my Tablet.
- 10 Q All right.
- 11 A So, that wasn't broken yet.
- 12 Q And -- and that was pretty important to you, wasn't it?
- 13 A Yes.
- 14 Q And you wanted that Tablet, didn't you?
- 15 A Yes.
- 16 Q All right.
- 17 A It was my life.
- 18 Q It was your life.
- 19 A I -- yes, I'm a techy person.
- 20 Q Yes. And how old were you at that time?
- 21 A Seventeen.
- 22 Q Okay. So, you're 17. You have your Tablet. Mom gets in a  
23 heated discussion with you. She's gonna, basically, ground you  
24 from the Tablet; correct?
- 25 A Yes.

0356a

1 Q You didn't like that, did you?

2 A No.

3 Q So, you end up telling Mom --

4 A Yeah.

5 Q -- about this incident; correct?

6 A Yeah.

7 Q Can you give me a time frame of -- so, you have that in your  
8 mind. Try to remember when you told Grandma from that point  
9 backwards. Was it a year ago prior to that, two years prior to  
10 that?

11 A It could've been -- no, I'm pretty sure it was in July, because  
12 it was a while after that, that I told my mom, before I told my  
13 counselor.

14 Q Okay. So, we're looking at, perhaps -- is it the same year  
15 that -- that that happened?

16 A (No verbal response).

17 Q That Mom was gonna take away your Tablet and you told Grandma?

18 A I told Grandma first --

19 Q Right.

20 A -- and then Grand -- Mom.

21 Q Right. I'm going backwards.

22 A But, yes.

23 Q Okay. Was it in that same year?

24 A Yes.

25 Q Okay. So, we kind of have an idea that it was probably about

0357a

1 four or five months --

2 A Yes.

3 Q -- prior --

4 A Yes.

5 Q -- to you telling your mom. Did -- was Mom surprised when you  
6 told her?

7 A Yes.

8 Q Okay.

9 A She went crazy.

10 Q Did you get the impression that she already knew this?

11 A No.

12 Q All right. You don't have any independent knowledge of whether  
13 or not Grandma talked to Mom then; right?

14 A No.

15 MR. CARTER: One moment.

16 BY MR. CARTER:

17 Q When you -- when you told your mom that this happened, what  
18 were your statements? What did you actually tell Mom?

19 A We were fighting, and I told her that she didn't understand  
20 what he did to me, and she was going crazy and said, "Who did  
21 what to you," and I told her what Damon did to me. And then,  
22 she went all crazy, and I was quiet for a minute. And she,  
23 literally, was like screaming at me to tell her, so I ended up  
24 telling her while we were sitting in her room after she calmed  
25 down a little. And then, she ended up going crazy even more.



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1 Q Okay. Well -- and -- and I can appreciate that. That's a good  
2 summary, but I'm more interested in what exactly you told your  
3 mom that Damon did.

4 A I told her, literally, what I have told you. He --

5 Q Did you tell her that he pushed you on the bed?

6 A Yes.

7 Q And -- and tried to stick his penis in you?

8 A Yes.

9 Q You, literally, told her the details.

10 A Yes.

11 Q And the other incident, also?

12 A Yes.

13 Q When you indicated that the subject came up, you said, "You  
14 don't understand what he did."

15 A Yes.

16 Q How -- how were -- you used a pronoun; right? Do you know what  
17 a pronoun is; right?

18 A Yes.

19 Q Okay. How -- how did his name get involved, then, if you just  
20 said, "You don't understand what he did?"

21 A Because she didn't know who "he" was --

22 Q Right.

23 A -- and I ended up telling her.

24 Q Okay. So, are -- are you attributing your -- well, I'm -- I'm  
25 kinda trying to understand why she's taking a Tablet away from

0359a

1 you and you're thinking, well, it's because he did something.

2 A No. She wanted to take my Tablet away from me because of what  
3 either I posted or what I got tagged in, and she seen that.

4 Q Okay. Do you recall what that was?

5 A No.

6 Q You don't -- you don't remember that?

7 A No.

8 Q So, you don't remember that. Well, that -- it was something  
9 pretty significant, wasn't it, because Mom was upset?

10 A Mom -- my mom always got upset if I got tagged in or I posted  
11 something, because I used to post our fights or arguments, and  
12 I'd get upset about it and just share it. And she would get  
13 mad at me for sharing some information that she didn't want --

14 Q Okay.

15 A -- on social media.

16 Q All right. Was this -- was this something she was upset  
17 because it was something inappropriate, or was it because of an  
18 argument that you posted?

19 A It was a -- I got tagged in something inappropriate.

20 Q And what was that?

21 MS. VAN LANGEVELDE: Objection, hearsay.

22 MR. CARTER: I don't know if that's hearsay.

23 THE COURT: Overruled.

24 BY MR. CARTER:

25 Q What was the inappropriate --

0360a

1 A My ex used to tag me in a bunch of stuff that he thought that  
2 would like.

3 Q Well, what was it?

4 A Pretty much, it was girls. 'Cause I used to have an attraction  
5 to girls, so he thought that it would be cool to post on my  
6 wall pictures of girls kissing or hugging, and my mom seen that  
7 before I could delete it, and she got upset with me.

8 Q Okay. Were these girls fully clothed?

9 A Yes.

10 Q Okay. So, it was these random pictures of females making out,  
11 so-to-speak?

12 A Yes. And they had sayings.

13 Q And what were these sayings?

14 A It was --

15 MS. VAN LANGEVELDE: Objection, hearsay.

16 MR. CARTER: I don't know if that's hearsay.

17 THE COURT: Overruled.

18 THE WITNESS: They were just, pretty much, quotes of  
19 -- like love quotes and stuff.

20 BY MR. CARTER:

21 Q Do you remember any of the quotes?

22 A No.

23 Q How often have you gotten in trouble as a teen-ager with your  
24 mom?

25 A You have to be more specific 'cause I've gotten in trouble a

0361a

1 lot with her.

2 Q Okay, there you go. A lot, huh? Do you ever lie to get out of  
3 trouble?

4 A No.

5 Q Never?

6 A Well, I've made some mistakes of fibbing to her, but never  
7 fully lying to her.

8 Q Fibbing. What's -- what's the difference between fibbing and  
9 lying?

10 A Lying is where you actually straight lie to her face and say,  
11 no, why would I do that. Fibbing is more like I did this but I  
12 didn't do this, and then I come out and actually tell her --

13 Q Okay.

14 A -- that I did it.

15 Q So, your testimony today is you've never lied mom to get out of  
16 trouble?

17 A No, I have.

18 Q Okay. So, you did go beyond --

19 A So, pretty much, my answer to you would be yes.

20 Q All right. Is that something routinely you would do when you'd  
21 get into trouble is to try to get yourself out of it?

22 A No, 'cause I've ratted myself out before on something -- some  
23 things that it's not worth lying to.

24 Q Okay. So, what you're saying, then, is that you've never lied  
25 to get yourself out of trouble with your mom?

0362a

1 A I have and I haven't to a --

2 Q I'm sorry?

3 A I have and I haven't, to a point.

4 Q Okay.

5 MR. CARTER: I have nothing further.

6 THE COURT: How long do you think your redirect will  
7 be?

8 MS. VAN LANGEVELDE: It might be a little bit. So,  
9 was actually gonna ask you to take a break.

10 THE COURT: Perfect.

11 MS. VAN LANGEVELDE: Thank you.

12 THE COURT: Ladies and gentlemen, we'll take our  
13 morning break, about 10 minutes.

14 Ms. Bond, would you please take the jury out?

15 (At 10:22 a.m., jury exits courtroom)

16 THE COURT: And watch your step.

17 Okay, anything we need to place on the record, Ms.  
18 Van Langevelde?

19 MS. VAN LANGEVELDE: No. Thank you, Judge.

20 THE COURT: Mr. Carter?

21 MR. CARTER: No.

22 THE COURT: All right, we'll take a 10 minute break.

23 (At 10:23 a.m., off the record)

24 (At 10:39 a.m., back on the record)

25 THE COURT: Ma'am would you please come back up to

0363a

1 the witness stand?

2 Is there anything we need to place on the record  
3 before we bring the jury in, Ms. Van Langevelde?

4 MS. VAN LANGEVELDE: I do not, Your Honor. Thank  
5 you.

6 THE COURT: Mr. Carter?

7 MR. CARTER: No.

8 THE COURT: All right. And then, we will continue  
9 with the testimony of Miss Pearl Giffen.

10 Miss Giffen, you are still under oath, okay?

11 THE WITNESS: Okay.

12 THE COURT: Okay.

13 (At 10:40 a.m., jury enters courtroom)

14 THE COURT: All right, please be seated.

15 All right, Ms. Van Langevelde, do you have any  
16 redirect of the witness?

17 MS. VAN LANGEVELDE: I do. Thank you, Your Honor.

18 THE COURT: Go ahead.

19 MS. VAN LANGEVELDE: Thank you.

20 REDIRECT EXAMINATION

21 BY MS. VAN LANGEVELDE:

22 Q Pearl, I want to start with you said that you -- you would fib  
23 about stuff or lie to your stuff about your mom (sic). What  
24 kind of stuff would you fib or lie to your mom about?

25 A I'd fib about doing my homework or being where I was supposed

0364a

1 to be when I wasn't or talking to someone who I wasn't suppose  
2 to be talking to.

3 Q And you said you usually -- you ratted yourself out. What did  
4 you mean by that?

5 A I would, eventually, tell. Like, if I went to say that I'm not  
6 lying, I would switch it around and say that I was and rat  
7 myself out that way.

8 Q Okay. Did you usually do that?

9 A Yes.

10 Q Was it hard to not tell your mom about that kind of stuff?

11 A Yes.

12 Q Okay. How about this social -- I want -- I want to talk about  
13 the social media fight that you had with your mom, or argument,  
14 whatever it was, about this ex-boyfriend posting stuff on your  
15 Facebook of those other girls.

16 A Yes.

17 Q Was that kind of sexual in nature?

18 A Yes.

19 Q Tell me how that, basically, became related to disclosing the  
20 sexual assault by the defendant.

21 A What do you mean?

22 Q Well, how -- how was, basically, your argument about the sexual  
23 assault -- I mean -- let me back up -- social media stuff, exes  
24 posting kind of sexualized stuff with girl on girl. Was that  
25 -- is that what your testimony was?

1 A Yes.

2 Q How did that, kind of, go into you disclosing about the  
3 defendant sexually assaulting you?

4 A I -- 'cause I'd get in trouble a lot by people doing that, and  
5 just he went too far when he did that.

6 Q Did you want him to do that?

7 A No. I wasn't -- I woke up to it, and I didn't get the time to  
8 delete it before she seen it. And she seen it.

9 Q Okay.

10 A And that's when I got in trouble.

11 Q Did you want him to post those things?

12 A No.

13 Q Did you want him to talk about girl on girl sexual stuff or  
14 sexual stuff on your Facebook page?

15 A No.

16 Q Okay. Did you --

17 A I have -- sorry.

18 Q That's okay. So, did you -- did you tell your mom about this  
19 sexual assault because you didn't want to get in trouble?

20 A No.

21 Q Did you tell your mom or make this -- I want to say this. Did  
22 you make this up because you didn't want to get in trouble?

23 A No.

24 Q Did you make this up because you didn't want your mom to take  
25 this Tablet away from you?



0366a

1 A No.

2 Q Did you make this up because you didn't want your mom to take  
3 your cell phone from you?

4 A No.

5 Q Did you make this up, at all?

6 A No.

7 Q Did this happen to you?

8 A Yes.

9 Q I want to go to the second incident, the time that he put his  
10 -- the defendant put his finger in your vagina. Were you  
11 surprised when he did that?

12 A Yes.

13 Q Were you expecting him to do that?

14 A No.

15 Q Had he ever done that before?

16 A No.

17 Q And you said you were wearing -- can -- you said pajamas. What  
18 -- what kind of pajamas were you wearing?

19 A Sweatpants and a nightshirt.

20 Q And a nightshirt, okay. I want to go back to the first time  
21 that you are on the bed, packing up to -- to go to your dad's.  
22 You said you were sitting on the bed?

23 A Yes.

24 Q And then he pushed you back. What part of your (sic) body did  
25 he push you with?

1 A His hands.

2 Q Okay. And where were his hands touching?

3 A On my shoulders.

4 Q Did his hands stay on your shoulders the whole time?

5 A No.

6 Q After he put his hands on your shoulders and pushed you back  
7 the bed, what -- what did he do?

8 A His hands went to the bed, the side -- my side on the bed.

9 Q Okay, was this before or after he pulls your pants off?

10 A After.

11 Q Do you know if his pant -- if his hands went to the side of the  
12 bed before or after he took his own pants down and pulled his  
13 penis out?

14 A After.

15 Q After? Now, on this position on the bed, how were -- where is  
16 your back?

17 A On the bed.

18 Q Back is on the bed. And where are you located?

19 A Up.

20 Q Up, okay. And what color is your ceiling?

21 A White. Ewww. Cream and white. That was gross.

22 Q Okay. So, then, what happened after that?

23 A That's when that incident happened.

24 Q Okay, what did he do?

25 A When he stuck his penis into my vagina.

0368a

1 Q Okay. What type of pants or clothing were you wearing during  
2 that incident?

3 A Sweatpants.

4 Q Do you wear sweatpants a lot?

5 A Yes.

6 Q Okay. Do you know what kind of top you were wearing?

7 A Like a loose top.

8 Q T-shirt, long shirt?

9 A A long t-shirt, yes.

10 Q Okay, short-sleeved, long-sleeved?

11 A Yes, short.

12 Q Do you remember testifying in -- in the prelim? I think Mr.  
13 Carter asked about you -- asked that about you a little bit.

14 Do you remember testifying downstairs?

15 A (No verbal response).

16 Q At a prior hearing in front of a judge?

17 A Yes.

18 Q Okay. Do you remember -- I -- I know Mr. Carter asked you if  
19 you made a noise. Do you recall what your testimony was?

20 A Yes.

21 Q And you were asked that, actually, more than once. Do you  
22 remember that?

23 A Yes.

24 Q Okay. Would it re -- would -- do you remember what you said  
25 the first time?

0369a

1 A Yes.

2 Q What did you say?

3 A No.

4 Q Are you sure about that?

5 A Yes.

6 Q Would it refresh your memory if you saw it?

7 A Didn't he show me?

8 Q Well, I'm asking you -- I -- I think he showed you the second  
9 time. Do you remember testifying the first time?

10 A No, I don't recall.

11 Q Okay. Would it re -- refresh your memory to see it?

12 A Yes.

13 MS. VAN LANGEVELDE: And I'm referring to page 10 of  
14 the preliminary examination, Your Honor.

15 BY MS. VAN LANGEVELDE:

16 Q Is your memory refreshed?

17 A Yup.

18 Q What did you testify at the first part of the preliminary exam?

19 A That I did make a noise.

20 Q And what happened after you made the noise?

21 A He got off.

22 Q So, were you a little bit confused?

23 A Yes.

24 Q All right. Is this difficult for you?

25 A Yes.

0370a

1 Q Why is that?

2 A Because I'm not -- this is the first time that this has ever  
3 happened, and I'm not used to talking in front of this many  
4 people.

5 MS. VAN LANGEVELDE: Just a moment, Your Honor.

6 BY MS. VAN LANGEVELDE:

7 Q Pearl, did you know what was gonna happen if you told somebody  
8 about what the defendant had done to you?

9 A No.

10 Q Why were you scared to tell somebody?

11 A 'Cause I didn't want to ruin -- I didn't want to break up our  
12 family. It was a really nice family. And before my mom and  
13 Damon got married, I was bugging 'em to have a baby. And after  
14 they had the baby, they had another one, and it was just a  
15 complete family, and I felt happy, and I felt, pretty much,  
16 there was a family that I actually belong to.

17 Q Did you feel loved?

18 A Yes.

19 Q Thank you.

20 MS. VAN LANGEVELDE: I don't have any other  
21 questions.

22 THE COURT: May the witness be dismissed, Mr. Carter?

23 MR. CARTER: Just --

24 THE COURT: Did you have any followup questions from  
25 the redirect?

0371a

1 MR. CARTER: A little bit.

2 THE COURT: Okay, recross will be limited to the  
3 redirect issues, please.

4 MR. CARTER: Thank you.

5 RECROSS-EXAMINATION

6 BY MR. CARTER:

7 Q Back to the social media. You said that she got upset because  
8 you couldn't delete these pictures in time. When did you  
9 actually get these pictures on your Tablet?

10 A They weren't pictures. They were just posts.

11 Q Okay, posts.

12 A I would usually be sleeping when my ex would post stuff like  
13 this. And I had family on my Facebook that I didn't -- well, I  
14 didn't want 'em to see it, but I didn't care. But it's not --  
15 it wasn't appropriate for my family, I felt like, so I would  
16 delete 'em before anyone could see 'em. But during the night  
17 when he would do it, it would be, obviously, too late for me to  
18 do it. So, I woke up to it, and I'd quickly delete it.

19 Q Okay. So, the argument that day, back when you told your mom,  
20 it all started with her finding these posts on your Tablet;  
21 correct?

22 A Yes.

23 Q So, was this in the morning, then?

24 A No. I was on my way home. Like, my stepmom.

25 Q And --

0372a

1 A And she called me, and she was yelling at me --

2 Q Okay.

3 A -- that I needed to give my electronics up when I got home.

4 Q Oh, okay. All right. Has that happened before, these posts,  
5 that she found out about?

6 A Yes, but she wouldn't take my stuff away.

7 Q Okay.

8 A She would just talk to me about it.

9 Q All right.

10 MR. CARTER: I have nothing further.

11 THE COURT: Thank you. You may step down.

12 THE WITNESS: Thank you.

13 (At 10:51 a.m., witness stands down)

14 THE COURT: Ms. Van Langevelde, please call your next  
15 witness.

16 MS. VAN LANGEVELDE: It's actually Mr. Strong's  
17 witness, and it's James Giffen, Your Honor.

18 THE COURT: Okay.

19 Come right up here, sir. There's a step right before  
20 you get to the witness chair, okay?

21 MR. GIFFEN: Okay.

22 THE COURT: Raise your hand. Do you swear to tell  
23 the truth, the whole truth, and nothing but the truth, so help  
24 you God?

25 MR. GIFFEN: Yes, I do.

0373a

1 THE COURT: Please have a seat. Please state your  
2 full name for the record.

3 THE WITNESS: James Giffen, James W. Giffen, Jr.

4 THE COURT: And how do you spell your last name?

5 THE WITNESS: G-i-f-f-e-n.

6 THE COURT: Thank you.

7 Mr. Strong.

8 MR. STRONG: Thank you.

9 JAMES W. GIFFEN, JR.

10 at 10:52 a.m., sworn as a witness, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. STRONG:

13 Q Good morning, Mr. Giffen.

14 A Morning.

15 Q I want to take you back -- well, let's first start out -- do  
16 you have a daughter?

17 A Yes, sir.

18 Q What's her name?

19 A Pearl Giffen.

20 Q Okay. Back around 2015, what was your custody situation with  
21 Pearl?

22 A I -- she lived with her mother.

23 Q How often did you see her?

24 A Every other weekend.

25 Q And would you go pick her up at her mother's house?



0374a

1 A Yes, I would.

2 Q Okay. And what day did you usually pick her up?

3 A Would be Friday evening.

4 Q Okay. How was your relationship with Pearl at that time?

5 A Normal.

6 Q Okay. At some point in December of 2015, did that custody  
7 situation change?

8 A Yes, sir.

9 Q How did it change?

10 A She came and lived with me.

11 Q Okay. And do you remember what day she came to live with you?

12 A It would be December 23rd.

13 Q All right. And how did -- how did she come to live with you?

14 A How? She was havin' problems with her -- where -- where she  
15 lived.

16 Q Okay. And she was living with her mother at that time?

17 A Yes, sir.

18 Q And did you go to pick her up from her mother's house?

19 A Yes, sir.

20 Q Did anyone else go with you?

21 A My wife.

22 Q Okay. Anybody else?

23 A No.

24 Q Did anyone else from your family eventually come to that house  
25 besides you and your wife?

- 1 A Yes.
- 2 Q Who was that?
- 3 A My son.
- 4 Q What's your son's name?
- 5 A Robert.
- 6 Q Robert. About how old was he at that time?
- 7 A Let's see, he just turned 23. So, he'd be 21.
- 8 Q Twenty-one, okay. Now, when you came to pick her up that day
- 9 why were you coming to pick her up?
- 10 A Her ma was having' problems is what I was told at that time.
- 11 Q All right. When you got there, did you meet with Pearl?
- 12 A Yes, I did.
- 13 Q How did -- what was her emotional state?
- 14 A She was mad, upset.
- 15 Q Did she want to go with you?
- 16 A No.
- 17 Q And did you have to, kinda, coerce her to come with you?
- 18 A Yes.
- 19 Q All right. How'd you do that?
- 20 A Behind her, picked her up, and grabbed her.
- 21 Q Okay. Now, when you got her, who else, besides you, your wife,
- 22 and your son, and Pearl, were at the house?
- 23 A When we first got there?
- 24 Q Yup.
- 25 A It was just her mother.

0376a

1 Q Did anyone else arrive?

2 A Her stepfather.

3 Q Who's her stepfather?

4 A Damon.

5 Q Okay. When he arrived, did you ever hear him say anything  
6 while all of this was going on?

7 A Yes, sir.

8 Q And what did you hear him say?

9 A He was threatening her.

10 Q And how was he threatening her?

11 A He was threatenin' her by gonna slit her throat.

12 Q All right. Now, once you got -- well, at some point in time,  
13 did you take Pearl back to your house?

14 A Yes, sir.

15 Q And then, did she live with you after that?

16 A Yes, sir.

17 Q Now, at some point in time, when you got her back to her (sic)  
18 house, did she disclose anything to you?

19 A Yes, sir.

20 Q Okay. Did she disclose the sexual assaults?

21 A Yes, sir.

22 Q And what did you do when that happened?

23 A Well, I -- we didn't do too much at the time, 'cause it was  
24 durin' the holidays.

25 Q All right.

1 A But she went and told her counselor at school, and that's what  
2 got stuff started.

3 Q Did you know that she had a counselor at school?

4 A Yes, sir.

5 Q Did you know she was going to tell the counselor at school?

6 A What we were told, yes.

7 Q Okay. Did Pearl, especially at that point in time when she  
8 told you all this, did she seem like she wanted to live with  
9 you?

10 A Yeah, after the whole incident, when her mom wouldn't believe  
11 her, yes.

12 Q All right. But when she -- you went to get her in the truck,  
13 she did not want to come with you.

14 A She didn't want to stay either place.

15 Q Okay. Leading -- so, Pearl told you what happened. Leading up  
16 to that, did you ever suspect anything?

17 A At one point in time, a bunch of my family members -- and we  
18 did.

19 Q What about Pearl led you to suspect something?

20 A She was always -- well, she was more timid and covered up. She  
21 wouldn't -- always dressed real heavy.

22 Q Okay. So, she would wear more clothes?

23 A More clothing, yes.

24 Q And that was different than the way she used to be?

25 A Yes.

0378a

1 Q And you said she was timid. She used to not be so timid?

2 A Not like that. She -- in the past, no.

3 Q All right. Would Pearl ever lie to you?

4 A What kid wouldn't?

5 Q Okay. Did she ever tell you anything like this before?

6 A No, sir.

7 Q To your knowledge, has she ever told anybody anything like this  
8 before?

9 A Not to my knowledge.

10 Q All right. Do you know -- did you put Pearl up to this, to get  
11 custody of her?

12 A No.

13 Q All right. Do you know what the custody situation was with  
14 Pearl when she was 13?

15 A She lived with her mother. We had split physical, or whatever  
16 they call that.

17 Q Okay.

18 A It was week end, week on.

19 Q Was it the same thing where you'd pick her up on weekends?

20 A Yeah.

21 Q Or, she'd go to your house on weekends?

22 A Yup, I had her every other weekend. And in the -- every other  
23 holiday and a week -- oh, it's a week at Christmas. There's  
24 two weeks in Christmas, and then two weeks every other -- in  
25 the summertime, was two weeks on, two weeks off.

1 Q When she was 13 and she would stay at your place on the  
2 weekends, did she have things at your house that she just left  
3 there all the time? Did she have a bed and --

4 A Yes.

5 Q -- things like that? Okay. Did she clothing at your house  
6 that she --

7 A Yes.

8 Q -- left there? So, she wouldn't, necessarily, bring all of her  
9 things --

10 A No.

11 Q -- with her? Okay. Did Sharon ever come pick her up? Your  
12 wife.

13 A Yes.

14 Q All right. So, sometimes you'd pick her up, sometimes Sharon  
15 would?

16 A Yes.

17 Q What -- what factored into that? How come you came and got her  
18 sometimes, and how come Sharon came and got her?

19 A I'm a seasonal employer. So, spring to fall or almost  
20 December, I'm workin' out of town.

21 Q Okay.

22 A I'm home on the weekends.

23 Q All right. So, it would kinda depend who's in town?

24 A Yes, sir.

25 Q All right.

0380a

1 MR. STRONG: Thank you. Nothing further.

2 THE COURT: Mr. Carter.

3 MR. CARTER: One -- one moment.

4 CROSS-EXAMINATION

5 BY MR. CARTER:

6 Q Hi, Mr. Griff -- is it Griffen?

7 A Giffen.

8 Q Giffen? I apologize. My name is David Carter. I'm gonna ask  
9 you just a few questions. If there's a question you don't  
10 understand, please let me know and I'll try to rephrase it;  
11 fair enough?

12 A Fair enough.

13 Q All right. And, again, I just have very few questions. The --  
14 on December 23rd of 2015, that's when you went and picked up  
15 Pearl; right?

16 A Yes.

17 Q And when you -- you indicated that she didn't want to go with  
18 you; correct?

19 A Correct.

20 Q Was she runnin' around the yard?

21 A No.

22 Q She wasn't runnin' around?

23 A No.

24 Q What was -- what was she doing?

25 A She was up -- up by the house when I got there.

0381a

1 Q Okay. Well, how did she -- how could you tell that she didn't  
2 want to go with you?

3 A She fought me.

4 Q Okay, how did she fight?

5 A Told me no.

6 Q Okay.

7 A I mean, typical kid.

8 Q Did you have to chase her?

9 A Yes, sir.

10 Q Okay, that's kinda what I meant by runnin' around the yard.

11 A Well, she wasn't running when I first got there.

12 Q Okay.

13 A It was when I got there, she didn't want to go, so she took  
14 off.

15 Q Okay, fair enough. So, at one point in time, there was a  
16 chase, so-to-speak.

17 A Yes.

18 Q You were trying to catch her; correct?

19 A Um-hum.

20 Q When you say "um-hum," that's kinda --

21 A Yes.

22 Q -- hard to record.

23 A Yes.

24 Q So, we need you to say yes or no. Okay. Now -- so, you  
25 finally caught her?



1 A Yes.

2 Q Did Mr. Warner indicate that he's willing to call the police  
3 right now and let's just get it done with?

4 A No.

5 Q He never said that?

6 A Not to my knowledge.

7 Q Not to your knowledge. So, he may have said it, you just don't  
8 know?

9 A I don't remember.

10 Q Okay. Was -- is it fair to say your attention were -- was  
11 elsewhere, trying to catch Pearl?

12 A Mine was, yes.

13 Q Okay, all right. And you recall Mr. Warner threatening Pearl;  
14 is that correct?

15 A Yes.

16 Q Said he was going to slit her throat?

17 A Yes.

18 Q Is that all you can recall him saying?

19 A At this time, yes.

20 Q Okay. You don't know if he was saying that because he felt  
21 like this was a false allegation?

22 MR. STRONG: Objection, Your Honor, calls for  
23 speculation.

24 MR. CARTER: I'm just asking if he knows. He can say  
25 yes or no. I'm not asking him to speculate.

0383a

1 THE COURT: Go ahead, answer the question.

2 THE WITNESS: What was the question, again, now?

3 BY MR. CARTER:

4 Q Do you know if he was saying that because he felt he was being  
5 falsely accused?

6 A No.

7 Q No, that you don't know or --

8 A I don't --

9 Q Okay.

10 A -- know if he said it or not.

11 Q And, again, who was there, at this time, when you were picking  
12 up Pearl?

13 A When I got there, it was just her mother.

14 Q And I -- and -- thank you. At -- at the end, when you finally  
15 caught Pearl --

16 A Her --

17 Q -- who was there?

18 A Her mother, Damon, my son, and my wife.

19 Q Okay. Your son, Robert?

20 A Yes.

21 Q He drove separate?

22 A Yes.

23 Q Okay. Your wife, did she drive separate?

24 A No.

25 Q Okay. So, when you got there, when you first arrived, it was

0384a

1 your wife, you, and Pearl?

2 A When I first got there, it was my wife, Pearl, I, and her  
3 mother.

4 Q Okay, and --

5 A My -- my son showed up about five minutes later.

6 Q Okay. And perfect, all right.

7 MR. CARTER: Okay, I have nothing further.

8 THE COURT: Any redirect, Mr. Strong?

9 MR. STRONG: No, Your Honor. Thank you.

10 THE COURT: Thank you. May the witness be excused?

11 MR. STRONG: He may.

12 THE COURT: Sir, you may step down, and you are free  
13 to go about your business.

14 (At 11:04 a.m., witness stands down)

15 Please call your next witness.

16 MS. VAN LANGEVELDE: Thank you. My next witness is  
17 Detective Sergeant Derrick Jordan.

18 THE COURT: Thank you.

19 Please step right up here, sir. There is a step  
20 before you get to the witness box.

21 DETECTIVE SERGEANT JORDAN: Yes, ma'am.

22 THE COURT: Raise your right hand. Do you swear to  
23 tell the truth, the whole truth, and nothing but the truth, so  
24 help you God?

25 DETECTIVE SERGEANT JORDAN: Yes, I do.

0385a

1 THE COURT: Please have a seat. Please state your  
2 full name for the record.

3 THE WITNESS: Derrick Jordan.

4 THE COURT: Spell --

5 THE WITNESS: Derrick's spelled -- oh, I'm sorry.  
6 Derrick's spelled D-e-r-r-i-c-k. Jordan, J-o-r-d-a-n.

7 THE COURT: Thank you.

8 Go ahead, Ms. Van Langevelde.

9 MS. VAN LANGEVELDE: Thank you.

10 DETECTIVE SERGEANT DERRICK JORDAN

11 at 11:05 a.m., sworn as a witness, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. VAN LANGEVELDE:

14 Q Detective Sergeant Jordan, can you tell us where you work?

15 A Yes, I work for the Michigan State Police.

16 Q And what is your title? I just said it, but what is your  
17 title?

18 A Detective Sergeant.

19 Q And what does that mean?

20 A That means that I -- I've been promoted from trooper up to  
21 detective sergeant. I investigate, or do interviews, or  
22 whatnot, for our department.

23 Q Okay. And do you have any specialized education and  
24 background? Can you just tell us a little bit about your  
25 education?

0386a

1 A Yes. I have an associate's degree in criminal justice, and I  
2 have a bachelor's degree in social work.

3 Q And do you have any specialized training and experience as a  
4 Michigan State Police detective sergeant?

5 A Yes, I have. I've been to several interview/interrogation  
6 schools where I've been trained on giving interviews, assessing  
7 statements, looking at statements that's given by people that  
8 talk to.

9 Q And can you tell us -- I guess, do you help out other  
10 agencies --

11 A Yes, I do.

12 Q -- during investigations?

13 A Yes, I do, at times. I'm requested by other agencies to  
14 assist.

15 Q And is that common?

16 A That is common. Yes, it is.

17 Q Okay. So, did you have an opportunity to help Detective Jim  
18 Maltby in this particular case?

19 A Yes, I did.

20 Q And did you conduct an interview of the defendant in this case?

21 A Yes, I did.

22 Q And where did that interview -- interview take place? Sorry.

23 A That interview took place at the Michigan State Police Lansing  
24 Lab. We have a section where we conduct interviews at the  
25 Lansing lab.

0387a

1 Q Okay. And was the defendant under arrest at the time that he  
2 gave the interview with you?

3 A No, he was not. He was free to go at any time, and he  
4 voluntarily gave the statement.

5 Q Did you actually go over his Miranda Rights with him?

6 A Yes, I did.

7 Q And did he agree to waive those rights and speak with you?

8 A He did agree to waive those rights and speak with me at the  
9 time.

10 Q Okay. Now, I want to ask you, sir, when you're interviewing  
11 just someone in general, do you go into an interview with types  
12 of technique?

13 A Techniques, sometimes strategies, yes, ma'am.

14 Q And did you have a particular technique or strategy that you  
15 were gonna use in this particular case?

16 A Yes, I did.

17 Q And what was that?

18 A That strategy was, pretty much, to make the defendant feel  
19 comfortable speaking with me. Sometimes that technique is used  
20 to get people to talk about things that they're embarrassed to  
21 talk about or they're afraid to talk about. That technique  
22 included me speakin' to him man-to-man, making him feel like I  
23 understood his perspective, I understood where he was comin'  
24 from, and I can relate to what he was talkin' about.

25 Q Okay. Have you ever met the victim in this case?

0388a

1 A Prior to speaking with him that day, no.

2 Q Okay. How the vic -- you's (sic) talked --

3 A Oh, the victim.

4 Q -- about defendant.

5 A No, no, the victim. I'm sorry, I'm thinkin' the defendant.

6 Q Okay.

7 A The victim, no.

8 Q And -- and, I guess, either of them. Had you ever -- have you

9 ev -- had you ever met the defendant prior to speaking with him

10 the day that you --

11 A No --

12 Q -- interviewed him?

13 A -- the defendant, nor the victim.

14 Q Okay. Did you know -- did you ever have a chance to talk about

15 the victim prior to that day?

16 A No, not the victim.

17 Q Okay. Did you -- despite not knowing the victim, did you talk

18 about the victim with the defendant, in the interview?

19 A I did. Yes, I did.

20 Q And can you tell me what some of the things that you said about

21 the victim as you're interviewing the defendant?

22 A Some of the things I said about the victim was part of a

23 technique that I use. I -- sometimes the technique that I use

24 to make people feel comfortable talking is blaming the victim

25 just to get the -- the defendant to talk about their action or

0389a

1 involvement in the situation. So, I said things like I knew  
2 the victim liked him, I knew the victim was promiscuous, I knew  
3 the victim was sexually active. Said things like that to make  
4 the defendant feel comfortable talking about the situation.

5 Q Are any of those things, to your knowledge, actually true?

6 A I have never met the victim; I have no idea.

7 Q Okay.

8 A Anything about the victim.

9 Q Then, why say those things, kind of negative things, about the  
10 victim?

11 A Again, it's a technique sometimes that's used in certain  
12 situations to get people to talk about their involvement,  
13 'cause sometimes they don't feel comfortable or they don't want  
14 to engage in it until they feel that it's okay. And, again,  
15 one of the techniques that I used was to make the defendant  
16 feel that me and him were on the same page, I understood where  
17 he was comin' from, and that he was not to be blamed in his  
18 actions or his involvement in the situation.

19 Q As you're going through that, you kind of, I'll call it victim  
20 blaming, did the defendant eventually open up to you?

21 A Yes, he did.

22 Q And can you tell me some of the things the defendant told you?

23 A The defendant told me that it was a time when him and the  
24 victim was wrestling around, and the victim asked him -- excuse  
25 me, but verbatim -- ditch -- did he want to feel her pussy. At



0390a

1 that time, he told me that the victim took his hand and put it  
2 down in her pajama pants and told him that she was wet, she was  
3 horny and on fire. At that time, he told me that he did take  
4 four fingers and feel the victim's vagina, that it was wet. He  
5 could feel the moisture. He then told me that he felt the  
6 inside of her lips, and then he pulled his hands out of her  
7 pajama pants.

8 Q Now, did you end up having this -- the defendant write out a  
9 written statement with you?

10 A I did. Yes, I did.

11 MS. VAN LANGEVELDE: Your Honor, I'm gonna show  
12 opposing counsel what's been pre-marked as People's Proposed  
13 Exhibit 2. May I approach the witness?

14 THE COURT: Yes.

15 MS. VAN LANGEVELDE: Thank you.

16 BY MS. VAN LANGEVELDE:

17 Q Detective Sergeant Jordan, I'm showing you what's been pre-  
18 marked as People's Proposed Exhibit 2. Do you recognize that  
19 document?

20 A Yes, I do.

21 Q Can you tell us what that is?

22 A This is a document in which I wrote out the statement, and  
23 which the defendant gave. At that time, I went over the  
24 statement with the defendant to make sure that it was accurate,  
25 what I was writing down. The defendant, then, he signed it, he

0391a

1           initialed behind everything that -- well, I wrote a statement  
2           "Is this statement true?" He wrote, "Yes," put his initials.  
3           I wrote down, "Did you give this statement voluntary?" He  
4           wrote, "Yes," put his initials. Then, I had him sign it, and  
5           then I signed it, to make it the official document, to make the  
6           document official.

7                                 (At 11:11 a.m., PX#2 identified)

8 BY MS. VAN LANGEVELDE:

9 Q       Now, this is a photocopy, basically, of the statement that you  
10       have; is that correct?

11 A       That is correct.

12 Q       Is it a fair and accurate photocopy of the actual statement?

13 A       Yes, it is.

14 Q       Little bit faded, but fair and accurate?

15 A       Yes, it is.

16 Q       Thank you.

17                                 MS. VAN LANGEVELDE: Your Honor, at this time, I move  
18       to admit People's Proposed Exhibit 2.

19                                 THE COURT: Voir dire on 2, Mr. Carter?

20                                 MR. CARTER: Thank you. Just a few questions.

21   VOIR DIRE EXAMINATION

22 BY MR. CARTER:

23 Q       You indicated this was your writing?

24 A       Yes, sir.

25 Q       Okay. Do you recall how many times the defendant was

0392a

1 interviewed before this, before your interview with him, that  
2 you wrote down these statements?

3 A How many times did I interview --

4 Q No.

5 A -- or how many times he was interviewed?

6 Q Did you, on -- do you know how often he was interviewed before  
7 this statement was written?

8 A I don't know right offhand, no, sir.

9 Q Do you know if it was more than once?

10 A I'm not sure, sir. Not sure.

11 Q You don't know, at all?

12 A I don't know, sir.

13 Q That isn't anything that was shared with you?

14 MR. STRONG: Objection, Your Honor, asked and  
15 answered.

16 THE COURT: Overruled. Go ahead.

17 BY MR. CARTER:

18 Q That was -- nothing was shared with you regarding that?

19 A As far as how many times he was interviewed, I -- I don't  
20 recall that specific question, sir.

21 Q All right. Was -- as you were writing this statement down,  
22 because this is your -- your handwriting; correct?

23 A Yes, it is.

24 Q Was it in an interview room?

25 A Ah, yes.

0393a

1 Q Was it videotaped?

2 A No. No, sir.

3 Q Okay. And did the defendant watch you write it down?

4 A Yes, the defendant watched me. Yes, sir.

5 Q Was he sitting across from you?

6 A Yes, he was sitting in very close proximity to me.

7 Q Was he over your shoulder, reading as your were writing it  
8 down?

9 A Nope. If I can demonstrate.

10 Q Sure.

11 A He was sitting like here. I was sitting here. And as I was  
12 writing, I would show him exactly what it was that I was  
13 writing.

14 Q Okay.

15 MR. CARTER: Thank you. I have nothing further. No  
16 objection.

17 THE COURT: Exhibit 2 shall be admitted and may be  
18 published to the jury.

19 (At 11:13 a.m., PX#2 admitted)

20 MS. VAN LANGEVELDE: Thank you. May I collect the  
21 document?

22 THE COURT: You may.

23 MS. VAN LANGEVELDE: Thank you.

24 DIRECT EXAMINATION, CONTINUED

25 BY MS. VAN LANGEVELDE:

0394a

1 Q Now, Detective Sergeant, you testified that at that -- that it  
2 was not videotaped. Was that not videotaped by Michigan State  
3 Police?

4 A That was not videotaped by Michigan State Police.

5 Q All right. And can you tell us back in -- I guess it was --  
6 the date of your interview was May 5th, 2016; is that correct?

7 A That is correct.

8 Q Back then, did the Michigan State Police have -- basically,  
9 have video recording of your interviews?

10 A No, we didn't have the technology at that time, but we have  
11 since updated all of our facilities to where we can tape every  
12 interview that we give now.

13 Q Okay. But this -- but at that time, you guys didn't have that  
14 technology --

15 A No.

16 Q -- is that accurate?

17 A That's correct.

18 Q Okay. Even though you didn't have a recording of it, was  
19 Detective Maltby in your, kind of, area?

20 A Yes, he was.

21 Q Where was Detective Maltby?

22 A Detective Maltby was in another room from which he can observe  
23 the interview.

24 Q Okay. And how can Detective Maltby observe the interview?

25 A We have a 50 inch television screen in the observation room

0395a

1 with a direct feed, so it's live as it is happening, with audi  
2 actually attached, as well.

3 Q And so, he's not in the room with you guys; he's in another  
4 room, but watching you guys.

5 A That is correct.

6 Q All right.

7 MS. VAN LANGEVELDE: Just a moment, Your Honor. Oh

8 BY MS. VAN LANGEVELDE:

9 Q Detective Sergeant, did you force the defendant to sign this  
10 statement?

11 A Absolutely not, no.

12 Q Did you threaten him, in any way, to make him sign this  
13 statement?

14 A Absolutely not.

15 Q Was he -- I'm sorry. And this -- and this written statement  
16 actually came -- or, the -- the -- the quotes in the written  
17 statement actually came from the defendant's mouth.

18 A Directly from the defendant, yes, ma'am.

19 Q And you just, simply, recorded them into --

20 A Written form.

21 Q -- written --

22 A Yes, ma'am.

23 Q Thank you.

24 A Um-hum.

25 MS. VAN LANGEVELDE: I don't have any other

1 questions.

2 THE COURT: Mr. Carter.

3 MR. CARTER: One moment. I --

4 CROSS-EXAMINATION

5 BY MR. CARTER:

6 Q Detective Sergeant Jordan --

7 A Yes, sir.

8 Q -- my name is David Carter. I'm gonna ask you a series of  
9 questions. If there's a question you don't understand, please  
10 let me know, and I'll try to rephrase it; fair enough?

11 A That's fair, sir.

12 Q You've testified previously in court hearings, haven't you?

13 A Yes, sir.

14 Q I could tell. You seemed polished and you're -- you're  
15 precise, and you don't use um-hums and huh-uhs. All right, do  
16 you know whether or not Detective Maltby videotaped it while he  
17 was outside, watching?

18 A It was brought to my attention later that he did videotape it.

19 Q Okay. So, when you say that Michigan State Police hadn't  
20 videotaped it, when I asked you the question if it was  
21 videotaped, kind of deceptive, wasn't it, because you knew it  
22 was videotaped?

23 A If you -- if you asked me specifically if Michigan State Police  
24 videoed --

25 Q No, I don't think I asked if Michigan State Police. I asked if

0397a

1 it was re -- if it was recorded, and you indicated no. Don't  
2 you recall saying that?

3 A Right, that's recording by the Michigan State Police --

4 Q All right.

5 A -- in my control, yes, sir.

6 Q So -- so, you're -- you're -- you're -- you were reading into  
7 my question. I think I was quite clear. So, there's a  
8 videotape of it; correct?

9 A There is video --

10 Q Okay.

11 A -- yes, sir.

12 Q And is there a reason why you're writing out the statement and  
13 not having Mr. Warner write out the statement?

14 A Again, another technique that I use. Just making him  
15 comfortable talking with me, and I wrote out what he -- what he  
16 actually told me.

17 Q Well, did you ask him if he wanted to write out a statement?

18 A Well, at that time, me and him, I thought we had a rapport in  
19 which we were speaking, and I just chose to write it out, and  
20 make sure that it was accurate by reviewing it with the  
21 defendant.

22 Q Okay. So, I don't know if you answered my question. Did you  
23 ask him whether or not he wanted to write out a statement?

24 A No, I did not.

25 Q All right.



1 A I stated that I wrote it out because me and him --

2 Q All right.

3 A -- had a good rapport, and I checked with him to make sure that  
4 everything I wrote down was accurate.

5 Q And you don't know how many times he had been interviewed prior  
6 to this?

7 A Not ex -- exact number, no, sir.

8 Q How long did this interview take?

9 A I'm not sure, but norm -- we were talking a couple hours.

10 Q Couple hours.

11 A Yeah.

12 Q So, did the statement come about during the whole interview or  
13 at the end?

14 A At the end.

15 Q So, it was kinda your summarizing of what was done throughout  
16 the interview?

17 A No, that's the statement that he gave at the end.

18 Q Okay, so he gave a statement at the end.

19 A Yes, sir.

20 Q All right. And -- and it's your testimony that this took about  
21 a couple hours?

22 A Yes, sir.

23 Q Do you know if he was anticipating that this interview would  
24 take a couple hours?

25 A I believe I asked the defendant did he -- if he knew how long

0399a

1 he was gonna be talkin' with me, you know, did he have an  
2 anticipated time, and he stated no. And I told him, hey, this  
3 is what we're gonna talk about.

4 Q Okay.

5 A So, there was no time limit given to the defendant, no.

6 Q Okay. Did you -- did you -- when you asked him these  
7 preliminary questions about whether or not he knew how long it  
8 would take, did you indicate to him about how long it would  
9 take?

10 A I may have. I'm not sure, sir. I don't recall.

11 Q So -- so, you don't know if he thought that this would only  
12 take a half-an-hour, 45 minutes, or what; right?

13 A I'm not sure what he thought, no, sir.

14 Q You don't know. So, you don't know if, at the end of the  
15 interview, when he's just given a statement and signing  
16 something, he just wants to get out of there at that point;  
17 right?

18 A No, that's not the vibe that I got, sir.

19 Q Okay.

20 A I got that he was very detailed in his description of what  
21 happened --

22 Q Okay.

23 A -- and I jotted that down, and I reviewed it with him --

24 Q Okay. That --

25 A -- and he said that that was accurate.

0400a

1 Q That's the jibe you got, but you don't know. You don't know if  
2 he was in a rush; right?

3 A No, I don't know that.

4 Q All right. You don't know if he had prior engagements.

5 A No, sir.

6 Q Isn't it true that, prior to this interview, he made it a point  
7 to you that he needed to get out of there to take his son to  
8 school?

9 A I don't recall that, sir.

10 Q You don't recall that?

11 A No, not at all.

12 Q Do you know what time it would -- do you know what day this  
13 occurred on?

14 A The day of the week?

15 Q Yes.

16 A I'm not sure. I know it was May 5th, 2016, but I don't know  
17 what day that was on.

18 MR. CARTER: I have nothing further, Detective.

19 THE COURT: Any redirect?

20 MS. VAN LANGEVELDE: Just a couple of things. Thank  
21 you.

22 REDIRECT EXAMINATION

23 BY MS. VAN LANGEVELDE:

24 Q Detective Sergeant, you, obviously, interview people for a  
25 living, yes?

0401a

1 A Yes, ma'am.

2 Q Okay. Did the defendant ever say that he wanted to leave?

3 A No, he never said that.

4 Q Did he ever say he didn't want to talk to you?

5 A No, he never said that.

6 Q Did he ever just get up and walk out?

7 A No, he did not. He was free to leave at any point, and he was  
8 told that.

9 Q Did he give you any body language that he wanted to get out of  
10 there and not speak with you?

11 A Not at all. No, ma'am.

12 Q Thank you.

13 MS. VAN LANGEVELDE: I don't have any other  
14 questions.

15 THE COURT: Thank you, sir. You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: You are free to go.

18 (At 11:20 a.m., witness stands down)

19 THE COURT: Next witness, please.

20 MS. VAN LANGEVELDE: Well, Your Honor, just a moment.

21 Can we -- actually, can we approach just briefly?

22 THE COURT: Yup.

23 MR. CARTER: Me, too?

24 THE COURT: I think you need to come, too, Mr.

25 Carter.

0402a

1 (At 11:21 a.m., bench conference)

2 (At 11:21 a.m., bench conference concluded)

3 MS. VAN LANGEVELDE: Thank you, Your Honor. My next  
4 witness will be Detective Maltby.

5 THE COURT: Thank you.

6 Detective, can you come up here, please? There's a  
7 little step right there, before you get to the witness box.

8 Do you swear to tell the truth, the whole truth, and  
9 nothing but the truth, so help you God?

10 DETECTIVE MALTBY: I do.

11 THE COURT: Please have a seat. State your full name  
12 for the record.

13 THE WITNESS: James Maltby, M-a-l-t-b-y.

14 THE COURT: Thank you.

15 Ms. Van Langevelde.

16 MS. VAN LANGEVELDE: Thank you.

17 DETECTIVE JAMES MALTBY

18 at 11:22 a.m., sworn as a witness, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. VAN LANGEVELDE:

21 Q Detective Maltby, you work for Eaton County Sheriff's  
22 Department; is that correct?

23 A That is correct.

24 Q And how -- what is your title there?

25 A I'm a detective.

0403a

1 Q And how long have you been a detective with Eaton County?

2 A Approximately eight years.

3 Q And prior to that, what was your title?

4 A I was a road deputy for, approximately, 10 years.

5 Q And before -- were you ever a police officer before you were  
6 with Eaton County?

7 A I was with the Mason Police Department for, approximately, 10  
8 months.

9 Q Okay. What is your education background?

10 A Associates degree in criminal justice and several other  
11 trainings, interview techniques, evidence collection.

12 Q How did you get to become a detective?

13 A By working in the -- working on the road, doing normal --  
14 normal duties as a road officer, and also doing investigations  
15 while I was on the road.

16 Q Is it a promotion to become a detective?

17 A Yes.

18 Q Do you have any specialized training or experience as a  
19 detective?

20 A Yes, I do.

21 Q Can you tell us some of those, please?

22 A Forensic interviewing, which is interviewing of children,  
23 basically, different interviewing techniques, schools, I've  
24 been to trainings, seminars, different evidence schools for  
25 crime scene investigations, stuff like that.

0404a

1 Q Okay. And have you investigated child sexual assault cases  
2 before?

3 A Yes, I have.

4 Q Do you know, ballpark, how many cases you've investigated  
5 total?

6 A Ballpark, probably between one and 200.

7 Q Okay. And did you conduct the investigation in this particular  
8 case involving the defendant?

9 A Yes, I did.

10 Q How did your investigation in this case begin?

11 A With a referral from CPS, from Child Protective Services.

12 Q Okay. And based on that, what did you do?

13 A I made contact with the CPS investigator that was assigned to  
14 the case.

15 Q And who was that?

16 A At that time, it was Miss Lain was her last name, L-a-i-n.

17 Q Okay. And where did -- I guess, when you met up with Miss  
18 Lain, what did you do?

19 A We discussed the case, went over a few things, and then we went  
20 and the first thing we did was interviewed Pearl, interviewed  
21 the victim at her school.

22 Q And why do you do that first?

23 A Just, basically, to gain as much information as we can and --  
24 and go straight to the -- the victim, the source.

25 Q Okay. And what -- where did that interview take place?

1 A That took place at the Olivet High School.

2 Q Do you recall when that took place?

3 A It was in January of 2016, I believe.

4 Q Okay. And did you have an opportunity -- oh, I'm sorry. Was  
5 your interview with Pearl recorded?

6 A Yes, it was.

7 Q And did you have --

8 A It was audio. Audio recorded.

9 Q Audio recorded. And did you have an opportunity to hear Pearl  
10 when she testified today?

11 A Yes.

12 Q Was there anything in her disclosure to you that was different  
13 from her testimony today?

14 A No.

15 Q After you conducted your interview of Pearl, what did you do  
16 next, in the course of your investigation?

17 A I -- I had learned that the defendant had a prior conviction  
18 for CSC, for -- for sexual conduct, for a sex crime that he had  
19 committed years before. So, I went and dug up those reports  
20 and court documents, and I wanted to read through them and --  
21 and learn as much as I could about his prior conviction and  
22 maybe his method of operation.

23 Q Okay. And one of those documents, was that a Judgment of  
24 Sentence?

25 A Yes.



1 MS. VAN LANGEVELDE: Your Honor, at this time, I move  
2 to admit People's Proposed Exhibit 3, which is a Judgment of  
3 Sentence certified by Calhoun County.

4 (At 11:26 a.m., PX#3 identified)

5 THE COURT: Did you show it to him already? Oh, I'm  
6 -- did you want to voir dire on it, I guess? That's what  
7 you --

8 MR. CARTER: No.

9 THE COURT: Okay. Do you have any objection to its  
10 admission?

11 MR. CARTER: No.

12 THE COURT: Exhibit 3 shall be admitted and may be  
13 published to the jury.

14 (At 11:26 a.m., PX#3 admitted)

15 MS. VAN LANGEVELDE: Thank you, Your Honor. Was  
16 Number 2 (inaudible). Do we have Exhibit 2?

17 THE COURT: Yes, I believe that juror number one has  
18 it.

19 MS. VAN LANGEVELDE: Oh, thank you.

20 BY MS. VAN LANGEVELDE:

21 Q Okay. So, Detective Maltby, after you got the information from  
22 Calhoun County -- sorry -- what did you do in the course of  
23 your investigation?

24 A During that time, the CPS and I -- there was something going on  
25 that CPS, as far as schedules go for the original CPS officer.

0407a

1 So, they had switched CPS officers. And I kinda started over  
2 with the -- with the new CPS investigator and got him caught  
3 up. And then, I believe we went and talked with the victim's  
4 dad and stepmom.

5 Q Okay. And who was the new CPS investigator?

6 A It was Corey Wood.

7 Q Okay. And then, did you conduct any other interviews during  
8 the course of your investigation?

9 A Yes, I did.

10 Q And who did -- who else did you interview?

11 A I interviewed the defendant's daughter, Sable, who was, I  
12 believe, at that time, six-years-old, at her residence on  
13 Butterfield Highway.

14 Q And anybody else?

15 A Also spoke with -- briefly spoke with the defendant's wife at  
16 that time, Bridget. I didn't really speak with her a whole  
17 lot. I kinda sat there and listened to Mr. Wood talk to her  
18 from CPS. I didn't really want to speak with her that much at  
19 -- at that time.

20 Q Why is that?

21 A I just -- I just didn't want to -- I knew I was gonna --  
22 eventually, I was gonna have to try to speak with the  
23 defendant, and I wanted to speak with the defendant. I didn't  
24 want the defendant to tell me no. So, I didn't want to really  
25 seem like a cop when I was over there. I just wanted to seem

0408a

1 like a guy who was hangin' out, was tryin' to help out, and I  
2 didn't want to really ask her a lot of questions right then.

3 Q So, who was primarily asking her questions?

4 A Corey Wood was.

5 Q Okay. Did -- while you were over at the residence, did you  
6 take any photographs?

7 A I took a few, yes.

8 Q Okay. Okay.

9 MS. VAN LANGEVELDE: I'm sorry, Your Honor.

10 BY MS. VAN LANGEVELDE:

11 Q And what was the purpose of taking photographs, Detective  
12 Maltby?

13 A I just wanted to document the back -- mostly the back bedroom  
14 area in case things got mixed up or confused as to what bedroom  
15 this might've happened in. Stuff that I do maybe once in a  
16 while just to kinda -- in case something pops up later down the  
17 road, at least I might have a couple photos to go back to and  
18 -- and look at.

19 Q Okay.

20 MS. VAN LANGEVELDE: Your Honor, let the record  
21 reflect I'm showing opposing counsel what's been pre-marked as  
22 People's Proposed Exhibits, basically, 4 through 9.

23 May I approach the witness?

24 THE COURT: You may.

25 MS. VAN LANGEVELDE: Thank you.

1 BY MS. VAN LANGEVELDE:

2 Q Detective Maltby, I'm handing you what's been pre-marked as  
3 People's Proposed Exhibits 4 through 9. And if you could look  
4 through those for me. Do you recognize those photographs?

5 A Yes, I do.

6 Q Can you tell me what they are?

7 A They're photos that I took the day I was at the defendant's  
8 house interviewing Sable and speaking with Bridget.

9 (At 11:30 a.m., PX#4, PX#5, PX#6, PX#7, PX#8 and PX#9  
10 identified)

11 BY MS. VAN LANGEVELDE:

12 Q Okay. And are they a fair and accurate depiction of what the  
13 -- the home looked like at that date and time?

14 A So far, they are. Get through all of 'em. All of 'em do.

15 Q Okay. And can you recall what day you actually went over to  
16 the house?

17 A No, I --

18 Q Would you --

19 A I would -- without looking at my report, I'm sorry, I --

20 Q I was gonna say would your report refresh your memory?

21 A Yes, it would.

22 Q All right.

23 A I'm sorry.

24 MS. VAN LANGEVELDE: May I approach the witness, Your  
25 Honor?

0410a

1 THE COURT: You may.

2 MS. VAN LANGEVELDE: Thank you.

3 BY MS. VAN LANGEVELDE:

4 Q Detective Maltby, if you could refresh your memory and then  
5 look back up at me.

6 A (Reading through report).

7 Q Is your memory refreshed?

8 A Yes.

9 Q Thank you. What date did you go over to the home?

10 A March 2nd, 2016.

11 Q And by that time, was Pearl still living in the house?

12 A No.

13 Q Who was all living in the house?

14 A It was the defendant, his wife, Bridget, their daughter, Sable,  
15 and their son, Noah.

16 MS. VAN LANGEVELDE: Your Honor, at this time, I do  
17 move to admit People's Proposed Exhibit 4 and through -- I'm  
18 sorry, 4 through 9.

19 THE COURT: Voir dire on 4 through 9, Mr. Carter?

20 MR. CARTER: No.

21 THE COURT: Any objection to the admission of  
22 Exhibits 4 through 9?

23 MR. CARTER: No.

24 THE COURT: Exhibits 4 through 9 shall be admitted  
25 and may be published to the jury.

1 (At 11:32 a.m., PX#4, PX#5, PX#6, PX#7, PX#8 and PX#9  
2 admitted)

3 BY MS. VAN LANGEVELDE:

4 Q Did you also have an opportunity -- I want to back up a minute  
5 Detective Maltby, to, when you were interviewing Pearl's father  
6 and stepmother, obtaining a photograph of Pearl?

7 A I believe I obtained the -- a photograph down -- during a  
8 second interview with her stepmother.

9 Q Okay. And what was the purpose of obtaining that photograph?

10 A After speaking with the defendant, I -- one of the, say, the  
11 themes he was giving me was how big and strong she was and how  
12 tough. Basically, just to show her size and what she looked  
13 like while she was that age, around the age of the assault, the  
14 alleged assault occurred.

15 Q So, did you obtain a photo of her when she was 13-years-old?

16 A So, I went back, yes, and spoke with the stepmom, and she was  
17 able to find me a photograph.

18 MR. CARTER: I'd -- I'd have to object to this line  
19 of questioning, because it sounds like they're trying to get in  
20 a time frame of a photo, and he's gonna have to speculate to  
21 all of that. You'd have to have a witness that -- that  
22 indicates that.

23 THE COURT: I take it that your objection is that  
24 there isn't a proper foundation to --

25 MR. CARTER: That is correct.

0412a

1 THE COURT: -- to admit the photo, and I would agree  
2 at this time, that has not been laid.

3 MS. VAN LANGEVELDE: Okay.

4 BY MS. VAN LANGEVELDE:

5 Q I do want to talk about the photos of the house. So, if I  
6 could --

7 MS. VAN LANGEVELDE: Just a moment, Your Honor.  
8 Thank you. Thank you, Deputy.

9 BY MS. VAN LANGEVELDE:

10 Q All right, so, Detective Maltby, what is, actually, the address  
11 of the home?

12 A You would have to ask me. I would have to look at my report  
13 again --

14 Q Okay.

15 A -- for the exact address.

16 Q What road is it on?

17 A It's on Butterfield Highway --

18 Q All right.

19 A -- near I-69.

20 Q Is it in Eaton County?

21 A Yes, it is.

22 Q In what town?

23 A It's in Olivet.

24 Q All right. And what are we looking the -- here, in this  
25 picture?

0413a

1 A You're looking down the hallway from the living room/dining  
2 room area towards the bedrooms.

3 Q So, this is in the living room/dining room area?

4 A Yes, I believe so.

5 Q Okay. And then, what are we looking at here, in this photo?

6 A That is one of the bedrooms, I believe, on the south side of  
7 the house.

8 Q Okay. And what was the purpose of taking this photograph?

9 A To show where the assault may have occurred, and in case there  
10 was any questions down the road, something came up, is -- the  
11 way something was laid out, just so I had a few doc --

12 Q Who was occupying this bedroom when you took these photographs?

13 A I believe Noah, the son.

14 Q Okay. What is this photograph?

15 A This is of, I believe, the other bedroom, which Sable was in.

16 Q Okay. I see Teen-age Mutant Ninja Turtles. Do you see that?

17 A Maybe. They may be the same bedroom; I can't tell from here.

18 Q Okay.

19 A So, I took pictures of both.

20 Q Okay. And then --

21 A There we go. Okay.

22 Q This is -- I'm sorry. What is --

23 A The same bedroom, yeah.

24 Q And what is this?

25 A It's just a different angle of that bedroom. This was,



0414a

1           apparently, the best that, it was described to me, Pearl's  
2           bedroom when she lived there. That's why I took the most in  
3           that room.

4 Q       Okay. Now -- now we're look -- now, what is this a photo of?

5 A       Same room, looking out. I'm, basically, standing in one place  
6       rotating around.

7 Q       Okay. Thank you, Detective Maltby. Now, you inter --  
8       indicated that you did end up interviewing the defendant; is  
9       that true?

10 A      Yes, I did.

11 Q      How many times did you interview the defendant?

12 A      Three -- three times, I would say.

13 Q      When was the first time?

14 A      April 4th, 2016.

15 Q      And where did that interview take place?

16 A      It took place at the Eaton County Sheriff's Department in  
17      Charlotte.

18 Q      And were -- was that interview recorded?

19 A      Yes, it was.

20 Q      When you're interviewing a detec -- or, I'm sorry, a defendant  
21      in these types of cases, do you use a particular technique?

22 A      Yeah, I'll use a few different techniques. But, usually in  
23      these cases, I'll -- I'll use kind of a rapport building, buddy  
24      system, kind of, interviews is kind of the theme I go with. I  
25      also downplay everything.

0415a

1 Q And why do you do that?

2 A Just to get the -- get the person feeling comfortable, get him  
3 to talk. If they see that, you know, this person may -- may  
4 see my point of view, they're gonna, maybe, be more likely to  
5 share stuff with me, give me more information.

6 Q Have you had that technique work in the past?

7 A Yes.

8 Q Did you ask the defendant about the allegations in this case?

9 A Yes, I did.

10 Q And what did he tell you?

11 A He told me there was no truth to them, at all.

12 Q All right. Did you ask him about having to come in and be  
13 interviewed about the allegations --

14 A Yes.

15 Q -- how that made him feel?

16 A Yes, I did.

17 Q And what did he say?

18 A He said he didn't mind it, at all.

19 Q I want to go back, because you kind of indicated that you had  
20 interviewed the defendant three times. So, the first time was  
21 April 4th, 2016?

22 A Correct.

23 Q When was the second time?

24 A It was -- I'd -- I'd spoke with the defendant some when we were  
25 with Detective Sergeant Jordan. So, I -- kind of throwing that

0416a

1 in. And then there was the -- the May interview.

2 Q Okay. And when was that interview in May?

3 A May -- I believe that was May 16th.

4 Q Of what year?

5 A 2016.

6 Q When you -- so, how many times did you interview the defendant  
7 before you went to Michigan State Police?

8 A One time.

9 Q So, the second interview, you're counting as, basically --

10 A I'm kind of counting that because I -- I had spoke with him a  
11 little bit.

12 Q Okay. And then the third interview, where did that interview  
13 take place?

14 A At the Eaton County Sheriff's Department, in the same -- the  
15 same room, at the main office here, in Charlotte.

16 Q Okay. And was that interview recorded?

17 A Yes, it was.

18 Q Going back to the first interview. And, I'm sorry. So, when  
19 you -- and I want to ask you specific things about your  
20 conversation with the defendant in the first interview. Did  
21 you ev -- did you ever ask him if anything inappropriate ever  
22 happened between him and Pearl?

23 A Yes, I did.

24 Q And what did he say?

25 A He said, "No, nothing inappropriate had every happened."

0417a

1 Q What was -- did -- did he say -- talk about Pearl, kind of, in  
2 general terms?

3 A Yes.

4 Q What were some of the things that he said about Pearl?

5 A At first, he said she was generally -- she was a good kid up  
6 till this. At that point, he kind of -- there was a point  
7 where he kinda turned and started calling her a big girl and  
8 started talking about her weight, started talking about her  
9 stealing money out of his wallet, stealing a few dollars out  
10 his wallet a couple years before that. He just, basically,  
11 started to paint her in a bad light after that, or tried to.

12 Q What -- what else did the defendant say about his relationship  
13 with Pearl?

14 A He said that -- I believe he said he had a good relationship  
15 with her up till -- up till this. And I had asked him that --  
16 I remember asking, at one point, if she had ever accused  
17 anybody of anything like this, and he said, no, she was,  
18 generally, a great kid.

19 Q Did you talk, at all, about play wrestling or wrestling, or  
20 anything like that with the defendant?

21 A Yes.

22 Q What did he tell you about that?

23 A He said that they would wrestle, but they would never wrestle  
24 unless his wife was there. And he would always -- because of  
25 his past, he would stick to like grabbing her top half of her

0418a

1 body and -- but, he said, no, they wouldn't wrestle unless --  
2 unless the mom was there.

3 Q Did you ever ask him why the victim would make this stuff --  
4 this allegation up?

5 A Yes, I did.

6 Q What did he say?

7 A At first, he said nothing, or he didn't have an answer. And  
8 then he -- he thought about it, and I believe he said that --  
9 because Pearl had confided in him about losing her virginity,  
10 and he ended up sharing that with his wife, with her mother,  
11 Bridget, and he felt that Pearl was maybe mad about that, and  
12 -- and that's why she said something.

13 Q Okay. Did he ever -- did he ever make himself into kind of a  
14 victim in the first interview?

15 A Yes.

16 Q What did he say?

17 A I think he even called himself a victim at one point.

18 Q Okay, what did he say about that in the first interview?

19 A About -- he talked about this happened before to him, that he  
20 just, basically, put himself in jail on the -- on his prior  
21 case, and that he didn't want to be a victim again, and so he  
22 was careful about how he dealt with Pearl. And we did -- we  
23 did discuss his other case a little bit, too, so.

24 Q Okay. Did he make any statements to you about Pearl's personal  
25 hygiene?

0419a

1 A Yes, he did.

2 Q What did he say about that?

3 A He said he hadn't done her laundry in a long time because she  
4 wasn't taking care of herself, and made comments about her  
5 underwear not -- not being -- not smelling right, and just that  
6 -- like he was disgusted with it and didn't want to -- he said  
7 he had stopped doing her laundry a few years before that.

8 Q As the detective who investigates this, was -- was that -- was  
9 that interesting to you?

10 A Yeah, it was.

11 Q Why is that?

12 A For him to start talking about her underwear like that and to  
13 show interest in something that -- down that line, is -- is  
14 usually an indication of something.

15 Q Okay. Did -- did the detec - or, I'm sorry. Did the defendant  
16 talk to you, at all, about his feelings regarding Pearl's  
17 boyfriend?

18 A Yes.

19 Q In that first interview?

20 A Yes, he did.

21 Q What did he say about him?

22 A I believe he said he -- that she acted -- was acting somewhat  
23 normal, or everything was normal until her boyfriend came  
24 along. And he told me, at one point, that he wanted to break  
25 the guy's neck and that -- he, obviously, wasn't happy that her

0420a

1 boyfriend was in the picture.

2 Q Okay. And was that significant to you, at all, as a detective  
3 who investigates CSC cases?

4 A Sure. Sure, it was.

5 Q Why is that?

6 A Because usually, in my experience, when -- in a -- in a  
7 criminal sexual abuse case like this, if a -- a defendant  
8 doesn't like their -- the defendant doesn't like the victim to  
9 have other relationships with people. They want their victim  
10 alone. They don't want their victim to have consensual sex  
11 with anybody. That really -- every time that happens, that --  
12 it really seems to infuriate the -- the suspect.

13 Q Now, I guess, Detective Maltby, you're not saying that a dad  
14 can't not like a boyfriend.

15 A Exactly.

16 Q Okay. What was the -- 'cause sometimes dads don't like 'em.

17 A Right.

18 Q And for various reasons.

19 A I'm saying the -- in the cases I've had in my experience  
20 before, in cases like this, if there is a -- if there's another  
21 subject involved, a boyfriend or another person that's having  
22 consensual sex with the victim, that every time, every single  
23 time, the suspect hates this. It infuriates them. They hate  
24 the other person, the other male half. And it's -- it's been  
25 like that every single time that I've had a case.

0421a

1 Q Okay. And I think you mentioned that you talked to the  
2 defendant about his prior CSC conviction --

3 A Yes, I did.

4 Q -- is that correct? What did he tell you about that incident?

5 A I believe he told me that -- after he told me he had put  
6 himself in jail, that he just wanted to get it over with, that  
7 he said it stemmed from an incident at a party where he was  
8 drunk and had oral sex with a 13-year-old, I believe.

9 Q Okay. Did you look into that --

10 A Yes, I did.

11 Q -- case? And was that the information that you had received?

12 A No, that wasn't the information that I received, at all.

13 Q Okay.

14 A Oh, I'm sorry, go ahead.

15 Q No, that's okay.

16 A I had -- in fact, I had already had that information when I  
17 asked the defendant. In the first interview, I already knew  
18 exactly what the case was and read through the entire report.  
19 And the description he gave me wasn't even close of the  
20 incident that was documented in the report. The report stated  
21 that he had --

22 MR. CARTER: I'd ob -- hearsay. I don't think he can  
23 state what a report stated.

24 MS. VAN LANGEVELDE: I don't disagree.

25 BY MS. VAN LANGEVELDE:



0422a

1 Q So, Detective Maltby, did you tell the defendant, at all, that  
2 I know that isn't true?

3 A Yeah. No, I didn't. I'm sorry. No.

4 Q And why didn't you tell him that?

5 A Because I didn't want to confront the -- the defendant at that  
6 time.

7 Q Why was that?

8 A Because I was still trying to get information and building a  
9 rapport with him and being his friend.

10 Q Okay. So, based on him -- based on your knowledge, what impact  
11 did that have on you?

12 A I'm sorry, what?

13 Q On the -- the difference -- that you're understanding of the  
14 difference of what the defendant was telling you as opposed to  
15 the difference and what you found in the report, what impact  
16 did that have on you?

17 A It -- it made me believe that he wasn't being truthful with me  
18 and that he wasn't telling me the whole story.

19 Q Okay. So, based on that, what did you do?

20 A I continued to investigate further, and I set up the interview  
21 with Detective Sergeant Jordan.

22 Q During your first interview, did you ask the defendant if Pearl  
23 had ever made any sort of sexual assault allegations before?

24 A During my first interview?

25 Q Yes.

1 A Yes, I did.

2 Q And what was -- what did he say?

3 A He said no.

4 Q Did you ask him, in the first interview, if Pearl had ever done  
5 anything inappropriate with him?

6 A Yes, I did.

7 Q And what did he indicate?

8 A He said no.

9 Q Did the defendant indicate anything, as far as -- in your first  
10 interview. I'm sticking with your first interview. Ever  
11 indicate to you about Pearl seeing him naked? Do you recall  
12 anything like that?

13 A I -- I don't recall. In one of the interviews, I believe he  
14 did. And he said -- talked about her maybe walking in on him  
15 in the shower before. But, I -- in the first interview, I  
16 don't think so.

17 Q Okay. You can't -- did you ask him if he thought people who  
18 did this should get a second chance?

19 A Yes, I did.

20 Q And what did he say?

21 A First, he said no for -- he -- he put it weird. He said no for  
22 people who do this with little kids. But for peop -- older  
23 people or like me, yes, or something like that.

24 Q Now, during your interview, I -- and I'm sticking with the  
25 first interview. I'm sorry. Was the defendant under arrest at

0424a

1           that time?

2   A       No, he was not.

3   Q       Was he free to go?

4   A       Yes, he was.

5   Q       Did you lock the door or anything? Was he in any restraints?

6   A       No. I explained that he was free to go and not under arrest,  
7           he could leave at any time.

8   Q       Did you threaten him, in any way?

9   A       No, I did not.

10   Q      Did you make him say anything to you, in any way?

11   A      No, I did not.

12                   MS. VAN LANGEVELDE: Your Honor, can we approach?

13                   THE COURT: Yes.

14                   MS. VAN LANGEVELDE: Thank you.

15                   (At 11:49 a.m., bench conference)

16                   (At 11:50 a.m., bench conference concluded)

17                   THE COURT: Detective, you can step down.

18                   (At 11:50 a.m., witness stands down)

19                   THE COURT: Ladies and gentlemen, we are going to  
20           take your lunch break. Your lunch is supposed to be here at  
21           noon, so you have a few minutes to walk around, use the  
22           restroom, go outside, go to your car, do what you need to do,  
23           and then have some lunch. And assuming your lunch comes on  
24           time, we'd like to get started about twelve-thirty, twelve-  
25           forty -- twelve-forty, if we can, but we'll do it however we

0425a

1 need to do it, okay?

2 You can leave your notebooks on your chairs if you  
3 want or you can take them with you.

4 Now, remember, this is a recess. So, during the  
5 recess, you may not talk to anybody about the case, you may not  
6 talk to the attorneys, defense, defe -- the defendant, or  
7 anybody else involved in the case about anything at all. If  
8 somebody does try to talk to you about the case, please remind  
9 them that you are a juror, that you are not allowed to discuss  
10 the case. If they continue to talk to you, please report it to  
11 me right away. You are still at the point in the case where  
12 you may not even discuss the case amongst each other. You can  
13 talk about anything else you want.

14 Have a nice lunch, and I'll see you in about 40  
15 minutes.

16 And remember, watch your step.

17 (At 11:51 a.m., jurors exit courtroom)

18 THE COURT: Okay, now, has Mr. Strong gone to go get  
19 Mr. Seratt --

20 MS. VAN LANGEVELDE: He has.

21 THE COURT: -- so that we can look at the video and  
22 make sure we're set to go right after lunch?

23 MS. VAN LANGEVELDE: He has, Your Honor.

24 THE COURT: Is that the only issue for the testimony  
25 after lunch is that the video has been properly redacted?

0426a

1 MS. VAN LANGEVELDE: I think so.

2 MR. CARTER: Yeah, I think so.

3 THE COURT: Okay.

4 MS. VAN LANGEVELDE: I've got --

5 MR. CARTER: What --

6 MS. VAN LANGEVELDE: Go ahead.

7 MR. CARTER: How long are we taking for lunch?

8 THE COURT: Well, for us, it will be about almost an  
9 hour because it's 10 to 12, and I said 20 to. I usually take  
10 40 minutes for lunch --

11 MR. CARTER: Okay.

12 THE COURT: -- is usually what we do.

13 MR. CARTER: All right. How much longer would --  
14 will the -- I -- I'm trying to arrange for witnesses.

15 THE COURT: Sure, I know.

16 MS. VAN LANGEVELDE: Sure. Well, I mean, the second  
17 -- I'm not playing the first interview, but I am --

18 MR. CARTER: And why is that? What's -- how long is  
19 the first interview?

20 MS. VAN LANGEVELDE: The first interview is an hour.  
21 They're both an hour. So, I, basically -- but, I am going -- I  
22 -- I'm going to propose to admit it.

23 MR. CARTER: Well, I'd -- see, I'd object to the  
24 admission without them seeing it.

25 THE COURT: I think that you -- I think he's right.

0427a

1 MS. VAN LANGEVELDE: Okay.

2 THE COURT: Well, let's just narrow this down. What  
3 was the date of the first interview?

4 MS. VAN LANGEVELDE: 4/4/16.

5 THE COURT: Are you -- do you want to -- are you  
6 gonna play that for the jury?

7 MS. VAN LANGEVELDE: I wasn't planning on publishing  
8 it because it's an hour long, and I think Detective Maltby  
9 covered what I --

10 THE COURT: Um-hum.

11 MS. VAN LANGEVELDE: -- was going to ask. So, I  
12 wasn't going to publish it.

13 The one from 5/16 is also an hour long, and that is  
14 the one that I was going to publish. As well as the 10 minute  
15 snippet video from MSP that Detective Maltby took with his cell  
16 phone. So, I have three videos total.

17 THE COURT: Okay.

18 MR. CARTER: I don't think she can authenticate it  
19 without showing it, and I'd object to that. I'm -- either  
20 she's gonna show the video and admit it, or she's not.

21 THE COURT: Well, just love -- this issue's never  
22 come up. I've never had a request to admit something that  
23 wasn't published to the jury.

24 MS. VAN LANGEVELDE: I can -- I guess I can publish  
25 it. I was trying to save time.

0428a

1 THE COURT: No, I appreciate what you're doing. I'm  
2 not saying I'm opposed to it. I'm dealing with the defendant  
3 objection saying --

4 MS. VAN LANGEVELDE: Sure.

5 THE COURT: -- this has never come up before.

6 MR. STRONG: Your Honor, to the best of my knowledge  
7 there's no requirement that we publish the information of this  
8 specific exhibit. It would be like if we had someone describe  
9 a photograph and then enter it into the record; it just becomes  
10 evidence. And, especially, since Detective Maltby has  
11 testified to the nature of it and to the conversation that  
12 happened, I don't think there's any requirement that it be  
13 published to the jury.

14 MR. CARTER: I think there is, and I object to it.

15 THE COURT: Well, what's the basis of your thinking  
16 that? I mean --

17 MR. CARTER: Well, because --

18 THE COURT: -- I don't --

19 MR. CARTER: Because it's gonna be a parallel  
20 statement of him. I mean, it's -- it's -- he -- he's  
21 summarizing a video? If that's what they want to do, then they  
22 don't publish it. But if they want -- if they want the jury to  
23 see, the jury should be able to see it during trial. Perhaps  
24 something will come up through me --

25 THE COURT: Have you --

0429a

1 MR. CARTER: -- watching it, too, that I could sit  
2 there and -- and question him.

3 THE COURT: Have you watched the videos?

4 MR. CARTER: I have watched the videos.

5 THE COURT: I -- nobody has any law to cite on this  
6 issue. As I said, it's never happened before. And I do think  
7 it's -- it's different, Mr. Strong, than a photograph, because  
8 you can look at a photograph and see what it -- what it is. In  
9 this case, if -- to get the -- to get the video in, Mr. --  
10 Detective Maltby needs to be on the stand, he authenticates it,  
11 it comes in, but it affords the defense a right to cross-  
12 examine after the video is shown. And I think that's what Mr.  
13 Carter's saying, is that, if you just give the video --

14 MR. STRONG: Your Honor, I think the defense has the  
15 right to -- like, if we were to introduce a portion of a  
16 writing, the defense has the right to have the entire --

17 THE COURT: Right.

18 MR. STRONG: -- you know, cross-examine on the entire  
19 writing.

20 THE COURT: Right.

21 MR. STRONG: If the defense wants to play the video  
22 and cross-examine on it, he certainly can. That doesn't bar  
23 its admission. It'd be like if we decided to play none of it  
24 but we still admit it, if that makes sense.

25 THE COURT: Well, that's what she's asking to do.



0430a

1 MR. STRONG: Right.

2 THE COURT: She's saying, as to the first video, she  
3 just wants to say -- I guess she'll give it to him and say, can  
4 you authenticate this because I guess you know what color the  
5 DVD cover is, and admit it and just have it sit there.

6 MR. STRONG: Right. And then, if the defense wants  
7 to play it, because he wants the -- the entire thing published  
8 as he has -- would have the right to do, then that's up to him  
9 if he wants to do that. But I don't think we have the  
10 requirement that we have to.

11 MR. CARTER: I would disagree. I think if you're  
12 admitting a -- a recording in, you've got to publish it. I  
13 don't think we just get to admit it, un -- unless it's by  
14 stipulation of the parties. And I'm not stipulating to it.

15 THE COURT: Well, I guess people get to do something  
16 during their lunch hour.

17 At any rate, you're -- you're planning on the second  
18 tape, playing it for an hour?

19 MS. VAN LANGEVELDE: Yes.

20 THE COURT: Right after lunch?

21 MS. VAN LANGEVELDE: Well, yes, but also the -- I'm  
22 sorry, but also this snippet --

23 THE COURT: Oh.

24 MS. VAN LANGEVELDE: -- from the MSP interview.

25 THE COURT: Okay.

0431a

1 MS. VAN LANGEVELDE: So, we -- we've got, basically  
2 three videos.

3 THE COURT: Yeah. Okay, then. And you're -- go  
4 ahead.

5 MR. CARTER: You -- you say that we have stuff to do  
6 for lunch. You want case law or something?

7 THE COURT: Well, I'm just -- I -- I want to -- I'm  
8 gonna make a ruling, and if anybody wants to --

9 MR. CARTER: I -- I'm at a disadvantage. I can't get  
10 onto your Internet.

11 THE COURT: Oh, you --

12 MR. CARTER: Just gonna be --

13 THE COURT: We will give you access. If you want to  
14 come in the back, we'll get you access on a computer. How come  
15 you can't get your laptop 'cause --

16 MR. CARTER: I don't know.

17 THE COURT: Mr. Seratt, can you see why he can't get  
18 on here with his laptop?

19 MR. STRONG: Can give it a go.

20 THE COURT: Please.

21 MS. VAN LANGEVELDE: And I guess --

22 MR. STRONG: Oh, Mr. Seratt. I thought you said  
23 Strong.

24 MS. VAN LANGEVELDE: Oh, I did, too.

25 THE COURT: You what?

0432a

1 MR. STRONG: I thought you said Strong, not Seratt.

2 MR. Seratt: Is that what you're connecting to?

3 THE COURT: No, I saw -- I'm like, well, let's --

4 MR. STRONG: Gotcha.

5 THE COURT: -- this problem solved, 'cause the  
6 defense attorneys should be able to get on their laptops in the  
7 courtroom.

8 MR. CARTER: I don't know what --

9 THE COURT: So, after Detective Maltby, you have  
10 left?

11 MS. VAN LANGEVELDE: Amanda and Detective Roberts.

12 THE COURT: You're not calling Corey Wood?

13 MS. VAN LANGEVELDE: No.

14 THE COURT: Okay. But, you already made a record  
15 that Corey Wood would be available if the defense wanted to.

16 MS. VAN LANGEVELDE: Correct.

17 THE COURT: I recall that now.

18 MS. VAN LANGEVELDE: Yes.

19 THE COURT: So, how long do you think -- I mean, I  
20 realize that -- but how -- how long do you think Amanda  
21 Williford's testimony will be?

22 MS. VAN LANGEVELDE: Not very long.

23 THE COURT: And Detective Roberts, same as -- would  
24 it be similar to Detective Sergeant Jordan?

25 MS. VAN LANGEVELDE: I think so.

0433a

1 THE COURT: Okay.

2 MR. STRONG: Relatively similar. Maybe a touch  
3 longer, but not by much.

4 THE COURT: So, it's feasible you're gonna finish  
5 your case today. Feasible, not, you know -- it's in the realm

6 MR. STRONG: Yes.

7 THE COURT: And that's why Mr. Carter's asking do I  
8 need to have a witness here.

9 MR. CARTER: Yeah, I -- I -- you know, my -- I can  
10 tell you that my witnesses will be very short, and I prefer to  
11 call 'em first thing in the morning.

12 THE COURT: Well, if we're gonna listen -- I mean, it  
13 comes down to my decision. If -- if -- if she's gonna have to  
14 play two hours and 10 minutes of video, we'll be lucky if she  
15 gets done today, and then you just bring yours in in the  
16 morning.

17 MR. CARTER: Right. My -- my issue is my witnesses  
18 are so far away and have transportation issues. So, I'd like  
19 to --

20 THE COURT: I don't have a problem. If we could --  
21 if we could get through the prosecutor's case today, I think  
22 everybody, in terms of timing, would leave here with a smile on  
23 their face.

24 MR. CARTER: Yes. So, we'll get --

25 THE COURT: So, you make sure your witnesses are

0434a

1 here, ready to testify, at eight-thirty tomorrow morning.

2 MR. CARTER: All right.

3 MR. STRONG: Judge, there is one question that I had  
4 And not about that. It's about something separate. It's  
5 something for Mr. Carter that's not on our witness list. But  
6 obviously, the Court stated we didn't have the sufficient  
7 foundation for People's Exhibit 1, as that came from the  
8 stepmother, Sharon. She is present. She is here for the sole  
9 purpose of her admitting People's Exhibit 1 and testifying to  
10 the foundation of that photograph, no other questions.

11 I'm -- and, again, she wasn't on our witness list.  
12 It wasn't anticipated that it would be this situation, which is  
13 why I'm proposing it now and telling Mr. Carter now.

14 THE COURT: What's your position, Mr. Carter?

15 MR. CARTER: Well, I'm sorry, I represent the -- my  
16 client, Mr. Warner, and I'd have to say I object to it.

17 THE COURT: Yeah, I don't know. You're asking to  
18 amend your wit -- wit -- wit -- amend your -- call a witness  
19 that wasn't listed in the middle of trial.

20 MR. STRONG: Right. And it would be the sole -- for  
21 the sole purpose for foundation of an exhibit.

22 THE COURT: Right. But, it's very possible that the  
23 defense strategy was that they're not gonna be able to get this  
24 picture in. And I don't know that there's good cause shown why  
25 that wasn't prop -- you know, that hadn't been arranged ahead

0435a

1 of time.

2 MR. STRONG: Right.

3 THE COURT: So.

4 MR. STRONG: We -- I suppose there's also the  
5 possibility of recalling a witness but -- Mr. Giffen -- but  
6 that's something we can discuss.

7 THE COURT: Yeah. At this point, I don't think there  
8 is a basis to allow you to add a witness in the middle of the  
9 trial. So -- and the defense refuses to stipulate. So, I  
10 would say, at this point, your request is denied.

11 MR. STRONG: Something else for me to look up during  
12 the lunch break.

13 MS. VAN LANGEVELDE: Before we go off the record, Mr.  
14 Seratt is here.

15 THE COURT: Um-hum.

16 MS. VAN LANGEVELDE: Can we take some testimony from  
17 Detective Maltby and, then, also Mr. Seratt, basically about  
18 the edits of the -- the video?

19 THE COURT: Well, let's first see if Mr. Carter has  
20 any issue with the edits.

21 MR. SERATT: The Internet is down. The county's free  
22 Internet thing is down.

23 THE COURT: Okay.

24 MR. SERATT: I would have to -- I can contact Jake or  
25 someone in IT.

0436a

1 THE COURT: So, if he needs to get on a computer, I  
2 need to take him back and let him use our computer.

3 MR. SERATT: Yes.

4 THE COURT: All right, Mr. Carter, do I need to take  
5 testimony from Detective Maltby and Mr. Seratt regarding the  
6 video being modified -- the modified or --

7 MR. CARTER: No.

8 THE COURT: -- redacted, or are you okay with that?

9 MR. CARTER: No, I'm okay with that. I mean, the --  
10 the --

11 THE COURT: So, we have a stipu --

12 MR. CARTER: As long as -- as long as they can assure  
13 me that one issue that I spotted --

14 THE COURT: Which they did.

15 MR. CARTER: -- that they redacted, then, no --

16 MS. VAN LANGEVELDE: Yes.

17 THE COURT: Yeah.

18 MR. CARTER: -- I don't need testimony.

19 THE COURT: So, we can have a stipulation that the  
20 parties have agreed that, whatever that those exhibits get  
21 marked, were redacted and both parties are okay with it.

22 MS. VAN LANGEVELDE: Yes.

23 THE COURT: Okay.

24 MS. VAN LANGEVELDE: And so, I'm gonna mark -- mark,  
25 basically, defendant's first interview as -- I think I'm on 10.

0437a

1 THE COURT: Ten, yup.

2 MS. VAN LANGEVELDE: The second inter -- or, the one  
3 at MSP as 11, and then the -- the one -- the second one, at the  
4 sheriff's department, as -- what am I on?

5 THE COURT: Twelve.

6 MS. VAN LANGEVELDE: Twelve? Thank you.

7 THE COURT: First interview is Exhibit 10, MSP is 11,  
8 second interview is 12.

9 (At 12:03 p.m., PX#10, PX#11 and PX#13 identified)

10 MS. VAN LANGEVELDE: Thank you.

11 THE COURT: All right, Mr. Carter, did you want to  
12 come back and have access to a computer?

13 MR. CARTER: I -- I -- I think, if you're asking me  
14 to look up any case law, I'm gonna need to.

15 THE COURT: Well, I'm just ask -- I -- I mean --

16 MR. CARTER: I -- I just don't think --

17 THE COURT: I don't know what the prosecutor is going  
18 to do. I'm gonna talk to my law clerk. I just said, if you  
19 wanted the ability to do a little research, if you thought that  
20 would be something you would like to do, I'm gonna give you  
21 access.

22 MR. CARTER: I -- I would appreciate, yes.

23 THE COURT: All right. Then, I'm taking Mr. Carter  
24 with me. If anybody's concerned, you can tag along.

25 MR. STRONG: No, I think that's fine, Judge.



0438a

1 MS. VAN LANGEVELDE: We're good. Thank you.

2 (At 12:03 p.m., off the record)

3 (At 12:48 p.m., back on the record)

4 THE COURT: We are back on the record in *People*  
5 *versus Warner*, file number 16-296-FC.

6 Ms. Van Langevelde, where are we at?

7 MS. VAN LANGEVELDE: We are -- I think Mr. Strong did  
8 some research, and he sent some -- are you talking about the

9 THE COURT: DVD issue.

10 MS. VAN LANGEVELDE: Okay. So, Mr. Strong did some  
11 research. And I'll, actually, let him argue it since he was  
12 the one that found it.

13 THE COURT: Did you -- yeah, we don't have it. I  
14 don't have anything.

15 MR. STRONG: I didn't e-mail it do you directly,  
16 Judge. I e-mailed it to your law clerk.

17 THE COURT: When did you get it?

18 LAW CLERK: Twelve (inaudible).

19 THE COURT: What's the -- what, was it a case?

20 LAW CLERK: Yes.

21 THE COURT: Did you send it -- you can't get on, so  
22 it doesn't really help Mr. Carter.

23 Okay, Detective.

24 MR. STRONG: I -- I sent it to Mr. Carter's e-mail,  
25 as well.

0439a

1 THE COURT: Yeah, but -- but he doesn't have e-mail  
2 access, as you know. So, that doesn't help. So, we need to

3 MR. STRONG: Well, I didn't know if his e-mail pushed  
4 to his phone through his carrier, as opposed to just the  
5 Internet. I can get e-mail through my phone if I'm not  
6 connected to --

7 MR. CARTER: No, I -- I got it. I got -- I got his  
8 e-mail, but it doesn't help me. I can't pull up the case or  
9 anything.

10 THE COURT: Right. That doesn't --

11 MR. CARTER: I think that's what you were --

12 THE COURT: That's what I meant, 'cause I can't --  
13 yeah, my -- okay, let's print that out and -- it's very  
14 frustrating. It's nobody's fault in this room. But, it's just  
15 frustrating. I -- you know what I mean? It's like, come on.

16 MR. STRONG: I feel ya, Judge. It's technology.

17 THE COURT: Right, but it's delaying my trial. And I  
18 -- I care about the 13 jurors that are waiting around, and I  
19 care that the -- everybody is getting access to what they need.  
20 And when that doesn't happen, it's frustrating.

21 But, why don't you verbally tell us what you have to  
22 say. We'll copies and we'll let --

23 MR. STRONG: Sure. Your Honor, essentially, I have  
24 found nothing that discusses an -- an order for an exhibit to  
25 be admitted as evidence, that there is a requirement that it's

0440a

1 published. There is a requirement -- and the case I cited is  
2 People versus Kemp, 99 Mich App 485, which dates back to 1980  
3 It says -- and it's, really, just one main quote:

4 "To be admissible, the prosecution must merely lay a  
5 foundation identifying the articles as what they are purported  
6 to be, and showing that they are connected with the crime or  
7 the accused."

8 And, if you think about it, it makes a lot of sense  
9 considering what some exhibits are and how they're admitted.  
10 For example, MRE 703 requires that an evidence is -- the basis  
11 of an evi -- sorry. The basis of an expert's opinion testimony  
12 must be in evidence.

13 THE COURT: Um-hum.

14 MR. STRONG: As this Court knows from the Hallick  
15 (phonetic) trial and, certainly, numerous other trials,  
16 sometimes we admit exhibits that are thousands upon thousands  
17 of pages long of medical records.

18 THE COURT: Um-hum.

19 MR. STRONG: We don't publish those. They're  
20 admitted because it's required. They're admitted so that if  
21 the defense wants to go through them or the jury wants to go  
22 through them, they can, but there's no requirement that we  
23 publish them.

24 THE COURT: Right. But in this case, that's not what  
25 we're -- we're not talking about -- we also admit summaries, as

0441a

1 long as the voluminous documents are available to compare it  
2 the summary.

3 MR. STRONG: Right.

4 THE COURT: But in this case, what is the purpose?  
5 Since the detective has testified as to what occurred in the  
6 interview, what is the purpose for enter -- for admitting the  
7 DVD? That's, I think, goes --

8 MR. STRONG: Sure.

9 THE COURT: -- to whether or not what the -- it has  
10 to be published.

11 MR. STRONG: I'm asking for relevance issue. And I  
12 think what the Court might be leading to is kind of a 403, of  
13 whether or not it's cumulative or unnecessary.

14 And I think here that, given defense counsel's  
15 numerous statements on cross-examination of other witnesses  
16 about was it recorded, was it recorded, we want to show that,  
17 yes, it was recorded. We don't feel the need to play it based  
18 on what Detective Maltby has testified to. But, we want to  
19 show to the jury that, yes, it's recorded. If they want to  
20 watch it, they can.

21 THE COURT: Go ahead, Mr. Carter.

22 MR. CARTER: Frankly, I don't understand their  
23 argument that they can do the founda -- because I can say,  
24 wait, I'm not gonna stipulate to the foundation. They can  
25 watch it and say, yup, that was it, in the end, and we can do

0442a

1 the foundation that way. I just won't stipulate to it. If  
2 they want it in, that's how they'll get it in, then. I mean,  
3 could play that game.

4 The -- the -- the -- I don't understand their  
5 argument, that they can say here's an exhibit. You can go look  
6 at it during deliberations. We have no idea if they'd look at  
7 it during deliberation. We have no control over them, what  
8 they do in deliberations, whether or not they'd view it.

9 If I make comments about what's on there, I don't  
10 know if they're gonna view it. I just don't know. I think  
11 it's unfair, and I -- I think it's just an odd way of doing  
12 something, to admit an exhibit without publishing it.

13 And the People quote rule 106, and that really says  
14 what -- and it supports my position:

15 "When a writing or a recorded statement or part  
16 thereof is introduced..."

17 And what does "introduced" mean? I -- I would say  
18 that it does mean published to the jury by a party.

19 "An adverse party may require the introduction at the  
20 time" -- at the time -- "of any other part or any other  
21 writing or recorded statements which ought to, in  
22 fairness, be considered contempor" -- "contemporaneous  
23 with it."

24 So, that's what I'm saying. Play it all. If it's  
25 gonna come in, play it.

0443a

1 THE COURT: I guess we play it. Do you need both of  
2 them to be in?

3 MR. STRONG: Well, Your Honor --

4 MS. VAN LANGEVELDE: Well, that's the -- I guess  
5 that's the -- the difference is, I guess, we don't have to  
6 admit the first interview. And if we don't admit the first  
7 interview, is Mr. Carter still willing to stipulate to the  
8 redactions and everything under the second, in the -- in the  
9 recording from --

10 THE COURT: Well, he's already -- you've already  
11 stipulated that the second interview recorded could be intro --  
12 can be played with redactions, without any issue.

13 MR. CARTER: Right. I just think those redactions  
14 have to do more with --

15 THE COURT: Yeah.

16 MR. CARTER: -- you know, polygraph exams and things  
17 like that.

18 THE COURT: Right. And so, there's no issue about  
19 playing the MSP snippet and playing the second interview;  
20 correct?

21 MR. CARTER: Correct.

22 THE COURT: So --

23 MR. STRONG: I don't imagine there will be.

24 MR. CARTER: I'd prefer to have it played. I mean,  
25 I'm not trying to keep it out. I -- I --

O444a

1 THE COURT: Have what played?

2 MR. CARTER: Both interviews.

3 THE COURT: Well, she's -- okay.

4 MR. CARTER: Yeah. I mean, I'm not trying to keep  
5 them from not playing it.

6 THE COURT: I understand it.

7 MR. CARTER: I think it should be played.

8 THE COURT: Right now, my understanding was that the  
9 prosecution had, all along, planned to play the 10 minute MSP  
10 interview and interview number two, which, by stipulation, has  
11 been redacted to remove things about the polygraph, et cetera.  
12 That was always gonna happen.

13 The issue right now is the prosecutor had -- was  
14 preparing to ask to inter -- to admit interview number one.  
15 And they're deciding now do we really need to admit it, because  
16 if we admit it, we have to play it. We might not need it; the  
17 officer testified.

18 Certainly, you have the right, then, if you want to  
19 ask the officer about it, to get the video and do it. I mean,  
20 they've never said that you don't have the right.

21 MR. CARTER: Right. I'm --

22 THE COURT: The question is do they want to play the  
23 first interview. That's where we're at right now.

24 MR. STRONG: That's exactly where --

25 MS. VAN LANGEVELDE: That's where --

0445a

1 MR. STRONG: -- we're at, and that's what we're  
2 discussing --

3 THE COURT: Go ahead. Yup.

4 MR. STRONG: All right, I think we're ready to move  
5 forward with Detective Maltby's testimony, Your Honor.

6 THE COURT: Okay. And what do we have queued up? Do  
7 you -- do have 'em both queued up, or are you doin' it at the  
8 same time? Or, I don't know how that works.

9 MS. VAN LANGEVELDE: No, I am going -- the first one  
10 that I'm gonna play is the snippet, the 10 minute snippet, from  
11 MSP.

12 MR. STRONG: And that's People's 11.

13 THE COURT: Okay, so let me get my list. And he was  
14 there. My recollection is he and the other detective were  
15 there; correct?

16 MS. VAN LANGEVELDE: Correct.

17 MR. STRONG: Correct.

18 THE COURT: You're chewing gum.

19 DETECTIVE MALTBY: Not in about 10 seconds I'm not.

20 MS. VAN LANGEVELDE: Well, and I -- and I know that  
21 we're not in front of the jury, but I guess, at this time, I --  
22 I -- I -- is Mr. Carter stipulating to the foundation and  
23 everything, so they can just walk in and play 'em or --

24 MR. CARTER: Sure.

25 THE COURT: Yes.



0446a

1 MS. VAN LANGEVELDE: Okay, perfect.

2 THE COURT: Yup.

3 MS. VAN LANGEVELDE: Okay, so People's 11 and 12 are  
4 admitted?

5 THE COURT: Yup, People's 11 and 12 are admitted.

6 (At 12:56 p.m., PX#11 and PX#12 admitted)

7 MS. VAN LANGEVELDE: Thank you.

8 THE COURT: Now, can we bring the jury in?

9 MS. VAN LANGEVELDE: Yes.

10 THE COURT: Go ahead. You need to get back on the  
11 stand, I think.

12 DETECTIVE MALTBY: What's that?

13 THE COURT: You need to come back on the witness  
14 stand.

15 DETECTIVE MALTBY: Okay.

16 THE COURT: They need to --

17 DETECTIVE MALTBY: Yes, ma'am. I didn't -- I didn't  
18 know if you wanted me to be --

19 THE COURT: Well, that's where you were when they  
20 left. So, I always think it's best that they -- you know. I  
21 don't think they think that you've been sitting there the whole  
22 time, though. There should be fresh water in there. Miss  
23 Ymimoff fills them.

24 MS. VAN LANGEVELDE: It should be -- (inaudible).

25 Do you want me to do blackout? Can you --

0447a

1 MR. STRONG: Don't touch that.

2 MS. VAN LANGEVELDE: I'm not touching anything.

3 THE COURT: Don't touch the clicker.

4 MS. VAN LANGEVELDE: That's why I like doing files  
5 with Adam; he knows how to do the technology.

6 (At 12:57 p.m., jury enters courtroom)

7 THE COURT: Please be seated.

8 All right, Ms. Van Langevelde, if you'd like to  
9 continue.

10 And, of course, Detective, you know you're still  
11 under oath.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Go ahead.

14 MS. VAN LANGEVELDE: Thank you, You Honor.

15 BY MS. VAN LANGEVELDE:

16 Q So, Detective Maltby, I want to talk a little bit, before we  
17 get started, about the MSP special interview.

18 A Yes.

19 Q Now, where were you at when the interview took place with  
20 Detective Sergeant Jordan?

21 A I was in the monitoring room down the hall.

22 Q Okay. And what were you doing in that monitoring room?

23 A Watching his interaction slash interview with the defendant on  
24 the monitor.

25 Q How were you --

0448a

1 A TV monitor similar to this one right here.

2 Q Okay. So, what we're going to be watching is what?

3 A He'd be watching -- at a certain point, I decided to get my  
4 phone out and start recording video of the interview when I see  
5 it takes, you know, a different turn and -- and some things are  
6 being mentioned that don't correspond with my first interview  
7 with the defendant.

8 Q Okay. What -- what did you record? And what -- I guess, what  
9 did -- what did you record with?

10 A With my department-issued cell phone, with the video portion of  
11 it.

12 Q And what did -- and why, at that particular time, did you  
13 record it?

14 A Because I -- I saw the interview taking a turn and saw the  
15 defendant starting to break down a little, and I got the  
16 feeling he was about to change his story, or he was already  
17 starting to change his story and admit some things that he  
18 hadn't admitted to me.

19 Q Okay. Now, you didn't record the entire interview with  
20 Detective Sergeant Jordan; correct?

21 A Correct. I had to pick and choose my moments. Through past  
22 experience with my phone, it fills up quickly with -- the data  
23 fills up quickly, especially with movies. So, I -- I really  
24 had to wait and hope for the best on that.

25 Q Okay. Detective, could you describe what's on the screen for

0449a

1 us, what we're gonna be looking at?

2 A It's the defendant. He's sitting in a chair talking with  
3 Detective Sergeant -- from MSP -- Jordan. And Detective  
4 Sergeant Jordan is -- would be just to the left, or the  
5 defendant's right-hand side. And I'm in the monitoring room  
6 with my phone. And what I'm recording right there, what you're  
7 seeing is a TV screen, a monitor, similar to the one we're all  
8 looking at right now. It's, basically, the same size. And I'm  
9 just holding my phone up, recording.

10 Q Okay, thank you.

11 MS. VAN LANGEVELDE: I'd like to play what's been  
12 previously admitted as People's 11.

13 (At 1:01 p.m., PX#11, audio/visual recording of MSP  
14 interview of the defendant, now begins being played  
15 into the record)

16 (At 1:05 p.m., PX#11, audio/visual recording of MSP  
17 interview of the defendant, paused due to equipment  
18 problems)

19 (At 1:07 p.m., PX#11, audio/visual recording of MSP  
20 interview of the defendant, resumes being played into  
21 the record)

22 (At 1:10 p.m., PX#11, audio/visual recording of MSP  
23 interview of the defendant, paused due to equipment  
24 problems)

25 MS. VAN LANGEVELDE: Okay. All right, so while --

0450a

1 Mr. Strong, there's an error.

2 BY MS. VAN LANGEVELDE:

3 Q While we're trying to figure this out, as it goes on, Detective  
4 Maltby, do you remember what the defendant says next?

5 A I was having trouble hearing where he was at in the -- in the  
6 video with the volume problems.

7 Q Okay. So, as he's talking to Detective Sergeant Jordan and  
8 they're talking about -- I think he's saying -- right before he  
9 says, "Let her go. Let her go," what -- what does he talk  
10 about at that point? Is that when he talks about the  
11 wrestling?

12 A It may be when she's forcing his -- he says that her -- she  
13 forced his hand down her pants and told him that her, well,  
14 pussy was on fire.

15 Q And is that what Detective Jordan wrote out, and that's been  
16 admitted as Exhibit 2?

17 A Yes, I believe so.

18 Q And so, that would've been what we're not seeing right now?

19 A Correct.

20 Q Okay. Is the description of what happened?

21 A Yes.

22 Q Your next interview took place -- well, let me ask you this.  
23 Had you -- when you talked to Detective Sergeant Jordan about  
24 this case, did you talk to him, at all, about the victim?

25 A No.

0451a

1 Q Did you --

2 A No, I did not.

3 Q And, in any of your conversations with Detective Sergeant  
4 Jordan, did you ever describe Pearl as promiscuous or anything  
5 like that?

6 A No, I did not.

7 Q Okay. Did you -- and you were -- I guess in your interviews  
8 with the defendant, did you go along, kind of, with that  
9 storyline?

10 A Yes, I did.

11 Q Why was that?

12 A It's something I do often. I -- I'll try to sexualize the  
13 victim, almost, and look at it from the defendant's point of  
14 view, or make him think I'm looking at it from his point of  
15 view. Like I said earlier, get him -- it gets him talking more  
16 if they think I see things from their side and I'm on their  
17 side and I think, you know, I -- I don't have a problem talking  
18 bad about the victim or saying things that I don't really feel  
19 about the victim, but whatever it takes to get the defendant  
20 talking to me.

21 Q Okay. Now, after the interview with Detective Sergeant Jordan  
22 at MSP, did you have another view -- interview with the  
23 defendant?

24 A Yes, I did.

25 Q And when did that take place?

0452a

1 A It took place on May 16th of 2016.

2 Q And where did that take place?

3 A At the Eaton County Sheriff's Department.

4 Q And was that interview recorded?

5 A Yes, it was.

6 MS. VAN LANGEVELDE: All right, Your Honor, at this  
7 time, I'm going to play what's been previously admitted as  
8 People's Exhibit 12.

9 MR. CARTER: Well, I -- I have an issue. I think we  
10 need to finish with this exhibit. I mean, I stipulated to  
11 foundation and all that, anticipating that the whole thing  
12 would be played.

13 MS. VAN LANGEVELDE: Well, I think we can get one to  
14 play. I think Mr. Strong is working on it. And I think we can  
15 -- I, absolutely, have no problem coming back to it. I'm just  
16 trying to move things along, as we're having technology  
17 problems.

18 THE COURT: Okay. I don't -- I don't think that  
19 there's any prejudice to the defense if we do number -- well,  
20 11 and 12 are in. We do 12, but then we have to come back to  
21 11 --

22 MS. VAN LANGEVELDE: Right.

23 THE COURT: -- and get that finished.

24 MS. VAN LANGEVELDE: Right. And I think -- Mr.  
25 Strong, I know, is working on getting --

0453a

1 THE COURT: Well, you're assuming 12 is gonna play.

2 MS. VAN LANGEVELDE: Well, I am. I'm -- I'm hopeful

3 THE COURT: Okay, I like the optimism.

4 MS. VAN LANGEVELDE: Does Your Honor have any -- this

5 -- just for the record, this interview is about an hour long.

6 Does Your Honor have any objection if I sit during this?

7 THE COURT: No, not at all.

8 MS. VAN LANGEVELDE: Thank you, Your Honor.

9 THE COURT: It might be helpful, if we get it to

10 play, that you turn the overhead lights off, then, so you can

11 see the screen better.

12 MS. VAN LANGEVELDE: Should I do that?

13 THE COURT: At least some of them, yeah.

14 MS. VAN LANGEVELDE: This okay?

15 THE COURT: Yup. Not all the way off in case the

16 jurors want to take notes, but dim it a little bit, or a couple

17 of 'em. I don't really know which ones operate it, but --

18 MS. VAN LANGEVELDE: How's that? Is that okay?

19 THE COURT: Sure.

20 (At 1:17 p.m., PX#12, DVD recording of Detective

21 Maltby's second interview of the defendant, now

22 begins being played into the record)

23 (At 2:19 p.m., PX#12, DVD recording of Detective

24 Maltby's second interview of the defendant,

25 concluded being played into the record)



0454a

1 MS. VAN LANGEVELDE: Your Honor, can we approach?  
2 Can we approach just briefly?

3 THE COURT: Sure.

4 (At 2:19 p.m., bench conference)

5 (At 2:21 p.m., bench conference concluded)

6 MS. VAN LANGEVELDE: And, Your Honor, at this time,  
7 Mr. Strong tried to clean up that first -- the -- that would be  
8 People's Exhibit 11 -- so, we're gonna try and replay that,  
9 which is the snippet from the MSP Department.

10 And I appreciate everyone's patience with the  
11 technology.

12 (At 2:22 p.m., DX#11, audio/visual recording of MSP  
13 interview of the defendant, resumed being played into  
14 the record)

15 MS. VAN LANGEVELDE: I'm gonna turn it up.

16 (At 2:27 p.m., DX#11, audio/visual recording of MSP  
17 interview of the defendant, concluded being played  
18 into the record)

19 MS. VAN LANGEVELDE: Thank you.

20 BY MS. VAN LANGEVELDE:

21 Q Now, Detective Maltby, when -- it was kinda hard to hear,  
22 obviously, because you're recording with your cell phone up to  
23 a TV.

24 A Yup.

25 Q At some point, though, the defendant kinda makes this motion

1 where he kinda uses his arms and brings them over his head.

2 Did you see that --

3 A Yes.

4 Q -- in the tape? Okay. What was he talking about? It was hard  
5 to hear.

6 A When he was wrestling with Pearl, and he was talking about  
7 Pearl flipping him over his back -- or, over her back.

8 Q Oh, Pearl -- him over Pearl's back?

9 A Yeah, I believe so.

10 Q Okay. How -- do you know, if you know -- did you -- how big is  
11 the defendant?

12 A I believe he's, approximately, five-nine, 170 pounds.

13 Q Okay. How -- and now, Pearl is now 17.

14 A Correct.

15 Q Do you have any idea how much she weighs now or how tall she  
16 is?

17 A I believe she's still around -- she was five foot tall around  
18 the time of the alleged in -- incident, approximately 170  
19 pounds.

20 MR. CARTER: I'd have to object. For one, it's not  
21 what the -- the question is. That's not the answer to the  
22 question posed. And before he answers the question, way back  
23 then, I want to know what the question's gonna be in case I  
24 have an objection.

25 THE COURT: Sustained. Please rephrase the question.

1 MS. VAN LANGEVELDE: Okay.

2 BY MS. VAN LANGEVELDE:

3 Q How tall do you think -- you saw Pearl in the courtroom today  
4 yes?

5 A Yes.

6 Q How tall, approximately, would you say Pearl is?

7 A Five foot.

8 Q Okay. Could -- if you had to guess, how big do you think Pearl  
9 is today?

10 A I believe one-ninety.

11 Q Okay. Did you have an opportunity to talk to anybody to find  
12 out how big Pearl -- big Pearl would've been back when she was  
13 13?

14 A Yes, I did.

15 Q Who did you speak with?

16 A Her stepmother.

17 Q Now, during your interview with the defendant, the second one  
18 that we watched, you say quite a bit, Detective Maltby, "Oh, I  
19 understand. I understand why you didn't tell me or why you  
20 told me nothing happened the first time." Do you really  
21 understand that?

22 A No, I don't.

23 Q And -- and why did you say that?

24 A I'm just trying to relate to the person I'm interviewing. I'm  
25 just to get him talkin' and trying to -- I'm -- with this

0457a

1 defendant, I'm just tryin' to get him talkin'. I'm tryin' to  
2 keep him talking. It's not even that maybe I expect a  
3 confession or expect to hear the truth. I just want to keep  
4 him talkin' and get information.

5 Q Okay. Now, the -- the defendant told you about what Pearl was  
6 wearing when he describes as this wrestling incident.

7 A Um-hum.

8 Q Is that correct?

9 A Yes, sorry.

10 Q And he -- and what did he describe Pearl wearing?

11 A Some kind of sweatpants and a -- a night shirt, I believe.

12 Q About the same like -- is that similar to the same as what  
13 Pearl described?

14 A Yes, it was.

15 Q You heard the defendant talk about "my little girl was there."  
16 Do you know who he was talking about?

17 A Sable.

18 Q And he was describing what Sable was during -- doing during  
19 this wrestling incident; is that correct?

20 A I believe so.

21 Q What do you recall him saying Sable was doing?

22 A I believe he's -- actually, I don't remember what he -- I can't  
23 remember, right now --

24 Q Okay.

25 A -- what he said she was doing exactly.

0458a

1 Q Did he give you, when he was talking about this wrestling  
2 incident, an approximate age of what Sable would've been?

3 A Again, I can't remember exactly.

4 Q Okay. Oh, there's a point in the interview where you touch  
5 your binder, Detective Maltby. You kinda do a swipe and say,  
6 "Oh, my DNA is there." Is that, based on your training and  
7 experience, really true?

8 A No, not for -- I -- I try to exaggerate some things to get  
9 people thinking in the back of their minds about DNA or, God,  
10 what if my DNA's on something, what if he's -- what -- what is  
11 he talking about, or what if somebody does have this on video  
12 of something I did. So, it's just kind of to plant a seed in  
13 their head.

14 Q Okay.

15 MS. VAN LANGEVELDE: Just one moment, Your Honor.

16 All right, thank you, Detective Maltby.

17 I don't have any other questions at this time, Your  
18 Honor. Thank you.

19 THE COURT: I think you need a break. Stand up,  
20 stretch, get something to drink, use the restroom. We'll take  
21 a 10 minute break.

22 (At 2:32 p.m., jury exits courtroom)

23 THE COURT: Okay, how about quarter to we come back.  
24 Let everybody stretch and --

25 MR. STRONG: That should be fine.

0459a

1 MS. VAN LANGEVELDE: Thank you, Your Honor.

2 THE COURT: I think the video kinda need -- you need  
3 to get up and to move.

4 MS. VAN LANGEVELDE: Agreed.

5 MR. STRONG: Your Honor, the only thing I wanted to  
6 place on the record, just I've marked on People's Exhibit 12,  
7 which is the DVD of the second interview, the time that we  
8 stopped it, so.

9 THE COURT: Okay.

10 MR. STRONG: On the time stamp, on the DVD case,  
11 itself, has the time. And I told that to Mr. Carter, as well.

12 MR. CARTER: Right. And you're gonna redact --

13 THE COURT: So, then -- so, you're gonna have it  
14 redacted.

15 MS. VAN LANGEVELDE: Yeah.

16 MR. STRONG: Yes, yes.

17 MS. VAN LANGEVELDE: I'll go take it to Mr. Seratt  
18 right now.

19 THE COURT: Yeah, okay, good.

20 MS. VAN LANGEVELDE: Thank you.

21 (At 2:33 p.m., off the record)

22 (At 2:48 p.m., back on the record)

23 THE COURT: We are back on the record in People  
24 versus Warner, file number 16-296-FC.

25 Are we ready to bring the jury back in?

0460a

1 MS. VAN LANGEVELDE: Yes, thank you.

2 THE COURT: All right. And, of course, Detective,  
3 you know you're still under oath.

4 THE WITNESS: Yes, Your Honor. I'm more awake.

5 THE COURT: I think everybody needed a little walk.

6 (At 2:49 p.m., jury enters courtroom)

7 THE COURT: All right, please be seated.

8 Mr. Carter.

9 MR. CARTER: Thank you.

10 CROSS-EXAMINATION

11 BY MR. CARTER:

12 Q Detective Maltby, my name is David Carter. I represent Mr.  
13 Warner in this matter. I'm gonna ask you a series of  
14 questions. If there's a question you don't understand, please  
15 let me know and I'll try to rephrase it; fair enough?

16 A Yes, sir.

17 Q All right. Now, when did you get this case and start  
18 investigating?

19 A In January of 2000 -- January of 2016.

20 Q And what was your first reaction, or what was your first steps  
21 when you got this case?

22 A To review the round sheet that I'd received. It's a sheet from  
23 CPS that was handed to me by my boss.

24 Q Just kind -- kinda getcha up to speed of the allegations and  
25 what is being alleged?

0461a

1 A Correct. The -- the allegations.

2 Q Okay.

3 A It's a sheet that has --

4 Q And then, what did you do from that point?

5 A I contacted the CPS officer that got assigned to the case.

6 Q And when you contacted them, what was the purpose of that?

7 A To see if there was anymore information that was not on the --  
8 on the allegation sheet that they knew.

9 Q Then, do you know when you contacted the CPS individual?

10 A I don't know the exact date, no. I think it was maybe the same  
11 day or the day after I received the -- the allegation sheet.

12 Q Very shortly thereafter.

13 A Yes.

14 Q And then, what did you do from that point?

15 A After we -- after I talked to the CPS agent, I -- we set up a  
16 date to go talk to Pearl at the high school.

17 Q Okay. And you did that?

18 A Yes.

19 Q And then after the -- do you know how far, from the time you  
20 got the case, then you went and talked to Pearl at the high  
21 school?

22 A Maybe a couple weeks, I think, or a week. I don't know for  
23 sure, though. I would have to look at the dates.

24 Q So, when -- when you interviewed Peril -- Pearl at the high  
25 school, are we still in January, or are we into February at



1 this point?

2 A I would have to look at my report to answer that accurately.

3 Q All right. And -- and I -- from after your -- you talked with  
4 Pearl, what did you do from that point?

5 A That is when the CPS -- they had switched CPS officers. The  
6 case was transferred. And I went and retrieved the old report  
7 from the defendant's previous conviction.

8 Q Okay. And what else? From after you pulled those, what did  
9 you do?

10 A Then, we -- I believe we, then, talked to Pearl's father and  
11 stepmother.

12 Q Okay. And that was the gentleman who testified today?

13 A Yes, sir.

14 Q Okay. And then, after you interviewed them, what did you do?

15 A I believe we went and talked to the defendant's wife, and I did  
16 an interview with his daughter, Sable.

17 Q Sable?

18 A Yes.

19 Q And the interview with Mr. Warner's wife, Bridget, Pearl's  
20 mom --

21 A Yes.

22 Q -- where was that done at?

23 A In the living room of their house.

24 Q Okay. Do you know when that occurred?

25 A For the exact date, I would have to --

0463a

- 1 Q Not an exact date.
- 2 A -- look at my report.
- 3 Q Just kind of around.
- 4 A No, I would have to look at my report.
- 5 Q All right. And after that, what did you do?
- 6 A Then, I believe we spoke with the defendant for the first time
- 7 Q All right.
- 8 A Or, I did.
- 9 Q And when was that, the first time you talked --
- 10 A That was April 4th.
- 11 Q I'm sorry?
- 12 A April 4th, 2016.
- 13 Q Okay. April 4th of 2016?
- 14 A Yes.
- 15 Q Now, if -- if that kinda helps you put a time line, was the
- 16 talking to -- Bridget and Sable, was it, that you talked to?
- 17 A Yes.
- 18 Q Was that within a couple weeks before that, a month before?
- 19 A It was probably in -- probably, if I had to say, in March
- 20 sometime.
- 21 Q Okay. In the middle of March?
- 22 A (No verbal response).
- 23 Q Don't know?
- 24 A I would have -- I would have to look at my report for the exact
- 25 date.

1 Q And how did you -- how did you talk -- how did you arrange the  
2 -- the first talk with Mr. Warner?

3 A I believe by a phone call.

4 Q Okay, you called him. He had his -- his phone -- you had his  
5 phone number?

6 A Yes.

7 Q He called you. Do you say, hey, I'd like you to come down and  
8 talk? How did that go?

9 A I believe I asked him to come down to the sheriff's department  
10 for an interview.

11 Q Okay. And he agreed to that?

12 A Yes.

13 Q Did he -- did he -- was he on time? Did he come at the right  
14 time? Did he postpone it, at any time?

15 A No, not that one.

16 Q Okay. He was very cooperative; correct?

17 A Yes. Yes, he was.

18 Q And do you know what time of day that occurred at?

19 A The first interview?

20 Q Yes.

21 A No, I don't.

22 Q Okay.

23 A I would -- I would have to review the --

24 Q Do you know how long that interview took?

25 A I think that was, approximately, an hour.

0465a

1 Q Okay. Do you know if that one was recorded?

2 A Yes, it was.

3 Q Okay. Now, how did the interview start off?

4 A With?

5 Q The very first interview --

6 A The -- the very first interview?

7 Q -- with Mr. Warner.

8 A I believe I told Mr. Warner that he's not under arrest --

9 Q Okay.

10 A -- free to go at any time, door's not locked. He could -- he  
11 was free to go.

12 Q Did you tell him why you were there to interview him?

13 A Yeah. He already knew the allegations.

14 Q Well, you said that he already knew the allegations. Did he  
15 knew -- did he know that some allegations were made, or did he  
16 know the details of the allegations that were made?

17 A If I remember right, he seemed to know the allegations --

18 Q Well, what makes you --

19 A -- what they were exactly.

20 Q You say if you seem to know -- you seem to know that he knew  
21 the allegations. Tell me, how -- how did you come to that  
22 conclusion?

23 A Because I believe he told me what the allegations were, and he  
24 knew them.

25 Q Okay. So, you -- so, it's your testimony that he told you

1 that --

2 A Without -- without listening, though, to the --

3 Q The --

4 A You know, to the interview, exactly, I would --

5 Q Well, you'll have to wait until I finish. So, it's your  
6 testimony that Mr. Warner told you that, oh, yeah, Pearl -- and  
7 I'm gonna summarize. Pearl made an allegations (sic) that I  
8 was in her room and I attempted to have sexual intercourse with  
9 her?

10 A No, that's not my testimony.

11 Q Okay. So, that's why I'm trying to get at. So, what details  
12 did he know about what Pearl was saying?

13 A I don't know.

14 Q Okay. So, you're just speculating that he knew about the  
15 details of the allegations.

16 A No, I'm say -- I'm saying I don't know. I can't answer that  
17 question.

18 Q Okay, so you -- so, you don't know if he knew them or not. He  
19 just knows that he's being investigated; correct?

20 A I -- I don't know, sitting up here at this time, what -- what  
21 he knew.

22 Q Well, did you ever ask him if he was ever in her room and  
23 pushed her on the bed and tried to have intercourse with her?

24 A I asked him if he had ever done anything approp --  
25 inappropriate with her sexually.

0467a

1 Q What -- a very general question; right?

2 A Yes.

3 Q You never indicated to him the actual allegations of what --  
4 what Pearl --

5 A Not at that --

6 Q -- was saying; correct?

7 A Not at that point, no.

8 Q No, 'cause you're trying to ask general questions. Why would  
9 you ask general questions?

10 A Because I don't want to give specific information on -- in a  
11 beginning of an interview.

12 Q Okay. So, you don't want to give specific things that they may  
13 catch up on -- catch on and say some things; correct?

14 A Correct.

15 Q So, you're trying to get them to be open and just reveal  
16 whatever happened, however, without being, for lack of a better  
17 word, tainted; correct?

18 A Just trying to get information, trying to get the truth.

19 Q Okay. And did you use the buddy system then, too?

20 A Yes.

21 Q And that's where you try to get a rapport with him, and you  
22 talk with him; correct?

23 A Yes.

24 Q Did you tell him that -- that it's -- that would help you if he  
25 told you what happened?

0468a

1 A I -- I don't know the exact wording I use every time.

2 Q And that -- and what was his position during that first  
3 interview about any sexual assaults?

4 A He said -- about any sexual assaults with Pearl?

5 Q With Pearl, yes.

6 A He denied everything and said nothing inappropriate had ever  
7 happened.

8 Q Okay. And this took for over an hour?

9 A I think -- I think the interview lasted, approximately, an  
10 hour.

11 Q Okay. And during that whole interview, he kept denying  
12 everything; correct?

13 A Yes, he did.

14 Q How did the interview end?

15 A I asked him if he would be willing to go in for another  
16 interview to meet with Detective Sergeant Jordan.

17 Q And what was the purpose of that?

18 A To try to obtain the truth, gain more information.

19 Q Okay, so when you say "to try to obtain the truth," because you  
20 already had a position that Mr. Damon (sic) told you wasn't  
21 true; right?

22 A That's correct.

23 Q That was your position.

24 A That's correct.

25 Q Right. 'Cause you took the position that Pearl was telling the

0469a

1 truth; correct?

2 A I -- I -- yes, I had at that point. I was --

3 Q So, every time that --

4 A -- leaning that way.

5 Q -- Mr. Warner was denying it, you're still searching for  
6 something more because you believe Pearl; correct?

7 A Well, I'm searching for the truth or inconsistencies in the  
8 story.

9 Q Okay. Well, what -- if Mr. Warner was denying everything in  
10 the very first interview, what was inconsistent during his  
11 interview?

12 A When he explained his prior CSC conviction.

13 Q Okay. Why would that be inconsistent?

14 A Because he -- he'd told -- he explained the details of the --  
15 of his -- of the incident that had occurred --

16 Q And how --

17 A -- that his conviction was from.

18 Q And how long ago was that conviction?

19 A I -- from the date of that interview, I think it was 14, 15  
20 years.

21 Q Okay. And did you ever -- well, prior to that interview, that  
22 first interview with Mr. Warner, did you ever interview that  
23 victim?

24 A No.

25 Q Okay, so you don't know if there was an inconsistency; right?



0470a

1 A Inconsistency?

2 Q Well, you said that he had his -- during that first interview  
3 there was inconsistencies about a pri --

4 A His inconsistencies with police reports, which --

5 Q Okay.

6 A -- he was convicted of.

7 Q But, you did not interview the victim; correct?

8 A No, I did not.

9 Q Okay, so you're just saying that what he claims happened is  
10 different than what a third party wrote in an interview -- I  
11 mean, in a police report; correct?

12 A Correct.

13 Q Okay, so let's move on to that. What other inconsistencies did  
14 he have at that -- with this incident?

15 A That -- that was the biggest one.

16 Q Okay. But -- but that isn't this inc -- incident -- this  
17 incident or the two that Pearl claims happened. What  
18 inconsistencies did he have regarding that story, in that first  
19 interview?

20 A It was more in the -- in the first interview, just more his  
21 demeanor, his actions.

22 Q Okay. So, really, the -- is it fair to say the only  
23 inconsistencies was that Pearl said one thing and he said  
24 another?

25 A That would be another one, yes.

0471a

1 Q So, when you asked him if he would interview with Mr. Jordan,  
2 did you tell him why you wanted to -- him to interview with  
3 him?

4 A Yes.

5 Q And what was the reason?

6 A Do you want --

7 Q Yeah, what was the reason why you wanted him to interview with  
8 Mr. Jordan?

9 MS. VAN LANGEVELDE: Can we -- actually --

10 MR. CARTER: Oh.

11 MS. VAN LANGEVELDE: -- can we approach?

12 THE WITNESS: Yeah, Your Honor, I --

13 (At 3:01 p.m., bench conference)

14 (At 3:02 p.m., bench conference concluded)

15 BY MR. CARTER:

16 Q The interview with Mr. Jordan, let me move on to that  
17 interview. And we saw the -- the clip of that interview. Did  
18 you stay during that whole interview?

19 A Yes.

20 Q And that interview, if -- if I recall correctly, you don't have  
21 it -- the whole thing on your phone; right?

22 A That -- that's correct.

23 Q And because of your data on your phone and what have you;  
24 correct?

25 A Correct.

1 Q And this -- this piece of paper was actually -- came from that  
2 interview; correct?

3 A I believe so, yes.

4 Q Exhibit 2 --

5 A Okay.

6 Q -- correct?

7 A Yes.

8 Q All right. And this was where Mr. Jordan was writing things  
9 down; correct?

10 A Yes.

11 Q All right. And this is when Mr. Warner stated that Pearl put  
12 his hands down her pajama pants, she told him that she was  
13 horny, and that her pussy was on fire. He stated that all four  
14 of his fingers touched her vagina and stated it was wet. He  
15 could feel the moisture; correct?

16 A Correct.

17 Q Now, you watched through that -- that interview. He, actually,  
18 didn't say that all four fingers went in her, did he?

19 A Not in that, no, he did not.

20 Q And as a matter of fact, that seemed to be at the conclusion of  
21 the interview; correct?

22 A No.

23 Q No?

24 A No.

25 Q Okay. So, that -- that 10 minute clip, when he's, pretty much,

0473a

1 done and looking at his phone and saying "I got to get out of  
2 here," that wasn't at the end of the interview?

3 A No.

4 Q All right. So, somehow the stuff that isn't on video is where  
5 he's giving this information that all four of his fingers went  
6 into her vagina, huh? Is that right?

7 A The number of fingers, yes.

8 Q Okay. Now, how did -- what was the circumstances behind this  
9 incident, as far as how Mr. Warner was -- was describing it?

10 A Circumstances?

11 Q Yeah. Let me ask that a little bit better. What were the --  
12 what was Pearl and Mr. Warner doing prior to, or at the time --  
13 shortly before this happened?

14 A As far as the interview goes?

15 Q No. As far as this incident, what were they doing prior to,  
16 what Mr. Warner claims, Pearl put his hands down her pants?

17 A He claimed they were wrestling.

18 Q Okay, they were wrestling.

19 A Yes.

20 Q And he was -- and who else was in the house at that point in  
21 time?

22 A Baby Sable.

23 Q Baby Sable. Now, Pearl says they were never wrestling;  
24 correct?

25 A Correct.

0474a

1 Q And Pearl also says that they're -- she had two incidences.  
2 One was in her bedroom and the other was in the kitchen;  
3 corect?

4 A Yes.

5 Q And the one in the kitchen was rather quick, while she went in  
6 there to get a drink or something after she's saying goodnight  
7 to Mr. Warner; correct?

8 A Yes, correct.

9 Q No wrestling involved, at all.

10 A Nope.

11 Q Sable wasn't around, at all.

12 A Correct.

13 Q Okay. So, that's a huge inconsistency, isn't it, those two  
14 stories?

15 A Yes.

16 Q Matter of fact, appears to be two different incidences.

17 A Two different stories.

18 Q Okay. Well, there's really nothing similar about 'em at all,  
19 is there?

20 A Between Mr. Warner's and -- and --

21 Q And Pearl's.

22 A -- Pearl's?

23 Q Of those two incidences.

24 A Clothing.

25 Q Clothing, but she wore pajamas all the time, sweatpants all the

0475a

- 1 time --
- 2 A You asked -- asked me what --
- 3 Q -- she testified to; correct?
- 4 A -- what the similarities were.
- 5 Q Okay.
- 6 A And the clothing, hands down the pants.
- 7 Q Okay. One was through the front, and the other was through --
- 8 from behind; right?
- 9 A Yeah, hands -- hands in the pants, the clothing, that would --
- 10 Q Okay.
- 11 A -- be my answer.
- 12 Q Right. And I said one was through the front, and the other was
- 13 -- Pearl's story was from behind. Mr. Warner was from the
- 14 front; correct?
- 15 A I believe so, yes.
- 16 Q And Mr. Warner indicated that it was Pearl who did it -- who
- 17 did it while they were wrestling; correct?
- 18 A Yes.
- 19 Q And Pearl said, no, she was just in the bedroom, nobody was
- 20 around, it happened, I stood there, I didn't say anything, I
- 21 just went into the kitchen, got my drink of water, and went in
- 22 the -- went into the bedroom; correct?
- 23 A Pearl said one -- one incident happened on the bed, in the
- 24 bedroom, and the other incident happened in the dining room
- 25 slash living room.

0476a

1 Q Okay. I -- I don't know if you answered my question. But,  
2 didn't she testify --

3 A Your question was kinda --

4 Q Pardon?

5 A Your question was -- I'm sorry --

6 Q Okay.

7 A -- if you'd rephrase your question, 'cause you kinda combined  
8 'em both, I think.

9 Q Oh, I didn't think I did. I thought I said that, according to  
10 Pearl, it happened in the -- in the dining room, it was rather  
11 quick, she -- he came up behind her, stuck her -- his hand down  
12 her pants, she stood there, didn't say anything, just went  
13 about her business, got her drink of water and went into the  
14 bedroom; isn't that correct?

15 A Yes, one of 'em.

16 Q Okay. Which is totally different than what Mr. Warner  
17 described that he said where something may have happened; isn't  
18 that correct?

19 A Yes.

20 Q You indicated that Mr. Warner was indicating, to you, that he  
21 could tell things were changing because -- with Pearl because  
22 of a boyfriend; isn't that correct?

23 A Yes.

24 Q And you took that as trying to de -- deflect his relationship  
25 with her, with Pearl, to a boyfriend; isn't that correct?

1 A Yes.

2 Q All right. But Pearl really didn't testify that she had a  
3 sexual relationship with Mr. Warner; isn't that correct?

4 A A sexual relationship?

5 Q Right.

6 A Just -- no, just the two incidents.

7 Q Just the two incidents.

8 A Correct.

9 Q Okay. So, it wasn't as if they had a sexual relationship and  
10 Mr. Warner was jealous of this guy coming around because there  
11 was really not a relationship there, was there?

12 A No. I -- I'm just -- when I answered that, that was based on  
13 my experience with previous suspects.

14 Q Yeah, but the long time sexual relationships with somebody they  
15 are --

16 A All different types of relationships.

17 Q Well, when he talked to you about his concerns about this  
18 boyfriend, did you look into that, at all?

19 A Yes, I did.

20 Q And what did you find out?

21 A I didn't find out much information about the boyfriend. I  
22 didn't do a -- a thorough investigation into the boyfriend. I  
23 looked up his name, I believe, and his date of birth one day.

24 Q Did Mr. Warner indicate to you what his concerns were about the  
25 boyfriend?



0478a

1 A I don't re -- I don't recall what they were.

2 Q Okay.

3 A He said he was -- that he didn't like it because she had  
4 changed after the boyfriend started coming around.

5 Q Did he indicate to you that he was concerned because of the  
6 great age difference?

7 MS. VAN LANGEVELDE: Well, Your Honor, I'm gonna  
8 object. I -- first of all, I think it's hearsay. And second  
9 of all, I don't think it's relevant. But I'm -- it's hearsay  
10 because he's not her deponent. He's asking what his own client  
11 said. He can't do that.

12 MR. CARTER: I don't think it's hearsay 'cause I'm  
13 not offering it for the truth.

14 THE COURT: I -- I agree, I don't -- I don't think  
15 that it's hearsay. So, overruled.

16 MR. CARTER: Thank you.

17 BY MR. CARTER:

18 Q Did -- did he -- did he give you concerns about the age  
19 difference between Pearl and him?

20 A He may have.

21 Q Did he give you -- give you -- did he indicate some concerns  
22 about some postings or pictures or things that he was sending?

23 A I believe he did, yes.

24 Q And you didn't -- and did you follow up with any of that?

25 A No, I did not.

0479a

1 Q When -- when you indi -- well, strike that. Did -- did Mr.  
2 Warner ever indicate to you that anything inappropriate  
3 happened to Pearl in her bedroom, at all?

4 A No.

5 Q Okay. And the only other incident that he'd indicated that ma  
6 have been inappropriate was this wrestling thing with Sable  
7 present in the living room area; correct?

8 A Correct.

9 Q And it was his position that, while they were wrestling, Pearl  
10 instigated that; correct?

11 A Correct.

12 Q Okay. Did you ever ask him any specifics about coming up  
13 behind Pearl while she was in the living room and sticking his  
14 hands down her pants?

15 A I asked him if there was a -- I -- I didn't get very specific.  
16 I asked him if there was another incident in the living room or  
17 dining room area.

18 Q Okay, and I can appreciate that. Maybe you didn't want to  
19 answer my question directly, but I'm asking specifically. Did  
20 you ask him specifically if, in fact, he walked up behind Pearl  
21 and stuck his hand down her pants while she was in the living  
22 room?

23 A No, not specifically --

24 Q Okay, right.

25 A -- I don't think.

0480a

1 Q You just were asking in general; right?

2 A Yes.

3 Q And he denied anything else happened; correct?

4 A Correct.

5 Q And he denied anything happened in the bedroom; correct?

6 A Yes, correct.

7 MR. CARTER: One moment, Your Honor.

8 THE COURT: Sure.

9 MR. CARTER: I have nothing further.

10 THE COURT: Redirect?

11 MS. VAN LANGEVELDE: Just a couple things.

12 REDIRECT EXAMINATION

13 BY MS. VAN LANGEVELDE:

14 Q Detective Maltby, I think you were asked on cross whether the  
15 defendant kept the first appointment with you, and you said,  
16 "Yes, the first one."

17 A Yes.

18 Q Was there a time when Mr. Warner missed an appointment?

19 A Yes, there was, the second appointment with Detective Sergeant  
20 Jordan.

21 Q So, when was that actually supposed to be?

22 A That was actually supposed to be on May 5th -- or, I'm sorry,  
23 May 4th.

24 Q And when did it take place?

25 A May 5th.

0481a

1 Q And why was it that you were able to get in with Detective  
2 Jordan on May 5th?

3 A Because I anticipated the defendant calling and making an  
4 excuse or not showing up, so I had booked the next day, also.

5 Q Okay. And did you talk to him about missing the appointment  
6 -- on the 4th?

7 A Yes.

8 Q And what did he tell you?

9 A He booked -- I think he told me there was a mix-up. He thought  
10 it -- he was supposed to come in on the 5th, and so he --  
11 something about his mom baby-sittin' or something about the  
12 kids, he wasn't gonna be able to come in on the -- on the 4th,  
13 and I said, "Well, there's a time available on the 5th, so  
14 you're in luck." And he came in the next day.

15 Q Okay. Any other time when -- when he didn't come in or missed  
16 the appointment with you?

17 A No, I don't believe so.

18 Q Now -- and I failed to ask you this. You actually had how many  
19 interviews with Pearl?

20 A Two.

21 Q When was the second interview with Pearl?

22 A That was -- I'd have to look at the report for the exact date.

23 MR. CARTER: I -- I guess I'd --

24 THE WITNESS: I think it was --

25 MR. CARTER: -- I'd object. That goes beyond cross.

0482a

1 MS. VAN LANGEVELDE: I can recall him --

2 THE COURT: Pardon me?

3 MS. VAN LANGEVELDE: -- as a witness. I guess I  
4 could have him step down and recall him as a witness but --

5 THE COURT: Go ahead.

6 MR. CARTER: Go ahead.

7 THE COURT: Go ahead.

8 MS. VAN LANGEVELDE: Thank you.

9 BY MS. VAN LANGEVELDE:

10 Q Detective Maltby, would your report refresh your memory as to  
11 when the second interview with Pearl was?

12 A Yes. I believe it might've been the 26th, but I would have to  
13 look for sure.

14 Q Okay.

15 MS. VAN LANGEVELDE: May I approach the witness?

16 THE COURT: Sure.

17 BY MS. VAN LANGEVELDE:

18 Q Detective Maltby, if you could look at that and refresh your  
19 memory, and look at me when you're done.

20 A It was on May 17th.

21 Q Okay. What year?

22 A 2016.

23 Q And where did that second interview take place?

24 A It took place at the Hastings High School.

25 Q And I don't want to know what Pearl said, but did you have an

0483a

1 opportunity to hear her testimony?

2 A Yes, I did.

3 Q And what did -- was there any big inconsistencies from the time  
4 that you talked to her again on the 17th to today's date?

5 A No, there was not.

6 Q Thank you.

7 MS. VAN LANGEVELDE: I don't have any other  
8 questions. Oh, may -- I'm sorry. Oh, okay. Okay.

9 BY MS. VAN LANGEVELDE:

10 Q And did you ask Pearl -- I think you talked a lot about -- in  
11 your interview, the second interview with the defendant, you  
12 were gonna ask Pearl about this wrestling incident. Did you  
13 ask her about the wrestling incident?

14 A Yes, I did.

15 MS. VAN LANGEVELDE: I don't have any other  
16 questions. Thank you.

17 THE COURT: Anything, Mr. Carter?

18 MR. CARTER: Shortly.

19 THE COURT: Um-hum.

20 RE-CROSS-EXAMINATION

21 BY MR. CARTER:

22 Q And she denied the wrestling incident; right?

23 A Yes.

24 Q She said that no sexual assault ever occurred during a  
25 wrestling incident; correct?

1 A That's correct.

2 Q Yeah.

3 MR. CARTER: Nothing further.

4 THE COURT: Thank you, Detective. You may step down.

5 (At 3:17 p.m., witness stands down)

6 THE COURT: Call your next witness.

7 MS. VAN LANGEVELDE: Thank you. My next witness is  
8 Amanda Williford, Your Honor, if I could step out and go get  
9 her.

10 THE COURT: Okay.

11 Please step right up here. There's a little step  
12 before you get to the witness box, okay?

13 Please raise your right hand. Do you swear to tell  
14 the truth, the whole truth, and nothing but the truth, so help  
15 you God?

16 MS. WILLIFORD: I do.

17 THE COURT: Please have a seat. State your full  
18 name.

19 THE WITNESS: Amanda Sue Williford.

20 THE COURT: And how do you spell your last name?

21 THE WITNESS: W-i-l-l-i-f-o-r-d.

22 THE COURT: Okay. Go ahead, Miss Van Langevelde.

23 MS. VAN LANGEVELDE: Thank you, Your Honor. Just one  
24 moment. Sorry. I've got a lot of stuff.

25

0485a

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AMANDA SUE WILLIFORD

at 3:18 p.m., sworn as a witness, testified as follows:

DIRECT EXAMINATION

BY MS. VAN LANGEVELDE:

Q So, I'm -- Amanda -- Miss Williford, what is -- that is your current last name; is that correct?

A Yes, ma'am.

Q Did you have a prior last name?

A Ratliff.

Q Can you spell that for us?

A R-a-t-l-i-f-f.

Q And make sure that you speak up because Ms. Bond has to type what you say, okay?

A Okay.

Q Thank you, ma'am. Do you know the defendant, Mr. Warner?

A Yes.

Q And can you tell me how you know him?

A Family of a friend.

Q How long have you known Mr. Warner?

A Twenty years.

Q Okay. Can you tell me just briefly about, I guess, family -- how -- how you guys know each other?

A His mom is related to my uncle's wife.

Q Okay. And so, have you known him since you were how old?

A I was little.



0486a

1 Q Okay. Under 12?

2 A Yeah.

3 Q Okay. How did you guys meet?

4 A Through the family.

5 Q And do you see him in the -- do you see Damon Warner in the  
6 courtroom today?

7 A Yes, ma'am.

8 Q Can you just point him out and describe what he's wearing?

9 A Gray shirt.

10 Q And when is your birthday, ma'am?

11 A 12/21/86.

12 Q Now, there was a criminal investigation back in 2000. Do you  
13 remember that?

14 A Yes.

15 Q And you were the subject of that criminal investigation. You  
16 were the victim?

17 A Yes, ma'am.

18 Q Okay. Did you and the defendant ever have sexual intercourse?

19 A No, ma'am.

20 Q Do you recall having an interview with de -- with a Detective  
21 Aaron Roberts?

22 A No, ma'am.

23 Q You don't recall that?

24 A No. My mom refused it.

25 Q If I showed you a police report with an interview, would that

0487a

1 refresh your memory?

2 A No.

3 Q So, you -- it wouldn't refresh your memory?

4 A I -- I wouldn't remember it 'cause I never did it.

5 Q So, it's your testimony here, today, that Detective Aaron  
6 Roberts never met with you?

7 A Yup, my mom refused it.

8 Q Never met with you with a Mike Karo (phonetic), and then --

9 A No.

10 Q -- Mike Karo stepped out of the room?

11 A Nope.

12 Q So, it's your testimony here, today, you never told Detective  
13 Roberts that the first time that you ever had sexual  
14 intercourse was with the defendant, Damon Warner?

15 A Yup.

16 Q You never told Detective Roberts that the first time you had  
17 sexual intercourse with Damon Warner was on November 7, 1999  
18 and you were 12?

19 A Nope.

20 Q And that it was special because you lost your virginity. You  
21 never told Detective Roberts that?

22 A Nope.

23 Q So, you never told -- so, it's your testimony that you never  
24 told Detective Roberts that, when you were at Damon's residence  
25 on 430 South Byron, Number 41, that you had sexual intercourse

1 with him after kissing?

2 A Nope.

3 Q And that you never told Detective Roberts that they were on  
4 Damon -- that you and Mr. Warner were on his bed, that he was  
5 on top of you, and that you were facing each other?

6 A Nope.

7 Q So, it's your testimony that you never told Detective Roberts  
8 that he didn't force himself on you and that you never asked  
9 him to stop?

10 A No.

11 Q You don't want to be here today, do you?

12 A No, I don't. I told you that on the phone.

13 Q So, the -- Mr. Warner is a close family friend?

14 A Yup.

15 Q So, it's your testimony here, today, that, after the first time  
16 that you had sex, you had sex with Mr. Warner about two times a  
17 week?

18 A Nope.

19 Q Never told Detective Roberts that --

20 A I was never alone with him.

21 Q Okay, well, let me ask my questions. It's your testimony here,  
22 today, that you never told Detective Roberts that you had sex  
23 in your living room, at your parents' home, after they went to  
24 bed?

25 A Nope.

0489a

1 Q It's your testimony here, today, that you usually slept on a  
2 couch afterwards and that he slept on the loveseat, every time  
3 that you had sex with Mr. Warner he stayed over?

4 A Nope.

5 Q You never -- you never told Detective Roberts that?

6 A Nope.

7 Q So, it's your testimony you never told Detective Roberts --

8 MR. CARTER: I -- I guess I'd have to object at this  
9 point in time.

10 THE COURT: Yeah.

11 MR. CARTER: She has testified that she has never  
12 talked --

13 THE COURT: Right.

14 MR. CARTER: -- or discussed anything with Detective  
15 Roberts. I guess we could go through a whole litany of -- of  
16 things and -- and claim so you never said this, you never said  
17 this. I mean, she said she'd never talked to him.

18 MS. VAN LANGEVELDE: Your Honor, it's admissible  
19 under prior inconsistent statements. And I have Detective  
20 Roberts coming in, and he can testify to her prior inconsistent  
21 statements.

22 THE COURT: Well, let's see about that, okay.

23 I think that -- Ms. Bond, would you take the jury out  
24 for just a few minutes, please?

25 Ladies and gentlemen, just a brief break. You can

0490a

1 leave your books right on your chairs. We'll have ya back in  
2 here in a -- in a minute. Watch your step.

3 (At 3:24 p.m., jury exits courtroom)

4 THE COURT: Okay, the jury has left. I just don't  
5 like to ever take a chance of saying something in front of  
6 them.

7 And this is just a little bit unique, because it's  
8 not where a witness has been interviewed or has otherwise given  
9 a statement in the case-in-chief and now they're taking the  
10 stand.

11 And so, you're using 6.13; correct?

12 MS. VAN LANGEVELDE: Correct, Your Honor.

13 THE COURT: Is what you're relying on. But, you're  
14 relying on this witness for 404B; correct?

15 MS. VAN LANGEVELDE: No, it's not 404B. It's 768 --

16 THE COURT: I mean --

17 MS. VAN LANGEVELDE: Yeah, yes.

18 THE COURT: -- yeah, yeah. I'm sorry.

19 MS. VAN LANGEVELDE: Yes.

20 THE COURT: It's what -- what we went through today.

21 MS. VAN LANGEVELDE: Correct.

22 THE COURT: So --

23 MS. VAN LANGEVELDE: We also have Detective Roberts  
24 coming in and testifying about the defendant's statements  
25 during him inter -- his interview, as well.

0491a

1 I mean, there was a whole investigation --

2 THE COURT: Right.

3 MS. VAN LANGEVELDE: -- where we have both Ms. -- no  
4 Williford's statements and the defendant's statements through  
5 Detective Aaron Roberts.

6 THE COURT: But, I guess, aren't your -- go ahead,  
7 Mr. Carter.

8 MR. CARTER: I'm quite concerned, and this is the  
9 problem I had with -- with the issue regarding the statements  
10 at opening statements when I asked the prosecutor did you  
11 interview this witness because I wanted to know what she was  
12 gonna testify. And now, we're in this crux where she's denying  
13 stuff --

14 THE COURT: Um-hum.

15 MR. CARTER: -- and, yet, they already put it in  
16 front of a jury. And I was quite clear earlier this morning  
17 that was my concern. I didn't get statements or summaries of  
18 statements. And they were going by a 17-year-old report that  
19 wasn't under oath, and I was concerned with that. And I  
20 thought I was entitled to those summary statements of what she  
21 was expected to testify. And it comes to find out, she told  
22 them that she wasn't gonna say anything or I had nothing to  
23 say, and, yet, we're here, today, getting this stuff in.

24 MR. STRONG: Judge, there is quite a few different  
25 ways to introduce the other acts.

0492a

1 THE COURT: Um-hum.

2 MR. STRONG: First, there's this Certified Judgment  
3 of Conviction, which is already entered.

4 THE COURT: Right.

5 MR. STRONG: There's the defendant's own statements  
6 that had -- were on the interviews. There's the defendant's  
7 statements to Detective Maltby. The witness is now taking the  
8 stand and saying that none of that ever happened, but we also  
9 have, as Miss Van Langevelde stated, Detective Roberts is going  
10 to come in and testify that the defendant, in his interview  
11 with him, admitted to these actions. So, I think there's  
12 certainly more than enough corpus for the other acts.

13 And in terms of the impeachment aspect, it's --  
14 Detective Roberts's testimony, as it relates to Miss Ratliff,  
15 would be showing that she is not now telling the truth on the  
16 stand now.

17 So, there would be an impeachment aspect for his  
18 statements -- or, his testimony regarding his investigation  
19 with Miss Ratliff, but it's still the other acts in his  
20 testimony regarding the statements that the defendant made to  
21 him.

22 THE COURT: Right, I -- I don't -- right. We are not  
23 talking about what the detective's gonna take the stand and  
24 testify.

25 MR. STRONG: Right.

0493a

1 THE COURT: We're talking about whether it's  
2 necessary for Ms. Van Langevelde to read every single alleged  
3 statement in a police report and have the witness deny it when  
4 she denies the interview, she denies saying any of it. I don't  
5 know that it's necessary. It's definitely the -- cumulative.  
6 I mean, she said, "I didn't meet with him. This didn't  
7 happen." And so, now to -- I'm just not sure that that is an  
8 appropriate use of a prior inconsistent statement.

9 MR. STRONG: I think the -- the purpose behind that  
10 Your Honor, would be so that when Detective Roberts is asked  
11 about it, it's in direct relationship to a question that was  
12 asked of Miss Ratliff.

13 THE COURT: Well, but it also says:

14 "Extrinsic evidence of the prior inconsistent  
15 statement is not admissible unless the witness is afforded  
16 the opportunity to explain or deny the same and the  
17 opposite party is afforded the opportunity to  
18 interrogate."

19 So, do we not need to actually show her this report  
20 that you're relying on?

21 MR. STRONG: Well, she tried. And that police report  
22 wouldn't be admissible anyway, but the witness stated that she  
23 didn't need to see it because it was already -- never happened.

24 So, I think the witness has already been afforded to  
25 explain.



0494a

1 THE COURT: So, then, we're not gonna go through each  
2 and every sentence, then. Do you see what I'm saying?

3 MR. STRONG: I -- I do, Your Honor. But, again, I  
4 think the reason behind that was so that if I asked Detective  
5 Roberts, then we don't have an objection saying, well, the  
6 witness never testified that that didn't happen because -- if  
7 you get my drift.

8 MS. VAN LANGEVELDE: I --

9 THE COURT: Well, what we have here is a -- you're  
10 gonna be asking the detective questions based on a report, and  
11 she's denied the report ever took place, and, therefore, she  
12 never said any of it. So, I think that that allows you to ask  
13 him about the report and what's in it.

14 Do you not agree with that, Mr. Carter?

15 MR. CARTER: I -- I -- I'm -- unfortunately, I  
16 probably have to agree with that. However, I -- obviously, I  
17 -- I -- I'd ask that Miss Williford not be released from her  
18 subpoena because I -- I will want to call her during my case,  
19 then, to go over what Mr. Roberts testifies to.

20 THE COURT: Right. Well, that's fair. Right?

21 MS. VAN LANGEVELDE: I'm -- I'm almost done.

22 THE COURT: Okay.

23 MS. VAN LANGEVELDE: That's what I was gonna say.

24 THE COURT: Right. Well -- okay.

25 Let's bring 'em back in.

0495a

1           Wait a minute. Just procedural, before the jury get  
2 here, so you're not gonna cross-examine her right now. You're  
3 gonna wait and call her?

4           MR. CARTER: No, I'm gonna cross-examine her.

5           THE COURT: Okay.

6           MR. CARTER: And then I'm gonna recall her.

7           THE COURT: Okay.

8           There's water in that, there. See that -- sometimes  
9 people get a little dry, you know.

10           (At 3:31 p.m., jury enters courtroom)

11           THE COURT: Please be seated.

12           Go ahead, Ms. Van Langevelde, you may continue.

13           MS. VAN LANGEVELDE: Thank you.

14 BY MS. VAN LANGEVELDE:

15 Q       So, Ms. Williford, did you and the defendant ever talk about a  
16 relationship?

17 A       No.

18 Q       Whether you guys were going to get married?

19 A       No.

20 Q       Back then, did you love him?

21 A       No.

22 Q       Were you friends with him?

23 A       Yes.

24 Q       Did he treat you well?

25 A       Yes.

0496a

1 Q Ever hurt you?

2 A No.

3 MS. VAN LANGEVELDE: I don't have any other  
4 questions.

5 THE COURT: Mr. Carter.

6 MR. CARTER: Okay.

7 CROSS-EXAMINATION

8 BY MR. CARTER:

9 Q Amanda, is it Williford?

10 A Williford.

11 Q Hi, Amanda. My name is Attorney David Carter. I represent Mr.  
12 Warner in -- in this case. I'm gonna ask you a series of  
13 questions. If there's a question you don't understand, please  
14 let me know, and I'll try to rephrase it; fair enough?

15 A Yes, sir.

16 Q Let me kinda get you back -- to back in 2000 and -- was it 2001  
17 that this -- or 2000? When did this occur, this criminal  
18 investigation that you were a victim in?

19 A 2000.

20 Q Okay, so it was around 2000. And I'm not gonna hold you to it.  
21 Could've been 1999, 2000, 2001, somewhere around there; right?

22 A Yes, sir.

23 Q Quite a big, big -- quite a long time ago; correct?

24 A Yup.

25 Q Do you know how that investigated -- investigation started?

0497a

- 1 A With a letter.
- 2 Q Okay. And what was a letter? What -- what -- what --
- 3 A I wrote to my cousin.
- 4 Q Okay. You wrote a letter to your cousin?
- 5 A Two nay -- two teen-agers just goofin' around, writin' letters  
6 state to state.
- 7 Q Okay. And did you -- what was inside the letter that created  
8 this investigation?
- 9 A That I had lost my virginity.
- 10 Q And did you name a person to whom you did?
- 11 A I don't remember.
- 12 Q Okay. And did you lose your virginity?
- 13 A No.
- 14 Q So, the letter wasn't true?
- 15 A She said it, too.
- 16 Q She said it, too?
- 17 A Yes.
- 18 Q So, what -- the letter -- what was in the letter wasn't true?
- 19 A No.
- 20 Q But that sparked something. Who found these letters?
- 21 A My aunt.
- 22 Q And who was your aunt?
- 23 A Cheryl Deasen (phonetic).
- 24 Q Cheryl?
- 25 A Deasen.

0498a

1 Q Deasen. And what did she do with these letters?

2 A She sent `em to CPS in Michigan.

3 Q Okay. That -- that -- that kinda draws my attention. Where  
4 was she, then, at the time?

5 A Florida.

6 Q How did she get ahold of the letters?

7 A My cousin.

8 Q Is this the other one that was writing the letters --

9 A Yes.

10 Q -- too? So, did you -- was -- this wasn't a diary. This was a  
11 letter you sent to a cousin?

12 A Yes.

13 Q Do you recall who -- who -- who claimed to have lost their  
14 virginity first?

15 A Kelly did.

16 Q Is that your cousin?

17 A Yes.

18 Q Who lives in Florida?

19 A She don't live in Florida, but, yes. Then, yes.

20 Q Then, she lived in --

21 A Yes.

22 Q -- Florida then. So, that prompted you to write a letter.

23 A Yes.

24 Q And you said it was just two --

25 A Teen-age girls.

0499a

1 Q -- being goofy?

2 A Yeah.

3 Q Okay. Did you write any other letters? Was that the only  
4 thing? Was it only one letter --

5 A Yes.

6 Q -- or was there multiple letters?

7 A One letter.

8 Q And you didn't name anybody.

9 A Not that I know of.

10 Q Okay. Could you have?

11 A I probably -- probably.

12 Q If you did, would it have been true?

13 A No.

14 Q Okay. Because you didn't lose your virginity --

15 A Right.

16 Q -- right? All right. And so, CPS got involved.

17 A Yes.

18 Q Your -- your aunt turned it over to CPS in Michigan.

19 A Yes, sir.

20 Q And that's how this investigation started.

21 A Yes.

22 Q How many times were you contacted by the police regarding this  
23 letter?

24 A One time.

25 Q And where were you?

0500a

1 A At home.

2 Q Was anybody with you?

3 A My mother.

4 Q And who's your mom?

5 A Theresa Ratliff.

6 Q Okay. And did they interview -- did they interview you?

7 A My mom refused them to interview me.

8 Q Okay.

9 A Because they wanted to do it privately.

10 Q And did she approve of that?

11 A No. She approved them not to talk to me.

12 Q Okay. And who -- were you in the custody of your mom at that  
13 time?

14 A Both of my parents, yes.

15 Q Okay, so your dad -- you -- you were an intact family.

16 A Yes.

17 Q Your mom and dad were together.

18 A Yes.

19 Q Do you ever recall going down and talking to a detective?

20 A No.

21 Q If you had and you had described what the prosecutor had said,  
22 such as losing your virginity with Mr. Warner and having sex  
23 several times, would that have been true?

24 A No.

25 Q Okay. And why wouldn't it be true?

0501a

1 A 'Cause it never happened.

2 Q All right. Were you ever -- when was the last time you were  
3 interviewed by a police -- police officer or -- or some agency  
4 regarding this 2000 incident?

5 A None until I got a subpoena in the mail on Friday morning.

6 Q Okay. Did -- did you get interviewed prior to that subpoena?

7 A No.

8 Q Were you interviewed after that subpoena?

9 A In the room just before I come in here.

10 Q Okay. Did the show you reports back in 2000?

11 A I told her I didn't want to see 'em.

12 Q And why's that?

13 A 'Cause I nev - they're not true.

14 Q You don't dispute that they exist.

15 A She showed me that they exist, but I don't -- I never talked to  
16 an officer.

17 Q And -- and if you had and those things were in there, that  
18 wouldn't be true?

19 A They weren't truth, yeah.

20 Q Okay.

21 MR. CARTER: I have nothing further.

22 THE COURT: Any redirect, Ms. Van Langevelde?

23 MS. VAN LANGEVELDE: No, I do not. Thank you.

24 THE COURT: Okay. Ma'am, you may step down, but you  
25 are not released from your subpoena. So, that means that there



0502a

1 needs to be a phone number where you can be contacted if we  
2 need you to come back, okay?

3 THE WITNESS: They have my phone number.

4 THE COURT: They -- do you have the -- Ms. Van  
5 Langevelde, do you have the phone number --

6 MS. VAN LANGEVELDE: Yes.

7 THE COURT: -- for this witness?

8 MS. VAN LANGEVELDE: Yes. Yes, Jody, in our office  
9 does.

10 THE COURT: Okay.

11 MR. CARTER: She'll share that with me?

12 MS. VAN LANGEVELDE: Yes, absolutely.

13 THE COURT: Okay, then you may step down. You're  
14 free to leave the building.

15 (At 3:38 p.m., witness stands down)

16 MS. VAN LANGEVELDE: I'm gonna go get the next  
17 witness.

18 THE COURT: Okay.

19 MR. STRONG: Our next witness is Detective Aaron  
20 Roberts, Your Honor.

21 THE COURT: Okay.

22 Come right up here, please, sir. There's a step  
23 right before you get to the witness box. Water and a cup right  
24 there.

25 Raise your right hand. Do you swear to tell the

0503a

1 truth, the whole truth, and nothing but the truth, so help you  
2 God?

3 DETECTIVE ROBERTS: I do.

4 THE COURT: Please have a seat. State your full name  
5 for the record.

6 THE WITNESS: Aaron D. Roberts.

7 THE COURT: How do you spell your last name?

8 THE WITNESS: R-o-b-e-r-t-s.

9 THE COURT: Thank you.

10 Mr. Strong.

11 MR. STRONG: Thank you.

12 DETECTIVE AARON D. ROBERTS

13 at 3:40 p.m., sworn as a witness, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STRONG:

16 Q Detective Roberts, where do you currently work?

17 A Eaton County Sheriff's Office.

18 Q And what do you do there?

19 A I'm a detective. I'm assigned to, mainly, computer forensics.

20 Q Okay. And how long have you been with the Eaton County  
21 Sheriff's Department?

22 A Since I started December of 2002.

23 Q Okay. And so, were you always a detective?

24 A No, I actually started just normal road patrol doing  
25 complaints. I was, actually, assigned to the Detective Bureau

0504a

1 -- my last day on the road was Christmas Eve of 2014.

2 Q Prior to 2002, what did you do?

3 A I worked for Homer Police Department, Olivet Police Department  
4 Vicksfield Police Department, and Barry Township.

5 Q All right.

6 A Sorry.

7 Q As a deputy or a police officer?

8 A A police officer Homer, about a year that was part-time. About  
9 four years of that was full-time. The other jobs were part-  
10 time while I worked for Homer.

11 Q Okay. I want to take you back to January 19th in the year  
12 2000. Were you with the Homer Police Department at that time?

13 A Yes.

14 Q What was your rank?

15 A I believe I was an officer. There's a -- a part there where I  
16 was sergeant, and then I actually went part-time for a while.  
17 One of the other guys was promoted sergeant. So, I'm --

18 Q Okay.

19 A -- trying to remember what I was. Whether it was officer or  
20 sergeant, I can't remember.

21 Q All right. Did you respond to calls?

22 A Yes.

23 Q Take calls, things of that nature. And I'm not too familiar  
24 with Homer. Can you describe about the relative size of the  
25 town?

0505a

1 A Homer is about two square miles. One square mile of it is,  
2 pretty much, farm fields. The -- the one square mile that's  
3 actually populated is -- is fairly dense. It reminds me kinda  
4 like a smaller Bellevue only has a -- a trailer park that is  
5 that's pretty heavily populated, too.

6 Q All right. And you said you were in Homer for about five years  
7 or --

8 A Yes, sir.

9 Q All right. And in that period of time, did you get to know the  
10 people of the town pretty well?

11 A We were expected to. It's -- it's -- small town policing there  
12 was community oriented policing before they called it that. By  
13 the end of -- by the time I left, pretty much most of the kids  
14 that lived in town, in the trailer park, most of the young  
15 adults, I knew who they were. It -- it's nothing for me to be  
16 on patrol, especially when I was workin' afternoons, for me to  
17 talk to some of these kids. Maybe not on a daily basis. A lot  
18 of 'em were -- was on a daily basis. Quite a few of 'em was  
19 probably at least a few times a week. And -- and I say kids,  
20 kids, young adults. It's -- it's one of those towns where the  
21 chief was an older guy. He would sit with all the --

22 Q Okay.

23 A -- the long-timers, and he would -- would talk to everybody in  
24 -- in the morning, and I would talk to everybody in the  
25 evenings, afternoon, which is how we solved a lot of crimes,

0506a

1 because people learned to trust us, they learned to tell us  
2 things.

3 Q Sure. Did you know a Damon Warner?

4 A Yes.

5 Q How did you know him?

6 A Mainly just through -- through contacts, talking to everybody  
7 else. I knew him mostly because of his younger brother. There  
8 was a lot of calls we got in times whenever his younger brother  
9 got into trouble. And, also, a lot of times when we would  
10 either -- we'd go to parties, people bein' too loud, whatever's  
11 goin' on.

12 Q And you had occasion, in those instances, to meet with Damon  
13 Warner?

14 A Yes, quite a few times.

15 Q In person?

16 A Yes.

17 Q Had a chance to hear him talk?

18 A Yes.

19 Q Talked with him a few times?

20 A Oh, several, yes.

21 Q And this is, obviously, about 17 years ago.

22 A Yes.

23 Q Do you think you'd still recognize Damon Warner if you saw him?

24 A Yes.

25 Q Do you see him today?

0507a

1 A Yes, he's sittin' in the defendant's chair, gray shirt.

2 Q Okay.

3 MR. STRONG: The record reflect the witness has  
4 identified the defendant.

5 THE COURT: The record will so reflect.

6 MR. STRONG: Thank you.

7 BY MR. STRONG:

8 Q Now, drawing your attention back to January 19th, in the year  
9 2000, when you were working there, were you assigned any  
10 particular case?

11 A I was actually assigned to check on a -- a possible criminal  
12 sexual conduct. I believe it was Cheryl Deason, Deason had  
13 forwarded a letter that her daughter had received from Amanda  
14 Ratliff, stating how she had taken advantage of Damon and Damon  
15 liked it.

16 Q Okay. And were you aware of who this Amanda Ratliff person  
17 was?

18 A Yes.

19 Q Did you know her from your policing?

20 A Yes.

21 Q Okay.

22 MR. CARTER: Your Honor, I'm sorry, I -- I think I  
23 need to make a record outside the presence of the -- of the  
24 jury. I'm going to object at this moment, and I'd like to --

25 THE COURT: Okay. Another leg stretch.

0508a

1 Miss Bond, would you please take the jury out?  
2 Remember you are on the mini recess. Don't talk about the  
3 case. Please don't let anybody talk to you about it. If they  
4 do, tell 'em you're a juror. If they continue, report it to  
5 me. Watch your step.

6 (At 3:45 p.m., jury exits courtroom)

7 THE COURT: Okay.

8 MR. CARTER: And -- and -- and I'm sorry, but the  
9 more I think about this testimony and what it's being brought  
10 in under, I don't know if it's appropriate. Now, I think, as  
11 far as any statements that Mr. Warner gives, I -- I think that  
12 becomes prior act and it comes in.

13 THE COURT: Um-hum, yup.

14 MR. CARTER: But here, we have an issue where an  
15 individual --

16 THE COURT: Um-hum.

17 MR. CARTER: -- is denying these things, and they're  
18 trying to get it in under the statute by impeaching her through  
19 prior incon -- I just don't see it's appropriate.

20 And, you know, I'm -- I'm -- I'm caught off-guard  
21 here, because, again, I -- I was asking if this witness was  
22 interviewed before. I would've been more prepared for this.  
23 But, I got the impression from them that, oh, we supplied the  
24 police report. That's how she's gonna testify to.

25 THE COURT: Well, I don't think there's any question

0509a

1 that was what we all thought was happening.

2 MR. STRONG: Yeah, I certainly --

3 MS. VAN LANGEVELDE: Yes.

4 MR. STRONG: -- think that's what the People thought  
5 was going to happen.

6 THE COURT: I don't know about the relevance of  
7 getting into getting a letter from somebody out of state, et  
8 cetera. I don't think there's any question that any statements  
9 the defendant made to the detective are admissible. You  
10 already have in the Judgment of Conviction. But I don't know  
11 that there's a basis to get into the information that -- how  
12 that -- this isn't a trial within a trial.

13 MR. STRONG: Sure.

14 THE COURT: It's like what I feel like we're gonna  
15 start to do is try the CSC case from 2000.

16 MR. STRONG: I have no intention of doing that.

17 THE COURT: And we're not -- right. And we're not  
18 gonna get into that. I realize that, apparently, this -- that  
19 -- what's her -- Ms. --

20 MR. STRONG: Williford.

21 THE COURT: -- Williford's testimony may have been a  
22 surprise to you, too, but we're not gonna prove that case right  
23 now. What we -- you can get in the defendant's statement.  
24 Obviously, there is a conviction.

25 MR. STRONG: Right.



0510a

1 THE COURT: But --

2 MR. STRONG: Judge, I -- I think I can keep my  
3 questions fairly limited. And I was trying to get out of the  
4 foundation for how he knew Amanda Ratliff and that he met with  
5 Amanda Ratliff to impeach her testimony on the stand. And I  
6 think we have the right to do that, to show that the woman who  
7 stood up here and said that she never had sex with the  
8 defendant, when we have the Judgment of Conviction and the  
9 defendant admitting to it, was lying. And Detective Roberts,  
10 think, can do that. I can keep the questions limited on that  
11 matter, and then focus more on the statements that the  
12 defendant made to him.

13 But, I think, certainly, at this point in time, the  
14 jury is entitled to hear this impeachment witness, to show that  
15 what she said, on the stand, was a lie.

16 THE COURT: Well -- go ahead, Mr. Carter.

17 MR. CARTER: I would disagree. Just be -- just  
18 because what she -- this statement is under oath. So, who's to  
19 say what she said before wasn't a lie. To sit there and say  
20 we're gonna show her that this is a lie, no. They're trying to  
21 impeach her. But what -- what are you trying to impeach? What  
22 was the relevance of that testimony? You're gonna try to  
23 impeach a testimony of prior bad acts that you're trying to use  
24 under here and then impeach the witness who -- I just think  
25 it's contravuted (sic), and I -- I don't think it's

0511a

1 appropriate.

2 THE COURT: Well, I think the jury's gonna start to  
3 get confused which case they're trying.

4 MR. STRONG: And I can -- like I said, I can be very  
5 limited on that aspect. But, again, since we just had a  
6 witness stand up here and say that this never happened --

7 THE COURT: Well, again, that goes to Mr. Carter's  
8 earlier objection that he had wanted a summary. I overruled  
9 his objection because we assumed -- I assumed somebody had  
10 talked to the witness and her -- and her testimony was  
11 consistent with the police report.

12 MR. STRONG: Judge, that's -- at any point in time, a  
13 witness could change their testimony from the time that they --

14 THE COURT: Right.

15 MR. STRONG: -- walk in the conference room up to  
16 now. We don't know, and that's why --

17 THE COURT: But she said nobody had talked to her  
18 until today.

19 MR. STRONG: And I do believe that Miss -- we have  
20 notes in our system --

21 MS. VAN LANGEVELDE: Yes.

22 MR. STRONG: -- about contact that we have had. It's  
23 not like the first time we've ever talked to her --

24 THE COURT: Okay.

25 MR. STRONG: -- is today. So -- and I know Ms. Van

0512a

1 Langevelde, for certain -- I don't want to --

2 MS. VAN LANGEVELDE: No.

3 MR. STRONG: -- speak for her --

4 MS. VAN LANGEVELDE: And -- and --

5 MR. STRONG: -- but has talked to her.

6 MS. VAN LANGEVELDE: -- and I have talked to her on  
7 the phone at least twice, basically telling her about this  
8 trial, talking to her about the police report and --

9 THE COURT: Okay.

10 MS. VAN LANGEVELDE: So, I think that --

11 THE COURT: Right. But she says she told you she  
12 didn't want to be here, and she denied the police report.

13 MS. VAN LANGEVELDE: Well, she told me she didn't  
14 want to be here, but that doesn't mean that she denied the  
15 police report.

16 THE COURT: Did she deny the police report?

17 MS. VAN LANGEVELDE: She did not.

18 THE COURT: Did she -- did she affirm it?

19 MS. VAN LANGEVELDE: She -- she --

20 THE COURT: Did she affirm it?

21 MS. VAN LANGEVELDE: We didn't go -- she wouldn't let  
22 me show it to her.

23 THE COURT: So, you never corroborated her statement  
24 is where we're at.

25 MS. VAN LANGEVELDE: Well, I said, "Did you meet

0513a

1 with" -- I went -- just like I did here on the stand, I went  
2 through it: Did you meet with Detective Roberts? No, my mom  
3 wouldn't let me. No -- this was in the room today.

4 THE COURT: Right.

5 MS. VAN LANGEVELDE: When I talked to her --

6 THE COURT: I -- I'm talking about before we got to  
7 today.

8 MS. VAN LANGEVELDE: Oh.

9 THE COURT: I'm trying to figure out -- she said that  
10 nobody met with her. So, I'm -- am just wanting to know  
11 whether you talked to her and said this is the police report,  
12 we're gonna call you, and did she deny it or not. That's the  
13 issue.

14 MS. VAN LANGEVELDE: She kept saying, "I don't know  
15 why I need to be here. I didn't want to testify before." And  
16 I talked to her about why it's im -- why she would have to  
17 testify. So, I never confronted her with the police report.

18 THE COURT: Okay.

19 MS. VAN LANGEVELDE: But -- but when I talked to her  
20 and I said, you know -- told her about this case, she said, "I  
21 wouldn't want somebody to do that to my child. I understand."  
22 And she made it sound like she was going to testify consistent  
23 with the police report.

24 THE COURT: No, she -- actually, she didn't. She  
25 refused to do that. So, now we're in a situation where this

0514a

1 witness is listed and actually knew that she wasn't gonna come  
2 in and testify consistent with the police report.

3 MS. VAN LANGEVELDE: No, I didn't. I didn't know  
4 that until we were in that room, right there.

5 THE COURT: Because you didn't ask her.

6 MS. VAN LANGEVELDE: I -- I assume that people are  
7 going to tell me the truth.

8 THE COURT: Well, she's -- not when she's -- well, I  
9 don't want to get into an argument about it. I'm trying to  
10 figure out what to do right now.

11 Mr. Carter, I think --

12 MR. CARTER: I -- I'm -- I'm renewing my motion for a  
13 mistrial is what I'm doing.

14 MR. STRONG: Your Honor, at this point in time, on  
15 what basis?

16 THE COURT: Right.

17 MR. STRONG: He hasn't cited a court rule. He hasn't  
18 cited --

19 THE COURT: Yup.

20 MR. STRONG: -- statute. He hasn't cited a case, at  
21 all.

22 MR. CARTER: Well, I think -- I think they --

23 MR. STRONG: Hold on, hold on. Let me make my  
24 argument.

25 MR. CARTER: Okay.

0515a

1 MR. STRONG: All he said is it's convoluted.

2 THE COURT: Um-hum.

3 MR. STRONG: It doesn't appear appropriate. That's  
4 not law.

5 THE COURT: I agree, Mr. -- calm down. Nobody is  
6 granting a motion for mistrial. I want to get the wit -- the  
7 jury back in here and con -- and continue the testimony.

8 MR. CARTER: Sure, but I --

9 THE COURT: So, if you --

10 MR. CARTER: But I'd like to make my record --

11 THE COURT: Okay.

12 MR. CARTER: -- and the reason why I'm -- I'm -- I'm  
13 asking for it again. Because the rule is specific: Show us  
14 the evidence and what is expected to testify in a summary of  
15 those things. That's what the statute says. They didn't do  
16 that. They -- they took a -- a 15-year-old report, never  
17 interviewed the witness to see if she'd be consistent and  
18 produced that and said, oh, this is what she's going to say.

19 THE COURT: Well, Mr. Carter --

20 MR. CARTER: I'm caught off by surprise.

21 THE COURT: And you can renew your motion tomorrow  
22 morning if you want. I agree with Mr. Strong; you can't just  
23 stand up and say mistrial. There has to be court rule,  
24 statute, case law. A combination is always nice.

25 MR. CARTER: Sure.

0516a

1 THE COURT: I dealt with this last night. I  
2 concluded there was not a basis of a mistrial based upon what  
3 we all knew last night. There's no question it sounds like  
4 there was a curve ball for ev -- for everybody.

5 So, we're gonna try to get through this witness, and  
6 then tomorrow morning, if you want to bring your motion for a  
7 mistrial, you can, but I'm not gonna stop the proceedings at  
8 this point.

9 MR. CARTER: Okay, I can appreciate -- I can  
10 appreciate that.

11 THE COURT: So, he's gonna testify. He can get into  
12 anything the defendant said. Mr. Strong has said he's gonna  
13 lay a very limited foundation so that they understand why he  
14 was investigated, then he's gonna get to what your client said  
15 and what happened. I think that's appropriate.

16 MR. STRONG: Your Honor, can I ask the witness if he  
17 met with Amanda Ratliff and she told him that she had sex with  
18 the defendant?

19 THE COURT: Yes, I think you can do that.

20 MR. STRONG: All right. And then, from there, I will  
21 go into the investigation that he had with the defendant and  
22 the interviews that he had with the defendant.

23 THE COURT: Yeah, you're -- you're just saying that  
24 you're not going too far down that. You're just gonna ask  
25 that.

0517a

1 MR. STRONG: I'm not -- I'm not going too far down

2 THE COURT: Yeah.

3 MR. STRONG: -- Amanda Ratliff's --

4 THE COURT: Right. Then, you're gonna -- and you  
5 agree, right, Mr. Carter, that this witness can testify about  
6 statements your client made?

7 MR. CARTER: Yeah, I -- I mean that's --

8 THE COURT: All of that. He can talk about the fact  
9 that there was a conviction. And there's no question their own  
10 wit -- they're impeaching their own witness. It's interesting,  
11 but they can do it. We're just gonna limit it to the question  
12 that Mr. Strong said.

13 And then, if you want to spend some time this evening  
14 and get things to people to try to make your argument, you can.  
15 But I concur with Mr. Strong, you cannot just stand up,  
16 announce a position, and then expect the Court to agree with  
17 you. There has to be a basis for it.

18 MR. CARTER: Well, of course. And -- and --

19 THE COURT: Yeah, so --

20 MR. CARTER: -- maybe I -- maybe you mistook my -- my  
21 motion, then. I was renewing it based on their failure to  
22 disclose. And that's what I'm -- I'm indicating. They  
23 disclosed a police report, but they didn't disclose the summary  
24 indicating what --

25 THE COURT: I'm understanding that.



0518a

1 MR. CARTER: Okay.

2 THE COURT: But, you might want to put something in  
3 writing so that it can be a little more -- there's a record of  
4 it --

5 MR. CARTER: Sure.

6 THE COURT: -- other than the transcript.

7 MR. CARTER: Well, it -- it sounds like the Court  
8 just thought I just threw out the word mistrial. Well, no.  
9 was a renewed motion from earlier based on --

10 THE COURT: Okay.

11 MR. CARTER: -- the failure to disclose.

12 THE COURT: Is everybody calm now? Can we bring the  
13 jury back in and continue the testimony?

14 MR. STRONG: I'm always calm, Judge.

15 THE COURT: Go -- go ahead, Miss Bond, get the jury.

16 MR. STRONG: I'm not even that red yet.

17 THE COURT: You were like two minutes ago.

18 Kathy's laughing going out the door.

19 MR. STRONG: You've seen me like that, huh?

20 (At 3:56 p.m., jury enters courtroom)

21 THE COURT: Please be seated.

22 Go ahead, Mr. Strong, you may continue.

23 MR. STRONG: Thank you.

24 BY MR. STRONG:

25 Q Detective Roberts, when we left off, you were investigating a

0519a

1 CSC with an Amanda Ratliff.

2 A Yes.

3 Q Did you have a chance to meet with her?

4 A Yes, I did.

5 Q When you met with her, did you eventually end up interviewing  
6 her?

7 A Yes.

8 Q And in that interview, did she tell you that she had had sexual  
9 intercourse with the defendant, Damon Warner?

10 A Yes, she did.

11 Q How old was she when this happened?

12 A When I talked to her, she was 13. She had disclosed that the  
13 first time was on November 7th of 1999, when she was 12-years-  
14 old.

15 Q All right. And how old was the defendant when that happened?

16 A Twenty-five.

17 Q Okay. At some point, did you, in fact, also see the defendant  
18 and Miss Ratliff, or Miss Williford now, arrive together in a  
19 car?

20 A Yes.

21 Q Okay. Did you have a chance, at that point in time, to  
22 interview the defendant?

23 A Briefly.

24 Q All right. Did you ask him what his relationship with Miss --  
25 I'm gonna call her Ratliff because that's what her name was at

0520a

1 the time -- Miss Ratliff?

2 A Yes.

3 Q And what did he tell you their relationship was?

4 A He said they were just friends.

5 Q Okay. Did you ever ask him if they were more than friends?

6 A Yes.

7 Q What did he say?

8 A Well, I talked with him for a few minutes, and I asked, "Well,  
9 have you ever kissed?" And he said, "Well, yes, we've kissed

10 Q Okay. Did you eventually have a chance to interview him again?

11 A Yes.

12 Q And how did that come about?

13 A I had actually interviewed Amanda, Ratliff at the time, at CPS.  
14 Their Child Protective Services at the time, Calhoun County.

15 Q And that's was where she told you that they've had sexual  
16 intercourse?

17 A Yes.

18 Q Okay.

19 A It was --

20 Q I'm sorry, and keep going. What happened after that?

21 A I, actually, returned to work. I believe it was on a Monday.  
22 I returned to work. And it's a very small department. We have  
23 an answering machine. There was a message on the answering  
24 machine from Damon Warner saying that he'd like me to talk to  
25 him and some -- I believe it was some things that were said

0521a

1 that weren't true.

2 Q Now, you've previously testified that you had had numerous  
3 interactions with Mr. Warner.

4 A Yes.

5 Q The voice that you heard over the phone, did you recognize that  
6 as Damon Warner's?

7 A Yes.

8 Q Okay. Did you call him back?

9 A I initially called and left a -- a message.

10 Q All right. Did he call you back after that?

11 A Yes, he did.

12 Q Did you talk to him on the phone?

13 A Yes.

14 Q Did you again recognize his voice as --

15 A Yeah.

16 Q -- Damon Warner?

17 A Yes.

18 Q Okay. What did you talk about?

19 A He wanted to know what was said in the interview, which I told  
20 him I couldn't disclose what -- what Amanda had said. And he  
21 had talked about wanting to know what was gonna happen because,  
22 if he had to go -- go away for a while, he had a three-year-old  
23 daughter. At one point, I said, "You know, you didn't -- it's  
24 better if you say at least your side, so that our prosecutor's  
25 will look at this, can be able to look at the whole picture and

0522a

1 have your side, too. So, if you want to do that, I can  
2 definitely have you come in, make a statement." At the time,  
3 he just wanted to talk over the phone.

4 Q Did you continue to talk to him over the phone?

5 A Yes, I did.

6 Q Did you get his side of it?

7 A Yes.

8 Q What did he tell you happened between the two of 'em?

9 A They'd been seeing each other for a month and-a-half, that the  
10 first time they had had sex it was sexual intercourse, that he  
11 was very drunk, that she was on top, she had taken her pants  
12 down, didn't take 'em off. He had kept his on but his penis  
13 through just the zipper. They had intercourse. Fell asleep  
14 afterwards, I believe. The second time he was also  
15 intoxicated, and he just used his finger. He didn't finish.

16 Q Did he ever give you any information about knowing the age  
17 difference between him and Miss Ratliff?

18 A Yes.

19 Q And what did he tell you?

20 A That he had mentioned there's a big age difference between the  
21 two and that Amanda didn't care. And, also, there was an  
22 agreement that if she met somebody her age and wanted to be  
23 with them, that that was okay. And that if he met somebody his  
24 age, that was okay, too.

25 Q Did she -- did he also tell you that he had tried to get her to

1 go back to school?

2 A Yes.

3 Q Okay. And you said that the second time he said he just used  
4 his fingers?

5 A Yes.

6 Q Okay. Do you ever recall him saying "do you know what happens  
7 when a woman starts touching there?"

8 A That was whenever -- there's a point where we were going over  
9 the order of things, and he had said, "Well, she started  
10 touching me, and you know what happens when, you know, a woman  
11 starts touching you there."

12 Q Okay. And after you completed your investigation, do you know  
13 if the court -- case proceeded to court?

14 A I believe it was pled. I believe there was an agreement to a  
15 plea bargain. I never had -- never ended up going to trial and  
16 testifying.

17 Q Okay. And that would've been in Calhoun County?

18 A Yes, sir.

19 Q All right. Homer's in Calhoun County?

20 A Yes, sir.

21 Q All right.

22 MR. STRONG: One second.

23 BY MR. STRONG:

24 Q Did the defendant tell you that it was Miss Ratliff's idea?

25 A Yes.

1 Q Did he tell you why it was her idea?

2 A I -- I don't remember.

3 Q Did he say --

4 A Do not.

5 Q Do you recall if he said that she'd wanted to lose her  
6 virginity?

7 A I remember her -- her saying it was a special day she  
8 remembered. And him -- him saying if she was -- her saying if  
9 she wanted -- if she was gonna lose her virginity, it might as  
10 well be to him.

11 Q Okay.

12 A That's what --

13 Q Is that what he said, or is that what --

14 A That's what he said. She had said it was a special day.

15 Q Okay.

16 A That's why she remembered the date.

17 Q Okay. Did you know -- like, we talked a little bit about a  
18 small town.

19 A Um-hum.

20 Q Did you know if Miss Ratliff's family and Mr. Warner's family  
21 were connected, in any way?

22 A Oh, they both lived in the -- the small trailer park. Pretty  
23 much, everybody in the trailer park -- they knew everybody. I  
24 think it was five streets, and, pretty much, everybody knew  
25 everybody.

0525a

1 Q All right, thank you.

2 MR. STRONG: Nothing further.

3 THE COURT: Mr. Carter.

4 MR. CARTER: One moment. I have nothing.

5 MR. STRONG: No redirect.

6 THE COURT: Thank you very much, sir. You may step  
7 down.

8 (At 4:03 p.m., witness stands down)

9 MS. VAN LANGEVELDE: Sorry. Can we have a moment,  
10 Your Honor?

11 THE COURT: You can.

12 MS. VAN LANGEVELDE: All right, Your Honor, thank  
13 you. At this time, the People don't have any further witnesses  
14 and will rest.

15 THE COURT: Okay.

16 So, Mr. -- it's four o'clock. Did you want to wait  
17 until tomorrow, because we thought we would not get done until  
18 that, and I had requested that you have your witnesses ready to  
19 start right at eight-thirty?

20 MR. CARTER: Right.

21 THE COURT: All right. Well, I have a few things we  
22 want to do on the record. But much to their pleasant surprise,  
23 I'm sure, I'm going to let the jury go.

24 Let me give you the official recess instruction.  
25 Ladies and gentlemen, I'm gonna let you leave for the day. I



1 don't know that -- of any news coverage regarding this case,  
2 but please remember that, if you're listening to the radio or  
3 you're on -- some of you might, you know, get your news on the  
4 computer, watching television, or any other form of media, if  
5 all of a sudden, you realize that you're hearing something  
6 about this case, turn it off immediately.

7 Do not let anybody discuss this case with you. You  
8 still can't discuss it with your family or friends when you  
9 leave here. You still cannot discuss it with each other.  
10 Remember, if somebody tries to discuss the case with you, tell  
11 'em you're a juror, you can't discuss it. If they do not stop,  
12 let me know.

13 Remember, you cannot talk to anybody involved in the  
14 case. Even if it's not about the case, you can't talk to them.

15 It is very important that the only information that  
16 you get about this case is when you are in court, you're all  
17 together, the prosecutor is here, the defense is here, and I'm  
18 here.

19 Other than that, I hope you have a very pleasant  
20 evening.

21 We'll start at eight-thirty sharp tomorrow, okay?

22 You can leave whatever you want in the jury room.  
23 We'll lock that room up.

24 Have a nice evening, and watch your step.

25 (At 4:05 p.m., jury exits courtroom)

0527a

1 THE COURT: Okay. So, I think to avoid confusion in  
2 the morning -- and, luckily, it's only four o'clock -- I just  
3 want to be clear, if Mr. Carter proceeds with his request for  
4 mistrial, that the basis of your mistrial now is -- not now,  
5 but what you're saying is the People are required to give a  
6 statement or give an indication of what the witness is gonna  
7 testify to. The People have indicated yesterday and this  
8 morning, obviously, there was the police report that was  
9 available, that was her statement.

10 So, the question is whether or not the People knew  
11 that there was more to her statement than the police report.

12 MR. CARTER: Or, whether or not they had a duty to  
13 find out. I mean, it's their witness. They're using it for a  
14 specific purpose. And I think that there's some type -- I  
15 would assume -- again, I haven't got into looking up any case  
16 law or anything, but you would assume there's a duty to back it  
17 up.

18 THE COURT: I just -- Ms. Van Langevelde, so, can you  
19 tell me when it was -- go over your notes there. When was the  
20 first time you talked to her?

21 MS. VAN LANGEVELDE: I -- I cannot -- I think that I  
22 per -- me, personally, I was trying to find, because I know  
23 that somebody talked to her. But, it looks like I talked to  
24 her just before the trial, because she would not call me back,  
25 was 6/14.

0528a

1 THE COURT: Okay.

2 MS. VAN LANGEVELDE: Okay. And so, what we talked  
3 discussed was that she -- she didn't want to come to court.  
4 And what we talked about, basically, was that she had gotten a  
5 subpoena --

6 THE COURT: Okay.

7 MS. VAN LANGEVELDE: -- she needed to be here. She  
8 was rather short with me. And that -- but I talked to her  
9 about, well, you were 12 years -- 13-years-old at the time.  
10 She said, "Yes." And then, I said, "Well, what if this was the  
11 child -- one of your children?" And she said, "You're right, I  
12 wouldn't want this to happen to my child. I'd want somebody to  
13 back my child up." And she said, "I need to go." I said,  
14 "Okay, I'll try and call you tomorrow." I did. She did not  
15 answer the phone. In fact, I forget what day the 14th was,  
16 what day of the week that was, but I called her back every day,  
17 'cause -- it was a Wednesday, 'cause I called her back  
18 Thursday, I called her back Friday, and I called her back  
19 Saturday.

20 THE COURT: Okay.

21 MS. VAN LANGEVELDE: And, actually, on the 14th, I  
22 didn't call her. She called our office because she had gotten  
23 her subpoena.

24 THE COURT: She got the subpoena in the mail.

25 MS. VAN LANGEVELDE: Yes.

0529a

1 THE COURT: Um-hum. Did she say that she'd never met  
2 with the detective?

3 MS. VAN LANGEVELDE: No.

4 THE COURT: Did she deny the allegations?

5 MS. VAN LANGEVELDE: No.

6 MR. CARTER: Well, were they ever asked? I mean --

7 THE COURT: Did somebody else talk to her -- her --  
8 her besides you --

9 MS. VAN LANGEVELDE: Yes.

10 THE COURT: -- out of your office?

11 MS. VAN LANGEVELDE: Mary did.

12 THE COURT: When did Mary talk to her?

13 MS. VAN LANGEVELDE: That same day. Mary, actually,  
14 took the call first. And, I guess, Jody did, as well. Mary  
15 and Jody are our victim advocates.

16 THE COURT: Right.

17 MS. VAN LANGEVELDE: And I was, actually, in Mr.  
18 Lloyd's -- I remember, 'cause I was in Mr. Lloyd's office  
19 discussing a different issue, and they came and interrupted us,  
20 and I said, "Oh, I'll take that," 'cause I knew we had a trial  
21 coming up.

22 THE COURT: So, the first time that you -- your  
23 office tried to contact her was June 14th.

24 MS. VAN LANGEVELDE: No, that's when she called us.  
25 I'm sorry. Is there another note? Did I miss something?

0530a

1 MR. STRONG: Yes.

2 THE COURT: I suppose she's already gone.

3 MR. STRONG: Your Honor, we'd been -- back in March  
4 23rd, 2017, Jody Strang, with our office, was trying to find  
5 her.

6 THE COURT: Um-hum.

7 MR. STRONG: So that we could serve her. And,  
8 obviously, you know, the information we had is from a 17-year  
9 old police report --

10 THE COURT: Right.

11 MR. STRONG: -- as far as her address. So, we were  
12 -- Jody Strang, with our office, was trying to find her. And,  
13 also, Bryan Seratt, on March 21st, 2017, was unable to find any  
14 information on her, as well. I don't believe we found her --

15 MS. VAN LANGEVELDE: Until she was served.

16 MR. STRONG: -- until -- it would've been May is when  
17 we finally got an e-mail address for her and served -- or, e-  
18 mailed her a subpoena for the May 9th jury trial --

19 THE COURT: Right.

20 MR. STRONG: -- which then was adjourned. And that,  
21 from my understanding, the first time she had stated what she  
22 was going to say on the stand was when she was in the  
23 conference room during Detective Maltby's cross-examination.

24 THE COURT: And who was she talking to in there?

25 MS. VAN LANGEVELDE: She talked to me.

0531a

1 THE COURT: Okay.

2 MR. CARTER: So, when -- the first time they got  
3 ahold of her was May?

4 THE COURT: Well, they were trying to find her back  
5 in March. And that's consistent with a statement at one of the  
6 pretrials saying, well, we have her on there if we can find  
7 her.

8 MR. STRONG: Right.

9 THE COURT: And then, I think what happened is you  
10 found her sometime the end of March, and that's when you  
11 learned she had a new last name, which is when you asked to  
12 amend the witness list. And at first, Mr. Carter was upset,  
13 and then he realized it was just changing it to her married  
14 name.

15 MR. STRONG: Right.

16 THE COURT: So, the issue is, after you found her,  
17 nobody interviewed her until today.

18 MR. STRONG: And --

19 MS. VAN LANGEVELDE: Right.

20 MR. STRONG: -- the one concern, Your Honor, is the  
21 768.27A --

22 THE COURT: Um-hum.

23 MR. STRONG: -- says you have to disclose the  
24 expected testimony. We expected her to testify just like  
25 Detective Roberts testified, which was in accordance with the

0532a

1 police report, just like witnesses are supposed to do. She  
2 threw us a curve ball.

3 THE COURT: Um-hum.

4 MR. STRONG: And that can happen. And that's why --

5 THE COURT: Oh, absolutely, it can.

6 MR. STRONG: That's why we're not under a duty to --  
7 obviously, if she had disclosed that, say, a week ago --

8 THE COURT: That's what I'm trying to find -- that's  
9 all I'm trying to find out --

10 MR. STRONG: Right.

11 THE COURT: -- is who talked to her, did they ask the  
12 -- you know, when Ms. -- when Ms. Van Langevelde talked to her,  
13 did you ask her are you gonna testify consistent with the  
14 police report?

15 MS. VAN LANGEVELDE: I -- I didn't ask her that  
16 directly, Judge, because it was, basically, explained to her  
17 that she had a subpoena, she needed to be here. She didn't  
18 want to come. I said, "Well, you need to come." She was very  
19 short with me on the phone. She didn't really want to talk  
20 with me.

21 THE COURT: Did you ask her why she didn't want to  
22 come? I mean, did that raise any flags, like, wait, I might  
23 have a hostile person here?

24 MS. VAN LANGEVELDE: Yes, but I'm the DV prosecutor.

25 THE COURT: Sure.

0533a

1 MS. VAN LANGEVELDE: I get every day people don't  
2 want to come to court. So, I just -- I guess I didn't --

3 THE COURT: Yeah.

4 MS. VAN LANGEVELDE: -- think. I didn't. But, I --  
5 every day I talk to people who don't want to come to court.

6 THE COURT: I agree. I understand that.

7 Mr. Carter, anything you want to add at this point?

8 MR. CARTER: Just the Court characterizing me as  
9 being upset that she was off the witness list. I just noticed  
10 it and said I wanted her there.

11 THE COURT: Well, I guess upset is a strong word.

12 MR. CARTER: Yes.

13 THE COURT: Okay, let's -- it sounds like --

14 MR. CARTER: Okay.

15 THE COURT: -- everybody's got their feel -- their  
16 feelings on the top of their skin right now.

17 MR. CARTER: Hey, I'm a snowflake.

18 THE COURT: It was -- it was raised, but it was --

19 MR. CARTER: I was raised, there you go.

20 THE COURT: -- no longer an issue when it became  
21 we're changing from --

22 MR. CARTER: No.

23 THE COURT: -- maiden to married name.

24 MR. CARTER: Yeah, because I -- the -- the story  
25 behind that is I see a witness that isn't on there anymore, and



0534a

1 I wanted to know more about it. I wasn't upset.

2 THE COURT: Right.

3 MR. CARTER: I'm just doing my job.

4 THE COURT: You are.

5 So, here's where I think we stand right now is the  
6 question for you, Mr. Carter, is to provide some basis that the  
7 prosecutor's office has a continuing obligation to interview  
8 all witnesses practically up to the day of trial. Ms. Van  
9 Langevelde, as an officer of the Court, she has stated that  
10 they tried to find her. When they found her, she talked to  
11 her. She had no reason to believe she wasn't gonna testify  
12 consistently with the police report until right before she took  
13 the stand this afternoon.

14 MR. CARTER: And I can appreciate that. But, I think  
15 it -- it -- I -- I -- I take issue in the way you couched that.  
16 I think, under the -- under the disclosure thing is whether or  
17 not they had a continued duty to update or get a summary.  
18 Because I would agree, with any witness, you throw -- but --

19 THE COURT: Right.

20 MR. CARTER: -- they're using this for a specific  
21 purpose, and I think there's a --

22 THE COURT: I understand, yeah.

23 MR. CARTER: There's a higher burden.

24 THE COURT: You're making a distinction because this  
25 is a prior act that comes in. And so, you're saying maybe

0535a

1 there is a duty, under this act, versus all other witnesses  
2 they named. That's your burden.

3 MR. CARTER: Right, right.

4 THE COURT: So --

5 MR. STRONG: Thank you. And I --

6 THE COURT: -- if you -- if you find something --

7 MR. STRONG: If there's some law, I'd love to read  
8 it.

9 THE COURT: We would love to --

10 MR. CARTER: Sure.

11 THE COURT: I -- I -- I will -- I will entertain it,  
12 and, you know, take a look at it.

13 As of right now, we're continuing the trial tomorrow.  
14 You're first up. First witness at eight-thirty.

15 And are you gonna want her to come back?

16 MR. CARTER: I -- I don't know.

17 THE COURT: Okay, so make sure he has that number;  
18 right?

19 MS. VAN LANGEVELDE: Yes, I will get that to Mr.  
20 Carter right now.

21 THE COURT: All right, great. Thank you, everybody.  
22 Have a nice evening.

23 And if you find anything, Mr. Carter, go ahead and  
24 get it to everybody as quickly as possible, okay?  
25

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MR. CARTER: Yes.

THE COURT: Okay.

(At 4:14 p.m., proceedings concluded for the day)

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CERTIFICATION OF COURT RECORDER

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STATE OF MICHIGAN )  
COUNTY OF EATON )

I certify that this transcript consisting of 263 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Tuesday, June 20, 2017.

Dated: December 10, 2017

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Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

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STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant.

JURY TRIAL - VOLUME III OF IV

BEFORE THE HONORABLE JANICE K. CUNNINGHAM, CIRCUIT JUDGE

Charlotte, Michigan - Wednesday, June 21, 2017

APPEARANCES:

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EXHIBITS:

None

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Charlotte, Michigan

Wednesday, June 21, 2017 - At 8:30 a.m.

THE COURT: We are back on the record in the People versus Warner, file number 16-296-FC.

Everybody can be seated.

I think we're still waiting for a juror, but I thought it would be good to see if there were any preliminary matters and also talk about the schedule today. So --

MR. STRONG: Sounds good.

THE COURT: -- let me start with the prosecutor. Any preliminary matters, Mr. Strong?

MR. STRONG: I have none.

THE COURT: Okay.

MR. STRONG: As the People have none.

MS. VAN LANGEVELDE: I'm sorry.

THE COURT: Thank you.

Mr. Carter, any issues?

MR. CARTER: I -- I -- I do, and it has to do with the -- that notice issue that we had yesterday.

THE COURT: Um-hum.

MR. CARTER: I -- I did a lot of time trying to research that. I couldn't find anything. I think it's something of first impression here. However, what I would like to do is I need to create a record for appeal, if, in fact, there's going to be one, regarding this issue.



0542a

1 I brought back Amanda, and I'd like to put her on the  
2 stand outside the presence of the jury, have her proffer about  
3 a conversation she had back in May, which, I think, would put  
4 them on notice that, perhaps, their -- their notice --

5 THE COURT: Okay.

6 MR. CARTER: -- of this is -- has changed. And I  
7 think implicit in that statute, they would then have a duty to  
8 at least --

9 THE COURT: Okay.

10 MR. CARTER: -- revise or let me know, so.

11 THE COURT: Let's bring her in.

12 MR. CARTER: Thank you.

13 THE COURT: Good morning, Detective Maltby. How are  
14 you today?

15 DETECTIVE MALTBY: Good morning. How are you, Your  
16 Honor?

17 THE COURT: Well, you know --

18 DETECTIVE MALTBY: Sure.

19 THE COURT -- every day's a journey.

20 DETETIVE MALTBY: It is.

21 THE COURT: Please come right up here, ma'am.  
22 There's a step right before the witness stand.

23 Please raise your right hand. Do you swear to tell  
24 the truth, the whole truth, and nothing but the truth, so help  
25 you God?

0543a

1 MS. WILLIFORD: I do.

2 THE COURT: Okay.

3 Mr. Warner, I forgot to swear you in this morning,  
4 which I always like to do just in case anybody says anything,  
5 so you know you're under oath.

6 Raise your right hand. Do you swear to tell the  
7 truth, the whole truth, and nothing but the truth, so help you  
8 God?

9 THE DEFENDANT: Yes.

10 (At 8:32 a.m., defendant sworn by the Court)

11 THE COURT: Great. Thank you.

12 Would you please state your full name for the record?

13 THE WITNESS: Amanda Sue Williford.

14 THE COURT: And could you please spell your last  
15 name?

16 THE WITNESS: W-i-l-l-i-f-o-r-d.

17 THE COURT: Okay. And please remember that Miss Bond  
18 needs to take down everything you say. Please keep your voice,  
19 you know, at a recordable level.

20 Mr. Carter.

21 MR. CARTER: Thank you.

22 AMANDA SUE WILLIFORD

23 at 8:32 a.m., sworn as a witness, testified outside the  
24 presence of the jury as follows:

25 DIRECT EXAMINATION

0544a

1 BY MR. CARTER:

2 Q Is it okay if I call you Amanda?

3 A Yes, sir.

4 Q Because that's easier for me to -- to remember and pronounce.

5 Amanda, when was the first time you were contacted about  
6 testifying in this proceeding?

7 A May.

8 Q May when?

9 A I'm not sure.

10 Q Okay. Do you know who you were contacted by?

11 A By the lady right there.

12 Q And you're pointing to the prosecutor?

13 A Yes.

14 Q The -- the female prosecutor?

15 A Yes.

16 Q I'll butcher her last name, so that's why I'm -- it's Adrianna.

17 THE COURT: Were you contacted by Miss Van  
18 Langevelde?

19 THE WITNESS: Yes.

20 MR. CARTER: All right.

21 THE COURT: And that was in 2017, May; correct?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Go ahead.

24 BY MR. CARTER:

25 Q And did she talk to you about your anticipated testimony?

0545a

1 A No.

2 Q What was that conversation?

3 A She told me I was subpoenaed to come to court, and I told her  
4 didn't want to be involved in this case.

5 Q Did -- did you indicate to her if anything ever happened back  
6 then --

7 A No.

8 Q -- between you and Damon? Did you tell her that nothing --

9 A Nothing happened.

10 Q -- happened between you and Damon?

11 A Yes, sir.

12 Q And what transpired from there?

13 A She --

14 Q When -- when you told her that nothing happened between you and  
15 Damon, what did --

16 A She said, "Wouldn't you want someone to be involved if it was  
17 your kids."

18 Q And what did you indicate at that point?

19 A I said, "I'm a single mom; I can't afford to take time off to  
20 come to court for something I don't want to be involved in."

21 Q And when was the second -- was there a second time you were  
22 contacted or interviewed?

23 A She called and told me to appear.

24 Q And did -- and -- well, did you have any other conversation  
25 between May and --

0546a

1 A No.

2 Q -- yesterday, before you appeared?

3 A No.

4 Q Prior to taking the stand, did you have a conversation?

5 A Out there, in the room.

6 Q Okay. And did you indicate to her whether or not anything had

7 happened or --

8 A Told her no.

9 Q -- whether -- Told her?

10 A Nothing happened.

11 Q All right.

12 MR. CARTER: I have no -- nothing further.

13 THE COURT: Mr. Strong. Or, is it Ms. Van

14 Langevelde?

15 MS. VAN LANGEVELDE: Oh, I'll ask.

16 CROSS-EXAMINATION

17 BY MS. VAN LANGEVELDE:

18 Q Isn't it true, Amanda, that that conversation took place on

19 June 14th of this year, not in May?

20 A No, you called me in May.

21 Q No, isn't it true that you called our office on June 14th and

22 talked to -- first to Mary and then Jody in our office?

23 A No, you called me first.

24 Q No, I'm asking --

25 A I have the voice mail.

0547a

1 Q I have -- I -- I probably tried to get ahold of you in May.

2 A And I called back.

3 Q It's your testimony that --

4 A That's how I knew to --

5 Q -- you called back.

6 A -- come yesterday.

7 Q Well, I'm asking you: Our conversation was on May -- or, I'm  
8 sorry, June 14th, 2017; right?

9 A That's when you told me to come yesterday, but you had called  
10 me in May. That's when I told you I didn't want to testify.

11 Q You had a voice mail from me in May.

12 A Yeah, I called you back. I told you I didn't want to testify.

13 Q And we had a conversation June 14th about you not wanting to  
14 testify.

15 A I said it then, too.

16 Q And we had a conversation on June 14th about your work schedule  
17 and --

18 A Yes.

19 Q -- how I was willing to work around your work schedule to make  
20 sure that you could be here for court.

21 A Yes.

22 Q And that you had kids, and you needed to make sure that they  
23 were taken care of, and that you had kids 'cause they were off  
24 for the summer; right?

25 A Yes, ma'am.

0548a

1 Q And so, I was willing to work around your schedule to get you  
2 here in the afternoon on Tuesday.

3 A Yes.

4 Q And then, you had to go because you had your kids.

5 A Yes.

6 Q And then I said I'd call you the next day to talk about the  
7 case. And I called you on -- what was it -- Thursday and left  
8 a voice mail; is that true?

9 A Yup.

10 Q And you never called me back.

11 A No, I had --

12 Q Called you on Friday.

13 A Yup.

14 Q Left you a voice mail. You never called me back.

15 A Nope.

16 Q Called you on Saturday.

17 A Yeah, I had a birthday party.

18 Q And you --

19 A I couldn't answer.

20 Q -- left the phone open. And you didn't hang up on me, but you  
21 left the phone open. You said, "Fuckin' prosecutor's trying to  
22 talk to me on a Saturday;" true?

23 A Yeah, probably, 'cause I was at a birthday party.

24 Q So, I was never able --

25 A You guys shouldn't be --

0549a

1 Q -- to talk to you about --

2 A -- callin' me on a Saturday.

3 Q -- the allegations in this case -- or, in your case, 'cause you  
4 wouldn't talk to me.

5 A But, you called me in May first.

6 Q I'm sorry, you need to say yes or no and not nod.

7 A Okay.

8 Q I'm sure I did talk -- I'm sure I did left (sic) you a voice  
9 mail in May.

10 MS. VAN LANGEVELDE: I don't have any other  
11 questions, Judge. Oh, I guess Mr. Strong --

12 BY MS. VAN LANGEVELDE:

13 Q Did you ever talk to Mr. Carter prior to coming to court?

14 A No.

15 Q Did you ever talk to Mr. Warner?

16 A No.

17 Q How about Mr. Warner's mom?

18 A No.

19 Q Anybody related to Mr. Warner?

20 A No.

21 THE COURT: So, I just want to be clear. Your  
22 testimony is that in May --

23 THE WITNESS: She called me.

24 THE COURT: -- you had a phone conversation with Miss  
25 Van Langevelde?



0550a

1 THE WITNESS: Yes, ma'am.

2 THE COURT: And during that conversation, you told  
3 her nothing happened between you and Damon?

4 THE WITNESS: Yes.

5 THE COURT: That's a statement you actually made?

6 THE WITNESS: Yes.

7 THE COURT: Mr. Carter, anything? Any redirect?

8 MR. CARTER: No.

9 THE COURT: May the witness be excused?

10 MR. CARTER: She may.

11 THE COURT: Oh, I have one more question. Did you  
12 ever talk to any staff at the prosecutor's office?

13 THE WITNESS: No.

14 THE COURT: Thank you. You may step down, and you  
15 are excused from your subpoena. You may leave.

16 THE WITNESS: Can I get something in writing that I  
17 was here today?

18 THE COURT: Yeah.

19 THE WITNESS: So I don't lose my job.

20 THE COURT: Yup. Miss Van Langevelde will take care  
21 of that.

22 MS. VAN LANGEVELDE: I'm gonna go get --

23 MR. STRONG: We're gonna get two people from our  
24 office, Your Honor.

25 THE COURT: Okay. If you can just wait out in the

0551a

1 lobby, somebody will bring that out to you, okay?

2 THE WITNESS: Okay.

3 (At 8:38 a.m., witness stands down)

4 THE COURT: I can sign that, whatever it is she  
5 needs, just verify that she was subpoenaed in court.

6 All right, Ms. Van Langevelde, did you have a witness  
7 you'd like to call?

8 MS. VAN LANGEVELDE: I do. Miss Jody Strang, Your  
9 Honor. And I would normally have another witness except Mary  
10 is out today.

11 THE COURT: Ms. Strang, would you please come  
12 forward? Raise your right hand.

13 Do you swear to tell the truth, the whole truth, and  
14 nothing but the truth, so help you God?

15 MS. STRANG: Yes.

16 THE COURT: Please have a seat. Would you please  
17 state your full name for the record?

18 THE WITNESS: Jody Lynn Strang.

19 THE COURT: How do you spell your last name?

20 THE WITNESS: S-t-r-a-n-g.

21 THE COURT: And Ms. Bond has to record everything  
22 that's said, so could you keep your voice to a level that can  
23 record? And then, you have to use words like yes and no, okay?

24 THE WITNESS: Yes.

25 THE COURT: All right. Go ahead, Ms. Van Langevelde.

0552a

1 MS. VAN LANGEVELDE: Thank you.

2 JODY LYNN STRANG

3 at 8:41 a.m., sworn as a witness, testified outside the  
4 presence of the jury as follows:

5 DIRECT EXAMINATION

6 BY MS. VAN LANGEVELDE:

7 Q Ms. Strang, you're a victim advocate for our office; correct?

8 A Yes.

9 Q Did you have an opportunity to review a note regarding Amanda  
10 Williford in this case?

11 A Yes.

12 Q And did you have an opportunity to talk to Amanda Williford?

13 A Actually, I -- Mary, that works under me, received a call from  
14 Amanda Williford, and she let me know that she was --

15 MR. CARTER: I'd have to object --

16 THE COURT: Yeah.

17 MR. CARTER: -- on hearsay at this point.

18 THE COURT: Right.

19 MR. STRONG: Your Honor, this is a motion hearing.  
20 Wouldn't it be acceptable in this particular type of hearing?

21 THE COURT: Well, I think she first needs to answer  
22 the question, and which is, no, she never talked to her.

23 MS. VAN LANGEVELDE: Okay.

24 BY MS. VAN LANGEVELDE:

25 Q Jody, at some point, did you get information from Mary that

0553a

1 Amanda Williford was on the phone?

2 A Yes.

3 Q Okay. And what information did you receive from Mary?

4 A That Amanda was on the phone.

5 MR. CARTER: I would have to object on hearsay.

6 THE COURT: It is an out-of-court statement that's  
7 being offered for the truth of what happened, so I have to  
8 sustain the objection.

9 MS. VAN LANGEVELDE: Well --

10 MR. STRONG: If --

11 MS. VAN LANGEVELDE: -- if we --

12 MR. STRONG: Your Honor, I think we're at a little  
13 bit of a disadvantage. Obviously, we didn't know we'd be  
14 taking testimony on this type of matter before.

15 THE COURT: Well --

16 MS. VAN LANGEVELDE: I know.

17 MR. STRONG: I mean, and so is the Court, obviously.  
18 But --

19 THE COURT: Well, I think we could've anticipated it  
20 after yesterday afternoon. I mean, it was --

21 MR. STRONG: Taking testimony?

22 THE COURT: -- specifically -- well --

23 MR. STRONG: I anticipated the legal argument --

24 THE COURT: Right.

25 MR. STRONG: -- but --

0554a

1 THE COURT: I -- okay. Why don't you finish with  
2 this witness, and then I think how it would be handled is that  
3 given the nature of the timing, that you would be allowed to do  
4 an offer of proof if Mary was not out today. That's how I  
5 think that -- that would be the way you would handle it. Not  
6 to allow this witness to testify what Mary would say, but to do  
7 an offer of proof, I -- is how I think the proper way is to  
8 handle this.

9 MS. VAN LANGEVELDE: Okay.

10 THE COURT: Mr. Carter?

11 MR. CARTER: I -- I think so, too.

12 THE COURT: Okay.

13 MR. CARTER: I mean, I -- I'm just trying to create a  
14 record.

15 THE COURT: Right. So, I -- I think the offer of  
16 proof would be, hey, if we would've known that we needed  
17 testimony, we would've had Mary here, and this is what we  
18 believe she would've testified to. I think that's the proper  
19 way --

20 MR. STRONG: Right.

21 THE COURT: -- as opposed to having this witness --

22 MS. VAN LANGEVELDE: Right, sure.

23 THE COURT: Okay.

24 MS. VAN LANGEVELDE: I understand.

25 THE COURT: Okay, so go ahead.

1 MS. VAN LANGEVELDE: Okay.

2 BY MS. VAN LANGEVELDE:

3 Q So, Jody, when you found out Amanda was on the phone, what did  
4 you do?

5 A I had Mary put her on hold, and I went and let Adrienne know  
6 that she was on the phone.

7 Q And where was I?

8 A You were with Doug Lloyd, in his office.

9 Q Okay. And why did you feel like it was important to interrupt  
10 my conversation with Mr. Lloyd to talk to Amanda on the phone?

11 A I knew that you were trying to get in touch with her, to speak  
12 with her regarding this trial.

13 Q Okay. And so, when you let me know Amanda was on the phone,  
14 what did I do?

15 A You immediately went and answered the call.

16 Q And that was on June 14th, 2017?

17 A Yes.

18 Q All right, thank you.

19 MS. VAN LANGEVELDE: I don't have any other  
20 questions.

21 THE COURT: Mr. Carter?

22 MR. CARTER: (No verbal response).

23 THE COURT: Okay. Thank you very much. You may step  
24 down.

25 (At 8:45 a.m., witness stands down)

0556a

1 MS. VAN LANGEVELDE: Thank you, Jody.

2 All right, so, Your Honor, I would like to make an  
3 offer of proof, and this is based on Mary's note in our adult  
4 case --

5 THE COURT: Well, let's establish the name of the  
6 witness that would testify, please.

7 MS. VAN LANGEVELDE: I'm sorry. What is Mary's last  
8 name?

9 MR. STRONG: Greener.

10 MS. VAN LANGEVELDE: Greener. Sorry. Mary Greener  
11 with our office. She is our newest --

12 THE COURT: Could you spell that for the court  
13 reporter, please?

14 MR. STRONG: G-r-e-e-n-e-r.

15 THE COURT: Thank you.

16 MS. VAN LANGEVELDE: Thank you.

17 So, Mary has a note in here:

18 "Received call from Amanda Williford, 517-358-3918.  
19 Stated someone called her and left her a message and she knew  
20 she had to be in court June 19th, 20th and 21st. She cannot do  
21 that. Has nothing to do with this case. Doesn't know why she  
22 has to be here. Doesn't know who called.

23 Adrienne called her and left her a message. So, I  
24 let Jody" -- or, "I tray" -- "talked" -- "wanted to talk to  
25 her, so I transferred her to AKV."

0557a

1 THE COURT: What was the date of that note?

2 MS. VAN LANGEVELDE: June 14th, 2017.

3 THE COURT: I have -- I don't think I have any  
4 problems that -- I mean, there appears to be four people that  
5 have corroborated. The witness said that there was a call the  
6 14th, you've said there was a call the 14th, Jody Strong (sic  
7 said there was a call the 14th, and --

8 MR. STRONG: Strang, Your Honor. Sorry, Strang. Our  
9 names are slightly similar.

10 THE COURT: Oh, sorry, Strang. And if Miss Greener  
11 were here, the 14th. I don't think there's any question, on  
12 the record, there was a call June 14th. Okay.

13 Any other witnesses -- any -- that you would wish --  
14 well, Mr. Carter, you're not any -- any other witnesses that  
15 you would wish to call?

16 MS. VAN LANGEVELDE: No, Your Honor.

17 THE COURT: All right, Mr. Carter.

18 MR. CARTER: Thank you, Your Honor. Again, I would  
19 renew my motion for a mistrial based on the defective notice.  
20 I believe at -- that, in May, that, according to the witness,  
21 she testified that she indicated that nothing had happened.  
22 This witness was called. I didn't receive a summary indicating  
23 that, hey, this -- our position has changed. The anticipated  
24 testimony isn't that anymore; it's now that nothing has  
25 happened. I didn't receive that. At best, we had -- they had



0558a

1 had information prior to putting her on the stand, and they  
2 could've rectified it at that point, and they chose not to.  
3 Thank you.

4 I think it's a direct violation of -- of the statute  
5 I think there is a continued duty, especially when you know now  
6 that, perhaps, they can't rely on this individual's testimony  
7 based on the statute, and they've went ahead and produced that  
8 witness anyways.

9 THE COURT: Mr. Strong.

10 MR. STRONG: Thank you, Your Honor.

11 Seven-sixty-eight-twenty-seven-a requires our office  
12 to disclose the expected testimony. Obviously, the purpose of  
13 that is so that the defense can prepare their defense for our  
14 attack, if you will.

15 THE COURT: Um-hum.

16 MR. STRONG: How we plan to prove the case. The  
17 expected testimony, which we had no reason to believe wouldn't  
18 be corroborated since we had a Judgment of Conviction and we  
19 had Detective Roberts saying he met with this person, that he  
20 talked with the defendant, everything that was corroborated in  
21 the police report. That was our form of attack. We disclosed  
22 that information, and then, obviously, we had the ruling from  
23 the Court yesterday morning about how everything in that was  
24 proper.

25 I think it stands before this Court a determination

0559a

1 of that witness's credibility. She said that she never had a  
2 phone conversation with anyone else in our office. We've given  
3 you an offer of proof that she did, that she -- she said, on  
4 the stand today, "I never had a phone conversation with anyone  
5 else in the office but Adrienne." Miss Strang, in our offer of  
6 proof, directly goes against that.

7 Just like the witness yesterday testified that she  
8 never met with Detective Roberts, that she never disclosed any  
9 of those different things, directly contrary to what Detective  
10 Roberts testified to.

11 She also has testified that she didn't want to be  
12 here, that she doesn't like our office. She's not a fan of  
13 Miss Van Langevelde.

14 So, I think the Court has to look at the motivations  
15 for that particular witness to lie about whether or not she  
16 actually said to Miss Van Langevelde nothing happened.

17 I submit to the Court that that did not happen, which  
18 means that we satisfied our duty that we expected her to  
19 testify in accordance with a police report that was  
20 corroborated by other sources. She did not do that. This --  
21 that's all we have to provide to the defense is what that  
22 expected testimony for the attack is going to be. Because we  
23 did that and because he's, obviously, had an adequate time to  
24 respond to it, then I don't think that there's any grounds for  
25 a mistrial.

0560a

1           The defense has stated no law, whatsoever, that we  
2 have any kind of a continuing duty to continuously interview  
3 witnesses. I understand that it's trial preparation, but  
4 that's one thing that the Court tends not to look at is how we  
5 prepare for trial, how the defense prepares for trial. That's  
6 trial strategy.

7           So, while we had no reason to believe that Miss  
8 Willicut -- or, sorry, Williford would change her story up  
9 until the minutes before she testified, there's no grounds for  
10 a mistrial, whatsoever. I would ask the Court to deny that.

11           Also, Your Honor, the -- since the purpose of 768.27A  
12 is to allow the defense to formulate a defense, how is he  
13 prejudiced by our other acts witness saying nothing happened?  
14 All the cases that deal with other acts mainly focus on the  
15 prejudice to the defendant. How is the defendant prejudiced by  
16 one of our main witnesses, I guess you could say, changing her  
17 story in favor of the defense? There's been no prejudice to  
18 him, whatsoever. This is simply a ploy to get a mistrial and  
19 double jeopardy, and there's no basis for it. Thank you.

20           THE COURT: Go ahead, Mr. Carter.

21           MR. CARTER: I can tell how -- I can tell you how I  
22 was prejudiced. She went through the police report and stated:  
23 Didn't you say this? And she said: No, that's a lie. Didn't  
24 -- didn't -- didn't -- so, she went through, and -- and she put  
25 on some pretty damaging stuff in front of a jury.

0561a

1           At best, at best, even on the prosecution's side, she  
2 knew it before that witness took the stand. She has the  
3 notice. The notice is to give me a summary of their testimony.  
4 If that changed and they knew about it, I think they had a --  
5 duty to let me know that, hey, our -- our reliance on this  
6 isn't there anymore. I think they had a duty to it.

7           I -- again, they claim that I haven't cited any case  
8 law. I think the statute specific says that they got to let me  
9 know of the summary of what the -- the anticipated testimony  
10 was. They knew that, before she took the stand, that it had  
11 changed. They had a duty to tell me. They had a duty to  
12 revise it, to let us know.

13           And I'd submit to you that in -- back in May, when  
14 the witness testified they got a call from her, they knew  
15 something was up, at that point. They had to've with that  
16 conversation. And they chose to ignore it.

17           THE COURT: Just so I'm clear, Ms. Van Langevelde,  
18 when you talked to Amanda in May, yesterday you indicated that  
19 she said she didn't want to come, she didn't want to be  
20 involved, but it's your position she never said nothing  
21 happened between me and Damon?

22           MS. VAN LANGEVELDE: I don't think I talked to her in  
23 May. I left her a voice mail in May.

24           THE COURT: So, you're denying that you even talked  
25 to her in May?

0562a

1 MS. VAN LANGEVELDE: I -- I have no recollection or  
2 any notes that I would've talked to her in May. I have notes  
3 and recollection that I talked to her on June 14th. I -- I  
4 know -- I'm sure I left her a voice mail in May, 'cause we were  
5 getting ready for trial. 'Cause there was -- we had the -- we  
6 had originally, then, scheduled for trial May 9th, and then we  
7 -- and then, Mr. Carter's wife had some sort of surgery. So,  
8 I'm sure that I did leave her a voice mail, but I had not -- I  
9 don't have any notes.

10 THE COURT: But, she did tell you, in the hallway,  
11 before she came in to testify that nothing happened, and that's  
12 when -- the first time you learned was out in the hallway; is  
13 that right?

14 MS. VAN LANGEVELDE: Yes, when we took our -- when we  
15 took our afternoon break yesterday --

16 THE COURT: Um-hum.

17 MS. VAN LANGEVELDE: -- for the 15 minutes, I said,  
18 "Amanda, come, let's -- let's talk because I haven't gotten a  
19 chance to talk to you."

20 THE COURT: Sure. Right, right.

21 MS. VAN LANGEVELDE: She wouldn't answer my phone  
22 calls all weekend and the week before. So, I took her into the  
23 thing. I said, "Let's talk about this." And that's the --  
24 that was the first time that she ever told me she had not had  
25 sex with Mr. Warner.

0563a

1 THE COURT: Okay. So, we need to take a break.

2 The -- the question -- I can tell ya, I -- I'm -- I  
3 will pose the question that I have in my mind before we take a  
4 break. And then, I'll take five minutes to let you all compose  
5 yourself to answer that, because I realize that everybody's  
6 reacting --

7 It -- the Judgment of Conviction would've come in  
8 regardless; correct, Mr. Carter?

9 MR. CARTER: Yes.

10 THE COURT: Okay. So, the jury would have known that  
11 the defendant had previously entered a plea of guilty and was  
12 convicted of -- it's CSC - third; correct?

13 MR. STRONG: Attempted CSC - third.

14 THE COURT: Attempted CSC - third.

15 MS. VAN LANGEVELDE: Yes.

16 THE COURT: And so, the issue is whether or not  
17 putting the witness on the stand, knowing that she was denying  
18 what was in the police report but then going through the police  
19 report, whether that is what creates the problem.

20 MR. STRONG: Your Honor, if I may.

21 THE COURT: Sure.

22 MR. STRONG: Not only would the Judgment of  
23 Conviction have come in, which states that the defendant did  
24 plead guilty to this, also the defendant's own statements about  
25 having a prior CSC came in.

0564a

1 THE COURT: Right.

2 MR. STRONG: And also Detective Roberts testifying  
3 about what the defendant told him about having sex with Amanda  
4 Ratliff --

5 THE COURT: Right.

6 MR. STRONG: -- comes in.

7 THE COURT: Right.

8 MR. STRONG: So, it's not just a piece of paper.  
9 It's those --

10 THE COURT: I'm sorry.

11 MR. STRONG: -- things together.

12 THE COURT: I agree with you. So, the --

13 MR. STRONG: Thank you.

14 THE COURT: So, the question is whether or not the  
15 put -- putting the -- well, there's two questions: Is whether  
16 or not the prosecutor's office knew before yesterday, which is  
17 June 20th; right?

18 MR. STRONG: Yes.

19 THE COURT: And assuming they knew before June 20th  
20 and assuming they did not know before June 20th is when they  
21 found out beforehand, whether the questioning, as Mr. Carter's  
22 argument is, they -- you still put her on the stand and went  
23 through all those questions knowing that she was denying it and  
24 not giving him a head's up. He didn't know until she was  
25 actually on the stand that that's what was happening. So,

0565a

1 that's the issue.

2 We'll take five minutes, maybe 10. I'll let you both  
3 address that issue. I'll make a ruling. And we'll see where  
4 we go from there.

5 MR. STRONG: Thank you, Your Honor.

6 MS. VAN LANGEVELDE: Thank you.

7 (At 8:56 a.m., off the record)

8 (At 9:08 a.m., back on the record)

9 THE COURT: We're back on the record in People versus  
10 Warner, file 16-296-FC.

11 Mr. Carter, it was your motion; you get the first  
12 shot. Go ahead.

13 MR. CARTER: Yeah, I -- I don't think I need to say  
14 anything more. I -- I -- I didn't think of anything more than  
15 what I said earlier.

16 THE COURT: Okay.

17 MR. STRONG: Your Honor, again --

18 THE COURT: Mr. Strong.

19 MR. STRONG: -- I don't see any way that the  
20 defendant was prejudiced when the Court was going to hear that  
21 the defendant had the conviction, that the defendant admitted  
22 to the prior conviction, and that they would've heard through  
23 Detective Roberts, as they did hear through Detective Roberts,  
24 that it was with Amanda Ratliff, that she was 12, that he was  
25 25, and that he admitted to doing it.



0566a

1           So, given that those statements would come in even  
2 without the witness, I don't see how there's been any  
3 prejudice.

4           Then, the witness's statements could not hurt the  
5 defendant. In fact, she just denied everything. So, I don't  
6 see how there's prejudice there, either.

7           I think what's very important, for this Court, is  
8 that, in order for Miss -- again, I still call her Ratliff's  
9 testimony before this Court yesterday and today to be true, the  
10 Court has to consider what also must be true in that sense. In  
11 order for her statements to this Court to be true, a lot of  
12 other people have to have lied: Adrienne Van Langevelde has to  
13 have lied. Mary Greener, from our office, has to have lied and  
14 documented that lie in our office by saying that she talked to  
15 Miss Ratliff. Jody Strang would've had to've lied on the  
16 stand. Detective Roberts would've had to've lied on the stand.  
17 Essentially, the entire judicial system of Calhoun County  
18 would've had to've lied in order for her statements for this  
19 Court to be true.

20           So, I think the Court needs to weigh her credibility.

21           And I urge you to find that she is not a credible witness on  
22 the stand, especially given her own statements about how she  
23 feels about this case, about being before this Court, and  
24 about, specifically, Miss Van Langevelde.

25           THE COURT: Thank you.

*56th Circuit Court  
Charlotte, Michigan*

0567a

1 I don't think I have to judge the credibility issue  
2 I -- first of all, just I -- I did not hear her say this  
3 morning that she didn't call and get referred to Ms. Van  
4 Langevelde. I heard her say that she didn't have a  
5 conversation with 'em. But that's mincing words, and it really  
6 doesn't matter to the Court's ruling.

7 First of all, I do want to state on the record that  
8 do believe that 768.27A does have implicit in it a duty of the  
9 prosecutor to update the defense if they learn conflicting  
10 information from what they provided. I think that's just  
11 standard in any case. If you provide information to somebody  
12 through discovery and you later learn that information is  
13 false, you have a duty to correct it. There's no question, in  
14 my mind, about it.

15 However, in this case, the facts show at least that  
16 Ms. Van Langevelde knew immediately before she put her on the  
17 stand that she was gonna say something different. I don't  
18 think that that raises a duty that we -- that Ms. Van  
19 Langevelde did anything wrong or that she didn't timely update  
20 since it was happening at the same time the trial was  
21 progressing.

22 But even if I accept the defense's argument that we  
23 should've taken a break yesterday, that Ms. Van Langevelde  
24 should've said, Mr. Carter, I want you to know she's gonna come  
25 in and deny and say that none of it was true, the question is

0568a

1 how was the defendant prejudiced, if at all. How would that  
2 have changed the defense strategy, if at all?

3 We've already established that the jury would have  
4 the Judgment of Conviction. We've already established that the  
5 jury would've heard the testimony of the detective and would,  
6 through that detective, heard the defendant's own statement of  
7 admission of a relationship with a 12-year-old when he was 25

8 At best, and this is just speculative, I guess the  
9 prosecutor may have chosen not to put Amanda on the stand or  
10 the defense would've objected to her taking the stand. But if  
11 she had not taken the stand, how does that help defendant? I  
12 think an argument can be made that Amanda taking the stand  
13 helps the defendant's position, that it doesn't hurt it. And  
14 even had we worked through, perhaps, that she was changing her  
15 testimony, if you will, from the police report, and so Mr. --  
16 the defense would say, well, then, we would've called her as a  
17 witness to deny it, then the prosecutor would've been allowed  
18 to impeach her testimony.

19 I mean, really, the only thing that happened is it  
20 appeared, to me, in observing the questions as asked by Ms. Van  
21 Langevelde yesterday, that she was as surprised as anybody else  
22 that the prosecution's own witness denied what was in the  
23 police report and testified favorably for the defendant. How  
24 does that prejudice the defendant? I don't -- I don't see it  
25 in this case.

0569a

1 I don't think the defendant has been prejudiced,  
2 especially given that, as I said, the Judgment of Conviction's  
3 already allowed in and the testimony of the detective, which  
4 includes the defendant's statement.

5 So, the Court is denying a mistrial because I don't  
6 believe anything prejudicial has occurred regarding the defense  
7 strategy or anything prejudicial as to the defense. We'll move  
8 forward with the trial.

9 MS. VAN LANGEVELDE: Thank you, Your Honor.

10 MR. STRONG: Thank you.

11 MR. CARTER: Thank you, Your Honor.

12 THE COURT: Is your first witness ready, Mr. Carter?

13 MR. CARTER: I would hope so.

14 THE COURT: Let's wait and make sure they're ready  
15 before we bring the jury in. I don't want 'em --

16 MR. CARTER: Give me one second.

17 THE COURT: Sure. Absolutely, go ahead and get  
18 yourself organized and -- I don't -- well, I do -- I think  
19 there's some in there. I hope I put some hard candy --

20 MR. CARTER: Just have a seat here.

21 THE COURT: Okay, good. Let's bring the jury in, if  
22 we could, please.

23 (At 9:16 a.m., jury enters courtroom)

24 THE COURT: Morning, morning, morning, morning,  
25 morning, morning. Good morning.

0570a

1 All right, please be seated.

2 Mr. Carter, would you please call your first witness

3 MR. CARTER: Yes, Doug Willbar.

4 THE COURT: Sir, please come right up here. Before  
5 you get to the witness stand, there's a little step. So, watch  
6 your step.

7 Raise your right hand. Do you swear to tell the  
8 truth, the whole truth, and nothing but the truth, so help you  
9 God?

10 MR. WILLBAR: So help me God.

11 THE COURT: Please have a seat. State your full name  
12 for the record.

13 THE WITNESS: My name is Douglas Wayne Willbur.

14 THE COURT: How do you spell your last name?

15 THE WITNESS: W-i-l-l-b-u-r.

16 THE COURT: Thank you.

17 Go ahead, Mr. Carter.

18 DOUGLAS WAYNE WILLBUR

19 at 9:17 a.m., sworn as a witness, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CARTER:

22 Q Mr. -- is it Will --

23 A Willbur.

24 Q Willbur. I'm sorry. Mr. Willbur, my name is David Carter, and  
25 I represent the defendant in this matter. I'm gonna ask you a

0571a

1 series of questions. If there's a question your don't  
2 understand, please let me know, and I'll try to rephrase it;  
3 fair enough?

4 A Yes, sir.

5 Q It's very important that you answer yes and no verbally, not  
6 um-hums or huh-uhs or anything like that because this young  
7 lady here is taking down everything we say, and those words are  
8 very hard to describe, okay?

9 A Yes.

10 Q All right. If there's a question you don't understand, let me  
11 know, okay, and I'll rephrase it. And that goes with the  
12 prosecutor, too. If there's something you don't understand,  
13 just -- just let 'em know.

14 Now, Mr. Willbar -- Willbur, do you know Damon  
15 Warner?

16 A Yes, I do.

17 Q And do you know Pearl Griffen (sic).

18 A Yes, I do.

19 Q How do you know these folks?

20 A I was friends with Pearl's mother and father when they lived in  
21 Olivet and I lived in Olivet.

22 Q And how long ago was that?

23 A I've known Pearl since she was a baby, before she was even  
24 born.

25 Q Okay. So, you kinda knew her in the womb, huh?

0572a

1 A Yeah.

2 Q All right. And so, have you been around Pearl?

3 A Been around Pearl most of her life.

4 Q And how so?

5 A Like I said, I was her neighbor. Our friends, oh, we all hung  
6 -- ran -- ran in the same circle.

7 Q Okay. And you've known her for the -- for most of her life.  
8 When did you quit associating with Pearl?

9 A When Pearl moved in with her father and moved to Hastings, I  
10 think.

11 Q Okay.

12 A But we've been around Pearl birthdays and everything before.

13 Q Okay. So, would that be up to about a year or two years ago?

14 A About a year and-a-half.

15 Q Okay. So, you've known her up until then.

16 A Right.

17 Q Does she have a reputation for truthfulness?

18 A No.

19 Q And how do you know that?

20 A I've been around her all my life.

21 Q Okay.

22 A And -- I mean, my kids ran with her kids. And as far as  
23 Bridget goes, they were all -- I mean, we all hung out together  
24 and were friends.

25 Q When it comes to truthfulness, how would you describe her?

0573a

1 A Far and few between.

2 Q And what do you mean by that?

3 A She -- she wouldn't know the -- know the truth if it bit her  
4 -- in the butt.

5 Q Okay.

6 A I don't know how else to say it. But she's -- only thing I can  
7 think is -- is to say that she's a compulsive liar.

8 Q Okay. And you've know that through your experience with her  
9 and --

10 A Her --

11 Q -- dealing with her and being around --

12 A Her entire life, I can think of several instances where she'd  
13 look right at you and lie.

14 Q Well, can you give me at least one?

15 MR. STRONG: Objection, Your Honor, 608(b), specific  
16 instances of conduct.

17 THE COURT: Hang on one second, okay?

18 THE WITNESS: Okay.

19 THE COURT: Mr. Carter.

20 MR. CARTER: I'm -- I'm trying to get there.

21 THE COURT: Okay, go ahead.

22 MR. CARTER: I'm sorry, you quoted six --

23 MR. STRONG: Six-oh-eight b.

24 MR. CARTER: Six-oh-eight b?

25 MR. STRONG: Specific instances of conduct not proper



0574a

1 on direct examination.

2 MR. CARTER: Okay, I'll move on.

3 THE COURT: Thank you.

4 MR. CARTER: I think that's a --

5 THE COURT: Okay.

6 BY MR. CARTER:

7 Q Would -- would Pearl lie about big things, little things?

8 A Yeah, it --

9 Q It -- it wouldn't matter?

10 A It wouldn't matter. When they were really little --

11 MS. VAN LANGEVELDE: Objection.

12 THE WITNESS: -- Pearl used to run with a girl named  
13 Taylor.

14 MS. VAN LANGEVELDE: It goes outside the scope of the  
15 question.

16 MR. STRONG: And this would be a specific instance of  
17 conduct, as well.

18 MR. CARTER: I don't know if it would be.

19 THE COURT: No. Repeat the question, please.

20 MR. CARTER: I'm trying to remember it.

21 THE COURT: Then, rephrase --

22 MS. VAN LANGEVELDE: Big things and little --

23 THE COURT: -- the question; how about that? Let's  
24 rephrase it. And I think for purposes of dealing with the  
25 witness, I would like just one of the prosecutors to handle the

1 objecting.

2 MR. STRONG: Understood.

3 MS. VAN LANGEVELDE: Sorry, Judge.

4 THE COURT: No problem.

5 BY MR. CARTER:

6 Q Would -- I think I asked would she lie about only little things  
7 or big things.

8 A It was all things. It did -- she craved attention is the only  
9 thing I can think of, is she always wantin' attention.

10 Q And it's through your personal experience she would do this  
11 through lying?

12 A Yeah.

13 MR. CARTER: I have nothing further.

14 THE COURT: Who is going to do the cross?

15 MR. STRONG: One second, Your Honor.

16 MS. VAN LANGEVELDE: I think Mr. Strong is, but just  
17 one second.

18 CROSS-EXAMINATION

19 BY MR. STRONG:

20 Q Morning, Mr. Will.

21 A Morning.

22 Q Willbur; right?

23 A Willbur, yup.

24 Q Okay. My name's Adam Strong for the prosecution. Same kind of  
25 things that Mr. Carter said where I ask you a question and you

0576a

1 don't understand, totally fine to tell me, you know, you didn't  
2 understand it, okay?

3 A (No verbal response).

4 Q So, you said that you've known Pearl kind of her entire life.

5 A Yup.

6 Q And you knew her back when, you said, her mom and dad lived in  
7 Olivet.

8 A Yup.

9 Q Which dad are you referring to? Is that --

10 A Jim -- James Giffeth.

11 Q James Giffeth. And you also knew her when she lived with Damon  
12 Warner?

13 A Yes.

14 Q And how close were you when she was living with Damon Warner?

15 A Close, close as I was with Jimmy.

16 Q Okay. Were you close with Mr. Warner, as well?

17 A Yeah.

18 Q Okay. How close were you with Mr. Warner?

19 A Friends. I mean, conversary -- conversate. Nothing --

20 Q Okay. Did you guys ever -- like, did you -- was it more than  
21 just, I guess you'd say, family functions, or was it did you  
22 just see him at family functions?

23 A No, not just family functions. We hung out. We lived in the  
24 same neighborhood. I mean --

25 Q Okay.

0577a

1 A -- before I moved out, moved to Battle Creek, we was --

2 Q When'd you move to Battle Creek?

3 A Oh, golly, seven years ago.

4 Q Okay. When -- after you moved to Battle Creek, did you  
5 still --

6 A Yeah.

7 Q -- deal with Mr. Warner?

8 A My daughter still lives over here.

9 Q Okay. So, did you still hang out with Mr. Warner?

10 A Yes.

11 Q Friends with Mr. Warner?

12 A Yes.

13 Q All right. Now, as far as Pearl -- asked about little things,  
14 what types of little things would she lie about?

15 A It would be anything, just anything, like taking toys from kids  
16 when she was little. I didn't take that toy, and she's got it  
17 in her hand.

18 Q Okay. But that's -- so, fair to say something that --

19 A It could be --

20 Q -- a lot of little -- lot of little kids lie about things like  
21 that; right?

22 A It's not just little things.

23 Q Okay.

24 A It's all the other things, too, like I was tryin' to explain to  
25 him.

0578a

- 1 Q Well --
- 2 A It's not --
- 3 Q -- hold on a minute.
- 4 A -- just the little things.
- 5 Q Not just the little things. But she would lie about little
- 6 things just like other kids; right?
- 7 A Yeah.
- 8 Q Did you ever talk to Mr. Warner about this case?
- 9 A No.
- 10 Q Did you ever talk to Pearl about this case?
- 11 A Well, I can't say, no, I didn't talk to him, but, yes, I did.
- 12 I mean -- but it wasn't --
- 13 Q Okay, you talked -- so, you talked to Mr. Warner about this
- 14 case?
- 15 A Yeah, I asked him how he was doing, and he said, "Fine."
- 16 Q Okay. And did you ever talk to Mr. Carter about this case?
- 17 A Just this minute, this afternoon when I got here.
- 18 Q Okay.
- 19 A I've never seen that man before in my life.
- 20 Q Okay. And it's fine if you did.
- 21 A Yeah. I'm just sayin' I've never seen --
- 22 Q Nope --
- 23 A -- that man before in my life.
- 24 Q -- totally fine. You never had any specific conversation with
- 25 Pearl about this case, did you?

0579a

1 A No. I haven't seen Pearl year and-a-half, two years now.

2 Q Okay.

3 A I haven't seen her.

4 Q So, you have no definite knowledge about Pearl and what she's  
5 testified to about this case.

6 A Nope.

7 Q And you have no knowledge about Pearl and what she stated to,  
8 guess you'd say, law enforcement about this case.

9 A (No verbal response).

10 Q You never -- through her and never talked to her about it.

11 A I've never talked to her about it.

12 Q All right. So, you have no personal knowledge of whether or  
13 not she's lying about this case. Personal knowledge.

14 A Personal knowledge?

15 Q Yes.

16 A Other than what he mother has told me --

17 Q No, can't go into that. Just personal --

18 A And her father's told me.

19 Q -- knowledge from Pearl about this case.

20 A I have not talked to Pearl.

21 Q Okay.

22 THE COURT: Any redirect, Mr. Carter?

23 MR. CARTER: I -- I don't know if they're done.

24 THE COURT: Oh, I'm sorry.

25 MR. STRONG: One second, Your Honor.

0580a

1 THE COURT: Sure.

2 BY MR. STRONG:

3 Q Are you aware of the allegations in this case?

4 A Yes, I am. And I don't believe a minute of it.

5 Q All right. Are you aware that Mr. Warner had previously been  
6 convicted of something --

7 A Yes, I am.

8 Q All right. But you still didn't believe --

9 A Past is past, and you guys --

10 Q All right.

11 A All right, I can't say no more.

12 Q Just askin' a question.

13 A No, I don't. The past is the past. How can you try somebody  
14 for the past?

15 Q Not trying him for the past. All right, thank you.

16 THE COURT: Any redirect, Mr. Carter?

17 REDIRECT EXAMINATION

18 BY MR. CARTER:

19 Q Based on your personal knowledge with Pearl and her reputation  
20 of being truthfulness, would it surprise that she would lie  
21 even to a Court?

22 MR. STRONG: Objection, Your Honor. There's no  
23 foundation that Pearl has lied to the Court.

24 MR. CARTER: I didn't ask if she -- I just said -- I  
25 asked if he would be surprised.

0581a

1 MR. STRONG: Then, it's a hypothetical --

2 THE WITNESS: Hypothetically, no.

3 MR. STRONG: -- and there's no purpose for it.

4 MR. CARTER: And I -- I believe --

5 THE COURT: Okay.

6 MR. CARTER: -- I could ask him that.

7 THE COURT: All right, everybody stop. We're only  
8 gonna talk one at a time. You asked the question.

9 What was the basis of your objection, Mr. Strong?

10 MR. STRONG: First, I said there's no foundation that  
11 she's lied to the Court. Second, that would be -- second, it's  
12 an improper hypothetical. And third, it's a specific instance  
13 that there is no specific instance of.

14 THE COURT: Well, I don't think there's a foundation  
15 for the question 'cause you didn't pose it as a hypothetical.

16 MR. CARTER: All right.

17 BY MR. CARTER:

18 Q If -- if -- hypothetically, if Pearl were to have lied to a  
19 court, would that surprise you?

20 A No.

21 MR. CARTER: Nothing further.

22 THE COURT: Any other -- may the witness be  
23 dismissed?

24 MR. CARTER: Yes.

25 THE COURT: Thank you, sir. You may --



0582a

1 THE WITNESS: Thank you.

2 THE COURT: -- step down. You're released from your  
3 subpoena.

4 THE WITNESS: You have a great day.

5 THE COURT: You, too.

6 (At 9:29 a.m., witness stands down)

7 THE COURT: Next witness, Mr. Carter.

8 MR. CARTER: I'd like to call Linda Willbur.

9 THE COURT: Please come up here, ma'am. There's a  
10 step right before you get to the witness box, so watch your  
11 step.

12 Yes, sir.

13 JUROR ENDSLEY: I know who Linda is.

14 THE COURT: Okay.

15 MS. WILLBUR: Yup, I know him from town.

16 THE COURT: Okay. Well, let me swear you in. Do you  
17 swear to tell the truth, the whole truth, and nothing but the  
18 truth, so help you God?

19 MS. WILLBUR: Yes.

20 THE COURT: Please have a seat.

21 Okay, so hang on a second.

22 MS. VAN LANGEVELDE: Can we -- can we actually  
23 approach, Your Honor?

24 THE COURT: Sure.

25 (At 9:30 a.m., bench conference)

0583a

1 THE COURT: Hmm?

2 LAW/JURY CLERK: (Inaudible).

3 THE COURT: Yeah, well, I know. We're gonna get to  
4 that.

5 LAW/JURY CLERK: (Inaudible).

6 THE COURT: Yeah.

7 (At 9:30 a.m., bench conference concluded)

8 THE COURT: Ms. Ykimoff, will you take the jurors out  
9 except for juror number nine, Mr. Endsley?

10 Recess instruction: Don't talk to anybody about the  
11 case. Please don't let anybody talk to you about the case.  
12 Don't talk to each other about the case.

13 (At 9:31 a.m., jury exits courtroom)

14 THE COURT: And watch your step.

15 Okay, Mr. Endsley, how ya doin' today?

16 JUROR ENDSLEY: Good.

17 THE COURT: And how do you know Ms. Willbar?

18 JUROR ENDSLEY: She used to work at the gas station  
19 in Bellevue.

20 THE COURT: Okay. And how often did you go to the  
21 gas station?

22 JUROR ENDSLEY: Oh, I don't know, probably two or  
23 three times a week, could be more.

24 THE COURT: Okay. Did you have personal conversation  
25 with her?

0584a

1 JUROR ENDSLEY: She asked me how my day was goin'.

2 THE COURT: So, just your typical --

3 JUROR ENDSLEY: Yup. Well, she asked me -- you know  
4 she knew I had kids. Asked how my kids was doin'.

5 THE COURT: Okay. Anything about your relationship  
6 with Ms. Willbar that would make you unable to judge her  
7 credibility as a witness just as you will all the other  
8 witnesses that have testified?

9 JUROR ENDSLEY: No.

10 THE COURT: Okay.

11 Ms. Van Langevelde, did you have any questions for  
12 Mr. Endsley?

13 MS. VAN LANGEVELDE: Yes, thank you. Mr. Endsley,  
14 you haven't had any conversations with -- with Ms. Willbar  
15 about this case; correct?

16 JUROR ENDSLEY: No. I don't even know where she  
17 lives anymore. I haven't seen her in probably the last five,  
18 six years, maybe longer.

19 MS. VAN LANGEVELDE: Okay. And knowing her wouldn't  
20 cause you to believe her testimony any more than any other  
21 witness in this case?

22 JUROR ENDSLEY: No, ma'am.

23 MS. VAN LANGEVELDE: All right, thank you so much.

24 THE COURT: Mr. Carter, do you have any questions?

25 MR. CARTER: No.

0585a

1 THE COURT: All right, Ms. Bond, will you have Ms.  
2 Ykimoff bring the jury back in, please?

3 MR. STRONG: Just for the record, Your Honor, I --  
4 given the relationship between the witness and the -- I don't  
5 think the People have any objection --

6 THE COURT: Okay.

7 MR. STRONG: -- to her testifying, Your Honor.

8 THE COURT: That's -- that's probably good to state  
9 that the Court doesn't think there's any issue, neither does  
10 the defense counsel or prosecution.

11 (At 9:33 a.m., jury enters courtroom)

12 THE COURT: All right, please be seated.

13 All right, go ahead, Mr. Carter.

14 MR. CARTER: Was she sworn in? I -- I --

15 THE COURT: Yes, I did swear her in.

16 MR. CARTER: All right.

17 LINDA WILLBUR

18 at 9:30 a.m., sworn as a witness, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CARTER:

21 Q Miss Willbur --

22 A Um-hum.

23 Q -- my name is David Carter. I represent the defendant, in this  
24 matter, Mr. Warner. I'm gonna ask you a series of questions.

25 If there's a question you don't understand, please let me know,

0586a

1 and I'll -- and I'll rephrase it; fair enough?

2 A Okay.

3 Q And it's very important that you answer in a yes or a no  
4 fashion. Those um-hums and huh-uhs, those are just too hard to  
5 just transcribe with the lady sitting off here. She types down  
6 every word to create a record.

7 And, lastly, if, in fact, you hear me or the  
8 prosecutor stand up and object, it's very important that you  
9 stop your testimony at that point and wait for the Judge's  
10 instructions, okay?

11 A Okay.

12 Q Fair enough?

13 A (No verbal response).

14 Q Now, do you know Mr. Warner?

15 A Yes.

16 Q How do you know Mr. Warner?

17 A He's married to my best friend, Bridget. Well, he was married  
18 to her.

19 Q Okay. And do you know Pearl?

20 A Yes.

21 Q Pearl Griffen (sic), I should --

22 A Yes.

23 Q -- clarify that. And how do you know her?

24 A She's Bridget's daughter.

25 Q How long have you known Bri -- how long have you known Pearl?

0587a

1 A Since she was born.

2 Q Okay. And when was the last time you've had contact with  
3 Pearl?

4 A About a year and-a-half ago.

5 Q All right. And from the time she was born up until a year and  
6 a-half, have you had an opportunity to be around Pearl in  
7 different circumstances?

8 A Yes.

9 Q And have you associated with her?

10 A Yes.

11 Q Okay. You've visited with her often?

12 A Yes.

13 Q Have you learned her reputation as far as truthfulness goes?

14 A Yes.

15 Q And how would you describe her reputation of truthfulness?

16 A Not very truthful.

17 Q And what do you mean by "not very truthful?"

18 A She just doesn't tell the truth about a lot of things.

19 Q Is it just little things?

20 A No, it's big things.

21 Q Okay. So, a whole range of things --

22 A Um-hum.

23 Q -- correct? Do you know -- have you had an opportunity to --  
24 strike that. During the time up until the last -- you said you  
25 -- you saw her back in about a year and-a-half ago.

1 A Um-hum.

2 Q Has her reputation for truthfulness gotten better or worse?

3 MS. VAN LANGEVELDE: Well, I'm gonna object based on  
4 lack of personal knowledge, because she said she hasn't had any  
5 contact with her in a year and-a-half.

6 THE COURT: Overruled.

7 BY MR. CARTER:

8 Q Has her -- has her reputation for truthfulness gotten worse as  
9 she's gotten older or better?

10 A I think it's gotten worse. Her stories have gotten like more  
11 extreme.

12 Q All right, thank you.

13 MR. CARTER: I have nothing further, Judge.

14 THE COURT: Ms. Van Langevelde, are you --

15 MS. VAN LANGEVELDE: Yes.

16 THE COURT: Cross-examination.

17 MS. VAN LANGEVELDE: Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MS. VAN LANGEVELDE:

20 Q Good morning, Miss Willbur.

21 A Morning.

22 Q So, Miss Willbur, you also know Damon; is that correct? Mr.  
23 Warner, I'm sorry.

24 A Yes.

25 Q And how long have you known him?

0589a

1 A Maybe 10 years.

2 Q Okay. And that is through Bridget --

3 A Right.

4 Q -- Pearl's mom?

5 A Yes.

6 Q Who, you said, the defendant was married to.

7 A Right.

8 Q Do you know when they got a divorce?

9 A They -- it's almost final right now.

10 Q So, they are still married, but the divorce isn't final.

11 A Right, but he's not been around for a while.

12 Q Okay. So, you stopped associating with Pearl after she made  
13 the disclosures; true?

14 A Right.

15 Q And you've had an experience to, basically, talk to Damon, hang  
16 out with Damon, kind of the same situation that your husband  
17 has --

18 A Yes.

19 Q -- is that correct? Okay.

20 A Yes.

21 Q When I say Damon, I mean the defendant, Mr. Warner.

22 A Right.

23 Q Okay. I mean, how often would you guys be together, hang out?

24 A Couple times a week, probably, birthday parties, stuff like  
25 that.



0590a

1 Q Mr. Damon general -- or, I'm sorry. Mr. Warner generally  
2 truthful?

3 A Yeah.

4 Q So, if he said he put his hand down Pearl's pants and put his  
5 finger in her vagina, that could be the truth.

6 A I suppose it could be. I would -- I don't know. I wouldn't  
7 question it. I just -- because -- I don't know. Pearl's  
8 history is extreme and --

9 Q Well, I didn't ask you that. I just asked you, if the  
10 defendant admitted that he put his hand down her pants and put  
11 his finger --

12 A He did not admit that to me, though.

13 Q I know. But if he did, you know him to be a truthful person;  
14 right?

15 A Yes. Everything he said to me was truthful, yes.

16 Q And so, if he pled guilty pri -- previously to an attempted  
17 criminal sexual conduct to a child, that could be the truth.

18 A It could be, yes.

19 Q Because you know him to be a truthful person.

20 A Right.

21 MS. VAN LANGEVELDE: I don't have any other  
22 questions.

23 THE COURT: Any redirect, Mr. Carter?

24 MR. CARTER: Just short.

25

REDIRECT EXAMINATION

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BY MR. CARTER:

Q You indicated that you stopped seeing Pearl after the disclosures.

A Um-hum.

Q You did the cardinal sin and said "um-hum." Is that a yes?

A Oh, yes.

Q All right.

A Yes, I'm sorry.

Q Now, would that be -- why is that? Was that because you didn't want to be around her anymore, or was it just because of circumstances?

A She had went to live with her dad, and he's nowhere near where I am. And she was never -- she wasn't at the birthday parties or at Bridget's, and so I never had contact with her after she left.

Q Okay. So, it was just life changes.

A Yeah, just life changes, yeah.

Q Okay.

MR. CARTER: Nothing further. Nothing further.

Well, hold on. Nothing further.

THE COURT: Thank you, ma'am. You may step down.

THE WITNESS: Okay.

(At 9:40 a.m., witness stands down)

THE COURT: Your next witness, Mr. Carter.

0592a

1 MR. CARTER: Ericka Boeneman.

2 THE COURT: Okay. Ma'am, if you could please --

3 MS. BOENEMAN: Up there?

4 THE COURT: -- come right up here. There is a step  
5 right before the witness box, so watch your step.

6 Raise your right hand. Do you swear to tell the  
7 truth, the whole truth, and nothing but the truth, so help you  
8 God?

9 MS. BOENEMAN: Yes.

10 THE COURT: Please have a seat. Please state your  
11 full name for the record.

12 THE WITNESS: Ericka Jill Boeneman.

13 THE COURT: Could you please spell your last name?

14 THE WITNESS: B-o-e-n-e-m-a-n.

15 THE COURT: Thank you.

16 Go ahead, Mr. Carter.

17 ERICKA JILL BOENEMAN

18 at 9:41 a.m., sworn as a witness, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CARTER:

21 Q Is it okay if I address you Ericka?

22 A Yes.

23 Q I tend to butcher last names.

24 A Everybody does.

25 Q My -- my name is David Carter, and I represent Mr. Warner in

0593a

1 this case. I'm gonna ask you a series of questions. If  
2 there's a question you don't understand, please let me know,  
3 and I'll try to rephrase it; fair enough?

4 A Yup.

5 Q And, also, it's very important that you verbalize your answers  
6 with yeses or nos. We try to stay away from uh-hus and --

7 A Okay.

8 Q -- um-hums, okay?

9 A Yes.

10 Q And, lastly, if me or the prosecuting attorney stands up and  
11 and objects to something that you're saying, please stop at  
12 that moment, okay? And then, we'll wait for the Judge's  
13 instructions --

14 A Okay.

15 Q -- fair enough?

16 A Yup. Yes.

17 Q All right. Do you know Mr. Warner --

18 A Yes.

19 Q -- Ericka? How do you know Mr. War -- Warner?

20 A I was mutual friends with his ex-wife, Bridget.

21 Q And do you know Pearl?

22 A Yes.

23 Q Pearl Griffen (sic)?

24 A Yes.

25 Q Making sure we're -- we have the right Pearl. How long have

0594a

1 you known Pearl?

2 A Since she was in Bridget's belly.

3 Q Since she --

4 A So, about 20 years.

5 Q Okay. And how old are you?

6 A Thirty-two.

7 Q Thirty-two. And during this time that you've known the family  
8 have you gotten to know Pearl?

9 A Yes.

10 Q And have you gotten to know whether or not she's a trustworthy  
11 person?

12 A She is not trustworthy.

13 Q Is -- does she tend to lie?

14 A Frequently, yes.

15 Q Is -- is it -- when you say "frequently," what does frequently  
16 mean to you?

17 A More often than not.

18 Q Okay. And are they small lies, big lies? What are they?

19 A All kinds of lies. About little things that you shouldn't lie  
20 about to big things that she -- well, you shouldn't lie, in  
21 general, but little things that really shouldn't be lied about,  
22 in general. Like, she lies all the time about anything.

23 Q All right. And when was the last -- when did you stop being  
24 around Pearl?

25 A I haven't seen Pearl since she moved out of Bridget's house,

0595a

1 December, I would think, 2015 it was.

2 Q All right. And so, you've, pretty much, known her  
3 uninterrupted since she was at her --

4 A Until then, yes.

5 Q All right. And as she's gotten older, did -- did her  
6 reputation for truthfulness increase or decrease?

7 A She's been a liar for most of her life, since she was probably  
8 I'd say, fifth grade and up.

9 Q Okay.

10 A If not -- and it's just a guess, but for as long as I can  
11 remember.

12 Q And did it get worse?

13 A Yes.

14 Q All right.

15 A As she got older. Like a typical teen-ager but drastically  
16 worse.

17 Q Would -- would -- have you ever exper -- saw her lie to get out  
18 of something?

19 A Oh, yeah. Yes.

20 Q Maybe to deflect things off of her?

21 A Um-hum.

22 MR. STRONG: Objection.

23 THE WITNESS: Yes.

24 MR. STRONG: Objection, Your Honor, leading.

25 THE COURT: Pardon?

0596a

1 MR. STRONG: (Inaudible). Sorry, yeah, that's --

2 THE COURT: Go ahead, Mr. Carter, next question.

3 MR. CARTER: I have nothing further.

4 THE COURT: Okay.

5 MR. CARTER: And I end with that.

6 THE COURT: Ms. Van Langevelde.

7 CROSS-EXAMINATION

8 BY MS. VAN LANGEVELDE:

9 Q Can you say your last name again for me?

10 A Boeneman.

11 Q Boeneman. I'm Miss Van Langevelde. You don't have to say my  
12 last name.

13 A Okay.

14 Q Good morning, ma'am.

15 A Good morning.

16 Q So, Ms. Boeneman, you've know -- you are friends with the  
17 defendant, as well, would you say?

18 A Through Bridget. I knew Bridget first, and then when -- I  
19 became friends with Damon, yes.

20 Q Okay. So, when -- basically, when the defendant entered  
21 Bridget's life, that's when you got to know him --

22 A Yes.

23 Q -- is that true? True?

24 A Yes.

25 Q Okay.

0597a

1 A True.

2 Q Are your parents the Willburs that we just saw here today?

3 A My mom.

4 Q Mom, okay.

5 A Doug is my stepdad.

6 Q Okay. So, your mom is Linda.

7 A Yes.

8 Q Okay. And -- and Doug is stepdad, okay. So, did you -- in  
9 your opportunity, I guess, to get to know Mr. Warner, the  
10 defendant, would you say he's a truthful person?

11 A Yes.

12 Q So, if he pled guilty and admitted to having relations with a  
13 person who is 12 or 13-years-old, that would be the truth;  
14 right?

15 A If he said he did it, yeah.

16 Q Because he's a truthful person. So, if he said that he put his  
17 hand down Pearl's pants and put his finger in her vagina, he's  
18 a truthful person; right?

19 A Yeah. I would say yes.

20 Q Okay. So, it could be true if he says he put his hands down  
21 her pants and put his finger in her vagina.

22 A He sometimes --

23 Q That wasn't my question. It could be -- if he's a truthful  
24 person, he could be telling the truth about that.

25 A Yeah, but he gets a little riled up sometimes, like most people



0598a

1 do. And I don't know if you've ever had an instance where --

2 Q Well --

3 A -- you say things that you don't mean.

4 Q But, ma'am, that wasn't my question. My question was: If he  
5 a truthful person and he said that, that could be the truth.

6 A It could be, yeah.

7 Q Okay, thank you.

8 THE COURT: Any followup? I mean, redirect, Mr.  
9 Carter.

10 MR. CARTER: No.

11 THE COURT: Thank you, ma'am. You may step down.

12 THE WITNESS: Thank you.

13 (At 9:47 a.m., witness stands down)

14 THE COURT: Your next witness, Mr. Carter.

15 MR. CARTER: Well, I -- I would like to call Damon  
16 Warner to the stand.

17 THE COURT: Mr. Warner, please raise your right hand,  
18 sir. Do you swear to tell the truth, the whole truth, and  
19 nothing but the truth, so help you God?

20 THE DEFENDANT: Yes.

21 THE COURT: Have a seat. Please state your full name  
22 for the record.

23 THE WITNESS: Damon Earl Warner.

24 THE COURT: Spell your last name, sir.

25 THE WITNESS: W-a-r-n-e-r.

0599a

1 THE COURT: Thank you.

2 Go ahead, Mr. Carter.

3 MR. CARTER: Thank you.

4 DAMON EARL WARNER

5 at 9:47 a.m., sworn as a witness, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CARTER:

8 Q Mr. Warner, you've sat through this trial. So, I'll probably  
9 cut through the -- all the preliminary stuff and get right to  
10 it. Pearl is your stepdaughter; correct?

11 A Yes.

12 Q And when did you meet Pearl?

13 A When I started datin' her mother.

14 Q How old was she?

15 A About seven.

16 Q Okay. Do you have gum in your mouth?

17 A No, sir. I have dentures.

18 Q Okay.

19 A So, I'm tryin' to keep 'em in.

20 Q I just wanted to make sure. So, I'm sorry, how old was Pearl  
21 at that --

22 A I believe she was seven to eight. I mean --

23 Q Seven to eight.

24 A Yes.

25 Q And you met her through her mother.

0600a

1 A Yes.

2 Q And how long did you know her mother until you guys moved in  
3 together?

4 A Probably about a year.

5 Q And where did you move into?

6 A Baseline. I mean Bellevue.

7 Q Whose -- whose home was that?

8 A That was Bridget's.

9 Q And did you end up getting married at some point in time?

10 A Yes.

11 Q And when did you get married?

12 A Oh, boy, I want to say -- well, I don't really remember --  
13 2010.

14 Q Okay, 2010. You heard Pearl come in and testify about some  
15 certain allegations; correct?

16 A Yes.

17 Q And I'm gonna try to go through those as they come in her time  
18 sequence. She alleged -- or, she testified that you had tried  
19 to sexually assault her in her bedroom. Do you remember that  
20 testimony?

21 A Yes.

22 Q Did that ever occur?

23 A No.

24 Q Now, what -- you heard her testify that Sable was just about  
25 one-years-old; correct?

0601a

- 1 A Correct.
- 2 Q And that Bridget was pregnant; correct?
- 3 A Yes.
- 4 Q Now, during that time frame, were you employed?
- 5 A Yes.
- 6 Q What was your employment hours?
- 7 A First shift, seven to three-thirty.
- 8 Q Every day?
- 9 A Monday through Friday, sometimes Saturdays and Sundays.
- 10 Q Okay. And during that time frame when Bridget was pregnant,  
11 was she employed?
- 12 A No, she was unemployment.
- 13 Q And where was she staying?
- 14 A She was a stay-at-home mom at that time.
- 15 Q So, she took care of the kids?
- 16 A Yup.
- 17 Q All right. Now, are you -- so, we got the time frame. So,  
18 Mom's usually home and you're gone --
- 19 A At work.
- 20 Q -- at work. And you heard the testimony she came -- that you  
21 came in and pushed her, and you're denying that; correct?
- 22 A Yes.
- 23 Q That ever happened?
- 24 A Yes, I'm denying it.
- 25 Q Okay. Has that ever happened?

0602a

1 A No.

2 Q Okay. I didn't know if you understood what I said. Now, when  
3 did you first learn of an allegation that you were  
4 inappropriate with Pearl?

5 A December 23rd.

6 Q Did you know the details at that point?

7 A Not all of 'em, no.

8 Q Now, let's move into the second allegation. And this was an  
9 issue where she came -- Pearl came from her bedroom and said  
10 goodnight to you. You heard that testimony; correct?

11 A Yes.

12 Q And that you went up from behind her and stuck your hand down  
13 her pants; do you recall that?

14 A Yes.

15 Q Did that ever happen?

16 A No.

17 Q Did any inappropriate sexual contact between you and Pearl  
18 happen?

19 A No.

20 Q Now, you ended up being interviewed several times with  
21 Detective Maltby; right?

22 A Yes.

23 Q And I think it's Detective Sergeant Jordan?

24 A Yes.

25 Q All right. Now, when -- do you recall when that first

0603a

- 1 interview was?
- 2 A Not for the date, no.
- 3 Q Was it sometime in April, perhaps?
- 4 A (No verbal response).
- 5 Q If you don't remember, that's okay.
- 6 A I -- honestly, I don't keep track of dates.
- 7 Q Okay, but you were interviewed.
- 8 A Yes, I was interviewed.
- 9 Q And was it a long interview?
- 10 A Very long.
- 11 Q How long was that interview?
- 12 A Probably over -- I'd say over an hour, closer to two hours.
- 13 Q What type of questions were asked?
- 14 A They're mainly directed towards me touchin' her vagina. She's  
15 saying that -- he was asking me if I'd done anything sexual to  
16 her, have I placed my fingers on her, have I done anything  
17 inappropriately with her. Just continuous same -- same  
18 questions.
- 19 Q Okay. And -- and what was your response to all those?
- 20 A It was no.
- 21 Q You were very consistent with that?
- 22 A Yes.
- 23 Q Continued to deny it?
- 24 A Yes.
- 25 Q And I'm assuming that question was posed more than one time.

0604a

- 1 A Several times, yes.
- 2 Q Okay. 'Cause it was over an hour long; right?
- 3 A Yes.
- 4 Q At least. Did you -- when you left that interview, did you  
5 agree to be interviewed a second time?
- 6 A Yes.
- 7 Q And during that interview, did you -- were you asked if  
8 anything inappropriate had happened?
- 9 A Basically the same questions.
- 10 Q Okay. They'd start off with the same questions?
- 11 A Yes.
- 12 Q Okay. How long was that second interview for?
- 13 A Over an hour.
- 14 Q Okay.
- 15 A Now --
- 16 Q Was it over --
- 17 A -- the second interview, would that be with Detective Maltby or  
18 Detective Jordan?
- 19 Q Thank you. Detective Jordan.
- 20 A Detective Jordan took well over two hours.
- 21 Q Okay. Were they, basically, the same questions leading up?  
22 Five questions, five different ways.
- 23 Q Okay. So, you -- and that took a long time?
- 24 A Yes.
- 25 Q All right. And at some point in time, did you tell them there

0605a

1 was some type of inappropriate contact?

2 A Yes.

3 Q And what was that inappropriate contact?

4 A I made the statement that we were wrestlin' and, at one point  
5 in time, she grabbed my hands and placed 'em on her vagina and  
6 said what she has said.

7 Q All right. Now, it's -- it's true that you told the detective  
8 that; correct?

9 A Yes.

10 Q Is it true that that -- that that happened?

11 A No.

12 Q So, you lied to him?

13 A Yes, I did.

14 Q Why?

15 A 'Cause I was tired of being badgered about the same questions  
16 over and over, and they wouldn't take no for an answer. And to  
17 a certain point, bein' looked at as by my past, they wasn't  
18 gonna quit until they got somethin' to help them.

19 Q Okay. So, why'd you pick that story?

20 A Because I knew she would not collaborate with it. I knew that  
21 she would deny it, and it would show that I was lyin' to 'em.

22 Q So, that -- that incident never happened.

23 A No.

24 Q And there was a third interview.

25 A Yes.



0606a

1 Q Do you recall that?

2 A Yes.

3 Q How long was that interview?

4 A Over an hour.

5 Q And what -- did you tell the same story?

6 A Yes.

7 Q And why is that? Why'd you stay consistent with that story?

8 A Because I knew that they wanted somethin', and that was all  
9 that they just -- they was pertaining to that situation of us  
10 wrestlin'. There was never no questions about anything else  
11 other than what I had spoken to Mr. Maltby about.

12 Q Okay. And when did you actually learn of the actual details of  
13 what Pearl was claiming in the first and second incident?

14 A When I was arrested.

15 Q Was this after the interviews?

16 A Yes.

17 Q All right. Now, there was some testimony that you were  
18 smelling Pearl's underwear.

19 A Yes.

20 Q Is that true?

21 A No.

22 Q Okay. Explain to the jury what that incident was all about.

23 A As far as her under (sic) goes, it's I did the laundry for our  
24 household. And when I go to do laundry and I smell a foul odor  
25 coming from it and I put my hands in there and I pull out her

0607a

1 clothes -- and I don't really know how to put this, but when  
2 she was having the time of her month and she leaves that  
3 product sitting on the underwear, I'd dump it back in there,  
4 and I started makin' her do her own laundry.

5 Q Okay.

6 A At that point, I can't control what she does.

7 Q So, it wasn't an issue of you smelling the underwear for any

8 A No.

9 Q -- sexual gratification or anything like that?

10 A No.

11 Q All right. Now, there was -- one moment. There was some  
12 testimony that Pearl is known to be a liar. Is that true?

13 A Yes.

14 Q That was kind of asked awkwardly, 'cause you might've been  
15 saying true that that's what the testimony was. Is Pearl  
16 considered a liar?

17 A By many people.

18 Q And during your time with Pearl being in the household, what  
19 have you learned, as far as her truthfulness?

20 A She lies a lot. I mean, I'm not gonna set here and badger her  
21 and say she lies all the time, but she does lie more than she  
22 does tell the truth.

23 Q Okay. Has she ever been known to lie to get herself out of  
24 trouble?

25 A Several times.

1 Q I'm gonna take you back to December 23rd of -- I believe it's  
2 2016, when the allegations were made. Does that sound right?

3 A Yeah.

4 Q Do you know whether or not Pearl was in trouble that day?

5 A Yes, I do.

6 Q And how do you know she was in trouble?

7 A I received a call before I got home from work that, when Pearl  
8 got home that night, we were takin' her Tablet and her  
9 telephone due to her receiving sexually explicit pictures from  
10 her boyfriend at the time. And her uncle from New York, and  
11 some of my family members, as well as some of our friends, were  
12 contacting Bridget to notify her of this situation. So, we  
13 were gonna take the Tablets (sic) to examine them that night.

14 Q Was that conveyed to Pearl that you were gonna do that?

15 A No, not until she returned home.

16 Q Okay. So, she was in trouble that day.

17 A Yes.

18 Q Would it be -- is that usual for her to lie to get herself out  
19 of trouble?

20 A Yes.

21 Q And that's when those -- that's when she alleged these  
22 allegations against you; correct?

23 A Yes.

24 MR. CARTER: I have nothing further.

25 THE COURT: Ms. Van Langevelde.

0609a

1 MS. VAN LANGEVELDE: Thank you.

2 CROSS-EXAMINATION

3 BY MS. VAN LANGEVELDE:

4 Q Good morning, Mr. Warner.

5 A Pardon me if I'm quiet.

6 Q Well, remember, we have to speak up 'cause Miss Bond --

7 A No, I'm just not responding to your -- your morning.

8 Q Oh.

9 A I know it's not genuine. Sorry.

10 Q So, Mr. Warner, I wanted to ask you first when were you  
11 arrested? You said -- you said --

12 A I don't really -- it was last summer.

13 Q Okay. So, if I said August 2016, would that be right?

14 A I, honestly, don't remem -- I don't really keep track of dates  
15 to --

16 Q Okay. So, it's your testimony here, today, that you didn't  
17 learn the allegations until you were arrested; is that true?

18 A Yes, that was when I learned of the allegations.

19 Q Okay. Isn't it true that there was a petition filed by Child  
20 Protective Services in May 18, 2016, and you were at a hearing  
21 where they read through -- or, at least discussed the  
22 allegations in the petition?

23 A If you're referring to the morning that they took my children  
24 from me, I don't keep track of dates. I was full of anger that  
25 morning. And if I remember, there was 14 to 15, maybe a little

0610a

1 bit less, officers in the courtroom to make sure I didn't lose  
2 control.

3 Q Okay. Well, it was my question that there was a petition  
4 filed, and the allegations were in the petition back in May of  
5 2016.

6 A That was downstairs in, what, civil, not criminal?

7 Q Yes. And the allegations were in that petition.

8 A I don't remember the dates, I'm sorry.

9 Q That's -- I'm not asking you the date. I'm just asking if the  
10 allegations were in the petition.

11 A I, honestly, don't recall.

12 Q There was a -- there was a multitude of, actually, hearings  
13 about that petition up until and before that you were arrested;  
14 true?

15 A Say what again?

16 Q There were a -- a few hearings about the allegations in the  
17 petition.

18 A Before I was arrested?

19 Q Yes.

20 A I -- I don't believe so.

21 Q Oh, you don't remember one June 30th of 2016?

22 A No, I don't.

23 Q It was, again, I think you said in front of Judge Byerley?

24 A Again, I said I don't remember the dates to this.

25 Q Okay. Do you remember, besides --

0611a

1 A I don't even remember the date to my own marriage.

2 Q And I'm not have -- I'm not asking you the --

3 A No, I'm just telling you for future reference. As far as my  
4 dates go, I don't --

5 Q I'm not asking you the exact date. I'm just asking you if you  
6 remember there was a pretrial conference in front of Judge  
7 Byerley on the allegations in the petition, which are --  
8 correspond with this case, downstairs with Judge Byerley before  
9 you were arrested.

10 A Okay. Sure, I guess.

11 Q Okay. So, you knew about the allegations before you were  
12 arrested.

13 A I knew of the allegations, but I didn't know what the charges  
14 were that were brought against me.

15 Q Okay.

16 A 'Cause you got -- I mean --

17 Q So, sir, you pled guilty -- I want to go back to -- way back in  
18 2000.

19 A One.

20 Q You pled guilty to attempted CSC - third.

21 A Yes.

22 Q And you made statements to Detective Roberts, who you heard  
23 here testify that you had had sexual relations with Amanda  
24 Ratliff --

25 A Yeah.

0612a

1 Q -- at the time.

2 A Correct.

3 Q And you ended up having that case; true?

4 A What's that?

5 Q And you ended up having that case?

6 A Yes.

7 Q Okay. Now, knowing that you had had that history, you still  
8 lied to Detective Sergeant Jordan about touching Pearl  
9 inappropriately; true?

10 A True.

11 Q And you know the ramifications that go along with having a CSC  
12 conviction; true?

13 A Yes.

14 Q Now, it was your testimony earlier that you were working when  
15 Bridget was pregnant. But, isn't it true that when Sable was  
16 about a year old, you weren't working at that time?

17 A No. I didn't become a stay-at-home father until 2012 when I  
18 lost my job three months after my son was born because I failed  
19 a drug test.

20 Q Okay. So, you -- you ever have the opportunity to stay home  
21 with Sable?

22 A On and off. I'm not -- I mean, probably less.

23 Q Okay. Did you ever have the opportunity to stay home with  
24 Pearl and Sable?

25 A No, 'cause Pearl was at school. Why would --

0613a

1 Q What about --

2 A -- I stay --

3 Q -- a half day?

4 A -- home with her? What about half days?

5 Q Would you have the opportunity to stay home with Pearl and  
6 Sable on a half day?

7 A I'm gonna say no.

8 Q Even if your wife had something going on at work?

9 A My wife wasn't workin' at the time.

10 Q You know, you and your wife met at a hotel in Marshall; is that  
11 true?

12 A Yes.

13 Q And your mom own that hotel?

14 A She didn't own it.

15 Q She didn't own it. What'd --

16 A She was the general manager there.

17 Q I see, okay. So --

18 MS. VAN LANGEVELDE: I'm sorry, Your Honor. Just a  
19 minute.

20 BY MS. VAN LANGEVELDE:

21 Q During your fir -- or, I want to talk about your -- your  
22 interview with Detective Jordan. Detective Jordan wrote out a  
23 statement, basically a summary of what you told him; true?

24 A Correct.

25 Q And you signed that statement --



0614a

1 A Yup.

2 Q -- that it was true?

3 A Yup.

4 Q And your second -- and -- and I call it your second interview.

5 I'm gonna call it the third interview, so that we're not

6 confused. 'Cause I call it the second interview with Detective

7 Maltby, that's confusing. So, your third interview --

8 A One, two, three.

9 Q Three -- the one that we watched on the video.

10 A Yes.

11 Q Okay. So -- sorry, one second. In that third interview, you

12 kind of talk about Pearl walking between the bedroom and the

13 bathroom in her bra and underwear; true?

14 A Do you want a full answer to that? Ask me a full question,

15 please.

16 Q I'm just asking you true or false.

17 A I'm not gonna answer that the way you questioned it, the way

18 you've asked me.

19 MS. VAN LANGEVELDE: Your Honor, I'd ask the Court to

20 ask him to respond.

21 THE COURT: Well --

22 THE WITNESS: I mean, at any time that I can be

23 walkin' down my hall from my bedroom to the front room, what

24 happens or transpires from me and her walkin' out of her

25 bedroom, I can't control that.

0615a

1 BY MS. VAN LANGEVELDE:

2 Q I didn't ask you that, sir.

3 A I know. You just asked me an indirect question.

4 Q I didn't think it was indirect.

5 THE COURT: Well, the prosecution is doing what's  
6 called cross-examination.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: And they're entitled to ask you questions  
9 that require a true or false answer. So, if you could answer  
10 the question true or false, that's what you have to do.

11 THE WITNESS: However -- okay, I --

12 THE COURT: Now, wait a second. Your attorney will  
13 have an opportunity when -- after the prosecution's done asking  
14 you questions, to come back and allow you to explain or  
15 elaborate.

16 THE WITNESS: Okay.

17 THE COURT: But Ms. Van Langevelde has the right to  
18 ask you a yes or no question.

19 THE WITNESS: Okay.

20 THE COURT: All right.

21 So, let's have a new question and --

22 MS. VAN LANGEVELDE: Thank you, Your Honor.

23 BY MS. VAN LANGEVELDE:

24 Q In your -- in your third interview, you talked to Detective  
25 Maltby about walking in on Pearl while she was changing in her

0616a

1 bedroom; correct?

2 A Correct.

3 Q You talked to Detective Maltby about Pearl walking in on you  
4 and Bridget having sex.

5 A At our old house on Baseline; correct.

6 Q Oh, okay.

7 A One time.

8 Q You talk about Pearl walking in on you in the bathroom;  
9 correct?

10 A Yes, one time.

11 Q Okay. You -- you talk a little bit about, in your third  
12 interview, Pearl liked it at your house; correct?

13 A Yes.

14 Q And Pearl called you Dad.

15 A Yes.

16 Q Pearl was going to get her mom's car before all this came out;  
17 is that correct?

18 A I guess, yes.

19 Q Okay. You tell Detective Maltby, "When I came home from  
20 prison, my first thought was I'm never gonna do anything to  
21 make anybody's job easier again, nothing;" correct?

22 A I don't know.

23 Q Okay. You don't remember?

24 A That could be referring to anybody, not just the law. It could  
25 be anything.

0617a

- 1 Q Well, my question was did you make that statement.
- 2 A I don't remember if I did or not.
- 3 Q All right, fair enough. In your -- in your third interview  
4 with Detective Maltby, you asked, "Why keep adding and  
5 changing," in regards to Pearl; do you recall that?
- 6 A No, I don't.
- 7 Q Okay. In your third interview with Detective Maltby, you talk  
8 about the wrestling incident that happened, you say, in the  
9 living room/dining room area; correct?
- 10 A Correct.
- 11 Q You say, "Pearl was younger. Maybe a few years ago." Correct?
- 12 A I guess. I don't -- when are you referring to?
- 13 Q The third interview that we watched yesterday.
- 14 A I understand the third interview. I'm saying when are you --
- 15 Q Oh --
- 16 A -- asking about the --
- 17 Q -- I'm -- I'm --
- 18 A -- situation.
- 19 Q -- talking about the wrestling incident that you were --
- 20 A Yes, that would've been --
- 21 Q -- describing to --
- 22 A -- when she was --
- 23 Q -- Detective Maltby. I'm sorry?
- 24 A That would've been probably when she was 13.
- 25 Q Okay.

0618a

1 A Or whenever she was --

2 Q So, the wrestling incident happened when Pearl was about 13?

3 A Yes.

4 Q And Pearl was wearing sweat -- sweatpants?

5 A I guess, yes.

6 Q And you had been giving Sable piggyback rides before the  
7 wrestling incident happened?

8 A Yes.

9 Q Pearl was about -- or, I'm sorry, not Pearl. Sable, she was  
10 about one-years-old, maybe a little -- maybe a little bit  
11 older?

12 A Yes.

13 Q Okay. You tell Detective Maltby, during that wrestling  
14 incident, that Pearl's nipples were hard; correct?

15 A Yes.

16 Q Tell Detective Maltby you could see her nipples through her  
17 shirt; correct?

18 A Correct.

19 Q You tell Detective Maltby, "We were wrestling. I had my arms  
20 around her waist;" correct?

21 A Correct.

22 Q You tell Detective Maltby, in the third interview, "I was  
23 wrapped around her, and she put my hand there and said, 'My  
24 pussy is on fire,' and that was it."

25 A Correct.

0619a

- 1 Q How tall is Pearl?
- 2 A About five-eight.
- 3 Q Would you guess?
- 4 A I'd say probably five-eight.
- 5 Q Five-eight?
- 6 A I'm only five-nine.
- 7 Q How tall do you think I am?
- 8 A With your heels, probably six foot or more.
- 9 Q You think I'm six foot? How tall do you think Detective Maltb
- 10 is?
- 11 A Don't care.
- 12 Q And so, it's your testimony that you think Pearl was five-
- 13 eight?
- 14 A I'm not a doctor. I don't measure people up. I try not to
- 15 stare at people. I try not to look at a person up and down.
- 16 Q Okay. How tall are you, sir?
- 17 A I'm five-nine.
- 18 Q Five-nine. So, you think Pearl is just one inch shorter than
- 19 you?
- 20 A Possible.
- 21 Q How much do you weigh, sir?
- 22 A How much do you think?
- 23 Q I get to ask the questions, though, sir.
- 24 A I weigh one-fifty.
- 25 Q How much do you think Pearl weighs today?

0620a

- 1 A Probably one-ninety, close to 200, maybe a little more.
- 2 Q Okay. When Pearl was 13, how much do you think she weighed?
- 3 A Probably about one-sixty or so, close to it.
- 4 Q Little -- little bit smaller than she is --
- 5 A Her and her mother kept track of their weights. I know she was
- 6 heavier than most kids at the age of 13.
- 7 Q Sure. Okay. So, you're -- it's your testimony you think she
- 8 was about one-sixty when she was 13?
- 9 A Possibly.
- 10 Q Okay. How tall do you think she was at 13?
- 11 A I don't know.
- 12 Q So, it's your testimony here, today, that this wrestling
- 13 incident never happened?
- 14 A Correct.
- 15 Q That you lied about that?
- 16 A Correct.
- 17 Q To not only Detective Maltby, but to Detective Sergeant Jordan?
- 18 A Correct.
- 19 Q And signed a written statement that was a lie?
- 20 A I signed a statement that a police officer wrote for me.
- 21 Q Right. And that says --
- 22 A So, it'd be correct.
- 23 Q -- on the bottom -- did you -- it says, "Is this statement
- 24 true?" With DW initials by it.
- 25 A I know what it says. Yes, it does.

0621a

- 1 Q Okay. And you initialed that.
- 2 A Yes, I did.
- 3 Q And it says, "Did you give this statement voluntarily?" It  
4 says, "Yes." Correct?
- 5 A Yes.
- 6 Q With your initials by it?
- 7 A Yes.
- 8 Q And that's your signature at the bottom of the page?
- 9 A Yes.
- 10 Q Now, in that -- in that first interview with Detective Maltby,  
11 you talk about your prior CSC a little bit, and you say that  
12 the victim was 15. The girl -- I think you used the phrase --  
13 the girl was 15-years-old and gave you oral sex; correct?
- 14 A Correct.
- 15 Q Did you tell Detective Maltby that in your first interview?
- 16 A Only because he was badgerin' me about it.
- 17 Q Okay.
- 18 A He was continuously askin'.
- 19 Q So, you told him that you were drunk at a party and a 15-year-  
20 old gave you oral sex.
- 21 A But I never gave a pacific (sic) name.
- 22 Q I -- I didn't ask a specific name. I'm asking if you told  
23 Detective Maltby that in your first interview.
- 24 A Yes.
- 25 Q Okay. And that -- and you told Detective Maltby you were 23 at



0622a

1 the time.

2 A Yes.

3 Q Back in 2000, during the investigation that Detective Roberts  
4 did, though, you told Detective Roberts you had penile/vaginal  
5 sex with Amanda; correct?

6 A When was that?

7 Q Two thousand.

8 A I was in trouble with this in 2001.

9 Q Oh, would the -- would the report refresh your memory?

10 A I ain't never report it.

11 Q I'm sorry?

12 A I wouldn't have any report out there.

13 Q Okay. Would it -- would it refresh your memory?

14 A It might. I don't know. I'll say yes to it if it makes you  
15 feel better.

16 MS. VAN LANGEVELDE: So, Your Honor, let the record  
17 reflect that I'm going -- may I approach the witness? I'm  
18 sorry.

19 THE COURT: With what?

20 MS. VAN LANGEVELDE: With the incident report from  
21 2000, Homer Police report.

22 THE COURT: Any objection?

23 MR. CARTER: If it re -- no, if it refleshes --  
24 refreshes his memory.

25 THE COURT: Sure, go ahead.

1 MS. VAN LANGEVELDE: Thank you.

2 BY MS. VAN LANGEVELDE:

3 Q Mr. Warner, I'm showing you the incident report from Homer. I  
4 you want to look through that and just refresh your memory as  
5 to the date.

6 A No. Where -- where am I lookin' at? I don't need to look at  
7 the whole report.

8 Q Oh, sure.

9 A I don't have time for it. So, I know that. Yes, that was my  
10 -- I think my first interview with Detective Roberts.

11 Q Okay. So, it -- it was in 2000.

12 A I believe, yes.

13 Q And you may have ended up -- and I -- I can appreciate your  
14 confusion because I think you actually entered your plea in  
15 2001.

16 A Yes.

17 Q Okay. So, the investigation took place in 2000.

18 A Yes.

19 Q And in your second interview with Detective Roberts, you talk  
20 about that you and Ms. Ratcliff (sic) had had penile/vaginal  
21 sexual intercourse; correct?

22 A Correct. Now, do you have anything from --

23 Q Well --

24 A -- my statements? I mean --

25 Q -- I get to ask you questions, sir.

0624a

1 A Forget about that.

2 Q So, then, you also talk about -- you talk about that you didn't  
3 force her to have sex, that she was a willing participant;  
4 correct?

5 A Yes, I admit to all of that.

6 Q Okay. And that -- but that she was under age. She was 12 and  
7 13 at the time.

8 A Correct. Now, I only knew of her age after he had spoke with  
9 me. I didn't know of her age at the time of the incident  
10 supposedly took place.

11 Q I didn't ask you a question, sir. Were you 25 at the time?

12 A I don't recall.

13 Q How old -- how old would you've been in 2000? When's your  
14 birthday?

15 A My birthday is October 10th.

16 Q Of what year?

17 A 1974.

18 Q So, in 2000, you would've been -- in January -- I'm sorry.  
19 Your birthday's in October?

20 A Yes.

21 Q So, you hadn't had your birthday yet. So, you would've been  
22 about 20 -- 20 -- I can't do math. I became a lawyer so I  
23 didn't have to do math. You were 26.

24 A I thought I was 25.

25 Q Twenty-five, 26? Okay. Just want to make -- 'cause you hadn't

1 had your birthday yet. That makes sense.

2 In your first interview with Detective Roberts,  
3 though, you told him that you and Amanda were just friends;  
4 true?

5 A Correct.

6 Q And that you said that you had just kissed, had never had sex

7 A True.

8 MR. CARTER: I guess I'd have to start to object on  
9 relevancy now, at this point in time.

10 MS. VAN LANGEVELDE: I'm moving on to something else.

11 THE COURT: Okay.

12 MS. VAN LANGEVELDE: Thank you.

13 BY MS. VAN LANGEVELDE:

14 Q Didn't you tell Detective Maltby, in your third interview, that  
15 the fight was about -- something about you having told Bridget  
16 that Pearl had lost her virginity; isn't that true?

17 A I'll answer that if you answer the whole question. I know  
18 you're the one answering questions. But if you're gonna ask me  
19 a question, ask me the whole question, please. If you want the  
20 -- the right answer.

21 Q Well, I'm asking you a question. Isn't it true -- is it -- is  
22 it -- I guess that's a poor way to phrase something. Let me  
23 ask it this way. Did you tell Detective Maltby, in your  
24 interview with him, that the fight was actually about you  
25 telling Bridget Pearl had lost her virginity?

0626a

1 A Yes. I believe --

2 Q Okay.

3 A -- one of the reasons why --

4 Q And the answer to my question is yes.

5 A Yes.

6 Q Thank you. So, let me see.

7 MS. VAN LANGEVELDE: Just a moment, Your Honor.

8 BY MS. VAN LANGEVELDE:

9 Q So, you had sexual intercourse with Amanda Ratcliff (sic);  
10 correct?

11 A False. Just because I said I did, doesn't mean I did it. If  
12 you want to know about my case in 2001, let's get to it,  
13 please. I'm -- I'm sorry. I mean, all this time I been  
14 sittin' here listening to you guys badger me about my case in  
15 2001. And while you're -- all you guys are speakin' about is  
16 what you want to talk about.

17 Q Are you done, sir?

18 A Yes, I guess so.

19 Q So, in your third interview with Detective Maltby, you talk  
20 about how you grab Pearl by the throat one time and tell her to  
21 shut her fuckin' mouth.

22 A Right.

23 Q Do you remember that?

24 A Yes, I do.

25 Q And that happened, didn't it?

0627a

1 A Yes, it did.

2 Q And do you recall telling Detective Maltby about a time when  
3 you grabbed Pearl and body-slammed her onto the floor?

4 A Yes, and her mother was present at that time. It was nothing  
5 to bring violence to her. It was to stop the situation that  
6 was escalating in my household between her and her mother that  
7 was pregnant.

8 Q I didn't ask you that. I just --

9 A I know you didn't. You just ask partial -- part of the  
10 question. You didn't ask the whole question.

11 MS. VAN LANGEVELDE: Your Honor --

12 THE WITNESS: I'm sorry.

13 MS. VAN LANGEVELDE: -- could you direct the witness  
14 to just answer my questions?

15 THE COURT: I know -- okay. So, let's go over this  
16 one more time. If you're asked a yes or no question by Miss  
17 Van Langevelde -- she is allowed to ask a yes or no question.  
18 Mr. Carter will get to get up and let you fully explain your  
19 answer, okay? So, answer yes or no, and then know that Mr.  
20 Carter will get up and say --

21 THE WITNESS: Okay.

22 THE COURT: -- okay, now you can explain everything,  
23 okay?

24 THE WITNESS: Yes.

25 THE COURT: All right.

0628a

1 THE WITNESS: Sorry.

2 THE COURT: 'Cause it will go much faster if you just  
3 answer her questions that she asks. That's how it works, okay?

4 THE WITNESS: Okay.

5 THE COURT: All right. Go head, Ms. Van Langevelde

6 MS. VAN LANGEVELDE: Thank you, Your Honor.

7 BY MS. VAN LANGEVELDE:

8 Q And the night that Pearl disclosed to her mother that you had  
9 sexually assaulted her, you threatened to slit Pearl's throat  
10 correct?

11 A Incorrect.

12 Q So, your testimony is that Detective Maltby and Detective  
13 Sergeant Jordan were badgering you; is that correct?

14 A Correct.

15 Q If they were badgering you, you still came in for a third  
16 interview with Detective Maltby, though, didn't you?

17 A Yes.

18 MS. VAN LANGEVELDE: All right, thank you. I don't  
19 have any other questions, Your Honor.

20 THE COURT: Mr. Carter, how long will your redirect  
21 be?

22 MR. CARTER: I --

23 THE COURT: Because this would be where we would take  
24 a break and come back, unless you tell me it's going to be not  
25 lengthy, which --

0629a

1 MR. CARTER: I'm -- I'm afraid to say that, and,  
2 well, then I'm -- I'm looking bad. I think this would be a  
3 good time.

4 THE COURT: Would this be a good time to take a  
5 break? Excellent.

6 So, Ms. Ykimoff, if you would take the jury back.

7 Your recess instruction is please do not talk to  
8 anybody about the case, tell them you are a juror. If they  
9 continue to try to talk to you, tell them to stop. Please  
10 don't discuss the case amongst yourselves. Have no  
11 conversation with anybody in the courtroom.

12 And I'll see you in about 10, maybe 15 minutes.

13 (At 10:23 a.m., jury exits courtroom)

14 THE COURT: Miss Bond, you're to follow the jury out  
15 so you get a break.

16 (At 10:23 a.m., off the record)

17 (At 10:39 a.m., back on the record)

18 THE COURT: Anything we need to place on the record  
19 be -- before we bring the jury in?

20 MR. CARTER: No.

21 THE COURT: Excellent, let's bring 'em in.

22 (At 10:40 a.m., jury enters courtroom)

23 THE COURT: Okay, please be seated.

24 All right, Mr. Carter, redirect.

25 MR. CARTER: Thank you.



## REDIRECT EXAMINATION

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BY MR. CARTER:

Q Mr. Warner, I'm gonna try to follow in progression of how the prosecutor crossed you and -- and -- and -- and work through that matter, okay? You were arrested in August of 2016; correct?

A Correct.

Q Is that when you learned of the actual charges against you?

A Yes.

Q All right. You were last interviewed on May 5th --

A Correct.

Q -- 2016; correct?

A Correct.

Q Okay. Try to be patient and -- and wait for me to ask the full question, okay? And, I guess, I'm -- it's interesting. Or, I'd like to know when you actually found out about the actual details. So, let me ask these questions; all right? On that May 5th interview, did you know the details of what Pearl was claiming happened?

A What was that again?

Q Okay. On May 5th, that last interview with Malt -- Detective Maltby, you knew Pearl was making some allegations; correct?

A Correct.

Q Was it a general allegation, or was it a specific allegation?

A I think it was a general.

0631a

1 Q Okay. And so, when you went through that interview and any  
2 interview prior to that, you didn't know the details, did you?

3 A Correct.

4 Q Of what she was actually saying happened.

5 A Correct.

6 Q You didn't know that she was claiming that you pushed her on  
7 the bed and tried to have sex with her; correct?

8 A Correct.

9 Q You didn't know that, in the second incident, that she went  
10 into the -- into the room to say goodnight to you, and then you  
11 went up from behind; correct?

12 A Correct.

13 Q All right. So, when you said that you didn't learn of the  
14 details until you were arrested, what did you mean by that?

15 A I didn't learn the particulars (sic) of what I was being charged  
16 with.

17 Q Okay.

18 A I just knew what I was -- what she had -- somewhat of what she  
19 had said.

20 Q Okay. There was a -- there was a petition filed with the Child  
21 Protective Services in this case; correct?

22 A Yes.

23 Q And that was sometime in May, too?

24 A Yes.

25 Q Was that before or after that last interview?

0632a

1 A That was after my last interview.

2 Q Okay, with Mr. Maltby.

3 A Maltby, yes.

4 Q So, if you -- you hadn't read that before the last interview;  
5 correct?

6 A Correct.

7 Q All right. So, you didn't have any other information, at that  
8 time, regarding the details during that last interview or  
9 anything prior; correct?

10 A Right.

11 Q All right. Now, there was -- the prosecutor indicated that you  
12 had mentioned to Detective Maltby in the interviews about  
13 seeing Pearl in her bra and underwear going from a bedroom to a  
14 bathroom; correct?

15 A Correct.

16 Q And that you walked in on her once when she was nude in her  
17 bedroom; correct?

18 A Correct.

19 Q Why did you give those -- why did you tell Detective Maltby  
20 about those incidents?

21 A He asked questions to if I had ever seen it, and I answered  
22 it --

23 Q Okay.

24 A -- truthfully.

25 Q Yeah. So, were you trying to portray Pearl as some kind of

0633a

1 sexual fiend or anything like that?

2 A No.

3 Q You were just answering questions?

4 A Just answering as he asked.

5 Q Okay. And when you did walk in on her nude once, what was your  
6 reaction?

7 A I just turned around and walked back -- back towards the front  
8 room.

9 Q Okay, you didn't stay -- stay there and stare?

10 A No. I didn't even comment to her.

11 Q Did you intend to walk in on her while she was nude?

12 A No.

13 Q Now, you indicated that this wrestling incident took place when  
14 she was 13; correct?

15 A Correct.

16 Q Well, is that the time that it actually took place, or is that  
17 the time frame you put it in your mind?

18 A The time frame that I put it in my mind with all of this that's  
19 going on.

20 Q So, that when you said that it happened in -- in 2013, that's  
21 the -- how you portrayed your lie; is that correct?

22 A Yes.

23 Q All right. Now, there was a -- the -- the prosecution asked  
24 you whether it was a fight -- the fight was really about losing  
25 her virginity; do you recall that?

1 A Yes.

2 Q What was the losing her virginity? When did that happen? When  
3 did you find out about that?

4 A That was, I want to say, a couple days before she was going to  
5 her father's house for the week.

6 Q Was it near this --

7 A Time frame, yes.

8 Q -- December 23rd date?

9 A About a week before.

10 Q Okay. So, it was in proximity; correct?

11 A Yes. I told her -- I told her mother after she had left to go  
12 to her dad's.

13 Q Okay. Was there a fight, then, at that time?

14 A Not between her and I.

15 Q When you say "her" -- you used a pronoun, and I don't know  
16 what "her" is. Was it -- because there's two females at this  
17 point.

18 A Not between --

19 Q Bridget and Pearl.

20 A No, because when I had told Bridget, Pearl was gone to her  
21 father's.

22 Q Okay. So, there was no fight between you two?

23 A Correct.

24 Q Did Pearl know you did that, told Mom?

25 A No.

0635a

1 Q Okay. Do you know if, during that time frame, after you had  
2 told Bridget about what Pearl had told you about losing her  
3 virginity, if Bridget had talked to Pearl during that time?

4 A Yes, she did.

5 Q Okay. And was it before December 23rd?

6 A Yes.

7 Q Was it over the phone, then?

8 A Yes.

9 Q All right. Were they upset with each other?

10 A Yes.

11 Q Now, there was an incident regarding you grabbing her, Pearl,  
12 by the throat and saying that you were gonna choke her or  
13 something like that?

14 A Yes.

15 Q What was that all about?

16 A It was an ongoing issue the whole day between her and her mom,  
17 and I was gettin' drug between it, and I was tryin' to stay out  
18 of it. And at that time, I just -- just reacted later that  
19 night in the wash room when she kept bringin' the shit to me --  
20 I mean -- sorry -- the -- her problems to me about it and --

21 Q Kinda lost your cool?

22 A Kinda lost my -- yeah.

23 Q Did it stop?

24 A Yes.

25 Q There was an incident they talked about you body-slamming

1 Pearl?

2 A Yes.

3 Q Can you describe what that was?

4 A Yes, her and -- Pearl and her mother were fighting. And Pearl  
5 was to the point where she was trying to kick and hit her while  
6 she was pregnant. I wasn't gonna let that happen.

7 Q Okay. Well, I'm gonna have to stop you.

8 A Sorry.

9 Q Because you used pronouns, and it's important to identify the  
10 people that you talked to so we know who. You said, "She was  
11 trying to kick and punch." Who's "she?"

12 A Pearl.

13 Q Okay, so Pearl is trying to kick and punch whom?

14 A Bridget.

15 Q All right. And Bridget was pregnant at the time?

16 A Yes.

17 Q And where were they at the time?

18 A It was in the front room between my stand and where the TV was.

19 Q And so, what did you do?

20 A Pearl was bein' resistant. I mean, she was -- she just kept  
21 tryin' to come back at us, and I just wrapped my arms around  
22 her and I laid her on the floor --

23 Q Okay.

24 A -- till she calmed down.

25 Q Well, see, when -- when we hear words like body slam, I think

0637a

1 we get these -- this big ole picture of a very violent act.  
2 So, I want you to describe what -- what -- what you meant by  
3 body slamming.

4 A I physically restrained her --

5 Q Okay.

6 A -- so she would quit doing what she was trying to do.

7 Q And -- and how did you physically -- did you throw her to the  
8 floor? What did you do?

9 A I wrapped my arms around her, and I picked her up and laid her  
10 on the floor.

11 Q Okay.

12 MR. CARTER: I have nothing further.

13 THE COURT: Sir, you may step down.

14 THE WITNESS: Thank you.

15 (At 10:50 a.m., witness stands down)

16 THE COURT: Did you have any other witnesses that you  
17 wish to call, Mr. Carter?

18 MR. CARTER: No, Your Honor.

19 THE COURT: Okay.

20 Do the People have any rebuttal witnesses they wish  
21 to call?

22 MS. VAN LANGEVELDE: No. Thank you, Your Honor.

23 THE COURT: Okay.

24 Are the People ready to move to closing, or would you  
25 like another brief break?



0638a

1 MS. VAN LANGEVELDE: I'm sorry, yes, can we have  
2 about five, 10 minutes?

3 THE COURT: Sure. How long do you think your closing  
4 will take?

5 MS. VAN LANGEVELDE: I don't want to make any  
6 promises.

7 THE COURT: Okay.

8 MS. VAN LANGEVELDE: I'm sorry. I don't -- I would  
9 say a half-hour or --

10 THE COURT: Okay, that's fine.

11 So, what we'll do is -- it's about 10 to 11. How  
12 about we try to be back at 11?

13 MS. VAN LANGEVELDE: Perfect.

14 THE COURT: No later than five after. We'll do  
15 closing arguments. If we -- if time permits, I'll then do  
16 closing instructions. Otherwise, we'll let 'em have a -- a  
17 bite of lunch. And then right after lunch, we'll do closing  
18 instructions.

19 So, Miss Bond, once again, I need you to please take  
20 them out. But you can stay out but don't -- you have to come  
21 back in, in case there's anything on the record, so.

22 Ladies and gentlemen, your recess instruction has  
23 been given. Please just don't talk to anybody about the case.  
24 Watch your step as you go down.

25 (At 10:51 a.m., jury exits courtroom)

0639a

1 THE COURT: Okay, Ms. Van Langevelde, anything else  
2 you would like to put on the record at this time?

3 MS. VAN LANGEVELDE: No, I do not. Thank you.

4 THE COURT: Mr. Carter?

5 MR. CARTER: No.

6 THE COURT: All right, I'm going to ask you guys a  
7 couple questions 'cause I did actually have some notes.

8 Defendant's statements as evidence against the  
9 statement, 4.01, that -- that is added; correct?

10 MS. VAN LANGEVELDE: Yes.

11 THE COURT: Mr. Carter?

12 MR. CARTER: On the --

13 THE COURT: There were notes of jury instructions --

14 MR. CARTER: Yup.

15 THE COURT: -- if needed, if needed.

16 MR. CARTER: Yeah, I'm gonna.

17 THE COURT: I would like to give Ms. Ykimoff the  
18 opportunity --

19 MR. CARTER: Sure. And I'm going to pull those up.

20 THE COURT: Sure, just take a second. Let's -- we  
21 have time.

22 MR. CARTER: And I apologize; my mind was wandering  
23 when you said that. What jury instruction are we referring --

24 THE COURT: That's okay, 4.01.

25 MR. STRONG: And, Your Honor, obviously, we would ask

0640a

1 that any -- the defendant -- there were numerous testimony from  
2 other witnesses about out-of-court statements made by the  
3 defendant, so --

4 THE COURT: Right.

5 MR. STRONG: -- I think there's more than enough  
6 there to have that instruction in.

7 MR. CARTER: Yes, that's -- I think that's  
8 appropriate.

9 THE COURT: Okay. Then, the other one would be 4.05

10 MR. STRONG: Oh, yeah.

11 THE COURT: So, do we want this one to say -- well,  
12 I'll wait for Mr. Carter to pull that up.

13 MR. CARTER: I'm there.

14 THE COURT: All right:

15 "If you believe that a witness previously made a  
16 statement inconsistent with his or her previous testimony at  
17 trial..."

18 Correct?

19 MR. CARTER: Yes. I think "his or her" should be in  
20 there, both.

21 MR. STRONG: Right.

22 THE COURT: His or her testimony -- the only purpose  
23 -- evidence has been offered that one or more witnesses  
24 previously made -- so, we use that one, too. So --

25 MR. STRONG: You're referring to paragraph two?

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1 THE COURT: Yeah.

2 MR. STRONG: Yes, I believe both of them would need  
3 to be read.

4 THE COURT: Yup, 4.05, one and two, with his and her.  
5 Do you concur, Mr. Carter?

6 MR. CARTER: Yes.

7 THE COURT: Four point oh-six -- I don't recall  
8 taking judicial notice of anything.

9 MR. CARTER: No.

10 MS. VAN LANGEVELDE: No.

11 MR. STRONG: No, neither do I.

12 THE COURT: So, that's out. Four point oh-seven,  
13 stipulation. The parties did --

14 MR. CARTER: You know, I don't think it's necessary  
15 to give --

16 THE COURT: Okay.

17 MR. STRONG: Right, I agree.

18 THE COURT: I think it can be confusing to lay --

19 MR. CARTER: Yeah.

20 THE COURT: -- people.

21 MR. STRONG: Right.

22 THE COURT: All right.

23 MR. STRONG: There was a stipulation about an  
24 exhibit, but we --

25 THE COURT: Yeah.

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1 MR. CARTER: Yeah.

2 MR. STRONG: -- even put on the record that we  
3 stipulated to any facts.

4 MR. CARTER: Yeah.

5 THE COURT: The 4.09 was requested by the prosecutor  
6 and we didn't have a response from you, Mr. Carter.

7 MR. CARTER: No.

8 MR. STRONG: No objection.

9 MR. CARTER: No objection.

10 THE COURT: No objection, okay. Right.

11 Okay, the only other one -- well, obviously, we need  
12 5.0 -- 5.03. It said "if needed." I think the record's  
13 replete with both attorneys being asked for the witnesses did  
14 you talk to either attorney --

15 MR. STRONG: Yes --

16 THE COURT: -- and they --

17 MR. STRONG: -- I think that --

18 THE COURT: We need to give it.

19 MR. STRONG: I would agree.

20 MR. CARTER: Yes.

21 THE COURT: I don't think we -- and do you want me to  
22 give "or a lawyer's representative?"

23 MR. CARTER: No.

24 MR. STRONG: There was nothing, I believe, in front  
25 of the jury --

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THE COURT: No.

MR. STRONG: -- about a lawyer's representative.

THE COURT: Right.

MR. STRONG: So, I don't think that's necessary.

THE COURT: Right. We don't -- why do we have 5.09  
in there?

MR. CARTER: It shouldn't be.

MR. STRONG: Right, that should not be in there.

MR. CARTER: And I'm -- five-ten shouldn't be in  
there.

THE COURT: Which one?

MR. CARTER: Five-ten. I don't know if we deleted it  
already.

THE COURT: Yeah, I don't have five-ten.

MR. STRONG: I would agree that --

THE COURT: It's not -- it's not in the final version  
that I have.

MR. STRONG: Okay.

THE COURT: All right, do you think that makes us all  
good on the jury instructions?

MR. CARTER: I think.

MR. STRONG: Looking at the -- what we've discussed  
on the record and the email from Miss -- Ms. Ykimoff, I would  
agree.

THE COURT: Excellent. All right, see everybody back

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1 here in about 10 minute-ish.

2 MR. STRONG: Thank you, Judge.

3 (At 10:56 a.m., off the record)

4 (At 11:14 a.m., back on the record)

5 THE COURT: All right, she can bring the jury in;  
6 right?

7 MS. VAN LANGEVELDE: Yes.

8 MR. STRONG: Yes.

9 (At 11:14 a.m., jury enters courtroom)

10 THE COURT: Please be seated.

11 Okay, ladies and gentlemen, as I told you, I think it  
12 was yesterday, how the process works is now each side has  
13 presented their evidence, and now you are going to hear closing  
14 argument where each side tells you how they see the evidence  
15 and how's (sic) they see the case.

16 We will start with Ms. Van Langevelde on behalf of  
17 the prosecutor.

18 MS. VAN LANGEVELDE: Thank you, Your Honor.

19 Members of the jury, first, again, I want to thank  
20 you for your time and for your attention the last few days. I  
21 know it's sometimes difficult to take time out of our busy,  
22 busy schedules to, you know, stop what we're doing, come to  
23 court, and have to be jurors. So, I do really appreciate your  
24 time and your energy and your effort in this case. So, thank  
25 you.

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1           As you know, the defendant is charged with count one  
2 which is criminal sexual conduct in the first degree. That is  
3 -- this is the digital penetration count.

4           And I know sometimes it can be confusing because we  
5 had the touching count actually occur first. But I want you to  
6 understand, count one is the actual penetration. Okay, this is  
7 his finger in her vagina.

8           So, in order for us to -- the first element is that  
9 the defendant engaged in a sexual act that involved entry into  
10 Pearl Giffen's vagi -- genital opening by the defendant's  
11 finger; Pearl was a child between the ages of 13 and 15-years-  
12 old; and that the defendant and Pearl were members of the same  
13 household.

14           Count two is that criminal sexual conduct - second  
15 degree. So, this -- this defendant intentionally touched  
16 Pearl's genital area, done for a sexual purpose or could  
17 reasonably be construed as having been done for a sexual  
18 purpose; Pearl was a child between the ages of 13 and 15 years  
19 old, that's the element; and finally, the defendant and Pearl  
20 were members of the same household.

21           Now, I want to talk a little bit about our  
22 expectations, because I know when we talked about jury  
23 selection, we talked a lot about what we expect when witnesses  
24 come in and testify; right?

25           So, Pearl was 13-years-old when this happened. And



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1 she's now 19-years-old. That's six years. And I don't know  
2 about, you know, people's memories, but, six years, memories  
3 can fade. Memory's a weird thing. And so, we talked a little  
4 bit in voir dire about how, even though something may happen  
5 like a crisis moment, sometimes you don't remember every single  
6 detail, but you remember a lot of those things.

7 So, a few times, I know Pearl talked about, "oh, I'm  
8 not sure, I don't remember." I think we got to ask ourselves  
9 are we that surprised by that. I don't think so, when you're  
10 looking back at something six years later.

11 She discloses when she's 17, and that she has some --  
12 she has ADHD and some learning disabilities. And I know that  
13 all of you saw her on the stand, and she's kind of fidgety,  
14 playing with her rings, kinda doin' that. And, I mean, what  
15 are our expectations of this child or a young adult who has  
16 that? I would say it meets our expectations if somebody was  
17 ADHD or those kind of learning disabilities might be fidgety,  
18 might be kind of nervous, especially coming in and having to  
19 tes -- tes -- testify about something very serious and  
20 intimate.

21 And at times, as we saw, Pearl, likely, was nervous.  
22 She was upset. I think we all saw her tear up a little bit.  
23 And I think that is a reasonable expectation.

24 So, I think we have some general facts that, I think,  
25 even the defense could agree with. We've got the defendant

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1 living with Pearl, basically from the time she's seven or  
2 eight-years-old. Defendant lived with Pearl and Mom at  
3 Butterfield address. The defendant, Mom and Pearl moved into  
4 Butterfield before Sable was born, when Mom was pregnant with  
5 Sable. Defendant is the father of Pearl's little sister,  
6 Sable, and brother, Noah. And Pearl has visits with her dad,  
7 Jim, who we met, every other weekend and during -- during,  
8 basically, this time period.

9 So, as we discussed, entry into Pearl's genital  
10 opening by the defendant's finger. Any entry, no matter how  
11 slight, is enough. Pearl is between the ages of 13 and 15.  
12 She testified that her birthday is June 10th, 1998. So, she  
13 would've been -- about that time, she would've been 13-years-  
14 old, as she testified. And that the defendant and Pearl are  
15 members of the same housecold -- household, and that they lived  
16 together at Butterfield, which is located here, in Eaton  
17 County, and the State of Michigan.

18 So, let's go over the evidence as to count one. So,  
19 Pearl testified she was getting up at night, she was getting  
20 ready for bed, she was going into the kitchen to get a drink of  
21 water. Sable's sleeping, Mom is sleeping. No Noah yet.  
22 Defendant's watching TV in the living room. And she remembers  
23 the defendant was watching WWE wrestling. That's a specific  
24 memory that she has. Told him she was going to bed, and that  
25 she went into the dining room, was standing near the table.

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1 She testified that the defendant came up behind her, put his  
2 hand down the back of her pants and put his finger into her  
3 vagina. She could feel his finger in her vagina.

4 So, count two. That's the defendant touched Pearl's  
5 genital area for a sexual purpose, or it could be reasonably  
6 construed as for a sexual purpose. Pearl was between the ages  
7 of 13 and 15, and defendant and Pearl are members of the same  
8 household.

9 So, as Pearl testified, this is the bedroom incident.  
10 So, Pearl's (sic) has a half day at school. She's at home.  
11 It's a Friday, toward the end of the school year. And she  
12 remembers that. And she's home with the defendant and Baby  
13 Sable. No Mom, no Grandma, they're not home. She's sitting on  
14 her bed, in her bedroom, and she put -- and the defendant comes  
15 in, pushes her back on the bed, takes her pants down, puts his  
16 pants down, and puts his penis on her vagina. It puts pressure  
17 on her vagina, and it hurts. But as Pearl testified, it  
18 doesn't go in. It doesn't go in. And I think that's important  
19 because, if somebody were gonna make this up, wouldn't they go  
20 all the way? But, Pearl's very specific; it doesn't go in, but  
21 it touches her vagina, and it hurts. She makes a noise; she  
22 screams. And that she can hear Baby Sable coming down towards  
23 the bedroom, and he gets off of her, and then he leaves.

24 So, we talked a little bit about Pearl -- this  
25 wrestling incident. Pearl says this never happened when they

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1 were wrestling. Pearl did not put defendant's hand down her  
2 pants. Pearl never told defendant that she was horny. Pearl  
3 never said her pussy was on fire. Pearl never wanted defendant  
4 to put his -- his hand down her pants. All those things that  
5 defendant wrote out in his written statement, Pearl completely  
6 denies. And now, the defendant's denying it. Pearl says that  
7 never happened.

8 So, we talked a little bit about, in voir dire, why  
9 people don't, necessarily, tell right away when they've been  
10 sexually assaulted, and Pearl gave us some reasons. She loves  
11 her family. She doesn't want to break them up. She loves her  
12 little brother and sister very much. And I think she had a  
13 feeling that, if she were to disclose, they wouldn't be a  
14 family anymore. And she loves her family. I think that was  
15 clear from the testimony. She's scared. She doesn't know what  
16 her mom was gonna do. She doesn't know what the defendant is  
17 gonna do.

18 And as we heard in the video, he's been violent with  
19 her in the past. He has grabbed her by her throat, pushed  
20 pressure on her throat and said, "Shut the fuck up." He's done  
21 that to her. He has grabbed her in -- as he described in the  
22 video, you heard him, he has body-slammed her onto the ground.

23 And the night that this incident -- that she finally  
24 disclosed and talked to her mom about it, he threatened to slit  
25 her throat in front of her dad, in front of the people coming

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1 to get her out of that situation.

2 So, let's talk about defendant's first interview.  
3 the first interview, as Detective Maltby testified, defendant  
4 says nothing inappropriate happened with Pearl. "I always  
5 thought she was a good kid until she pulled this." It's a lot  
6 different than what we heard today, isn't it? He told  
7 Detective Maltby, "I always thought she was a good kid until  
8 she told this. We used to wrestle with each other, but I would  
9 never touch anywhere down there." He asked him -- or,  
10 Detective Maltby asked the defendant if Pearl had ever done  
11 anything inappropriate to him. Basically, that victim blaming  
12 that we kinda heard about later. "No. No Pearl's never done  
13 anything inappropriate to me."

14 The first interview there's a couple of weird --  
15 there's a weird statement about her underwear. There's a --  
16 this discussion about angry about a boyfriend, and now the  
17 boyfriend's involved.

18 And he lied about his prior CSC.

19 So, that all triggers Maltby to get Detective  
20 Sergeant Jordan involved.

21 Now, Detective Sergeant Jordan, he is very  
22 specialized, and he specializes in interviewing people. This  
23 is what this guy does, and he's good at it. He's never met the  
24 victim. He doesn't know anything about her, but he uses these  
25 techniques of victim blaming; right? So, being on the same

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1 level as the defendant. "Now, I'm gonna help you out." We  
2 heard him say that in the -- in the tape. You know, we're --  
3 it's -- it's building that rapport with somebody. And so, he  
4 gets admissions by blaming the victim.

5 And I think it's important, Detective Maltby sees  
6 kind of a shift in the interview coming. And so, he pulls out  
7 his cell phone, and he wants to capture what is about to be  
8 said by the defendant. He can kind of see it coming.  
9 Detective Maltby's been doing this a long time, talking to  
10 people. He can kinda see it coming. So, he pulls out his  
11 phone, and he wants to capture what the defendant's gonna say.  
12 Watch his body language in that snippet. I think that tells a  
13 lot. You see the defendant, when the words come out of his  
14 mouth, and he sort of realizes that, oh, I'm done. He's got  
15 his head down. He's got his face covered. That's body  
16 language. And there's this almost -- he does like a punch.  
17 Like, what does that tell you?

18 And in the beginning of that, he talks about how they  
19 were wrestling and Pearl, who was, I would say, smaller than  
20 me, as far as height, is able to lift the defendant over, at  
21 13, his (sic) shoulder, and this wrestling thing happened. I'm  
22 not buying that. And I understand that the defendant's saying,  
23 well, that never happened now. The wrestling incident never  
24 happened. So, why tell Detective Sergeant Jordan that? And  
25 then, he will follow up in a room with Detective Maltby and

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1 talk about this wrestling incident -- if it never happened?  
2 That doesn't make sense. Why would you go back and -- and have  
3 this second interview -- that we all watched. It was about an  
4 hour long -- with Detective Maltby if that wasn't true? Or,  
5 just tell the Detective Maltby, who's not doing more of the  
6 interrogation in your face kind of tactic. It's more of the  
7 buddy system, hey, guys, let's talk about this. Why not tell  
8 him, you know, this stuff that I told Detective Jordan just  
9 want' true; he kind of goaded me into saying that? That's not  
10 what he tells Detective Maltby. He sticks with the wrestling  
11 story. Said the victim was able to grab his hand and put it in  
12 her pants.

13 Second interview, this is the admissions that he  
14 talks to Detective Sergeant Jordan about. Pearl made his hand  
15 go down her sweatpants. Pearl said she was horny. Pearl told  
16 him to rub it. Pearl said her pussy was on fire. Her nipples  
17 were hard. You could see them through her shirt. All four of  
18 his fingers touched her vagina. He could feel her vagina was  
19 wet. And his fingers went inside the vagina lips. He tells  
20 Detective Jordan that. We heard it.

21 So, let's talk about the third interview, the -- the  
22 one that we watched with Detective Maltby. The defendant is  
23 all over the place. I had a hard time following him. Like,  
24 how is he gettin' from here to there to everywhere? He's kinda  
25 all over the place in that interview. And, basically,

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1 Detective Maltby, he's keeps trying to bring him back; let's  
2 talk to the -- let's talk about that wrestling incident. I  
3 don't care about that. Let's talk about the wrestling  
4 incident.

5 But, during that interview, he keeps blaming Pearl  
6 and making Pearl out to be like this over-sexualized kid. So  
7 we see Pearl walking in between the bedroom and bathroom in her  
8 bra and underwear, he walks in on Pearl changing, Pearl walks  
9 in on Mom and him having sex, Pearl walks in on him in the  
10 bathroom, dildos and the sex toys are missing, women at the  
11 hotel, an orgy. He's talking about all sorts of things.  
12 Finally, we get him back to the wrestling incident.

13 Well, he talks about how Pearl likes it at their  
14 house. He talks about that. And Pearl called him Dad. Pearl  
15 was gonna get Mom's car before this disclosure took place.

16 And he gets angry about when Detective Maltby,  
17 towards the end of that interview -- Pearl can't keep a secret.  
18 He gets angry about this. "She doesn't hold shit in. Pearl's  
19 not like that. Pearl's a fucking joke." That's what he says.  
20 He is angry. And I put it to you he's angry because Pearl  
21 finally disclosed, 'cause she couldn't keep it a secret.

22 And he says, "When I came home from prison, my first  
23 thought was I'm never gonna do anything to make anybody's job  
24 any easier, nothing." Not when I get out of prison, I'm never  
25 gonna sexually assault going to assault another child again.



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1 Or, when I get out of prison, I'm never going to make a false  
2 admission about sexually assaulting a child again. Or, I'm  
3 never going to put myself in a position where I could ever be  
4 accused of sexually assaulting a child again. No, that's not  
5 what he says. He says, "Why keep adding? Why keep changing?  
6 Because Detective Maltby's saying, well, what if, you know,  
7 Pearl tells me something different.

8 Well, members of the jury, Pearl's story has never  
9 changed. It's been consistent throughout this whole  
10 investigation, throughout the testimony. It's the defendant's  
11 story that has -- keeps adding and changing, even today. He  
12 says, back in the third interview, wrestling incident happened  
13 in the living room/dining room. Pearl was younger a few years  
14 ago. And now, he's -- today, he said Pearl was 13 at the time  
15 is what he told Detective Maltby. Pearl was wearing  
16 sweatpants. He had been giving Sable piggyback rides. My  
17 daughter was little, about one. That's what he tells him in  
18 the third interview. He says, "Pearl's nipples were hard.  
19 Could see them through her shirt. Wrestling -- I had my arms  
20 around her waist. And I was wrapped around her, and she put my  
21 hand there and said 'my pussy is on fire,' and that was it."

22 How could Pearl possibly take his hand and put it  
23 down her pants when he's got her around the waist, when he's  
24 got -- when he -- he is a grown man? And we all saw her.  
25 She's about five foot. She's a little heavier, but she's about

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1 five foot. And he's -- he's got her around the waist in a bear  
2 hug. How could she possibly take his hand, a grown man, and  
3 force it down her pants?

4 What's interesting is that, even though the defendant  
5 -- well, the defendant says he didn't know the details about  
6 the allegations that Pearl was making until May, after his  
7 third interview. But in his third interview and in the  
8 interview with Detective Sergeant Jordan, there are many  
9 similarities. So, these similarities are Pearl was 13 when  
10 this -- when the incident happened. Well, and, also, Pearl  
11 can't keep a secret. She rats herself out, and Pearl said  
12 that. Pearl, she says she may fib, but she rats herself out.

13 Pearl will call her (sic) dad, and Pearl admits that.  
14 She -- she used to call the defendant Dad. They both agree  
15 that the defendant's hand went down her pants in that wrestling  
16 incident. They both agree that the finger went into the vag --  
17 vaginal opening. And they both agree that Pearl (sic) was a  
18 baby. They both agree that Pearl would've been 13. And they  
19 both agree this happened in the dining room.

20 Those are consistent with each other, and that's  
21 consistent with the second interview, consistent with the third  
22 interview. All those things are the same. Even though the  
23 defendant is telling you he didn't know the details of the  
24 allegation, it's interesting that his false admission is  
25 consistent with what Pearl was saying, what she was wearing,

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1 how old she was, where she was. All those consistencies are  
2 Pearl's statements.

3 So, during that interview, the defendant lied to  
4 Detective Maltby, says he was drunk at a party and a 15-year-  
5 old give him oral sex when he was 23. Well, what is Detective  
6 Roberts' testimony on that prior CSC? The victim was not 15,  
7 but 12 and 13-years-old at the time. The defendant was 25.  
8 And he told Detective Roberts that he had penile/vaginal sex  
9 with the victim when she was 12 and 13.

10 So, then, also on that prior first CSC, at the  
11 defendant's first interview, he said he and Amanda are just  
12 friends, but that they were kissing, that they had not had sex.  
13 Second interview, defendant says he didn't force himself on  
14 her. It only happened twice, but when he was really drunk. He  
15 said Amanda wanted to lose her virginity. Admitted having  
16 sexual intercourse with Amanda two weeks after dating.  
17 Interview takes -- took place a month and-a-half after they  
18 started dating and that Amanda was 12 and 13.

19 The defendant can't have it both ways. His story  
20 keeps changing. And it changed back in 2000, and it's changing  
21 now.

22 So, what are the defense's theories here? So, he  
23 previously false confessed to a CSC with a person 12 and 13.  
24 And when -- and then he pled guilty to attempted CSC - third.  
25 So, he knows the ramifications. He knows. He talked about he

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1 went to jail or prison, but then he gives two false statements  
2 to two -- to two separate police officers. If he knows the  
3 ramifications for giving a false confession before, why would  
4 he do it again? That makes no sense.

5 So, here's the other defense theory. Pearl did this  
6 Pearl forced his hand down her pants. That doesn't make any  
7 sense, either. If he's got her in a bear hug -- and now he  
8 says this isn't true, by the way. But if he's got her in a  
9 bear hug, how could she possibly grab ahold of his hand, a  
10 grown man, and put it down her own pants? And by the way, not  
11 only down her pants, but down her pants, down her underwear,  
12 with enough time for her to say "my pussy is on fire," his  
13 finger to go in, and then he says, "oh, I'm not -- I'm not  
14 doing that." That makes no sense.

15 And why -- and he tells Detective Maltby this in the  
16 beginning of the -- that third interview. He talks to Bridget  
17 about why he didn't tell her about the wrestling incident,  
18 because it would hurt her. No. If you have a child who is  
19 putting your hand down her pants, you would tell her mother.  
20 That makes sense. If you have a child who's having sexually  
21 acting out, you do something about it, especially if you have  
22 been previously convicted of criminal sexual conduct on a  
23 child. You don't not do anything about it, and just talk to  
24 her and say we're never gonna -- we're gonna pretend like this  
25 never happened. No.

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1           So, the other defense theory could be, possibly,  
2 Pearl's lying because her mom was gonna take her Tablet or  
3 phone. And I'll tell you why this one fails. Because when she  
4 first tells, when she tells her mom -- and that's kinda when  
5 everything blows up, that day before Christmas Eve -- she is  
6 obviously, she wants her Tablet, but they're having a  
7 discussion, basically, about her -- her -- I want to say -- no  
8 sex -- maybe it's sexual orientation. And so, they're having  
9 this argument about these pictures of girls and how she is kind  
10 of experiencing this like about her body. And is it  
11 surprising, to us. that a child who has been sexually assaulted  
12 is acting out sexually? I don't think so. I think if -- you  
13 can use your common sense and reason to determine that, if a  
14 child has been sexually assaulted, they probably would have  
15 some sort of acting out sexually. I think that's normal.

16           So -- but at that point, law enforcement, CPS, all of  
17 us are not involved. And if she wanted her Tablet back, she  
18 wouldn't have told the counselor, wouldn't have told law  
19 enforcement, wouldn't have told CPS, because she can't go back  
20 home. She can't go home because he's still there with Mom.  
21 So, she does not accomplish a goal of getting her Tablet back  
22 when she tells her counselor and CPS

23           And the other part of this is all of the scheming  
24 just -- Pearl must be a really -- what's the word I want --  
25 advanced, even though she has ADHD and a learning disability,

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1 because this doesn't make any sense, either. He doesn't know  
2 the details of her allegations, and, yet, there are so many  
3 similarities, especially about the -- the digital penetration  
4 incident. So many, but, yet, he doesn't know any of the -- the  
5 details. And so, in Pearl's grand scheme, he would've -- it  
6 just worked out that he falsely confessed to putting his hand  
7 down her pants with similar details, such as she was 13, Sable  
8 was a baby, Sable was there, it was in the dining room/living  
9 room. It just happened to work out. That makes no sense. I  
10 not allowed to do psychology.

11 So, what does Pearl get for her trouble, for having  
12 to disclose? Pearl gets threatened by the defendant that he's  
13 going to slit her throat. Pearl gets slapped by her mom, gets  
14 taken from her mom's house that she loves. And you heard her  
15 testify about how she loves her family, and she loves her  
16 little brother and sister very much. She misses them. And she  
17 doesn't get to live with them anymore. And she doesn't get to  
18 see them very often. She has to go to a new school. You heard  
19 the testimony that they started at Olivet, and now she has to  
20 go to a new school because of this and make friends at  
21 Hastings. And she has to tell a ton of people. She has to  
22 testify twice in court. That's what she gets. She doesn't get  
23 a Tablet. She doesn't get her phone.

24 What makes sense, members of the jury?

25 As the Judge will instruct you, testimony is enough.

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1 You don't have to have physical evidence or corroborating  
2 evidence. Testimony is enough if you believe it and you  
3 believe it for each element beyond a reasonable doubt.

4 What makes sense is that the defendant keeps changing  
5 his story, but that Pearl's story has stayed consistent. I put  
6 to you the truth doesn't change. What happened, happened. And  
7 I'll put to you what makes sense is the defendant saw an  
8 opportunity. Pearl is in his home, and she's the same age as  
9 his prior victim. Pearl has a good relationship with him and  
10 loves her family. She has problems. She -- I'm not gonna hide  
11 that from you. Pearl has some issues. And what a perfect  
12 victim. Someone in your house who's got problems, who you can  
13 make look like a liar, what a perfect victim. You pick a --  
14 and we talked about that in voir dire. If you were going to --  
15 not you. But, if someone were going to sexually assault  
16 someone, how would they do it? They would do it when nobody  
17 else was around, no witnesses. They would do it to somebody  
18 they have power over. And they would do it to somebody who  
19 wouldn't be believed. And what do you have here? Those same  
20 factors.

21 Members of the jury, I believe that the evidence has  
22 proved to you this case beyond a reasonable doubt, and I'm  
23 asking you to find the defendant guilty of criminal sexual  
24 conduct in the first degree and criminal sexual conduct in the  
25 second degree. Thank you.

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1 THE COURT: Thank you, Ms. Van Langevelde.

2 Mr. Carter, are you ready?

3 MR. CARTER: Yeah, and if I could move the podium.

4 THE COURT: Okay.

5 MR. CARTER: The People have not proven their case  
6 against Mr. Warner. There is no evidence, in this case, that  
7 proves that Mr. Warner is guilty of what the State claims.

8 But, you do not need to go nearly that far in order  
9 to find Mr. Warner not guilty. The evidence need not prove Mr.  
10 Warner's innocence in order for you to find him not guilty. It  
11 need not convince you of what happened between him and Pearl  
12 before you acquit Mr. Warner. That is because, in this  
13 country, we are all protected by some very important legal  
14 principles, principles that form the heart and sole of our  
15 great system.

16 Let's talk about some of those principles. The  
17 American criminal justice system is admired all over the world.  
18 It is admired for the protection it affords every one of its  
19 citizens. It protects each and every one of us should we find  
20 ourselves in Mr. Warner's position, an innocent man wrongly  
21 accused of a crime he did not commit. At the heart of this  
22 great system is you, the jury. No one is more important to  
23 this system than the 12 of you. You are the people charged  
24 with ensuring that these protections are provided to Mr.  
25 Warner.



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1           In one respect, your job is extremely difficult; but  
2           in another, it's really very easy. It is difficult because you  
3           are given a responsibility that most people will never know.  
4           You hold the life of a man in your hands. You will decide the  
5           fate of a human being, Mr. Warner. That is a great  
6           responsibility, and one that should not be taken lightly.

7           However, in another respect, your job is quite easy.  
8           It is easy because you're not -- you are not asked to figure  
9           out what happened between Mr. Warner and Pearl. You are not  
10          asked to determine whether Mr. Pearl -- Mr. Warner is innocent.  
11          That's not what you're asked to do. You are only asked to  
12          determine whether the prosecution has convinced you beyond a  
13          reasonable doubt that Mr. Warner did the things he is accused  
14          of.

15          If you have uncertainty, if you feel like you aren't  
16          sure, if there are unanswered questions that keep you from  
17          feeling confident about what happened, your job is easy. You  
18          must find Mr. Warner not guilty.

19          Before we go on to look at the evidence in this case  
20          more closely, I'd like to take a moment to discuss some very  
21          important legal principles. The Judge will talk to you about  
22          the law before you start your deliberations. However, there  
23          are three principles that are so central to our system that  
24          they deserve discussion here. These principles protect us all  
25          as American citizens. They protect each and every one of us

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1 should we ever find ourselves in Mr. Warner's situation, an  
2 innocent man wrongly accused of the crime he did not commit.

3 The first of these principles is the presumption of  
4 innocence. The presumption of innocence is like a cloak that  
5 we all wear as American citizens. It protects every member of  
6 our community should we ever be falsely accused of a crime.  
7 This cloak of innocence cannot be removed unless and until the  
8 State meets a very high burden, a burden the State has not met  
9 in this case. But that important cloak of protection that  
10 makes up the foundation of our great system only works when  
11 every member of our community believes in this principle.

12 Before being sworn in as jurors each of you agreed to  
13 honor this principle. By doing so, you agreed to view Mr.  
14 Warner innocent at the outset of this case. You agreed to  
15 continue to hold this view as you listened to the evidence in  
16 the case. You agreed not to remove that cloak from Mr. Warner  
17 unless you decided that the government has met its very high  
18 burden.

19 Mr. Warner continues to wear this cloak as he sits  
20 before you at this moment. As you listen to these final  
21 arguments, you must continue to presume he's innocent. You  
22 must do this as you hold the State to the standard required by  
23 the laws of this great country. We will talk about this  
24 standard in a moment.

25 The second important principle is the burden of

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1 proof. In our criminal justice system, the burden lies with  
2 the State. We don -- we do not require any person to prove his  
3 innocence. Our system insists that, before the State can take  
4 away a citizens liberty, it must bear the entire burden of  
5 proving the accusations against that person. This means that  
6 if you have any questions about what happened back when Pearl  
7 was 13, you cannot look to Mr. Warner for the answers. You  
8 must look to the State. It's their responsibility. And the  
9 State's failure to do so can be the basis of a not guilty  
10 verdict.

11 So, if you wanted to hear from, perhaps, Pearl's  
12 grandmother to determine when this disclosure took place, what  
13 her demeanor was like, if you wanted to hear that, you can't  
14 hold that against Mr. Warner. If you wanted to hear from  
15 Bridget, Pearl's mother, about the incident on December 23rd  
16 and what occurred then, you can't hold that against Mr. Warner.  
17 That was the State's duty to provide.

18 If you feel that there are too many unanswered  
19 questions to your satisfaction, that was the responsibility of  
20 the State. You may not hold that against Mr. Warner.

21 Our Constitution allows Mr. Warner to sit back and  
22 make the State prove the case against him. He's not required  
23 to present any evidence. He could sit back and hold the  
24 government to the burden it is required to meet under the law.  
25 But, he chose to take the stand because he wanted you to hear

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1 his side of the story.

2 The last principle I want to talk to you about is the  
3 standard of proof. In a criminal case, you may think the  
4 accused probably committed the offense. That is not enough.  
5 You may believe the accused likely committed the offense. That  
6 is not enough. You may feel fairly certain that the accused  
7 committed the offense. That is not enough, either. In each of  
8 those scenarios, you must find that person not guilty.

9 You may only return a verdict of guilty if you have  
10 no reasonable doubt. You see, above fairly certain is beyond a  
11 reasonable doubt.

12 I would like to explain to you what reasonable doubt  
13 looks like with a little example, and I call it the cat, the  
14 mouse, and the box. Suppose you have a box with a lid, you got  
15 a cat, and you have a mouse. You put the cat in the box, the  
16 mouse in the box, put the lid on the box, and you tie a rope  
17 around it. You lift the box in the middle of the room, nothin'  
18 around it, suspended, you leave. You come back about a half-  
19 an-hour later. You lower the box. You untie it, the -- you  
20 untie the rope. You open up the box. What do you see? You  
21 see a fat cat with a smile on its face and no mouse. That is  
22 beyond a reasonable doubt. You weren't there. There's no  
23 witnesses. You don't -- you didn't see what happened to that  
24 mouse, but you could be sure that the cat ate the mouse.

25 Now, let's take the same scenario. You got the box,

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1 got a cat, got a mouse. Put 'em in the box, put the lid on it  
2 tie the rope. You hoist up the box. You leave the room. You  
3 come back in a half-an-hour. You come -- you lower the box.  
4 You untie the rope. You lift up the lid, and what do you see?  
5 You see a big fat cat with a smile on its face, but you don't  
6 see a mouse. What else do you see? You look at the box, and  
7 sure enough, there's a hole in the corner of that box just big  
8 enough for that mouse to get through. That is reasonable  
9 doubt.

10 So, let's take a look at the holes in this case.  
11 Let's first look at the first incident. At this point, I want  
12 to remind you that you all agreed that it extreme -- that it is  
13 extremely hard to prove something did not happen. When we were  
14 in a situation like that -- when we are in a situation like  
15 that, we try to ask questions that, perhaps, the other side  
16 wouldn't think about asking to see if this event truly happened  
17 or if they're telling the truth. We call that "the devil in  
18 the details," because people don't think of them, really, the  
19 details of something when they're telling a lie or something.  
20 So, we can determine whether or not somebody may be lying in  
21 the -- in the details.

22 Pearl says she's in her room packing. She's on her  
23 bed. And she is sitting there, and the defendant comes in.  
24 Mr. Warner comes in and pushes her down. But what's  
25 significant is, when I asked her, well, what were you packing,

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1 she said, "To go out to her dad's house for a weekend." I  
2 asked her a question that I didn't think anybody would think to  
3 ask her, "Well, were you packing a suitcase or what?" Do you  
4 remember what she said? It didn't make sense, at all. She was  
5 putting two pairs of pants and other clothing to go overnight  
6 with her father in a one -- in a one foot by six inch bag.  
7 Does that make sense? No. Because she wasn't prepared to  
8 answer that question in her false al -- allegation. She was  
9 just concentrated on just the general allegation.

10 She claims that Mr. Warner then comes in, pulls down  
11 her -- pushes her over, pulls down her pants to her knees.  
12 That's significant, too, to her knees. And that's when Mr.  
13 Warner, then, takes off his pants to try to do the sexual  
14 assault on her. But her pants are at her knees. How do you do  
15 a sexual assault with somebody whose knees are strapped by her  
16 sweatpants and her panties -- and her underpants? It doesn't  
17 make sense. If it was truly a sexual assault that he was  
18 trying to have sex with her, he would've taken all the pants  
19 off her, at least get 'em down to the ankles. Logistically, it  
20 doesn't work. Again, the devil is in the details.

21 If you want to talk about changing stories, Pearl's  
22 story changed quite a bit during the first incident. First,  
23 she claims that she didn't make a noise, she didn't scream, she  
24 didn't squirm, she didn't do any of that. I read her the  
25 transcript. She agreed that's what she said. "No, I didn't do

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1 any of that." Then, she said she did scream or make a noise.  
2 She was all over the place on that. Again, the devil is in the  
3 details. She first said that when she made the noise, that's  
4 when Mr. Warner stopped. But then she goes on to say, no, it  
5 was when we heard Sable comin' down the hallway. What is it?  
6 Again, the devil is in the details here. She also said that  
7 she never made a noise or squirmed, and she never screamed.  
8 Again, she goes back to saying that again.

9 She also claims that this incident, that he did that  
10 he was interrupted, and he left, and he says nothing to her,  
11 nothing after that. And here she's packing to go to her  
12 father's house for the weekend, and he says nothing to her?  
13 Does that make sense?

14 And we want -- the prosecutor wants to key in on  
15 opportunity. Do you think that somebody would actually commit  
16 a sexual assault just prior to releasing it to another  
17 individual, an adult, where they would tell or say something?  
18 That doesn't make sense. If any time, you'd do it while you  
19 have the child or the person under your control for a lot  
20 longer time. Does that really make sense?

21 Now, let's look at the second incident. Pearl  
22 testified that she left her bedroom to say goodnight to Mr.  
23 Warner. She then said it was to get a drink. Why is that  
24 significant? Because, at first, she comes out of her room to  
25 say goodnight to Mr. Warner, but, oh, yeah, I gotta somehow get

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1 to the table with this other accusation. And she doesn't even  
2 remember why she stopped at the table. On such a traumatic  
3 incident like this, you don't remember something like that? I  
4 submit to you that you would. That would be ingrained in your  
5 mind.

6 What is odd about that incident, too, is she says he  
7 walks up to her, doesn't say anything, sticks his hand in her  
8 for a slight second, pulls it out. She could feel him  
9 penetrate. He says nothing to her. She says nothing. And she  
10 just goes about, gets her drink, and goes into the -- her  
11 bedroom. Does that make sense? She doesn't scream. She  
12 doesn't do anything. She's just quiet and goes about her  
13 business.

14 Now, let's look at Mr. -- or, Detective Maltby's  
15 testimony. His testimony reminds me of what Stuart Chase once  
16 said: "For those who believe, no proof is necessary. For  
17 those who don't believe, no proof is possible."

18 Well, what do I mean by that? Do you recall he  
19 interviewed Mr. Warner for over an hour the first time? And  
20 Mr. Warner continued to deny that nothing happened. He was not  
21 satisfied with that, because he believed Pearl already. It  
22 didn't matter what Mr. Warner was going to say. He was going  
23 to continue to interview him and badger him until Mr. Warner  
24 said something that he could cling on to. He, pretty much,  
25 said that. It didn't matter what Mr. Warner said; he was gonna



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1 continue to be hounded until he said something.

2 And, unfortunately, Mr. Warner finally did. He made  
3 up a story. He made up a story about the wrestling incident.  
4 That's significant, because Mr. Warner didn't -- does admit  
5 that that was a lie just to give him something, because he was  
6 continuously being badgered. What's significant about that is  
7 Pearl corroborates that it was a lie, because she said, "That  
8 never happened, never happened." She actually corroborates it

9 And the prosecutor would want you to believe that,  
10 through the testimony, these -- the -- those two incidences are  
11 so similar, and they're not. You know that. You heard the  
12 testimony. One was he was sitting in a chair watching  
13 wrestling when she came in to get a drink, or came in to say  
14 goodnight and then to go get a drink. And then, it was come up  
15 from behind, and he sticks his hand down her -- her pants. And  
16 that they were the only ones there, no Sable, no nothing. Mr.  
17 Warner testified that, yeah, he told 'em a lie, and the lie was  
18 this. We were wrestling. We were doing piggyback rides, and  
19 it turned into a wrestling match, and Pearl stuck her hand --  
20 stuck my hand down her front. So, we have front and back. We  
21 have -- it's -- it's -- it's totally different.

22 The only sig -- the only thing that is the same would  
23 be that Mr. Warner's hand went down her pants, that's it. That  
24 is significant because, as Mr. Warner testified, he had no idea  
25 what the details of the allegations were, but he was

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1 continuously badgered and interviewed, wanting something from  
2 him.

3 I'm not an expert in false confessions. I don't get  
4 it, but they happen. Mr. Warner caved. He gave 'em something  
5 to say, something, just to get out of there, get out of there  
6 And guess what? It ended up stopping. He wasn't interviewed  
7 anymore. It worked. In his mind, he just wanted to get out of  
8 there.

9 Now, why would -- oh, the other dissimilarities on  
10 that one is, is that Sable was present during Mr. Warner's  
11 false story and with Pearl, she wasn't.

12 Now, why would anyone make up a lie? I don't know.  
13 Especially this serious. But we do know -- and we've heard  
14 testimony from family members -- or, friends, rather -- they're  
15 not family members -- that Pearl has a tendency to lie when she  
16 gets into trouble, to get herself out of it. She's known as a  
17 liar. She lies more than most people. Matter of fact, the  
18 testimony was -- is that as she got older, it got worse.

19 And we know that she was in trouble because of all  
20 this sexual stuff going on in her Tablet, and it was gonna get  
21 taken away. Does that make sense that perhaps she'd throw out  
22 a lie to deflect from it? I submit, to you, it does.

23 The defendant says that none of these things  
24 happened. I submit, to you, that the evidence really supports  
25 that version. The only thing that doesn't support it is

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1 Pearl's testimony, and that's it. The testimony of a girl  
2 who's in trouble and wanted to get out of trouble. She  
3 deflected.

4 Now, Judge Cunningham will instruct you on the law  
5 and how it applies. But there is one instruction that I want  
6 to go over a little bit.

7 You heard evidence that Mr. Warner was convicted of  
8 similar crime almost 17 years ago. It is important that you  
9 only consider that evidence for the limited purpose the Judge  
10 instructs you on. You must not consider that evidence for any  
11 other purpose than what the Judge instructs you. For example,  
12 you must not decide that it shows that Mr. Warner is a bad  
13 person or that he is likely to commit crimes. You must not  
14 convict Mr. Warner here because you think he is guilty of other  
15 bad acts.

16 Once you begin deliberation, I urge you to be  
17 carefully -- to carefully, rather, and thoughtfully consider  
18 all of the evidence in this case. Take your time. I beg you  
19 to take your time. And I know my client begs you to take your  
20 time. Your decision is final and irreversible. If you rush to  
21 judgment and wrongfully return a verdict of guilty, you cannot  
22 later take it back. After you think of this case when you  
23 return to your daily routine, if you wake up in the middle of  
24 the night and think, oh, my, I made a terrible mistake, you  
25 can't call Judge Cunningham and say I want to change my vote.

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Charlotte, Michigan*

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1 It is final. If you find yourself continuously thinking about  
2 how there was really no evidence to corroborate Pearl's version  
3 of events and that she actually corroborates Mr. Warner's false  
4 story as being false, you can't call the prosecutor up and say  
5 I'm sorry, I change -- I -- I made a mistake. I want to change  
6 my mind. If you think to yourself a week from now that Pearl  
7 kept changing her story on these details, you can't call me up  
8 and say I feel terrible. I want to take back my verdict.

9 Remember that you each only have to have one reason  
10 to doubt, and it doesn't have to be the same. I urge you to  
11 leave no stone unturned as you begin your search for reasons to  
12 doubt in this case. If you have a reasonable doubt about the  
13 stories Pearl is asking you to believe, you must find Mr.  
14 Warner not guilty. How could you not in this case? Reasonable  
15 doubt is all over it.

16 And I know that you're in a position where you're  
17 listening to a crime or testimony about a child that was  
18 involved. I ask you and urge you to try to separate your  
19 emotions and just look at the evidence, evidence only, because  
20 you're here to determine whether or not Mr. Warner committed  
21 these acts beyond a reasonable doubt. You're not here to  
22 determine whether or not Mr. Warner is innocent, just whether  
23 or not the prosecution has proved their case beyond a  
24 reasonable doubt. The evidence does not support a conviction  
25 beyond a reasonable doubt.

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1 Now, the State will get a final summation and will  
2 try to show you that their case is stronger than what it is.  
3 But remember, their case is really based on an uncorroborated  
4 testimony of Pearl, who's known to be a liar and is known to  
5 lie to get out of trouble or to deflect.

6 Her stories doesn't make sense. The time of day  
7 doesn't make sense. The first allegation, when just prior to  
8 being turned over to her father, doesn't make sense. The pants  
9 being pulled down to the knees doesn't make sense. Packing in  
10 such a small bag doesn't make sense. The incident in the  
11 kitchen where he walks up from behind her, sticks his hand in  
12 there, says nothing, doesn't do anything. She doesn't --  
13 nothing's said afterward, and she just goes about getting her  
14 drink and into her bedroom just doesn't make sense.

15 The prosecutor's case is missing several pieces of  
16 the puzzle. In my many years of being a defense attorney, I  
17 have heard the prosecutor say that it's okay to have missing  
18 pieces to a puzzle, as long as you can, ultimately, figure out  
19 what the puzzle is. And she alluded to -- to that during her  
20 opening statement. Does that really make sense to you? Would  
21 you be satisfied purchasing a puzzle with missing pieces?  
22 Absolutely not. This is a criminal trial. It's much serious  
23 -- much more serious than a puzzle. Besides, you would be the  
24 first one to complain if you got your puzzle at home, put it  
25 together, and it was missing a piece.

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1           The prosecution doesn't have the final word; you do  
2           Given the evidence, or should I say the lack of evidence in  
3           this case, those final words should be not guilty. I urge you  
4           to box up this incomplete puzzle and give it back to the  
5           prosecutor with a not guilty verdict. Thank you.

6           THE COURT: Thank you, Mr. Carter.

7           Ms. Van Langevelde.

8           MS. VAN LANGEVELDE: Thank you, Your Honor. One  
9           moment, please.

10           Now, members of the jury, when you go back into the  
11           jury room, you have the opportunity to take with you all the  
12           exhibits. I just want to remind you of that. You have the  
13           opportunity to take these things with you that we've admitted  
14           into evidence, including the videos. And you can watch those  
15           again if you feel like you need to.

16           The defense wants to point out the minute details  
17           that might be a little bit different. But when I -- when I  
18           asked Pearl on redirect about if she had previously testified  
19           if she made a noise -- she actually had. She had previously  
20           testified to that. So, the defense wasn't -- that wasn't  
21           correct. She had testified that she had made a noise before,  
22           and she testified to it again.

23           The defense doesn't want you to look at the little  
24           details of the defense's story, because what you have to  
25           consider as evidence, as well as Pearl's testimony, is the

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1 defense testimony, the defendant's testimony, as well as the  
2 videos and the interviews, and everything the defendant said.  
3 That's all evidence.

4 And it's the defendant's story that detail is just  
5 not there. He wants you to say that, because the defendant  
6 told a lie and Pearl agrees that it was a lie, that he's the  
7 truthful one. Talk about not making any sense. So, because  
8 the defendant told a lie and Pearl agrees it's a lie,  
9 therefore, the defendant is the truthful one and not Pearl.  
10 That makes no sense.

11 Her testimony was that, when the defendant put his --  
12 and I'm talking about the -- the count one, the finger into her  
13 vagina. When the defendant did that, she was shocked. That  
14 was her testimony. And what person wouldn't be shocked?

15 But what actually does make sense is that Pearl  
16 doesn't want to break up her family. Pearl doesn't want -- she  
17 wants to just ignore this and move on with her life and pretend  
18 like it never happened, and you heard her testify about that.

19 And there are some -- so many reasons why a victim  
20 might not come forward, and love can be one of them, even love  
21 for the perpetrator. That can happen, and it happens all the  
22 time.

23 Mr. Carter wants to talk a lot about how they were  
24 badgering, badgering the defendant. He came back for a third  
25 interview. He was -- he had this buddy rapport with Detective

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1 Maltby. They were talking about how, you know, I'm -- you're  
2 man, too, and -- and we're men together. And I got these, you  
3 know, things on my phone about porn. Detective Maltby keeps  
4 trying to bring him back to the wrestling incident, and he  
5 wants to talk about all sorts of things with Detective Maltby  
6 about being a man. They're buddies. There's no badgering. He  
7 wants to -- to make this out like this false accusation -- or  
8 I mean false -- what's the word I want -- confession was  
9 something that they badgered him into, but he goes back and he  
10 talks to Detective Maltby about it. He wasn't badgered.

11 His written and the statement to Detective Sergeant  
12 Jordan is so similar. It is so similar to what Pearl says  
13 happened, as far as the digital penetration, Sable being born  
14 but a baby, in the dining room/living room area. He goes with  
15 some of those things. Isn't that interesting? But it's the  
16 wrestling aspect that he uses to sort of put it on Pearl, and  
17 it's Pearl's fault, because it's this victim blaming. Pearl's  
18 this -- you know, Pearl comes on to me, and she's always  
19 walking around the house naked. No.

20 The testimony about Pearl being a liar, who'd that  
21 come from? The defendant's friends, people that know and are  
22 friends with the defendant. They're adults. They're not here  
23 to like Pearl.

24 And I submit to you again, lying -- as we talked  
25 about in voir dire, lying about not doing your homework, lying



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1 about being with a group of friends, that, maybe, you know, Mom  
2 didn't want you to be with those friends but you were with them  
3 anyway and said you were somewhere else, that kind of stuff is  
4 teen-age stuff. It's quite, quite different to walk into a  
5 courtroom and sit in front of all of you and to testify, and  
6 you're under oath. Very different. Very different to talk to  
7 even a police officer, CPS worker, on multiple occasions.

8 And why continue the lie? What does she get? Again  
9 what does she get? She doesn't get her Tablet. She doesn't  
10 get to live with her mom. She doesn't get to live with her  
11 brothers and sisters, who she loves. She has to talk about  
12 intimate details, and her whole life is changed.

13 Members of the jury, you don't have -- Judge isn't --  
14 will instruct you that victim's testimony need not be  
15 corroborated. And the defense wants you to find now with the  
16 corroborations, but that's not the law. The law is the  
17 testimony of a victim in a CSC case need not be corroborated.  
18 Why? Because perpetrators of child CSC -- what -- they don't  
19 have witnesses, they pick the easiest target, someone who you  
20 wouldn't believe or anybody would believe.

21 But we know that he's done this before. He pled  
22 guilty. This isn't no contest. He pled guilty to it. He  
23 wants you to believe it never happened. No. You get to use  
24 that in deciding if he has a propensity to do this to children.  
25 That's why the law is what it is. That's the law. And you can

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1 use that in helping you decide if he committed this.

2 And I ask you to find the defendant guilty of  
3 criminal sexual in the first degree, to criminal sexual conduct  
4 in the second degree. Thank you.

5 THE COURT: Thank you, Miss Van Langevelde.

6 All right, so, ladies and gentlemen, you have now  
7 heard all of the evidence, and you have heard closing arguments.  
8 The next step will be for me to give you your final  
9 instructions, and then you will have the case back in the jury  
10 room.

11 My thought had been that, before we do that, that you  
12 would like a break and like to get something to eat in the back  
13 room. Have I -- no?

14 JUROR STAUFFER: Yes.

15 THE COURT: Yes, okay. So, this is going to be your  
16 recess instruction. Please do not talk to anybody about the  
17 case, including each other. If someone talks to you about the  
18 case, please report it to me immediately. You still may not  
19 talk to each other about the case.

20 It is 20 after. I'm thinking that 10 -- about 10 to  
21 or one o'clock will be your closing instructions, and then you  
22 will have the case.

23 Ms. Van -- Yk -- well, neither one are -- yeah. And,  
24 of course, watch your step.

25 (At 12:19 p.m., jury exits courtroom)

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1 THE COURT: Okay, Ms. Van Langevelde, anything you  
2 need to, or would like to, put on the record?

3 MS. VAN LANGEVELDE: No. Thank you.

4 THE COURT: Mr. Carter, same question to you.

5 MR. CARTER: No.

6 THE COURT: Of course, once we instruct the jury, I  
7 know where the -- the prosecutor will be in the building. I'  
8 need you, Mr. Carter, to, if not stay in the building, stay  
9 within five --

10 MR. CARTER: Right.

11 THE COURT: -- minutes in case there's --

12 MR. CARTER: Yeah.

13 THE COURT: -- jury --

14 MR. CARTER: I know the procedure.

15 THE COURT: Okay. Well, I just like to place it on  
16 the record. We'll make you comfortable in the back.

17 MR. CARTER: I --

18 THE COURT: Go ahead.

19 MR. CARTER: Logistically, I -- I do have -- and I  
20 brought this up during break. If, in fact, we go into day two,  
21 I have a hearing at eight-thirty that I can be in and out of  
22 and be down here by nine-thirty. So --

23 THE COURT: Okay.

24 MR. CARTER: -- I -- I'd like that to be kept in mind  
25 if -- if, in fact, we go into a second day.

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1 THE COURT: Well, if we go into the second day, you  
2 know, I have my normal Thursday docket. And I just plan on  
3 showing up and -- and working except for when the jury needs  
4 us, and then we'll take breaks. But we would certainly give  
5 you that accommodation.

6 MR. CARTER: Thank you.

7 THE COURT: But you would be here by nine-thirty, and  
8 then the rest of the day, otherwise?

9 MR. CARTER: Yes, yes.

10 THE COURT: Okay, I don't have any issue with that.  
11 Do you?

12 MR. STRONG: We do not --

13 MS. VAN LANGEVELDE: No.

14 MR. STRONG: -- either, Your Honor. I'm sure it will  
15 be -- your motion day. And if the jury comes back at nine-  
16 thirty, so that they're deliberating while he's here because  
17 they have questions --

18 THE COURT: In fact, you know, if you don't think you  
19 can be here till nine-thirty, depending on what happens at the  
20 end of the day, we could have them report at nine instead --

21 MR. STRONG: That's --

22 THE COURT: -- of eight-thirty.

23 MR. STRONG: That's --

24 MR. CARTER: That's why I brought that up.

25 MR. STRONG: -- what we were thinking, yes.

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1 THE COURT: Yeah.

2 MR. CARTER: And -- and I do --

3 THE COURT: That would give 'em time to --

4 MR. CARTER: I do have something scheduled in the  
5 afternoon, but I know that you wouldn't mind making a courtesy  
6 call to that judge.

7 THE COURT: All right, so, if you guys can be back  
8 here by like 10, five to, that would be great.

9 MR. STRONG: Thank you.

10 THE COURT: All right, thank you.

11 MR. CARTER: Thank you.

12 (At 12:21 p.m., off the record)

13 (At 1:05 p.m., back on the record)

14 THE COURT: We are back on the record in People  
15 versus Warner. The time has come to do final instruction. I'm  
16 just gonna make sure, we should have 13; right? One --

17 LAW/JURY CLERK: I just took the one out.

18 THE COURT: I just like to do it myself.

19 LAW/JURY CLERK: That's fine. I'm just letting you  
20 know I did check.

21 THE COURT: Make sure there's no duplicates, so  
22 there's no issue.

23 All right, Ms. Van Langevelde, anything else that you  
24 would like to put on the record?

25 MS. VAN LANGEVELDE: No, I don't -- I don't think so.

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1 Thank you, Judge.

2 THE COURT: Mr. --

3 MR. CARTER: No.

4 THE COURT: -- Carter? Then, I believe it is time to  
5 bring the jury in for final instructions, if you would, please  
6 Ms. Ykimoff.

7 The jury isn't here. You'd think now that we give  
8 them a copy of the written instructions, but it probably does  
9 help to have 'em read out loud.

10 Did you guys ever approve the verdict form?

11 MS. VAN LANGEVELDE: Yes, I will -- I will do that.

12 (At 1:07 p.m., jury enters courtroom)

13 THE COURT: Please be seated.

14 Okay, members of the jury, the evidence and the  
15 argument in this case are now finished, and I will instruct you  
16 on the law. That is, I am going to explain to you the law that  
17 applies to this case.

18 Please remember, you have taken an oath to return a  
19 true and just verdict based only on the evidence and my  
20 instructions on the law.

21 You must not let sympathy or prejudice influence your  
22 decision.

23 As jurors, you must decide what the facts of this  
24 case are. This is your job and nobody else's. You must think  
25 about all the evidence and then decide what each piece of

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1 evidence means and how important you think it is. This  
2 includes whether you believe what each witness has said. You  
3 decide about any -- what you decide about any fact in this case  
4 is final.

5 It is my duty to instruct you on the law. You must  
6 take the law as I give it to you. If a lawyer says something  
7 different about the law, follow what I say.

8 At various times, I have already given you some  
9 instructions about the law. You must take all my instructions  
10 together as the law that you are to follow. You should not pay  
11 attention to some instructions and ignore others.

12 To sum it up, it is your job to decide what the facts  
13 of this case are and apply the law as I give it to you. In  
14 that way, you will be deciding this case.

15 A person accused of a crime is presumed to be  
16 innocent. This means you must start with the presumption that  
17 the defendant is innocent. This presumption continues  
18 throughout the trial and entitles the defendant to a verdict of  
19 not guilty unless you are satisfied beyond a reasonable doubt  
20 that he is guilty.

21 Every crime is made up of parts called elements. The  
22 prosecutor must prove each element of the crime beyond a  
23 reasonable doubt. The defendant is not required to prove his  
24 innocence or to do anything. If you find the prosecutor has  
25 not proven el -- every element beyond a reasonable doubt, then

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1 you must find the defendant not guilty.

2 A reasonable doubt is a fair, honest doubt growing  
3 out of evidence or lack of evidence. It is not merely an  
4 imaginary or possible doubt, but a doubt based on reason and  
5 common sense. A reasonable doubt is just that, a doubt that is  
6 reasonable after a careful and considered examination of the  
7 facts and the circumstances of this case.

8 Now, when you discuss the case and decide on your  
9 verdict, you may only consider evidence that has been properly  
10 admitted in this case. Therefore, it is important for you to  
11 understand what evidence is and what evidence is not.

12 Evidence includes the sworn testimony of witnesses,  
13 the exhibits that were admitted into evidence, and anything  
14 else I told you that you could consider as evidence.

15 Many things are not evidence, and you must not -- you  
16 must be careful to not consider them as such. I will now  
17 describe some of the things that are not evidence.

18 The fact that the defendant is charged with a crime  
19 and is on trial is not evidence. Likewise, the fact that he is  
20 charged with more than one crime is not evidence. The lawyers'  
21 statements and argument and any commentary are not evidence.  
22 They are only meant to help you understand the evidence and  
23 each side's legal theory. You should only accept things the  
24 lawyers say that are supported by the evidence and by your own  
25 common sense and general knowledge.



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1           The lawyers' questions to the witnesses and my  
2 questions to witnesses are not evidence. You should consider  
3 these questions only as they give meaning to the witness's  
4 answer.

5           Any comments I made, my rulings, questions or summaries  
6 or instructions are not evidence.

7           It is my duty to see the trial is conducted according  
8 to the law and to tell you the law that applies to this case.  
9 However, if I make (sic) a comment or gave an instruction, I am  
10 not trying to influence your vote or personal opinion about  
11 this case. If you believe that I do have an opinion about how  
12 you should decide this case, you must pay no attention to that  
13 opinion.

14           You are the only judges of the facts, and you should  
15 decide this case based on the evidence.

16           At times during this trial, I have excluded evidence  
17 that was offered. I did not really strike testimony, but I  
18 ruled on objections. You may not consider those things in  
19 deciding this case. Make your decision only on the evidence  
20 that was let in and nothing else.

21           Your decision should be based on all of the evidence  
22 regardless of which party produced it.

23           You should use your own common sense and general  
24 knowledge in weighing and judging evidence, but you should not  
25 use any personal knowledge you may have about a person, place

1 or event.

2 To repeat once more, you must decide this case based  
3 only on the evidence admitted during the trial.

4 Now, as I said before, it is your job to decide what  
5 the facts of this case are. You must decide which witnesses  
6 you believe and how important you think their testimony is.  
7 You do not have to accept or reject everything a witness has  
8 said. You are free to believe all, none, or a part of any  
9 person's testimony.

10 In deciding which testimony you believe, you should  
11 rely on your own common sense and your everyday experience.

12 However, in deciding whether you believe a witness's  
13 testimony, you must set aside any bias or prejudice that you  
14 may have based on race, gender, or the national origin of a  
15 witness.

16 There are no fixed rules for judging whether you  
17 believe a witness, but it may help you to think about these  
18 questions:

19 Was the witness able to see and hear clearly? How  
20 long was the witness watching or listening? Was anything going  
21 else on -- going on that might have distracted the witness?

22 Did the witness seem to have a good memory?

23 How did the witness look and act while testifying?

24 Did the witness seem to make an honest effort to tell the  
25 truth, or did the witness seem to evade questions or argue with

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1 the lawyer?

2 Does the witness's age or maturity affect how you  
3 judge his or her testimony?

4 Does the witness have any bias, prejudice or personal  
5 interest in how this case is decided?

6 Have there been any promises, threats, suggestions,  
7 or other influences that affected how a witness testified?

8 In general, does the witness have any special reason  
9 to tell the truth or any special reason to lie?

10 All in all, how reasonable does the witness's  
11 testimony seem when you think about all the evidence in the  
12 case?

13 Now, sometimes the testimony of different witnesses  
14 will not agree, and you must decide which testimony to accept.  
15 You should think about whether the disagreement involves  
16 something important or not and whether you think someone is  
17 lying or they are simply mistaken. People see and hear things  
18 differently. And witnesses may testify honestly but simply be  
19 wrong about what they thought they saw or remembered.

20 It is also good to think about which testimony agrees  
21 best with the other evidence in the case.

22 However, you may conclude that a witness deliberately  
23 lied about something that is important on how you decide the  
24 case. If so, you may choose not to accept anything that  
25 witness said. On the other hand, if you think the witness lied

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1 about some things but told the truth about others, you may  
2 simply accept the part that you think is true and ignore the  
3 rest.

4 The prosecutor must prove beyond a reasonable doubt  
5 that the crime occurred in Ingham -- in Eaton County. Time,  
6 however, is not an element of the crime of criminal sexual  
7 conduct. The prosecutor does not have to prove the date or  
8 time of the offense beyond a reasonable doubt.

9 Now, when you go to the jury room, you will each have  
10 your written copies of the final instructions. They're in your  
11 notebook.

12 You should first choose a foreperson. The foreperson  
13 should see to it that your discussions are carried out in a  
14 businesslike way and that everyone has a fair chance to be  
15 heard.

16 During your deliberations, please turn off your cell  
17 phone and any other communication equipment until we recess.

18 A verdict in a criminal case must be unanimous. In  
19 order to return a verdict, it is necessary that each of you  
20 agrees on that verdict.

21 In the jury room, you will discuss the case among  
22 yourselves. But, ultimately, each of you will have to make up  
23 your own mind. Any verdict must represent the individual,  
24 considered judgment of each juror.

25 It is your duty, as jurors, to talk to each other and

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1 make every reasonable effort to reach an agreement. Express  
2 your opinions and the reasons for them, but keep an open mind  
3 as you listen to your fellow jurors. Rethink your opinion and  
4 do not hesitate to change your mind if you decide you were  
5 wrong. Try your best to work out your differences.

6 However, although you should try to reach an  
7 agreement, none of you should give up your honest opinion about  
8 the case just because other jurors disagrees with you or just  
9 for the sake of reaching a verdict.

10 In the end, your vote must be your own, and you must  
11 -- must vote honestly and in good conscience.

12 If you have any questions about the instructions  
13 before you begin deliberation or about the instructions while  
14 you are deliberating, simply submit the question in writing, in  
15 a sealed envelope, to the bailiff.

16 Possible penalty should not influence your decision.  
17 It is the duty of the Judge to fix the penalty within the  
18 limits provided by the law.

19 If you want to communicate with me while you are in  
20 the jury room, have your foreperson write a note and give it to  
21 the bailiff. It is not proper for you to talk directly to the  
22 Judge, lawyers, court officers, or anybody else involved in  
23 this case.

24 As you discuss the case, you must not let anyone,  
25 even me, know how your voting stands. Therefore, until you

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1 return a unanimous verdict, please do not reveal that to  
2 anybody outside the jury room.

3 When you go to the jury room to deliberate, you may  
4 take your notes, your notebook, your full instructions.

5 If you want to look at any documents or any of the  
6 exhibits that have been admitted, simply ask for them.

7 As I indicated, you are going to have this hard copy  
8 of your instructions that you already have.

9 As you discuss the case, please think about all the  
10 instructions as the law that you are required to follow.

11 Now, the defendant is charged with two counts; that  
12 is, with the crime of criminal sexual conduct - first degree  
13 and criminal sexual conduct - second degree. These are  
14 separate crimes, and the prosecutor is charging that the  
15 defendant committed both of them. You must consider each crime  
16 separately in light of all of the evidence. You may find the  
17 defendant guilty of all or any one of these crimes or not  
18 guilty.

19 I have prepared a verdict form. This the verdict  
20 form that will go into the jury room with you. It is very  
21 simple. It has: Count one: Criminal sexual conduct - first  
22 degree, relationship. There is a box to check not guilty.  
23 There is a box to check guilty. The same for count two. The  
24 foreperson would then sign and date it. This is your jur --  
25 this is your verdict form.

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1 Now, the prosecutor has introduced evidence of a  
2 statement that it claims the defendant made. Before you may  
3 consider such an out-of-court statement against the defendant  
4 you must first find that the defendant actually made the  
5 statement as given to you.

6 JUROR: (Sneezed).

7 THE COURT: God bless.

8 If you find that the defendant made the statement,  
9 you may give the statement whatever weight you think it  
10 deserves. In deciding this, you should think about how and  
11 when the statement was made and about all the other evidence in  
12 the case. You may consider the statement in deciding the facts  
13 of this case, and in deciding if you believe the tes -- the  
14 defendant's testimony in court.

15 Facts can be proved by direct evidence from a witness  
16 or an exhibit. Now, direct evidence is evidence that we  
17 actually see or evidence we actually hear. So, for example, if  
18 you look outside, you see the rain is falling, that is direct  
19 evidence that it's raining.

20 But, facts can also be proven by indirect or  
21 circumstantial evidence. Circumstantial evidence is evidence  
22 that normally or reasonably leads to other facts. So, for  
23 example, if you see a person come in from outside, wearing a  
24 raincoat, covered with drops of water, that would be  
25 circumstantial evi -- evidence that it is raining out.

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You may consider circumstantial evidence. Circumstantial evidence by itself or a combination of circumstantial evidence and direct evidence can be used to prove the elements of a crime. In other words, you should consider all the evidence that you believe.

Now, if you believe that a witness previously made a statement inconsistent with his or her testimony at this trial the only purpose for which the earlier statement could be considered by you is in deciding whether the witness testified truthfully in court. The earlier statement is not evidence that what the witness said earlier is true.

Evidence has been offered that one or more witnesses in this case previously made statements inconsistent with their testimony at trial. You may consider the earlier statements in deciding whether the testimony at trial was truthful and in determining the facts of this case.

You may consider whether the defendant had a reason to commit the alleged crime, but a reason, by itself, is not enough to find a person guilty. The prosecutor does not have to prove that the defendant had a reason to commit the alleged crime. She only has to show that the defendant actually committed the crime and that he meant to do so.

The defendant's intent may be proved by what he said, what he did, how he did it, or by any other facts and circumstances in evidence.



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1           You should not decide this case based on which side  
2 presented more witnesses. Instead, you should think about each  
3 witness and each piece of evidence and whether you believe  
4 them. Then, you must decide whether the testimony and the  
5 evidence you believe proves beyond a reasonable doubt that the  
6 defendant is guilty.

7           You have heard that a lawyer talked to one of the  
8 witnesses. There is nothing wrong with this. A lawyer may  
9 talk to a witness to find out what the witness knows  
10 about the case and what the witness's testimony will be.

11           You have heard the testimony from witnesses who are  
12 police officers. That testimony is to be judged by the same  
13 standard you use to evaluate the testimony of any other  
14 witness.

15           The defendant is charged with the crime of first  
16 degree criminal sexual conduct. To prove this charge, the  
17 prosecutor must prove each of the following elements beyond a  
18 reasonable doubt:

19           First: That the defendant engaged in a sexual act  
20 that involved entry into Pearl Giffen's genital opening by the  
21 defendant's finger. Any entry, no matter how slight, is  
22 enough. It does not matter whether the sexual act was  
23 completed or whether semen was ejaculated.

24           Second: That Pearl Giffen was 13, 14 or 15-years-old  
25 at the time of the alleged act.

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1           And third: At the time of the alleged act, the  
2 defendant and Pearl Giffen were living in the same household.

3           The defendant is charged with the crime of second  
4 degree sexual conduct. To prove this charge, the prosecutor  
5 must prove each of the following elements beyond a reasonable  
6 doubt:

7           First: That the defendant intentionally touched  
8 Pearl Giffen's genital area or the clothing covering that area

9           Second: That this was done for sexual purposes or  
10 could reasonably be construed as having been done for a sexual  
11 purpose.

12           Third: That Pearl Giffen was 13, 14 or 15-years-old  
13 at the time of the alleged act.

14           And fourth: That, at the time of the alleged act,  
15 the defendant and Pearl Giffen were living in the same  
16 household.

17           The prosecution has introduced evidence of claimed  
18 acts of sexual misconduct by the defendant with a minor for  
19 which he is not on trial. Before you may consider such alleged  
20 acts as evidence against the defendant, you must first find  
21 that the defendant actually committed those acts. If you find  
22 that the defendant did commit those acts, you may consider them  
23 in deciding if the defendant committed the offenses for which  
24 he is now on trial. You must not convict the defendant here  
25 solely because you think he is guilty of other bad conduct.

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1 The evidence must convince you beyond a reasonable doubt that  
2 the defendant committed the alleged crime, or you must find hi  
3 not guilty.

4 All right, ladies and gentlemen, we have 13 names in  
5 the box. I am going to draw one of the names. The name that  
6 draw will not deliberate; however, the name that I draw is not  
7 released from jury duty. You will be allowed to leave the  
8 courthouse. You can go home, to work, the mall, whatever you  
9 wish to do, so long as you have a telephone available at all  
10 times so we can reach you in case we need you. Should  
11 something happen to one of the 12 jurors that go in the jury  
12 room, we would ask you to come back and deliberate as a juror,  
13 okay?

14 So, this person's name that I call is not released.  
15 You still cannot talk to anybody about the case. You must tell  
16 people that you are a juror and cannot discuss the case. You  
17 cannot find anything by way of radio, television, social media,  
18 or any other electronic media about the case, or do any  
19 research. You can't talk to your family and friends.

20 Basically, you are being allowed, simply, to leave  
21 the building because it would be kind of mean to make you go  
22 sit in a room when you're not deliberating; right?

23 The minute there is a verdict, Ms. Ykimoff will call  
24 the person's name that I draw and tell you you're free, go do  
25 what you want to do, talk to who you want to talk to, okay?

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1 Now, I never know, when I pull this name, if the  
2 person wants their name pulled or not, but the person that will  
3 be allowed to leave -- Forrest Wellman.

4 Is that you, Mr. Wellman, down there?

5 JUROR WELLMAN: Yes, ma'am.

6 THE COURT: Okay. So, I will ask you to stay right  
7 there for a minute while the other -- we get the other 12 out  
8 of here, and then you'll go out and give Ms. Ykimoff your phone  
9 number, okay?

10 JUROR WELLMAN: Okay.

11 THE COURT: And in -- I hope we don't need you back  
12 here. So, allow me to thank you on behalf of Eaton County, the  
13 prosecutor, the defense, and myself for your service as a  
14 juror. Greatly appreciate it.

15 Miss Ykimoff, are you ready to take your oath?

16 LAW/JURY CLERK: Yes, ma'am.

17 THE COURT: Please raise your right hand. Do you  
18 solemnly swear that you will keep the persons sworn as jur --  
19 as jurors in this cause in a private and convenient place, that  
20 you will not suffer any communication to be made to them, that  
21 you will not communicate to them yourself, orally or otherwise,  
22 unless by order of this Court, or to ask them if they have  
23 agreed upon a verdict; that, until they have been discharged,  
24 you will not, before they render their verdict, communicate to  
25 anyone the state of their deliberation or the verdict that they

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1 agreed upon, so help you God?

2 LAW/JURY CLERK: I will.

3 (At 1:30 p.m., bailiff sworn by the Court)

4 THE COURT: Thank you. If you would please -- oh,  
5 here's the verdict form.

6 So, Miss Ykimoff will take you back to the jury room  
7 She'll also give you sealed envelopes to use for sending out  
8 questions.

9 Ladies and gentlemen, you may now talk to each other  
10 about the case but only when you're all in the room, okay?  
11 Thank you.

12 (At 1:31 p.m., jury exits courtroom and begins  
13 deliberations)

14 THE COURT: Mr. Wellman, did you have anything in the  
15 jury room that you left back there?

16 JUROR WELLMAN: (No verbal response).

17 THE COURT: Why don't you go with them, then, and  
18 grab that? And just make sure you give Ms. Ykimoff your  
19 contact information, okay?

20 JUROR WELLMAN: Okay.

21 THE COURT: Again, thank you.

22 Okay, any objection to the reading of the  
23 instructions, Ms. Van Langevelde?

24 MS. VAN LANGEVELDE: No, Your Honor.

25 THE COURT: Mr. Carter?

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1 MR. CARTER: No.

2 THE COURT: Anything anybody wants to put on the  
3 record?

4 MS. VAN LANGEVELDE: I think --

5 THE COURT: Okay.

6 MS. VAN LANGEVELDE: Oh, I'm sorry. If they happen  
7 to want --

8 THE COURT: Oh, I was gonna do that. So, here's my  
9 standard question: If they say they would like the exhibits,  
10 can I give them to you (sic) without calling the lawyers back  
11 into the courtroom, or do you want to be notified and come back  
12 in?

13 MR. CARTER: I guess if they ask for -- well, for a  
14 -- I guess I'd want to know about the video if they want it.

15 THE COURT: Now, the video, you have an option, if  
16 they want to see it, that we'd have to come back in and watch  
17 it in here.

18 MR. CARTER: Okay.

19 THE COURT: That's an option. We do have it set up  
20 in the back where Ms. Bond can go in and play it for 'em, also.  
21 So, if it's --

22 MR. CARTER: And the ruling on that is that they --  
23 they would need to watch the whole thing; correct?

24 THE COURT: Correct.

25 MR. CARTER: Not just portions of it.

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1 THE COURT: Well, once they're watching it -- I mean  
2 what I will do, if they want to watch the video and we want to  
3 do it in the courtroom, which I believe you do have that right  
4 we would start playing it, but a juror could raise their hand  
5 and say can you stop that and wind it back so I can hear that  
6 part again.

7 MR. CARTER: Sure.

8 THE COURT: They have --

9 MR. CARTER: Sure.

10 THE COURT: -- the right to do that.

11 MR. CARTER: Right.

12 MR. STRONG: I think that the jurors can watch as  
13 much or as little --

14 THE COURT: Right.

15 MR. STRONG: -- of the video as they want. It's  
16 their deliberations.

17 THE COURT: Correct, but -- but --

18 MR. STRONG: Right.

19 THE COURT: -- Mr. Carter can say I want to do it in  
20 the courtroom.

21 MR. STRONG: Yes, yes, that's fine.

22 THE COURT: In fact, Judge Sauter would not allow  
23 them to watch it in the jury room. He only allowed them to  
24 watch it in the courtroom.

25 MR. STRONG: Yes, that's correct.

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1 THE COURT: I, however, if both attorneys agree, have  
2 no problem letting them have it back with Ms. Bond.

3 So, it sounds like, if they want the DVD, we should  
4 come back.

5 MR. CARTER: Yes.

6 THE COURT: If they want the three paper exhibits,  
7 nobody has a problem.

8 MR. CARTER: No.

9 MS. VAN LANGEVELDE: No.

10 MR. STRONG: Right.

11 THE COURT: All right. Thank you, all, very much.  
12 I'm sure we'll see each other soon, with at least questions.

13 MS. VAN LANGEVELDE: Thank you, Your Honor.

14 THE COURT: All right.

15 (At 1:33 p.m., off the record)

16 (At 1:46 p.m., back on the record)

17 THE COURT: We're back on the record in People versus  
18 Warner.

19 Ms. Van Langevelde and Mr. Strong are here, as is Mr.  
20 Carter.

21 I know your client isn't here, but I don't know that  
22 he has to be here for this.

23 They just wrote a note that they want all exhibits.  
24 So, what I wanted to do is write back and say "here are the  
25 paper exhibits. If you want to watch the video, we need to do



0702a

1 that in the courtroom." And by that way, they can go through  
2 some preliminary discussions, whatever. And then, if there's  
3 people that want to see it, they can, hopefully, get it to a  
4 point where everybody's ready to see it.

5 MR. CARTER: Yeah.

6 MR. STRONG: That would be just fine.

7 MS. VAN LANGEVELDE: Um-hum.

8 THE COURT: Is it? So, I -- but I --

9 MS. VAN LANGEVELDE: That works.

10 THE COURT: -- don't want -- I can't write to the  
11 jury without your permission.

12 MR. CARTER: That's fine.

13 MS. VAN LANGEVELDE: And I think -- I think we're set  
14 up and ready to go on that.

15 MR. STRONG: We can get it relatively quickly.

16 MS. VAN LANGEVELDE: Yeah.

17 THE COURT: And I just want to reiterate, so I don't  
18 want there to be any confusion, Mr. Carter, you want to be in  
19 the courtroom, as you are entitled to be, with your client when  
20 the DVD is played and the jury is --

21 MR. CARTER: Right.

22 THE COURT: Okay. All right, one-fifty p.m.

23 All right, this is what I have written verbatim:

24 "Attached are the paper exhibits. If you want to  
25 watch the DVDs, we have to do that in the courtroom. JKC 1:50

0703a

1 p.m."

2 MR. STRONG: I think that's fine.

3 MR. CARTER: That's fine.

4 MS. VAN LANGEVELDE: I nod my head, and I realize  
5 we're on the record now. I'm sorry, Judge.

6 THE COURT: That's, you know -- today's the 21st;  
7 right?

8 LAW/JURY CLERK: Yes.

9 THE COURT: I think I've only written it 50 times  
10 today, so, of course, I can't remember that.

11 All right, envelope with question number one goes  
12 back to Ms. Ykimoff.

13 All right, I think that probably should be it for at  
14 least 15 minutes.

15 MR. CARTER: Yes.

16 MR. STRONG: Start my timer.

17 MS. VAN LANGEVELDE: I know, right?

18 THE COURT: Yeah.

19 MS. VAN LANGEVELDE: We'll see.

20 THE COURT: Is Mr. Anderson -- we're off the record  
21 now.

22 (At 1:48 p.m., off the record)

23 (At 1:50 p.m., back on the record)

24 THE COURT: We're back on the record in People versus  
25 Warner.

0704a

1           The Court has talked to Ms. Van Langevelde, Mr.  
2 Strong, and Mr. Carter about the requirement that I, Judge  
3 Cunningham, be the one sitting here should the jury wish to  
4 come back in and watch either of the two DVDs, because I would  
5 -- I have another matter that I should take care of, and I can  
6 do that in Judge Maurer's courtroom, but then I wouldn't be  
7 here, but Judge Maurer could sit here while I take care of the  
8 other criminal matter.

9           Is that acceptable to you, Mr. Strong?

10           MR. STRONG: That is, Your Honor. And, frankly, I  
11 think it's -- it's almost a good idea, since, obviously, while  
12 we'll be present in the room for the video being played,  
13 there's -- we can't do anything to influence deliberations.  
14 So, it's not like, I think, any of the parties are gonna be  
15 talking anyway.

16           THE COURT: Right. Is that okay with you, then, Mr.  
17 Carter?

18           MR. CARTER: Yes.

19           THE COURT: So, if it should happen that I have that  
20 conflict at three-thirty, I would have Judge Maurer come in and  
21 preside.

22           MR. STRONG: Thank you, Your Honor.

23           THE COURT: Great. Thank you.

24           (At 1:51 p.m., off the record)

25           (At 2:26 p.m., back on the record)

0705a

1 THE COURT: All right, we are back on the record in  
2 People versus Warner.

3 Oh, you're -- good -- good call, Mr. Kennedy.

4 We are back on the record in People versus -- versus  
5 Warner.

6 Mr. Strong and Ms. Van Langevelde are here. Mr.  
7 Carter and Mr. Warner.

8 Here's the question:

9 "Should we only account one second" -- "Should we  
10 only account the second living room incident to the first  
11 degree criminal sexual conduct or can we account either  
12 incident to both first degree and second degree?"

13 So, the Information that we read -- well, I'm just  
14 gonna go into the court file, which is easier.

15 MS. VAN LANGEVELDE: Is -- I'm sorry. On the  
16 Information, on the Amended Information that I filed, it -- it  
17 says, specifically, digital/vaginal penetration.

18 THE COURT: That's what I thought. That's on the  
19 first degree; right?

20 MS. VAN LANGEVELDE: Right.

21 THE COURT: And -- and that's what I read to the  
22 jury.

23 MS. VAN LANGEVELDE: Right.

24 THE COURT: So, I think -- you know, and that  
25 should've, really, been put on the jury instruction, which we

0706a

1 have been doing on the CSC's to make it clear.

2 MS. VAN LANGEVELDE: Um-hum.

3 THE COURT: So, I should write --

4 MS. VAN LANGEVELDE: I think you say -- I think you  
5 have to say something like count one is digital/vaginal, and  
6 count two is just the sexual touching -- or, is engaged in  
7 sexual contact --

8 THE COURT: Count one --

9 MS. VAN LANGEVELDE: -- because that's what the  
10 Information says.

11 THE COURT: -- is digital/vaginal. Count two is  
12 touching?

13 MS. VAN LANGEVELDE: It says -- I'm sorry. It says:  
14 "Did engage in a sexual contact."

15 I would use the language right from the Information,  
16 if Mr. Carter's okay with that.

17 MR. CARTER: Yeah.

18 THE COURT: And were there dates on those?

19 MS. VAN LANGEVELDE: No. It just says that she was  
20 between, basically, 13 --

21 THE COURT: So, their question is -- the -- both  
22 prosecutor and defense talked about the first incidence and the  
23 second incident. Their question is can the second incident be  
24 used to prove either count one or count two.

25 MS. VAN LANGEVELDE: But it's kind of confusing

0707a

1 because --

2 MR. CARTER: I --

3 MS. VAN LANGEVELDE: -- the one incident happened  
4 first, and then -- I think if we just give them the language of  
5 the information, I feel like they should --

6 THE COURT: All right.

7 MS. VAN LANGEVELDE: -- be able to figure it out.

8 THE COURT: Mr. Carter.

9 MR. CARTER: Now, I'm confused. Maybe I don't  
10 understand the jury's question, because I don't think you -- if  
11 -- because it draws my attention, what you just said. Can the  
12 second one prove the first one? I would say no, I mean --

13 THE COURT: Right.

14 MR. CARTER: So, now I'm confused as to exactly what  
15 the question is.

16 THE COURT: The question reads:

17 "Should we only account the second living room  
18 incident to the first degree sexual conduct or can we account  
19 either incident to both first and second degree?"

20 And the answer is no. In other words, they're  
21 asking, for example, could the incident in the bedroom justify  
22 count one and count two, and the answer is no.

23 MR. STRONG: Right. But, I think they're also asking  
24 for the incident in the living room, which, in that case, would  
25 be the digital penetration. Could that constitute count one

0708a

1 and count two? And, actually, I think it could, because count  
2 one involves the added element of penetration. But, obviously  
3 putting a hand on a vagina, with the testimony from the -- the  
4 trial, could still be sexual contact, for a sexual purpose.

5 THE COURT: For count two.

6 MR. STRONG: For count two.

7 THE COURT: But --

8 MR. STRONG: So, the -- this -- what they're  
9 referring to as the second incident, which would be --

10 THE COURT: Right.

11 MR. STRONG: -- that could constitute for both count  
12 one and count two.

13 MR. CARTER: Well, in all fairness, we're all trying  
14 to interpret what the note says. I think we need more  
15 clarification at this point. I'm -- I'm fearful of answering  
16 how we're speculating what they're asking.

17 MS. VAN LANGEVELDE: Right. And that's why I -- I  
18 felt more comfortable if we give them, actually, just the  
19 language from the Information; that count one says  
20 digital/vaginal penetration, and count two is regarding sexual  
21 contact.

22 THE COURT: Can one incident prove both count one and  
23 two? That's what they're asking. I'm not -- I'm not making  
24 this up.

25 MR. CARTER: I know that.

0709a

1 THE COURT: I'm -- it's not a matter -- it says:

2 "Can we account the second living room incident to  
3 first degree sexual con" -- "conduct or can we account either  
4 incident" -- well, you guys talked about two incidents -- "to  
5 both first degree and second degree?"

6 So, I mean, I -- I understand their question, maybe  
7 because I didn't try the case. If they find that the defendant  
8 put his hands down her pants and his fingers touched her  
9 vagina, can that support finding guilty as to digital vaginal  
10 penetration and sexual contact?

11 MS. VAN LANGEVELDE: Yes.

12 MR. STRONG: Your Honor, I think -- I think that --

13 MR. CARTER: And it can't, not digital penetration,  
14 unless they find that he --

15 THE COURT: There was a find -- but I'm putting  
16 penetration in the thing.

17 MR. STRONG: Yes.

18 THE COURT: But what they're asking, it's -- it's --  
19 Mr. Carter, it's very clear:

20 "Can we account either incident to both first degree  
21 and second degree?"

22 MS. VAN LANGEVELDE: I think the answer is yes,  
23 Judge.

24 THE COURT: Do you want me to bring the foreman in to  
25 explain the question? Is that what you're asking, Mr. Carter?



0710a

1 MR. CARTER: I -- I guess so, because I'm fearful  
2 that I don't understand the que --

3 THE COURT: Okay.

4 MR. CARTER: I'm not trying -- I --

5 THE COURT: I need white-out 'cause I already wrote  
6 on this. Not their question, to white-out what I wrote. Well  
7 yeah, I can't do that. Give that to Kathy. I screw it up  
8 every time.

9 So, are we going to bring the foreman in --

10 MR. CARTER: Well --

11 THE COURT: -- to explain it?

12 MR. CARTER: -- yeah. I -- I --

13 THE COURT: We don't have to bring the whole jury in.

14 MR. CARTER: No.

15 THE COURT: Or, do you want me to bring --

16 MR. CARTER: No, I --

17 THE COURT: -- 'em all in?

18 MR. CARTER: I don't. I just would feel more  
19 comfortable if I understood the question.

20 THE COURT: Well, do you want me to ask them could  
21 you clarify?

22 MR. CARTER: Yeah, that's what I'd prefer. I -- I --  
23 I wouldn't want the foreman in, because I think that --

24 THE COURT: Okay.

25 MR. CARTER: -- now you -- we've -- we know who the

0711a

1 foreman is. I don't know if that's appropriate.

2 THE COURT: All right, let me write a question back

3 LAW/JURY CLERK: My Lord.

4 THE COURT: What happened?

5 LAW/JURY CLERK: I whited out the whole thing.

6 THE COURT: Oh, my God, you can't do that. I just  
7 said --

8 LAW/JURY CLERK: I know. I was write -- whiting out  
9 your stuff. I could probably do it all.

10 THE COURT: See if you can.

11 LAW/JURY CLERK: I was trying to rush and I -- yeah,  
12 I whited out the whole thing. Great, it did not work.

13 MR. STRONG: Judge, the thing that I've been mulling  
14 around in my head while we're doing this is the question of  
15 whether the digital penetration, CSC - first, could also --  
16 that same act, putting a hand into a vagina, could also  
17 constitute sexual contact.

18 THE COURT: Contact.

19 MR. STRONG: And then, whether the jury, with one  
20 act, could find the defendant guilty of both offenses.

21 THE COURT: Yes.

22 MR. STRONG: So, the question for that is the double  
23 jeopardy question. And the Blockburger test requires that each  
24 charge -- it's permissible if each charge requires proof of an  
25 element that the other does not.

0712a

1           And I think it is permissible because CSC - first  
2 requires penetration but no sexual purposes. CSC - second  
3 requires sexual purpose but no penetration.

4           So, I think that one act of the second incident, the  
5 -- the digital penetration, could constitute both CSC - first  
6 and CSC - second. They could return guilty on both.

7           MR. CARTER: I would disagree. I think both acts  
8 would be sexual in nature. This was criminal sexual conduct.  
9 I mean in the title, itself. I think it's implied.

10          MS. VAN LANGEVELDE: But --

11          MR. CARTER: Digital penetration, it's not a mistake.  
12 It's --

13          MS. VAN LANGEVELDE: But, I think you also have -- I  
14 guess -- and they're talking about the incident specifically.  
15 And when you have the hand under -- I mean, basically, from the  
16 backside of the buttocks, that can be considered as sexual  
17 touching, as well. I mean, it's -- I think we need to clarify.

18          THE COURT: Okay.

19          MS. VAN LANGEVELDE: I agree.

20          THE COURT: Well, look, now we have a situation where  
21 the lawyers don't even agree what the dang instruction should  
22 be.

23                 So, first of all, do we have the note uncovered?

24          LAW/JURY CLERK: We're gonna have to --

25          COURT RECORDER: I'll replay where you read it.

0713a

1 MS. VAN LANGEVELDE: Oh, we have another note.

2 COURT RECORDER: And she --

3 LAW/JURY CLERK: Sorry. Trying to be quick.

4 MR. STRONG: It happens.

5 THE COURT: They can go to the bathroom. They don't  
6 need to -- yeah, I'll write it. But --

7 LAW/JURY CLERK: I inform them to knock, typically,  
8 so they --

9 THE COURT: So they know they're out there and can  
10 tell people not to talk to them.

11 LAW/JURY CLERK: Right.

12 THE COURT: So, I'll just write "okay." But, Lauren,  
13 you've got to go back there because you're the only one sworn.

14 LAW/JURY CLERK: Yeah.

15 THE COURT: Well, I can swear Kris in. Raise your  
16 right hand. Do you solemnly swear that you will keep the  
17 persons sworn as jurors in this case in a private and  
18 convenient place, that you will not suffer communication to be  
19 made to them, that you will not communicate to them yourself  
20 orally or otherwise unless by order of this Court, or to ask  
21 them if they have agreed upon a verdict, until they have been  
22 discharged, and that you will not, before they render a  
23 verdict, communicate to anyone the state of their deliberation  
24 or the verdict they have agreed upon, so help you God?

25 MS. COOK: (Inaudible).

0714a

1 (At 2:36 p.m., judicial assistant, Ms. Cook, sworn in  
2 the Court)

3 THE COURT: All right. There you go. Yup, we're  
4 trying to fix this.

5 MS. VAN LANGEVELDE: Are you with Maurer right now  
6 are you with --

7 MR. STRONG: Cunningham.

8 MS. VAN LANGEVELDE: Okay. Do you know if Kelly's  
9 next door?

10 THE COURT: No. I have my Safety Court next door,  
11 waiting for me to do a safety review. And we're gonna put the  
12 Drug Court next door.

13 What's she gonna do, rewrite it? Okay, why don't you  
14 play it out loud?

15 (At 2:37 p.m., jury question played back)

16 THE COURT: Now, then, just stop. We're not -- just  
17 stop that and go back, so she can hear it again.

18 So, can we account the first incident in the living  
19 room, blah, blah, blah.

20 MS. VAN LANGEVELDE: To both counts.

21 (At 2:38 p.m., jury question played back again)

22 THE COURT: No, stop. The answer is we don't  
23 understand your question.

24 MS. VAN LANGEVELDE: I under -- I understand.

25 MR. CARTER: This is -- this is my concern with their

0715a

1 question. They -- they say "the second living room incident."  
2 Were they referring to the second one that she claimed or the  
3 second one that my client --

4 THE COURT: I'm gonna -- I'm gonna -- everybody just  
5 -- I don't think anybody knows what they mean by the --

6 MR. CARTER: Okay.

7 THE COURT: -- fact that everybody's talking about  
8 it. So -- okay, now that is beyond annoying, Miss Bond.

9 All right, I'm going to write "I do not understand  
10 your question. Please rephrase."

11 Is that acceptable?

12 MR. CARTER: Yes.

13 THE COURT: Thank you.

14 LAW/JURY CLERK: Do you want it on a new note?

15 THE COURT: I don't care. There you go. Here's the  
16 envelope. This is envelope number two. Supposed to mark  
17 these. There you go.

18 All right, now these I need to sign and get to Galen,  
19 I believe. Oh, my gosh, now everybody's supposed to -- oh,  
20 okay.

21 All right, I'll be right back. Kathy, can you let me  
22 out? I'm gonna need my clicker. I need to go next door and  
23 tell the folks what are going on while they're taking a  
24 restroom break.

25 (At 2:40 p.m., off the record)

0716a

1 (At 2:57 p.m., back on the record)

2 THE COURT: We're back on the record in People versus  
3 Warner.

4 The Court has received a revised note. I'm gonna  
5 write number three.

6 The record should reflect that Mr. Strong, Ms. Van  
7 Langevelde are here, Mr. Carter and Mr. Warner.

8 Okay:

9 "Does count one have to pertain to evidence in the  
10 dining room only?"

11 MR. STRONG: Your Honor, I think what they can say  
12 and what we should say --

13 THE COURT: Well, let me read the whole thing, then,  
14 before you start to --

15 MR. STRONG: Oh, sure.

16 THE COURT: "Does count two have to pertain to  
17 evidence in the bedroom only? Or, can count one and two" --  
18 with the word "and" circled -- "pertain to the dining room?"

19 MR. STRONG: Is that it?

20 THE COURT: Go ahead.

21 MR. STRONG: Okay. I think that we should instruct  
22 the jury that they can view all the evidence. And whatever  
23 evidence they feel satisfies the elements of the offenses,  
24 that's how it should -- they should return their verdict.

25 THE COURT: Mr. Carter.

0717a

1 MR. CARTER: I would -- I would disagree. I think  
2 they're specific counts. That's how the proofs came out. One  
3 is in the dining room, and one is in the bedroom, and I think  
4 they cannot be interchanged.

5 MR. STRONG: But that would be him telling the jury  
6 how they're to view the evidence, which is the sole provenance  
7 of the jury.

8 Just as a hypothetical, if they were to find, based  
9 on Pearl's testimony, that when -- and if they found her  
10 credible -- that when the defendant pulled her pants down and  
11 tried to put his penis in her vagina, if they were to find that  
12 that counts as entry or -- then, they could possibly find that.

13 I don't think we should be telling the jury how  
14 they're to deliberate. We should just tell them to view all  
15 the evidence and see if their view of the evidence satisfies  
16 the jury instructions.

17 Okay, the only exception to that, Your Honor, is that  
18 count one does say "digital/vaginal," which is what the jury  
19 instruction says.

20 THE COURT: Okay. So, you don't agree, Mr. Carter,  
21 that any evidence they believe can be used to prove either  
22 count if all elements are met?

23 MR. CARTER: I -- I guess I'd -- I guess I would tend  
24 -- tend to agree with Mr. Strong; perhaps we just indicate  
25 that, you know, the counts are those, and if -- if it's



0718a

1 supported by the -- or something. You worded it much better  
2 than I.

3 MR. STRONG: Yeah. Thanks. That -- and maybe if the  
4 Court refers them to the two jury instructions.

5 MR. CARTER: Yes. I think --

6 THE COURT: Let's look at the jury instructions.  
7 That's a -- which number?

8 LAW/JURY CLERK: Twenty-oh-one to 20.02.

9 THE COURT: Thank you.

10 MR. STRONG: Thank you, Lauren.

11 LAW/JURY CLERK: Yup.

12 THE COURT: Twenty-oh-one: The defendant is charged  
13 with the crime of first degree criminal sexual conduct.

14 First: That the defendant engaged in a sexual act  
15 that involved entry into the genital opening by the defendant's  
16 finger.

17 MR. STRONG: And I think that's specific enough  
18 towards the information that, if they refer to that, they will  
19 find how they are supposed to rule on count one.

20 THE COURT: And then, on 20.2 --

21 MR. STRONG: Twenty-point-two is a little bit more  
22 generic because it's CSC - second.

23 THE COURT: But their question is:

24 "Can count one" --

25 MR. STRONG: Yes.

0719a

1 THE COURT: -- "and count two be proven by what  
2 happened in the dining room only?"

3 MR. STRONG: Yes.

4 MR. CARTER: And I would -- I disagree. I don't  
5 think you can --

6 THE COURT: Well, that's what we have to talk about  
7 guys.

8 MR. STRONG: Yes.

9 THE COURT: Come on.

10 MR. STRONG: Yes, Your Honor, I think it can, and I  
11 can tell you why.

12 First, again, under the test of Blockburger, it's  
13 permis -- it's permissible --

14 THE COURT: I don't know what that is. I have no  
15 case number, I have no legal memorandum. I don't know what  
16 that is.

17 Do you know what it is?

18 MR. CARTER: No.

19 THE COURT: Okay. So, now we've got to get a copy  
20 for Mr. Carter.

21 MR. STRONG: Judge, it's --

22 THE COURT: I've never had it come up before. So --

23 MR. STRONG: Sure.

24 THE COURT: -- you're acting like it's something I  
25 should know. I don't know.

0720a

1 MR. STRONG: It's --

2 THE COURT: And Mr. Carter says he doesn't know what  
3 it is.

4 MR. STRONG: It's a relatively --

5 THE COURT: Do you?

6 MR. CARTER: No, I don't. I really don't.

7 MR. STRONG: -- famous case, Your Honor, about double  
8 jeopardy, 284 US 299, from 1932.

9 THE COURT: It's a US Supreme Court case.

10 MR. STRONG: Correct. Then, there's also People  
11 versus Smith, 478 Mich 292, from 2007, stating that Michigan  
12 follows the Blockburger test.

13 THE COURT: Does it say what that means?

14 MR. STRONG: Yes. The Blockburger test is that it --  
15 double jeopardy protects against multiple punishments for the  
16 same offense; right? One action committing multiple crimes.  
17 The test, the Blockburger test, for whether an offense require  
18 -- sorry. The test is whether each offense requires proof of  
19 an element which the other does not. Right?

20 THE COURT: Um-hum.

21 MR. STRONG: Like a venn diagram kind of thing.

22 THE COURT: I get it.

23 MR. STRONG: If it passes that, then one action can  
24 be multiple crimes.

25 And in this case, CSC - first requires penetration.

0721a

1 CSC - second does not. CSC - second requires that the action  
2 was done for a sexual purpose. CSC - first does not.

3 And, Your Honor, that comes from --

4 THE COURT: Um-hum, I see that.

5 MR. STRONG: Two seconds. So, that it -- if Your  
6 Honor's familiar with the -- the difference between -- those  
7 are cognate offenses --

8 THE COURT: I understand.

9 MR. STRONG: -- versus lesser included.

10 THE COURT: I think you need to be talk -- Mr.  
11 Carter's the one that has to weigh in on this, also. So, go  
12 on.

13 MR. STRONG: I know. And I'm trying to go through  
14 all of it.

15 Then, there's a case, People versus Lemons, 454 Mich  
16 234, from 1997, that says that CSC - second is a cognate lesser  
17 offense of CSC - first, 'cause CSC - second requires proof of  
18 intent to seek sexual arousal. That's that sexual --

19 THE COURT: Um-hum.

20 MR. STRONG: -- purpose requirement that's in the  
21 jury instruction. Whereas, CSC - first does not.

22 So, the answer to the jurors' question of whether one  
23 action, the -- the dining room incident, can satisfy both  
24 counts one and two is yes.

25 THE COURT: Um-hum. Mr. Carter.

0722a

1 MR. CARTER: The way I followed it, it couldn't,  
2 because the penetration is for a sexual purpose. I -- I don't  
3 understand how --

4 THE COURT: So, you're saying --

5 MR. CARTER: -- it isn't a cognitive --

6 THE COURT: You're saying -- but you're -- but  
7 penetra --

8 MR. CARTER: It's a -- if one is a lesser included  
9 offense, then, obviously, it -- it includes the elements of --

10 THE COURT: Well, it's not. That's the difference.  
11 And, actually, I'm now starting to get some reminisces from the  
12 Halleck case.

13 MR. STRONG: There you go.

14 THE COURT: A lesser included offense is not the same  
15 as a cognitive offense. In fact, that's the distinction. A  
16 lesser included offense means all of the elements of the lesser  
17 offense are, by nature, in the higher offense, not with the  
18 cognate. They're actually not.

19 You're saying that penetration equals sexual purpose.  
20 They don't. Somebody could penetrate somebody using actually  
21 -- let me just double check. Somebody could penetrate somebody  
22 not for a sexual purpose. They could do it for --

23 MS. VAN LANGEVELDE: Um-hum.

24 THE COURT: -- a mean purpose, a torturous purpose.

25 MR. STRONG: Right.

0723a

1 THE COURT: Where count two actually requires it's a  
2 sexual purpose of why it's being done.

3 MR. CARTER: And I --

4 MR. STRONG: That's exactly it, Your Honor.

5 MR. CARTER: And I don't disagree with that.  
6 However, because it reads -- the facts of this case and how the  
7 evidence is presented and all that, it was -- the penetration  
8 was for a sexual purpose. That's what it indicated in there.  
9 That's what the -- that's what the jury instruction was, is  
10 that he digitally vaginally for a sexual purpose.

11 MS. VAN LANGEVELDE: No.

12 MR. STRONG: That's not what the jury instructions  
13 says.

14 THE COURT: Well, that's not the jury instruction.

15 MR. STRONG: And that's not what the law requires.

16 THE COURT: Right.

17 MR. STRONG: While the evidence might've come out  
18 that that's the reason he did it, that's not what they need to  
19 prove --

20 THE COURT: Right.

21 MR. STRONG: -- the elements.

22 THE COURT: I -- I agree with the prosecutor in this  
23 one. Your argument would be, essentially, that count two is  
24 the lesser included offense of count one, and it is not.

25 MR. STRONG: That's what -- exactly, yes.

0724a

1 THE COURT: So, I believe, when they say, "Can count  
2 one and count two pertain to the dining room," the answer is  
3 yes.

4 MR. STRONG: Yes.

5 THE COURT: And so, when they say, "Does count one  
6 have to pertain to evidence in the dining room only," no.  
7 "Does count two have to pertain" --

8 MR. STRONG: Sorry, Your Honor.

9 MS. VAN LANGEVELDE: That one does --

10 MR. STRONG: That one does.

11 MS. VAN LANGEVELDE: -- because it's digital  
12 penetration.

13 MR. STRONG: Yeah, that's --

14 THE COURT: Oh, right.

15 MR. STRONG: Yup.

16 THE COURT: Okay. "Does count two have to pertain to  
17 the evidence in the bedroom only?"

18 MR. STRONG: No.

19 MS. VAN LANGEVELDE: No.

20 MR. CARTER: Okay, I agree. I -- I'm getting --  
21 because they're flip-flopped.

22 MR. STRONG: Yup.

23 MR. CARTER: That's where my --

24 THE COURT: Yeah.

25 MR. CARTER: So, I -- I've --

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THE COURT: Okay, I --

MR. CARTER: We're on the same page.

THE COURT: Yeah, because --

MR. CARTER: But I was -- I was --

THE COURT: -- how the verdict form was writ -- yeah  
got it. Okay. So, now we're all in agreement.

MR. CARTER: Because of the --

THE COURT: Count one --

MR. CARTER: -- time frame and the way you --

MR. STRONG: Understandable.

THE COURT: Count one -- "Does count one have to  
pertain to evidence in the dining room only?" Yes. "Does  
count two have to pertain to evidence in the bedroom only?"  
No. "Can count one and count two pertain to the dining room?"

MR. STRONG: Yes.

THE COURT: Yes.

MR. CARTER: Right.

MR. STRONG: Do you agree?

MR. CARTER: Yes.

MR. STRONG: All right.

MS. VAN LANGEVELDE: Okay.

MR. STRONG: We're on the same page.

MR. CARTER: I'm sorry. I was confused on the way --  
because of the time --

MR. STRONG: I get ya. Understandable.



0726a

1 THE COURT: Okay.

2 MS. VAN LANGEVELDE: Can I ask a question, Judge?

3 THE COURT: Yeah.

4 MS. VAN LANGEVELDE: If they are going to -- are you  
5 going to go take care of your stuff?

6 THE COURT: No. I had to finish 'em. I had -- I  
7 have three-thirty reviews that I'm gonna try, at least, to do  
8 the sentencings and the graduation. We'll see where the jury  
9 goes.

10 MS. VAN LANGEVELDE: Okay.

11 MR. STRONG: Mr. Anderson will be handling those, by  
12 the way.

13 THE COURT: I assumed that, yeah.

14 MS. VAN LANGEVELDE: Okay. So, I'm gonna go back to  
15 my office. And if -- if you're -- if Mr. Strong can cover some  
16 things for me, I have some personal business.

17 THE COURT: Sure, we're good.

18 MS. VAN LANGEVELDE: Okay, thank you.

19 THE COURT: This needs to go back to the jury.

20 Yes, sir? Yeah, you can go. I'm waiting for Lauren  
21 to come back and get the envelope.

22 MS. VAN LANGEVELDE: Thank you, Your Honor.

23 MR. STRONG: Thank you, Judge.

24 THE COURT: We're off the record.

25 (At 3:08 p.m., off the record)

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1 (At 4:30 p.m., back on the record)

2 THE COURT: So, as I -- I want the record to reflect  
3 because of Miss Bond -- I had not brought Ms. Bond in yet --  
4 that I had received a note from the jury, and it said:

5 "We would like to view the video with Detective  
6 Sergeant Jordan."

7 I asked that the attorneys be brought in and that be  
8 queued up. When I went back to find Ms. Ykimoff, she had a ne  
9 note from the jury. And it reads:

10 "The members of the jury refuse to reach an  
11 agreement. They wish to know how long deliberation must go  
12 before a hung jury situation can be called."

13 They no longer wish to see the video.

14 So, I assume you want me to make them keep  
15 deliberating, Mr. Strong -- or, Ms. Van Lang -- who should I be  
16 talking to?

17 MS. VAN LANGEVELDE: You can talk to me now.

18 THE COURT: Ms. Van Langevelde --

19 MS. VAN LANGEVELDE: Thank you, Your Honor.

20 THE COURT: -- I assume you want me to tell them they  
21 can go home.

22 So, let's talk about am I gonna write back a note, or  
23 will I bring 'em in and give 'em instruction 3.12.

24 MS. VAN LANGEVELDE: Yeah, I think we should give 'em  
25 the instruction.

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1 THE COURT: Three point one two is the deadlock jury  
2 instruction.

3 MR. CARTER: Yeah.

4 THE COURT: All right, let's bring 'em in.

5 MS. VAN LANGEVELDE: I don't know -- well, let me --

6 THE COURT: Well, just a minute.

7 MS. VAN LANGEVELDE: -- just say this. Let me just  
8 say this. If they -- I mean, I think we should kind of -- not  
9 necessarily, say like you have a time limit --

10 MR. CARTER: Right.

11 MS. VAN LANGEVELDE: -- but I think, maybe, we should  
12 check on them.

13 THE COURT: Yeah, you want to get that off.

14 MR. STRONG: Yeah.

15 THE COURT: Good job.

16 MR. CARTER: Thank you. I was just --

17 THE COURT: I'm not gonna give 'em a time limit.

18 MR. CARTER: No, no.

19 MS. VAN LANGEVELDE: No, no, I'm not saying that.  
20 But --

21 THE COURT: I may -- the -- the question is whether  
22 or not they -- you know, I would like to send them back --  
23 well, I'm gonna ask 'em these questions. I mean, do you think  
24 it will be helpful to submit to the bailiff a written list of  
25 questions? Continue, da-da-da. However, don't give up on your

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1 honest beliefs. If -- I'm gonna send them back, and I'm gonna  
2 have Lauren check on 'em in like --

3 MS. VAN LANGEVELDE: Yeah.

4 THE COURT: -- 20 minutes. If they're making  
5 progress, then I'll decide if I'm gonna stay past five and let  
6 the sheriff's office know --

7 MS. VAN LANGEVELDE: Perfect.

8 THE COURT: -- or if we're gonna come back in the  
9 morning. If they're not making progress, I'm not going to  
10 force them to do so.

11 MS. VAN LANGEVELDE: Okay. That's -- that's all I  
12 ask. Thank you, Your Honor.

13 THE COURT: Let's bring 'em in.

14 (At 4:34 p.m., jury enters courtroom)

15 THE COURT: Please be seated. Good afternoon.

16 Ladies and gentlemen, you have returned from  
17 deliberations indicating that you believe you cannot reach a  
18 verdict. I will be asking you to return to the jury room to  
19 resume your deliberations in the hope that, after further  
20 discussion, you will be able to reach a verdict.

21 As you deliberate, I would like you to keep in mind  
22 the following guidelines:

23 Remember, it is your duty to consult with your fellow  
24 jurors and try to reach an agreement, if you can do so without  
25 violating your own judgment.

*56th Circuit Court  
Charlotte, Michigan*

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1           To return a verdict, you must all agree, and the  
2 verdict must represent the judgment of each of you.

3           As you deliberate, you should carefully conseriate  
4 carefully and seriously consider the views of your fellow  
5 jurors. Talk things over in the spirit of fairness and  
6 frankness.

7           Naturally, there will be a difference of opinion.  
8 You should each not only express your opinion but give the  
9 facts and the reason on which you base it. By reasoning the  
10 matter out, jurors often can reach an agreement.

11           If you think it would be helpful, you may submit to  
12 the bailiff a written list of issues that are dividing or  
13 confusing you. They could then give it to me, and I would  
14 attempt to clarify or amplify the instruction in order to  
15 assist you.

16           When you continue your deliberations, do not hesitate  
17 to rethink your own views and change your opinion if you decide  
18 you are wrong.

19           However, none of you should give up your honest  
20 belief about the weight or affect of the evidence only because  
21 of what your fellow jurors think or only for the sake of  
22 reaching an agreement.

23           Ms. Ykimoff, would you please take the jury back. If  
24 you would make -- after you take them back, make a copy of this  
25 to put in the jury room. Don't make 12 of 'em. Just give them

1 one.

2 LAW/JURY CLERK: Okay.

3 THE COURT: Thank you. And watch your step.

4 (At 4:36 p.m., jury exits courtroom)

5 THE COURT: We're off the record.

6 (At 4:36 p.m., off the record)

7 (At 4:53 p.m., back on the record)

8 THE COURT: We are back on the record in People  
9 versus Warner.

10 We are going to be sending the jury home. They'll be  
11 coming back in the morning.

12 I wanted to confirm that we are gonna have them come  
13 back at nine.

14 MR. CARTER: Again, and I appreciate you  
15 accommodating me. Yes, I have a hearing at eight-thirty. They  
16 -- I told them I'd be promptly there at eight-thirty, get on  
17 the record, and get back. I think I can get back by nine-  
18 fifteen, nine-thirty.

19 THE COURT: It's on my desk.

20 LAW/JURY CLERK: Okay.

21 THE COURT: Please. Huh?

22 MR. CARTER: I believe I can get back here by nine-  
23 fifteen, nine-thirty.

24 THE COURT: Yeah, I don't want to go -- I -- I'm  
25 trying to be accommodating, but I also need for the jury to be

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1 deliberating.

2 MR. CARTER: And --

3 THE COURT: And we're not -- we're sending them home  
4 because -- well, first of all, if they're as tired as all the  
5 rest of us, they probably need to go home. Secondly, unless a  
6 jury tells me they're within like a half-hour of a verdict, I  
7 not -- to be very honest, we have to pay sheriffs overtime --

8 MR. CARTER: Right.

9 THE COURT: -- we have to pay the door people  
10 overtime.

11 MR. CARTER: Right.

12 THE COURT: We have people here, I know, that have  
13 families and children. And it just isn't a justification to  
14 stay past five o'clock.

15 So, given the fact that I just gave them an  
16 instruction that I wanted them to continue deliberating, I am  
17 gonna send 'em home. I'm just gettin' my recess instruction,  
18 which, probably by now, they can all --

19 MR. STRONG: I just want to put on the record, Your  
20 Honor, we agree with that. We were actually gonna request  
21 that, anyway, given the fact, you know, it's been a three day  
22 trial, we've been here all day. You know, I think it would be  
23 good for everybody to sleep on it, especially since the Court  
24 just gave the deadlock instruction.

25 THE COURT: All right, you'd think I would know this

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1 by heart, the number of the recess instruction, so I can find  
2 it quickly, 'cause I don't -- here it is, two-thirteen.

3 Bring 'em in.

4 (At 4:56 p.m., jury enters courtroom)

5 THE COURT: Please be seated.

6 Ladies and gentlemen, I am going to be allowing you  
7 to leave the courtroom and go about your own business.

8 You may not discuss this case with anyone or let  
9 anyone discuss it with you or in your presence. If someone  
10 tries to do that, tell him or her to stop, that you are a  
11 juror, and you are not allowed to discuss the case. If he or  
12 she continues, please report it to me as soon as you are back  
13 to the courthouse.

14 Please do not talk to the defendant, the lawyers, or  
15 any of the witnesses about anything at all, even if it has  
16 nothing to do with the case. It is important that the only  
17 information that you get about this case is when you are  
18 together, acting as jurors, the prosecutor is here, the defense  
19 and the defendant is here, and I am here.

20 While you are now allowed to talk about this case  
21 amongst each other, remember, it's only when you're all  
22 together back in the jury room. So, you still cannot talk to  
23 your friends, family, neighbor, anybody yet about the case.

24 I don't anticipate this, but should you hear  
25 something on the radio, the television, or on social media,



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1 turn it off immediately. You don't want to hear anything about  
2 the case.

3 I want you just to have a relaxing evening. I want  
4 you to get a good night's sleep. Come back refreshed. And you  
5 don't have to be back here until nine. I would like you to  
6 start deliberating at nine tomorrow, okay? So, be back in the  
7 jury room at nine.

8 You can leave anything in there that you would wish  
9 because Miss Ykimoff is gonna lock it as soon as you all are  
10 gone.

11 Miss Ykimoff, would you please call the alternate  
12 juror and let him know he is still not released. It's really  
13 important. And remind him the recess instruction is in place.  
14 I gave him that. Let me put this on the record.

15 Mr. Strong, Ms. Van Langevelde, Mr. Carter, is it  
16 okay if Miss Ykimoff lets him know he's not released and the  
17 recess instruction I gave him before he left is in place, or do  
18 you want me to call him and tell him that?

19 MS. VAN LANGEVELDE: I think Miss Ykimoff can.  
20 That's fine, Judge.

21 MR. CARTER: Yeah, I -- I believe that's fine.

22 THE COURT: I was ver -- you -- I did in front of all  
23 you. I was very clear to him that he is not released until we  
24 call and tell him there's a verdict, so.

25 MR. CARTER: Right.

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1 MR. STRONG: Right.

2 THE COURT: Okay. Have a nice evening. And guess  
3 what?

4 (At 4:59 p.m., jury exits courtroom)

5 THE COURT: Have a nice night.

6 JURORS: Thank you. You, too.

7 THE COURT: Miss Van Langevelde, anything else you'd  
8 like to place on the record?

9 MS. VAN LANGEVELDE: No. Thank you, Judge.

10 THE COURT: Mr. Carter?

11 MR. CARTER: No.

12 THE COURT: And we'll -- they'll be back here at  
13 nine. And, hopefully, they won't have a question right off the  
14 bat, which I doubt they will since I just sent 'em back in. If  
15 they do, we will patiently wait for you to come back. If  
16 something odd happens, you know, we can always put you on  
17 speaker phone --

18 MR. CARTER: Yeah.

19 THE COURT: -- and talk about it.

20 MR. CARTER: Yeah, that -- that would be fine, too.

21 THE COURT: If we needed to.

22 MR. CARTER: Yeah. You want to put my cell phone  
23 number in your file there, then?

24 THE COURT: Yes.

25 MS. VAN LANGEVELDE: Yeah, we should --

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THE COURT: That would be wonderful.

MR. CARTER: Five-one-seven-two-five-six-three-eight  
eight-six.

THE COURT: Thank you.

MR. CARTER: Yup.

MS. VAN LANGEVELDE: Judge, we have the two discs,  
and I would feel more comfortable if you held on to them.

THE COURT: Really? Can we give 'em to Kathy?

MS. VAN LANGEVELDE: Yes, really. Kathy can have  
them, sure, absolutely. Just not me.

THE COURT: Yeah, or me. I'm kidding. Everybody  
have a good night.

(At 5:00 p.m., proceedings concluded for the day)

- - -

CERTIFICATION OF COURT RECORDER

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STATE OF MICHIGAN )  
COUNTY OF EATON )

I certify that this transcript consisting of 200 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Wednesday, June 21, 2017.

Dated: December 22, 2017

---

Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

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STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant.

JURY TRIAL - VOLUME IV OF IV

BEFORE THE HONORABLE JANICE K. CUNNINGHAM, CIRCUIT JUDGE

Charlotte, Michigan - Thursday, June 22, 2017

APPEARANCES:

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56th Circuit Court  
Charlotte, Michigan

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EXHIBITS:

None

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Charlotte, Michigan

Thursday, June 22, 2017 - At 8:46 a.m.

THE COURT: The Court's gonna call -- I know Mr. Carter is not here, but just so there is a record -- People of the State of Michigan versus Damon Warner, file 16-296-FC.

The record should reflect that our jury has been out since yesterday. The jury is to report at nine o'clock today. One of the reasons for the nine o'clock reporting time is that Mr. Carter had something somewhere else first thing this morning, but he thought he could be here by nine-thirty. So, we thought if we have the jury report at nine, they could start deliberating. If there were any questions, he would be here by nine-thirty.

I've just been informed by the bailiff that we have a juror that is concerned that she may have compromised something, and we need to go on the record with the attorneys outside of the rest of the jurors. We have to wait for Mr. Carter to get here, so you'll --

LAW/JURY CLERK: Would you like me to keep her --

THE COURT: I want to have her sequestered from the rest of the jury since -- but she still has to be sequestered, so put her in the little jury room.

LAW/JURY CLERK: Okay.

THE COURT: You know, give her a water or coffee or

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something.

LAW/JURY CLERK: Yeah, yeah, yeah.

THE COURT: But, tell the rest of the jurors, as they get here, they cannot begin deliberating until we can deal with that issue. And ask Mr. Carter to get here as quickly, but as safely, as he possibly can.

MR. STRONG: Judge, Mr. Carter, also yesterday, did say that his hearing was at eight-thirty, and, maybe, if something did come up, they could -- he could be reached by phone and appear by phone, if the Court wants to consider that. I don't know what Mr. Carter's phone is like, but that might be something we want to --

THE COURT: We don't have a phone back there. There's no way to do it by phone unless we did it here, which, I suppose, we could do it here. I mean, I don't know that it has to be totally private from the public; it just needs to be outside the purview of the other 11 jurors.

MR. STRONG: Could we call him and put him on speaker phone on his cell phone?

THE COURT: Well, let's see if we can find him.

MR. STRONG: Sure.

THE COURT: Oh, we -- no, he can call in here. We can put him on the speaker phone here, have the juror here --

MR. STRONG: Right.



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THE COURT: -- and do it in the courtroom.

MR. STRONG: Right.

THE COURT: We just -- so, well, let's just take this at baby steps.

MR. STRONG: Yes.

LAW/JURY CLERK: I don't think they have another --

THE COURT: Right.

LAW/JURY CLERK: -- phone for Mr. Carter.

THE COURT: Right. And then, ask Mr. Carter when his client's reporting, was gonna get here, because he has a right to be present back there or to be present here. So, that's the other glitch. Did -- was Mr. Carter gonna have his client be here by nine?

MR. STRONG: I had thought so, but I -- I can't say for sure.

THE COURT: Well, right. And where's Ms. Van Langevelde?

MR. STRONG: I believe she might be in the back library.

THE COURT: Why don't you grab her, so that she can be with when you talk to Mr. Carter, so Mr. Strong can stay in here, and we'll try to move things forward as we figure this out.

LAW/JURY CLERK: Thank you.

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THE COURT: All right. So, we're off the record.

(At 8:49 a.m., off the record)

(At 9:43 a.m., back on the record - in library and outside the presence of the jurors)

(Court, counsel and defendant present)

THE COURT: Do you want to look at my thing? Juror number one indicated -- juror number one --

MR. STRONG: Yup.

THE COURT: -- indicated --

MR. CARTER: Close the door?

THE COURT: I'm gonna close it when I get --

MR. CARTER: Oh, okay.

THE COURT: Indicated that she needed to talk to me, that there was an issue, she thought things might be compromised.

The record should reflect that we immediately sequestered juror number one in a different room from the jury room, where the other jurors were present.

We have been waiting for everybody to get here. We're now gonna bring in juror number one and find out what the issue is.

(At 9:44 a.m., Juror Surato now present)

THE COURT: Do you want to go sit down at the end, please. End of the table, would you please? You have to stay

right there.

LAW/JURY CLERK: Yes.

THE COURT: All right, ma'am. You are -- raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

JUROR SURATO: I do.

(At 9:44 a.m., juror sworn by the Court)

THE COURT: All right. So, we are -- I would indicate we are in a separate room, at this point, making a private record.

And your name is Linda Surato?

JUROR SURATO: Surato.

THE COURT: Surato. And, Miss Surato, we refer to you as juror number one 'cause we don't like to use the names of jurors. You indicated that you needed to talk to me. Now is the time to do that. Go ahead.

JUROR SURATO: I mentioned to my mother that this was a sexual conduct case for tonight, and I guess I didn't think that I -- I didn't elaborate or anything, but I didn't really think that I had made a mistake until this morning, and she posted something to my social media about a -- a trial that went to court on a sexual conduct case.

THE COURT: Okay.

JUROR SURATO: And then, I thought, well, maybe, you

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know -- I was pretty upset last night, I guess, and she realized that. And I just said that it had been a stressful day.

THE COURT: Yes, it had been. That's why we wanted to let everybody go home and get a good night's sleep, everybody, the attorneys, the defendant, the jurors, et cetera.

Now, what kind of social media did she post it on; do you know?

JUROR SURATO: Facebook.

THE COURT: Okay. And did she post any names, or did she just say that her daughter was involved as a juror?

JUROR SURATO: She -- no, she just posted to my timeline where they convicted somebody in Eaton County of criminal sexual conduct or --

THE COURT: Previously.

JUROR SURATO: I didn't read the article. I just --

THE COURT: Okay.

JUROR SURATO: -- saw it, and I thought, oh, I shouldn't have said anything.

THE COURT: All right. So, you didn't read what she posted.

JUROR SURATO: No.

THE COURT: And you don't know if any of the other -- well, the other jurors aren't supposed to be on social media at

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this point, anyways, reading things about the case; right?

JUROR SURATO: Right.

THE COURT: All right.

So, let me start with the prosecutor. Do you have any questions for the juror?

MR. STRONG: The article -- or, the -- the article that was posted, it wasn't about this case.

JUROR SURATO: No.

MR. STRONG: It was about a separate case.

JUROR SURATO: Right.

MR. STRONG: And you said you didn't read it.

JUROR SURATO: I just -- I just read that she had posted to my timeline, and it said something about a criminal sexual case had been -- he'd found -- been found guilty.

MR. STRONG: Okay. And you didn't have any other conversation with her about this case?

JUROR SURATO: Just that it was a stressful day yesterday.

MR. STRONG: Okay. Didn't have any conversation with her about that other case?

JUROR SURATO: No.

MR. STRONG: Okay.

JUROR SURATO: She posted that to my timeline sometime last night. I just looked at it this morning, and it

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was there, and it was -- and then I thought maybe I said something I shouldn't have.

MR. STRONG: Okay. And --

THE COURT: No, keep going. I'm sorry.

MR. STRONG: Anything about that, I guess you'd say headline that you saw, would that -- is that going to sway you in any way, on this case?

JUROR SURATO: No, I don't think so.

MR. STRONG: Okay.

THE COURT: Mr. Carter.

MR. CARTER: You didn't discuss any -- outside of you saying that it was a very stressful day, you didn't discuss anything about the case, at all, with your grandmother, did you?

JUROR SURATO: My mother. No, huh-uh.

MR. CARTER: Your mother, I'm sorry.

JUROR SURATO: Not -- I didn't, no. I just said that there was a lot of strong opinions.

MR. CARTER: Okay. And -- but, you didn't discuss the elements of the case --

JUROR SURATO: No.

MR. CARTER: -- or anything like that.

JUROR SURATO: No.

MR. CARTER: Did she advise you, in any way?

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JUROR SURATO: She told me not to let people sway my judgment, and I told her I can't talk about it, at all, that this -- she said I -- I had to make my own determination. She doesn't know how I feel about the case. She doesn't -- she just knew I was kinda stressed out.

MR. CARTER: Okay.

JUROR SURATO: I talk to my mom every day.

MR. CARTER: Okay, she doesn't know the -- would she know -- you didn't discuss the age of the victim or timelines or --

JUROR SURATO: No.

MR. CARTER: -- anything like that.

JUROR SURATO: No.

MR. CARTER: Just absolutely nothing. Just that it was the subject matter of what the trial was.

JUROR SURATO: I told her what -- what -- that I had been put on a jury and that, you know, it was a sexual conduct case, and then --

MR. CARTER: Okay.

JUROR SURATO: -- last night, I told her that the day had been -- she asked me every day, "Are you going back to work tomorrow?" No.

MR. CARTER: She didn't pry to get any information from you?

0749a

JUROR SURATO: No.

MR. CARTER: Okay.

JUROR SURATO: She just told me that I had to make my own -- I -- I shouldn't let other people sway my judgment.

MR. CARTER: All right.

THE COURT: Okay. Well, that's very --

MR. CARTER: Honorable.

THE COURT: So, that's the instruction that I've already given all the jurors.

All right, I really appreciate you telling us, but I see no reason that you should not continue as a juror in this case. So, we're gonna --

MR. STRONG: Can I ask one more question?

THE COURT: Sure.

MR. STRONG: The -- the headline that you read, the fact that that dealt with another case that the person was convicted, and you said that nothing about that would sway your opinion, anything about the outcome or the penalty that might've been in that headline that would sway your opinion on this case or influence your opinion in this case?

JUROR SURATO: I don't think that I saw what the out -- I mean, I -- it -- it said that they had found him guilty, but that's how it -- the headline said something about Eaton County jury finds man guilty of --



0750a

MR. STRONG: Okay. Okay, thank you.

THE COURT: All right, would you please go back to the big jury room?

I understand that there was one juror not here yet, that called in and had a flat tire and was getting alternate transportation or fixing her tire. But, you should go back. Don't mention anything about this to the rest of the jury, okay?

JUROR SURATO: Okay.

THE COURT: All right. Thank you very much, ma'am. I appreciate it.

JUROR SURATO: I'm really sorry.

THE COURT: No problem. You didn't do anything wrong. You really didn't. Please don't feel bad. You did nothing wrong.

And you know it's just right down the hall, to the back. Wonderful.

(At 9:50 a.m., Juror Surato exits library)

THE COURT: All right, is there anything else we need to place on the record before I go back and --

MR. STRONG: I'm pretty sure I know what the article was.

MS. VAN LANGEVELDE: I know.

MR. CARTER: I think so, too.

0751a

MS. VAN LANGEVELDE: I saw it, too.

MR. STRONG: I think she saw the Chad Stewart case.

MR. CARTER: Yeah.

MR. STRONG: It was all in the Free Press and the other --

MR. CARTER: Yeah.

MR. STRONG: -- LSJ yesterday about him getting convicted and his sentence and what it was.

THE COURT: Oh, I didn't even see it.

MR. STRONG: Yeah.

MR. CARTER: Yeah, I don't know if that was even related. I mean, it wasn't like she was searching.

MS. VAN LANGEVELDE: No. I guess my question is do we -- if we get an update on the -- the juror that the tire was flat, if she's having problems? I guess, do we know how -- what her estimated time of arrival is?

THE COURT: I don't, because I've been in the courtroom doing other things.

MS. VAN LANGEVELDE: I know. I'm sorry.

THE COURT: Anything else?

MR. CARTER: No. No.

THE COURT: Are you here now?

MR. CARTER: I'm here.

THE COURT: Okay, anything else?

0752a

MR. STRONG: No, I'm good with it.

MR. CARTER: I may -- I may have to have you call Judge (inaudible).

THE COURT: All right, that's all for the record.

(At 9:51 a.m., off the record in the library)

(At 10:29 a.m., back on the record in the courtroom)

THE COURT: All right, we are back on the record in the People of the State of Michigan versus Damon Warner.

Mr. Strong and Ms. Van Langevelde are here for the People. Mr. Carter is here. Mr. -- the defendant is also here.

The jury wants to view the video with Detective Serdent -- Sergeant Jordan.

Now, I know yesterday we talked about it had been queued up, and they could watch it. Of course, right now, I don't know if it's queued up. We also have a lot of other members of the public that are here for business before the Court.

What's your position, Mr. Strong?

MR. STRONG: Your Honor, I think -- I think it's possible, and it certainly wouldn't actually be that difficult for me to set it up in the back jury room. It's only a short minute -- or, whatever, 10, 11 minute video. And then, it's simply a matter of pressing "play." So --

0753a

MS. VAN LANGEVELDE: Maybe -- and maybe not Mr. Strong --

MR. STRONG: Right, yes.

MS. VAN LANGEVELDE: -- but Mr. Serrat, I know, is in the building. He could do it.

THE COURT: Mr. Carter, what's your position?

MR. CARTER: I think that's appropriate, somebody neutral.

THE COURT: There is a big screen TV, just so you all know. I don't know, is it as big as that one?

DEPUTY: It's relatively the same size.

THE COURT: About the same size in the jury room. So, that they would be watching it by themselves, just as they would've in the courtroom, which is where I think we agreed yesterday.

MR. STRONG: Right.

MR. CARTER: Obviously, I would ask that the bailiff be in there as they're setting it up.

THE COURT: Yes. All right, so, Ms. Ykimoff, you are ordered to get Mr. Serrat. They'll get -- I mean, you have to watch the jury. Be with the jury and make sure that the video is set up, and then we'll go from there.

What envelope number is this?

LAW/JURY CLERK: Number six.

0754a

MS. VAN LANGEVELDE: I did give the DVD to Ms. Bond  
Do you still have those, Ms. Bond?

COURT RECORDER: Yes.

MS. VAN LANGEVELDE: Perfect. I'll go get Mr.  
Serrat.

THE COURT: Hence, Ms. Bond, they need the DVD.

(At 10:30 a.m., off the record)

(At 11:26 a.m., back on the record)

THE COURT: We are on the record in the People of the  
State of Michigan versus Damon Warner.

Ms. Van Langevelde is here on behalf of the People.  
Mr. Carter is here, and the defendant is here.

Just wanted to let you know I received a note from  
the jury they now want to watch the video with Detective  
Maltby.

MS. VAN LANGEVELDE: Okay.

THE COURT: Wanted to make sure that it was  
acceptable, that we could use the same procedure of putting the  
video in the jury room and having Mr. Serrat que it up, so long  
as Ms. Ykimoff, the bailiff, is in the room.

Ms. Van Langevelde?

MS. VAN LANGEVELDE: That's fine, Your Honor.

THE COURT: Mr. Carter.

MR. CARTER: I don't know how I could object if I

0755a

didn't object on the other video. So, yeah, that seems appropriate.

THE COURT: All right. So, Ms. Bond, anyway, we're off the record now.

(At 11:27 a.m., off the record)

(At 1:11 p.m., back on the record)

THE COURT: All right, we have -- we are back on the record in People versus Warner.

Ms. Van Langevelde is here on behalf of the People. Mr. Carter's here with the defendant. Mr. Warner is here.

I have the following note from the jury. It says:

"We have come to an agreement on one count." Not meaning one or two, but one of two. "We are unable to reach an agreement on another count. How do we proceed?"

At this point, the jury has now been deliberating three hours yesterday. Is that quarter after one?

MS. VAN LANGEVELDE: It is.

LAW/JURY CLERK: Three hours today.

THE COURT: So that -- huh?

LAW/JURY CLERK: Three hours today.

THE COURT: Eleven, 12 -- they've been deliberating for six hours. I am inclined to accept their verdict.

MS. VAN LANGEVELDE: I agree.

THE COURT: Mr. Carter? It would be a --

0756a

technically, I believe that would be a mistrial on the count they couldn't decide.

MS. VAN LANGEVELDE: Correct.

THE COURT: And take the verdict on --

MR. CARTER: Yes.

THE COURT: Yes?

MR. CARTER: We would agree.

THE COURT: Okay. Then, Ms. Van Langevelde -- and I'm gonna instruct them to --

MS. VAN LANGEVELDE: I might want a few minutes. Yeah, the -- the victim did want to know, and she -- she had just run out to lunch.

THE COURT: Well, they're gonna have to come in. We're -- I've got to write 'em back a note --

MS. VAN LANGEVELDE: Oh, I know.

THE COURT: -- tell 'em how to figure it out.

MS. VAN LANGEVELDE: I'm gonna let --

THE COURT: Okay.

MS. VAN LANGEVELDE: Can you get ahold -- do you have Pearl's number? I do in my -- may I be excused from the courtroom?

THE COURT: You may.

(At 1:12 p.m., off the record)

(At 1:15 p.m., back on the record)

0757a

THE COURT: Okay, we are back on the record. The attorneys are present, as is the defendant.

Once the jury fills out the verdict form per my instruction, I believe, when they come back in, I need to go through the hung deadlock or hung jury -- our deadlock jury as to the count they have not been able to reach an agreement and have them confirm that, based on their honest belief, that continued deliberations will not allow them to reach a verdict.

MR. STRONG: I would agree.

MS. VAN LANGEVELDE: Yes, Your Honor.

THE COURT: And I believe that I can just -- not yet. I believe I can --

LAW/JURY CLERK: No, it's --

THE COURT: No, you -- okay. I believe I can just ask the foreperson that.

Do you agree, Prosecutors?

MS. VAN LANGEVELDE: I do.

MR. CARTER: Yes.

THE COURT: Do you agree, Mr. Carter?

MR. CARTER: I would agree with that.

THE COURT: Okay. Are they filling it out?

LAW/JURY CLERK: I believe so. They -- I had told them, if they had any questions, to go ahead and knock and --

THE COURT: Okay.



0758a

LAW/JURY CLERK: -- nobody's knocked.

THE COURT: So, what we're going to do is, when we bring them in, I will be asking them if they've been able to reach a verdict on both counts. To which my understanding is they will say -- by the way, this goes with the case we're doing in the back room. Well, yeah. I did have it. I will make sure that I'll -- I'll go through the deadlock instruction, okay?

LAW/JURY CLERK: Yup. Question mark?

THE COURT: I -- I was reading, and I got that set over there because it got to a point that -- we're off the record right now.

(At 1:17 p.m., off the record)

(At 1:20 p.m., back on the record)

THE COURT: They need a little more time to deliberate. They want -- well, they're deliberating. They're deliberating.

All right, you know, we're ready for a break. I'm going to talk about insurance.

MS. VAN LANGEVELDE: All right, thank you.

THE COURT: Sorry.

(At 1:21 p.m., off the record)

(At 2:21 p.m., back on the record)

MS. VAN LANGEVELDE: Did we get another note?

0759a

THE COURT: Yeah, they've reached a verdict.

MS. VAN LANGEVELDE: On both?

THE COURT: Well, I'm gonna be giving the deadlock instruction --

MS. VAN LANGEVELDE: Okay.

THE COURT: -- as we discussed previously.

MS. VAN LANGEVELDE: Okay.

LAW/JURY CLERK: Mr. Strong's not coming.

THE COURT: Hmm?

LAW/JURY CLERK: Mr. Strong's not coming, Judge.

THE COURT: Okay.

LAW/JURY CLERK: Just so you know.

THE COURT: What's he doing?

MS. VAN LANGEVELDE: He's in a prelim, an armed robbery.

THE COURT: Downstairs?

MS. VAN LANGEVELDE: Um-hum.

THE COURT: Okay. Are you gonna check on 'em or --

LAW/JURY CLERK: I was gonna take this back. That way --

THE COURT: Yes. Yup, yup, yup. Okay.

(At 2:25 p.m., jury enters courtroom with verdict)

THE COURT: Please be seated.

All right, Mr. Rutenber, you are the foreman?

0760a

FOREMAN RUTENBER: Correct.

THE COURT: It is my understanding that you were able to reach a verdict on one of the counts but have been able to reach a verdict on one of the other counts. So, there's two counts. One you could reach an agreement; on another one, you could not; is that correct?

FOREPERSON RUTENBER: That is correct.

THE COURT: Now, sir, on behalf of the jury, I had sent you back yesterday, if you recall, on a deadlock instruction. And so, now I need to ask you that would continued deliberations allow you to be able to reach an agreement, in your opinion?

FOREPERSON RUTENBER: I do not believe so.

THE COURT: Okay. And you are speaking on behalf of the entire jury -- you're -- the entire jury; correct?

FOREPERSON RUTENBERG: Yes.

THE COURT: Okay. So, given that, then, have you reached a verdict on one of the counts?

FOREPERSON RUTENBER: We have.

THE COURT: All right. Sir, what I'd like to do is I've asked you -- I ask you to stand up, and I'm gonna read the count, and then I would like you to tell us what the verdict is.

Would the defendant please stand?

0761a

Okay, sir, as to count one, criminal sexual - first degree, relationship, how does the jury find?

FOREPERSON RUTENBER: We found no agreement.

THE COURT: Okay. So, the Court finds on count number one that there is a mistrial on that count.

And then, sir, as to count two, criminal sexual conduct - second degree, relationship, how do you find?

FOREPERSON RUTENBER: Guilty.

THE COURT: Thank you. You may sit down.

So, the jury has found the defendant guilty on count two, criminal sexual conduct - relationship. The Court, therefore, enters a verdict of guilty as to count two. Count one, I believe, is technically dismissed.

Mr. Carter, go ahead.

MR. CARTER: I'd like the jury polled.

THE COURT: Yup, I was gonna get to that.

MR. CARTER: Okay. I'm sorry.

MS. VAN LANGEVELDE: I'm sorry, I disagree that count one is dismissed if it's a hung jury.

THE COURT: Well, there is not -- a verdict will not be entered.

MS. VAN LANGEVELDE: Correct.

THE COURT: Okay.

MS. VAN LANGEVELDE: But, it's not dismissed.

0762a

THE COURT: Right.

MS. VAN LANGEVELDE: Okay.

THE COURT: Okay. You can retry that if you wish.

MS. VAN LANGEVELDE: Correct.

THE COURT: Correct. Okay, now, as to count two, the verdict being guilty of criminal sexual conduct - second degree, juror number one, was that your verdict, guilty?

JUROR SURATO: Yes.

(At 2:28 p.m., jury polled)

THE COURT: Juror number three, was that your verdict?

JUROR SIMON: Yes.

THE COURT: Juror number four, was that your verdict?

JUROR STAUFFER: No. Oh, on the second count? Yes.

THE COURT: Okay. Juror number five, was that your verdict?

JUROR PRATT: Yes.

THE COURT: Juror number six, was that your verdict?

JUROR DRIVER: Yes.

THE COURT: Juror number 13, was that your verdict?

JUROR WOOD: Yes.

THE COURT: Juror number seven, was that your verdict?

JUROR MCCAULEY: Yes.

0763a

THE COURT: Juror number eight, was that your verdict?

JUROR JAGLOWSKI: Yes.

THE COURT: Juror number nine, was that your verdict?

JUROR ENDSLY: Yes.

THE COURT: Juror number 10, was that your verdict?

JUROR FAHIE: Yes.

THE COURT: Juror number 11, was that your verdict?

FOREPERSON RUTENBER: Yes.

THE COURT: And, juror number 12, was that your verdict?

JUROR RAMER: Yes.

THE COURT: Okay. Ladies and gentlemen, on behalf of Eaton County and on behalf of the Court and myself, personally, I thank you very much for serving as a juror. It is, I think, the highest calling that we do have as citizens.

I know that you ended up having to take more time away from your business and personal schedules. I know that you worked long and hard. I know it's a -- a difficult task to undergo. I believe that you did it -- I -- I really just appreciate what you did. And you are now free to go.

Now, your recess instruction is gone. From this moment forward, you can talk to whoever you want about anything to do with the case.

0764a

I would ask that you go back in the jury room and wait just briefly. I would like to talk to you before you leave the building.

Ms. Ykimoff, would you take the jury back, please? Watch your step.

(At 2:29 p.m., jury is discharged and exits courtroom)

THE COURT: Okay, so the verdict of guilty is entered as to count two, criminal sexual conduct - second degree.

Ms. Van Langevelde.

MS. VAN LANGEVELDE: Thank you, Your Honor. Your Honor, I do ask that the Court remand the defendant to the jail based on the verdict. There is a penalty of up to 30 years in prison because he is a habitual offender, and I ask that you remand him.

THE COURT: Mr. Carter.

MR. CARTER: I'd ask that you continue bond. He's always shown up for every court date. He's been throughout these whole proceedings.

THE COURT: Have there been any court dates on which he has not appeared, Ms. Van Langevelde?

MS. VAN LANGEVELDE: Not that I'm aware of, Judge. I took this case over from Miss Pollard, as you might remember.

THE COURT: Um-hum.

0765a

MS. VAN LANGEVELDE: So, I don't know. I -- I -- it's -- not that I've had since I've been on the case. But I -- I -- you know, I am concerned, based on, obviously, the penalty being so high, 30 years, he'd been found guilty. Even though it was only count two, it's still a child between the ages of 13 and 15. My understanding, just talking to CPS, I believe he does have a child in the home where he resides.

THE COURT: Well, does he have a bond right now?

MR. CARTER: Yes, he does.

MS. VAN LANGEVELDE: I'M assuming so.

THE COURT: What is his bond right now? Well, I mean, I don't --

MS. VAN LANGEVELDE: I don't know, Judge.

MR. CARTER: Well, you're -- what's your bond?

THE DEFENDANT: The amount?

MR. CARTER: Yeah.

THE DEFENDANT: Fifty percent to a thousand, then 10 percent.

MR. CARTER: Fifty thousand, 10 percent, or something? I don't know. I do know that he went through a bondsman.

He doesn't have any children in his home.

THE COURT: Well, I show, early on, in October, it was -- Judge Reincke set a \$50,000, 10 percent surety bond?



0766a

MR. CARTER: Yeah.

THE COURT: Is that what it is?

MR. CARTER: Yes.

THE COURT: You posted \$5,000?

THE DEFENDANT: Yes.

MR. CARTER: He used a bondsman; correct?

THE COURT: Okay.

MR. CARTER: There's been no issues with bond. He's never contacted anybody. There's been no violations of the bond. He's always appeared throughout the court hearings. Even when there was problems with my schedule, he's always kept informed with me.

THE COURT: Well, so your sole reason of asking me to revoke his bond is because he's been convicted. I mean, I realize, had he been convicted on count one, it would be mandatory that he would be taken into custody. It's not mandatory on count two, which, obviously, tells the Court, as a matter of public policy, that means I have to go back to the standards for bond. And the two standards for bond are, number one: Is the defendant going to appear? And he has appeared at everything. He does have a \$50,000 bond at stake. And number two: Is he a danger to the community? And given the fact that he has been in the community for the number of years that he has without any violations of the law -- I mean, there was --

0767a

this was a delayed reporting case. There is no other violations of the law. I don't think that I can find that he a danger to the community, to allow him to be out on bond.

Do you have anything else, Ms. Van Langevelde?

MS. VAN LANGEVELDE: Well, I guess the only difference, Judge, is that when you're on bond, you still -- you know, obviously, he's presumed innocent. And he has gone through a trial. Now he knows he's facing a maximum of 30 years. And I think it's important that -- and his -- and his guidelines, I haven't -- I'm sorry, I haven't run the guidelines just on count two.

THE COURT: That's what I was gonna say. Can you tell me at least what his guidelines are?

MS. VAN LANGEVELDE: The guidelines on count one were --

THE COURT: Well, no, just on count two.

MS. VAN LANGEVELDE: Oh, okay.

THE COURT: 'Cause he wasn't found -- they did not reach --

MS. VAN LANGEVELDE: Sure.

THE COURT: -- a verdict on count one.

MS. VAN LANGEVELDE: Hold on one second. I mean, this is just like, obviously, preliminary, so. I think we're in a C grid. Does that sound right, Mr. Carter?

0768a

MR. CARTER: I'm sorry?

MS. VAN LANGEVELDE: CSC - second is a C grid?

MR. CARTER: I -- I don't have my materials with me

MS. VAN LANGEVELDE: Sorry. If you could just give me a moment, Your Honor.

THE COURT: Absolutely.

MS. VAN LANGEVELDE: I think his guidelines would be somewhere around -- because -- and don't hold me to this, Judge, but just really quickly looking at this, I would guess that they're 43 to 129-ish. And he's a habitual -- like I said, he's a habitual third. So, his maximum is 30 years. And he has a prior CSC conviction, as you know.

THE COURT: All right. Well, I think that, given the fact that now the defendant has been convicted and is looking at a guaranteed term of prison, an argument can be made that -- strongly that there is a risk that he may not appear.

MR. CARTER: May -- may I respond, though?

THE COURT: Well, you did. I didn't know --

MR. CARTER: Okay.

THE COURT: -- you had anything else you wanted to say. But, all you have to do is say, Judge, can I say something else?

MR. CARTER: Judge, may I say something else?

THE COURT: Yes, you may.

0769a

MR. CARTER: Your Honor, there's several times, you sitting on the bench, have taken pleas to crimes that people are going to have -- have much higher grids than this and much higher guidelines than this, and perhaps they're not directly mandated back, and they have an opportunity to -- to, basically, tie up loose ends in -- in the community before they go in -- in to serve their term of sentence here.

I've been practicing for over 20 years. I've had cases where they're lookin' at a prison sentence that's much higher than this in the guidelines, and it's not an automatic revoke of bond.

My client has never had a case where he was a flight risk. Even in his prior cases, there's nothing indicating in his report that he's been a flight risk, didn't abide by the terms of his probation or parole, or anything. I don't think my client is a flight risk. I don't think, even if he's looking at a -- a prison sentence, and I'd ask that you continue bond. Thank you.

THE COURT: Well, I don't know if that's a correct statement, that I've taken a plea on a CSC case and allowed the person to leave after they've entered a plea.

MR. CARTER: No, I didn't -- I didn't -- I -- if I meant you, I didn't mean you, nor did I say CSC cases.

THE COURT: Okay.

0770a

MR. CARTER: I just said cases where they're serving -- where there's prison time.

THE COURT: Well, there's all sorts of different fact scenarios, but they're always a little bit different.

MR. CARTER: Sure.

THE COURT: What about if we let your client out on a tether? What if we had him on a tether?

MS. VAN LANGEVELDE: He can always cut the tether off.

THE COURT: Well, you know what?

MS. VAN LANGEVELDE: I know, I know.

THE COURT: Yeah.

MS. VAN LANGEVELDE: But --

MR. CARTER: He has a tether on? Do you?

THE DEFENDANT: No, I don't have a tether on. I've never had one.

THE COURT: I was saying what if we let him out on a tether.

MR. CARTER: Yeah, I would -- I think that's appropriate.

THE COURT: Ms. Van Langevelde.

MS. VAN LANGEVELDE: I would oppose a tether.

THE COURT: Sure. Well, I think that -- that a fair compromise is to add a condition to the defendant's bond that

he can be released upon a GPS tether.

Again, I do not believe that the defendant is, in any way, a risk to the community; otherwise, I would revoke his bond.

The sole question I'm looking at is whether or not the defendant is going to appear. Given his strong history of appearing at all court appearances and the fact that he has a \$50,000 bond, I think if we add the tether to the \$50,000 bond, I think he'll appear.

Yes, sir. You are still under oath, but I think Mr. Carter would rather have you talk to him.

MR. CARTER: I don't think he has anything to add than what I have said.

THE COURT: All right. Anything else you'd like to place on the record?

Now, we just have to have our sentencing date. I was thinking -- since I know that we are going to have testimony from the victims; is that correct, Ms. Van Langevelde?

MS. VAN LANGEVELDE: I think we'll have a victim's -- yes, a victim's statement.

THE COURT: Yeah.

MS. VAN LANGEVELDE: Well, hold on, now. I'm sorry. Mr. Morton is --

THE COURT: If it is --

0772a

MR. MORTON: Sorry, Your Honor. I believe bond revocation is mandatory on all, so.

THE COURT: Excuse me. Could you please identify yourself for the record?

MR. MORTON: I'm sorry. Brent Morton with the Eaton County Prosecutor's Office. I just spoke on the phone with Kelly Morton with the Eaton County Prosecutor's Office --

THE COURT: Okay.

MR. MORTON: -- who handles these cases. She indicated that count two is a mandatory bond revoke --

THE COURT: Well, that would be -- that would've been good to know, because I stated to -- to Ms. Van Langevelde, I knew if he was found guilty on count one, he had to immediately be taken into custody. I did not know on count two, and Ms. Van Langevelde said he did not. If that's wrong, let's correct it right now.

MR. MORTON: Thank you. Thank you for this --

MS. VAN LANGEVELDE: And I'm sorry if I got it wrong.

MR. MORTON: -- opportunity. I apologize for my intrusion.

THE COURT: It's okay. It's just -- so, we're not gonna do it on our normal sentencing day, August 10th, because -- at least not at eight-thirty, because I believe that we'll have victims' statements. We could do it August 10th,

0773a

according to the calendar right now, but I would want to do it at eleven o'clock. And that would allow, from 11 to 12, ample time for the victims to have their opportunity to address the Court.

So, I'll set sentencing at August 10th, at eleven o'clock.

I'd like to wait a moment to make sure that we're not violating the CSC statute in terms of automatic remands.

So, you can have a seat, Mr. Warner, as it -- that gets looked up, okay?

MS. VAN LANGEVELDE: Do you want to take -- I mean, while we're looking this up, do you want to take a break so you can talk to the jury?

THE COURT: Oh, yeah. Well, actually, not a break. Everybody stay here. We're still on the record. Nobody move.

MS. VAN LANGEVELDE: And -- and if you --

THE COURT: I'll be back.

MS. VAN LANGEVELDE: -- could ask them, Your Honor, if they would be will -- anybody would be willing to speak with Mr. Carter and I, I think you -- would -- did you want to talk to them?

MR. CARTER: That's fine, yes.

(At 2:41 p.m., Court exits courtroom)

(At 2:51 p.m., back on the record)



0774a

THE COURT: Thank you. We are back on the record.

Okay, well that was -- and I'm gonna keep that right here where I -- well, actually, I won't forget it again. I knew it as to CSC - first.

Did you get a copy of this, Mr. Carter?

MR. CARTER: Well, I found it. I read it online.

THE COURT: Okay. So, the statute is very clear that the defendant shall be detained and is not allowed bail.

Therefore, sir, your bail is revoked, and you are remanded into custody.

We will keep August 10th, at eleven o'clock, as our sentencing date for the reasons I've already stated on the record.

Ms. Van Langevelde, anything else I can do for you?

MS. VAN LANGEVELDE: No, thank you.

THE COURT: Mr. Carter, anything else I can --

MR. CARTER: No.

THE COURT: -- do for you?

Okay, could you please take the defendant into custody? And I'll -- we'll stay in here, and I'll talk to the attorneys. Off the record.

(At 2:52 p.m., proceedings concluded)

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0775a

CERTIFICATION OF COURT RECORDER

STATE OF MICHIGAN )

COUNTY OF EATON )

I certify that this transcript consisting of 37 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Thursday, June 22, 2017.

Dated: December 26, 2017

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Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

56th Circuit Court  
Charlotte, Michigan

0776a

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF EATON

PEOPLE OF THE STATE OF MICHIGAN,

v

DAMON EARL WARNER,  
DEFENDANT.

File No. 16-020296-FC

**VERDICT FORM**

You may return only one verdict for each of the two (2) counts. Mark only one box for each count.

COUNT 1 – CRIMINAL SEXUAL CONDUCT – FIRST DEGREE (Relationship)

- Not Guilty *NO agreement*
- Guilty

STATE OF MICHIGAN, COUNTY of EATON  
**FILED**  
JUN 23 2017

DIANA BOSWORTH  
EATON COUNTY CLERK

COUNT 2 – CRIMINAL SEXUAL CONDUCT – SECOND DEGREE  
(Relationship)

- Not Guilty
- Guilty

Dated: 6/22/17

Christopher Rutenber *[Signature]*

Foreperson

Approved, SCAO

RECEIVED by MSC 12/28/2022 2:41:49 PM

<b>STATE OF MICHIGAN</b> 56th CIRCUIT COURT EATON COUNTY	0777a <b>JUDGMENT OF SENTENCE                  COMMITMENT TO                  DEPARTMENT OF CORRECTIONS</b>	<b>CASE NO.</b> 2016 0000020296-FC
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1045 INDEPENDENCE BLVD.,  
 CHARLOTTE, MI 48813

(517) 543-4335

ORI MI-230015J Police Report No. 16-352

THE PEOPLE OF THE STATE OF MICHIGAN

V

Defendant's name, address, and telephone no.  
 DAMON EARL WARNER  
 20700 PINELAKE RD  
 BATTLE CREEK, MI 49014

CTN/TCN 231600323401	SID 1712924T	DOB 10/10/1974
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Prosecuting attorney's name DOUGLAS R. LLOYD	Bar no. 47218
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Defendant attorney's name TIMOTHY AUSTIN DOMAN	Bar no. 77811
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**THE COURT FINDS:**

1. The defendant was found guilty on 06/22/2017 of the crime(s) stated below.  
Date

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL Citation/PACC Code
	Plea*	Court	Jury			
01					CSC-1ST DEGREE (RELATIONS	750.520B1B
02			X		CSC-2ND DEGREE (RELATIONS.	750.520C1B
		X			HABITUAL OFFENDER 4TH	769.12

\*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

- 2. The conviction is reportable to the Secretary of State pursuant to MCL 257.625(21)(b).
- 3. HIV testing and sex offender registration are completed. Defendant's driver's license number
- 4. The defendant has been fingerprinted according to MCL 28.243.
- 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

**IT IS ORDERED:**

- 6. Probation is revoked.
- 7. Participating in a special alternative incarceration unit is  prohibited.  permitted.
- 8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
02	08/10/2017	10			30			08/10/2017		62	

- 9. Sentence(s) to be served consecutively to  each other.  case numbers \_\_\_\_\_ (If this item is not checked, the sentence is concurrent.)

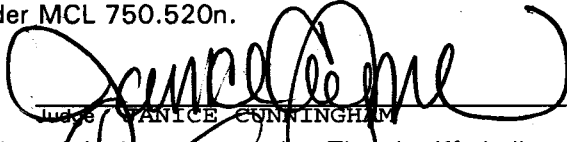
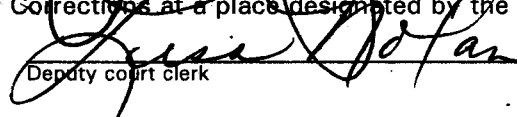
9. The defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$68.00	\$130.00			\$500.00				\$698.00

The due date for payment is 08/10/2017. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

- 11. The defendant is subject to lifetime monitoring under MCL 750.520n.
- 12. Court recommendation:

08/14/2017  
Date

  
 Judge JANICE CUNNINGHAM 38700  
Bar no.  
  
 Deputy court clerk

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver the defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

RECEIVED by MSC-12/28/2022 2:41:49 PM

<b>STATE OF MICHIGAN</b> <b>56A JUDICIAL DISTRICT</b> <b>56th JUDICIAL CIRCUIT</b>	<b>MOTION/ORDER</b> <b>OF NOLLE PROSEQUI</b>	<b>CASE NO.: 2016003234</b> <b>DISTRICT: 16-1411-FY</b> <b>CIRCUIT: 16-020296-FC</b>
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District Court ORI: MI230025J 1045 Independence Blvd., Charlotte, MI 48813 517-543-7500 Police Report No. 23ECSD 16-352	Circuit Court ORI: MI230015J 1045 Independence Blvd. Charlotte, MI 48813 517-543-7500
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THE PEOPLE OF <input checked="" type="checkbox"/> The State of Michigan  <input type="checkbox"/> _____  <input type="checkbox"/> _____	v Defendant/Juvenile name, address, and telephone no. <b>DAMON EARL WARNER</b> <b>5480 W BUTTERFIELD HWY</b> <b>OLIVET, MI 49076</b> <table border="1"> <tr> <td>CTN / TCN</td> <td>SID</td> <td>DOB</td> </tr> <tr> <td>23-16003234-01 / U916532524J</td> <td>1712924T</td> <td>10/10/1974</td> </tr> </table>	CTN / TCN	SID	DOB	23-16003234-01 / U916532524J	1712924T	10/10/1974
CTN / TCN	SID	DOB					
23-16003234-01 / U916532524J	1712924T	10/10/1974					

Juvenile In the matter of \_\_\_\_\_

Count	CRIME	CHARGE CODE(S) MCL citation/PACC Code
001	CSC-1ST DEGREE (RELATIONSHIP)	750/520B1B

**MOTION**

Adrienne K. Van Langevelde, prosecuting official, moves for a nolle prosequi in this case for the following reason(s):  
Not in the interest of justice to pursue at this time

08/15/2017  
Date

*Adrienne K. Van Langevelde* P72488  
 Prosecuting Official Bar no

**ORDER**

**IT IS ORDERED:**  
 1. Motion for nolle prosequi is granted and the case is dismissed without prejudice.  
 2. Motion for nolle prosequi is granted as to the following charge(s), which are dismissed without prejudice:  
Ct 1 - CSC - 1st Degree (Relationship) 750.520B1B

- 3. Motion for nolle prosequi is denied.
- 4. Defendant/Juvenile shall be immediately discharged from confinement in this case.
- 5. Bond is canceled and shall be returned after costs are deducted.
- 6. Bond is continued on the remaining charge(s).

8/15/17  
Date

*JANICE K. CUNNINGHAM*  
 Judge/Magistrate JANICE K. CUNNINGHAM Bar no. J38700

If item 1 is checked, the clerk of the court shall advise the Michigan State Police Criminal Justice Information Center of the disposition as required under MCL769.16a.

**TO THE DEFENDANT:** Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243.

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON EARL WARNER,

Defendant-Appellant.

---

UNPUBLISHED

March 21, 2019

No. 340272

Eaton Circuit Court

LC No. 2016-020296-FC

Before: SWARTZLE, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction of second-degree criminal sexual conduct (CSC-II), MCL 750.520c. The jury could not reach a verdict on a charge of first-degree criminal sexual conduct (CSC-I), MCL 750.520b. Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to 10 to 30 years' imprisonment. We reverse and remand for a new trial.

In Count 1 of the criminal complaint, defendant was charged with CSC-I for an incident involving his digital-vaginal penetration of his stepdaughter when she was 13 years old. In Count 2 of the criminal complaint defendant was charged with CSC-II for an incident involving sexual contact between defendant and his stepdaughter when she was also 13. The CSC-I charge was predicated on the theory that defendant came up behind the victim in the dining room of the family home, placed a hand down her pants, and inserted a finger into her vagina. The CSC-II charge was based on the theory that defendant entered the victim's bedroom while she was sitting on her bed, that he then pushed her down onto the bed, that he next pulled down her pants, and that defendant then pressed his penis against her vagina without insertion. According to the victim, the CSC-II assault occurred about two or three months before the CSC-I assault. They were two separate and distinct acts. Defendant testified on his own behalf, denying any inappropriate touching or contact.

The trial court instructed the jury that a “[v]erdict in a criminal case must be unanimous.” The court further instructed the jurors that the two counts represented “separate crimes” and that they “must consider each crime separately in light of all of the evidence.” The trial court, in

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reviewing the elements of the offenses, instructed the jury that the CSC-I charge required proof of digital-genital penetration and that the CSC-II charge required proof of sexual contact with the victim's genital area. With respect to the CSC-I charge and during the general reading of the instructions, the trial court did not instruct the jury that it could also consider CSC-II as a lesser offense of CSC-I. The jury was provided a verdict form that gave them the option of finding defendant guilty or not guilty on the two separate counts; there was no indication on the verdict form that Count 1 pertained to the alleged sexual assault in the dining room or that Count 2 concerned the alleged sexual assault in the bedroom. Nor did the verdict form provide for any consideration of potential lesser offenses of the two charged crimes.

After 55 minutes of deliberations, the jury asked the trial court whether it could “only account the second living room incident to the first-degree criminal sexual conduct or [could it] account either incident to both first and second-degree.” This question touched off a lengthy discussion between the trial court and the parties regarding the meaning of the question being posed by the jury. The trial court, in writing, then informed the jury as follows regarding its question, “I do not understand your question, please rephrase.” In response, the jury submitted a revised note with two questions. The jury first asked, “Does Count 1 have to pertain to evidence in the dining room only?” The jury next asked, “Does Count 2 have to pertain to evidence in the bedroom only? Or, can count 1 *and* 2 pertain to the dining room?”<sup>1</sup> These questions set off a new round of discussions between the trial court and the parties, reflecting a great deal of confusion on how to respond. The parties and the trial court then came to an agreement that as to the first question, Count 1 (sexual penetration) had to pertain to evidence in the dining room only and that as to the second question, Count 2 (sexual contact) did not have to pertain to evidence in the bedroom only and that Count 1 and Count 2 could pertain to the dining room. These responses were conveyed to the jurors by written note. Effectively, the jury was instructed that it could find defendant guilty of CSC-II on the basis of the incident in the bedroom, consistent with the prosecution's theory regarding CSC-II and Count 2, as well as the incident in the dining room, which was not consistent with the prosecution's theory. Importantly, the jury was not instructed that with respect to any decision finding defendant guilty of CSC-II, all 12 of them had to reach that result on the basis of the same specific incident, either the bedroom incident or the dining room incident.

The jury subsequently indicated to the trial court that the jurors could not reach an agreement on the charges. The jury was given the deadlocked-jury instruction, M Crim JI 3.12, directing the jurors to continue deliberations in an effort to reach a verdict. Eventually, with respect to Count 1 and the CSC-I charge, the jury indicated on the verdict form that there was “no agreement.” But in regard to Count 2 and the CSC-II charge, the jury found defendant guilty.

On appeal, defendant argues that trial counsel was ineffective for failing to request a specific unanimity instruction after the court informed the jury that it could convict defendant of

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<sup>1</sup> We have emphasized the word “and” because the jury circled it in its note to the court.

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CSC-II based on either of the two discrete incidents of sexual assault that were alleged in this case. We agree.

Whether counsel was ineffective presents a mixed question of fact and constitutional law, which we review, respectively, for clear error and de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). In *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001), our Supreme Court addressed the basic principles governing a claim of ineffective assistance of counsel, observing:

To justify reversal under either the federal or state constitutions, a convicted defendant must satisfy the two-part test articulated by the United States Supreme Court . . . . First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the counsel guaranteed by the Sixth Amendment. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. Second, the defendant must show that the deficient performance prejudiced the defense. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. [Citations and quotation marks omitted.]

An attorney's performance is deficient if the representation falls below an objective standard of reasonableness. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000).

In *People v Gadomski*, 232 Mich App 24, 30; 592 NW2d 75 (1998), this Court addressed the requirement of jury unanimity, observing:

Criminal defendants are guaranteed a unanimous jury verdict under the state constitution. Consequently, trial courts are required to give proper instructions regarding the unanimity requirement. In some circumstances, a general unanimity instruction . . . is not adequate to ensure a defendant's right to a unanimous jury verdict. For instance, the Michigan Supreme Court has held that when the prosecution offers evidence of multiple acts by a defendant, each of which would satisfy the actus reus element of a single charged offense, the trial court is required to instruct the jury that it must unanimously agree on the same specific act if the acts are materially distinct or if there is reason to believe the jurors may be confused or disagree about the factual basis of the defendant's guilt. [Citations omitted.]

CSC-II requires "sexual contact," MCL 750.520c. "Sexual contact" is defined as "the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional



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touching can reasonably be construed as being for the purpose of sexual arousal or gratification . . . ,” MCL 750.520a(q).

Here, as matters developed after the jury began its deliberations, the single CSC-II charge, which had been based on one particular act that was materially distinct and separate from the act that formed the basis of the CSC-I charge, morphed into a charge that could be established by either of those two acts, each of which could satisfy the actus reus element of the single CSC-II charge. This situation developed because of the trial court’s responses to the jury’s questions, upon which the parties fully agreed, yet a specific unanimity instruction was not given in conjunction with the court’s responses.

The jury could not agree on whether defendant engaged in an act of sexual penetration in the dining room, but all twelve jurors found that defendant had sexual contact with the victim. However, it is impossible to discern what act or acts formed the basis of the CSC-II conviction. Perhaps all 12 jurors found defendant guilty of CSC-II predicated on the dining room incident, as there was evidence that that incident involved, at least in part, some sexual contact. Perhaps all 12 jurors found defendant guilty of CSC-II on the basis of the bedroom incident. If either of those two possibilities actually occurred, the unanimity requirement would have been satisfied.<sup>2</sup> But we cannot say with any confidence that there was unanimity on the CSC-II conviction *relative to the specific underlying act supporting that conviction*. And we cannot conclude so because the trial court did not give the jury a specific unanimity instruction on the CSC-II charge. Most important, defense counsel made no such request. Because both acts—the one in the bedroom and the separate and distinct act in the dining room—could have supported the CSC-II charge and conviction, it is certainly possible that some of the jurors based their verdict on the bedroom incident alone and some solely on the dining room incident. Indeed, the very fact that the jury asked whether the CSC-II charge could be based on the dining room incident suggested that at least some of the jurors were of the mindset that the dining room incident supported a CSC-II conviction.

Under these circumstances, defense counsel’s failure to request a specific unanimity instruction constituted deficient performance, falling below an objective standard of reasonableness. The need to request the clarifying unanimity instruction was glaring, and we cannot think of any logical or strategic reason for not making it. Moreover, we simply cannot conclude that the deficient performance was harmless and did not prejudice defendant. The lack of a specific unanimity instruction is sufficient to undermine confidence in the outcome of the trial. *Carbin*, 463 Mich at 600. The jury’s questions and its struggle to even render a verdict on the CSC-II charge revealed a difference of opinion and strongly suggested that there was no consensus and unanimity on what act or incident supported the CSC-II conviction. Under these facts, we find reversal is warranted.

Finally, we take a moment to respond to our dissenting colleague’s position that the two acts, while physically distinct, were not materially distinct: The two acts were not conceptually

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<sup>2</sup> It is also feasible that all 12 jurors found the commission of CSC-II relative to both acts or incidents.

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different, nor did either party offer materially distinct proofs as to each act. In *People v Cooks*, 446 Mich 503, 524; 521 NW2d 275 (1994), our Supreme Court observed “that if alternative acts allegedly committed by defendant are presented by the state as evidence of the actus reus element of the charged offense, a general instruction to the jury that its decision must be unanimous will be adequate unless 1) the alternative acts are materially distinct (where the acts themselves are conceptually distinct or where either party has offered materially distinct proofs regarding one of the alternatives), or 2) there is reason to believe the jurors might be confused or disagree about the factual basis of defendant's guilt.” We would first note that with respect to the latter *alternative* factor, we certainly believe under the circumstances discussed above that the jurors might have disagreed about the factual basis of defendant’s guilt in regard to CSC-II. Indeed, given their questions to the court, we deem it likely that they did disagree.

As to whether the two acts were materially distinct, we note that physical distinctions are relevant. Contrary to the dissent’s suggestion, the two acts were conceptually different, and the prosecution offered materially distinct proofs regarding the two acts. *Cooks*, upon which the dissent primarily relies, supports *our* view. In *Cooks*, the defendant was charged with one count of CSC-I based on anal intercourse, but the testimony referred to three incidents of such sexual penetration. The evidence revealed that on three consecutive days the defendant approached the minor victim while she was engaged in housekeeping chores. He kissed her while fondling her breasts and vagina, and then he forced her against a wall and penetrated her anus with his penis. The trial court gave the jury a general unanimity instruction, and the defendant appealed. *Cooks*, 446 Mich at 505-507.

The *Cooks* Court stated that “where materially identical evidence is presented with respect to each act, and there is no juror confusion, a general unanimity instruction will suffice.” *Id.* at 512-513. In affirming the defendant’s conviction, our Supreme Court held that, as distinguished from other cases where the alternative alleged acts “were supported or rebutted by a materially distinct piece of evidence, the evidence presented against defendant here was materially identical with regard to all three of the alleged acts of penetration.” *Id.* at 513. Quite clearly, physical distinctions and similarities were relevant to the Court’s analysis.

Here, as discussed earlier, the prosecution presented evidence that in regard to one of the acts, defendant came up behind the victim in the dining room of the family home, placed a hand down her pants, and inserted a finger into her vagina. And with respect to the other act, the prosecution presented evidence that defendant entered the victim’s bedroom while she was sitting on her bed, that he then pushed her down onto the bed, that he next pulled down her pants, and that he then pressed his penis against her vagina without insertion. The two acts occurred months apart, took place in two different rooms, involved different prefatory conduct, and entailed two completely different types of sexual acts. The two acts were supported by materially distinct pieces of evidence offered by one of the parties—the prosecution. The facts in the instant case are not analogous to those presented in *Cooks*; they are not even close.

The dissent emphasizes that the trial court instructed the jurors that in order to return a verdict they had to agree “on *that* verdict.” Therefore, according to the dissent, “the general unanimity instruction was proper and sufficient.” We fail to see how the instruction minimized the danger that developed when the trial court, in response to questions posed by the jury, instructed the jurors that they could convict defendant of CSC-II based on either one of the two

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acts without further instructing the jury that it had to be unanimous on the specific act underlying the verdict. Unanimity on the *verdict* is not the equivalent of unanimity on the verdict *and the underlying act supporting that verdict*. The jury in this case could have concluded that unanimously finding defendant guilty of CSC-II was all that was necessary even if some of the jurors reached that determination based solely on one of the acts and other jurors relied solely on the other act. In sum, we respectfully disagree with the dissent's reasoning and conclusion.

We reverse defendant's conviction and remand for a new trial. We do not retain jurisdiction.<sup>3</sup>

/s/ Brock A. Swartzle

/s/ Jane E. Markey

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<sup>3</sup> In light of our ruling, we find it unnecessary to address defendant's additional claim of ineffective assistance of counsel and the sentencing issue.

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STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON EARL WARNER,

Defendant-Appellant.

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UNPUBLISHED

March 21, 2019

No. 340272

Eaton Circuit Court

LC No. 2016-020296-FC

Before: SWARTZLE, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J. (*dissenting*)

I respectfully dissent, because I do not agree that the trial court improperly instructed the jury regarding unanimity. Additionally, I would reject defendant’s other assertions of error.<sup>1</sup> Therefore, I would affirm.

As the majority explains, defendant was charged with first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(b) (victim aged 13 to 15 and a relative), on the basis of digital-vaginal penetration that occurred in the dining room of their home; and he was charged with second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(b) (victim aged 13 to 15 and a relative), on the basis of penile-vaginal contact in a bedroom. Defendant’s theory of the case was that neither event occurred. The trial court’s initial instructions to the jury informed them, *inter alia*, that time is not an element of either crime, that the two charges represented separate crimes to be considered independently, that a “verdict in a criminal case must be unanimous,” and “in order to return a verdict, it is necessary that each of you agrees on that verdict.”

Neither defendant nor the majority appear to take exception to the instructions as of that point in the proceedings, and I cannot imagine any such argument prevailing. “Time is not of the

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<sup>1</sup> However, due to the procedural posture of being in dissent, I, like the majority, find it unnecessary to present an analysis of those claims.

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essence nor a material element in a criminal sexual conduct case, at least where the victim is a child.” *People v Stricklin*, 162 Mich App 623, 634; 413 NW2d 457 (1987). Each act of penetration or contact is a separate act of criminal sexual conduct. *People v Dowdy*, 148 Mich App 517, 520-521; 384 NW2d 820 (1986); *People v Brown*, 105 Mich App 58, 68-69; 306 NW2d 392 (1981), aff’d in part and vacated in part on other grounds in *People v Robideau*, 419 Mich 458; 355 NW2d 592 (1984); see also *People v Sikorski*, 499 Mich 899; 877 NW2d 155 (2016). The trial court’s instruction unambiguously required the jury to be unanimous as to *each* verdict it returned, not merely *any* verdict. It is clear that the attorneys and the trial court believed, at the time, that the acts in the dining room were specifically tied to the CSC-I charge, and the acts in the bedroom were specifically tied to the CSC-II charge. Because it was not yet contemplated that either act could support more than one specific charge each, there would have been no reason to suspect that a specific unanimity instruction might even *possibly* be warranted. See *People v Cooks*, 446 Mich 503, 510-516; 521 NW2d 275 (1994).

However, the jury sent a question that the attorneys and the trial court agreed was incomprehensible. Upon being asked to rephrase, the jury sent another note asking:

Does count one have to pertain to evidence in the dining room only? Does count two have to pertain to evidence in the bedroom only? Or, can count one *and* two pertain to the dining room?

The attorneys and the trial court correctly agreed that CSC-II was a cognate offense of CSC-I rather than a lesser included offense, because CSC-II does not require penetration as does CSC-I, but CSC-I does not require a “sexual purpose” as does CSC-II. See *People v Duenaz*, 306 Mich App 85, 107; 854 NW2d 531 (2014). They also agreed that sexual penetration could be performed for a non-sexual purpose, such as torture, but *if* it is established to have been performed for a sexual purpose, it would necessarily also constitute sexual contact. I have not found any cases on point, but I agree, as apparently does the majority, that the logic is inescapable.

The trial court therefore, with the agreement of the attorneys, responded to the jury:

“Does count one [CSC-I] have to pertain to evidence in the dining room only?”  
Yes. “Does count two [CSC-II] have to pertain to evidence in the bedroom only?” No. “Can count one and count two pertain to the dining room?” [Yes.]

Thus, the jury’s instructions continued to require a CSC-I verdict to be based only on the digital-vaginal penetration in the dining room; however, a CSC-II verdict could “pertain to” either act. Defendant did not concede that either act actually occurred, but seemingly *did* concede that the evidence indicated any such penetration to have been for a sexual purpose. As the majority states, the jury was unable to reach a conclusion regarding the CSC-I charge, but it found defendant guilty of the CSC-II charge. As the majority also states, either assault could have supported a CSC-II conviction. However, this is *not* a situation in which a single act could have resulted in multiple convictions under the same statute. See *People v Garland*, 286 Mich App 1, 6-7; 777 NW2d 732 (2009).

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Notably, defendant does not argue that the trial court erred in failing to *sua sponte* give a specific unanimity instruction, but rather that defense counsel was ineffective for failing to request one. As a consequence, in addition to the review standards outlined by the majority, we are to engage in the presumption that trial counsel's decisions were strategic, we must defer to any reasonable possibility that such strategic decisions were sound irrespective of whether they were successful, and we must evaluate whether any error is likely to have affected the outcome of the proceedings. *People v Jordan*, 275 Mich App 659, 667-668; 739 NW2d 706 (2007); *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001).

“Michigan criminal juries are not required to unanimously agree upon every fact supporting a guilty verdict.” *People v Gadomski*, 232 Mich App 24, 30-31; 592 NW2d 75 (1998). Even where a multitude of alternative acts could satisfy the *actus reus* of a single charged offense, a general unanimity instruction will suffice “unless 1) the alternative acts are materially distinct (where the acts themselves are conceptually distinct or where either party has offered materially distinct proofs regarding one of the alternatives), or 2) there is reason to believe the jurors might be confused or disagree about the factual basis of defendant's guilt.” *Cooks*, 446 Mich at 524. Defendant did not challenge the details of either assault, but rather whether they occurred at all; in his closing argument to the jury, he explicitly stated that:

The defendant says that none of these things happened. I submit, to you, that the evidence really supports that version. The only thing that doesn't support it is [the victim's] testimony, and that's it. The testimony of a girl who's in trouble and wanted to get out of trouble. She deflected.

Defendant offered no materially distinct defense against either charge beyond undermining the victim's credibility. Likewise, the prosecution's case largely consisted of the victim's testimony and undermining defendant's credibility. Thus, it “was obvious to the participants in the trial that the verdict turned on whether the jury believed the testimony of [the victim] on the one hand, or found reasonable doubt that any sexual assault occurred, as claimed by the defendant.” *People v Van Dorsten*, 441 Mich 540, 545; 494 NW2d 737 (1993).

The two acts of assault perpetrated by defendant were *physically* distinct. However, because neither party offered materially distinct proofs, the acts are only *materially* distinct (and therefore warranting a specific unanimity instruction) if they are “conceptually distinct.” *Cooks*, 446 Mich at 524. Again, defendant “did not contest the nature of the acts themselves.” See *People v Martin*, 271 Mich App 280, 338-339; 721 NW2d 815 (2006). Defendant's conviction of CSC-II did not require a conclusion that penetration occurred, and defendant did not dispute that either assault would, if it occurred, entail sexual contact. See *Cooks*, 446 Mich at 529 n 33. Under the circumstances of this case, I cannot agree that the assaults were, at least for purposes of CSC-II, conceptually distinct.<sup>2</sup> Because the trial court unambiguously instructed the jury that

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<sup>2</sup> It appears to me that the majority concludes that physically distinct acts are necessarily materially distinct. I respectfully disagree and believe that if our Supreme Court had intended such an automatic equivalence, it would have so stated.

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each verdict must be unanimous as to *that* verdict, I conclude that the general unanimity instruction was proper and sufficient.

As noted, because the majority does not analyze the remainder of defendant's claims on appeal, I likewise decline to set forth an extensive analysis. However, I have reviewed them and I would find them unpersuasive. Defendant's conviction should be affirmed.

/s/ Amy Ronayne Krause

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STATE OF MICHIGAN  
IN THE EATON CIRCUIT COURT

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

HON. JANICE K. CUNNINGHAM

Circuit Court No. 16-020296 FC

v

DAMON EARL WARNER,

Defendant.

---

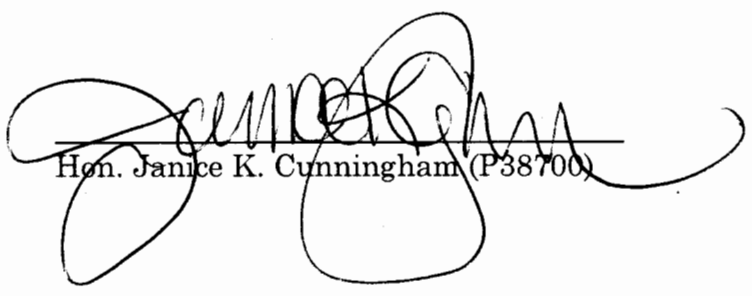
**ORDER VACATING CONVICTION AND SENTENCE**

The Michigan Court of Appeals having issued an opinion reversing Defendant's conviction and remanding the case to this Court for a new trial;

And the Eaton County Prosecutor forgoing an appeal of that decision in the Michigan Supreme Court;

IT IS HEREBY ORDERED that Defendant's conviction and sentence are vacated, and Defendant shall be released from the Michigan Department of Corrections to the Eaton County Sheriff's Department pending a new trial on the original charge or posting of bond.

4/30/19  
Date

  
Hon. Janice K. Cunningham (P38700)

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STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

DAMON EARL WARNER,

Defendant.

File #16-020296-FC

STATE OF MICHIGAN, COUNTY of EATON

**FILED**

**FEB 18 2020**

**DIANA BOSWORTH**  
EATON COUNTY CLERK

STATUS CONFERENCE AND DEFENDANT'S MOTION TO SET BOND

BEFORE THE HONORABLE JANICE K. CUNNINGHAM , CIRCUIT JUDGE

Charlotte, Michigan - Friday, May 17, 2019

APPEARANCES:

For the People:

ADRIANNE VAN LANGEVELDE (P72488)  
KELLY MORTON (P56769)  
Eaton County Prosecutor's Office  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4801

For the Defendant:

GREG HOCKING (P26951)  
303 South Waverly Road, Suite 2  
Lansing, Michigan 48917-3657  
(517) 327-0200

Also present:

ELIZABETH HOOGSTRA  
District Court Probation

Recorded and transcribed by:

Kathy Bond, CSR/CER-2779  
Certified Electronic Recorder  
(517) 543-4327

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WITNESSES: For the People:

None

WITNESSES: For the Defendant:

None

EXHIBITS:

None

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Charlotte, Michigan

Friday, May 17, 2019 - At 11:13 a.m.

(Court and counsel present)

THE COURT: People of the State of Michigan versus  
Damon Warner, file 16-296-FC.

Are they bringing him up?

LAW CLERK: Yes.

(At 11:14 a.m., defendant now present)

THE COURT: Good morning, sir. Raise your right  
hand.

Do you swear to tell the truth, the whole truth, and  
nothing but the truth, so help you God, under penalty of  
perjury?

THE DEFENDANT: Yes.

(At 11:14 a.m., defendant sworn by the Court)

THE COURT: All right, this is the defendant's motion  
to set bond; correct?

MR. HOCKING: It is, Your Honor. It also is --

THE COURT: A status conference, if you will.

MR. HOCKING: His first appearance since the case was  
remanded from the Court of Appeals.

I just mentioned to the prosecutor, my intent today would  
be to ask the Court to set a bond. I'd like to formally  
request a copy of the trial transcripts. I realize that you  
don't have the full file back from the Court of Appeals. And

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1 then, I was going to request that this be reset for a status  
2 conference in June. By then, I'll be -- I've only been on the  
3 case since Monday.

4 THE COURT: Yeah.

5 MR. HOCKING: By then, I'll be up to speed with  
6 regard to all the issues and -- and whether or not there's a  
7 way to resolve it.

8 Oh, I would also state that -- that I did discuss  
9 with -- with my client, and it's -- I don't think it's a matter  
10 that's debatable, but I assume the prosecutor's gonna move to  
11 reinstate Count One, which they nolle prossed without prejudice  
12 pursuant to the deadlocked jury.

13 THE COURT: Ms. Van Langevelde.

14 MS. VAN LANGEVELDE: I understand that the Court  
15 needs to set a bond in this case; however, I'm asking for a  
16 \$500,000 cash or surety bond.

17 As the Court's aware, Mr. Warner has a prior CSC on a  
18 -- on a person 13-years-old. Now he's facing, once again, as  
19 -- as Mr. Hocking indicated, a CSC - First charge, because we  
20 will be reinstating that, because the jury was hung on the CSC  
21 - First, as well as the CSC - Second charge.

22 I believe that bond amount is appropriate given the  
23 risk to the community and the seriousness of the offense, which  
24 a CSC - First is a life offense.

25 THE COURT: But, Mr. Hocking makes the argument in

1 his motion -- I didn't get a response; right?

2 MS. VAN LANGEVELDE: No, we -- and I think we just  
3 got it.

4 MR. HOCKING: There's -- I was only able to get it t  
5 'em by two days ago, Your Honor.

6 THE COURT: Oh, okay.

7 But, he makes the point, when you're talking about  
8 CSC - First, that the jury was deadlocked. So, one of the  
9 issues is that the Court can deny bond, if somebody is charged  
10 with CSC - First, if the Court finds that proof of the  
11 defendant's guilt is evident or the presumption is great.

12 How can -- how can you argue that the defendant's  
13 guilt is evident when a jury was deadlocked?

14 MS. VAN LANGEVELDE: But, they didn't find him not  
15 guilty of that. There were, obviously, jurors who believed the  
16 victim and believed that it happened. They just couldn't come  
17 to a --

18 THE COURT: Well, I --

19 MS. VAN LANGEVELDE: -- unanimous verdict.

20 THE COURT: I think you're -- you're putting the  
21 burden of proof on the defendant. I don't think that's  
22 appropriate.

23 MS. VAN LANGEVELDE: No, I'm -- I believe --

24 THE COURT: That -- that the jury didn't find him  
25 guilty.

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MS. VAN LANGEVELDE: Correct.

THE COURT: That's the issue. Not that he wasn't found innocent. That the jury did not find him guilty because they were deadlocked.

I'm just looking at the court rule, because this is a serious question about whether or not to grant the defendant bond after the jury was deadlocked, and then the Court of Appeals said that the jury instructions, I guess, were not correct. That's a whole 'nother discussion for another day. But --

MS. VAN LANGEVELDE: But, I -- but, they, also, did not find him not guilty. There were jurors on -- they found that they could not reach a unanimous verdict. There were some jurors on --

THE COURT: Right. That means that guilt wasn't evident because you didn't have all 12 people saying, yes, he's guilty.

MS. VAN LANGEVELDE: But, then, we would -- but, I guess, the guilt being evidence (sic) -- I mean, there's -- when you're looking at the allegations when there's a -- there's a -- there hasn't been a trial yet; right? So, that's where we're back to, is now we have to retry both counts of CSC - First and CSC - Second.

THE COURT: All right. Mr. Hocking.

MR. HOCKING: Well, you know, he goes back to the

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1 status quo. He's -- he's presumed innocent.

2 THE COURT: Right.

3 MR. HOCKING: But, when we start analyzing the court  
4 rule -- and I realize she asked for tantamount to no bond, a  
5 half a million dollar bond.

6 I should point out that the bond, while this case was  
7 pending, was 50,000 cash or surety. He did post it.

8 My understanding is he appeared at all proceedings,  
9 was never a threat to anybody, et cetera, et cetera, that he  
10 complied with all those bond conditions.

11 THE COURT: Is there any evidence in the file that he  
12 has not appeared for any -- any court appearance?

13 And then, my second question is -- he did post the  
14 \$50,000 bond originally -- were there any bond violations  
15 during that time?

16 How are you today? What are you doin' over here?

17 UNIDENTIFIED FEMALE: Status conference.

18 THE COURT: Okay. We're gonna take a break, though,  
19 after this. I'm surprised Mr. Freeman isn't throwing things at  
20 me from the galley (sic). They've been waiting.

21 MS. VAN LANGEVELDE: I don't see any, Judge. And I'm  
22 like -- and I'm just looking through the notes.

23 THE COURT: And then, we have a hearing, don't we?  
24 Don't we have a bond violation?

25 Okay, so I'm gonna grant the defendant's request.

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1 And I'm gonna go back to the original bond, on the original  
2 charge, which is the 50,000 cash/surety; correct?

3 MR. HOCKING: It was.

4 THE COURT: That'll be the defendant's bond.

5 And we'll have a status conference on June 21st.

6 I would indicate, though, as a condition of the bond  
7 no contact with anybody that was involved in the first case as  
8 a victim or a witness.

9 Any other conditions that you would like, Ms. Van  
10 Lange --

11 MS. VAN LANGEVELDE: I would ask for a no contact  
12 with any person 16 years or under, because he has that pri --  
13 he has a conviction for a CSC on that 13-year-old, and now we  
14 have, again, allegations of a CSC on a child 13 to 14-years-  
15 old.

16 THE COURT: Isn't -- wasn't the CSC, the facts -- and  
17 I might be confusing cases -- on the 13 -- the conviction, was  
18 that not -- and I know legally it's not possible. But, wasn't  
19 -- was that the consensual one where the people knew about it?  
20 Oh, okay.

21 MS. VAN LANGEVELDE: No.

22 THE COURT: No, it was not.

23 Okay, yeah, let's not --

24 MS. VAN LANGEVELDE: Are we -- we're talking about  
25 the victim in this case was his stepdaughter.



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1 THE COURT: No, I'm talking about the conviction.

2 MS. VAN LANGEVELDE: Oh, that was a --

3 THE COURT: That wasn't the one?

4 MS. VAN LANGEVELDE: That -- that was the -- there  
5 was a girl. There was some -- he was in his twenties. She was  
6 in -- she was a teenager.

7 THE COURT: Right.

8 MS. VAN LANGEVELDE: Yes.

9 THE COURT: And the parents agreed to the  
10 relationship, even though, legally --

11 MS. VAN LANGEVELDE: Yes.

12 THE COURT: -- the person was 13. But, it was a con  
13 -- it was a consensual relationship.

14 Is that right, sir? Is that what --

15 THE DEFENDANT: No.

16 THE COURT: Oh.

17 THE DEFENDANT: No. It was a -- I pled guilty  
18 without a victim. I said I was guilty. That's what happened  
19 19 years ago. They come at me with some other charges. And  
20 they said, well, we can't prosecute you, but if you're willing  
21 to say you're guilty, we will give you attempted third degree,  
22 which that's why I --

23 THE COURT: If you post your bond, where are you  
24 gonna live?

25 THE DEFENDANT: I was gonna live with my wife.

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1 THE COURT: Okay.

2 THE DEFENDANT: I have a stepdaughter that's 16 and  
3 older, and a stepdaughter that's 19.

4 But, on my last bond, there was no conditions on the  
5 bond other than no contact with Miss Giffen, which was no  
6 problem. And I haven't done so, even now, to this day.

7 And I'd also like to say that durin' my issue two  
8 years ago, a lady from CPS, Miss Jerrica --

9 THE COURT: Um-hum.

10 THE DEFENDANT: -- contacted my wife, had a meeting  
11 at the police department with her daughters and herself in  
12 front of this chief of police. And the chief -- and they  
13 agreed that there was no threat, at all. They called me and  
14 apologized. They said, you know, we're not -- we're not gonna  
15 press the issue with your wife because we don't feel that  
16 you're a threat to anybody. And I did have visitation with my  
17 children at that time, which I have, to this day, have had no  
18 contact. I followed every order that was placed in front of  
19 me.

20 MR. HOCKING: May -- may I offer a solution?

21 THE COURT: Yeah.

22 MR. HOCKING: That if -- if the condition is put on  
23 for any child 16 or under, that the only exception would be  
24 that he can be in the presence of his stepdaughter if --

25 THE DEFENDANT: My wife is present.

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1 MR. HOCKING: -- the wife is also present as a third  
2 party.

3 THE COURT: I don't have a problem with that. I'm  
4 not gonna -- yup, that's fine.

5 THE DEFENDANT: Which, by way, when this was all  
6 goin' on two years ago, I never was at my house with my wife's  
7 kids, at all, by myself, at any time, because I -- I'm gonna  
8 regress.

9 MR. HOCKING: Okay, leave it right there.

10 THE COURT: Okay.

11 THE DEFENDANT: Sorry. Sorry about that.

12 THE COURT: Anything else, Ms. Van Langevelde?

13 MS. VAN LANGEVELDE: No.

14 THE COURT: Anything else, Mr. Hocking?

15 MR. HOCKING: No, Your Honor, thank you.

16 MS. VAN LANGEVELDE: Oh, he should be reporting to  
17 District Court, usually on these types of cases --

18 THE COURT: Okay.

19 MS. VAN LANGEVELDE: -- while on bond.

20 THE COURT: Okay, how often do you want him to  
21 report?

22 I don't know. Ms. Hoogstra looks like she's goin'  
23 what.

24 MS. HOOGSTRA: Well, he should just report once a  
25 month.

1 THE COURT: All right. You need to report once a  
2 month to District Court Probation, okay?

3 THE DEFENDANT: Where is that, downstairs?

4 THE COURT: Yeah.

5 THE DEFENDANT: Okay.

6 THE COURT: Do you need me to put anything in writing  
7 for you?

8 It'll be on the bond; right, that he's to report once  
9 a month to District Court Probation?

10 MS. HOOGSTRA: That's correct.

11 MS. VAN LANGEVELDE: Yes.

12 THE DEFENDANT: Yeah, I got to register, too, so.

13 MR. HOCKING: Okay. Right.

14 THE DEFENDANT: So, that all -- yeah.

15 THE COURT: We'll put that on the bond.

16 MS. MORTON: And he -- needs to go --

17 MS. VAN LANGEVELDE: He -- he needs to report, once  
18 he gets released from jail, immediately to set up the  
19 appointment for District Court.

20 MR. HOCKING: Just what I told him.

21 MS. VAN LANGEVELDE: Thank you.

22 THE COURT: Perfect. Thank you.

23 MR. HOCKING: Thank you, Judge.

24 THE COURT: All right, we're taking a break.

25 (At 11:25 a.m., proceedings concluded)

CERTIFICATION OF COURT RECORDER

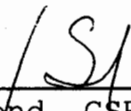
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STATE OF MICHIGAN )

COUNTY OF EATON )

I certify that this transcript consisting of 13 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Friday, May 17, 2019.

Dated: December 30, 2019

  
\_\_\_\_\_  
Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

0803a

STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant.

STATUS CONFERENCE

BEFORE THE HONORABLE JANICE K. CUNNINGHAM , CIRCUIT JUDGE

Charlotte, Michigan - Friday, June 21, 2019

APPEARANCES:

For the People:

ADRIANNE VAN LANGEVELDE (P72488)  
Eaton County Prosecutor's Office  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4801

For the Defendant:

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(800) 392-7311

Recorded and transcribed by: Kathy Bond, CSR/CER-2779  
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*56th Circuit Court  
Charlotte, Michigan*

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WITNESSES: For the People:

None

WITNESSES: For the Defendant:

None

EXHIBITS:

None

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Charlotte, Michigan

Friday, June 21, 2019 - At 9:42 a.m.

(Court, counsel and defendant present)

THE COURT: People of the State of Michigan versus  
Damon Warner, file 16-296-FC.

MR. AMADEO: Good morning, Your Honor. William  
Amadeo, P76194, on behalf of Mr. Warner. I was just retained  
last night.

THE COURT: Okay.

MR. AMADEO: And I did speak to the Public Defender,  
who signed the Substitution of Counsel. And I'm just getting  
up to date on this matter, based on my initial post this  
morning.

THE COURT: Okay. Did you say you filed an  
appearance?

MR. AMADEO: I have it with me. I went to the status  
conference, but I will file it today.

THE COURT: That's fine, okay. Because I had  
appointed Mr. Hocking.

Ms. Van Langevelde, this is your file?

MS. VAN LANGEVELDE: It is. Good morning, Your  
Honor.

THE COURT: Good morning.

All right, well, I -- I -- it looks like I gave him,  
huh, 50,000 cash/surety bond. He's all -- he also was to



1 report to the District Court Probation, and he was not to have  
2 any contact with children under the age of six -- 16, except in  
3 the presence of his wife. Of course, no contact with the  
4 victims or any witnesses in the previous case.

5 I don't see that the defendant has violated any  
6 conditions of his bond.

7 Is that right, Ms. Van Langevelde?

8 MS. VAN LANGEVELDE: Not that I'm aware of. We're  
9 here for status conference. And I --

10 THE COURT: Right.

11 MS. VAN LANGEVELDE: Yes.

12 THE COURT: So, I'm just saying he -- that -- that  
13 his new counsel is asking to move this out to July 17th; right?

14 MR. AMADEO: Actually, Your Honor, I'm in trial July  
15 15th in Detroit. So, I am asking to get the rest of my  
16 discovery. And according to Mr. Hocking, that probably won't  
17 be for another 30 days, at least. There's several DVDs I have  
18 to get, trial transcripts are going to be sent to me, and Mr.  
19 Hocking did not receive all the discovery as of yet.

20 MS. VAN LANGEVELDE: Well, we have the DVDs available  
21 to be picked up upon request. So, if you can --

22 MR. AMADEO: I'll get them today.

23 MS. VAN LANGEVELDE: -- go next door today -- and  
24 then, we can email everything to Mr. Amadeo once we get his  
25 appearance. I know he's gonna file that today.

1 I just want to put on the record our offer, Judge,  
2 today.

3 THE COURT: Okay.

4 MS. VAN LANGEVELDE: And the offer is -- and it's --  
5 and it's my understanding that the offer is being rejected.  
6 And I know Mr. Hocking and I have been in a lot of discussion  
7 about this case, and he put a lot of time into preparing for  
8 today. And I understand that Mr. Amadeo was just retained last  
9 night.

10 That being said, our offer is that, if the defendant  
11 pleads guilty to CSC - Second, with a sentence agreement of 10  
12 to 30 years at MDOC, with credit for whatever he has, we will  
13 not go forward on the CSC - First.

14 It's my understanding that that offer is being  
15 rejected.

16 And so, I am asking for a trial date.

17 THE COURT: Okay. So, sir, you understand that,  
18 currently, you are charged with Criminal Sexual Conduct - First  
19 Degree, and you understand that, if convicted on Count One, the  
20 maximum is life or any term of years, with lifetime monitoring,  
21 and a minimum of 25 years in the Michigan Department of  
22 Corrections. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: You, also, are charged, in Count Two,  
25 with Criminal Sexual Conduct, and there's a -- which is 15

1 years, and there's a Fourth Offense Offender Notice, making  
2 your maximum, on Count Two, also life or any term of years. Do  
3 you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: And so, if you were to go to trial -- if  
6 you go to trial and you're convicted, the minimum, by law, that  
7 I would sentence you to is 25 years, but it could be more. Do  
8 you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: But --

11 MS. VAN LANGEVELDE: Actually, Your Honor, the 25  
12 year mandatory minimum does not apply because she was not under  
13 13.

14 THE COURT: Oh.

15 MS. VAN LANGEVELDE: However, they were in the same  
16 household. So, we, preliminary (sic), scored the guidelines of  
17 CSC - First at 180 to 360 months because he is a habitual.

18 THE COURT: Okay. Do you understand that, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. That's the offer the prosecution  
21 has made today is that they would agree to a sentencing  
22 agreement of 10 to 30 years, and they would not pursue the  
23 First Degree Criminal Sexual Conduct, which we've just gone  
24 over, has 180 to 360, and it does have the mandatory lifetime  
25 monitoring. Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: I understand, this morning, you want to  
3 reject that offer.

4 THE DEFENDANT: Yes.

5 THE COURT: Okay.

6 And when were you retained, sir?

7 MR. AMADEO: I was retained last night.

8 THE COURT: See, I'm gonna set a trial date 'cause I  
9 don't like that. I don't -- I don't know why, sir -- Mr.  
10 Hocking was appointed. He has been working -- or, negotiating  
11 with the prosecutor's office. Mr. Hocking is an excellent  
12 lawyer. You, of course, always have a right to hire your own  
13 lawyer. You don't have a right to hire your own lawyer at the  
14 last minute and then seek an unreasonable delay. So, I'm gonna  
15 set a trial date.

16 And, sir, you can go to the prosecutor's office when  
17 you leave the courtroom. You know where it's at. You can pick  
18 up the disks.

19 Is that right, Ms. Van Langevelde?

20 MS. VAN LANGEVELDE: We can have them made today,  
21 Your Honor.

22 THE COURT: Okay.

23 MR. AMADEO: I will pick them up today, Judge.

24 THE COURT: All right. So, how many days is the  
25 trial gonna take?

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1 MS. VAN LANGEVELDE: I think last time we took three  
2 days. Is that right, Mr. Strong?

3 MR. STRONG: Yup.

4 MS. VAN LANGEVELDE: I would guess about the same,  
5 Your Honor.

6 THE COURT: Okay.

7 MS. VAN LANGEVELDE: And I don't know if it's  
8 possible if we could do what we did before in the last CSC  
9 case, where we picked a jury the Friday before.

10 THE COURT: Yes, I -- that -- that -- that is gonna  
11 be our procedure on CSC cases because --

12 MS. VAN LANGEVELDE: Thank you.

13 THE COURT: -- it allows us to have a more fluid  
14 trial, and I think it's easier for the jurors, also.

15 So, what that means, sir, is that whatever trial date  
16 I'm gonna give you, we're gonna pick the jury the Friday  
17 before.

18 MR. AMADEO: That's fine, Judge.

19 THE COURT: Yeah. And we'll pick 'em, and I give 'em  
20 a recess instruction. And that way, we can start first thing  
21 Monday morning, you know, with -- with opening instructions,  
22 opening statements, et cetera.

23 So, I'm looking at September 9th.

24 MR. AMADEO: I'm in trial in Washtenaw starting  
25 September 3rd, which will be a two week trial, Judge. And

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1 that's a CSC - One in Washtenaw.

2 THE COURT: September 16th.

3 MR. AMADEO: Is there any way we can move it to the  
4 first week of October?

5 THE COURT: No.

6 MR. AMADEO: Okay.

7 THE COURT: I'm not movin' it out that far.

8 MR. AMADEO: Three days, you said, Your Honor?

9 THE COURT: That is what is -- it is believed going  
10 to take.

11 MS. VAN LANGEVELDE: So, we would -- I'm sorry. We  
12 would pick the jury the 13th?

13 THE COURT: Yup.

14 MS. VAN LANGEVELDE: Thank you.

15 MR. AMADEO: Okay. I'm gonna -- I'll put it on my  
16 docket. Obviously, Your Honor, I'll have to work a few things  
17 out, but if that's as far as you'll go. I do need to get my  
18 discovery. I need to see what motions I need to file.

19 I do understand I'm coming in late, but I am trying  
20 to be diligent, Judge.

21 THE COURT: All right, we can do the 23rd, then.  
22 We'll set it for the 23rd. We'll pick the jury on the 20th.

23 MR. AMADEO: I -- I apol -- I have another trial the  
24 23rd. So --

25 THE COURT: Okay.

0812a

1 MR. AMADEO: -- the 16th will have to --

2 THE COURT: Right. Well, I -- that's fine. I -- I  
3 just don't want there to be any issue of you saying that you  
4 didn't have time to be prepared.

5 MR. AMADEO: That's why I'm asking for October,  
6 Judge, 'cause I --

7 THE COURT: Well, I understand that, sir, but you  
8 know, under the Michigan Rules of Professional Conduct, when  
9 you come into a case, you should not take the case if your  
10 calendar doesn't permit you to handle the case.

11 And so, moving this out to October is just really not  
12 acceptable for how long this has been going. And I don't know  
13 if your client informed you of that last night or if you  
14 contacted the prosecutor to see where things were at, but we're  
15 gonna try this case on September 16th. We're gonna pick a jury  
16 on September 13th.

17 That's all for the record.

18 MR. AMADEO: Thank you.

19 MS. VAN LANGEVELDE: Thank you, Your Honor.

20 (At 9:50 a.m., off the record)

21 (At 9:50 a.m., back on the record)

22 THE COURT: Oh, we have to go back on the record.  
23 The final pretrial is going to be September 3rd at three p.m.

24 At the final pretrial, bring your final witness list,  
25 your final exhibit list, and your proposed jury instructions.

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MR. AMADEO: And, Your Honor, do you give motion dates or not on this? Should it just be before that?

THE COURT: Yeah.

MR. AMADEO: Okay.

THE COURT: Just before that. And if you need a motion date, just contact Miss Cook, and -- and we'll -- we'll get you in, okay?

MR. AMADEO: Okay, thank you.

THE COURT: So, as soon as you know that you -- what you need, let us know.

MR. AMADEO: Thank you, Judge.

THE COURT: All right.

(At 9:51 a.m., proceedings concluded)

- - -



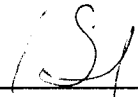
CERTIFICATION OF COURT RECORDER

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STATE OF MICHIGAN )  
COUNTY OF EATON )

I certify that this transcript consisting of 12 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Friday, June 21, 2019.

Dated: December 30, 2019

  
\_\_\_\_\_  
Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

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STATE OF MICHIGAN  
IN THE 56<sup>TH</sup> CIRCUIT COURT FOR EATON COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

V

STATE OF MICHIGAN, COUNTY of EATO: FILED File No. 16-020296-FC

AUG 13 2019

Hon. Janice K. Cunningham

DAMON EARL WARNER,  
Defendant.

DIANA BOSWORTH  
EATON COUNTY CLERK

Adrienne K. Van Langevelde (P72488)  
Eaton County Asst. Prosecutor  
1045 Independence Blvd  
Charlotte, MI 48813  
(517) 543-4801

William Amadeo (P76194)  
Attorney for Defendant  
2500 Packard St., Ste 106  
Ann Arbor, MI 48104  
(800) 392-7311

MOTION TO AMEND THE INFORMATION/ REINSTATE COUNT 1:

CRIMINAL SEXUAL CONDUCT 1<sup>ST</sup> DEGREE

Now Comes, the People of the State of Michigan, by and through its attorney and states for its motion the following:

- 1) A Jury trial was held in this case in June 2017. The jury found the defendant guilty of Count 2: Criminal Sexual Conduct 2<sup>nd</sup> degree but were hung on Count 1: CSC 1<sup>st</sup> degree.
- 2) On August 10, 2017, defendant was sentenced to 10-30 years at MDOC for Criminal sexual conduct 2<sup>nd</sup> degree.
- 3) Based on the sentenced imposed by this Court on Count 2, the People, in consultation with the victim, chose to dismissed count 1 on August 15, 2017 and so Count 1 was dismissed without prejudice.
- 4) On April 30, 2019, the defendant's conviction to count 2: CSC 2<sup>nd</sup> was vacated pending a new trial on the original charge per an order of this Honorable Court.
- 5) MCR 6.112(H) states, "The court before, during, or after trial may permit the prosecutor to amend the information or the notice of intent to seek enhanced


sentence unless the proposed amendment would unfairly surprise or prejudice the defendant.”

- 6) On October 14, 2016, the defendant had a preliminary examination where the case was bound over on two counts—Count 1: CSC 1<sup>st</sup> degree and Count 2: CSC 2<sup>nd</sup> degree. Because defendant has already had a preliminary examination as to the evidence regarding Count 1, there is no necessity for a remand for a preliminary examination. There is also no unfair surprise or prejudice to the defendant as he not only had a preliminary examination on the charges, but also had a full jury trial.
- 7) Re-prosecution after mistrial caused by failure of a jury to reach a verdict does not violate Michigan double jeopardy clause. It also does not violate the Michigan Constitution or the United State Constitution. *People v. Thompson*, 424 Mich. 118, 125-128 (1985).
- 8) As the defendant is being retried on Count 2, it is in the interest of justice to have both counts of CSC tried together as it involves the same victim and defendant.

Wherefore, the People respectfully requests that this Honorable Court GRANT the People’s Motion Amend the Information/Reinstate Count 1: Criminal Sexual Conduct 1<sup>st</sup> degree.

Respectfully Submitted,

Date: August 13, 2019

  
Adrienne K. Van Langevelde (P72488)

0817a

STATE OF MICHIGAN  
IN THE 56<sup>th</sup> CIRCUIT COURT FOR THE COUNTY OF EATON

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

vs

Case No. 16-020296-FC

DAMON EARL WARNER,  
Defendant.

HON. JANICE K. CUNNINGHAM

McManus and Amadeo  
William C. Amadeo (P76194)  
Attorneys for the Defendant  
2500 Packard Street  
Suite 106  
Ann Arbor, MI 48104  
(609)816-9438

STATE OF MICHIGAN, COUNTY of EATON  
**FILED**

**AUG 19 2019**

DIANA BOSWORTH  
EATON COUNTY CLERK

Adrienne K. Van Langvelde  
Eaton County Assistant County Prosecuting Attorney  
1045 Independence Blvd  
Charlotte, Michigan, 48813  
(517) 543-4801

**DEFENDANT'S ANSWER TO MOTION TO AMEND THE  
INFORMATION/REINSTATE COUNT I: CRIMINAL SEXUAL  
CONDUCT 1<sup>ST</sup> DEGREE**

Now comes the Defendant, Damon Earl Warner, by and through his attorney, William C. Amadeo (P76194) and responds to the following and will include a brief in support of their reply:

1. Admitted. This led to a mistrial.
2. Admitted.
3. Admitted in part, denied in part. The dismissal was made as the charge was deemed "not in the interest of justice to pursue at this time" and the only reason for the attempt to reinstate is that the Defendant won his appeal.

4. Admitted.
5. Admitted. While that is the language of the statute the request of the prosecution is being taken out of context and there is a blatant due process violation that the prosecutor is trying to advocate.
6. Denied. While the Defendant was subjected to a preliminary examination in the past, there is new evidence that has been discovered that could include prosecutorial misconduct. When the prosecutor chose to dismiss count I without prejudice they stated it was in the interest of justice. Now, with new witnesses that are prepared to come forward with information that the previous defense counsel had not discovered coupled with the fact that the Defendant has a right to be arraigned again, he is entitled to have this case remanded to the District Court and the opportunity to have a preliminary examination as the defendant has witnesses they would have testified that could display there is a lack of probable cause for the charges presented.
7. Denied. In this circumstance, the Double Jeopardy Clause is violated. The prosecution failed to mention Michigan Court Rule (MCR) 6.417 which speaks to mistrials. The rule states that before ordering a mistrial the must, on the record, give each defendant and that prosecutor an opportunity to comment on the propriety of the order, to state whether party consents or objects, and to suggest alternatives. This was not done in the first trial and hence Double Jeopardy does apply.
8. Denied. To allow another trial based upon MCR 6.417 would violate the Double Jeopardy Clause. Alternatively, to not allow a Defendant to have their case be remanded to district court after a dismissal without prejudice is a shortcut to the Defendant's constitutional rights.

**DEFENDANT'S BRIEF IN SUPPORT OF THEIR ANSWER TO MOTION  
TO AMEND THE INFORMATION/REINSTATE COUNT I: CRIMINAL  
SEXUAL CONDUCT (CSC) 1<sup>ST</sup> DEGREE**

The prosecution wants to reinstate a charge of CSC 1<sup>st</sup> degree and cites MCR 6.112 (H) which will allow her to amend information. What the prosecution fails to realize is MCR 6.417 which covers mistrials. According to this court rule, "Before ordering a mistrial, the court must, on the record, give each defendant and the prosecutor an opportunity to comment on the propriety of the order, to state whether the party consents, and to suggest alternatives."

In the first trial, the mention of a mistrial was brought up by the court but then the jury continued to deliberate. When the mistrial was ordered, there was no opportunity for the defendant to comment, consent or suggest alternatives. Have this rule been followed, a resolution may have occurred that upon the Defendant winning his appeal may not have given the prosecution the opportunity to try to bring redundant prosecution. *See People v. Howard*, docket 153651.


Alternatively, if the court was to refuse to follow the court rule, it is common knowledge that once a charge has been dismissed without prejudice, to reinstate a charge under normal circumstances, the Defendant has the right to be indicted and arraigned again. To sidestep these rights and not allow the matter to be remanded to the District Court would be a miscarriage of justice.

**RELIEF REQUESTED**

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The proper remedy in this matter is for Double Jeopardy to be applied. Alternatively, it would be a travesty of justice for this case to disregard MCR 6.417 and not allow the Defendant to provide the newly discovered evidence that previous counsel had not explored.

Respectfully submitted,

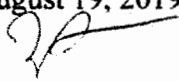
  
William C. Amadeo (P76194)  
McManus and Amadeo  
2500 Packard Street (Suite 106)  
Ann Arbor, Michigan 48104

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**PROOF OF SERVICE**

This answer was served to the court in accordance to the Michigan Court Rules on August 19, 2019.



**William C. Amadeo (P76194)**

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STATE OF MICHIGAN  
IN THE 56<sup>th</sup> CIRCUIT COURT FOR THE COUNTY OF EATON

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

vs

Case No. 16-020296-FC

DAMON EARL WARNER,  
Defendant.

HON. JANICE K. CUNNINGHAM

McManus and Amadeo  
William C. Amadeo (P76194)  
Attorneys for the Defendant  
2500 Packard Street  
Suite 106  
Ann Arbor, MI 48104  
(609)816-9438

STATE OF MICHIGAN, COUNTY of EATON

FILED

AUG 19 2019

DIANA BOSWORTH  
EATON COUNTY CLERK

Adrienne K. Van Langvelde  
Eaton County Assistant County Prosecuting Attorney  
1045 Independence Blvd  
Charlotte, Michigan, 48813  
(517) 543-4801

**DEFENDANT'S MOTION FOR SUPPRESSION OF DECTECTIVE JORDAN VIDEO**  
**OF MAY 5, 2016**

Now comes the Defendant Damon Earn Warner by and through his attorney, William C. Amadeo with his motion to suppress the videotape that was placed into admission at the first trial.

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**DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO SUPPRESS THE  
DETECTIVE JORDAN VIDEO OF MAY 5, 2016**

The Defendant now comes to this honorable court with this motion to suppress the video of May 5, 2016 that was utilized in the first trial that led to a conviction of the Defendant Damon Warner. In what was a disgraceful utilization of the Reid Technique which was utilized to obtain a false confession in this case, the defendant now asks our court to suppress such evidence. We turn to the Michigan Rules of Evidence (MRE) 403 which allows for suppression when the probative value of the evidence is substantially outweighed by the prejudicial effect.

**AUTHORITY FOR SUPPRESSION OF THIS VIDEO**

MRE 403 states that relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

"Rule 403 determinations are best left to a contemporaneous assessment of the presentation, credibility, and effect of testimony" by the trial court. *People v Vander Vliet*, 444 Mich 52, 81 (1993). "In determining admissibility [under MRE 403] the court must balance many factors including: the time necessary for presenting the evidence and the potential for delay; how directly it tends to prove the fact in support of which it is offered; whether it would be a needless presentation of cumulative evidence; how important or trivial the fact sought to be proved is; the potential for confusion of the issues or misleading the jury; and whether the fact sought to be proved can be proved in another way involving fewer harmful collateral effects."

People v Oliphant, 399 Mich 472, 490 (1976).<sup>2</sup> See also People v Blackston, 481 Mich 451, 462 (2008). See Section 2.2(F) for more information on MRE 404.

The Michigan Court of Appeals addressed the issue of “unfair prejudice”: “‘Unfair prejudice’ does not mean ‘damaging.’ Bradbury v Ford Motor Co, 123 Mich App 179, 185 (1983). Any relevant testimony will be damaging to some extent. We believe that the notion of ‘unfair prejudice’ encompasses two concepts. First, the idea of prejudice denotes a situation in which there exists a danger that marginally probative evidence will be given undue or pre-emptive weight by the jury. In other words, where a probability exists that evidence which is minimally damaging in logic will be weighed by the jurors substantially out of proportion to its logically damaging effect, a situation arises in which the danger of ‘prejudice’ exists. Second, the idea of unfairness embodies the further proposition that it would be inequitable to allow the proponent of the evidence to use it. Where a substantial danger of prejudice exists from the admission of particular evidence, unfairness will usually, but not invariably, exist. Unfairness might not exist where, for instance, the critical evidence supporting a party’s position on a key issue raises the danger of prejudice within the meaning of MRE 403 as we have defined this term but the proponent of this evidence has no less prejudicial means by which the substance of this evidence can be admitted.” Sclafani v Peter S Cusimano Inc, 130 Mich App 728, 735-736 (1983).

### **ARGUMENT**

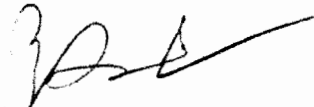
At the first trial, Detective Derrick Jordan admits to using a “technique” that basically lies to the Defendant in order to obtain a confession. What is amazing about the testimony of

this officer that is not qualified as an expert is that he speaks of the video that was taken on May 5, 2016. The videos presented to defense counsel of May 5, 2016 displays 26 minutes of video. Despite having only 26 minutes of video, the officer admits on page 124 of the trial transcript that he spoke to the defendant for a *couple of hours*. In addition to speaking to the defendant for a couple of hours (though it may have been longer as the officer is not certain), the prosecution only submitted 26 minutes of video. We have no idea what was said or done prior to coerced confession. Further, in all of the videos, it appears that the prosecution has cherry-picked what evidence they wish to provide without allowing the defense to examine the interrogations as a whole. The reality is that we do not know what was said or done by the police officers. However, what we have found out later in time is that Damon Warner, our defendant, was highly intoxicated during several of the interviews and no BAC or testing for narcotics was ever done to determine if the statements were valid. This is a case that screams of suppression based upon MRE 403.

**RELIEF REQUESTED**

The defense respectfully asks for suppression of the evidence presented. It was the product of coercion and corruption and this is the central focus of MRE 403. For the reasons and case law stated, this evidence should not be viewed by the jury.

Respectfully submitted,

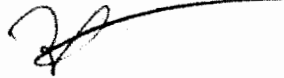


William C. Amadeo (P76194)  
Attorney for the Defendant

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Damon Warner will be prejudiced. For these reasons, the defense respectfully asks that Det/Sgt Derrick Jordan on the Michigan State Police Department not be allowed to testify at trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'W. Amadeo', with a long horizontal flourish extending to the right.

William C. Amadeo (P76194)  
Attorney for the Defendant

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STATE OF MICHIGAN  
IN THE 56<sup>th</sup> CIRCUIT COURT FOR THE COUNTY OF EATON

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

vs Case No. 16-020296-FC

DAMON EARL WARNER,  
Defendant.

HON. JANICE K. CUNNINGHAM

McManus and Amadeo  
William C. Amadeo (P76194)  
Attorneys for the Defendant  
2500 Packard Street  
Suite 106  
Ann Arbor, MI 48104  
(609)816-9438

Adrienne K. Van Langevelde (P72488)  
Eaton County Assistant County Prosecuting Attorney  
1045 Independence Blvd  
Charlotte, Michigan, 48813  
(517)543-4801

STATE OF MICHIGAN, COUNTY of EATON

FILED

AUG 21 2019

DIANA BOSWORTH  
EATON COUNTY CLERK

**DEFENDANT'S MOTION REQUESTING THE COURT TO APPOINT A  
FALSE CONFESSION EXPERT**

NOW COMES the Defendant, DAMON EARL WARNER by and through his attorney, William C. Amadeo of McManus and Amadeo, presents his motion to have missing evidence instruction.

Dated: August 21, 2019

Respectfully submitted,



William C. Amadeo (P76194)

**DEFENDANT'S MOTION REQUESTING THE COURT TO APPOINT A FALSE  
CONFESSION EXPERT**

The Defendant comes before this honorable court asking for the court to appoint an expert in the field of false confession. The defense has found two potential experts that would help to preserve the constitutional rights of the defendant, those experts being Dr. Richard Leo and Dr. Brian Cutler. Either of these experts would speak not to the fact that the Defendant made a false confession but instead would speak to the attributes associated with false confessions and the interviewer bias of Det. Derrick Jordan.

**STATEMENT OF FACTS**

The prosecution has charged the defendant with multiple counts of criminal sexual conduct (CSC) on this delayed reporting case. In the first trial, the prosecution displayed a confession by the defendant. However, as testified to by Det. Derrick Jordan at the first trial, the defendant and the detective spoke for several hours on May 9, 2016 and the confession was the product of coercion as opposed to the free will of the defendant. The confession tape is 26 minutes in length and there has been no explanation for where the rest of the tape is. The confession is incomplete and we ask that an expert testify to other possibilities.

### **WHAT THE JURY DIDN'T HEAR**

At the first trial, the jury did not hear how long the interrogation actually took. Further, there was no display of the Michigan State Police Handbook on interrogations and there was no documentation as to when the defendant signed in at the Michigan State Police station. What we heard was selective and in favor of the prosecution. We did not hear about the promises made to Damon Warner prior to his confession. We did not hear about the emotional threats made to the defendant. What we heard was one-sided and a clear violation of Damon's constitutional rights.

### **ARGUMENT**

The suggestibility concerns in this case are obvious. Det. Jordan actually admits to questioning for Damon for a couple of hours (it is our contention that this was at least 6 hours of questioning). The Detective speaks of "techniques" that he utilizes in obtaining the information that he desires. Further, the Detective also admits that he wrote out the statement of Damon's statements as opposed to having Damon write this because this was "another technique" the the officer, who was not qualified as an expert believed was helpful to his investigation.

#### **B. The Court should appoint an Expert on this matter.**

In *People v Kennedy*, 502 Mich 206, 218; 917 NW2d 355 (2018), our Supreme Court, relying on *Ake v Oklahoma*, 470 US 68; 105 S Ct 1087; 84 L Ed 2d 53 (1985), held that due process requires the trial court to appoint experts for the defense in certain circumstances. Specifically, such appointment will be necessary where the defendant shows " 'a reasonable probability both that an expert would be of assistance to the defense and that denial of expert assistance would result in a fundamentally unfair trial.' " *Kennedy*, 502 Mich at 228, quoting *Moore v Kemp*, 809 F2d 702, 712 (CA 11, 1987). This standard is not intended to be unduly demanding for indigent defendants. "Until an expert is consulted," the Court explained, "a defendant might often be unaware of how, precisely, the expert would aid the defense. If, in such cases, the defendant was required to prove in detail with a high degree of certainty that an expert would benefit the defense, the defendant would essentially be tasked with the impossible: to get an expert, the defendant would need to already know what the expert would say." *Id.* at 226. Still, a defendant must make more than a "bare assertion that an expert would be beneficial." *Id.*

While *Kennedy* specifically addressed the appointment of experts before trial, the same rationale should extend to experts requested on appeal. In fact, the Court in *Ake* explicitly referenced the appointment of experts on appeal: [*Ake*, 470 US at 77 (emphasis added, cleaned). The Court in *Kennedy* quoted this portion of *Ake*, indicating that an indigent defendant is entitled to the "basic tools of an adequate . . . appeal." *Kennedy*, 502 Mich at 214. 16 [F]undamental fairness entitles indigent defendants to an adequate opportunity to present their claims fairly within the adversarial system. To implement this principle, we have focused on identifying the basic tools of an adequate defense or appeal, and we have required that such tools be provided to those defendants who cannot afford to pay for them up.)] *While counsel is retained, the defendant has only been able to pay \$450 of the contract and is now indigent. Defendant counsel has not asked to withdraw as he believes that Damon Warner deserves the best possible defense. There is no question that Damon Warner is an indigent man that needs the court to appoint such an expert to preserve his freedom.*

Further, as stated above, the *Kennedy* Court held that the appointment of defense experts is a matter of due process.

#### **C. The Prosecution has retained an expert to support their case.**

The state has retained Thomas Cottrell to help to explain the delayed in reporting. It would be fundamental unfairness if the prosecution is allowed to have an expert paid for by the state without affording the Defendant the same option.

**RELIEF REQUESTED**

0829a

We respectfully ask the court to appoint a false confession expert to explain that the confession obtained by the Michigan State Police displayed attributes of coercion. We ask our court to appoint a false confession expert to preserve the constitutional protection of the defendant.

Respectfully submitted,

William C. Amadeo (P76194)

McManus and Amadeo


2500 Packard Street

Suite 106

Ann Arbor, Michigan 48104

**PROOF OF SERVICE**

This motion was filed with the court, Judge Cunningham and the prosecution on August 21, 2019 and served to the court and the prosecuting attorney.

---

William C. Amadeo (P76194)



STATE OF MICHIGAN  
IN THE 56<sup>TH</sup> CIRCUIT COURT FOR EATON COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

V

File No. 16-020296-FC

DAMON EARL WARNER,  
Defendant.

Hon. Janice K. Cunningham

STATE of MICHIGAN, COUNTY of EATON  
**FILED**

---

Adrienne K. Van Langevelde (P72488)  
Eaton County Asst. Prosecutor  
1045 Independence Blvd  
Charlotte, MI 48813  
(517) 543-4801

---

William Amadio (P72194)  
Attorney for Defendant  
2500 Packard St #106  
Ann Arbor, MI 48106  
(800) 392-7311

**AUG 30 2019**  
**DIANA BOSWORTH**  
EATON COUNTY CLERK

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION REQUESTING THE  
COURT TO APPOINT A FALSE CONFESSION EXPERT

NOW COMES, the People of the State of Michigan, by and through its attorney and states for its response the following:

The Defense has requested this Honorable Court to appoint an expert in false confessions to explain that confessions by the Michigan State Police display attributes of coercion, and specifically in this case. Defense, however, completely ignores the case of *People v. Kowalski*, 492 Mich 106 (2012).

In *Kowalski*, the Michigan Supreme Court considered whether expert witness testimony regarding interrogation techniques and psychological factors claimed to generate false confessions is admissible under MRE 702 and MRE 403 and whether exclusion of this testimony violates the Sixth Amendment right to present a

defense.<sup>1</sup> The Court held that the circuit court in *Kowalski* did not abuse its discretion by excluding this testimony, as the basis of the expert testimony was not reliable.<sup>2</sup> In the *Kowalski* case, defense filed a notice to call two proposed experts, a Dr. Richard Leo and a Dr. Jeffrey Wendt.<sup>3</sup> Dr. Leo's proposed testimony was regarding police interrogation techniques and the existence of false confessions.<sup>4</sup> Dr. Wendt's proposed testimony was regarding psychological testing of the defendant and his opinion as to the defendant's mental state during police questioning and that the defendant's confession were consistent with the literature on false confessions.<sup>5</sup>

The Supreme Court concluded that both doctor's proposed testimony regarding the research of false confessions failed MRE 702.<sup>6</sup> The Court criticized Dr. Leo's methodology, the inadequacies of his data, and found it unreliable and therefore, inadmissible.<sup>7</sup> Additionally, the Supreme Court held that exclusion of the expert testimony on false confession research does not deny defendant his constitutional right to present a defense.<sup>8</sup>

In this case, the defense has proposed two names of two possible experts, Dr. Richard Leo and Dr. Brian Cutler. It was Dr. Leo's testimony in the *Kowalski* case that was specifically excluded. Additionally, the defense has not provided a

---

<sup>1</sup> *People v. Kowalski*, 492 Mich 106, 110 (2012).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 111.

<sup>4</sup> *Id.* at 112.

<sup>5</sup> *Id.* at 112.

<sup>6</sup> *Id.* at 134.

<sup>7</sup> *Id.* at 134-135.

<sup>8</sup> *Id.* at 141.

Curriculum Vitea for either of these proposed experts. Defense states that his proposed experts would speak to the attributes associated with false confessions and interviewer bias of Det./Sgt Jordan, however, again *Kowalski*, Dr. Leo's proposed testimony was found to be unreliable and, therefore, inadmissible.

Therefore, the People respectfully request this Honorable Court DENY the defendant's motion to appoint an expert witness on false confessions.

Respectfully Submitted,

Date: August 30, 2019



Adrienne K. Van Langevelde (P72488)

0833a

2016003234 AKV

<b>STATE OF MICHIGAN</b> 56A JUDICIAL DISTRICT 56th JUDICIAL CIRCUIT		<b>AMENDED INFORMATION</b>		<b>CASE NO.: 16-020296-FC</b> <b>POLICE: 23ECSD 16-352</b> <b>DISTRICT: 16-1411-FY</b> <b>CIRCUIT:</b>	
District Court ORI: MI- MI230025J 1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500		STATE OF MICHIGAN, COUNTY OF EATON 1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500			
<b>THE PEOPLE OF THE</b>		Defendant's name and address <b>V Damon Earl Warner W/M</b> <b>AKA Damon Huff</b> <b>5480 W Butterfield Hwy</b> <b>OLIVET, MI, 49076</b>		Victim or complainant	
<b>STATE OF MICHIGAN</b>				Complaining Witness	
Co-defendant(s)				Date: On or about <b>SPRING-SUMMER 2012</b>	
City/Twp./Village <b>City of Olivet</b>	County in Michigan <b>EATON</b>	Defendant TCN <b>U916532524J</b>	Defendant CTN <b>23-16003234-01</b>	Defendant SID <b>1712924T</b>	Defendant DOB <b>10/10/1974</b>
Police agency report no. <b>23ECSD 16-352</b>	Charge <b>See below</b>	DLN Type:	Vehicle Type	Defendant DLN <b>W656135162780</b>	

**SEP 18 2019**  
**DIANA BOSWORTH**  
**EATON COUNTY CLERK**

[ ] A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.

Witnesses

**Detective James Maltby**  
**Sharon Giffen**  
**Corey Wood**

**Corey Wood**  
**James Giffen**  
**Det/Sgt Josh Ivey**

**D/Sgt Derrick Jordan, NP16-88**  
**Pearl Giffen**  
**Thomas Cottrell**

**STATE OF MICHIGAN, COUNTY OF EATON**

**IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:** The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described above, the defendant:

**COUNT 1: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE (Relationship)**

did engage in sexual penetration to-wit: digital-vaginal, with a child who was at least 13 but less than 16 years of age and the defendant and victim were members of the same household; contrary to MCL 750.520b(1)(b). [750.520B1B]

**SORA NOTICE**

This is a Tier III Offense under the Sex Offender Registration Act (SORA) unless the court finds that the victim was between the ages of 13 to 15 inclusive, consented to the conduct, and the defendant was not more than 4 years older than the victim. MCL 28.722(w)(iv).

**HIV/STD TESTING NOTICE**

Take notice that pursuant to MCL 333.5129, upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.

**FELONY: Life;** mandatory lifetime electronic monitoring; mandatory AIDS/STD testing; DNA to be taken upon arrest. The Court may impose a consecutive sentence under MCL 750.520b(3).

**COUNT 2: CRIMINAL SEXUAL CONDUCT - SECOND DEGREE (Relationship)**

did engage in sexual contact with: a child who was at least 13 but less than 16 years of age, and the defendant and victim were members of the same household; contrary to MCL 750.520c(1)(b). [750.520C1B]

**SORA NOTICE**

This is a Tier II offense under the Sex Offender Registration Act (SORA). It is a Tier III offense if the defendant has a prior conviction for a Tier II offense. MCL 28.722(u)+(v).

**HIV/STD TESTING NOTICE**

Take notice that pursuant to MCL 333.5129, upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.; contrary to MCL 750.520c(1)(b). [750.520C1B]

**FELONY: 15 years;** mandatory AIDS/STD testing; DNA to be taken upon arrest.

Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling

samples.

**HABITUAL OFFENDER - THIRD OFFENSE  
NOTICE**

Take notice that the defendant was twice previously convicted of a felony or an attempt to commit a felony in that on or about 03/12/2001, he or she was convicted of the offense of Attempted-Criminal Sexual Conduct-3rd Degree (Force or Coercion) in violation of 750.520D1B in the 37th Circuit Court for Calhoun County, State of Michigan;

And on or about 12/10/1993, he or she was convicted of the offense of Attempted-Forgery in violation of 750.248 in the 37th Circuit Court for Calhoun County, State of Michigan.

Therefore, defendant is subject to the penalties provided by MCL 769.11. [769.11]

**PENALTY: COUNT 1 - LIFE  
COUNT 2 - 30 YEARS**

and against the peace and dignity of the State of Michigan.

9-3-19  
Date

Prosecuting Attorney

By: Adrienne K. Van Langevelde  
Adrienne K. Van Langevelde (P72488)

MC 200 (3615) FELONY SET, Information

MCL 764.1 et seq., MCL 766.1 et seq., MCL 767.1 et seq., MCR6.110

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STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant./

FINAL PRETRIAL AND MOTIONS

BEFORE THE HONORABLE JANICE K. CUNNINGHAM , CIRCUIT JUDGE

Charlotte, Michigan - Tuesday, September 3, 2019

APPEARANCES:

For the People:

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Certified Electronic Recorder  
(517) 543-4327

56th Circuit Court  
Charlotte, Michigan

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EXHIBITS:

None

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Charlotte, Michigan

Tuesday, September 3, 2019 - At 10:26 a.m.

(Court and counsel present)

THE COURT: People of the State of Mich -- please be seated. People of the State of Michigan versus Damon Earl Warner -- Warner, file number 16-296-FC.

Is your client here?

MR. AMADEO: He is, Your Honor.

THE COURT: Well, he needs to come forward and sit at the table.

THE COURT: We have so many motions, that I don't really want to have to go through the process of deciding which are so significant that the defendant has to be present. I want him present at all motions.

MR. AMADEO: Yes, Your Honor.

THE COURT: So that we don't have an issue.

And that's for today. And don't we have some scheduled for next week?

LAW CLERK: Yes.

THE COURT: Okay, everybody understand?

MR. AMADEO: Yes, Your Honor.

THE COURT: Excellent.

All right, so, we have Ms. Morton and Ms. Van Langevelde here on behalf of the People. We have Mr. Amadeo and I'm assuming Mr. McManus.



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1 MR. AMADEO: Mr. Winter.

2 MR. WINTER: Your Honor, I've been called a lot of  
3 things, but that's not one of 'em.

4 THE COURT: Okay.

5 MR. WINTER: My name is Peter Winter, Your Honor.

6 THE COURT: All right. And you are with Mr. Amadeo's  
7 firm?

8 MR. WINTER: Do I have to admit that?

9 THE COURT: You do.

10 MR. WINTER: Okay, then I admit it.

11 THE COURT: Okay.

12 Mr. Warner, raise your right hand.

13 Do you swear to tell the truth, the whole truth, and  
14 nothing but the truth, so help you God, under penalty of  
15 perjury?

16 THE DEFENDANT: Yes.

17 (At 10:27 a.m., defendant sworn by the Court)

18 THE COURT: Okay. So, we have five motions for the  
19 Court to decide this lovely morning. We're gonna do this  
20 pretty methodically. Let me find my notes. Here we go.

21 The first motion is the People's motion to amend the  
22 Information and reinstate Count One, Criminal Sexual Conduct -  
23 First degree.

24 I would first note, before we get into these motions,  
25 that all motions and responses have been reviewed, and to the

1 extent I thought necessary, a review of case law. When we get  
2 to that part, I'll remind everybody of the cases that were  
3 reviewed. And, of course, a review of both the court rules and  
4 the Rules of Evidence.

5 So, oral argument should be limited, if possible, to  
6 the salient points because, of course, both parties' motions  
7 are considered part of the court record.

8 And so, what we have here is the People are asking,  
9 pursuant so MCR 6.112(H), that the -- that to allow the  
10 Information to be amended to add back in Criminal Sexual  
11 Conduct - First Degree. The defendant opposes it, claiming  
12 it's not in the interest of justice, and that the only reason  
13 to reinstate it is that the defendant won his appeal.

14 The defendant was subject to a preliminary  
15 examination, but they claim that there's new evidence that's  
16 been discovered, and that had that new evidence been presented  
17 -- I guess, it's two-fold, that the defendant is saying that  
18 double jeopardy applies because of how the dismissal was done  
19 pursuant to 6.417. If double jeopardy doesn't apply, then  
20 they're saying, in -- in the interest of justice, it shouldn't  
21 be amended. And, finally, that if the Court considers it, then  
22 the defendant is entitled to be arraigned and to go back and  
23 have a preliminary examination in District Court.

24 Mr. -- is it Amadeo?

25 MR. AMADEO: Yes, Your Honor.

1 THE COURT: Mr. Amadeo, is that a correct statement?

2 MR. AMADEO: That is, Your Honor.

3 THE COURT: Okay. So, go ahead -- who's gonna speak  
4 on this motion?

5 MS. VAN LANGEVELDE: I am, Your Honor. Thank you.

6 THE COURT: Go ahead, Ms. Van Langevelde, of  
7 addressing the defendant's opposition to that motion.

8 MS. VAN LANGEVELDE: Well, Your Honor, I -- I -- any  
9 issue, as far as new evidence, the trial would cure that. Any  
10 defect would be cured by trial, so that's not really an issue.

11 We've had, as I stated -- and -- and I don't really  
12 have a whole lot to add to my motion, Your Honor. We've had  
13 not only a prelim in this case but a full trial. I'm not aware  
14 that any of the allegations that Pearl has -- or, testimony  
15 that Pearl has already testified to has changed or different.

16 And so, based on the court rule and also the case of  
17 People v Thompson, I believe that the Court should allow the  
18 reinstatement of Count One.

19 The reason why we ended up dismissing Count One is  
20 because, in consultation with the victim, she was satisfied  
21 with Your Honor's sentence and thought that that was a just  
22 sentenced based -- and, at that point, didn't want to go  
23 through another trial.

24 And so, we -- we felt that, at that time, it was in  
25 the interest of justice to dismiss that count.

1           However, now that the case has come back and we have  
2 to do a new trial, and also consultation with the victim, if  
3 we're going to trial, all of the acts that the defendant is  
4 alleged to have committed against this victim should go to  
5 trial before the jury.

6           And so, we're asking that the Court allow that  
7 reinstatement of Count One, which is permissible. Thank you.

8           THE COURT: I'm just trying to -- so, once it -- the  
9 Court of Appeals -- okay, Michigan issued an opinion reversing  
10 -- this is a procedural question that either party can answer.  
11 So, the -- once the Court of Appeals said that it had to be  
12 remanded back, we did enter an order vacating the conviction;  
13 correct?

14           MS. VAN LANGEVELDE: You did, Your Honor.

15           THE COURT: And then, the prosecutor re -- decided to  
16 go forward and retry the defendant; is that correct?

17           MS. VAN LANGEVELDE: Correct.

18           THE COURT: I mean, I know that's correct. I'm just  
19 makin' a record.

20           MS. VAN LANGEVELDE: Oh, yes. I'm sorry.

21           THE COURT: So, what -- what document is used to do  
22 that? Well, in other words, are we relying on the original  
23 information?

24           MS. VAN LANGEVELDE: Yes. Yes, I believe that we  
25 are.

1 THE COURT: So, if we're relying on the original  
2 Information, why does it have to be amended? Because the  
3 original Information had both counts.

4 MS. VAN LANGEVELDE: You're not wrong, Your Honor.  
5 You're right. But -- but, we have to reinstate it because we  
6 did issue a nolle pros after he was sentenced.

7 THE COURT: Here's one of the things I'm trying to  
8 get at, is, on June 21st, Mr. Amadeo finalized -- filed his  
9 Appearance, Notice of Appearance, and Waiver of Arraignment,  
10 and Demand for Discovery.

11 Is that Waiver of Arraignment considered for the  
12 Information? What is he waiving if there hasn't been an  
13 Information provided? I would assume he's waiving arraignment  
14 on the Information.

15 Mr. Amadeo, go ahead.

16 MR. AMADEO: That's not correct, Your Honor. What I  
17 was waiving there is that we were in District Court, my client,  
18 obviously, would plead not guilty; i.e., stand mute, if that  
19 was the case.

20 The reality here is 6.417 clearly says, if a mistrial  
21 is ordered, we need commentary from both sides, which did not  
22 occur at the first trial.

23 THE COURT: Well, sure it did. Mr. Carter had the  
24 opportunity. According to the transcript, there was a  
25 discussion on the record, and the defense counsel chose not to

1 say anything on the record. But, clearly, there was a lot of  
2 discussion. And, clearly, the defendant wanted a mistrial.

3 So, I don't know what you're referring to, but that  
4 is a bogus argument that has no merit.

5 So, what I'm referring to is you didn't file it in  
6 District Court. You filed it in Circuit Court. You filed your  
7 appearance, Notice of Appearance, Waiver of Arraignment, and  
8 Demand for Discovery on June 21st.

9 So, I was a little confused to read in your argument  
10 that you were saying, well, he has a right to be arraigned.  
11 And it's like, well, you waived all that. He waived that in  
12 Circuit Court.

13 So, to the Court, I would -- regardless, I would --  
14 this is -- the bottom line is -- here's the question, is that  
15 what the Court is -- is going to allow reinstatement of Count  
16 One, 'cause that is consistent with Michigan law. It is not  
17 proper to cite an argument and not cite authority. The People  
18 have cited authority, People versus Thompson, 424 Mich 118,  
19 where the Supreme Court, in a published decision, obviously,  
20 specifically said they are not aware of any United -- United  
21 States Supreme Court decision holding that retrial, following a  
22 properly declared hung mistrial, violates the federal due  
23 process clause. Likewise, this court has never held that such  
24 a retrial violates the Constitution. And, finally, while there  
25 may be cases in which repeated retrials, after repeated

1 deadlock, might -- and I stress might -- fund -- be  
2 fundamentally unfair so as to violate due process, it did not  
3 in People versus Thomas (sic), and that was after a third  
4 trial.

5 So, I believe that the People are correct, that the  
6 prosecutor is entitled to reinstate Criminal Sexual Conduct -  
7 First Degree. And so, the Information is amended.

8 What I don't have, from either side, is any authority  
9 on whether or not -- and I believe the waiver of the  
10 arraignment definitely relates to Count Two of the Information.  
11 There's no question that, on his client's behalf, Mr. Amadeo  
12 did that. I don't have any authority that tells me if I rein  
13 -- in reinstating Count One, which is the Court's ruling,  
14 whether the defendant is entitled, again, to be re-arraigned  
15 and have any type of a preliminary exam.

16 MS. VAN LANGEVELDE: We've already had the  
17 preliminary exam, and he -- there is a waiver from that.

18 THE COURT: So that counts for this. That's all --

19 MS. VAN LANGEVELDE: Yes.

20 THE COURT: -- I'm asking for --

21 MS. VAN LANGEVELDE: Yes, it does, Your Honor. It  
22 does.

23 THE COURT: -- procedurally. Okay.

24 MS. VAN LANGEVELDE: It does. I apologize. I wasn't  
25 understanding.

1 THE COURT: All right. Well, if you didn't  
2 understand, that's on me because I didn't articulate my  
3 question.

4 MR. WINTER: Your Honor, if I may.

5 THE COURT: Go ahead. I'm sorry, what was your name  
6 again?

7 MR. WINTER: My name is Peter Winter.

8 THE COURT: Go ahead, Mr. Winter. I'm sorry. I'll  
9 write that down. That was --

10 MR. WINTER: That's -- that's okay.

11 THE COURT: -- bad on my part.

12 MR. WINTER: I've been called a lot of things.

13 THE COURT: Go ahead, Mr. Winter.

14 MR. WINTER: Your Honor, I -- I think it's important  
15 that we distinguish here what's going on, because I think we  
16 have two different situations.

17 At the time that Mr. Amadeo filed his Appearance, the  
18 only thing that was of record was the trial on CSC - Two that  
19 was --

20 THE COURT: I agree. That's what I just said. So,  
21 he clearly waived arraignment on that.

22 MR. WINTER: Exactly. So, there wasn't any intent,  
23 at that point, to -- to waive anything with regard to CSC -  
24 One. I think that we have two different questions here because  
25 there was a mistrial on One, but, on Two, there was a -- a



1 verdict, which was reversed.

2 Now -- and -- and there was a nolle pros. It seems,  
3 to me, that when you nolle pros, you got to go back to -- to  
4 point one. You can't just go back and say, hey, we're  
5 reinstating the charge. I don't think that's really  
6 appropriate because the -- the -- that part of it was  
7 dismissed.

8 Now, I'm only speaking -- nobody's arguing about, I  
9 don't -- I'm not gonna make an argument other than what Mr.  
10 Amadeo has about CSC - Two. But as the CSC - One, there's a  
11 whole different situation. You had a -- a dismissal, a nolle  
12 pros.

13 THE COURT: What is the proffer of new evidence that  
14 you would have? Because I -- I was intrigued by that argument,  
15 saying one of the reasons is that the prosecutor actually  
16 dismissed Count One, and now we have new evidence. So, we're  
17 entitled to be arraigned and have a new preliminary exam,  
18 because it's possible the District Court Judge may find that  
19 there isn't probable cause to believe a crime was committed or  
20 that the defendant committed the crime. What is -- I need an  
21 offer of proof on that. Go ahead.

22 MR. WINTER: I think -- I think there's an offer of  
23 proof, Your Honor, as to the credibility, which I'm not sure  
24 would -- would persuade the magistrate or District Court Judge  
25 as to make a different decision. But there -- but we -- if I

1 might, from my understanding, Mr. Carter did not interview any  
2 of the witnesses before he put them on. Mr. Amadeo has done --

3 THE COURT: Wait a minute. You just said, on the  
4 record, that you don't think there's any witnesses that would  
5 result in the magistrate --

6 MR. WINTER: No, no.

7 THE COURT: -- making a different decision.

8 MR. WINTER: I didn't. I'm sorry, Your Honor. If I  
9 said that, I didn't mean to say that.

10 THE COURT: It's what you said, so.

11 MR. WINTER: I think I said that I'm not sure that it  
12 would be persuasive, but I think that we should have a chance  
13 to put that before the magistrate, Your Honor.

14 THE COURT: Well, I don't believe that you're  
15 entitled to another preliminary examination because you didn't  
16 like how the defense counsel conducted the case.

17 MR. WINTER: I -- I'm --

18 THE COURT: The -- the -- the case law does not  
19 support that.

20 MR. WINTER: I'm not -- I'm not -- I am not saying  
21 that that would be the reason. You asked me -- you asked us --

22 THE COURT: My question is very simple. And this is  
23 gonna be a very long morning, since we're only on the first  
24 motion. It is your brief that said there were new witnesses.

25 MR. WINTER: Yes, Your Honor.

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THE COURT: It says, specifically:

"New witnesses prepared to come forward with new information."

Tell me what that is.

MR. WINTER: As to the credibility of -- of -- I think Mr. Amadeo can speak to that because he has spoken --

THE COURT: Who is the witness? What is the name of the witness? You can't just make this statement.

MR. AMADEO: There's two --

THE COURT: You're saying there's new evidence. Tell me what it is. A proffer means you say witness x is gonna say y. Go ahead.

MR. AMADEO: Witness Austin Walsh is going to testify that Pearl Giffen gave him a different version of events, and they were married at the time. Robert Giffen, who is the brother of Pearl Giffen, will also provide testimony that Pearl lied in the forensic interview about his interaction on the day she was taken to her biological father's house. These are two individuals that have close and intimate knowledge of Pearl Giffen, and they're critical of my case, Your Honor.

THE COURT: Thank you very much. I appreciate it. That's all I wanted was what are these new witnesses.

So, I still think I'm back to the same question, Ms. Van Langevelde. Where does it state that, after a prosecutor has issued a no -- a nolle pros, that it can just say, okay,

1 with the law, Judge, reinstate it? Why don't we have to have  
2 the Court say, yeah, you can amend the Information, but, as to  
3 Count One, this defendant has to be arraigned and there needs  
4 to be another preliminary examination, as to Count One only?  
5 That's all we're talking about --

6 MS. VAN LANGEVELDE: Right.

7 THE COURT: -- not Count Two.

8 MS. VAN LANGEVELDE: So, he's already had that  
9 preliminary examination, Judge, as -- as you know. And so, the  
10 witnesses that are proposed don't have to do with probable  
11 cause. The witness that we have is Pearl Giffen, who's already  
12 testified, who -- the only people that were there, at the time,  
13 were Pearl and the defendant. These other witnesses are,  
14 essentially, impeachment witnesses --

15 THE COURT: Okay.

16 MS. VAN LANGEVELDE: -- that, obviously, would be  
17 brought and -- and may have something at trial to go to  
18 credibility of the witness, which would be in front of the  
19 jury.

20 But as far as probable cause goes, Pearl is the  
21 witness for probable cause. And he's already had the  
22 preliminary examination as to that count. So, he's already had  
23 the Court bind over and find probable cause. So, he's not re-  
24 entitled to that.

25 THE COURT: Okay, but that didn't answer my question

1 of whether or not there still has to be an arraignment.

2 I understand what you're saying about reinstatement,  
3 but this is what I'm getting caught up on, where the  
4 defendant's argument makes a tad bit of sense, but I -- but --  
5 but -- but it would be, I guess, to be arraigned here, in  
6 Circuit Court. Is dismissal without prejudice simply means  
7 that the prosecution has agreed to dismiss the case, but it's  
8 understood that they could choose to refile. And refile and  
9 reinstate, to me, are not the same thing.

10 MR. WINTER: Exactly. Thank you.

11 MS. VAN LANGEVELDE: But --

12 THE COURT: Okay, well, you don't need to talk out  
13 loud when I'm talking.

14 MR. WINTER: I'm sorry, Your Honor.

15 THE COURT: That's okay. It's hard for the court  
16 recorder to --

17 MR. WINTER: I -- I --

18 THE COURT: -- hear on the video.

19 MR. WINTER: I'm old, I talk to myself.

20 THE COURT: Well, I think we're all gettin' there.  
21 So, I don't think there's any question that the  
22 prosecution gets to amend the information and add Count One.  
23 The question is whether I need to arraign the defendant this  
24 mor -- this afternoon.

25 I don't disagree that I don't think the proffer of

1 Austin Walsh and Mr. Griffen (sic) goes to the question on the  
2 preliminary examination. So, the finding would stand by the  
3 District Court Judge to waive it up, but I think he has to be  
4 re-arraigned.

5 MS. VAN LANGEVELDE: So, I can file an Amended  
6 Information today and get that -- or, if he is now -- right --  
7 I'll work on that right now, so that you can arraign him on  
8 that.

9 THE COURT: While we're still here.

10 MS. VAN LANGEVELDE: Yes.

11 THE COURT: So, the ruling of the Court is that,  
12 first of all, that the -- a second trial does not -- the -- the  
13 ruling of the Court is that the prosecutor is entitled to amend  
14 their Information to add Count One. There is no disagreement  
15 with the defendant as to Count Two, in that the arraignment had  
16 been waived.

17 The Court does not find persuasive the defendant's  
18 argument that the two new witnesses that they wish to call  
19 would, in any way, affect or result in any different outcome as  
20 to the preliminary examination, that these two witnesses go to  
21 the credibility of the victim and would be there for  
22 impeachment as to whether -- well, that's what they would be;  
23 they would be impeachment witnesses.

24 So, I agree with Mr. Winter, which is, basically,  
25 what he said at the beginning is he doesn't think they would

1 make a difference.

2 So, get me an amended Count One. I'll arraign the  
3 defendant while he's here. That issue is resolved.

4 I already addressed 6.417. I believe the transcript  
5 shows that that was handled appropriately. And I think the  
6 other portion of the defense argument is overreaching of what's  
7 required by 6.417 when there's a mistrial and that the  
8 defendant wanted the mistrial.

9 That takes us to two. Defendant has a motion for  
10 additional discovery to compel the complainant for submission  
11 of a psychological exam.

12 So, this involves a Stanaway question. And -- and  
13 the burden is on the defendant to make a required showing, as  
14 required by Stanaway, and cannot be on a fishing expedition  
15 (sic). As we all know, pursuant to 6.201(C)(2):

16 "The defendant has to demonstrate a good-faith  
17 belief, grounded in articulable fact, that there is a  
18 reasonable probability that records protected by privilege  
19 are likely to contain material information necessary to  
20 the defense. If the" -- "if the defense does that, then  
21 the Court would conduct an in-camera inspection of those  
22 records."

23 Go ahead, Mr. Amadeo.

24 MR. AMADEO: Your Honor, I'll be very brief. I'll  
25 stand behind the merits of my motion.

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The only thing I will add is Miss Giffen was constantly in trouble at school, and she was under psychiatric care prior to making these allegations.

For that reason, I think it's appropriate that you view the records to see if there was a motive for bringing these allegations. And that's all I have to add. Thank you.

THE COURT: Well, maybe -- okay, hang on.

Go ahead. Who's arguing this?

MS. MORTON: I am.

THE COURT: Go ahead, Ms. Morton.

MS. MORTON: Well, Judge, first of all, everything that Mr. Amadeo just said, none of that is mentioned anywhere in the motion.

THE COURT: Right.

MS. MORTON: But even so, it still does not rise to the level of specificity required by Stanaway, which would be, basically, we know that Pearl Giffen talked to Dr. Smith about this case and/or is receiving treatment regarding what happened in this case from Dr. Smith; and therefore, we want the Court to look at the records.

And I think it's just that lack of specificity throughout the motion that it leads us to a denial of this motion.

I've answered each one of his -- each one of his reasons, I guess, for wanting these -- these records, and none



1 of them are specific, in any way.

2 First of all, he has never identified a doctor whose  
3 records he wants. And it'd be -- there is not a time frame  
4 listed.

5 And under this motion, basically, he's asking for all  
6 records, ever, of Pearl Giffen.

7 THE COURT: Well, wasn't there asked -- a request for  
8 a psychological evaluation?

9 MS. MORTON: There was a -- well, that's in the  
10 title, but there is no --

11 THE COURT: But nothing's in there. So, that's  
12 abandoned, as far as the Court's concerned; correct?

13 MS. MORTON: As far as I'm concerned --

14 THE COURT: There's no lay --

15 MS. MORTON: -- there is no authority cited.

16 THE COURT: There was no legal basis argued, okay.

17 MS. MORTON: So -- so, because that wasn't argued, I  
18 did not answer it. I think I put that --

19 THE COURT: Right.

20 MS. MORTON: -- in my mo --

21 THE COURT: Correct.

22 MS. MORTON: -- in my answer.

23 So, if you have specific questions about any of the  
24 reasons or my responses, I'm happy to answer them. But, I -- I  
25 just don't -- at this -- I don't think he's been specific

1 enough, in light of what Stanaway requires.

2 And I think it's important, just like they point out  
3 in Stanaway, to remember that Miss Giffen is -- she is entitled  
4 to privacy of her records, even from the Court. And this idea  
5 that the Court looking at them is somehow less of an invasion  
6 of her privacy is just not accepted by our appellate courts.

7 And so, we're, obviously, asking that you deny this  
8 motion.

9 THE COURT: Okay. Well, as I said, the defendant has  
10 to demonstrate a good-faith belief, grounded in articulable  
11 fact, that there's a reasonable probability that the records  
12 protected by privilege are likely to contain information. Also  
13 woven into this has to do with a miss -- Mr. Cottrell  
14 testifying. So --

15 MS. MORTON: Judge, I would just note that, on that  
16 issue, when he lists that as a somehow statement by the People  
17 that she has mental health issues because we've listed a mental  
18 health professional --

19 THE COURT: Right.

20 MS. MORTON: -- the two do not logically connect.

21 THE COURT: Right.

22 MS. MORTON: That witness is merely to talk about, in  
23 general, symptoms of children who have experienced --

24 THE COURT: Correct.

25 MS. MORTON: -- child sexual abuse, and not anything

1 specific --

2 THE COURT: And that's what I was --

3 MS. MORTON: -- to this victim.

4 THE COURT: -- going to state, is that Mr. Cottrell  
5 does not know the facts of this case and will only be providing  
6 generalized testimony that has nothing to do with mental health  
7 issues pertaining to any of the witnesses. And I know we're  
8 gonna deal with that issue later. But, the admission of Mr.  
9 Cottrell as a witness is no underlying common denominator  
10 linking it to the defense's allegations that Ms. Griffen (sic)  
11 has mental health issues due to the request to the People to  
12 use this mental health.

13 This assertion is a fishing expedition and falls  
14 short of what's required by both MCR 6.201(C)(2) and Stanaway.

15 As to the defendant's other allegations regarding  
16 Miss Griffen going through a divorce, being pregnant, having  
17 some sort of a genetic predisposition to mental health issues  
18 and abuse, I find these are, likewise, devoid of any legal or  
19 factual basis. While Miss Giffen may have ADHD and trouble  
20 concentrating, she may be going through a divorce, and she may  
21 have a brother with a diagnosis of apraxia, which is not  
22 genetically linked, she may have a mother who may have been  
23 abused, and an aunt with alleged issues of her own, none of  
24 these are articulable facts that there is a reasonable  
25 probability that any records protected by privilege would

1 contain material information necessary to the defense.

2 Of equal concern to the Court is, as the People have  
3 argued, that the defendant has not pointed out any specific  
4 medical records or any specific doctor from whom he seeks  
5 records. There's no time frame provided for which he has  
6 requested records, which would leave one to conclude that he's  
7 asking for medical records since Miss Giffen was born. That  
8 would clearly be an inappropriate invasion of her privacy and  
9 her absolute privilege.

10 The defendant has failed to demonstrate a good-faith,  
11 belief grounded in fact, that there is a reasonable probability  
12 that records protected by privilege are likely to contain  
13 information necessary to the defense. So, the Court is not  
14 going to do that.

15 And, also, as indicated, there was some psychological  
16 examination request thrown out there. There was no legal basis  
17 cited, no argument. The Court considers that claim has been  
18 abandoned. And, therefore, it's denied in its entirety.

19 MS. MORTON: Judge, I did make a request in my Answer  
20 that you direct the Court -- the defense that they are not to  
21 mention, bring up, or discuss in front of the jury the affair,  
22 which clearly has no relevance to the events that occurred in  
23 this case while prior to her even being married. And so, I --  
24 I believe that providing that information was just an attempt  
25 to embarrass and --

1 THE COURT: What was the time frame of the affair,  
2 again? Do you recall?

3 MS. MORTON: I don't know if that was provided.

4 THE COURT: All right, I guess it's to you, Mr.  
5 Winter. You stood up.

6 MR. WINTER: Well, I got it first. Your Honor, I --  
7 I would just request the Court to allow us to amend that  
8 motion, so we could provide the particulars the Court has  
9 indicated are deficient.

10 THE COURT: Well, no, those should've been provided  
11 at the time. So, I mean, you can't file a motion under a court  
12 rule and based on a case and say, okay, this is what we're  
13 relying on, but, oh, sorry, we didn't provide any of the  
14 information. It's denied. I -- you know, that's where we're  
15 at on that.

16 But, what about the issue asking that the defense,  
17 then, is precluded from bringing up anything to do with the  
18 affair?

19 Mr. Amadeo, are you addressing that?

20 MR. AMADEO: Yes, I am, Your Honor.

21 I think it's already clear that the affair or  
22 anything questioning her credibility is critical to this case.

23 THE COURT: When was the affair? What are the dates  
24 of the affair?

25 MR. AMADEO: The affair is relatively recently, Your

1 Honor.

2 THE COURT: I want dates of the affair. You can't

3 MR. AMADEO: I don't have the dates.

4 THE COURT: So, okay, that request is granted, at  
5 this point.

6 How old was Miss Giffen when these alleged acts took  
7 place?

8 MS. VAN LANGEVELDE: Thirteen.

9 MS. MORTON: Thirteen.

10 THE COURT: Thirteen. And how old is she today?

11 MS. VAN LANGEVELDE: She's 21.

12 THE COURT: Okay. So, at this point, since you can't  
13 give me any dates and you're saying it's recent and you can't  
14 give me anything more, the Court will order that no mention of  
15 the affair will be made, since you can't provide any basis that  
16 it -- something happening when somebody's 21 is relevant to  
17 something that happened when they were 13.

18 MR. AMADEO: Am I allowed to put her husband on the  
19 stand as a rebuttal witness?

20 THE COURT: And what would he rebut?

21 MR. AMADEO: Her credibility in general. She  
22 discussed these allegations with him, Your Honor.

23 THE COURT: Well, that would be admissible.

24 MS. MORTON: Just not the affair.

25 THE COURT: Right.

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MR. WINTER: Yeah.

THE COURT: Yeah, but the husband would --

MR. WINTER: Yes.

THE COURT: I mean, if -- if -- if -- you know, a witness can take the -- that's -- yes, there's a basis to do that, in the Court's opinion, so, yes, you may do that. Let's -- we're just not gonna talk about the affair because that goes to a different -- well, leave it at that.

Okay, now, that takes us to three. Defendant wants to dismiss the testimony of Thomas Cottrell or, in the alternative, to have a Daubert hearing on his credibility.

So, as we know, pursuant to People versus Beckley and People versus Peterson:

"Experts regarding syndrome evidence, as it relates to child sexual abuse, are permitted to testify in the following manner:

"(1) An expert may testify in the prosecution's case-in-chief regarding typical and relevant symptoms of child sexual abuse for the sole purpose of explaining a victim's behavior that might be incorrectly construed by the jury as inconsistent with that of an actual abuse victim; and (2) an expert may testify with regard to the consistencies between the behavior of a particular victim and other victims of child sexual abuse to rebut an attack on a victim's credibility."

1 Now, my understanding is it is your position, on  
2 behalf of your client, Mr. Ademo (sic), that Mr. Cottrell does  
3 not qualify as an expert; is that correct?

4 MR. AMADEO: That is correct, Your Honor.

5 THE COURT: Go ahead.

6 MR. AMADEO: I've been involved in several cases with  
7 Mr. Cottrell, several which have been dismissed, and he always  
8 testifies to various things, not just delayed reporting. He  
9 testifies --

10 THE COURT: Well, that doesn't, necessarily, mean  
11 he's not an expert.

12 MR. AMADEO: Well --

13 THE COURT: Doesn't that go to your ability of  
14 attacking his credibility and how much weight the state -- the  
15 jury should give to his testimony?

16 MR. AMADEO: I do agree with that, Your Honor. And  
17 that's why I feel a Daubert hearing is appropriate in this  
18 situation.

19 In Tomacek, he gave testimony, Mr. Cottrell did,  
20 which led to a potential overturn. In other cases I've had,  
21 he's testified. Those cases have been dismissed. I think it's  
22 only right that I be able to question him prior to the trial,  
23 at a Daubert hearing, to test his credibility.

24 THE COURT: Well -- and what happened to it? Or did  
25 Lauren not give it to me? Maybe that's why she left.



1 I mean, Tomacek had to do with the issue of testimony  
2 being allowed in about the percentage of children that tell the  
3 truth versus lie. I wish I had the case in front of me. Wait  
4 a minute. I want Lauren to get that for me. So, I don't want  
5 to misspeak on the record.

6 Do you think she's coming back, Kathy, or what?

7 COURT RECORDER: Want me to get her?

8 THE COURT: Yeah. Tell her I can't -- if she printed  
9 it, I can't --

10 MS. VAN LANGEVELDE: Your Honor.

11 THE COURT: What?

12 MS. VAN LANGEVELDE: Is it all right if I respond  
13 while we're waiting?

14 THE COURT: Is it going?

15 COURT RECORDER: It is going.

16 THE COURT: Okay. It might be on my desk.

17 COURT RECORDER: Okay.

18 THE COURT: Go ahead.

19 MS. VAN LANGEVELDE: Thank you, Your Honor.

20 So -- and -- and, also, you know, Your Honor kind of  
21 mentioned this. There was this recent case of People versus  
22 Thorpe that just came out in July of 2019.

23 THE COURT: That's the one I was talking about.  
24 Sorry.

25 MS. VAN LANGEVELDE: I -- no, that's okay.

1           And in that, obviously, Mr. Cottrell was found to be  
2 an expert. The problem, in that case, was actually the  
3 prosecutor's question regarding the percentages of children who  
4 lie, and that -- that percentage was very low. I, obviously,  
5 do not intend to ask that question. But, he was found as an  
6 expert.

7           And, Your Honor, Daubert is a hearing to test the  
8 science --

9           THE COURT: Um-hum.

10          MS. VALLES: -- not the credibility.

11          And as Your Honor obviously stated, the law allows  
12 for the syndrome evidence under People versus Beckley and  
13 People versus Peterson, just as Your Honor stated, that that is  
14 the -- that is the test.

15          He's been ruled to be an expert in child sexual abuse  
16 and in dynamics of child sexual abuse of perpetrator behavior  
17 before throughout the state of Michigan.

18          I think the issue, though, is Defense argues that Mr.  
19 Cottrell has never met Pearl Giffen and that he -- he testifies  
20 often without meeting the alleged victim. But, frankly, that's  
21 -- that's a good thing because you don't want an expert -- and  
22 an expert cannot testify about whether the victim is a victim,  
23 whether the victim is credible. His role is to speak to  
24 generalities.

25          THE COURT: Right.

1 MS. VAN LANGEVELDE: And I believe that, under the  
2 the law, as Your Honor already stated, it is admissible.

3 THE COURT: First of all, as it relates to a Daubert  
4 hearing, Ms. Van Langevelde is correct, that that's already  
5 been determined by People versus Beckley and People versus  
6 Peterson, which I believe is affirmed in the Thorpe case issued  
7 July 11th, 2019, that there can be testimony regarding  
8 explaining a victim's behavior that might be incorrectly  
9 construed with regard to inconsistencies between the behavior  
10 of a particular victim and other victims or construed as  
11 inconsistent with somebody being act -- actually abused.

12 So, you don't -- that -- that's been determined. And  
13 you've provided no basis for the Court to say there needs to be  
14 a Daubert hearing on that.

15 In addition to that, Mr. Cottrell has already been  
16 determined to be an expert. And he is a generalized expert,  
17 meaning that he's gonna provide that information to the jury  
18 'cause I think somebody of ordinary -- an ordinary person might  
19 not understand how victims of sexual abuse act. He cannot,  
20 however, talk about whether or not he believes the victim, and  
21 he cannot talk about percentages and whether or not children  
22 lie or don't lie. That's really what Thorpe dealt with. It,  
23 actually, dealt with three cases. But, that -- that was the  
24 issue.

25 And simply because the Michigan Supreme Court decided

1 this issue on -- it looks like it was argued April 11th and  
2 decided July 11th. Prior to that time, experts had been  
3 providing that information to juries.

4 So, I don't think it's proper to attack the veracity  
5 of Mr. Cottrell. Now the Supreme Court has says (sic), nope,  
6 you can't do that. He can't do it. Other people can't do it.  
7 End of discussion, okay. So, that motion is denied.

8 So, that, then, takes us to -- oh, there would be one  
9 thing I would say. I want to -- on that, is that the case law  
10 cited by the defendant ignores the published case law here, in  
11 Michigan. But of concern, to me, is that it did rely on  
12 unpublished decisions and out of state cases, which are not  
13 binding on the Court, but really shouldn't have been used.

14 And I would remind everyone that MCR 7.215, dealing  
15 with the Court of Appeals, but I find that to be applicable to  
16 trial courts, is you're not supposed to cite unpublished  
17 opinions unless you provide a clear explanation, I guess, as to  
18 why that opinion should not be followed. So, 7.215 is an  
19 important court rule, which the Supreme Court actually changed  
20 within the last couple of years.

21 And I don't believe that Mr. Cottrell's testimony has  
22 been under scrutiny by the Michigan Court of Appeals or the  
23 Supreme Court as to the substance of his entire testimony, only  
24 limited to the statistical issue, which now we know is  
25 impermissible.

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1           So, for those reasons, the defendant's motion is  
2 devoid of fact or law in support of their position. And the  
3 People's position relying on Beckley, Peterson, Thorpe and the  
4 court rule is appropriate. The motion's denied.

5           Next is Defendant's motion in limine regarding other  
6 acts evidence for impeachment purposes.

7           The People provided -- filed notice of other acts  
8 pursuant to MCL 768.27a.

9           So, go ahead, Mr. Adam -- Adama (sic).

10          MR. AMADEO: Amadeo.

11          THE COURT: This is your motion. Sorry.

12          MR. AMADEO: Your Honor, in speaking to the People,  
13 they're not putting anything about the prior conviction in  
14 their case-in-chief.

15          THE COURT: Um-hum.

16          MR. AMADEO: With that being said, I withdraw the  
17 motion. I didn't know that until two days ago.

18          THE COURT: Oh, that's fine, okay. So, the record  
19 will reflect the defendant has withdrawn the motion regarding  
20 other acts for impeachment.

21          That, then, takes me to defendant's motion in limine  
22 requesting an expert on false confession.

23          So, in this issue, I think it's number five,  
24 Defendant has asked the Court to appoint an expert in false  
25 confessions to explain that confessions by the Michigan State

1 Police display attributes of coercion.

2 And I guess we're looking at People versus  
3 Kowalski --

4 MR. AMADEO: That's correct, Your Honor.

5 THE COURT: -- as the controlling case, where the  
6 Michigan Supreme Court considered whether expert witness  
7 testimony regarding interrogation techniques and psychological  
8 factors generated a false confession would be admissible under  
9 MER (sic) 702 and MRE 403, and whether exclusion of the  
10 testimony would violate the Sixth Amendment right to be  
11 present.

12 So, in this case, the defense has filed a notice to  
13 call Dr. Richard Leo and Dr. Jeffrey Wendt; is that correct?

14 MR. AMADEO: No, Dr. Richard Leo or Dr. Brian Cutler.

15 THE COURT: Cutler, okay. Mr. Leo's proposed  
16 testimony was regarding the police interrogation techniques and  
17 the existence of a false confession; right?

18 MR. AMADEO: Correct.

19 THE COURT: And Cutler was regarding the  
20 psychological testing of the defendant and his opinion as to  
21 whether the defendant's mental state during the police  
22 questioning and his confession were consistent with the  
23 literature on false confessions; is that right?

24 MR. AMADEO: That's correct, Your Honor.

25 THE COURT: Okay. Okay, now the People oppose this;

1 is that correct? Who's arguing this?

2 MS. VAN LANGEVELDE: I am, Your Honor.

3 THE COURT: Go ahead.

4 MS. VAN LANGEVELDE: Thank you.

5 Your Honor, I think that the defense motion does  
6 ignore the People versus Kowalski case. And in that, actually  
7 the doctor that was subject to a Daubert hearing was Dr.  
8 Richard Leo. And that -- and -- and that case is extremely and  
9 precisely on point for this case.

10 Dr. Leo's proposed testimony was examined in a  
11 Daubert hearing. It was looked at by the -- it was -- his  
12 testimony was suppressed or -- excuse me, not suppressed,  
13 denied by the circuit court. They appealed to the Court of  
14 Appeals and then the Supreme Court. And the Supreme Court  
15 found that his proposed testimony regarding false confessions  
16 and police interro -- terrogations was unreliable, that the  
17 data was inac -- there was inac -- excuse me. I can talk this  
18 morning -- inadequate, and that his methodology was improper.  
19 And so, they struck this testimony.

20 And so, the holding in Kowalski is -- is directly on  
21 point, that the science behind this is not adequate. And --  
22 and so, the court in the Kowalski case said that the circuit  
23 court was correct in striking that expert testimony.

24 This is the same expert that the defense proposes in  
25 this case. And not only do they propose this expert, but they

1 haven't provided a curriculum vitae for either of these  
2 experts, they haven't provided any additional information, the  
3 data, the research, anything.

4 And so, I'm asking the Court to deny their motion to  
5 appoint these experts. And -- or -- and not just to appoint  
6 them, but to even allow their testimony.

7 THE COURT: Well, okay.

8 On the issue of the psychological testing, what about  
9 that? Because in that, the Supreme Court indicated that --  
10 well, the circuit court --

11 "We do not hold the circuit court is required to  
12 admit this portion of the testimony, just that in this  
13 applied MRE 403 and excluding it. However, in applying  
14 403 on remand, the circuit court has to consider whether  
15 the limits that this court imposes on expert testimony of  
16 this nature and is there a possibility of a limit" --  
17 "limiting jury instruction to reduce the danger of unfair  
18 prejudice."

19 What is your response to that?

20 MS. VAN LANGEVELDE: So, in 2009, there was a case of  
21 People versus Steele. And I -- I apologize. And that said  
22 that the doctor's proffered expert testimony that he tested the  
23 defendant and the defendant did not fit the profile for or  
24 display characteristics of a pedophile or a person being a  
25 sexual predator. And the court found that that was not



1 admissible.

2 I -- I don't know -- it doesn't appear --

3 THE COURT: Well, that was 2009. I'm talking about  
4 Kowalski, which was 2012.

5 MS. VAN LANGEVELDE: I don't know what -- whatever  
6 happened with -- with that, Your Honor, as far as the  
7 psychological testing portion of it. But, the science behind  
8 the generalized testimony, which is what in --

9 THE COURT: Well, let's let Mr. Amadeo --

10 MS. VAN LANGEVELDE: Oh, I'm sorry.

11 THE COURT: -- address -- first of all, where do you  
12 cite anything as to -- 'cause we're talking about a couple  
13 different things; right?

14 MR. AMADEO: Sure.

15 THE COURT: -- that says Kowalski should not be  
16 followed?

17 MR. AMADEO: When we look at the psychological aspect  
18 that came out of Kowalski -- and I dealt with Dr. Cutler on  
19 this issue -- the Supreme Court and Federal courts have allowed  
20 him to explain to a jury why somebody could be coerced into a  
21 confession.

22 In this particular case, Your Honor, my client was  
23 interrogated for six hours, and there's only 12 to 16 minutes  
24 of video. There's a problem here. And I need to explain to  
25 the jury why somebody could be coerced into making a confession

1 when they were worn down. Dr. Cutler is able to give me that  
2 option.

3 My client cannot afford someone like Dr. Cutler. To  
4 even the playing field, I'm respectfully asking that we allow  
5 the psychology to come in.

6 THE COURT: Well, so you agree, though, that the --  
7 you have no case law that would change the Supreme Court's  
8 ruling as it relates to Dr. Leo.

9 MR. AMADEO: That's correct.

10 THE COURT: So, you agree that Dr. Leo doesn't tes

11 MR. AMADEO: I do. Dr. Leo is out. I think Dr.  
12 Cutler should be in.

13 THE COURT: Okay, so Dr. Leo's out. Now we deal with  
14 Dr. Cutler.

15 But, see, before we can deal with Dr. Cutler -- with  
16 Dr. Cutler, I'd have to hold a Daubert hearing and see what you  
17 have -- would have to say about Dr. Cutler, but I don't know  
18 why the county would pay for an expert when I have two paid  
19 defense attorneys sitting at the table.

20 MR. AMADEO: Well, Your Honor, first of all, I'm not  
21 being paid, right now, in this case. And if it helps, I'll  
22 waive my fee completely to help this man.

23 THE COURT: Well, that's not the question. He -- he  
24 had a court-appointed attorney, a very good court-appointed  
25 attorney, Mr. Hocking, and he chose to hire you. So, somewhere

1 there's money.

2 So, before that, we're gonna have a hearing on  
3 whether or not this gentleman is indigent, at the same time,  
4 because I don't know why the county should pay for Dr. Cutler.

5 MR. AMADEO: I'd agree to an indigent hearing. Makes  
6 sense.

7 THE COURT: So, we're gonna have to get into what --  
8 you know, is he married, does he own any real estate, does he  
9 own any assets.

10 And I say that because I think that the defendant is  
11 correct on this final motion. I do believe that the defendant  
12 is entitled to have a Daubert hearing. But, I guess the other  
13 point of that is whether or not a defendant, in Eaton County,  
14 is entitled to ask the county to pay for the most expensive  
15 expert in the country, which I don't know. See, I don't have  
16 anything on Cutler. I don't know what he costs, nothin'.

17 So, do you have his curriculum vitae?

18 MR. AMADEO: I do, Your Honor, and I could get it to  
19 you today.

20 THE COURT: Well, why don't we give everybody a copy,  
21 so we can look at it.

22 And what is -- what are you claiming he will cost?

23 MR. AMADEO: I will get you all that information  
24 within the hour. I'll contact him. And I do have it in my  
25 emails.

1 THE COURT: And then, we're gonna have to address  
2 whether the county would have to pay that, 'cause I don't think  
3 the county would. I think that that's -- well, I hope that's  
4 the conclusion. I'll look at everything objectively, but I  
5 don't -- I -- I -- there's something a little fishy about  
6 having two attorneys at counsel table filing five motions today  
7 and however many next week, and then sayin' that this person  
8 needs the county to pay for the -- and he -- where is Mr.  
9 Cutler from?

10 MR. AMADEO: Mr. Cutler currently resides in  
11 California.

12 THE COURT: Okay. So, also, I think you have to  
13 prove that there's no other expert available in a closer  
14 geographical range before the county has to pay for it.

15 So, we're gonna have to have a hearing. I'm sorry.  
16 I know everybody wanted to move forward with the trial, but  
17 that's impossible.

18 We're gonna have the motions next week still, because  
19 I want those done.

20 But, I do think the defendant has convinced me that  
21 we have to have a Daubert hearing. And that is only on the  
22 issue of -- let me get it right here. Well, now I lost my  
23 spot.

24 MS. VAN LANGEVELDE: Well, can I -- can I ask --  
25 address the Court on something?

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1 THE COURT: What? Yes, you may.

2 MS. VAN LANGEVELDE: I'm looking at the motion. And  
3 on the first page, bottom part of the paragraph --

4 THE COURT: Okay, now if you're lookin' at motions,  
5 you're gonna have to give me --

6 MS. VAN LANGEVELDE: I'm sorry.

7 THE COURT: -- because these aren't tabbed.

8 MS. VAN LANGEVELDE: I apologize.

9 THE COURT: So --

10 MS. VAN LANGEVELDE: I will wait.

11 THE COURT: Yeah.

12 MS. VAN LANGEVELDE: So, the --

13 THE COURT: So --

14 MS. VAN LANGEVELDE: I'm looking at Defendant's  
15 motion requesting the Court to appoint a false confession  
16 expert.

17 THE COURT: And that's what he's asking fall -- for.  
18 Correct, Mr. --

19 MR. AMADEO: That's correct, Your Honor.

20 THE COURT: False confession expert.

21 MS. VAN LANGEVELDE: So, in his notice, when you get  
22 there, Judge -- or, I guess the motion.

23 THE COURT: Well, yeah. You know what, it's gonna be  
24 quicker -- can you get that off the --

25 LAW CLERK: Yes.

1 THE COURT: -- ROA? These files, once they get  
2 thick, because you're not allowed to put anything in a court  
3 file, you can't tab 'em, you -- sometimes the things are not  
4 punched in chronological order, through no one's fault, it's  
5 just difficult to find things. So, let's get that before we go  
6 forward.

7 All right, we're back on the record in People versus  
8 Warner.

9 Defendant's motion requesting the Court to appoint a  
10 false confession expert:

11 "Now comes the defendant, Damon Earl Warner, by and  
12 through his attorney..."

13 And then it just -- okay, the motion:

14 "The defendant comes before the Court, asking the  
15 Court to appoint an expert in the field of false  
16 confession. The defense has found two potential experts  
17 that would help to preserve the Constitutional rights of  
18 Defendant, Dr. Richard Leo and Dr. Wendt. Either of these  
19 experts would speak not to the fact that Defendant made a  
20 false confession but, instead, would speak to the  
21 attributes associated with false confessions and the  
22 interviewer bias of Detective Derrick Jordan."

23 Go ahead.

24 MS. VAN LANGEVELDE: So, that is what I was pointing  
25 out to the Court is what the defendant is asking for, but

1 that's exactly what Kowalski doesn't allow.

2 It -- and it's kind of goofy how they -- they send it  
3 back for Dr. Wendt to -- basically, to explore Dr. Wendt's  
4 testimony, as Your Honor pointed out.

5 THE COURT: Um-hum.

6 MS. VAN LANGEVELDE: But, the general -- the  
7 generalized false confession is what the court strikes as  
8 inadmissible because --

9 THE COURT: Why don't you tell me where that is in  
10 the opinion?

11 MS. VAN LANGEVELDE: That's what I'm trying to find.  
12 I'm looking at -- they talk about testimony of Dr. Leo on page  
13 18. General testimony about false confessions -- I'm sorry --  
14 12, page 12, and then it goes into 13. And I'm looking at  
15 paragraph -- page 13. The paragraph starts with, "Our decision  
16 to uphold the exclusion of the testimony based on false  
17 confessions." Do you see where I see that, Judge?

18 THE COURT: I don't, because I think our pages are  
19 different.

20 MS. VAN LANGEVELDE: Oh, okay.

21 THE COURT: Oh, that's okay. I can find it  
22 eventually. Is it at the beginning of the -- I mean --

23 MS. VAN LANGEVELDE: It's kind of in the middle, Your  
24 Honor. It's -- there's a par -- there's a --

25 MS. MORTON: Page in the opinion.

1 MS. VAN LANGEVELDE: Oh.

2 MS. MORTON: Give her that page number.

3 MS. VAN LANGEVELDE: So -- okay. So, the page number  
4 of the actual opinion is 18. Do you see the little --

5 THE COURT: All right.

6 MS. VALLES: And it starts with "General testimony  
7 about false confessions." Is the header.

8 THE COURT: That's the category that it's under, you  
9 mean?

10 MS. VAN LANGEVELDE: Yes.

11 THE COURT: General testimony about false  
12 confessions, got it.

13 MS. VAN LANGEVELDE: Okay. So, in reading that  
14 paragraph, they do the analysis about the general testimony,  
15 which was Dr. Leo's. And then if you --

16 THE COURT: What? Hang on a second. I can't hear  
17 when you talk.

18 MR. WINTER: I'm sorry, Your Honor.

19 THE COURT: Please.

20 MR. WINTER: Okay, I'm done.

21 THE COURT: "Both Leo and Wendt propose to offer  
22 testimony based on research and literature about the phenomenon  
23 of false confessions." Is that what you're talking about?

24 MS. VAN LANGEVELDE: Yes. Yup.

25 THE COURT: "Leo proposed to testify that false



1 confessions existed, that certain psychological  
2 interrogation techniques commonly employed by the police  
3 sometimes resulted in false confessions, and that some of  
4 those techniques were used in this case."

5 Wendt, who I think is now gonna be re -- would be  
6 what Curtell -- Car -- Car --

7 MR. AMADEO: Cutler.

8 THE COURT: Huh?

9 MR. AMADEO: Brian Cutler is who we want to use.

10 THE COURT: Cutler. So, Wendt -- Cutler is talking  
11 about what Wendt talked about; correct?

12 MR. AMADEO: Correct.

13 MS. VAN LANGEVELDE: Well -- well, but that's not  
14 what they're --

15 THE COURT: "Cutler proposed to build on this  
16 foundation and testify that circumstances of defendants'  
17 confessions were consistent with the literature on false  
18 confessions, and that the interactions between the  
19 defendant and the police were consistent with a coerced  
20 confession."

21 MS. VAN LANGEVELDE: But, Your Honor, that's not what  
22 their motion states that Dr. Cutler would testify about.

23 He states:

24 "Either of these experts would speak not to the fact  
25 the defendant made a false confession but, instead, would

1 speak to the attributes associated with false confessions  
2 and the interviewer bias of Detective Derrick Jordan.”

3 THE COURT: That’s correct. So, let me go back and  
4 see. Our decision to uphold -- our decision to uphold the  
5 exclusion of testimony based on -- (indecipherable).

6 So, the Supreme Court did hold, after reviewing other  
7 decisions, and especially, I guess, the Alaska decision, that  
8 it was proper to exclude literature of false confessions. The  
9 inquiry that the Supreme Court continued and remanded back was  
10 testimony that also encompassed a second category, which was  
11 evidence that he psychologically tested the defendant.

12 MS. VAN LANGEVELDE: Right. Which we do not have  
13 here.

14 THE COURT: So, do we -- we -- has -- Mr. Cutler  
15 didn’t perform any psychological testing on your client, did  
16 he, Mr. Amadeo?

17 MR. AMADEO: No, not at this point. But as -- with  
18 Dr. Cutler’s testimony, he’s not testifying to the ultimate  
19 issue of whether there was a false confession. He’s testifying  
20 to the psychology of whether the attributes of a false  
21 confession are present. He’s been --

22 THE COURT: But, he hasn’t seen your client or tested  
23 your client. So, that’s -- that’s not what you asked for.  
24 What -- this is what you say. This is what you say in your  
25 motion:

1 "Either experts will speak to the fact" -- "to the  
2 fact" -- "attributes associated with false confessions and  
3 interviewer bias."

4 And that's what the Supreme Court rejected. That's -- so, what  
5 you're asking for, in your motion, was already rejected by the  
6 Michigan Supreme Court in Kowalski.

7 MR. AMADEO: And I'm asking you to consider the  
8 psychological aspects that the Supreme Court was open to  
9 listening to. And that's why I think a Daubert hearing is  
10 appropriate.

11 THE COURT: No, they were only open to listening to  
12 it because testing had been done on the defendant. You have no  
13 testing that had been done on this defendant.

14 They didn't even say it would be allowed. They said  
15 they might be open to it, that they -- they remanded it back  
16 because Dr. Wendt had performed psychological testing on the  
17 defendant and was going to try to tie that into the generalized  
18 research.

19 MR. AMADEO: Dr. Cutler would do psychological  
20 testing. But, once again, it comes down to the indigency  
21 issue, Your Honor. He's willing to do it. I sent the CV over.  
22 I need to get him paid. And like I said, I'm not getting paid.  
23 I do feel a Daubert hearing and an indigent hearing are  
24 appropriate under these circumstances.

25 THE COURT: Well, what happened when the case was

1 remanded back? It'd be nice -- does anybody know?

2 MS. MORTON: I'm looking, Your Honor.

3 THE COURT: 'Cause see, these things are helpful to  
4 trial courts, 'cause it could end up being that, when it was  
5 sent back, it didn't matter. It said it would be open to it.  
6 Anybody know what happened?

7 MS. MORTON: I'm looking.

8 THE COURT: Do you know what happened?

9 MR. AMADEO: I don't, Your Honor. I'm looking it up.

10 MS. MORTON: Looks like his -- it looks like his  
11 application for leave was denied later, but it doesn't say what  
12 happened in the trial court. Oh, hang on.

13 THE COURT: Okay.

14 MS. MORTON: The Court of Appeals is -- now, I'm just  
15 scanning, but it does not appear that it's addressed in the  
16 Court of Appeals.

17 THE COURT: So, we don't know what happened. Are  
18 there any cases after 2012 that have addressed this issue?

19 MS. MORTON: There's a -- there's a federal case.  
20 It's a motion to --

21 THE COURT: Well, let's go off the record.

22 (At 11:29 a.m., off the record)

23 (At 12:01 p.m., back on the record)

24 THE COURT: All right, we're back on the record in  
25 People of the State of Michigan versus Mr. Warner.

1 Ms. Van Langevelde and Ms. Morton are here still on  
2 behalf of the plaintiff. Mr. Amadeo and Mr. Winter are still  
3 here with the defendant. And the defendant is still here.

4 At the break, it was -- where we are at is on the  
5 fifth motion filed by the defendants, where the defendant has  
6 asked the Court to appoint an expert in the field of false  
7 confession filed August 21st.

8 The defendant has already withdrawn the request as to  
9 Dr. Leo. He has continued to ask that duckler -- Dr. Cutler be  
10 appointed.

11 That led to a discussion regarding the Kowalski case  
12 and any more recent cases.

13 The prosecutor's position is that what he's asking  
14 for today is not what the motion requested.

15 And so, the question is what is the defendant asking  
16 for and did he properly ask for it.

17 So, I'll let you start, Mr. Amadeo. Go ahead.

18 MR. AMADEO: I am asking for Dr. Cutler to be  
19 appointed to discuss the psychology of false confessions. I am  
20 requesting that the Court do an indigent -- indigency hearing  
21 for my client's financial situation, and a Daubert hearing for  
22 Dr. Cutler. In addition, I will research for somebody more  
23 affordable. Dr. Cutler's one of the few in this field I have  
24 found. I have sent his resume' over, along with his fee  
25 schedule, to the prosecution. Thank you.

1 THE COURT: What is his fee schedule?

2 MR. AMADEO: I believe it's 300 an hour.

3 THE COURT: Okay. Ms. Van Langevelde.

4 MS. VAN LANGEVELDE: Well, I guess it goes back to,  
5 again, he says the psychology about false confessions, which,  
6 again, that -- that general testimony was held in the Kowalski  
7 case to not be admissible.

8 And I know your law clerk and I -- you -- you had  
9 asked before the break, Your Honor, if there had been any cases  
10 about this issue. There was a federal published case in 2018,  
11 United States versus Vegay, V-e-g-a-y, that talked about, in  
12 that federal case -- which is interesting that Dr. Leo was also  
13 the doctor that they were discussing -- that they were not  
14 allowing the testimony regall -- regarding false confessions.  
15 It says:

16 "Dr. Leo may not testify regarding false confessions,  
17 and that such testimony has been found to be unreliable."

18 And so, that -- that general testimony is found to be  
19 unreliable and should not be admissible.

20 There were also two unpublished cases that cite to  
21 the Kowalski case that I found, one of which was People versus  
22 Allen, 2016, Westlaw number 3314460. That was a 2016 case.

23 THE COURT: Michigan case?

24 MS. VAN LANGEVELDE: Yes. I'm sorry.

25 THE COURT: Unpublished?

1 MS. VAN LANGEVELDE: Unpublished Court of Appeals.  
2 And then there was also a 2014 case, People v Clifford, C-1-i-  
3 f-f-o-r-d, 2014, Westlaw number 6956940. Again, an unpublished  
4 Michigan Court of Appeals case.

5 And in those cases they talk -- basically, what --  
6 both those defendants in those unpublished cases were arguing  
7 is that they should have had an expert testimony re --  
8 regarding false confessions. And the court said:

9 "The proposed offered testimony based on the research  
10 about this is unreliable."

11 And so, they -- they -- what's interesting is that both  
12 unpublished cases say that the Supreme Court, arguably, left  
13 the door open for testimony regarding that particular  
14 defendant's psychological profile, but that, basically, it --  
15 the defendant wasn't prejudiced by not having that. And so,  
16 the conviction stood.

17 THE COURT: Well, I -- the defendant has requested  
18 that the Court allow expert testimony regarding false  
19 confessions, and that request is denied pursuant to Kowalski.  
20 I think Kowalski is very clear that what the defendant has  
21 asked for is that -- what are the attributes associated with  
22 false confessions and interviewer bias. That's a quote from  
23 the defendant's motion. That is not allowed as by the decision  
24 of our Supreme Court in the Kowalski case. And that's binding.

25 I would note, though, that in 2018 there was the case

1 of the United States versus Vegay, 310 Federal Supplement 3rd,  
2 1318 to 1356. It's a 2018 case.

3 And the -- I cite that case because it, basically,  
4 has a statement in it that, I think, speaks to what Kowalski  
5 said, which was:

6 "The conclusion that tech" -- "that these techniques  
7 provide no reliable means of determining the likelihood that a  
8 given confession is false, their reliability concerns that the  
9 court had regarding the error of Dr. Leo's methodology..." and  
10 then they cite People versus Kowalski, which I think is  
11 important where they say, "Dr. Leo's testimony based on false  
12 confession research because it is not reliable. The danger of  
13 allowing such testimony is that the jury may conclude that the  
14 defendant's incriminating statements were false, not because  
15 there is sound evidentiary basis for doing so, but because an  
16 impressively credentialed expert says it is so."

17 So, that request is denied. And I do not believe a  
18 Daubert hearing is necessary as it relates to the motion, as  
19 filed, by the defendant.

20 So, that resolves the cases -- the motions for today.  
21 I think we have more next week; right?

22 MS. VAN LANGEVELDE: We do, Your Honor.

23 And I've prepared an Amended Information, if I could  
24 present that to Your Honor and to defense counsel.

25 THE COURT: Yeah, let defense -- yup, yup, yup.



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MS. VAN LANGEVELDE: May I approach?

THE COURT: Please. When are our motions next week?

MS. VAN LANGEVELDE: Tuesday at one-thirty.

Oh, but Ms. Morton has -- do you have some issues?

MS. MORTON: Well, we did have a couple of questions about some of the things that were filed.

THE COURT: For what? For next Tuesday?

MS. MORTON: No, for the witness list, there's at least four --

THE COURT: Okay. Does this go in the court file?

MS. VAN LANGEVELDE: Yes. Is that --

MS. MORTON: That -- I think you have to arraign him; right? Is that what you --

THE COURT: Yeah.

MS. MORTON: -- ruled earlier --

THE COURT: Yup.

MS. MORTON: -- on -- on that?

THE COURT: Okay. So, we are -- do you wish me to read --

MR. AMADEO: No, Your Honor. We'll waive, and we'll stand mute.

THE COURT: Okay, thank you. So, the defense counsel has waived formal arraignment as to Count One, stands moot (sic). The Court enters, of course, a not guilty plea.

All right, go ahead with your questions, then.

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MS. MORTON: Thank you. On the Pretrial Statement, there are at least four witnesses for him and no contact information is provided.

THE COURT: Okay.

MS. MORTON: And there's --

THE COURT: So, we need to just, you know, pump the break and let me get to that, Defendant's Pretrial Statement.

All right, go ahead. Jury trial September 16th, Defendant's possible witnesses. Who --

MS. MORTON: On the second page, third from the top: Pastor Matt Rhode, Phil Smith, Tracey Clay, and Dr. Thomas Neidlinger. And I'm not really sure what the -- he -- I guess he's not listed as an expert, so I'm assuming he's testifying for some other purpose.

THE COURT: Say -- say the first person again.

MS. MORTON: Pastor Matt Rhode.

THE COURT: I don't have that.

MS. MORTON: On the second page.

THE COURT: On the second page, I have Amy Warner, Skyler Morgan, expert yet to be determined.

MS. VAN LANGEVELDE: Well, there was a new --

MS. MORTON: There's a new --

MR. AMADEO: I filed one. I emailed it to you yesterday. I filed it with the Court. You have all the contact information on all my witnesses.

1 MS. MORTON: This is what I printed that you emailed  
2 us yesterday.

3 MR. AMADEO: There's a copy.

4 THE COURT: Well, let me see.

5 MS. MORTON: This is what you sent.

6 THE COURT: Defendant's mo -- so, here's what I've  
7 got. Defendant's motion that witness tampering has occurred.

8 MS. MORTON: Oh, that -- that's not what you emailed  
9 us yesterday, that you emailed --

10 THE COURT: Motion to suppress handwritten statement.

11 MS. MORTON: Okay, I -- I withdraw that. I --  
12 apparently, there's been an amended one, obviously filed.

13 As to expert yet to be determined, if that's beyond  
14 -- I mean, at this point, we would object to the listing of any  
15 expert. The court rule indicates that it's a 28 day deadline  
16 to list experts and provide CVs and statements about anything  
17 that they're going to testify to. And, clearly, we're well  
18 beyond the 28 days in this case.

19 And then, there's -- on the exhibit list, it just  
20 says, "Exhibit from the Internet." And I wanted to know is  
21 this what you're talking about?

22 MR. AMADEO: That is.

23 MS. MORTON: The -- and then the -- yes?

24 MR. AMADEO: Yes.

25 MS. MORTON: Okay.

1 THE COURT: Well, are we identifying those for the  
2 record, so that we don't have a problem where now somethin'  
3 shows up and --

4 MS. MORTON: I think they were attached to the  
5 exhibit list.

6 THE COURT: Okay.

7 MS. MORTON: I think that's it, just the expert  
8 issue.

9 THE COURT: Time magazine, nope.

10 MS. VAN LANGEVELDE: Here --

11 THE COURT: That's suppression of Detective Jordan as  
12 a witness. Is that -- huh? Oh.

13 So, you believe that you both are in agreement as to  
14 what that is; is that fair to say? I don't have to keep  
15 lookin' for it?

16 MR. AMADEO: Yes, Your Honor, that is correct.

17 THE COURT: All right. Okay, then we have -- go  
18 ahead, your response to pursuant to court rule you're required  
19 to name your expert -- I think it's -- it's 28 days prior to  
20 trial, provide a curriculum vitae, and a -- I guess a summation  
21 of what they're gonna testify to.

22 MR. AMADEO: Yeah. And, obviously, Your Honor, based  
23 on your ruling today, I don't have an expert to include. I put  
24 that in there earlier with the hopes of an expert, but we have  
25 no expert. So, that can be withdrawn.

1 THE COURT: Okay. Way too much paper. Trial is what  
2 date?

3 MS. VAN LANGEVELDE: So, we're picking a jury Friday  
4 September 13th, Your Honor.

5 THE COURT: Okay.

6 MS. VAN LANGEVELDE: And then, starting the witnesses  
7 September 16th.

8 THE COURT: Now, I can't find that dang motion. You  
9 just printed it. I just can't find it. Hang on one second.  
10 Okay, there it is.

11 So, if -- let's see, so there's 10 -- so, I just  
12 think the record needs to reflect, I'm sure for appellate  
13 purposes, that there's an agreement that the court rule does  
14 require 28 days notice; correct?

15 MR. AMADEO: That's correct, Judge.

16 THE COURT: Okay. Because the motion asking the  
17 Court to appoint a false confession expert wasn't filed until  
18 August 21st. So, even if the Court would've granted the  
19 motion, the prosecutor's request to exclude would've been  
20 granted 'cause the motion wasn't even filed 28 days prior to  
21 the trial, let alone the necessary information of a paragraph  
22 or a summary what the expert would testify to, and the  
23 curriculum vitae, because it wasn't filed till August 21st. We  
24 heard it as quickly as we could, which is today, September 3rd,  
25 but we're pickin' a jury on the 13th, and that's when the trial

1 starts. So, the defendant would not have complied with the  
2 court rule even had the Court granted the relief requested  
3 today. And I think that's important for the Court of Appeals  
4 to know if and when it reviews these pretrial motions.

5 Anything else I can do for you on the record, Ms. Van  
6 Langevelde?

7 MS. VAN LANGEVELDE: Not for today. Thank you so  
8 much, Your Honor.

9 THE COURT: Anything else, Mr. Amadeo --

10 MR. AMADEO: No, thank you.

11 THE COURT: -- I can do for you today?

12 MR. AMADEO: Thank you very much, Judge.

13 THE COURT: Anybody trying to get this case resolved,  
14 at all? Is there any offers that need to be placed on the  
15 record?

16 MS. VAN LANGEVELDE: I can -- oh, go ahead.

17 MR. AMADEO: I have tried to reach out. There has  
18 been no different offer made, whatsoever, from June 25th.

19 THE COURT: What was the offer on June 25th?

20 MS. VAN LANGEVELDE: The offer, Your Honor, is that,  
21 if the defendant pleads guilty to Count Two, CSC - Second, the  
22 People would agree to a sentence of 10 years with credit for  
23 the time that he has.

24 THE COURT: Um-hum. What are his guidelines?

25 MS. VAN LANGEVELDE: On the -- if convicted of both

1 counts -- sorry, Your Honor, my computer's --

2 THE COURT: That's all right, take your time.

3 Do you know what your client -- client's guidelines  
4 are if convicted on Counts One and Two, which is --

5 MR. AMADEO: I only know if convicted on Two, which  
6 are 36 months. And he's done over 24 months already, in  
7 prison.

8 THE COURT: His guideline on Count Two is what?

9 MR. AMADEO: It was 36 months to -- I forget what it  
10 was. But, 36 months was the bottom end.

11 MS. VAN LANGEVELDE: So, if convicted of Count One,  
12 we have preliminarily scored his guidelines at 180 to 360  
13 months.

14 THE COURT: What if convicted on just Count Two?

15 MS. VAN LANGEVELDE: I have to get into a different  
16 window.

17 THE COURT: That's all right. Take your time.

18 MS. VAN LANGEVELDE: I apologize, Your Honor.

19 MR. AMADEO: I could quote the original PSI.

20 MS. VAN LANGEVELDE: That's fine.

21 THE COURT: Just Count One.

22 MS. VAN LANGEVELDE: Just Count One?

23 THE COURT: I mean just Count Two. I'm sorry.

24 MS. VAN LANGEVELDE: Twelve to 36.

25 THE COURT: Pardon me?

1 MS. VAN LANGEVELDE: Twelve to 36 months.

2 MR. AMADEO: And he's done about 24 already, in  
3 prison.

4 THE COURT: Okay.

5 MS. VAN LANGEVELDE: And Your Honor sentenced him to  
6 10 to --

7 MR. AMADEO: Ten to 30 years.

8 MS. VAN LANGEVELDE: -- 30 years.

9 THE COURT: Ten to 30?

10 MR. AMADEO: The original PSI, I believe, recommended  
11 36 months. And his guidelines, on Count Two, are 12 to 36.

12 If we were talkin' something in that ballpark, Judge,  
13 we would listen, but we're not there. I've pleaded with the  
14 prosecution to have discussions. They're not movin' on the 10  
15 years.

16 THE COURT: All right, well, I will see everybody  
17 next week.

18 MR. AMADEO: Thank you.

19 And, Your Honor, just for the record --

20 THE COURT: Yes.

21 MR. AMADEO: -- we are open to discussions. We'd  
22 like to settle this, if possible. While I maintain his  
23 innocence, I would like to discuss it but --

24 THE COURT: Okay.

25 MS. VAN LANGEVELDE: Does that mean -- I don't know



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what that -- do you -- does that mean you want us to have a  
Cobbs? I don't --

MR. AMADEO: Well, we're not takin' 10 years.

THE COURT: Well, I'll talk to you guys back in my  
office if you want.

MS. VAN LANGEVELDE: Okay, thank you.

THE COURT: See where we're at.

(At 12:20 p.m., proceedings concluded)

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CERTIFICATION OF COURT RECORDER

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STATE OF MICHIGAN )  
COUNTY OF EATON )

I certify that this transcript consisting of 61 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Tuesday, September 3, 2019.

Dated: December 31, 2019

  
\_\_\_\_\_  
Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

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STATE OF MICHIGAN  
56TH JUDICIAL CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

V

File No. 16-020296-FC

DAMON EARL WARNER,

Defendant.

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PRETRIAL MOTIONS

BEFORE THE HONORABLE JANICE K. CUNNINGHAM, CIRCUIT JUDGE  
Charlotte, Michigan - Tuesday, September 10, 2019

APPEARANCES:

For the People: MS. ADRIANNE VanLANGEVELDE (P72488)  
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Charlotte, Michigan

Tuesday, September 10, 2019 - 2:12 p.m.

THE COURT: People of the State of Michigan versus  
Damon Earl Warner, file 16-296-FC.

Ms. VanLangevelde is here on behalf of the People.

Mr. Amadeo is here on behalf of the Defendant.

Good afternoon, Mr. Warner, raise your right hand.

Do you swear to tell the truth, the whole truth and  
nothing but the truth, so help you God, under penalty of  
perjury?

THE DEFENDANT: I do.

THE COURT: All right.

This matter is before the Court on six motions;  
however, it is my understanding that through the diligent work  
of the attorneys, Ms. VanLangevelde and Mr. Warner, and I  
don't know who else may have been involved, but they've been  
able to exchange information. They have been able to, I  
guess, develop a DVD that would remove the concerns of the  
Defendant that the motions that are currently pending are  
going to be withdrawn.

So, for example, there is a motion regarding  
suppression of the handwritten statement upon the best  
evidence rule. The person testifying will have the original  
statement by hand. I believe that resolves that. And, I can  
either rule in the favor of the Prosecutor or it can simply be

1 withdrawn now that Mr. Amadeo knows that the original document  
2 is, in fact, going to be presented in Court.

3 MR. AMADEO: Yeah, Your Honor, we will draw. I have  
4 seen the original document. I will get a copy of it today.

5 THE COURT: Okay.

6 Furthermore, it's my understanding as it relates to  
7 the Defendant's attempt to use the rape shield that the --  
8 that's being withdrawn for the reasons as discussed in the  
9 motions?

10 MR. AMADEO: That's correct, Your Honor.

11 THE COURT: And, the Defendant's motion that witness  
12 tampering has occurred in this case causing a miscarriage of  
13 justice, you've now had an opportunity to talk to the  
14 Prosecutor and the witnesses and to get the information. Is  
15 that correct, Mr. Amadeo?

16 MR. AMADEO: We are on the same page, that's  
17 correct.

18 THE COURT: All right, that motion is now withdrawn.

19 And the suppression of Detective Sergeant Jordan as  
20 a witness, and the video, as I understand it has also been  
21 resolved. There is now a video that is ten minutes long. Is  
22 that correct?

23 MS. VanLANGEVELDE: It's ten minutes and 18 seconds  
24 long, Your Honor.

25 THE COURT: And, it no longer has any reference in

1 any way that the jury can see to the word polygraph or that  
2 Mr. Warner was given a polygraph. Is that correct?

3 MS. VanLANGEVELDE: So, it's been cropped so that  
4 the word MSU Polygraph is not visible. We have cropped it as  
5 best we could to take out any wires. There's one little part  
6 where Detective -- or Maltby is holding the cell phone and  
7 kind of wiggles, but it's literally, like, not even a second.  
8 And I have the DVD to present to Mr. Amadeo after we're done  
9 here so he can watch it and see what I'm talking about. To  
10 me, it looks, literally, like a screen, where he's sitting at  
11 a -- next to a desk with the screen next to him with a bunch  
12 of computer cords. And, it's so quick I don't -- if you  
13 didn't know what you were looking at you wouldn't know it was  
14 a polygraph.

15 THE COURT: Well, what I'm going to have us do is  
16 watch it.

17 MS. VanLANGEVELDE: Sure.

18 THE COURT: So that we can make sure and that  
19 everybody's on the same page and not all of the sudden the day  
20 it's going to be presented that there's a concern.

21 MS. VanLANGEVELDE: Yep.

22 THE COURT: And that leaves the only other issue is  
23 motion for missing evidence. Mr. Amadeo?

24 MR. AMADEO: We have reviewed everything together  
25 and that motion was written before --

1 THE COURT: Right.

2 MR. AMADEO: -- Adrienne and I had a chance to talk.  
3 So, the evidence is there. I think everything is good to go.  
4 I think it was a lack of communication on both our parts. I  
5 apologize for that. But, after meeting with Adrian (sic), I  
6 think we're all on the same page.

7 THE COURT: And it did seem to the Court having, you  
8 know, and, and my law clerk having to read all of these  
9 motions that there are no issues now that need to be resolved.  
10 And, so, I don't have to rule on them if you're withdrawing  
11 them.

12 MR. AMADEO: I will withdraw them formally.

13 THE COURT: And you're withdrawing them is a good  
14 thing. So, there we are. But, now we're going to watch the  
15 video to make sure that we can all agree.

16 What?

17 MS. VanLANGEVELDE: I don't know how to turn on the  
18 TV because I don't have the remote.

19 There is one other issue, Judge, that I just want to  
20 raise, briefly, is that the -- there was an actual motion for  
21 suppression of Detective Sergeant Jordan as a witness.

22 THE COURT: Is that the one that talked about the  
23 bicycle.

24 MS. VanLANGEVELDE: Yes.

25 THE COURT: Okay.



1 MS. VanLANGEVELDE: And I would ask that there be no  
2 reference to that. He was never convicted. It doesn't fall  
3 under any Rules of Evidence to come.

4 THE COURT: Right.

5 MS. VanLANGEVELDE: It was never suspended or  
6 anything like that. And he's to testify if need by, Your  
7 Honor.

8 MR. AMADEO: My only concern there, Judge, and I'll  
9 withdraw that motion as well, is that I don't want the jury  
10 knowing who the Detective is when we're testifying.

11 THE COURT: Okay, well, I've lived in this community  
12 since, let's see, 1986, I think is when I first moved into  
13 Eaton County. And, I've been pretty well aware of things  
14 going on. When did this allegedly occur? I mean, I know it  
15 occurred --

16 DETECTIVE JORDAN: May 18, 2018.

17 THE COURT: All right.

18 I heard nothing about this. I was reading it and I  
19 was like, what are they talking about. And, so, I called in  
20 Ms. Ykimoff. We started talking about it and I said, let me  
21 get this right, somebody allegedly got a -- was on a bike on  
22 Mackinaw Island. Was it a two-seater? Was it pink? I don't  
23 know. But, at any rate, I heard nothing about it. Most  
24 importantly, there was no conviction, so, for anything like  
25 that to come in it's got to be that the witness has a

1 conviction involving truth and honesty. And not that -- I  
2 don't even -- I don't know, do you call that bike ride, joy  
3 riding? I don't -- you know, it really is borderline silly.  
4 I had never heard about it. I don't think that it was in the  
5 paper up north, right?

6 MS. VanLANGEVELDE: Yeah, it was in the news up  
7 north.

8 THE COURT: Yeah, okay. I mean, nobody reads the  
9 newspaper up north that lives down here on a regular basis  
10 unless somehow your job requires you to do it. I mean, it is  
11 fun to watch the weather people up there if you're up there,  
12 the local stations. But, really, it's not like it was in the  
13 Delta or Grand Ledge or Charlotte community newspaper, or the  
14 Lansing State Journal.

15 MR. AMADEO: I understand, Judge.

16 THE COURT: Okay.

17 I'm just saying that that one was -- that was one,  
18 you know, this was like the 12<sup>th</sup> motion between last week and  
19 this week. And, at that point, it's like, okay, we may be  
20 getting into frivolous territory.

21 MR. AMADEO: When you Google Detective Jordan, it  
22 was the first thing that came up. So, my only fear was if the  
23 jury Googled him during the trial, they would know he worked  
24 for MSP.

25 THE COURT: Well, I think the juries follow my

1 instructions very well and they won't use any social media to  
2 do anything in any way about investigating the case. So --  
3 and I just -- I -- you know, I realize that each individual  
4 case is significantly important to the Defendant who's being  
5 charged, to the victims who are having their case heard, but,  
6 trust me, I do not believe the residents of Eaton County, this  
7 is even on their radar. And, if their selected for the jury,  
8 and they remember the name of a witness, they're not going to  
9 go Google them because they can't do it. They're not allowed  
10 to use social media.

11 MR. AMADEO: I get it.

12 THE COURT: And, in all the -- all the jury trials  
13 I've done, one time, we've had a juror do something that they  
14 weren't supposed to. And, the first thing that happened is  
15 they came in, they said something in the jury room, the jurors  
16 stopped him, brought him out here, I sent him home and he was  
17 in contempt for doing it. So, I have every confidence in the  
18 jury system and the jury. They take their instructions  
19 serious.

20 Mr. Warner, I don't know what your fidgeting about,  
21 but it's getting on my nerves, and if you do that in front of  
22 the jury, it's going to get on their nerves. Your client  
23 wants to talk to you for a second.

24 MR. AMADEO: Your Honor, I do have the authority to  
25 approve this if he's allowed to leave right now. He -- he

1 just -- if Mr. Warner wants to leave I can have the authority  
2 to just say this is good or not. He doesn't need to watch  
3 this video right now if you'll let him leave.

4 THE COURT: I think he can stay.

5 MR. AMADEO: Okay.

6 THE COURT: But, he may get his wish because I don't  
7 know if we're going to be able to get it to work.

8 MS. VanLANGEVELDE: Mr. Morton is trying to help me  
9 with the cord. I'm sorry.

10 THE COURT: We really probably need, at some point,  
11 then to learn how to do this too in our courtroom. I know I  
12 don't, but I should learn.

13 Can we go off the record so I can call Mr. Seratt  
14 and have him --

15 THE COURT: Well, it doesn't -- I guess, I guess,  
16 see, I'm not going to allow -- I don't think -- I have a  
17 problem with the Defendant saying I'm leaving the courtroom,  
18 number one. Because all of this is significant in terms of  
19 your rights, Mr. Warner. Go ahead.

20 THE DEFENDANT: I've seen the video. And I'll take  
21 you guys word for it, whatever you guy want to do. I just  
22 don't want to be sitting here for this. I've already seen the  
23 ten minute video that was shown two years ago.

24 THE COURT: It's not the same video, is it?

25 THE DEFENDANT: It's the only ten minute video there

1 is. A ten minute video and a 30 minute video.

2 THE COURT: All right.

3 It's the same video you saw, but apparently -- well,  
4 wait a minute, I can't believe that we showed it last time and  
5 it said polygraph on it.

6 MS. VanLANGEVELDE: We -- we didn't --

7 THE DEFENDANT: It showed the wires, everything.

8 MS. VanLANGEVELDE: We didn't crop it -- we had  
9 cropped it before, Your Honor, but I cropped it -- I had Bryan  
10 Seratt crop it even more because there was some concerns about  
11 the wires. So, you can't see --

12 THE COURT: Okay.

13 So this is the same video that, Mr. Warner, that you  
14 saw before. Apparently, it's been cropped a little bit more.  
15 But, are you saying that you don't object to this video being  
16 shown? I know you don't like it, but --

17 THE DEFENDANT: No, I don't care. Whatever my  
18 lawyer wants to do he can do. At this point, I'm just -- I'm  
19 just done with it. I don't know. I'm not concerned with what  
20 the wires are showing.

21 THE COURT: Well, I -- I'm -- what I'm being told is  
22 that the wires don't show.

23 THE DEFENDANT: Right. So, I'll take you guys word  
24 for it. I'm not -- I'm not going to be concerned with it.

25 MS. VanLANGEVELDE: Well, there is one area, and

1 during the video, that's why I want to do it, and do it  
2 outside the presence of the jury, because it's very quick  
3 where Detective Maltby goes to turn off the light switch so  
4 his phone can see it better.

5 THE COURT: Can you put it to that spot or within a  
6 few seconds of that spot? We can't see anything yet, so I  
7 turned the volume --

8 (At 2:24 p.m. - video playing)

9 MS. VanLANGEVELDE: See right there.

10 THE COURT: Yeah.

11 (At 2:24 p.m. - video stopped)

12 MS. VanLANGEVELDE: And, see, to me, it just looks  
13 like a computer with a bunch of cords.

14 THE COURT: Right.

15 Do you have -- go back again so Mr. Amadeo can see  
16 it again.

17 MS. VanLANGEVELDE: So the lights on there.

18 (At 2:24 p.m. - video playing)

19 (At 2:25 p.m. - video stopped)

20 MS. VanLANGEVELDE: That portion.

21 THE COURT: I -- I mean, I'll -- I'm going to defer  
22 to Mr. Amadeo, but, to me, it looks like he's just sitting in  
23 an office somewhere being -- talking to somebody. I don't see  
24 --

25 MR. AMADEO: Yeah, and that's fine, Judge, the only

1 thing I was pointing to in the video I had was you actually  
2 see where it says, our goal, MSP Polygraph, comes up. My only  
3 fear was the jury seeing that sign. We don't see it here.

4 THE COURT: No, I don't see it.

5 MR. AMADEO: The discovery I received it was there.

6 THE COURT: Okay, right. Very good. Do you see it  
7 there?

8 MR. AMADEO: No, I think it's fine there.

9 THE COURT: Are we fine there?

10 Okay.

11 So, we're all good then with that DVD.

12 All right.

13 Are there any other pretrial motions that I need to  
14 hear, right now, before we reconvene at 8:15 Friday morning.  
15 I want the attorneys and Mr. Warner here at 8:15 in this  
16 courtroom. The courtroom will be unlocked. Because I want to  
17 get the jury up here -- the jury pool, as close to 8:30 as  
18 humanly possible.

19 MS. VanLANGEVELDE: Yes, Your Honor.

20 THE COURT: And we'll pick the jury.

21 Is there anything else, Ms. VanLangevelde.

22 MS. VanLANGEVELDE: So, I was going through the list  
23 of possible exhibits through -- that we got at the, the final  
24 pretrial last week.

25 THE COURT: Okay.

1 MS. VanLANGEVELDE: And Mr. Amadeo and I are going  
2 to meet afterwards, but just FYI, Judge, some possible  
3 exhibits include photographs of penis from Mayo Clinic, and a  
4 photograph of Damon Warner, which says impeachment if needed.  
5 I'm -- apparently, I'm under the understanding that it's going  
6 to be a photograph of Damon Warner's penis. And so --

7 THE COURT: Okay, well we're going to -- what, what,  
8 what are we talking about here?

9 MS. VanLANGEVELDE: This is what I'm being told it's  
10 going to be a possible exhibit.

11 THE COURT: Mr. Amadeo.

12 MR. AMADEO: In the CPS interview, the first one,  
13 Pearl Griffin testified -- well, she gave a statement that Mr.  
14 Warner's penis looked like something that came out of a health  
15 book.

16 THE COURT: A health book?

17 MR. AMADEO: That's what she said.

18 THE COURT: What does that mean?

19 MR. AMADEO: I was going to question her on that.

20 THE COURT: Oh, okay. And --

21 MR. AMADEO: I don't not intend to use the penis  
22 picture that we had.

23 THE DEFENDANT: Please don't.

24 MR. AMADEO: Okay.

25 We don't intend to do that.



1 THE COURT: Okay.

2 MR. AMADEO: I said we had a bunch of exhibits. I  
3 want to go over it with Adrian (sic) one-on-one. I just  
4 listed a bunch of things as I chopping them down. Most of  
5 those exhibits won't be utilized. But, I just want to meet  
6 with her for, like, a half hour, be on the same page and  
7 stipulate to a bunch.

8 THE COURT: So, she said something -- if you asked  
9 her what that meant, and somehow that involved some kind of a  
10 distinguishing feature, let's say --

11 MR. AMADEO: Yes.

12 THE COURT: -- and then, in fact, Mr. Warner's penis  
13 does not have that distinguishing feature, at that point, you  
14 would want to use it?

15 MR. AMADEO: Correct.

16 THE COURT: Well, obviously, that's going to be  
17 okay. If that's what were to happen. Just, you know --

18 MR. AMADEO: That was the only purpose of that,  
19 Judge.

20 THE COURT: Who took the picture of the penis that  
21 may be used?

22 MR. AMADEO: I asked him to take the picture.

23 THE COURT: Okay, so he can -- so, but, here -- so  
24 he would have to take the stand to testify to authenticate the  
25 picture, correct?

1 MR. AMADEO: He would have to.

2 THE COURT: What, Mr. Warner?

3 THE DEFENDANT: My wife took the picture. I did not  
4 take it myself.

5 THE COURT: Okay.

6 Well, then she could take the stand.

7 THE DEFENDANT: Okay.

8 MR. AMADEO: Okay.

9 THE COURT: Right? To -- Ms. VanLangevelde, she'd  
10 have to take the witness stand, but --

11 MS. VanLANGEVELDE: Right. I understand -- and I  
12 understand that. I was just going through the possible  
13 exhibits and that is one that we are going to go over, I  
14 guess, afterwards and, and go through some of these possible  
15 exhibits because I, I haven't received some of these things  
16 listed. And, so, just -- we may have some evidentiary issues  
17 to address before trial.

18 MR. AMADEO: I think we'll be able to figure it out  
19 by Thursday.

20 THE COURT: Well --

21 MS. VanLANGEVELDE: Okay.

22 THE COURT: -- I certainly hope that it all gets  
23 figured out because nothing make me more crazy than asking  
24 citizens to give up their time to be here and we are doing  
25 something other than having them sit in the courtroom and

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listen to evidence. They should not be back twiddling their thumbs in a jury room because we aren't prepared to start the trial.

MR. AMADEO: Understood, Judge.

THE COURT: Understood?

MS. VanLANGEVELDE: Yes.

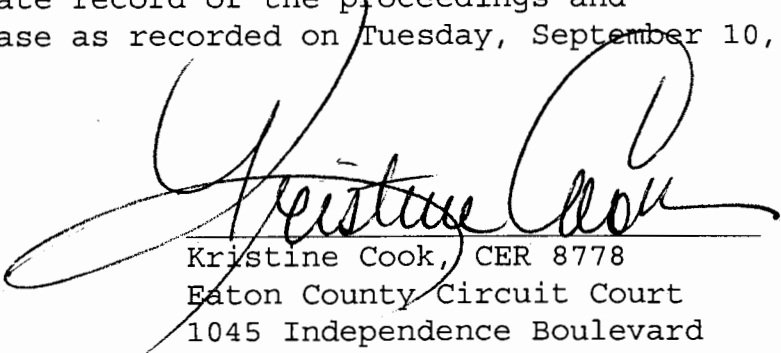
THE COURT: Are we all on the same -- now, I am going to be around so if anybody needs to talk to me, I'll be back in my office. That's all for the record.

(At 2:29 p.m. proceedings concluded)

STATE OF MICHIGAN )  
 )  
COUNTY OF EATON )

I certify that this transcript, consisting of 18 pages, is a complete, true, and accurate record of the proceedings and testimony taken in this case as recorded on Tuesday, September 10, 2019.

Date: 12.10.19



Kristine Cook, CER 8778  
Eaton County Circuit Court  
1045 Independence Boulevard  
Charlotte, MI 48813  
(517) 543-4307

STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant.

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JURY TRIAL - VOLUME I OF III

BEFORE THE HONORABLE JANICE K. CUNNINGHAM , CIRCUIT JUDGE

Charlotte, Michigan - Friday, September 13, 2019

APPEARANCES:

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Jury voir dire

Jury impaneled

EXHIBITS:

None

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Charlotte, Michigan

Friday, September 13, 2019 - At 8:32 a.m.

THE COURT: We are on the record in the People of the State of Michigan versus Damon Earl Warner, file number 16-296 FC.

Ms. Morton and Ms. Van Langevelde are here on behalf of the People. Mr. Amadeo and Mr. --

MR. WINTER: Winter.

THE COURT: -- Winter are -- is here on behalf of the defendant.

Mr. Warner, raise your right hand.

MR. WINTER: I'm sorry?

THE COURT: I'm talking to the defendant.

MR. WINTER: I'm sorry.

THE COURT: Raise your right hand.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God, under penalty of perjury?

THE DEFENDANT: I do.

(At 8:33 a.m., defendant sworn by the Court)

THE COURT: Okay. So, any preliminary matters that we have to address before we bring the jury pool in, Ms. Van Langevelde?

MS. VAN LANGEVELDE: I do have just one paperwork, Your Honor. Going through the -- actually, your law clerk

1 contacted me yesterday about the Amended Information. And when  
2 looking at it, I noticed, actually, the date was incorrect.  
3 Now, a date, in CSC cases, is not an element, but I know that  
4 because Pearl was 13 in two -- and that's when the allegations  
5 took place, and she's always testified that her little sister,  
6 Sable, was just about a year old. And so -- and Sable's  
7 birthday is 2010. So, it should actually read spring/summer of  
8 2011.

9 I talked to Mr. Amadeo about that this morning, and  
10 there's no objection to amending that.

11 THE COURT: Is that correct, Mr. Amadeo?

12 MR. AMADEO: Of course, Judge, no objection.

13 THE COURT: All right.

14 MS. VAN LANGEVELDE: And there is an Amended  
15 Information, and that --

16 THE COURT: I have that, yup.

17 MS. VAN LANGEVELDE: -- should be loose in the file.  
18 Thank you.

19 THE COURT: Okay.

20 MR. AMADEO: Your Honor, I do apologize. I was here  
21 at seven-forty-five. I know you have a tight date, but the  
22 jury was out there.

23 THE COURT: It doesn't matter. They don't know that  
24 you're an attorney in the case. They don't know anything about  
25 the case. And there was no basis not to come in the building.



1 So, I don't understand it, but that's where we're at.

2 MR. AMADEO: I was in line, Judge.

3 THE COURT: Huh?

4 MR. AMADEO: I was in line. I didn't know I could  
5 jump the line.

6 THE COURT: You were what?

7 MR. AMADEO: I was in line, but I didn't know I could  
8 actually jump ahead of them.

9 THE COURT: Okay, that's all right. We're waiting  
10 for the jury pool to come up anyway.

11 Is there any other preliminary matters?

12 MS. VAN LANGEVELDE: I do want to place the offer  
13 that we've extended to the defendant on the record. And -- and  
14 it is my understanding he's rejecting that offer --

15 THE COURT: Okay.

16 MS. VAN LANGEVELDE: -- but I do want to place it on  
17 the record.

18 The People offered that, if the defendant were to  
19 plead guilty to a count of CSC - Third and CSC - Second, we  
20 would dismiss the CSC - First. Also, that would change the  
21 guidelines, because we believe, as on the CSC - First, the  
22 guidelines are 81 months to 202 months because he's a Habitual  
23 Third. If he were to plead guilty to a CSC - Third and a CSC -  
24 Second, the guidelines, as I have them preliminarily scored,  
25 are 51 to 127 months. We also -- I should -- the record should

1 reflect, too, that we made a -- a sentencing agreement range of  
2 six years to 10 years. So, basically, at sentencing, we were  
3 saying we would argue for what we wanted to argue --

4 THE COURT: Um-hum.

5 MS. VAN LANGEVELDE: -- but the defense could argue  
6 for a lower number.

7 THE COURT: Um-hum.

8 MS. VAN LANGEVELDE: And then, we had an -- and so,  
9 extended that on September 10th.

10 Then yesterday, the record should reflect we had an  
11 in-chambers meeting, and Your Honor indicated that, if he were  
12 to accept our offer, Your Honor would be around seven years on  
13 the sentence if he were to plead to the CSC - Third and the CSC  
14 - Second.

15 I don't -- I just want to place that on the record.  
16 And I think that's an accurate statement of the offers that  
17 have been extended.

18 THE COURT: Mr. Amadeo.

19 MR. AMADEO: Yes, Judge. Thank you for your meeting  
20 yesterday. I did have time to speak to my client and his  
21 family, explain the pros and cons. It is my understanding he  
22 is refusing the offer.

23 THE COURT: Okay.

24 MR. AMADEO: Is that accurate?

25 THE DEFENDANT: Yes.

1 MR. AMADEO: Yes.

2 THE COURT: All right, so just so we're clear, Mr.  
3 Warner, if you are convicted, as charged, it is believed your  
4 guideline is 6.7 years to 16.8 years; do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. And the prosecutor, this morning,  
7 is offering a resolution that would be six to 10 years, and  
8 then up to the Court's discretion to determine what amount  
9 within that time frame. And you are rejecting that, as I  
10 understand it.

11 And I just need to make sure that you understand  
12 that, if you were to be sentenced at the top end, if you were  
13 convicted, you're talking about an additional 10 years.

14 THE DEFENDANT: Yes.

15 THE COURT: All right. And it's your decision that  
16 you do not want to accept that offer.

17 THE COURT: Yes.

18 THE COURT: Okay. Are they ready?

19 LAW CLERK/JURY BAILIFF: No, she still has 29 that  
20 she's checking in.

21 THE COURT: Okay.

22 MR. AMADEO: Can I run to the bathroom real quick?

23 THE COURT: Yes, you may.

24 MR. AMADEO: Thank you.

25 THE COURT: All right, so I guess I'm going to go

1 back in my office until the jury pool is ready to come in.

2 MR. WINTER: Your Honor, may I have one moment. I'm  
3 -- I'm -- I usually have hearing aids, and my hearing aids are  
4 broken, so I have a little bit of a hearing problem. So, I'll  
5 try not to interrupt the trial, but I just wanted to make the  
6 Court aware that I -- I may have some difficulty hearing some  
7 things. I --

8 THE COURT: Well, what is your role this morning in  
9 the case, Mr. Winter?

10 MR. WINTER: I'm -- I'm assisting Mr. Amadeo. I --  
11 probably will just be listening.

12 THE COURT: Okay.

13 MR. WINTER: But it will probably continue into next  
14 week 'cause I'm not gonna get 'em over the weekend. So, I just  
15 wanted to make the Court aware of that.

16 THE COURT: Well --

17 MS. VAN LANGEVELDE: We do have one some of those --

18 THE COURT: The Court has some type of a hearing  
19 device that is available for jurors that have a hearing  
20 problem, that don't have it. So, perhaps we'll do it.

21 Are you chewing gum?

22 MR. WINTER: I'm sorry? Yes, I am.

23 THE COURT: Okay, that needs to be spit out in the  
24 garbage.

25 MR. WINTER: Okay.

1 THE COURT: We don't chew gum in the courtroom.

2 And I guess we'll wait to make sure a juror doesn't  
3 need them, and then we'll see about that hearing device --

4 MR. WINTER: That's fine.

5 THE COURT: -- to assist you.

6 MR. WINTER: I appreciate that. Thank you, ma'am.

7 THE COURT: No problem.

8 Anything else on the record?

9 MS. VAN LANGEVELDE: No. Thank you.

10 (At 8:39 a.m., off the record)

11 (At 9:10 a.m., back on the record)

12 THE COURT: Okay, we are back on the record in People  
13 versus Warner, file 16-296-FC.

14 It's my understanding that the jury is -- jury pool  
15 is getting ready to be brought up.

16 Right before they're brought up, Ms. Ykimoff is gonna  
17 be bringing a potential juror up who came with her infant child  
18 in a car seat that I need to speak to about her civic duty, and  
19 then we'll go from there.

20 I would indicate to both attorneys, I guess before  
21 the jury gets here, that I don't like to limit attorneys'  
22 questions. As you both know, I'm going to ask the initial  
23 generic type questions that you would always ask, and then give  
24 you each an opportunity. But, jury selection is not a time to  
25 try your case. And so, if, at some point, I feel that people

1 are taking an inordinate amount of time, you know, I may ask  
2 either one of you just to conclude your voir dire and sit down  
3 okay? Not saying it's gonna happen, I'm just letting you know.

4 MS. VAN LANGEVELDE: Thank you, Your Honor.

5 MR. AMADEO: Your Honor, when one juror is polled, is  
6 there a limit to how many questions we can ask to do? I know  
7 in Wayne County, they make us limit to three if that happens.  
8 It speeds 'em up.

9 THE COURT: I think that's -- I don't normally limit  
10 it because I haven't had people abuse it.

11 MR. AMADEO: Right.

12 THE COURT: But if that starts to happen, then I may  
13 call both of you up and say, okay, now you're gonna have a  
14 limitation on --

15 MR. AMADEO: Okay.

16 THE COURT: -- how many follow-ups. But, generally,  
17 my experience has been that the attorneys, you know, they're  
18 experienced and they know the jurors are listening, and you're  
19 gonna lose the jurors if you rehash, you know, too much of what  
20 they've already heard. I am always amazed at how attentive the  
21 prospective jurors are, and that they do take very serious  
22 their obligation, well, to be jurors. It's the one positive  
23 thing I can say about the criminal justice system is how jurors  
24 take their job very serious, as well they should.

25 MS. VAN LANGEVELDE: Judge, I know one thing that you

1 always do, and maybe we -- we can address this while we're  
2 waiting, is -- I'm sorry -- the list of witnesses.

3 THE COURT: Yup.

4 MS. VAN LANGEVELDE: Just to make sure that all the  
5 names -- 'cause --

6 THE COURT: That I'm saying them correctly?

7 MS. VAN LANGEVELDE: Well, we could do that, too,  
8 but --

9 THE COURT: I have Detective James Malt -- Maltby,  
10 Doctor -- Detective Sergeant Josh Ivey, Detective Derrick  
11 Jordan, Pearl Giffen, James Giffen, Sharon Giffen, Corey Wood  
12 from CPS, Tom Cottrell, Robert Giffen, Austin Walsh, Heather  
13 Romero, Damon Warner, Amy Warner, Skyler Warner Morgan, Pastor  
14 Matt Rhode, Phil Smith, Tracey Clay, Dr. Thomas Neidlinger,  
15 Noah Warner, and Sable Warner.

16 MR. AMADEO: As far as my witness -- that was the  
17 initial list, Your Honor. I'm not calling any witnesses. I  
18 may call rebuttals.

19 THE COURT: So, which ones do you want me to take  
20 off?

21 MR. AMADEO: You could take 'em all off except for  
22 Damon Warner.

23 THE COURT: Well, I don't know which ones are yours.

24 MR. AMADEO: Oh.

25 THE COURT: I just have a comprehensive list.

1 MS. MORTON: I think it's after --

2 MS. VAN LANGEVELDE: So --

3 MS. MORTON: -- James Giffen; right?

4 MS. VAN LANGEVELDE: Yeah. So, he -- I think you may  
5 call Robert Giffen.

6 MR. AMADEO: I may call Robert Giffen and Austin  
7 Walsh --

8 MS. VAN LANGEVELDE: Okay.

9 MR. AMADEO: -- as rebuttal witnesses.

10 MS. VAN LANGEVELDE: So, but --

11 MR. AMADEO: Not puttin' 'em on my case-in-chief.

12 THE COURT: But I still have to name them in case  
13 somebody knew them.

14 MS. VAN LANGEVELDE: Right, right.

15 MR. AMADEO: Right.

16 MS. VAN LANGEVELDE: So -- but I think everybody -- I  
17 think what you're saying is everybody after Austin Walsh,  
18 except Damon -- well, Damon Warner is after Austin Walsh.

19 THE COURT: Is it -- okay, let's -- I'm gonna do this  
20 one at a time.

21 MS. VAN LANGEVELDE: Okay.

22 THE COURT: Does Sable Warner need to be on the list?  
23 Sable Warner.

24 MR. AMADEO: No.

25 THE COURT: Noah Warner.



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MR. AMADEO: No.

THE COURT: Dr. Thomas Neidlinger.

MR. AMADEO: No.

THE COURT: Tracey Clay.

MR. AMADEO: No.

THE COURT: Phil Smith.

MR. AMADEO: No.

THE COURT: Pastor Matt Rhode.

MR. AMADEO: No.

THE COURT: Skyler Warner Morgan.

MR. AMADEO: No.

THE COURT: Amy Warner.

MR. AMADEO: No.

THE COURT: Damon Warner.

MR. AMADEO: Possibly, but unlikely.

THE COURT: Well, I'll leave it, then.

MR. AMADEO: Yeah.

THE COURT: Heather Romero.

MR. AMADEO: No.

THE COURT: Austin Walsh.

MR. AMADEO: Possibly.

THE COURT: And then Robert Giffen's --

MR. AMADEO: Possible.

THE COURT: -- a possible.

MR. AMADEO: Okay.

1 THE COURT: And then everybody else. Okay.

2 MS. VAN LANGEVELDE: Yes. Thank you.

3 THE COURT: Thank you for that clarification. I  
4 appreciate that.

5 MR. AMADEO: I believe all exhibits have been  
6 stipulated to, as well, Judge.

7 MS. VAN LANGEVELDE: Yes. Actually, let's put that  
8 on --

9 THE COURT: Yes.

10 MS. VAN LANGEVELDE: I can put that on the record,  
11 too.

12 We went over -- we talked about this a little bit in  
13 chambers, too, yesterday. But, I met with Mr. Amadeo yesterday  
14 and played, for him, the portion of the second interview with  
15 Detective Maltby that I intend to play. And I believe that  
16 there's a stipulation that --

17 THE COURT: What are the exhibit numbers, please?

18 MS. VAN LANGEVELDE: Oh, I don't have an exhibit  
19 number on it yet. I'm sorry.

20 THE COURT: So, you only have one exhibit?

21 MS. VAN LANGEVELDE: No.

22 THE COURT: Okay. What are the exhibits and their  
23 numbers and identification --

24 MS. VAN LANGEVELDE: There -- I haven't --

25 THE COURT: -- that are stipulated to?

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1 MS. VAN LANGEVELDE: -- pre-marked them yet, Judge.  
2 I'm sorry.

3 LAW CLERK/JURY BAILIFF: (Inaudible).

4 THE COURT: She's not coming up?

5 LAW CLERK/JURY BAILIFF: No, she said she's sick.

6 THE COURT: She understands that she'll be back?

7 LAW CLERK/JURY BAILIFF: Correct.

8 THE COURT: Well, sometimes just the idea of having  
9 chat works.

10 MS. VAN LANGEVELDE: I'm sorry, I haven't pre-marked  
11 them with numbers yet, but there's photographs.

12 THE COURT: Why don't maybe we do this. Why don't --  
13 since we're not doing any exhibits today, why don't you prepare  
14 an exhibit list, as I think you would normally do --

15 MS. VAN LANGEVELDE: Right.

16 THE COURT: -- and then first thing Monday morning,  
17 before we bring the jury in, we'll have a document that can be  
18 stipulated --

19 MR. AMADEO: Sure.

20 THE COURT: -- that the exhibits are considered  
21 admitted.

22 MS. VAN LANGEVELDE: Thank you.

23 THE COURT: Yeah.

24 MS. VAN LANGEVELDE: All right, thank you, Judge.

25 THE COURT: And, apparently, the juror doesn't need

1 to come up and see me.

2 MS. VAN LANGEVELDE: Okay.

3 THE COURT: Yes? Anybody who is just observing, I  
4 need you to go in the back corner, so that the prospective  
5 jurors are all in the front rows. Once a jury has been  
6 selected, you will be allowed to come back to the front row.  
7 Thank you very much. You're gonna have to go all the way over  
8 because I think we're gonna need all the seats. Thank you.

9 (At 9:18 a.m., prospective jurors enter courtroom)

10 LAW CLERK/JURY BAILIFF: If everyone could squeeze  
11 in, so we can get one person on the end of each row. Thank  
12 you. Appreciate it.

13 THE COURT: Please be seated. Everybody snug as a  
14 bug?

15 All right, good morning, ladies and gentlemen.

16 PROSPECTIVE JURORS: Good morning.

17 THE COURT: My name is Judge Cunningham. And it is  
18 both my privilege and my pleasure to welcome you to the 56th  
19 Circuit Court.

20 I know that jury duty, for some of you, may be a new  
21 experience. Jury duty is the most serious of duties that  
22 members of a free society are asked to perform. Our system of  
23 self government could not exist without the jury system.

24 The jury is a very important part of this courtroom.  
25 The right to a jury trial is an ancient tradition, and it is

1 part of our heritage.

2 The law says that both a person, who is accused of a  
3 crime, and the prosecution has the right to a trial, not by one  
4 person but by a jury of 12 impartial persons.

5 Jurors must be as free as humanly possible from bias  
6 prejudice or sympathy for either side. Each side in a trial is  
7 entitled to jurors who will keep an open mind until the time  
8 comes to decide the case.

9 A trial begins with jury selection. The purpose of  
10 this process is to obtain information about you that will help  
11 us choose a fair and impartial jury to hear this case.

12 During jury selection, the lawyers and I will ask you  
13 questions. This is called voir dire. The questions are meant  
14 to find out if you know anything about the case.

15 Also, we need to know if you have any opinions or  
16 personal experiences that might influence you for or against  
17 the prosecution, the defendant, or any witnesses.

18 One or more of these things could cause you to be  
19 excused in this particular case, even though you are qualified  
20 to be a juror.

21 The questions may probe deeply into your attitudes,  
22 beliefs and experiences. They are not meant to be unreasonably  
23 prying into your private life.

24 The law requires that we get this information so that  
25 an impartial jury can be chosen.

1           If you do not hear or understand a question, please  
2 say so. If you do understand the question, you should answer  
3 it truthfully and completely. Please do not hesitate to speak  
4 freely about anything you think that I should know.

5           Now, during the jury selection process, you may be  
6 excused from serving on the jury in one of two ways. First, I  
7 might excuse you for cause. That is, I may decide there is a  
8 valid reason why you cannot or should not serve on a jury in  
9 this particular case. Or, a lawyer, from one side or the  
10 other, may excuse you without giving a reason. This is called  
11 a peremptory challenge. The law gives each side the right to  
12 excuse a certain number of jurors in this way. If you are  
13 excused, you should not feel bad or take it personally. There  
14 is, simply, something that causes you to be excused in this  
15 particular case.

16           I will now be asking you to stand and swear to answer  
17 truthfully, fully and honestly any questions that you are asked  
18 about your qualifications to serve as a juror in this case. If  
19 you have a religious belief against taking an oath, you may  
20 simply affirm that you will answer all of the questions  
21 truthfully, fully and honestly.

22           Would you all please stand and raise your right  
23 hands?

24           Do you solemnly swear or affirm that you will  
25 truthfully and completely answer all the questions about your

1 qualifications to serve as a juror in this case?

2 PROSPECTIVE JURORS: I do. Yes.

3 (At 9:25 a.m., prospective jurors sworn by the Court.

4 THE COURT: Thank you. Please be seated.

5 All right, so, now the next step is going to be I  
6 will call 14 names into the jury box. The first person, the  
7 first name I call, please come to the top seat closest to me.  
8 You can actually come through this way if you want, so you  
9 don't have to go through all the chairs.

10 And that person would be Joshua Young.

11 JUROR YOUNG: Dang it.

12 THE COURT: Right up here, sir.

13 And then, Celia Anthony, followed by Brandi Lee  
14 Howell, in the fourth seat will be Mr. Kevin Smith, followed by  
15 Roberta Raflik, Rebecca Hosey, next will be Wendy Kitsmiller.  
16 And, Miss Kitsmiller, if you would sit in the first chair  
17 closest to me, on the bottom. Marjorie McPhee, Patrick Dake,  
18 Kristie Green, Linda Wallace, Janet Renton, Regina Centeno.

19 And, Miss Centeno, you would sit in the top back  
20 seat, if you would, please.

21 Jeffrey O'Bryant.

22 Good morning, again.

23 JURORS: Good morning.

24 THE COURT: How's everybody doin'?

25 JURORS: Good.

1 THE COURT: Okay. Well, let me start by introducing  
2 you to the members of my staff. My court reporter, who takes  
3 down everything that happens in the courtroom, is Miss Kathy  
4 Bond. And my law clerk and jury bailiff, who brought you up  
5 here this morning, is Miss Lauren Ykimoff.

6 This is a criminal case involving the charges of  
7 Criminal Sexual Conduct - First Degree, a relationship, and  
8 Criminal Sexual Conduct - Second Degree, a relationship. I'm  
9 gonna explain that a little more fully a little later on.

10 These charges have been made against the defendant,  
11 who is Mr. Damon Earl Warner, also known as Damon Huff. And  
12 the defendant's lawyer is Mr. William Amadeo and Mr. Winter.

13 The lawyers for the State of Michigan are Assistant  
14 Prosecuting Attorney Adrienne Van Langevelde.

15 MS. VAN LANGEVELDE: Good morning. Good morning.

16 THE COURT: And Assistant Prosecuting Attorney, Miss  
17 Kelly Morton.

18 MS. MORTON: Good morning.

19 THE COURT: Now, the witnesses who may be called in  
20 this case are as follows: Detective James Maltby, Eaton County  
21 Sheriff's Department; Detective Sergeant Joshua Ivey, Eaton  
22 County Sheriff's Department; Detective Sergeant Derrick Jordan,  
23 Michigan State Police; Pearl Giffen; James Giffen; Sharon  
24 Giffen; Corey Wood with the Eaton County CPS; Thomas Cottrell;  
25 Robert Giffen; Austin Walsh; and Damon Warner.



1           So, let's just start there. Does anybody in the jury  
2 box know any of the people participating on this side of the  
3 bar?

4           JUROR GREEN: No, ma'am.

5           THE COURT: Did any of you recognize the name of any  
6 of the witnesses that may be called during trial?

7           JUROR GREEN: No, ma'am.

8           THE COURT: Okay. We think this trial will last for  
9 three days. In other words, we believe it will be con -- con  
10 -- concluded Wednesday.

11           Does anybody have any airline tickets to leave the  
12 state of Michigan between now and Wednesday?

13           JURORS: No.

14           THE COURT: Does anybody have any health problem that  
15 would prevent you from being able to sit for about two hours at  
16 a time? We take a break about every two hours. Anybody have  
17 any health issue?

18           JURORS: (No verbal response).

19           THE COURT: Does anybody have any sight or hearing  
20 issues that would impact your ability to see the screen or look  
21 at exhibits or hear a witness testify?

22           Okay, Miss Kitsmiller.

23           JUROR KITSMILLER: I have MS. I can sit for two  
24 hours, no problem. But if I have an attack, which I never  
25 know --

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1 THE COURT: Okay.

2 JUROR KITSMILLER: -- then I don't know when that  
3 will happen. So, it -- it could happen.

4 THE COURT: It could.

5 JUROR KITSMILLER: Yeah, but it could not.

6 THE COURT: Well, would you feel comfortable serving  
7 as a juror?

8 JUROR KITSMILLER: Yes, I would.

9 THE COURT: Okay.

10 JUROR KITSMILLER: Yeah.

11 THE COURT: Because I certainly don't believe that MS  
12 is -- is that right?

13 JUROR KITSMILLER: Right.

14 THE COURT: -- is anything that disqualifies you.

15 JUROR KITSMILLER: Right.

16 THE COURT: My issue is more are you comfortable, are  
17 you gonna be able to sit and listen carefully and not make any  
18 decision about anything until you've heard all the evidence.  
19 Would you be able to do that?

20 JUROR KITSMILLER: Yes, I could do that.

21 THE COURT: Okay.

22 JUROR KITSMILLER: I'm just saying I have what they  
23 call dystonia, which is like a seizure but I can still see.

24 THE COURT: Okay.

25 JUROR KITSMILLER: And I don't know when that's

1 coming. Now, it's been a year and two months or three  
2 months --

3 THE COURT: Okay.

4 JUROR KITSMILLER: -- since it's happened, but I  
5 don't know --

6 THE COURT: Right.

7 JUROR KITSMILLER: -- when that's gonna happen.

8 THE COURT: So, you're saying -- and we don't want  
9 that to happen.

10 JUROR KITSMILLER: Right.

11 THE COURT: And, by the way, I'm glad it's been a  
12 year. And I'm sure that's --

13 JUROR KITSMILLER: Right.

14 THE COURT: But say you were to have a seizure, would  
15 you be able like to kinda put your hand up or --

16 JUROR KITSMILLER: Yeah.

17 THE COURT: I mean, I'm --

18 JUROR KITSMILLER: Yeah.

19 THE COURT: And I -- we could take a break?

20 JUROR KITSMILLER: Oh, yeah.

21 THE COURT: Okay.

22 JUROR KITSMILLER: Yeah, I could. (Inaudible).

23 THE COURT: All right. So, you're comfortable --

24 JUROR KITSMILLER: Yes.

25 THE COURT: -- at this point. Okay.

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JUROR KITSMILLER: Yup. Yup.

THE COURT: Good. All right.

JUROR KITSMILLER: So, I just wanted you to know.

THE COURT: I appreciate you sharing that.

JUROR KITSMILLER: Yeah.

THE COURT: Anybody else have anything they think I need to know at this point?

JURORS: (No verbal response).

THE COURT: Okay. So, as I said, this is a criminal case. Now, ladies and gentlemen, the paper that's used to charge a defendant with a crime is called the Information. The Information in this case reads as follows:

The People of the State of Michigan, the prosecuting attorney for this county appears before the Court and alleges  
Count One: Criminal Sexual Conduct - First Degree: That the defendant, Damon Earl Warner, did engage in sexual penetration, to-wit: digital/vaginal with a child who was at least 13 but less than 16 years of age, and the defendant and the victim were members of the same household; contrary to Michigan law.

Count Two: Criminal Sexual Conduct - Second Degree: That the defendant, Damon Earl Warner, did engage in sexual conduct with a child who was at least 13 but less than 16 years of age, and the defendant and the victim were members of the same household; contrary to Michigan law.

The defendant has pled not guilty to these charges.

1 And you should clearly understand that the Information that I  
2 have just read is not evidence. An Information is read in  
3 every criminal trial so that the defendant and the jury can  
4 hear the charges. You must not think it is evidence of guilt  
5 or that he must be guilty simply because he has been charged.

6 A person accused of a crime is presumed to be  
7 innocent. This means you must start with the presumption that  
8 the defendant is innocent. The presumption continues  
9 throughout the trial and dis -- and the defendant is entitled  
10 to a verdict of not guilty unless you are satisfied beyond a  
11 reasonable doubt that he is guilty.

12 Every crime is made up of parts called elements. The  
13 prosecutor must prove each element of the crime beyond a  
14 reasonable doubt. The defendant is not required to prove his  
15 innocence or to do anything. If you find that the prosecutor  
16 has not proven every element beyond a reasonable doubt, then  
17 you must find that the defendant is not guilty.

18 A reasonable doubt is a fair, honest doubt growing  
19 out of the evidence or lack of evidence. It is not merely an  
20 imaginary or possible doubt, but a doubt based on reason and  
21 common sense. A reasonable doubt is just that, a doubt that is  
22 reasonable after a careful, considered examination of the facts  
23 and circumstances of the case.

24 So, let me start with this question. Have any of you  
25 been on a jury before?

1 Okay, I see Miss Hosey. When -- when were you on a  
2 jury?

3 JUROR HOSEY: Probably about 10 years ago in East  
4 Lansing.

5 THE COURT: In East Lansing? What kind of case was  
6 it?

7 JUROR HOSEY: It was actually a traffic thing.

8 THE COURT: Oh. Oh, okay.

9 And who else had their hand up? Miss Renton.

10 JUROR RENTON: I don't know what year it was, but it  
11 was in Grand Rapids, and it was a corporation, fra -- like a  
12 fraud.

13 THE COURT: Was it civil or criminal?

14 JUROR RENTON: Umm --

15 THE COURT: Were there six of you or 12 of you?

16 JUROR RENTON: Twelve of us.

17 THE COURT: Okay. Did you reach a verdict?

18 JUROR RENTON: We did.

19 THE COURT: What was the verdict?

20 JUROR RENTON: Guilty.

21 THE COURT: Okay. Now, anything about serving on  
22 that jury -- would that impact you, in any way, of serving on  
23 this jury?

24 JUROR RENTON: No.

25 THE COURT: Okay.

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And Mr. O'Bryant; correct?

JUROR O'BRYANT: Yes.

THE COURT: When were you on a jury, sir?

JUROR O'BRYANT: About 1980.

THE COURT: Oh, a long time ago.

JUROR O'BRYANT: Yeah.

THE COURT: Was it here?

JUROR O'BRYANT: No, it was in Mason.

THE COURT: Okay. What kind of case was it?

JUROR O'BRYANT: Drunk driving.

THE COURT: All right. Did you reach a verdict?

JUROR O'BRYANT: Yes.

THE COURT: What was the verdict?

JUROR O'BRYANT: Not guilty.

THE COURT: Okay. Anything about that experience impact you to be a jury in -- a juror in this case?

JUROR O'BRYANT: No.

THE COURT: Okay. Have any of you ever been a witness in a case, where you've come to court and testified?

JURORS: (No verbal response).

THE COURT: Okay. Have any of you been a party in a case, where you've come to court and sat at either table, whether it's civil or criminal?

JURORS: (No verbal response).

THE COURT: All right. Do any of you have a relative

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1 or yourself that has been the victim of a crime? All right.

2 Any -- oh, okay. Who had their hand up? Okay.

3 And Miss McPhee.

4 JUROR MCPHEE: Yes. It -- it was my nephew. And I  
5 don't believe there were ever any charges.

6 THE COURT: Okay.

7 JUROR MCPHEE: But, it went through the -- the --  
8 their school counselors --

9 THE COURT: Okay.

10 JUROR MCPHEE: -- and the state did get involved.

11 THE COURT: Were you involved in it?

12 JUROR MCPHEE: No.

13 THE COURT: How long ago was that?

14 JUROR MCPHEE: It was this summer.

15 THE COURT: Okay. And it's your nephew?

16 JUROR MCPHEE: Yes.

17 THE COURT: Did you talk about it with any family  
18 members?

19 JUROR MCPHEE: Yes.

20 THE COURT: Okay. And what did your nephew allegedly  
21 do?

22 JUROR MCPHEE: Apparently, there was either kids at  
23 school or -- he said it was his father that was assaulting him.

24 THE COURT: Oh.

25 JUROR MCPHEE: And -- but they -- his father, of



1 course, denies it and --

2 THE COURT: Were charges ever brought?

3 JUROR MCPHEE: Not that I'm aware.

4 THE COURT: Okay. Would that impact you in this  
5 case?

6 JUROR MCPHEE: I think it could.

7 THE COURT: Why do you think it could?

8 JUROR MCPHEE: I have a very soft spot for -- for  
9 kids.

10 THE COURT: Okay. I think we all do.

11 JUROR MCPHEE: Yes. Well, I have many grandkids  
12 and --

13 THE COURT: Um-hum.

14 JUROR MCPHEE: -- a couple of granddaughters that are  
15 in that age group here.

16 THE COURT: Okay. But, the question today is whether  
17 or not you can keep an open mind and listen to the evidence,  
18 not make any decision until all the evidence is in, and then  
19 take the facts as you find them, because the jury -- jurors are  
20 the fact finders, and then apply it to the elements of the  
21 crime and the law. Do you think you could do that?

22 JUROR MCPHEE: I would do my best.

23 THE COURT: Okay.

24 Miss Kitsmiller.

25 JUROR KITSMILLER: My son was involved with breaking

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1 and entering a -- a school --

2 THE COURT: Oh,

3 JUROR KITSMILLER: -- and taking computers.

4 THE COURT: How long ago was that?

5 JUROR KITSMILLER: Two thousand and four, I think.

6 THE COURT: Okay, so about 15 years ago.

7 JUROR KITSMILLER: Yeah, yeah.

8 THE COURT: Was that here, in Eaton County?

9 JUROR KITSMILLER: No, actually, it was in 2008.

10 And, yes, it was in Eaton County. So, yeah, 2008. I was  
11 trying to think. My kids are all four years apart, and I have  
12 four of 'em, so I'm like --

13 THE COURT: Right.

14 JUROR KITSMILLER: So, anyway, he got the Youth  
15 Training Act.

16 THE COURT: Um-hum.

17 JUROR KITSMILLER: And did what he needed to do with  
18 probation, and he got a court-appointed attorney and --

19 THE COURT: Okay.

20 JUROR KITSMILLER: -- stuff, so.

21 THE COURT: Was it resolved to your satisfaction?

22 JUROR KITSMILLER: Oh, yeah.

23 THE COURT: Yeah.

24 JUROR KITSMILLER: Yeah.

25 THE COURT: So, did you personally ever deal with the

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prosecutor's office?

JUROR KITSMILLER: No --

THE COURT: Okay.

JUROR KITSMILLER: -- 'cause I -- yeah.

THE COURT: No?

JUROR KITSMILLER: I just --

THE COURT: But, like you --

JUROR KITSMILLER: My husband and I watched --

THE COURT: Right.

JUROR KITSMILLER: -- to see what was happening or  
whatever, but that was it.

THE COURT: Did he successfully complete HYTA?

JUROR KITSMILLER: Um-hum.

THE COURT: All right. So --

JUROR KITSMILLER: He said it would never happen  
again. So, anyway. But, yes, I do have a soft spot for  
children, also.

THE COURT: Can you keep an open mind and listen to  
all the evidence?

JUROR KITSMILLER: I think I can. My hus -- or, my  
brother is a DeWitt Township -- well, he's retired now from the  
police department there.

THE COURT: Okay.

JUROR KITSMILLER: And I've heard a lot of -- lot of  
bad stuff.

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1 THE COURT: Right.

2 JUROR KITSMILLER: And now he's bailiff at -- in  
3 Saint Johns, so.

4 THE COURT: Oh, who's he bailiff for?

5 JUROR KITSMILLER: Yeah, I don't know the judge's  
6 name.

7 THE COURT: Ah, you don't.

8 JUROR KITSMILLER: Yeah. I know my brother's name,  
9 but, yeah.

10 THE COURT: Yeah.

11 JUROR KITSMILLER: So, he -- but -- so, I have heard  
12 quite a few bad --

13 THE COURT: Right.

14 JUROR KITSMILLER: -- stories.

15 THE COURT: But, would that influence you in this  
16 case?

17 JUROR KITSMILLER: I believe I would listen.

18 THE COURT: You would keep an open mind --

19 JUROR KITSMILLER: Yeah.

20 THE COURT: -- and listen to all the facts; is that  
21 right?

22 JUROR KITSMILLER: Right. Correct.

23 THE COURT: Who else had their hand up? All right,  
24 Miss Hosey.

25 JUROR HOSEY: My brother-in-law, his daughter now has

1 accused him of domestic violence. And it did come to court.  
2 And he was found innocent.

3 However, currently, I have a very good friend who has  
4 a pending case for domestic violence and rape, I think in this  
5 court. And I feel -- and I'm -- my heart's beating really fast  
6 now because I'm very angry and upset about that whole  
7 situation. And I don't know --

8 THE COURT: The -- the case that's in front of -- in  
9 front of me?

10 JUROR HOSEY: It hasn't come up yet.

11 THE COURT: Oh, okay.

12 JUROR HOSEY: It was pending.

13 THE COURT: Okay.

14 JUROR HOSEY: I believe it will.

15 THE COURT: Okay.

16 JUROR HOSEY: I mean, to me, it is attempted murder.

17 THE COURT: Domestic violence?

18 JUROR HOSEY: Yeah.

19 THE COURT: Yeah.

20 JUROR HOSEY: And I --

21 THE COURT: This -- this is not a domestic violence  
22 case.

23 JUROR HOSEY: But, with rape.

24 THE COURT: Right. Oh, I see, um-hum.

25 JUROR HOSEY: And babies involved.

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1 THE COURT: Right.

2 JUROR HOSEY: And -- and so, I'm --

3 THE COURT: You don't believe that you could be fair  
4 and impartial?

5 JUROR HOSEY: I don't know that I can. Because, I  
6 mean, I'm shakin' right now because I know -- I'm so upset --

7 THE COURT: Sure.

8 JUROR HOSEY: -- about this other situation.

9 THE COURT: Ms. --

10 JUROR HOSEY: And I have a tiny -- I have a young  
11 daughter --

12 THE COURT: Okay.

13 JUROR HOSEY: -- as well.

14 THE COURT: Ms. Van Langevelde.

15 MS. VAN LANGEVELDE: Just -- I'm sorry, Your Honor.

16 JUROR HOSEY: 'Cause I am so angry.

17 MS. VAN LANGEVELDE: No, I -- I don't have any  
18 objection for cause, Your Honor.

19 THE COURT: Mr. Amadeo.

20 MR. AMADEO: No objection for cause.

21 THE COURT: All right, Miss Hosey, thank you very  
22 much for being honest. You are excused.

23 JUROR HOSEY: And don't call me for that case.

24 THE COURT: All right, Alfonso Rogers. Good morning.

25 JUROR ROGERS: Good morning.

1 THE COURT: Now, ladies and gentlemen, as you're  
2 gonna see, as -- as I talk to Mr. Rogers briefly, I know that  
3 you're all paying attention to everything even though you're  
4 not in the jury box, 'cause the first thing I'm gonna ask you,  
5 sir, is did you -- would you have answered yes to any of the  
6 questions that I have asked so far?

7 JUROR ROGERS: No.

8 THE COURT: All right. Do you know anybody here?

9 JUROR ROGERS: No.

10 THE COURT: Did you know any of the witnesses?

11 JUROR ROGERS: No.

12 THE COURT: Have you been a juror before?

13 JUROR ROGERS: No.

14 THE COURT: Have you ever been a witness in a case  
15 before?

16 JUROR ROGERS: No.

17 THE COURT: Have you ever been a party in a case  
18 before?

19 JUROR ROGERS: Yes.

20 THE COURT: Okay, what kind of case was that?

21 JUROR ROGERS: A death, a death case.

22 THE COURT: A death? A wrongful death you mean?

23 JUROR ROGERS: Well, my son was killed in a car  
24 accident.

25 THE COURT: Oh, I'm very sorry.

1 JUROR ROGERS: In -- in Eaton County.

2 THE COURT: Here?

3 JUROR ROGERS: Yes. (Indecipherable).

4 THE COURT: Okay. How long ago, sir?

5 JUROR ROGERS: I think the case was probably like 15  
6 years ago.

7 THE COURT: Okay.

8 JUROR ROGERS: Yeah.

9 THE COURT: Is there anything about that experience  
10 that would impact your ability to be fair and impartial in this  
11 case?

12 JUROR ROGERS: Well, I wasn't happy with the  
13 decision.

14 THE COURT: Oh, was it a jury?

15 JUROR ROGERS: Yes.

16 THE COURT: Okay. You weren't happy with what the  
17 jury decided.

18 JUROR ROGERS: Yes.

19 THE COURT: Okay. That was civil; correct?

20 JUROR ROGERS: Yes.

21 THE COURT: Would that -- now, would that impact your  
22 ability to be a juror and keep an open mind and hear all the  
23 evidence?

24 JUROR ROGERS: I don't think so.

25 THE COURT: Okay. One of the things that was brought



1 up by Miss Kitsmiller and my next question was going to be do  
2 any of you have any family or close friends in law enforcement

3 Miss Wallace?

4 JUROR WALLACE: I've got cousins that are Lenawee  
5 County sheriffs and Lansing City and Ingham County.

6 THE COURT: Okay.

7 JUROR WALLACE: Yeah.

8 THE COURT: Are you close to them?

9 JUROR WALLACE: At family gatherings, not --

10 THE COURT: Do you talk to them a lot about their  
11 job?

12 JUROR WALLACE: Not a whole lot, no.

13 THE COURT: Okay.

14 One of the instructions that the jury will be given,  
15 once a jury is selected, is that jurors are to treat the  
16 testimony of people in law enforcement just the same as people  
17 who aren't in law enforcement. You know, you're to hear their  
18 testimony and judge their credibility the same for everybody;  
19 right?

20 Would you be able to do that?

21 JUROR WALLACE: Oh, yes.

22 THE COURT: Okay.

23 Mr. Dake, did you have your hand up?

24 JUROR DAKE: Yeah. I have a cousin that is a  
25 corrections officer in Ionia --

1 THE COURT: Okay.

2 JUROR DAKE: -- and I have -- I'm not exactly sure of  
3 the relation. I think it's my mom's cousin is also a  
4 corrections officer --

5 THE COURT: Okay.

6 JUROR DAKE: -- in Ionia.

7 THE COURT: Anything about that impact your ability  
8 in this case to be fair and impartial?

9 JUROR DAKE: I don't think so.

10 THE COURT: Miss Kitsmiller.

11 JUROR KITSMILLER: I'm sorry. My brother's sons, my  
12 nephew is a Michigan State Police detective.

13 THE COURT: Okay. Would that impact your ability in  
14 this case?

15 JUROR KITSMILLER: You know, I don't know. I haven't  
16 talked to him or got him -- you know.

17 THE COURT: Right. So, the question is -- the --  
18 the reason I ask the question is to make sure that, if you --  
19 people have family members or friends who are in law  
20 enforcement, that they understand that -- I read on the witness  
21 list there are going to be people in law enforcement testifying  
22 as witnesses.

23 JUROR KITSMILLER: Right.

24 THE COURT: And their testimony is to be judged just  
25 the same as the witnesses that aren't in law enforcement.

1 JUROR KITSMILLER: Right.

2 THE COURT: Would you be able to do that?

3 JUROR KITSMILLER: Yeah, I think so.

4 THE COURT: Okay.

5 Ms. Anthony.

6 JUROR ANTHONY: Yeah. Can I be honest about this  
7 jury duty?

8 THE COURT: Oh, I wish you would.

9 JUROR ANTHONY: I mean --

10 THE COURT: That's why we're asking questions.

11 JUROR ANTHONY: -- I'm not really -- right now,  
12 there's so many things goin' on that affectin' my life. So, I  
13 work at GM.

14 THE COURT: Okay.

15 JUROR ANTHONY: And we're supposed to be striking  
16 next week. So, I got a lot of things goin' on in my mind right  
17 now. I don't think I can concentrate on this. And I have a  
18 granddaughter who has a heart problem.

19 And so, the money coming now is not gonna be -- we're  
20 not -- I'm not sure if it's gonna be there. So, I don't know  
21 if my mind's gonna be in this -- (Inaudible).

22 THE COURT: Hmm.

23 JUROR ANTHONY: Very --

24 THE COURT: What's -- I didn't understand what you  
25 said about GM.

1 JUROR ANTHONY: We're gonna be goin' on strike next  
2 week, so --

3 THE COURT: Oh, I didn't know that.

4 JUROR ANTHONY: So, that --

5 THE COURT: Is this breaking news?

6 JUROR ANTHONY: Many don't know. I know. But  
7 there's gonna be --

8 THE COURT: Huh?

9 JUROR ANTHONY: -- no pay coming in. And I have a  
10 lot of things that I still have to deal with financially.

11 And I have a granddaughter who has a heart problem.  
12 She's in the Philippines. Well, I don't know if I can show you  
13 that, though.

14 So many things going on in my life right now that I  
15 don't know if I can concentrate on this.

16 THE COURT: Well, you know, we all have a lot of  
17 things goin' on in our lives --

18 JUROR ANTHONY: I know.

19 THE COURT: -- every single person sittin' there,  
20 everybody out there. So -- and if you were accused of a crime  
21 or a family member was accused of a crime, I'll bet you would  
22 want a jury trial, as opposed to a bench trial with me; right?  
23 You'd want 12 impartial people hearing the evidence. That's  
24 what we all would want; right?

25 JUROR ANTHONY: Yeah.

1 THE COURT: So, if we want for ourselves, we have to  
2 be able to understand that there is a sacrifice to that.

3 JUROR ANTHONY: Right.

4 THE COURT: And that is, if you're selected as a  
5 juror, that the -- like I said, everybody is busy. People have  
6 jobs, people have families, people have issues going on. And  
7 so, if that were a basis to say, well, yeah, I just don't want  
8 to do this, we wouldn't have any jurors. Do you understand  
9 what I'm saying?

10 JUROR ANTHONY: Right, yes.

11 THE COURT: So, on the other hand, my responsibility  
12 is to make sure that a fair and impartial juror is picked along  
13 with the prosecution and the defense, so I would do this for  
14 you. I would excuse you today, but I would instruct our jury  
15 clerk, who you all met downstairs, to put you back in the jury  
16 pool in October.

17 JUROR ANTHONY: Okay.

18 THE COURT: I'm not going to excuse you forever from  
19 jury duty. But based on what you've said, I think that I have  
20 to let it go today for cause. But, you will be back in the  
21 pool in October.

22 JUROR ANTHONY: Okay.

23 THE COURT: Ms. Van Langevelde.

24 MS. VAN LANGEVELDE: I have no objection, Judge.

25 MR. AMADEO: No objection, Your Honor.

1 THE COURT: You may go.

2 JUROR ANTHONY: Thank you.

3 JUROR YOUNG: Your Honor, I -- I have -- I just want  
4 to throw out there I don't know if it's the same case, but I --

5 THE COURT: You need to wait for one second, okay?

6 JUROR YOUNG: Okay, yup.

7 THE COURT: Because I need to fill that seat first.  
8 There's a process.

9 JUROR YOUNG: No, no. I'm sorry.

10 THE COURT: Sorry.

11 JUROR YOUNG: Yup, you're fine.

12 THE COURT: Okay. Stephanie McCracken.

13 Okay, Mr. Young, you were saying to me? I'm sorry.

14 JUROR YOUNG: I'm sorry.

15 THE COURT: It's okay.

16 JUROR YOUNG: I -- I don't know if it's the same  
17 case, but I know that I work with a girl. And we just started  
18 workin' together for about two weeks, and she's kinda goin'  
19 through a similar case. I don't know all the details of the  
20 case but --

21 THE COURT: Do you know her name?

22 JUROR YOUNG: Amanda Rubell (phonetic).

23 THE COURT: That has nothing to do with this case.

24 JUROR YOUNG: Oh, okay. I just wanted to --

25 THE COURT: Glad you checked, though.

1 JUROR YOUNG: Yup.

2 THE COURT: How are you, Stephanie?

3 JUROR MCCRACKEN: I'm doing well, thank you.

4 THE COURT: Okay. Were you able to hear all of the  
5 questions that have been asked?

6 JUROR MCCRACKEN: Yes, I have.

7 THE COURT: Would you have answered yes to any of  
8 them?

9 JUROR MCCRACKEN: (No verbal response).

10 THE COURT: Do you know anybody that's a participant?

11 JUROR MCCRACKEN: No, ma'am.

12 THE COURT: A witness?

13 JUROR MCCRACKEN: No.

14 THE COURT: Have you ever been on a jury before?

15 JUROR MCCRACKEN: No.

16 THE COURT: Ever been a witness in a case, where  
17 you've come and testified?

18 JUROR MCCRACKEN: No.

19 THE COURT: Ever been a party in a case?

20 JUROR MCCRACKEN: No. I did want to let you know  
21 that I was -- I was questioned by the police when I was a  
22 teenager. My mother's husband, at the time, had sexually  
23 molested his niece.

24 THE COURT: Okay.

25 JUROR MCCRACKEN: And so, I was questioned for that.

1 I just wanted to --

2 THE COURT: All right.

3 JUROR MCCRACKEN: -- let you know for transparency  
4 sake.

5 THE COURT: They were -- oh, I appreciate that. So,  
6 they questioned you to make sure that nothing had happened to  
7 you?

8 JUROR MCCRACKEN: Correct.

9 THE COURT: How old were you at the time?

10 JUROR MCCRACKEN: I was 16-years-old.

11 THE COURT: Was that scary?

12 JUROR MCCRACKEN: It was a little scary, yeah,  
13 considering it happened within our household, yes.

14 THE COURT: Sure. Would -- would that experience  
15 influence you in this case?

16 JUROR MCCRACKEN: No.

17 THE COURT: And do you know anybody in law  
18 enforcement?

19 JUROR MCCRACKEN: My father was a corrections officer  
20 in Ohio.

21 THE COURT: Okay.

22 JUROR MCCRACKEN: And he's -- he's passed away seven  
23 years ago. That's the only person I would know --

24 THE COURT: Would that impact your ability in this  
25 case --



1 JUROR MCCRACKEN: No.

2 THE COURT: -- do you think?

3 JUROR MCCRACKEN: No.

4 THE COURT: All right.

5 Any of you have any friends or relatives involved as  
6 -- in criminal defense, like a criminal defense attorney, just  
7 like we have prosecuting attorneys?

8 JURORS: (No verbal response).

9 THE COURT: Okay. Now, one of the things that is  
10 inherent of being a juror is that you are passing judgment;  
11 right? You're gonna hear evidence. You're gonna -- you're  
12 gonna make a decision on the facts, and then you're gonna apply  
13 it to the law, which, inevitably, means you're passing  
14 judgment.

15 Does anybody have a problem with that concept of  
16 bein' a juror?

17 JURORS: (No verbal response).

18 THE COURT: Now, do any of you know each other in the  
19 jury box?

20 JURORS: (No verbal response).

21 THE COURT: Okay. Is there anything any of the 14 of  
22 you think that I should know about your ability to keep an open  
23 mind, not make a decision until all of the evidence is in, and  
24 then, when all the evidence is in, as a jury, you will go back  
25 to the jury room, and then, and only then, you will talk about

1 the case with each other, and you will try to come up with a  
2 unanimous decision? Anybody have anything that they think I  
3 need to know?

4 JURORS: (No verbal response).

5 THE COURT: Okay. Oh, okay, Miss Howell.

6 JUROR HOWELL: Hi.

7 THE COURT: Hi.

8 JUROR HOWELL: I'm a mom with a five-year-old. So,  
9 when you read the charges, I -- my mind already made like a  
10 snap judgment. So, I'm not sure I can be too open-minded. I  
11 just wanted to let you know. I mean, I can try, but it's just  
12 -- with my little boy, it's just putting myself in that. I  
13 don't know.

14 THE COURT: Okay.

15 JUROR HOWELL: I don't --

16 THE COURT: This involves a 13-year-old. But  
17 nonetheless, I -- I need you to do more than try.

18 JUROR HOWELL: And I'm not sure I can.

19 THE COURT: Say I think that -- you know, we need to  
20 understand --

21 JUROR HOWELL: Yes.

22 THE COURT: -- that the process only works if  
23 everybody truly has an open mind.

24 JUROR HOWELL: Right.

25 THE COURT: As you would want --

1 JUROR HOWELL: Oh, yeah, definitely.

2 THE COURT: If you were sitting over there, would you  
3 want yourself to be a juror?

4 JUROR HOWELL: No, not at all.

5 THE COURT: Okay, any -- Ms. Van Langevelde, any  
6 objection?

7 MS. VAN LANGEVELDE: None for cause.

8 MR. AMADEO: None, Your Honor.

9 THE COURT: Mr. Amadeo.

10 Thank you very much for your honesty, Miss Howell.

11 You are excused.

12 Emily Shaver. Well, good morning, Emily.

13 JUROR SHAVER: Good morning.

14 THE COURT: How are you this morning?

15 JUROR SHAVER: Good, thank you.

16 THE COURT: Were you able to hear all of my  
17 discussions with your fellow jurors --

18 JUROR SHAVER: Yes.

19 THE COURT: -- proposed jurors? Okay. Would you  
20 have answered yes to any of the questions?

21 JUROR SHAVER: Yes, to a couple. I know Miss Morton.  
22 Her son and my son are on the same football team, and have been  
23 for a couple --

24 THE COURT: Okay.

25 JUROR SHAVER: -- three or four years.

1 THE COURT: All right. Do you sit with Ms. Morton at  
2 the games?

3 JUROR SHAVER: Not recently, the last couple games,  
4 but years past, yes.

5 THE COURT: Okay. Would you consider yourself  
6 friends? I mean, have you been to her home, has she been to  
7 your home?

8 JUROR SHAVER: No, invited, but not been to each  
9 other's homes yet, no.

10 THE COURT: I mean, is there -- is -- because you  
11 know Ms. Morton, would that cause you to give anything she may  
12 say or do more credibility than, say, Mr. Ada -- Mr. Amadeo and  
13 Mr. Winter?

14 JUROR SHAVER: I think I would trust her more because  
15 our sons have played together, hung out. So, I trust my kids  
16 at her house more than I would trust somebody that I don't  
17 know.

18 THE COURT: Okay. So, if she's presenting evidence,  
19 you would give that more credibility because you know her?

20 JUROR SHAVER: Probably, yes.

21 THE COURT: Ms. Van Langevelde.

22 MS. VAN LANGEVELDE: No objection for cause.

23 MR. AMADEO: No objection for cause, Your Honor.

24 THE COURT: Thank you very much. You are excused.  
25 Kimberly Farrell. Might be easier to come around

1 this way, huh?

2 Good morning, Miss Farrell. How are you today?

3 JUROR FARRELL: I'm good. How are you?

4 THE COURT: Were you able to hear all of the  
5 questions?

6 JUROR FARRELL: Yes.

7 THE COURT: Would you have answered yes to any of  
8 them?

9 JUROR FARRELL: Yes, just to the one about being in  
10 the courtroom on this side.

11 THE COURT: Okay.

12 JUROR FARRELL: I was involved in a domestic --  
13 domestic abuse case --

14 THE COURT: Case?

15 JUROR FARRELL: -- when I was like 20 or 21.

16 THE COURT: Okay. Was that here, in Eaton County?

17 JUROR FARRELL: Yes.

18 THE COURT: Okay. And was there a criminal trial?

19 JUROR FARRELL: Yes.

20 THE COURT: Was the defendant found guilty?

21 JUROR FARRELL: Yes.

22 THE COURT: So, that must have been a very difficult  
23 process for you.

24 JUROR FARRELL: Um-hum.

25 THE COURT: Okay. Did you -- so, how -- how long ago

1 was that?

2 JUROR FARRELL: Gosh, if I do the math, like -- it's  
3 over 35 years ago.

4 THE COURT: Okay. So, you didn't deal with anybody  
5 in the prosecutor's office then that are still there now.

6 JUROR FARRELL: I don't think so.

7 THE COURT: Yeah, it's --

8 JUROR FARRELL: It's been an awfully long time.

9 THE COURT: Sure. Do you think that you could be  
10 fair and impartial?

11 JUROR FARRELL: I think so.

12 THE COURT: Okay.

13 All right, now the next phase is that both the  
14 prosecutor and the defense get to ask you some questions, also;  
15 all right? Again, I take it you all understand the hope is to  
16 be honest and answer the questions.

17 And we'll start with Ms. Van Langevelde.

18 MS. VAN LANGEVELDE: Thank you.

19 Good morning, again.

20 JURORS: Good morning.

21 MS. VAN LANGEVELDE: I'm just gonna cut to the -- the  
22 chase. As you heard, this case is about child sexual assault.  
23 Does anybody -- and I know Judge asked you, but does anybody  
24 have any experience in -- with working or talking to victims  
25 who have been sexually assaulted?

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JURORS: (No verbal response).

MS. VAN LANGEVELDE: Anybody have -- anyone ever tell them, as like a friend, I was a victim of sexual assault?

You have, sir?

JUROR DAKE: My fiancé was a victim of sexual assault when she was younger.

MS. VAN LANGEVELDE: Okay.

JUROR DAKE: I don't know all the details.

MS. VAN LANGEVELDE: Sure.

JUROR DAKE: That's all she's told me --

MS. VAN LANGEVELDE: Okay.

JUROR DAKE: -- so.

MS. VAN LANGEVELDE: And did that happen a long time ago, before you even knew her?

JUROR DAKE: I've known her 15 years. I don't know when it -- all I know is it happened.

MS. VAN LANGEVELDE: Sure.

JUROR DAKE: I don't know when or any of the details.

MS. VAN LANGEVELDE: Okay. But she -- she confided in you. Do you know if she ever told the police?

JUROR DAKE: I have no idea.

MS. VAN LANGEVELDE: She didn't share that with you.

JUROR DAKE: No, she --

MS. VAN LANGEVELDE: Okay.

JUROR DAKE: -- did not share any information about

1 it, at all.

2 MS. VAN LANGEVELDE: Okay. Would it surprise you if  
3 she never told the police officer or didn't tell anybody ever  
4 like in --

5 JUROR DAKE: No --

6 MS. VAN LANGEVELDE: -- court or anything?

7 JUROR DAKE: -- it would not surprise me if she  
8 didn't say anything.

9 MS. VAN LANGEVELDE: Okay. Knowing that your fiancé  
10 was a victim of sexual assault, would that impact your ability  
11 to be fair and impartial in this case?

12 JUROR DAKE: It -- I don't think so --

13 MS. VAN LANGEVELDE: Okay.

14 JUROR DAKE: -- but I -- I mean, it could.

15 MS. VAN LANGEVELDE: Well, her in -- I mean, you can  
16 appreciate that.

17 JUROR DAKE: Um-hum.

18 MS. VAN LANGEVELDE: Her situation is not this case.

19 JUROR DAKE: Yeah.

20 MS. VAN LANGEVELDE: And do you feel like you could  
21 keep an open mind and look into the evidence in this particular  
22 case, in this situation?

23 JUROR DAKE: Probably.

24 MS. VAN LANGEVELDE: Okay, thank you.

25 Ms. McCracken, you said your mom's former husband?



1 JUROR MCCRACKEN: Correct.

2 MS. VAN LANGEVELDE: Is that right?

3 JUROR MCCRACKEN: Um-hum.

4 MS. VAN LANGEVELDE: Okay, so stepdad?

5 JUROR MCCRACKEN: Yes. At the time, yes.

6 MS. VAN LANGEVELDE: Okay. He was not -- obviously,  
7 you -- you were not a victim; is that accurate?

8 JUROR MCCRACKEN: That's accurate, yes.

9 MS. VAN LANGEVELDE: Okay. Was he prosecuted for  
10 that incident?

11 JUROR MCCRACKEN: Yes, he -- and he -- it wasn't a  
12 trial jury like this, but he -- he did plead guilty, and he did  
13 serve some time.

14 MS. VAN LANGEVELDE: Okay. Would that experience and  
15 -- and knowing that your stepdad was -- was -- well, pled  
16 guilty and -- and went to prison --

17 JUROR MCCRACKEN: Um-hum.

18 MS. VAN LANGEVELDE: -- would that impact your  
19 ability to be fair and impartial in this case?

20 JUROR MCCRACKEN: No, it would not.

21 MS. VAN LANGEVELDE: Did you believe that that  
22 happened, that he actually did do it?

23 JUROR MCCRACKEN: I did believe that it happened,  
24 yes, ma'am.

25 MS. VAN LANGEVELDE: Okay. But you -- you never saw

1 it happen, you weren't there.

2 JUROR MCCRACKEN: No.

3 MS. VAN LANGEVELDE: Okay.

4 Anyone else ever have any experience with sexual  
5 assault?

6 JURORS: (No verbal response).

7 MS. VAN LANGEVELDE: Okay. How about in -- in -- can  
8 anyone give me some reasons why -- and I'm just gonna start  
9 down the row -- why a victim of sexual assault may not come  
10 forward about it for years? It's kinda in the news a lot  
11 lately. But, can anybody give me some reasons why it may take  
12 years for somebody to come forward about something?

13 How about you, Mr. O'Bryant?

14 JUROR O'BRYANT: Embarrassed.

15 MS. VAN LANGEVELDE: Embarrassed.

16 How about you, Ms. Renton?

17 JUROR RENTON: Yes. I think just -- you just feel  
18 like you don't want to tell anybody and just keep it to  
19 yourself.

20 MS. VAN LANGEVELDE: Okay. How about you, Miss  
21 Wallace?

22 JUROR WALLACE: I think people think that it's their  
23 fault or they're embarrassed by it.

24 JUROR GREEN: I agree.

25 MS. VAN LANGEVELDE: Miss Green, do you agree with

1 that?

2 JUROR GREEN: Yes.

3 MS. VAN LANGEVELDE: How about you, sir? Mr. Dake,  
4 is that right?

5 JUROR DAKE: Yeah. Being' embarrassed and the fear  
6 of havin' to deal with all of this and --

7 MS. VAN LANGEVELDE: Sure. Does your -- does your  
8 answers change if it was a child or a teenager?

9 JURORS: (No verbal response).

10 MS. VAN LANGEVELDE: Like a 13, 14-year-old? Would  
11 that -- what do you -- how about you, Miss McPhee?

12 JUROR MCPHEE: I think they're more afraid.

13 MS. VAN LANGEVELDE: More afraid? How about you,  
14 Miss Kitsmiller?

15 JUROR KITSMILLER: Guilt -- guilty feeling or maybe  
16 it was their fault or --

17 MS. VAN LANGEVELDE: Okay.

18 JUROR KITSMILLER: -- it's a fear, also, of their  
19 family finding out and --

20 MS. VAN LANGEVELDE: Impact of --

21 JUROR KITSMILLER: -- you know.

22 MS. VAN LANGEVELDE: -- the family situation?

23 JUROR KITSMILLER: Yeah.

24 MS. VAN LANGEVELDE: How about you, Mr. Young, how --  
25 how -- how would it -- what do you think about a victim taking

1 years to disclose?

2 JUROR YOUNG: I think they probably just don't want  
3 to relive the situation --

4 MS. VAN LANGEVELDE: Um-hum.

5 JUROR YOUNG: -- havin' to talk about it and bringin'  
6 everything back up again.

7 MS. VAN LANGEVELDE: Sure, that would make -- that's  
8 difficult, huh?

9 JUROR YOUNG: Yeah.

10 JUROR MCCRACKEN: I think there's a lot of fear and  
11 embarrassment, and maybe they're afraid of backlash.

12 MS. VAN LANGEVELDE: Sure.

13 How about Miss Farrell; is that correct?

14 JUROR FARRELL: Um-hum.

15 MS. VAN LANGEVELDE: What are your thoughts?

16 JUROR FARRELL: I think the same, fear and  
17 embarrassment.

18 MS. VAN LANGEVELDE: Okay. How about you, sir? What  
19 if the perpetrator's in your home?

20 JUROR SMITH: Well, I think most -- a lot of it could  
21 be, if they're young, not knowin' any better.

22 MS. VAN LANGEVELDE: Sure.

23 JUROR SMITH: I mean, maybe they didn't know it was  
24 wrong.

25 MS. VAN LANGEVELDE: How about you, ma'am?

1 JUROR RAFLIK: Well, I'd say it's what they said, as  
2 far as embarrassment and guilt. It can also be denial.

3 MS. VAN LANGEVELDE: Um-hum.

4 How about you, Mr. Rogers?

5 JUROR ROGERS: They probably don't want the police to  
6 know what happened.

7 MS. VAN LANGEVELDE: Sure.

8 JUROR ROGERS: Just keep it to themselves, and maybe it  
9 would go away.

10 MS. VAN LANGEVELDE: Maybe it'll go away? And maybe  
11 it does go away.

12 JUROR ROGERS: Right.

13 MS. VAN LANGEVELDE: And you can just kind of ignore  
14 that it ever happened?

15 JUROR ROGERS: Right.

16 MS. VAN LANGEVELDE: Does that happen?

17 And Miss Centeno?

18 JUROR CENTENO: I have the same, afraid -- afraid of  
19 losing -- if it's a younger child, losing a loved one --

20 MS. VAN LANGEVELDE: Um-hum.

21 JUROR CENTENO: -- someone you trusted, and not  
22 having them in their life if they did tell.

23 MS. VAN LANGEVELDE: Okay. All good, and it all  
24 makes sense.

25 How about if someone's going to pick a -- pick a

1 person to abuse, teenager -- let's -- let's stick with like  
2 young teens, how would you do it? If someone's gonna abuse  
3 somebody, how would they do it?

4 JUROR GREEN: Intimidation.

5 MS. VAN LANGEVELDE: Intimidation. Anybody else?

6 JUROR RENTON: Trickery.

7 MS. VAN LANGEVELDE: Pardon?

8 JUROR RENTON: Trickery.

9 MS. VAN LANGEVELDE: Trickery. Like a surprise,  
10 maybe?

11 JUROR RENTON: Oh, a little seduction in it.

12 MS. VAN LANGEVELDE: Seduction.

13 How about witnesses? You gonna do it around other  
14 people?

15 JUROR GREEN: I don't think so.

16 MS. VAN LANGEVELDE: How about the type of person  
17 you're gonna pick? Anybody have any ideas?

18 JUROR KITSMILLER: Somebody that's shy.

19 JUROR WALLACE: Vulnerable.

20 MS. VAN LANGEVELDE: Somebody that's shy.

21 JUROR KITSMILLER: Gullible.

22 JUROR WALLACE: Vulnerable.

23 MS. VAN LANGEVELDE: Vulnerable.

24 JUROR GREEN: Scared.

25 JUROR RENTON: Needy.

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MS. VAN LANGEVELDE: Pardon?

JUROR RENTON: Needy.

MS. VAN LANGEVELDE: Needy.

JUROR RENTON: Of love.

MS. VAN LANGEVELDE: Love.

Picking -- what about somebody that might not be  
believed?

JURORS: (No verbal response).

MS. VAN LANGEVELDE: Any -- anybody disagree with  
that?

JURORS: (No verbal response).

MS. VAN LANGEVELDE: I don't think any of you raised  
your hand. Nobody's ever testified before?

JURORS: (No verbal response).

MS. VAN LANGEVELDE: You never had to?

JURORS: (No verbal response).

MS. VAN LANGEVELDE: But -- but -- I don't want to  
tell you what this is. Does anybody know what this area of the  
courtroom is?

JUROR GREEN: Witness stand.

MS. VAN LANGEVELDE: It's the witness box. Anybody  
have any guess as to why the witness box is right there?

JURORS: (No verbal response).

MS. VAN LANGEVELDE: Miss Farrell, do you know?

JUROR GREEN: Sits closest to the jury.

1 MS. VAN LANGEVELDE: Closest to the jury. Okay.

2 So, the judge is gonna instruct you that testimony is  
3 evidence; right?

4 So, who are my CSI watchers?

5 JURORS: (Hands raised).

6 MS. VAN LANGEVELDE: Or my NCIS and all that, okay.  
7 Does everybody understand that that's --

8 JUROR WALLACE: It's fake.

9 MS. VAN LANGEVELDE: -- and is not real?

10 JUROR WALLACE: And it's fake.

11 MS. VAN LANGEVELDE: Anybody have any expectation  
12 that I'm gonna be able to produce any DNA evidence from 2011?

13 JURORS: (No verbal response).

14 MS. VAN LANGEVELDE: Okay. Anybody -- anybody think  
15 that I'm gonna magically have some sort of sky camera that's  
16 gonna show what exactly happened on that date or time?

17 JURORS: (No verbal response).

18 MS. VAN LANGEVELDE: Okay. So, Judge is going --  
19 like I said, Judge is gonna instruct you that testimony is  
20 evidence. And that, if you believe the testimony, that can be  
21 beyond a reasonable doubt. That I don't have to produce DNA  
22 evidence. I don't have to produce physical evidence.

23 Is everybody okay with that?

24 JURORS: (No verbal response).

25 MS. VAN LANGEVELDE: Nodding your heads. Does



1 everybody feel okay with that, no DNA?

2 JURORS: (No verbal response).

3 MS. VAN LANGEVELDE: I'm just puttin' it out there.

4 Okay.

5 How about I've been pulled over for speeding. Has  
6 anybody had any like negative feelings towards police officers?

7 JURORS: (No verbal response).

8 MS. VAN LANGEVELDE: I think everybody's kinda, maybe  
9 had, once in a while, you know, like I got pulled over.

10 Anybody have any like just bad experiences with  
11 police officers, and they are just like I would never trust a  
12 police officer?

13 JURORS: (No verbal response).

14 MS. VAN LANGEVELDE: No. How about some good  
15 experiences with police officers?

16 Yes, Miss Farrell? Miss Kitsmiller?

17 JUROR KITSMILLER: Yeah.

18 MS. VAN LANGEVELDE: But, I don't think anybody here  
19 is married to a police officer or lives with a police officer.

20 No?

21 JURORS: (No verbal response).

22 MS. VAN LANGEVELDE: Okay. Who -- I know all your  
23 questionnaires talk about kids.

24 Who has -- who -- even though you don't -- might not  
25 have kids living with you, who has kids or grandkids?

1 JURORS: (Hands raised).

2 MS. VAN LANGEVELDE: Okay. Does every -- so, most  
3 everybody. In your experience, do kids sometimes not tell the  
4 truth about stupid, little things?

5 JUROR GREEN: Yes.

6 MS. VAN LANGEVELDE: Okay. Fair to say, kids  
7 sometimes don't tell the truth about stupid, little things?

8 JURORS: (No verbal response).

9 MS. VAN LANGEVELDE: Okay. That happens; right? Is  
10 that normal?

11 JURORS: (No verbal response).

12 MS. VAN LANGEVELDE: Yeah. My two -- three-year-old  
13 got into my make-up last night. She told my husband, "It's  
14 just Play-Doh."

15 So, anybody have problems -- have an issue with  
16 following the judge's instructions? If the judge tells you you  
17 cannot do something or you have to do something, is everybody  
18 okay with that?

19 JUROR GREEN: Yes.

20 MS. VAN LANGEVELDE: 'Cause Judge is going to  
21 instruct you on the law. And Judge will tell you you have to  
22 follow the law. Is everybody okay with that?

23 JUROR GREEN: Yes.

24 MS. VAN LANGEVELDE: Okay.

25 So, as the People of the State of Michigan, I have

1 the burden to prove the case, to you, beyond a reasonable doubt  
2 and -- and through the evidence and testimony that's gonna be  
3 presented. That's -- that's gonna be my burden. And we hear  
4 lot about beyond a reasonable doubt. Like, what does that  
5 mean? Does everybody -- okay, what is that?

6 JURORS: A flag.

7 MS. VAN LANGEVELDE: I heard it but --

8 JUROR WALLACE: Mich -- State of Michigan flag.

9 MS. VAN LANGEVELDE: State of Michigan flag, okay.

10 I'm gonna pick on you, Ms. Wallace.

11 JUROR WALLACE: All right.

12 MS. VAN LANGEVELDE: How do you know it's the State  
13 of Michigan flag?

14 JUROR WALLACE: I've seen it before.

15 MS. VAN LANGEVELDE: Can you see all of it?

16 JUROR WALLACE: No.

17 MS. VAN LANGEVELDE: Who else -- who else agrees with  
18 Ms. Wallace -- I'm sorry, I keep forgetting your name -- that  
19 that is the State of Michigan flag?

20 JURORS: (Hands raised).

21 MS. VAN LANGEVELDE: Okay. Can you see -- so, how  
22 was -- those of you who raised your hands -- Mr. Young, did you  
23 raise your hand?

24 JUROR YOUNG: Yes.

25 MS. VAN LANGEVELDE: How do you know that's the State

1 of Michigan flag?

2 JUROR YOUNG: Just 'cause I've seen the Michigan flag  
3 before, and it resembles, from what I can see, you know, is  
4 what it looks like.

5 MS. VAN LANGEVELDE: What's on the State of Michigan  
6 flag?

7 JUROR YOUNG: Two deer and --

8 MS. VAN LANGEVELDE: You don't have to tell me any  
9 more.

10 JUROR YOUNG: Okay.

11 MS. VAN LANGEVELDE: I think there's like a deer and  
12 a --

13 JUROR YOUNG: Yeah.

14 MS. VAN LANGEVELDE: Yeah. Okay, but can you see the  
15 whole deer and the moose?

16 JUROR YOUNG: Nope.

17 MS. VAN LANGEVELDE: Okay. There's some things you  
18 can't see. You still pretty confident it's the State of  
19 Michigan flag?

20 JUROR YOUNG: Yeah.

21 MS. VAN LANGEVELDE: Okay. Everybody else?

22 JUROR KITSMILLER: Well, I've been in a courtroom  
23 before, and they have a United States flag and a State of  
24 Michigan flag.

25 MS. VAN LANGEVELDE: Okay. So, there's -- there's

1 evidence that there's -- there's probably --

2 JUROR KITSMILLER: Yeah.

3 MS. VAN LANGEVELDE: -- a State of Michigan flag in  
4 every courtroom?

5 JUROR KITSMILLER: Right.

6 MS. VAN LANGEVELDE: Okay, who all agrees with that?

7 JURORS: (No verbal response).

8 MS. VAN LANGEVELDE: Everybody agree you can't see  
9 the moose and the elk or the deer?

10 JUROR RAFLIK: You can see a T.

11 MS. VAN LANGEVELDE: You can see part of it.

12 JUROR RAFLIK: You can see a T. It could be  
13 California. You could've done that just for the heck of it  
14 today.

15 MS. VAN LANGEVELDE: Who believes beyond a reasonable  
16 doubt that that is the State of Michigan flag?

17 JURORS: (Hands raised).

18 MS. VAN LANGEVELDE: All right.

19 Do -- so, beyond a reasonable doubt; right? There  
20 may be some things that -- that you may not be able to see or  
21 that we may not be able to tell you or that -- but, does  
22 everybody feel like beyond a reasonable doubt that's the State  
23 of Michigan flag?

24 JUROR GREEN: Yes.

25 MS. VAN LANGEVELDE: Okay. Everybody okay with that

1 standard of beyond a reasonable doubt?

2 JURORS: (No verbal response).

3 MS. VAN LANGEVELDE: That it -- it doesn't have to be  
4 a mathematical certainty?

5 JURORS: (No verbal response).

6 MS. VAN LANGEVELDE: That it's not, necessarily, a  
7 hundred percent. Now, if I stretch that out and I show it to  
8 you, all of it, that's -- that's everything; right?

9 But, there's some things that I'm not -- that you  
10 might not know. There may be some questions that may not be  
11 answered in this case, as you're hearing the testimony, but  
12 beyond a reasonable doubt.

13 And it -- and I think that's funny that you said a  
14 California flag or maybe I snuck in here. Is that really  
15 reasonable?

16 JUROR RAFLIK: No.

17 MS. VAN LANGEVELDE: Okay. So, we're looking at --  
18 does everybody feel like they have common sense and reason?

19 JURORS: (No verbal response).

20 MS. VAN LANGEVELDE: Okay.

21 One, two -- and I guess I go back to this. If --  
22 does everyone feel like if you hear the testimony and you  
23 believe it and you believe the evidence that's presented, does  
24 everybody feel like they could find the defendant guilty be --  
25 beyond a reasonable doubt, that they could reach that verdict?

1 JURORS: (No verbal response).

2 MS. VAN LANGEVELDE: Because that's a big -- I mean,  
3 it's not -- it's not a flag in a courtroom; it's serious  
4 business, but -- and I want everyone to say, yup, I can -- I  
5 feel comfortable in that job. Does everybody feel like they  
6 can do that?

7 JURORS: Yes, um-hum.

8 MS. VAN LANGEVELDE: All right, thank you.

9 THE COURT: Mr. Amadeo.

10 MR. AMADEO: Morning, guys. How are ya?

11 JURORS: Morning.

12 MR. AMADEO: Just to reintroduce, this is Peter  
13 Winter. He's my mentor. When I'm doing something wrong,  
14 you'll see him screamin' in my ear to shut up. That's my  
15 client, Damon Warner. And I'm Bill Amadeo.

16 So, we have a case that the prosecutor mentioned from  
17 2011.

18 What do you guys think about that? If somebody  
19 accused you of a crime from eight years ago, would you hold 'em  
20 to a high standard to prove that crime? Can I see a show of  
21 hands?

22 JUROR RENTON: You know, I -- I think any, you know,  
23 anything that comes up, I mean, there's a reason, so.

24 MR. AMADEO: Okay.

25 JUROR RENTON: Present the evidence and go from

1 there.

2 MR. AMADEO: Would it concern you that it was that  
3 old, that it was so old in time?

4 JUROR RENTON: For a 13-year-old, probably not.

5 MR. AMADEO: Anybody have a different opinion on  
6 that?

7 JURORS: (No verbal response).

8 MR. AMADEO: Okay.

9 How do you guys feel about law enforcement? Do you  
10 respect law enforcement, expect to believe 'em?

11 JURORS: (No verbal response).

12 MR. AMADEO: Okay.

13 In this case, if I had to call into credibility the  
14 police that are on the stand, would you hold that against my  
15 client, or would you say he's just doin' his job? How would  
16 you feel about that?

17 JUROR GREEN: Just doin' your job.

18 MR. AMADEO: Doin' my job?

19 JURORS: Um-hum.

20 MR. AMADEO: Maybe -- (inaudible).

21 JUROR GREEN: -- your job is.

22 MR. AMADEO: Okay. So, you'd be okay with that.

23 Now, in a criminal matter, the defendant does not  
24 have to take the stand. And usually, defense lawyers will tell  
25 the defendant not to take the stand.



1           When we have a case like this, from eight years ago,  
2 it's, basically, a credibility contest, how credible is the  
3 complaining witness and the story they told.

4           If I chose -- or, I advised my client not to take the  
5 stand, would you hold that against him?

6           JUROR GREEN: That's his right under the law.

7           MR. AMADEO: His right?

8           JUROR GREEN: His right under -- sorry. It's his  
9 right under the law.

10          THE COURT: I know you can't hear her, Ms. Bond, but  
11 I don't think she can speak up. I think she's got laryngitis.

12          JUROR GREEN: I'm just getting over laryngitis.

13          MR. AMADEO: She's trying.

14          MS. VAN LANGEVELDE: Oh, you know what, I have --

15          JUROR GREEN: I am, I'm tryin'.

16          MS. VAN LANGEVELDE: Do you have -- I have a cough  
17 drop.

18          JUROR GREEN: Oh, thank you very much. I'm sorry,  
19 Judge.

20          THE COURT: You're fine. No, no, please don't  
21 apologize. It's just, normally, sometimes people talk quiet,  
22 and so Ms. Bond will turn her head, and then I'll go speak up.  
23 And I was observing you, and I'm like I -- I think that you're  
24 having a throat problem. So --

25          JUROR GREEN: Yes, thank you.

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1 THE COURT: -- we will do our best to take down what  
2 you say.

3 Go ahead, Mr. Amadeo.

4 MR. AMADEO: Has anyone in this jury pool, right now  
5 ever had a loved one or someone they cared about that they felt  
6 was treated unfairly by the police?

7 JURORS: (No verbal response).

8 MR. AMADEO: No? Any sports fans in the group?

9 JURORS: (Hands raised).

10 MR. AMADEO: Almost everybody. Saw a few hands not  
11 go up.

12 Who's your favorite team, sir?

13 JUROR O'BRYANT: The Patriots.

14 MR. AMADEO: Okay. You know you live in Michigan;  
15 right?

16 JUROR O'BRYANT: I've waited a long time for the  
17 Lions.

18 MR. AMADEO: Were you a Lions fan at one point?

19 JUROR O'BRYANT: (No verbal response).

20 MR. AMADEO: What made you switch?

21 JUROR O'BRYANT: They never win.

22 MR. AMADEO: How about you, ma'am?

23 JUROR RENTON: Spartans.

24 THE COURT: Go Green.

25 MR. AMADEO: It's cause you're from Michigan State

1 area.

2 JUROR RENTON: Actually, my husband.

3 MR. AMADEO: Okay. All right.

4 JUROR GREEN: I'm neutral.

5 JUROR DAKE: Spartans, Lions, Tigers.

6 JUROR MCPHEE: Tigers.

7 MR. AMADEO: Who?

8 JUROR MCPHEE: Tigers.

9 MR. AMADEO: Okay, so you're a baseball fan. How's  
10 the season goin'?

11 JUROR MCPHEE: What season?

12 JUROR KITSMILLER: Packers and the Spartans.

13 MR. AMADEO: Mr. Young?

14 JUROR YOUNG: I'm a Michigan fan.

15 MR. AMADEO: Okay. Now, you're livin' in Charlotte;  
16 is that correct?

17 JUROR YOUNG: Well, I live in Grand Ledge.

18 MR. AMADEO: Okay. How'd you become a Michigan fan?

19 JUROR YOUNG: I think, mostly, when my first son was  
20 born, he was in Ann Arbor, in a hospital down there. So, we  
21 spent a couple months down there, so started watchin' the  
22 Michigan games, and so.

23 MR. AMADEO: It's funny, 'cause our oldest is in Ann  
24 Arbor.

25 JUROR YOUNG: Okay.

1 MR. AMADEO: And you would think Ann Arbor verse East  
2 Lansing, it's like two different states. Okay, there's like  
3 anger right there.

4 How about you?

5 JUROR MCCRACKEN: I don't really watch sports.

6 MR. AMADEO: Okay. Mr. Dake.

7 JUROR DAKE: Spartans, Lions, Tigers.

8 MR. AMADEO: Mr. Rogers.

9 JUROR ROGERS: Alabama.

10 MR. AMADEO: Okay, why?

11 JUROR ROGERS: My niece went to school --

12 MR. AMADEO: Okay.

13 JUROR ROGERS: -- down there.

14 MR. AMADEO: Okay.

15 JUROR ROGERS: And she's been callin' me and tellin'  
16 me what -- (inaudible).

17 MR. AMADEO: You a big Nick Saben fan?

18 JUROR ROGERS: Yeah.

19 MR. AMADEO: Think things would've been different if  
20 he's stayed at Michigan State?

21 JUROR ROGERS: Well, I think he should've, but he's  
22 doin' good down there.

23 MR. AMADEO: Miss Centeno?

24 JUROR CENTENO: I don't know.

25 MR. AMADEO: Okay.

1 Now, it's important to understand how the court's  
2 laid out. The prosecutor's table is here, and our table is  
3 over there, and there's a reason for that. The prosecutor has  
4 to stand -- sit, I should say, closest to the jury 'cause they  
5 have the burden of proof.

6 So, does everybody understand that, basically, I  
7 could sit here and have my client read the newspaper and do  
8 nothing? Judge Cunningham would kill me if I did that, but we  
9 have that option. We don't have to do anything in this matter  
10 We're going to, but it is their burden. And their burden is  
11 beyond a reasonable doubt.

12 Anybody really know what that really means, beyond a  
13 reasonable doubt?

14 JUROR GREEN: More than 50 percent.

15 MR. AMADEO: More than 50 percent? A lot more than  
16 50 percent.

17 I had an old law school professor, James Peevin  
18 (phonetic). Great guy. He taught me a lot in criminal  
19 procedure. And one day, he drew a stick figure on the white  
20 board. And he said, "Probable cause is at this guy's ankles.  
21 Preponderance of the evidence is right about his belly. And  
22 beyond a reasonable doubt's over his head."

23 That means nearly certainty has to be proven in the  
24 criminal case. We have to be so certain that the defendant did  
25 something before we actually rule on a guilty verdict. Do we

1 all understand that?

2 JURORS: (No verbal response).

3 MR. AMADEO: Does anyone have a problem with that?

4 JURORS: (No verbal response).

5 MR. AMADEO: All right, thanks for your time.

6 THE COURT: All right, challenges for cause, first to  
7 you, Ms. Van Langevelde.

8 MS. VAN LANGEVELDE: Oh, none for cause, thank you.

9 THE COURT: Challenges for cause to you, Mr. Amadeo.

10 MR. AMADEO: No, Your Honor.

11 THE COURT: First peremptory goes to you, Ms. Van  
12 Langevelde.

13 MS. VAN LANGEVELDE: Thank you, Your Honor. The  
14 People would thank and excuse juror number five, Miss Raf --  
15 Raflik? Thank you.

16 THE COURT: All right. Thank you very much, Miss  
17 Raflik, for being here today.

18 JUROR RAFLIK: Thank you.

19 THE COURT: Okay, Theresa Bush.

20 MS. VAN LANGEVELDE: I'm sorry, can we approach just  
21 briefly, Your Honor?

22 THE COURT: Sure.

23 MS. VAN LANGEVELDE: Thank you.

24 (At 10:23 a.m., bench conference)

25 (At 10:24 a.m., bench conference concluded)

1 THE COURT: Miss Bush, how are you today?

2 JUROR BUSH: I'm good. How are you?

3 THE COURT: It has come to my attention that there  
4 has been some contact, that, on this particular case, you  
5 should have been told that you didn't have to be here. And so  
6 I hope you found it entertaining. And you are free to go about  
7 your day. Thank you very much.

8 JUROR BUSH: Thank you.

9 THE COURT: I'm sorry that that was not caught first  
10 thing this morning.

11 JUROR BUSH: Yup, that's all right. Thank you.

12 THE COURT: Okay. Kelley Cook. Good morning, Miss  
13 Cook.

14 JUROR COOK: Good morning.

15 THE COURT: How are you?

16 JUROR COOK: Good.

17 THE COURT: So, a lot of questions have been asked  
18 this morning; right?

19 JUROR COOK: Yes.

20 THE COURT: Were you able to hear them all?

21 JUROR COOK: Yes.

22 THE COURT: Is there anything that stood out in your  
23 mind, boy, if I was sitting in the -- the jury chair, I would  
24 have to answer yes or let the judge know?

25 JUROR COOK: No.

1 THE COURT: No? Okay.

2 Ms. Van Langevelde.

3 MS. VAN LANGEVELDE: Thank you.

4 Ms. Cook, you don't have any -- do you have any  
5 experience with sexual assault or sexual assault victims?

6 JUROR COOK: No.

7 MS. VAN LANGEVELDE: Okay. Have you ever been a  
8 victim before?

9 JUROR COOK: No.

10 MS. VAN LANGEVELDE: Okay. Do you know anybody who's  
11 ever been a victim before?

12 JUROR COOK: No, I do not.

13 MS. VAN LANGEVELDE: Okay. Can you think of some  
14 reasons why a victim might wait years to disclose that they  
15 were sexually assaulted?

16 JUROR COOK: Yes. That would be -- it could be due  
17 to the pressure to disclose, just too scared to disclose, and  
18 they could be under threatening --

19 MS. VAN LANGEVELDE: Um-hum.

20 JUROR COOK: -- pressure if they disclosed that.

21 MS. VAN LANGEVELDE: Um-hum.

22 JUROR COOK: I guess anybody, I think, no matter the  
23 age would suffer embarrassment.

24 MS. VAN LANGEVELDE: Sure. Would it surprise you if  
25 a victim waited a few -- five years, a few years to disclose?



1 JUROR COOK: No.

2 MS. VAN LANGEVELDE: Okay. If -- and what if the  
3 person was still in the home and it wasn't happening anymore,  
4 would that surprise you, at all, that they waited so long to  
5 disclose?

6 JUROR COOK: No, 'cause I -- I think, sometimes, the  
7 might to into seclusion and feel that maybe it might go away.

8 MS. VAN LANGEVELDE: Um-hum. Are you okay with the  
9 idea that testimony is evidence and that there's not gonna be  
10 any DNA or medical evidence, that it's gonna be based on  
11 testimony? Are you okay with that?

12 JUROR COOK: Yes.

13 MS. VAN LANGEVELDE: And do you feel like you could  
14 make a decision based on testimony alone?

15 JUROR COOK: Yes.

16 MS. VAN LANGEVELDE: Okay. And how do you feel about  
17 the -- the beyond a reasonable doubt? Do you feel like that's  
18 something that you can -- you can follow?

19 JUROR COOK: Yes.

20 MS. VAN LANGEVELDE: Okay. Did you -- you -- did you  
21 hear my flag example?

22 JUROR COOK: Yes.

23 MS. VAN LANGEVELDE: Okay.

24 JUROR COOK: I'd have to see the flag pulled out, all  
25 the evidence on the flag to be sure.

1 MS. VAN LANGEVELDE: Okay. Well, I mean, what if  
2 there's some questions that you have that -- you know, maybe  
3 you have a question but it's not an element? So, I guess let  
4 me back up.

5 Judge is gonna instruct you that I have to prove each  
6 element of a crime beyond --

7 JUROR COOK: Um-hum.

8 MS. VAN LANGEVELDE: -- a reasonable doubt. That's  
9 -- that's different than maybe you have a question, oh, what  
10 about this, or where was this -- (indecipherable).

11 JUROR COOK: Um-hum.

12 MS. VAN LANGEVELDE: If that's not an element, are  
13 you okay with that? If I meet the elements beyond a reasonable  
14 doubt, are you okay with that?

15 JUROR COOK: Yes, I am.

16 MS. VAN LANGEVELDE: Okay. Any experiences with  
17 police?

18 JUROR COOK: Just got pulled over one time. No big  
19 deal.

20 MS. VAN LANGEVELDE: No big deal. No bad experience,  
21 no good --

22 JUROR COOK: No.

23 MS. VAN LANGEVELDE: -- experience? Okay.

24 JUROR COOK: Actually, it was kind of funny,  
25 actually. I was looking through my paperwork, and he came up

1 to the side of my window. He's like whatcha doin, and all my  
2 papers went all over the car. And we had a really good laugh  
3 over it, actually.

4 MS. VAN LANGEVELDE: Well, good.

5 All right. Well, thank you so much, ma'am.

6 JUROR COOK: Thank you.

7 THE COURT: Mr. Amadeo.

8 MR. AMADEO: Thank you.

9 Good morning, Miss Cook.

10 JUROR COOK: Good morning.

11 MR. AMADEO: I have one broad question, and it's not  
12 just for Miss Cook but for the whole jury.

13 There's two people that we're always taught that you  
14 don't want to be on the jury: Those that absolutely want to be  
15 on the jury or those that don't want to be on the jury at all.

16 Does anybody, including Miss Cook, fall into those  
17 categories?

18 JUROR GREEN: Repeat the question.

19 MR. AMADEO: Two people you do not want on the jury,  
20 those who want to be on it very badly 'cause there's -- I would  
21 say desperately want to be on, or those that don't want to be  
22 on, whatsoever.

23 Does anybody fall into that category?

24 JURORS: (No verbal response).

25 MR. AMADEO: Miss Cook?

1 JUROR COOK: Oh, no, I don't.

2 MR. AMADEO: Thank you.

3 THE COURT: Challenges for cause, Ms. Van Langevelde

4 MS. VAN LANGEVELDE: None for cause.

5 THE COURT: Challenges for cause, Mr. Amadeo?

6 MR. AMADEO: None for cause, Your Honor.

7 THE COURT: Peremptory to you, Mr. Amadeo.

8 MR. AMADEO: We would like to thank and excuse Miss  
9 Cook.

10 THE COURT: Thank you very much, Miss Cook.

11 JUROR COOK: Thank you.

12 THE COURT: Barbara Dobberfuhl. And good morning to  
13 you, ma'am.

14 JUROR DOBBERFUHL: Good morning.

15 THE COURT: How are ya?

16 JUROR DOBBERFUHL: I'm fine, thank you.

17 THE COURT: Were you able to hear all of the  
18 questions?

19 JUROR DOBBERFUHL: I was.

20 THE COURT: Is there -- were there any questions that  
21 you thought, boy, if I was sitting in the jury box, I'd have to  
22 raise my hands (sic)?

23 JUROR DOBBERFUHL: I served on jury -- on a jury, but  
24 it was so long ago, I don't remember what the -- all's I  
25 remember is the judge said, "I don't know what it took you guys

1 so long for." So, that's the only thing --

2 THE COURT: Okay.

3 JUROR DOBBERFUHL: -- I recall.

4 THE COURT: Was that here, in Eaton County?

5 JUROR DOBBERFUHL: It was, but that -- I think the  
6 seats were over there.

7 THE COURT: Well, you could've been in the other  
8 courtroom.

9 JUROR DOBBERFUHL: There you go.

10 THE COURT: It's -- it's the -- it's the reversal.

11 JUROR DOBBERFUHL: Yeah, I'm -- I'm that old.

12 THE COURT: Did -- did -- as a juror, did -- did your  
13 jury reach a verdict?

14 JUROR DOBBERFUHL: I have not a clue.

15 THE COURT: Okay.

16 JUROR DOBBERFUHL: I didn't -- when I left, I left it  
17 right there with 'em.

18 THE COURT: All right. Well, is there any reason  
19 that you think you would be unable to keep an open mind and be  
20 fair and impartial until the time came for you to deliberate  
21 with your fellow jurors and reach a decision?

22 JUROR DOBBERFUHL: I think I would be biased.

23 THE COURT: Thank you very much.

24 JUROR DOBBERFUHL: Biased.

25 THE COURT: You think what?

1 JUROR DOBBERFUHL: I would be biased.

2 THE COURT: Oh.

3 JUROR DOBBERFUHL: Yeah.

4 THE COURT: That was not --

5 JUROR DOBBERFUHL: You wouldn't like --

6 THE COURT: -- the answer I was looking for.

7 JUROR DOBBERFUHL: Yeah, I would not --

8 THE COURT: Why do you think that?

9 JUROR DOBBERFUHL: Well, I've had a son who was on  
10 the Internet, on child pornography. So, I have mixed feelings.  
11 And I have mixed feelings about the police. And so, I would  
12 probably be a terrible juror.

13 THE COURT: Well --

14 MS. VAN LANGEVELDE: No objection for cause.

15 THE COURT: Mr. Adamo (sic)?

16 MR. AMADEO: No objection for cause.

17 THE COURT: Amadeo. Okay. Well, thank you for your  
18 honesty.

19 JUROR DOBBERFUHL: Yup.

20 THE COURT: And you may go about your day.

21 It's always one seat, I'm tellin' ya. Today it's  
22 seat five.

23 All right, Carlos Leven. You're gonna break the  
24 trend, Mr. Leven. Right?

25 JUROR LEVEN: Right.

1 THE COURT: All right. And how are you today, Mr.  
2 Leven?

3 JUROR LEVEN: Good morning, Your Honor. How are you

4 THE COURT: So, were you able to hear all of the  
5 questions?

6 JUROR LEVEN: Yes, I was.

7 THE COURT: I saw you were kind of in the back, but  
8 you could hear?

9 JUROR LEVEN: Yes, ma'am.

10 THE COURT: Would you have raised your hand?

11 JUROR LEVEN: (No verbal response).

12 THE COURT: So, do you believe that you can be fair  
13 and impartial?

14 JUROR LEVEN: Yes, ma'am.

15 THE COURT: Keep an open mind.

16 JUROR LEVEN: Yes, ma'am.

17 THE COURT: Wait till all the facts are in.

18 JUROR LEVEN: Yes, ma'am.

19 THE COURT: And then deliberate with your fellow  
20 jurors to, hopefully, reach a unanimous verdict?

21 JUROR LEVEN: (No verbal response).

22 THE COURT: Excellent.

23 Ms. Van Langevelde.

24 MS. VAN LANGEVELDE: Thank you.

25 Good morning, Mr. Leven.

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JUROR LEVEN: Good morning.

MS. VAN LANGEVELDE: Were you able to hear me okay?

JUROR LEVEN: Yes.

MS. VAN LANGEVELDE: Okay. Any answers to any of the questions that I asked, specifically about sexual assault or a victim, that you want to share with us?

JUROR LEVEN: (No verbal response).

MS. VAN LANGEVELDE: No? Never -- don't know anyone

JUROR LEVEN: Never had to deal with that type of issue and --

MS. VAN LANGEVELDE: Okay.

JUROR LEVEN: -- other than what you hear on the YouTube, things of that nature.

MS. VAN LANGEVELDE: Okay. Can you think of any reasons why a child might wait some years before they disclose?

JUROR LEVEN: Like what everybody else says, embarrassment, didn't know any better --

MS. VAN LANGEVELDE: Um-hum.

JUROR LEVEN: -- things of that nature.

MS. VAN LANGEVELDE: Okay. What about -- what about -- are you -- I think you said that you've got -- you have some children at home; is that correct?

JUROR LEVEN: They're all out of the house.

MS. VAN LANGEVELDE: Oh, they're all out of the house, but you have children.



1 JUROR LEVEN: Yes, three.

2 MS. VAN LANGEVELDE: Okay. How many?

3 JUROR LEVEN: Three children.

4 MS. VAN LANGEVELDE: Did they ever tell some stories  
5 or say some things that weren't, necessarily, true?

6 JUROR LEVEN: I think all kids do.

7 MS. VAN LANGEVELDE: Sure. That can -- that can  
8 happen; right?

9 JUROR LEVEN: Um-hum.

10 MS. VAN LANGEVELDE: Kids can lie about little  
11 things.

12 JUROR LEVEN: Yup.

13 MS. VAN LANGEVELDE: Okay. Does that mean they --  
14 they're always liars?

15 JUROR LEVEN: Nope.

16 MS. VAN LANGEVELDE: Does that mean they always don't  
17 tell the truth about even sometimes maybe big things?

18 JUROR LEVEN: No.

19 MS. VAN LANGEVELDE: Okay. How about if you were --  
20 and I don't think you said -- you don't have any police in your  
21 family?

22 JUROR LEVEN: No.

23 MS. VAN LANGEVELDE: Or any have -- ever had any  
24 police contact?

25 JUROR LEVEN: I know some police officers. I know

1 some judges, you know.

2 MS. VAN LANGEVELDE: You just know 'em, but --

3 JUROR LEVEN: Yeah.

4 MS. VAN LANGEVELDE: -- don't really --

5 JUROR LEVEN: No.

6 MS. VAN LANGEVELDE: -- talk about the job or  
7 anything like that?

8 JUROR LEVEN: Right.

9 MS. VAN LANGEVELDE: Wouldn't cause you to be biased?

10 JUROR LEVEN: No.

11 MS. VAN LANGEVELDE: Okay. How about my flag  
12 example? Can you see the whole flag?

13 JUROR LEVEN: You can't.

14 MS. VAN LANGEVELDE: Are you still confident that  
15 that's the Michigan flag?

16 JUROR LEVEN: Of course it is, because it's required  
17 to be there.

18 MS. VAN LANGEVELDE: All right. All right. Thank  
19 you.

20 I don't have any other questions, Judge.

21 THE COURT: Mr. Amadeo.

22 MR. AMADEO: Hey, Mr. Leven, how are ya?

23 JUROR LEVEN: Good. You?

24 MR. AMADEO: I'm gonna be brief. You've heard a lot  
25 of our questions; right?

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JUROR LEVEN: Yes.

MR. AMADEO: I don't want to keep you guys here all day.

Just real quick, lookin' at your questionnaire, how are your parents doing, because I know you take care of 'em?

JUROR LEVEN: Yup.

MR. AMADEO: Will this be a hardship for you, or will it be okay?

JUROR LEVEN: Not necessarily.

MR. AMADEO: Okay, thank you.

THE COURT: Challenges for cause, Ms. Van Langevelde.

MS. VAN LANGEVELDE: None for cause, JUDGE. Thank you.

THE COURT: Challenges for cause, Mr. Amadeo.

MR. AMADEO: None, Your Honor.

THE COURT: And that takes us to you, Ms. Van Langevelde.

MS. VAN LANGEVELDE: May I just have a minute, Your Honor?

THE COURT: You absolutely may.

MS. VAN LANGEVELDE: Thank you. Okay, thank you.

The People would thank and excuse number four, Mr. Smith. Thank you, Mr. Smith.

THE COURT: Thank you very much, Mr. Smith.

Susan Tabor.

1001a

1 JUROR TABOR: Good morning, Judge.

2 THE COURT: It is you.

3 JUROR TABOR: A few years later.

4 THE COURT: Yeah. I get the questionnaires the day  
5 before to go through, and I was like, well, I wonder if that's  
6 my dear, old friend Sue Tabor.

7 JUROR TABOR: Yes, it is.

8 THE COURT: So, I will disclose, as you can tell,  
9 that Miss Tabor and I go back to 1990 --

10 JUROR TABOR: Ninety-two?

11 THE COURT: -- six? Two?

12 JUROR TABOR: Um-hum.

13 THE COURT: Is it? Well, let's just not talk about  
14 that.

15 JUROR TABOR: It was a while ago.

16 THE COURT: Mine was way better. Miss Tabor and I  
17 served on the Delta Township Board of Trustees together and  
18 were friends. And -- and so, I saw her on a quite regular  
19 basis for quite some time, and then we got older and our kids  
20 got older and our jobs changed. And I don't think I've seen  
21 you for at least 10 years.

22 JUROR TABOR: At least.

23 THE COURT: Yeah. It's good to see ya.

24 JUROR TABOR: Good to see you. You look good up  
25 there.

1 THE COURT: Well, thank you for that.

2 Other than that, I don't think the fact that you know  
3 me -- would that impact your ability to be fair and impartial?

4 JUROR TABOR: That would not. I do have several  
5 family members from law enforcement.

6 THE COURT: Right.

7 JUROR TABOR: They're all retired now.

8 THE COURT: Okay. Would you still be able, though,  
9 to keep an open mind? Simply because you had family members  
10 that were in law enforcement?

11 JUROR TABOR: Well, I've been thinking about that  
12 sitting back there. I can't, honestly, say a hundred percent I  
13 wouldn't be -- I -- I have a -- a very good friend who went  
14 through this with her daughter.

15 THE COURT: Okay.

16 JUROR TABOR: It was a long time ago, but I couldn't  
17 help think about it when you first told us what this case was  
18 about. She was maybe five or six-years-old. It wasn't  
19 discovered till she was 16 that her father had been sexually  
20 abusing her all that time.

21 THE COURT: So, the -- the main question is whether  
22 you have an open mind and will not make any decision until you  
23 really have heard all of the evidence and deliberate with your  
24 fellow jurors. Do you feel that you have an open mind, that  
25 you could do that?

1 JUROR TABOR: Honestly, Judge, I don't feel a hundred  
2 percent, I really don't.

3 THE COURT: The other way sometimes I'll ask the  
4 question is, if you were sitting at the defense table --

5 JUROR TABOR: Um-hum.

6 THE COURT: -- would you want you to be a juror?

7 JUROR TABOR: No, because --

8 THE COURT: All right, that's all I need.

9 JUROR TABOR: Okay, yes.

10 THE COURT: Ms. Van Langevelde, any objections to  
11 dismissal for cause?

12 MS. VAN LANGEVELDE: No. Thank you, Your Honor.

13 MR. AMADEO: No, Your Honor.

14 THE COURT: Mr. -- thank you for your honesty. It  
15 was nice to see you.

16 JUROR TABOR: Nice to see you. We'll have to get  
17 together sometime.

18 THE COURT: We should.

19 JUROR TABOR: Outside of the courtroom.

20 THE COURT: Right. Yeah, nobody likes to see me  
21 inside, as a rule; right?

22 Nathan Poirier. Did I say that right? Poirier?

23 JUROR PIORIER: Yes, Piorier.

24 THE COURT: Nathan. How are you today, sir?

25 JUROR PIORIER: I'm good.

1 THE COURT: Well, you were in the front row.

2 JUROR PIORIER: Yes.

3 THE COURT: So, you were hearing all the questions?

4 JUROR PIORIER: Yes.

5 THE COURT: Would you have raised your hand to answer  
6 any of those or let me know something about the questions that  
7 have been asked this morning?

8 JUROR PIORIER: No.

9 THE COURT: Do you believe that you can be fair and  
10 open-minded?

11 JUROR PIORIER: I was tryin' to think about that as  
12 you were going through witnesses. I'm not entirely sure.

13 THE COURT: Why?

14 JUROR PIORIER: Well, I -- yes, I'm a PhD student in  
15 sociology at MSU.

16 THE COURT: You're what?

17 JUROR PIORIER: A PhD student.

18 THE COURT: Okay.

19 JUROR PIORIER: I study power and inequality.

20 THE COURT: Right.

21 JUROR PIORIER: I -- I -- I study gender. And I just  
22 -- in -- in -- in cases like this, I -- I tend to side with the  
23 -- the accuser, pre-judge.

24 THE COURT: Okay. But in this case, you're not a PhD  
25 student, you're not -- are you a TA, also?

1 JUROR PIORIER: Yes.

2 THE COURT: You're not a teaching assistant. You are  
3 serving your civic duty as a juror, whose responsibility is to  
4 keep an open mind and listen to all the evidence. Do you think  
5 that you could do that?

6 JUROR PIORIER: I think it would depend on the -- the  
7 -- the facts of the case.

8 THE COURT: Well, we won't know the facts of the case  
9 until we start the trial.

10 JUROR PIORIER: Yes.

11 THE COURT: So -- but, again, the jury decides the  
12 facts, decides who's credible and who's not credible, what  
13 evidence they believe, how much weight they want to give each  
14 piece of evidence, and then you apply the facts as you, as the  
15 jury, determine them, to the law that I will give you;  
16 essentially, the elements and what you'd have to find.

17 Do you think you would be able to go through that  
18 process?

19 JUROR PIORIER: I mean, I -- I think I could.

20 THE COURT: Okay. 'Cause that's another thing that I  
21 hope you're teaching our students; right?

22 JUROR PIORIER: Yes.

23 THE COURT: Their civic duty.

24 Ms. Van Langevelde.

25 MS. VAN LANGEVELDE: Thank you.



1 I want to make sure I -- I -- can you tell me again  
2 what you -- what you're teaching? I'm sorry, I -- soc -- it  
3 was sociology?

4 JUROR PIORIER: Sociology.

5 MS. VAN LANGEVELDE: Okay. And you said -- and --  
6 and I -- I think it's interesting what you said, that you,  
7 actually, are -- are you reading like case studies about --  
8 (inaudible) -- incidents?

9 JUROR PIORIER: No.

10 MS. VAN LANGEVELDE: Oh, okay.

11 JUROR PIORIER: No, just gender. General gender  
12 cases.

13 MS. VAN LANGEVELDE: Okay, gender role, gender  
14 inequality, things like that?

15 JUROR PIORIER: Yes.

16 MS. VAN LANGEVELDE: Okay. And you -- and you said  
17 -- so, maybe part of what you do is you're reading something  
18 that happens and then you're coming to an opinion. Is that --  
19 is that fair to say?

20 JUROR PIORIER: Yes.

21 MS. VAN LANGEVELDE: Okay. And so, that's kind of  
22 like what we would be asking you to do. You don't know  
23 anything. This is a clean slate. And I guess that's what  
24 Judge was in -- is instructing everybody, is that we don't know  
25 -- you guys don't know anything, and that's the way we want it

1 to be. And we want everybody to keep an open mind as the  
2 evidence is presented.

3 We're not saying that, once it's all said and done --  
4 we're hoping you'll come to a de -- unanimous decision.

5 Does that make sense to everybody?

6 JURORS: (No verbal response).

7 MS. VAN LANGEVELDE: That you will all agree on a --  
8 on a verdict, but just to keep an open mind throughout every --  
9 does -- does that make sense?

10 JUROR PIORIER: Um-hum.

11 MS. VAN LANGEVELDE: To everybody?

12 JURORS: (No verbal response).

13 MS. VAN LANGEVELDE: Okay.

14 And I know -- and I -- and, I'm sorry, Mr. Rogers, I  
15 feel bad for you. Now, you said, when your son was killed,  
16 there was a -- a jury trial. And I think you said it was  
17 civil; is that accurate?

18 JUROR ROGERS: Right.

19 MS. VAN LANGEVELDE: Okay. And -- and so, there  
20 wasn't a guilty or not guilty. Was it cause or --

21 JUROR ROGERS: Well, it was -- they were tryin' to  
22 find out which party was at fault. And -- and, you know, it  
23 came out to a 50/50.

24 MS. VAN LANGEVELDE: Okay. So, it wasn't that they  
25 said not guilty or guilty. They said no cause or cause,

1 something like that?

2 JUROR ROGERS: Correct. And it was 50/50 who was at  
3 fault.

4 MS. VAN LANGEVELDE: Okay, okay.

5 And then, Mr. O'Bryant, you said you -- it was a  
6 drunk driving that you were a juror in?

7 JUROR O'BRYANT: Um-hum.

8 MS. VAN LANGEVELDE: Can you tell me what -- I mean,  
9 obviously, that case was totally different than this case.  
10 But, what was -- what was some of the -- the issues in that  
11 case?

12 JUROR O'BRYANT: The gentleman had been out drinkin'  
13 all night and pulled up to a green light and stopped. An  
14 officer seen him.

15 MS. VAN LANGEVELDE: Ump-hum.

16 JUROR O'BRYANT: And pulled him over and asked him  
17 why he was stopped at a green.

18 MS. VAN LANGEVELDE: Um-hum.

19 JUROR O'BRYANT: You know, and did field tests on  
20 him. And he'd been drinkin'.

21 MS. VAN LANGEVELDE: Okay. But you reached a not  
22 guilty. Can I ask why?

23 JUROR O'BRYANT: Yeah. I -- I stuck with guilty for  
24 the longest time. I was one of the last ones. And, finally, I  
25 got convinced that --

1 MS. VAN LANGEVELDE: Okay.

2 JUROR O'BRYANT: You know, I don't remem -- it was --

3 MS. VAN LANGEVELDE: So long ago, sure.

4 JUROR O'BRYANT: -- 40 years ago.

5 MS. VAN LANGEVELDE: Okay, thank you for sharing that  
6 with me.

7 And so, I'm sorry, going back to you Mr. -- Mr.  
8 Poirier. Did -- and I know maybe you -- you talk about this a  
9 little bit more in your -- in your gender and inequality, but  
10 the -- is it surprising to you that a victim might wait years  
11 before they disclose?

12 JUROR PIORIER: No.

13 MS. VAN LANGEVELDE: Okay. And do you feel  
14 comfortable with the standard of beyond a reasonable doubt?

15 JUROR PIORIER: Yes.

16 MS. VAN LANGEVELDE: And do you understand -- this is  
17 to everybody -- that it's not all doubt, but it's just beyond a  
18 reasonable doubt --

19 JUROR PIORIER: Yes.

20 MS. VAN LANGEVELDE: That you feel confident and  
21 certain?

22 JURORS: (No verbal response).

23 MS. VAN LANGEVELDE: Okay, thank you, everybody.

24 THE COURT: Mr. Amadeo.

25 MR. AMADEO: Hi, Nathan. How are ya?

1 JUROR PIORIER: Good.

2 MR. AMADEO: I just want to be clear on a couple  
3 things because you seem a little apprehensive. If you're not  
4 comfortable, we all need to know. Do you think -- and hold no  
5 -- nothing back here -- based on your studies, what you're  
6 doing for a living, do you think you'll look at my client  
7 objectively, knowing what you know about this case already?

8 JUROR PIORIER: I'm not sure I can come in with a  
9 complete open mind. Depends on what happens in the case.  
10 Yeah, perhaps.

11 MR. AMADEO: So, would you start from the premise  
12 that you think he's guilty before we start?

13 JUROR PIORIER: It wouldn't be -- I wouldn't -- I  
14 wouldn't feel, you know, confident passin' judgment that he's  
15 guilty, but I would, you know, probabilistic terms, just in  
16 general, yes.

17 MR. AMADEO: So, we would have to prove his innocence  
18 to you; correct?

19 JUROR PIORIER: Yeah.

20 MR. AMADEO: Okay, thank you.

21 THE COURT: Thank you, Mr. Piorier, for being here.  
22 You're released.

23 Stephanie Drake. Good morning, Miss Drake.

24 JUROR DRAKE: Hi.

25 THE COURT: And how are you?

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1 JUROR DRAKE: Fine. How are you?  
2 THE COURT: Have you been able to hear everything?  
3 JUROR DRAKE: Yes.  
4 THE COURT: Would you have, you know, shot your hand  
5 up, raised your hand?  
6 JUROR DRAKE: Yeah.  
7 THE COURT: Go ahead.  
8 JUROR DRAKE: I was sexually assaulted when I was 16  
9 THE COURT: Okay. Ms. Van Langevelde.  
10 MS. VAN LANGEVELDE: No objection.  
11 THE COURT: Mr. Amadeo.  
12 MR. AMADEO: No objection, Judge.  
13 THE COURT: I don't need you to go through that for  
14 me. Thank you --  
15 JUROR DRAKE: Thank you.  
16 THE COURT: -- for your honesty. You're excused.  
17 Beth Everson. And good morning to you.  
18 JUROR EVERSON: Good morning, Judge.  
19 THE COURT: Would you have raised your hand?  
20 JUROR EVERSON: Yeah, I was a juror about 30 years  
21 ago in a criminal case here, in Eaton County.  
22 THE COURT: Oh.  
23 JUROR EVERSON: And I think we found the guy not  
24 guilty, but I don't remember.  
25 THE COURT: Okay, I like that, check, check, check.

1 Do you think you could be fair and impartial?

2 JUROR EVERSON: Yes, I do.

3 THE COURT: Ms. Van Langevelde.

4 MS. VAN LANGEVELDE: Miss Everson, it says you are a  
5 retired attorney.

6 JUROR EVERSON: Yes, I am.

7 MS. VAN LANGEVELDE: I hope to be that some day.

8 JUROR EVERSON: You could -- (inaudible).

9 MS. VAN LANGEVELDE: What kind of an attorney were  
10 you?

11 JUROR EVERSON: I was a civil. I -- a strictly civil  
12 one.

13 MS. VAN LANGEVELDE: Okay, car accidents or family  
14 law or --

15 JUROR EVERSON: Yup, probate, family law, civil, you  
16 know, boundary disputes, bankruptcies, real estate, that kind  
17 of stuff.

18 MS. VAN LANGEVELDE: Okay. Any answers to any of the  
19 questions that I asked that would be different from the rest of  
20 the panel that I should know?

21 JUROR EVERSON: No. I get it with the flag. Nope.

22 MS. VAN LANGEVELDE: Okay, thank you, ma'am.

23 THE COURT: Mr. Amadeo.

24 MR. AMADEO: Hi, Miss Everson. Did you ever do  
25 criminal law? I looked you up last night. I knew you were a

1 lawyer but I didn't know what field.

2 JUROR EVERSON: Oh, you know, way, way, way back,  
3 before any of you guys were born, I dabbled in criminal law  
4 with Ken Birch -- (inaudible) -- in East Lansing.

5 MR. AMADEO: Okay.

6 JUROR EVERSON: I think I maybe handled a couple  
7 drunk driving cases.

8 MR. AMADEO: And you understand everything going on  
9 in the court, obviously.

10 JUROR EVERSON: Yes.

11 MR. AMADEO: Probably better than myself.

12 JUROR EVERSON: I don't know about that.

13 MR. AMADEO: I have nothing further. Thank you.

14 JUROR EVERSON: Um-hum.

15 THE COURT: Challenges for cause, Ms. Van Langevelde.

16 MS. VAN LANGEVELDE: No, none for cause.

17 THE COURT: Challenges for cause, Mr. Amadeo?

18 MR. AMADEO: None, Your Honor.

19 THE COURT: Peremptory to you, Mr. Amadeo.

20 MR. AMADEO: Defense would like to thank and excuse  
21 juror number eight, Miss McPhee.

22 THE COURT: Thank you very much, Miss McPhee.

23 JUROR MCPHEE: Thank you.

24 THE COURT: That brings me to Bernie Wing -- or,  
25 Bennie, sorry. Sorry, Bennie. Bennie Lynn Wing.



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Good morning.

JUROR WING: Good morning.

THE COURT: Were you able to hear all the questions?

JUROR WING: I was.

THE COURT: Was there anything you think I need to know?

JUROR WING: Not that I'm aware of.

THE COURT: Keep an open mind?

JUROR WING: Yes.

THE COURT: Be fair and impartial until the time comes for you to talk about the facts with your fellow jurors?

JUROR WING: Yes.

THE COURT: Ms. Van Langevelde.

MS. VAN LANGEVELDE: Thank you, Your Honor.

Miss Wing, I see you work at McLaren. Are you in the Mother/Baby Unit?

JUROR WING: No.

MS. VAN LANGEVELDE: No? Okay. Were you able to hear everything I asked?

JUROR WING: I did.

MS. VAN LANGEVELDE: Okay. Any answers to any of the questions that I presented that you'd like to share or that --

JUROR WING: No.

MS. VAN LANGEVELDE: -- I need to know or Mr. Amadeo needs to know? No experience with victims of sexual assault?

1 JUROR WING: No.

2 MS. VAN LANGEVELDE: Would it surprise you if a -- if  
3 a child waited years to disclose after -- even if it hap -- you  
4 know, happened five years ago? That was the last time and they  
5 waited five years to disclose?

6 JUROR WING: No.

7 MS. VAN LANGEVELDE: Okay. Would -- wouldn't expect  
8 DNA evidence?

9 JUROR WING: No. If it's a child, it would -- it's  
10 scary, I would think, you know. So, I can see -- and maybe she  
11 was threatened or he was threatened. It's hard to say.

12 MS. VAN LANGEVELDE: Sure. Well, and are you okay  
13 with -- with it just being testimony and that there's not gonna  
14 be medical evidence or DNA? Are you okay with making a  
15 decision based on testimony?

16 JUROR WING: I don't know.

17 MS. VAN LANGEVELDE: Okay. Thank you for being  
18 honest. Anything else?

19 JUROR WING: No.

20 MS. VAN LANGEVELDE: That I should know? All right,  
21 thank you, ma'am.

22 THE COURT: Mr. Amadeo.

23 MR. AMADEO: We have no questions for Miss Wing, Your  
24 Honor.

25 THE COURT: Challenges for cause, Ms. Van Langevelde.

1 MS. VAN LANGEVELDE: None for cause.

2 THE COURT: Challenges for cause, Mr. Amadeo.

3 MR. AMADEO: No, Your Honor.

4 THE COURT: Ms. Van Langevelde.

5 MS. VAN LANGEVELDE: Thank you, Your Honor. The  
6 People would thank and excuse Miss Wing. Thank you.

7 THE COURT: Thank you, Miss Wing.

8 And that takes me to Kathlene Kole -- Koledica --  
9 dica?

10 JUROR KOLEDICA: Not even close.

11 THE COURT: Okay. All right. Kath -- Kathlene, come  
12 on up. And then when you get to your seat, I would greatly  
13 appreciate you telling me the correct pronunciation of your  
14 name.

15 JUROR KOLEDICA: It is Koledica.

16 THE COURT: Koledica.

17 JUROR KOLEDICA: Yes. Like Pina Koledica.

18 THE COURT: I like that. That's good.

19 Okay. Is there anything you think I need to know?

20 JUROR KOLEDICA: Yes. I have a cousin who is a New  
21 York police officer. My sister was a victim/witness advocate  
22 for Kalamazoo County. I've been on a jury. We -- it was a  
23 fleeing and eluding, and we found him not guilty. I've never  
24 been a witness. I have an aunt and a cousin who were victims,  
25 a breaking and entering, by the -- my niece's ex-boyfriend. My

1 niece was stabbed, and my aunt was beaten.

2 THE COURT: Wow, okay. So, the breaking and  
3 entering --

4 JUROR KOLEDICA: Um-hum.

5 THE COURT: -- was that here, in Eaton County?

6 JUROR KOLEDICA: No, that was in Texas.

7 THE COURT: Okay. Scary, huh?

8 JUROR KOLEDICA: Um-hum.

9 THE COURT: Were you involved in that, at all, with  
10 it being so far away?

11 JUROR KOLEDICA: No, but we knew immediately what was  
12 going on.

13 THE COURT: Right. It was the -- the -- the niece's  
14 ex-boyfriend?

15 JUROR KOLEDICA: Correct.

16 THE COURT: Drug related?

17 JUROR KOLEDICA: No, jealousy.

18 THE COURT: Sister, victims' advocate in Kalamazoo  
19 County?

20 JUROR KOLEDICA: Correct.

21 THE COURT: Still is?

22 JUROR KOLEDICA: No, she's retired now.

23 THE COURT: Okay. But you served on a jury where you  
24 found a defendant not guilty for fleeing and eluding.

25 JUROR KOLEDICA: Correct.

1 THE COURT: So, the question you know I'm gonna ask  
2 is: Do you think that you could have an open mind and listen  
3 to all the evidence?

4 JUROR KOLEDICA: Yes, I think so.

5 THE COURT: Is there any -- I mean, are you sure that  
6 you could do that?

7 JUROR KOLEDICA: Yes.

8 THE COURT: Okay. Ms. Van Langevelde.

9 MS. VAN LANGEVELDE: Thank you.

10 Miss Koledica.

11 JUROR KOLEDICA: Koledica.

12 MS. VAN LANGEVELDE: Koledica, okay. So, do you have  
13 any experience with -- (inaudible) -- sexual assault?

14 JUROR KOLEDICA: I had a neighbor and a good friend  
15 that were victims of incest.

16 MS. VAN LANGEVELDE: Oh, okay. Did that -- did that  
17 go through the court system?

18 JUROR KOLEDICA: No, I don't believe so.

19 MS. VAN LANGEVELDE: Okay. How did -- how did you  
20 know about that, if you don't mind sharing a little?

21 Do you need another cough drop?

22 JUROR GREEN: No.

23 MS. VAN LANGEVELDE: Okay.

24 JUROR KOLEDICA: My neighbor explained to me because  
25 her sister was in therapy, pretty intense.

1 MS. VAN LANGEVELDE: Okay. Fair to say that you  
2 weren't there and didn't experience it.

3 JUROR KOLEDICA: Correct.

4 MS. VAN LANGEVELDE: But no reason to doubt that it  
5 happened to her.

6 JUROR KOLEDICA: Yes.

7 MS. VAN LANGEVELDE: And you still believe that it  
8 happened to her.

9 JUROR KOLEDICA: Oh, yes.

10 MS. VAN LANGEVELDE: Okay. Now, was the fleeing and  
11 elude, when you were on a jury, was that here, in Eaton County?

12 JUROR KOLEDICA: Yes.

13 MS. VAN LANGEVELDE: I missed that. Okay. Was it  
14 upstairs or downstairs?

15 JUROR KOLEDICA: I think -- I don't remember. That  
16 was probably five or six years ago.

17 MS. VAN LANGEVELDE: Twelve of you or six of you?  
18 Or, 14?

19 JUROR KOLEDICA: I think there was 12 of us.

20 MS. VAN LANGEVELDE: Okay. Do you recall anything  
21 about that case?

22 JUROR KOLEDICA: Yes. The person, the accused, had  
23 bought a motorcycle, and was taking it back home to, I think it  
24 was Dimondale area. The officers, in the vehicle, said they  
25 did not notice a license plate on it, said that they had their

1 lights going and their sirens going and he -- the person did  
2 not stop. What we had figured out was that the police  
3 officers' stories were a little bit different, and, also, the  
4 gentleman involved said that he had paperwork saying that he  
5 had purchased the motorcycle, and that he did not see the  
6 lights because it was sunny out, his mirrors were bouncing, and  
7 he didn't hear anything because he had a helmet on.

8 MS. VAN LANGEVELDE: Okay. Do you recall if any of  
9 the names of the police officers that were read --

10 JUROR KOLEDICA: No.

11 MS. VAN LANGEVELDE: -- or were the same?

12 JUROR KOLEDICA: Huh-uh.

13 MS. VAN LANGEVELDE: Okay. So, you -- in that  
14 particular situation, you guys were making a credibility  
15 judgment; fair?

16 JUROR KOLEDICA: Correct.

17 MS. VAN LANGEVELDE: So, were there -- and back then,  
18 I don't -- I don't know how long this was. Do you remember?

19 JUROR KOLEDICA: I -- I want to say it's five or six  
20 years ago.

21 MS. VAN LANGEVELDE: Okay. Was there a dash cam?

22 JUROR KOLEDICA: No.

23 MS. VAN LANGEVELDE: Body cam?

24 JUROR KOLEDICA: No.

25 MS. VAN LANGEVELDE: Okay. So, obviously, in this

1 particular case, we don't have video.

2 JUROR KOLEDICA: Correct.

3 MS. VAN LANGEVELDE: It's gonna be based on testimony  
4 and who is -- who believes. Do you feel like you can make a  
5 decision based on testimony alone?

6 JUROR KOLEDICA: Yes.

7 MS. VAN LANGEVELDE: Okay. All right, that's all I  
8 have.

9 JUROR KOLEDICA: Thanks.

10 MS. VAN LANGEVELDE: Thank you, ma'am.

11 THE COURT: Mr. Amadeo.

12 MR. AMADEO: And I'll be brief. More for Miss Green.  
13 You're a trooper. Are you gonna be okay?

14 JUROR GREEN: Oh, yeah, I'm fine. Thank you.

15 MR. AMADEO: Okay.

16 JUROR GREEN: I'm a tough cookie.

17 MR. AMADEO: This is gonna go a few days. I want to  
18 make sure you're feelin' okay.

19 JUROR GREEN: Oh, no, I'm fine.

20 MR. AMADEO: Okay, cool. If you need water or  
21 anything, let them know.

22 JUROR GREEN: No, I'm fine. Comfortable.

23 MR. AMADEO: Miss Koledica, your sister's a victim  
24 advocate?

25 JUROR KOLEDICA: Yes, she's retired now.



1 MR. AMADEO: Okay. So, I'll briefly put my personal  
2 -- (indecipherable) -- this question. Somebody I dated in law  
3 school has actually become a victim advocate. And she's -- we  
4 don't talk much anymore because I'm a defense lawyer. When  
5 you're a defense lawyer or a prosecutor, you kinda get tunnel  
6 vision. I believe everybody's innocent. They believe  
7 everybody's guilty. We always have these fights. And it's a  
8 very emotion job.

9 Has she shared things with you during -- in her job?

10 JUROR KOLEDICA: Occasionally.

11 MR. AMADEO: Okay. And has she turned to you for  
12 support in the job, because it is emotionally exhausting?

13 JUROR KOLEDICA: Not really support. Just, sometimes  
14 she just liked to discuss, you know, the -- the daily -- the  
15 feelings that she has daily.

16 MR. AMADEO: And being close with her and  
17 understanding what she does with her job, do you feel a hundred  
18 percent you could be objective in this matter?

19 JUROR KOLEDICA: I think so.

20 MR. AMADEO: Okay, thank you.

21 THE COURT: Challenges for cause?

22 MS. VAN LANGEVELDE: No, none for cause. Thank you.

23 THE COURT: Challenges for cause, Mr. Amadeo?

24 MR. AMADEO: Nothing for cause, Your Honor.

25 THE COURT: Peremptory to you, Mr. Amadeo.

1 MR. AMADEO: Yes, the defense would like to thank and  
2 excuse juror number 12, Miss Renton.

3 THE COURT: Thank you very much, Miss Renton.

4 JUROR RENTON: Am I done for the day, then?

5 THE COURT: You are. Have a nice weekend.

6 That takes me to Christy Long. Good morning.

7 JUROR LONG: Good morning.

8 THE COURT: How are you?

9 JUROR LONG: I'm well, thank you.

10 THE COURT: Do you -- would you have answered yes to  
11 any of the questions that I have asked?

12 JUROR LONG: Yes, I would.

13 THE COURT: Which ones?

14 JUROR LONG: I was on a jury several years ago in  
15 Judge Eveland's court.

16 THE COURT: Okay.

17 JUROR LONG: And I think it was criminal but --

18 THE COURT: It left a big impression on you, huh?

19 JUROR LONG: Yes.

20 THE COURT: Do you know if you reached a verdict?

21 JUROR LONG: Yes.

22 THE COURT: What was the verdict?

23 JUROR LONG: I think it was guilty.

24 THE COURT: But you don't remember what kind of case  
25 it was or anything?

1 JUROR LONG: I think it was criminal. I think there  
2 was theft between two inmates in the county jail.

3 THE COURT: Okay. Do you think that you could keep  
4 an open mind, be fair and impartial?

5 JUROR LONG: I do.

6 THE COURT: Ms. Van Langevelde.

7 MS. VAN LANGEVELDE: Thank you.

8 You -- you know Kelly Morton?

9 JUROR LONG: I do know Kelly.

10 MS. VAN LANGEVELDE: You used to work at SIREN?

11 JUROR LONG: I did.

12 MS. VAN LANGEVELDE: Okay.

13 JUROR LONG: And I -- I currently work at the  
14 Michigan Coalition to End Domestic and Sexual Violence.

15 MS. VAN LANGEVELDE: So, I get a lot of emails from  
16 your organization.

17 JUROR LONG: Yeah.

18 MS. VAN LANGEVELDE: Do you feel like, even though  
19 you work for the Michigan Coalition to End Sexual and Domestic  
20 Violence, that you could still be fair and impartial in this  
21 case?

22 JUROR LONG: Yes.

23 MS. VAN LANGEVELDE: Okay, tell me why you feel that  
24 way.

25 JUROR LONG: That's a good question. I should've

1       been thinking about that.

2               MS. VAN LANGEVELDE: That's okay.

3               JUROR LONG: Because even though we -- we believe in  
4 and follow certain philosophies and promote, you know, certain  
5 beliefs about sexual assault and domestic violence, I still  
6 believe that everyone deserves a -- a -- a fair trial, and that  
7 you're innocent until you're proven guilty.

8               MS. VAN LANGEVELDE: Sure. And I appreciate that.  
9 And you don't know anything about this case --

10              JUROR LONG: No.

11              MS. VAN LANGEVELDE: -- or the parties --

12              JUROR LONG: No.

13              MS. VAN LANGEVELDE: -- involved or any of the  
14 witnesses?

15              JUROR LONG: Huh-uh.

16              MS. VAN LANGEVELDE: And just because you know Kelly,  
17 does that mean that -- and I don't know if we've ever met.  
18 But, just because you know Kelly, doesn't -- does that mean  
19 that you're gonna believe everything or our side more or less  
20 than any -- than the other party's?

21              JUROR LONG: No.

22              MS. VAN LANGEVELDE: Okay. Is there any other  
23 answers to any of the other questions that I asked the rest of  
24 the group that you thought that we need to know or to share?

25              JUROR LONG: I have members of my family that were

1 victims of incest.

2 MS. VAN LANGEVELDE: Okay. And can you tell me when  
3 they disclosed?

4 JUROR LONG: I don't even know. It was the big  
5 family secret for years. To be honest, I don't know if they  
6 ever did.

7 MS. VAN LANGEVELDE: Okay, that's fair. So,  
8 sometimes people don't disclose, at all, to other people.

9 JUROR LONG: Yes.

10 MS. VAN LANGEVELDE: Okay. Is there anything about  
11 that being in your family that would cause you to feel -- I  
12 know we talked about your job. But, anything about having that  
13 in your family that would make you biased or -- to one side or  
14 the other?

15 JUROR LONG: I don't believe so.

16 MS. VAN LANGEVELDE: All right. Thank you so much.

17 THE COURT: Mr. Amadeo.

18 MR. AMADEO: No questions, Judge.

19 THE COURT: Challenges for cause, Ms. Van Langevelde.

20 MS. VAN LANGEVELDE: No, none for cause.

21 THE COURT: Challenges for cause, Mr. Amadeo.

22 MR. AMADEO: None for judge -- none for cause, Judge.

23 THE COURT: Peremptory to you, Ms. Van Langevelde.

24 MS. VAN LANGEVELDE: Thank you. The People would  
25 thank and excuse Miss Koledica. Thank you, ma'am.

1 THE COURT: Thank you very much, Miss Koledica. Have  
2 a great day. You are excused.

3 And that takes us to Dawn Wright. Good morning.

4 JUROR WRIGHT: Good morning.

5 THE COURT: How are you today?

6 JUROR WRIGHT: Good.

7 THE COURT: Would you have answered yes to any of the  
8 questions?

9 JUROR WRIGHT: Many.

10 THE COURT: Pardon?

11 JUROR WRIGHT: Many. My stepniece had been abused by  
12 her brother, and my -- my sister's daughter adopted her.

13 THE COURT: Okay.

14 JUROR WRIGHT: She draws cartoons of penises and  
15 vaginas.

16 THE COURT: Oh. Do you --

17 JUROR WRIGHT: It's very personal.

18 THE COURT: You -- you are not able to be fair and  
19 impartial, are you?

20 JUROR WRIGHT: (No verbal response).

21 THE COURT: Okay, I don't really need for you to go  
22 into any detail. I don't wish to --

23 JUROR WRIGHT: Nobody's been charged, either.

24 THE COURT: -- put you through that. I don't -- you  
25 don't need to go through that.

1 Ms. Van Langevelde, any objection to cause?

2 MS. VAN LANGEVELDE: No. Thank you.

3 THE COURT: Mr. Adamo (sic)?

4 MR. AMADEO: Of course not.

5 THE COURT: Thank you very much for being here today  
6 You are excused.

7 JUROR WRIGHT: Thank you.

8 THE COURT: Ladonna Kuba. Good morning. How are  
9 you?

10 JUROR KUBA: Good. How are you?

11 THE COURT: Would you have answered yes to any of the  
12 questions?

13 JUROR KUBA: No, I wouldn't have.

14 THE COURT: Do you believe that you'd have an open  
15 mind?

16 JUROR KUBA: Yes.

17 THE COURT: And you'll be fair and impartial?

18 JUROR KUBA: Yes.

19 THE COURT: Ms. Van Langevelde.

20 MS. VAN LANGEVELDE: Thank you. Good morning, Ms.  
21 Kuba.

22 JUROR KUBA: Good morning.

23 MS. VAN LANGEVELDE: Do you have any experience with  
24 victims of sexual assault?

25 JUROR KUBA: No, I don't.

1 MS. VAN LANGEVELDE: Ever -- ever known anybody to  
2 disclose? How about anybody accused of sexual assault?

3 JUROR KUBA: Nope.

4 MS. VAN LANGEVELDE: No?

5 JUROR KUBA: Huh-uh.

6 MS. VAN LANGEVELDE: Can you give me -- think of any  
7 reasons why it might take somebody years to disclose what  
8 happened to them?

9 JUROR KUBA: Well, of course bein' afraid of what  
10 might happen to them or, I guess, not really understanding the  
11 whole situation and thinkin' it's their fault.

12 MS. VAN LANGEVELDE: Now, I noticed you didn't have  
13 any -- you don't have any kids at home, currently; is that  
14 correct?

15 JUROR KUBA: Right.

16 MS. VAN LANGEVELDE: Do you have children?

17 JUROR KUBA: I have one son.

18 MS. VAN LANGEVELDE: One son, okay. Did you -- does  
19 he have any children?

20 JUROR KUBA: No.

21 MS. VAN LANGEVELDE: Okay.

22 JUROR KUBA: Not yet.

23 MS. VAN LANGEVELDE: Has the son ever maybe tell some  
24 fibs or lies about things?

25 JUROR KUBA: Oh, yeah.



1 MS. VAN LANGEVELDE: Okay. Does that make him a liar  
2 about everything?

3 JUROR KUBA: No.

4 MS. VAN LANGEVELDE: All right. Ever have any police  
5 contact?

6 JUROR KUBA: Yes, speeding tickets.

7 MS. VAN LANGEVELDE: Okay experiences, as much as we  
8 don't like speeding tickets?

9 JUROR KUBA: Yeah. No, it -- it was fine.

10 MS. VAN LANGEVELDE: Okay.

11 JUROR KUBA: Nothin' -- nothin' bad.

12 MS. VAN LANGEVELDE: Okay. And did you hear my flag  
13 example?

14 JUROR KUBA: Um-hum..

15 MS. VAN LANGEVELDE: Okay. Do you -- even if there  
16 may be some questions that you have, that maybe aren't  
17 answered, but I still meet the elements beyond a reasonable  
18 doubt, do you feel like that -- that you could find somebody  
19 guilty of a crime?

20 JUROR KUBA: Yeah, I think so.

21 MS. VAN LANGEVELDE: Okay.

22 JUROR KUBA: Um-hum.

23 MS. VAN LANGEVELDE: Thank you, Miss Kuba.

24 THE COURT: Ms. Amadeo. Mr. Amadeo.

25 MR. AMADEO: That's fine. Thank you, Judge.

1 Do you have any questions for me? You've heard us go  
2 through this; right?

3 JUROR KUBA: Right.

4 MR. AMADEO: Any questions, at all?

5 JUROR KUBA: No.

6 MR. AMADEO: Thank you.

7 THE COURT: Challenges for cause?

8 MS. VAN LANGEVELDE: No, none for -- sorry. None for  
9 cause.

10 THE COURT: Challenges for cause, Mr. Amadeo?

11 MR. AMADEO: No, Your Honor.

12 THE COURT: Mr. Amadeo, peremptory goes to you.

13 MR. AMADEO: Yes, we would like to thank and excuse  
14 juror number 11, Miss Wallace.

15 THE COURT: Thank you very much, Miss Wallace. You  
16 are excused.

17 Julie -- is it Juhas? Good morning.

18 JUROR JUHAS: Good morning.

19 THE COURT: Would you have answered yes to any of the  
20 questions?

21 JUROR JUHAS: Yes, I would've. My niece's dad, Matt  
22 Slocum, just went through this whole, entire process --

23 THE COURT: Um-hum.

24 JUROR JUHAS: -- and got convicted.

25 THE COURT: Um-hum.

1 JUROR JUHAS: And, honestly, I think right now, in my  
2 opinion, all men are pigs. Sorry. I'm going through --

3 THE COURT: I'm sorry, that's not funny but --

4 JUROR JUHAS: I'm going through a divorce.

5 THE COURT: -- your honesty is --

6 JUROR JUHAS: It's not. I'm going through a divorce  
7 right now. And he just -- they just had a baby together, my  
8 husband and -- so.

9 THE COURT: Okay.

10 JUROR JUHAS: I'm kind of biased against men right  
11 now. Sorry.

12 THE COURT: Sure. Well, thank you for being here  
13 this morning, and you're excused.

14 JUROR JUHAS: Thank you.

15 THE COURT: Nancy Mattson. Good morning, Miss  
16 Mattson.

17 JUROR MATTSON: Good morning.

18 THE COURT: Would you have answered yes to any of the  
19 questions?

20 JUROR MATTSON: I would not.

21 THE COURT: Do you believe that you can keep an open  
22 mind?

23 JUROR MATTSON: I can.

24 THE COURT: Do you believe that you could be fair and  
25 impartial?

1 JUROR MATTSON: I believe so.

2 THE COURT: Do you believe that you can follow the  
3 instructions that I give you, that you are required to follow  
4 as a juror?

5 JUROR MATTSON: Yes, I can.

6 THE COURT: Excellent.

7 Ms. Van Langevelde.

8 MS. VAN LANGEVELDE: Thank you.

9 Miss Mattson, it says -- do you have -- do you have  
10 couple kids at home?

11 JUROR MATTSON: Two.

12 MS. VAN LANGEVELDE: Two? How old are your kids?

13 JUROR MATTSON: Sixteen and 18.

14 MS. VAN LANGEVELDE: Okay. And your husband's an  
15 instructor at LCC?

16 JUROR MATTSON: Yes.

17 MS. VAN LANGEVELDE: What does he teach?

18 JUROR MATTSON: Electrical. He teaches electricians  
19 and --

20 MS. VAN LANGEVELDE: Okay.

21 JUROR MATTSON: -- people who want to work in the  
22 electrical field.

23 MS. VAN LANGEVELDE: Okay. Going back to your kids,  
24 the kids ever lie about some things?

25 JUROR MATTSON: Sometimes.

1 MS. VAN LANGEVELDE: Sometimes. Does that make your  
2 kids liars about everything?

3 JUROR MATTSON: No.

4 MS. VAN LANGEVELDE: Okay. Do you -- have you ever  
5 known any victims of sexual assault?

6 JUROR MATTSON: No.

7 MS. VAN LANGEVELDE: And would it -- is it surprising  
8 to you, at all, that maybe doesn't disclose until years after  
9 it had happened?

10 JUROR MATTSON: No.

11 MS. VAN LANGEVELDE: Okay. Would it be surprising to  
12 you if it -- it actually like stopped and the victim just --  
13 and didn't disclose for years?

14 JUROR MATTSON: It wouldn't surprise me.

15 MS. VAN LANGEVELDE: Okay. Do you feel comfortable  
16 with -- with following Judge's instructions?

17 JUROR MATTSON: Yes, I do.

18 MS. VAN LANGEVELDE: Okay. And that you feel like,  
19 if you felt beyond a reasonable doubt that the victim was  
20 telling the truth about what happened, you could find the  
21 defendant guilty?

22 JUROR MATTSON: Yes.

23 MS. VAN LANGEVELDE: Thank you, ma'am.

24 THE COURT: Mr. Amadeo.

25 MR. AMADEO: Hi, Nancy.

1 JUROR MATTSON: Hello.

2 MR. AMADEO: I just have one question. What do you  
3 teach?

4 JUROR MATTSON: No, my husband teaches.

5 MR. AMADEO: Oh, okay. What does he teach?

6 JUROR MATTSON: Electrical, people who want to be  
7 electricians or work in the electrical field.

8 MR. AMADEO: And he's still at LCC?

9 JUROR MATTSON: He is.

10 MR. AMADEO: Okay, thanks.

11 JUROR MATTSON: You're welcome.

12 THE COURT: Challenges for cause?

13 MS. VAN LANGEVELDE: None for cause, thank you.

14 THE COURT: Challenges for cause?

15 MR. AMADEO: None for cause, Judge.

16 THE COURT: I believe we're back to you, Ms. Van  
17 Langevelde.

18 MS. VAN LANGEVELDE: Thank you. The People would  
19 thank and excuse Miss Everson in seat number four. Thank you.

20 THE COURT: Thank you very much, Miss Everson.

21 JUROR EVERSON: Oh, you're welcome. Thank you.

22 THE COURT: Richard Veith?

23 JUROR VEITH: Yeah.

24 THE COURT: Did I say that right?

25 JUROR VEITH: Yeah, that's correct.

1 THE COURT: Good. How are you today, sir?

2 JUROR VEITH: I'm fine.

3 THE COURT: Would you have --

4 JUROR VEITH: Thank you, ma'am.

5 THE COURT: Would you have answered yes to any of the  
6 questions?

7 JUROR VEITH: I think other than my next door  
8 neighbor is the Eaton County sheriff and we're good friends.  
9 But other than that --

10 THE COURT: Do you talk to him about his job very  
11 often?

12 JUROR VEITH: No, no.

13 THE COURT: Do you think that because your next door  
14 neighbor is an Eaton County sheriff's deputy that you would  
15 give more credibility to testimony from law enforcement than  
16 you would the other witnesses?

17 JUROR VEITH: Ah, no, no.

18 THE COURT: Do you think you could be fair and  
19 impartial?

20 JUROR VEITH: Yes.

21 THE COURT: Ms. Van Langevelde.

22 MS. VAN LANGEVELDE: Thank you.

23 And good morning, Mr. -- is it Veith?

24 JUROR VEITH: Yes, Richard Veith.

25 MS. VAN LANGEVELDE: Okay. Who is your neighbor?

1 JUROR VEITH: Troy Hengesburger.

2 MS. VAN LANGEVELDE: Oh, Troy Hansbarger.

3 JUROR VEITH: Yeah.

4 MS. VAN LANGEVELDE: Okay. All right. Were you able  
5 to hear me okay?

6 JUROR VEITH: Yes, um-hum.

7 MS. VAN LANGEVELDE: Okay. Any answers to the  
8 questions that I asked that would -- that I need to know or  
9 that you need to share with us?

10 JUROR VEITH: No, other than my -- one of my  
11 grandsons was -- by -- by somebody -- I don't know, but just  
12 through knowledge, somebody had messed with him growing up.  
13 And -- and it was never taken to court, or nobody was ever  
14 turned in for it or somethin', but it has affected him.

15 MS. VAN LANGEVELDE: Um-hum.

16 JUROR VEITH: But other than that, no.

17 MS. VAN LANGEVELDE: Okay. Would -- knowing that  
18 your son -- or, I'm sorry, your grandson --

19 JUROR VEITH: Grandson.

20 MS. VAN LANGEVELDE: -- grandson, that happened to  
21 him, would that make you feel biased, one way or the other,  
22 toward either party?

23 JUROR VEITH: No, no. I believe I could listen to  
24 everything.

25 MS. VAN LANGEVELDE: Okay. Okay. No feelings -- bad



1 feelings towards law enforcement or the prosecutor's office  
2 that it -- that the person was never prosecuted?

3 JUROR VEITH: No, no, 'cause I guess nobody ever  
4 pursued it.

5 MS. VAN LANGEVELDE: Okay.

6 JUROR VEITH: It was a just found out about it type  
7 things.

8 MS. VAN LANGEVELDE: Okay. All right, thank you,  
9 sir.

10 JUROR VEITH: You're welcome.

11 THE COURT: Mr. Amadeo.

12 MR. AMADEO: Richard, how are ya?

13 JUROR VEITH: Hi. Good.

14 MR. AMADEO: Big Michigan fan?

15 JUROR VEITH: Oh, you --

16 MR. AMADEO: Big Michigan fan?

17 JUROR VEITH: Oh, you bet.

18 MR. AMADEO: Big football fan?

19 JUROR VEITH: Forever, yeah.

20 MR. AMADEO: So, I only have one question for ya.

21 JUROR VEITH: Okay.

22 MR. AMADEO: How did you guys almost lose the Army  
23 game last week? You don't have to answer.

24 JUROR VEITH: Let me -- let me figure that one out,  
25 and I'll get back with ya on that.

1 THE COURT: Challenges for cause, Ms. Van Langevelde

2 MS. VAN LANGEVELDE: No, none for cause.

3 THE COURT: Challenges for cause --

4 MR. AMADEO: No, Your Honor.

5 THE COURT: -- Mr. Amadeo? Mr. Amadeo, peremptory?

6 MR. AMADEO: Yes, the defense would like to thank and  
7 excuse juror number 12, Miss Long.

8 THE COURT: All right, thank you very much, Miss  
9 Long.

10 And that takes us to Brian Meeder. How are you  
11 today?

12 JUROR MEEDER: Good. How you doin'?

13 THE COURT: Would you have answered yes to any of the  
14 questions?

15 JUROR MEEDER: I was a defendant on a criminal court  
16 matter about 10 years ago.

17 THE COURT: Here, in Eaton County?

18 JUROR MEEDER: Grand Rapids.

19 THE COURT: Okay. And what -- how is -- did you go  
20 to trial?

21 JUROR MEEDER: Yup.

22 THE COURT: What was the verdict?

23 JUROR MEEDER: Guilty.

24 THE COURT: Okay. What kind of offense was it?

25 JUROR MEEDER: Assault.

1 THE COURT: Okay. Would that impact your ability to  
2 be fair and impartial in this case?

3 JUROR MEEDER: I don't think so.

4 THE COURT: Ms. Van Langevelde.

5 MS. VAN LANGEVELDE: Good morning, Mr. Meeder.

6 JUROR MEEDER: Morning.

7 MS. VAN LANGEVELDE: I -- have you -- and did -- were  
8 you able to hear me okay?

9 JUROR MEEDER: Sure.

10 MS. VAN LANGEVELDE: Sorry. Any answers to the  
11 questions that I asked that I need to know from you?

12 JUROR MEEDER: I don't think so.

13 MS. VAN LANGEVELDE: Okay. Ever know a victim of  
14 sexual assault?

15 JUROR MEEDER: No.

16 MS. VAN LANGEVELDE: No? Ever had -- how do you feel  
17 about no DNA in a -- in a case that maybe is five years old?  
18 Would that surprise you?

19 JUROR MEEDER: No.

20 MS. VAN LANGEVELDE: Okay. Any reason that you think  
21 of that you couldn't be fair and impartial in this case?

22 JUROR MEEDER: No.

23 MS. VAN LANGEVELDE: No? Okay. Thank you, sir.

24 THE COURT: Mr. Amadeo.

25 MR. AMADEO: Thank you, Judge.

1 You still working for Penske?

2 JUROR MEEDER: Yup.

3 MR. AMADEO: That's all I have. Thank you.

4 THE COURT: Challenges for cause, Ms. Van Langevelde?

5 MS. VAN LANGEVELDE: No, none for cause. Thank you.

6 THE COURT: Challenges for cause, Mr. Amadeo?

7 MR. AMADEO: None, Your Honor. Thank you.

8 THE COURT: I guess we're at peremptory to you, Ms.  
9 Van Langevelde.

10 MS. VAN LANGEVELDE: Thank you. The People would  
11 thank and excuse Mr. Meeder, juror number 12. Thank you, sir.

12 THE COURT: Thank you very much, Mr. Meeder.

13 Linda Swanson. Good morning.

14 JUROR SWANSON: Good morning.

15 THE COURT: Would you have answered yes to any of the  
16 questions?

17 JUROR SWANSON: No.

18 THE COURT: And do you think that you can be fair and  
19 impartial?

20 JUROR SWANSON: Somewhat.

21 THE COURT: Okay. What -- what -- what does somewhat  
22 mean?

23 JUROR SWANSON: It means that sometimes it's hard to  
24 tell the truth --

25 THE COURT: Um-hum.

1 JUROR SWANSON: -- besides mine.

2 THE COURT: Right.

3 JUROR SWANSON: So, it's -- it's kinda hard, so.

4 THE COURT: Yeah, it is. It's a -- being a juror is  
5 a hard job.

6 JUROR SWANSON: Yeah.

7 THE COURT: There is absolutely --

8 JUROR SWANSON: Um-hum.

9 THE COURT: -- no question. But just because it's  
10 hard, it doesn't mean that you can't do it; right?

11 JUROR SWANSON: Um-hum. Right. And, also, I  
12 noticed, sittin' in here, I need to have some people speak up a  
13 little bit louder --

14 THE COURT: Okay.

15 JUROR SWANSON: -- so I can understand.

16 THE COURT: Well, we could arrange that, for sure.

17 JUROR SWANSON: Okay.

18 THE COURT: Sometimes Ms. Bond needs that, too --

19 JUROR SWANSON: Um-hum.

20 THE COURT: -- as you've seen today.

21 JUROR VEITH: I can talk for you.

22 THE COURT: But you don't have any preconceived  
23 notions; in other words, you understand that, sitting here,  
24 right now, the defendant's not guilty; correct?

25 JUROR SWANSON: Right.

1 THE COURT: And now, the prosecutor has to produce  
2 evidence that you believe and apply it to the elements before  
3 you would be able to reach a different verdict than that;  
4 right?

5 JUROR SWANSON: Right.

6 THE COURT: And you'd be able to do that; correct?

7 JUROR SWANSON: Yes.

8 THE COURT: Ms. Van Langevelde.

9 MS. VAN LANGEVELDE: Thank you.

10 I bet I'm one of those people. Sorry, Miss Swanson.  
11 Were you -- were you able to hear me okay, or did you have a  
12 little trouble?

13 JUROR SWANSON: A little trouble.

14 MS. VAN LANGEVELDE: Okay. Have you had any  
15 experience with a victim of sexual assault?

16 JUROR SWANSON: No.

17 MS. VAN LANGEVELDE: Or know anybody?

18 JUROR SWANSON: No.

19 MS. VAN LANGEVELDE: No? Ever know anybody accused  
20 of -- of assaulting someone else?

21 JUROR SWANSON: Yes.

22 MS. VAN LANGEVELDE: Okay, can you tell me a little  
23 bit about that?

24 JUROR SWANSON: It is my sister's -- well, she --  
25 she's passed away recently. So, her ex-boyfriend has been

1 accused of it. But it turned out that the young girl lied.

2 MS. VAN LANGEVELDE: Okay.

3 JUROR SWANSON: 'Cause, you know.

4 MS. VAN LANGEVELDE: Anything about that experience  
5 in your life that would cause you to be fair or impartial in  
6 this particular case?

7 JUROR SWANSON: No.

8 MS. VAN LANGEVELDE: Okay. And can you tell me a  
9 little bit about what -- what was it that -- that -- I guess it  
10 was your sis -- I'm sorry, your sister's --

11 JUROR SWANSON: Sister's.

12 MS. VAN LANGEVELDE: -- boyfriend?

13 JUROR SWANSON: Ex-boyfriend.

14 MS. VAN LANGEVELDE: Ex-boyfriend, okay. Were you  
15 able to -- do you feel like you could listen to somebody,  
16 though, and make a -- a decision whether they were telling the  
17 truth?

18 JUROR SWANSON: (No verbal response).

19 MS. VAN LANGEVELDE: You said that would be hard for  
20 you.

21 JUROR SWANSON: Yeah, it would be hard.

22 MS. VAN LANGEVELDE: Okay. And -- and -- and can you  
23 tell me -- explore that a little bit more with me?

24 JUROR SWANSON: Well, to be honest, I've watched a  
25 lot of programs --

1 MS. VAN LANGEVELDE: Um-hum.

2 JUROR SWANSON: -- and there's a lot of programs with  
3 this situation. And sometime I'm watchin' it, and I said I  
4 can't tell that that person's tellin' the truth or not, you  
5 know.

6 MS. VAN LANGEVELDE: Um-hum.

7 JUROR SWANSON: Until -- till it's proven, though.  
8 And then at the end, all the evidence do come forward. But I  
9 have to really pay attention to the whole pro -- program. And  
10 then if information does come out that it is -- then I realize  
11 that the person is telling the truth.

12 MS. VAN LANGEVELDE: Okay. Well, thank you so much  
13 for your time, ma'am.

14 JUROR SWANSON: Um-hum.

15 THE COURT: Mr. Amadeo.

16 MR. AMADEO: Hi, Miss Swanson.

17 JUROR SWANSON: Hi.

18 MR. AMADEO: Were you able to hear most of what was  
19 going on today?

20 JUROR SWANSON: Yeah -- (indecipherable) -- um-hum.

21 MR. AMADEO: Do you have any questions for me, based  
22 on what you heard so far?

23 JUROR SWANSON: No.

24 MR. AMADEO: And would you be comfortable if you were  
25 picked for the jury?



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JUROR SWANSON: Yes.

MR. AMADEO: Okay, thank you.

JUROR SWANSON: Um-hum.

THE COURT: Challenges for cause, Ms. Van Langevelde?

MS. VAN LANGEVELDE: No, none for cause. Thank you.

THE COURT: Challenges for cause, Mr. Amadeo?

MR. AMADEO: No, Your Honor.

THE COURT: Peremptory to you, Mr. Amadeo.

MR. AMADEO: The People would like to thank and  
excuse --

MR. WINTER: No, they're the People.

MR. AMADEO: Sorry. Defense would like to thank and  
excuse number five, Mr. Leven.

THE COURT: Thank you very much, Mr. Leven.  
Talitha Wimberly.

MR. WINTER: Your Honor, could you repeat her name,  
please?

THE COURT: It is Wimberly, W-i-m-b-e-r-l-e-y (sic).

MR. WINTER: Thank you, Your Honor.

THE COURT: How are you?

JUROR WIMBERLY: Good.

THE COURT: Were you able to hear everything?

JUROR WIMBERLY: Yes.

THE COURT: Would you have answered yes to any of the  
questions?

1 JUROR WIMBERLY: No.

2 THE COURT: Do you believe that you can keep an open  
3 mind?

4 JUROR WIMBERLY: Yes.

5 THE COURT: Do you believe that you are fair and  
6 impartial as you sit here today?

7 JUROR WIMBERLY: Yes.

8 THE COURT: Ms. Van Langevelde.

9 MS. VAN LANGEVELDE: Good morning, Miss Wimberly.

10 JUROR WIMBERLY: Yes.

11 MS. VAN LANGEVELDE: Okay. So, you work for  
12 undergraduate students?

13 JUROR WIMBERLY: Yes, I'm the Director of  
14 Undergraduate Student Affairs for the College of Music at  
15 Michigan State.

16 MS. VAN LANGEVELDE: Okay. That sounds like an  
17 awesome job. What do you do?

18 JUROR WIMBERLY: A lot. But, I am responsible for  
19 all of the advising of undergraduate students, the graduation  
20 process, a bunch of random administrative things.

21 MS. VAN LANGEVELDE: Okay. And do you have children  
22 at home?

23 JUROR WIMBERLY: I do.

24 MS. VAN LANGEVELDE: How many?

25 JUROR WIMBERLY: Two.

1 MS. VAN LANGEVELDE: What are their ages?

2 JUROR WIMBERLY: Six and four.

3 MS. VAN LANGEVELDE: Okay. Do the six and four-year  
4 old ever lie to you about some things?

5 JUROR WIMBERLY: Yes, sadly.

6 MS. VAN LANGEVELDE: Does that make them liars --

7 JUROR WIMBERLY: No.

8 MS. VAN LANGEVELDE: -- if they lie about little  
9 things? Okay. Have you ever known a victim of -- has anybody  
10 ever come to you and said I've been a victim of sexual assault?

11 JUROR WIMBERLY: Yes.

12 MS. VAN LANGEVELDE: Could you tell me, would that  
13 experience make you biased for one part or the other in this  
14 particular case?

15 JUROR WIMBERLY: No.

16 MS. VAN LANGEVELDE: Okay. Do you -- can you  
17 understand why a victim might take years to disclose?

18 JUROR WIMBERLY: Yes.

19 MS. VAN LANGEVELDE: Okay. Thank you, ma'am. I  
20 don't have any further questions.

21 THE COURT: Mr. Amadeo.

22 MR. AMADEO: Hi, Miss Wimberly.

23 JUROR WIMBERLY: Um-hum.

24 MR. AMADEO: In your position, do you deal with  
25 student discipline, at all?

1 JUROR WIMBERLY: Yes.

2 MR. AMADEO: Okay, in what capacity?

3 JUROR WIMBERLY: Primarily, if it's -- if the student  
4 ends up on probation or -- and that could be from the College  
5 of Music or from the university due to grades and stuff like  
6 that.

7 MR. AMADEO: Okay. On a personal issue to Michigan  
8 State, has the Larry Nassar affected your job description, at  
9 all?

10 JUROR WIMBERLY: It hasn't affected my job  
11 description. We do have to go through more training. I am a  
12 mandatory reporter, but that just requires me to report what I  
13 hear, and then it goes up.

14 MR. AMADEO: And you've heard everything that's gone  
15 on today, so far. Do you have any questions for me?

16 JUROR WIMBERLY: No.

17 MR. AMADEO: All right, thank you.

18 THE COURT: Challenges for cause?

19 MS. VAN LANGEVELDE: No, none for cause.

20 THE COURT: Challenges for cause, Mr. Amadeo.

21 MR. AMADEO: None, Your Honor.

22 THE COURT: Peremptory to you, Ms. Van Langevelde.

23 MS. VAN LANGEVELDE: Thank you. The People would  
24 thank and excuse Miss Swanson. Thank you, ma'am.

25 JUROR SWANSON: Thank you.

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THE COURT: Thank you very much.

Joshua Savage. How are you today, Mr. Savage?

JUROR SAVAGE: Good. How are you?

THE COURT: Would you have answered yes to any of the questions?

JUROR SAVAGE: No.

THE COURT: Do you believe that you could keep an open mind?

JUROR SAVAGE: Yes.

THE COURT: Do you believe that you're fair and impartial?

JUROR SAVAGE: Yes.

THE COURT: Ms. Van Langevelde.

MS. VAN LANGEVELDE: Good morning.

JUROR SAVAGE: Morning.

MS. VAN LANGEVELDE: You work for a manufacturing company? Is that what you do? What do you do?

JUROR SAVAGE: I can't talk about it.

THE COURT: Need you to speak up just a little bit.

JUROR SAVAGE: I cannot talk about what I do.

THE COURT: Okay.

MS. VAN LANGEVELDE: Okay.

THE COURT: Sorry, Ms. Van Langevelde.

MS. VAN LANGEVELDE: That's okay. (Inaudible).

JUROR SAVAGE: A lot is military contract kind of

1 stuff.

2 MS. VAN LANGEVELDE: Okay, you're one of those  
3 people. Oh, that's cool.

4 Have you ever known a victim of sexual assault?

5 JUROR SAVAGE: Yes.

6 MS. VAN LANGEVELDE: Who is that? Well, you don't  
7 have to tell me who it is, but is it somebody that's a friend  
8 or close relative?

9 JUROR SAVAGE: A friend, yeah.

10 MS. VAN LANGEVELDE: Okay. Did that person go  
11 through the legal system?

12 JUROR SAVAGE: No.

13 MS. VAN LANGEVELDE: Okay. Did they wait a few years  
14 to disclose?

15 JUROR SAVAGE: Just about a year.

16 MS. VAN LANGEVELDE: Okay. But they never reported  
17 it to the police?

18 JUROR SAVAGE: No.

19 MS. VAN LANGEVELDE: Okay. Can you appreciate a  
20 victim might not want to come to court and go to police?

21 JUROR SAVAGE: Yes.

22 MS. VAN LANGEVELDE: Was that person a child when it  
23 happened or an adult?

24 JUROR SAVAGE: An adult.

25 MS. VAN LANGEVELDE: Okay. Having that person in

1 your life, do you feel like having that experience would make  
2 you biased towards one part or another in this particular case

3 JUROR SAVAGE: Nope.

4 MS. VAN LANGEVELDE: All right. Thank you so much,  
5 sir.

6 JUROR SAVAGE: Yup.

7 THE COURT: Mr. Amadeo.

8 MR. AMADEO: Hi, Joshua.

9 JUROR SAVAGE: Hello.

10 MR. AMADEO: Real brief. Do you think being on the  
11 jury for a few days, or probably 60 percent of your week is  
12 compromised, will that affect your job?

13 JUROR SAVAGE: No.

14 MR. AMADEO: So, you'll be okay if you are selected.

15 JUROR SAVAGE: Yes.

16 MR. AMADEO: Okay, thanks.

17 THE COURT: Challenges for cause, Ms. Van Langevelde.

18 MS. VAN LANGEVELDE: No, none for cause.

19 THE COURT: Challenges for cause, Mr. Amadeo.

20 MR. AMADEO: None for cause, Judge.

21 THE COURT: Peremptory to you, Mr. Amadeo.

22 MR. AMADEO: Give me one second, please.

23 Defense would like to thank and excuse juror number  
24 three, Miss Farrell.

25 THE COURT: Thank you very much, Miss Farrell. You

1 are excused.

2 Moses Manuel.

3 JUROR MANUEL: That would be me, Your Honor.

4 THE COURT: All right. How are you today, Mr.  
5 Manuel?

6 JUROR MANUEL: Doing fine, ma'am.

7 THE COURT: Would you have answered yes to any of the  
8 questions that I asked, sir?

9 JUROR MANUEL: I think I would have, ma'am.

10 THE COURT: Which -- what would you have answered yes  
11 to?

12 JUROR MANUEL: Do you mind if I stand up?

13 THE COURT: Nope.

14 JUROR MANUEL: I had -- all right, I -- I got a lot  
15 of experience in the military, retired out. I was the  
16 investigatin' NCO of some sexual cases --

17 THE COURT: Okay.

18 JUROR MANUEL: -- on the gay side, and I found a  
19 person innocent based upon the facts and proof and witness. I  
20 have had some issue with officers that I went to court and won.  
21 That's why I'm a Wolverine fan and a Patriot fan. And I  
22 believe in diversified, ma'am.

23 THE COURT: You believe what?

24 JUROR MANUEL: Diversified.

25 THE COURT: Yeah.



1 JUROR MANUEL: In the court system.

2 THE COURT: Yeah. So, you would be a good juror.

3 JUROR MANUEL: I'm an awesome juror.

4 THE COURT: And I'm gonna get over the U of M thing.

5 JUROR MANUEL: Okay.

6 THE COURT: All right.

7 JUROR MANUEL: Whatever you say.

8 THE COURT: We can settle down on that.

9 JUROR MANUEL: Okay.

10 THE COURT: Other than that, we're all good.

11 Go ahead, Ms. Van Langevelde.

12 MS. VAN LANGEVELDE: Okay. Good morning, Mr. Manuel.

13 JUROR MANUEL: Hello, ma'am.

14 MS. VAN LANGEVELDE: Were you able to hear me okay?

15 JUROR MANUEL: Yes, ma'am.

16 MS. VAN LANGEVELDE: Okay. Oh, and I don't want to  
17 pry too much, but, because you've had experience and you said  
18 you found one -- one individual innocent, did you find other  
19 people guilty, or was this just this one case that you were  
20 assigned to or can you tell -- I guess, can you tell me a  
21 little bit about that?

22 JUROR MANUEL: It was really a bad issue, but it was  
23 a young man that -- you know, he was kinda funny, on the funny  
24 side. He got drunk, and he got into a deal with another male.  
25 So, he didn't do no criminal issue. It was just drunk and

1 disorderly. And that's how he got off.

2 MS. VAN LANGEVELDE: Okay. Was there -- but -- so,  
3 you investigated that particular case.

4 JUROR MANUEL: I was the investigatin' NCYC.

5 MS. VAN LANGEVELDE: I see. I see, okay. So, there  
6 weren't -- so, because you were assigned that one case, you  
7 weren't looking at all these other cases where you could've  
8 found maybe something else happened in the military --

9 JUROR MANUEL: True.

10 MS. VAN LANGEVELDE: -- is that fair?

11 JUROR MANUEL: Um-hum.

12 MS. VAN LANGEVELDE: Okay. When you were -- I guess,  
13 when you were investigating this, you obviously had to get  
14 people's versions of events; fair to say?

15 JUROR MANUEL: Yes, ma'am.

16 MS. VAN LANGEVELDE: Were -- were different people  
17 telling you -- like this person had a version; fair to say?

18 JUROR MANUEL: Oh, yeah, um-hum.

19 MS. VAN LANGEVELDE: And then somebody else had a  
20 version?

21 JUROR MANUEL: Right.

22 MS. VAN LANGEVELDE: Did -- did somebody's version  
23 change, at all?

24 JUROR MANUEL: Yes, because they was -- I guess you  
25 can say when the policy came out 'don't ask, don't tell', I'm

1 one of the old army troops. We believe in the old school, the  
2 military. So, we had -- some soldier would say he did it. And  
3 by investigatin' it -- 'cause they didn't like the person  
4 because he was that way, and I felt that was wrong. I think  
5 the man should've had the benefit of the doubt, you know, for  
6 trial.

7 MS. VAN LANGEVELDE: Um-hum.

8 JUROR MANUEL: And a fair investigation, then. So,  
9 whatever your feelin' is about somebody, you got to put that  
10 aside.

11 MS. VAN LANGEVELDE: Sure.

12 JUROR MANUEL: And judge on the facts and proof and  
13 evidence that you get.

14 MS. VAN LANGEVELDE: Sure. Well, and I guess my  
15 question was: Was one of the party's stories always  
16 consistent?

17 JUROR MANUEL: Sure.

18 MS. VAN LANGEVELDE: And somebody else's story --  
19 maybe that one was it was this way, well, maybe, okay, well,  
20 no, maybe this happened, just a little bit different versions.  
21 Did that impact you?

22 JUROR MANUEL: Well, I have good -- I could read  
23 people --

24 MS. VAN LANGEVELDE: Um-hum.

25 JUROR MANUEL: -- by when you're investigatin' 'em,

1 by their body language, eye contact, you know if they lyin',  
2 you know if they got a personal grudge against the individual  
3 or somethin', and you put that all in -- in the facts.

4 MS. VAN LANGEVELDE: Okay. Do you feel like you  
5 could be fair and impartial on this case?

6 JUROR MANUEL: I'm very fair.

7 MS. VAN LANGEVELDE: Okay.

8 JUROR MANUEL: But I'm hard.

9 MS. VAN LANGEVELDE: Thank you.

10 THE COURT: Mr. Amadeo.

11 MR. AMADEO: Is Antonio Brown guilty or not?

12 JUROR MANUEL: I think New England shouldn't have  
13 taken him.

14 MR. AMADEO: Why?

15 JUROR MANUEL: He got an attitude problem.

16 MR. AMADEO: But do you think he's guilty of the  
17 allegations?

18 JUROR MANUEL: I don't think he's a good addition to  
19 the team.

20 MR. AMADEO: But, if you were a juror on Antonio  
21 Brown's criminal case, where would you lean right now?

22 JUROR MANUEL: I really don't know the facts about  
23 it --

24 MR. AMADEO: Okay.

25 JUROR MANUEL: -- to make a decision.

1 MR. AMADEO: Fair enough.

2 JUROR MANUEL: Yes, sir.

3 MR. AMADEO: Thank you.

4 JUROR MANUEL: Um-hum.

5 THE COURT: Challenges for cause?

6 MS. VAN LANGEVELDE: None for cause, thank you.

7 THE COURT: Challenges for cause to you, Mr. Adamo

8 (sic).

9 MR. AMADEO: None for cause, Your Honor.

10 THE COURT: Peremptory to you, Ms. Van Langevelde.

11 MS. VAN LANGEVELDE: Thank you, Your Honor. The  
12 People would thank and excuse Mr. Manuel.

13 JUROR MANUEL: Thank you.

14 MS. VAN LANGEVELDE: Thank you, sir, for being here.  
15 Thank you for your --

16 THE COURT: Thank you, Mr. Manuel.

17 JUROR MANUEL: Thank you, Judge.

18 THE COURT: Danny Shilling.

19 JUROR SHILLING: Thank you, sir.

20 JUROR MANUEL: Have a good day.

21 THE COURT: You, too, sir.

22 Good morning.

23 JUROR SHILLING: Good morning.

24 THE COURT: How are you today, sir?

25 JUROR SHILLING: Oh, not too bad.

1 THE COURT: Were you able to hear all the questions?

2 JUROR SHILLING: Not really. I worked in a factory  
3 for 40 years; I can't really hear a whole lot.

4 THE COURT: Can you hear me?

5 JUROR SHILLING: I can hear you.

6 THE COURT: All right. If a witness was sitting --  
7 sitting there testifying, would you be able to hear the  
8 witness?

9 JUROR SHILLING: Dependin' on how loud their voice  
10 was, probably.

11 THE COURT: Do you feel that the -- your hearing  
12 could impact your ability to be a juror?

13 JUROR SHILLING: Yes, could be.

14 THE COURT: If we were to provide you with any  
15 listening device that may amplify things in the courtroom,  
16 would that be something you would want to do?

17 JUROR SHILLING: I'd be willin' to do it.

18 THE COURT: You would what?

19 JUROR SHILLING: I'd be willing to do it.

20 THE COURT: So, you don't know whether you would've  
21 answered yes to any of the questions that were asked; is that  
22 right?

23 JUROR SHILLING: Right.

24 THE COURT: 'Cause you couldn't hear 'em.

25 JUROR SHILLING: Um-hum.

1 THE COURT: All right. Do you -- did -- do you know  
2 anything about this case?

3 JUROR SHILLING: No.

4 THE COURT: Have you ever had any experience with  
5 somebody regarding criminal sexual conduct?

6 JUROR SHILLING: No.

7 THE COURT: Or domestic violence?

8 JUROR SHILLING: No.

9 THE COURT: Do you have any friends who are in law  
10 enforcement?

11 JUROR SHILLING: No.

12 THE COURT: Have you ever been on a jury before?

13 JUROR SHILLING: No.

14 THE COURT: Do you believe you can be fair and  
15 impartial?

16 JUROR SHILLING: Yeah, I believe.

17 THE COURT: Why did you pause?

18 JUROR SHILLING: Oh, I don't really agree with that  
19 kind of stuff, so.

20 THE COURT: What kind of stuff, innocent until proven  
21 guilty?

22 JUROR SHILLING: Well, I just don't think that people  
23 like that should be in our society.

24 THE COURT: But, you don't know what people like that  
25 are, who that is, 'cause we haven't heard any facts; right?

1 JUROR SHILLING: True.

2 THE COURT: Do you believe, sitting here today, that  
3 the defendant would have to be found not guilty 'cause you  
4 don't know anything about the case?

5 JUROR SHILLING: No.

6 THE COURT: You don't think he's not -- you don't  
7 think that you would render a verdict of not guilty if you had  
8 to vote right now?

9 JUROR SHILLING: Depends on how it went. What I  
10 could understand of it, probably.

11 THE COURT: So, the law says, right now, if the  
12 people in this jury box had to vote, your vote would have to be  
13 not guilty because you have been presented no evidence from the  
14 prosecutor; correct?

15 JUROR SHILLING: Right.

16 THE COURT: And this defendant is presumed to be  
17 innocent. Do you understand that?

18 JUROR SHILLING: I think so.

19 THE COURT: Okay.

20 Ms. Van Langevelde, I think I'm going to release this  
21 juror for -- 'cause he has -- you know, like he has a hearing  
22 issue and because I'm not convinced that the baseline is met.  
23 Any objection to that?

24 MS. VAN LANGEVELDE: No. Thank you.

25 THE COURT: Mr. --



1 MR. AMADEO: No, Judge.  
2 THE COURT: Thank you very much, sir, for being here  
3 JUROR SHILLING: Thank you.  
4 THE COURT: Stephen Marzilli. Or Stephen.  
5 JUROR MARZILLI: Stephen.  
6 THE COURT: Okay. Did I say your last name right?  
7 JUROR MARZILLI: You did.  
8 THE COURT: Excellent. Mr. Marzilli --  
9 JUROR MARZILLI: Yes.  
10 THE COURT: -- were you able to hear all the  
11 questions?  
12 JUROR MARZILLI: I was.  
13 THE COURT: Mr. Marzilli, were you able to hear all  
14 the questions?  
15 JUROR MARZILLI: I was.  
16 THE COURT: Would you have answered yes to any of  
17 them?  
18 JUROR MARZILLI: I would not.  
19 THE COURT: Do you believe that you have an open  
20 mind?  
21 JUROR MARZILLI: I do.  
22 THE COURT: Do you believe that you could be fair and  
23 impartial?  
24 JUROR MARZILLI: I do.  
25 THE COURT: Ms. Van Langevelde.

1 MS. VAN LANGEVELDE: Thank you.

2 Good morning, Mr. Marzilli.

3 JUROR MARZILLI: Good morning.

4 MS. VAN LANGEVELDE: Were you able to hear me okay?

5 JUROR MARZILLI: I was.

6 MS. VAN LANGEVELDE: Okay, wonderful. Do you have  
7 any answers to the questions that I asked that we need to know  
8 about?

9 JUROR MARZILLI: Nope. I lead a boring life. This  
10 is my first jury duty.

11 MS. VAN LANGEVELDE: Well, then -- do you know any  
12 victims of sexual assault?

13 JUROR MARZILLI: I do not.

14 MS. VAN LANGEVELDE: And you know -- know anybody  
15 who's ever been accused of sexual assault?

16 JUROR MARZILLI: I do not.

17 MS. VAN LANGEVELDE: Can you understand why a child  
18 might wait years before they talk about it?

19 JUROR MARZILLI: Yes.

20 MS. VAN LANGEVELDE: Okay.

21 JUROR MARZILLI: Yup.

22 MS. VAN LANGEVELDE: It says you're self -- you do  
23 sales and you're --

24 JUROR MARZILLI: Yes, self-employed.

25 MS. VAN LANGEVELDE: -- self-employed. Can you tell

1 me a little bit about that, just briefly?

2 JUROR MARZILLI: I do (indecipherable) -- yes, I was  
3 an appraiser for the Treasury Department, like property that  
4 stuff was sheeted to the state --

5 MS. VAN LANGEVELDE: Okay.

6 JUROR MARZILLI: -- like safe deposit boxes and  
7 stuff.

8 MS. VAN LANGEVELDE: Cool. Do you have any children?

9 JUROR MARZILLI: I do not.

10 MS. VAN LANGEVELDE: Okay. Any reason why you feel  
11 like you could be -- you would be biased one side or the other?

12 JUROR MARZILLI: Nope.

13 MS. VAN LANGEVELDE: Were you able to hear my --

14 JUROR MARZILLI: I was.

15 MS. VAN LANGEVELDE: -- example of the flag?

16 JUROR MARZILLI: I was.

17 MS. VAN LANGEVELDE: Feel confident that that is a  
18 Michigan flag?

19 JUROR MARZILLI: I -- I do.

20 MS. VAN LANGEVELDE: This -- all right, thank you. I  
21 don't have any other questions.

22 THE COURT: Mr. Amadeo.

23 MR. AMADEO: Hi, Mr. Marzilli. I'll be brief. I'm  
24 lookin' at your questionnaire. It looks like you were actually  
25 a victim of a robbery a couple times?

1 JUROR MARZILLI: Not really to me. It was a business  
2 that I had that was broken into. So, maybe however you want to  
3 call that.

4 MR. AMADEO: Were you injured, though?

5 JUROR MARZILLI: I was not there.

6 MR. AMADEO: Okay.

7 JUROR MARZILLI: So, this was -- I was not even in  
8 the area from Traverse City to --

9 MR. AMADEO: So, it wouldn't affect you, at all.

10 JUROR MARZILLI: Didn't affect me, at all.

11 MR. AMADEO: Okay, thank you, sir.

12 THE COURT: Challenges for cause, Ms. Van Langevelde?

13 MS. VAN LANGEVELDE: None for cause.

14 THE COURT: Challenges for cause, Mr. Amadeo?

15 MR. AMADEO: None, Your Honor.

16 THE COURT: Mr. Amadeo, peremptory to you.

17 MR. AMADEO: Yes, the defense would like to thank and  
18 excuse juror number seven, Miss Kitsmiller.

19 THE COURT: Thank you very much, Miss Kitsmiller.

20 JUROR KITSMILLER: Thank you.

21 THE COURT: Richard Morris. And good morning to you,  
22 Mr. Morris.

23 JUROR MORRIS: Good morning.

24 THE COURT: Were you able to hear all of the  
25 questions?

1 JUROR MORRIS: Yes.

2 THE COURT: Would you have answered yes to any of  
3 them?

4 JUROR MORRIS: Would I -- yeah, I mean there's some  
5 that I would need explanations for.

6 THE COURT: Okay, go ahead.

7 JUROR MORRIS: I'm -- I'm nervous, sorry.

8 THE COURT: Oh, that's okay. It's understandable.

9 JUROR MORRIS: The thing with the flag, I -- I don't  
10 know what -- what it -- I mean, it could be the county flag for  
11 all I know; right?

12 THE COURT: Right.

13 JUROR MORRIS: It doesn't match the seal --

14 THE COURT: Right.

15 JUROR MORRIS: -- above your head.

16 THE COURT: Right.

17 JUROR MORRIS: So, the colors are different.

18 THE COURT: Well, so, what would happen is that you  
19 would discuss -- thank you -- that you would discuss, with your  
20 fellow jurors, when the time comes.

21 Now, when you take breaks -- when you're on a jury,  
22 you go back and have breaks and you have lunch -- you can't  
23 talk about the case. But after all of the evidence has been  
24 presented and after each side gives their closing statement,  
25 and then I'll give some closing instruction, then you'll go

1 back, the door will be closed, and then you can talk amongst  
2 yourself (sic). And so, you would be able to state what you  
3 saw and what you think, and your fellow jurors and you would  
4 talk about it. And then, the question would be whether there's  
5 direct evidence or circumstantial evidence, or altogether, do  
6 you believe, beyond a reasonable doubt, it's the Michi -- State  
7 of Michigan flag or not. So, you don't have to make that  
8 decision today or right now.

9 JUROR MORRIS: Right. But based on the premise, I  
10 would -- just 'cause two people said something, I would never  
11 trust that --

12 THE COURT: Right.

13 JUROR MORRIS: -- to put somebody in jail for 10  
14 years, I mean.

15 THE COURT: Right, right. Well, the length of the --  
16 any punishment is not really supposed to be considered. If a  
17 jury finds a defendant guilty, then that's my responsibility to  
18 decide what that should be.

19 But, you're right, each juror is an individual. And  
20 that, while we ask jurors to try their best to reach a  
21 unanimous verdict --

22 JUROR MORRIS: Um-hum.

23 THE COURT: -- we also ask you to remain an  
24 individual and make sure that it's something that you believe.

25 So, it sounds, to me, like you could do that.

1 JUROR MORRIS: Oh, yeah, I'd be -- I'd be very  
2 straightforward about it. I wouldn't look at it on an  
3 emotional level.

4 THE COURT: Okay. Is there -- is there anything  
5 else? I mean, so you believe you can be open-minded.

6 JUROR MORRIS: Um-hum.

7 THE COURT: And you can listen to all of the evidence  
8 before you make a decision; is that correct?

9 JUROR MORRIS: That's correct.

10 THE COURT: Okay. Is there anything you think I need  
11 to know that would, in any way, bias you for or against either  
12 the prosecution or the defense?

13 JUROR MORRIS: Well, my -- my only bi -- bias would  
14 be is I don't look at what people do, whether you're a judge or  
15 an attorney or an officer. Everybody is capable of doing  
16 things incorrectly.

17 THE COURT: Correct. That -- that's true.

18 JUROR MORRIS: Okay. So, I did have a little run-in  
19 in Colorado. I got a misdemeanor, reckless endangerment. And  
20 I was just trying to get away from my wife. And took about an  
21 hour to get out of the room. But when I did, I was backin' my  
22 car out of the garage, and she ran around behind it, and it  
23 just touched her leg. And then, she opened up the hatchback  
24 and jumped in the car, and I reached in to pull her out, and  
25 she cut my wrists with her fingernails. I spun around, and a

1 neighbor's watchin' the whole time. And so, I set her on the  
2 ground, and she got up and jumped in the passenger side, and I  
3 called the police, and they arrested me.

4 THE COURT: Hmm. How long ago was that?

5 JUROR MORRIS: About eight years ago.

6 THE COURT: It sounds like it was a bad experience.

7 JUROR MORRIS: Oh, it was -- it about tore my --  
8 (inaudible). I wouldn't walk for the cops, so they -- they  
9 lifted me up, like the torture thing, when you lift 'em up by  
10 their -- their wrists. And the judge didn't let me have my 911  
11 tape. So, I was -- I was also charged with harassment, which I  
12 wasn't convicted of.

13 THE COURT: Did you go to trial?

14 JUROR MORRIS: Yeah.

15 THE COURT: What -- were you convicted?

16 JUROR MORRIS: I was guilty. I got 45 days.

17 THE COURT: Okay. It sounds like that might have --

18 JUROR MORRIS: I represented myself, but I fired  
19 three -- four attorneys.

20 THE COURT: Okay.

21 JUROR MORRIS: And then, the judge --

22 THE COURT: Right. Well --

23 JUROR MORRIS: But, I mean they violated the law in  
24 so many areas, in terms of procedure.

25 THE COURT: Okay, but what I need to know is whether



1 that experience would influence you in this case. Can --

2 JUROR MORRIS: No, but I -- like if someone tells me  
3 that's the Michigan State flag, you got to prove it to me.

4 THE COURT: Okay.

5 Ms. Van Langevelde, go ahead.

6 MS. VAN LANGEVELDE: I don't have any questions.

7 Thank you.

8 THE COURT: Mr. Amadeo?

9 MR. AMADEO: No questions, Your Honor.

10 THE COURT: And that takes us to peremptory to Ms.  
11 Van Langevelde.

12 MS. VAN LANGEVELDE: Your Honor, thank you. The  
13 People would thank and excuse Mr. Morris. Thank you.

14 THE COURT: Thank you, Mr. Morris.

15 JUROR MORRIS: All right.

16 THE COURT: All right, you have a good day.

17 And I need Kilee Hettick -- Hettich.

18 Did I say your name right?

19 JUROR HETTICH: Yeah. Yeah.

20 THE COURT: Kilee --

21 JUROR HETTICH: Yes?

22 THE COURT: -- have you heard everything that was  
23 said today?

24 JUROR HETTICH: Yes, I have.

25 THE COURT: Do you have anything that you think I

1 need to know?

2 JUROR HETTICH: I was a victim of sexual assault when  
3 I was 14.

4 THE COURT: Okay. Thank you very much for being  
5 here. Any objection to me allowing this young lady to go?

6 MS. VAN LANGEVELDE: No. Thank you.

7 MR. AMADEO: No, Judge.

8 THE COURT: Thank you for being here.

9 JUROR HETTICH: Thank you.

10 THE COURT: Terry Reed. Good morning, sir.

11 JUROR REED: Good morning.

12 THE COURT: Were you able to hear all the questions?

13 JUROR REED: Yes, I was.

14 THE COURT: Would you have answered yes to any of  
15 them?

16 JUROR REED: A couple of 'em.

17 THE COURT: Go ahead.

18 JUROR REED: I was falsely accused of the same thing  
19 about 25 years ago. The jury was out for about 10 minutes, and  
20 it was over with. But, yeah, it wasn't pleasant.

21 THE COURT: They found you not guilty.

22 JUROR REED: Right. Well, yeah.

23 THE COURT: Well, yeah. Well, so -- I mean, do you  
24 think that would im -- that was 25 years ago.

25 JUROR REED: About.

1 THE COURT: Do you think that you would be able to  
2 keep an open mind in this case?

3 JUROR REED: Yeah, of course.

4 THE COURT: Okay. What else do you think I need to  
5 know?

6 JUROR REED: You were my professor in law school.  
7 Remember?

8 THE COURT: Which class?

9 JUROR REED: Family law.

10 THE COURT: Ah. Did you learn a lot?

11 JUROR REED: I got a B plus. It should've been an A.

12 THE COURT: Okay. Well, a B plus was a very good  
13 grade in my class.

14 JUROR REED: Yes, I know that.

15 THE COURT: Anything about that influence you to be a  
16 juror in this case?

17 JUROR REED: Well, the fact that I'd be found in  
18 contempt if I didn't show up, yeah, that's quite an influence.

19 THE COURT: Right, yes, exactly.

20 Do you believe you can keep an open mind?

21 JUROR REED: Yeah.

22 THE COURT: And you believe you can be fair and  
23 impartial; right?

24 JUROR REED: Well, I think I can be fair and  
25 impartial. I wouldn't be here otherwise.

1 THE COURT: Okay.

2 Ms. Van Langevelde.

3 MS. VAN LANGEVELDE: Thank you.

4 Good morning, Mr. Reed.

5 JUROR REED: Morning.

6 MS. VAN LANGEVELDE: So, I -- I guess -- and I -- and  
7 I -- I'm sorry to pry, but I -- I do need to explore just a  
8 little bit. So, just to be clear, you don't feel it -- in you  
9 -- you're feeling that you don't feel like you would identify  
10 with the defendant sitting over there or be biased?

11 JUROR REED: No, I don't think I would be. I think,  
12 if I hadn't gone to law school, if I hadn't been in the  
13 military, you know, in security and all that stuff, I can look  
14 at it on both sides. Part of life.

15 MS. VAN LANGEVELDE: Sure. And I appreciate that.  
16 The -- you said you went to law school. And I saw that you're  
17 self-employed. What do you -- can you tell me a little bit  
18 about what you do?

19 JUROR REED: I develop apps.

20 MS. VAN LANGEVELDE: Oh.

21 JUROR REED: You'll find us in the App Store.

22 MS. VAN LANGEVELDE: What kind of apps? Can you tell  
23 me a little bit about that?

24 JUROR REED: It's a -- a business-to-business app,  
25 Google -- (inaudible).

1 MS. VAN LANGEVELDE: Okay. Did you graduate from  
2 Cooley?

3 JUROR REED: Yes, I did.

4 MS. VAN LANGEVELDE: Okay, what year? No, you don't  
5 have to -- no, you don't have to date yourself. But was it  
6 recent, like --

7 JUROR REED: No.

8 MS. VAN LANGEVELDE: -- last 10 years?

9 JUROR REED: It wasn't recent.

10 MS. VAN LANGEVELDE: Did you take the bar?

11 JUROR REED: No, I haven't taken the bar. I went  
12 into the app field and --

13 MS. VAN LANGEVELDE: Okay. And when did you do that?

14 JUROR REED: Oh, about two, three years after I got  
15 out of law school.

16 MS. VAN LANGEVELDE: Okay. Have you ever known a  
17 victim, a victim of sexual assault?

18 JUROR REED: Good question. I'm sure I have but --

19 MS. VAN LANGEVELDE: Has anybody ever told -- come to  
20 you and said, hey, you know what, I was -- I was victimized  
21 when I was --

22 JUROR REED: Yeah.

23 MS. VAN LANGEVELDE: -- such and such an age?

24 JUROR REED: Yeah, I think there was many years ago.

25 MS. VAN LANGEVELDE: Okay. Did you believe that

1 person?

2 JUROR REED: I believed the person. The person  
3 believed in me.

4 MS. VAN LANGEVELDE: Um-hum, okay. And you -- did --  
5 going through the court system, that was pretty difficult, I  
6 could imagine.

7 JUROR REED: She went through the court system, yeah.  
8 It was difficult, yes, terrible.

9 MS. VAN LANGEVELDE: That person that told you she  
10 was a victim?

11 JUROR REED: Right.

12 MS. VAN LANGEVELDE: Yeah. And that was difficult  
13 for her to have to testify?

14 JUROR REED: It was difficult for everybody.

15 MS. VAN LANGEVELDE: Sure. Having that experience,  
16 would that cause any emotions or bias or anything like that?

17 JUROR REED: I think that experience and the one I  
18 went through balanced out, and I could see both sides of the  
19 equation. It's really important.

20 MS. VAN LANGEVELDE: Okay.

21 JUROR REED: That's what I got from it.

22 MS. VAN LANGEVELDE: Sure, okay. Thank you, sir.

23 THE COURT: Mr. Amadeo.

24 MR. AMADEO: What kind of apps do you do, Mr. Reed?

25 JUROR REED: I beg your pardon?

1 MR. AMADEO: What kind of apps?

2 JUROR REED: B2BFs.

3 MR. AMADEO: What's that? I'm like --  
4 (indecipherable)-- technology.

5 MR. WINTER: Business-to-business.

6 JUROR REED: Business-to-business apps.

7 MR. AMADEO: Are you gonna take the bar?

8 JUROR REED: I'm 60-years-old, so probably not. I  
9 may. I was thinking about it.

10 MR. AMADEO: I always tell people you went through  
11 three years of law school, why not take the bar.

12 JUROR REED: Well, the reason I didn't take it -- the  
13 reason I went to law school was to learn how the law applied  
14 for app developing. I didn't learn that in her class, but I  
15 did take some other classes.

16 MR. AMADEO: Nothing further.

17 THE COURT: Challenges for cause, Ms. Van Langevelde?

18 MS. VAN LANGEVELDE: No, none for cause.

19 THE COURT: Challenges for cause, Mr. Amadeo?

20 MR. AMADEO: No, Your Honor.

21 THE COURT: Peremptory to you, Mr. Amadeo.

22 MR. AMADEO: The defense would like to thank and  
23 excuse juror number nine, Patrick Dake.

24 THE COURT: Thank you very much, Mr. Dake. You are  
25 excused.

1 Lon Milligan. And how are you today?

2 JUROR MILLIGAN: Very good.

3 THE COURT: Would you have answered yes to any of the  
4 questions?

5 JUROR MILLIGAN:: Yes, a couple of 'em.

6 THE COURT: Go ahead.

7 JUROR MILLIGAN:: Okay, so I know a couple state  
8 police officers that are retired.

9 THE COURT: Okay.

10 JUROR MILLIGAN: Had good relationships with 'em.  
11 Didn't share a lot of stories, as far as that goes, but. And  
12 then, I'm from Mulliken, and my neighbor was Devon Gilford.  
13 You know, he was in our house quite often, so --

14 THE COURT: Okay.

15 JUROR MILLIGAN: -- we lived through that situation,  
16 but.

17 THE COURT: So, let's start with knowing Michigan  
18 State Police.

19 JUROR MILLIGAN: Um-hum.

20 THE COURT: Would the fact that you know them get --  
21 does that mean that you would give more credibility to law  
22 enforcement than other witnesses, or would you be able to treat  
23 it all the same?

24 JUROR MILLIGAN: I think I could treat it all the  
25 same. You know, they were very honest people. But, I don't



1 have a problem with people. In fact, I worked in sales, so I'  
2 be with people all the time.

3 THE COURT: Okay. And then, let's talk about the  
4 Mulliken situation.

5 JUROR MILLIGAN: Um-hum.

6 THE COURT: I was -- that was before my time.

7 JUROR MILLIGAN: Um-hum.

8 THE COURT: However, it is my understanding that  
9 there may be some ill feelings towards, perhaps, law  
10 enforcement and the prosecutor.

11 JUROR MILLIGAN: Um-hum.

12 THE COURT: Do you feel that way?

13 JUROR MILLIGAN: No, I don't. I developed an opinion  
14 about it very early on.

15 THE COURT: Okay.

16 JUROR MILLIGAN: And so, I understood, you know, it  
17 was a bad situation 'cause I was -- you know, I grew up with  
18 the family.

19 THE COURT: Right.

20 JUROR MILLIGAN: And -- but, I'm able to hold my own  
21 decision about it.

22 THE COURT: Okay.

23 JUROR MILLIGAN: And I'm confident with where I'm  
24 standin'.

25 THE COURT: All right.

1 JUROR MILLIGAN: So, I don't have a problem.

2 THE COURT: So, you wouldn't, in any way, think more  
3 or less of either Ms. Morton or Ms. Van Langevelde because they  
4 happen to be assistant prosecutors than you would of Mr.  
5 Amadeo, him being a defense attorney.

6 JUROR MILLIGAN: No.

7 THE COURT: It'd all be --

8 JUROR MILLIGAN: Yes.

9 THE COURT: It'd be the same in your mind.

10 JUROR MILLIGAN: Yes, it is.

11 THE COURT: You'd keep an open mind and listen to the  
12 facts.

13 JUROR MILLIGAN: Yes, I would.

14 THE COURT: Okay. Ms. Van Langevelde.

15 MS. VAN LANGEVELDE: Thank you.

16 Mr. Milligan -- and, I guess, can I explore that a  
17 little bit more --

18 JUROR MILLIGAN: Um-hum.

19 MS. VAN LANGEVELDE: -- with you? I'm sorry. Do you  
20 know of any of the police officers that were --

21 JUROR MILLIGAN: I do not.

22 MS. VAN LANGEVELDE: -- state -- do you know any of  
23 them?

24 JUROR MILLIGAN: No.

25 MS. VAN LANGEVELDE: Okay. Do you feel like you

1 would -- you wouldn't be biased against them because of your  
2 neighbor's situation?

3 JUROR MILLIGAN: No, no.

4 MS. VAN LANGEVELDE: Okay. And -- and I know Judge  
5 asked you, but, no, you wouldn't hold it against our office or  
6 myself or Ms. Morton that no charges were ever issued in that  
7 case?

8 JUROR MILLIGAN: No.

9 MS. VAN LANGEVELDE: Okay.

10 JUROR MILLIGAN: No.

11 MS. VAN LANGEVELDE: Do you -- have you ever known a  
12 victim of sexual assault?

13 JUROR MILLIGAN: I do, two.

14 MS. VAN LANGEVELDE: Two?

15 JUROR MILLIGAN: Yes.

16 MS. VAN LANGEVELDE: You don't have to tell me who  
17 they are. Were they children when it happened to them?

18 JUROR MILLIGAN: Yes, they were.

19 MS. VAN LANGEVELDE: Okay. Do you believe them?

20 JUROR MILLIGAN: Yes, I do, but because of the fact  
21 that I was inside and heard both stories when it was all done,  
22 I know that my brother-in-law spent five years in prison that  
23 he wouldn't have spent if he'd went to this stage.

24 MS. VAN LANGEVELDE: Okay.

25 JUROR MILLIGAN: He didn't. He took a plea, you

1 know, because of the situation. He didn't -- (inaudible) -- to  
2 do that.

3 MS. VAN LANGEVELDE: Okay. So, but you believe that  
4 the victims are victims, that this happened?

5 JUROR MILLIGAN: I know that in the situation of the  
6 one, yes. The other one, it's questionable because of what I  
7 know of being, you know, inside the story and hearing both  
8 sides of it.

9 MS. VAN LANGEVELDE: And this is your brother-in-law  
10 you said?

11 JUROR MILLIGAN: It was a brother-in-law that spent  
12 five years in jail, yes.

13 MS. VAN LANGEVELDE: Okay. Based on that situation,  
14 do you still feel like you would be impartial?

15 JUROR MILLIGAN: You know, I -- I feel that a person  
16 that's in that position where they're the accused is in a very  
17 hard place. You know, can I look at them as being innocent?  
18 Yes. But, I do believe that I'll be very diligent in looking  
19 at the evidence against 'em because of the fact that, you know,  
20 I feel like he was wrongly accused. And in the other case,  
21 then, you know, he -- it turned out to be it wasn't -- he was  
22 guilty. But, you know, I've -- I've given it a great deal of  
23 thought --

24 MS. VAN LANGEVELDE: Um-hum.

25 JUROR MILLIGAN: -- over the years because of the

1 situations that we've been in.

2 MS. VAN LANGEVELDE: Okay. But you -- so, you know  
3 -- I mean, you know that he did perpetrate on one child.

4 JUROR MILLIGAN: My brother-in-law, I don't know --

5 MS. VAN LANGEVELDE: Oh --

6 JUROR MILLIGAN: -- because of the situation.

7 MS. VAN LANGEVELDE: -- I thought that's what you  
8 just said --

9 JUROR MILLIGAN: Oh, no.

10 MS. VAN LANGEVELDE: -- I'm sorry.

11 JUROR MILLIGAN: I'm talkin' about another situation  
12 that -- that I knew about, 'cause I knowed (sic) of the --  
13 (inaudible) -- all together.

14 MS. VAN LANGEVELDE: Okay. Okay. But --

15 JUROR MILLIGAN: So, I've given it a great deal of  
16 thought --

17 MS. VAN LANGEVELDE: -- I mean --

18 JUROR MILLIGAN: -- over the years.

19 MS. VAN LANGEVELDE: -- I know. And I -- I totally  
20 appreciate --

21 JUROR MILLIGAN: Yeah.

22 MS. VAN LANGEVELDE: -- you being honest, because I  
23 know this is difficult. But going through this, I mean --

24 JUROR MILLIGAN: Um-hum.

25 MS. VAN LANGEVELDE: -- a lot of times, we -- we

1 have, obviously, picked victims who've been victims.

2 JUROR MILLIGAN: Sure, yup.

3 MS. VAN LANGEVELDE: And you've known somebody that,  
4 in the back of your mind, are -- are you gonna be thinkin', oh  
5 my brother-in-law's case, you know, oh, this and that, and  
6 you're comparing this case to that case.

7 JUROR MILLIGAN: Um-hum.

8 MS. VAN LANGEVELDE: And I guess the same goes for  
9 you, too, Mr. Reed, you know, comparing this case to your case  
10 I mean, are you gonna be able to put that aside?

11 JUROR MILLIGAN: I believe that I can look at it and  
12 -- and be honest about makin' a decision that's open-minded,  
13 yes.

14 MS. VAN LANGEVELDE: Okay. Thank you.

15 THE COURT: Mr. Am -- Amadeo.

16 MR. AMADEO: Hi, Mr. Milligan. How are ya? This  
17 question isn't just directed at you, but everybody right now.  
18 We're gettin' to that point where we're almost at that jury  
19 pool.

20 Is there anybody currently sittin' down that truly  
21 does not want to be on this jury or it would be too much of a  
22 hardship for them? Anybody. Now's the time to speak up.

23 JURORS: (No verbal response).

24 MR. AMADEO: No? You're sure?

25 JUROR MILLIGAN: Yeah, as -- as you were -- the

1 judge, quote, said somethin' about three days --

2 MR. AMADEO: Yes, sir.

3 THE COURT: Right.

4 JUROR MILLIGAN: -- you know, for -- and that's  
5 fairly reasonable. Then, I think that it would be fine.

6 MR. AMADEO: Okay, fair enough. Thank you.

7 THE COURT: Challenges for cause, Ms. Van Langevelde?

8 MS. VAN LANGEVELDE: None for cause.

9 THE COURT: Challenges for cause, Mr. Amadeo?

10 MR. AMADEO: No, Your Honor.

11 THE COURT: I think the peremptory is to you, Ms. Van  
12 Langevelde.

13 MS. VAN LANGEVELDE: The People -- People would thank  
14 and excuse Mr. Milligan. Thank you, sir.

15 THE COURT: Thank you, Mr. Milligan.

16 MR. AMADEO: Your Honor, could we approach briefly?

17 THE COURT: Yup.

18 MS. VAN LANGEVELDE: Do you want to fill the seat  
19 first?

20 THE COURT: Yeah, I do. Judy Owens.

21 JUROR OWENS: (Inaudible).

22 MS. VAN LANGEVELDE: Collide.

23 THE COURT: The juror gets to go first.

24 (At 11:56 a.m., bench conference)

25 (At 11:56 a.m., bench conference concluded)

1 THE COURT: All right, Miss Owens, how are you?

2 JUROR OWENS: Good, thank you.

3 THE COURT: Would you have answered yes to any of the  
4 questions?

5 JUROR OWENS: I would have. My neighbor' son -- and  
6 I have two friends, neighbors, that are state police.

7 THE COURT: Okay. Does that mean that -- I mean, you  
8 still would be able to listen to all the evidence; correct?  
9 And you wouldn't give -- we are gonna have testimony from law  
10 enforcement. Simply because you have neighbors that are MSP,  
11 you would treat them the same as anyone.

12 JUROR OWENS: Certainly.

13 THE COURT: Okay. Anything else you think I need to  
14 know?

15 JUROR OWENS: Ah, no.

16 THE COURT: Do you believe you can be fair and  
17 impartial?

18 JUROR OWENS: I do.

19 THE COURT: Ms. Van Langevelde.

20 MS. VAN LANGEVELDE: Thank you.

21 Good morning, Ms. Owens.

22 JUROR OWENS: Good morning.

23 MS. VAN LANGEVELDE: Were you able to hear me okay?

24 JUROR OWENS: I was.

25 MS. VAN LANGEVELDE: Any questions that I asked that



1 -- of my questions that we need to address? Anything that --

2 JUROR OWENS: I do have a close family member that  
3 was sexually assaulted.

4 MS. VAN LANGEVELDE: Okay.

5 JUROR OWENS: As a child.

6 MS. VAN LANGEVELDE: Okay. Do you feel like you can  
7 set that aside and be fair in this particular case?

8 JUROR OWENS: I do.

9 MS. VAN LANGEVELDE: Okay. You're not gonna be  
10 thinkin', in the back of your mind, oh, this is like that case  
11 but you can listen to the evidence in this case as this case?

12 JUROR OWENS: I can.

13 MS. VAN LANGEVELDE: Thank you.

14 JUROR OWENS: Um-hum.

15 THE COURT: Mr. Amadeo.

16 MR. AMADEO: Hi, Miss Owens. Do you have any  
17 questions for me? You've heard everything goin' on so far.

18 JUROR OWENS: I'm fine, thank you.

19 MR. AMADEO: Thank you.

20 THE COURT: Challenge for cause?

21 MS. VAN LANGEVELDE: None for cause.

22 THE COURT: Challenge for cause?

23 MR. AMADEO: None, Your Honor.

24 THE COURT: Mr. Amadeo, peremptory goes to you.

25 MR. AMADEO: We have none, Your Honor.

1 THE COURT: You accept the jury?

2 MR. AMADEO: I do accept the jury.

3 THE COURT: Ms. Van Langevelde.

4 MS. VAN LANGEVELDE: Just -- I'm sorry. One moment,

5 Judge. Okay. Thank you.

6 The People would thank and excuse Mr. Veith. Thank  
7 you, sir, for your time today.

8 THE COURT: Who?

9 MS. VAN LANGEVELDE: Mr. Veith, number four. Veith.  
10 I'm sorry, my bad.

11 THE COURT: Okay. Thank you very much, Mr. Veith.

12 JUROR VEITH: Okay, thank you.

13 MR. AMADEO: Go Blue.

14 THE COURT: All right.

15 MR. WINTER: Go Green.

16 THE COURT: Let's all be calm.

17 MR. AMADEO: Go Green.

18 THE COURT: All right, Ann Nestle.

19 JUROR VEITH: Ma'am.

20 JUROR NESTLE: Thank you.

21 THE COURT: And good morning.

22 JUROR NESTLE: Hello.

23 THE COURT: Were you able to hear fine?

24 JUROR NESTLE: (No verbal response).

25 THE COURT: Would you answer yes to any of the

1 questions that I --

2 JUROR NESTLE: No.

3 THE COURT: Okay. Do you believe that you can serve  
4 with an open mind?

5 JUROR NESTLE: (No verbal response).

6 THE COURT: Do you believe that you can be fair and  
7 impartial?

8 JUROR NESTLE: Yes.

9 THE COURT: Yes?

10 JUROR NESTLE: Yup.

11 THE COURT: Okay. Ms. Van Langevelde.

12 MS. VAN LANGEVELDE: Thank you.

13 Ms. Nestle, you work at Sparrow?

14 JUROR NESTLE: I do.

15 MS. VAN LANGEVELDE: And what do you do?

16 JUROR NESTLE: On Mother/Baby.

17 MS. VAN LANGEVELDE: Okay. Do you -- have you ever  
18 known a victim of sexual assault?

19 JUROR NESTLE: Yes.

20 MS. VAN LANGEVELDE: Okay. Would that experience  
21 cause you to be biased one way or another?

22 JUROR NESTLE: No.

23 MS. VAN LANGEVELDE: Know anybody who's ever been  
24 accused of sexual assault?

25 JUROR NESTLE: No.

1 MS. VAN LANGEVELDE: Okay. Any answers --

2 JUROR NESTLE: Well, besides -- well, never mind,  
3 that's okay. I misunderstood the question. But, go ahead.  
4 So, we're good. No --

5 MS. VAN LANGEVELDE: Okay.

6 JUROR NESTLE: -- I don't know of anybody --

7 MS. VAN LANGEVELDE: Okay.

8 JUROR NESTLE: -- who's been accused.

9 MS. VAN LANGEVELDE: Any answers to any of the  
10 questions that I asked that would be -- that I'd need to know,  
11 that we need to digest a little bit?

12 JUROR NESTLE: No, I think we're good.

13 MS. VAN LANGEVELDE: Okay. Thank you, ma'am.

14 JUROR NESTLE: Yup.

15 THE COURT: Mr. Amadeo.

16 MR. AMADEO: Miss Nestle, do you have any questions  
17 of me? You've been here for a few hours. You've heard  
18 everything?

19 JUROR NESTLE: Yes. No. No, I'm okay.

20 MR. AMADEO: Thank you. Nothing for me, then.

21 JUROR NESTLE: Yup.

22 THE COURT: Challenge for cause, Ms. Van Langevelde?

23 MS. VAN LANGEVELDE: No, none for cause.

24 THE COURT: Challenge for cause, Mr. Amadeo?

25 MR. AMADEO: None, Your Honor.

1 THE COURT: Mr. Amadeo, peremptory goes back to you.

2 MR. AMADEO: We have no peremptories.

3 THE COURT: Go ahead, Ms. Van Langevelde.

4 MS. VAN LANGEVELDE: Thank you. May I have a moment?

5 THE COURT: Yes.

6 MS. VAN LANGEVELDE: Sorry.

7 THE COURT: Okay, Ms. Van Langevelde.

8 MS. VAN LANGEVELDE: Thank you. The People would  
9 thank and excuse Mr. Reed. Thank you.

10 THE COURT: Thank you very much, Mr. Reed. It was  
11 nice meeting you.

12 JUROR REED: You, too. Glad it's not class.

13 THE COURT: And that takes us to Wendy Aikin. Hi.

14 JUROR AIKIN: Hello.

15 THE COURT: How are you today?

16 JUROR AIKIN: I'm okay.

17 THE COURT: Would you have answered yes to any of the  
18 questions that have been asked today?

19 JUROR AIKIN: No.

20 THE COURT: Do you believe that you would -- you can  
21 serve with an open mind?

22 JUROR AIKIN: Yes.

23 THE COURT: And do you believe that you can be fair  
24 and impartial?

25 JUROR AIKIN: Yes.

1 THE COURT: Ms. Van Langevelde.

2 MS. VAN LANGEVELDE: Thank you.

3 Good morning, Miss Aikin.

4 JUROR AIKIN: Good morning.

5 MS. VAN LANGEVELDE: Are you able to hear me okay?

6 JUROR AIKIN: Yes.

7 MS. VAN LANGEVELDE: Okay. Any answers to any of the  
8 questions that I asked -- and I know it's been a while -- but  
9 that -- that we need to talk about or further digest?

10 JUROR AIKIN: No.

11 MS. VAN LANGEVELDE: Ever known a victim of sexual  
12 assault?

13 JUROR AIKIN: No.

14 MS. VAN LANGEVELDE: Ever know anybody accused of  
15 sexual assault?

16 JUROR AIKIN: No.

17 MS. VAN LANGEVELDE: Any reason why you feel like you  
18 couldn't serve as a -- as a juror?

19 JUROR AIKIN: No.

20 MS. VAN LANGEVELDE: Do you feel like you could  
21 follow Judge's instructions?

22 JUROR AIKIN: Yes.

23 MS. VAN LANGEVELDE: And if you felt like -- how  
24 about testimony as evidence, do you feel comfortable with that?

25 JUROR AIKIN: Yes.

1 MS. VAN LANGEVELDE: Yeah. If you believed somebody  
2 then you could find a defendant guilty?

3 JUROR AIKIN: Yes.

4 MS. VAN LANGEVELDE: All right, thank you, ma'am.

5 JUROR AIKIN: Um-hum.

6 THE COURT: Mr. Amadeo.

7 MR. AMADEO: No questions of Miss Aikin. Thank you.

8 THE COURT: Challenge for cause, Ms. Van Langevelde.

9 MS. VAN LANGEVELDE: No, none for cause.

10 THE COURT: Challenge for cause, Mr. Amadeo.

11 MR. AMADEO: No, Your Honor.

12 THE COURT: Peremptory to you, Mr. Amadeo.

13 MR. AMADEO: Like to thank and excuse Miss Aikin.

14 THE COURT: Thank you very much, Miss Aikin.

15 Cory -- is it Dykhuizen.

16 JUROR DYKHUIZEN: Dykhuizen.

17 THE COURT: Dykhuizen. How are you today, sir?

18 JUROR DYKHUIZEN: Very good. And yourself?

19 THE COURT: Good. Were you able to hear all of the  
20 questions?

21 JUROR DYKHUIZEN: Yes.

22 THE COURT: Would you have answered yes to any of  
23 them?

24 JUROR DYKHUIZEN: No, just a couple friends that are  
25 in law enforcement, but nothin' too close.

1 THE COURT: So, you wouldn't -- you wouldn't give  
2 them any more credibility than any other witnesses simply  
3 because they're in law enforcement.

4 JUROR DYKHUIZEN: No.

5 THE COURT: Do you believe that you have an open  
6 mind?

7 JUROR DYKHUIZEN: Yes.

8 THE COURT: Do you believe that you can be fair and  
9 impartial?

10 JUROR DYKHUIZEN: Yes.

11 THE COURT: Ms. Van Langevelde.

12 MS. VAN LANGEVELDE: Thank you.

13 Hi, Mr. Dykhuizen.

14 JUROR DYKHUIZEN: Hi.

15 MS. VAN LANGEVELDE: Were you able to hear me okay?

16 JUROR DYKHUIZEN: Yes.

17 MS. VAN LANGEVELDE: Okay. Any answers to the  
18 questions I asked that we need to digest?

19 JUROR DYKHUIZEN: No.

20 MS. VAN LANGEVELDE: Know a victim or -- of sexual  
21 assault?

22 JUROR DYKHUIZEN: No.

23 MS. VAN LANGEVELDE: Okay. Know anybody who's ever  
24 been accused of sexual assault?

25 JUROR DYKHUIZEN: Not that I know of.



1 MS. VAN LANGEVELDE: All right. Thank you, sir.

2 THE COURT: Mr. Amadeo.

3 MR. AMADEO: No questions, thank you.

4 THE COURT: Challenge for cause, Ms. Van Langevelde.

5 MS. VAN LANGEVELDE: No, none for cause.

6 THE COURT: Challenge for cause, Mr. Amadeo?

7 MR. AMADEO: None, Judge.

8 THE COURT: Peremptory to you, Mr. Amadeo.

9 MR. AMADEO: Like to thank and excuse Mr. Dykhuizen.

10 THE COURT: Thank you, sir, for being here today.

11 JUROR DYKHUIZEN: Thank you.

12 THE COURT: Lana Garcia. And how are you today?

13 JUROR GARCIA: Great, thanks.

14 THE COURT: Do you believe that you can have an open  
15 mind?

16 JUROR GARCIA: Yes.

17 THE COURT: Do you believe that you're fair and  
18 impartial?

19 JUROR GARCIA: Yes.

20 THE COURT: Is there anything that I should know  
21 about your qualifications to serve as a juror in this case?

22 JUROR GARCIA: The only thing I could really think of  
23 is, in my line of work, I am considered to be a mandatory  
24 reporter. And I have had children report to me that they've  
25 been sexually assaulted, and then I have to file the proper

1 paperwork --

2 THE COURT: Right.

3 JUROR GARCIA: -- and contact CPS.

4 THE COURT: I'm -- I'm not looking at the  
5 questionnaires, so I don't recall. Can you tell me what your  
6 line of work is?

7 JUROR GARCIA: I'm a pediatric nurse practitioner.

8 THE COURT: Oh, wonderful.

9 JUROR GARCIA: Um-hum.

10 THE COURT: Okay. And is -- do you work at a  
11 hospital or for a doctor?

12 JUROR GARCIA: I work at a doctor's office.

13 THE COURT: All right. But, as a mandatory reporter,  
14 it's not your responsibility to decide whether something did or  
15 didn't happen; right?

16 JUROR GARCIA: Correct.

17 THE COURT: It's to you to report that, if a child  
18 tells you something happened, then you need to let somebody  
19 else know, who will --

20 JUROR GARCIA: Correct.

21 THE COURT: -- investigate it; correct?

22 JUROR GARCIA: Correct. You just report what's been  
23 told to you by the child.

24 THE COURT: Right, okay. You're not making an  
25 assessment whether it's true or false --

1 JUROR GARCIA: No.

2 THE COURT: -- correct?

3 JUROR GARCIA: No.

4 THE COURT: Anything about that impact your ability  
5 to be a juror on this case?

6 JUROR GARCIA: No.

7 THE COURT: Ms. Van Langevelde.

8 MS. VAN LANGEVELDE: No, I don't have any questions.  
9 Thank you, Your Honor.

10 MR. AMADEO: No questions, Judge.

11 THE COURT: Challenge is to you, Mr. Amadeo.

12 MR. AMADEO: No, Your Honor.

13 THE COURT: All right, to the individuals in the  
14 galley (sic) --

15 JUROR WIMBERLY: Does it matter that Lana is my  
16 daughter's nurse practitioner?

17 THE COURT: Oh, you guys know each other.

18 JUROR WIMBERLY: Well --

19 THE COURT: No, it doesn't unless --

20 JUROR WIMBERLY: Okay.

21 THE COURT: Do you talk outside of --

22 JUROR GARCIA: No.

23 JUROR WIMBERLY: No.

24 THE COURT: -- normally?

25 JUROR WIMBERLY: No.

1 JUROR GARCIA: No.

2 THE COURT: The reason we would be concerned about  
3 jurors knowing each other is that I would have to make sure  
4 they understand my instruction that you can't talk about the  
5 case until you get it.

6 Ladies and gentlemen in the galley, let me thank you  
7 so much for your patience. Let me thank you for sitting on  
8 hard, wood seats. I've often thought in the jury -- when we  
9 tell you to come, that we should tell you to bring the little  
10 cushions, you know, you take like to a football game or  
11 something.

12 We have selected a jury, so you are free now to leave  
13 now and whatever you do the rest of the day.

14 Because you were not selected for jury, you are still  
15 in the jury pool. So, when -- whenever it is you have to call,  
16 you need to still do that, okay?

17 I hope you all have a great weekend. Thank you very  
18 much.

19 (At 12:07 p.m., jury impaneled)

20 THE COURT: Ladies and gentlemen in the jury box, you  
21 have been chosen to decide a criminal charge made by the State  
22 of Michigan against one of your fellow citizens.

23 I'm going to be asking you to stand and swear to  
24 perform your duty to try this case justly and to reach a true  
25 verdict. If your religious belief does not permit you to take

1 an oath, you may, instead, affirm to try the case justly and  
2 reach a true verdict.

3 I ask all of you to rise and raise your right hands.

4 Do each of you solemnly swear or affirm that, in this  
5 action now before the Court, you will justly decide the  
6 questions submitted to you, and that, unless you are discharged  
7 by the Court from further deliberation, you will render a true  
8 verdict, and that you will render your verdict only on the  
9 evidence introduced and in accordance with the instructions of  
10 this Court, so help you God?

11 JURORS: I do.

12 (At 12:08 p.m., jury sworn by the Court)

13 THE COURT: Please have a seat.

14 Ladies and gentlemen, you are now gonna be able to  
15 leave for the weekend. We will start this case bright and  
16 early Monday morning, at which time I will be giving you  
17 further instruction, you will be hearing opening statements,  
18 and the evidence in this case will begin to be presented.

19 I am going to give you what is called a recess  
20 instruction. I will give you a recess instruction every time  
21 you leave this courtroom. You are to follow this instruction.

22 You may not discuss this case with anyone or let  
23 anyone discuss it with you or in your presence. If someone  
24 tries to do that, tell him or her to stop and explain that, as  
25 a juror, you are not allowed to discuss this case. If he or

1 she continues, please report it to me immediately.

2 You may not talk to the defendant, the lawyers or the  
3 witnesses in this case, at all, anything at all, even if it has  
4 nothing to do about this case.

5 All information that you get on this case must be  
6 when you are acting as a jury all together and the prosecutor,  
7 the defendant and I am present.

8 Now, please remember that, because you are going to  
9 be allowed to leave, you will have access to television, radio  
10 newspaper, and other social media. You may not, in any way,  
11 investigate any part of this case on your own. You may not use  
12 social media, the Internet or traditional forms such as  
13 dictionaries and other types of books that you might read.

14 I know of nothing, right now, that there is any press  
15 that has been involved in this case. However, should you pick  
16 up a newspaper or turn on a radio or be looking on the Internet  
17 and you saw anything that involved Eaton County, click off it  
18 immediately. Don't even look at it to see if it's about this  
19 case.

20 Again, please remember, all evidence, on this case,  
21 about this case has to come in this courtroom, when you are all  
22 together, the prosecutor's here, the defendant's here, and I am  
23 here.

24 You still can't talk to each other about the case.  
25 You can't talk to a friend, a neighbor or a spouse about this

1 case.

2 Is that clear to everybody?

3 JURORS: Yes.

4 THE COURT: All right. Now, if it should happen that  
5 you come back Monday morning and somebody says something that  
6 leads you to believe that they have, in any way, got any  
7 information or done an experiment or researched something, you  
8 need to let me know right away, okay?

9 JURORS: (No verbal response).

10 THE COURT: The jury room -- Ms. Ykimoff is gonna  
11 take you back, so you know where it is.

12 When you come in the building Monday, you will come  
13 up the elevator. You will go down the hallway. And she will  
14 show you. You will be buzzed in. And you will be in the jury  
15 room.

16 When you are in the courtroom, your jury room will be  
17 locked. So, you can leave books, purses, phones, et cetera.

18 If you need to bring any special food or beverages,  
19 we can accommodate that in the refrigerator, okay?

20 We will go, on Monday, until, approximately, three  
21 o'clock. We cannot go all day Monday because I have Veterans  
22 Court. Therefore, we will not be feeding you lunch on Monday  
23 'cause we'll be letting you go, again, somewhere between two  
24 and three, whatever the natural break in the case is. We will  
25 take two 15 minute breaks. There are jury snacks back there.

1 But, again, for those of you that may have special food needs,  
2 if you need to bring something, when you get here, let Ms.  
3 Ykimoff know, and we'll put it in the refrigerator.

4 On Tuesday, we will go all day. We will start at  
5 eight-thirty. We will go until four-thirty. We will provide  
6 lunch for you on Tuesday.

7 We will discuss Wednesday if and when we need to  
8 discuss it.

9 Does that all make sense to everybody?

10 JUROR GREEN: Yes, ma'am.

11 THE COURT: I hope you all have a wonderful,  
12 wonderful weekend.

13 Please be back here, in the jury room, at eight-  
14 thirty on Monday morning.

15 Ms. Ykimoff, will you please take the jurors to the  
16 jury room?

17 (At 12:13 p.m., jury exits courtroom)

18 THE COURT: Watch your step. There's a little step  
19 right there. Thank you.

20 Anything you need to place on the record, Ms.  
21 Ykimoff?

22 MS. VAN LANGEVELDE: I'm Ms. Van Langevelde.

23 THE COURT: That's correct.

24 MS. VAN LANGEVELDE: No thank you.

25 THE COURT: Okay, let's try that again.



1 Ms. Van Langevelde --

2 MS. VAN LANGEVELDE: Yes.

3 THE COURT: -- is there anything you need to state on  
4 the record?

5 MS. VAN LANGEVELDE: No. And here's my jury  
6 questionnaires.

7 THE COURT: Any objection to the recess instruction  
8 given by the Court?

9 MS. VAN LANGEVELDE: No, Your Honor.

10 THE COURT: Mr. Amadeo, anything you need to place on  
11 the record?

12 MR. AMADEO: No thank you, Judge.

13 THE COURT: Any objection to the recess instruction  
14 given by the Court?

15 MR. AMADEO: No, Your Honor.

16 THE COURT: You can leave anything you want in here.  
17 We will lock the courtroom as soon as you're out.

18 MR. AMADEO: Thank you.

19 THE COURT: So, if you feel you need to leave  
20 something here, you can, 'cause I realize you're from out of  
21 town.

22 MR. AMADEO: Thank you, Judge.

23 THE COURT: Please be here at eight-fifteen.

24 MR. AMADEO: Yes.

25 THE COURT: It doesn't matter if you walk in with the

1 jury people unless you talk to them. Just don't talk to them.

2 MR. AMADEO: Right.

3 THE COURT: Okay. I want everybody here at eight-  
4 fifteen. I would love it for the jury to be coming out at  
5 eight-thirty.

6 We will, of course, start with my opening instruction  
7 and go right to opening argument.

8 Do you know -- have you decided if you're gonna make  
9 your opening statement on Monday or wait? You don't have to

10 MR. AMADEO: I am gonna -- I am gonna make it on  
11 Monday.

12 THE COURT: Okay. And then, you'll have witnesses  
13 ready to go; right?

14 MS. VAN LANGEVELDE: Yes, Your Honor.

15 THE COURT: Thank you, all, very much.

16 MR. AMADEO: Thank you, Your Honor.

17 THE COURT: Have a good weekend.

18 MR. WINTER: You, too, Your Honor.

19 MS. VAN LANGEVELDE: Thank you, Your Honor.

20 (At 12:15 p.m., proceedings concluded for the day)

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CERTIFICATION OF COURT RECORDER

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STATE OF MICHIGAN )  
COUNTY OF EATON )

I certify that this transcript consisting of 191 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Friday, September 13, 2019.

Dated: January 7, 2020

  
\_\_\_\_\_  
Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

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STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant.

JURY TRIAL - VOLUME II OF III

BEFORE THE HONORABLE JANICE K. CUNNINGHAM, CIRCUIT JUDGE

Charlotte, Michigan - Monday, September 16, 2019

APPEARANCES:

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Charlotte, Michigan

Monday, September 16, 2019 - At 8:26 a.m.

(Court, counsel and defendant present)

THE COURT: We are on the record in People of the State of Michigan versus Damon Earl Warner, file 16-296-FC.

Ms. Morton's here on behalf of the People. I assume Ms. Van Langevelde's coming in in a second.

MS. MORTON: Yes.

THE COURT: All right. And Mr. Amadeo is here, Mr. Winter is here --

MR. WINTER: Good morning, Your Honor.

THE COURT: -- and the defendant is here.

Mr. Warner, raise your right hand.

Do you swear to tell the truth, the whole truth, and nothing but the truth, under penalty of perjury?

THE DEFENDANT: I do.

(At 8:27 a.m., defendant sworn by the Court)

THE COURT: I believe everybody's -- the -- the jurors are here except one, and that could've changed. That person could be here. I thought we could start with any preliminary matters.

I've been provided an exhibit list. Have you seen this, Mr. Amadeo?

MR. AMADEO: I have, Your Honor.

THE COURT: And do you -- do you need some paper

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1 towel?

2 MR. AMADEO: No, I'll be okay.

3 THE COURT: Okay.

4 MR. AMADEO: It's not that bad a spill.

5 THE COURT: Okay. Are these exhibits listed one  
6 through 11 stipulated to for admission, Mr. Amadeo?

7 MR. AMADEO: They are, Judge.

8 THE COURT: All right. So, Exhibits One through 11  
9 shall be admitted, and they may be published to the jury.

10 (At 8:28 a.m., PX#1, PX#2, PX#3, PX#4, PX#5, PX#6,  
11 PX#7, PX#8, PX#9, PX#10 and PX#11 admitted)

12 THE COURT: And just to make sure we're clear, I  
13 guess I would ask Ms. Bond if you would mark this as a joint  
14 exhibit, and we'll call that Joint Exhibit One, so it's clear  
15 what the list was that was admitted, Exhibits One through 11.

16 (At 8:28 a.m., Joint Exhibit #1 identified)

17 MS. VAN LANGEVELDE: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MS. VAN LANGEVELDE: Your Honor, I had an opportunity  
20 to meet with Mr. Amadeo last week, Thursday. There -- we --  
21 and when we were last here, we're dealing with the videos.  
22 There's a video that's from MSP of 10 minutes and 18 seconds.  
23 It's my understanding that he is stipulating to this video, and  
24 that, basically, the other portions of the video are not  
25 admissible because they talk about the polygraph and there's



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1 some irrelevant things.

2 So, it's my understanding that we're stipulating to  
3 this, and that this is the only portion that's admissible.

4 THE COURT: What number is that?

5 MS. VAN LANGEVELDE: That is --

6 MR. WINTER: Number 10, Your Honor.

7 MS. VAN LANGEVELDE: -- 10.

8 THE COURT: Well, we -- we just stipulated to it.

9 MS. VAN LANGEVELDE: Oh, okay.

10 THE COURT: I -- I was given this, I assume by the  
11 prosecutor's office --

12 MS. VAN LANGEVELDE: Yes.

13 THE COURT: -- outlining Exhibits One through 11.  
14 And Mr. Amadeo has stipulated that these exhibits are  
15 admissible, and I've admitted them, and they may be published  
16 to the jury.

17 MS. VAN LANGEVELDE: Okay. Thank you.

18 THE COURT: All right. Any other matters for the  
19 prosecutor that need to be addressed before we bring the jury  
20 in?

21 MS. VAN LANGEVELDE: I don't believe so. I do know  
22 that we're all kind of sick, and I just know that we're gonna  
23 have cough drops and may have to take some extra breaks if we  
24 need to. I just wanted to let the Court know.

25 THE COURT: Okay, well, the plan had been we'll go

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1 from eight -- assuming the last juror's here, if we can get  
2 them in, in the next minute or so, we would go from eight-  
3 thirty till 10, take a 15 minute break, which always becomes  
4 20, let's be realistic, and then come back in and go until the  
5 natural break.

6 As I mentioned to the jurors and the attorneys  
7 already know this, we do have Veterans Court this afternoon.  
8 And I do not like to adjourn that because they need the  
9 consistency and the stability of having it the first and third  
10 Monday of every week (sic).

11 So, you will be done early today. So, maybe you can  
12 get some rest.

13 Mr. Amadeo, anything you need to place on the record?

14 MR. AMADEO: I think the only thing I want to place,  
15 Judge, is the utilization of the word "victim" in the first  
16 trial. The word "victim" was used 86 times.

17 THE COURT: Okay.

18 MR. AMADEO: I would feel complaining witness or  
19 alleged victim would be more appropriate as to not mislead the  
20 jury.

21 THE COURT: That issue has been dealt with by our  
22 Court of Appeals.

23 And does the prosecutor know the name of the  
24 published case? There is a case where the Court of Appeals has  
25 said that that is an appropriate term.

1 If you have legal authority from a published  
2 decision, of the Court of Appeal or Supreme Court, that says  
3 that is not appropriate, I would be more than happy to consider  
4 it, but that --

5 MR. AMADEO: I don't want to take too much of the  
6 Court's time, Your Honor. I was just doin' a last review, and  
7 I -- the word came up so frequently, I figured I'd just put  
8 something on the record.

9 THE COURT: Go ahead, Ms. Morton.

10 MS. MORTON: Thank you. We have addressed this many  
11 times before. Had a motion been filed, I easily could've --

12 THE COURT: Yes.

13 MS. MORTON: -- could've provided you the authority.  
14 But that alleged victim and complaining witness is their theory  
15 of the case. We're allowed to present our theory of the case,  
16 which is that she's a victim.

17 THE COURT: Correct.

18 MS. MORTON: And she is also afforded that status by  
19 the Constitution, by the Crime Victims Rights Act, and it is  
20 regardless of whether there's been a conviction or not. She is  
21 con -- considered a victim by definition.

22 THE COURT: And I agree with Ms. Morton. This issue  
23 has come before me on more than one occasion, and I -- as I  
24 said, had a motion been filed, I know that the exact authority  
25 would have been provided. But I do know there is authority for

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1 the position as stated by Ms. Morton. And unless there has  
2 been a subsequent published decision by the Court of Appeals  
3 the Supreme Court, the prosecutor shall be allowed to refer --  
4 or, use the term "victim."

5 MR. AMADEO: Okay.

6 THE COURT: You, of course, are at liberty to use  
7 "alleged victim" if that is what you would like to do.

8 MR. AMADEO: Thank you, Your Honor.

9 THE COURT: No problem.

10 LAW CLERK/JURY BAILIFF: They're all here.

11 THE COURT: So, just so we're clear, we're going to  
12 start this morning with the Court giving opening instructions  
13 starting at 2.02, because I gave them the oath. And so, we'll  
14 be going through all of the opening instructions through 2.26,  
15 then we'll be doing opening statements.

16 And I assume, Ms. Van Langevelde, you have your first  
17 witness ready to go when we're done with that.

18 MS. VAN LANGEVELDE: Yes, I do. Maltby?

19 THE COURT: Detective Maltby, should I -- I guess I  
20 should let the jury know who that is because he was not here  
21 for jury -- the -- the jury pick, which is fine, he didn't need  
22 to be here, but they know who's at the table. So, I don't want  
23 them, at all, to be confused; right?

24 All right, let's bring 'em in. And I'm -- so far,  
25 I'm happy, the jur -- the jurors are all here. I saw them

1 putting a few, little snacks into the refrigerator.

2 MR. AMADEO: Adrienne.

3 MS. VAN LANGEVELDE: Um-hum.

4 MR. AMADEO: That's one of my witnesses. Now on the  
5 way out, so I'm --

6 MS. VAN LANGEVELDE: Oh. Yeah, I didn't even -- we  
7 didn't --

8 MR. AMADEO: I didn't realize it right away, but I  
9 didn't want any drama, so.

10 One of my witnesses, Judge. I just told her to wait  
11 outside.

12 THE COURT: Thank you, Mr. Amadeo.

13 MS. VAN LANGEVELDE: I think there's a stipulation  
14 that we're sequestering witnesses except for, obviously --

15 MR. AMADEO: The OIC; right?

16 MS. VAN LANGEVELDE: Yeah.

17 MR. AMADEO: Yeah.

18 MS. VAN LANGEVELDE: And once Pearl's done  
19 testifying, obviously she has a right to stay and is the  
20 victim.

21 THE COURT: Um-hum.

22 (At 8:35 a.m., jury enters courtroom)

23 THE COURT: Good morning. Morning. Good morning.

24 All right, please be seated.

25 Good morning, ladies and gentlemen.

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1 JURORS: Morning.

2 THE COURT: So, this morning, we will begin with the  
3 initial jury instructions that are to be given before the trial  
4 starts.

5 I would introduce to you Detective Maltby, who is  
6 also at the prosecution's table. He was not here on Friday  
7 when we were selecting, so I wanted you to know who that was.

8 Now, I'm going to explain legal principles that you  
9 need to know and what is gonna be the procedure of this trial

10 The tri -- at first, the prosecutor will make her  
11 opening statement. She will give her theories about the case.  
12 The defendant's lawyer does not have to make an opening  
13 statement, but he may make an opening statement after the  
14 prosecutor makes hers or he can wait until later. These  
15 statements are not evidence. They are only meant to help you  
16 understand how each side views the case.

17 To prove the charges, the prosecutor must prove the  
18 following beyond a reasonable doubt:

19 First, Count One: That the defendant engaged in a  
20 sexual act that involved entry into Pearl Giffen's genital  
21 opening by the defendant's finger. Any entry, no matter how  
22 slight, is enough. It does not matter whether the sexual act  
23 was completed or whether semen was ejaculated.

24 Second, that Pearl Giffen was 13, 14 or 15-years-old  
25 at the time of the alleged act.

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1           And third, that Pearl Giffen is related to the  
2 defendant either by blood -- blood or by marriage, as a  
3 stepdaughter.

4           Count Two: Criminal Sexual Conduct - Second Degree

5           First, that the defendant intentionally touched Pearl  
6 Giffen's genital area or clothing covering that area.

7           Second, that this was done for a sexual purpose or  
8 could reasonably be construed as having been done for a sexual  
9 purpose.

10           Third, that Pearl Giffen was 13, 14 or 15-years-old  
11 at the time of the alleged act.

12           And fourth, that Pearl Giffen is related to the  
13 defendant, either by blood or by marriage, as a stepdaughter.

14           Next, the prosecutor will present her evidence. The  
15 prosecutor may call witnesses to testify and may show you  
16 exhibits like a document or an object. The defendant's lawyer  
17 has a right to cross-examine the prosecutor's witnesses.

18           After the prosecutor has presented all of her  
19 evidence, the defendant's attorney may also offer evidence but  
20 does not need to do so. By law, the defendant does not have to  
21 prove his innocence or produce any evidence. If the defense  
22 does call any witnesses, then the prosecutor has the right to  
23 cross-examine them.

24           The prosecutor may also call witnesses to contradict  
25 any testimony of a defense witness.

1           After all the evidence has been presented, the  
2 prosecutor and the defendant's lawyer will make a closing  
3 argument. Like the opening statement, these are not evidence  
4 They are only meant to help you understand the evidence and the  
5 way each side sees the case. You must base your verdict only  
6 on the evidence.

7           You have been given a copy of the written  
8 instructions that I have read to you, and you may refer to them  
9 during trial. No one can predict the course of a trial, so  
10 these instructions may change at the end of the trial. At the  
11 close of the trial, I will provide you with a copy of the final  
12 instructions for your use during deliberation.

13           My responsibility, as the judge in this trial, is to  
14 make sure that the trial is run fairly and efficiently, to make  
15 decisions about evidence, and to instruct you about the law.  
16 Excuse me. You must take the law as I give it to you. Nothing  
17 I say is meant to reflect my own opinions about the facts of  
18 this case. As the jurors, you are the ones who will decide  
19 this case.

20           Your responsibility is to decide what the facts of  
21 this case are. This is your job and no one else's. You must  
22 think about all the evidence and all the testimony, and then  
23 decide what each piece of evidence means and how important you  
24 think the evidence is. This includes how much you believe what  
25 -- what each of the witnesses have said. What you decide about



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1 any fact in this case is final.

2 When it's time for you to decide the case, you are  
3 only allowed to consider the evidence admitted in the case.  
4 Evidence includes only the sworn testimony of witnesses and the  
5 exhibits that are admitted into evidence, and anything else I  
6 tell you that you're allowed to consider as evidence.

7 It is your job to decide what the facts of this case  
8 are. You must decide which witnesses you believe and how  
9 important you think their testimony is.

10 You do not have to accept or reject everything a  
11 witness says. You are free to believe all, none, or a part of  
12 a person's testimony.

13 In deciding which testimony you believe, you should  
14 rely on your own common sense and your every day experience.  
15 However, in deciding whether you believe a witness's testimony,  
16 you must set aside any bias or prejudice that you have based on  
17 race, gender, or the national origin of a witness.

18 There is no fixed set of rules for judging whether  
19 you believe a witness, but it might help you to think about the  
20 following questions:

21 Was the witness able to see and hear clearly?

22 How long was the witness watching or listening?

23 What else was going on that might have distracted the  
24 witness?

25 Does the witness seem to have a good memory?

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1 How does the witness look and act while testifying?

2 Does the witness seem to make an honest effort to  
3 tell the truth, or does the witness seem to evade the question  
4 and argue with the lawyers?

5 Does the witness's age or maturity affect how you  
6 judge his or her testimony?

7 Does the witness have any bias or prejudice or any  
8 personal interest in how the case is decided?

9 Have there been any promises, threat, suggestions, or  
10 other influences that may affect how the witness testifies?

11 In general, does the witness have any special reason  
12 to tell the truth or any special reason to lie?

13 All in all, how reasonable does the witness's  
14 testimony seem when you think about all the other evidence?

15 Now, the questions that the lawyers ask the witness  
16 is not evidence. Only the answers given are evidence. You  
17 should not think something is true just because one of the  
18 lawyers ask questions that assume or suggest that it is.

19 I may ask some of the witnesses questions. These  
20 questions are not meant to reflect my opinion about the  
21 evidence. If I ask a question, my only reason would be to ask  
22 about things that have not been fully explored.

23 Now, during the trial, the lawyers may object to  
24 certain questions or statements made by other lawyers or by a  
25 witness. I will rule on these objections according to the law.

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1 My rulings for or against one side or the other are not meant  
2 to reflect my opinion about the case.

3 Now, sometimes the lawyers and I will have  
4 discussions outside of your hearing. Also, while you're back  
5 in the jury room, I may have to take care of other matters that  
6 have nothing to do with the case. Please try to pay no  
7 attention to any interruptions should they occur.

8 Now, you may not discuss the case with anybody,  
9 including your family or your friends. You cannot even talk to  
10 each other until the time comes to decide the case.

11 Now, when it's time for you to decide the case, I  
12 will send you back to the jury room for that purpose. Then,  
13 you should discuss the case amongst yourselves, but only in the  
14 jury room and only when all the jurors are present. When the  
15 trial's over, you can talk to anybody you wish about the case.

16 If I call for a recess during the trial, I will  
17 either send you back to the jury room or allow you to leave the  
18 courtroom on your own and go about your business.

19 You must not discuss the case with anyone or let  
20 anyone discuss it with you or in your presence. If someone  
21 tries to do that, stop them, tell them that you are a juror and  
22 you are not allowed to discuss the case. If he or she  
23 continues, leave and report the incident to me as soon as you  
24 return to court.

25 You must not talk to the defendant, the lawyers or

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1 the witnesses about anything, at all, even if it has nothing to  
2 do with the case. It is very important that the only  
3 information that you get about this case is while you are in  
4 court, you are all together acting as a jury, and the  
5 defendant, the lawyers and I are all present.

6 The restrictions that I'm about to describe are meant  
7 to ensure that the parties get a fair trial. In our judicial  
8 system, it is crucial that the jurors are not influenced by  
9 anything or anyone outside of the courtroom.

10 Now that many jurors have easy access to information  
11 through handheld devices or other technology, jurors may be  
12 tempted to use these devices to learn more about some aspect of  
13 the case. But, if a juror were to do this, it would harm the  
14 parties. The parties' attorneys would have no way of knowing  
15 that a juror has gotten outside information and would have no  
16 chance to object if that information were false, untrustworthy  
17 or irrelevant.

18 Remember, no -- no matter how careful or  
19 conscientious a news reporter, family member, friend or other  
20 people outside the courtroom may be, information about a case  
21 from television, radio, the Internet or social media will,  
22 inevitably, be incomplete, and it could be incorrect.

23 Please bear these things in mind as I read the  
24 following instruction. These restrictions apply from this  
25 moment until you are discharged from jury service.

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1           You must decide this case based solely on the  
2 evidence you see and hear in the courtroom. You must not  
3 consider information that comes from anywhere else. This means  
4 that, during the trial, you must not read, watch or listen to  
5 news reports about the case, whether in a newspaper or on  
6 television, on radio or on the Internet. You must not research  
7 any aspect of the case during trial. This means using a  
8 cellular phone, computer, or other electronic device to search  
9 the Internet, as well as to research with traditional sources  
10 like a dictionary, a reference manual, a newspaper or a  
11 magazine.

12           You must not investigate the case on your own or  
13 conduct any experiment concerning the case, including  
14 investigations or experiments using the Internet, computers,  
15 cellular phones or other electronic devices.

16           You must not visit any scene at issue in trial. If  
17 it were to become necessary for you to visit the scene, court  
18 staff would take you there as a group and under court  
19 supervision.

20           You also must not consider any evidence of any  
21 personal knowledge that you would have of a scene.

22           Before your deliberations, you must not discuss this  
23 case with anyone, even your fellow jurors. After you begin  
24 deliberations, you should discuss the case with your fellow  
25 jurors, but you still must not discuss the case with anyone

1 else until you are discharged from your jury service.

2           Until I have discharged you from jury service, you  
3 must not share any information about the case by any means,  
4 including cellular phones or social media.

5           If you discover that a juror has violated my  
6 instructions, you must report it to the bailiff.

7           Now, you are allowed to take notes during the trial  
8 but you don't have to. If you do take notes, you should be  
9 careful that it does not distract you from paying attention to  
10 all of the evidence. When you go to the jury room to decide  
11 your verdict, you may use your notes to help you remember what  
12 happened in the courtroom. If you take notes, do not let  
13 anyone, except the other jurors, see them during your  
14 deliberations. They must be turned over to the bailiff during  
15 recesses. Your notes will not be examined by anyone. And when  
16 your jury service concludes, your notes will be collected and  
17 destroyed.

18           Now, each of you should have a binder with your juror  
19 number on the side. And in your binder should have been a  
20 notepad and a pen or a pencil.

21           As I said, you don't have to take notes, but if you  
22 want to, you can. Your notes should be left in your binder.  
23 When you're not in the jury room, your binder is left in there  
24 and we lock it. At the end of the trial, the bailiff will  
25 collect your notes and shred them.

1 We have chosen 14 jurors. After all the evidence has  
2 been heard, after my final instructions are given, I will draw  
3 a lot to see which two of you will be allowed to leave, to form  
4 a jury of 12. The two people selected will not be dismissed as  
5 jurors, but you will be allowed to leave, and we will call you  
6 if we need you, to have you come back. Those two jurors will  
7 be given a recess instruction when they leave. So, still the  
8 same rules: You can't talk to anybody about the case, you  
9 can't research the case.

10 Do not concern yourselves, during trial or in your  
11 deliberation, with what the penalty might be if you find the  
12 defendant guilty. The question of guilt and the question of  
13 penalty are decided separately. The question of -- that we're  
14 -- it is the duty -- excuse me -- of the judge to fix the  
15 penalty whenever a defendant is found guilty. Possible  
16 penalties should not influence your decision.

17 I may give you more instructions during the trial.  
18 And at the end of the trial, I will give you detailed  
19 instructions about the law that you are to follow. You can --  
20 should consider all my instructions as connected, as a series.  
21 And taken altogether, it is the law that you must follow.

22 After all of the evidence has been presented and the  
23 lawyers have given their arguments, I will then give you  
24 detailed instructions about the rules of law that apply to this  
25 case. You will, then, go to the jury room to decide on your

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1 verdict.

2 A verdict must be unanimous. That means that every  
3 juror must agree on it, and it must reflect the individual  
4 decision of each juror.

5 It is important for each of you to keep an open mind  
6 and to not make a decision about anything in this case until  
7 you go to the jury room to decide this case.

8 Now, ladies and gentlemen, as I explained, the next  
9 step in this process will be the opening statement by the  
10 prosecutor, Ms. Van Langevelde.

11 Ms. Van Langevelde.

12 MR. WINTER: Your Honor, may we approach for a  
13 moment?

14 THE COURT: Yes, you may.

15 (At 8:53 a.m., bench conference)

16 (At 8:53 a.m., bench conference concluded)

17 THE COURT: All right, Ms. Bond. Ms. Bond. Ms.  
18 Ykimoff obviously didn't think I'd need her right away. Will  
19 you please take the jury out.

20 Ladies and gentlemen, you are in a recess  
21 instruction. I know that you know what that means. You still  
22 can't talk to each other about it. You can't talk to anybody  
23 about the case, at all. And you can't talk to anybody in this  
24 courtroom about anything, at all. Ms. Bond will escort you  
25 back to the jury room. And you can leave your binders on your



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1 chairs if you want, just right now, because you'll be coming  
2 right back, or you can take them with you, whatever you want to  
3 do. Watch your step as you go out, please.

4 (At 8:54 a.m., jury exits courtroom)

5 THE COURT: All right, we are -- the jury has left.

6 Mr. Winter has asked that a second trial instruction  
7 be given, so we're gonna have to look at that.

8 I'm very unhappy that, as we start this trial, Mr.  
9 Winter, you brought that up. The jury instructions have gone  
10 back and forth several times. Everybody agreed on the jury  
11 instructions, and now we have a delay.

12 Do you have the instruction handy, Ms. Van  
13 Langevelde?

14 MS. VAN LANGEVELDE: I do see one. It's 2.21, called  
15 "Second Trial." It reads:

16 "This case has been tried before. And during this  
17 trial, you may hear some reference to the first trial.  
18 Sometimes a case may be retried before a new jury, and you  
19 should not pay attention to the fact that this is a second  
20 trial. Your verdict must be based only on the evidence in  
21 this trial. You must not decides the facts" -- oh, sorry.  
22 I'm sorry. "You must decide the facts only from what you,  
23 yourselves, hear and see."

24 THE COURT: I do not know how that is applicable. Do  
25 you, Ms. Van Langevelde?

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1 MS. VAN LANGEVELDE: Well, we did have a second  
2 trial, but we've had --

3 THE COURT: No. I mean --

4 MS. VAN LANGEVELDE: Oh.

5 THE COURT: -- whether that tri -- that instruction  
6 addresses if the first trial is gonna be referenced, in any  
7 way, like, you know, somebody's testified before, et cetera,  
8 and not just because there was a previous trial. That would be  
9 my guess, but I don't have it in front of me. I need --

10 Is Ms. Ykimoff coming in? I need that -- what was  
11 the number?

12 MS. VAN LANGEVELDE: Two point two-one.

13 MS. MORTON: It's 2.21.

14 MR. WINTER: If I may approach, Your Honor.

15 THE COURT: No, I'll get it from my clerk, thank you.

16 MS. MORTON: Judge, at this point, I would say that  
17 we are gonna ask that you deny that request. And I believe  
18 that can be handled just by saying "you've testified before"  
19 and not specifying in what context. And, otherwise, I think --

20 THE COURT: Give me the number again.

21 MS. MORTON: Two point two-one. I think we'd like a  
22 little bit of time to look at this if we're gonna try to use  
23 it.

24 THE COURT: Is Miss --

25 MR. WINTER: And I apologize, Your Honor. I was not

1 as -- as heavily involved in this as Mr. Amadeo. I'm late into  
2 this, so I never had an opportunity to review those jury  
3 instructions. And I was following along as you read them, and  
4 I saw that --

5 THE COURT: I don't know how you could've not had  
6 time to re -- review the jury instructions. You've been here  
7 at least since last week, if not the week before. We just had  
8 a weekend. And the jury instructions were approved.

9 So, I -- I'm sorry, but I do not find that apology of  
10 statement accurate. There was plenty of time for you to review  
11 the jury instructions.

12 Having said that, I can't deny you the opportunity to  
13 raise the issue. And we will take a recess, and I will go back  
14 and review it, and I'll be back in 10 minutes.

15 (At 8:57 a.m., off the record)

16 (At 9:12 a.m., back on the record)

17 THE COURT: We are back on the record in *People*  
18 *versus Warner*, file 16-296-FC.

19 The record should reflect we couldn't find any  
20 published decisions that had guidance on this proposed jury  
21 instruction 2.21. So, I think prob -- what does the pros --  
22 does the prosecutor have any citations or position?

23 MS. MORTON: I could not find anything, either. I  
24 would just note, for the Court, that it's my understanding, per  
25 Mr. Winter, that they're agreeing to just refer to it as prior

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1 testimony rather than refer to which hearing the prior  
2 testimony was given at. And I think that would --

3 THE COURT: So, they don't want -- Mr. Winter.

4 MR. WINTER: Your Honor, I just -- I -- I agree. I  
5 -- I just was concerned that there -- there wasn't any -- I  
6 didn't know if there was an agreement that had been reached,  
7 and I wanted that addressed.

8 I'm -- I'm okay with that, as long as both of -- both  
9 sides do their best not to reference that there was a prior  
10 trial.

11 THE COURT: Well, my concern is, now that this has  
12 been asked, if I don't give it, this instruction, even though  
13 now Mr. Winters is saying he doesn't want it, that the Court of  
14 Appeals will disagree. I mean, I think we have to recall that  
15 this case is back because of one of the problems with the  
16 verdict form. So, I don't want to be in a position of trying  
17 this case a third time because Mr. Winter made the objection  
18 and now he's saying he doesn't care.

19 What is the harm of giving the -- the instruction?

20 MS. MORTON: I'm just, I guess -- we would want more  
21 time to consider that and do some more research. And 10  
22 minutes is just -- I've got other people looking at it in the  
23 office.

24 THE COURT: And -- and we did our best to look at it,  
25 too.

1 MS. MORTON: Right.

2 THE COURT: But --

3 MS. MORTON: I guess what I would say is that we  
4 proceed now with the agreement that we're going to just  
5 reference prior testimony. And should it become necessary, if  
6 there is a reference, we could give this at the end. And so,  
7 think --

8 THE COURT: Except for that if the -- the instruction  
9 contemplates that it's given prior to the trial beginning.

10 MS. MORTON: Right. But I -- again, I think we can  
11 alter that. And I do think that a stipulation not to give it  
12 and to not to refer to the first trial would satisfy that.

13 THE COURT: Okay. So, at this point, I'll accept the  
14 stipulation of both parties that, if it is necessary, the --  
15 the -- the statement may be made "prior testimony," but not  
16 indicating when or how there was prior testimony. And if we  
17 need to, then we'll address it at the end, should that not  
18 happen.

19 Is that correct, Ms. Morton?

20 MS. MORTON: Yes.

21 THE COURT: Mr. Winter?

22 MR. WINTER: That's accurate, Your Honor. Thank you,  
23 Your Honor.

24 THE COURT: Let's bring the jury back in.

25 You ready to do your opening?

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1 MS. VAN LANGEVELDE: Yes, Your Honor.

2 Kathy, can I grab -- just, can I have some stickers  
3 just 'cause I know I'm gonna need 'em? Thank you.

4 (At 9:16 a.m., jury enters courtroom)

5 THE COURT: All right, please be seated.

6 And, Ms. Van Langevelde, if you would like to give  
7 your opening statement.

8 MS. VAN LANGEVELDE: I will. Thank you, Your Honor  
9 Good morning, members of the jury.

10 JURORS: Good morning.

11 MS. VAN LANGEVELDE: We are here because the  
12 defendant sexually assaulted his stepdaughter, Pearl, two times  
13 when she was 13-years-old. The first time, he tried to put his  
14 penis in her vagina, and so his penis touched her vagina. And  
15 the second time, he put his finger into her vagina.

16 Now, as you heard, this happened when -- with --  
17 you're gonna hear today from Pearl. And Pearl's now 21-years-  
18 old. She was 13 when this happened to her.

19 And you're gonna hear that the defendant had been in  
20 Pearl's life for some time. And I think she'll testify about  
21 seven-years-old was when the defendant and Pearl's mom started  
22 dating. And then shortly thereafter, they moved in together.  
23 And then, eventually, Pearl's mom became pregnant with her  
24 younger sister, Sable. And you'll hear that Sable was born on  
25 May 7th of 2010. And that the family moved into a house on

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1 Butterfield Highway, in Olivet, in Eaton County, Michigan.

2 And you'll hear that when -- so, in this house, Sable  
3 and Pearl shared a room. And then, their grandma also lived  
4 there, and then Mom, obviously, and the defendant.

5 And you'll hear that the first time the defendant  
6 sexually assaulted Pearl, she remembers that her sister, Sable  
7 was a baby. She remembers that she was crawling.

8 And as you'll hear, you're also gonna meet Pearl's  
9 biological father, James. And Pearl would have every other  
10 weekend visits with -- with her father, James, and then her  
11 stepmother, Sharon. You'll meet them, as well.

12 And what you're gonna hear is that first incident it  
13 was a half a day. Pearl was -- it was a Friday. She remembers  
14 it was a Friday. It was like a lazy day. She remembers she  
15 was wearing sweatpants. And she remembers she was packin' her  
16 bag, her overnight bag, her overnight bag, to go to her dad's  
17 house for the weekend. And what she'll tell you is that she  
18 was in her room. The defendant came in, pushed her back on the  
19 bed, pulled down her pants, pulled down his pants, and tried to  
20 put his penis into her vagina. And she was shocked. She made  
21 a noise. She remembers hearing Sable crawling down the hallway  
22 because her bedroom was, you know, just off the hallway. And  
23 then, he got off of her and went about his business. And Pearl  
24 was just shocked. Can't believe that just happened. So, she  
25 didn't -- and she was scared. She's 13-years-old.

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1           And so, when her stepmom, you'll hear, came to pick  
2 her up, she didn't say anything to her. She -- she -- she'll  
3 tell you she could've, but she didn't. And she was just so  
4 shocked by it.

5           You'll also hear about the second time. And Pearl  
6 will tell you she remembers her mom was pregnant with her  
7 little brother, Noah, who is about a year difference. Noah's  
8 birthday's in September of 2011.

9           She remembers her mom was pregnant with Noah. Baby  
10 Sable was sleeping. Mom was sleeping. And she'll tell you  
11 that the defendant was up. He was in the living room. He was  
12 watching wrestling. That was something that they used to like  
13 to watch together was actually wrestling, WWE. And she  
14 remembers getting up, going to the living room, saying  
15 goodnight to the defendant, going in to get a glass of water,  
16 and then coming back around to the dining room table. And she  
17 doesn't remember why. She'll tell you she's not sure why.  
18 But, she stopped by the table. And she's just standing there,  
19 looking out the window. And the defendant came up, and he put  
20 his hands down her pants. And he put his finger in her vagina.  
21 And she, again, was -- was really shocked.

22           And, again, she could've said something to somebody.  
23 But, again, she's 13-years-old, she's scared. She didn't  
24 really understand what happened. And she'll tell you she had  
25 plenty of opportunities to tell somebody, but she didn't



1 because she -- she didn't know what -- what had happened. She  
2 was scared about it. She just kind of wanted to ignore it and  
3 pretend like it never happened.

4 And throughout this trial -- you're gonna hear from a  
5 man by the name of Tom Cottrell. And he will testify that he's  
6 a -- a counselor. And he works with a lot of kids, a lot of  
7 kids who have been sexually assaulted. And he'll tell you it's  
8 not unusual -- it's actually more common -- that kids wait  
9 years before they disclose about what things that had happened  
10 to them. And that's more than -- that's more common than a few  
11 kids like actually disclosing right away.

12 Now, as you heard in jury selection, we don't -- we  
13 don't have DNA. Pearl didn't disclose until she was 17-years-  
14 old that this had happened to her. And as I indicated, now  
15 she's 21. And despite the delays, Pearl will tell you this  
16 happened to me. The defendant did this to me. She'll tell you  
17 that.

18 Now, the evidence will also show that the defendant  
19 came in for an interview with Detective Maltby, actually, a few  
20 interviews. And in the first interview, you'll hear that the  
21 defendant denied that anything inappropriate ever happened  
22 between him and the victim, Pearl. He -- he was even asked,  
23 actually, you know, because they were really into wrestling,  
24 they liked to wrestle, that was something that they kind of did  
25 together, and Detective Maltby asked, "Did you ever, you know,

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1 like touch inappropriately maybe by accident when you're  
2 wrestling?" The defendant says, "No." Says, "I always stayed  
3 away from touching down there." Malt -- the defendant told  
4 Maltby that. Then, he asked him, "Has Pearl ever come on to  
5 you, in any way?" Now, mind you, she's 17 (sic) now, but she  
6 was 13 at the time. Nope.

7 But, the defendant -- but the evidence will also show  
8 that Maltby wanted to get another interview. And so, the  
9 defendant actually agreed to interview with a Detective  
10 Sergeant Jordan from Michigan State Police. And you'll hear  
11 from Detective Sergeant Jordan today. And this is what he does  
12 here, interviews people, he talks to people. And you'll hear  
13 that the defendant's story kind of changed. Didn't -- it did  
14 change. You'll hear that the defendant told Detective Sergeant  
15 Jordan, "She told me to rub it, her vagina." You'll hear the  
16 defendant told Detective Sergeant Jordan the 13-year-old forced  
17 my hand down her pants. The 13-year-old told me she was horny.  
18 And the 13-year-old said, "My pussy's on fire." The defendant  
19 completely does a -- a different story and blames Pearl, that  
20 this is the 13-year-old's fault. And it was the 13-year-old  
21 made me do it. She came on to me.

22 And you'll hear that there was another interview  
23 where Detective Maltby came -- brought the defendant back in  
24 and said, "Can you explain this a little bit to me? Let's --  
25 let's go through this again." And he sticks with this it was

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1 the 13-year-old, she overpowered me. It was the 13-year-old  
2 who did this. It wasn't me. It wasn't anything I did.

3 You know, as we -- and I want you to think about, as  
4 -- as we're going through this, what makes sense. Think about  
5 the evidence and what makes sense.

6 And as you know, the defendant is charged with two  
7 counts. The first count being Criminal Sexual Conduct in the  
8 First Degree; that being that the defendant put his fingers  
9 inside the victim's vagina. And Count Two is that sexual  
10 touching of a person. So, there doesn't have to be  
11 penetration. It just has to be a touching. So, and -- and  
12 part of that, as Judge already read to you, that they were  
13 members of the same household. I don't think there's any  
14 dispute that the defendant was the victim's stepfather at the  
15 time, that they were living in the same household. The issue,  
16 obviously, is going to be was there that sexual touching, was  
17 there that -- that penetration.

18 And I believe that, after you've heard the testimony  
19 in this case -- because I want you to remember testimony is  
20 evidence. And I believe -- after you've heard the evidence and  
21 the testimony in this case, I'm gonna ask that you find the  
22 defendant guilty of Criminal Sexual Conduct in the First Degree  
23 and Criminal Sexual Conduct in the Second Degree. Thank you.

24 THE COURT: Thank you very much, Ms. Van Langevelde.

25 Mr. Winter.

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MR. WINTER: Thank you, Your Honor.

Good morning, everyone.

JURORS: Morning.

MR. WINTER: My name is Pete Winter. I'm one of Mr. Warner's attorneys. And Bill Amadeo and I will be representing him. So, obviously, we have a slightly different view of what the evidence will show you.

I want to thank you, first, for agreeing to be jurors. You didn't have much of a choice, but it takes time out of your weeks and your days. I -- I know that most of you are employed, and it's a difficulty for you, but we all appreciate your service. And we hope that, after you've heard all the evidence, you'll come to a fair and equitable verdict.

The prosecution just made their opening statement, has told you their version of the evidence that they expect to show and how they believe it will -- you will -- lead you to determine -- to come to a guilty verdict. Obviously, we don't agree with the prosecution's story.

We expect that Miss Giffen will testify -- Miss Giffen is Pearl. She's the complaining -- complaining witness. And she'll tell -- she will testify that -- and -- and the prosecution just told you -- that the relationship between her mother and Mr. Warner started when she was about seven-years-old. This was not reported until she was 17. There's a period of 10 years from the time she was first in that house until she

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1 reported the incident. And the allegation is going to be that  
2 she was 11 or 12-years-old when these two incidents occurred.

3 We want you to take into account the fact that the  
4 evidence is gonna show and she will testify that, for that 10  
5 year period, she was -- basically, they were a happy family  
6 unit. She was -- she called Mr. Warner her dad. They did  
7 things together. They hung out together. They played  
8 together.

9 And these were two isolated incidents. Now, I do not  
10 want to downplay the fact that, if this happened, that it's a  
11 serious thing. The question is: Did it happen? And so, I'm  
12 gonna ask you to seriously and -- and focus on all of the  
13 testimony, and also focus on what's not in the evidence.

14 Miss Giffens' gonna testify that -- that she was  
15 scared. And the first person that she told was her  
16 grandmother.

17 Now, one of the problems that -- that we have in all  
18 kinds of these cases is the differences in the testimony. Now,  
19 the prosecution said and described evidence that they intend to  
20 bring forward in which Mr. Warner changes his story. I want  
21 you -- when Miss Giffen testifies and when the officers  
22 testify, I want you to listen to inconsistencies and  
23 contradictions in her story. I believe the evidence will show  
24 that, at one time, she testified that she told her grandmother  
25 about this -- these incidents two years before she told anybody

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1 else. And then, they asked -- the evidence will -- will -- she  
2 will testify that, no, she -- she told her grandmother two to  
3 four months before she told anyone else.

4 She's also gonna testify that she told her -- her  
5 mother on December 23rd, 2015. And at that point, she's gonna  
6 testify that she and her mother were havin' an argument. That  
7 her mother had found things on the Internet that were  
8 disturbing to her, and she was gonna take away her iPad and her  
9 phone, which was broken, and she was going to, essentially,  
10 give her a time-out from doing the Internet. And she was upset  
11 about that, and they were arguing about that. And it was at  
12 that time that these incidents all of a sudden came up and came  
13 out.

14 Now, she told her mother. She will testify that her  
15 mother didn't believe her. She will testify that -- well, the  
16 testimony will show that subsequent to that time, on that same  
17 day, her father came. Remember that Mr. -- Mr. Warner is her  
18 stepfather. She had a relationship with her father because, as  
19 the prosecution has indicated, we have a situation where there  
20 -- there was a divorce, and her parents were separated, but her  
21 father had visitation every other week. And we believe Miss  
22 Giffen is gonna testify that she exercised that -- that  
23 visitation. So, she had a good relationship with her father.  
24 And her father had remarried. And she had a stepmother. And  
25 she a re -- good relationship with her stepmother.

1140a

1           So, on December 23rd, she's upset. And she's gonna  
2 testify she didn't want to be in the house anymore. She didn't  
3 want to be anywhere. So, her parents came.

4           And she has a brother, an older brother from the  
5 first marriage. His name is Robert Giffen. He -- we expect  
6 that he will be testifying, as well.

7           But, all of those people came on December 23rd.

8           Nobody was notified of this incident. Nobody went to  
9 the authorities, at all, nobody. Not Grandma, not Mom, not --  
10 not Dad, not Stepmother, not Miss Giffen, until after --  
11 December 23rd is Christmas break. Nobody -- the testimony is  
12 gonna show that nobody reported any of this. They weren't  
13 concerned about it. We don't know why. Well, there's gonna be  
14 testimony, well, it was the Christmas holidays. I mean, do you  
15 buy that? I don't know.

16           So, the testimony's gonna show that the first time it  
17 was reported was when Pearl went to her school counselor and  
18 reported it. And that's what kicked all of these -- all of  
19 these charges and incidents off. Nobody reported it.

20           I'm gonna ask you that you consider all of these --  
21 these factors. There are two random incidents that come out of  
22 nowhere. There's a relationship of 10 years. This happens,  
23 according to her story, when she's 13. She's gonna testify  
24 never happened again, never happened before, just these two  
25 times.

1141a

1 The judge has said you are the people who are going  
2 to have to determine what happened. Did it happen? Didn't it  
3 happen? You're gonna have to listen to the evidence and say:  
4 Did it ever happen? Is this believable? Did it occur?

5 Now, the evidence -- you're gonna see videos of the  
6 interviews that the prosecution described. And when you see  
7 these videos, I would appreciate it if you pay close attention  
8 to how the questioning is done, to see -- put yourself in the  
9 defendant's position in those interviews.

10 Now, I want you to remember that the evidence will  
11 show that there were three, count them, three interviews.  
12 Okay. And the prosecution just told you that, in the second  
13 interview, there was some acknowledgment by Mr. Warner that  
14 perhaps something occurred. Now, I want you to very carefully  
15 listen to the officer's behavior and questions and how he acts.  
16 And how would you react if you were in -- in Mr. Warner's seat  
17 during those interviews?

18 Now, in the second interview, the prosecution just  
19 told you he -- he -- he kind of admitted perhaps something  
20 happened.

21 Now, why wasn't he charged at that point, if that was  
22 an admission? Why wasn't -- why was he, several weeks later,  
23 sometime later brought in for a third interview?

24 You have to ask yourselves these questions when you  
25 are considering the evidence. The evidence is going to show



1142a

1 all of those things.

2 Miss Giffen has been interviewed about this and has  
3 testified on several different occasions. She's going to be  
4 sitting in the witness chair today and testifying again.

5 I would appreciate it if you would focus very  
6 carefully on her testimony, and also on the questions that are  
7 going to be asked and how they are answered, because I believe  
8 that the evidence is gonna show that there are a number of  
9 different stories that she has told along the way. And you're  
10 gonna have to decide whether those inconsistencies in her -- in  
11 her story are -- why are they there.

12 Now, I'm sure -- I mean, my mom always told me to  
13 tell the truth. Why do you tell the truth? Well, one good  
14 reason is, if you tell the truth, you don't have to -- you  
15 don't have to try and remember what happened, 'cause what  
16 happened, happened. If you're tellin' a lie, if you're not  
17 tellin' it truthfully and you tell it several different times,  
18 you're gonna have a problem 'cause you're not gonna remember  
19 what you said the last time.

20 And there have been a lot of statements and questions  
21 and interviews and testimony given. And there have been a lot  
22 of in -- inconsistencies in her testimony. And I hope that,  
23 when you hear that evidence, that you will take that into  
24 consideration when you are coming to your verdict.

25 You're gonna be presented with a statement that is

1143a

1 going to be attributed to -- to Mr. Warner as part of these --  
2 one of the interviews. I want you to take notice that he did  
3 not write that statement. The officer wrote that statement,  
4 and he signed it or initialed it. It's not his words. It's  
5 not his hand. It's -- you could -- you're gonna have to  
6 consider is that really his statement, did he really read it.  
7 You're going to have to consider the environment in which that  
8 was presented to him, the interview, the type of discussions  
9 that were going on, the exchanges between the officer and --  
10 and him as being interviewed.

11 He came in voluntarily three times. You're gonna  
12 have to consider that as part of -- of your evidence.

13 You -- as -- as the judge has told you, as the  
14 prosecution has told you, you're the people that are gonna  
15 determine what happened. You are the ultimate deciders of the  
16 facts.

17 What we have are two, basically, distinct stories.  
18 It's a very difficult decision for you to make. It's a very  
19 important obligation for you. And we hope that you will  
20 consider all the evidence very carefully. And we believe that,  
21 if you do so, that, at the end, you will have -- you will find  
22 it hard to find that Mr. Warner committed the crimes that he's  
23 alleged to have committed beyond a reasonable doubt, and that  
24 you will find him not guilty on that basis.

25 I also want to ask you that -- during the trial, that

1144a

1 -- that Mr. -- Mr. Amadeo and I may -- I'm old, and I forget  
2 things. My mind slips. Bill is passionate, and he may say  
3 some things or do some things that may upset you. Please  
4 remember that we represent Mr. Warner. If we screw up, if we  
5 do something that's incorrect, please don't hold that against  
6 our client. That's us. That's not him.

7 Okay. Again, we believe that, when you hear all of  
8 the evidence and you consider it thoroughly, that you will be  
9 able to come to a verdict of not guilty on both these charges

10 Thank you for your time.

11 THE COURT: Thank you, Mr. Winter.

12 All right, your first witness, Ms. Van Langevelde.

13 MS. VAN LANGEVELDE: Thank you. I'm gonna go get  
14 Pearl Giffen, Your Honor.

15 MR. WINTER: I hope we leveled the playing field.

16 MR. AMADEO: Me, too.

17 MR. WINTER: The one thing I didn't do was I didn't  
18 -- I wanted to bring in -- and maybe you should -- she -- she  
19 spoke about the fact that -- that there were kids born.

20 MR. AMADEO: Yeah.

21 MR. WINTER: She never acknowledged that they got  
22 married.

23 MR. AMADEO: Right.

24 MR. WINTER: I think that's important --

25 MS. MORTON: I'm sorry.

1145a

1 MR. WINTER: -- so there's no --

2 MS. MORTON: I can hear that quite clearly. If  
3 they're going to have a discussion, I would prefer if the jury  
4 can't hear it.

5 THE COURT: Yeah, you need to go --

6 MR. WINTER: I'll put my hand over the mic. I'm  
7 sorry.

8 THE COURT: Well, it's, also, we just don't want to  
9 be able to hear words.

10 MR. WINTER: Okay.

11 THE COURT: Come right up here, please, ma'am.  
12 There's a step before you get to the witness box. Please raise  
13 your right hand.

14 Do you swear to tell the truth, the whole truth, and  
15 nothing but the truth, under penalty of perjury?

16 MS. PEARL GIFFEN: I do.

17 THE COURT: Please have a seat. Please state your  
18 name for the record.

19 THE WITNESS: Pearl Giffen.

20 THE COURT: Spell your last name.

21 THE WITNESS: G-i-f-f-e-n.

22 THE COURT: Thank you very much.

23 Ms. Van Langevelde.

24 MS. VAN LANGEVELDE: Thank you.

25

1146a

PEARL GIFFEN

1  
2 at 9:40 a.m., called by Ms. Van Langevelde and sworn by the  
3 Court, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. VAN LANGEVELDE:

6 Q Good morning, Pearl.

7 A Good morning.

8 Q Pearl, can you tell us how old you are?

9 A Twenty-one.

10 Q And when is your birthday?

11 A 6/10/98.

12 Q And make sure you speak up, so Ms. Bond can type what you say,  
13 okay? And everybody needs to hear, okay?

14 A Um-hum.

15 Q Now, even though you're 21, did you struggle with school a  
16 little bit?

17 A Yes.

18 Q Okay. Are you -- do you have a diagnosis of anything?

19 A Yes.

20 Q What do you have?

21 A I'm ADHD.

22 Q Okay. And so, you know, when you come to court, it's important  
23 to tell the truth, obviously.

24 A Yes.

25 Q And you promise to tell the truth today; right?

1147a

1 A Yes.

2 Q Okay. Another rule that we have in court is that we don't  
3 guess at answers. So, if you don't remember or you don't know  
4 it's okay to say I don't remember or I don't know, okay?

5 A Yes.

6 Q Can you do that for me?

7 A Yes.

8 Q All right. And then, if I get something wrong or even Mr.  
9 Amadeo or the judge, if we ask you a question and we get  
10 something wrong in our question, it's okay to correct to us.  
11 Can you do that?

12 A Yes.

13 Q All right, thank you. Pearl, do you know Damon Warner?

14 A Yes.

15 Q Do you see him in the courtroom today?

16 A Yes.

17 Q Can you just point him out and describe briefly what he's  
18 wearing?

19 A He's in a blue suit.

20 Q Okay, blue shirt?

21 A Yes.

22 Q Just gonna wait a minute, okay?

23 MS. VAN LANGEVELDE: Your Honor, let the record  
24 reflect the witness has identified the defendant.

25 THE COURT: The record will so reflect.

1 MS. VAN LANGEVELDE: Thank you.

2 BY MS. VAN LANGEVELDE:

3 Q How do you know Damon?

4 A He was a step -- he was my stepfather.

5 Q Okay. And he was married to your mom?

6 A Yes.

7 Q What's your mom's name?

8 A Bridget Warner.

9 Q Okay. And do you have a -- a biological father?

10 A Yes.

11 Q What's his name?

12 A James Giffen.

13 Q And is your mom remarried?

14 A No.

15 Q Or, I'm sorry. Okay. How about your dad, did your dad  
16 remarry?

17 A Yes.

18 Q All right, thank you. And what's her name?

19 A Sharon Giffen.

20 Q Okay. Do you remember how old you were, about, when the  
21 defendant and your mom started dating?

22 A About nine.

23 Q About nine? Okay. And do you know what street you and your --  
24 your mom and the defendant lived on first when you guys -- when  
25 your mom and Damon were dating?

1149a

- 1 A Yes.
- 2 Q What -- what street?
- 3 A Baseline.
- 4 Q Okay. And, at some point, did you move?
- 5 A Yes.
- 6 Q And what road was that?
- 7 A Butterfield Highway.
- 8 Q Butterfield Highway. Do you remember the address of that
- 9 house?
- 10 A 5480 West Butterfield Highway.
- 11 Q Okay. And what town?
- 12 A Olivet.
- 13 Q In what county?
- 14 A Eaton.
- 15 Q Eaton County? Okay. Did -- did your mom and your -- and the
- 16 defendant have any children together?
- 17 A Yes.
- 18 Q Okay. What are their names?
- 19 A Sable and Noah.
- 20 Q And do you remember when Sable's birthday is?
- 21 A Yes.
- 22 Q Okay, when is it?
- 23 A Mar -- or, May 6th of 2010.
- 24 Q Okay. And Noah's birthday is in --
- 25 A Or, sorry, the 7th of May and the 6th of September, a year



1150a

1 after.

2 Q So, that's -- that's Noah's birthday?

3 A Yes.

4 Q Okay. Noah's birthday's in September --

5 A Yes.

6 Q -- is that right?

7 A Yes.

8 Q Sable's birthday's in May.

9 A Yes.

10 Q Okay. Two thou -- and you said Sable's birthday is May 2010.

11 A Yes.

12 Q Okay. Do you know -- was -- was anybody else living with you,  
13 at some point, when Sable was a baby --

14 A Yes.

15 Q -- when you lived in Butterfield?

16 A Yes.

17 Q And who was that?

18 A My grandma.

19 Q Did you still see your dad?

20 A Yes.

21 Q Even though your mom and dad were divorced?

22 A Yes.

23 Q Did you have regular parenting time with him?

24 A Yes.

25 Q What would that be?

1151a

1 A Every other weekend.

2 Q Okay. And let's -- you know what, let's pull the white board  
3 out, if we could, 'cause I want to talk about the layout of the  
4 Butterfield house.

5 MS. VAN LANGEVELDE: Your Honor, can I move the white  
6 board?

7 THE COURT: You may.

8 MS. VAN LANGEVELDE: Thank you.

9 BY MS. VAN LANGEVELDE:

10 Q Okay, Pearl --

11 THE COURT: You can't block the defense table.

12 MS. VAN LANGEVELDE: No, I know. I'm just trying to  
13 think of a good place to put this, Judge.

14 THE COURT: Maybe in front of the podium.

15 MS. VAN LANGEVELDE: Okay.

16 THE COURT: On an angle.

17 MS. VAN LANGEVELDE: Yup.

18 THE COURT: So everybody can see.

19 MR. AMADEO: Yeah, that's better.

20 THE COURT: Well, you want the jury to be able to see  
21 it.

22 MS. VAN LANGEVELDE: Right, right, right.

23 THE COURT: So, you go that way, towards the podium,  
24 Mr. Amadeo.

25 MS. VAN LANGEVELDE: Then, go backwards a little bit.

1152a

1 THE COURT: Yeah, and then go back a little bit.

2 MS. VAN LANGEVELDE: Hopefully, this will be --

3 THE COURT: And the people can -- yeah.

4 Okay, now I don't know about every juror. You're  
5 starting to get a little far for me.

6 MS. VAN LANGEVELDE: I was trying to -- how about  
7 that? Is that good?

8 MR. AMADEO: Can you guys see this okay?

9 MS. VAN LANGEVELDE: Can everyone see that?

10 JURORS: (No verbal response).

11 THE COURT: Okay, there you go.

12 BY MS. VAN LANGEVELDE:

13 Q Pearl, could you --

14 MS. VAN LANGEVELDE: Would it be all right, Your  
15 Honor, if Pearl approaches and draws for us?

16 THE COURT: Okay.

17 MS. VAN LANGEVELDE: Thank you.

18 THE COURT: You may step down.

19 MS. MORTON: Make sure she can hear her in the  
20 microphone.

21 MS. VAN LANGEVELDE: Okay. All right, Pearl, you got  
22 to speak up because we're kind of far away from the microphone,  
23 okay?

24 THE WITNESS: Yup.

25

1153a

1 BY MS. VAN LANGEVELDE:

2 Q All right, so what kind of house is the house on Butterfield?

3 Is it one story, two story?

4 A It's a one story.

5 Q Okay, you got to make sure they hear ya.

6 THE COURT: Can you hear her, Ms. Bond?

7 BY MS. VAN LANGEVELDE:

8 Q Make it big.

9 A It is big.

10 Q Okay. All right, so, it's a one -- one story with a basement,

11 is that right?

12 A Yeah.

13 Q Okay. So, can you show us, where's the front door?

14 A Right here (indicating).

15 Q Okay. Where is the kitchen?

16 A (Indicating).

17 Q Can you put a K where the kitchen is? Okay. Where's the

18 living room?

19 A (Indicating).

20 Q And is there a dining room?

21 A (No verbal response).

22 Q Okay. Where's your bedroom, when you and -- and when Sable was

23 a baby?

24 A (No verbal response).

25 Q You put -- you put SP, and that rep -- represents Sable and

1154a

- 1 Pearl's room?
- 2 A Yes.
- 3 Q Okay. Where was your mom and Damon's room?
- 4 A (Indicating).
- 5 Q Okay. And is there another bedroom?
- 6 A (No verbal response).
- 7 Q Whose bedroom is that, Grandma's?
- 8 A Yes.
- 9 Q Okay. And then, where -- is there any other bedrooms or rooms?
- 10 A (No verbal response).
- 11 Q What's that?
- 12 A That's a bathroom (indicating), and that's a bathroom  
13 (indicating). This is a like a washroom (indicating).
- 14 Q Like a laundry wash room?
- 15 A And this is the hallway (indicating).
- 16 Q Okay.
- 17 A And then, I have another dining room. And then, this  
18 (indicating) was like a trash room.
- 19 Q Okay.
- 20 A And then, this (indicating) was like -- yeah, this was like  
21 another big dining room.
- 22 Q Okay. So, we'll fix that, so we know what that is. So, this  
23 (indicating) is like a dining area? So, there's like two  
24 dining areas.
- 25 A Yes.

1155a

1 Q Okay, hallway is here (indicating)? I'm gonna put hallway.

2 Okay. All right. Thank you. You can go have your seat.

3 So, let's talk about why we're here today, okay?

4 A (No verbal response).

5 Q Do you remember the first time the defendant sexually assaulted  
6 you?

7 A Yes.

8 Q Okay. Where were you in the house?

9 A In my bedroom.

10 Q Okay. And that's marked SP for Sable and Pearl's room?

11 A Yes.

12 Q Okay. Let's talk about that day. Do you remember what day it  
13 was?

14 A It was a Monday. Or, it was a Friday.

15 Q Okay. And why do you remember it was a Friday?

16 A Because it was a half a day.

17 Q Okay. Were -- had you been at school that day?

18 A Yes.

19 Q So, you remember it was a half a day at school?

20 A Yes.

21 Q Okay. What were you wearing?

22 A Sweatpants and a T-shirt.

23 Q Okay. What were you doing in your room prior to this  
24 happening?

25 A I was packing to go to my dad's house.

1156a

1 Q Okay. And where were you in the room? What were you doing?

2 A I was sitting on my bed.

3 Q Okay, where was your bag?

4 A In front of me.

5 Q And do you know where -- where your sister was?

6 A She was in the living room.

7 Q Okay. And where was the defendant prior to comin' into your  
8 room?

9 A In the living room with her.

10 Q Okay. Was it unusual for the defendant to be watching you and  
11 Sable?

12 A No.

13 Q Okay. So, you're getting ready, packing up to go to your  
14 Dad's?

15 A Yes.

16 Q What happens next?

17 A He came into my bedroom.

18 Q Did he say anything to you?

19 A No.

20 Q Okay. What happens next?

21 A He came in and pulled down my pants and tried sticking his  
22 penis into my vagina.

23 Q Okay, let's talk about that. When he came into your room, was  
24 he clothed?

25 A Yes.

1157a

1 Q What was he wearing; do you recall?

2 A Jeans and a shirt.

3 Q Okay. And you said he came over to you and pulled down your  
4 pants; is that correct?

5 A Yes.

6 Q Okay, can you explain that to us?

7 A I was sitting on my bed, packing to go to my dad's house, and  
8 he came in, didn't say nothing, pulled down my sweatpants, and  
9 tried to stick his penis into my vagina.

10 Q Did he push you back, at all, or anything like that?

11 A No.

12 Q You were sitting?

13 A Yes.

14 Q Where were your legs?

15 A In front of me.

16 Q Like, were they laying on the bed or over the bed or something  
17 else?

18 A No.

19 Q Do you remember?

20 A No.

21 MS. VAN LANGEVELDE: Can we approach, Your Honor?

22 I'm sorry, can we approach?

23 THE COURT: Sure.

24 (At 9:51 a.m., bench conference)

25 (At 9:51 a.m., bench conference concluded)



1158a

1 BY MS. VAN LANGEVELDE:

2 Q So, we -- okay. So, you're sitting on your bed. Do you  
3 remember how you were positioned on the bed?

4 A No.

5 Q Okay. You said he pulled your sweatpants down. Do you  
6 remember if you had underwear on?

7 A Yes.

8 Q Okay. Did he take the underwear off, too?

9 A Yes.

10 Q Were they separate, together, or something else?

11 A Together.

12 Q Now, you said he tried to put his penis in your vagina. He was  
13 wearing jeans?

14 A Yes.

15 Q How -- tell me how that -- how his -- tell me what happened  
16 with his jeans.

17 A I don't remember.

18 Q Okay. Was it quick?

19 A Yes.

20 Q Okay. What, if anything, did he say to you?

21 A No.

22 Q When he tried to put his penis in your vagina.

23 A He didn't say anything.

24 Q Okay. Did -- how did that feel?

25 A Uncomfortable.

1159a

1 Q Okay. Did that cause you to do anything?

2 A No.

3 Q What do you remember hearing or saying or anything; do you  
4 remember?

5 A I might remember hearing my sister.

6 Q Okay, what do you remember hearing of your sister?

7 A Her coming down the hallway.

8 Q Okay. Do you know if she was walking, crawling or something  
9 else?

10 A Crawling.

11 Q Okay. Do you know what triggered him to stop?

12 A No.

13 Q And what happened next?

14 A We went on our day.

15 Q Did you say anything to him about it af -- after this was  
16 over --

17 A No

18 Q -- that day?

19 A No.

20 Q Did you say anything to your dad or your stepmom when you went  
21 over to their house that day?

22 A No.

23 Q I should ask, did you go over to your mom (sic) and stepdad's  
24 (sic) that day?

25 A Yes.

1160a

1 Q Is there a reason you didn't tell them what had happened?

2 A I didn't feel like it was time to tell anyone.

3 Q Okay, tell me more about that.

4 A What do you mean?

5 Q Like, why did you feel that way?

6 A 'Cause Damon is a -- was a stepfather to me, and he was the  
7 only person that I had in my life as a father figure.

8 Q So -- but you had your dad.

9 A Every other weekend.

10 Q Okay. Do you -- did you like Damon?

11 A Yes.

12 Q Were you friends with Damon?

13 A Yes.

14 Q Did you love him?

15 A Yes.

16 Q What kind of things would you do with Damon?

17 A We would talk. We would -- when I was younger, we would  
18 wrestle. We would watch TV together. We'd do anything  
19 together.

20 Q Was there another time when the defendant sexually assaulted  
21 you?

22 A Yes.

23 Q Can you tell me what time of day this happened?

24 A At night.

25 Q Okay. And what -- where -- where was your mom?

1161a

1 A Sleeping.

2 Q Okay. Where was baby Sable?

3 A Sleeping.

4 Q Was your -- was Damon awake?

5 A Yes.

6 Q Okay, where was he at?

7 A In the living room.

8 Q What was he doing?

9 A Watching TV.

10 Q Do you remember what he was watching?

11 A WWE.

12 Q Is that wrestling?

13 A Yes.

14 Q Okay. And then, what were you doing?

15 A About to go to bed.

16 Q Okay. So, what did you do?

17 A I came out to the kitchen to get a drink and to say goodnight.

18 Q Okay. So, you -- so, where -- let me --

19 MS. VAN LANGEVELDE: Can I approach the white board,

20 Your Honor?

21 THE COURT: Yes.

22 BY MS. VAN LANGEVELDE:

23 Q So, is Damon in the living room watching TV?

24 A Yes.

25 Q So, you're going to the kitchen to get a drink?

- 1 A Yes.
- 2 Q So, you're goin' over here (indicating)?
- 3 A No, I went through the living room and into the dining room.
- 4 Q Okay, so you did like a loop this way (indicating)?
- 5 A Yes.
- 6 Q So, you passed by Damon, who's in the living room?
- 7 A Yes.
- 8 Q As you were goin' to be, is that -- or something else?
- 9 A I had went to say goodnight, and then I went to get a drink.
- 10 Q Okay. So, you did like a circle.
- 11 A Yes.
- 12 Q Okay. So, you're in the kitchen. Did you get a drink of
- 13 water?
- 14 A I stopped in the -- the dining room, at the table, for some
- 15 reason.
- 16 Q Okay. So, there's a -- is there like a table where this D is?
- 17 A No, it's in the bigger dining room.
- 18 Q Oh, over here (indicating)?
- 19 A Yes.
- 20 Q So, you stopped over here (indicating)?
- 21 A Yes.
- 22 Q Is there a window in this room?
- 23 A Yes.
- 24 Q Where's the window?
- 25 A Right behind the table. Right side.

1163a

- 1 Q This side or this side (indicating)?
- 2 A Right side.
- 3 Q Right side?
- 4 A Yes.
- 5 Q Right side of the window?
- 6 A Yes.
- 7 Q Okay. And then, there's a table right there (indicating)?
- 8 A Yes.
- 9 Q Okay. And is that the table that you stopped at?
- 10 A Yes.
- 11 Q Okay. So, tell me, when you -- do you know why you stopped at
- 12 the table?
- 13 A No idea.
- 14 Q So, you're standing by the table?
- 15 A Yes.
- 16 Q What are you lookin' at?
- 17 A Like I said, I don't remember why I stopped at the table.
- 18 Q Okay. What happened as you're standing in front of the table?
- 19 A Damon comes up behind me and sticks his hand in my pants from
- 20 behind and goes up into my vagina.
- 21 Q So, he goes down your backside?
- 22 A Yes.
- 23 Q Down your butt?
- 24 A Yes.
- 25 Q And then, he puts his fingers inside of your vagina?

1164a

- 1 A Yes.
- 2 Q Did it -- how did that feel?
- 3 A Uncomfortable.
- 4 Q Okay. Did it hurt?
- 5 A Yes.
- 6 Q Did he say anything to you when he came up behind you?
- 7 A No.
- 8 Q Did you say anything to him when he came up behind you?
- 9 A No.
- 10 Q Do you remember what you were wearing?
- 11 A Sweatpants and a T-shirt.
- 12 Q Did he say anything to you after he's put his hand down --
- 13 A No.
- 14 Q -- your pants and into your vagina?
- 15 A No.
- 16 Q How do you know that it went inside of your vagina?
- 17 A Because I felt the penetration.
- 18 Q How do you know it was his finger?
- 19 A Because it was his hand.
- 20 Q Okay. Was it pretty quick?
- 21 A Yes.
- 22 Q Okay. So, did -- you didn't say anything to him. He just --
- 23 how -- how did it stop; do you know?
- 24 A No.
- 25 Q He just pulled his hand out?

1165a

1 A Yes.

2 Q Where did he go?

3 A Back to the living room.

4 Q Okay. And where did you go?

5 A To get a drink of water and to bed.

6 Q So, you -- you did get a glass of water and went to bed?

7 A Yes.

8 Q Did you tell your mom that night?

9 A No.

10 Q Is there a reason you didn't tell your mom that night?

11 A Because she was sleeping.

12 Q Was that the only reason?

13 A No.

14 Q Okay. Can you tell me more about why you didn't tell your mom  
15 that night?

16 A I wasn't gonna wake her up.

17 Q Okay. How about the next day?

18 A No.

19 Q Is there a reason you didn't tell your mom the next day?

20 A No.

21 Q There isn't a reason?

22 A (No verbal response).

23 Q Was it -- can you tell me --

24 MR. AMADEO: Asked and answered. Objection.

25 MS. VAN LANGEVELDE: I can move on.



1 BY MS. VAN LANGEVELDE:

2 Q Pearl, did it take you some time before you ever told anybody  
3 about what the defendant had done?

4 A Yes.

5 Q Did you continue to live with your mom and the defendant?

6 A Yes.

7 Q Did you like living with your mom and the defendant?

8 A Yes.

9 Q Tell me what you -- why you liked living with your mom and the  
10 defendant.

11 A 'Cause I had a brother -- I had a brother on the way, and I had  
12 my sister.

13 Q Okay. Do you love your brother and sister?

14 A Yes.

15 Q What kind of things would you do with them?

16 A I'd take of 'em, and I would play with 'em.

17 Q Okay. What kind of things would you play with Sable?

18 A We'd play ponies and then --

19 Q How -- oh, good ahead.

20 A And then with my brother, we would watch TV.

21 Q Little Noah?

22 A Yes.

23 Q Anything else? What kind of things did you watch TV with Noah?

24 A Ninja Turtles.

25 Q Do you like Ninja Turtles?

1 A Yes.

2 Q Did you play Ninja Turtles with Noah?

3 A Once in a while.

4 Q Okay. So, you were -- did -- did Damon, later on, bring this  
5 up to you, talk to you about what had happened?

6 A Yes.

7 Q Can you tell me, if you know, if you remember, how long after  
8 it happened when he brought these incidents up to you?

9 A A couple weeks after.

10 Q Okay. And where were you?

11 MR. WINTER: Your Honor, if we might, we're talking  
12 about two incidents a couple of weeks after what? I'm sorry.

13 MS. VAN LANGEVELDE: Okay.

14 BY MS. VAN LANGEVELDE:

15 Q What -- when you said "a couple of weeks after," do you mean  
16 after the first incident or after the second incident?

17 A He never asked me about the first incident, then, only the  
18 second one.

19 Q Okay. And so, when he talked to you about it, it was a couple  
20 weeks after the second incident?

21 A Yes.

22 Q And this is when he put his hand down the back of your pants  
23 and put his finger in your vagina?

24 A Yes.

25 Q Okay. Where were you when he brought this up?

1168a

- 1 A We would be at the house, alone, or in a car.
- 2 Q Oh, so he brought it up to you more than once.
- 3 A Yes.
- 4 Q Okay. Let's talk about one of the times that he brought this  
5 up to you. How about when you were alone at the house?
- 6 A He would just ask if I've told anyone, and I would tell him no.
- 7 Q Had you told anyone?
- 8 A No.
- 9 Q How about in -- in the car, were you -- you said you -- were  
10 you with anybody else in the car when he brought it up?
- 11 A Other than my siblings, no.
- 12 Q And they were babies?
- 13 A Yes.
- 14 Q What did he say to you in the car?
- 15 A He would say the same thing, ask me if I told anyone.
- 16 Q And what did you say?
- 17 A No.
- 18 Q And had you told anyone?
- 19 A No.
- 20 Q Do you know why -- oh, strike that. Did you like the -- your  
21 life that you had with your mom and Damon?
- 22 A Yes.
- 23 Q Did that play into, at all, why you didn't tell anybody?
- 24 A Yes.
- 25 Q Tell me about that.

1 A I didn't want to ruin our family.

2 Q Okay. Why would you say telling would ruin your family?

3 A Because I knew things like this would happen, we would get  
4 split up.

5 Q Now, you said you liked to do things with Damon, like wrestle  
6 when you were little?

7 A Yes.

8 Q Okay. Who -- who was around when you guys would play wrestle

9 A My mom.

10 Q Anybody else?

11 A No.

12 Q Okay. Do you remember ever play wrestling when your mom wasn't  
13 around?

14 A No.

15 Q Okay. Who would win when you and Damon would play wrestle?

16 A Damon.

17 Q Okay. Always?

18 A Yes.

19 Q Okay. Was your mom always around when you and Damon would play  
20 wrestle?

21 A Yes.

22 Q Okay. What about friends, were friends ever around when you  
23 guys would play wrestle?

24 A Sometimes.

25 Q Okay. Okay. Pearl, was there ever a time when you were play

1 wrestling with Damon, when you grabbed his hand and put it down  
2 your pants?

3 A No.

4 MR. AMADEO: Objection, leading.

5 MS. VAN LANGEVELDE: It's a yes or no answer, but  
6 it's not leading.

7 THE COURT: Denied. Go ahead.

8 MS. VAN LANGEVELDE: Thank you.

9 BY MS. VAN LANGEVELDE:

10 Q Was there ever a time when you were play wrestling with Damon  
11 that you put his hand down your pants?

12 A No.

13 Q So, if Damon told that to some detectives, would that be a  
14 truth or a lie?

15 A A lie.

16 Q You -- I think you said, Pearl, that you would wrestle with the  
17 defendant when you were little. But, do you remember how old  
18 you guys -- you -- how old you were when you were play  
19 wrestling with the defendant?

20 A No, I do not.

21 Q Okay. Do you know what school you were in?

22 A Yes.

23 Q Okay. What school were you in?

24 A Middle school.

25 Q Okay. So, you were play wrestling, at some point, when you

1171a

1 were in middle school?

2 A Yes.

3 Q And, I'm sorry, Pearl, but I want to go back to the bedroom  
4 incident for a minute. Did the defendant ever tell you how it  
5 was gonna feel before he put his penis in your vagina?

6 A Yes.

7 Q What did he say?

8 A He said it might hurt.

9 Q Okay. Did it hurt?

10 A Yes.

11 Q Can you describe how it hurt?

12 A It was -- it wasn't -- or, it was very uncomfortable.

13 Q What -- can you tell me what, specifically, the defendant like  
14 said?

15 A He just said it might hurt.

16 Q Okay. And is that when he tried to put his penis in your  
17 vagina?

18 A Yes.

19 Q Pearl, who is the very first person that you told that Damon  
20 had sexually assaulted you?

21 A My grandma.

22 Q Do you recall when you told your grandma?

23 A No.

24 Q Okay. Was it before -- and -- and that was before anybody else  
25 got involved; is that correct?

1 A Yes.

2 Q Okay. And your Grandma Esther, who is she in your family tree

3 A My mother's mom.

4 Q Okay. Is she the same grandma that used to live with you at  
5 the Butterfield address?

6 A Yes.

7 Q Okay. Now, did she -- did she live with you all throughout  
8 when you were living with your mom and Damon?

9 A No.

10 Q Did she -- there came a time when she didn't live with you guys  
11 anymore?

12 A Yes.

13 Q Do you remember when that was, a grade?

14 A No.

15 Q Okay. Who was the next person --

16 A My mom.

17 Q -- that you told? Okay. And your mom was married to the  
18 defendant at the time?

19 A Yes.

20 Q Do you remember what day it was that you told your mom?

21 A It was the night before Christmas Eve.

22 Q The night -- I'm sorry?

23 A The night before Christmas Eve.

24 Q So, what date is that?

25 A The 23rd.

1173a

1 Q Of December?

2 A Yes.

3 Q Do you know how old you were?

4 A Thirteen. No, 17.

5 Q Okay. So, you didn't tell her when you were 13.

6 A No.

7 Q Okay. You told her when you were 17.

8 A Yes.

9 Q Okay. Is there a reason -- so, let's -- let's talk about that

10 When you told your mom, was anyone else home?

11 A Yes, my brother and sister were.

12 Q Okay. Was the defendant there?

13 A No.

14 Q How did -- how did this whole thing kinda come about?

15 A We were gettin' into a fight because she wanted to take my  
16 electronics away from me.

17 Q Okay. Were you in trouble?

18 A Yes.

19 Q Okay. Tell us -- can you tell us a little bit about what had  
20 happened?

21 A I came home from my dad and Sharon's house, and she seen  
22 something on Facebook that was inappropriate, and she wanted my  
23 electronics. So, she told me to give 'em to her, and I didn't  
24 want to give 'em to her.

25 Q Okay. Had you posted something on Facebook?



1 A No.

2 Q Okay. Who -- was it somebody else that posted something on  
3 Facebook?

4 A Yes.

5 Q About you?

6 A No, they tagged me in it.

7 Q Oh, okay. They just tagged you into something inappropriate?

8 A Yes.

9 Q Okay. Mom didn't like it.

10 A No.

11 Q Okay. So, she was gonna away your tablet?

12 A And my phone.

13 Q And your phone, okay. How did this come out about Damon? What  
14 did you say?

15 A We were fighting back and forth, and I told her she wouldn't  
16 understand. And she asked me what I didn't understand, and  
17 that's when I came out and told her what Damon had done to me.

18 Q Okay. What did you tell her that Damon had done to her -- done  
19 to you?

20 A I told her about the two incidents, and she didn't believe me.

21 Q What was her reaction to you?

22 A She just wanted to argue with me.

23 Q Did she hurt you, at all?

24 A No.

25 Q Even though your mom wanted to take your electronics away, did

1175a

1 you still love your mom?

2 A Yes.

3 Q Do you still love your mom to this day?

4 A Yes.

5 Q What did she do after you told her?

6 A She went into her bedroom to calm down.

7 Q And what were you doing?

8 A Packing.

9 Q Packing?

10 A Yes.

11 Q Like what were you -- what was your plan at that -- what was  
12 goin' through your mind?

13 A I didn't want to be there anymore.

14 Q Why not?

15 A Because if my mom didn't believe me, then I didn't want to be  
16 there. And so, I wanted to leave.

17 Q Okay. What happened next?

18 A She ended up calming down a little. We talked things out. At  
19 first she believed me. But then, when the defendant came home,  
20 she confronted him about it.

21 Q Were you in the room when she confronted him?

22 A No, I was in my bedroom.

23 Q Okay. Does your bedroom have a door?

24 A At the time, no.

25 Q Okay. And I guess that -- and back when you were 13, did it

1 have a door?

2 A No.

3 Q So, you -- could you hear what was happening?

4 A Yes.

5 Q Where were -- where was your mom and Damon?

6 A In their bedroom.

7 Q They were in their bedroom?

8 A Yes.

9 Q Okay. What happened after your mom talked to the defendant?

10 A He got upset some more. And my dad ended up showing up to get  
11 me, and I didn't want to go with him. So, I started running  
12 away, and my dad came and got me and tried getting me in the  
13 truck. And that was when the defendant started coming after  
14 me, threatening me.

15 Q Okay, let's -- let's take it back. Take a break. Okay, so  
16 Damon is in the house and you're in the house.

17 A Yes.

18 Q Where does he go?

19 A I don't remember.

20 Q Okay. You said you wanted to run away.

21 A Yes.

22 Q Did you want to go with your dad?

23 A No.

24 Q Did you want to stay at home?

25 A No.

1177a

1 Q What were you thinkin'?

2 A I don't want to be at the house.

3 Q Okay, is there a reason?

4 A 'Cause I -- I don't like commotion, so I didn't like the  
5 yelling back and forth.

6 Q Okay. So, your dad comes and tells you what?

7 A To get in the truck.

8 Q Did you want to get in the truck?

9 A No.

10 Q Okay. Is there a reason why?

11 A I just didn't want to go with anyone. I didn't want to be  
12 around anyone.

13 Q Okay. Were you upset?

14 A Yes.

15 Q Why were you upset?

16 A Because my mom believed him and not me.

17 Q Okay. So, then, eventually, did you see the defendant when you  
18 were outside?

19 A Yes.

20 Q What happened when you saw the defendant?

21 A He came outside and threatened me, and that was when my  
22 brother, Robert, pushed him back.

23 Q Did he say anything, the defendant?

24 A Yes.

25 Q What did he say?

1 A He told me he was gonna slit my throat.

2 Q Okay, how'd that make you feel?

3 A Upset.

4 Q So, if you didn't want to be at home and you didn't want to be  
5 with your dad, did you have a plan of where you were gonna go?

6 A No.

7 Q Did you, eventually, go with your dad?

8 A Yes.

9 Q Where -- now, you said your brother, Robert --

10 A Yes.

11 Q -- showed up?

12 A Yes.

13 Q Is he a grown-up?

14 A Yes.

15 Q Or, was he at the time? I should -- he's a grown-up now,  
16 obviously. But, was he a grown-up at the time, too?

17 A Yes.

18 Q Okay. You guys share the same dad?

19 A Yes.

20 Q Okay. How about your stepmom, was she there?

21 A Yes.

22 Q Where was she at?

23 A In the truck.

24 Q Okay. Now, after the 23rd, did you go back and live with your  
25 mom?

1179a

1 A No.

2 Q Who'd you live with?

3 A My dad.

4 Q Okay. Did you miss your mom?

5 A Yes.

6 Q Did you miss living with her?

7 A Sometimes.

8 Q All right. How about Damon, did you even miss him?

9 A No.

10 Q Okay. How about -- did you live with your brother and sister?

11 A Yes.

12 Q Did you miss them?

13 A Yes.

14 Q Did you want to leave your mom's house back in December?

15 A No.

16 Q Would you have liked to stay living with your mom?

17 A Yeah.

18 Q Were you allowed to take your stuff?

19 A What I packed, yes.

20 Q Just what you packed.

21 A Yes.

22 Q Was -- that was just clothes?

23 A Yes.

24 Q Okay. Now, you've talked to a lot of people about this; is

25 this true?

1180a

- 1 A Yes.
- 2 Q What type of people, what kind of jobs?
- 3 A CPS, detectives, you.
- 4 Q Now, when did CPS and the detective first come to talk to you  
5 about what had happened with you and with Damon?
- 6 A When I was at school.
- 7 Q Okay. So, we're at December 23rd, and then they don't come to  
8 talk to you until when?
- 9 A After Christmas break.
- 10 Q Okay. Is there a reason, if you know -- if you don't know --  
11 that nobody called the police?
- 12 A No.
- 13 Q That night.
- 14 A No.
- 15 Q Not that you know of?
- 16 A Not that I know of.
- 17 Q Is there a reason why you didn't call the police before  
18 Christmas break was over with?
- 19 A 'Cause I didn't have my phone.
- 20 Q You didn't have your phone?
- 21 A (No verbal response).
- 22 Q Okay. What -- where was your phone?
- 23 A My mom had it.
- 24 Q Okay. Could you have used somebody else's?
- 25 A Yeah.

1 Q Did you like talking about what the defendant had done to you?

2 A No.

3 Q Do you like talking about it now?

4 A No.

5 Q Okay. Can you tell us how do you -- how you feel about the  
6 defendant?

7 A Pretty upset.

8 Q Okay, why?

9 A 'Cause he -- 'cause he shouldn't do things like this to people

10 Q What do you mean by that?

11 A It's not right for people to live their life knowing that  
12 someone did something to you and you not being able to talk  
13 about it.

14 Q How did you live your life after this happened?

15 A It's hard. I struggle day-by-day trying to forget about  
16 everything.

17 Q Why?

18 A 'Cause people shouldn't have to be doing things like this and  
19 should be able to live their life.

20 Q Did you try to ignore it?

21 A Yes.

22 Q Did you try to forget it?

23 A Yes.

24 Q Pearl, are you test -- are you testifying about this because it  
25 actually happened?



1182a

1 A Yes.

2 Q Are you mad at the defendant and making this up, for any  
3 reason?

4 A No.

5 MS. VAN LANGEVELDE: Thank you, Your Honor. I don't  
6 have any other questions at this point.

7 THE COURT: Thank you.

8 Mr. Amadeo.

9 CROSS-EXAMINATION

10 BY MR. AMADEO:

11 Q Hi, Pearl. How are ya?

12 A Good.

13 MS. MORTON: Take a picture before you erased the  
14 drawing.

15 MR. AMADEO: I was gonna draw somethin' on --

16 MS. VAN LANGEVELDE: Can --

17 MR. AMADEO: Do you want her to draw it again?

18 THE COURT: Keep going.

19 BY MR. AMADEO:

20 Q Pearl, I'm gonna ask you some questions about the allegations,  
21 and the only thing you have to do is tell the truth to the best  
22 of your ability, okay?

23 A Okay.

24 Q All right. Now, you said -- well, let me start with this,  
25 actually. You just testified, when Adrienne asked you about

1 the first incident, did it cause you to do anything, and you  
2 said no; correct?

3 A Yes.

4 Q Okay. Do you remember talking to Officer Maltby in January of  
5 2016?

6 A Yes.

7 Q Do you remember telling Officer Maltby that you screamed and  
8 that's what made it stop?

9 A Yes.

10 Q Do you remember telling Officer Maltby that you heard your  
11 little sister come down the hall and that's what made it stop?

12 A Yes.

13 Q Do you remember telling Officer Maltby that the defendant said,  
14 "This is going to hurt?"

15 A Yes.

16 Q And did you tell him, in January of '16, this happened three or  
17 four years ago?

18 A Yes.

19 Q Okay. So, there's some inconsistencies, Pearl, so help us.  
20 You testified today nothing happened after this allegation  
21 occurred, but you told Officer Maltby three years ago you  
22 screamed and you heard Sable coming down the hall. Which one  
23 is true?

24 A The one with Maltby.

25 Q So, not what you said today.

1184a

1 A Well, technically, they're both true.

2 Q Well, there's inconsistencies. Which one is true?

3 A The one with Maltby.

4 Q Okay. So, what you said today is not completely accurate; is  
5 that correct?

6 A Yes.

7 Q Okay. Now, so Maltby -- whatever you told Officer Maltby, that  
8 was true, not what you said today; correct?

9 A Yes.

10 Q Okay. So, now --

11 MS. VAN LANGEVELDE: Your Honor, I'm sorry. Can we  
12 -- I think we need to taylor a little bit --

13 THE COURT: What's the objection?

14 MS. VAN LANGEVELDE: I -- I think it's  
15 mischaracterization of the testimony because she said they're  
16 both true.

17 THE COURT: Okay. Mr. Amadeo, your response.

18 MR. AMADEO: I'm just saying what she just told me,  
19 Your Honor, doing a follow-up question.

20 THE COURT: All right, I think what the witness said  
21 is about the specific questions that you asked and not  
22 everything. So, if you could just keep that clarified --

23 MR. AMADEO: Sure.

24 THE COURT: -- to what you're asking her, which was  
25 what happened after the incident; correct?

1 MR. AMADEO: Correct.

2 THE COURT: Okay.

3 BY MR. AMADEO:

4 Q You told Officer Maltby that the allegations occurred three or  
5 four years ago when you met with him; correct?

6 A Yes.

7 Q Okay. So, let's isolate the first incident. When did it  
8 occur?

9 A On a Friday.

10 Q Do you remember the year?

11 A No.

12 Q Do you remember the month?

13 A No.

14 Q But you do remember it was a Friday?

15 A Yes.

16 Q How would you remember it's a Friday but not the year and  
17 month?

18 A Because it was a half day of school.

19 Q Okay. Do you think it was 2013?

20 A Could be.

21 Q If the People said it happened between the spring and summer of  
22 2011, would that be accurate or do you think it's a different  
23 time?

24 A A different time.

25 Q So, it's not 2011.

1186a

1 A No.

2 Q Okay. So, what exactly happened in the first incident?

3 A I was packing for my dad's house and he came into my bedroom.

4 Q Sorry, could you speak up?

5 A I was packing for my dad's that weekend and he came into my  
6 bedroom.

7 Q How were you on the bed? Were you laying down or were you  
8 sitting?

9 A I was sitting.

10 Q So, you weren't laying on the bed?

11 A No.

12 Q So, you weren't pushed onto the bed.

13 A No.

14 Q So, if you said earlier in time that you were pushed onto the  
15 bed, would that be inaccurate?

16 A Yes.

17 Q When you were laying on the bed, what exactly happens from  
18 there?

19 A What do you mean? I was sitting on my bed, packing, when he  
20 came in.

21 Q And what did he do?

22 A He pulled down my pants and stuck his penis into my vagina.

23 Q How did he pull down your pants, one hand, two hands?

24 A Two hands.

25 Q And this all happened in one --

1187a

1 A Yes.

2 Q -- motion?

3 A Yes.

4 Q So, he pulls down your pants and puts his penis into your  
5 vagina.

6 A Yes.

7 Q So, he did put his penis in your vagina?

8 A No, he attempted.

9 Q But it never actually happened.

10 A No.

11 Q Do you remember tell -- do you remember meeting with Officer  
12 Maltby a second time?

13 A Yes.

14 Q In May of 2016?

15 A Briefly, yes.

16 Q Okay. And I have recordings if you need them, but did you tell  
17 Officer Maltby that day that this occurred in August, the first  
18 incident?

19 A It could've. I -- like I said, I don't really remember much.

20 Q Okay. So, if you told that to Officer Maltby before, would  
21 that be accurate or not?

22 A Yes.

23 Q So, it did happen in August?

24 A Yes.

25 MR. AMADEO: Your Honor, I'd like to play something

1188a

1 briefly.

2 THE COURT: Well, you need to identify it so the  
3 prosecutor knows whether or not --

4 MR. AMADEO: I'm playing the second interview between  
5 Maltby and Pearl.

6 MS. VAN LANGEVELDE: For what purpose?

7 MR. AMADEO: To show what she said about the month  
8 occurred.

9 MS. VAN LANGEVELDE: She just testified.

10 MR. AMADEO: Okay.

11 BY MR. AMADEO:

12 Q So, it did occur in August, then?

13 A Yes.

14 Q And you don't know the year.

15 A No.

16 Q But you do know it was a half day of school.

17 A Yes.

18 Q When does school start?

19 A In September.

20 Q So, school starts in September?

21 A Yes.

22 Q And this happened after -- you have a half day of school in  
23 August?

24 MS. VAN LANGEVELDE: Well, I think we -- I'm gonna  
25 object. I think he needs to clarify the question of which

1189a

1 incident he's talking about.

2 THE COURT: Well --

3 MR. AMADEO: The first incident. Sorry.

4 THE COURT: I believe that he has repeatedly said  
5 we're talking about the first incident, at this point. Is that  
6 correct?

7 MS. VAN LANGEVELDE: I don't know if she was aware of  
8 that.

9 BY MR. AMADEO:

10 Q So, the first incident we're talking about, Pearl, did you tell  
11 Officer Maltby that it occurred in August?

12 A Yes.

13 Q Okay. And did you tell Officer Maltby that you had a half day  
14 of school -- and you remember that clearly -- on Friday?

15 A Yes.

16 Q And when did school start that year?

17 A In September.

18 Q So, how did you have a half day at school in August if school  
19 didn't start until September?

20 A It could've been a miscommunication 'cause the secondant (sic)  
21 incident could've happened in August. The first incident  
22 happened before -- be -- af -- a little after the beginning of  
23 the year because my sister hasn't turned one yet.

24 Q So, you're not sure when it occurred; correct?

25 A No.



1190a

1 Q But you have told people you knew when it occurred; correct?

2 A Yes.

3 Q So, you lied before.

4 A I don't understand, most of the time, what -- when it happened.

5 Like I said, when Miss Adrienne was going back and forth, I  
6 don't remember most of it 'cause I try to forget things.

7 Q Talking about the second incident, Pearl, when did that occur?

8 A Around fall time.

9 Q And what time of night was this?

10 A At night.

11 Q About 11 p.m.?

12 A Yes.

13 Q So, let me be clear. Is it true that the first allegation,  
14 you're saying, happened on a Friday, in the afternoon?

15 A Yes.

16 Q And do you know what time in the afternoon?

17 A Yes.

18 Q What time?

19 A In the -- at 12.

20 Q At 12?

21 A Yes.

22 Q Okay. So, if you testified previous that it happened later in  
23 the afternoon would not be correct, or would it definitely be  
24 noon?

25 A It would've been in the afternoon, around two-ish, because I

1191a

1 got off the bus at 12.

2 Q And the second incident we're sure happened at night?

3 A Yes.

4 Q And that would've been a Monday night.

5 A Yes.

6 Q Do you know somebody named Erica Bohnen (phonetic)?

7 A Yes.

8 Q Do you know somebody named Linda Wilbur?

9 A Yes.

10 Q How do you know them?

11 A What was that?

12 Q How do you know them?

13 A 'Cause they're friends of my mom's.

14 Q Did they watch you a lot when Damon and your mom were workin'?

15 A No.

16 Q Did they -- they never baby-sat you?

17 A No.

18 Q Who did baby-sit you when Damon and your mom were workin'?

19 A I would watch myself. I was at the age that I was able to  
20 watch myself.

21 Q So, you didn't have a baby-sitter?

22 A No.

23 Q Did you actually watch Sable and Noah, as well, like you were  
24 their baby-sitter?

25 A Yes.

1192a

1 Q Okay. And how often were you alone with the kids?

2 A A lot.

3 Q And what time of day were you alone with the kids?

4 A In the afternoons.

5 Q And why were you alone with the kids in the afternoon?

6 A 'Cause Damon would work and my mom would work.

7 Q So, Damon was working in the afternoon?

8 A Yes.

9 Q Do you know where Damon worked?

10 A No.

11 Q Do you know what time he worked?

12 A He worked that -- he worked late, I know that.

13 Q What does that mean?

14 A He would work in -- at -- until late at night.

15 Q But he was working.

16 A Yes.

17 Q So, if Damon was working in the afternoon, it's possible that  
18 you were home alone with Sable; correct?

19 A Yes.

20 Q And you did just testify that Damon was, in fact, working;  
21 correct?

22 A When he got a job, yes.

23 Q So, if Damon was working in the afternoon and you watched Sable  
24 in the afternoon, how does your time frame make sense?

25 A He didn't have a job at the time the incidence happened.

1193a

1 Q When did the incident happen?

2 A Which incident?

3 Q First one.

4 A I don't --

5 MS. VAN LANGEVELDE: Well, Your Honor, I'm gonna  
6 object. She's answered that she can't remember.

7 MR. AMADEO: I didn't hear her say she didn't  
8 remember.

9 THE COURT: Denied. He's started a new question  
10 based on her answer.

11 Go ahead, Mr. Amadeo.

12 THE WITNESS: Can you repeat your question, please?

13 MR. AMADEO: Sure.

14 BY MR. AMADEO:

15 Q You said -- correct me if I'm wrong -- you didn't know if Damon  
16 had a job or not at that point; correct?

17 A Yes.

18 Q Okay. At what point are we referring to, Pearl?

19 A When the first incident happened, he didn't have a job.

20 Q When did the first incident happen?

21 A Before Sable's birthday.

22 Q What year?

23 A Two thousand eleven.

24 Q You just said earlier you didn't know what year it occurred.

25 A Yes.

1194a

1 Q So, you're changing your story?

2 A No, I'm not changing my story; I'm remembering things.

3 Q Okay. So, it happened in 2011.

4 A Yes.

5 Q In 2011, do you remember if Damon worked for Danny LaPoint  
6 (phonetic)?

7 A I don't remember.

8 Q Do you remember telling Officer Maltby that Damon worked for  
9 Danny LaPoint?

10 A Yes.

11 Q Do you telling Officer Maltby that Damon worked until late  
12 afternoon?

13 A No.

14 Q Okay. Did you just testify that Damon worked till late  
15 afternoon?

16 A Yes.

17 Q So, if Damon was working till late afternoon in 2011, how is it  
18 possible this occurred?

19 A Because he knew I had a half day of school, and so he didn't  
20 work that day, 'cause he had no one to watch the kids.

21 Q Are you sure about that?

22 A Yes.

23 Q How long after the first incident did the second incident  
24 occur?

25 A A couple months.

1195a

1 Q If you told Officer Maltby that the second incident occurred  
2 two weeks after the first incident, would that be accurate or  
3 not?

4 A I could've told him that.

5 Q So, it's possible it was two weeks after the first?

6 A I really don't remember what I told Detective Maltby.

7 Q Did you testify before that it occurred three months after the  
8 first?

9 A Yes.

10 Q Okay, so when did the second allegation supposedly occur, two  
11 weeks after the first, two months after the first, three months  
12 after the first, or a different time?

13 A A couple months after, two.

14 Q Let's talk about December 23rd, 2015. That's the night you  
15 told your mom; correct?

16 A Yes.

17 Q What happened with you and your mom prior to you telling her  
18 about these accusations?

19 A We got into a fight.

20 Q What was the fight about?

21 A I got tagged in a -- a post that she didn't like, and she  
22 wanted my electronics.

23 Q The fact that your mom wanted your electronics, did that upset  
24 you?

25 A Yes.

1 Q Why did it upset you so much?

2 A 'Cause I didn't want her to take my electronics.

3 Q So, when you told your mom that Damon, allegedly, did this to  
4 you several years ago, were you upset probably about something  
5 else?

6 A No.

7 Q Didn't you just say you were upset about your electronics being  
8 taken?

9 A Yes.

10 Q So, I'll ask it again, Pearl. Were you upset about something  
11 else, other than Damon, when you made the accusation about him?

12 A No.

13 Q You weren't upset about your electronics?

14 A No.

15 Q You just said you were upset about your electronics.

16 A I mean, I guess I was a little mad, but I wasn't -- I didn't  
17 tell her what he did to me because I was mad about getting my  
18 electronics taken away.

19 Q But you were fighting with your mom.

20 A Yes.

21 Q Did you testify on direct examination that, when you told your  
22 mom, nothing happened?

23 A I don't understand what you said. Sorry.

24 Q When Adrienne asked you about telling your mom, did you tell  
25 Adrienne that, when you told your mom, your mom did nothing?

1197a

1 A Yes.

2 Q Is that actually true?

3 A Yes.

4 Q Did your mom slap you?

5 A No.

6 Q If you told the officer that your mom slapped you, in his  
7 report, would that be true or would that be a lie?

8 A I guess she -- yeah, she did put her hands on me, but she  
9 didn't smack me.

10 Q What did she do, exactly?

11 A She kinda just told me to get to my room, and she pushed me.

12 Q Is Esther Stevens your grandmother?

13 A Yes.

14 Q Did you tell your grandmother --

15 A Yes.

16 Q -- about the accusations?

17 A Yes.

18 Q Do you remember when you told her about it?

19 A Yes and no. I remember, but I don't remember exactly when I  
20 told her.

21 Q Do you remember testifying before you told her in October of  
22 2014?

23 A Yes.

24 Q Do you remember testifying again, you told her October of 2015?

25 A Yes, but it was '14.



1198a

1 Q It was '14 when you told your grandmother.

2 A Yes.

3 Q So when --

4 A 'Cause it was two years before I told my mom.

5 Q Okay. So, let's stop for a minute. In October of '14, you  
6 told Esther; correct?

7 A Yes.

8 Q And in December of '15, you told your mom.

9 A Yes.

10 Q Correct? Okay. What did your grandmother say?

11 A She told me that I needed to tell my school counselor.

12 Q Did you ever tell your school counselor?

13 A Yes.

14 Q When?

15 A After I told my mom.

16 Q And do you remember what around that date was?

17 A After Christmas break.

18 Q So, January 16th?

19 A Yes.

20 Q So, in October of '14, you told Esther; right?

21 A Yes.

22 Q And she told you to tell your school counselor.

23 A Yes.

24 Q And you waited till January of '16 to tell your school  
25 counselor?

1 A Yes.

2 Q And you told your school counselor two weeks after you argued  
3 with your mom about the electronics.

4 A Yes.

5 Q What'd your grandmother do when you told her, besides giving  
6 you the advice to tell your school counselor?

7 A She told me I needed to tell my mom, too, but I told her that  
8 I'd tell my school counselor before I told my mom.

9 Q Did your grandmother ever go to the police?

10 A No.

11 Q Did your grandmother ever go to CPS?

12 A No.

13 Q Do you love your grandmother?

14 A Yes.

15 Q Does your grandmother love you?

16 A Yes.

17 Q Why do you think your grandmother, who loves you, would have  
18 waited over a year and-a-half for anybody to know about these  
19 accusations?

20 MS. VAN LANGEVELDE: Your Honor, I'm gonna object to  
21 speculation. She can't testify to what her grandmother --

22 THE COURT: Sustained.

23 MS. VAN LANGEVELDE: Thank you.

24 BY MR. AMADEO:

25 Q You told your mom in -- December 23rd of '15; correct?

1 A Yes.

2 Q Did your mom call the police?

3 A No.

4 Q Did your mom call CPS?

5 A No.

6 Q Did you tell Sharon Giffen, your stepmother, in December of  
7 '15?

8 A No, we waited after Christmas day to tell -- or, I waited after  
9 Christmas day to talk to 'em about everything.

10 Q So, it was December 26th?

11 A Yes.

12 Q Did Sharon Giffen ever call the police or CPS?

13 A No.

14 Q When did you tell your father, James Giffen, about these  
15 accusations?

16 A The same day I told my stepmom.

17 Q Did James Giffen ever call CPS or the police?

18 A No.

19 Q Let's go back to the first incident for a minute. If James  
20 Giffen said that you had just gotten out of the shower when the  
21 first incident occurred, would that be truthful or would that  
22 be a lie?

23 A That would be a --

24 MS. VAN LANGEVELDE: Well, objection. I don't know  
25 that she can say what her dad said.

1201a

1 MR. AMADEO: I'm asking her if it would be true or a  
2 lie what he said.

3 MS. VAN LANGEVELDE: I don't know that she know what  
4 her -- I think it calls for speculation.

5 THE COURT: Well, is there -- do -- do you have his  
6 statement from her dad? Is that what you're saying?

7 MR. AMADEO: Yeah, her father told this to the  
8 police.

9 THE COURT: Well, okay. So, come up here.

10 (At 10:37 p.m., bench conference)

11 (At 10:38 p.m., bench conference concluded)

12 THE COURT: Thank you.

13 BY MR. AMADEO:

14 Q Pearl, on December 26th, when you first told James, what did  
15 you tell him?

16 A I told him exactly what I've been telling you guys.

17 Q Specifically, what did you tell him?

18 A I told him both -- I told him about both of the incidents.

19 Q Did you ever tell him you'd just got out of the shower?

20 A No.

21 Q You never told that to him?

22 A No.

23 Q You testified on direct examination that during the second  
24 incident your mom was in the house; is that correct?

25 A Yes.

1202a

1 Q So, where was your mom sleeping?

2 A In her bedroom.

3 Q And how far is your bedroom from where the second allegation,  
4 allegedly, occurred?

5 A It's across the house. It was on one side of the house.

6 Q So, to be clear, you're testifying that Damon sexually  
7 assaulted you with your mom across from the home -- across from  
8 the dining room and you didn't tell her?

9 A Across the house.

10 Q Across the house.

11 A She was on one side of the house; we were on the other.

12 Q Okay. In the same house; correct?

13 A Yes.

14 Q So, he, allegedly, assaulted you in the same house your mom is  
15 sleeping.

16 A Yes.

17 Q And you didn't tell your mom.

18 A No.

19 Q Why didn't you tell your mom?

20 A 'Cause I wasn't gonna wake my mom up.

21 Q So, because you didn't want to wake your mom up, you didn't  
22 tell her you were assaulted?

23 A No.

24 Q The night of December 23rd, 2015, your father, did he come to  
25 pick you up?

1203a

1 A Yes.

2 Q But you didn't tell your father what happened that night?

3 A No.

4 Q Did your brother, Robert, come that night?

5 A Yes.

6 Q How's your relationship with Robert?

7 A Good.

8 Q Good? Do you respect Robert?

9 A Yes.

10 Q Is Robert a truthful person?

11 A Yes.

12 Q And did you testify that Damon was coming after you and  
13 threatened to slit your throat and Robert stopped it?

14 A Yes.

15 Q So, if Robert were to testify it didn't happen, would he be  
16 telling the truth?

17 A No.

18 MS. VAN LANGEVELDE: Object. Your Honor, she can't  
19 vouch for the credibility of another witness.

20 THE COURT: Right.

21 MR. AMADEO: I'll just rephrase.

22 BY MR. AMADEO:

23 Q Once again, is Robert a truthful person?

24 A Yes.

25 Q And is he somebody you respect?

1204a

1 A Yes.

2 Q Do you know somebody named Austin Walsh?

3 A Yes.

4 Q Is Austin Walsh somebody you respect?

5 A Yes.

6 Q Is Austin Walsh a truthful person?

7 A Yes.

8 Q Okay.

9 MR. AMADEO: Nothing further at this time.

10 THE COURT: Ms. Van Langevelde.

11 MS. VAN LANGEVELDE: Thank you.

12 REDIRECT EXAMINATION

13 BY MS. VAN LANGEVELDE:

14 Q Are you nervous, Pearl?

15 A Yes.

16 Q Are you doing your best to remember --

17 A Yes.

18 Q -- to the best of your ability? So, I think Mr. Amadeo asked  
19 you if you remember what -- the dates and all that. Did you  
20 keep a journal or a calendar about when all this happened?

21 A No.

22 Q Okay. Do you remember how old Sable was, about?

23 A Yes.

24 Q Okay. How old was -- what -- how old, about, was Sable when  
25 this --

1205a

1 A She hadn't --

2 Q -- first incident happened?

3 A She hadn't even turned one yet.

4 Q Okay. And you believe that because why?

5 A Because it was two months prior before her birthday.

6 Q Okay. And do -- do you remember what Sable was doing?

7 A Yes.

8 Q What was she doing?

9 A She was getting ready to walk.

10 Q Okay. Was she crawling?

11 A Yes.

12 Q Was Noah born yet?

13 A No.

14 Q And I'm talking about the first incident. Do you know if your  
15 mom was pregnant with Noah?

16 A Yes, she was.

17 Q Okay. I want to talk about the first incident again, in the  
18 bedroom. Now, you said you were sitting on the bed. Did you  
19 -- when he, the defendant, tried to put his penis into your  
20 vagina, did you stay in that same position when he was trying  
21 to push his penis into your vagina?

22 MR. AMADEO: Objection, testifying.

23 BY MS. VAN LANGEVELDE:

24 Q I'm -- I'm asking you what was -- I guess, what position --  
25 were you sitting in a sitting position when he did that?



1 A Yes.

2 Q Okay, then what happened?

3 A I fell onto the bed.

4 Q Okay, tell me -- I can't hear you.

5 A I fell onto the bed.

6 Q Okay, tell me about that.

7 A When he went to go stick his penis into my vagina, it caused me  
8 to go back onto my elbows.

9 Q Okay. So, as your -- how is your body on the -- positioned on  
10 the bed?

11 A On a diagonal.

12 Q Okay. So, what is touching the bed?

13 A My back. Well, some of my back.

14 Q Some of your back? What part of his body is touching the bed;  
15 do you remember?

16 A His hands.

17 Q Okay. Is he over you, under you, some -- behind you, something  
18 else?

19 A Leaning on me.

20 Q Leaning on you?

21 A Yes.

22 Q Is -- and you said he's leaning on you. Is he trying to put  
23 his -- and I'm sorry for being graphic. Is he trying to put  
24 his penis front ways, so chest-on-chest, or back ways?

25 A Front ways.

1207a

1 Q Okay. So, is his chest touching your chest?

2 A No.

3 Q Can you describe that for us?

4 A He was -- he had both of his hands on the bed as he was tryin  
5 to stick his penis into me, but none of his body was touching  
6 me other than his penis.

7 Q Okay. So, he was over top of you?

8 A Yes.

9 Q Okay. Did the fact that your mom was -- was pregnant with  
10 Noah, did that weigh into your decision, at all?

11 A Yes.

12 Q Tell us about that. Why?

13 A Because my mom was pregnant with Noah. I didn't want to wake  
14 her up because she was pregnant. And I also didn't want to  
15 cause her stress.

16 Q Okay. And that was both the first and the second time?

17 A Yes.

18 Q How about -- and I want to talk about, obvious -- let's stay  
19 with the bedroom incident. Would it be unusual for you to  
20 shower before you went to your dad's?

21 A No.

22 Q Do you not -- do you remember whether you did or you didn't?

23 A I didn't.

24 Q Okay. You remember that day you didn't?

25 A Yes.

1208a

1 Q Okay. But it wouldn't be unusual if you did?

2 A No.

3 Q Okay. Again, I'm talking of the second -- I'm talking about  
4 the second incident that happened at night, Pearl. Did you  
5 keep a calendar --

6 A No.

7 Q -- of when this incident happened?

8 A No.

9 Q Of what month?

10 A No.

11 Q What year?

12 A No.

13 Q Do you know how old you were, though?

14 A Briefly.

15 Q Okay. And the second incident, was Noah born?

16 A No.

17 Q Was your mom pregnant with Noah?

18 A Yes.

19 Q Was Sable born?

20 A Yes.

21 Q And you know that this time in the -- I'm gonna call it the  
22 dining room -- was after the bedroom incident?

23 A Yes.

24 Q Okay. And you remember what day it was, why?

25 A Because it was a Monday.

1209a

1 Q Why do you remember it was a Monday?

2 A Because wrestling was on.

3 Q Okay. And that's something that you and Damon would watch  
4 together?

5 A Yes.

6 Q Okay. Is it hard for you to remember dates?

7 A Yes.

8 Q Okay. Do you know, is there a reason that you -- you didn't  
9 tell anybody until you told your -- other -- in authority  
10 figures?

11 MR. WINTER: I think this is asked and answered, Your  
12 Honor. I think we're goin' over ground that's been covered,  
13 and I think --

14 THE COURT: I -- I agree. I think that this has been  
15 testified to at length.

16 But, go ahead if you're going -- just keep it brief,  
17 if you would, Ms. Van Langevelde.

18 MS. VAN LANGEVELDE: Sure. Okay.

19 THE WITNESS: Can you re-ask that question, please?

20 BY MS. VAN LANGEVELDE:

21 Q Well, is there a reason why you didn't tell like a teacher or  
22 that it was your counselor, specifically, that you decided to  
23 tell?

24 A No.

25 Q Were you -- is that somebody that you felt like you could

1210a

1 trust?

2 A I felt like I could trust my grandma more than anything.

3 Q Okay. Tell me about that.

4 A Me and my grandma had a strong bond. So, I would tell her,  
5 pretty much, anything.

6 Q When you told your grandma, were you looking to get the police  
7 or CPS or anybody involved?

8 A No.

9 Q Why?

10 MR. WINTER: Excuse me. Your Honor, I think we're  
11 going beyond the scope of redirect. This is -- this is areas  
12 that were -- weren't covered on cross. So, they should've been  
13 covered on direct, and we're going a little bit beyond the  
14 bounds.

15 MS. VAN LANGEVELDE: I disagree. She talked about  
16 telling her grandma on cross and her counselor.

17 THE COURT: So -- right. So, what -- what is the  
18 point? She -- I mean, it --

19 MS. VAN LANGEVELDE: There was a point we --

20 THE COURT: The questions on cross were confirming  
21 what was asked on direct. So, I think we're going over some of  
22 the old territory and then bringing in something new. So, if  
23 we could wrap up this line of questioning, it would be helpful.

24 BY MS. VAN LANGEVELDE:

25 Q Well, why did -- were you expecting that your grandma would

1211a

1 call the authorities --

2 A No.

3 Q -- when you told her? Is that something you wanted to have  
4 happen?

5 A No.

6 Q Okay, thank you. And why would that be?

7 A Because I didn't want to get anyone in trouble.

8 Q Thank you.

9 MS. VAN LANGEVELDE: I don't have any other  
10 questions.

11 THE COURT: May the witness be excused?

12 MS. VAN LANGEVELDE: Please.

13 MR. AMADEO: Yes, Your Honor.

14 THE COURT: You may step down, and you are excused,  
15 so.

16 (At 10:48 a.m., witness stands down)

17 THE COURT: Ladies and gentlemen, Ms. Ykimoff will  
18 escort you back to the jury room. We will take a 20 minute  
19 break to give you time to stretch and make phone calls and do  
20 whatever it is that you need to do.

21 Please remember that, while you are in recess, you  
22 may not talk to the -- about the case with each other. You  
23 can't talk to anybody about the case. You can't talk to  
24 anybody in this courtroom about anything.

25 You can leave your books on your chair or take 'em

1212a

1 with you to the jury room, whichever is more convenient for  
2 you.

3 JUROR YOUNG: Do we do anything special with our  
4 notes?

5 THE COURT: No. Keep 'em in your book, and we'll  
6 make sure that nobody -- if you leave your notebook there,  
7 they'll all be safe and watched.

8 JUROR NESTLE: They'll be fine, there.

9 THE COURT: All right.

10 JUROR NESTLE: Is it possible to move that board  
11 slightly back farther, so we can --

12 MR. AMADEO: I was gonna ask, Judge, should I move it  
13 now?

14 THE COURT: Sure. Yes.

15 JUROR NESTLE: Can you move the podium and then the  
16 board back so that --

17 THE COURT: Yes.

18 JUROR NESTLE: -- we can see better?

19 THE COURT: Yes.

20 JUROR NESTLE: Thank you.

21 THE COURT: Absolutely we will. Thank you.

22 JUROR NESTLE: Um-hum.

23 (At 10:49 a.m., jury exits courtroom)

24 THE COURT: Don't forget there's a step there.

25 MR. AMADEO: Is this gonna bother you guys here?

1213a

1 THE COURT: Doesn't bother me.

2 Okay, a couple things. Let's see, the first thing I  
3 just want to clarify is that there would have been an objection  
4 -- I don't know if it was Mr. Winter or Mr. Amadeo -- that I  
5 overruled. And it had to do with a question asked by Ms. Van  
6 -- Van Langevelde about was -- something about, well, did that  
7 happen every time. And the objection was that it was a leading  
8 question. And, really, it wasn't leading because the witness  
9 could've given an answer either way. And in addition to that  
10 it was responding to a previous statement.

11 I think we've dealt clearly now with the issue of the  
12 shower. And -- okay, and there was no objection to that.

13 Are there any other things that need to be dealt  
14 with, on the record, before we take our break? Because when we  
15 come back in, I'd like to get the jury back in here right away.

16 MR. AMADEO: None from us, Your Honor.

17 MS. VAN LANGEVELDE: I don't think so. I'm just  
18 trying to think about what all we talked about at the bench  
19 but.

20 Oh, there was an issue with Mr. Winter's hearing  
21 device.

22 THE COURT: Oh, right. At the bench, the -- the  
23 concern expressed by the prosecutor was that Mr. Winter was  
24 trying to, apparently, get the hearing apparatus to work, and  
25 it was buzzing and making high-pitched noises. And that was



1214a

1 during the direct testimony of the victim. And Mr. Winter  
2 agreed to turn it off and not deal with it anymore. And that  
3 addressed that situation.

4 Now, if you want to try to get it working now, on a  
5 break --

6 MS. VAN LANGEVELDE: That's fine. Thank you.

7 THE COURT: -- please do so. It was just that it got  
8 turned on during testimony, and it should be -- it should be  
9 figured out when we're at a break and not when the witness is  
10 on the stand.

11 MR. WINTER: Understand, Your Honor. Thank you.

12 THE COURT: Any other issues that you can think of,  
13 Ms. Van Langevelde or Ms. Morton?

14 MS. VAN LANGEVELDE: I don't believe so.

15 THE COURT: Mr. Amadeo or Mr. Winter?

16 MR. AMADEO: No, Your Honor.

17 THE COURT: All right, I'll see everybody back here  
18 at, approximately, 10 after.

19 (At 10:52 a.m., off the record)

20 (At 11:12 a.m., back on the record)

21 THE COURT: We are back on the record in People  
22 versus Warner.

23 Yes, Ms. Morton.

24 MS. MORTON: Judge, I just wanted to address  
25 scheduling for today.

1215a

1 THE COURT: Okay.

2 MS. MORTON: We have four more witnesses today. If  
3 we get done with those, we're asking that you stop for the day.  
4 Detective Maltby is very ill and has, in fact, been vomiting in  
5 the bathroom. And I do not want him to have to testify today.  
6 So, he will be our last witness tomorrow but --

7 THE COURT: You have four witnesses today that are  
8 gonna testify?

9 MS. MORTON: Four more today.

10 THE COURT: All right, that would make me very happy,  
11 and I would be glad to stop at that point. And I'm sure the  
12 defense has no objection; is that correct?

13 MR. AMADEO: Yeah. I'm actually a little worried  
14 about Maltby over there. He looks -- (indecipherable).

15 MR. WINTER: We want to put an invisible wall up.

16 THE COURT: Do you -- I guess, do you have any  
17 objection to that, if he leaves?

18 THE COURT: No. I would just have him leave.

19 MR. AMADEO: Yeah.

20 THE COURT: Any objection by Defense?

21 MR. AMADEO: No.

22 MR. WINTER: No.

23 THE COURT: Not only that, but I'm gonna be, you  
24 know, obviously not happy if, whatever the germs are, seep up  
25 here.

1216a

1           Make a decision. I want to get the jury in here so  
2 we can --

3           MR. AMADEO: If --

4           MS. VAN LANGEVELDE: I think -- yeah, we -- we -- if  
5 -- if the Court could just, I don't know, let them know that  
6 he's miss -- I don't know.

7           MS. MORTON: I wouldn't say a word.

8           THE COURT: I don't think they care.

9           MS. MORTON: N, I don't think they care, either.

10          THE COURT: In -- in terms of I don't think they're  
11 looking, you know, to go who's there, oh, my gosh, where is he.

12          And, certainly, when he testifies tomorrow, you can  
13 address that if you want. You can say, hey, why'd you leave  
14 yesterday and -- I really don't think -- go ahead. Go ahead,  
15 Detective.

16          DETECTIVE MALTBY: Thank you, Judge.

17          (At 11:13 a.m., Detective Maltby exits courtroom)

18          THE COURT: Can we bring in the jury now?

19          MR. AMADEO: Yes.

20          THE COURT: All right.

21          MR. AMADEO: And, Your Honor, we have one witness.  
22 Should I just tell him to leave for today, because it probably  
23 won't be until tomorrow?

24          THE COURT: Yes. Yeah --

25          MR. AMADEO: Helpful.

1217a

1 THE COURT: -- because if we're gonna do your  
2 witnesses and then stop for the day --

3 MR. AMADEO: Yeah, we'll --

4 THE COURT: -- we don't need his witness.

5 MR. AMADEO: Thank you, Judge.

6 THE COURT: He can't come in the courtroom --

7 MR. AMADEO: No, no.

8 THE COURT: -- but he can leave the building.

9 MR. AMADEO: Just tell him to go home for the day.

10 MS. MORTON: And the latest we're going -- are we --

11 THE COURT: Two --

12 MS. MORTON: Two-thirty; right?

13 THE COURT: Well, two-thirty would be the absolute  
14 latest. But, a natural break, so I figure --

15 MS. MORTON: Okay.

16 THE COURT: Yeah.

17 MS. MORTON: I thought you said three o'clock the  
18 other day. And I thought --

19 MS. VAN LANGEVELDE: Yes.

20 MS. MORTON: -- wait, we start at two.

21 THE COURT: No, we do -- we do --

22 MS. MORTON: Two-thirty -- we start at two-thirty.

23 THE COURT: -- case reviews at two-thirty.

24 Okay, you're gonna turn that off; right?

25 MR. WINTER: I'm gonna try and set it up so it stops

1218a

1 making noise. If it doesn't, then I'm gonna --

2 MR. AMADEO: Is it still goin'?

3 MR. WINTER: That's still -- can you still hear it?

4 MS. MORTON: Not right this second. Move around a  
5 little. Okay, dance. I don't hear it.

6 (At 11:14 a.m., jury enters courtroom)

7 MR. AMADEO: It's doin' it.

8 THE COURT: Yeah, you're gonna have to turn it off  
9 'cause Ms. Bond -- it's gonna bother her, too. And deal with  
10 it at the next break.

11 Please be seated.

12 Ms. Morton, will you call your next witness, please?

13 MS. MORTON: The People call James Giffen.

14 THE COURT: Sir, come right up here, please. There's  
15 a step. Please raise your left hand.

16 Do you swear to tell the truth, the whole truth, and  
17 nothing but the truth, so help you God, under penalty of  
18 perjury?

19 MR. JAMES GIFFEN: Yes, I do.

20 THE COURT: Have a seat, sir. Please state your full  
21 name for the record.

22 THE WITNESS: James Giffen, Jr.

23 THE COURT: Go ahead, Ms. Morton.

24 MS. MORTON: Thank you.  
25

1219a

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JAMES GIFFEN, JR.

at 11:15 a.m., called by Ms. Morton and sworn by the Court,  
testified as follows:

DIRECT EXAMINATION

BY MS. MORTON:

Q Do you know Pearl Giffen?

A Yes, ma'am.

Q How do you know her?

A My daughter.

Q Okay. And do you know Damon Warner?

A Yes, I do.

Q How do you know him?

A Her stepfather.

Q Do you see him in the courtroom today?

A Yes, I do.

Q Can you tell me where he's sitting and what he's wearing,  
please?

A Sittin' over to my right, wearin' a blue shirt with a tie.

MS. MORTON: Can the record please reflect  
identification of the defendant?

THE COURT: The record will reflect he's identified  
the defendant.

MS. MORTON: Thank you.

BY MS. MORTON:

Q Where was Pearl living in 2015?

1220a

- 1 A With her mother and her stepfather.
- 2 Q Okay, and where was that?
- 3 A In Olivet.
- 4 Q Where do you live?
- 5 A Hastings.
- 6 Q Is that where you lived in 2015, as well?
- 7 A Yes, ma'am.
- 8 Q And during that period of time, did you have some kind of court  
9 ordered visitation with Pearl?
- 10 A Yes, ma'am.
- 11 Q Can you tell us about that, please?
- 12 A Week on and week on -- off and two weeks of the -- two weekends  
13 on in the summer and two weekends off and every other holiday.
- 14 Q Okay. So, during the school year, how often was she coming to  
15 your house?
- 16 A Every other weekend.
- 17 Q All right. And then during the summer, how often was she  
18 coming to your house?
- 19 A Two weekends on, two weekends off.
- 20 Q Like, just weekends --
- 21 A Or, no.
- 22 Q -- or weeks?
- 23 A I'm sorry, excuse me. Weeks.
- 24 Q Okay, so two weeks on, two weeks off --
- 25 A Weeks off --

1221a

1 Q -- all summer long?

2 A Yes.

3 Q And then, alternating holidays?

4 A Yes.

5 Q Okay. When she would come to your house for visitation, how  
6 would she get there?

7 A Either I or my -- her stepmother would pick her up.

8 Q Okay. Who's her stepmother?

9 A Sharon --

10 Q And --

11 A -- Giffen.

12 Q -- is she still her stepmother?

13 A Yes, ma'am.

14 Q All right. And that's -- you're married to Sharon?

15 A Yes.

16 Q So, one or the other of you would go pick her up?

17 A Yes.

18 Q Would it be -- how would you decide who was gonna go get her?

19 A How would you decide? Well, I don't know how to answer that  
20 question. Because of my work.

21 Q Okay, so your work. Sometimes you could go get her and  
22 sometimes you couldn't?

23 A Yes. I work out of town is what it was.

24 Q Okay. Now, in December of 2015, did that custody arrangement  
25 change?



1222a

1 A (No verbal response).

2 Q Did she stop living with Mom?

3 A Yes.

4 Q All right. Do you remember, specifically, the date that she  
5 stopped living with her mom?

6 A No, I don't.

7 Q All right. Is that -- did she start living with you at that  
8 time?

9 A Yes.

10 Q All right. Do you remember what date she came to live with  
11 you?

12 A Twenty-third of December, if I'm correct.

13 Q Okay. And tell me what happened on the 23rd of December.

14 A That was -- the first week of Decem -- that first week of  
15 Christmas break was mine. My wife took her home on the 23rd.  
16 And that evening, I got a phone call to come get her.

17 Q Okay, who was the phone call from?

18 A Her mother.

19 Q All right. Did you go to Mom's house, then?

20 A In the evening, yes.

21 Q What did you see when you first arrived at Mom's?

22 A I see Pearl was outside, and her mother was outside, and she  
23 was -- how would you say it -- upset and -- upset, I'd call it.

24 Q You said, "She was upset." Can you clarify who you meant by  
25 "she?"

1 A Pearl was upset.

2 Q Pearl was upset. And when you say "upset," what do you mean  
3 that? What does that look like?

4 A She was havin' a bad evening, I would call it.

5 Q Well, was she crying?

6 A Yes.

7 Q Was she yelling?

8 A Yes.

9 Q What other things were -- was she doing when -- that made you  
10 think she was upset?

11 A She didn't want to be -- stay there. She wanted to leave.

12 Q Okay. And you said that, when you first arrived, you saw Mom  
13 and Pearl outside. Was anyone else home when you got there?

14 A Not that I'm aware of.

15 Q All right. So, you didn't see anyone else outside?

16 A No, ma'am.

17 Q Okay. And so, what did you first do when you got there?

18 A I don't recall.

19 Q Okay.

20 A I walked -- I know I recall walkin' up and askin' Pearl what  
21 was goin' on.

22 Q All right. And were you alone when you went to the house --

23 A No.

24 Q -- on the 23rd?

25 A No.

1224a

- 1 Q Who was with you?
- 2 A My wife.
- 3 Q Okay. Did other people arrive while you were at Mom's house?
- 4 A My -- my youngest son.
- 5 Q And what's his name?
- 6 A Robert.
- 7 Q Is he older or younger than Pearl?
- 8 A Older.
- 9 Q All right. When did he get there?
- 10 A About five minutes after I did.
- 11 Q All right. Now, tell me -- what's his name?
- 12 A Robert.
- 13 Q Robert, okay. Tell me about Robert. Did he have something
- 14 happen that would affect his memory or his ability to remember
- 15 things?
- 16 A Yes.
- 17 Q What was that?
- 18 A He had a concussion.
- 19 Q When was the concussion?
- 20 A Sophomore year of high school.
- 21 Q All right. What caused the concussion?
- 22 A Football.
- 23 Q And as a result of that concussion, what was the treatment?
- 24 A He spent the night in the hospital --
- 25 Q All right.

1225a

1 A -- 'cause he couldn't remember who we were.

2 Q So, on the night -- on that night, he didn't know who you were

3 A In the -- when he had -- of the foot -- yes.

4 Q Okay. And what about after that, did he receive any treatment  
5 after that?

6 A Yes.

7 Q What -- did you take him to that treatment?

8 A No, ma'am.

9 Q Okay, what treatment did he receive after that?

10 A I, honestly, couldn't -- don't remember 'cause his mother did  
11 all that.

12 Q Okay. And since then, have you had contact with -- since the  
13 concussion, have you had contact with Robert?

14 A Yes.

15 Q Have you had an opportunity to talk to him about events that  
16 you both attended?

17 A Can you --

18 Q Sure. Do you talk to him about stuff that you were both at?

19 Like, say, Christmas dinner or --

20 A Yes.

21 Q -- a football game or --

22 MR. AMADEO: Objection, leading.

23 THE COURT: Overruled. Go ahead.

24 MS. MORTON: Thank you.

25 THE WITNESS: Yes, we talked.

1 BY MS. MORTON:

2 Q All right. And have you noticed any issues with Robert's  
3 memory since then?

4 A Some, yes.

5 Q Okay, such as? Can you give us examples?

6 A The year before -- he don't remember stuff that happens the  
7 year -- in the past year.

8 Q All right.

9 A That -- that he should.

10 Q That you think he should remember?

11 A Oh, yeah.

12 Q All right. So, when Robert showed up at the house on the 23rd,  
13 what did he do?

14 A I don't -- honestly, don't remember what he did at first. I  
15 was attending to my daughter.

16 Q Okay. And was -- did anybody else show up while you were at  
17 the house?

18 A Her stepfather.

19 Q The defendant?

20 A Yes, ma'am.

21 Q All right. And what did he do when he arrived?

22 A He -- what I can recall, he walked up to the house, 'cause I --  
23 like I said, I was attendin' to her, and I don't -- honestly,  
24 don't remember all he did. I know he went to the house, that's  
25 it.

1227a

- 1 Q Okay.
- 2 A I --
- 3 Q Did he say anything?
- 4 A He was threatenin' her.
- 5 Q What do you mean he was threatening her?
- 6 A He was threatenin' Pearl, to cut her, slit -- slit her throat  
7 and that.
- 8 Q Okay, he said he was gonna slit her throat?
- 9 A Um-hum.
- 10 Q Did he say anything else?
- 11 A No, ma'am, not that I can recall.
- 12 Q All right. And after you left on the 23rd, did Pearl go with  
13 you?
- 14 A Yes, ma'am.
- 15 Q Now, when you first arrived there, you said Pearl wanted to  
16 leave. Did she want to go with you?
- 17 A No.
- 18 Q Okay. Where did -- what happened after you got there? Were  
19 you trying to take her with you?
- 20 A Yes.
- 21 Q And what happened?
- 22 A She ran. Ran --
- 23 Q Where'd she run to?
- 24 A Around the yard, so I couldn't catch her.
- 25 Q Did you catch her?

1228a

- 1 A Yeah.
- 2 Q Okay. And what happened after you caught her?
- 3 A I had to pick her up and carry her to my truck.
- 4 Q All right. Ultimately, did she leave with you?
- 5 A Yes.
- 6 Q And did she take her things with her, like her belongings?
- 7 A No.
- 8 Q Did she have a bag with her?
- 9 A Yes.
- 10 Q Okay. What about other things like in her room, other items  
11 like that?
- 12 A No.
- 13 Q After that night, did she live with you or live with Mom?
- 14 A She stayed with me, lived with me.
- 15 Q All right. Did she ever go live with Mom again?
- 16 A No.
- 17 Q And did you -- was there ever a time when you went back and  
18 collected all of her things?
- 19 A Yes.
- 20 Q Did she take everything or --
- 21 A Yes.
- 22 Q She was given time to pack, or did you just go over there and  
23 grab some stuff?
- 24 A No, she had time to pack.
- 25 Q Okay. Did -- at some point, did Pearl tell you about things

1229a

1 that the defendant was doing to her?

2 A Yes.

3 Q Okay. When did she tell you about that?

4 A Oh, I don't recall what day or nothin'. It was after  
5 Christmas.

6 Q Okay. So, you picked her up on the 23rd. And then, obviously  
7 Christmas is December 25th.

8 A Um-hum.

9 Q It was after that?

10 A After that, I found out, yes.

11 Q Do you remember exactly how long after that?

12 A No, I don't.

13 Q What did you do when Pearl told you what was goin' on?

14 A I don't remember. Well, I --

15 Q Did you call the police?

16 A Honestly, I do not remember what we did after that. We left it  
17 up to Pearl, somewhat, what she wanted to do. I don't recall,  
18 honestly.

19 Q Okay. But you -- you said you left it up to her?

20 A After she told us, yes.

21 Q Okay.

22 A Yeah.

23 Q Do you remember talking to, like, CPS after that, Child  
24 Protective Services?

25 A Yes.



1230a

1 Q Okay. And how about the police, did you talk to the police, at  
2 some point after that?

3 A Yes.

4 Q All right. So, you remember talking to them. Do you remember  
5 when?

6 A No.

7 Q Okay. Now, was there anything that Pearl was doing prior to  
8 Christmas of 2015 that was different than she had behaved in  
9 the past?

10 A There probably was, but I don't recall --

11 Q All right.

12 A -- what it was.

13 Q All right. Is it -- well, after the -- after she came to live  
14 with you and told you what was going on, was she protected from  
15 the defendant?

16 A Yes.

17 MS. MORTON: I have nothing else. Thank you.

18 CROSS-EXAMINATION

19 BY MR. AMADEO:

20 Q Afternoon, Mr. Giffen.

21 A Good morning.

22 Q Do you remember giving an interview with Officer Maltby and CP  
23 -- CPS agent Corey Wood February of 2016?

24 A I remember talkin' to 'em, yes.

25 Q Do you remember the details, at all?

1231a

1 A Not all of 'em.

2 Q All right. What did Pearl tell ya happened?

3 A (No verbal response).

4 Q What was her version that she gave to you?

5 A I, honestly, don't remember.

6 Q You don't recall?

7 A Not recall all of it, no.

8 Q She's told me some things I can recall.

9 A During the interview -- well, what are the things you remember

10 MS. MORTON: I'm sorry, that calls for hearsay.

11 Objection.

12 THE COURT: No, he said, "What are the things you  
13 remember."

14 MS. MORTON: About --

15 MR. AMADEO: He said he remembered some of the things  
16 that Pearl told him.

17 THE WITNESS: I remember some --

18 MS. MORTON: Right, he remembers some of the things  
19 that Pearl told him. That's hearsay.

20 BY MR. AMADEO:

21 Q Did you have --

22 MR. AMADEO: I'll withdraw the question.

23 THE COURT: Thank you.

24 BY MR. AMADEO:

25 Q Did you and Pearl discuss the allegations?

1232a

1 A I think so.

2 Q You don't remember for sure?

3 A No, sir.

4 Q Okay. Robert Giffen, is he your son?

5 A Yes, sir.

6 Q When was this injury that occurred to Robert?

7 A It was his sophomore year, in the fall of his football.

8 Q How old is he now?

9 A By my calculations, sophomore year --

10 Q Well, how old's Robert now?

11 A Right now, he's 25.

12 Q So, maybe 10 years ago?

13 A At least.

14 Q So, Robert had a concussion 10 years ago.

15 A Um-hum.

16 Q What has he done with his life since then?

17 A What do you --

18 Q What does he do for a living?

19 A Heavy equipment.

20 Q Is he a fireman?

21 A Yes.

22 Q Is a successful fireman?

23 A Yes.

24 Q Does he lead a productive life?

25 A Yeah, I think so.

1233a

1 Q Is he somebody that you find truthful?

2 MS. MORTON: Objection. Again, asking --

3 MR. AMADEO: It's his father. How would he not have  
4 firsthand knowledge of that?

5 MS. MORTON: He's not allowed to comment on veracity.

6 THE COURT: Well, come.

7 (At 11:29 a.m., bench conference)

8 (At 11:30 a.m., bench conference concluded)

9 THE COURT: Go ahead, Mr. Amadeo.

10 BY MR. AMADEO:

11 Q In your interview with CPS and Detective Maltby, do remember  
12 telling the officer and the CPS agent that my client had a CPS  
13 investigation about Pearl in 2011?

14 A I don't recall.

15 Q If I were to play you the audio from that, would it help you  
16 remember?

17 A Probably not.

18 Q It wouldn't help you remember if I played the audio?

19 A Probably not.

20 Q Why wouldn't it? So, hearing your interview would not help you  
21 remember?

22 A It might, but it probably won't.

23 Q So, do you have memory problems?

24 A What do you mean, do I have memory problems?

25 Q Well, if I can't refresh your memory, is there issues with your

1234a

1 memory, itself, sir?

2 A No. You can try.

3 MR. AMADEO: At this point, I'd like to play a  
4 portion of the interview.

5 MS. MORTON: Considering that there -- can we  
6 approach?

7 THE COURT: Sure.

8 MS. MORTON: Thank you.

9 (At 11:31 a.m., bench conference)

10 (At 11:32 a.m., bench conference concluded)

11 THE COURT: You're gonna -- she's gonna take you  
12 right back there.

13 MR. AMADEO: Oh.

14 THE COURT: Since it is much -- the record will  
15 reflect that the prosecutor wants to listen to the audio before  
16 it's played to the jury. And because it's so short, it's  
17 easier to have the prosecutor go listen to it in the back room.

18 MS. MORTON: Are we taking the witness to refresh his  
19 memory?

20 THE COURT: No.

21 MS. MORTON: Okay.

22 MS. VAN LANGEVELDE: Okay.

23 THE COURT: No, we're gonna play it -- no, we're  
24 gonna play the tape in front of the jury --

25 MS. MORTON: Right.

1235a

1 THE COURT: -- but there's a concern -- nobody's  
2 listening to me.

3 MS. MORTON: I am. I'm still right here. I'm still  
4 here.

5 THE COURT: Just like home.

6 (At 11:33 a.m., attorneys exit courtroom)

7 (At 11:33 a.m., off the record)

8 (At 11:38 a.m., attorneys enter courtroom)

9 (At 11:39 a.m., back on the record)

10 THE COURT: We're back on the record.

11 Are you ready to proceed, Mr. Amadeo?

12 MR. AMADEO: I am.

13 BY MR. AMADEO:

14 Q Mr. Giffen, do you remember telling Officer Maltby and Agent  
15 Wood that CPS was involved in this situation years ago?

16 A Yes.

17 Q You do remember that?

18 A I remember Maltby and them bein' there, yes.

19 Q Okay.

20 A But I'm -- I'm confused. What are you asking?

21 Q I'm asking you, to your knowledge, was CPS involved in the  
22 situation with Damon and Pearl several years ago?

23 A Yes.

24 Q And what became of that investigation?

25 A I am confused, may I say. What year? You said 2011 when you

1 left.

2 Q Two thousand eleven.

3 A I do not remember a case in 2011.

4 Q Do you remember telling Officer Maltby, "Several years ago, CPS  
5 was involved in this situation"?

6 A No, I don't.

7 Q Okay. Would it help remem -- refresh your memory if I played  
8 you the one minute video?

9 A You can, yes. Or, maybe it will. Two thousand eleven?

10 (At 11:40 a.m., a portion of recording of audio  
11 interview was played at this point in the  
12 proceedings)

13 MS. MORTON: That's not what you played in the back.

14 MR. AMADEO: It's minute forty --

15 MS. MORTON: (Inaudible).

16 MR. AMADEO: I'm playing the CPS --

17 MS. MORTON: Judge --

18 THE COURT: Okay.

19 MS. MORTON: -- they can hear all of this.

20 THE COURT: I can't. So, turn it off.

21 (At 11:41 a.m., recording of audio interview was  
22 stopped at this point in the proceedings)

23 THE COURT: Some people could hear it? I got -- most  
24 people are shakin' their head no, a few yes. So, the people  
25 with really, really, really good hearing I guess could hear it.

1237a

1 I couldn't hear it.

2 But, I thought that you -- this is becoming very  
3 frustrating --

4 MR. AMADEO: I understand that.

5 THE COURT: -- because you said it was less than a  
6 minute. You guys went in the back and listened to it. You  
7 were gone significantly longer than it would take. And now,  
8 whatever Ms. Morton could hear, she said was not what was  
9 played in the back, that they agreed to.

10 MR. AMADEO: From minute forty-twenty to minute  
11 forty-forty, which I had to find. He says how CPS was involved  
12 in this situation years ago. That's all I want to get out.

13 THE COURT: Okay. Do you have it ready --

14 MR. AMADEO: I do.

15 THE COURT: -- right there, so there's nothing  
16 extraneous, and you can put it up?

17 MR. AMADEO: Yeah, let me play it.

18 THE COURT: Go ahead. Be ready to stop it if  
19 something else comes up.

20 (At 11:42 a.m., portion of recording of audio  
21 interview was played at this point in the  
22 proceedings)

23 THE COURT: Okay, stop.

24 (At 11:43 a.m., recording of audio interview was  
25 stopped at this point in the proceedings)



1238a

1 THE COURT: Did you hear that, sir?

2 THE WITNESS: Yes, sir (sic).

3 THE COURT: Was that your voice?

4 THE WITNESS: Yes, sir.

5 THE COURT: Go ahead, Mr. Amadeo.

6 BY MR. AMADEO:

7 Q So, was CPS involved years ago on this ordeal?

8 A No. This ordeal is -- when CPS was involved there, this was  
9 that was due to -- before this, what we're doin' now, occurred

10 Q Did you not tell Officer Maltby on that video -- and you said  
11 it's you --

12 A Yes.

13 Q -- that CPS was involved years ago on this deal? Is that not  
14 what you said in the video?

15 A Yes. I am about -- what I told Officer Maltby, CPS was  
16 involved. This was when -- Your Honor, this was to do with  
17 before this case even occurred. This was when we were goin'  
18 through a divorce, my first wife and I -- or, my second wife.  
19 CPS couldn't do nothin' unless somethin' happened. When we  
20 found out -- whatever his role. How do you say this? I -- you  
21 know, flabbergasted.

22 MS. MORTON: Okay. Can we stop for a minute and  
23 approach, please?

24 THE COURT: Okay.

25 THE WITNESS: Yeah.

1239a

1 (At 11:44 a.m., bench conference)

2 (At 11:44 a.m., bench conference concluded)

3 THE COURT: All right.

4 BY MR. AMADEO:

5 Q Did you tell Officer Maltby that Pearl had just got out of the  
6 shower when this occurred with Damon; do you remember that?

7 A No.

8 MR. AMADEO: I have nothing further at this time.

9 THE COURT: Anything else, Ms. Morton?

10 REDIRECT EXAMINATION

11 BY MS. MORTON:

12 Q To be clear, when you said, "This ordeal," you did not mean the  
13 defendant sexually assaulting Pearl.

14 A No.

15 Q All right. And when you just answered about telling Detective  
16 Maltby about the shower, is it that you don't remember telling  
17 him that or you did not tell him that?

18 A I don't remember telling anything about a shower.

19 Q Okay. So, you might have but you don't remember.

20 A Right.

21 Q All right, thank you.

22 THE COURT: Thank you, sir. You may be excused.

23 (At 11:45 a.m., witness stands down)

24 THE COURT:

25 MS. MORTON: Yes, People call Sharon Giffen.

1240a

1 THE COURT: Come right up here, please. There's a  
2 step before you get to the witness box. Please raise your  
3 right hand.

4 Do you swear to tell the truth, the whole truth, and  
5 nothing but the truth, under penalty of perjury?

6 MS. SHARON GIFFEN: I do.

7 THE COURT: Please have a seat. Please state your  
8 full name.

9 THE WITNESS: Sharon Irene Giffen.

10 THE COURT: Thank you.

11 Go ahead, Ms. Morton.

12 MS. MORTON: Thank you.

13 SHARON IRENE GIFFEN

14 at 11:47 a.m., called by Ms. Morton and sworn by the Court,  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MORTON:

18 Q Ms. Giffen, do you know Pearl Giffen?

19 A Yes, she's my stepdaughter.

20 Q How about James Giffen?

21 A He's my husband.

22 Q Robert Giffen?

23 A My stepson.

24 Q And do you know Damon Warner?

25 A Yes.

1241a

1 Q And how do you know him?

2 A He's Pearl's stepfather.

3 Q Do you see him in the courtroom today?

4 A Yes.

5 Q Can you please tell me where he's sitting and what he's  
6 wearing?

7 A He's wearing a blue shirt with a tie, and he's to my right,  
8 there.

9 MS. MORTON: Can the record please reflect that the  
10 witness pointed at the defendant and identified him?

11 THE COURT: Yes, the record will reflect that the  
12 defendant was identified.

13 MS. MORTON: Thank you.

14 BY MS. MORTON:

15 Q Prior to Christmas in 2015, where was Pearl living?

16 A With her mother.

17 Q All right. And do you remember the evening of December 23rd,  
18 2015?

19 A Yes.

20 Q Prior to that, was -- you said she was living with her mother.  
21 Did you have some kind of visitation arrangement?

22 A He -- Jimmy had every other weekend.

23 Q Okay. And were there times when you would pick Pearl up for  
24 the weekend?

25 A Yes.

1242a

1 Q On the night of the 23rd, did you go over to Pearl's mom's  
2 house?

3 A Yes.

4 Q Do you know where that is?

5 A Yes, on Butterfield Highway.

6 Q I'm sorry?

7 A Butterfield Highway.

8 Q Okay, do you know what city that's in?

9 A Olivet.

10 Q All right. And who'd you go over there with?

11 A I went over there with my husband, James.

12 Q Okay. Why did you go over there?

13 A Well, we got -- Pearl's mother called Jimmy and got us up out  
14 of bed, and that there was a big fight going on and we were  
15 supposed to come over and pick her up.

16 Q Okay. So, when you got there, what did you see?

17 A There was all kinds of commotion. Pearl was screaming. Her  
18 mother was screaming. She was running away from the house.  
19 And on the way there, we had called Robert to meet us over at  
20 Bridget's.

21 Q Okay. So, when you got to her mom's house -- what's her mom's  
22 name?

23 A Bridget.

24 Q Okay. When you got to Bridget's house, did you get out of the  
25 car?

1243a

- 1 A Not at first, no.
- 2 Q Okay. Did James get out of the car?
- 3 A Yes, he did.
- 4 Q All right. And was Robert there when you arrived?
- 5 A He got there right after we did.
- 6 Q Okay. So, when you first arrived at the house, other than  
7 Pearl and Bridget, did you see anybody else?
- 8 A Not at first.
- 9 Q Okay. And then, you said Robert showed up shortly after.
- 10 A Yes.
- 11 Q And then, you said that Pearl was running away from the house.
- 12 A Yes.
- 13 Q What happened when she ran away from the house?
- 14 A She was trying to run away, to get away from the whole  
15 situation.
- 16 Q And what happened?
- 17 A She had told her mom what had happened with her stepdad, Damon,  
18 and she didn't believe her, and she was running away.
- 19 Q So, when she ran away, what happened?
- 20 A Her dad went after her.
- 21 Q Did he catch her?
- 22 A He did, yes.
- 23 Q Did she leave there with you that evening?
- 24 A Yes, she did.
- 25 Q All right. And when -- when you were there, did the defendant

1244a

1 show up, at some point?

2 A Yes, he did.

3 Q When was that?

4 A It might've been just a few minutes after Robert had come in,  
5 but we were still trying to catch Pearl.

6 Q Okay. So, Robert was there before the defendant.

7 A I can't say for sure.

8 Q Okay. They both arrived while you were there?

9 A Yes.

10 Q And when Robert got there, were you still in your -- in the  
11 vehicle?

12 A Yes, for a bit.

13 Q Okay, how about when the defendant got there?

14 A I -- I can't remember exactly.

15 Q All right. At some point, did you hear the defendant saying  
16 something to Pearl?

17 A Yes, I did.

18 Q What did he say to her?

19 A He threatened he was "gonna slit the bitch's throat."

20 Q And what happened after he said that?

21 A That there was a lot goin' on, but Robert helped keep Damon  
22 away from Jimmy and Pearl, so that we could get Pearl to the  
23 truck.

24 Q All right. And then -- and she got in the truck eventually?

25 A Yes.

1245a

1 Q And then you left.

2 A Yes.

3 Q Where did you go?

4 A We went back to Hastings, to our house.

5 Q All right. And that -- at some point, did you hear -- or, did  
6 Pearl tell you about what the defendant was doing to her?

7 A We knew something had happened, but she didn't actually tell us  
8 much that night, when we got back home.

9 Q Okay. So -- well, you said you knew something had happened.  
10 Did she tell you details that evening?

11 A Not a lot, but we knew something serious had happened.

12 Q Okay. When did she, ultimately, tell you?

13 A The day after Christmas.

14 Q All right. Did you call the police?

15 A No, we did not.

16 Q Is there a reason that you didn't call the police?

17 A Well, we didn't want to the night we got her home, to have  
18 everything in chaos before Christmas. And then, we wanted to  
19 actually enjoy Christmas. That's why we, you know, told her  
20 she had to tell us, after Christmas, what exactly happened with  
21 Damon.

22 Q Okay. So, before Christmas, you didn't know the details.

23 A No.

24 Q And then after Christmas, when she did tell you the details, is  
25 there a reason you didn't call the police then?



1246a

1 A We wanted Pearl to speak with her school counselor and, you  
2 know, tell what had happened, and Pearl's, you know, safetines  
3 (sic) of her time.

4 Q And, I'm sorry, her what?

5 A And -- and her -- when she felt safe, to tell somebody at  
6 school.

7 Q Okay. And did -- prior to the December of 2015, or December  
8 23rd, 2015, had you noticed any changes in Pearl's behavior, a  
9 all?

10 A Not a lot. She wasn't really open with her dad or I. You  
11 know, she was a typical kid, come every other weekend. And we  
12 did things and went places and -- but, we didn't know anything  
13 like that had happened.

14 Q Okay.

15 MR. WINTER: Your Honor, I don't want to interrupt,  
16 but I -- can we have a time frame here? This is wide open,  
17 prior, prior to the 12 of '15, there were noticed -- changes  
18 noticed when?

19 MS. MORTON: All right.

20 THE COURT: Could you clarify the time frame she's  
21 talkin' about the things that she would do with her?

22 MS. MORTON: Okay.

23 BY MS. MORTON:

24 Q So, immediately preceding, for maybe the last couple months  
25 before 2015, December 23rd of 2015, did you notice anything?

1247a

1 A No.

2 Q What about in 2011, do you remember any changes in her behavior  
3 back then?

4 A No.

5 Q I'm gonna show you what's been, I guess, admitted as a  
6 stipulated People's Exhibit Number One. It's a photograph.  
7 Can you tell me who's in that photograph?

8 A Pearl Giffen.

9 (At 11:55 a.m., PX#1 identified)

10 BY MS. MORTON:

11 Q And do you know how old she is in that photograph?

12 A Thirteen, maybe, 14.

13 Q Okay. Would this have been in grade school, middle school,  
14 high -- or high school, do you know?

15 A Junior high school.

16 Q Junior high?

17 A Yup.

18 Q All right. Thank you.

19 MS. MORTON: I don't think I need to move to admit at  
20 this time.

21 THE COURT: No, Exhibit Number One has already been  
22 admitted, and you may publish it to the jury.

23 MS. MORTON: Thank you.

24 I have nothing else. Thank you.

25 THE COURT: Mr. Amadeo.

1 MR. AMADEO: Thank you.

2 CROSS-EXAMINATION

3 BY MR. AMADEO:

4 Q Mrs. Giffen, is it true that there was a parenting arrangement  
5 with Pearl where every other weekend she would go with you and  
6 your husband?

7 A Yes.

8 Q And did you often pick her up for those trips?

9 A Yes, I did.

10 Q What time of day did you pick her up?

11 A Between four and five-thirty.

12 Q Between four and five. When you picked her up, who was  
13 watching her?

14 A Damon was there.

15 Q Anybody else?

16 A And her other siblings.

17 Q Was Pearl ever alone when you went to pick her up?

18 A That I'm not sure.

19 Q Were there other people watching her at times when you picked  
20 her up?

21 A No.

22 Q Erica and Linda never watched her, to your knowledge?

23 A Not to my knowledge.

24 Q Do you know who they are?

25 A No, I don't.

1249a

1 Q Do you remember speaking to the police on the night in  
2 question?

3 A Yes.

4 Q What did you tell the police?

5 A When they came to my house or --

6 Q Yes, when they came to your house to interview you, what did  
7 you tell the police?

8 A What she had told us what had happened.

9 Q Which was what?

10 A She had been assaulted.

11 MS. MORTON: Objection, hearsay.

12 MR. AMADEO: She has firsthand knowledge. She gave a  
13 report to the police.

14 THE COURT: No, no. Sustained.

15 BY MR. AMADEO:

16 Q Do you know Robert Giffen?

17 A Yes.

18 Q How well do you know Robert?

19 A Not really well. He's my stepson.

20 Q As his stepmother, do you have interaction with him on a  
21 regular basis?

22 A No.

23 Q How often do you see Robert?

24 A Once or twice a year.

25 Q Do you know what Robert does for a living?

1250a

1 A He's a fireman, I know that.

2 Q Do you remember telling the police that you were concerned that  
3 Pearl may be stretching the truth?

4 A I don't recall.

5 Q If I played you a video that you made to the police, would that  
6 help refresh your memory?

7 A There's a video?

8 Q There's an audio.

9 A I don't recall it, myself.

10 Q Do you remember telling the police -- actually, at the twenty-  
11 one-thirteen mark of the interview with Detective Maltby --  
12 that you believe that Pearl is bipolar?

13 A I never said she was bipolar.

14 Q If I played the video, would that help remember -- help you  
15 remember?

16 A I guess.

17 MR. AMADEO: Your Honor, I'd like to play the twenty-  
18 one to twenty-two minute mark.

19 THE COURT: And has the prosecutor had a chance to  
20 listen to the 21 to 22 minute mark?

21 MR. AMADEO: No.

22 MS. MORTON: Not in anticipation of this, no.

23 THE COURT: Okay.

24 Ms. Ykimoff, let's take the jury out for just a brief  
25 minute, so we can get it queued up, in case there's a problem.

1251a

1 Ladies and gentlemen, you may leave your books on  
2 your chair.

3 You are in a recess instruction. Please don't talk  
4 to anybody about the case, don't let anybody talk to you about  
5 the case, and you still can't talk to each other about the  
6 case. And we'll get you back in here real quick.

7 (At 11:59 a.m., jury exits courtroom)

8 THE COURT: Watch your step, don't forget.

9 Okay, let's get it queued up.

10 (At 12:00 noon, portion of recording of audio  
11 interview was played at this point in the  
12 proceedings)

13 MR. AMADEO: That's it.

14 THE COURT: Okay.

15 (At 12:00 noon, recording of audio interview was  
16 stopped at this point in the proceedings)

17 THE COURT: Did you hear that?

18 THE WITNESS: Yes.

19 THE COURT: Does that refresh -- what?

20 MS. MORTON: Well, she didn't say stretch the truth.

21 MR. AMADEO: She said, "You'd better not be  
22 stretching. You better be telling the truth."

23 THE COURT: Listen to it again.

24 MS. MORTON: Well, but -- so, the question that was  
25 asked was --

1 THE COURT: There's two questions.

2 MR. AMADEO: Two.

3 THE COURT: The first question that was asked was  
4 that you thought -- the witness was asked whether she ever said  
5 that her -- that the victim was bipolar, and she said she never  
6 said that. And, obviously, I think we all heard on the tape --  
7 did you hear yourself?

8 THE WITNESS: Yes, I did.

9 THE COURT: And does that refresh your recollection?

10 THE WITNESS: Yes.

11 MS. MORTON: So, to be clear, what she said was, "We  
12 think she's bipolar." And I don't want the jury to mistake  
13 that as if she's been diagnosed as bipolar.

14 THE COURT: He -- and he can rephrase the question  
15 that it was something she said. But, she did say that on the  
16 tape, and she says she never said it. So, he's -- that's fair,  
17 I don't know impeachment, but clarification.

18 So, I think the jury can be brought back in. And Mr.  
19 Amadeo can ask: While the jury was out, you listened to the  
20 tape. Isn't it true that you said that you thought --

21 MR. AMADEO: Pearl's bipolar.

22 THE COURT: -- Pearl was -- you thought Pearl was  
23 bipolar. That addresses that.

24 And the next one, I want to hear again 'cause I  
25 couldn't hear it very well, about truthful or untruthful.

1253a

1 (At 12:02 p.m., portion of recording of audio  
2 interview was replayed at this point in the  
3 proceedings)

4 (At 12:02 p.m., recording of audio interview was  
5 stopped at this point in the proceedings)

6 MR. AMADEO: "You better not stretch. You better be  
7 telling the truth."

8 MS. MORTON: Right, but the question was: Did you  
9 tell Detective Maltby that you were concerned she was  
10 stretching the truth?

11 That's not, at all --

12 THE COURT: Right.

13 MS. MORTON: -- what she says.

14 THE COURT: That isn't -- the question that you asked  
15 the witness is not consistent with --

16 MR. AMADEO: Understood.

17 THE COURT: -- what the witness said.

18 MR. AMADEO: I can rephrase.

19 THE COURT: So, okay, how are you gonna rephrase it?  
20 Because I -- I don't want to -- don't want to have bring -- put  
21 'em out again and listen to it again.

22 MR. AMADEO: Right. Were there any concerns that  
23 Pearl was being truthful in these allegations?

24 THE COURT: Did you have any concerns during the  
25 investigation part?



1254a

1 THE WITNESS: No. I mean, I just wanted the truth to  
2 be told, as to what happened.

3 MR. AMADEO: I'll just stick to the bipolar question.

4 THE COURT: Okay. So, we're all clear on that.

5 And so, I think we'll bring -- have -- not think.  
6 I'm suggesting that we're gonna bring the jury back in and let  
7 them know that a portion of a previous interview done by Ms.  
8 Giffen was played to refresh her recollection, and then you  
9 will ask the question.

10 MR. AMADEO: Okay.

11 THE COURT: Anything else?

12 MS. MORTON: No. Thank you.

13 THE COURT: Let's bring the jury in.

14 MS. VAN LANGEVELDE: Are we taking a break after this  
15 witness?

16 THE COURT: No.

17 MS. VAN LANGEVELDE: Okay. I need to have Bryan get  
18 the laptop.

19 THE COURT: We haven't even been back an hour since  
20 the last break.

21 (At 12:05 p.m., jury enters courtroom)

22 THE COURT: Please be seated.

23 All right, ladies and gentlemen, during the brief  
24 break, a portion of an audio interview done by Ms. Giffen was  
25 played back for her to listen to, to refresh her recollection.

1255a

1                   Go ahead, Mr. Amadeo.

2                   MR. AMADEO: Thank you.

3 BY MR. AMADEO:

4 Q       Mrs. Giffen, did you have a chance to hear the video?

5 A       Yes.

6 Q       Okay. And is it true that you told Detective Maltby that "we  
7 believe Pearl is bipolar?"

8 A       That she could be, yes.

9 Q       Did you say that to Officer Maltby?

10 A       Yes, I said that.

11 Q       Okay. So, you were concerned about her mental stability; is  
12 that correct?

13 A       Yes.

14 Q       Now, earlier, you testified, when Ms. Morton was questioning  
15 you, that you went to go pick Pearl up on December 23rd;  
16 correct?

17 A       Yes.

18 Q       And what happened on December 23rd?

19 A       (No verbal response).

20 Q       When you went to pick her up, what happened?

21 A       She came out of the house, and we left.

22 Q       And had she told her mother about the allegations on the 23rd?

23                   MS. MORTON: Objection. I think this lacks  
24 foundation, whether she even knows that.

25                   THE COURT: You could ask her.

1 BY MR. AMADEO:

2 Q Are you aware of what Pearl told Bridget, her mother, prior to  
3 you coming to pick her up that night?

4 A At ten-thirty?

5 Q At ten-thirty, at night, on the 23rd.

6 A Well, we knew somethin' had happened.

7 Q What did you believe happened?

8 A She told her mother what happened.

9 Q So, were you aware of it on that day?

10 A Yes.

11 Q So, you didn't find out on December 26th. You, actually, found  
12 out on December 23rd; correct?

13 A That she had told her mother, yes. That's why they were  
14 fighting.

15 Q What was your knowledge on December 23rd?

16 A That we had to get her out of there.

17 Q Why?

18 A 'Cause her and her mother were fighting.

19 Q About?

20 A Her husband.

21 Q And what was -- so, you did know there was an allegation on  
22 December 23rd?

23 A Yes.

24 Q Thank you. Were you concerned about this allegation?

25 A Yes, I was.

1257a

- 1 Q What did you do?
- 2 A What do you mean what did I do?
- 3 Q What did you do when you learned of the allegation?
- 4 A I don't understand. What do you mean what did I do?
- 5 Q I'll help ya. Did you call the police?
- 6 A No, we did not.
- 7 Q Did you call CPS?
- 8 A No, we did not.
- 9 Q In fact, you also testified that Damon threatened to "slit the  
10 bitch's throat"; correct?
- 11 A Yes.
- 12 Q Where were you in the car when you heard that?
- 13 A In the passenger seat.
- 14 Q And where did this actually occur, this alleged situation?
- 15 A Along the edge of the yard, along the driveway.
- 16 Q How far were you from where the allegation supposedly happened?
- 17 A Maybe a few hundred yards, maybe a few -- I don't know.
- 18 Q Few hundred yards?
- 19 A I was in the driveway, in my truck.
- 20 Q And you're claiming you could hear this a few hundred --
- 21 A He screamed it.
- 22 Q -- yards -- okay. So, you were concerned.
- 23 A Yes.
- 24 Q Were you fearful?
- 25 A Yes.

1258a

1 Q Did you call the police?

2 A No.

3 Q Thank you.

4 MR. AMADEO: Nothing further.

5 THE COURT: Ms. Morton.

6 MS. MORTON: Thank you.

7 REDIRECT EXAMINATION

8 BY MS. MORTON:

9 Q Have you ever seen a football field?

10 A Yes.

11 Q Okay, so a football field is a hundred yards.

12 A Okay.

13 Q Okay. So, when you say "a few hundred yards," were you three  
14 football fields away?

15 A No.

16 Q All right.

17 A Maybe 50, 70 feet, maybe.

18 Q Okay. And you said -- you were asked you knew there was an  
19 allegation on December 23rd, and you said yes. Did you know  
20 the details? Or, right before that, you had said you knew it  
21 had something to do with Bridget's husband.

22 A Yes.

23 Q So --

24 A But, I didn't know any other details, that something had  
25 happened.

1259a

1 Q And it was with Bridget's husband.

2 A Yes.

3 Q And that's Damon.

4 A Yes.

5 Q To be clear on the bipolar issue, that -- that was just a  
6 personal thought, not a diagnosis.

7 A No, it was not. It was just somethin' that spilled out.

8 MS. MORTON: I have nothing else. Thank you.

9 THE COURT: May the witness be released?

10 MR. AMADEO: Yes, Your Honor, from us.

11 MS. MORTON: Yes.

12 THE COURT: Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: You may step down.

15 (At 12:09 p.m., witness stands down)

16 THE COURT: Your next witness.

17 MS. VAN LANGEVELDE: Our next witness is Detective  
18 Sergeant Jordan.

19 THE COURT: Okay. Come right up here, sir. There's  
20 a step before you get to the witness box. Raise your right  
21 hand.

22 Do you swear to tell the truth, the whole truth, and  
23 nothing but the truth, under penalty of perjury?

24 DETECTIVE SERGEANT JORDAN: Yes, I do.

25 THE COURT: Have a seat. Please state your full name

1260a

1 for the record.

2 THE WITNESS: Derrick Jordan.

3 THE COURT: Thank you.

4 Go ahead, Ms. Van Langevelde.

5 MS. VAN LANGEVELDE: Thank you, Your Honor.

6 DETECTIVE SERGEANT DERRICK JORDAN

7 at 12:10 p.m., called by Ms. Van Langevelde and sworn by the  
8 Court, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. VAN LANGEVELDE:

11 Q Good afternoon now, Detective Sergeant Jordan. How are you?

12 A I'm doin' great, thank you.

13 Q Can you tell us where you're employed, sir?

14 A I'm employed with the Michigan State Police.

15 Q And can you tell us what your title is there?

16 A My title there is Detective Sergeant.

17 Q And what does that mean?

18 A That means I've been promoted from trooper, where I'd normally  
19 do road patrol, stuff like that, to Detective Sergeant, where  
20 I'm more so doin' investigations and interviews.

21 Q Okay. And how long have you been a police officer?

22 A Twenty-four years, one month.

23 Q And can you tell us just what -- what do you -- what is your  
24 educational background?

25 A I have an associate's degree in Criminal Justice, and I have a

1261a

1 bachelor's degree in Social Work.

2 Q And do you have any specialized training and experience as a  
3 Detective Sergeant who does investigations?

4 A Yes, I do.

5 Q Can you tell us just a little bit about that and your training

6 A I've been to several interview and interrogation technique  
7 schools to where I've learned to interview people, assess  
8 statements that they give me, assess written statements that  
9 they may have given.

10 Q All right. And did you -- can you tell us, I guess, some of  
11 the things that you do in your training when you interview  
12 people?

13 A I do inter -- I -- I do specialized interviews with people. I  
14 assess the statements that they give me. I assess the written  
15 statements that they give me.

16 Q Okay. And do you sometimes assist other police agencies?

17 A Yes, I do.

18 Q And did you have an opportunity to assist Detective Maltby in  
19 this particular case?

20 A Yes, I did.

21 Q All right. And did you conduct an interview with the defendant  
22 in this particular case?

23 A Yes, I did.

24 Q All right. Can you tell me when that interview took place?

25 A I believe the date was May 5th, 2016.



1262a

1 Q Okay. And where did that interview take place?

2 A That interview took place at the Michigan State Police  
3 Laboratory in Lansing.

4 Q Okay. And was the defendant under arrest, at all, when you  
5 were interviewing him?

6 A No, he wasn't under arrest. He was free to go at any time.

7 Q Did you read him Miranda?

8 A Yes, I did.

9 Q All right. And he said he was willing to come in and speak  
10 with you; is that accurate?

11 A That is correct.

12 Q So, Detective Sergeant Jordan, did you -- did you use any  
13 strategies when you were interviewing the defendant in this  
14 particular case?

15 A Yes, I did.

16 Q Can you tell us a little bit about that?

17 A One of the strategies that I used was to pretty much try and  
18 build a rapport with him by telling him I understood his  
19 position in the situation, stating that the victim in this case  
20 -- that it was her fault, just kind of victim blaming just to  
21 get him to open up, to talk about his role in the situation.

22 Q Had you ever met the defendant before?

23 A The defendant, no.

24 Q Yes. Had you ever met the victim before?

25 A No.

1263a

1 Q Had you ever talked with the victim?

2 A No.

3 Q Hear any of the interviews with her?

4 A No.

5 Q So, you didn't -- you're goin' in blind; is that accurate?

6 A That is correct.

7 Q Okay.

8 A Excuse me.

9 Q Did you say things about the victim in this situation?

10 A Yes, I did.

11 Q And were -- and did you know whether those things were true or  
12 not?

13 A No, not at all.

14 Q Okay. What kind of things do you recall saying to the  
15 defendant?

16 A About --

17 Q About the victim. I'm sorry.

18 A That we both knew that she was probably sexually active, that  
19 she liked him, that it was her fault, things of that nature.

20 Q Okay. Why would you say --

21 MR. WINTER: May we have a moment, Your Honor? May  
22 we approach? I -- I have an objection, but I -- I -- are you  
23 going to play the tape?

24 MS. VAN LANGEVELDE: Well, yes.

25 (At 12:14 p.m., bench conference)

1264a

1 (At 12:15 p.m., bench conference concluded)

2 MS. MORTON: Judge.

3 THE COURT: Yes?

4 Yes, sir.

5 JUROR CENTENO: Can we ask the witness to speak more  
6 into the microphone?

7 THE COURT: Yes. Well, actually, I will also tell  
8 you, you do need to project a little more because these don't  
9 amplify --

10 THE WITNESS: Okay.

11 THE COURT: -- like you would normally think, because  
12 their -- their main purpose is to help record.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: So, if you could please amplify, that'd  
15 be great.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Thank you. Go ahead.

18 MS. VAN LANGEVELDE: And I'm sorry, but I want to  
19 make sure that they've heard everything that Detective Sergeant  
20 Jordan has said. So, could -- I don't know if I'd want --

21 THE COURT: Has everybody been able to hear what he  
22 has said, on the whole, so we can move forward?

23 JURORS: (No verbal response).

24 THE COURT: Okay, let's move forward.

25 MS. VAN LANGEVELDE: Okay, thank you.

1 BY MS. VAN LANGEVELDE:

2 Q So, you -- I guess just to back up, so you said things like we  
3 both know she's sexually active, we both know she wants you,  
4 those sorts of things?

5 A That is correct.

6 Q Okay. Why would you say those types of things?

7 A Again, to get the defendant to be comfortable talkin' about his  
8 role in this incident, getting him to feel that I was on his  
9 side, that we were man-to-man talkin', we were talkin' like me  
10 or whatnot, and so that he can be comfortable speakin' about  
11 his role in the situation.

12 Q Okay. And what did the defendant tell you?

13 A He told me that him and the victim were wrestling around, and  
14 she asked him -- excuse my language, but she asked him if he  
15 wanted to feel her pussy. At that time, he said that she took  
16 his hands and placed 'em down in her pajama pants and told him  
17 that her pussy was hot and on fire. He told me, at that point,  
18 he took four of his fingers and he felt her vagina. It was  
19 wet. And that he put his fingers inside her -- the lips of her  
20 vagina, then he pulled his hand out.

21 Q Was he specific as to how many fingers?

22 A He said four.

23 Q Okay. And did he -- did he -- I think you said this. Did he  
24 indicate what he felt when he felt her vagina?

25 A He said her vagina was moist. It was wet.

1266a

1 Q Now, as part of your, I guess, special interview with the  
2 defendant, did you write down what he told you?

3 A I did write it down, yes, ma'am.

4 Q Okay. And what is the purpose of doing that?

5 A Writin' it down to make sure that it's accurate, and then I had  
6 him sign it.

7 Q Okay.

8 MS. VAN LANGEVELDE: And, Your Honor, I'm showing  
9 what's been marked as People's Exhibit Two, which has been  
10 stipulated to as an exhibit.

11 May I approach?

12 THE COURT: You may.

13 MS. VAN LANGEVELDE: Thank you.

14 BY MS. VAN LANGEVELDE:

15 Q Detective Sergeant Jordan, I'm showing you what's been admitted  
16 over stipulation as People's Exhibit Two. Do you recognize  
17 that document?

18 A Yes, I do.

19 Q Can you tell us what it is?

20 A This is the statement that I wrote down and had the defendant  
21 sign.

22 THE COURT: Okay, wait a minute. What -- you said  
23 that was Exhibit Two?

24 MS. VAN LANGEVELDE: Maybe I'm missing --

25 THE COURT: It is -- it's -- it's supposed to be

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1 Exhibit Eight --

2 MS. VAN LANGEVELDE: I'm sorry.

3 THE COURT: -- given the stipulated list.

4 MS. VAN LANGEVELDE: My apologies.

5 THE COURT: I -- and I think Ms. Bond needs to be  
6 doing that.

7 MS. VAN LANGEVELDE: Okay. So, I'm making it Eight  
8 (At 12:18 p.m., PX#8 identified)

9 THE COURT: Oh, okay. Ms. Bond needs to be doing  
10 that.

11 MS. VAN LANGEVELDE: Oh.

12 THE COURT: And I'm gonna have you put this on the  
13 thing, so you guys can double check against the master list  
14 that you stipulated to.

15 MS. VAN LANGEVELDE: Okay, thank you.

16 THE COURT: That's okay. Is that all -- yup, there  
17 you go. Because, you see, she puts the -- the number, and then  
18 she also puts the date. And that makes it the ones that go up,  
19 if it goes up with the transcript on the --

20 MS. VAN LANGEVELDE: I'm sorry.

21 THE COURT: No problem.

22 MS. VAN LANGEVELDE: I'm sorry. I'm used to doing it  
23 myself.

24 THE COURT: And we appreciate you doing it yourself.  
25 No problem, at all. Okay.

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1 MS. VAN LANGEVELDE: All right.

2 THE COURT: There we go.

3 BY MS. VAN LANGEVELDE:

4 Q So, Detective Sergeant Jordan, I'm looking on Exhibit Eight.

5 And there's two signatures on there; is that correct?

6 A That is correct.

7 Q Okay. Which one is your signature?

8 A My signature is the one to the right of the paper.

9 Q Okay. And which one is the defendant's signature?

10 A His signature is the one to the left of the paper.

11 Q Okay. Now, there -- it says on here, "Is this statement true?"

12 Yes?

13 A That is correct.

14 Q And then it has, in different handwriting, "Yes, DW;" is that  
15 correct?

16 A That is correct.

17 Q Who wrote that "Yes, DW?"

18 A The defendant wrote that.

19 Q And then, it looks like -- did you write this part, "Did you  
20 give this statement voluntarily?"

21 A I did write that part.

22 Q Okay. And then after it, it says, in different writing, "Yes,  
23 DW."

24 A That is correct.

25 Q Who wrote that?

1 A The defendant wrote that.

2 Q Okay. But this first part of the paragraph, did you handwrite  
3 that?

4 A I handwrote that, yes.

5 Q Okay. And -- but that was based on what?

6 A That was based on the statement that the defendant gave me.

7 Q Okay.

8 MS. VAN LANGEVELDE: May I publish to the jury, Your  
9 Honor?

10 THE COURT: You may.

11 MS. VAN LANGEVELDE: Thank you.

12 BY MS. VAN LANGEVELDE:

13 Q Now, can you explain to us, Detective Sergeant Jordan, why or  
14 if there is a specific technique in -- in having yourself write  
15 that?

16 A At times, like I say, when I'm interviewin', I assess not only  
17 the statements but also their body language, the -- the tone in  
18 the -- the room, if you will. And I just felt that it would --  
19 it would allow things to go along smoother if I wrote it down  
20 and he initialed that it was accurate and then signed it.

21 Q Okay. Now, did you make any threats to the defendant, in any  
22 way?

23 A No, I did not.

24 Q Did you force the defendant to sign that?

25 A No, I did not.



1 Q Okay. Now, back in 20 -- May of 2016, when you conducted this  
2 interview with the defendant, was Michigan State Police  
3 videotaping at the lab where you were at?

4 A No, they were not.

5 Q Okay. Can you explain to me does -- I guess, what is the setup  
6 in -- in allowing other people to watch?

7 A Other people that's associated with the case, maybe the officer  
8 that's in charge of the case, will be sittin' in an adjacent  
9 room where there's a live feed, and he can watch the entire  
10 interview as it's happenin' live.

11 Q Okay. So, are you aware if Detective Maltby was doing that in  
12 this particular case?

13 A Yes, I am. He was there.

14 Q Okay. And so, he wasn't in the same room with you, but he was  
15 watching a live feed; is that accurate?

16 A That is correct.

17 Q Okay. Was it brought to your attention later on that Detective  
18 Maltby had videotaped a portion of your interview with him?

19 A It was brought to my attention later.

20 Q Okay. At any point during your interview with the defendant,  
21 did he indicate he wanted to leave and you keep him there?

22 A No.

23 Q Okay.

24 A Nope, not at all.

25 Q Did he ever indicate he didn't want to talk to you anymore?

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1 A Not at all, no.

2 Q And did he indicate to you that he didn't agree with the  
3 statement that you guys wrote out?

4 A No, he did not.

5 MS. VAN LANGEVELDE: Just a second, Your Honor.

6 All right, thank you. I don't have any other  
7 questions at this point.

8 THE COURT: Did you take the master list?

9 MS. VAN LANGEVELDE: I did. I'm gonna bring it back  
10 Judge.

11 THE COURT: Go ahead, Mr. Amadeo.

12 Why don't you put it right down there, so he can see  
13 it, too. Then, if I need it, Ms. Bond will pass it up to me.

14 MS. VAN LANGEVELDE: Okay, thank you.

15 MR. AMADEO: Are we not playing the video?

16 CROSS-EXAMINATION

17 BY MR. AMADEO:

18 Q Good afternoon, Detective Jordan.

19 A Good afternoon, sir.

20 Q Do you remember testifying that you've been to several  
21 interview and interrogation schools?

22 A Yes, I do.

23 Q So, would it be safe to say that you're a highly qualified  
24 interviewer?

25 A I think I'm okay, sir.

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1 Q Okay. What techniques do you usually employ?

2 A Like I described techniques in which you build rapport, you get  
3 the defendant to feel that you're on their side, so that  
4 they're comfortable speakin' about the incident in which  
5 they're involved in.

6 Q Would it be safe to say that most techniques that are out there  
7 you've had experience with?

8 A I can't tell you most. I'm not sure what all techniques are  
9 out there, sir.

10 Q Are you familiar with the PEACE Technique?

11 A Pardon me?

12 Q Are you familiar with the PEACE Technique?

13 A I've heard of it, but I haven't done anything --

14 Q Do you have any experience with that?

15 A No, sir.

16 Q How about the Reid Technique?

17 A I've heard that, yes, sir.

18 Q Can you explain the Reid Technique to the jury?

19 A Not really because I -- it's something that I've heard. A lot  
20 of the techniques that I use seem to be on par with Reid.

21 Q Okay. So, can you explain the steps of Reid?

22 A Again, sir, that's not a technique that I used with him that  
23 day?

24 Q Isn't it true that Michigan State Police utilize the Reid  
25 Technique as their number one technique?

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1 A That, I cannot say, sir. Some people have been trained in it  
2 but not everyone.

3 Q And with that Reid Technique, from your knowledge, isn't there  
4 a high risk of false confessions?

5 A There have been statements of false confession with Reid, yes  
6 sir.

7 Q In fact, wasn't the Reid Technique famous for the West Memphis  
8 Three and the Central Park Five case, to your knowledge?

9 A I'm not sure about the Central Park Five case.

10 Q But we can agree to a lot of false confessions with Reid;  
11 correct?

12 A I've heard of false confessions, but I can't tell you a lot. I  
13 can't tell you a little. I can't tell you that.

14 Q How long was your interview with Damon on May 5th, 2016?

15 A I'm not sure.

16 Q You don't remember?

17 A I'm not sure exactly how long, no, sir.

18 Q If I showed you what you testified before, would that help?

19 A Yes, it would. Okay, yeah.

20 Q Detective Jordan, did you have a chance to review your prior  
21 testimony?

22 A Not really. I did not.

23 Q Didn't I just show you --

24 A You just showed me, yes, sir, that, yes.

25 Q And do you have any reason to believe that this would be

1 inaccurate?

2 A That's a generalization, of which I put in that, that  
3 statement, there.

4 Q Okay. So, what did the generalization say?

5 A Couple of hours.

6 Q Couple hours.

7 A Yes, sir.

8 Q What time did Damon come in that morning?

9 MS. VAN LANGEVELDE: Your Honor, can we approach?

10 I'm sorry.

11 THE COURT: Yes.

12 (At 12:25 p.m., bench conference)

13 (At 12:27 p.m., bench conference concluded)

14 BY MR. AMADEO:

15 Q So, you do feel it's fair, Detective, that my client was there  
16 a couple hours?

17 A That's correct, sir, yes.

18 Q Did you have him sign in when he came into the Michigan State  
19 Police station?

20 A Do I have him sign in like a sign-in sheet? No, there's no  
21 sign-in sheet or anything like that.

22 Q There's not documentation when you walk into the MSP?

23 A No. I mean, people come and go all -- all day there.

24 Q Are you saying, under oath, that people don't have to sign in  
25 to the MSP when they enter?

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1 A The part in which I was working, they did not have to sign in  
2 no.

3 Q You asked Damon if he had used any alcohol or drugs prior to  
4 your interview.

5 A I did.

6 Q And what did he say?

7 A I'm not -- I can't recall, but I did ask him that.

8 Q But you don't remember for sure.

9 A I don't remember for sure, no, sir.

10 Q Did you ask him if he was on any specific medications?

11 A I did ask him if he was on any medications and if --

12 Q What'd he tell ya?

13 A I'm not sure, sir. I don't have that in front of me.

14 Q It's possible if he -- he was on medications, that could've  
15 altered things; correct?

16 A Certain medications, I guess, could, yes, sir.

17 Q In the handwritten statement you have -- I'm gonna approach you  
18 with it -- let's be clear on this, did you write this?

19 A Yes, I wrote that, sir. I wrote the top part of the statement.

20 Q Is there video of him reading it?

21 A Is there a video of him reading it?

22 Q Yeah. Or, are we just taking your word that he reads this?

23 A Well, yes, he signed it.

24 Q Okay. He signed the bottom, which I understand, supposedly,  
25 that's his signature. I'm asking you this. When you wrote

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1 this out, is there any other documentation other than your  
2 word?

3 A No, sir, I guess not.

4 Q Okay, thanks. So, you lied to him; correct?

5 A I didn't lie to anybody, sir.

6 Q You didn't lie to my client?

7 A Lie to him about what?

8 Q Did you, basically, attack him, saying you understood things?

9 A Attack him? No, sir, that's not a fair word to use.

10 Q Did you make any promises to him?

11 A Not at all, sir.

12 Q You made no promises to him?

13 A No promises at all, sir.

14 Q Did you ever offer him food?

15 A Water, I'm sure I offered him water. That's just somethin'  
16 standard that I do. We do have granola bars and stuff like  
17 that in the office. And if I have that, I offer it. Most  
18 people turn it down.

19 Q What's your level of education again, Officer?

20 A I have an associate's degree and a bachelor's degree, sir.

21 Q So, is it safe to say you're highly educated?

22 A I'm educated, I guess, yes, sir.

23 Q What's Damon's level of education?

24 A I did ask him that.

25 Q What'd he say?

1 A I wrote it down. I don't have it in front of me. But, I did  
2 confirm that he was able to read and write and understand what  
3 I was sayin'.

4 Q Did Damon keep checking his phone when he was in your  
5 interview?

6 A I don't recall that, sir.

7 Q Did Damon tell you that he had to go pick up his son and he was  
8 rushing to get out of the interview?

9 A I don't recall that either, sir.

10 Q Do you recall this? What point of the interview did Damon  
11 actually give you this alleged confession? Was it the  
12 beginning, the middle, or the end?

13 A I would say it was closer to the end than it would be the  
14 middle. Between the middle and the end, yes, sir.

15 Q So, to be clear -- and correct me if I'm wrong -- you wrote  
16 this statement for him; correct?

17 A I wrote it down in his presence, yes, sir.

18 Q You never got him to write it. Just to sign this at the end.

19 A After I read it to him, to make sure that it was accurate,  
20 that's when I asked him to sign it.

21 Q But you decided to write it yourself.

22 A I did, sir.

23 Q And while you're somewhat familiar with the Reid Technique,  
24 you're not really an expert in that area; correct?

25 A That's fair to say, sir.



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1 Q And you do not recall Damon's level of education.

2 A I wrote it down, but I don't have it in front of me, sir.

3 Q And you do not recall whether or not my client used any  
4 narcotics that morning; correct?

5 A That is something that I ask. And if he had used narcotics  
6 that morning, I would not have talked to him.

7 Q Do you remember, did you document his response to that  
8 question?

9 A I did document it --

10 Q Do you have it?

11 A -- but I don't have it in front of me. No, sir.

12 Q You don't have it.

13 A No, sir.

14 Q Okay. So, basically, Detective Jordan, we're just gonna take  
15 your word on this; correct?

16 A Yes, sir.

17 Q Okay, thanks.

18 MR. AMADEO: Nothin' further.

19 REDIRECT EXAMINATION

20 BY MS. VAN LANGEVELDE:

21 Q Detective Sergeant Jordan, you -- let's be clear. You did not  
22 use the Reid Technique when you were talking to the defendant  
23 in your interview.

24 A That is correct.

25 Q All right. And Michigan State Police, do the troopers that are

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1 out and about on the roads, do they even wear body cameras?

2 A They should be wearin' 'em now. They're -- they're  
3 implementin' 'em.

4 Q But back in --

5 A Back then, no.

6 Q Okay.

7 A No, not at all.

8 Q When you were doing the interview, did you guys have the setup  
9 where you could record everything?

10 A No, it wasn't set up in the Lansing lab, no.

11 Q That wasn't something the Lansing lab did.

12 A Correct.

13 Q Okay. That -- and I guess that's the distinction. Not that  
14 you couldn't; it's not something the Lansing lab did.

15 A That's correct.

16 Q Okay. Thank you.

17 MS. VAN LANGEVELDE: I don't have any other questions,  
18 at this point, of this witness, Your Honor.

19 THE COURT: May the witness be excused?

20 MS. VAN LANGEVELDE: Yes.

21 MR. AMADEO: Yes, Your Honor, I have no objection.

22 THE COURT: Okay. All right.

23 Thank you, sir. You may step down.

24 THE WITNESS: Thank you, Your Honor.

25 (At 12:33 p.m., witness stands down)

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1 THE COURT: Ms. Van Langevelde.

2 MS. VAN LANGEVELDE: May we approach?

3 (At 12:33 p.m., bench conference)

4 (At 12:33 p.m., bench conference concluded)

5 THE COURT: Ladies and gentlemen, you are gonna have  
6 a break for about another 20 minutes, like the first one.

7 We'll be back on the record at one o'clock.

8 You are in a recess instruction. So, remember, you  
9 can't talk to anybody about the case. You still can't talk to  
10 each other about the case.

11 You can't do any research on social media. You can  
12 leave your notebook on -- on the chair, if you wish to. And  
13 I'll see you in about 20 minutes.

14 Thank you very much. And watch your step as you go  
15 out.

16 (At 12:34 p.m., jury exits courtroom)

17 THE COURT: Okay, everybody can be seated.

18 So, my understanding -- so, I -- I would say that Ms.  
19 Van Langevelde was questioning the detective about his general  
20 practice and what does he do in starting interviews, and Mr.  
21 Winter objected at the bench and said, well, if you're playin'  
22 the tape, that's the best evidence of what was said. I denied  
23 that objection because I think that the prosecution was  
24 entitled to lay some foundation as to generically how the  
25 defendant -- the -- excuse me -- the detective does things and

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1 his rationale for doing it prior to hearing the tape.

2 Of course, that all now seems a little moot since we  
3 didn't hear the tape. Clearly, the testimony was fine.

4 That takes me back to the issue of the tapes. It's  
5 my understanding, from listening to this witness, that  
6 Detective Maltby was on the other side of the glass, if you  
7 will, and was listening as it was being live-streamed, which is  
8 a courtesy MSP affords whoever the other agency is. In this  
9 case, it was the Eaton County Sheriff's Department. And that  
10 Maltby was recording it.

11 And that's the genesis of the recording; is that  
12 correct, Ms. Van Langevelde?

13 MS. VAN LANGEVELDE: So, yes, there were two parts.  
14 The -- the part of the recording is the one that we had the  
15 other day, where we edited --

16 THE COURT: Okay, I just need you to answer my  
17 question.

18 MS. VAN LANGEVELDE: Oh, I'm sorry.

19 THE COURT: Is Mr. Maltby the one who re -- recorded  
20 it?

21 MS. VAN LANGEVELDE: Yes.

22 THE COURT: And you agree with that --

23 MR. AMADEO: I do.

24 THE COURT: -- right, Mr. Amadeo?

25 MR. AMADEO: Yeah, I do.

1 THE COURT: Now, Mr. Amadeo's concern, for -- for  
2 some time, has been that his client was there and being  
3 interviewed for a significantly longer period of time than for  
4 which there is a recording; is that correct?

5 MR. AMADEO: That's correct, Judge.

6 THE COURT: Now, my belief, and Ms. Ykimoff has  
7 confirmed it, is that we were in court on September 10th  
8 because we had a -- quite a few pretrial motions left to be  
9 heard. And one of those had to do with the request by the  
10 defendant to suppress the video based upon that whole issue, is  
11 that the -- it took -- the interrogation was longer than the  
12 video. I'm reading portions of what was said in it:

13 "The video presented is 26 minutes despite being with  
14 him a couple hours. They've cherry-picked what they've got..."  
15 blah, blah, blah.

16 Now, Mr. Amadeo, you withdrew your objection to that,  
17 that objection that was filed. And you did that telling me  
18 that you were satisfied that the balance of the recorded  
19 interview referenced things like the defendant taking a  
20 polygraph, explaining the polygraph, which at least all of us  
21 in this room, right now, can at least agree on this, that's not  
22 admissible in front of a jury.

23 And so, I'm a little -- I need to know what you  
24 learned since September 10th that now, today, you were bringing  
25 back up at the bench the issue of the length of the video.

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1 MR. AMADEO: I am concerned, in re-reading the  
2 transcripts, which I was preppin' on this weekend --

3 THE COURT: Well, you had read those before.

4 MR. AMADEO: I had.

5 THE COURT: That's why I had a motion to suppress  
6 scheduled and ready to be heard.

7 MR. AMADEO: I understand that.

8 THE COURT: And, you know, I'm not -- I'm -- I'm not  
9 happy with, oh, my gosh, we're just learning about jury  
10 instructions, we're just learning about that, when we've had a  
11 lot of pretrial motions, and there's plenty of time to be  
12 adequately prepared, and most important, to not waste the  
13 jury's time by having them sit back in a jury room.

14 So, I'm gonna ask you again, what have you learned  
15 since September 10th, which, at that point, you were no longer  
16 concerned about it and you withdrew your motion to suppress?

17 Do you agree that's what happened on September 10th?

18 MR. AMADEO: I do agree.

19 THE COURT: Okay. So, what have you learned since  
20 September 10th that now you want to relit -- I guess, bring  
21 that issue back up?

22 MR. AMADEO: There's not much more I learned, Your  
23 Honor.

24 THE COURT: Okay, good. So, that's where we're at on  
25 that. We will have no talk about the polygraph. We will have

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1 no talk about the explanation to the defendant about the  
2 polygraph. And we're done talking about the length of the  
3 video, because you can't dismiss a motion and then resurrect it  
4 in the middle of a jury trial.

5 And although this is not a transcript, the Court  
6 notes are very helpful because they're typed con --  
7 contemporaneous. And the Court said:

8 "Through diligent work of the attorneys, they have  
9 exchanged information, they developed a DVD that removed  
10 any concerns of the defendant. And now we have motions  
11 that are pending. The Rape Shield motion's withdrawn.  
12 The witness tampering motion's withdrawn. Suppression of  
13 Jordan as a witness and the video have been resolved. The  
14 motion for missing evidence resolved. Defendant:  
15 Evidence is all there. Everything is good to go. All on  
16 the same page."

17 So, if there has been nothing new that you have  
18 learned since that statement, as an officer of the court, it  
19 would seem, to me, that issue is resolved.

20 MR. AMADEO: I understand, Judge.

21 THE COURT: Mr. Winter, is there a reason you're  
22 standing?

23 MR. WINTER: No. I was considering something, and,  
24 Your Honor, I'm -- I'm -- after consideration, I have nothing  
25 to say. Thank you, Your Honor.

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1 THE COURT: Okay. Because if there is something that  
2 you've learned since September 10th, although the time to have  
3 done it would've been the morning of picking the jury, when I  
4 said is there anything else we need to do with -- deal with --  
5 but when defense counsel withdraws motions after they've met  
6 and, in good faith, believe everything's worked out, again, not  
7 appropriate to raise it in the middle of trial unless there's  
8 some startling new evidence, which can happen. That's why I'm  
9 asking.

10 Yes, Mr. Winter.

11 MR. WINTER: I'm sorry, Your Honor. I just want to  
12 clarify, so that I'm clear.

13 I don't think that what we were trying to do this --  
14 this morning was to suppress the tape. My -- I -- I need some  
15 direction from the Court so that we don't overstep.

16 I think that what we are trying -- what we want to  
17 comment on is the fact that Detective Maltby -- Detective  
18 Jordan has testified that the -- the interview was an hour or  
19 two and were --

20 THE COURT: A couple hours.

21 MR. WINTER: Pardon me?

22 THE COURT: A couple hours.

23 MR. WINTER: Couple hours, couple hours. And we're  
24 gonna play a tape, at some point, that's gonna be 30 minutes.

25 THE COURT: Yes, but here's the problem with where



1 you're going. That's exactly what Mr. Amadeo had been arguing  
2 because there's missing time. Mr. Amadeo said, on September  
3 10th, he no longer felt there was missing time, that the  
4 discussions that were not tape recorded would not be admissible  
5 anyway because they involved explanation of, preparation of,  
6 and dealing with the polygraph.

7 MR. WINTER: Okay, I -- I guess -- I guess that's not  
8 where I was goin'. I was just --

9 THE COURT: In other words, you can't say to the jury  
10 he was there a couple hours and we only have 26 minutes.

11 MR. WINTER: Okay.

12 THE COURT: I'm not gonna allow that --

13 MR. WINTER: Okay.

14 THE COURT: -- because --

15 MR. WINTER: That's definitive.

16 THE COURT: -- we've already dealt with the issue of  
17 is there motion for missing evidence. And the defense attorney  
18 said, "Evidence is there, everything is good to go."

19 MR. WINTER: That's --

20 THE COURT: Because otherwise, I would've had to have  
21 dealt with not only whether to let the tape be played but  
22 whether or not there needed to be a missing evidence  
23 instruction because that had been discussed by the defense.  
24 When I'm told evidence is there, everything is good to go, that  
25 precludes you now, on the first day of trial, from saying, oh,

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1 now we want to argue there's evidence missing.

2 MR. WINTER: I -- I -- I understand, Your Honor. I  
3 just appreciate your clarification.

4 THE COURT: Yes.

5 Is there anything else, Ms. Van Langevelde or Ms.  
6 Morton, that you need us to deal with?

7 I -- I really do not want to bring the jury back in  
8 in 15 minutes, and have everybody up at the bench or leaving  
9 again. I -- I swear to God that we're all talking to each  
10 other more than the jury's hearing anything, which, of course,  
11 I hope you all realize is really not productive for either side  
12 'cause the jury wants to hear from people sitting in the box  
13 and not looking at the back of your heads, but, nonetheless,  
14 that's where we're at.

15 Ms. Van Langevelde, Ms. Morton, anything on the  
16 record we need to deal with?

17 MS. VAN LANGEVELDE: No thank you.

18 MS. MORTON: No.

19 THE COURT: Mr. Amadeo?

20 MR. AMADEO: No, Your Honor.

21 THE COURT: Mr. Winter?

22 MR. WINTER: No, Your Honor.

23 THE COURT: And so, we're clear; right?

24 MR. WINTER: Yes, Your Honor. Thank you.

25 MR. AMADEO: We are. Thank you.

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1 THE COURT: All right.

2 So, I will be back at one o'clock and will anticipate  
3 a witness ready to testify at one. Thank you, all, very much.

4 (At 12:44 p.m., off the record)

5 (At 1:02 p.m., back on the record)

6 THE COURT: We are back on the record in *People*  
7 *versus Warner*. Everyone that was here this morning is still  
8 here this afternoon, at counsel table, except for Detective  
9 Maltby, which we sent home this morning because he has the flu.

10 Are we ready to bring the jury in?

11 MS. MORTON: Yes.

12 MS. VAN LANGEVELDE: Yes.

13 THE COURT: Okay.

14 Mr. Cottrell?

15 MR. COTTRELL: Your Honor.

16 (At 1:03 p.m., jury enters courtroom)

17 THE COURT: All right, please be seated.

18 And, Ms. Morton, if you would please call your next  
19 witness.

20 MS. MORTON: Thank you. The People will call Thomas  
21 Cottrell.

22 THE COURT: Come right up here, sir. Raise your  
23 right hand.

24 Do you swear to tell the truth, the whole truth, and  
25 nothing but the truth, under penalty of perjury?

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1 MR. COTTRELL: I do.

2 THE COURT: Have a seat, please. Please state your  
3 full name for the record.

4 THE WITNESS: Thomas Cottrell, C-o-t-t-r-e-l-l.

5 THE COURT: Go ahead, Ms. Morton.

6 MS. MORTON: Thank you.

7 THOMAS COTTRELL, LMSW

8 at 1:04 p.m., called by Ms. Morton and sworn by the Court,  
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. MORTON:

12 Q Mr. Cottrell, where are you employed?

13 A I am the Chief Programing Officer at the YWCA in West Central  
14 Michigan, that's in Grand Rapids. I oversee all of our  
15 programing with regard to domestic violence, sexual assault,  
16 and child sexual abuse.

17 Q And what -- what is that programing?

18 A It is, primarily -- well, it's a variety of things, but primar  
19 -- with regard to child sexual abuse, it's primarily therapy  
20 and advocacy. In the arena of domestic violence, we also have  
21 shelter and transitional housing. With regard to sexual  
22 assault, which includes children, we also have a medical  
23 forensic team that does forensic medical exams.

24 Q Okay. And how long have you worked for the Grand Rapids YWCA?

25 A I've been with the YW since 1983. I began as a therapist in

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1 the Child Sexual Abuse Treatment Program, then became the  
2 clinical director of that program -- or, rather, the  
3 supervisor, then the clinical director, and then 15, 16 years  
4 ago became the chief programing officer over all the programs  
5 that regar -- that are related to victims of violence.

6 Q Okay. So, you've been in your current position, I'm sorry, how  
7 long?

8 A I think it's 2002.

9 Q Okay. And, specifically, do you work directly with child  
10 victims of sexual abuse?

11 A I currently work with adult survivors of childhood abuse.  
12 Occasionally, I work with sex offenders. Earlier in my career,  
13 I was exclusively working with families that experienced child  
14 sexual abuse.

15 Q Okay. And specifically with the -- the child victims?

16 A With the child victims, with the non-offending parents, with  
17 the offenders, with the siblings, the re -- we consider a  
18 referral to our program to be a family referral when it  
19 involves sexual abuse within a household. So, we provide  
20 services for everybody related to that victimization.

21 Q All right. And by services, what do you mean by that?

22 A Counseling services and advocacy.

23 Q Okay. And you talked about also working with offenders.

24 A Yes.

25 Q What work do you do with offenders?

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1 A Primarily, the work I have done is facilitating sex offender  
2 therapy groups and also working individual -- individually with  
3 sex offenders. And, on occasion, when they are having some  
4 ongoing relationship with the victim or the family, would  
5 provide family therapy in that regard, too, particularly around  
6 safety planning.

7 Q Okay. And so, when you say facilitate the group, you're -- you  
8 are there, present for the group?

9 A Correct, providing group psychotherapy.

10 Q All right. Do you have training or experience in the area of  
11 child development?

12 A My undergraduate degree from the University of Michigan is in  
13 Child Psychology. My master's degree, also from the University  
14 of Michigan, is in Advanced Social Work Practice with -- well,  
15 advanced social -- Interpersonal Practice with a specialty in  
16 children.

17 Q Okay. And what are other training -- well, tell us about your  
18 educational background, other than if there is any -- what you  
19 just told us.

20 A Well, I am a mi -- Licensed Master Social Worker in the State  
21 of Michigan, meaning I can practice independently without  
22 direct supervision. Education has gone as far as a master's  
23 degree. I provide training throughout the state on issues  
24 related to child sexual abuse, primarily through the State  
25 Court Administrator's Office, where I train Child Protective

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1 Service workers and therapists who are contracted with the  
2 state to provide services for children who've been sexually  
3 abused.

4 Q Okay. And have you, yourself, attended other trainings over  
5 the years regarding child sexual abuse, child development?

6 A As part of my licensure, I'm required to maintain continuing  
7 education credits, and so, yes. The focus of my training tends  
8 to be more on issues directly more connected to trauma, to  
9 LGBDQ issues as it relates to sexual assault, some -- usually  
10 with regard to child sexual abuse, I provide the trainings. I  
11 don't, necessarily, attend them.

12 Q Okay. Now, earlier in your career, you talked about working  
13 more directly with families. Were you receiving training in  
14 those areas then?

15 A Yes.

16 Q And now you teach the training.

17 A Correct.

18 Q All right. How is child development related to child sexual  
19 abuse?

20 A How a child responds to being sexually assaulted is very much  
21 related to where they are developmentally, in terms of how they  
22 understand the world, how it shapes what they see and what they  
23 believe.

24 One of the things that I think folks often forget is  
25 that sexual abuse is also a teaching process where it is

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1 teaching the child about their body, about relationships, about  
2 power, about violence. And depending on where that child is  
3 developmentally, how those lessons impact them in their later  
4 liFE is greatly determined by where they are developmentally.

5 Q Okay. So, would it be fair to say that developmental issues  
6 are -- are closely related to that area of child sexual abuse?

7 A Yes.

8 Q And what about have you trained -- had training in perpetrator  
9 tactics or offender dynamics?

10 A Yes.

11 Q And tell us about that training.

12 A Most of that training was earlier in my career, and it was  
13 specifically with regard to incest offenders, meaning offenders  
14 who abuse their own children or stepchildren or children that  
15 are home or older teens who are abusing younger children. Most  
16 of that came from Midwest Institute for the family, Mary Jo  
17 Barrett, that's in Chicago. Those were the trainers of the day  
18 back in the mid 80s, when I began my original career.

19 Q All right. And you continue to work in that area now?

20 A Correct.

21 Q And do you -- have you taught as a professor?

22 A Yes. I was an adjunct professor at Western Michigan University  
23 in the Grand Rapids campus where I taught three different  
24 classes: One on advanced social work practice with children,  
25 one on group therapy, and one on child sexual abuse.



1 Q All right. Have you testified as an expert before in the area  
2 of child sexual abuse or childhood trauma?

3 A With regard to child sexual abuse, yes, I've been qualified in  
4 23 counties in Michigan to testify on that topic.

5 Q All right. And do you know how many times you have testified?

6 A Upwards of 200.

7 Q And have you -- you've been qualified in those courts as an --  
8 as an expert by the court?

9 A That is correct.

10 Q All right. And how about in perpetrator tactics and offender  
11 dynamics?

12 A When I consider child sexual abuse dynamics, I include the  
13 offender dynamics as part of that because they are intricately  
14 connected. Probably in a handful of cases, maybe less than 20,  
15 I've been specifically qualified on offender dynamics.

16 Q All right.

17 A But oftentimes, it's included in the notion of child sexual  
18 abuse dynamics.

19 Q Are you familiar with other research and studies involving  
20 child sexual abuse?

21 A I continue to read the literature with regard to child sexual  
22 abuse and the statistics and -- and the evolving treatment  
23 techniques.

24 Q All right. So, you keep up with the research.

25 A Yes. Part of my job, as the chief programing officer, is to

1 make sure that our staff are working with the best technologies  
2 when it comes to trauma resolution and child sexual abuse. So  
3 it is my responsibility to make sure I'm updated on what's  
4 going on in the field.

5 Q All right.

6 MS. MORTON: Your Honor, at this time, I'm going to  
7 ask you to qualify Mr. Cottrell as an expert in the dynamics of  
8 child sexual abuse and perpetrator tactics or sex offender  
9 dynamics.

10 THE COURT: Voir dire, Mr. Amadeo?

11 VOIR DIRE EXAMINATION

12 BY MR. AMADEO:

13 Q Mr. Cottrell, did you say that you've testified in over 200  
14 trials?

15 A Yes.

16 Q Okay. How many times have you testified for the defense?

17 A Zero.

18 Q So, you're always for the prosecution?

19 A I have only been asked by the prosecution, yes.

20 MR. AMADEO: Okay, nothing further at this time.

21 MR. WINTER: Admit him as an expert?

22 THE COURT: Any objection to his qualification as an  
23 expert under 702?

24 MR. AMADEO: No, Your Honor.

25 THE COURT: All right, the Court, then, will qualify

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1 the witness as an expert in the dynamics of child sexual abuse  
2 which includes perpetrator tactics or sex offender dynamics.

3 MS. MORTON: Thank you.

4 DIRECT EXAMINATION, CONTINUED

5 BY MS. MORTON:

6 Q Can you tell us what is incest?

7 A Incest is child sexual abuse that occurs when the perpetrator  
8 is related by blood or affinity to the victim. Generally, we  
9 consider it any -- any individuals who's living in the  
10 household or is a close relative to the child.

11 Q All right. And so, would it be fair to say that child sexual  
12 abuse is incest, but incest is not, necessarily -- right?

13 A Correct.

14 Q Child sexual abuse is something different than incest?

15 A Incest is a subset of child sexual abuse.

16 Q Okay. Thank you. Have you ever met Pearl Giffen?

17 A No.

18 Q And have you ever reviewed any medical, counseling records,  
19 police reports, videos, anything related to Pearl Giffen?

20 A No, I have not.

21 Q All right. All right, and can typical victim behavior in a  
22 child sexual abuse situation be misconstrued as being  
23 inconsistent with that of an actual sexual abuse victim?

24 A The short answer is yes. Oftentimes, there is a  
25 misunderstanding of how children react to child sexual abuse.

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1 There is some mythology around how they should respond versus  
2 how they actually do respond.

3 Q Okay. And so, what types of behavior might a -- a victim  
4 exhibit that would get misconstrued?

5 A Well, a victim not disclosing immediately is sometimes  
6 misinterpreted as the abuse not happening. When a child victim  
7 continues to have an ongoing relationship with the assailant in  
8 terms of, you know, going to, you know, social events with them  
9 or just being in the household with them, not seeing -- seeming  
10 afraid of them, those behaviors are often misconstrued as  
11 indicating that abuse didn't happen. Children not having  
12 severe, overt symptoms of being sexually assaulted, children  
13 who don't regress, children who don't have nightmares, children  
14 who are, you know, not exhibiting signs of depression,  
15 sometimes the lack of symptoms is misconstrued as abuse not  
16 happening.

17 Q Would you say that there's anything that is typical about a  
18 child's reaction to child sexual abuse? Outward reaction, I --  
19 I guess I'd say.

20 A There are behaviors that occur more often than not, but nothing  
21 that is -- could specifically indicate that this behavior, if  
22 seen, means that child sexual abuse happened. Children are  
23 unique individuals, and they all respond a little bit  
24 differently.

25 Q Okay. And so, what is delayed disclosure.

1 A Delayed disclosure simply refers to a span of time elapsing  
2 between a sexual assault occurring and the abuse being  
3 disclosed by the victim. That disclosure can off -- sometimes  
4 be elicited by other people because they witness something  
5 going on and ask questions. Sometimes that disclosure is  
6 voluntary and spontaneous. The delay can be anywhere from a  
7 matter of days to upwards -- I'm working with a case right now  
8 where it's been 70 years, and this 77-year-old woman is finally  
9 disclosing things that happened to her when she was in her  
10 childhood. So, the delay can be significant.

11 Q All right. And based on the research and your training and  
12 experience, would it be unusual for a child to delay disclosing  
13 child sexual abuse?

14 A Not at all. Most -- almost all children, in our programing for  
15 child sexual abuse, have some degree of delay. And the  
16 literature, right now, is pointing to upwards of 50 to 60  
17 percent of the child sexual abuse that we know about isn't dis  
18 -- isn't disclosed until adulthood. So, it is actually the  
19 norm for there to be a delay.

20 Q All right. So, have there been studies about this very topic  
21 in the research community?

22 A Yes.

23 Q All right. And is that topic -- or, is delayed disclosure  
24 something that's generally accepted in the community of  
25 research?

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1 A Yes, it is.

2 Q All right. Why is delayed disclosure so common?

3 A Well, it's the underlying abuse dynamics that make it common.  
4 And, typically, we're looking at three primary ways that delays  
5 occur.

6 First, we have children who don't, necessarily, even  
7 understand what's happened to them as being wrong. We often  
8 run into this in cases where the children are very young and  
9 the abuse is done under the guise of a game. So, we have  
10 three, four and five-year-olds not quite understanding that  
11 being touched inappropriate is even a wrong thing to report to  
12 anyone. They may later disclose as they get older and realize  
13 that it was inappropriate and then they tell someone. Or, more  
14 often than not, what we find is that they're caught in the  
15 action or they're sexually acting out with another child,  
16 perhaps because they're trying to duplicate what has happened  
17 to them, but naively.

18 Also within that category, we have mid to older teens  
19 who often believe they have a romantic relationship with the  
20 assailant, and so aren't telling because they believe this is  
21 part of their relationship and they have affection for this  
22 individual, and they believe it's a part of their  
23 boyfriend/girlfriend relationship. Later on, they may disclose  
24 when, again, as they get older, maybe they break up with this  
25 person, or, if they were never going with them in the first

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1 place, and will talk about what's happened to them.

2 We also have children, who are so traumatized by the  
3 abuse, that they simply don't have access to the language to be  
4 able to describe it to someone. Or if they do have access to  
5 that language, telling it is so anxiety provoking for them,  
6 that they simply just don't do it. And often, we get later  
7 disclosure from these children because they become symptomatic.  
8 Their anxiety becomes overwhelming, they engage in self-  
9 destructive behaviors, and people start asking questions, and  
10 they later reveal that they've been abused.

11 The vast majority of children, though, who don't  
12 disclose immediately, kind of fall into a middle category where  
13 they're strategically deciding not to tell. And they're going  
14 through -- and I'm gonna make it sound more complicated than it  
15 is, but a cost/benefit analysis. Does it hurt more, does it  
16 create more anxiety to keep the secret or to tell the secret?  
17 And the important part to recognize in that is that they're  
18 using children's metrics to determine how much it will hurt.  
19 Often, they're making assumptions about what will happen if  
20 they tell, if they'll be loved, if they'll get kicked out of  
21 their home, if they will go to jail, will they -- you know,  
22 their parent not love them anymore, will they get in trouble at  
23 school, will they get teased in school, the things that are  
24 important to children. We, as adults, wish -- wish they were  
25 making those judgments perhaps based on other criteria, but

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1 they're using a child's lens to determine what's going to  
2 create them -- for them the most stress, which is the where the  
3 nature of child development comes in, because children, at  
4 different stages of development, have different priorities.  
5 And they base those decisions of whether to disclose or not  
6 based on those priorities.

7 So, we later get disclosure when those scales tip,  
8 when maybe the reason they were holding onto the secret when  
9 they were seven, eight and nine was less relevant when they're  
10 13, 14 and 15. So, then, it is easier for them to tell.

11 Also included within that range of purposely delaying  
12 and disclosure are the children who, for them, the abuse stops  
13 for some reason, and they are ver -- there's a very low -- low  
14 motivation for them to disclose to anyone because, for all  
15 practical purposes, for them it has stopped.

16 Q Okay. So, would you say it's, in your experience, it -- and  
17 from the -- from the -- the kids that you've worked with,  
18 harder or easier to disclose sexual abuse that's happening with  
19 someone in the home.

20 A It's, typically, more difficult because the vast majority of  
21 sexual abuse occurs within the context of a relationship. And  
22 there are built into that relationship a sense of loyalty,  
23 looking at how that offender may be connected to other family  
24 members, how destructive it will be to the household. So,  
25 there's many more factors that play for these children than



1 just -- quite frankly, this is rarely their agenda, to have a  
2 sense of justice. More often, they're worried about will the  
3 home stay together, will the family stay together, will I have  
4 love, will I have affection, will I have a place to return home  
5 to, will there be enough money coming into the household to  
6 feed me. Those are things that tend to be more of a priority  
7 And that's usually when the offender is a family member, most  
8 likely an adult in that household.

9 Q Okay, would it be unusual for a child, or a teenager even, to  
10 have emotional ties to the perpetrator even after the abuse  
11 occurs?

12 A Absolutely. Again, abuse is in the context of the  
13 relationship. That relationship can persist even when the  
14 abuse stops. And there still may be loyalty, there still may  
15 be affection, or it may simply just be endurance, or the child  
16 can be putting on a facade of normalcy so no one asks  
17 questions.

18 Q Okay. And so, to be clear, my question, I think, was: Would  
19 it be unusual for there still to be emotional ties? And you  
20 said: Absolutely.

21 A Not.

22 Q Abso -- okay.

23 A I'm sorry.

24 Q Okay.

25 A Yes.

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1 Q Okay, the rest of the answer didn't quite match, so.

2 THE COURT: Can we just pause? What is the problem  
3 Ms. Bond?

4 COURT RECORDER: I'm getting a lot of noise coming  
5 from his microphone. And --

6 THE WITNESS: Did I do it?

7 COURT RECORDER: I don't think so, but I don't --

8 THE COURT: Take a quick look at it.

9 Sorry, she wasn't able to record. She was starting  
10 to get concerned about the quality of the recording.

11 COURT RECORDER: Pardon? No.

12 THE COURT: Okay, now try it.

13 COURT RECORDER: Can I have you talk?

14 THE WITNESS: Test, test, one, two, three.

15 COURT RECORDER: The noise is still there, but I can  
16 hear him better.

17 THE COURT: Can you hear him better?

18 COURT RECORDER: Yes.

19 THE COURT: Okay.

20 MS. MORTON: Can I suggest if we can -- if we know  
21 where that one's plugged in, we can --

22 THE COURT: I wouldn't move them right now because,  
23 you know, it's --

24 MS. MORTON: Okay.

25 THE COURT: I think we'll get the tech department up

1304a

1 here at -- at the end of the day.

2 Maybe can you scooch it just a little bit more away  
3 from you?

4 THE WITNESS: Away from me?

5 THE COURT: It seems to be. Now try it again.

6 THE WITNESS: Test, test, one, two, three.

7 COURT RECORD: I can hear you better.

8 THE WITNESS: Okay.

9 THE COURT: Can you hear enough if you needed to do  
10 transcript?

11 THE COURT: Yes.

12 THE COURT: Okay, thank you for that.

13 Ms. Morton, go ahead. You may continue.

14 MS. MORTON: Okay.

15 BY MS. MORTON:

16 Q Does the -- okay. Does the age at which the abuse starts  
17 affect disclosure, at all?

18 A It can, depending on the family dynamics and where that child  
19 is. For example, if there was a degree of existing marital  
20 discord, for example, and the child was under the age of 10,  
21 where they would have great concern about family disruption and  
22 where they would go, that age would make a difference, versus a  
23 17-year-old, who might not care very much if Mom and Dad broke  
24 up.

25 Q Okay. So, would that have to do with the age at disclosure or

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1 the age at which the abuse started?

2 A Both. It could continue on. I mean, if -- if we're looking at  
3 why disclosure did not occur from the moment abuse began, that  
4 may be one of the reasons. And disclosure may occur when that  
5 reason is no longer valid.

6 Q All right. What is -- what does the term "process of  
7 disclosure" mean to you?

8 A Most children who disclose do not say everything the first  
9 time. And, rather, it is a process of disclosure, meaning, as  
10 time goes on and as they are asked questions or as they feel  
11 like they are in more welcoming and comfortable environments,  
12 they may disclose additional information about the sexual  
13 assault, itself. That's just a safety factor.

14 The other element that speaks to a process of  
15 disclosure is that often, when children are traumatized, they  
16 don't, necessarily, remember the events in a linear fashion,  
17 and bits and pieces of the memory may come back to them over  
18 time, meaning that the story will get filled out over time, as  
19 they're remembering bits and pieces of the abuse.

20 Q All right. So, if a child is -- is trying to forget the abuse,  
21 how can that affect later disclosure and recall?

22 A If the child isn't actively remembering the abuse or actively  
23 entertaining what had happened to them by recalling it and  
24 assuming the abuse has stopped, they aren't rehearsing that  
25 memory and there will be -- it will become less and less

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1 important over time. They can actually be effective about  
2 trying to put out of their mind. I won't say forget, but to  
3 not focus it -- on it anymore, if it, indeed, has -- is not  
4 presenting ongoing struggles for them; for example, if they're  
5 not having nightmares, if they -- if it isn't -- isn't an  
6 intrusive thought and they're able to carry on with their life  
7 without thinking about it. It would affect the motivation to  
8 disclose because there wouldn't be a high motivation to do it.  
9 It doesn't, necessarily, affect the quality of the memory.

10 Q All right. Now, based on your training and experience, tell me  
11 about how kids are with dates and times.

12 A Typically poor. We remember elements of any event based on  
13 what is important to us. Times and dates are not important to  
14 children, typically. They have adults take care of that for  
15 them. They're telling them when to go to school, when to get  
16 up, when to go to church. All of those things are within the  
17 purview of adults, and children rely on adults to do that.

18 So, when they are recalling event -- or, actually,  
19 when they encode the event, when -- when we make a memory of  
20 something that happened, it isn't usually limited to times and  
21 dates because times and dates aren't relevant unless it happens  
22 to be a birthday or Christmas or something that is significant  
23 to a child, then they -- they remember that it was on a  
24 particular kind of day.

25 But, in terms of dates and times of day, those things

1 just aren't important to children, and they don't associate  
2 those with the events in their life. That's not unique to  
3 child sexual abuse. That's anything.

4 Q All right. And is -- would -- how are adults with dates and  
5 times?

6 A A little better. Times are more important to us. But, we also  
7 have events in our life that we incur multiple times and we don't  
8 -- may not remember from one to the other if it was a Saturday  
9 or Sunday, or the 12th or the 26th. Again, it's how important  
10 to each individual those particular elements of their life are  
11 and do they organize their life around times and dates.

12 Q Okay.

13 A So, some of us do as adults, some of us do not.

14 Q Okay. And so, how about a 13-year-old? Talk to me about dates  
15 and times with a 13-year-old.

16 A For that particular child, a lot is going to depend on how  
17 their household is organized and whether that 13-year-old's  
18 expected to have a lot of independence and, therefore, kind of  
19 forced into remembering to get up themselves and what day  
20 they're supposed to go to school and when their homework is due  
21 and those kinds of things. And if the household is structured  
22 that way, times and dates become a little more important. But,  
23 by and large, 13 is still not an age at which children pay a  
24 whole lot of attention to those things.

25 Q Okay. So, if a child was going to Dad's, say every other

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1 weekend and remembered that it was a Friday because it was a  
2 day they were going to Dad's, would you expect them to, then,  
3 remember that exact date?

4 A No, they would -- I would not. Just that -- and that is not a  
5 date. I mean, that's really centered around the example that  
6 I'm going to Dad's, which happens to be on a Friday. So, I  
7 would not expect them to know which date that was.

8 Q All right. And what about the passage of time since the abuse  
9 does that affect the ability to remember dates and times?

10 A If there ever was a memory that was related to the date, yes,  
11 time would make that less and less significant, and that might  
12 be a piece of the memory that fades.

13 Q What is trauma response to sexual abuse?

14 A When the abuse, itself, is either very painful or very  
15 frightening, there can be a -- what we would call a traumatic  
16 reaction. Not all child sexual abuse is traumatic. It is  
17 always a bad thing, but not, necessarily, a traumatic thing.  
18 When someone is traumatized, how they process memory changes,  
19 how they connect memory to emotion changes in our brain, and  
20 it's a self-protective response. When we are overwhelmed and  
21 our -- our capacity to cope is overwhelmed, it can make the  
22 memories disjointed in the sense that they're not remembered as  
23 a linear event but, rather, bits and pieces that aren't  
24 connected together well. There's a lot of science behind that  
25 that I won't go into. But it -- it is a different way of

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1 processing events versus having it be a bad experience but  
2 remembered as a bad experience, as opposed to being  
3 traumatized.

4 Q All right. So, if someone is talking about a traumatic event  
5 but their affect during that retelling is flat, no crying, no  
6 emotion, would that surprise you?

7 A No, not at all. Often, when memories are traumatic, they are  
8 tied to very powerful emotions, and it is often -- and I've  
9 certainly seen it in therapy where someone tries to just get  
10 through a description of events without connecting to the  
11 emotion because it's, literally, a battle that they go through  
12 trying to hold those emotions back. And what we see on the  
13 surface is just a very flat presentation.

14 Q All right. If a child hasn't disclosed sexual abuse, can the  
15 child still be exhibiting some behavioral responses to that?

16 A Oh, absolutely.

17 Q And what might that look like?

18 A If there has been no disclosure?

19 Q Correct.

20 A There can be a whole host of symptoms that we'd see in children  
21 who have not disclosed, and those are usually signs of stress.  
22 And this is, again, that category where, if the sexual abuse is  
23 stressful, we can see particular things, but sexual abuse is  
24 not the only thing that can be stressful in a child's life.

25 But, things we would typically see, we can see self-



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1 destructive behaviors, cutting behaviors, aggressive behaviors  
2 For younger children, particularly in terms of toileting and  
3 eating. We can see sexualized behaviors where they may be  
4 acting out sexually or being suggestive in their clothing and  
5 their interactions with individuals. We see signs of  
6 depression, substance use in -- more in teens, angry outbursts  
7 which is also a sign of depression, and that can be almost any  
8 age. Some people we call hypervigilance, where it's being on  
9 guard all the time. And that's an artifact of trauma, where  
10 children are kind of perpetually scanning the environment to  
11 see who's gonna hurt them next. That often looks like ADHD  
12 because children can't tune into the things around them because  
13 they're preoccupied about the dangers that might be around  
14 them.

15 Q All right. What are the symp -- what do the symptoms of ADHD  
16 look like?

17 A Inability to focus on a task that is given to them, high levels  
18 of energy and -- well, high levels of energy, distractability.

19 Q Have you, in your own practice, seen instances where a child is  
20 diagnosed with ADHD but was really expressing trauma symptoms?

21 MR. WINTER: Excuse me, Your Honor. I -- I'm not  
22 sure that we have qualified Dr. Cottrell as an expert in -- in  
23 ADHD. And I think it's a subset of an area. And I don't think  
24 we have seen anything that qualifies him to testify as to ADHD,  
25 Your Honor.

1311a

1 THE COURT: And that was not an area that I have  
2 qualified him in?

3 MS. MORTON: Well, he just testified that, typically  
4 children may exhibit behaviors that are associated with ADHD  
5 when they have been sexually traumatized.

6 And so, what I'm asking him is what are those  
7 behaviors.

8 So, I guess I can rephrase it in that manner.

9 MR. WINTER: If we can take the -- the reference to  
10 ADHD out, I -- I'm better abled. But I -- if -- if we're  
11 talking about what the behaviors are of ADHD, then I don't  
12 think we've qualified him as an expert in that area. I think  
13 it's a subset and he's not --

14 THE COURT: I don't disagree, especially given his --  
15 you know, your substantial -- your -- your curriculum vitae, as  
16 testified verbally, didn't include anything regarding that. Or  
17 actually having a practice; correct?

18 THE WITNESS: I'm sorry?

19 THE COURT: Did -- a practice. You weren't in  
20 private practice; correct?

21 THE WITNESS: Yes, I was.

22 THE COURT: But, a long time ago.

23 THE WITNESS: Yes.

24 THE COURT: Yup.

25 Okay, go ahead, Ms. Morton, if you'd like to rephrase

1           that.

2                           MS. MORTON: All right.

3 BY MS. MORTON:

4 Q       When you -- in terms of attention issues or distraction issues  
5       what do you see?

6 A       When children are hypervigilant, it is an inability to focus on  
7       a task that is given to them, usually high energy, and that's  
8       part of the adrenaline that's connected to the hypervigilance  
9       So, they are often fidgety kids. They are kids who can't sit  
10       still in school. They don't usually pay attention to teachers.  
11       And they also began -- and they begin to self identify as poor  
12       students, which impacts their self-esteem. What else do we  
13       see? And because of the adrenaline, they -- which is kind of  
14       toxic to your system, they also tend to be a little more sickly  
15       kids. They get ill more often.

16                        So, those are the symptoms that we look at as  
17       hypervigilant. It can be more profound depending on the  
18       individual.

19                        It -- it can manifest as something we would call  
20       agoraphobia, which is afraid to go out into open spaces. They  
21       can have phobias about things that are connected to the abuse.  
22       And they're hypervigilant about those kind of things, going  
23       into dark rooms, going in terms of people of a particular  
24       gender. A lot depends on the nature of the abuse and the  
25       things that scare them.

1313a

1 Q All right. So, it's individualized with each person, each  
2 child.

3 A Absolutely, yes.

4 Q All right. Are you familiar with the research and studies that  
5 are out there about common perpetrator tactics?

6 A Yes.

7 Q Can you describe some of those tactics for us?

8 A Well, particularly as it relates to child sexual abuse?

9 Q Yes.

10 A There is, typically, a grooming process where the perpetrator  
11 tries to engage the child in behaviors -- and it's going to be  
12 unique to every situation -- where the child is desensitized to  
13 sexual touch and is co-opted into cooperating with the  
14 assailant and not disclosing.

15 Now, those can take many, many forms depending on the  
16 family, depending on the circumstances. Sometimes they are not  
17 threatening events. They can be provided -- that grooming can  
18 take place in terms of giving someone favors or paying special  
19 attention to them or even developing what the child would refer  
20 to as friendship, so that they will feel obligated and loyal to  
21 the individual who maybe has not abused them yet but is  
22 planning to. Or, they can take the forms of -- of frightening  
23 things, like threats, don't tell because x, y and z will  
24 happen, you won't be believed, I'll abuse your sister instead,  
25 things that scare the child into cooperating and not telling.

1314a

1           Then, there can also be a desensitization process  
2 where the child is gradually exposed to behaviors that  
3 sexualize the relationship. That could be being exposed to  
4 pornography, it can be exposure to various stages of undress,  
5 various stages of boundary violation, a sense of laying in bed  
6 together, or not having the door closed to the bathroom or in  
7 the shower, wrestling, touching, physical teasing, sexualized  
8 jokes. All of those things that add a sexualized element to  
9 the relationship between the child and the offender.

10           MR. WINTER: Your Honor, may we approach?

11           THE COURT: Sure.

12           (At 1:39 p.m., bench conference)

13           (At 1:40 p.m., bench conference concluded)

14 BY MS. MORTON:

15 Q       If a child's in a bedroom that does not have a bedroom door, is  
16 that a tactic that you have heard of or seen in the research?

17 A       I have seen it in my practice. I -- I can't tell you whether  
18 I've actually seen it in the research.

19 Q       Okay. In what context have you seen it?

20 A       In my practice?

21 Q       Yes.

22 A       That several offenders, throughout my career, have established  
23 in the home, under the guise of being open and transparent,  
24 took all the doors off of all the bedrooms and bathrooms.  
25 Their explanation to the family -- grooming the family -- was

1315a

1 this is how people show affection and care about each other  
2 because there's no boundaries between them. What that teaches  
3 the children in that household is they are not entitled to that  
4 degree of privacy. And that is a grooming tactic, and the  
5 offenders admit it as such.

6 Q All right. And earlier, you specifically mentioned  
7 wrestling --

8 A Yes.

9 Q -- with a child as a tactic. Can you please explain how that  
10 is used?

11 A It -- children like to be in contact with adults. It's a  
12 normal behavior that many families go to -- go through. In the  
13 process of that wrestling, though, if the offender begins to  
14 touch parts of the child's body, it begins to desensitize the  
15 child to being touched, and it becomes more normative behavior  
16 in their relationship. So, when other, more deliberate forms  
17 of sexual abuse occur, the child isn't as shocked because this  
18 behavior's similar to that that happened in the past, so they  
19 don't recoil and tell -- (indecipherable). So, it is a tactic  
20 that's designed to lead the child to be more comfortable with  
21 that kind of touch.

22 Q All right. And what about creating the idea there is a special  
23 relationship with the child?

24 A That is probably the most prevalent dynamic that we see in --  
25 in incest cases, where the parent, stepparent, live-in

1316a

1 boyfriend, live-in girlfriend try to establish with that child  
2 that they have a special relationship that other people just  
3 simply don't understand, that they're best buddies, that  
4 they're friends. And what that creates is a sense of loyalty  
5 on the child's part. So, that if something inappropriate were  
6 to occur, they are less likely to tell, and they are more  
7 likely to see it as their role in this relationship to take  
8 care of the emotional needs, which may have a sexual expression  
9 of the other person.

10 Q And in your work with actual offenders, is it common for a  
11 perpetrator to blame a victim for the behavior?

12 A Yes, it is. Many offenders, in this process of grooming  
13 children, also groom themselves. They engage in -- in group,  
14 we call it the mental gymnastics quiz, really a rationalization  
15 that, essentially, gives themselves permission to act in ways  
16 that would otherwise be inappropriate.

17 Sex offenders don't like the label of "sex offender"  
18 either. And they try to rationalize what their behavior is and  
19 is somehow okay. And by putting the responsibility on the  
20 child, it takes the burden off their shoulders. So, to say the  
21 child came to me, the child wanted this, you know, the child  
22 can say no, the child asked for it takes the responsibility off  
23 them for acting. And they can live with themselves more easily  
24 that way.

25 Q All right, thank you.

1317a

1 MS. MORTON: I have nothing else.

2 THE COURT: Mr. Winter.

3 MR. WINTER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. WINTER:

6 Q Mr. Cottrell, can you -- you've indicated that perpetrator --  
7 you -- you were -- you're qualified as an expert in perpetrator  
8 behavior; is that correct?

9 A I believe so, yes.

10 Q Okay. Can you describe, for me, what types of activities might  
11 be described as -- or, that you would describe as  
12 desensitization? And that's one of the ways you indicated; is  
13 that correct?

14 A That's correct.

15 Q And over what period of time might that occur?

16 A The types of behaviors? Again, they're --

17 Q Sensitization -- what -- what -- what would you describe as  
18 being sensitization?

19 A Desensitization.

20 Q Desensitization.

21 A Yes. It is the gradual exposure of an individual to, in this  
22 case, either sexualize --

23 Q In this case?

24 A Well --

25 Q In what -- we're not talking --



1 A You can desensitize around anything.

2 Q You -- you have not -- you have not -- you have nev -- you hav  
3 not met the --

4 A No.

5 Q -- the -- the victim in this case.

6 A No. I'm sorry. Desensitization is -- can occur around  
7 anything in -- you know, desensitization with regard to --  
8 (inaudible).

9 Q I'm asking you what are the --

10 MS. MORTON: Objection. Can he finish his answer to  
11 the question, please?

12 THE COURT: Well, why don't we take a deep breath.  
13 Go ahead, Mr. Winter, ask the question again.

14 BY MR. WINTER:

15 Q Mr. Cottrell, I'm asking you what types of behavior does a  
16 desens -- desensitization consist of? Can you describe it to  
17 us?

18 A I -- sure. One form can be the graduated exposure to nudity  
19 through pornography, through dress, when we're talking about  
20 exposure to sexual behavior, itself.

21 With regard to sexual behavior within a relationship,  
22 it can be, again, levels of disrobing, it can be levels of  
23 touch that increase in severity over time, it can be  
24 elimination of boundaries between individuals, again increasing  
25 in severity over time.

1319a

1 With regard to relationships and that sense of  
2 loyalty or dependency, it can be graduated exposure to a  
3 child's obligation to take care of the emotional welfare of  
4 another person, a parent in this regard.

5 So, those are some examples.

6 Q And if -- and if none of those behaviors that you've described  
7 exist, then would you agree that desensitization has not  
8 occurred?

9 A Those elements of desensitization have not occurred.

10 Q Can you describe the el -- elements for it?

11 A There could be desensitization around isolation of a child, for  
12 example, being comfortable having time away from the other  
13 parent, or not talking to the other parent would be another  
14 form.

15 Not all grooming includes desensitization, but that  
16 is just one form of grooming.

17 Q I -- I thought we were talking about the elements of  
18 desensitization. And that -- that's a behavior. I don't see  
19 that as -- can you -- can you explain, to me, the difference?  
20 You used the word "element." And I'm trying to understand.

21 A It's -- it's gonna be so unique to every circumstance. So --

22 Q Okay, then, we'll -- we'll just pass it.

23 A Okay.

24 Q Can you do the same thing, for me, for grooming? Tell me some  
25 -- some behaviors that -- that I would expect to see if it --

1 or you would expect to see --

2 A Um-hum.

3 Q -- if a perpetrator is grooming a victim.

4 A Well, all those elements of desensitization are one form of  
5 grooming. Another form of grooming can be providing the child  
6 special rewards for being alone and close to an individual. It  
7 can be, you know, getting the higher allowance than the other  
8 children. It can be going on special trips with Dad or Stepdad  
9 or Mom. It can be ignoring bad grades on a report card for one  
10 child and not for another child. It can be getting more  
11 presents at Christmas for one child and not another child.

12 So, a child is -- comes to believe that they occupy a  
13 special place in that -- in the eyes of that person and have a  
14 sense of loyalty towards them.

15 Q Okay. So, if -- if -- in -- in the event that none of those  
16 things that you have described occurred, would you say that  
17 there was an absence of grooming, for the most part?

18 A No. There are the --

19 Q You just --

20 A -- other elements, as well.

21 Q Pardon me?

22 A There are other forms of grooming, as well.

23 Q Well, I'm trying to -- to learn what grooming is because you  
24 are testifying in the abstract here.

25 A Right.

1321a

1 Q And we have a -- a young lady who has made allegations of  
2 sexual abuse against the defendant. And the -- the young lady  
3 has testified here. And you are describing forms of behavior  
4 and I'm trying to see if those forms of behavior were evident  
5 in her testimony.

6 A Okay.

7 Q Okay? And -- and I can't give you that testimony, but I'm  
8 trying to get to elicit from you --

9 MS. MORTON: Judge, is there a question?

10 MR. WINTER: Yes, I'm trying --

11 MS. MORTON: He's testifying.

12 MR. WINTER: -- to elicit from you --

13 THE COURT: Well --

14 MR. WINTER: -- what -- what those behaviors would  
15 be. What I would expect to see.

16 THE WITNESS: Okay. Well, I have seen hundreds of  
17 cases of grooming, and each one is unique. So, I'm not sure I  
18 can cover every single, potential behavior that's there.

19 The other side of grooming that I haven't talked  
20 about yet are the threats that can occur when a child is told  
21 by an assailant that there will be consequences, or they're  
22 demonstrated through behaviors that there are consequences for  
23 not complying, there are consequences for not being close,  
24 there are consequences for not participating, there are  
25 consequences for moving away if there's the beginnings of

1322a

1 sexual touch. Those consequences can be withdrawal of  
2 affection, those consequences can be, literally, physical  
3 violence.

4 Offenders sometimes groom by hurting animals. And  
5 children assume that a consequence to them will be that this  
6 they will get hurt, as well.

7 So, again, it's many and varied, and it is all  
8 targeted at having the child cooperate with the abuse and not  
9 resist.

10 BY MR. WINTER:

11 Q Okay. Mr. Cottrell, you used an interesting word. You used  
12 the word "targeting;" is that correct?

13 A I did say that word, yes.

14 Q Okay. Would you agree that the -- the word "targeting" has an  
15 element of intentionality?

16 A Yes.

17 Q Somebody has to intentionally do something? Those are the  
18 behaviors that you're describing; is that accurate?

19 A Yes, they are intentional behaviors.

20 Q Okay. So, if -- if there was a situation where those  
21 intentional behaviors were absent, then you would -- would you  
22 agree that what you've described is not applicable?

23 A If I -- I'm not sure I followed that question. I'm sorry.

24 Q Well, you have described a whole bunch of behaviors.

25 A Correct.

1323a

1 Q And you said that it would -- we'll use the word "target,"  
2 which is -- which you have said is -- would you -- you would  
3 agree is intentional.

4 A Yes.

5 Q Okay. If -- if there -- those behaviors are not there, then  
6 can there be any intent?

7 A The behaviors I described are intentional, intentional  
8 grooming. That is not, necessarily, meaning there isn't the  
9 intent to assault. Not all assault, necessarily, in --  
10 involves grooming. Most do, not all. So, intentionality, the  
11 -- the intentional grooming may or may not exist. In most  
12 case, it does.

13 Q You have -- you've described the fact that the lack of doors  
14 may imply the absence of barriers; am I correct?

15 A I think I said boundaries, but, yes.

16 Q All right, boundaries. I apologize. Okay. Is -- in the -- is  
17 the absence of doors -- is that implicit -- in -- in your  
18 description, is that -- would that be something which would not  
19 be intentional?

20 A In the cases that I'm referencing and recall and have  
21 experience in my practice, yes, that is an intentional act.

22 Q Thank you. So, that if this was just something that existed in  
23 the house and it wasn't something that the perpetrator -- or,  
24 alleged perpetrator did, that's not applicable.

25 A If the doors did not exist in the first place?

1324a

1 Q Yes.

2 A Then, there would not be the intentional removing of the doors  
3 you're correct.

4 Q Thank you. Okay, thank you. Are there accusations -- or, are  
5 there false accusations of sexual abuse that you're aware of?

6 A It is --

7 Q Or is everybody who -- who says I've been sexually abused a  
8 victim?

9 A It is rare, but it does occur, yes.

10 Q So, it's possible.

11 A I --

12 Q So, in your experience, everybody that cries wolf, there's a  
13 wolf.

14 A I think I just said there are allegations that are not true.  
15 So, in my experience, no, it is not.

16 Q Well, you said they were rare.

17 A They are rare. I have seen them. They have been in my  
18 practice.

19 Q Okay. So, have you -- in your practice, do you assess -- do --  
20 do you deal with the perpetrator?

21 A Yes, I do.

22 Q And do you deal -- do you assess, as part of your practice, the  
23 truth and honesty of the actors involved?

24 A As much as is feasible from a clinical perspective. We do not  
25 use polygraphs. We do not use bafizmographs (phonetic). So,

1325a

1 there is some limit to that. But, veracity of accusations and  
2 veracity of denials is always something we take into  
3 consideration.

4 Q I'm sure -- I'm not sure I understood your answer but -- you  
5 you've testified earlier, I believe, when -- when Mr. Amadeo  
6 asked you on voir dire, that you have testified in -- in a  
7 number of -- 200 -- over 200 cases. And in zero of those  
8 cases, you've testified on behalf of the defendant; is that  
9 correct?

10 A That is correct.

11 Q Are you paid for your testimony today, being here today?

12 A Yes, I am.

13 Q Okay. And the prosecution or -- or, the county is paying your  
14 bill for being here; is that correct?

15 A Yes.

16 Q You -- you testified -- there was some discussion about  
17 wrestling as a tactic and -- and touching tactic; is that  
18 right?

19 A Yes, yes.

20 Q I'm -- I'm curious. Can you wrestle without touching somebody?

21 A That would be difficult.

22 Q Okay. But I thought you said wrestling can be used as a  
23 tactic; is that right?

24 A And I think I added with that "and touching certain parts of  
25 people's bodies --



1326a

1 Q Okay.

2 A -- in the process of wrestling."

3 Q During the process of wrestling?

4 A Yes.

5 Q Okay. So, if there was wrestling and there was no touching of  
6 particular body parts, then that's not applicable to this  
7 discussion; is that right?

8 A Not necessarily.

9 Q Well, explain, to me, the exception.

10 A Well, it could be the beginning of a process that was not taken  
11 to -- all the way to -- through fruition. And we'd have to  
12 look at the age appropriateness of the wrestling behavior,  
13 whether -- you know, the age of the individuals. Are they in  
14 the midst of puberty? Are they not? Is wrestling even an  
15 appropriate parent/child interaction? So, it -- it may or may  
16 not be applicable. I don't know the circumstances.

17 Q Okay. So, essentially, we don't know. You've talked about a  
18 special relationship. Again, in your discussion about a  
19 special relationship, is that something that you would  
20 characterize as being an intentional procedure by the  
21 perpetrator, typically?

22 A Yes.

23 Q Okay. And could you describe some of the -- some of the things  
24 that, in your mind, would establish or would provide evidence  
25 that the perpetrator is attempting to establish this special

1 relationship?

2 A If they were to engage in behaviors that were more friendship  
3 based, meaning that the adult and the child were considered to  
4 be on an equal level, such as, you know, sharing job concerns  
5 with the child or talking about the other parent, potentially  
6 as not understanding or not being a good partner, and so the  
7 child understands the assailant better, kind of more friendship  
8 based, more establishing a sense of intimacy, establishing a  
9 sense of loyalty in the sense of having to care for this older  
10 individual. Children usually feel pretty special when those  
11 things occur because they're depended on, which is really the  
12 inverse of what their relationship should look like.

13 Q Would watching TV together be one of those things?

14 A In and of itself, no.

15 Q So, in the absence of the types of things that you've  
16 described, would there -- would you expect there to be a  
17 special relationship as you have defined it?

18 A I only gave a few examples of what that relationship would look  
19 like. There's --

20 Q But --

21 A -- many, many more.

22 Q But, again -- but, again, is it fair to say -- and I think  
23 we've said this. Is it fair to say that you would -- in order  
24 to achieve that, the perpetrator would have to intentionally  
25 act to do those things --

1328a

1 A Yes.

2 Q -- to establish that special relationship?

3 A Yes.

4 Q Is that correct?

5 A Yes.

6 Q Thank you. Okay. Is there a particular pattern which  
7 perpetrators exhibit when they sexually abuse a victim? A  
8 typical pattern.

9 A (No verbal response).

10 Q And I -- and let me clarify the question. Of -- of -- of what  
11 they do to their victim or how often they do it to their  
12 victim.

13 A In that regard, not really. There are so many intervening  
14 factors, it's really difficult to point to any singular pattern  
15 that is what we would call common across abusive incidents.  
16 They are extremely varied in how they occur and frequency and  
17 scope.

18 Q In your experience and in the research and readings, how likely  
19 would it be that on -- there would be -- there might be two  
20 isolated incidents in a relatively compressed period of time,  
21 close to each other, the two incidents occurred close to each  
22 other, when there has been a period of something like 10 years  
23 in the relationship, and there have been these two isolated  
24 incidents?

25 A Sexual abuse of a child typically -- again, it presents as a

1329a

1 somewhat graduated process. But, again, how offenders look at  
2 it -- some -- some offenders actually scare themselves when  
3 they realize what they're doing and they stop.

4 So, I've certainly had cases in my own practice where  
5 it's been one occurrence and, five years later, still nothing  
6 has happened again, or one or two or three occurrences and  
7 nothing happens after that. And other cases where it's seven  
8 eight years of perpetual abuse. So -- and it's everywhere in  
9 between.

10 Q So, there's no specific pattern, but it's -- have -- have -- is  
11 it possible that the sexual abuse -- the -- a charge of sexual  
12 abuse might be made to deflect criticism or discipline of a  
13 parent?

14 A Is it possible?

15 Q Yes.

16 A I will never say anything is impossible. It is, in my  
17 experience, not likely. I've not seen that in my practice.  
18 But, I will never say anything's impossible.

19 Q And, again, just to be clear, so the jury clearly understands,  
20 your testimony today is -- would it be fair to -- to  
21 characterize it as a hypothetical as applied to the facts of  
22 our individual case?

23 A If I'm understand --

24 Q Let -- let me phrase it a different way.

25 A Please.

1330a

1 Q It's fair to say that you haven't ever met Pearl Giffen?

2 A Correct.

3 Q You haven't examined any of her medical records.

4 A Correct.

5 Q You've never met the alleged perpetrator.

6 A Correct.

7 Q You don't know any of the family dynamics.

8 A Correct.

9 Q So, what you are describing here today are general  
10 characteristics --

11 A That is correct.

12 Q -- which may or may not apply in this situation.

13 A That is correct.

14 Q Thank you.

15 THE COURT: Ms. Morton.

16 MS. MORTON: Thank you.

17 REDIRECT EXAMINATION

18 BY MS. MORTON:

19 Q So, just to be clear, can -- kids can tell the truth when  
20 they're getting in trouble, too.

21 A Yes.

22 Q And a lack of doors, even if not removed by the perpetrator,  
23 would still serve the purpose of desensitizing nudity.

24 A Well, it would serve the purpose of having poor boundaries  
25 within a household, depending on how that family dealt with

1           nudity.

2                   THE COURT:   Mr. Winter.

3                   MR. WINTER:   Your Honor, I -- Your Honor, I'm sorry  
4           but -- but I believe that the -- the question that was asked  
5           and his testimony is that there had to be some intention  
6           involved.  So, the absence of doors, by and -- by and of  
7           itself, is not what's at issue here.

8                   THE COURT:   That was his testimony.

9                   MS. MORTON:   Right.  And my question is:  Whether it  
10          was intentional or not, would it still desensitize the child to  
11          nudity.

12                   THE COURT:   Or could it.

13                   MS. MORTON:   In the home.  Could -- oh, sure, could  
14          it.

15                   THE COURT:   Go ahead.

16                   THE WITNESS:  Yes, it could.

17                   MS. MORTON:   Okay.

18 BY MS. MORTON:

19 Q           With the wrestling, with a child or a teenager, is it possible  
20           that the child may be touched on parts of the body and not even  
21           realize it, but still be getting used to being touched there?

22 A           I think if a -- I -- I think a child may not realize its  
23           importance.  I don't know that they wouldn't, necessarily, be  
24           aware of the touch that -- the process of desensitization would  
25           not be functional if the child didn't realize they were

1332a

1 touched, because they are being desensitized to touch.

2 Q All right. And so, the -- so, in terms of a special  
3 relationship, creating a special relationship, if you, for ex  
4 -- you give -- you were given the example of watching TV  
5 wouldn't, necessarily, create that. But, what if it -- it was  
6 more specific than that, like watching wrestling together, on  
7 TV, on Monday nights?

8 A There can be a whole host of things that can make something as  
9 seemingly innocuous as watching television become a grooming  
10 technique. You know, examples that I have seen are children  
11 who are allowed to stay up late at night and watch television  
12 with a particular person. So, watching television, in and of  
13 itself, is not a -- is not wrong or bad, but the mere fact that  
14 they have this special time together, excluding the rest of the  
15 family, developing a special closeness and relationship, that  
16 can be a grooming behavior.

17 Q All right.

18 A And so, I think we have to be careful about saying -- taking a  
19 behavior out of its context.

20 Q All right. And you were -- kept using the term "elements of  
21 desensitiza" -- "desensitizasen" -- nobody can say that word  
22 except you, apparently. You know what I mean. By elements, do  
23 you mean examples of that?

24 A Usually when there's acts of desensitization, there are  
25 graduated steps. And I would refer to those steps as elements.

1 Q Okay.

2 A Because it is a graduated process of gradually exposing someone  
3 to a type of behavior so they become accustomed to it.

4 Q All right. So, you've listed many examples of things that  
5 could be grooming behaviors. But, can you list every example  
6 of a grooming behavior for us?

7 A I hope that's a yes or no question. I --

8 Q Is it possible for you to do that?

9 A I don't think I could, no.

10 MS. MORTON: I have nothing else. Thank you.

11 MR. WINTER: Your Honor, I have -- I have one or two,  
12 if I might, briefly.

13 THE COURT: Go ahead.

14 RE-CROSS-EXAMINATION

15 BY MR. WINTER:

16 Q Mr. Cottrell, you just described the fact that the grooming  
17 procedure that we've -- everybody's talked about here is a  
18 graduated procedure --

19 A Typically.

20 Q -- is that correct?

21 A It doesn't have to be -- a -- a single threat can be a grooming  
22 behavior.

23 Q All right. Is -- is -- but it's -- but it's a bunch of things  
24 that -- so that the -- the victim becomes accustomed to it and  
25 is not surprised.



1334a

1 A If grooming takes place, it's -- well, I -- I meant -- I also  
2 said "and it is also directed at keeping the victim quiet."

3 Q Okay.

4 A So, it can be all of those elements.

5 Q Okay. So -- so, if -- if a victim describes himself as being  
6 shocked by the behavior of the -- of the perpetrator --

7 A Um-hum.

8 Q -- does that indicate that there was grooming?

9 A (No verbal response).

10 Q Would you expect that if somebody had been groomed or  
11 desensitized?

12 A Less likely that those things had occurred if -- if --

13 Q I'm sorry?

14 A -- there was shock.

15 Q Did you say less likely?

16 A Less likely that any kind of grooming -- well, at least with  
17 regard to the -- the sexual touch. With regard to  
18 relationships and loyalty, those things could have been in  
19 place.

20 Q Thank you.

21 MR. WINTER: Thank you, Your Honor.

22 THE COURT: All right. May the witness be dismissed,  
23 Ms. Morton?

24 MS. MORTON: Yes.

25 THE COURT: Mr. Winter?

1335a

1 MR. WINTER: Done. Thank you, Your Honor.

2 THE COURT: Thank you, sir. You are dismissed.

3 MR. WINTER: Thank you, Mr. Cottrell.

4 THE WITNESS: Thank you.

5 (At 2:09 p.m., witness stands down)

6 THE COURT: Ladies and gentlemen, we are at the end  
7 of our day. And we will be sending you back to leave your  
8 belongings that you wish to leave in the jury room, and you may  
9 go about your evening.

10 Please remember that you may not talk to anybody  
11 about the case, nor let anybody talk to you.

12 I don't believe anything about this case, that I'm  
13 aware of, has had any publicity. But, again, should you hear  
14 something on the radio, see something on the local news, see  
15 something on Facebook or any type of social media that even  
16 resembles something that might have been talking about this  
17 case, turn it off.

18 Remember, the only information that you can get about  
19 this case is when you are all together, acting as a jury, and  
20 the prosecutor, the defense and I am present.

21 If anybody does try to talk to you about this case or  
22 if you learn a juror has violated the recess instruction, I  
23 need you to report it to me first thing tomorrow morning.

24 I really appreciate everybody getting here timely  
25 this morning. And I would like to do the same tomorrow.

1 Tomorrow, we will start, hopefully, right at eight-thirty. We  
2 will take a mid-morning break. We will bring lunch for you at  
3 lunch time, which will be anywhere from quarter to 12 to 12,  
4 just depending on the timing of the witnesses. We have about  
5 40 minutes for you to eat lunch and stretch your legs. We'll  
6 come back in. We'll take an afternoon break, if necessary.

7 At the pace we're going, it's quite possible that you  
8 will get this case tomorrow, but I don't ever like to make a  
9 guarantee. But that's how it's looking, that you should be  
10 deliberating tomorrow.

11 At any rate, I'll see you in the morning, at,  
12 approximately, eight-thirty. I hope you have a pleasant  
13 evening. Thank you very much.

14 Don't forget about the step as you leave. Take your  
15 books in the back now because your notes are in there, okay?

16 (At 2:11 p.m., jury exits courtroom)

17 THE COURT: Okay, any objections or any issues, at  
18 this point, that you need to place on the record on behalf of  
19 the People, Ms. Van Langevelde or Ms. Morton?

20 MS. VAN LANGEVELDE: No, Your Honor.

21 MS. MORTON: No.

22 MR. AMADEO: No, Your Honor.

23 MR. WINTER: No, Your Honor. Thank you.

24 THE COURT: All right. We are going to have Veterans  
25 Court in here. You are allowed to leave anything that you need

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to leave, but leave it on a chair under the plasma TV because nobody will be at those chairs. There will be people at Plaintiff's table and Defense table, and the veterans will be in the jury box while we conduct our veterans review.

Everybody did good this morning. Quarter after eight, let's be in courtroom. And, hopefully, we'll start right at eight-thirty.

MR. AMADEO: Thank you, Your Honor.

MS. MORTON: Thank you.

THE COURT: Great. Thank you, all, very much. Have a nice evening.

(At 2:12 p.m., proceedings concluded for the day)

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CERTIFICATION OF COURT RECORDER

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STATE OF MICHIGAN )  
COUNTY OF EATON )

I certify that this transcript consisting of 234 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Monday, September 16, 2019.

Dated: January 15, 2020

\_\_\_\_\_  
Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

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STATE OF MICHIGAN

56TH CIRCUIT COURT (EATON COUNTY)

PEOPLE OF THE STATE OF MICHIGAN,

v

File #16-020296-FC

DAMON EARL WARNER,

Defendant.

JURY TRIAL - VOLUME III OF III

BEFORE THE HONORABLE JANICE K. CUNNINGHAM , CIRCUIT JUDGE

Charlotte, Michigan - Tuesday, September 17, 2019

APPEARANCES:

For the People:

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KELLY MORTON (P56769)  
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Recorded and transcribed by: Kathy Bond, CSR/CER-2779  
Certified Electronic Recorder  
(517) 543-4327

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Charlotte, Michigan

Tuesday, September 17, 2019 - At 8:40 a.m.

THE COURT: We are back on the record in People versus Warner, file 16-296-FC.

Ms. Morton and Ms. Van Langevelde are here for the People. Mr. Amadeo and Mr. Winter is here with the defendant

Mr. Warner, raise your right hand.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: I do.

(At 8:40 a.m., defendant sworn by the Court)

THE COURT: Detective Maltby is also here. How are you feeling today?

DETECTIVE MALTBY: A little better.

THE COURT: Okay. I understand there's an issue we need to deal with prior to bringing the jury in.

I have -- wow, really dirty glasses. What I have in front of me reads as follows:

"Members of the jury, you are going to watch some videos of interviews of the defendant, Damon Warner. There has been an agreement between the parties to admit these videos. These videos have been edited to have the relevant and admissible portions of the interviews. There may be some times where the video skips ahead in time. Please pay no attention to these edits, as you are only to



1 consider the statements admitted."

2 Okay. Everybody okay -- Ms. Morton --

3 MS. MORTON: Well, this is --

4 THE COURT: Or, Ms. Van Langevelde.

5 MS. MORTON: This is similar to what we used last  
6 week because it's quite obvious that there's parts that are --

7 THE COURT: Right.

8 MS. MORTON: -- cut out or muted. It was muted last  
9 week. I believe they're cut this week, so.

10 MR. AMADEO: Yeah, there's no objection, Your Honor.

11 THE COURT: Okay. So, this is going to be a special  
12 jury instruction.

13 When are you going to play the video?

14 MS. VAN LANGEVELDE: It will be during Detective  
15 Maltby's testimony. So, I'm gonna start with him, just give --  
16 do some background stuff.

17 THE COURT: Right.

18 MS. VAN LANGEVELDE: And then play the first  
19 interview.

20 THE COURT: So, before you play the first one, that's  
21 when I will give this instruction; agreed?

22 MS. VAN LANGEVELDE: Yes, Your Honor.

23 THE COURT: Agreed, Mr. Amadeo?

24 MR. AMADEO: Yes.

25 THE COURT: Okay. All right, anything else we need

1 to talk about before we bring the jury in?

2 MS. MORTON: We did get an email about some  
3 interviews. And I guess I'm -- I'm a little confused that he  
4 wants to, I guess -- it says:

5 "Potential areas to be played tomorrow depending upon  
6 answers."

7 And I'm assuming these are for -- to refresh the  
8 detective's memory should he not remember these statements,  
9 because, again, they would -- the interviews, themselves, would  
10 be hearsay, particularly with James Giffen, Sharon Giffen, and  
11 then there's an S. Giffen, which I'm concerned is Sable.

12 MR. AMADEO: No, that's Sharon, as well.

13 MS. MORTON: It is Sharon?

14 MR. AMADEO: That was just an --

15 MS. MORTON: Okay. And so, I think we're gonna run  
16 into a similar problem as yesterday, where we're not gonna want  
17 to be playing these in front of the jury.

18 So, I -- I don't know if we want to, on the break --

19 THE COURT: I would assume -- and -- and correct me  
20 if I'm wrong. Ms. Van Langevelde are you doing the direct?

21 MS. VAN LANGEVELDE: Yes. Of Detective Maltby, yes,  
22 Your Honor.

23 THE COURT: I would guess -- do you think that will  
24 take us to our first break?

25 MS. VAN LANGEVELDE: Yes. I mean, with the videos --

1344a

1 THE COURT: Right.

2 MS. VAN LANGEVELDE: -- and everything, yes.

3 THE COURT: So, what I'm hoping, then, you know, is  
4 that we'll -- we'll take the detective's testimony until break.  
5 At that point, Mr. Amadeo, I'm sure, will have noted if there's  
6 areas where he's like, okay, I might have to play the video.  
7 And during the break, we can discuss it, so that we're not  
8 bringing the jury in and then sending them right back out  
9 again, as we had to do yesterday.

10 MS. MORTON: I might just suggest that he have the  
11 detective listen to these parts of the interviews on the break,  
12 so that we don't have to worry about it --

13 THE COURT: That was helpful --

14 MS. MORTON: -- once the jury is here.

15 THE COURT: -- yesterday.

16 MR. AMADEO: Yes.

17 THE COURT: We did that once. And, that way, we  
18 could come back in, and the -- the memory was refreshed.

19 MR. AMADEO: My only concern, Judge, with five of  
20 these, potentially, I didn't want to keep pullin' the jury out  
21 and waste everybody's time, so.

22 THE COURT: Right.

23 MR. AMADEO: So, if me and the detective want to sit  
24 down for a few minutes on break and handle 'em, that's fine  
25 with me. May not need 'em. I don't know what his answer's

1345a

1 gonna be.

2 THE COURT: I -- I -- I totally -- I appreciate that  
3 That's what I'm saying. So, good.

4 Let's bring the jury in. Let's get through the  
5 direct of the detective --

6 MR. AMADEO: Okay.

7 THE COURT: -- and then that will be our first break

8 MR. AMADEO: Thank you, Judge.

9 THE COURT: Okay?

10 MS. VAN LANGEVELDE: Thank you, Your Honor.

11 THE COURT: Wonderful.

12 (At 8:45 a.m., jury enters courtroom)

13 THE COURT: Good morning.

14 JURORS: Good morning.

15 THE COURT: Good morning.

16 All right, please be seated. Good morning.

17 JURORS: Good morning.

18 THE COURT: All right, Ms. Van Langevelde, would you  
19 please call your next witness?

20 MS. VAN LANGEVELDE: Yes, thank you. The People call  
21 Detective James Maltby, please.

22 THE COURT: Raise your right hand, sir.

23 Do you swear to tell the truth, the whole truth, and  
24 nothing but the truth, so help you God, under penalty of  
25 perjury?

1346a

1 DETECTIVE MALTBY: I do.

2 THE COURT: Please have a seat. Please state your  
3 full name for the record.

4 THE WITNESS: James Maltby, M-a-l-t-b-y.

5 THE COURT: Thank you.

6 Go ahead, Ms. Van Langevelde.

7 MS. VAN LANGEVELDE: Thank you.

8 DETECTIVE JAMES MALTBY

9 at 8:46 a.m., called by Ms. Van Langevelde and sworn by the  
10 Court, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. VAN LANGEVELDE:

13 Q Detective Maltby, I want to start off with you were with us in  
14 the beginning yesterday, and then you disappeared on us. Were  
15 you -- you were not feeling well; is that fair?

16 A I'm a little under the weather, yes.

17 Q All right.

18 A I'm a little better today.

19 Q Well, we have a trash bucket by you just in case.

20 A All try to breathe more towards the judge. Towards the --

21 Q You're a little pale, you're under the weather, but I do need  
22 you to speak up so Ms. Bond can hear you.

23 A Okay.

24 Q All right. When were you assigned -- obviously, you were  
25 assigned to this case; is that correct?

1347a

1 A Yes, I was.

2 Q And when were you originally assigned to the case?

3 A In January, I think it was January 8th, 2016.

4 Q And, at that time, how long had you been a detective with Eaton  
5 County?

6 A At that time, I'd been a detective about eight years.

7 Q Okay. And did you work anywhere else -- well, let me ask this

8 Prior to becoming a detective, were you a police officer?

9 A Yes, I was a police officer on the road here, at Eaton County  
10 for 10 years, before goin' on to the Detective Bureau. And  
11 then, I worked at Mason Police Department for 10 months or a  
12 year before I came here.

13 Q Okay. And what is your education and -- and background?

14 A Associates degree in Criminal Justice and Business and several  
15 other trainings, classes, schools.

16 Q Let's talk about some of the trainings and classes that you've  
17 been to as a police office. Can you just share a few of the  
18 trainings that you've had?

19 A The standard police officer, radar school, stuff like that.  
20 And then as a detective, I've been to several interviewing  
21 schools, specialty interviewing schools, like forensic  
22 interviewing, which is interviewin' children, different  
23 evidence schools that are crime scene schools, homicide  
24 schools, death investigations. Probably more schools than I  
25 can remember, so.

1348a

1 Q Okay. Have you investigated other child sexual assault cases?

2 A Yes, I have.

3 Q Can you give us a ballpark as to how many?

4 A Probably between one and 200.

5 Q Okay. And let's talk about, again, this case in particular.  
6 How did your investigation in this case begin?

7 A With a complaint that I received from my boss, from CPS, Child  
8 Protective Services.

9 Q Okay. And then, once you got assigned the case from your boss,  
10 what did you do?

11 A I made contact with the CPS person -- it was Gretchen Lane  
12 initially -- and discussed the case with her.

13 Q Okay. And then, what did you do?

14 A We agreed on a date to go interview Pearl at her school in  
15 Olivet.

16 Q All right. And did you do that?

17 A Yes, we did.

18 Q Okay. And then, after -- I guess, and you -- even though you  
19 left yesterday, you did have an opportunity to hear Pearl's  
20 testimony; is that correct?

21 A Yes.

22 Q All right. Is there anything substantially different from what  
23 she told you back in 2016 that you heard --

24 A No.

25 Q -- yesterday? After you interviewed Pearl, did you interview

1349a

1 other people?

2 A Yes.

3 Q Can you tell me who else you interviewed?

4 A After interviewing Pearl, we -- we switched CPS people. And we  
5 went -- went and interviewed Pearl's dad and stepmom. And I  
6 believe that was in February --

7 Q Okay.

8 A -- of 2016.

9 Q Was that at their home?

10 A At their home in Mason, yes.

11 Q Okay. Did you -- and you -- you said you switched CPS people.  
12 Was that because --

13 A Miss Lane --

14 Q Well, why -- why was that?

15 A Miss Lane, I think, had some family issues going on. Her  
16 father passed away and some other stuff, so they assigned the  
17 case to somebody else.

18 Q Okay. It wasn't that she had done anything wrong.

19 A No, no.

20 Q Okay. What did you do after you interviewed James and Sharon  
21 Giffen?

22 A We went to Butterfield Highway and made contact with Bridget  
23 Warner.

24 Q Who is?

25 A Who is the defendant's -- or, was the defendant's wife at the



1350a

1 time. And also two small children that were there.

2 Q Who were those children?

3 A Sable, who I believe was six at that time; and Noah, and I  
4 think he was around four-years-old.

5 Q Okay. And do you recall what their birthdays were, or learning  
6 their birthdays?

7 A No. I -- I remember they -- they were four and six --

8 Q Okay.

9 A -- at that time.

10 Q And when you went to the residence on Butterfield Highway, do  
11 you recall the address?

12 A I think it was 5480 West Butterfield, just outside of Olivet.

13 Q And is that in Eaton County and the State of Michigan?

14 A Yes.

15 Q Did you make contact with the defendant at the home?

16 A No. No, I did not.

17 Q All right. What else did you do at the home?

18 A I -- I spoke with Sable. I conducted a forensic interview with  
19 her. And the CPS person that was there with me, Corey Wood, he  
20 spoke with Bridget most of the time. I did not speak with  
21 Noah; he was too young. And that would --

22 Q Okay.

23 A Nothing would've been gathered from it. But, I -- I, also,  
24 while I was there, I took some pictures inside the house.

25 Q Okay.

1351a

1 MS. VAN LANGEVELDE: May I approach, Your Honor?

2 THE COURT: Yes.

3 MS. VAN LANGEVELDE: Your Honor, I'm -- just let the  
4 record reflect I'm showing opposing counsel -- (inaudible) --  
5 People's Exhibits Two, Three, Four, Five, Six and Seven.

6 MR. AMADEO: So stipulated.

7 MS. VAN LANGEVELDE: Okay.

8 BY MS. VAN LANGEVELDE:

9 Q Detective Maltby, I'm showing you what's been pre-marked as  
10 People's Exhibits Two, Three, Four, Five, Six and Seven. Do  
11 you recognize those photographs?

12 A Yes, I do.

13 Q Can you just tell us, just in summary, what they are?

14 A They're photographs of the inside of the house on Butterfield  
15 where the defendant was living at that time and where the  
16 alleged crime -- crimes took place.

17 (At 8:53 a.m., PX#2, PX#3, PX#4, PX#5, PX#6 and PX#7  
18 identified)

19 MS. VAN LANGEVELDE: Your Honor, I'd like to publish  
20 those on the screen for the jury, please.

21 THE COURT: Yes, you may.

22 MS. VAN LANGEVELDE: Thank you.

23 BY MS. VAN LANGEVELDE:

24 Q So, what are we looking at here?

25 A We're looking down the hallway, which up that hallway are the

1352a

- 1 bedrooms in the house. Straight ahead is the master bedroom.
- 2 Q All right. What are we looking at here?
- 3 A This one, I believe, was -- was Noah's bedroom at the time.
- 4 Q Okay. Now, Pearl indicated, to you, that this was the room,
- 5 though, that -- when the bedroom incident, that's -- is that
- 6 why you took this photo?
- 7 A Yes.
- 8 Q But it was Noah's at the time that you went.
- 9 A Right.
- 10 Q Okay. When did you take this photograph?
- 11 A I took that photograph on -- it would've been on March 2nd or
- 12 -- 2nd or 3rd, when I was there, in 2016.
- 13 Q Okay. So, as far as -- how long was Pearl not living in this
- 14 house at that time?
- 15 A Pearl had not been there for three -- two, three months, since
- 16 the end of December.
- 17 Q And what are we looking at in this photograph?
- 18 A That's another walking further into the bedroom, same bedroom.
- 19 Q Okay. This one, right here.
- 20 A The -- the bed, yeah, same room.
- 21 Q (Inaudible) -- Ninja Turtles?
- 22 A Yeah.
- 23 Q And then, what are in this -- (indecipherable).
- 24 A Just to try to cover the whole room.
- 25 Q Okay. And then this is the -- tell us what this is.

1353a

1 A This would be standing inside that same bedroom, but now  
2 looking out.

3 Q Okay. Is there a door on that bedroom?

4 A No.

5 Q Detective Maltby, after you went to the Butterfield residence  
6 what did you do in your investigation?

7 A After that, I believe I -- that's when I -- the next step I had  
8 -- it was my first interview with Mr. Warner.

9 Q Okay. And do you see Mr. Warner in the courtroom today?

10 A Yes, I do.

11 Q Can you point him out and just describe, briefly, what he's  
12 wearing?

13 A He's at the defendant's table wearing a light blue shirt, tie,  
14 sitting on the end of the table.

15 Q Thank you.

16 MS. VAN LANGEVELDE: Let the record reflect the  
17 witness has identified the defendant?

18 THE COURT: The record will so reflect.

19 MS. VAN LANGEVELDE: Okay.

20 BY MS. VAN LANGEVELDE:

21 Q Detective, when did your first interview with the defendant  
22 take place?

23 A I believe it was April 4th, 2016.

24 Q Okay. And where did that take place?

25 A That was at the sheriff's department here, in Charlotte, at the

1354a

1 main office.

2 Q Was the defendant in custody at the time you did the interview  
3 on April 4th, 2016?

4 A No, he came in voluntarily.

5 Q Okay. Did you talk to him about whether he was under arrest or  
6 anything?

7 A Yes, I did. I told him he was not under arrest. He was free  
8 to go at any time.

9 Q Was that first interview recorded?

10 A Yes, it was.

11 Q All right. Now, before we -- maybe I -- I do want to ask you,  
12 did you use any strategies or have anything in mind when you  
13 were gonna -- when you were interviewing the defendant during  
14 this first interview?

15 A Yeah, there's different strategies I use, depending on the  
16 case. This one was more of a -- like a buddy strategy for  
17 rapport building. It's a non-confrontational type of  
18 interviewing.

19 Q And why do you do that? Why did you choose to use that?

20 A Just to try to build a rapport, better rapport, and try to get  
21 more information from the defendant. The more information I  
22 can get, hopefully I can get to the truth quicker, easier the  
23 more willing they are to talk to me.

24 Q All right.

25 MS. VAN LANGEVELDE: Your Honor, at this time, I'd

1 like to play the first interview, which is Stipulated Exhibit  
2 Number Nine.

3 (At 8:57 a.m., PX#9 identified)

4 THE COURT: Ladies and gentlemen, you are going to  
5 watch some videos of interviews of the defendant, Damon Warner  
6 There has been an agreement between the parties to admit these  
7 videos. These videos have been edited to have the relevant and  
8 admissible portions of the interview. There may be times when  
9 the video skips ahead in time. Please pay no attention to  
10 these edits, as you are only to consider the statements that  
11 are being admitted.

12 Ms. Van Langevelde.

13 MS. VAN LANGEVELDE: Thank you, Your Honor.

14 THE COURT: Oh, where'd she go?

15 MS. VAN LANGEVELDE: I'm over here.

16 THE COURT: Okay. Thank you, Ms. Ykimoff.

17 MR. AMADEO: Should I move? Can the jury see okay?

18 (At 8:58 a.m., PX#9, video of Detective Maltby's  
19 first interview of defendant, was played at this  
20 point in the proceedings)

21 (At 8:58 a.m., PX#9, video of Detective Maltby's  
22 first interview of defendant, was paused at this  
23 point in the proceedings)

24 MS. VAN LANGEVELDE: There -- there it goes. Okay.  
25 I don't know how to get rid of those little box things.

1356a

1 MR. AMADEO: Adrienne, you're asking the wrong  
2 person. I have no idea.

3 MR. WINTER: Adrienne, try going to "view" and see  
4 that's --

5 MS. MORTON: See where it says the LC zoom hide?

6 MS. VAN LANGEVELDE: Where is that?

7 MS. MORTON: Right underneath the -- right there.

8 MR. WINTER: No, that makes it zoom in.

9 MS. MORTON: Close out of the surfer.

10 MS. VAN LANGEVELDE: Okay, thank you.

11 (At 9:00 a.m., PX#9, video of Detective Maltby's  
12 first interview of defendant, resumes being played at  
13 this point in the proceedings)

14 (At 9:00 a.m., PX#9, video of Detective Maltby's  
15 first interview of defendant, was paused at this  
16 point in the proceedings)

17 MS. VAN LANGEVELDE: Sorry. I'm trying --

18 THE COURT: Are you getting Bryan?

19 MS. VAN LANGEVELDE: I'm sorry, Your Honor. I'm  
20 gonna go get Adam.

21 MS. MORTON: I think we'll just play it like this,  
22 but -- (inaudible).

23 (At 9:04 a.m., video of Detective Maltby's first  
24 interview of defendant, resumes being played at this  
25 point in the proceedings)

1357a

1 THE COURT: Can you pause that? It's too loud. I  
2 I --

3 (At 9:04 a.m., PX#9, video of Detective Maltby's  
4 first interview of defendant, was paused at this  
5 point in the proceedings)

6 THE COURT: All right, I -- I can't really understand  
7 anything that's being said. So, I have to presume that some of  
8 the other jurors feel the same way? Okay. So, I don't know if  
9 it's we need to turn it down, the volume, and go back, please

10 (At 9:05 a.m., video of Detective Maltby's first  
11 interview of defendant, resumes being played at this  
12 point in the proceedings)

13 THE COURT: Yeah, stop there. That's good.

14 (At 9:26 a.m., PX#9, video of Detective Maltby's  
15 first interview of defendant, was stopped at this  
16 point in the proceedings)

17 BY MS. VAN LANGEVELDE:

18 Q So, Detective Maltby, after you did this first interview that  
19 we saw with the defendant, what did you do next in your  
20 investigation, in this case?

21 A I arranged for another interview, for a special type of  
22 interview with Detective Sergeant Jordan with the Michigan  
23 State Police.

24 Q And is it -- I guess, is it common to reach out to another  
25 agency to help sometimes?



1 A Yes.

2 Q Okay. And, at that interview, was the defendant under arrest?

3 A No, he wasn't.

4 Q And, I guess at the end of that interview, did you ever put the  
5 defendant under arrest?

6 A No, he walked out of the sheriff's office.

7 Q Why? But, why is that?

8 A Because he was free to go and not under arrest.

9 Q Okay. So, I wanted to -- before we show that video, I want to  
10 talk a little bit about it. So, this was with Detective  
11 Sergeant Jordan; is that correct?

12 A Yes.

13 Q Where did that take place?

14 A Took place at the state --

15 Q In Lansing?

16 A It took place in Lansing.

17 Q Okay. Do you recall the date of that?

18 A I think it was May 5th of 2016.

19 Q Okay. And to your knowledge, back in May of 2016, did MSP  
20 record the interviews that they did in the lab?

21 A No, not back then.

22 Q Okay. So, when you -- when we're gonna watch it, we're -- the  
23 -- a portion of the clip, is there a -- who took that video?

24 A This -- this video was taken by me with my department cell  
25 phone.

1 Q Okay. And why did you do that?

2 A It -- it was all I had, first of all, for a recording device.  
3 And during the interview with Detective Sergeant Jordan, it  
4 sounded like the defendant was getting ready, maybe, to make  
5 some admissions or maybe change some things that he had told  
6 me. So, I wanted to get his exact wording down and record any  
7 inconsistencies I could, the best I could. It's not a good --  
8 not a good video, but it's me usin' my phone videotaping a --  
9 monitor like that, me standin' there with my phone, 'cause I'm  
10 watching from another room --

11 Q Okay.

12 A -- in the same building.

13 Q I was gonna ask you, can you describe, kind of, the setup where  
14 you were?

15 A I was just down the hall, in another room, by myself. And  
16 Detective Sergeant Jordan and the defendant are in another room  
17 together.

18 Q Okay. And is that normal?

19 A Yes.

20 MS. VAN LANGEVELDE: Okay, Your Honor, at this time,  
21 I would like to publish People's Exhibit 10.

22 (At 9:29 a.m., PX#10 identified)

23 THE COURT: I'm sorry, the number was 10; right?

24 MS. VAN LANGEVELDE: Ten.

25 THE COURT: Yes?

1360a

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MS. VAN LANGEVELDE: Yes.

THE COURT: Um-hum.

MS. VAN LANGEVELDE: Let's hope for better.

(At 9:31 a.m., PX#10, video of Detective Sergeant Jordan's interview of the defendant, was played at this point in the proceedings)

MS. VAN LANGEVELDE: I'm gonna restart it.

(Inaudible). I think we might need to turn it up a little bit.

(At 9:31 a.m., PX#10, video of Detective Sergeant Jordan's interview of the defendant, was paused being played at this point in the proceedings)

MR. AMADEO: It's not on the screen.

MS. VAN LANGEVELDE: I know. I don't know why it doubles it. That's the way it goes.

MR. AMADEO: There ya go.

MS. VAN LANGEVELDE: You ready, Kathy?

COURT RECORDER: Yes.

MS. VAN LANGEVELDE: Okay.

(At 9:32 a.m., PX#10, video of Detective Sergeant Jordan's interview of the defendant, was played at this point in the proceedings)

(At 9:42 a.m., PX#10, video of Detective Sergeant Jordan's interview of the defendant, was stopped at this point in the proceedings)

BY MS. VAN LANGEVELDE:

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1 Q Detective Maltby, I had a hard time -- and I'm sure the jury  
2 did, too -- hearing portions of that. So, I'm gonna back that  
3 up a little bit and -- and maybe you can tell us -- because you  
4 were there and you heard it. Can you decipher a little bit  
5 better.

6 (At 9:42 a.m., PX#10, video of Detective Sergeant  
7 Jordan's interview of the defendant, a portion was  
8 replayed at this point in the proceedings)

9 (At 9:43 a.m., PX#10, video of Detective Sergeant  
10 Jordan's interview of the defendant, was stopped at  
11 this point in the proceedings)

12 BY MS. VAN LANGEVELDE:

13 Q And what did he just say there?

14 MR. AMADEO: Objection. (Indecipherable) -- that is  
15 hearsay.

16 THE COURT: Yeah.

17 MR. AMADEO: He cannot testify to what he said.

18 THE COURT: Okay, let's --

19 MR. AMADEO: All right.

20 THE COURT: The objection is sustained.

21 MS. VAN LANGEVELDE: Okay. Can I replay that  
22 portion?

23 THE COURT: You can.

24 MS. VAN LANGEVELDE: So, it can be heard a little bit  
25 better --

1362a

1 THE COURT: You can.

2 MS. VAN LANGEVELDE: -- 'cause I think it's --

3 THE COURT: Absolutely, you can.

4 MS. VAN LANGEVELDE: Okay. Can you turn it up just a  
5 little bit, Kathy? Thank you. Maybe that's too much. Thanks

6 (At 9:43 a.m., PX#10, video of Detective Sergeant  
7 Jordan's interview of the defendant, a portion was  
8 replayed at this point in the proceedings)

9 THE COURT: It needs to go -- all right, can you  
10 pause it? Adrienne -- Ms. Van Langevelde.

11 MS. VAN LANGEVELDE: Sorry.

12 (At 9:44 a.m., PX#10, video of Detective Sergeant  
13 Jordan's interview of the defendant, was stopped at  
14 this point in the proceedings)

15 THE COURT: I think if we turn it down a smidge -- I  
16 think the high volume is making it -- at least for me, it is  
17 harder for me to discern what's being said.

18 MS. VAN LANGEVELDE: Okay.

19 THE COURT: So, let's just try lowering the volume a  
20 little bit.

21 MS. VAN LANGEVELDE: Thank you.

22 THE COURT: Okay. Now, let's try that. Maybe that  
23 will be better.

24 (At 9:44 a.m., PX#10, video of Detective Sergeant  
25 Jordan's interview of the defendant, a portion was

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1 replayed at this point in the proceedings)  
2 (At 9:46 a.m., PX#10, video of Detective Sergeant  
3 Jordan's interview of the defendant, was stopped at  
4 this point in the proceedings)

5 MS. VAN LANGEVELDE: I want to make sure everybody  
6 heard that part.

7 THE COURT: I think everybody did.

8 MS. VAN LANGEVELDE: Okay.

9 BY MS. VAN LANGEVELDE:

10 Q So, Detective Maltby, after you kind of take your -- you end  
11 the recording there, what -- what happened?

12 A Not long after that, I -- I joined the same room where Jordan  
13 and the defendant are.

14 Q Okay.

15 A And all three of us spoke for a little while.

16 Q I'm sorry?

17 A I'm sorry. All three of us spoke for a little while.

18 Q Okay. Did you have an opportunity to see a -- a written  
19 statement done?

20 A Yes, I did.

21 Q Okay. And where did -- where was that?

22 A Where?

23 Q Were you -- I mean, were you with the defen --

24 A I was with Detective Sergeant Jordan and the defendant, yes.

25 Q So, were you back in that room with them, at that point?

1364a

1 A Yes.

2 Q And did you actually watch Detective Sergeant write that  
3 statement with the defendant?

4 A Yes, I believe so, yeah.

5 Q Was the defendant ever threatened?

6 A No, no.

7 Q Was the defendant ever promised anything?

8 A No.

9 Q How -- how was the statement presented to him?

10 A It was read to him, and he -- he signed it himself.

11 Q Okay. And then, that was left with Detective Sergeant Jordan;  
12 correct?

13 A Yes.

14 Q Okay. Now, you had another follow-up interview with the  
15 defendant; is that correct?

16 A Yes.

17 Q And where did that one take place?

18 A That took place back at the Eaton County Sheriff's Office, at  
19 the main office here, in Charlotte.

20 Q Okay. And what was the purpose of having that -- another  
21 interview with you at Charlotte?

22 A To kinda clean things up, maybe get a few more details out of  
23 the defendant. Obviously, this isn't the -- the greatest video  
24 in the world, either. And our interview rooms are recorded  
25 there, so just -- just to try to get as much information as I

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1 could continue to get.

2 Q Okay.

3 MS. VAN LANGEVELDE: Your Honor, at this point, I  
4 move to admit and ask to publish Proposed Exhibit 11, which is  
5 a video of the interview -- oh, I'm sorry.

6 (At 9:49 a.m., PX#11 identified)

7 BY MS. VAN LANGEVELDE:

8 Q I know you said it was in Charlotte. Do you remember the date  
9 Detective Maltby?

10 A It was the -- I believe it was May 16th of 2016.

11 Q Okay, thank you.

12 THE COURT: They -- they've already been admitted and  
13 you may publish.

14 MS. VAN LANGEVELDE: Okay, thank you.

15 (At 9:50 a.m., PX#11, video of Detective Maltby's  
16 second interview of defendant, was played at this  
17 point in the proceedings)

18 THE COURT: Pause just for a second, if you would,  
19 Ms. Van Langevelde.

20 (At 9:50 a.m., PX#11, video of Detective Maltby's  
21 second interview of defendant, was paused at this  
22 point in the proceedings)

23 THE COURT: While this video is playing, the witness  
24 has asked if he can go out the back door and use the restroom,  
25 and I'm going to allow him to do that unless there's an



1366a

1 objection that he sit there while this is being viewed.

2 MR. AMADEO: No, no objection.

3 THE WITNESS: Thank you. Oh, all right.

4 (At 9:50 a.m., witness exits courtroom)

5 THE COURT: Go ahead.

6 MS. VAN LANGEVELDE: Thank you, Your Honor.

7 (At 9:51 a.m., PX#11, video of Detective Maltby's  
8 second interview of defendant, resumed being played  
9 at this point in the proceedings)

10 (At 9:53 a.m., witness enters courtroom)

11 MS. VAN LANGEVELDE: Your Honor, I'm just gonna pause  
12 it here so I can move the little --

13 THE COURT: Yup.

14 (At 9:59 a.m., PX#11, video of Detective Maltby's  
15 second interview of defendant, was paused at this  
16 point in the proceedings)

17 MS. VAN LANGEVELDE: -- screen.

18 THE COURT: Okay.

19 MS. VAN LANGEVELDE: So, we can all see the --  
20 (inaudible). I'm gonna back it up just a little bit. There.

21 (At 9:59 a.m., PX#11, video of Detective Maltby's  
22 second interview of defendant, resumed being played  
23 at this point in the proceedings)

24 (At 10:00 a.m., PX#11, video of Detective Maltby's  
25 second interview of defendant, was paused at this

1367a

1 point in the proceedings)

2 MS. VAN LANGEVELDE: I've got to move the screen  
3 again, Judge.

4 (At 10:00 a.m., PX#11, video of Detective Maltby's  
5 second interview of defendant, resumed being played  
6 at this point in the proceedings)

7 (At 10:03 a.m., PX#11, video of Detective Maltby's  
8 second interview of defendant, was stopped at this  
9 point in the proceedings)

10 BY MS. VAN LANGEVELDE:

11 Q So, Detective Maltby, did you coordinate your schedule with the  
12 defendant's schedule when you did these interviews?

13 A Yes.

14 Q So, he told you, when you set up these interviews, he would be  
15 available to meet with you?

16 A Yes, I think I -- I made -- I worked around his schedule, I  
17 think.

18 Q Okay. All three of 'em, to the best of your knowledge?

19 A Yes.

20 Q After you did your -- I -- I'm gonna call it the -- the last  
21 interview with the defendant, what else did you do in this  
22 investigation? Did you follow-up with Pearl?

23 A Yes, I did, the next day.

24 Q Okay. And where did that take place at?

25 A At her new high school in Hastings.

1 Q Okay. And did Pearl in -- I guess, did you -- obviously, we  
2 heard a little bit about the wrestling incident. After you met  
3 with Pearl, anything new come out?

4 A No.

5 Q What did you do after you interviewed Pearl the second time?

6 A After -- after I spoke with Pearl the second time, I made  
7 contact with her stepmom, Sharon, and I asked if she could get  
8 me a picture of Pearl when she was the age -- would've been,  
9 approximately, 13 when this supposedly happened and maybe some  
10 medical records that would -- that could help me identify how  
11 tall she was, how much she weighed back then, because this was  
12 -- you know, this was three years later, so. And her -- her  
13 mom -- her stepmom was able to do that for me.

14 Q Okay. So, you -- you obtained People's Exhibit One; is that  
15 correct, from the stepmom?

16 A (No verbal response)

17 Q Is that correct?

18 A If that's One, yes, that's correct.

19 Q Okay. And you've seen that photo --

20 A Yes, I did.

21 Q And you met with both the defendant and Pearl. Was -- how tall  
22 is Pearl?

23 A Five foot.

24 Q How tall would you say the defendant is?

25 A Probably five-nine.

1 Q Weight-wise, can you give me an estimate of how big Pearl --  
2 or, how big the defendant was when you were meeting with him?

3 A Probably around one-eighty, in that ballpark.

4 MR. WINTER: Your Honor, I'm -- I have a problem with  
5 this as to relevancy. When the detective met with -- I think  
6 the questions go to the time of the interview, which was in  
7 '16. The allegations here are in fif -- '11 or '12. Where are  
8 we going with this?

9 THE COURT: Ms. Van Langevelde.

10 MS. VAN LANGEVELDE: Well, the al -- as you heard,  
11 the -- the video -- the defendant claims that the 13-year-old  
12 overpowered him, and he was a man.

13 THE COURT: Well, okay.

14 MS. VAN LANGEVELDE: Both at that time and at --

15 THE COURT: Both of you -- so, your objection is  
16 relevancy. And the question is what is the relevance of the  
17 weight of either party five years, is it, after --

18 MR. WINTER: Well, my -- my -- my -- my objection is  
19 that there isn't any time here. He can't testify. He didn't  
20 see them five years before this happened. So, what's the  
21 relevancy of the weight and size at the time he interviewed  
22 them?

23 MS. VAN LANGEVELDE: Well, I'm asking about the  
24 defendant. Most grown men don't change over the years but --

25 THE COURT: Whoa, okay. You can't give that opinion

1 testimony.

2 So, you're relevancy. What you're asking is what the  
3 weight of the defendant was at the time of the interview.

4 MS. VAN LANGEVELDE: Yes.

5 THE COURT: All right. I think that she can ask him  
6 that. And then on cross-examination, it can be pointed out  
7 what the time difference is. But, she's already asked it, and  
8 it's been answered. So, I'm gonna allow it.

9 But, let's move on because --

10 MS. VAN LANGEVELDE: Yup. Just a moment, Your Honor.  
11 Thank you.

12 At this time, the People have no further questions of  
13 this witness.

14 MR. AMADEO: Your Honor, do we want to take a moment  
15 to go over that video?

16 THE COURT: Well, are -- are you gonna use it right  
17 away, or could we just go for a few more minutes before we --

18 MR. AMADEO: We can go for a few minutes.

19 THE COURT: I figure you might have some preliminary  
20 questions, and then we'll take a break when we get to the point  
21 of what we discussed prior to the jury coming in.

22 CROSS-EXAMINATION

23 BY MR. AMADEO:

24 Q Morning, Officer Maltby. How are you today?

25 A Good, thank you.

1 Q What was your title on this investigation? Are you a detective  
2 sergeant or are you the officer in charge?

3 A Detective. I'm -- it's the case that I was -- one of the cases  
4 that I was assigned.

5 Q Do you think it's safe to say that you were the officer in  
6 charge?

7 A Yes.

8 Q What does the officer in charge do?

9 A He conducts an investigation and makes decisions concerning the  
10 investigation and the direction that it's gonna go.

11 Q So, basically, you're the main guy; right?

12 A Yes.

13 Q Let's talk about May 5th for a minute. I'm gonna jump around a  
14 little bit, but I don't really want to hit that May 5th  
15 interview with Detective Jordan, because I really wasn't clear  
16 -- who was doin' most of the talkin'? Was it Detective Jordan  
17 or was it my client?

18 A It went both ways at different times.

19 Q Do you want to hear it again?

20 A Are you referring to the entire --

21 Q The May 5th interview.

22 A -- time he was there, or are you referrin' to just the clip  
23 that we watched?

24 Q What we saw. Who was doing the talking, the majority of the  
25 talking? And if we need to watch it again, we will. Was it

1 Detective Jordan or was it my client? Simple question.

2 A Oh, it was -- it was probably Detective Sergeant Jordan.

3 Q Okay. So, did you actually hear Damon say anything prior to  
4 Detective Jordan puttin' it out there?

5 A Anything -- could you be a little more specific on it?

6 Q Did Damon say he did these things, or did Detective Jordan keep  
7 sayin' I know you did this? Who was the aggressor in that  
8 interview?

9 MS. VAN LANGEVELDE: Well, I'm gonna object to  
10 mischaracterization of the evidence.

11 MR. AMADEO: The video speaks for itself.

12 THE COURT: Overruled. Go ahead.

13 BY MR. AMADEO:

14 Q Who was the aggressor? Was it Detective Jordan or was it my  
15 client?

16 A I wouldn't say he was the aggressor. I would say he was --

17 Q I just --

18 A -- the one that was --

19 Q I asked you a question.

20 A -- talkin' about it.

21 Q Please answer it.

22 A What was your question again, then?

23 Q Who was the aggressor in that interview?

24 A Then, my answer would be I don't think there was an aggressor.

25 Q Okay. Who was more aggressive in that interview?

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1 A Oh, Detective Sergeant Jordan with his -- I mean, just with the  
2 tone of his voice.

3 Q We have this letter; right?

4 A (No verbal response).

5 Q Remember this letter?

6 A I'm sorry, I can't see. Yeah, come a little closer. Yeah.

7 Q Who wrote that letter?

8 A Detective Sergeant Jordan.

9 Q And when was this letter written?

10 A The day that the video was captured there.

11 Q Before or after?

12 A After the video.

13 Q After the video?

14 A After the video.

15 Q Okay. A moment of time -- (indecipherable) -- sir. Is it true  
16 that you just said this writing that Detective Jordan created  
17 was done after the video we just saw?

18 A I believe so.

19 Q Then, why didn't you continue to video that writing?

20 A Because I was then in the room.

21 Q So, we're just gonna take your word for it that this happened?

22 A I mean, hopefully, detec -- yeah, yes. And, also Detective  
23 Sergeant Jordan.

24 Q Is there any evidence, other than your word and Detective  
25 Jordan's word that my client signed that?



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1 A I -- just our words that we --

2 Q Just your words.

3 A -- witnessed him sign that, yes.

4 Q So, if you were Mr. Warner, wouldn't you be a little concerned  
5 that you guys lied to him throughout the whole process, and now  
6 you're claiming, without anything to substantiate it, you have  
7 this letter, which you're trying to use as a confession? Is  
8 that a concern?

9 A I'd be really concerned if I was Mr. Warner, yeah.

10 Q Because of what happened by the actions of you and Detective  
11 Jordan; correct?

12 A No.

13 Q How many forensic interviews have you done in your career?

14 A Probably close to a hundred.

15 Q And did you say earlier between one and 200?

16 A That was criminal sexual conduct cases.

17 Q Okay. And do you know how many interrogations you've had?

18 A Hundreds, if not thousands.

19 Q And is your report a full and accurate description of your  
20 investigation?

21 A Yes.

22 Q And did you say, under oath, that Pearl Giffen never changed  
23 her story?

24 A Did I say that or was that -- are you referring to the question  
25 that the prosecutor asked me?

1375a

1 Q I was referring to the question the pros -- yeah.

2 A She's -- I believe she asked me, for the most part, if  
3 everything sounded the same, and I said yes.

4 Q Has Pearl changed her story?

5 A No, her -- she still has the same -- the same story.

6 Q You remember doing your report; right?

7 A (No verbal response).

8 Q Do you remember doing your report -- your report?

9 A Yes.

10 Q I'm gonna ask you some questions from the report. If you need  
11 to refresh, I'll bring it up for ya.

12 A Okay.

13 Q On page two of your report of August of '16, do you remember  
14 when Pearl said to you, that time, when the second incident  
15 occurred?

16 MS. VAN LANGEVELDE: Well, Your Honor, I'm gonna  
17 object to hearsay.

18 THE COURT: Go ahead. On -- on what basis?

19 MS. VAN LANGEVELDE: It's the vic -- it's a vic --  
20 it's not a party opponent. The victim's not a party opponent.

21 THE COURT: Mr. Amadeo.

22 MR. AMADEO: I'm questioning from the content of his  
23 report from the interview that he had firsthand knowledge of.

24 THE COURT: Go through it one more time.

25 MR. AMADEO: Okay.

1 BY MR. AMADEO:

2 Q Did you complete a police report in August of 2016?

3 A Yes.

4 Q And is your police report a full and accurate description of  
5 your investigation?

6 A I believe so, yes.

7 Q So, if I asked you questions about that document that you  
8 authored, is it fair that those facts would be correct?

9 THE COURT: Go ahead. Are you -- are you -- are you  
10 standing or not standing?

11 MS. MORTON: The problem is that the police report,  
12 in and of itself --

13 THE COURT: Self.

14 MS. MORTON: -- is, by definition, hearsay.

15 THE COURT: Correct.

16 MS. MORTON: An out of court statement by a  
17 declarant, other than a party opponent, is also hearsay.

18 THE COURT: Correct.

19 MS. MORTON: He wants to get into the statements of  
20 the victim here. That's hearsay. And as is the contents of  
21 the report.

22 THE COURT: Mr. Amadeo, as you well know, police  
23 reports are not admissible into evidence, so --

24 MR. AMADEO: And I'm not asking about the report,  
25 Judge; I'm asking what was said to him that allowed him to

1 write this report. He had a firsthand interview with this  
2 witness, and I think that's fair game.

3 THE COURT: I -- I don't believe that it is. Unless  
4 you have authority for that, I think you're tryin' to back door  
5 in the police report; otherwise, the report is not admissible  
6 for you to simply do what you're trying to do at this point,  
7 so. He can't talk about what somebody told him, an out of  
8 court statement in court, especially when what you're talking  
9 about, an out -- that out of court statement, the witness was  
10 actually on the stand, and you had an opportunity to cross-  
11 examine that person.

12 MR. AMADEO: And I did.

13 THE COURT: So, let's move on, please.

14 BY MR. AMADEO:

15 Q When did, in your opinion, the first allegation occur?

16 A In my opinion, when did the first allegation occur?

17 Q From your investigation, when did it occur?

18 A I was -- I was -- in my -- in my best guess, it was probably  
19 between fall and spring of 2011 to '12.

20 Q Fall and spring --

21 A The fall of two -- yeah, 2011.

22 Q And when did the second incident occur?

23 A I believe -- I'm not good with dates, either. I'm trying to  
24 remember back, so. Because there was confusion on the -- when  
25 you get cases like this where something happened several years

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1 ago or it was alleged something happened several years ago, a  
2 lot of people aren't good with dates. So, you have to kinda  
3 place timelines using different things. And that was kinda the  
4 case for this.

5 MR. AMADEO: Give me one second, Judge?

6 THE COURT: Yes.

7 BY MR. AMADEO:

8 Q So, we're saying between fall and -- fall of 2011?

9 A Fall 2011. More likely spring of 2012, I believe.

10 Q And if Pearl Giffen is, in fact, a victim in this case, she  
11 would remember specifics; correct?

12 A Not necessarily.

13 Q Oh, so she's --

14 A I -- I would think that certain things she would remember, but  
15 certain things she might block out, too.

16 Q When you interviewed Pearl, what was her relationship like with  
17 her brother, Noah, and her sister, Sable?

18 A It seemed to be fine.

19 Q Did she seem to care about them?

20 A Yes.

21 Q She actually talked about how Sable's birthday was coming up?

22 A Yes, I believe so.

23 Q So, her little brother and sister were important to her;  
24 correct?

25 A Yes.

1379a

1 Q According to the first allegation, which you believe may have  
2 been in the fall of 2011, spring of 2012 --

3 A Um-hum.

4 Q -- what did she tell you about Sable?

5 MS. VAN LANGEVELDE: Objection, hearsay.

6 THE COURT: Sustained.

7 MS. VAN LANGEVELDE: Thank you.

8 BY MR. AMADEO:

9 Q During the first allegation, did you and Pearl discuss Sable's  
10 whereabouts?

11 A Yes.

12 Q And what did she tell you?

13 MS. VAN LANGEVELDE: Objection, hearsay.

14 THE COURT: Mr. Amadeo.

15 BY MR. AMADEO:

16 Q Did Pearl tell you that Sable --

17 THE COURT: Mr. Amadeo.

18 MR. AMADEO: Oh, I'm sorry, I thought you ruled. I  
19 thought you sustained the objection.

20 THE COURT: I did.

21 MR. AMADEO: Oh.

22 THE COURT: Which means you -- you cannot keep asking  
23 what Pearl said.

24 MR. AMADEO: Okay.

25 THE COURT: So, let's rephrase. Go ahead.

1 BY MR. AMADEO:

2 Q Can you explain what you believe happened in the first  
3 allegation?

4 A You're asking for my opinion?

5 Q I'm asking, based on your investigation, what you developed.

6 A Based on my investigation, I believe that the defendant walked  
7 into her room, pulled down her sweatpants, and attempted to  
8 stick his penis inside her.

9 Q And do you remember Pearl testifying? You were present when  
10 Pearl testified several times about this; correct?

11 A Yes.

12 Q In one of her testimonies, do you recall her saying that Damon  
13 took both of his hands and pulled her down?

14 A I -- I don't know. She could've. I mean, I'm sure there was  
15 different wording used each time.

16 Q Okay. If Damon put both of her -- his hands on her shoulders  
17 and pulled her down, and his zipper was up, as she testified  
18 to, how would that be possible?

19 A I wasn't there. I can't answer that.

20 Q Doesn't seem logical, does it?

21 A Once again, I -- I don't know the scenario. I think it would  
22 be easy to pull somebody down and then unzip your pants.

23 Q Let me ask you this: Would it be fair and accurate -- well,  
24 you did interviews with Pearl, as well; correct?

25 A Yes.

1381a

1 Q Okay. Would it be fair if I asked you about those interviews?

2 A Yes. Actually, the first interview, I -- I believe Miss Lane  
3 conducted mo -- might've conducted a lot of that, so. The  
4 second interview, though, when I spoke with her at Hastings  
5 High School, it was just me.

6 Q So, you do have firsthand knowledge of your interviews;  
7 correct?

8 A Yes.

9 Q So, once again, if I ask about those interviews, is that a  
10 problem?

11 A Hopefully not. I mean, if I can remember what you're talkin'  
12 about, yeah.

13 Q How old was Sable when this allegation, the first allegation  
14 allegedly occurred?

15 A She would've been around -- around one years old, in that  
16 ballpark, I believe.

17 Q And did Pearl tell you that or -- (indecipherable) -- for a  
18 minute. Was Bridget pregnant with Noah when this all stopped?  
19 Do you remember Pearl saying that?

20 A When it stopped?

21 Q Yes.

22 A I -- I don't know for sure. I don't know. I'd have to say I  
23 don't know.

24 Q From your investigation, was Noer -- Noah ever present through  
25 any of these allegations?



1382a

1 A Was who ever present?

2 Q Noah, her little brother.

3 A Through my investigation --

4 Q Or, was he even born yet?

5 A I -- I don't believe he was born yet.

6 Q He wasn't born yet. Do you know when he was born?

7 A Not offhand, no. Shortly after these alle --

8 Q Shortly after?

9 A Shortly after this time frame we're talking about, I believe.

10 I believe. I don't know for sure.

11 Q So, to the best of your knowledge, Noah was born shortly after  
12 these allegations occurred; correct?

13 A Yes.

14 Q And you claim these allegations, through your investigation,  
15 occurred in -- beginning of February of 2011; correct? Oh, I'm  
16 sorry, fall of 2011.

17 A Possibly, yes. I'm not sure on that. My date range is between  
18 fall of 2011 and the spring of 2012.

19 Q Okay. If Noah is born September 6th, 2011 and these  
20 allegations occur starting in the fall of 2011, how's that time  
21 frame possible?

22 A The time frame may need to be moved back. Like I said, I'm --  
23 I'm not sure on those dates.

24 Q So, we don't care about the time frame?

25 A Sitting up here, that's -- you asking me the time frame, you

1383a

1 know, based on my opinion, that's -- that's what I gave ya.

2 Q I'm asking you, as the officer in charge, about your  
3 investigation.

4 A You're askin' me about the time frame. Right.

5 Q Yes. And that's part of your investigation --

6 A Um-hum.

7 Q -- is it not?

8 A Yes.

9 Q Okay. Is it concerning that we're not sure not only if these  
10 things occurred, but when they could've occurred?

11 A No.

12 Q That's not --

13 A It's not.

14 Q -- concerning to you?

15 A No, that's common.

16 Q Okay.

17 A With these kind of cases where it's reported years later, I  
18 mean this is common.

19 Q And how many forensic interviews did you say you did?

20 A I would have no idea of the exact number. Probably close to a  
21 hundred, if I had to guess.

22 Q So, forensic interviewing is really one of your things or it's  
23 one of your expertise?

24 A No. No.

25 Q But you've done a hundred of 'em.

1384a

1 A Yeah, we do a lot of 'em here. I was -- I was doin' it when I  
2 was wearing a uniform.

3 Q Are you qualified to do 'em?

4 A Yes, always.

5 Q Can you explain the process of a forensic interview?

6 A There's a certain set of rules, a protocol that you have to  
7 follow, as far as when interviewing children: Making sure that  
8 they understand the difference between the truth and a lie;  
9 that you're -- if they don't understand a question, that they  
10 need to tell you that; that they're not just trying to please  
11 you. Just stuff like that. There's the ground rules that you  
12 go over. In fact, I have -- there's a card they give you to  
13 make sure you don't miss anything. I -- I still use the card.  
14 That's -- that's -- I don't do it that often.

15 Q In Michigan, do you know what the average age is on forensic  
16 interviews of the alleged victim?

17 A No, I don't.

18 Q Do you know what the average age is of delayed reporting in  
19 Michigan?

20 A No, I don't.

21 Q Forensic interviews?

22 A No.

23 Q Is it unusual, based on your experience doing forensic  
24 interviews, that, in a 10 year time frame, there would only be  
25 two allegations?

1385a

1 A I'm sorry, could --

2 Q In your --

3 A Can -- can you say it one more time? My ears are a little  
4 plugged.

5 Q In your experience doing forensic interviews, do you find it  
6 unusual that, in a 10 year time frame, there would only be two  
7 isolated allegations?

8 A No.

9 Q You don't find that unusual?

10 A No.

11 Q Do you remember the second forensic interview with Pearl?

12 A At Hastings High School?

13 Q Yes.

14 A Yes.

15 Q Do you remember what you said to her towards the beginning of  
16 the interview?

17 A Not exactly, no, without --

18 Q If you said -- and we could play it. But if you said, come on,  
19 Pearl, was there only two -- paraphrasing that -- would that be  
20 a fair question?

21 A I may have said that, yeah.

22 Q Okay. So, you didn't really buy into the fact that there were  
23 two allegations; correct?

24 A I just want -- I wanted to make sure there was only two times  
25 where it happened. I was just trying to be as thorough as I

1386a

1 could and so we're not continuously comin' back to other  
2 things.

3 Q Here's what's really confusing. I need your help on this one  
4 Detective Jordan, in what I say was coercion but you're gonna  
5 say was an interview -- with that, did they say there were four  
6 fingers that went in and went out real quick?

7 A I heard four fingers that went down and touched --

8 Q And pulled up real quick --

9 A Um-hum.

10 Q -- that's what he said.

11 A Yes. It was hard for me to hear from this --

12 Q Sure.

13 A -- angle.

14 Q What did Pearl say the allegations were?

15 A She said they were -- you want me to answer this by what Pearl  
16 said or --

17 Q Well, you've heard her testify multiple times, you interviewed  
18 her.

19 A She -- the first allegation was that he --

20 MS. VAN LANGEVELDE: Your Honor, I'm gonna object.

21 The question, again, calls for hearsay as to what Pearl said.

22 THE COURT: Sustained.

23 MS. VAN LANGEVELDE: Thank you.

24 BY MR. AMADEO:

25 Q Did Pearl -- in your discussions with Pearl, did an allegation

1387a

1 of four fingers going in ever come up, or did she make  
2 different allegations?

3 A No, her -- she had a similar allegation where her -- where a

4 Q That's not what I asked you.

5 A -- fingers went down there.

6 Q I asked you specifically --

7 A So, you're askin' the specific four -- no, she never said  
8 specifically four, the number four.

9 Q So, what we all kinda heard from Damon Warner does not match  
10 the accusations of Pearl Giffen; is that correct?

11 A That's correct.

12 Q Who was the first person -- during your investigation, you  
13 found out -- who was the first person that Pearl spoke to about  
14 this?

15 A Her Grandma Esther.

16 Q If I'm correct, between testimonies and interviews, Pearl  
17 started to tell people because she was cutting; correct?

18 A Yes.

19 Q She couldn't hold it in anymore.

20 A She was cutting, yes.

21 Q And this all happened when?

22 A When she started cutting? At -- sitting here now, I don't  
23 know.

24 Q December 23rd of 2015 is a big day here; correct? From your  
25 investigation.

1 A Right, correct.

2 Q And didn't you actually say that Esther Stevens, the  
3 grandmother, was recently told about these things?

4 A Correct.

5 Q Did you hear Pearl testify yesterday?

6 A Yes.

7 Q Yes or no, did Pearl testify that she told Esther Stevens in  
8 October of '14? Do you remember that?

9 A I remember her giving sev -- several dates and being confused  
10 But for that exact -- that exact one, no, I don't. I'm -- I'm  
11 sure she did.

12 Q She did, okay. So, October of '14, but, yet, all hell breaks  
13 loose in December of '15; correct?

14 A Correct.

15 Q What was going on with Pearl and her mother on that night,  
16 December 23rd, 2015?

17 MS. VAN LANGEVELDE: Objection, hearsay.

18 THE COURT: No, it's not, if he has personal  
19 knowledge of what happened. He might have knowledge. He's not  
20 being asked what somebody said. It's being asked what he  
21 learned during his investigation. Overruled.

22 Go ahead, you can answer the question.

23 THE WITNESS: What happened between her -- her and  
24 her mother?

25 BY MR. AMADEO:

1389a

1 Q Yeah.

2 A They got in an argument.

3 Q About what?

4 A It was about electronics bein' taken away from her.

5 Q It was about her mother wanted to take her electronics away;  
6 correct?

7 A Correct. I think, yeah.

8 Q So, her mom and her are having a confrontational moment; would  
9 you agree with that?

10 A Supposedly, yes.

11 Q And that's when Pearl comes up with the story that Damon raped  
12 her; isn't that correct?

13 A I don't -- I don't believe that is correct but --

14 Q It was your investigation; correct?

15 A Yeah.

16 Q If Damon --

17 A I don't believe that's correct, no, I don't, to answer your  
18 question.

19 Q You don't believe it.

20 A No.

21 Q Okay. If your reports say that everything developed on  
22 December 23rd, 2015, are your reports wrong?

23 A I'm not agreeing with you when you're saying that --

24 Q Well, I'm asking --

25 A -- she made this up.



1390a

1 Q -- your opinion now.

2 A Okay.

3 Q I'm trying to get a time frame.

4 A But, I'm answering the question yes.

5 Q Okay. So, on December 23rd, 2015, when Pearl made the  
6 allegations, yes or no, was she having an altercation with her  
7 mother?

8 A Yes.

9 Q And was the altercation over her mother wanted to take her  
10 electronics away?

11 A Yes.

12 Q So, you don't see that as potential motive to lie about my  
13 client?

14 A Yes, I mean --

15 Q Thank you.

16 A -- it could be a motive, yes.

17 Q Thank you. So, if these allegations occurred, as you said,  
18 between fall of 2011 and the summer of 2012 --

19 A Spring of 2012.

20 Q -- and Noah Warner was born September 6th of 2011 -- where was  
21 Noah during this whole thing, any idea?

22 A Where was -- I'm sorry, I couldn't hear ya.

23 Q If Noah Warner was born September 6th of 2011 --

24 A Um-hum.

25 Q -- wouldn't he have had to be present?

1391a

1 A Like I said earlier, the time frame may be just a little bit  
2 earlier than that. I'm -- I'm not 100 percent positive on  
3 that, that's for sure.

4 Q In the second interview that you did with Pearl, did you  
5 discuss when the first allegation occurred?

6 A I don't remember.

7 MR. AMADEO: At this point, Your Honor, I'd like to  
8 refresh recollection.

9 THE COURT: And this is the perfect point to take a  
10 break.

11 Ladies and gentlemen, this is your morning break.  
12 You will be allowed to leave for a recess instruction. Don't  
13 talk to anybody about the case. You still can't talk to each  
14 other about the case. If somebody tries to talk to you, report  
15 it to me immediately. You may leave your notebooks on your  
16 chairs if you wish to do so.

17 We'll take about a 15 minute break. Watch your step  
18 going down, please.

19 (At 10:33 a.m., jury exits courtroom)

20 THE COURT: Anything for the record before we take  
21 the break?

22 MR. AMADEO: No, Your Honor.

23 THE COURT: All right. Now, as we're on break, we're  
24 gonna play these snippets; is that correct?

25 MR. AMADEO: Correct, Judge.

1392a

1 THE COURT: And is one of you allowed -- available to  
2 stay in here in case they want him to hear it? 'Cause I know  
3 you'll -- you guys need a break, too.

4 All right --

5 MS. VAN LANGEVELDE: Yes, we'll stay.

6 THE COURT: -- I'll be back in about 15 minutes.  
7 Thank you very much.

8 MS. VAN LANGEVELDE: Thank you.

9 (At 10:34 a.m., off the record)

10 (At 11:05 a.m., back on the record)

11 THE COURT: We are back on the record in *People*  
12 *versus Warner*.

13 Is there anything we need to state on the record  
14 before we bring the jury in?

15 I was told by Ms. Ykimoff that the portions of the  
16 previous interviews were played and that the witness's memory  
17 has been refreshed, so we should not have any technical issues.  
18 Is that fair to say?

19 MR. AMADEO: That's correct, Your Honor.

20 THE COURT: Are you ready to go?

21 MR. AMADEO: I am.

22 THE COURT: Ready to go?

23 MS. VAN LANGEVELDE: Yes, Your Honor.

24 THE COURT: Ready to go? Bring 'em in.

25 (At 11:06 a.m., jury enters courtroom)

1393a

1 THE COURT: Please be seated.

2 Go ahead.

3 MR. AMADEO: Thank you, Your Honor.

4 BY MR. AMADEO:

5 Q Detective Maltby, is it true that you did interview my client  
6 three times?

7 A Yes.

8 Q Did he always come in voluntarily?

9 A Yes.

10 Q Is it normal for people to voluntarily come in three times?

11 A Yes.

12 Q Is it normal to do two forensic interviews on a subject?

13 A No.

14 Q Okay. So, why'd you do two?

15 A Because in my -- during -- not mine. Miss Lane was also there.  
16 During the first interview with the victim, I just -- just a  
17 feeling I had maybe there was something else she was holding  
18 back, maybe another incident, or sometimes victims blame  
19 themselves for things or -- just something I wanted to be sure  
20 of, that everything was out there.

21 Q And do you remember Pearl telling you, in the second interview,  
22 she wasn't holding anything back in the first?

23 A Right.

24 Q You weren't sure about her credibility, were you?

25 A Yes, I was.

1394a

1 Q You did a second interview; correct?

2 A Not -- not for the fact that I believed she was lying to me.

3 For the fact that I wanted to make sure there wasn't other --

4 other --

5 Q Did you do two interviews, though?

6 A Yes. Yes, sir.

7 Q Okay. In the second interview -- we reviewed this on break --

8 doesn't Pearl tell you that the first incident happened in

9 August?

10 A Yes.

11 Q And did you see --

12 A Well, yes. I'm sorry, go ahead.

13 Q Did you see Pearl testify yesterday?

14 A Yes.

15 Q And did she, once again, reaffirm that the first allegation

16 occurred in August?

17 A I --

18 Q Do you remember that?

19 A I was a little -- things were a little foggy for me yesterday,

20 but I think she said August yesterday.

21 Q And did she also say she remembered specifically it was a lazy

22 day at school, she had a half day?

23 A Yes.

24 Q How could it have been in August if school didn't start till

25 September 4th?

1395a

1 A It couldn't have been if -- if that's when school started.

2 Q So, she doesn't know when this occurred. Are we sure about  
3 that?

4 A I'm pretty sure she doesn't know the exact date or the date --  
5 the correct date that that occurred, yes.

6 Q Are you familiar with Care House?

7 A I believe so.

8 Q Do you know what Care House is?

9 A If it's the one I'm thinkin' of, it's a --

10 Q What are you thinking?

11 A I'm thinking it's an interview facility --

12 Q Um-hum.

13 A -- to take children to be interviewed, maybe in --

14 Q And at Care House, in Macomb and in Eaton, isn't it standard  
15 that, when there's an accusation of a CSC with a child, the  
16 child's sent to Care House?

17 A Is it what?

18 MS. VAN LANGEVELDE: Well, Your Honor, I'm gonna  
19 object.

20 THE COURT: Yeah.

21 MS. VAN LANGEVELDE: It's not relevant to our case.

22 THE COURT: There is not a Care House in Eaton  
23 County.

24 BY MR. AMADEO:

25 Q Now, going back to Damon Warner. As part of your

1396a

1 investigation, knowing his whereabouts would be important  
2 during these allegations; correct?

3 A No.

4 Q It wouldn't be?

5 A We -- we're not even sure on the exact date because --

6 Q We have a time frame; correct?

7 A Yes. A big time frame, yes.

8 Q And you did say between fall of 2011 and summer of 2012.

9 A That was my opinion, yes.

10 Q Where did Damon work during that time frame?

11 A I believe he told me he worked for a subject named Danny  
12 LaPoint or -- he also mentioned workin' at a hotel.

13 Q Did he tell you that he worked there when you interviewed him,  
14 or did he tell you that he worked there during the time of  
15 these allegations?

16 A I don't remember.

17 Q Okay. Did you ever check his work schedules during the alleged  
18 time frame?

19 A No.

20 Q Is it true that one accusation was done, allegedly, in the  
21 afternoon, on a Friday?

22 A Correct.

23 Q And the other one was, supposedly, on a Monday night?

24 A Yes, that's correct.

25 Q Do you feel it's important to know if Mr. Warner was working,

1397a

1 to see if he was actually in those locations at the time the  
2 accusations occurred?

3 A Once again, without the -- without the date or a pretty  
4 precise, you know, two or three week time span, I'm gonna agree  
5 with that; but when you're dealin' with not knowing the exact  
6 date, that's -- that's just not gonna be possible.

7 Q So, you never looked into that?

8 A No.

9 Q When did you interview Esther Stevens?

10 A I did not interview her.

11 Q You didn't interview Esther Stevens?

12 A No.

13 Q Were you told that Esther Stevens was the first person that  
14 Pearl reported this to?

15 A Yes.

16 Q Why wouldn't you interview her?

17 A When I went to interview her, she was in the hospital. She had  
18 just had open heart surgery, I was told.

19 Q When was that?

20 A I don't remember when I was told that. It was sometime during  
21 the investigation.

22 Q And it's true that your investigation lasted from January of  
23 '16 to August of '16; correct?

24 A Correct.

25 Q So --



1 A Till -- I'm sorry, August of --

2 Q August of '16? That's what you put in your report to the  
3 prosecutor.

4 A Okay, that's maybe when the warrant got issued, I don't know,  
5 but it -- yeah, pretty much.

6 Q So, you had eight months in this, eight months on the Warner  
7 case.

8 A No, it -- the investigation actually lasted from January to the  
9 end of May.

10 Q Okay.

11 A So, yeah, five.

12 Q So, five months.

13 A Um-hum.

14 Q Did you follow-up with Esther Stevens, at all?

15 A No, I did not.

16 Q Why?

17 A Like I said, the -- the first time I went to follow-up with  
18 her, I learned that she was in the hospital, just had open  
19 heart surgery, and there was -- I believe that I was going to  
20 make contact with her another time, but there was something  
21 else where -- I don't know if she was sick again or she was out  
22 of town. But, at that point, I didn't feel I needed to. I  
23 didn't think it was -- it was imperative for my investigation,  
24 at that point. My -- the defendant had already admitted  
25 putting his hand down the victim's pants.

1399a

1 Q Esther Stevens, true or false, we are told, and you were told  
2 was the first person that Pearl opened up to.

3 A Um-hum, correct.

4 Q And you're telling me you didn't -- it wasn't important to get  
5 her version of events?

6 A I -- I wish I could've talked to her.

7 Q Thank you. How about Bridget Warner or Bridget Stevens, as  
8 she's called now, you spoke to her; right?

9 A Yes.

10 Q What'd she tell you?

11 A I didn't speak --

12 MS. VAN LANGEVELDE: Objection, hearsay.

13 THE COURT: Sustained.

14 MS. VAN LANGEVELDE: Thank you.

15 BY MR. AMADEO:

16 Q Did you and Bridget Stevens -- did you interview Bridget  
17 Stevens about these accusations?

18 A No, I really didn't. The CPS --

19 Q Did you have a conversation --

20 A -- officer did.

21 Q Okay. Were conversations had with Bridget Stevens about these  
22 allegations?

23 A Yes.

24 Q Were those conversations video or audio recorded?

25 A I don't believe so.

1400a

1 Q And do you know if Bridget Stevens, the mother of Pearl, is a  
2 witness for the prosecution here?

3 A No, I do not.

4 Q Is Esther Stevens a witness for the prosecution?

5 A No.

6 Q Did you speak to Sharon Giffen during your investigation?

7 A Yes, I did.

8 Q And did you and I and the prosecutor review some snippets of  
9 those interviews?

10 A Yes.

11 Q Is it true that Sharon said to you, during the investigation,  
12 and I quote, "Pearl lies about a lot of things?"

13 A Yes.

14 Q Is it also true that Sharon told you that she believed Pearl  
15 was bipolar?

16 A Yeah, I believe she said -- she may -- she may even be bipolar  
17 or something like that, but, yeah.

18 Q Now, who knows Pearl better, yourself or her stepmother,  
19 Sharon?

20 A Oh, her stepmother.

21 Q So, her stepmother said she's bipolar. Did you investigate  
22 that?

23 MS. VAN LANGEVELDE: Your Honor, I'm gonna object to  
24 that. I mean, we heard Sharon testify. Sharon's not a doctor.  
25 She doesn't have a diagnosis.

1401a

1 THE COURT: Well, what's your objection?

2 MS. VAN LANGEVELDE: Mischaracterization of the  
3 evidence that we heard yesterday.

4 MR. AMADEO: Mischar -- I said -- I'm asking him what  
5 he thought from the interview.

6 THE COURT: Well, I'm gonna sustain the objection to  
7 the extent that the testimony, as the Court recalls, it wasn't  
8 that she was bipolar but that the witness, yesterday, thought  
9 she might be bipolar. And so, you can ask about that.

10 BY MR. AMADEO:

11 Q When the witness told you that Pearl was bipolar, did that make  
12 you want to do any research on the mental stability of Pearl?

13 A No. She -- to talk to Sharon Giffen is -- she's a sarcastic  
14 person. She's just -- that's kind of her way. And I --

15 Q So, you --

16 A It wasn't said like she's been diagnosed with this or that.

17 No, it was just, you know, she may be this, who knows.

18 Q I'm sorry, you said she was a sarcastic person?

19 A What's that?

20 Q You said Sharon Giffen's a sarcastic person?

21 A I said the way -- the way she can put things sometimes is she  
22 can be like, you know --

23 Q Would it be --

24 A -- sarcastic.

25 Q -- appropriate for a stepmother --

1402a

1 A I should say jokingly. She's more of a joking --

2 Q Oh, so --

3 A -- person.

4 Q -- bipolar was a joke?

5 A I didn't say that, either.

6 Q Well, what are you saying?

7 A I'm saying it wasn't said like she's been diagnosed as bein' a  
8 bipolar person or she's convinced that she's bipolar. That's  
9 not how it was put to me. Like --

10 Q So, you didn't -- you didn't think Sharon Giffen was really  
11 credible, did ya?

12 A Yes.

13 Q But, you didn't take that statement serious?

14 A I had -- I had met Pearl and listened to her speak, and, yeah,  
15 I knew that she hadn't been diagnosed with bein' bipolar or  
16 anything like that, so I --

17 Q Oh, did you check her medical records?

18 A Actually, we did get her medical records for her weight and her  
19 height from the doctors.

20 Q Okay. Did you get any of her mental medical records? Not  
21 physical.

22 A Those -- those are all the records from her doctor. She  
23 doesn't have a mental doctor that I know of back then.

24 Q So, you never did any further investigation upon Sharon's  
25 statement; correct?

1403a

1 A No. No, I didn't.

2 Q So, Esther Stevens is the first person that Pearl told;  
3 correct?

4 A Yes.

5 Q And Pearl said October of '14. And Bridget Stevens was told  
6 December 23rd of '15?

7 A Yes.

8 Q And James and Sharon Giffen were told either December 23rd or  
9 December 26th of '15; correct?

10 A Correct.

11 Q Who's Esther Stevens?

12 A That is --

13 Q What's her relation to Pearl?

14 A That's her grandmother.

15 Q And what is Bridget Stevens relation?

16 A To Esther or to Pearl?

17 Q Pearl.

18 A Her mother.

19 Q And what is James relation to Pearl?

20 A Father.

21 Q And what is Sharon's?

22 A Stepmother.

23 Q So, these four people were all close to Pearl; correct?

24 A Yes.

25 Q In one way or another. And in one way or another, are they all

1404a

1 care-givers for Pearl?

2 A I hope so. I -- I can't say that for sure, but I hope so,  
3 yeah.

4 Q I have a real simple question. Esther Stevens, Bridget  
5 Stevens, James Giffen, Sharon Giffen, did any of these people  
6 report anything that Pearl told 'em to CPS?

7 A No.

8 Q Did any of these people report anything that Pearl said to the  
9 police?

10 A No.

11 Q So, if your daughter or granddaughter was, allegedly, a victim  
12 of rape, and you believed it to be valid, how could you not  
13 report it to the authorities?

14 MS. VAN LANGEVELDE: Your Honor, I'm gonna object to  
15 the relevance. He's asking him about what he would do with his  
16 own child. It's completely different.

17 MR. AMADEO: I'll withdraw.

18 THE COURT: Thank you.

19 MS. VAN LANGEVELDE: Thank you.

20 BY MR. AMADEO:

21 Q Only a couple questions left. The alleged confession was on  
22 May 5th of 2016; correct?

23 A Yes.

24 Q So, you had a confession, in your opinion?

25 A Yes.

1405a

1 Q And you feel the confession was valid?

2 A Yes.

3 Q Yes or no question, did you arrest Damon Warner on May 5th,  
4 2016?

5 A No, I did not.

6 Q Thank you.

7 MR. AMADEO: Nothing further.

8 THE COURT: Any redirect?

9 MS. VAN LANGEVELDE: I do. Thank you.

10 REDIRECT EXAMINATION

11 BY MS. VAN LANGEVELDE:

12 Q Detective Maltby, there are some differences, obviously,  
13 between what Pearl says happened and what the defendant says  
14 happened; fair?

15 A Correct.

16 Q But they both agree that the defendant's fingers went into her  
17 vagina.

18 A Yes.

19 Q Can you get records from a doctor that doesn't exist?

20 A No, I cannot.

21 Q But you did get some medical records to show what?

22 A To show -- to show Pearl's physical characteristics and what  
23 she -- basically, just get her physical characteristics, get an  
24 idea of what she looked like when she -- at the time of the  
25 alleged CSC.



1 Q Okay. And you did this investigation jointly with CPS; is that  
2 fair?

3 A Yes.

4 Q Okay. So, I want to talk a little bit about -- so, I'm -- yes  
5 I'm sorry. So, CPS actually did some of the interviews that  
6 we've been talking about, but you were present.

7 A That's correct.

8 Q Okay. And I think you indicated Ms. Lane did the first  
9 forensic interview with Pearl -- (inaudible)?

10 A I think she did most of it, yes. We were both there, at the  
11 school.

12 Q Okay. You talked -- so, was it concerning to you that Pearl  
13 wasn't able to give you an exact date?

14 A No, no.

15 Q Throughout your career as a detective and police officer  
16 investigating CSC crimes, is that common?

17 A That's -- that's common, especially for children.

18 Q Okay.

19 A Or someone that was that age at the time it happened.

20 Q Okay. And do you recall what you actually kind of put on your  
21 warrant request?

22 A I believe I put the fall of -- as -- as far as the date that  
23 this crime may have occurred --

24 Q Yes.

25 A -- or crimes? I believe I put fall of 2011.

1407a

1 Q So, did -- was it you that kind of were pushin' for dates or  
2 or, maybe the CPS worker?

3 A Yeah, it was. Yeah, as adults, we -- we're the ones that push  
4 for the dates. It's -- Pearl was never concerned with the  
5 dates. Unfortunately, we're the ones that are what's the date  
6 what's the date. We got to have a date, we got to have a time  
7 you know. And that's my fault, but that's how it is. We have  
8 forms we have to fill out, reports we have to do, questions  
9 we've got to answer along the way like today that we know are  
10 gonna come up, but kids aren't worried about the dates. They  
11 have other things burned in their memory, not the date.

12 Q But it was -- but it was -- originally, you wrote down 2011.

13 A Yes.

14 Q Okay. And is it -- is it common, in your -- I guess in your  
15 experience as an -- also as a detective and a police officer,  
16 for kids not to tell everything the first time?

17 A Yes.

18 Q And why does -- in your experience, has that happened to you?

19 A Because they -- they have trust issues and --

20 MR. WINTER: Your Honor, I'm gonna object to that. I  
21 don't understand how he may -- it's speculation. How does he  
22 know why kids do anything?

23 MS. VAN LANGEVELDE: Well, I don't think it's  
24 speculation because he's a police officer who's done multiple  
25 forensic interviews with kids and can -- and has interviewed

1408a

1 kids multiple times, done numerous investigations. He's --

2 THE COURT: He hasn't been qualified as an expert to  
3 be able to say -- the way you phrased the question -- I'm gonna  
4 sustain the objection and ask you to rephrase your question.

5 MS. VAN LANGEVELDE: Okay.

6 BY MS. VAN LANGEVELDE:

7 Q Have you had kids tell you about other incidents in follow-up  
8 interviews?

9 A Yes.

10 Q Okay. And why do you do follow-up interviews?

11 A Because the -- the children are -- you and the child are more  
12 comfortable around each other, they know you then, they're more  
13 willing to open up. The more times they meet you, the longer  
14 they know you, the -- I mean, more likely you are -- it's  
15 common sense -- to get information from them.

16 Q All right, I think the defense asked you but didn't -- I think  
17 asked you if you would be concerned if you were the defendant.  
18 Why would you be concerned if you were the defendant?

19 A Because of -- well, I'd be concerned because I committed a  
20 crime and I'm gonna, possibly, go to prison.

21 Q Did -- did anyone force Mr. Warner to sign that sheet?

22 A No.

23 MR. WINTER: That's asked and answered, Your Honor.

24 THE COURT: Sustained.

25 MS. VAN LANGEVELDE: I don't have anything further.

1 Thank you.

2 THE COURT: Thank you very much, Detective. You may  
3 step down.

4 (At 11:26 a.m., witness stands down)

5 THE COURT: Your next witness, Ms. Van Langevelde.

6 MS. VAN LANGEVELDE: No. At this time, Your Honor,  
7 the People rest.

8 THE COURT: Oh, okay.

9 At this time, I would ask Ms. Ykimoff to take the  
10 jury out briefly.

11 You're on a recess instruction. You can't talk to  
12 anybody about the case. Don't let anybody talk to you about  
13 the case. And you can leave your notebooks there. You'll be  
14 back in a few minutes. Thank you, ladies and gentlemen.

15 (At 11:26 a.m., jury exits courtroom)

16 THE COURT: You may be seated.

17 All right, Mr. Amadeo.

18 MR. AMADEO: First, Your Honor, I'd like to make a  
19 motion for directed verdict.

20 THE COURT: Yes.

21 MR. AMADEO: It's clear there's inconsistency. The  
22 alleged confession does not match any of the allegations. I do  
23 not feel there's enough to move forward to the jury.

24 THE COURT: The Amended Information that -- was that  
25 corrected, the date?

1 MS. VAN LANGEVELDE: Yes, it says -- it should say  
2 spring/summer 2011.

3 THE COURT: Okay. Response to the motion for  
4 directed verdict. And I assume you were saying pursuant to  
5 6.419, Mr. Amadeo?

6 MR. AMADEO: That's correct, Judge.

7 THE COURT: Ms. -- Ms. Morton.

8 MS. MORTON: Thank you.

9 As the Court is well-aware, all of the facts must be  
10 taken in the light most favorable to the prosecution. And as I  
11 know the Court is also aware, time is not something that we  
12 have to prove.

13 THE COURT: Um-hum.

14 MS. MORTON: And so, there's been a lot of discussion  
15 about that, but that is not one of the elements that we have to  
16 prove. And I know the Court will be instructing the jury that  
17 that is not something that we have to prove.

18 In terms of the allegations, Pearl certainly gave  
19 testimony to support each of those counts. First of all, the  
20 CSC - First Degree, she indicated that the defendant came up  
21 behind her, reached around, put his hand down her pants, and  
22 stuck his finger in her vagina. And as for -- well, and she --  
23 she indicated she was 13-years-old. And, obviously, they were  
24 members of the same household. I don't think that's in  
25 dispute.

1411a

1           And as for the second count, the sexual contact --  
2 again, this is sexual touching without penetration that can be  
3 construed as having been done for a sexual purpose. And I  
4 think when someone tries to stick their penis in you, that is  
5 easily construed as being done for a sexual purpose. And she  
6 did provide those facts, as well.

7           And so, I believe that you should deny this motion.

8           THE COURT: The motion for a directed verdict, Mr.  
9 Amadeo, is denied. I think that the issues that you raise go  
10 to the credibility of witnesses' testimony. The credibility of  
11 witnesses is for the consideration and decision of the jury.  
12 It is not for the judge to decide which witnesses have -- which  
13 witnesses that have testified are credible or not credible.

14           And Miss Morton is correct, time is not an element  
15 that has to be proven. I understand why you are -- did --  
16 brought in the time element because that can be argued as a  
17 credibility issue in terms of where and when things happen, but  
18 that does not make fatal the charges in the Information.

19           So, your motion is denied.

20           MR. AMADEO: Okay.

21           THE COURT: Now, do you plan on calling any  
22 witnesses?

23           MR. AMADEO: I do, Your Honor.

24           I would like to put on the record that we are not  
25 gonna be calling Mr. Warner. And, if possible, I'd like to

1412a

1 just make an instruction to him, for the record, that we have  
2 discussed this issue, and he will not be taking the stand.

3 THE COURT: Would you like to do that right now?

4 MR. AMADEO: If I may.

5 THE COURT: You may.

6 MR. AMADEO: Mr. Warner, have you and I discussed  
7 that you have the right to take the stand should you choose?

8 THE DEFENDANT: Yes.

9 MR. AMADEO: And have you and I discussed the pros  
10 and cons of that?

11 THE DEFENDANT: Yes.

12 MR. AMADEO: And do you agree that not taking the  
13 stand is the proper move?

14 THE DEFENDANT: Yes.

15 MR. AMADEO: And is this your decision?

16 THE DEFENDANT: Yes.

17 MR. AMADEO: Thank you.

18 THE COURT: Thank you.

19 MR. WINTER: And freely and voluntarily.

20 MR. AMADEO: And was it done freely and voluntarily?

21 THE DEFENDANT: Yes.

22 MR. AMADEO: Thank you.

23 THE COURT: Are you gonna call any witnesses?

24 MR. AMADEO: We have two, at this point. I'm  
25 definitely calling one, and he's out there waiting.

1413a

1 THE COURT: Yup, we're gonna start 'cause the -- the  
2 -- we're gonna go till noon, so.

3 MR. AMADEO: Okay. Now, I don't know about the  
4 second one, but the one is here, ready to go.

5 THE COURT: Okay. And -- all right, so you want to  
6 bring that --

7 MR. AMADEO: I will.

8 THE COURT: -- person in? And as soon as that person  
9 comes -- all right, you're gonna get him? And so, that person  
10 comes in the courtroom.

11 Ms. Ykimoff, I'd like you to go get the jury.

12 Anything else we need to put on the record? Okay.

13 MS. VAN LANGEVELDE: No thank you. Oh, yeah, you can  
14 have two of them.

15 MS. MORTON: Oh, those are mine.

16 MS. VAN LANGEVELDE: Oh. Do you want -- want me to  
17 give one to Jim?

18 MS. MORTON: That's fine.

19 MS. VAN LANGEVELDE: I'll go get you more.

20 MS. MORTON: He's touched them now. I have more in  
21 my bag.

22 MR. AMADEO: Here's our witness, Judge.

23 THE COURT: All right, you can sit right there.

24 Bring in the jury, please.

25 What is his name, Mr. --



1414a

1 MR. AMADEO: Robert Giffen.

2 THE COURT: -- Winter? Thank you.

3 (At 11:33 a.m., jury enters courtroom)

4 THE COURT: Please be seated.

5 All right, Mr. Winter, call your first witness.

6 MR. WINTER: Thank you, Your Honor. The defendant  
7 would call Robert Giffen to the stand, please.

8 THE COURT: Please come right up here, sir. There is  
9 a step before you reach the witness box. Raise your right  
10 hand.

11 Do you swear to tell the truth, the whole truth, and  
12 nothing but the truth, so help you God, under penalty of  
13 perjury?

14 MR. ROBERT GIFFEN: I do.

15 THE COURT: Please have a seat. Please state your  
16 full name for the record.

17 THE WITNESS: Robert Giffen.

18 THE COURT: Go ahead, Mr. Winter.

19 MR. WINTER: Thank you, Your Honor.

20 ROBERT GIFFEN  
21 at 11:33 a.m., called by Mr. Winter and sworn by the Court,  
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WINTER:

25 Q Mr. Giffen, I'm gonna ask you a series of questions, and I

1 would ask that you listen carefully to the questions and answer  
2 them as fully and accurately as you can. Is that okay?

3 A Yes.

4 Q All right. If you don't understand the question before or  
5 don't hear the question, please ask me and I'll repeat it; all  
6 right?

7 A (No verbal response).

8 Q Please answer out loud. Don't say um-hum or nod your head.  
9 The court reporter needs to have something for the record. Is  
10 that all right?

11 A Yes.

12 Q Thank you. If you answer a question, I'm going to assume that  
13 you heard the question and answered it accurately unless you  
14 tell me otherwise, okay?

15 A Okay.

16 Q Are you familiar with Pearl Giffen?

17 A Yes.

18 Q Are you related to her?

19 A Yes.

20 Q Can you tell us the relationship?

21 A She is my half sister.

22 Q Okay. And who's your father?

23 A James.

24 Q James Giffen?

25 A Yes, sir.

1416a

1 Q Okay. At some point in time, did your father lose part of his  
2 arm?

3 A Yes, sir.

4 Q And can you please tell us how that occurred, to the best of  
5 your knowledge?

6 A He was working on a dump truck. The box came down, took his  
7 arm off, and hit him in the head.

8 Q And how did that affect him?

9 A His memory, obviously his loss of arm.

10 Q Okay. When you say his memory, how did it affect his memory,  
11 as far as you could observe in comparing before and after?

12 A He calls me my brother, my brother me, calls me all -- names,  
13 like his brother.

14 Q When you were in high school, did you play football?

15 A Yes.

16 Q What position did you play?

17 A Quarterback.

18 Q At some pint -- point during your ca -- career, did you sustain  
19 a concussion?

20 A Yes, sir.

21 Q And what -- what year in school was that?

22 A My freshman year.

23 Q Okay. And how did that affect you, at that time?

24 A I spent one night in the hospital, didn't play football my  
25 sophomore year.

1417a

1 Q Okay. Did it -- did it impact your -- your attending school  
2 beyond the one night in the hospital?

3 A No.

4 Q Did it impact your going to classes?

5 A No.

6 Q Taking exams?

7 A No.

8 Q Okay. Did you return to playing football?

9 A Yes.

10 Q What position did you play when you played football?

11 A Quarterback.

12 Q Okay. How much -- did you start at quarterback?

13 A Yes.

14 Q Did you get much playing time?

15 A Yes.

16 Q For both years, you played junior and senior years?

17 A Yes.

18 Q Okay. This may seem like an obvious question, Mr. Giffen, but  
19 I -- I want to ask it. Can you describe the on-field  
20 responsibilities of a quarterback? What do you have to do and  
21 what do you have to know in order to play quarterback?

22 A The quarterback is the field general. He must know what every  
23 position is doing for every play.

24 Q Okay. And -- and when you played quarterback, is there a play  
25 book?

1 A Yes.

2 Q Okay. And you had to know that play book in order to call your  
3 plays?

4 A Yes.

5 Q Okay. And you played quarterback for two full years.

6 A Yes.

7 Q And you were starting quarterback.

8 A Yes.

9 Q Does it also require you remember defenses?

10 A Yes.

11 Q Recognize defenses?

12 A Yes.

13 Q Okay. And you were able to do those things when you played?

14 A Yes.

15 Q Okay. How old are you today?

16 A Twenty-five.

17 Q Okay. And where do you currently work?

18 A Aggregate Industries.

19 Q And what do you do at Aggregate Indus --

20 A I run heavy machinery.

21 Q Okay. Does operating heavy machinery require that you remember  
22 the various con -- controls for the various machines that you  
23 operate?

24 A Yes.

25 Q Okay. And you're -- how long have you been working for them

1419a

1 and operating machinery for them?

2 A I started for them this spring.

3 Q Okay. Prior to that, where did you work?

4 A For a tow company.

5 Q Okay. When you say a tow com -- tow company, were you towing  
6 cars and trucks at accidents?

7 A Yes.

8 Q Okay. Are there any particular requirements to become a tow  
9 truck driver?

10 A A DOT physical and a medical card.

11 Q Chauffeur's license?

12 A Chauffeur's license.

13 Q So, in order to get that job, you had to take a DOT physical  
14 and you had a med -- get a medical card?

15 A Correct.

16 Q And you were able to pass those without any problem.

17 A Correct.

18 Q So, there's no ongoing -- so, in a -- in your understanding,  
19 there's no ongoing affects of the concussion from your freshman  
20 year.

21 A Correct.

22 Q Do you have to get that medical card renewed from time-to-time?

23 A Yes.

24 Q Okay. Do you remember about when the time it was you got it  
25 renewed?

1420a

- 1 A A year ago.
- 2 Q Okay. Any problems at that time?
- 3 A No.
- 4 Q What else do you do? Do you par -- participate as a volunteer  
5 in -- in your community?
- 6 A Yes, I am a volunteer firefighter in my community.
- 7 Q Okay. And I'm looking at your jacket, which is kind of self-  
8 descriptive, but where do you volunteer?
- 9 A Olivet.
- 10 Q Okay. And in order to -- as part of your activity as a  
11 volunteer fireman, have you received training?
- 12 A Yes.
- 13 Q Attended classes?
- 14 A Yes.
- 15 Q Obtain certificates?
- 16 A Yes.
- 17 Q So, your ability to -- to read and understand and recall past  
18 tests hasn't been affected by this concussion; is that fair?
- 19 A That is fair.
- 20 Q Okay. Returning to -- so, you don't have any -- at -- at -- at  
21 the present time, you don't have -- do you -- do you have any  
22 difficulty remembering things that you're aware of?
- 23 A No.
- 24 Q Anybody ever mentioned that to you?
- 25 A No.

1421a

- 1 Q Okay. Returning to Pearl Giffen, how far apart in year --  
2 years are you in age?
- 3 A Four.
- 4 Q Okay. And where did -- who did you live with when you were  
5 growing up?
- 6 A My mother.
- 7 Q Okay. Who's the parent that you have in common with Pearl?
- 8 A My father.
- 9 Q Okay. Did you and Pearl ever live together?
- 10 A During the summers and visitation, weekends with my father.  
11 Q But not -- but not lived together; correct?
- 12 A Correct.
- 13 Q You -- you were -- spent time --
- 14 A Yes.
- 15 Q -- when you were --
- 16 A Correct.
- 17 Q -- on the visitation days from -- okay.
- 18 A Correct.
- 19 Q So, you spent weekends together and summers together.
- 20 A Correct.
- 21 Q But not ongoing, extended periods of time.
- 22 A Correct.
- 23 Q Okay. Do you know Bridget and Damon War -- Warner?
- 24 A Yes.
- 25 Q Did you ever spend any extended time at their house?



1 A No.

2 Q Socialize with 'em?

3 A No.

4 Q Okay. Was there a time when you received a request to go to  
5 their house?

6 A Yes.

7 Q And who -- who ask you to go there?

8 A My father.

9 Q Did you go?

10 A Yes.

11 Q Okay. Can you describe what you saw when you first arrived?

12 A When I first arrived, I saw Damon and Bridget standing on the  
13 porch with Pearl in the yard and my dad not far behind her.

14 Q Okay. And what was going on with your -- with your dad and  
15 Pearl?

16 A Pearl was yelling and screaming and running around the yard.

17 Q And could you tell what Pearl was -- was screaming about? Did  
18 she say anything?

19 A That she did not want to leave the property.

20 Q She didn't want to leave the -- well, the Warner property.

21 A Correct.

22 Q Okay. Did she tell you anything about what -- what caused the  
23 commotion at that time?

24 A No.

25 Q Did you ask her?

1423a

- 1 A No.
- 2 Q And what did your dad ask you to do?
- 3 A Put her in the truck.
- 4 Q And did you do that?
- 5 A Yes.
- 6 Q Okay. Did you hear him threaten anyone, in any way?
- 7 A No.
- 8 Q Threaten Pearl in any way?
- 9 A No.
- 10 Q Did you -- were you -- was it necessary for you to restrain  
11 anyone?
- 12 A No.
- 13 Q So, you never had to restrain Mr. -- Mr. Warner, at all?
- 14 A No.
- 15 Q Okay. Was there -- did you feel there was any danger from Mr.  
16 War -- Mr. Warner, at any time, during that period?
- 17 A No.
- 18 Q Over the past few years, have you spent much time with Pearl?
- 19 A No.
- 20 Q Okay. Can you tell us why?
- 21 A Work schedule, loss of respect for her character.
- 22 Q Okay. Have you talked with Mr. Amadeo and myself prior to you  
23 testifying?
- 24 A Yes.
- 25 Q Okay. And how -- how were you first contacted by the defense

1424a

1 team?

2 A Through Facebook.

3 Q And who did that?

4 A Mr. Amadeo.

5 Q And we -- did you -- who did you talk to before your testimony?

6 A Yourself and Mr. Amadeo.

7 Q Okay. Have we directed your testimony, in any way, or  
8 suggested anything you say?

9 A No.

10 Q Okay. Did you -- did you speak to anyone else about this  
11 incident in the -- in the past week or so?

12 A Yes.

13 Q And who would that have been?

14 A Mr. Santos, Nick.

15 Q Sorry?

16 A Nick.

17 Q And who else? Was there a police officer?

18 A A Detective Ivey.

19 Q And what was your conversation with -- what -- what was the  
20 nature of your conversation with Detective Ivey?

21 A The incident that night.

22 Q Okay. Were you, basically, able to tell him, essentially, what  
23 you told us here today?

24 A Yes.

25 Q And if I asked you today when did that incident happen, would

1425a

1 you -- would you be able to tell us that of your own  
2 independent recollection?

3 A No.

4 Q Okay. Have you learned about the time and the date  
5 subsequently?

6 A Yes.

7 Q Is that correct?

8 A Yes.

9 Q At some point in time, did you learn about the alle -- the --  
10 the accusations that Pearl made against Mr. Warner?

11 A Yes.

12 Q Was that on the day that you went to the Warner household?

13 A No.

14 Q Can you tell us about when that occurred?

15 A Shortly before his first trial.

16 Q Okay.

17 MR. WINTER: Thank you, Your Honor. Nothing further.

18 THE COURT: Ms. Van Langevelde.

19 MS. VAN LANGEVELDE: Thank you.

20 CROSS-EXAMINATION

21 BY MS. VAN LANGEVELDE:

22 Q Hi, Mr. Giffen.

23 A Hi.

24 Q How are you?

25 A Good. How are you?

1 Q Good. You spoke with me, too, over the phone with Detective  
2 Sergeant Ivey --

3 A Yup.

4 Q -- is that correct?

5 A Correct.

6 Q Now, you didn't say that, but that's true; right?

7 A Right.

8 Q So, you weren't lying; you just forgot that; is that fair?

9 A Fair enough.

10 Q Okay. Do you remember when you went over to Damon's house to  
11 get your sister?

12 A At night. Like I said, I do not recall a time of year.

13 Q You don't recall the time of year?

14 A No.

15 Q Okay. Do you remember the year?

16 A Two thousand fifteen.

17 Q Okay. So, you do remember it was 2015, but you don't remember  
18 the season?

19 A Correct.

20 Q You used to work with Damon, or do you still work with Damon?

21 A I have worked with him in the past, yes.

22 Q Okay. When did you work with him?

23 A I don't recall an exact year.

24 Q Okay. Do you know how old you were?

25 A Twenty-one.

1427a

- 1 Q Twenty-one? And where did you work with him?
- 2 A For my uncle at D and J Excavating.
- 3 Q Okay. So, you were about 21?
- 4 A Yeah.
- 5 Q Do you still work with the defendant?
- 6 A No.
- 7 Q Okay. Do you know when you stopped working with him?
- 8 A No.
- 9 Q Okay. Do -- and you don't -- can you give me a year?
- 10 A No.
- 11 Q Okay. Do you remember the date of your concussion, the exact  
12 date?
- 13 A No.
- 14 Q So, you know that your concussion happened.
- 15 A Yeah.
- 16 Q Do you remember -- so, you can't give us a date?
- 17 A No, ma'am.
- 18 Q Okay. But was -- would you say this was a significant event in  
19 your life or something --
- 20 A I mean, it was a concussion.
- 21 Q You remember going to the hospital?
- 22 A Yes.
- 23 Q Do you remember that it happened?
- 24 A Yes.
- 25 Q Okay. Do you remember some details about it?

1428a

1 A Yes.

2 Q Okay. What is your date of birth? I'm sorry. I know you --

3 A Six-thirteen of 1994.

4 Q Six-thirteen --

5 A Yes.

6 Q -- of '94?

7 A Yes, ma'am.

8 Q And you said you're 25 now?

9 A Yes, ma'am.

10 Q All right, thank you.

11 MS. VAN LANGEVELDE: I don't have any other  
12 questions. Thank you.

13 THE COURT: Any redirect?

14 MR. WINTER: No thank you, Your Honor.

15 THE COURT: Thank you very much, sir. You are  
16 excused.

17 THE WITNESS: Thank you, ma'am.

18 (At 11:46 a.m., witness stands down)

19 THE COURT: Your next witness.

20 MR. AMADEO: Defense is going to rest at this point,  
21 Your Honor.

22 THE COURT: Okay.

23 Any other witnesses?

24 MS. VAN LANGEVELDE: No. Thank you, Your Honor.

25 THE COURT: Okay.

1429a

1           At this point, then, ladies and gentlemen, I'm gonna  
2 send you back to the jury room. I realize your lunch is not  
3 going to be here until noon, so you're gonna have about 15  
4 minutes.

5           But, the next step in this process is going to be  
6 closing arguments, and then the final instructions that you are  
7 to follow when you go back and deliberate. And so, we need to  
8 get all of that prepared and in order.

9           And some of the things, as I mentioned in my opening  
10 instructions that I need to talk about with the attorneys to  
11 get ready, we don't -- we can't talk about it in front of you.

12           So, you're in a recess instruction. Your lunch  
13 should be here at noon. So, I'm hoping that we could get back  
14 on the record an hour from now, maybe a smidge earlier, okay?

15           Don't talk to anybody about the case. Don't let  
16 anybody talk to you about the case.

17           Please take your books with you because you will be  
18 -- we'll be needing those in the back, so that the final  
19 instructions can also be placed in your book, okay?

20           Watch your step as you go down.

21           (At 11:48 a.m., jury exits courtroom)

22           THE COURT: All right, you may be seated.

23           I'd like to start with I will be giving -- I'll give  
24 everybody a chance to make a record in a second. I want to go  
25 through some of my questions.



1430a

1 I will be giving instruction three-oh-three,  
2 defendant not testifying. Okay?

3 MR. AMADEO: Yes, Judge.

4 THE COURT: I had a note. Let's see, four-oh-one,  
5 prosecutor evidence of a statement it claims the defendant  
6 made. Okay, so four-oh-one, obviously I'll be giving that  
7 except for the very last part of the last sentence in paragraph  
8 three, 'cause that's in -- in parens, "and in deciding if you  
9 believe the defendant's testimony in court." Since he didn't  
10 testify, we will not be giving that. And 4.07, I don't think  
11 there are any facts that the parties stipulated to.

12 You -- you did stipulate to exhibits, but that's not  
13 a fact. So, I think I will eliminate that. Do you agree, Ms.  
14 Van Langevelde --

15 MS. VAN LANGEVELDE: Yes.

16 THE COURT: -- and Ms. Morton?

17 MS. MORTON: Yes, Your Honor.

18 THE COURT: Mr. Amadeo, Mr. Winter?

19 MR. AMADEO: Yes, Judge.

20 THE COURT: Okay, that takes me to 4.11.

21 MS. VAN LANGEVELDE: Yes. Yeah, Your Honor, we're  
22 not getting into the prior acts.

23 THE COURT: So, we cannot -- we don't have to give  
24 that; correct?

25 MS. VAN LANGEVELDE: Correct.

1431a

1 THE COURT: Eliminate. I assume you concur, Mr.  
2 Adamo (sic), Mr. Winter?

3 MR. AMADEO: We do, Judge.

4 THE COURT: That takes me to 5.10, and that would be  
5 the testimony -- only one expert, which was Cottell (sic);  
6 right?

7 MS. VAN LANGEVELDE: Yes.

8 THE COURT: All right. And then, of course, we have  
9 to add into their book the jury instruction I gave this morning  
10 about the video.

11 Okay, now, is there -- are there any other issues  
12 that I need to address from the prosecutor's point of view?

13 MS. MORTON: Are you giving 4.16 and 10?

14 THE COURT: Hang on.

15 MS. MORTON: That's part of the --

16 THE COURT: Four point --

17 MS. VAN LANGEVELDE: And I don't have my list in  
18 front of me.

19 THE COURT: Yes --

20 MS. MORTON: Okay.

21 THE COURT: -- 4.16 and -- no, I don't have 4.10.

22 MS. MORTON: I -- I didn't say that.

23 THE COURT: Okay, what'd you say?

24 MS. MORTON: I didn't say anything after 4.6.

25 THE COURT: Okay.

1432a

1 MS. MORTON: Six -- of course, 16, 4.16. But, what  
2 about are you giving 5.3, witness interviewed by a lawyer?  
3 There was testimony that --

4 THE COURT: That just happened.

5 MS. MORTON: -- witnesses -- yeah. Well, and there  
6 was testimony yesterday, too.

7 THE COURT: Yup, it's there. Five point oh-three is  
8 in.

9 MS. MORTON: And 5.2, number of witnesses.

10 THE COURT: Correct, it's in there.

11 Maybe let's just do this one time from the beginning,  
12 if everybody could.

13 I will be giving 3.01, the duty of judge and jury;  
14 3.02, presumption of innocence; 3.03, defendant not testifying;  
15 3.05, evidence; 3.06, witness's credibility; 3.10a, venue;  
16 3.11, deliberations and verdict; 3.13, penalty; 3.14,  
17 communication with the court; 3.15, exhibits; 3.16, jury  
18 instructions, 3.20, single defelon -- defendant, multiple  
19 counts; 4.01, defendant's statement as evidence, taking out the  
20 parens at the last sentence in paragraph three; 4.03,  
21 circumstantial evidence; 4.05, prior inconsistent statement  
22 used to impeach a witness; eliminating 4.07; 4.09, motive;  
23 4.11, evidence of other offenses eliminated; 4.16, intent;  
24 5.02, number of witnesses; 5.03, witnesses that have been  
25 interviewed by a lawyer; 5.10, expert witness, Cottell (sic);

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1 5.11, police as witness; 20.01, criminal sexual conduct - first  
2 degree; 20.02, criminal sexual conduct - second degree.

3 The only thing I would like to do is, once we've  
4 agreed on them and I know they're all in order --

5 MS. MORTON: What -- are you done with the -- what  
6 you're reading?

7 THE COURT: Yeah.

8 MS. MORTON: We would like twenty-twenty-five,  
9 testimony of the victim need not be corroborated and --

10 THE COURT: Okay.

11 MS. MORTON: -- twenty-twenty --

12 THE COURT: Slow down.

13 MS. MORTON: Okay, sorry.

14 THE COURT: First one you would like?

15 MS. MORTON: Twenty-twenty-five.

16 THE COURT: Go ahead.

17 MS. MORTON: Testimony doesn't have to be  
18 corroborated.

19 THE COURT: Mr. Amadeo, any objection?

20 MR. AMADEO: One second, Your Honor.

21 MR. WINTER: No objection, Your Honor.

22 MS. MORTON: Twenty-twenty-six, the victim need not  
23 resist.

24 MR. WINTER: No objection to that.

25 THE COURT: Any others, Miss Mor -- Ms. Morton?

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1 MS. MORTON: No, we're good. Thank you.

2 MS. VAN LANGEVELDE: Yeah, I think we're good.

3 THE COURT: Any instructions that you request, Mr.  
4 Amadeo or Mr. Winter?

5 MR. WINTER: Your Honor, you went a little quickly  
6 for me, so I -- are you -- are you going to give us a list? I  
7 -- I don't think there's anything we want to add, but I'm  
8 trying to play catch-up.

9 THE COURT: Huh? They've already been emailed to  
10 you, so that's why I don't know why --

11 MR. AMADEO: Yeah.

12 MR. WINTER: All right, my bad. I'm sorry.

13 MR. AMADEO: No, we're -- we're fine, Your Honor.  
14 Nothin' to add. We're -- yeah, we're fine.

15 THE COURT: All right, so I'm gonna add twenty-  
16 twenty-five and twenty-twenty-six.

17 Then, the only thing I might do, when I actually read  
18 them, is I may move -- shoot, I just had it at three. Yeah, I  
19 -- I may move three-one-five -- three-one-four and three-one-  
20 five. Excuse me, 3.11, when you go to the jury room, and  
21 three-one-three and three-one-four and three-one-five to the  
22 end. Sometimes I do that, sometimes I don't. I -- there was a  
23 symmetry about keeping them in numerical order 'cause then I  
24 know I'm not gonna screw up and forget to give an instruction.  
25 But, really, those four make the most sense being at the end.

1435a

1 MR. AMADEO: No problem here, Judge.

2 THE COURT: So, I'll let you -- I mean, you'll know  
3 'cause if I go right from one to the -- don't -- don't worry,  
4 I'll have given them all.

5 And then, did you -- were you able to find that, Ms  
6 Bond, or no?

7 COURT RECORDER: I know where the part is that I  
8 need.

9 THE COURT: Okay, all right.

10 LAW CLERK/JURY BAILIFF: (Inaudible). We were  
11 working on it. We hadn't finalized it.

12 THE COURT: Okay, where are we at on the verdict  
13 form?

14 MS. VAN LANGEVELDE: So, I got it, but I -- I looked  
15 at it, but I'm not sure how we -- we never got a chance,  
16 actually, to talk about it.

17 THE COURT: All right. We'll do that right now.

18 So, at least one person from each team talk about the  
19 verdict form, 'cause I want that done before I bring them back.  
20 And then, I don't really know what the hell's happened with it.  
21 All right, that's all for the record. That -- that wasn't on  
22 the record, by the way. We were already off.

23 (At 11:57 a.m., off the record)

24 (At 12:50 p.m., back on the record)

25 THE COURT: So, we're back on the record in People

1 versus Warner. Let's get a few things done, so we can bring  
2 the jury in for closing argument and final instruction.

3 The verdict form is the first thing we'll talk about  
4 Count One, Criminal Sexual Conduct - First Degree, relationship  
5 - dining room, not guilty or guilty; Count Two, Criminal Sexual  
6 Conduct - Second Degree, relationship - bedroom.

7 Why don't I find the Information. So, I would like  
8 little more description on the verdict form. I think on Count  
9 One, Criminal Sexual Conduct - First Degree, relationship -  
10 dining room, it should say, dash, sexual penetration.

11 MS. VAN LANGEVELDE: That's fine, Your Honor.

12 THE COURT: And on Count Two, Criminal Sexual Conduct  
13 - Second Degree, relationship - bedroom, it should say sexual  
14 contact.

15 MS. VAN LANGEVELDE: That's fine, Your Honor. No  
16 objection.

17 THE COURT: Okay. I don't want there to be any  
18 question. You guys can argue the facts of what that is, but I  
19 think that, as long as Count One says sexual penetration and  
20 Count Two says sexual contact, between the location bedroom  
21 versus dining room and the description of the alleged offense,  
22 sexual penetration being the fingers, sexual conduct being the  
23 penis, I don't think there will be any question. I don't think  
24 the jury will be confused. But if anybody thinks it needs to  
25 be more descript (sic), Ms. Van Langevelde, Ms. Morton, on

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1           behalf of the People?

2                   MS. VAN LANGEVELDE:  No, I think that's fine, Your  
3 Honor.  Thank you.

4                   THE COURT:  And, Mr. Amadeo or Mr. Winter?

5                   MR. AMADEO:  We're fine with it, Judge.  Thank you.

6                   THE COURT:  Okay.  So, that will be the verdict form  
7 Oh, okay, so they can look at it.

8                   All right, now the other thing is, in reviewing the  
9 jury instructions -- all right, I -- I've got to wait for Ms.  
10 Ykimoff to get back 'cause it's not in here, so.  And I don't  
11 know where -- did she copy the special instruction, and where  
12 did that go?  So, we'll wait a second.

13                   I don't see twenty-twenty-nine in my book.

14                   LAW CLERK/JURY BAILIFF:  It's right after five-ten,  
15 which was expert witness instruction.

16                   THE COURT:  Oh, so we're gonna put those together,  
17 okay.

18                   LAW CLERK/JURY BAILIFF:  That's what was requested by  
19 the prosecution.

20                   THE COURT:  All right, so five-ten had been approved.  
21 And that's gonna be that you've heard testimony of the witness,  
22 Thomas Cottrell, who has given you his opinion as an expert in  
23 the field of dynamics of child sexual abuse.  Experts are  
24 allowed to give their opinions; however, you do not have to  
25 believe -- and then twenty-twenty-nine, you have heard the --



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1 you have heard Thomas Cottrell's opinion about the behavior.  
2 You should consider that evidence only for the limited purpose  
3 of deciding whether Pearl Giffen's acts and words after the  
4 alleged crime were consistent with those of sexually abused  
5 children. That evidence cannot be used to show that the crime  
6 charged here was committed, nor can it be considered an  
7 opinion. Okay.

8 And that's the instruction; is that correct, Mr.  
9 Amadeo?

10 MR. AMADEO: Yes, correct, Your Honor.

11 THE COURT: Twenty-twenty-nine. And you agree --  
12 both agree, even though it's out of order, we'll give them  
13 together, five-ten and then twenty-twenty-nine.

14 MR. AMADEO: Yes, Judge.

15 THE COURT: All right. So, is there anything else we  
16 need to address?

17 I had -- I would just want to bring up the issue as  
18 to whether or not there needs to be any type of a curative  
19 instruction as to whether Detective Malt -- Maltby may have  
20 expressed his opinion about the credibility of the victim.  
21 What I had sketched out myself was that if you believe that  
22 Detective Maltby expressed an opinion about what he thinks  
23 happened or the credibility of the victim, you must ignore it.  
24 You, and only you, each individual juror are the judge of the  
25 facts of this case, which includes the credibility of

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1 witnesses.

2 MS. VAN LANGEVELDE: I think that's fine, Your Honor

3 MR. WINTER: Thank you, Your Honor.

4 MR. AMADEO: Thank you, Judge.

5 THE COURT: So --

6 MS. MORTON: Would -- I'm sorry, would you read the  
7 beginning? I just want to make sure that it doesn't sound like  
8 he did anything wrong because --

9 THE COURT: Which I don't think --

10 MS. MORTON: -- it was in response.

11 THE COURT: Right. Right. And I don't think -- I  
12 don't -- I don't think that the detective did do anything  
13 wrong. However, I -- the individuals on this side of the bench  
14 are always in a very awkward position because, when a trial  
15 gets reviewed on appeal, a person can read very slowly and read  
16 everything in black and white, and is not in the heat of the  
17 battle, if you will.

18 I am not sure, to be honest, whether the jurors even  
19 caught what was said, per se, because of the discussion that  
20 was going on.

21 My concern is that, if it gets read on appeal,  
22 somebody could read that and say, wait a minute, what he said  
23 was, in his opinion, he believed that the defendant sexually  
24 abused the victim. And that's why I went back and listened  
25 very carefully, which the jurors aren't gonna -- you know,

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1 again, I don't know. It was in the heat of debate. However,  
2 think that the best approach, just in case one or more of the  
3 jurors heard it, that we make it clear to them, just as there  
4 is the instruction, like if they think I have an opinion, there  
5 is -- there is the instruction about the judge, if you think  
6 any of the questions I asked or anything I did, ignore it. So  
7 I was going to -- this was an idea, but I'm open for each party  
8 to give me their opinion and additions or deletions.

9 During the testimony of Detective Maltby, he may have  
10 expressed his opinion about what he believed happened or the  
11 credibility of the testimony you have heard. If you believe he  
12 expressed an opinion about what he thinks he (sic) happened or  
13 the credibility of the victim, you must ignore that. You, and  
14 only you, each individual juror are the judge of the facts of  
15 this case, which includes the credibility of the witnesses.

16 MS. MORTON: I just wanted to hear the beginning of  
17 it --

18 THE COURT: Yeah. No.

19 MS. MORTON: -- again. I think that it's wise to  
20 give the instruction. I just wanted to hear --

21 THE COURT: Right.

22 MS. MORTON: -- the beginning.

23 THE COURT: And what do you think, Mr. Winter?  
24 You're saying yes, Mr. Adameo?

25 MR. WINTER: I think that's fine, Your Honor. I

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1 appreciate your putting that in.

2 MR. AMADEO: Thank you, Judge.

3 THE COURT: All right, now let me just decide where  
4 we should put this.

5 MR. WINTER: Perhaps after five-eleven.

6 THE COURT: Okay, let's see what five -- what do you  
7 think about that --

8 MS. VAN LANGEVELDE: Police witness, that's fine.

9 MS. MORTON: Or, what about right after three-oh-six?

10 THE COURT: Okay, let's look at three-oh-six.

11 MS. MORTON: That's the credibility instruction.

12 MR. WINTER: I think it relates more -- because it --  
13 it -- it -- it relates to Detective Malt -- I think it relates  
14 more in five-eleven. That's the only reason I suggested that.

15 MS. VAN LANGEVELDE: I -- I think it actually makes  
16 more sense because it's about credibility issues --

17 THE COURT: Five-eleven? I don't have five -- oh,  
18 wait, I do have five-eleven.

19 MR. WINTER: Five-eleven is police witness.

20 THE COURT: Yeah, I have that.

21 MS. VAN LANGEVELDE: Three point six.

22 MR. WINTER: Or, 5.11. I'm not a math major.

23 THE COURT: Well, okay, you've heard the testimony.  
24 That testimony is to be judged by the same standard you use to  
25 evaluate the testimony of other witnesses.

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1 MS. VAN LANGEVELDE: That's fine, Judge. We can do  
2 it after the police ex -- that's fine, whatever.

3 THE COURT: Okay. All right. Everybody have the  
4 revised verdict form?

5 MS. VAN LANGEVELDE: Yes.

6 MR. AMADEO: Yes, Judge.

7 THE COURT: All right, everybody agree that this  
8 verdict form is accurate and provides enough detail that the  
9 jurors will know what they're doing?

10 MR. AMADEO: Yes, Your Honor.

11 THE COURT: Are we ready, then, to move to closing  
12 arguments?

13 Ms. Van Langevelde, you're --

14 MS. VAN LANGEVELDE: Yes.

15 THE COURT: -- doing the closing?

16 MS. VAN LANGEVELDE: Yes, I am. And I have my Power  
17 Point ready.

18 MR. AMADEO: Do you need me to --

19 THE COURT: Oh, my gosh.

20 MR. AMADEO: Do you want me to move?

21 MS. VAN LANGEVELDE: No, I -- whatever. Whatever --  
22 wherever you want to be.

23 MR. AMADEO: I'll move.

24 MS. MORTON: If you're -- I would ask that, if  
25 they're gonna sit there -- they were reacting physically during

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1 the playing of the interviews earlier -- that they not react  
2 right underneath the Power Point.

3 THE COURT: So, none of this kind of stuff?

4 MS. MORTON: Well, yes, or less subtle.

5 MR. AMADEO: I don't think we actually booed, but,  
6 okay.

7 MR. WINTER: I might've.

8 THE COURT: Sometimes you may have expressive faces  
9 that are right underneath where the jury is required to look.

10 MR. AMADEO: Miss Bond, is this in your way?

11 MS. MORTON: The bigger concern was actual head  
12 shaking, like this, and laughing --

13 THE COURT: Like this, yeah.

14 MS. MORTON: -- together.

15 THE COURT: Let's not do that. We're all agreed we  
16 won't do that? Okay.

17 And my names are in the box?

18 LAW CLERK/JURY BAILIFF: Yes, ma'am.

19 THE COURT: Verify that.

20 Are you ready to go? Are you giving the closing, Mr.  
21 Amadeo?

22 MR. AMADEO: I am, Your Honor.

23 THE COURT: All right, you'll make two copies of that  
24 to give to both of them, so they can double check that it's  
25 okay while the other person's talking or whatever.

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1 LAW CLERK/JURY BAILIFF: Yes.

2 THE COURT: And you can bring the jury in.

3 LAW CLERK/JURY BAILIFF: Yup.

4 THE COURT: Thank you, Ms. Ykimoff.

5 (At 1:06 p.m., jury enters courtroom)

6 THE COURT: All right, please be seated.

7 All right, Ms. Van Langevelde, are you ready to give  
8 your closing argument?

9 MS. VAN LANGEVELDE: I am.

10 THE COURT: Go ahead.

11 MS. VAN LANGEVELDE: Thank you.

12 You have to -- members of the jury, again I want to  
13 thank you for your time and attention the last few days. I  
14 really appreciate it. And I know all of us here appreciate you  
15 taking time out of your busy lives and your busy schedules to  
16 be here, to deal with this very important issue. So, thank you  
17 so much.

18 As you know, this is the case of People versus Damon  
19 Warner.

20 So, Judge is going to instruct you, and as we all  
21 know, the defendant's charged with two crimes:

22 Count One, Criminal Sexual Conduct in the First  
23 Degree, that being digital penetration of the victim, Pearl's  
24 vagina. And that the defendant did engage in a sexual act that  
25 involved entry into Pearl's gentle -- genital opening by the

1445a

1 defendant's finger. Pearl is a child between the ages of 13  
2 and 15. That's the el -- that's the next element. And that  
3 Defendant and Pearl were members of the same household at that  
4 time.

5 Count Two, that the defendant intentionally touched  
6 Pearl's genitals, done for -- and this was done for a sexual  
7 purpose, or it could be reasonably construed for having been  
8 done for a sexual purpose. Again, that Pearl was between the  
9 ages of 13 to 15, and that the defendant and Pearl were member  
10 of the same household.

11 Similar, very similar, but two, obviously, separate  
12 charges, two separate, distinct acts.

13 This is important. In Criminal Sexual Conduct cases  
14 regarding children, Judge is going to instruct you that I do  
15 not have to prove beyond a reasonable doubt a date or a time.  
16 And that's the instruction.

17 And when we were all here, we all talked about are we  
18 able to follow Judge's instruction. So, she's going to  
19 instruct you that I don't have to prove that element.

20 What I do have to prove is those other elements that  
21 I just put on the board, and that it happened in Eaton County  
22 and the State of Michigan. That's venue. But, I do not have  
23 to prove date and time.

24 Now, what are our expectations? Right. So, this  
25 happened -- the incidents happened eight years ago. It's a



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1 long time. Pearl was 13-years-old, and she's now 21. It's  
2 been a while. And she disclosed when she was 17. So, it's  
3 been a while even since the disclosure. She has ADHD. She  
4 talked about that. She was also, obviously, nervous. Getting  
5 up in front of all of you guys, having to talk about the  
6 intimate details. And she's embarrassed. I think we can all  
7 kind of could see some of that dynamic there. Okay?

8 So, what are our expectations? Is that un -- is her  
9 testimony -- based on our expectations, is it that outside of  
10 norm? I would say no.

11 So, what are our general facts, what Pearl testified  
12 to? Defendant and Pearl lived together since -- basically  
13 since Pearl was in elementary school. They lived with her mom  
14 in -- on Butterfield Highway, in Olivet, in Eaton County,  
15 Michigan. We heard that the incidents happened when Sable was  
16 a baby and Mom was pregnant with Noah. And the defendant is  
17 the father of -- of Pearl's younger brother and sister, Sable  
18 and Noah. And that Pearl had regular visitations with her dad,  
19 James, every other weekend and a couple weeks in the summer,  
20 off and on.

21 So, let's talk about what we heard with -- as to  
22 Count One. We had testimony that there was entry into Pearl's  
23 vaginal opening, her vagina, by the defendant's finger.

24 Judge is gonna also talk about any entry, no matter  
25 how slight, is penetration.

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1 Pearl is between the ages of three and 15. She says  
2 she remembers she was 13-years-old. She may not be able to  
3 give us a date. She may not -- the years kind of funky, can't  
4 quite remember. She -- but she -- what did she talk about?  
5 She talked about Sable being a baby. She talked about Mom  
6 being pregnant with Noah.

7 Pearl and Defendant are members of the same  
8 household, and they lived together at the Butterfield house.

9 So, let's talk about Count One. This is the incident  
10 in the dining room. So, Pearl gets up to get a drink of water.  
11 And Sable was -- she remembers Sable was sleeping. Mom was  
12 sleeping. Mom was -- she remembers Mom was pregnant with Noah.  
13 And Defendant was watching TV in the living room. And Pearl  
14 remembers they were watching WWE wres -- wrestling. She  
15 remembers it was a Monday because that's what they did on  
16 Mondays was they would watch wrestling together. So, she tells  
17 him I am -- I'm goin' to bed. She goes to the kitchen to get a  
18 drink of water. And for some reason, she doesn't know why, she  
19 stops in front of the dining room table, in the dining room.  
20 And she testified the defendant came up behind her and put his  
21 fingers down her sweatpants. She remembers she was wearing  
22 sweatpant pajamas, and he put his finger into her vagina. And  
23 she says it hurt. That it was -- and it was fairly quick.  
24 Now, she didn't tell Mom. She didn't wake Mom up. She  
25 remembers Mom was pregnant, and she didn't want to wake her up.

1 Now, maybe, you know in looking at this in hindsight  
2 you should've -- maybe you should've woken up Mom. You  
3 should've told somebody right away. Hindsight's 20/20. You're  
4 dealing with a 13-year-old kid who -- it's just confusing to  
5 them.

6 Count Two, that the defendant -- this, again, the  
7 defendant touched the -- Pearl's genital area for a sexual  
8 purpose or it could be reasonably construed for a sexual  
9 purpose, that Pearl was between the ages of 13 and 15, and that  
10 Defendant and Pearl were members of the same household.

11 So, as far as this Count Two, Pearl remembers this  
12 was a half day, Friday. And she remembers it was a Friday  
13 because she was getting ready to go to her dad' house for the  
14 weekend. And she remembers she was packin' her bag to go to  
15 Dad's house. And she knows it was a half day 'cause it was  
16 like a lazy day, and she wore her sweatpants. She was wearing  
17 sweatpants. And she remembers Mom wasn't home, Grandma wasn't  
18 home, but baby Sable was there again, and Defendant was there,  
19 watching them. And she remembers sitting on the bed and the  
20 defendant coming in. And she testified kind of -- at first,  
21 she -- she said she was in a sitting position, and that she  
22 just remembered being pushed back on -- backward on the bed,  
23 Defendant pulling down her sweatpants, pulling down her  
24 underwear, and pulling his pants down, and trying to put his  
25 penis into her vagina. He didn't go inside of her vagina with

1 his penis, but she remembers it pressing against it. And she  
2 kind of -- she -- I think she testified she made like a noise  
3 But, she remembers Sable coming down the hallway. And Sable  
4 was a baby. And I think she remembered her crawling 'cause it  
5 -- I think that was one of her memories, is that she heard,  
6 kind of, Sable coming down the hallway. And the defendant  
7 stopped, got up, and went out.

8 Pearl also testified this did not happen when they  
9 were wrestling. She was asked, but she said no. This was not  
10 wrestling. They did wrestle. There were times when they would  
11 play wrestle, but she testified Mom was around or her friends  
12 were around. These incidents didn't happen when they were play  
13 wrestling.

14 She said she never put the defendant's hand down her  
15 pants. She never said to him, "I'm horny." She never said to  
16 him, "My pussy's on fire." A 13-year-old, no. She said she  
17 never said that.

18 Now, we talked a little -- a little bit about -- in  
19 voir dire -- why a child might not tell right away when these  
20 things are happening. Well, Pearl testified she loves family,  
21 still does, loves her family very much, and she didn't want to  
22 break up her family. She didn't know what would happen if she  
23 told. And she didn't know how Mom was (sic) react. She -- her  
24 mom was pregnant at the time.

25 And let's think about this. She said she didn't want

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1 to give her mom added stress because she was pregnant. And so  
2 she has this like family -- she has a family unit. She's --  
3 she -- she considers the defendant a father figure to her.  
4 He's not an every other weekend dad. He's the every day dad  
5 who's there for her. And she doesn't want to ruin that or to  
6 break that up. And didn't know how he would react if she told  
7 And so -- and it stopped.

8 And what I think is interesting is it stopped after  
9 Noah was born. She has -- this never -- this always happened  
10 when -- when Mom was pregnant. I think that's interesting.  
11 And it stopped.

12 So, let's talk about her dad. Obviously, James  
13 testified. She's -- he's her dad. He testified Pearl would  
14 visit every other weekend. He and his wife would some --  
15 sometimes they -- he would pick her up, sometimes Sharon would  
16 pick them (sic) up.

17 They did pick up Pearl from the defendant's home on  
18 the 23rd of 2015. Pearl was upset. She didn't want to go with  
19 them. And he heard the defendant say, "I'm going to" -- "I" --  
20 "I'm gonna slit her throat."

21 And what's interesting is he testified Robert arrived  
22 after they did. And Robert said he was there, and he arrived  
23 after they did.

24 And Pearl, frankly, was safe with him, at that point,  
25 in their home.

1 Now, Pearl testified she -- and we'll talk about this  
2 a little bit more, too. She never went back to live with her  
3 mom. She stayed with her -- her dad and -- and stepmom, that  
4 she was safe. She was protected from the defendant.

5 So, Sharon Giffen also testified to a lot of the  
6 similar things. Stepmom went to -- with James to pick up Pearl  
7 on December 23rd, 2015, takes Pearl home, to their house.  
8 There had been a big fight. She didn't know the details at the  
9 time. Pearl was upset. And she heard the defendant say, "I'm  
10 gonna slit that bitch's throat." And then -- and, again, Pearl  
11 got taken out of that situation and was home safe with them.  
12 And, again, she said Robert arrived after they did.

13 Now, we also heard from Robert Giffen today. He's  
14 Pearl's half brother, same dad, different mom. Worked with the  
15 defendant. Seems like a nice, young man. He doesn't remember  
16 when this incident where he went to help Dad get Pearl. He  
17 knows it happened. He doesn't remember the season, doesn't  
18 really remember when they went and got Pearl.

19 He also know that he had a concussion. He doesn't  
20 know the exact date, but he knows it happened. Again, these --  
21 it's -- it's kind of a perfect example of you know something  
22 happened, you know this event happened, you remember kind of  
23 the events leading up to it, but you just don't remember the  
24 exact date. And that's kind of an example of how people  
25 remember things.

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1 He also said he -- he spoke with me, too, last week  
2 in preparation, and there's nothing wrong with that. Witnesses  
3 talk to attorneys. But, it's important because he wasn't  
4 lying, he just left that out. He just forgot. And I think  
5 that can happen with people.

6 And what are our expectations of witnesses?  
7 Sometimes things -- people leave things out. That doesn't  
8 meant that they're lying. It just means they didn't remember  
9 that at the time.

10 So, let's talk about the defendant's interviews. So,  
11 in the first interview, the defendant says, "I always thought  
12 she was a good kid until she pulled this shit on me. She never  
13 really did anything wrong." He talks a little bit about how he  
14 would -- she would take cigarettes, I think kind of normal  
15 teenage things. Like, she'd take some money out of his wallet,  
16 maybe take a couple cigarettes. I think those are kind of  
17 normal teenage things. Talk back to her mom a little bit.  
18 This is kind of -- I mean, this is a big deal saying somebody  
19 -- somebody committed a sexual assault. This isn't taking  
20 cigarettes. This isn't taking five bucks out of somebody's  
21 wallet.

22 He talks about Pearl cutting. And what did we hear  
23 Thomas Cottrell talk about? That can be a symptom of child  
24 sexual abuse. Her grades started slipping. She was getting  
25 depressed. She was gaining weight. She was staying in her

1 room all the time. Those can all be symptoms, as Mr. Cottrell  
2 talked about, of child sexual abuse.

3 And in the first interview, yeah, he's the fun, easy  
4 going parent. Mom's the one who disciplined. He lets her go  
5 to friends' houses, has friends over. He admits to staying up  
6 late in the evening with Pearl, watching wrestling.

7 And I think it's interesting, he's upset that Pearl  
8 has this boyfriend, even though she's 17. I don't know any  
9 teenagers who don't really have boyfriends and girlfriends.  
10 But you see him in the interview quite upset that she has this  
11 boyfriend.

12 He talks about, "We used to wrestle with each other,  
13 but I would never touch anything down there." He says that in  
14 the first interview. Maltby talks to him about, you know, did  
15 anything inappropriate ever happen, kinda giving him that out.  
16 No, never. Has Pearl ever done anything to you inappropriate,  
17 like, you know, maybe shifting the blame a little bit. Maltby  
18 gives him that out. No, never. Says he maybe saw her walk,  
19 from the bedroom to the bathroom, in her bra and underwear, but  
20 that's about it.

21 So, as we heard from Mr. Cottrell, Mr. Cottrell  
22 doesn't know the parties in this case. Doesn't know Pearl,  
23 doesn't know the defendant. But he talked about delayed  
24 disclosure of sexual abuse, and that's because that is the  
25 norm. That is most common. And why we have these delays is,



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1 a, we have -- and I think we talked about this in voir dire.  
2 We have young children who don't know it's wrong. We have  
3 older teens who might believe they're in a romantic  
4 relationship with this adult person. I think the one that's  
5 really important in this case is the cost/benefit analysis;  
6 right? How will this impact me and my family if I disclose at  
7 this point? And Mr. Cottrell talked about kids maybe not  
8 realizing that they do this, but they do. Like, Pearl will say  
9 "I don't want to stress my mom out. She's pregnant. I don't  
10 want to break up my family." It's that cost/benefit analysis.

11 Self-destructive behaviors, we saw that: Depression,  
12 gaining weight, kind of being isolated, going to your room  
13 alone all the time.

14 We get delayed disclosures because of the abuse stops  
15 and it's not happening anymore, so they just want to ignore it  
16 and forget about it.

17 I think it was also interesting, time and dates are  
18 not important to children, and Mr. Cottrell talked about that.  
19 But what is important, when you're forming a memory, is those  
20 events. So, the memories are formed around the event, not  
21 dates and times. So, we have events. We have a Count One,  
22 going -- oh, I've switched 'em around. Sorry. Count One would  
23 be watching WWE, going to bed late, going to get a drink of  
24 water, Mom was sleeping, Sable was a baby, those events. And  
25 then Count Two being going to Dad's for the weekend, it was a

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1 half day. That's -- that's where those memories that form.  
2 That's what kids form their memories around.

3 And Thomas Cottrell talked about different people  
4 reacting differently. So, some people will fight, some people  
5 will flee, some people will freak. And I think we saw that a  
6 lot. We can -- you can have an emotional response to sexual  
7 abuse. You can have a flat affect. I think we saw that with  
8 Pearl. I'm gonna tell you about it, but I'm not gonna relive  
9 it. I'm going to tell you what happened to me, but I'm not  
10 going to relive it and go there.

11 I think you have some -- and he talked about  
12 behavioral changes: Depression and hypervigilance. That looks  
13 like it's ADHD but it's not, it's different. Some kids act out  
14 sexually, some kids get eating disorders, and some kids have  
15 toileting issues.

16 Mr. Cottrell also talked about perpetrator tactics  
17 and grooming. So, grooming can be a special relationship with  
18 that victim, building that loyalty, that will cause them not to  
19 disclose. So, they're -- they're building that relationship,  
20 that buddy --

21 He also talked about this desensitization. And what  
22 did we see in this case. We have this wrestling, this play  
23 wrestling, that -- where -- where it's okay to touch, and we're  
24 touching each other. No door on the bedroom. It's okay for me  
25 to see you naked and for me to see you naked.

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1 Now, he blames in his interviews for that, and we'll  
2 get to victim blaming. But, there's kind of this, oh, she  
3 comes in the room. She sees me naked. She -- I see her  
4 walking between the bathroom and bedroom. There's no door on  
5 her bedroom. That's part of desensitization. Boundary  
6 violations, that's a part of that, too.

7 Lots of consequences for not complying. Kinda heard  
8 that. On the day that she disclosed, I don't know why Robert  
9 didn't hear it, maybe he wasn't there yet, but Mom and step --  
10 or Stepmom and Dad sure heard it.

11 And then, making the child feel like they have to  
12 take care of the other family members. I think that was part  
13 of Pearl's -- she talked about not disclosing, at that time,  
14 because Mom's pregnant. She's got to take care -- she feels  
15 like she's got to take care of her baby brother and sister.  
16 She plays with them. She played pony. She watches Ninja  
17 Turtles. She's a part of this family she loves.

18 Offenders also try and rationalize their behavior.  
19 And I think we saw that. I know we saw that quite a bit.  
20 We're gonna blame the victim, because they don't want to admit  
21 what they did, so they place the blame on the victim.

22 And so, what do we have? We have the -- Pearl put  
23 his hand down her pajama pants. She told him she was horny and  
24 that her pussy was on fire. All four of his fingers touched  
25 her vagina and stated it was wet. He could feel the moisture.

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1 Stated he touched the inside of her lips, and then he pulled  
2 his hand out. But, he starts with Pearl, blaming Pearl. This  
3 was the 13-year-old's fault. She overpowered me when we were  
4 wrestling.

5 And we heard from Detective Sergeant Jordan. He  
6 specializes in interviewing. He's never met the victim.  
7 Doesn't know her. But he uses victim blaming as a tool to get  
8 some admissions from the defendant.

9 Now, I don't think is the -- this -- he -- he did --  
10 he wrote this, absolutely he did. He wrote it based on the  
11 statement from the defendant, and the defendant agreed with it  
12 and signed it.

13 And, remember, we used to have -- we used to not have  
14 all the technology that we have. Detective Maltby did the best  
15 he could. He saw the defendant starting to make some  
16 admissions. So, he whipped out his phone and said I want to  
17 record this. He did what he had -- he did what he had to do.  
18 And what we have is the defendant blaming the victim, because  
19 he said, "I touched the victim's lips of her vagina. I felt it  
20 was wet." That's an admission to digital penetration.

21 And I think -- well, let me go back. Watching the  
22 defendant's body language in that video is very telling. And  
23 you will have the opportunity, if you'd like because I know the  
24 speakers in here were awful, to take the video back in the jury  
25 room, if you'd like to rewatch it. But watch the defendant's

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1 body language as he's admitting to what he did. Not -- still  
2 blaming Pearl but admitting to what he did.

3 And then, like I said, he -- he blames Pearl. Pearl  
4 the 13-year-old, five foot little girl, made me put my hand  
5 down her pants. Well, Pearl told me to rub it. Pearl said she  
6 was horny. Pearl said her pussy was on fire. He says her  
7 nipples were hard. I could see through her shirt. He's  
8 talking about his 13-year-old stepdaughter. All four of his  
9 fingers touched her vagina, and she could -- and he could feel  
10 that her vagina was wet. All his fingers were inside her  
11 vagina.

12 And he -- like I said, he says it again in his  
13 interview, third interview with Detective Maltby, "Her nipples  
14 were hard. You could see through her shirt. We were wrestling  
15 and my arms were around her waist. I was wrapped around her,  
16 and she put my hand there and said "my pussy is on fire."  
17 Again, blaming the 13-year-old little girl.

18 But, the different thing is that the defendant agrees  
19 that this happened in the liv -- or, in the living/dining room  
20 area. Pearl was younger than she was. It wasn't like when she  
21 was 16.

22 He says to Maltby she was wearing sweatpants. He  
23 says to Maltby that Sable was a baby. She was crawling around.  
24 I mean, he's giving us a lot of the same things that Pearl  
25 talks about. Here -- she -- Sable was a baby. Pearl was about

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1 13. It's -- it's like these -- these things all line up, but  
2 he just can't admit he did it. And that's what Tom Cottrell  
3 talked about, victim blaming.

4 He says, in the third interview with Detective  
5 Maltby, "Why keep adding and changing?" And Maltby's talking  
6 about Pearl. But, who's adding and changing? The defendant.  
7 Pearl isn't the one adding and changing things. The defendant  
8 who says, "No, we never" -- "we" -- "there was nothing ever  
9 inappropriate. I never touched her. I never did" -- "we  
10 never" -- "she never did anything inappropriate." He's the one  
11 adding and changing.

12 And like she said, Pearl called the defendant Dad at  
13 times. She liked it at Mom and Dad's house. He was a father  
14 figure to her.

15 They agree that the defendant's hand went down her  
16 pants and they were sweatpants. They agree Sable was a baby.  
17 They agree Pearl would've been 13, and it happened in the  
18 dining room. Those things they all agree on.

19 So, let's talk a little bit about the defense theory.  
20 Defendant admitted he put his finger into her vagina, but it  
21 wasn't Pearl's fault. Or, it was Pearl's fault. But this  
22 doesn't make sense, because when you see him demonstrate, like  
23 he's got her arms in like a bear hug, that doesn't make any  
24 sense. If you're wrestling with somebody and you have control  
25 over somebody, how could she possibly, this 13 -- five foot,

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1 13-year-old get a grown man's hand down her pants?

2 And, okay, let's say that's true. Why wouldn't you  
3 tell her mother? If a 13-year-old is acting out sexually, of  
4 course you're going to tell the mother and get some sort of  
5 counseling involved. Why would you keep that a secret? That  
6 makes no sense.

7 Pearl is lying because her mom was gonna take away  
8 her electronics. Okay, how does disclosing the defendant  
9 sexually assaulted her get her electronics back? It doesn't.  
10 She doesn't get to live with her mom anymore. She doesn't get  
11 her tablet and her new phone. She doesn't get to live with her  
12 little brothers and sisters anymore. Why would she make  
13 something up about the defendant if she's mad at her mom for  
14 taking away the electronics? Why wouldn't she make something  
15 up about her mom? It makes no sense, no sense.

16 And what does Pearl want to get, get out of all of  
17 this? Well, that night, on December 23rd, 2015, she got  
18 threatened by the defendant. She gets taken out of her mom's  
19 house. She doesn't get to live with her brother and sister  
20 anymore. She has to go to a new school. She has to tell a ton  
21 of people about intimate details, about her -- just say the  
22 word vagina. And she has to testify in court.

23 Now, as we talked about in jury selection, testimony  
24 is enough. Testimony doesn't need to be corroborated. We do  
25 have corroboration because the defendant has admitted. But,

1 you can find the defendant guilty based on the victim's  
2 testimony alone.

3 So, what make sense? The defendant keeps changing  
4 his story, but Pearl's stays the same. There's variations.  
5 I'm not gonna say that she's got it ever -- she's remembered  
6 everything every time over the last eight years. But, her  
7 story has remained the same. The defendant's story has things  
8 that keep on changing. The defendant saw an opportunity.  
9 Pearl was available, Pearl was home. He has -- she has a good  
10 relationship with him. He's the fun parent. She -- he's the  
11 parent she goes to. And why wouldn't you pick a victim who you  
12 wouldn't -- who has issues? I think that's interesting. We  
13 talked about that a little bit. Probably pick a victim that  
14 you wouldn't, necessarily, believe. Pearl may have some issues  
15 as a teenager. As -- but as she's kind of grown up, we've seen  
16 those issues have gotten worse. And what does Tom Cottrell us?  
17 That's not surprising that she's been sexually assaulted by the  
18 defendant.

19 So, members of the jury, I believe that af -- now  
20 that we've gone through all the evidence, I'm asking you to  
21 find the defendant guilty of CSC in the First Degree, sexual  
22 penetration, and CSC - Second Degree, sexual contact. Thank  
23 you.

24 THE COURT: Thank you, Ms. Van Langevelde.

25 Mr. Amadeo.



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1 MR. AMADEO: May I use the white board, Judge?

2 THE COURT: You may.

3 MR. AMADEO: Can you help me with that?

4 First, I want to thank you all for your time. I know  
5 it's been a tough two days. A lot of things you'd rather be  
6 doing than being here, listenin' to me and Adrienne argue with  
7 each other. So, I do appreciate your efforts.

8 With that said, I want you to think about what Pete  
9 Winter said in his opening. In his opening, he said, "Pay  
10 careful attention to the evidence presented, and pay careful  
11 attention to the evidence that's not presented." And that's  
12 key here. How credible is Pearl Giffen?

13 What we have up here is the different members of this  
14 investigation. First we have Pearl. Pearl said, under oath,  
15 that her story is inconsistent. Every time Pearl tells this  
16 story, it's a different variation of it.

17 The key thing to think about happened today when  
18 Detective Maltby testified. And he said the allegations were  
19 between the fall of 2011 to the summer of 2012. Now, they  
20 could say all day that the timing is not an element of the  
21 crime, but the timing is an element of credibility. If we're  
22 going to convict the man for an allegation, we need  
23 credibility. And the reality of this, Pearl's baby brother,  
24 Noah, was born on September 6th, 2011, and she has a good  
25 relationship with Noah. And she has said constantly that Noah

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1 was not born when these allegations supposedly occurred.

2 Now, as far as December 23rd, 2015, the People have  
3 made it their mission to discredit Robert Giffen. They said he  
4 had a concussion when he was 14-years-old, and they did that  
5 because they knew Robert would tell the truth. And the truth  
6 is, with no agenda to lie, Robert never heard Damon threaten  
7 anybody. He went to the house on December 23rd because there  
8 was a commotion. Pearl did not want to leave the house.

9 Now, think about this, guys. This man is supposedly  
10 raping her, and, yet, she's fightin' to stay in that home.  
11 Does that make any sense?

12 Robert, who, yeah, he had a concussion when he was  
13 14, he was a star quarterback his junior and senior year, he  
14 was looked at by colleges, and he went on to be a successful  
15 volunteer firemen and runs heavy back -- he's successful. Has  
16 260 hours of accreditation. Robert's a credible individual.  
17 He's the most credible person you've heard these past two days.  
18 And he was besmudged because he was going to testify to the  
19 truth.

20 The truth was nothing happened that night, where  
21 Damon made a threat. If Damon really made a threat night, why  
22 not gonna charge him with attempted murder or an act of  
23 terrorism? Does that make any sense?

24 James Giffen, biological father of Pearl. When we  
25 heard James testify, it was one recurring theme: I don't

1 remember, I don't remember, I don't remember.

2 And we learned from Robert's testimony today that Mr  
3 Giffen, while tragic, when he lost his arm, machinery fell on  
4 his head. His memory is not good. Based on the tragedy that  
5 Mr. Giffen went through, does he truly have memory --  
6 (inaudible) -- communication and knowledge, the four elements  
7 required to testify as a fact witness? The answer is no.

8 But, his wife, Sharon, stepmother of Pearl, she's got  
9 those things. What did Sharon tell Officer Maltby? Though she  
10 tried to lie about it initially, she said that we believe Pearl  
11 is bipolar. She said that to the officer investigating the  
12 situation. And she also said, "We know Pearl to be a liar.  
13 She lies about things."

14 If your daughter was allegedly the victim of a rape  
15 and the officer involved in the case came to the house, what  
16 would your reaction be? Would it be to say, oh, by the way,  
17 she's bipolar and she lies, or to be to get her help?

18 Sharon Giffen -- I don't know if it was intentional  
19 or not -- put something out there that cannot be taken back.  
20 When Officer Maltby was told by Sharon Giffen, who knew Pearl  
21 better than he ever will, that we believe she's bipolar, at  
22 that point, he should've investigated it. Because if Pearl is  
23 truly bipolar, she may not be trying to lie. She may just be  
24 lying because of mental incapacity. And we don't know that,  
25 because he never followed up on it.

1 Detective Jordan, you guys saw him testify yesterday  
2 I want you to ask yourselves something. The man who sat in  
3 this chair, calm and polished, was that the same man you saw in  
4 the video?

5 Damon never confessed to anything. Detective Jordan  
6 gave him the story that he wanted to hear. And you know why?  
7 Because the police had already interviewed Pearl and got a  
8 version of what she said. So, this was a script. Jordan, from  
9 his own account, wrote the statement, not Damon. And  
10 surprisingly, there's no video of him writin' that statement.

11 Can we put the freedom of Damon Warner on the line  
12 when there's nothing to substantiate that statement other than  
13 somebody's word?

14 MS. VAN LANGEVELDE: Your Honor, can we approach,  
15 please? I'm sorry. I apologize.

16 THE COURT: Yup.

17 (At 1:42 p.m., bench conference)

18 (At 1:43 p.m., bench conference concluded)

19 MR. AMADEO: Officer Maltby, he's the OIC. And the  
20 OIC is the officer in charge. This is the individual where  
21 everything begins and ends with. He's in charge. He testified  
22 that he never investigated where Damon worked during the time  
23 of these allegations.

24 According to the prosecution's case, there's two  
25 isolated incidents in 10 years, which, in and of itself,

1 doesn't make sense.

2           If there was grooming done, we'll get to that  
3 shortly. There'd be a hell of a lot more than two incidents.  
4 It just doesn't add up.

5           But, let's take this for a moment. One incident  
6 supposedly happened at two p.m. in the afternoon, on a Friday  
7 The second, 11 o'clock at night, on a Monday. And we don't  
8 know when Damon Warner worked. We don't know his work  
9 schedule. Pearl did testify that sometimes she would watch the  
10 babies by herself, sometimes where other people had watched the  
11 children. How can we leave such a critical piece of this  
12 puzzle out? If Damon Warner was working at night, the 11  
13 o'clock incident would be impossible. If he's working during  
14 the day, the two p.m. incident would be impossible. Where is  
15 the credibility here? If somebody was accused of a crime and  
16 they were working during that time, shouldn't the officer be  
17 researching where they were, what time they worked?  
18 Substantiate the investigation. It didn't happen here.

19           Tom Cottrell. Tom Cottrell was the expert that your  
20 tax dollars actually paid for to come in and talk about  
21 theories. And the funny thing about Mr. Cottrell, none of the  
22 theories he presented were provided testimony by Pearl.  
23 Everything Tom Cottrell does is observational.

24           And the prosecution, they got this theme of grooming.  
25 And they brought in the expert to try to prove grooming.

1 But, here's something they missed. I want you to  
2 really think about this. Esther Stevens is the grandmother of  
3 Pearl. She lived with Pearl. Bridget Stevens, the mother of  
4 Pearl, and she lived with Pearl. Both these women lived with  
5 Pearl, were maternal figures during the time of these  
6 allegations. And the prosecution chose not to include either  
7 one of them on their witness list. Instead of bringing in the  
8 people who have firsthand knowledge of whatever Pearl was going  
9 through as a child, they brought in an expert who never met  
10 her, to talk about theories. Funny thing about theories, guys,  
11 you can twist and play with them. But, if her mother was on  
12 the stand, then you'd have a different opinion of things. If  
13 her grandmother was on the stand, maybe she would provide some  
14 medical testimony. They chose not to do that. Instead, let's  
15 skip these two people and let's pay for testimony.

16 Now, I want you to really think about something right  
17 now. James Giffen, Father; Sharon Giffen, Stepmother; Bridget  
18 Stevens, Mother; Esther Stevens, Grandmother; these four people  
19 are, supposedly, told by Pearl what happened. Not one of them,  
20 not one reported this to CPS, not one reported this to the  
21 police. If your child told you that they were raped twice,  
22 would you tell her to wait until Christmas break to talk to her  
23 school counselor, or would you try to protect her that day?  
24 And if you chose not to protect, you've got to ask yourself  
25 why. How can these people, if they believed that Pearl was

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1 truly in jeopardy, just sit on this information?

2 I want you to really think about the people that knew  
3 Pearl the best. Esther Stevens is the first person that Pearl  
4 confided in. And Pearl tells you that she couldn't take it  
5 anymore on December 23rd, 2015. She was cutting. She had to  
6 tell somebody. That's what she told the police. That's what  
7 she's testified to previously. But, she testified on Monday  
8 that she told Esther Stevens in October of 2014. Does that  
9 make sense? How credible is Pearl Giffen if she told her  
10 grandmother 14 months prior to her having cutting incidents and  
11 claiming that she was cutting because she held it in till  
12 December? Just doesn't add up, guys. It doesn't add up.

13 I want to go back to the alleged confession. And I  
14 deal with law enforcement every day. Family's been in law  
15 enforcement for decades. Officer Maltby said, under oath, he  
16 knew he had Damon because he had a confession. Well, here's  
17 the thing. Ask yourself how long was Damon in that room before  
18 he gave a confession. Ask yourself was it Damon's words or was  
19 it Detective Jordan's words. But, most importantly, ask  
20 yourself if they knew that confession on May 5th was valid, why  
21 didn't they arrest him that day? They waited till August. And  
22 they were so concerned with their flawed confession that they  
23 pulled him in a third time to interview and then a second  
24 forensic with Pearl, which Detective Maltby said doesn't  
25 happen, we don't do two forensics. He did it here. Use common

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1 sense. If somebody confessed to a crime and you believe the  
2 confession was valid, why would you let them leave? They'd be  
3 fingerprinted and processed right there. It didn't happen,  
4 guys. And you know why it didn't happen? They knew that  
5 confession was coerced. They knew they could hang their hat on  
6 that. It took them three additional months to try to make the  
7 case.

8 Told you guys in voir dire that my old law school  
9 professor once told me that the criminal justice system is a  
10 stick figure. Professor Piedon (phonetic) said probable cause,  
11 at the defendant's ankles, preponderance of evidence is about  
12 at their belly, and beyond a reasonable doubt, that's up here,  
13 'cause those words are magical. The prosecutors have to prove  
14 their case beyond a reasonable doubt. And you need to ask  
15 yourselves: Is there a doubt here? Because if there's a  
16 chance in your heart and in your mind that you think this story  
17 doesn't make sense, then the verdict's not guilty, not guilty.  
18 You have to have near certainty this happened.

19 And think, the loved ones of the complaining witness  
20 never reported it. Confession was coerced. The proof of that  
21 is he wasn't arrested after that alleged confession. The  
22 stories don't add up. And why, why was Esther Stevens never  
23 even interviewed by Detective Maltby? She was the first person  
24 that Pearl decided to tell this story to. And why is she not  
25 here to testify on behalf of her granddaughter? And where's



1 Pearl's mother? They're not part of the witness list. You got  
2 to really think what is the significance of that.

3 I know it's been a tough few days. I thank you for  
4 your time and service. Thank you.

5 THE COURT: Ms. Van Langevelde.

6 MS. VAN LANGEVELDE: Members of the jury, you have to  
7 make your decision based on the evidence, the evidence  
8 presented in court.

9 There is no evidence that the statement the defendant  
10 made was coerced. No evidence. No evidence that he was forced  
11 to say that. No evidence that he had to sign that. There's no  
12 evidence of that.

13 There were two people there during the incidents,  
14 during the sexual assaults, the defendant and the victim. The  
15 victim can -- or, the defendant can say their versions, but  
16 there were two people there. Maybe baby Sable. She can't  
17 really testify. Two people know what happened. And you don't  
18 have to take Pearl's word for it, because we saw the defendant.

19 And the defendant talked to you about Pearl and Pearl  
20 growing up and what Pearl was like. The defendant told you in  
21 his interview. He talked to you about what kind of kid she  
22 was. She was a good kid. She was a good kid. That that was  
23 his words, that she was a good kid. She did some typical  
24 teenage stuff. She was a good kid.

25 The defense counsel used a lot of strong words.

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1 Beyond a reasonable doubt isn't magical. It's the standard we  
2 use in every criminal case. And I -- I think the best -- the  
3 example that I gave about the flag, you may not see everything  
4 but do you still know that it's a Michigan flag in a courtroom?  
5 Based on common sense and reason.

6 Sharon -- granted, Mr. Giffen probably does have  
7 memory issues from his accident. But you know who was there  
8 that doesn't have memory issues is Sharon Giffen, and Sharon  
9 Giffen heard that statement.

10 The family wanted to let Pearl be the person to  
11 decide who she wanted to tell and how she wanted it to come  
12 out, as far as the police. That may not be how you or I or  
13 anybody else might decide how to let things come out, but that  
14 was what Sharon testified. That was their kind of family  
15 decision. Maybe some people might do things differently, but  
16 that's not what we have here. Sharon testified she -- they  
17 wanted to let Pearl be the person to decide who she disclosed  
18 to and how she wanted it to come out, if she wanted it to.

19 This idea that -- that they chose not to protect  
20 Pearl, no, they were protecting Pearl. Pearl moved in with Dad  
21 and Stepmom. They weren't not protecting Pearl. She was safe  
22 with Dad. And -- and this -- it goes back to this cost/benefit  
23 analysis at that point. She -- she has now realized -- or,  
24 realized then what the cost of telling was and is.

25 And what do we expect when a child talks about an --

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1 or, an event? We even had it today with an adult, who, again  
2 seems like a nice young man. You may not remember all the  
3 details, but you know it happened.

4 And the testimony wasn't -- and there's no evidence  
5 about the defendant raping -- that -- that word was used a lot.  
6 What we're talking about is digital penetration and an -- and  
7 an attempt -- and the defendant attempting to put his penis in  
8 the victim's vagina. Uses these strong words.

9 And nothing has happened in years; right? We know  
10 that.

11 I think it's -- it's interesting that, when you point  
12 out Detective Sergeant Jordan, yup, he -- he may be a little  
13 bit different. But what do we expect? People dress up for  
14 court. People present different maybe in court.

15 And I think the same could be said for the defendant.  
16 The person we see in the video is not, necessarily, the person  
17 sitting in the courtroom in a tie and shirt.

18 We have Detective Sergeant Jordan here, sitting here,  
19 being attentive, and takes on a different type of tactic when  
20 he's talking to somebody who is a suspect in a criminal sexual  
21 conduct case. I don't think that's outside the realm of you're  
22 gonna talk to somebody a little bit differently when you're  
23 talking about touching kids in a sexual way. I don't think  
24 that's outside our realm of expectations.

25 I don't think it's surprising to anybody, too, that

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1 Mr. Cottrell's time is paid for. And -- or, that he would,  
2 necessarily, be asked to talk to you -- be asked by the  
3 prosecutor's office because I don't know any defense attorneys  
4 who's gonna bring in an expert on child sexual abuse when their  
5 -- when their client's being charged with child sexual abuse.  
6 That doesn't quite make sense.

7 What does -- what we have here -- there -- just  
8 because there are things that maybe we want to know and maybe  
9 we -- we -- maybe we wish we had, that doesn't, necessarily,  
10 mean the evidence isn't there. And the evidence is there  
11 beyond a reasonable doubt because we have the victim and the  
12 defendant were the only two people there. And what do they  
13 say? They both agree the defendant's finger went into her  
14 vagina. The defendant's -- she was wearing sweatpants, Sable  
15 was a baby, and it was in the living room. All those things  
16 are consistent. They only have different --

17 But, what do we hear from Mr. Cottrell? People who  
18 do this to children victim blame.

19 So, I'm asking you, look at the evidence, look at the  
20 testimony that we've heard. And I think -- based on all that,  
21 I'm asking you to find the defendant guilty of Count One, CSC  
22 First and Count Two, CSC Second. Thank you.

23 THE COURT: Thank you, Ms. Van Langevelde.

24 Ladies and gentlemen, I'm going to have you go back  
25 in the jury room briefly while we make sure that all the jury

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1 instructions that I'm about to give you are agreed upon and  
2 we're ready to go. You'll only be back there about 10 minutes  
3 and then we'll come back. I will give you the closing  
4 instructions of the law that you are required to follow. I  
5 will, then, draw the two names of the two jurors that will be  
6 allowed to leave the building but not be dismissed from jury  
7 service.

8 You are on a recess instruction. Please don't talk  
9 to anybody about the case. You still can't talk to each other.  
10 But the next time you leave here, you'll be able to talk to  
11 each other.

12 Ms. Ykimoff, would you please take 'em back to the  
13 jury room and come right back?

14 (At 2:01 p.m., jury exits courtroom)

15 THE COURT: Please be seated.

16 All right, let's see, does everybody have the verdict  
17 form but me?

18 MR. AMADEO: Yes, Your Honor.

19 MS. VAN LANGEVELDE: I have a copy if you'd like  
20 ours, Judge.

21 THE COURT: I'm sure she'll get -- oh, here it is.  
22 Maybe she did give it to me.

23 So, everybody's in agreement on the verdict form and  
24 the changes made, check; correct?

25 MR. AMADEO: Yes, Your Honor.

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1 THE COURT: Does everybody have a copy of the final  
2 draft of closing instructions before we talk about them again?

3 Where did we put the second testimony? Or, not the  
4 second testimony, the video instruction.

5 MS. VAN LANGEVELDE: Oh, I don't think we need it  
6 now.

7 THE COURT: Right, but is it in their book? Because  
8 they're supposed to have a copy of all instructions that I gave  
9 them. Do you know what I'm talking about?

10 LAW CLERK/JURY BAILIFF: Yes. Let me go double  
11 check. It's not in yours?

12 THE COURT: I -- I --

13 LAW CLERK/JURY BAILIFF: I gave them whatever is in  
14 yours.

15 THE COURT: Okay, let me just see if it's in here.

16 LAW CLERK/JURY BAILIFF: Yes.

17 THE COURT: This is it. Actually, for this one, you  
18 could just copy this and leave it on the -- in the jury -- in  
19 the table.

20 LAW CLERK/JURY BAILIFF: Okay.

21 THE COURT: So, they'll have it in case they want to  
22 be reminded.

23 MR. AMADEO: Sure, Judge.

24 THE COURT: Everybody agree on that? 'Cause,  
25 actually, there's no requirement they get their own set. We do

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1 that because it makes it easier. So, this, we'll copy. Not  
2 right -- not this second. And we'll put it in the jury room.

3 LAW CLERK/JURY BAILIFF: Yes, ma'am.

4 THE COURT: All right.

5 Ms. Morton, go ahead.

6 MS. MORTON: Judge, on that instruction, we,  
7 actually, wanted the instruction at that moment. I don't think  
8 that, at this point, it -- you're going to say that penalty  
9 is --

10 THE COURT: Oh.

11 MS. MORTON: -- not to be considered and that  
12 they're, you know, not to base their decision on emotion. So,  
13 I think, you know --

14 THE COURT: Okay.

15 MS. MORTON: -- at this point, it's --

16 THE COURT: I was gonna say can we -- we'll put it,  
17 if -- if you wanted me to do a curative instruction, that's  
18 where I would've put it, because where it says that they --  
19 they're not supposed to worry about penalty, that they're the  
20 only one -- so, you do not want me to say anything at that  
21 point?

22 MS. MORTON: Well, you're gonna say what I would ask  
23 you to say anyway, so.

24 THE COURT: Okay. Sorry about that. I didn't quite  
25 understand that.

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1 Anything for you, Mr. Amadeo?

2 MR. AMADEO: No, Your Honor. Thank you.

3 THE COURT: Okay.

4 MS. MORTON: Oh, yes, for the record, I guess our  
5 objection during the closing was that he was referring to the  
6 defendant's freedom.

7 THE COURT: Right.

8 MS. MORTON: I -- well, I didn't --

9 THE COURT: Oh -- oh, you're up -- up at the bench.

10 MS. MORTON: Right.

11 THE COURT: The prosecutor objected that was because  
12 Mr. Amadeo, in his passion, said, "Are you gonna take away  
13 somebody's freedom..." blah, blah, blah. That's akin to  
14 talking about putting somebody in jail or prison. And, of  
15 course, the jury is not to consider punishment, what that may  
16 or may not be, when deciding a case. And so, that's an  
17 impermissible reference that I will be talking about, not  
18 thinking about penalty when they decide it, so.

19 MR. AMADEO: Thank you, Judge.

20 THE COURT: Hang on one second, Lauren. You already  
21 turned 'em around for me, didn't ya?

22 LAW CLERK/JURY BAILIFF: Yes.

23 THE COURT: Okay. Such a smart young lady.

24 Okay, let's bring 'em in. Let's get the final  
25 instruction done.



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(At 2:06 p.m., jury enters courtroom)

THE COURT: Please be seated.

Well, ladies and gentlemen, the evidence and the arguments in this case are now finished, and I am going to instruct you on the law. That is, I will explain the law that applies to this case.

Please remember that you have taken an oath to return a true and just verdict based only on the evidence and my instructions on the law. You must not let sympathy or prejudice influence your decision.

As jurors, you must decide what the facts of this case are. This is your job and nobody else's. You must think of all the evidence and then decide what each piece of evidence means and how important you think it is. This includes whether you believe what each of the witnesses have said. What you decide about any fact in this case is final.

It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I have said.

At various times now, I have already given you instructions about the law. You must take all my instructions together as the law that you are to follow. You should not pay attention to some instructions and ignore others.

To sum this up, it is your job to decide the facts of this case and apply the law as I give it to you. And in that

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1 way, you will decide the case.

2 A person accused of a crime is presumed to be  
3 innocent. This means you must start with the presumption that  
4 the defendant is innocent. This presumption continues  
5 throughout the trial and entitles the defendant to a verdict of  
6 not guilty unless you are satisfied beyond a reasonable doubt  
7 that he is guilty.

8 Every crime is made up of parts called elements. The  
9 prosecutor must prove each element of the crime beyond a  
10 reasonable doubt. The defendant is not required to prove his  
11 innocence or to do anything. If you find that the prosecutor  
12 has not proven every element beyond a reasonable doubt, then  
13 you must find the defendant is not guilty.

14 A reasonable doubt is a fair and honest doubt growing  
15 out of the evidence or lack of evidence. It is not merely an  
16 imaginary or possible doubt, but a doubt based on reason and  
17 common sense. A reasonable doubt is just that, a doubt that is  
18 reasonable after careful and considered examination of the  
19 facts and the circumstances of this case.

20 Now, every defendant has the absolute right not to  
21 testify. When you decide the case, you must not consider the  
22 fact that he did not testify. It must not affect your verdict  
23 in any way.

24 When you discuss the case and decide on your verdict,  
25 you may only consider the evidence that has been properly

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1 admitted in the case. Therefore, it is important for you to  
2 understand what is evidence and what is not evidence.

3 Evidence includes the sworn testimony of the  
4 witnesses, the exhibits that were admitted into evidence, and  
5 anything else I told you you could consider as evidence.

6 Many things are not evidence and you must be careful  
7 not to consider them as such. I will now describe some things  
8 that are not evidence. The fact that the defendant is charged  
9 with a crime and is on trial is not evidence. Likewise, the  
10 fact that he is charged with more than one crime is not  
11 evidence. The lawyers' statements and the lawyers' arguments  
12 and any commentary are not evidence. They are only meant to  
13 help you understand the evidence and each side's legal theory.  
14 You should only accept things the lawyers say that are  
15 supported by the evidence or by your own common sense and  
16 general knowledge. The lawyers' questions to the witnesses and  
17 my questions to the witnesses are not evidence, and you should  
18 not consider them only as they give meaning to the answer given  
19 by the witness. Any comments, rulings, questions, or summary  
20 of evidence that I have done, including the instructions are  
21 not evidence.

22 It is my duty to see that the trial is conducted  
23 according to the law and to tell you the law that applies to  
24 this case. However, when I make a comment or give an  
25 instruction, I am not trying to influence your vote or express

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1 any personal opinion about this case. If you believe I have a  
2 opinion about how you should decide this case, please pay no  
3 attention to that opinion. You, and only you, are the judges  
4 of the facts. And you should decide this case from the  
5 evidence.

6 At times during trial, I've excluded evidence that  
7 was offered or stricken testimony that was heard. Do not  
8 consider those things in deciding the case. Make your decision  
9 only on the evidence that was let in.

10 Your decision should be based on all the evidence  
11 regardless of which party produced it. You should use your own  
12 common sense and general knowledge in weighing and judging the  
13 evidence, but you should not use any personal knowledge that  
14 you may have about a place, a person or event.

15 To repeat that once more, you must decide this case  
16 based only on the evidence admitted during the trial.

17 Now, as I said before, it is your job to decide what  
18 the facts of this case are. You must decide which witnesses  
19 you believe and how important you think their testimony is.  
20 You do not have to accept or reject everything a witness has  
21 said. You are free to believe all, none or a part of any  
22 person's testimony. In deciding which testimony you believe,  
23 you should rely on your own common sense and your every day  
24 experience. However, in deciding whether you believe a  
25 witness's testimony, you must set aside any bias or prejudice

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1 that you may have based on race, gender or national origin of  
2 the witness.

3 And, there are no fixed rules for judging whether you  
4 believe a witness, but it may help to think about these  
5 questions:

6 Was the witness able to see and hear clearly?

7 How long was the witness watching or listening?

8 Was anything else going on that may have distracted  
9 the witness?

10 Did the witness seem to have a good memory?

11 How did the witness look and act while testifying?

12 Did the witness seem to be making an honest effort to  
13 tell the truth, or did the witness seem to evade the question  
14 or argue with the lawyer?

15 Does the witness's age or maturity affect how you  
16 judge his or her testimony?

17 Does the witness have any bias, prejudice or personal  
18 interest in how the case is decided?

19 Have there been any promises, threats, suggestions or  
20 other influences that affected how the witness testified?

21 In general, does the witness have any special reason  
22 to tell the truth or any special reason to lie?

23 All in all, how reasonable does the witness's  
24 testimony seem when you think about all of the evidence in the  
25 case?

1 Sometimes the testimony of different witnesses will  
2 not agree, and you must decide which testimony you accept. You  
3 should think about whether the disagreement involves something  
4 important or not, and whether you think someone is lying or  
5 they are simply mistaken. People see and hear things  
6 differently. And witnesses may testify honestly but simply be  
7 wrong about what they thought they saw or remembered. It is  
8 also a good idea to think about which testimony agrees best  
9 with the other evidence in the case.

10 However, you may conclude that a witness deliberately  
11 lied about something that is important about how you decide the  
12 case. If so, you may choose not to accept anything that  
13 witness said. On the other hand, if you think the witness lied  
14 about some things but told the truth about others, you can  
15 simply accept the part that you think is true and ignore the  
16 rest.

17 The prosecutor must prove beyond a reasonable doubt  
18 that the crime occurred in Eaton County. Time, however, is not  
19 an element of the crime of criminal sexual conduct. The  
20 prosecutor does not have to prove the date or time of the  
21 offense beyond a reasonable doubt.

22 Now, when you go to the jury room, you will have your  
23 written copy of the instructions. As you discuss the case, you  
24 should think about all the -- the instructions together as the  
25 law that you are to follow.

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1           The defendant is charged with two counts, that is  
2 with the crimes of Criminal Sexual Conduct - First Degree and  
3 Criminal Sexual Conduct - Second Degree. These are separate  
4 crimes, and the prosecutor is charging that the defendant  
5 committed both of them. You must consider each crime  
6 separately in light of all the evidence in this case. You may  
7 find the defendant guilty of all, any one, or not guilty.

8           The prosecutor has introduced evidence of a statement  
9 that it claims the defendant made. Before you may consider an  
10 out-of-court statement against the defendant, you must first  
11 find that the defendant actually made the statement as given to  
12 you. If you find the defendant did make the statement, you may  
13 give the statement whatever weight you think it deserves. In  
14 deciding this, you should think about how and when the  
15 statement was made and all the other evidence in the case. You  
16 may consider the statement in deciding the facts of this case.

17           Now, facts can be proved by direct evidence from a  
18 witness or an exhibit. Direct evidence is about what we  
19 actually see or hear. So, for example, when you look outside  
20 and rain is falling, that's direct evidence that it's raining  
21 out.

22           But, a fact can also be proven by indirect or  
23 circumstantial evidence. Circumstantial evidence is evi --  
24 evidence that normally and reasonably leads to other facts.  
25 So, for example, if a person comes from outside wearing a

1 raincoat covered with small drops of water, that would be  
2 circle -- circumstantial evidence that it's raining outside.

3 You may consider circumstantial evidence by itself  
4 in combination of circumstantial and direct evidence. Both can  
5 be used to prove the elements of a crime. In other words, you  
6 should consider all of the evidence that you believe.

7 If you believe that a witness previously made a  
8 statement inconsistent with his or her testimony at this trial,  
9 the only purpose for which the earlier statement can be  
10 considered by you is in deciding whether the witness testified  
11 truthfully in court. The earlier statement is not evidence of  
12 what the witness said earlier was true.

13 Evidence has been offered that one or more witnesses  
14 in this case previously made statements inconsistent with their  
15 testimony at trial. You may consider the earlier statements in  
16 deciding whether the testimony here, at this trial, was  
17 truthful when you are determining the facts of this case.

18 You may consider whether the defendant had a reason  
19 to commit the alleged crime, but a reason, by itself, is not  
20 enough to find a person guilty of a crime. The prosecutor does  
21 not have to prove that the defendant had a reason to commit the  
22 crime. She only has to show that the defendant actually  
23 committed the crime and that he meant to do so.

24 The defendant's intent may be proved by what he said,  
25 by what he did, how he did it, or by any other facts or



1 circumstances that are in evidence.

2 You should not decide this case based on which side  
3 presented more witnesses. Instead, you should think about each  
4 witness and each piece of evidence and whether you believe  
5 them. Then, you must decide whether the testimony and evidence  
6 you believe proves beyond a reasonable doubt that the defendant  
7 is guilty.

8 You have heard that a lawyer talked to one of the  
9 witnesses. There is nothing wrong with this. A lawyer may  
10 talk to a witness to find out what the witness knows about the  
11 case and what the witness's testimony will be.

12 You have heard the testimony from a witness, Thomas  
13 Cottrell, who has given you his opinion as an expert in the  
14 field of dynamics of child sexual abuse and perpetrator  
15 tactics, offender dynamics. Experts are allowed to give  
16 opinions in court about matters they're experts on. However,  
17 you do not have to believe an expert's opinion. Instead, you  
18 should decide whether you believe it and how important you  
19 think it is. When you decide whether you believe the expert's  
20 opinion, think carefully about the reasons and the facts he  
21 gave for his opinion and whether those facts are true. You  
22 should also think about the expert's qualifications and whether  
23 his opinion makes sense when you think about all the other  
24 evidence in the case.

25 You have heard Thomas Cottrell's opinion about the

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1 behavior of sexually abused children. You should consider that  
2 evidence only for the limited purpose of deciding whether Pearl  
3 Griffen's (sic) acts and words, after the alleged crime, were  
4 consistent with those of sexually abused children. That  
5 evidence cannot be used to show that the crime charged here was  
6 committed or that the defendant committed it, nor can it be  
7 considered an opinion by Thomas Cottrell that Pearl Giffen was  
8 telling the truth.

9 You have heard the testimony from witness whose (sic)  
10 are police officers. That testimony is to be judged by the  
11 same standard you use to evaluate the testimony of any other  
12 witnesses.

13 Where is -- is that the special instruction that we  
14 agreed I would give at this point; correct?

15 During the testimony of Detective Maltby, he may have  
16 expressed his opinion about what he believed or the credibility  
17 of the testimony you have heard. If you believe that Detective  
18 Maltby expressed an opinion about what he thinks happened or  
19 the credibility of the victim, you must ignore it. You, and  
20 only you, each individual juror are the judge of the facts of  
21 this case, which includes the credibility of the witnesses who  
22 testified.

23 The defendant is charged with the crime of First  
24 Degree Criminal Sexual Conduct. To prove this charge, the  
25 prosecutor must prove each of the following elements beyond a

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1 reasonable doubt:

2 First, that the defendant engaged in a sexual act  
3 that involved entry into Pearl Giffen's genital opening by the  
4 defendant's finger. Any entry, no matter how slight, is  
5 enough. It does not matter whether the sexual act was  
6 completed or whether semen was ejaculated.

7 Second, that Pearl Giffen was 13, 14 or 15 years of  
8 age at the time of the alleged act.

9 And third, that Pearl Giffen is related to the  
10 defendant either by blood or by marriage as a stepdaughter.

11 The defendant is charged with the crime of Second  
12 Degree Criminal Sexual Conduct. To prove this charge, the  
13 prosecutor must prove each of the following elements beyond a  
14 reasonable doubt:

15 First, that the defendant intentionally touched Pearl  
16 Giffen's genital area or the clothing covering that area.

17 Second, that this was done for sexual purposes or  
18 could reasonably be construed as having been done for a sexual  
19 purpose.

20 Third, that Pearl Giffen was 13, 14 or 15 years of  
21 age at the time of the alleged act.

22 And fourth, that Pearl Giffen is related to the  
23 defendant either by blood or marriage as a stepdaughter.

24 To prove this charge, it is not necessary that there  
25 be evidence other than the testimony of Pearl Giffen if that

1 testimony proves guilt beyond a reasonable doubt. To prove  
2 this charge, the prosecutor does not have to show that Pearl  
3 Giffen resisted the defendant.

4 Now, when you go to the jury room, you will be  
5 provided with your written copy of the final instruction.

6 You should first choose a foreperson. The foreperson  
7 should see to it that your discussions are carried out in a  
8 businesslike way and that everyone has a fair chance to be  
9 heard.

10 During your deliberations, turn off your cell phones  
11 and other communication equipment until we recess.

12 A verdict, in a criminal case, must be unanimous. In  
13 order to return a verdict, it is necessary that each of you  
14 agrees on that verdict.

15 In the jury room, you will discuss the case amongst  
16 yourselves. But, ultimately, each of you will have to make up  
17 your own mind. Any verdict must represent the individual  
18 considered judgment of each juror.

19 It is your duty, as jurors, to talk to each other and  
20 make every reasonable effort to reach an agreement. Express  
21 your opinions and the reasons for them, but keep an open mind  
22 as you listen to your fellow jurors. Rethink your opinions and  
23 do not hesitate to change your mind if you decide you were  
24 wrong. Try your best to work out your differences.

25 However, although you should try to reach an

1 agreement, none of you should give up your honest opinion about  
2 the case just because other jurors disagree with you or just  
3 for the sake of reaching a verdict.

4 In the end, your vote must be your own, and you must  
5 vote honestly and in good conscience.

6 If you have any questions about the jury instructions  
7 before you begin deliberations or questions while you are  
8 deliberating, submit them in writing, in a sealed envelope, to  
9 the bailiff.

10 Possible penalty should not influence your decision.  
11 It is the duty of the judge to fix the penalty within the  
12 limits provided by law.

13 If you want to communicate with me while you are in  
14 the jury room, please have your foreperson write a note and  
15 give it to the bailiff. It is not proper for you to talk  
16 directly to the judge, the lawyers, court officers or other  
17 people involved in the case.

18 As you discuss the case, you must not let anyone,  
19 even me, know how your voting stands. Therefore, until you  
20 return a unanimous verdict, do not reveal this to anyone  
21 outside the jury room.

22 When you go to the jury room to deliberate, you may  
23 now take your notes. You have your full set of instructions.

24 If you want to look at any or all of the referenced  
25 documents or exhibits, just ask for them.

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1           This is the jury form that you will be taking into  
2 the jury room to fill out. It has got Count One: Guilty or  
3 not guilty. And then, Count Two is guilty or not guilty. And  
4 each of the counts is described specifically. It must be  
5 unanimous as to each count.

6           Now, as I saw, every time I do this, I never know if  
7 the two people want their name called or not; right? Because  
8 you've been so attentive, and I, you know, really appreciate  
9 your time and effort.

10           You are not -- however, the two names I'm about to  
11 call, you are not dismissed. You are leaving on a recess  
12 instruction. The two names I'm about to call may leave the  
13 courthouse and go about your business, so long as you have a  
14 cell phone for which you give Ms. Ykimoff your phone number.  
15 There may be something could happen where I need you to come  
16 back and continue to serve as a juror and deliberate.  
17 Therefore, don't read anything, don't research anything, and  
18 don't talk to anybody about anything. Don't call any friends  
19 and tell 'em what happened. You are in a recess mode. I'm  
20 just allowing you to leave.

21           Now, if the jury reaches a verdict, then Ms. Ykimoff  
22 will call you. Then, you are released, and you can talk to  
23 anybody that you want about the case, okay?

24           All right, and the first juror is Judy Owens. You'll  
25 wait and go out with them, Judy, 'cause she's got to get your

1 information, okay?

2 JUROR OWENS: Okay.

3 THE COURT: And the other person, Stephanie  
4 McCracken.

5 Okay, so, Judy and Stephanie, you are allowed to  
6 leave, but you are still considered a juror in this case. Make  
7 sure you give that information.

8 Everybody's going to leave. You can take your jury  
9 book, too, if you would. Ms. Ykimoff will -- you'll walk with  
10 the other jurors. Whoa, wait a minute. One last thing we have  
11 to do.

12 Ms. Ykimoff, do you solemnly swear that you will keep  
13 the persons sworn as jurors in this case in a private and  
14 convenient place, that you will not suffer any communication to  
15 be made to them, that you will not communicate to them  
16 yourself, orally or otherwise, unless by order of this Court,  
17 or to ask them if they have agreed upon a verdict until they  
18 have been discharged, and that you will not, before they render  
19 their verdict, communicate to anyone the state of their  
20 deliberations or the verdict that they have agreed upon, so  
21 help you God?

22 LAW CLERK/JURY BAILIFF: I will.

23 (At 2:30 p.m., law clerk/jury bailiff sworn by the  
24 Court)

25 THE COURT: Thank you.

1493a

1 Now, ladies and gentlemen, you shall go back and  
2 deliberate. Please follow Ms. Ykimoff. Watch your step.

3 (At 2:30 p.m., jury exits courtroom to begin  
4 deliberations)

5 THE COURT: All right, be seated.

6 Starting with the prosecution, any objection to the  
7 final instructions, Ms. Morton?

8 MS. MORTON: No.

9 THE COURT: Mr. Amadeo, any objections?

10 MR. AMADEO: No, Your Honor.

11 THE COURT: All right. And you both got the name of  
12 the two jurors who are allowed to leave?

13 MR. WINTER: Yes, Your Honor.

14 THE COURT: It was juror number two and juror number  
15 nine.

16 MR. AMADEO: Yes.

17 MR. WINTER: Yes, Your Honor.

18 THE COURT: Juror number two and juror number nine.  
19 I don't know if Ms. Ykimoff put the special  
20 instruction in the jurors' books, because, obviously, I didn't  
21 have it. I'm gonna have her make copies and just put 'em in  
22 the jury room.

23 MR. AMADEO: Sure.

24 THE COURT: My other question is -- I know where the  
25 prosecutors will be -- are you gonna stay in the building, Mr.



1 Amadeo and Mr. Winter?

2 MR. AMADEO: Yes, Your Honor.

3 MR. WINTER: Yes, Your Honor.

4 THE COURT: And make sure that -- we need to make  
5 sure we have your phone numbers --

6 MR. AMADEO: Yes.

7 MR. WINTER: Yes.

8 THE COURT: -- in case you're wandering around. So  
9 Ms. Ykimoff will come out while the jurors are getting situated  
10 and get that.

11 Finally, if the jurors ask for the exhibits, do you  
12 want to come back into the courtroom, or do you want to  
13 authorize that I can have the exhibits taken back, and we'll  
14 just let you know they asked for them?

15 MR. AMADEO: I have no problem authorizing the Court.

16 MS. VAN LANGEVELDE: That's fine, Your Honor.

17 THE COURT: And my last question is: What if they  
18 want to hear the video again? We do have the ability to have  
19 the video watched in the jury room, but it's absolutely within  
20 both of your rights to want the jury to come back in and watch  
21 it on the screen.

22 Ms. Van Langevelde slash Morton.

23 MS. VAN LANGEVELDE: I'm fine. We can -- we have the  
24 ability to set it up back there. I'm fine if they want to  
25 watch it and talk about it.

1495a

1 THE COURT: What do you want to do, Mr. Amadeo?

2 MR. AMADEO: I -- I don't want to make your life more  
3 difficult. Whatever's easier works for me.

4 THE COURT: Okay. Do you want to get their phone  
5 numbers? 'Cause we know where they're gonna be.

6 LAW CLERK/JURY BAILIFF: I need the verdict form.

7 MR. WINTER: Your Honor, the only thing I'd just ask  
8 is that Ms. Ykimoff make that extra copy of the special  
9 instruction since I gave mine up.

10 THE COURT: Oh, yes.

11 LAW CLERK/JURY BAILIFF: I've got one in the back.

12 THE COURT: So, you can give that back to him.

13 MR. WINTER: Thank you.

14 LAW CLERK/JURY BAILIFF: Yeah, I've -- I've got that  
15 in the back.

16 THE COURT: All right, just make a --

17 LAW CLERK/JURY BAILIFF: And -- and it was in the  
18 jurors' -- it was -- it was already in the jurors' notebooks.

19 THE COURT: Oh, I just didn't have that.

20 LAW CLERK/JURY BAILIFF: -- with you. Sorry.

21 THE COURT: Well, why do I need it, Lauren?

22 LAW CLERK/JURY BAILIFF: I think I may have put in  
23 the handwritten one is what happened, but --

24 MR. WINTER: Want some cheese with that wine?

25 THE COURT: Um-hum.

1 MS. MORTON: If they want to watch the videos --

2 THE COURT: Trust me, I haven't even started yet.

3 MS. MORTON: -- we can use that computer. Oh, yeah  
4 you might -- well, no, you can take it and use -- you probably  
5 have to take a power cord 'cause it's an older computer and --

6 LAW CLERK/JURY BAILIFF: I can -- (inaudible).

7 MR. WINTER: Are we off?

8 LAW CLERK/JURY BAILIFF: You have the handwritten  
9 one. I -- I thought you'd just shove it in there.

10 THE COURT: Um-hum. Okay, yeah, we're done.

11 (At 3:22 p.m., off the record)

12 (At 3:25 p.m., back on the record)

13 THE COURT: We are back on the record in People  
14 versus Warner.

15 Ms. Van Langevelde, Ms. Morton, Mr. Winter and Mr.  
16 Amadeo is here, as is the defendant, Mr. Warner. You're still  
17 under oath.

18 "Is Count One just referring to the dining room? And  
19 is Count Two referring to the bedroom, exclusively?"

20 And that's how it was asked to do the form. So, we  
21 agree that the answer is yes.

22 Ms. Morton?

23 MS. MORTON: Yes.

24 MR. AMADEO: Yes.

25 THE COURT: Isn't today the 17th; right?

1497a

1 LAW CLERK/JURY BAILIFF: Correct.

2 THE COURT: That's all for now, but I wouldn't go to  
3 far because, you know.

4 MS. VAN LANGEVELDE: They should know about, I guess  
5 the --

6 THE COURT: That's all for the record.

7 (At 3:27 p.m., off the record)

8 (At 3:38 p.m., back on the record)

9 THE COURT: We are back on the record in *People*  
10 *versus Warner*.

11 Ms. Van Langevelde and Ms. Morton are here on behalf  
12 of the People. Mr. Winter, Mr. Amadeo are here. Mr. Warner's  
13 also here.

14 Sir, you are still under oath.

15 I have received notice that the jury has reached a  
16 verdict. The jury will be coming in now.

17 (At 3:38 p.m., jury enters courtroom with verdict)

18 THE COURT: Please be seated.

19 Juror number 10 --

20 FOREPERSON GREEN: Yes, ma'am.

21 THE COURT: -- I believe you are the foreperson  
22 because you have the envelope; is that correct?

23 FOREPERSON GREEN: That is correct.

24 THE COURT: Would you please stand? And read to us  
25 the verdict of the jury.

1 FOREPERSON GREEN: The People of the State of  
2 Michigan versus Damon Earl Wayans (sic), Defendant.

3 Count One: Sexual -- Contromal (sic) Sexual Conduct  
4 - First Degree, relationship - dining room - sexual  
5 penetration: Guilty.

6 Count Two: Criminal Sexual Conduct - Second Degree  
7 relationship - bedroom - sexual conduct: Not guilty.

8 THE COURT: Thank you. Please be seated.  
9 Would the prosecutor like the jury polled?

10 MS. VAN LANGEVELDE: No.

11 THE COURT: Would the defense like the jury polled?

12 MR. AMADEO: We would, Your Honor.

13 (At 3:40 p.m., jury polled)

14 THE COURT: Juror number one, is that your verdict?

15 JUROR YOUNG: Yes.

16 THE COURT: Juror number three, is that your verdict?

17 JUROR MARZILLI: Yes.

18 THE COURT: Juror number four, is -- is that your  
19 verdict?

20 JUROR NESTLE: Yes.

21 THE COURT: Juror number five, is that your verdict?

22 JUROR WIMBERLY: Yes.

23 THE COURT: Juror number six, is that --

24 JUROR ROGERS: Yes.

25 THE COURT: -- your verdict?

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JUROR ROGERS: Yes.

THE COURT: Juror number 13, is that your verdict?

JUROR CENTENO: Yes.

THE COURT: Juror number seven, is that your verdict?

JUROR GARCIA: Yes.

THE COURT: Juror number eight, is that your verdict?

JUROR KUBA: Yes.

THE COURT: Juror number 10, is that your verdict?

FOREPERSON GREEN: Yes.

THE COURT: Juror number 11, is that your verdict?

JUROR MATTSON: Yes.

THE COURT: Juror number 12, is that your verdict?

JUROR SAVAGE: Yes.

THE COURT: And, juror number 14, is that your  
verdict?

JUROR O'BRYANT: Yes.

THE COURT: Anything else?

MR. AMADEO: No thank you, Judge.

THE COURT: Ladies and gentlemen, on behalf of Eaton  
County, and specifically on behalf of the 56th Circuit Court, I  
thank you so much for your time and your energy, your  
concentration.

And I would like to talk to you briefly after you go  
in the back room.

But, again, thank you so much for your service. It

1500a

1 is very greatly appreciated.

2 You may go. Oh, and there is no recess instruction

3 JUROR: Except for watch your step.

4 THE COURT: Right.

5 (At 3:41 p.m., jury is discharged and exits

6 courtroom)

7 THE COURT: Mr. Warner, you have been found guilty by

8 a jury of your peers of Criminal Sexual Conduct in the First

9 Degree. That is a lifetime offense, and it is mandatory that

10 you be taken into custody. Your bond is revoked.

11 I would ask the deputies to take the defendant into

12 custody.

13 MS. MORTON: Sentencing date.

14 THE COURT: And we'll -- and your sentencing date is

15 going to be October 24th.

16 MR. AMADEO: What time will that be, Judge?

17 THE COURT: Pardon me?

18 MR. AMADEO: What time is sentencing?

19 THE COURT: It's gonna be eight-thirty.

20 MR. AMADEO: Eight-thirty?

21 THE COURT: But, I'm gonna pull up my calendar, if

22 you don't mind if you wait a second, because am I going to hear

23 from the victim again, do you think? I mean, I don't mean that

24 again. I'm not --

25 MS. VAN LANGEVELDE: I -- I don't know if you would

1501a

1 hear from her. I think she'll submit a letter. And I'm sure  
2 family members -- somebody, like last time, will speak on her  
3 behalf.

4 THE COURT: All right, let me just go to the 20 --  
5 what did I tell ya she has on my list? The 24th. And, of  
6 course, we do our -- at 10 o'clock, we do our PVs, and we do  
7 have a pretrial.

8 What's the next one? Would be -- she has down  
9 October 31st. We have nothing yet.

10 So, I think what we'll do -- and this would help you,  
11 too, since you're from out of town. Let's do it at 11 o'clock.

12 MR. AMADEO: Eleven?

13 MS. MORTON: When?

14 THE COURT: The 31st.

15 MS. MORTON: Okay.

16 THE COURT: Thursday, October 31st. And then, Ms.  
17 Cook will just make sure, from 11 to 12, nothing else is  
18 scheduled, just in case there's more people that wish to  
19 address the Court. I don't want to set it for eight-thirty and  
20 then --

21 So, October 31st, 11 o'clock.

22 Anything else I can do for you, Ms. Morton?

23 MS. MORTON: No, thank you.

24 THE COURT: Ms. Van Langevelde?

25 MS. VAN LANGEVELDE: No thank you.



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THE COURT: Mr. Amadeo?

MR. AMADEO: No thank you, Judge.

THE COURT: And, Mr. --

MR. WINTER: No.

THE COURT: -- Winter?

MR. WINTER: Thank you, Your Honor.

THE COURT: Okay. I'm gonna go back and talk to the jury, to see if there's anything. I think I'm just gonna let 'em go, unless you feel the need that -- it's been a long two days for them.

MR. AMADEO: I think it's been a long three days for 'em with voir dire.

THE COURT: Right.

MR. AMADEO: We're -- we're not gonna bother.

THE COURT: Okay.

MR. AMADEO: I don't know if they do but --

THE COURT: And I know usually Ms. Morton says she doesn't care, so. That's not in a mean way.

MS. MORTON: I do care, but not about that.

THE COURT: I'm gonna let -- I'm gonna let the jury go, then, after I talk to them.

Thank you, all, very much.

MR. AMADEO: Thank you.

MS. VAN LANGEVELDE: Thank you, Your Honor.

(At 3:44 p.m., proceedings concluded)

CERTIFICATION OF COURT RECORDER

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STATE OF MICHIGAN )  
COUNTY OF EATON )

I certify that this transcript consisting of 165 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Tuesday, September 17, 2019.

Dated: January 21, 2020

\_\_\_\_\_  
Kathy Bond, CSR/CER-2779  
56th Circuit Court  
1045 Independence Blvd.  
Charlotte, Michigan 48813  
(517) 543-4327

RECEIVED by MSC 12/28/2022 2:41:49 PM

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF EATON

PEOPLE OF THE STATE OF MICHIGAN,

v

DAMON EARL WARNER,

DEFENDANT.

File No. 16-020296-FC

STATE OF MICHIGAN, COUNTY OF EATON  
**FILED**

SEP 18 2019

DIANA BOSWORTH  
EATON COUNTY CLERK

**VERDICT FORM**

You may return only one verdict for each of the two (2) counts. Mark only one box for each count.

COUNT 1 – CRIMINAL SEXUAL CONDUCT – FIRST DEGREE (Relationship – dining room – sexual penetration)

Not Guilty

Guilty

COUNT 2 – CRIMINAL SEXUAL CONDUCT – SECOND DEGREE (Relationship – bedroom – sexual contact)

Not Guilty

Guilty

Dated: 9/17/19



Foreperson

RECEIVED by MSC 12/28/2022 2:41:49 PM

<b>STATE OF MICHIGAN</b> 56th CIRCUIT COURT EATON COUNTY	1505a <b>JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS</b>	<b>CASE NO.</b> 2016 0000020296-FC
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1045 INDEPENDENCE BLVD.,  
 CHARLOTTE, MI 48813

(517) 543-335  
 STATE OF MICHIGAN COUNTY OF EATON  
 FILED  
 NOV 05 2019  
 DIANA BOSWORTH  
 EATON COUNTY CLERK

ORI MI-230015J Police Report No. 16-352

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant's name, address, and telephone no.  
 DAMON EARL WARNER  
 6160 IONIA RD.  
 BELLEVUE, MI 49021

CTN/TCN 231600323401	SID 1712924T	DOB 10/10/1974
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Prosecuting attorney's name  
 DOUGLAS R. LLOYD  
 Bar no.  
 47218

Defendant attorney's name  
 WILLIAM C. AMADEO  
 Bar no.  
 76194

**THE COURT FINDS:**

1. The defendant was found guilty on 09/17/2019 of the crime(s) stated below.  
 Date

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL Citation/PACC Code
	Plea*	Court	Jury			
01			X		CSC-1ST DEGREE (RELATIONS)	750.520B1B
02				D	CSC-2ND DEGREE (RELATIONS)	750.520C1B
		X			HABITUAL OFFENDER 3RD	769.11

\*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

- 2. The conviction is reportable to the Secretary of State pursuant to MCL 257.625(21)(b).
- 3. HIV testing and sex offender registration are completed.
- 4. The defendant has been fingerprinted according to MCL 28.243.
- 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

**IT IS ORDERED:**

- 6. Probation is revoked.
- 7. Participating in a special alternative incarceration unit is  prohibited.  permitted.
- 8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
01	10/31/2019	20			40			10/31/2019		751	

- 9. Sentence(s) to be served consecutively to \_\_\_\_\_ (If this item is not checked, the sentence is concurrent.)  
 each other.  case numbers \_\_\_\_\_

9. The defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total

The due date for payment is \_\_\_\_\_. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

- 11. The defendant is subject to lifetime monitoring under MCL 750.520n.
- 12. Court recommendation:

11/04/2019  
 Date

*[Signature]*  
 Judge JANICE K. CUNNINGHAM  
 Bar no. 38700

*[Signature]*  
 Deputy court clerk

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver the defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON EARL WARNER,

Defendant-Appellant.

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FOR PUBLICATION

October 7, 2021

9:00 a.m.

No. 351791

Eaton Circuit Court

LC No. 2016-020296-FC

Before: CAMERON, P.J., and BORRELLO and REDFORD, JJ.

CAMERON, P.J.

Defendant, Damon Earl Warner, appeals his jury-trial conviction of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(b)(i). Defendant was sentenced, as a third-offense habitual offender, MCL 769.11, to 20 to 40 years’ imprisonment. We affirm.

**I. BACKGROUND**

Defendant was convicted of CSC-I for assaulting his 13-year-old stepdaughter. According to the victim, defendant first assaulted her sometime in 2011 while she was sitting on her bed. She testified that defendant “pulled down [her] pants and tried sticking his penis into [her] vagina.” The victim was unable to remember certain details, but she was clear that defendant did not penetrate her vagina with his penis during this assault. A few months later, the victim alleged that defendant assaulted her again, this time in the dining room. During this assault, defendant approached the victim from behind and put his hand in her pants. Defendant digitally penetrated the victim when his hand went “up into [her] vagina.”

In December 2015, the victim told her mother that defendant had sexually assaulted her. The disclosure occurred during an argument, and the victim’s mother did not believe the victim. The victim’s mother called the victim’s father and told him to come pick up the victim. When the victim’s father arrived, the victim and her mother were standing outside. The victim was upset and did not want to go with her father. At some point, defendant came outside and threatened the victim, informing her that he was going to slit her throat. The victim eventually left with her father and, from that point forward, the victim lived with her father full time.

Three days later, the victim told her father and her stepmother that defendant had sexually assaulted her. However, law enforcement was not notified until early January 2016, after the victim reported the assaults to her guidance counselor at school. Detective James Maltby was assigned to the investigation and arranged for defendant to be interviewed by Detective Sergeant Derrick Jordan. During that interview, defendant admitted to penetrating the victim's vagina with four of his fingers. Defendant explained that he did so at the urging of the victim and only after she placed his hand in her pants while they were "wrestling around[.]" Defendant was not arrested at that time. Several days later, Detective Maltby interviewed defendant.

In August 2016, defendant was arrested and charged with CSC-I and second-degree criminal sexual conduct (CSC-II), MCL 750.520c, for his alleged conduct in the bedroom and the dining room. In defendant's first jury trial, he was convicted of CSC-II. The jury was unable to reach a verdict as to the charge of CSC-I. Defendant was sentenced, as a fourth-offense habitual offender, MCL 769.12, to 10 to 30 years' imprisonment for CSC-II. After sentencing, the prosecutor decided not to retry defendant for CSC-I; therefore, the prosecutor moved to dismiss, or *nolle prosequi*, the CSC-I charge. On August 14, 2017, the trial court granted the prosecutor's motion and dismissed the CSC-I offense without prejudice.

Several years later this Court granted defendant a new trial after he successfully appealed his CSC-II conviction. *People v Warner*, unpublished per curiam opinion of the Court of Appeals, issued March 21, 2019 (Docket No. 340272), p 6.<sup>1</sup> We therefore remanded the CSC-II charge back to the trial court to schedule a new trial. *Id.*

After defendant's new trial date was scheduled, the prosecutor moved the trial court to amend the information to reinstate the CSC-I charge that had been dismissed. The prosecutor explained that she had only sought dismissal of the CSC-I charge "based on the sentence imposed by [the trial court]" and "in consultation with the victim."<sup>2</sup> The trial court granted the motion to amend the information and the CSC-I charge was reinstated over defendant's objections.

The parties also addressed several pretrial issues relevant to this appeal. The prosecutor provided notice that she had retained Thomas Cottrell, an expert in the dynamics of child sexual abuse, to "explain delayed report[ing] of child sexual abuse victims, the process of child sexual abuse disclosure, and perpetrator grooming behavior." The prosecutor provided defendant a summary of Cottrell's expected testimony. Defendant moved the trial court to appoint him an expert concerning false confessions and to conduct an *in camera* inspection of the victim's medical and psychological records. The trial court denied both of defendant's motions.

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<sup>1</sup> This Court granted defendant a new trial on the ground that defendant was denied the effective assistance of counsel because counsel failed to request a specific unanimity instruction. *Warner*, unpub op at 4, 6.

<sup>2</sup> Defendant agrees on appeal that the prosecutor sought to dismiss the CSC-I charge because the victim was satisfied with a prison sentence of "at least ten years in prison" for CSC-II and because the prosecutor did not want to "put [the victim] through a second trial."

Defendant fared worse at his second jury trial. Specifically, he was convicted of CSC-I and acquitted of CSC-II. The guidelines minimum sentence range for defendant's CSC-I conviction was 51 to 127 months' imprisonment. The trial court departed from the advisory sentencing guideline range and sentenced defendant to 20 to 40 years' imprisonment. This appeal followed.

## II. REINSTATEMENT OF THE CSC-I CHARGE

Defendant first argues that the trial court erred by granting the prosecutor's motion to reinstate the CSC-I charge that had been dismissed after his first trial. Defendant argues that after an offense is dismissed at the prosecutor's request, that offense can only be reinstated by the prosecutor filing a new indictment in district court. Because the prosecutor did not follow this procedure, defendant asserts that he is entitled to another new trial. We disagree. The trial court properly granted the prosecutor's motion to amend the information.

"The interpretation of either a statute or a court rule is a question of law subject to review de novo. A trial court's decision to grant or deny a motion to amend an information is reviewed for an abuse of discretion." *People v McGee*, 258 Mich App 683, 686-687; 672 NW2d 191 (2003) (citations omitted). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

In this case, defendant's first jury convicted him of CSC-II. After defendant was sentenced to prison for CSC-II, the prosecutor moved to dismiss the CSC-I charge that was still pending and the trial court entered the prosecutor's proposed *nolle prosequi* order of dismissal. Thereafter, this Court reversed defendant's CSC-II conviction and remanded the CSC-II charge for a new trial. *Warner*, unpub op at 6. Before trial, the prosecutor moved the trial court to amend the information to include the charge of CSC-I pursuant to MCR 6.112(H). The trial court granted the motion over defendant's objection, concluding that the court could properly amend the information and reinstate the CSC-I count.

Defendant does not directly address the prosecution's argument that the amendment to the information was proper under MCR 6.112(H). Instead, defendant relies on MCL 767.29 and related case law to support his argument that after a *nolle prosequi* is sought and entered, the dismissed charge can only be reinstated through a new indictment in district court, not by amendment. MCL 767.29 provides, in relevant part:

A prosecuting attorney shall not enter a *nolle prosequi* upon an indictment, or discontinue or abandon the indictment, without stating on the record the reasons for the discontinuance or abandonment and without the leave of the court having jurisdiction to try the offense charged, entered in its minutes. . . .

Defendant's argument relies heavily on *People v Curtis*, 389 Mich 698, 703-706; 209 NW2d 243 (1973), in which our Supreme Court considered the language of a prior version of MCL

767.29<sup>3</sup> and indicated that a prosecuting attorney who secures a *nolle prosequi* after an indictment must “obtain a new indictment and begin proceedings anew if [the prosecutor] wish[es] to reinstate the original charge.” The *Curtis* Court further stated that, under the statute, a prosecutor is not permitted “to retract a Nolle prosequi and immediately proceed to trial on the same indictment.” *Id.* at 706. This procedure was later recognized by this Court in *People v Ostafin*, 112 Mich App 712, 716; 317 NW2d 235 (1982), in which we held that “the prosecution must begin proceedings anew after entry of an order of nolle prosequi, and may not merely seek to reinstate a previous indictment or conviction.” The holding in *Ostafin* was based on *Curtis*. *Id.*

In this case, the prosecutor did not begin the proceedings anew by filing a new indictment in district court. Instead, the prosecutor successfully moved to amend the information in circuit court under MCR 6.112(H). MCR 6.112(H) provides that “[t]he court before, during, or after trial may permit the prosecutor to amend the information . . . unless the proposed amendment would unfairly surprise or prejudice the defendant.” Importantly, under MCR 6.112(H), an information can be amended to charge a new crime. *McGee*, 258 Mich App at 689-690.<sup>4</sup> Therefore, the question presented is which procedure must be followed when a prosecutor decides to reinstate a charge that was dismissed without prejudice pursuant to an order of *nolle prosequi*.

“Under our Constitution, the Supreme Court’s rule-making power in matters of court practice and procedure is superior to that of the Legislature.” *People v Parrott*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2020) (Docket No. 350380); slip op at 9, lv pending (quotation marks and citation omitted). Our Supreme Court’s authority to determine rules of practice and procedure in the courts of this state is evidenced by MCR 6.001(E), which provides:

The rules in this chapter supersede all prior court rules in this chapter and any statutory procedure pertaining to and inconsistent with a procedure provided by a rule in this chapter.

We conclude that the language of MCL 767.29 and MCR 6.112(H) do not conflict. Indeed, the language of MCL 767.29 merely requires that before a *nolle prosequi* is authorized, a prosecutor must state his or her “reasons for the discontinuance or abandonment” of an indictment on the record and obtain permission for the dismissal from the court that has jurisdiction to try the offense charged. But the statute does not speak to the procedure that is required when a prosecutor wishes to reinstate a charge that was voluntarily dismissed without prejudice. Nevertheless, as noted by defendant, in *Curtis*, 389 Mich at 703-706, our Supreme Court considered the language of a similar statute that preceded the current version of MCL 767.29 and stated that the “statute has the effect of requiring a prosecuting attorney who entered a Nolle prosequi after indictment to

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<sup>3</sup> Although MCL 767.29 was amended by 1988 PA 90 after *Curtis* was decided, the statute was not materially changed by the amendment.

<sup>4</sup> We acknowledge that, in *People v Higuera*, 244 Mich App 429, 446; 625 NW2d 444 (2001), this Court held that “[a]n information may be amended . . . so long as the accused is not prejudiced by the amendment and the amendment does not charge a new crime.” However, in so holding, the *Higuera* Court cited MCL 767.76. *Id.* Importantly, MCL 767.76 is superseded by MCR 6.112(H). *McGee*, 258 Mich App at 689.



obtain a new indictment and begin proceedings anew if [the prosecutor] wished to reinstate the original charge.” In order to understand this statement, it is necessary to take a closer look at *Curtis*.

In *Curtis*, 389 Mich at 701, the defendant was charged with sale of marijuana. As part of a plea bargain reached in district court, the prosecutor “moved to amend the original complaint by adding a second count charging [the] defendant with unlawful possession.” *Id.* The prosecutor then moved to *nolle prosequi* the more serious sale of marijuana charge. *Id.* The district court granted both motions; therefore, only the possession charge was bound over to circuit court. *Id.* at 701-702. But after bindover, the circuit court judge expressed doubt about whether the district court judge had authority to dismiss a felony charge. *Id.* at 702. Later, the circuit court sua sponte “issued an order of superintending control to the District Court requiring that an examination be held by that court as to the charge of sale [of marijuana].” *Id.* Importantly, the circuit court also concluded that the order of *nolle prosequi* entered by the district court judge was “null and void” because circuit courts alone have authority to enter a *nolle prosequi* for felonies. *Id.*

Ultimately, our Supreme Court granted leave in *Curtis* to answer the question “whether or not a District Court judge may grant an order of Nolle prosequi of any felony charge before [the judge], upon motion of the prosecuting attorney, or whether that discretion is reserved to Circuit Court.” *Curtis*, 389 Mich at 703. After concluding that neither the text of MCL 767.29 nor the parties’ arguments “answer the question presented,” the Court determined that it was proper to review the “history of the statute and the term ‘nolle prosequi’ itself . . . for an understanding of what the People of this State attempted to accomplish by first enacting this statute in 1846.” *Id.* at 703-704. After considering the common law that was in place before MCL 767.29’s “forerunner” was enacted in 1846, *id.* at 705-706, our Supreme Court stated:

A . . . review of the common law reveals that the Nolle prosequi at that time could be retracted at any time, and must have become a Matter of record to prevent a revival of proceedings on the original indictment. It thus appears clear to the court that the forerunner of the present statute in question was enacted to protect the interests of the criminal defendant. This it did by requiring that thereafter all Nolle prosequi would be entered on the record. This statute then had the effect of requiring a prosecuting attorney who entered a Nolle prosequi after indictment to obtain a new indictment and begin proceedings anew if he wished to reinstate the original charge. It thus effectively overruled the old common law rules permitting a prosecutor to retract a Nolle prosequi and immediately proceed to trial on the same indictment. . . . Today, as long as jeopardy has not attached, or the State of Limitations not run, our law permits a prosecutor to reinstate the original charge on the basis of obtaining a new indictment and thus beginning the process anew.

It does not appear, therefore, that the Legislature in any way attempted to restrict the use of Nolle prosequi in those circumstances where the prosecutor could not, solely at his discretion, reinstate the case for immediate trial. In situations akin to the one before us, this could not be done in any event as no indictment nor information had yet been filed with the trial court. The defendant still retained the right to a grand jury proceeding or a preliminary examination.

We thus hold that [MCL 767.29] applies only to proceedings held in Circuit Court after the indictment or information is filed with that court. [*Id.* at 706-707.]

Based on this analysis, our Supreme Court concluded that MCL 767.29 did not establish that only circuit courts have authority to dismiss felony charges. *Id.* at 707. The *Curtis* Court then continued with its analysis, ultimately holding that the district court had authority to dismiss the felony charge. *Id.* at 707-711.

While the *Curtis* Court did indicate that proceedings must begin anew after a *nolle prosequi* is entered, we conclude that the statement is dicta. “[O]biter dictum” is “[a] judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (though it may be considered persuasive).” *People v Higuera*, 244 Mich App 429, 437; 625 NW2d 444 (2001) (second alteration in original; quotation marks and citation omitted).

The issue before the *Curtis* Court was whether the district court had authority to dismiss a felony charge by way of an order of *nolle prosequi*. *Curtis*, 389 Mich at 703. In the Court’s analysis of whether MCL 767.29 resolved that issue, the Court considered why MCL 767.29’s predecessor statute was enacted and then opined about the effects of the statute’s enactment. *Id.* at 704-706. The issue before the *Curtis* Court was not whether the prosecutor could reinstate a felony charge in circuit court after entry of the *nolle prosequi*. Indeed, there is no indication that the prosecutor in *Curtis* even wanted to pursue the charge that it had moved to dismiss as part of a plea agreement; rather, it was the circuit court judge who sua sponte concluded the *nolle prosequi* was null and void. *Id.* at 702. Therefore, the Court’s statements concerning the effect of former MCL 767.29 was commentary that was offered to explain that the statute did not restrict a district court’s authority to enter a felony *nolle prosequi* order of dismissal. Respectfully, contrary to the conclusion reached by the concurrence, the question of what procedure a prosecutor must comply with to reinstate a charge that was dismissed via a *nolle prosequi* was not germane to the controversy at issue in *Curtis*, but rather the central issue was whether the discretion to grant or deny a motion for *nolle prosequi* was reserved solely to a circuit court. See *Higuera*, 244 Mich App at 437.

Additionally, the language of the opinion supports that the *Curtis* Court was well aware that its comment did not originate from the plain text of the statute that existed at the time that *Curtis* was decided. Indeed, the Court merely opined that the *effect* of that statute was to require prosecutors to start proceedings anew after successfully moving for an order of *nolle prosequi*. *Curtis*, 389 Mich at 706. While the *Curtis* Court offered this comment, there is no indication that the *Curtis* Court read words into the plain language of the statute, which is prohibited. See *PIC Maintenance, Inc v Dep’t of Treasury*, 293 Mich App 403, 411; 809 NW2d 609 (2011). Thus, the statements in *Curtis* are not precedential or persuasive. See *Higuera*, 244 Mich App at 437.

Although in *Ostafin*, 112 Mich App at 716, this Court held that “the prosecution must begin proceedings anew after entry of an order of *nolle prosequi*, and may not merely seek to reinstate a previous indictment or conviction,” *Ostafin* is not binding on this Court, *People v Bensch*, 328 Mich App 1, 7 n 6; 935 NW2d 382 (2019). More importantly, we conclude that *Ostafin* is also unpersuasive because its holding relies entirely on the dicta expressed in *Curtis*.

The concurrence notes that, in *People v Richmond*, 486 Mich 29; 782 NW2d 187 (2010), our Supreme Court cited *Curtis* in what appears to be a favorable manner. However, the *Richmond* Court did not specifically address whether MCL 767.29 actually applied to the facts of that case and did not engage in any sort of in depth analysis of that statute or of *Curtis*'s interpretation of it. Indeed, the *Richmond* Court concluded that it was unnecessary to address whether MCL 767.29 applied because "that dispute" did not affect the analysis of the issue that was before the Court, i.e., whether the prosecutor's actions rendered the issue of whether the trial court improperly suppressed certain evidence moot. *Richmond*, 486 Mich at 33 n 1, 34. The *Richmond* Court merely commented that the prosecutor had the option of beginning the proceedings anew. *Id.* at 36 n 3. See also *People v Richmond (On Rehearing)*, 486 Mich 1041, 1041; 783 NW2d 703 (2010) amended 784 NW2d 204 (2010).

At no point did the Courts in *Curtis*, *Ostafin*, or *Richmond* address the interplay between MCL 767.29 and MCR 6.112(H). Indeed, there is no indication that MCR 6.112(H) or a similar rule existed at the time *Curtis* and *Ostafin* were decided. It is also difficult to fathom how a discussion of MCR 6.112(H) would have been relevant in *Ostafin* or *Richmond*. In both cases, the prosecutors successfully moved to dismiss the charges that were pending before the trial courts. *Ostafin*, 112 Mich App at 715; *Richmond*, 486 Mich at 33. In this case, however, all charges were not dismissed. Indeed, the CSC-II charge was still pending before the trial court when the prosecutor moved to reinstate the CSC-I charge. Neither the parties nor this Court have found any authority that would permit amendment of an information under MCR 6.112(H) after all charges have been dismissed and the trial court is divested of jurisdiction.

Having decided that *Curtis*, *Ostafin*, and *Richardson* are not controlling and having concluded that MCL 767.29 does not describe the proper procedure for reinstating a charge that was previously dismissed pursuant to a *nolle prosequi*, we turn to the court rule applied by the trial court when it amended the information and reinstated the CSC-I charge and consider whether, under that rule, the amendment unfairly surprised or prejudiced defendant. See MCR 6.112(H). Because the amendment did not result in unfair surprise or prejudice to defendant, we conclude that the trial court properly amended the information under MCR 6.112(H) to reinstate the CSC-I charge.

Understandably, defendant does not assert on appeal that the amendment resulted in unfair surprise. Such a claim would be difficult to make in this case. When defendant was charged in 2016, he was notified at his arraignment that he was charged with CSC-I. During his preliminary examination and at his first trial, defendant successfully defended himself against allegations that he digitally penetrated the victim in the dining room. There is no dispute that the reinstated CSC-I charge was for the same CSC-I allegations that defendant had previously defended himself against. Therefore, the amendment reinstating the same CSC-I allegation in 2019 could not have surprised, let alone unfairly surprised, defendant. Defendant's argument on appeal is that the prosecutor used the wrong procedure to reinstate the CSC-I count, not that reprosecution for that offense was unfair or prohibited.

Defendant's argument in support for a procedure that requires reindictment also fails to explain what he would have gained had the CSC-I charge been refiled in district court. Nor does he explain how the amendment reinstating the CSC-I charge in circuit court resulted in unfair prejudice under MCR 6.112(H). But defendant's preference for reindictment was explained to the

trial court. Specifically, defendant explained that reindictment for CSC-I was preferable because this procedure would entitle him to another preliminary examination at which he could call new witnesses. When the trial court pressed defendant to explain, he asserted that there were two new witnesses: the victim's then-husband<sup>5</sup> who would testify that the victim "gave him a different version of events," and one of the victim's brothers, who would testify that the victim lied during a forensic interview.

The trial court was not persuaded that these new witnesses entitled defendant to a second preliminary examination. The trial court concluded that these witnesses would not "in any way, affect or result in any different outcome as to the preliminary examination" because "they would be impeachment witnesses." We agree with the trial court's assessment.<sup>6</sup> While district courts "must consider . . . the credibility of the witnesses," a "district court cannot discharge a defendant if the evidence conflicts or raises reasonable doubt concerning a defendant's guilt because this presents an issue for the trier of fact." *People v Redden*, 290 Mich App 65, 84; 799 NW2d 184 (2010). Thus, even if the new witnesses' testimony conflicted with that of the victim at a preliminary examination, the testimony would not have prevented the district court from binding that matter over because matters of credibility would ultimately be an issue for the jury. See *id.* Furthermore, although the trial court offered to arraign defendant on the CSC-I charge, defendant waived formal arraignment for that count.

Because defendant did not establish unfair surprise or prejudice, the trial court did not abuse its discretion by permitting amendment of the information under MCR 6.112(H). See *People v Goecke*, 457 Mich 442, 462; 579 NW2d 868 (1998) (holding that, "[w]here a preliminary examination is held on the very charge that the prosecution seeks to have reinstated, the defendant is not unfairly surprised or deprived of . . . a sufficient opportunity to defend at trial").

We caution that our conclusion that the trial court properly amended the information under MCR 6.112(H) is based on our very specific set of facts—none of which were present in *Curtis*, *Ostafin*, or *Richmond*. Under different circumstances, such as those at issue in *Richmond* and *Ostafin*, we may have concluded that the prosecutor in this case was required to begin the proceedings anew. Additionally, while it is arguable that the prosecutor could have filed a motion to set aside the order granting the prosecutor's request for *nolle prosequi*, the prosecutor in this case did not move the trial court for relief from the August 14, 2017 order under MCR 2.612(C). Because a motion for relief from the August 14, 2017 order was not before the trial court, we pass no judgment as to whether it would have been appropriate for the trial court to grant such a motion.

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<sup>5</sup> The victim and her husband were in the process of divorcing during the time leading up to the second trial.

<sup>6</sup> We further note that defendant did not call the victim's then-husband at the second trial. Defendant did call the victim's oldest brother, who was present when the victim's father retrieved the victim from her mother's home in December 2015. The victim's oldest brother testified that he did not recall defendant threatening to slit the victim's throat or having to restrain defendant.

### III. DUE PROCESS

Defendant argues that his due process right to present a defense was violated by the trial court improperly denying his motion for appointment of an expert on false confessions and by the trial court's refusal to conduct an *in camera* inspection of the victim's medical and psychological records.

#### A. STANDARDS OF REVIEW AND RELEVANT AUTHORITY

"This Court reviews de novo whether [a] defendant suffered a deprivation of his constitutional right to present a defense." *People v Propp*, 330 Mich App 151, 166; 946 NW2d 786 (2019), lv gtd 506 Mich 939; 949 NW2d 459 (2020). We review a trial court's decision on whether to appoint an expert for an indigent defendant for an abuse of discretion. *People v Lueth*, 253 Mich App 670, 689; 660 NW2d 322 (2002). "A trial court's decision to conduct or deny an *in camera* review of records in a criminal prosecution is [also] reviewed for an abuse of discretion." *People v Davis-Christian*, 316 Mich App 204, 207; 891 NW2d 250 (2016).

As this Court noted in *Parrott*, \_\_\_ Mich App at \_\_\_; slip op at 4,

"[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane v Kentucky*, 476 US 683, 690; 106 S Ct 2142; 90 L Ed 2d 636 (1986) (quotation marks and citation omitted). Specifically, "[a] criminal defendant must be provided a meaningful opportunity to present evidence in his or her own defense." *People v Bosca*, 310 Mich App 1, 47; 871 NW2d 307 (2015). However, a defendant's right to present a complete defense "is not unlimited and is subject to reasonable restrictions." *People v King*, 297 Mich App 465, 473; 824 NW2d 258 (2012). A defendant's "right to present a complete defense may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process." *Id.* (quotation marks and citation omitted).

#### B. ANALYSIS

##### 1. MOTION FOR APPOINTMENT OF AN EXPERT WITNESS

Defendant argues that the trial court violated his right to due process by improperly denying his motion to appoint a false-confession expert.<sup>7</sup> We disagree.

Our Supreme Court has recognized that "[t]he right to offer the testimony of witnesses . . . is in plain terms the right to present a defense[.]" *People v Kowalski*, 492 Mich 106, 139; 821 NW2d 14 (2012) (quotation marks and citation omitted). In *Ake v Oklahoma*, 470 US 68, 77; 105 S Ct 1087; 84 L Ed 2d 53 (1985), the United States Supreme Court outlined the

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<sup>7</sup> Defendant also argues that his right to equal protection was violated. However, because he fails to explain or rationalize this argument or provide any supporting authority, the argument is abandoned. See *People v Martin*, 271 Mich App 280, 315; 721 NW2d 815 (2006).

framework for determining when an indigent defendant is entitled to the appointment of an expert. The *Ake* Court stated:

Three factors are relevant to this determination. The first is the private interest that will be affected by the action of the State. The second is the governmental interest that will be affected if the safeguard is to be provided. The third is the probable value of the additional or substitute procedural safeguards that are sought, and the risk of an erroneous deprivation of the affected interest if those safeguards are not provided. [*Id.*]

In *People v Kennedy*, 502 Mich 206, 210; 917 NW2d 355 (2018), our Supreme Court held that the United States Supreme Court’s decision in *Ake* “is the controlling law” on matters involving an indigent criminal defendant’s request for “expert assistance[.]” The *Kennedy* Court adopted the “reasonable probability” standard set forth in *Moore v Kemp*, 809 F2d 702 (CA 11, 1987), to help a trial court determine whether a defendant established that he or she was entitled to expert assistance under *Ake*. *Kennedy*, 502 Mich at 226-228. The *Kennedy* Court indicated that, in order to be entitled to funds, a defendant is required to “demonstrate something more than a mere possibility of assistance from a requested expert[.]” *Id.* at 227 (quotation marks and citation omitted). “Rather . . . a defendant must show the trial court that there exists a reasonable probability both that an expert would be of assistance to the defense and that denial of expert assistance would result in a fundamentally unfair trial.” *Id.* (quotation marks and citation omitted). “In addition, the defendant should inform the court why the particular expert is necessary.” *Id.* (quotation marks and citation omitted). The *Kennedy* Court further indicated that a “defendant’s bare assertion that an expert would be beneficial cannot, without more, entitle him or her to an expert[.]” *Id.* at 226 (citation omitted).

In this case, defendant moved the trial court to appoint a false-confession expert. After oral argument, the trial court denied defendant’s motion based on a conclusion that such evidence would be inadmissible under *Kowalski*. The trial court also explained that, under *Kowalski*, “it was proper to exclude literature of false confessions.”

Defendant argues that the trial court improperly denied his motion based on a misinterpretation of *Kowalski*, and we agree given that *Kowalski* did not create a categorical ban on false-confession testimony and literature. Rather, in *Kowalski*, the trial court held a *Daubert*<sup>8</sup> hearing to determine whether the proposed experts’ testimony would be admissible under MRE 702. *Kowalski*, 492 Mich at 112. The trial court ultimately excluded the proposed experts’ testimony. *Id.* at 115-117. On appeal, our Supreme Court considered whether the trial court properly excluded the proposed testimony, ultimately affirming in part and reversing in part. *Id.* at 118-119, 144. Thus, because *Kowalski* concerned whether a trial court properly applied the rules of evidence following a *Daubert* hearing and did not hold as a matter of law that false-confession testimony is universally inadmissible, the trial court in this case erred by concluding that expert testimony regarding false confessions was not permitted under *Kowalski*.

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<sup>8</sup> *Daubert v Merrell Dow Pharm, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993).

Nonetheless, we conclude that the trial court did not abuse its discretion by denying the motion because defendant did not show that a reasonable probability existed “that denial of expert assistance would result in a fundamentally unfair trial.” See *Kennedy*, 502 Mich at 227. While defendant sought expert testimony to support his defense, defendant did not argue that he would be unable to present a false-confession defense without an expert witness. Indeed, defendant indicated that the proposed false-confession experts “would speak not to the fact that the defendant made a false confession but instead would speak to the attributes associated with false confessions and the interviewer bias of Det. Derrick Jordan.” At the motion hearing, defense counsel indicated that proposed expert Dr. Brian Cutler would not testify “to the ultimate issue of whether there was a false confession” but would instead testify “to the psychology of whether the attributes of a false confession are present.”

Additionally, although defendant argued in the trial court that denying him an expert would be fundamentally unfair because the prosecutor had retained Cottrell, Cottrell was not retained to testify about the reliability of defendant’s confession. Rather, Cottrell was retained to explain delayed reporting by child victims and the “grooming” rituals in which sexual predators often engage. The prosecutor’s notice of Cottrell’s proposed testimony specifically indicated that Cottrell would not testify regarding the veracity of the victim’s claims or whether defendant was guilty. We fail to see how the prosecutor’s retention of Cottrell to present generalized testimony about a different issue demonstrates that the denial of a false-confession expert resulted in a fundamentally unfair trial for defendant. In sum, the trial court did not abuse its discretion by denying defendant’s motion. See *People v Lyons*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998) (“This Court will affirm a lower court’s ruling when the court reaches the right result, albeit for the wrong reason.”).<sup>9</sup>

Even without expert testimony, defendant was able to present evidence and argument that his confession was false. Defense counsel explained during his opening statement that defendant had been interviewed three times by law enforcement and suggested that defendant’s statement to Detective Sergeant Jordan was not a real confession. Defense counsel also told the jury that they should put themselves “in [defendant’s] position in these interviews” and “to very carefully listen to the officer’s behavior and questions and how he acts.”<sup>10</sup>

Detective Sergeant Jordan testified on direct examination that he had utilized certain “strategies,” which included blaming the victim, during the interrogation. Detective Sergeant Jordan noted that he had done so in order to get defendant to “open up.” Detective Sergeant Jordan acknowledged that he did not know whether certain statements that he made to defendant were accurate. A portion of Detective Sergeant Jordan’s interview with defendant was played at trial, and defendant’s statement that was written by Detective Sergeant Jordan was admitted into evidence. Defense counsel cross-examined Detective Sergeant Jordan about the techniques that he used during the interview, and Detective Sergeant Jordan testified that he had interviewed defendant for a “[c]ouple of hours” and that defendant had confessed to penetrating the victim’s

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<sup>9</sup> Given this holding, we need not address defendant’s argument that a hearing is required to determine whether he was indigent at the time of the motion hearing.

<sup>10</sup> It appears that the “the officer” defense counsel was referencing was Detective Sergeant Jordan.

vagina “closer to the end” of the interview. Defense counsel also asked Detective Sergeant Jordan about his level of education, as compared to defendant’s level of education. During cross-examination of Detective Maltby, who had watched defendant’s interview with Detective Sergeant Jordan from a different room, defense counsel elicited favorable testimony that Detective Sergeant Jordan was more aggressive than defendant during the interview.

Defense counsel argued during his closing that defendant’s statement to police was coerced. Defense counsel pointed out that Detective Sergeant Jordan testified that *he* wrote the statement that defendant had signed. Defense counsel argued as follows: “Detective Jordan gave [defendant] the story that he wanted to hear. And you know why? Because the police had already interviewed [the victim] and got a version of what she said. So, this was a script.” Defense counsel further argued that defendant would have been arrested immediately had the police believed that the confession was valid. Consequently, even though the trial court denied defendant’s motion for appointment of an expert, defendant was not deprived of a meaningful opportunity to present a false-confession defense.

## 2. MOTION FOR *IN CAMERA* REVIEW OF THE VICTIM’S RECORDS

Defendant argues that he was denied his due process right to present a defense because the trial court improperly denied his motion for *in camera* review of the victim’s confidential records. We disagree.

“The right to present a defense . . . protects a defendant’s ability to put before a jury evidence that might influence the determination of guilt and to have access to exculpatory evidence.” *Propp*, 330 Mich App at 167 (quotation marks and citation omitted). “Discovery should be granted where the information sought is necessary to a fair trial and a proper preparation of a defense. Nonetheless, defendants generally have no right to discover privileged records absent certain special procedures, such as an *in camera* review of the privileged information conducted by the trial court.” *Davis-Christian*, 316 Mich App at 207-208.

In *People v Stanaway*, 446 Mich 643, 649; 521 NW2d 557 (1994), our Supreme Court balanced the opposing interests of protecting the confidentiality of privileged records with a criminal defendant’s right to obtain evidence necessary to his defense. The *Stanaway* Court held that “where a defendant can establish a reasonable probability that the privileged records are likely to contain material information necessary to his defense, an *in camera* review of those records must be conducted to ascertain whether they contain evidence that is reasonably necessary, and therefore essential, to the defense.” *Id.* at 649-650. The Court held, however, that a defendant’s “generalized assertion of a need to attack the credibility of his accuser [does] not establish the threshold showing of a reasonable probability that the records contain information material to his defense sufficient to overcome the various statutory privileges.” *Id.* at 650.

Defendant does not dispute that the victim’s records contain privileged information. Thus, defendant was only entitled to have the trial court conduct an *in camera* review of the victim’s records if he could “establish a reasonable probability that the privileged records [were] likely to contain material information necessary to his defense.” *Stanaway*, 446 Mich at 649. Defendant did not do so. In defendant’s motion, he alleged that review of the victim’s records was necessary because (1) the victim was going through certain family issues, including a divorce; (2) evidence



supported that the victim had “trouble with consequential thinking,” anxiety, depression, “ADHD and trouble concentrating”; (3) the victim’s younger half-brother has a genetic issue, which the victim may also have; and (4) the victim and members of her family engage in dysfunctional behavior. For these reasons, defendant argued that the victim “may have emotional issues that need to be explored to test” her credibility. At oral argument on the motion, defendant added that the victim was receiving mental health treatment before she made the allegations and that she had been in trouble at school.

The trial court properly concluded that defendant merely offered generalized assertions that the record might contain useful evidence, as opposed to offering “any specific articulable fact that would indicate that the requested confidential communications were necessary to a preparation of his defense.” See *Stanaway*, 446 Mich at 681. At most, defendant’s arguments merely supported that the victim’s records *may* reveal evidence to support defendant’s theory that the victim had fabricated the allegations against him. Because defendant’s “request falls short of the specific justification necessary to overcome the privilege” and essentially amounted to an attempt to “fish” for evidence that may enhance his defense, the trial court did not abuse its discretion by denying defendant’s motion. See *id.* at 681-682.

We further note that the victim’s medical records were not necessary for defendant’s defense that the victim had fabricated the allegations against him. During opening statements, defense counsel implored the jury to “listen to inconsistencies and contradictions in [the victim’s] story.” Defense counsel emphasized at trial that the victim’s mother did not believe that the victim was being truthful about the assaults and that other members of the victim’s family did not report the assaults after the victim disclosed them. During cross-examination of the victim, defense counsel successfully impeached the victim and elicited testimony that she could not recall certain details regarding the assaults. Defense counsel also elicited testimony from the victim’s stepmother that, at the time of the 2016 investigation, she had questioned the victim’s mental stability. Testimony was elicited from the victim’s older half-brother that he had not spent much time with the victim in the past few years because of a “loss of respect for her character.” Defense counsel also elicited favorable testimony from the prosecution’s expert, Cottrell, that he had heard of false reports, that he had never met the victim, and that the testimony that he offered concerning the dynamics of sexual abuse may not apply in this case.

During closing arguments, defense counsel argued that the victim was not credible because she had provided inconsistent statements concerning the alleged assaults and because her behavior following the alleged assaults was not consistent with someone who had been assaulted. Defense counsel also pointed out that the victim’s family did not believe her and suggested that law enforcement did not believe the victim considering that the victim was interviewed twice by police and given that defendant was not immediately arrested even though he had allegedly “confessed” to police. Defendant’s acquittal of CSC-II suggests that defendant’s defense of undermining the victim’s credibility had some success. Therefore, defendant was not denied the right to present a meaningful defense as a result of the trial court’s decision to deny his motion for *in camera* review of the victim’s privileged records.

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## IV. SENTENCING

## A. REASONABLENESS OF SENTENCE

Defendant argues that his 20 to 40 year sentence for CSC-I was unreasonable. We disagree.

“A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness.” *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). The standard of review is abuse of discretion. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). A trial court abuses its discretion when it applies a minimum sentence that violates the principle of proportionality or “by failing to provide adequate reasons for the extent of the departure sentence imposed[.]” *Id.* at 476.

“[A] sentence is reasonable under *Lockridge* if it adheres to the principle of proportionality set forth in [*People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990)].” *People v Lampe*, 327 Mich App 104, 126; 933 NW2d 314 (2019) (alteration in original; quotation marks and citation omitted). Factors that a trial court may consider under the proportionality standard include the following:

(1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant’s misconduct while in custody, the defendant’s expressions of remorse, and the defendant’s potential for rehabilitation. [*Id.* (quotation marks and citation omitted).]

In this case, defendant was convicted of CSC-I and his guidelines minimum sentence range was 51 to 127 months’ imprisonment. During sentencing, the trial court identified a number of factors it considered when sentencing defendant. The trial court first noted the severe impact the sentencing offense had on the victim’s life, stating that the assault destroyed the victim’s life and the girl “she would have been.” The court also expressed deep concern that a grown man would sexually assault a child and then try to justify his criminal sexual misconduct to police by providing extensive detail about how the victim was sexually aroused by him—something the trial court described as “absolutely disgusting.” The trial court further stated that throughout the proceeding, defendant “blamed the victim” and had a “nonchalant” demeanor that “was very striking throughout the trial.” And perhaps most importantly, the trial court noted that while the guidelines already considered defendant’s prior felony convictions, the guidelines did not account for how similar defendant’s prior CSC-III conviction was to the sentencing offense such that both defendant’s prior conviction and the sentencing offense involved the sexual assault of an adolescent girl. The trial court explained that defendant’s predilection to prey on vulnerable children reflects that defendant is unlikely to be reformed and underscores the need for the trial court’s sentence to protect society.

Rather than address each of these proper sentencing considerations, defendant argues that the trial court’s sentence improperly punished him for blaming the victim at trial. Defendant argues that this was improper because maintaining one’s innocence in a criminal sexual conduct case necessarily requires a defendant to accuse a victim of lying. While “[a] sentencing court may

not base a sentence, even in part, on a defendant's failure to admit guilt," a court may consider a defendant's lack of remorse. *People v Carlson*, 332 Mich App 663, 675; 958 NW2d 278 (2020).

To determine whether sentencing was improperly influenced by the defendant's failure to admit guilt, we focus on three factors: (1) the defendant's maintenance of innocence after conviction; (2) the judge's attempt to get the defendant to admit guilt; and (3) the appearance that had the defendant affirmatively admitted guilt, his sentence would not have been so severe. [*Id.* (quotation marks and citation omitted).]

In this case, the trial court noted at sentencing that defendant continued to maintain his innocence. But there is no indication that the trial court improperly attempted to force defendant to admit his guilt or improperly punish defendant for doing so. To the contrary, the trial court noted that a defendant has an "absolute right" to maintain innocence, but "without revictimizing the victim." The trial court's statements at sentencing do not suggest that defendant was punished for maintaining his innocence or claiming that the victim was lying. Rather, the trial court's statements reflect that it considered defendant's statement to police that his criminal conduct was somehow justified or excused because the victim was the sexual aggressor. The trial court properly considered defendant's unscripted statement to police because defendant's justification for his conduct suggested to the trial court that defendant has low potential for rehabilitation and an unreasonable risk of reoffending.

Defendant next argues that there was no reasonable explanation for his sentence, which exceeded the guidelines minimum sentence range. However, this argument is not supported by the record, which establishes that the trial court provided a detailed and well-reasoned explanation as to why it concluded that a 20-year minimum sentence was "proportionate to the seriousness of the circumstances surrounding the offense and the offender." See *Steanhouse*, 500 Mich at 474. Consequently, the trial court did not abuse its discretion.

## B. VINDICTIVE SENTENCING

Defendant next argues that the trial court's minimum sentence of 20 years for his CSC-I conviction was an unlawful vindictive sentence because the sentence punished him for successfully exercising his right to appeal. We disagree.

A claim that a sentence is vindictive implicates a defendant's constitutional rights. *Michigan v Payne*, 412 US 47, 50; 93 S Ct 1966; 36 L Ed 2d 736 (1973). "This Court reviews de novo a question of constitutional law." See *Kennedy*, 502 Mich at 213.

In *North Carolina v Pearce*, 395 US 711, 723-724; 89 S Ct 2072; 23 L Ed 2d 656 (1969), overruled in part on other grounds by *Alabama v Smith*, 490 US 794; 109 S Ct 2201; 104 L Ed 2d 865 (1989), the United States Supreme Court recognized that a sentence that punishes a defendant for successfully appealing a conviction is vindictive and therefore violates a defendant's due process rights. The *Pearce* Court held that such vindictive considerations "must play no part in the sentence [a defendant] receives after a new trial." *Pearce*, 395 US at 725. The Court further held that, "[i]n order to assure the absence of such a motivation, . . . whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must

affirmatively appear.” *Id.* at 726. “[T]he factual data upon which the increased sentence is based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal.” *Id.* The standard established in *Pearce* was broad and far-reaching.

But the United States Supreme Court has since clarified that “[t]he *Pearce* requirements . . . do not apply in every case where a convicted defendant receives a higher sentence on retrial.” *Texas v McCullough*, 475 US 134, 138; 106 S Ct 976; 89 L Ed 2d 104 (1986). This is because “the evil the [*Pearce*] Court sought to prevent” was not the imposition of “enlarged sentences after a new trial,” but the “vindictiveness of a sentencing judge.” *Id.* The Court has further recognized that because “the severity” of applying an inflexible presumption “may operate in the absence of any proof of an improper motive and thus . . . block a legitimate response to criminal conduct,” *United States v Goodwin*, 457 US 368, 373; 102 S Ct 2485; 73 L Ed 2d 74 (1982), the Supreme Court has “limited its application . . . to circumstances where its objectives are thought most efficaciously served,” *Smith*, 490 US at 799 (quotation marks and citations omitted). “Such circumstances are those in which there is a ‘reasonable likelihood’ that the increase in sentence is the product of actual vindictiveness on the part of the sentencing authority.” *Id.* at 799, quoting *Goodwin*, 457 US at 373. But where the possibility of judicial vindictiveness is only speculative, a presumption of vindictiveness does not apply and “the burden remains upon the defendant to prove actual vindictiveness[.]” *Smith*, 490 US at 799 (quotation marks and citations omitted). Thus, the once broad presumption of vindictiveness established in *Pearce* is now limited to circumstances where there is a reasonable likelihood that a sentence improperly punishes a defendant for exercising the right to appeal a conviction, while the mere speculation of vindictiveness will not invoke the *Pearce* presumption.

Appellate courts have declined to apply the *Pearce* presumption of vindictiveness where the reasons for the harsher sentence after a successful appeal are apparent from the surrounding circumstances. For example, the United States Supreme Court has rejected the argument that the *Pearce* presumption applies whenever a defendant’s sentence is increased following retrial, regardless of whether the sentence was imposed by the same “sentencer.” See *Colten v Kentucky*, 407 US 104, 116-118; 92 S Ct 1953; 32 L Ed 2d 584 (1972) (declining to apply the presumption when the second court in a two-tier trial system imposed a longer sentence); *Chaffin v Stynchcombe*, 412 US 17, 26-27; 93 S Ct 1977; 36 L Ed 2d 714 (1973) (declining to apply the presumption where a jury imposed the increased sentence on retrial). In such circumstances, there is no reason to assume that the second sentencer held a grudge against the defendant and was motivated by actual vindictiveness. Similarly, judicial vindictiveness is unlikely to have occurred when a defendant receives a higher sentence after proceeding to trial following a previous guilty plea being vacated on appeal. *Smith*, 490 US at 794, 801. This is the case because “[e]ven when the same judge imposes both sentences, the relevant sentencing information available to the judge after the plea will usually be considerably less than that available after trial.” *Id.* at 801. The United States Supreme Court also declined to apply the presumption of vindictiveness in a case where the trial court granted the defendant’s motion for a new trial on the basis of prosecutorial misconduct. *McCullough*, 475 US at 138-139. The Court concluded that, in such a case, there is “no realistic motive for vindictive sentencing[.]” *Id.* at 139.

Our Supreme Court has recognized that, when the same judge resentences a defendant and increases the sentence, the increased sentence is presumptively vindictive. See *People v Mazzie*,

429 Mich 29, 35; 413 NW2d 1 (1987); *People v Lyons (After Remand)*, 222 Mich App 319, 323; 564 NW2d 114 (1997) (the defendant was resentenced for a longer period of time by the same judge, therefore the presumption is raised). And like the federal courts, Michigan appellate courts have not invoked a presumption of vindictiveness when the reason for the imposition of a greater sentence is apparent. *Mazzie*, 429 Mich at 33 (“where a second sentence is imposed by a judge other than the judge who imposed the original sentence, we should not invoke a presumption of vindictiveness”).

In this case, we conclude that the *Pearce* presumption of vindictiveness does not apply. We recognize that the same trial judge presided over both trials and imposed a harsher sentence after defendant successfully appealed. But under *Pearce* and its progeny, this is only the first step of the analysis. Before the *Pearce* presumption can be invoked, an appellate court must examine the surrounding circumstances to determine whether there is a reasonable likelihood that the defendant was punished for successfully appealing his conviction. The facts here do not support invoking the presumption.

First, defendant was convicted of CSC-I after his second trial, whereas defendant’s first trial resulted in a conviction for CSC-II, an offense punishable by up to 15 years’ imprisonment. MCL 750.520c(2)(a). After defendant’s successful appeal, he was convicted of CSC-I, an offense punishable by “imprisonment for life or for any term of years.” MCL 750.520b(2)(a). Under Michigan’s guideline scheme, CSC-I is categorized as crime class “A” which is reserved for the most serious felony offenses, while the guidelines categorize CSC-II in crime class “C,” thereby designating it a less serious offense. MCL 777.16y. Because of this, defendant’s CSC-I conviction was scored in a higher sentencing grid, resulting in a higher minimum prison sentence for CSC-I.<sup>11</sup> Accordingly, defendant’s sentence was different because the guidelines minimum sentence range was increased, as was the maximum potential sentence. These circumstances, not judicial vindictiveness, support the trial court’s imposition of a more severe sentence that better accounts for the severity of the sentencing offense. Indeed, the trial court’s sentence was a “legitimate response to criminal conduct.” See *Goodwin*, 457 US at 373.

Because the possibility of judicial vindictiveness is only speculative and the presumption does not apply, “the burden remains upon . . . defendant to prove actual vindictiveness[.]” See *Smith*, 490 US at 799. The record contains no indication of actual vindictiveness on the part of the trial court. Indeed, the record is absent of any expressed hostility that suggests that the trial court deliberately penalized defendant for successfully exercising his right to appeal his previous conviction and sentence. Because defendant has failed to make a showing of actual vindictiveness, he is not entitled to the relief he seeks.

Furthermore, even if we were to conclude that the presumption of vindictiveness applied, the presumption would be overcome. The presumption of vindictiveness is rebutted when “events subsequent to the first trial that may have thrown new light upon the defendant’s life, health, habits, conduct, and mental and moral propensities arise.” *Pearce*, 395 US at 723 (quotation marks and

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<sup>11</sup> The minimum guidelines sentence range with respect to the CSC-II conviction was 12 to 36 months’ imprisonment. The minimum guidelines sentence range with respect to the CSC-I conviction was 51 to 127 months’ imprisonment.

citation omitted). Similarly, “the presumption may be overcome where the judge at resentencing possessed information which was unavailable to [the judge] at the initial sentencing, even where that information does not concern conduct of the defendant occurring *after* the first trial.” *Mazzei*, 429 Mich at 35-36. “[T]he presumption of vindictiveness may be overcome only when the extent of the increase in the sentence bears a reasonable relationship to the new information.” *Id.* at 36.

As explained by the trial court, CSC-I is a particularly serious offense. The court stated:

[I]n this case, a jury of [defendant’s] peers found him guilty of CSC first, and I agree with the comments by [the prosecutor]. Murder is always the crime that we think of as the absolute worst thing. And, I guess, in almost every way it is because the person is gone. But, in a case of CSC first, with a 13 year old girl, [the victim’s] gone too. At least the girl she would have been but for the intervening acts of the Defendant that the jury found were, in fact, committed.

Although defendant appears to argue that the conduct underlying the CSC-I charge was not new information because the trial court could have considered the conduct underlying the CSC-I charge at his original sentencing for CSC-II, there is no indication that the trial court did so. Although the trial court did reference the conduct underlying the CSC-I charge, it stated:

[Defendant] didn’t have to blame the victim. He didn’t have to accuse a 13 year old of allegedly grabbing his hand and putting it down his pants. The jury didn’t believe him, I don’t believe him, and it’s really a revictimization. By saying those things he is revictimizing this young girl.<sup>12]</sup>

Thus, the trial court merely indicated that it found defendant’s *statements* about that offense to be relevant. The trial court did not state that it was sentencing defendant on the basis of the conduct underlying the CSC-I charge. We conclude that it is irrelevant that the trial court *could* have considered the conduct underlying the CSC-I charge when there is no indication that the trial court actually did so in relation to the 2017 sentencing.

Additionally, defendant’s updated presentencing investigation report (PSIR) indicates that PPOs were obtained on behalf of the minor children that defendant shared with the victim’s mother. The trial court noted that it was concerning that the PPOs were obtained *after* defendant’s parental rights were terminated to those children. At defendant’s 2017 sentencing, there was no mention of PPOs, although defendant’s counsel at the time indicated that defendant’s parental rights had been terminated. In addition, the victim was not present at the 2017 sentencing hearing. Rather, the victim’s aunt spoke on the victim’s behalf, and the victim’s statement was included in the original PSIR. The victim’s statements at the 2019 sentencing hearing included new information. Specifically, at defendant’s 2019 sentencing, the victim reported that defendant had damaged many of her relationships with family members, including her relationships with her mother and older brother. In the victim’s 2017 statement, she merely asked for the “maximum

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<sup>12</sup> Defendant testified at the first trial that he did not touch the victim inappropriately and that he had lied to law enforcement. Defendant did not testify at the second trial.

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sentence possible,” but at the 2019 sentencing she specifically asked the trial court to sentence defendant to 20 to 40 years’ imprisonment.

Additionally, we conclude that the increase of a 10-year minimum to a 20-year minimum bore a reasonable relationship to the new information, which was unavailable at defendant’s original sentencing. See *Mazzie*, 429 Mich at 36. Indeed, the trial court did not rely on minor information that had no relevance to a fair or appropriate sentence. See *id.* Instead, the trial court appropriately relied on the seriousness of a CSC-I offense, the impact that defendant’s crime had on the victim’s life, and defendant’s behavior following the termination of his parental rights, which is relevant to defendant’s “habits, conduct, and mental and moral propensities.” See *Pearce*, 395 US at 723 (quotation marks and citation omitted). In sum, the trial court provided an appropriate on-the-record, wholly logical, nonvindictive reason for the sentence. See *id.* at 726.

Affirmed.

/s/ Thomas C. Cameron  
/s/ James Robert Redford

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STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON EARL WARNER,

Defendant-Appellant.

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FOR PUBLICATION

October 7, 2021

No. 351791

Eaton Circuit Court

LC No. 2016-020296-FC

Before: CAMERON, P.J., and BORRELLO and REDFORD, JJ.

BORRELLO, J (*concurring in result*).

I concur in the result reached by the majority but write separately to express my strong disagreement with the majority’s attempt to overturn law set forth by a superior court under the guise of labeling a holding by our Supreme Court “dicta.” Here, the majority seeks to cast aside prior holdings by our Supreme Court and this Court which held that following entry of an order of *nolle prosequi*, the prosecution was required to begin the proceedings anew. In their opinion, the majority concludes that it was proper for the trial court to allow the prosecution to reinstate the CSC-I charge against defendant by amending the information and without remanding to the district court for a new preliminary examination. The majority arrives at their result by erroneously concluding that the procedure to be undertaken in such cases as previously set forth in *People v Curtis*, 389 Mich 698; 209 NW2d 243 (1973) was meaningless dicta. It is here where I take issue with my colleagues. It is no small detail for an inferior court to begin labeling the holdings of a superior court dicta, especially in cases, where, like here, the superior court has reaffirmed the very holding now labeled dicta by an inferior court. As will be pointed out below, our Supreme reaffirmed their holding in *Curtis* in 2010. Following their affirmance, this Court published a case based on that very “dicta.” Unfortunately, because the majority’s precepts of what constitutes “dicta” are erroneous, the entirety of their analysis on this issue is rife with error. Unlike the majority, I do not believe we need to conjure an opinion from a blank slate, nor do I see a legal or policy basis to casually dismantle a half century of legal precedent set forth by a superior court. Therefore, contrary to the analysis employed by the majority, I conclude, that binding precedent from our Supreme Court dictates that the procedure employed here by the trial court was erroneous. Nonetheless, I further conclude that the error was harmless and would affirm the result on that basis.



Our Supreme Court held in *Curtis*, 389 Mich at 706 that the forerunner to MCL 767.29<sup>1</sup> “was enacted to protect the interests of the criminal defendant” and “effectively overruled the old common law rules permitting a prosecutor to retract a *Nolle prosequi* and immediately proceed to trial on the same indictment.” The *Curtis* Court further held that “[t]his statute then had the effect of requiring a prosecuting attorney who entered a *Nolle prosequi* after indictment to obtain a new indictment and begin proceedings anew if he wished to reinstate the original charge.” *Curtis*, 389 Mich at 706.

In this case, the trial court permitted the prosecution to avoid following this procedure by allowing the prosecution to amend the information to reinstate the CSC-I charge that had previously been dismissed by a *nolle prosequi* order. Under *Curtis*, the prosecution should have been required “to obtain a new indictment and begin proceedings anew” in order to reinstate the original CSC-I charge. *Curtis*, 389 Mich at 706. The failure to follow this procedure was error. *Id.*

The majority avoids this result by concluding that the rule quoted above from *Curtis*, requiring a prosecutor to “begin proceedings anew” in order to reinstate a charge that had been dismissed by *nolle prosequi* after indictment, was dicta. They are wrong. “[O]biter dictum” is “[a] judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (though it may be considered persuasive).” *People v Higuera*, 244 Mich App 429, 437; 625 NW2d 444 (2001) (second alteration in original; quotation marks and citation omitted). However, this Court has also recognized that “[t]he Michigan Supreme Court has declared . . . that [w]hen a court of last resort intentionally takes up, discusses and decides a question *germane* to, though not necessarily decisive of, the controversy, such decision is not a *dictum* but is a judicial act of the court which it will thereafter recognize as a binding decision.” *Id.* (quotation marks and citation omitted; second alteration in original).

In *Curtis*, the Court’s pronouncement of the rule requiring prosecutors to begin anew when reinstating a charge that had been dismissed by *nolle prosequi* was made in the context of the Court’s analysis of the history of MCL 767.29 and the common law applicable to *nolle prosequi* before that statutory provision was enacted. *Curtis*, 389 Mich at 704-706. The Court was required to construe MCL 767.29 because the “appellee, and the Honorable Circuit Court Judge, by means of his order of superintending control, [took] the position that the matter is determined by MCLA 767.29; MSA 28.969 . . . .” *Curtis*, 389 Mich at 703.

The *Curtis* Court explained that in order to answer the question presented—i.e. “whether or not a District Court judge may grant an order of *Nolle prosequi* of any felony charge before him, upon motion of the prosecuting attorney, or whether that discretion is reserved to Circuit Court”—a “review of the history of the statute involved and the term ‘*nolle prosequi*’ itself is necessary for an understanding of what the People of this State attempted to accomplish by first enacting this statute in 1846.” *Curtis*, 389 Mich at 703-704. In the context of this analysis, the

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<sup>1</sup> The *Curtis* Court noted that this statute had “remained virtually unchanged since its first adoption in 1846.” *Curtis*, 389 Mich at 704.

Court determined that the statute changed the prior existing common law regarding *nolle prosequi*<sup>2</sup> by requiring all *nolle prosequi* to be entered on the record and further requiring prosecutors to “obtain a new indictment and begin proceedings anew” before reinstating any charge that had been previously dismissed by an order of *nolle prosequi* after indictment. *Id.* at 706. After making this determination, the *Curtis* Court further concluded:

It does not appear, therefore, that the Legislature in any way attempted to restrict the use of Nolle prosequi in those circumstances where the prosecutor could not, solely at his discretion, reinstate the case for immediate trial. In situations akin to the one before us, this could not be done in any event as no indictment nor information had yet been filed with the trial court. The defendant still retained the right to a grand jury proceeding or a preliminary examination.

We thus hold that MCLA 767.29; MSA 28.969 applies only to proceedings held in Circuit Court after the indictment or information is filed with that court. [*Id.* at 706-707.]

Our Supreme Court in *Curtis* proceeded to analyze other sub-issues before ultimately holding that “the Circuit Court, in this situation, committed error in issuing its order of superintending control requiring that an examination be held on the higher charge. As to that count, the prosecuting attorney had already entered a Nolle prosequi, with leave of the district court. We now state that such an action was within the discretion of the District Court judge.” *Id.* at 710-711.

It is thus clear from the Supreme Court’s opinion in *Curtis* that the issue of how a prosecutor was to reinstate a charge that had been previously dismissed by a *nolle prosequi* order was intentionally taken up and decided by the Court, and it is also clear from the opinion that this issue was necessary to the decision or, at a minimum, germane to the controversy. Contrary to the view taken by the majority, our Supreme Court in *Curtis* expressed in no uncertain terms that this issue was necessary and germane to its analysis. Accordingly, the rule that a prosecutor in this situation must “begin proceedings anew” is not dicta but is instead a binding decision by a superior court. *Higuera*, 244 Mich App at 437. This conclusion is further bolstered by the fact that our Supreme Court has cited *Curtis* for this same rule. See *People v Richmond*, 486 Mich 29, 36 n 3; 782 NW2d 187 (2010) (“If the prosecution’s voluntary dismissal was a *nolle prosequi* under MCL 767.29, the prosecution could have reinstated the ‘original charge on the basis of obtaining a new indictment . . . .’ *People v Curtis*, 389 Mich. 698, 706, 209 N.W.2d 243 (1973).”) (ellipsis in original).

The majority does not stop at its pronouncement that our Supreme Court’s rule announced in *Curtis* was dicta; they go further by criticizing the soundness of our Supreme Court’s decision

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<sup>2</sup> The *Curtis* Court summarized the common law applicable to *nolle prosequi* as it existed prior to the enactment of the statutory provision at issue as follows: “A further review of the common law reveals that the Nolle prosequi at that time could be retracted at any time, and must have become a Matter of record to prevent a revival of proceedings on the original indictment.” *Curtis*, 389 Mich at 705-706.

1528a

in *Curtis*, characterizing our Supreme Court's construction of the statute as a comment that is not precedential or persuasive because (although the majority attempts to deny that this is their reason) the Supreme Court effectively read additional language into the statute. However, our Supreme Court has been abundantly clear in stating that "[i]t is the Supreme Court's obligation to overrule or modify case law if it becomes obsolete, and until this Court takes such action, the Court of Appeals and all lower courts are bound by that authority." *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 192-193; 880 NW2d 765 (2016) (quotation marks and citation omitted).

Additionally, the majority relies on MCR 6.112(H), which provides that the "court before, during, or after trial may permit the prosecutor to amend the information or the notice of intent to seek enhanced sentence unless the proposed amendment would unfairly surprise or prejudice the defendant." However, this court rule is silent regarding the procedure when the prosecution seeks to reinstate a charge that has previously been dismissed by an order of *nolle prosequi* such as occurred in the instant case. Thus, the circumstances at issue in this case are squarely controlled by our Supreme Court's holding in *Curtis* and the court rule is inapplicable.

Having concluded that the procedure followed in this case was erroneous does not, however, end the analysis. The practical effect of this error was to deny defendant a new preliminary examination before the CSC-I charge was reinstated. As this Court concluded in *People v McGee*, 258 Mich App 683, 685; 672 NW2d 191 (2003), "in light of defendant's subsequent conviction, any error in failing to conduct a preliminary examination does not warrant reversal because defendant has not shown that the alleged error affected the trial." The same is true in this case. Defendant was subsequently convicted of CSC-I following his jury trial. Thus, the failure to conduct a preliminary examination as a result of the improper procedure followed for reinstating the CSC-I charge was harmless. *Id.* For that reason, I would conclude that reversal is not required on this ground.

/s/ Stephen L. Borrello

# Order

1529a

Michigan Supreme Court  
Lansing, Michigan

September 23, 2022

Bridget M. McCormack,  
Chief Justice

163805

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 163805  
COA: 351791  
Eaton CC: 2016-020296-FC

DAMON EARL WARNER,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the October 7, 2021 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1). The parties shall address: (1) whether, under MCL 767.29 and MCR 6.112(H), a trial court may amend an information, over objection, to include a charge that was dismissed pursuant to an order of *nolle prosequi*, without beginning the proceedings anew, “unless the proposed amendment would unfairly surprise or prejudice the defendant,” MCR 6.112(H); (2) if so, whether the Eaton Circuit Court erred by doing so in this case and whether any error was harmless; and (3) whether the trial court abused its discretion by denying the defendant’s motion to appoint an expert in false confessions.

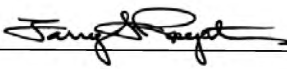
The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



p0920

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 23, 2022

  
Clerk

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stated that Pearl put his hand down her pajama pants. She told him that she was horny and that her pussy was on fire. Stated that all four of his fingers touched her vagina and stated it was wet. He could feel the moisture. Stated that he touched the inside of her lips and then he pulled his hand out.

Is this statement true? Yes D.W.  
Did you give this statement voluntarily? Yes D.W.

X *[Signature]* 5-5-16

X *[Signature]*

PEOPLE'S EXHIBIT  
8  
9-16-19 KB

NP16-88 Record 1  
Fulton County Sheriff Department  
Agency Case 16-352 Sub 1  
Officer Maltby, Jim IX: 5176523313  
Examiner Jordan, Derrick  
Damon Earl Warner w/m DOB: 10-74-1100-1 5 5 2015  
9:00am

01531a

STATE OF MICHIGAN, COUNTY of EATON

**FILED**

STATE OF MICHIGAN  
IN THE 56<sup>TH</sup> CIRCUIT COURT FOR EATON COUNTY

FEB 14 2017

DIANA BOSWORTH  
EATON COUNTY CLERK

PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 16-020296-FC  
Hon. Janice K. Cunningham

DAMON EARL WARNER,  
Defendant.

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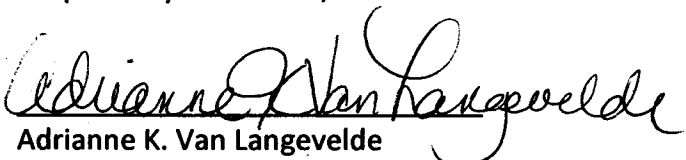
**Notice Pursuant to MCL 768.27a**

Pursuant to MCL 768.27a, the People give notice that they intend to introduce evidence of other acts of a sexual assault by defendant on a victim who was a child at the time of the assault and that defendant has a conviction of Attempted CSC 3<sup>rd</sup> on that victim. Attached is the Judgment of Sentence and police report summarizing what the People believe testimony will be regarding the other act of sexual assault.

The purpose of introducing this evidence is to show the defendant's propensity toward acts of criminal sexual conduct. The proposed evidence is admissible under MRE 403 because the probative value is not substantially outweighed by the danger of unfair prejudice.

Dated: February 14, 2017

Respectfully Submitted,

  
Adrienne K. Van Langevelde  
Assistant Prosecuting Attorney

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Original - Court 1532a  
 1st copy - Corrections  
 2nd copy - Corrections (for return)  
 3rd copy - State Police  
 4th copy - Defendant  
 5th copy - Prosecutor  
 Page 1 of 1

Approved, SCAO

STATE OF MICHIGAN  
 37TH JUDICIAL CIRCUIT  
 CALHOUN COUNTY

JUDGMENT OF SENTENCE  
 COMMITMENT TO  
 CORRECTIONS DEPARTMENT

CASE NO.  
 01-000468-FC-M

ORI Court Address CALHOUN COUNTY JUSTICE CENTER Court Telephone no.  
 MI- 130015J BATTLE CREEK, MI 49014-4066 616-969-6518  
 Police Report No. HPD 00-0076

THE PEOPLE OF THE STATE OF MICHIGAN

Defendant's name, address, and telephone no.

WARNER, DAMON, EARL  
 430 S BYRON LOT 41  
 HOMER, MI 49245

CTN	SID	DOB
130100028901	1712924T	10/10/74

Prosecuting attorney name Bar no.  
 KABOT, JEFFREY A., 41804

Defendant attorney name Bar no.  
 GILBERT, DAVID E., 41934

**THE COURT FINDS:**

1. The defendant, represented by counsel, was found guilty on 2/01/01 of the crimes stated below:  
 \*Plea: use "G" for guilty plea; "NC" for nolo contendere; "MI" for guilty but mentally ill.  
 \*Use "X" if sentence is to be enhanced because of Habitual Offender Act.

Count	CONVICTED BY			CRIME	CHARGE CODE (S) MCL citation/PACC Code
	Plea	Court	Jury		
2	G			CSC 3RD DEGR FORCE	750.520D1B ATTEMPT

- 2. The conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040. The defendant's driver license number is: \_\_\_\_\_
- 3. HIV testing was ordered on 2/16/01 Date. Confidential test results are on file.

**IT IS ORDERED:**

4. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.		Mos.	Days	
2	3/12/01		23			60	3/12/01		180	

- Defendant shall pay restitution of \$ \_\_\_\_\_. If a cash bond/bail was personally posted by the defendant, payment toward restitution is to first be collected out of that bond/bail and allocated as specified under MCL 775.22.
- 5. Sentence(s) to be served consecutively to:
  - each other.
  - case number \_\_\_\_\_
- 6. Defendant shall pay a \$ 60.00 assessment for the Crime Victim Rights Fund.
- 7. Court recommends: REGISTER UNDER THE SEX OFFENDER ACT. COUNT 1 IS HEREBY DISMISSED.
- 8. Defendant shall pay a \$ 150.00 assessment for forensic lab test.

MARCH 12, 2001  
 Date Judge STEPHEN B. MILLER Bar no. 23152

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk





01534a

**Incident : 2000-0076**

Homer Police  
PO Box 188  
138 East Main Street  
Homer, MI 49846  
517-688-4312

**Informational**

Name: Sheryl unknown Dawson  
DOB: [REDACTED]  
Race: White Sex: Female  
Height: Weight:  
Hair: Eyes:

Address: 700 Occochee Rd.  
Ocea Fla 34761  
Social Security #: [REDACTED]  
DL/State:  
Telephone Number: (407)-854-7804  
Alias:

**Informational**

Name: Pamela Jean Shepard  
DOB: [REDACTED]  
Race: White Sex: Female  
Height: Weight:  
Hair: Eyes:

Address: 478D Roger Rd.  
Panna MI 49269  
Social Security #: [REDACTED]  
DL/State:  
Telephone Number: (517)831-3843  
Alias:

**Informational**

Name: Tawana Marie Ruff  
DOB: [REDACTED]  
Race: White Sex: Female  
Height: 5-03 Weight: 182  
Hair: Brown Eyes: Hazel

Address: 430 South Byron Street Lot # 108  
Homer MI 49245  
Social Security #: 377-88-3385  
DL/State: R-341-789-885-378AM  
Telephone Number: 517-588-4179  
Alias:

**Informational**

Name: Mary Ruff  
DOB: [REDACTED]  
Race: White Sex: Male  
Height: Weight:  
Hair: Brown Eyes:

Address: 430 South Byron #108  
Homer MI 49245  
Social Security #: [REDACTED]  
DL/State: R-341-885-020-143 / MI  
Telephone Number: 517-588-4302  
Alias:

**Informational**

Name: Megan Marie Ruff  
DOB: [REDACTED]  
Race: White Sex: Female  
Height: 5-08 Weight: 110  
Hair: Brown Eyes: Hazel

Address: 430 South Byron #108  
Homer MI 49245  
Social Security #: [REDACTED]  
DL/State:  
Telephone Number: 517-588-4302  
Alias:

**Informational**

Name: Thomas Stanley Eding  
DOB: [REDACTED]  
Race: White Sex: Male  
Height: 5-09 Weight: 160  
Hair: Blond Eyes: Green

Address: 430 South Byron #108  
Homer MI 49245  
Social Security #: 382-02-7574  
DL/State: E-382-782-777-884 / MI  
Telephone Number:  
Alias:

RECEIVED by MSC 12/28/2022 2:41:49 PM

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**Incident : 2000-0076**

Homer Police  
 PO Box 165  
 130 East Main Street  
 Homer, MI 49846  
 617-688-4312

**Informational**

Name: Niki Odell

DOB:

Race: White

Sex: Female

Height:

Weight:

Hair: Brown

Eyes:

Address: 5700 29 Mile Road

Homer

MI

49245

Social Security #:

DL/State:

Telephone Number: 517-688-4336

Alias:

***Narrative / Comments Regarding The Incident*****INFORMATION:**

On 1/19/2000 Homer Police Department was contacted by [REDACTED] and given a letter that had been written to Kelle Deason, by Amanda Ratliff. In the letter, Amanda Ratliff, who is 13 years old as of this report, indicates she is seeing Damon Earl Warner, who is 25 years old as of this report, and they are planning on having a child together. In the letter, she also indicated that she thinks she might be having a baby already as she has missed a menstrual cycle and has to go to the doctor. The only reference in the letter to actual sexual contact is when Amanda writes that she "took advantage" of Damon and he "liked it". Sheryl said this letter is not the first with references such as these sent to her daughter and that Amanda has also talked about seeing Damon in the past. She said she was concerned because Amanda's mother, Sheryl's sister, allowed Damon in the residence and allowed Amanda to see him. She said she never heard Teresa Ratliff, Amanda's mother, say she knew Amanda and Damon were having sexual relations, but that Teresa has made comments that Megan Ratliff (her other daughter who is 14) was having sex with Thomas Eding (A subject who is also much older) and that as soon as Megan turned 18, she would sign the papers for them to get married.

Another relative, Pamela Shepherd, stated she knew of the situation, but mostly through Sheryl. She said if she heard anything, she would contact our office.

The letter was received [REDACTED]. The letters were not all legible so Officer Jed Wild contacted her by phone and had her read the letter word by word and filled in the missing letters according to Sheryl's statements. The original letter is available upon request.

**OFFICER'S ACTIONS:**

Upon receiving this information, I contacted the on call prosecutor and spoke with him on the matter. After discussion he suggested the best course of action would be to either interview the victim or well and see if Sheryl or Pamela could tell us anything more. At this time, I am electing to refrain from contacting the subjects as it may hinder information gathering from Sheryl and Pamela who, after considering the parents lack of apparent displeasure and the willingness of the victim, are considered our department's best source of information at this time.

1/20/00 cps has been contacted by chief kirkebride, and given information on this complaint, and they have agreed to hold off till more information can be ascertained from family members

**Supplemental Narrative**

Date: 01/19/2000

Officer: 157-Wild

On 01/19/2000 I contacted [REDACTED] reference a fax she had sent to the Homer Police Department. The fax when received was illegible. I had Ms. Deason read the letter to me as I filled in the blanks of the faxed copy. I then asked Ms. Deason to mail the original letter to the Homer Police Department. She said that she would mail the letter the next day (01/20/2000). She then stated that she would like to have the parents prosecuted and lose custody of the child (Amanda Ratliff). Deason also stated that another [REDACTED] had contacted the CPS of

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**Incident : 2000-0076**

Homer Police  
 PO Box 185  
 138 East Main Street  
 Homer, AK 99348  
 617-688-4312

Calhoun County reference this complaint.

**Supplemental Narrative**      Date: 01/24/2000      Officer: 140-Roberts

**CONTACT WITH TERESA RATLIFF:**

Due to previous contact with our informant and being told that no new information had come to her attention, I, Sgt. Roberts, contacted the parties involved to conduct initial interviews. The first person I came in contact with was Teresa Ratliff. I informed Teresa of the situation and asked if there was any relationship between Damon Warner and her daughter, Amanda Ratliff. She said they was none. I asked if Damon came over to the residence any and she said he did, but there was nothing going on sexually between the two of them. Just then, Damon arrived in his vehicle with Amanda Ratliff and the two walked toward the residence. I, therefore, concluded by contact with Teresa and spoke with Damon and Amanda.

**CONTACT WITH DAMON WARNER - SUSPECT:**

I informed Damon of the letter received and asked him about the relationship between Amanda and himself. He said they were just "friends" and that they just "hung out" together. I asked if there was anything besides this going on and he said there was not. I asked about going to the Ratliff's residence and he said he goes over there frequently because he is friends with them. I asked about spending the night and he said he does because he is friends with the family and it is better being there than at his mother's where he gets yelled at all the time for things like leaving his hat on the table. I asked about where he slept if he ever slept in the bed with Amanda. He said he sleeps on the couch and that Amanda is usually in bed by the time he goes to sleep anyway. I then asked if he'd ever kissed her and he said, "well, we've kissed". I then inquired about a relationship and asked if he had a relationship that was more than just friends and he said they did, but that they had never had sex, only kissed. Damon said he didn't think much of it because her sister, Megan Ratliff, is seeing a guy that is 22 (talking about Thomas Eding who this department will also seek charges against pending further evidence).

**CONTACT WITH AMANDA RATLIFF - VICTIM:**

I then asked to speak with Amanda. Amanda came outside while Damon went in. I could hear her father, Marty Ratliff, yelling about being bothered by the police and her mother, Teresa Ratliff, kept peaking out the door as I spoke with Amanda to hear the conversation.

I asked Amanda about the letter and if it was truthful that there were relations between she and Damon. She said that there was not, but nodded slightly. I asked about bragging to her cousin and she said she wasn't bragging, and would not answer why she wrote the letter. I asked again if what was in the letter was true then and she nodded slightly, but wouldn't answer. It was evident that she did not want to talk where others would hear. As Teresa Ratliff, her mother, put her head back inside for a short time, I asked Amanda if it would be better to talk later. She said it would and that her father went to work in the morning. At that time, it was very evident to me that she was fearful of something and did not want her parents or Damon to hear her saying anything about it, but was not denying involvement.

Teresa then peaked back out and I concluded our conversation as it was obvious Amanda wanted to make a statement but was afraid to do so at that time.

**OFFICER'S ACTIONS:**

I contacted CPS and was told Mike Caro was dealing with the case. It was requested that I fax a copy of this report to CPS to coordinate an examination / interview with Amanda Ratliff between CPS, the Prosecutor's Office, and Homer Chief Of Police according to the new Child Abuse Protocol adopted by Calhoun County.

-Contact was at approx. 22:20-

01537a

**Incident : 2000-0076**

Homer Police  
 PO Box 185  
 138 East Main Street  
 Homer, MI 49946  
 617-888-4312

**Supplemental Narrative**      Date: 01/28/2000      Officer: 140-Roberts

**CONTACT WITH AMANDA RATLIFF AT FAMILY INDEPENDENCE AGENCY - 0330:**

I, Sgt. Roberts, was contacted by Michael Caro with CPS and informed that Amanda Ratliff was ready to make a statement. I, therefore, went to their office and spoke with Amanda. During the interview, Amanda appeared somewhat reluctant, saying that she didn't want Damon to get in trouble. I told Amanda that I needed to ask some questions that could be personal or embarrassing and that I understood if she wanted to have either myself or Mike Caro talk to her alone. Approx. half way through the interview, Mike Caro asked if she wanted to talk to one person and, after she said she did, left the room until we were done.

During the interview, Amanda said she had sexual relations for the first time, first time ever having intercourse, with Damon Warner on November 7, 1999 when she was still twelve (12) years old. She said she remembered the date because it was special as she lost her virginity. She said it happened later in the afternoon and remembered it was a weekend day, likely Sunday.

She said they were at Damon's residence, 430 South Byron #41, and were sitting and talking. She said she didn't remember what they were talking about, but that they soon started kissing, using the term "making out" to describe the type of kissing. She said they soon went to Damon's bedroom and continued kissing. I asked who's idea it was to go to the bedroom and she said it was both of theirs. I asked about what happened in the bedroom and she said they began taking their clothes off. I asked what clothing and she said they both took off their pants and underwear. I asked who took the clothes off and she said she took hers off and Damon took his off. She said they both left their shirts on and had them on during the entire encounter. I asked where they engaged in this activity and she said it was on Damon's bed. I asked how long it lasted and she described it as a "short time". She said he first touched her with his hands. I asked where he touched her and she said he touched her on her sides, but nowhere else. I asked if Damon had touched her on any of her "private places" with his hands and she said he did not, only her sides. I asked what happened then and she said "we did it". I inquired as to what "it" was and she hesitated. I asked if, by saying "it", she meant intercourse and she said she did. I asked if she knew what that was and she said she did. I asked where they were and she said they were on his bed, with him on top, facing each other. I asked if he was wearing a condom and she said he was, but she couldn't remember what kind, or color, or any other description. She said he'd put it on right before they had intercourse.

I asked what happened afterward and she said they both put their clothes back on and went to the living room. She said they talked, but could not remember what they talked about. I asked if Damon had forced himself on her or if she had asked him to stop at any time and she said he did not, and that she had never asked him to stop.

I then asked about any other times and she said they had sex about twice (2) a week since then. I asked where these contacts occurred at and she said they were at her house (Lot #106). She said they took place in the living room, because she doesn't have a room of her own, and that it was after her parents went to bed. She said her sister, Megan Ratliff, was in her bedroom during each contact and had not, to her knowledge, witnessed any activity. I asked if she remembered all of these and she said she did not, only that it was around twice each week. I asked if he stayed the night during these contacts and she said he did. She said she usually slept on the couch afterward and he slept on the loveseat. I asked if they had sex every time he stayed over and she said they did not.

I then asked if her parents knew about it and she said they did, but did not know that they were having sex in the living room. She said she had told her sister, Megan, who then told her mother sometime in November 1999. She said her parents didn't really say anything about it. I asked what she meant by "didn't really say anything" and she said they knew, but didn't seem to care. I asked if Damon seemed worried about her parents sleeping in the other room and she said he was worried about her parents coming out and seeing them.

I asked about the time that this took place at and she said it was always around 10:00pm or 10:30pm after her parents go to bed as they are usually in bed by 8:00pm or 9:00pm. I asked if her parents ever said anything about her

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**Incident : 2000-0076**

Homer Police  
 PO Box 166  
 130 East Main Street  
 Homer, MI 49845  
 617-699-4312

relationship and she said her parents were concerned about the age difference, but didn't say they couldn't be together.

I then asked about the last time she and Damon had sexual relations and she said it was close to Sunday of this last week (Sunday January 23, 2000). She said she had gone to school that day so it was Monday (Monday January 24, 2000). I asked her to tell me about the incident starting with what time it happened. She said it happened around 11:00pm and that she and Damon were talking. She said they started Kissing in the living room. I asked where everyone else was and she said her sister was sleeping in her room and her parents were asleep in their room. I asked who's idea it was to have sex and she said it was hers. She said they both took their own pants and underwear off. She said they started on the floor with Damon on top, facing each other. I asked how long it lasted and she said it was about one (1) hour. I asked about what they did, meaning if he put anything in her, if they just kissed, or if he touched her. She said he put his "dick" in her. I asked what part of her and she said her vagina. She said they did not stay in the same position and that she was on top of him for awhile, but they were always facing each other. I asked what happened afterward and she said they put their clothes on, pants and underwear, and watched television. I asked if she remembered what they watched and she said they watched "Change Of Heart" and "Frazier", which she watches often. I asked if Damon stayed the night that night and she said he did, that he slept on the loveseat and she slept on the couch.

I asked if she and Damon had been seeing each other before having sex in November and she said they had seen each other for around one (1) month. I asked if he'd ever said anything about marriage and she said he didn't, only that he wanted to stay with her a long time.

I then asked about her sister, Megan Ratliff, and her boyfriend, Thomas Eding. Megan is 14 years of age now and Thomas is 23. She said she knew they were having sex because Megan had told her she was sleeping with him. I asked how she knew "sleeping" meant having sex and she said Megan told her they were having sex. She said she never witnessed any of this activity, but said they do sleep in the same room. I asked about hearing anything and she said the only thing she ever heard was once when Megan and Thomas were in the shower together. She said she heard noises coming from the shower. I asked what kind and she said "sounds". I asked if she meant the "typical moans" and she said it was moaning. She said it happened around two (2) months ago. I asked if her parents knew about Megan and Thomas and she said they did. I asked if they said anything about them being together and she told me that they did, that Megan and Thomas argue too much and that Thomas is childish. She said that, if her parents did say something, Megan would not listen anyway.

**CONTACT WITH TERESA AND MARTY RATLIFF - AMANDA'S PARENTS:**

During the interview, Teresa did the majority of talking with Marty answering usually only when specifically asked. I asked if they knew about Amanda and Damon having sex and Teresa said she knew about the first time because Megan had told her. I asked when this was and she said it was in November (of 1999). She said she confronted Damon and Amanda about it and she said it would not happen again and that they would just be friends. She said she found out they had done it again when Amanda had missed her period and was worried she was pregnant. She said this was about 2 to 3 weeks after she knew about the first time. She said Amanda was checked by Dr. Grove from Springport, who is their family doctor. She said she confronted Damon about this, he didn't say much, only that he and Amanda liked each other and that, again, they would only be friends. She said she only knew of two times this occurred. I asked what time they normally go to bed and she said they both are usually in bed by 8:00pm or 9:00pm. I asked about hearing anything at night and she said neither of them had woke up to anything that sounded like sexual activity in the living room.

I asked about the relationship between Amanda and Damon and if they called themselves friends or boyfriend/girlfriend. She said Damon always said they were friends, but that Amanda would go between both, saying they were friends one time and boyfriend/girlfriend another. Teresa said she told Amanda several times that Damon could not be her boyfriend because of the age difference and that she (Teresa) was not ok with this arrangement. I then informed Teresa of the frequency of the contacts as stated by Amanda and Marty referred to Damon as a

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**Incident : 2000-0076**

Hammer Police  
 PO Box 198  
 138 East Main Street  
 Hamer, MI 48845  
 817-888-4312

"predator" and a "pedophile".

I asked about Amanda's problem with missing school and she said Amanda kept skipping long before meeting Damon and that she didn't think he had anything to do with this problem. Teresa said she and Marty have been trying to get Amanda to go to school, but have been having problems doing so for a long time.

I then asked about Damon sleeping over at the residence. Teresa said he sleeps over "once in awhile". I asked what this meant and she said he usually sleeps over there twice a week or more, and that he usually sleeps on the floor or couch. She said he is usually in one of these places in the morning when she and Marty get up.

I then asked about Megan and Thomas. Teresa said she knew about them because Megan came to her and said that Thomas was her boyfriend, that they were going to see each other, and that if she was told she couldn't see him, she would leave. Teresa said she didn't know how when they started having sex, but that they found out about it after the two went camping together. Teresa said Tom and Megan never really talked about it but that she (Teresa) knew that if she did anything to stop it, Megan would just run away. She said Megan and Tom broke up a couple weeks ago and that she was now seeing Jake Lorenz. I asked where Thomas lived and she said all his clothes and things were at their house when he was there, but she was not sure now. I asked about the statement regarding them getting married and she said she probably told them that, if they were still together when Megan was 18, that she would sign the papers. She said that there was a age difference that she didn't like, but figured if they were still together at that time, they could get married. She mentioned relatives that had gotten married with a large age difference and were still together after several years. She said she disapproved because of the age difference and didn't want Megan to be sexually active with Tom, but that she and Marty didn't know it was illegal at that age.

#### CONTACT WITH NIKKI ODELL

At approx. 2200 I, received a call from Alicia Odell, a cousin and friend to Nikki Odell. Nikke was previously acquainted with Damon Warner, beginning when she was eleven (11), had additional contact with him when she was twelve (12) because Damon was engaged to her mother, Sherri Jeffries, and stated she'd had sexual relations with him when she was thirteen (13). Nikke said she did not want to testify in court as she was very worried about her grandmother, whom she now lives with and is her guardian, finding out about it. I told her I could not guarantee anything, but that I would make not of this in the report and try to keep her name out of the investigation concerning other victims if possible. Nikke talked to me over the phone as she was in Battle Creek with her Cousin at the time and said she would prefer to talk to me that way. I have had several past contacts with Nikki and recognized that it was her voice.

I asked her about her relationship with Damon and she said they used to "hang out" together. I asked about the first time she and Damon had sex and she said it was in June when she was 13 years old (June of 1996). I asked where this took place at and she said the first time was at her house when she and Damon were the only ones there. She said she and Damon were talking before, but she does not remember what about as it was so long ago. I asked who's idea it was to have sex and she said it was his. I asked if Damon touched her anywhere first and she said he did, that he put his hands "all over" her. I asked her to clarify what this meant and she said "you know, all over". I asked if he touched her private areas and she said he did. I asked what private areas he touched and she, again was reluctant to mention the names for the parts. I asked if the parts she was referring to were usually called "butt", "breasts", and "vagina" and she said they were. I asked which ones he touched and she said he touched all of them. She said they were in her room and, when they had intercourse, they were on her bed, facing each other, with him on top. I asked if they were clothed and she said they both had their pants and underwear off. I asked if she took her pants off and she said that Damon took them off. She said it lasted about 10 to 15 minutes and afterward, they talked some more. She said she didn't remember what was said because it was awhile ago and they used to talk often. I asked if Damon said anything to influence her such as being her boyfriend and she said he didn't.

I then asked if this continued or was only once. She said it went on for approx. six (6) months and happened every day

**Incident : 2000-0076**

Homar Police  
 PO Box 188  
 138 East Main Street  
 Homar, MI 48346  
 817-888-4312

to every other day. I asked where this usually took place and she said it normally took place at his house or in the car he was driving. I asked what he was driving and she said it was her grandmother's Buick that he was using. I asked what time it was at Damon's house and if his mother was around and she said it was usually 12:00 to 1:00pm, in the afternoon, and that his mother was usually gone (Damon still lives at his mother's residence). I asked if they always had this contact in the same manner or if it was different. She said it was usually always the same in that they would both take off their pants and underwear, leaving their shirts on, then have sex. I asked if he ever forced himself on her or continued if she said she wanted to stop and she said he never forced himself and that she didn't tell him to stop. I asked if he wore a condom and she said, to her knowledge, he never did. I asked where in his house this usually happened and she said it was his bedroom. She mentioned that his bed was very soft and that you would sink right into it.

I then asked about the last time they had sex and Nikki said it was in November when she was 13 years old. She said it was, again, at her house and she thought it was around 12:00 to 1:00pm, but was not sure. She said they were "hanging out" and that it happened the same as the first time in that they went to his bedroom, both had their pants and underwear off, and they had intercourse. She said the only difference was that he left afterward instead of staying and talking.

Nikki said he stopped seeing her when she got grounded for skipping school and she was not allowed to talk with him, per part of her grounding. She said she has talked with him on the phone, but only seen him once at 5-Star Pizza (where he is currently employed).

Finally, I asked if they ever referred to each other as a boyfriend or girlfriend. Nikki said they did not and he never said he was her boyfriend and she never referred to him as such. I asked if it was ever her idea to have sex and she said it was always Damon's, but that she never said she didn't want to do it.

**CONTACT WITH DAMON WARNER - SUSPECT:**

Upon arriving to work on 1/28/2000, I received a message that Damon Warner wanted to talk to me regarding some things that Amanda said that weren't true. After my conversation with Nikki Odell, I called Damon's residence and left a message on the answering machine that I could be reached at the station if he wanted to come there or call on the phone.

I received a call approx. 15 minutes later and spoke with Damon. He asked me what was said in the interview with Amanda and I informed him that I could not disclose her statements to him at this time, but that there was an investigation going and that most likely, he would be charged. I told him that, if he wanted to add anything to his previous statement, I would be glad to talk with him and add so that the prosecutor can see all sides of this story and that I could do so this evening or when I returned to work on Monday. He asked that I let him know what was going on so that he could make sure things were set for his daughter (he had a 3 year old daughter) if he was going away for awhile. I told him it was an obvious mistake, but that no one said he had forced himself on her and that I didn't believe him to be that type of person. He then said he didn't force himself on her. He said it only happened twice and he wasn't even at "full capacity" when it did. I asked what that meant and if he was saying he was drunk. He said he was very drunk and practically passed out before they even talked the last time. Damon said he thought this may happen and was going to take whatever he had coming, but wanted to take care of his daughter first. I again said he had made a mistake and that the fact he didn't force himself on anyone made a difference. I told him I could take a statement if he wanted to come to the office or Monday if he needed. He seemed very reluctant and said he could talk to me on the phone because his family already knew what was going on anyway. I said I could go ahead and interview him on the phone now so that we could get this started. He said he would rather do that and get it over with. He asked me what I thought he would get from this and I said I really couldn't tell him, but that, if he is cooperative with prosecutors, they are often willing to plea bargain for a lesser charge.

I asked Damon about what happened between him and Amanda and he said he could remember sleeping together

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**Incident : 2000-0076**

Homer Police  
 PO Box 188  
 138 East Main Street  
 Homer, MI 49846  
 617-698-4912

once. I asked if "sleeping together" meant having intercourse and he said it did. He said the other was with his finger and he passed out on top of her. I asked how long they had known each other prior and he said they had been hanging out for about one (1) month before the first time. I asked if they were boyfriend and girlfriend or just friends and if he had said anything about marrying her. He said he never said anything about marrying her and didn't make any promises. He said he told Amanda if she found someone her age that she liked that was fine and that Amanda told him the same thing. He said Amanda was someone he could talk to and relate to. He said Amanda's parents treat her poorly and he was someone she could relate to also.

I asked him about the first time he and Amanda had sex and when it happened. He said he couldn't remember the date, but that it was about two (2) weeks after they started seeing each other. He said they had only been seeing each other for around a month and a half (1.5) before now (1/28/2000) I asked who's idea it was to have sex and he said it was her idea and that she told him she wanted to lose her virginity. He said he asked her if she was sure and she told him that she would rather lose it to him than anyone else. Damon said he mentioned the age difference between them, but that she said she didn't care. Damon then mentioned how Amanda had been having problems going to school and that he tried to get her to go to school. I asked what happened then and he said she started touching him. He said "you know what happens when a woman starts touching there". I asked what happened then and he said they had sex. I asked him to be more specific in what happened, for instance, was he on top of her? He said she was "more or less" or top of him. I asked what "more or less" meant and he said she was on top. I asked if they had their clothes on or off and he said they both had all their clothes on. I asked how, if they were fully clothed, he could have intercourse with her. He said he had his through his zipper and she had her pants down to her ankles, but they never took them off. I asked if he used a condom and he said he did. I asked what happened afterwards and he said they both went to sleep. Damon said Amanda's parents found out about it when Megan told them afterward. I asked what her parents said about it when they found out. He said her mother (Teresa) said it was coming and that she was just waiting because Amanda hints around and is always hanging on him. He said he was reluctant because he saw what her sister (Megan) did to a guy (Subject was charged for sexual relations with her while she was underage) and he didn't want it to happen to him.

I then asked about the second time and he said he didn't remember it very well because he passed out or fell asleep on top of her, but that it was only with his finger and he never got to the rest of it. He said he was "doing it" with his finger in her and didn't remember the rest.

Damon said he was told by Teresa and Marty that he couldn't come there or see Amanda any more and that he will not do so. He mentioned that, while he was there, her parents liked him and even wanted him to move in, saying they could make a place for his things. He said he gave back a ring she gave him and disposed of some pictures she gave him of herself. He added that they were of her clothes on and just regular pictures of her.

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*Disposition*