

1 MR. STIDHAM: I respectfully disagree, your Honor.
2 I understand your ruling. Thank you.

3 (RETURN TO OPEN COURT.)

4 MR. STIDHAM: Your Honor, may I approach the bench?

5 THE COURT: Yes.

6 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT
7 OF THE HEARING OF THE JURY.)

8 MR. STIDHAM: Your Honor, I think it kind of
9 confuses the jury when we rested back there and they
10 don't know what happened.

11 THE COURT: I'll tell them.

12 MR. STIDHAM: Okay.

13 (RETURN TO OPEN COURT.)

14 THE COURT: Are we ready?

15 Alright, ladies and gentlemen, good morning, and
16 Court will be in session and for your information and
17 everyone else's information the defense has rested their
18 case. The Court's heard a motion and we're now ready to
19 proceed with rebuttal.

20 MR. DAVIS: Your Honor, the State would call Gary
21 Gitchell.

22 MR. STIDHAM: Your Honor, may counsel approach the
23 bench again?

24 THE COURT: Yes.

25 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT

1 OF THE HEARING OF THE JURY.)

2 MR. STIDHAM: Your Honor, I want to point out to the
3 Court that Officer Gitchell was in the courtroom
4 yesterday during the testimony and I understand that he
5 watched some of the testimony and---

6 THE COURT: --I observed him in the courtroom during
7 some of Doctor Ofshe's testimony. I don't know about him
8 being here prior to that.

9 MR. STIDHAM: We would submit that's a violation of
10 the Rule.

11 THE COURT: He is a -- he is a rebuttal witness. He
12 had been released from the Rule by the Court and by
13 agreement with both parties and, therefore, I'm going to
14 allow him to testify.

15 (RETURN TO OPEN COURT.)

16 GARY GITCHELL

17 having been previously sworn to tell the truth, the whole
18 truth, and nothing but the truth, then testified further as
19 follows:

20 REDIRECT EXAMINATION

21 BY MR. FOGLEMAN:

22 Q. For the record you are Inspector Gitchell who previously
23 testified in this case?

24 A. Yes, sir, I am.

25 Q. Inspector Gitchell, I believe that you were in the

1 courtroom yesterday during some of Mr. Ofshe's testimony. Is
2 that correct?

3 A. Yes, sir.

4 Q. Mr. Ofshe testified that the fact that this incident
5 happened at night was not mentioned until page eighteen when
6 Detective Ridge said, "The night you were in these woods."
7 Was the fact that this happened at night mentioned prior to
8 page eighteen of the transcript?

9 A. Yes, sir. Mr. Ofshe's remark was incorrect inasmuch as
10 on page twelve of the transcript Jessie states, "Well, after
11 all this stuff happened that night." That's the first time
12 that night is mentioned by Jessie himself.

13 Q. Alright. Had you -- had you or Detective Ridge mentioned
14 night prior to that?

15 A. No, sir.

16 Q. Mr. Ofshe also testified in regards to the follow-up date
17 that nowhere in the record did Jessie say seven or eight until
18 you mention seven or eight. Where did you get seven or eight?

19 A. I -- I derived that from -- there again, back on page
20 twelve of the transcript, Jessie states, "Then they called me
21 at nine o'clock that night."

22 Q. Um-hum.

23 A. And then you refer to page twenty-four of that same
24 transcript and then there's a mention of, "How long after you
25 got home you received the phone call?"

1 And Jessie responds, "An hour."

2 So that's where I deducted the -- the time frame.

3 Q. Okay. Now, would you refer to page three of the
4 transcript?

5 A. (COMPLIES.)

6 Q. Where the transcript shows that Detective Ridge said,
7 "Nine o'clock in the morning." Mr. Ofshe testified that
8 Jessie said -- that Jessie said that, not Detective Ridge and
9 that the transcript is wrong. Who said that?

10 A. Detective Ridge is the person that said, "Nine o'clock in
11 the morning." And I even have a -- the tape which shows that
12 Detective Ridge said that.

13 Q. Would you play that portion of the tape?

14 A. (COMPLIES.)

15 (TAPE BEING PLAYED FOR JURY AT THIS TIME.)

16 BY MR. DAVIS:

17 Q. And who just said, "Nine o'clock in the morning."?

18 A. That's Detective Ridge that said that.

19 Q. Alright. If you would, Inspector Gitchell, describe for
20 the jury the room that this interview took place in.

21 A. The room which we used to interview Jessie in was
22 Detective Lieutenant Hester's -- she's a female police officer
23 at the police department. Her room is probably the nicest
24 room that we have in the detective division. She has pictures
25 of her children, colorings that they've done in school saying,

1 "Mother, I love you." -- things of that nature. So it's
2 probably the most relaxed atmosphere that we have in the
3 police department.

4 Q. Alright, and describe for the jury the -- the atmosphere
5 during the interviews themselves, both on tape and off tape.

6 A. Well, during that time, we were probably nervous, but the
7 atmosphere itself was a very laid back and subdued nature.

8 Q. During either interview on tape -- off -- first
9 interview, follow-up interview, was any pressure or
10 intimidation used by either yourself or Detective Ridge?

11 A. No, sir, none whatsoever. We knew this case due to the
12 type of coverage it had received that whomever would be picked
13 up, we would have to use -- we would have to talk with this
14 person and use the utmost care and treat them truly with kid
15 gloves as if we were talking with one of our own children.

16 Q. And was there anything in -- in either of the tape
17 recorded portions that indicate anything on the defendant's
18 part that you observed or heard that would indicate a lack of
19 pressure or intimidation?

20 A. Yes, sir. On the second tape that I did with Jessie
21 Misskelley there are three places in there which he's yawning,
22 and---

23 Q. He's yawning?

24 A. Yes, sir. He's -- you can hear him going (DEMONSTRATING)
25 -- just yawning. So there's not any pressure there.

1 Q. Alright, and you can hear this on the tape?

2 A. Yes, sir, you can.

3 Q. Did you or Detective Ridge ever feed any information to
4 this defendant?

5 A. No, sir.

6 Q. Did you or Detective Ridge---

7 MR. CROW: I'll object to leading, your Honor.

8 THE COURT: Avoid leading.

9 MR. CROW: Thank you.

10 BY MR. FOGLEMAN:

11 Q. What if any manipulations did you or Detective Ridge do
12 to the defendant?

13 A. None whatsoever.

14 Q. Would you ever try to get a person to confess to a crime
15 that they did not commit?

16 A. Absolutely not.

17 MR. FOGLEMAN: I don't have any further questions.

18 MR. STIDHAM: Your Honor, could we have a moment,
19 please?

20 THE COURT: Yes.

21 MR. STIDHAM: I need to review the transcript right
22 quick.

23 MR. FOGLEMAN: Your Honor, I do have one more
24 question.

25 BY MR. FOGLEMAN:

1 Q. In regard to State's Exhibit One Oh Five, that's --
2 excuse me -- I think that's the photograph -- or the series of
3 photographs that were shown to the defendant?

4 A. Yes, sir.

5 Q. When the defendant identified which boy had been sexually
6 mutilated, did you or Detective Ridge use any suggestion to
7 suggest who he should pick?

8 A. No, sir, not whatsoever. He picked out this young man
9 right here -- the Byers boy. (INDICATING.) He mentions
10 Michael Moore simply because in the caption, Michael Moore
11 comes underneath this picture and that's why Detective Ridge
12 read the caption underneath to straighten that out. He did
13 pick the right boy who was castrated.

14 Q. Alright. When this -- when he identified -- as far as
15 when the -- when he identified who was castrated, where was
16 the picture?

17 A. The picture was sitting on the desk.

18 Q. Alright, it was laying on a desk?

19 A. Yes, sir.

20 Q. Alright, and was anybody pointing to any of the pictures?

21 A. No, sir, not at all.

22 MR. FOGLEMAN: I don't have any further questions.

23 RE CROSS EXAMINATION

24 BY MR. STIDHAM:

25 Q. Inspector Sitchell, this statement wasn't videotaped, was

1 it?

2 A. No, sir, it wasn't.

3 Q. And you didn't take notes during the first statement, did
4 you?

5 A. No, sir.

6 Q. And -- but you didn't take notes prior to the tape
7 recorder coming on so you really don't know exactly what
8 questions were asked and what questions were answered, do you?

9 A. Just from recollection.

10 Q. So if we had a videotape we'd know for sure, wouldn't we?

11 A. Yes, sir.

12 Q. At an earlier hearing on January thirteenth in Marion I
13 asked you about -- going on to the second tape -- and
14 immediately you're telling Jessie, "You told me earlier it was
15 seven or eight."

16 A. Yes, sir, I recall.

17 Q. And I asked you, "When did you talk to him about that?"
18 and your response was, you didn't remember.

19 A. My first response, if you'll look in the transcript, was,
20 "I believe it was during the very first taping." Is that not
21 correct, counsel?

22 Q. Detective Gitchell, what page is that on?

23 A. Uh -- one forty-six is what page was shown.

24 Q. I believe your response, Detective Gitchell, was that you
25 weren't sure.

1 A. Uh -- I did make that response later, but my first
2 response was, "I believe it was during the first tape," and
3 then subsequently after several more questions from you, I
4 told you, "I really wasn't sure." But I first do -- do recall
5 making the statement, "I believe it was during the first
6 tape."

7 Was that not correct?

8 Q. I believe that's correct and then you said you weren't
9 sure. You thought it was the first tape.

10 A. I thought it was the first tape.

11 Q. Now you're more certain of that?

12 A. It was during the first tape, yes, sir.

13 MR. STIDHAM: Pass the witness.

14 REDIRECT EXAMINATION

15 BY MR. FOGLEMAN:

16 Q. How did that come up in that other hearing about -- what
17 was the whole---

18 A. It was in the same gist as now about the mentioning of
19 the time. Mr. Stidham asked me if -- what -- at what time did
20 we -- did that statement come up. I stated at first, "I
21 thought it was during the taped interview," which this is what
22 the transcript is of that I just testified to.

23 Q. Were you given an opportunity -- did you go through and
24 look through every page of the transcript during that hearing
25 to see if you could find where it was?

1 A. No, sir, I had not had an opportunity to do that.

2 Q. Alright. Is that until after the hearing?

3 A. Right, on this that I've looked through, yes, sir.

4 Q. Alright. In fact referring to page one thirty-six of
5 that hearing, Mr. Stidham asked you, "Why does the tape we
6 just heard -- the second tape say -- you told me earlier this
7 happened about seven." And what was your answer?

8 A. My answer to him was, "You didn't hear all of the first
9 tape. You've got transcripts of it and if you had played the
10 whole tape you would have heard what I was referring to."

11 Q. Okay.

12 MR. FOGLEMAN: I don't have any further questions.

13 RE CROSS EXAMINATION

14 BY MR. STIDHAM:

15 Q. The second taped statement you don't even know what time
16 that was, do you?

17 A. It was approximately five o'clock.

18 Q. Why didn't you announce what time it was on the tape?

19 A. I didn't think to do that.

20 Q. And there are several gaps in the tape, is there not?

21 A. Yes, sir, that's accounted for from me leaving the room
22 and going back and talking with Mr. Fogleman because he had
23 some questions for me to ask Jessie.

24 Q. The prosecutor was sending you back in the room to ask
25 Jessie more questions?

1 A. That's correct.

2 Q. Isn't it customary, Inspector Gitchell, to when you get
3 on a tape to announce what date it is, what time it is, the
4 tape was turned off---

5 A. That would be customary---

6 Q. Let me finish my question, please.

7 A. Well, I was going to answer the first part.

8 Q. Isn't it customary that when you stop the tape, you
9 announce what time it is and when you go back on tape, you
10 announce what time you begin again?

11 A. That's customary in this type of statement which we did
12 do that. However, this -- the only reason I did this tape was
13 to verify because I be -- I was sure nobody would believe what
14 I would be saying, so that's why I carried the tape in with
15 me.

16 MR. STIDHAM: Nothing further.

17 MR. FOGLEMAN: I don't have any further questions.

18 (WITNESS EXCUSED.)

19 THE COURT: Call your next witness.

20 MR. DAVIS: Your Honor, the State would call Doctor
21 Vaughn Rickert.

22 THE COURT: Doctor, you were previously sworn.

23 THE WITNESS: Yes, sir.

24 DOCTOR VAUGHN RICKERT

25 having been previously sworn to speak the truth, the whole