COPY

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE	:	ID No. 1208005897
	:	
v.	:	Criminal Action Nos. 12-08-0963 to 0969
MELVIN L. MORSE,	:	12-09-1049 to 1053
Defendant.	:	VOLUME E

T R A N S C R I P T
O F
P R O C E E D I N G S

Sussex County Courthouse
Georgetown, Delaware
Tuesday, February 4, 2014

The above-entitled matter was scheduled for trial in open court at 10:00 o'clock a.m.

BEFORE:

THE HONORABLE RICHARD F. STOKES, Judge, and a Jury.

APPEARANCES:

MELANIE C. WITHERS & CASEY L. EWART, Deputy Attorneys General, appearing on behalf of the State of Delaware.

JOSEPH A. HURLEY & KEVIN P. TRAY, Esquires, appearing on behalf of the Defendant.

ANDREA J. JOHNSON
OFFICIAL COURT REPORTER

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P R O C E E D I N G S

THE COURT: So we are at this portion of the trial where we have the 3507 parts. Just as a preliminary matter, I have heard the direct testimony of Anna Morse. I am satisfied that a foundation has been laid for the 3507 for each of the witnesses on this subject and that the voluntariness has been established as a threshold matter by a preponderance of the evidence. As required by *Hatcher,* the Court has to make this finding whether there is an objection or not.

Are you ready for the 3507?

MS. WITHERS: We do have one other matter, Your Honor. The State, yesterday, admitted the note that Anna wrote when she ran away from home. What the State was in possession of was a Xerox copy. It was actually provided to the State by defense counsel. It was in the defendant's possession. Today, the defendant has brought with him the original note.

THE COURT: Yes.

MS. WITHERS: There was a portion of the note that I had blacked out and made a reference to some items that Your Honor previously ruled would not be discussed in front of this jury. We have whited out that same line in the original. What I would like to do is somehow substitute or in addition --

THE COURT: Mr. Hurley, is there any problems with substituting it?

MR. HURLEY: No. That's fine.

THE COURT: All right. We will substitute it with the same number, and we will make the Xerox a court exhibit so that it is part of the record.

MS. WITHERS: The first one we admitted yesterday would be a court exhibit, Your Honor?

THE COURT: Yes, just so that we have a record.

THE CLERK: Entered as Court Exhibit No. 5. The original will be entered as State's Exhibit No. 46.

THE COURT: All right. Now, of course then, for 3507 purposes, Anna Morse needs to be

present somewhere in the courtroom. Where do you propose that she be seated?

MR. HURLEY: I don't have any problem under *Smith* waiving that particular facet.

THE COURT: Well, there is language from the Supreme Court that says "shall be present."

MR. HURLEY: I take the position "shall" is always subject to a person waiving. "Shall" have a Fifth Amendment right as well. "Shall" have a right to a trial by jury.

MS. WITHERS: Your Honor, the State has no objection to her being in the courtroom. I just want to make sure we comply with the rule.

THE COURT: It is not an objection as much as the Supreme Court has the language that says "shall."

Now, the other aspect of this, of course, is when you choose to cross-examine. At this point, it is set up in one mode of how 3507 is presented, which is, the witness who testified remains in the courtroom; the people who heard the out-of-court statements are cross-examined; and then the witness returns and

is cross-examined.

And of course, as you know in the *Smith* case, there was a question about the time of cross-examination, that the defense could not be sandbagged, so to speak, in how the case was presented. The other option -- again, that is truly up to you if you might choose -- is to cross-examine her now.

MR. HURLEY: No, I do not wish to do that. I do not want to piecemeal it.

THE COURT: Very well. There is language that the Supreme Court says "shall be present." And to me, in my view, "shall" means she stays in the courtroom.

(Brief pause.)

THE COURT: All right. You may bring the jury in.

(Whereupon, the jury returned to the jury box.)

THE COURT: Good morning. Has any juror been exposed to any media coverage about this case, meaning radio, TV, newspaper, Internet?

Let the record reflect a negative

response.

You may proceed.

MS. WITHERS: Thank you, Your Honor. The State recalls Tammy Sneller.

Whereupon,

TAMMY SNELLER

resumed the stand as a witness recalled by and on behalf of the State of Delaware and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MS. WITHERS:

Q Good morning. Your name, again, for the record?

A Tammy Sneller.

Q And to remind everyone, what is it that you do for a living?

A I am an investigator for the Division of Family Services.

Q Did you act as a investigative worker for DFS in July of 2012 when Anna Morse ran away from home?

A Yes.

Q Would you agree that part of your role on July 13th, 2012, was to seek emergency custody of Anna and Melody on behalf of DFS?

A Yes.

Q Did you, in fact, have contact with Anna on that day?

A Yes.

Q And where did you first see her?

A At Beebe Medical Center.

Q And where, specifically, was she in the hospital?

A She was in a room in the emergency room.

Q What was your role while she was being treated at Beebe?

A To assess her safety.

Q Did you spend time with her?

A Yes, I did.

Q At some point that day while you were still at the hospital, did you attempt to speak with her?

A Yes.

Q Did she talk to you about why she had run away?

A Yes.

Q And did she, in fact, tell you what had happened the night before?

A Yes.

Q Do you today, specifically, recall what she said about that?

A She had talked about her family coming home from the store. She said that she was sitting in the car, and it was around dark, and her dad came out and drug her out of the car and into the house through the side door of her house and then into her bedroom where he spanked her several times with his hand open and closed.

Q Did she indicate whether her mother was present while this happened?

A She said that her mother was there.

Q Did she indicate whether her mother intervened?

A She said she did not.

Q Did she indicate to you whether her sister, Melody, was in a position to, in fact, see what had happened between the defendant and herself?

A She said that Melody was there watching TV.

Q Did she indicate in which room Melody was at the time?

A I don't recall that.

Q Would it assist you to refer to your notes about this?

A Yes. If that would be okay.

(Brief pause.)

THE WITNESS: She said she was watching TV in her room.

BY MS. WITHERS:

Q And by "her room," did you interpret that to mean in Anna's room or Melody's room?

THE COURT: Strike that. You cannot answer that. It just has to be from the notes.

The evidence in this case that is being presented from this witness, who is testifying in front of you now, is being offered to you under the provision of Delaware Law 3507, which is something that you will be getting an instruction about. So she is testifying about what has been said to her, allegedly, by Anna

Morse at a time prior to trial. So, the evidence -- and you will be getting instructions on 3507 -- can only be the words of Anna Morse. It cannot be any interpretations, any spins.

I am just stating that this is what you have to be focused on here.

MS. WITHERS: Thank you.

BY MS. WITHERS:

Q Did Anna indicate to you what had prompted her to run away?

A Yes. She said that she heard her mom and dad talking about a foster home in Seaford and that she was scared of what they were going to do to her, so she packed her things and wrote a note and left.

Q If you would take a look at your notes and tell us exactly what you have regarding what she overheard her parents say.

A She overheard her mom and dad saying something about a foster care place in Seaford, and they were talking about what her punishment would be.

Q Okay. Did you ask Anna whether this was

the first time anything like this had happened before?

A Yes.

Q What was Anna's answer?

A She said, "No."

Q Did she describe to you that day anything else the defendant had done to her?

A Yes.

Q And what was that?

A She said that her dad would tell her mom and her sister that he was washing her hair in the sink, and then he would hold her head under the water.

Q Did she tell you what he said to her about this activity?

A He said that you could go a couple of minutes without breathing.

Q Did she tell you how long she's been having trouble at home?

A Yes. For three years.

Q Did Anna tell you what the defendant told her would happened if Anna told anyone about what he was doing to her?

A Yes.

Q What did she say?

A She said that no one would ever believe her because he's such a good person, who gives talks to people and goes all over the place.

Q If I could stop you for just a second. If you would refer to your notes.

A Okay.

Q The question was, what did he say to her?

A He told her if she told -- she talked about how he told her if she told, no one would ever believe her.

Q That's what I was looking for. Thank you.

A Sorry.

Q Okay. Did Anna indicate to you whether she felt she had been believed when she had told previously?

A No.

Q What did she tell you?

A She said -- she talked about how she had told the nurse at school some things that he had

done -- her dad had done, but when the people came out, nothing happened because they didn't believe her.

MS. WITHERS: Thank you, nothing further.

MR. HURLEY: Good morning, ladies and gentlemen.

CROSS-EXAMINATION

BY MR. HURLEY:

Q Good morning. May I see the specific pages that you have been referring to in giving your testimony this morning, please?

Thank you.

(Brief pause.)

MR. HURLEY: Thank you. Nothing at this time. I would ask that she be subject to recall Friday in the morning.

THE COURT: Yes. Subject to recall on Friday morning. You are not to talk about the case with anyone.

(Witness steps down.)

MS. EWART: The State calls Diane Klecan.

Whereupon,

DIANE M. KLECAN

was called as a witness by and on behalf of the State of Delaware and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. EWART:

Q Good morning, Ms. Klecan.

A Good morning.

Q Where do you work?

A I work for the Children's Advocacy Center of Delaware.

Q Is that known by any acronym?

A Oh, the CAC.

Q How long have you worked for the CAC?

A Almost 14 years now.

Q What is your role there?

A I am currently a Program Director for Client Services, and I also continue to conduct forensic interviews.

Q What are your responsibilities as a Forensic Interviewer?

A To conduct an interview with a child

when there's been an allegation of some type of abuse.

Q In your role as a Forensic Interviewer, did you interview a girl named Anna Morse?

A Yes, I did.

Q Do you know what day that was?

A I believe it was August 6th of 2012, but I can look at my notes.

Q Would that help refresh your recollection?

A Yes.

(Brief pause.)

THE WITNESS: That is correct. August 6th, 2012.

BY MS. EWART:

Q Where did that occur?

A That was in the at Children's Advocacy Center in Georgetown.

Q Do you know who brought Anna to the interview?

A Yes. It was a DFS worker by the name of Greg Banks.

Q Was your interview with Anna recorded?

A Yes, it was.

Q Do you know how many DVD's the interview was on?

A I believe Anna's had two.

MR. HURLEY: No objection.

MS. EWART: Your Honor, I would like to mark this as a court exhibit and publish it to the jury.

THE COURT: Yes.

THE CLERK: Marked as Court Exhibit No. 6.

MS. WITHERS: May we approach, Your Honor?

THE COURT: Yes. We need a court reporter.

(Whereupon, counsel approached the bench and the following proceedings were had:)

MS. WITHERS: As Your Honor knows, the interview was highly redacted. It's going to be very clear that it was redacted, and I would ask Your Honor to mention that to them.

THE COURT: Any objection to me giving them an instruction on redactions?

MR. HURLEY: No.

THE COURT: Now, as a technical matter, this has been indicated to be a court exhibit. I am wondering if it should be a matter of evidence because they could ask for it. Typically, it would not go back to the jury. But it is evidence, and they could ask for it. And under some circumstances, if the jury were to ask for it, the judge could allow it to go back to the jury. If it is a court exhibit, it is not go to go back to them unless those circumstances arise. Maybe if they ask for it, it really does not matter if it is entered as a court exhibit or --

MS. EWART: I'm sorry, Your Honor. My understanding of the case law and the way that we have always done this is that, the CAC, because it's a 3507 statement, does not get entered as a piece of evidence.

THE COURT: It does not go back to the jury.

MS. EWART: But, that is why we make it a court exhibit so that it doesn't go back.

THE COURT: But, a jury could ask for it.

MS. EWART: They could.

THE COURT: So, it is evidence.

MS. EWART: It is. But we have always -- my practice has always been to do it as a court exhibit to avoid any mistakes in sending it back.

THE COURT: I had a case many, many years ago where court exhibits got back to the jury, so labeling something does not always mean that life is good.

What do you want me to do? Does it matter?

MS. WITHERS: To the extent, my concern would be that they ask for it and Your Honor feels it can't go back because it is a court exhibit.

THE COURT: No, no. I don't feel anything about labeling. I am just raising the subject now. I will try my best to remain silent.

MS. WITHERS: But, you will mention the

redactions.

THE COURT: Yes, the redactions.

(Whereupon, counsel returned to the trial table and the following proceedings were had:)

THE COURT: Yes. You are about to hear some information that is going to be played for you. On the tape itself, there may be some gaps or pauses, it might have been some redactions. I am instructing you not to pay any attention to the fact that there were any redactions or pauses or gaps or to speculate about that, for there is nothing abnormal about that and it is nothing that you should concern yourselves about.

(Whereupon, the DVD was played for the Court and jury, after which the following proceedings were had:)

MS. EWART: No further questions, Your Honor.

MR. HURLEY: At this point, I don't have any question of this witness.

THE COURT: May she be excused?

MS. WITHERS: She is subject to recall, Your Honor.

THE COURT: You are subject to recall, and you are not to talk about this case to anyone.

Thank you.

(Witness steps down.)

MS. WITHERS: The State would recall Anna.

THE COURT: Should we have a recess at this point then?

MS. WITHERS: Sure, Your Honor. That's fine.

(Whereupon, a recess was taken.)

THE COURT: Bring the jury in.

MR. HURLEY: Your Honor, there is a sequestration application in order.

THE COURT: We have a sequestration order. Are there any witnesses in the audience?

MS. WITHERS: Your Honor, would that apply to Dr. Greenbaum? Typically, experts are allowed to remain.

MR. HURLEY: I don't know anything about

typically. I know in this particular case, I did not object to her watching the tape that was just played so that she could get the sense of what the, alleged, victim is portraying.

However, during the course of cross-examination, materials may come out that I really don't care for her to be listening to. And she's already made her opinion anyhow.

THE COURT: Yes. Well, experts may remain in the courtroom. Thank you. Dr. Greenbaum may remain.

Is there anything else?

Well, bring the jury in.

(Whereupon, the jury returned to the jury box.)

THE COURT: Yes. Would Anna Morse return to the stand?

The defense may question.

Whereupon,

ANNA MORSE

resumed the stand as a witness recalled by and on behalf of the State of Delaware and, having been previously duly sworn, was examined and

testified further as follows:

CROSS-EXAMINATION

BY MR. HURLEY:

Q Hi. I will be asking you some questions. If you don't understand the question, tell me. I'll repeat it until I'm sure you understand it. And from time to time, I'll be showing you pieces of paper that may have something that you've written on them or it may have something that a DFS worker has written on them or it may have something that you've said on them so that you can look to see whether or not you remember saying whatever it is that's on there. Take your time to read it so that you make sure that you understand it so that we know that we're both speaking the same language.

Okay. You started out yesterday by taking an oath, do you remember that?

A Yes.

Q What is an oath?

A An oath is when you swear to tell the truth no matter what.

Q Okay. And was yesterday the first time

that you've ever taken an oath?

A No.

Q Do you remember back last fall that we had a hearing, and you were in a bigger courtroom, and you took an oath in there?

A Yes.

Q And that oath said that you would tell the truth?

A Yes.

Q And you did that, didn't you?

A Yes.

MR. HURLEY: Okay. Could we have the ELMO on, please?

I want to show you question and answer on page 106.

My zoom function is not working.

BY MR. HURLEY:

Q Can you see those two questions and those two answers?

A Yes.

Q The question is, "This is not the first time since you've run away -- you've talked about this, the things in the relationship

between you and Melvin with somebody from the State -- is it not?"

Your answer was, "Yes, it is not."

And the question was, "Have you told the absolute truth every single time you've talked to folks?"

And you said, "Yes."

Is that true?

A Yes.

MR. HURLEY: Your Honor, at this time, I would offer into evidence -- excuse me, offer as a court exhibit a portion of the CAC interview on January 5th, 2010, a copy has been provided to counsel.

THE COURT: Ms. Withers?

MS. WITHERS: That's fine, Your Honor.

THE COURT: To be made a court exhibit.

THE CLERK: Entered in as Court Exhibit No. 7.

BY MR. HURLEY:

Q This is going to play. I would like you to just simply sit and watch and listen. I'm going to ask you some questions.

THE COURT: And again, Mr. Hurley, the date on this?

MR. HURLEY: January 5th, 2010.

THE COURT: Thank you.

MR. HURLEY: You're welcome. The CAC interview.

THE COURT: Yes.

(Brief pause.)

THE COURT: Can you back that up to the very beginning, please? Can you stop it? It is already hard to hear. Let us try this over again and get the volume up so that everyone can hear.

(Whereupon, the DVD was played for the Court and jury, after which the following proceedings were had:)

BY MR. HURLEY:

Q Truth or lie?

A I don't know which one this was. The first time it was the truth, but the second one that she did was a lie.

Q Okay. This was talking about Christmas Eve, December 24th, 2009, about less than two

weeks before you talked to Mr. Richardson. What you told him happened there, was that truth or a lie?

A That was lie.

Q And you told us that you took an oath on the Bible of Almighty God to tell the whole truth back in October, didn't you?

A Yes.

Q In October, you said that everything that you told people during these investigations was the truth, didn't you?

A Yes.

Q And that was a lie under oath, wasn't it?

A Yes.

Q The next excerpt I'm offering as a court exhibit is a small portion of a CAC interview on May 14th, 2010?

THE COURT: Make that a court exhibit then.

THE CLERK: Entered as Court Exhibit No. 8.

BY MR. HURLEY:

Q Again, I would ask you to watch and listen, please.

(Whereupon, the DVD was played for the Court and jury, after which the following proceedings were had:)

BY MR. HURLEY:

Q Truth or lie?

A That was lie.

Q Back in 2007, Ashley had done bad stuff to you, hadn't she?

A Yes.

Q And you were not happy about her coming back into the family home, were you?

A No.

Q Did you have an understanding that if Ashley had done this bad stuff to you, who was allowing her to come back into the home?

A Mom.

Q Okay. Did your mom and dad invite her in?

A I don't really know.

Q I'm sorry. I didn't understand you.

A I said that I don't really know.

Q Before Christmas time, how many times had Ashley come over to the house to visit?

A Only once.

Q And who brought her there?

A I think dad picked her up.

Q And if you'd of had your way, you wouldn't want her in that house?

A No.

Q After you gave your statement on January 5th, 2010, she never returned to the house, did she?

A No.

Q Now, we'll take you to -- do you recall Tammy, Ms. Tammy?

A Yes.

Q The lady who testified today, Ms. Tammy. She saw you on July 13th. She saw you, if you remember, first at the hospital, Beebe Hospital, and then later you were taken to the police station.

A Yes.

Q And then she talked to you over there?

A Yes.

Q Okay. I want to show you something she prepared to see if you remember this.

MR. HURLEY: May I approach the witness, Your Honor? Do you wish me to ask each time?

THE COURT: No, no. Each side may approach freely.

BY MR. HURLEY:

Q Okay. Anna, I am going to show you Ms. Tammy's report. I've highlighted in green what I want you to just look at and then just read that to yourself for a moment.

Do you see that?

A Yes.

Q Okay. Thank you. Ms. Tammy wrote that you said that you missed Ashley; was that true?

A Yes.

Q Okay. Now, Ashley hadn't treated you real nice, had she?

A No.

Q She had, before, carried you up the stairs in the house; right?

A Yes.

Q She had locked you in the bedroom with her?

A Yes.

Q She had taken her finger and put her finger or fingers in your private place inside you?

A Yes.

Q She had held you so tight you couldn't breathe?

A Uh-huh.

Q She had a knife?

A Yes.

Q And then in your relationship during that period of time with her, she also did some other not nice things, didn't she?

A Yes.

Q For example, she taught you how to masturbate the dog?

A I don't remember that.

Q Do you remember Mary Jo Bagley?

A No.

Q Do you remember that in the summer of 2008? You were having contact with DFS as a

result of what Ashley had done in 2007.

A Yes.

Q But you don't remember telling her that?

A No.

Q Do you remember that Ashley choked the dog?

A Yes.

Q Do you remember that Ashley held you by the ankle and dangled you over the railing from the second floor?

A Yes.

Q And that scared the living daylights out of you, I guess?

A Yeah.

Q Do you remember that Ashley would have a knife at night and would cut you while you were asleep?

A Yes.

Q Do you remember that Ashley would, at times, punch you as hard as she could and hurt you?

A Yes.

Q Do you remember that she would walk

along next to you and have her arm around you and then just pinch you under the arm as hard as she could (indicating)?

A Yes.

Q Do you remember that she murdered a rabbit that your aunt had as a pet?

A Uh-huh.

Q Do you remember that she wanted to kill you?

A Yes.

Q Do you remember she tried to push you down the steps?

A Yes.

Q And you missed her?

A (No response.)

Q Okay. December of 2008, you were in what grade?

A I was in third grade.

Q Okay. And that meant that in September you would have started the third grade?

A Yes.

Q Okay. And you ended up going to school -- and the dates aren't important -- sometime

while you are in the third grade, you tell the school that there had been an incident at your home the night before and that your mom and dad had been in an argument. And after the argument had occurred, your dad came upstairs to where you were -- and for no apparent reason, he had knocked over a vase or whatever -- and he slapped you across the face so hard that you actually left your feet and hit some kind of object in the bedroom?

A Yes.

Q Do you remember saying that?

A Yes.

Q But what did he hit you with?

A He hit me with his hand.

Q Was it an open hand, the front of the hand, the back of the hand, the fist, if you remember?

A It was the front of his hand.

Q Okay. So it was a slapping motion like that (indicating)?

A Yes.

Q Was it harder than that (indicating)?

A Yes.

Q I'm not going any harder. And it was so hard that you actually left your feet and fell to the floor?

A I felt like I did.

Q Okay. And the next day you told the school nurse what happened?

A Yes.

Q And they looked at your face. The nurse looked at your face?

A Yes.

Q And then they called DFS, Family Services, to come in and look at you?

A Yes.

Q And then you told them what I just recited, basically?

A Uh-huh.

Q And did you look in the mirror that morning and see if there were any marks on your face?

A Yes.

Q Were there?

A Hardly.

Q Pardon me?

A I said hardly.

Q Does that mean "No"?

A Yes.

Q Who is Toni Ballas-Rowe?

A She was my therapist.

Q Okay. I'm going to suggest to you -- and if you don't remember, you don't remember -- in the spring of 2008, which is about a year after Ashley had done what she had done, you started seeing Toni Ballas-Rowe as your therapist or counselor; is that right?

A Yes.

Q And after this incident where you had gone to school and said that your dad, or Melvin, slapped you in the face, there was a session that you had about the same time and you said that, yes, he had slapped you in the face; do you remember?

A Yes.

Q And you always told her the truth, didn't you?

A Yes.

Q And you did tell her that this had happened?

A Yes.

Q Back in October of that year when you were under oath, I asked you these questions:

"Do you remember you were in counseling with a lady called Toni Ballas-Rowe?"

And you said, "Toni Ballas-Rowe?"

And I said, "Do you remember her?"

And you said, "Yes."

And I said, "She was a nice lady?"

And you said, "Uh-Huh."

And I said, "Did you always tell her the truth?"

And you said, "Yes."

And I said, "And did you tell her about that slapping in the face?"

And do you know what your answer was? I'll tell you. It was "No."

Okay. And the next time you met with Toni Ballas-Rowe -- and I will tell you that it was December 18th, so it's about two weeks later -- do you remember what you told her then about

the slapping?

A No.

Q Do you know what the word "recant" means?

A No.

Q I don't either, but I looked it up. What it means is to take back something that you have said -- publicly take it back and say no, no, no, that's wrong.

Okay. With that definition, do you remember that you recanted and said, no, it didn't happen? And the explanation that you gave was that Ashley's beliefs were in your head. Do you remember saying that to her?

A Yes.

Q So there was another occasion where you went to school and your eyes were all inflamed or something was the matter with them, they were irritated and you were crying, do you remember that?

A Yes.

Q I'm going to suggest to you that four months later -- so what we just talked about was

December of 2008, and this was March of 2012. So January, February, March, three and a half months later, you had gotten some magic markers on your eyes at home, had you not?

A Yes.

Q And how did you come to get the magic marker marks on your eyes?

A I slept with the marker caps open.

Q And in sleeping with the marker caps open, without you even doing it deliberately, your eyes got these mark on them?

A Yes.

Q And then in the morning, your dad saw them, and then he rubbed/scrubbed your eyes?

A Yes.

MR. HURLEY: Okay. Your Honor, what I would ask to do is to place into evidence without publication to the jury what has some markings on it with the idea that I would substitute the unmarked.

THE COURT: Yes. Have you seen this, Ms. Withers?

MS. WITHERS: Not yet, no.

MR. HURLEY: And these are part of the records provided from Georgetown Elementary School, the nursing records.

I offer this as a defense exhibit out of turn -- actually it's not out of turn.

THE COURT: Ms. Withers?

MS. WITHERS: No objection, Your Honor.

THE COURT: So be it. Defense exhibit.

MR. HURLEY: Thank you.

THE CLERK: Are we marking the second one as anything or not marking it at all?

THE COURT: Is it your intention to have exhibits for two pages?

MR. HURLEY: Thursday morning I will come in and substitute one that's not marked up. It will be the same thing.

THE COURT: My question is, is the exhibit one or two pages, or is it Exhibits 1 and 2?

MR. HURLEY: It is one exhibit.

THE CLERK: Entered as Defense Exhibit No. 1.

THE COURT: Thank you.

BY MR. HURLEY:

Q Anna, I'm going to show you -- I don't know if you've seen this, so take your time -- a report that was made by the school and Delaware Family Services as a result of your contact after the eye marker.

You take your time and read it. Tell me when you have done so to yourself.

(Brief pause.)

BY MR. HURLEY:

Q Were there any words there you didn't understand?

A No.

Q Did you happen to notice that this looks like an official document on this first page?

A Yes.

Q And it has a place for a description and it says, quoting you, "Daddy rubbed and washed against my eyes. They are still sore. I had marker on my eyes. I was asleep, and the marker lids were open. And I moved around in bed when I was sleeping and markers got on my eyes. Daddy used cold water and a wash rag. It hurt,

and I cried."

That's your quote. And then it goes on to describe what the school people did. And in describing you it says, "She said it happened this morning. The assistant principal came in my office, and Anna told him the above. And he told her that she had to tell the truth. Anna said, quote, 'I marked my eyes with marker to make it look like make up last night so my friend Lucy could see.'" Closed quote.

Which is the truth?

A The first one. May I explain?

Q The first one about rolling around?

A Yes.

Q So then you deliberately lied to the teacher?

A Yes.

Q I'm sorry. The assistant principal.

A Yeah. May I explain?

Q Did he make you feel guilty when you lied to him?

A Yeah.

Q What did you mean by lying to him?

A Well, I thought when I told him that I left the caps open, it would sound kind of weird because I forgot to close the caps and he would ask me why, so I just told him that.

Q So you just told him what you wanted him to believe?

A Yes.

Q And did that idea just come to you that quickly?

A No.

Q So you thought about it and planned it?

A I thought about it on the way to the office.

Q You thought on the way to the office that this isn't going to sound good, so you have to come up with something better; is that right?

A Yes.

Q Well, why does it say, "Anna told him the above"? And then he told you, you had to tell the truth. So, you repeated the same story about the loose caps to him; didn't you?

A Yes.

Q And you already had, like, a back-up

plan in your mind that if he doesn't buy into this then you'll tell him that you marked them yourself?

A Yes.

Q Okay. Fair enough. You were how old then?

A I don't really remember, but I know it must have been before fourth grade because that's when Lucy moved away.

Q Okay. I'll help you because you know your date of birth. This was March of 2009. So, how old were you May 22 of 2009?

A I was eight.

Q So you would have been seven years old?

A Yes.

Q Who is Cody?

A Cody is my brother.

Q And so that it is clear, before you had ever met Melvin, you now know that he had a family in Tacoma, Washington with other folks?

A Yes.

Q And you now know that he had adopted certain children?

A Yes.

Q And one of them was Cody?

A Yes.

Q So although you're not related to him by blood, because you were once a family and that was his previous family, you refer to him as your brother?

A Yes.

Q Do you remember that when you were in the first grade, Cody came to Delaware to live with you all?

A Yes.

Q And you remember he was here about four months?

A Yes.

Q He didn't even spend Christmas here, did he?

A No.

Q All right. And he had actually given you a pill back in the first grade, hadn't he?

A Yes.

Q And because Cody had given you this pill, you couldn't walk, and they took you to

the emergency room, and you were looked at and released?

A Yes.

Q Okay. And that was the last time you saw Cody?

A Yes.

(Brief pause.)

BY MR. HURLEY:

Q I'm going to show you a document from Family Services and tell you that this is May 13th, 2009, just before your birthday and that last paragraph there and the top of the next page where it has yellow, just read it to yourself, please.

Boy, that's quick. You read that?

A Yes.

Q Okay. Thank you. This indicates it was a visit to your school regarding Cody and your parents?

A Yes.

Q "Anna went on to explain how her brother, Cody, had been in jail, and he has been knocking on her windows with a garbage bag

asking for money. She said this has happened a lot recently."

True or false?

A False.

Q Do you remember that the first time that you gave a recorded statement, after you ran away, was a couple weeks after your hospital meeting with the police and with Ms. Tammy?

A Yes.

Q I'm going to show you a page of the transcript -- and this is what the jury just saw -- just read to yourself the yellow highlighted portions, please.

(Brief pause.)

BY MR. HURLEY:

Q I'm only going to ask about the yellow stuff. Thank you. The police officer says here that he has one rule, did you see that?

A Yes.

Q He says, "When we talk, we always tell the truth, you understand that?"

And you indicate that you do.

A Yes.

Q And he says, "Can we agree on that, to tell the truth today?"

And you say, "Uh-huh."

Did you honor that commitment? Is everything that you told the police on August the 6th the absolute truth?

A Yes.

MS. WITHERS: Can we clarify the date?

MR. HURLEY: August 6th, 2012.

MS. WITHERS: That's not the date of the interview.

MR. HURLEY: August 7th, 2012.

MS. WITHERS: That's not the date of the interview.

MR. HURLEY: All right. I give up. It's the CAC interview in 2012.

(Brief pause.)

BY MR. HURLEY:

Q I made a mistake. Putting that aside, you did tell the absolute truth?

A Yes.

(Brief pause.)

BY MR. HURLEY:

Q This is August 6th. Again, I hand you pieces of a transcript, and I'm only going to ask you about the yellow; so, familiarize yourself with it. Please let me know when you're done.

(Brief pause.)

BY MR. HURLEY:

Q What you're describing here is what you say Melvin did in putting his finger or thumb underneath your arm and pinching it or hurting you; correct?

A Yes.

Q And the question is asked, "Does anyone else ever do that?"

And you say, "No."

Was that true?

A Yes.

Q Ashley did that.

A (No response.)

Q I'll enter this as a court exhibit, an excerpt of May 14th.

THE COURT: Yes.

THE CLERK: Entered as Court Exhibit No. 9.

MR. HURLEY: This is May 14th, 2010.

(Whereupon, the DVD was played for the Court and jury, after which the following proceedings were had:)

BY MR. HURLEY:

Q I'll ask you again. Did Ashley pinch you under the arm?

A (No response.)

MR. HURLEY: Your Honor, may I have the easel brought out?

THE COURT: Yes.

BY MR. HURLEY:

Q While that's being done, when you have your 2007 CAC interview, do you remember telling the interviewer an experience you had at school or daycare where your breathing -- you couldn't breathe. You dropped, and you couldn't stop and get your breath back?

A Yes.

(Brief pause.)