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In The Fifteenth Judicial Circuit Court In
and For Palm Beach County, Florida
Criminal Division
Case No. 95-8543CF A02

STATE OF FLORIDA,)
)
V)
)
EDGAR BUSHEY,)
)
Defendant.)
_____)

Volume 2

Jury Trial Before the Honorable Edward A. Garrison

Palm Beach County Courthouse
Courtroom 10-F
West Palm Beach, Florida 33401
July 17, 1996
Commencing at or about 9:20 a.m.

APPEARANCES:

On behalf of the State:
STATE ATTORNEY'S OFFICE
401 North Dixie Highway
West Palm Beach, Florida 33401
BY: BARBARA BURNS,
Assistant State Attorney

On behalf of the Defendant:
PUBLIC DEFENDER'S OFFICE
421 Third Street
West Palm Beach, Florida 33401
BY: BARBARA WOLFE,
Assistant Public Defender

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I N D E X

Witness Direct Cross Redirect Recross

Shay Charles:

By Ms. Burns 81

By Ms. Wolfe 95 Further Cross-122

Susan Charles:

By Ms. Burns 98,

By Ms. Wolfe 110

Frank Baker:

By Ms. Burns 111 121

By Ms. Wolfe Voir Dire-118 120

Steven Kopins:

By Ms. Wolfe 126

By Ms. Burns 139

Certificate of Court Reporter

Page 141

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P R O C E E D I N G S :

Thereupon,

THE COURT: All right. We are here on Bushey.

MS. WOLFE: I would like to invoke the rule.

THE COURT: Both counsel will be responsible for telling their own witnesses that the rule has been invoked.

MS. WOLFE: May I address the Court about the comments the Court made Monday having to do with, the only way I could have had that information was if there was witness tampering in this case?

THE COURT: Yes

MS. WOLFE: I'm not concerned that you are suggesting that I would have been involved in witness tampering in this case, based upon the relationship that I have with the Court, and based upon mutual respect and trust. I'm sure that the Court was not suggesting that I was involved in witness tampering.

However, for appellate purposes and whoever may read this record, they may not realize that I have this relationship.

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I would like to put on the record how I came to know that the witnesses were not available.

THE COURT: Before you do that, let me suggest that since you and I do know each other so well, you know I was not suggesting that you or Mr. Bushey were engaging in witness tampering. But that was not a reasonable account for the witnesses not being here and I was not buying that. Perhaps the remarks were ill advised. But go ahead.

MS. WOLFE: I did not for a moment think that you were accusing me of that because I know you would not do such a thing. But it is my job as defense counsel to be aware of the status of the availability of the witnesses. And I did receive some information from one of the witnesses that I'm calling, who is a family member, that Shay and her mother were out of town and that he didn't know if they were going to be back in time for the trial.

I had also received information from Ms. Burns that she had not been in touch with the mother and child. So, based upon that, I had reason to believe that they were not going to be

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1 available on Monday, and it certainly had
2 nothing to do with anything beyond that.

3 THE COURT: Okay. Thank you.
4 Bring in the jury.

5 You have asked the witnesses to step
6 outside?

7 MS. BURNS: There are no witnesses that
8 will be testifying in this courtroom.

9 (Whereupon, the jury enters the
10 courtroom.)

11 THE COURT: Good morning. We are all set
12 now.

13 Ms. Burns, call your first witness.

14 MS. BURNS: The State would call Shay
15 Charles.

16 S H A Y C. C H A R L E S
17 having been first duly sworn by the Clerk, was examined
18 and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. BURNS:

21 Q. Good morning, Shay.

22 A. Good morning.

23 Q. Would you please state your full name and
24 spell your last name for the Court Reporter?

25 A. My name is Shay Carol Charles. My last

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1 name is spelled C-H-A-R-L-E-S.

2 Q. How old are you?

3 A. Ten.

4 Q. When did you turn ten?

5 A. April 6th.

6 Q. Of this year?

7 A. Yes.

8 Q. Do you go to school?

9 A. Yes.

10 Q. Where do you go to school?

11 A. Everington Elementary.

12 Q. What grade will you be in this fall?

13 A. Fifth.

14 Q. What's your favorite subject?

15 A. Math.

16 Q. Do you know a person by the name of Edgar

17 Bushey?

18 A. Yes.

19 Q. How do you know Mr. Bushey?

20 A. He was a friend of my mom's and

21 grandmom's.

22 Q. Do you remember how old or how young you
23 were when you first met Mr. Bushey?

24 A. No.

25 Q. Was it just a little while ago or a long

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1 time ago?

2 A. A long time ago.

3 Q. Were you in school yet?

4 A. Yes.

5 Q. Okay. How is it that you met Mr. Bushey?

6 A. My grandma works for him.

7 Q. And do you know what kind of work she
8 does?

9 A. She works out at a religious store.

10 Q. I would like to direct your attention to
11 October of '94. Did you know Mr. Bushey in October of
12 '94?

13 A. Yes.

14 Q. And do you remember seeing Mr. Bushey in
15 October of '94?

16 A. Yes.

17 Q. Where did you see him?

18 A. In my house.

19 Q. Can you tell the jurors what you remember
20 about him coming to your house?

21 A. (No response.)

22 Q. Who opened the door?

23 A. Me.

24 Q. And you saw him standing there?

25 A. Yes.

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1 Q. Do you know why he came to your house on
2 that day?

3 A. To talk to my uncle and my grandma.

4 Q. And did your uncle and grandma come out
5 and talk to him?

6 A. No.

7 Q. Do you know what they were doing?

8 A. My grandma was in my mom's room. She was
9 babysitting me and taking a shower.

10 Q. Okay.

11 A. My uncle was in his room folding his
12 clothes.

13 Q. So what happened after Mr. Bushey said he
14 wanted to talk to your uncle and grandma?

15 A. He sat down on my living room couch.

16 Q. Where were you?

17 A. In my living room.

18 Q. All right. Where were you seated or where
19 in the living room were you?

20 A. On the couch.

21 Q. All right. Where did Mr. Bushey sit in
22 regard to where you were seated?

23 A. I was in between his legs.

24 Q. While you were sitting in between his legs
25 did he say anything to you?

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1 A. Yes. He started rubbing my legs.

2 Q. Can you tell the jurors what you mean by,
3 "he started rubbing my legs?"

4 A. He put his hands on my legs and started
5 rubbing them.

6 Q. What part of your legs?

7 A. On my thighs.

8 Q. And would this be on the side, bottom or
9 top of your thighs?

10 A. Top.

11 Q. And what was he using to rub?

12 A. His hands.

13 Q. Did he say anything to you when he put his
14 hands on your legs and started rubbing them?

15 A. Yes.

16 Q. What did he say to you?

17 A. He said to take his hands and rub them
18 wherever I wanted him to.

19 Q. What did you do?

20 A. I moved them a little and he kept on going
21 too.

22 Q. When you say you moved them, where did you
23 move them?

24 A. Up and down where my knees were.

25 Q. Was this unusual for him to be doing that?

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1 A. No, not really, because a couple of days
2 ago before he did that I was laying down. I was laying
3 down on his lap and he rubbed my back, and my mom was
4 sitting next to him.

5 Q. How did you feel about sitting between his
6 legs and having him rub your legs?

7 A. Nervous.

8 Q. Did anything else happen after he started
9 rubbing your legs?

10 A. Yes.

11 Q. What happened?

12 A. He stopped them in front, right there in
13 front of my thighs, and I can't say any more. I
14 forgot.

15 Q. Did he say anything to you when he stopped
16 right in front of your thighs?

17 A. Yes. He said, "let me feel what a little
18 girl has inside of them." And then he put his hand
19 under my bodysuit.

20 Q. Can you describe to the jury what that was
21 like?

22 A. I had on a purple bodysuit where the
23 sleeves come up to my elbows.

24 Q. What did you have on, if anything,
25 underneathe it? Anything?

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- 1 A. No.
- 2 Q. You say he put his hands on --
- 3 A. On the side -- on the bottom of it.
- 4 Q. I'm sorry?
- 5 A. On the side. It was on the side.
- 6 Q. On the side? Like on the side of your
7 bodysuit?
- 8 A. It was on the side where my thighs were --
9 like where it would go in my vagina.
- 10 Q. So it was between your legs and not on the
11 outside of your legs?
- 12 A. Um-hum.
- 13 Q. When he put his hand inside of your
14 bodysuit between your legs, did he do anything with his
15 hand?
- 16 A. His middle finger just dropped in between
17 them.
- 18 Q. Between what?
- 19 A. Between -- in between my vagina. Not
20 where I go to the bathroom though.
- 21 Q. Further back?
- 22 A. Yes. It was in front, sort of.
- 23 Q. And when he did this -- when his finger --
24 can you describe what it felt like when he put his
25 finger there?

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1 A. It felt frightening.

2 Q. What did you do?

3 A. Just let his hand go, because I was
4 scared. I didn't want him to do anything to me.

5 Q. Did you say anything to him?

6 A. No.

7 Q. What did he do?

8 A. He just took his hand out a little while
9 later. And I said, "you wanted to talk to my uncle?"
10 And I went to my uncle's door and banged on it and
11 said, "Steven, Edgar is here."

12 Q. While his finger was inside of you -- did
13 you feel his finger or any part of his finger go inside
14 of you?

15 A. No.

16 Q. When you got up and you went to get your
17 Uncle Steven, where did you go?

18 A. I went in my brother's room where he was,
19 because he was staying at my house and was in my
20 brother's room because he just got a divorce from his
21 wife.

22 Q. Did Mr. Bushey say anything to you when
23 you got up and went to your uncle's door?

24 A. I went around the bed and he said, "come
25 here," twice, and I said, "no." And he said, "give me

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1 a hug," and I said, "no," and I ran out of the room and
2 went into the room where my grandmother was.

3 Q. Before you went to your uncle's room after
4 he put his hand inside of you, did he say anything to
5 you about having his hand inside of you?

6 A. He said, "I should not be doing this. I'm
7 sorry."

8 Q. Did he --

9 A. And he said, "don't tell anyone."

10 Q. Okay. Were you able to get inside of your
11 uncle's room right away?

12 A. The door was locked and so he had to get
13 up. He was like still on the couch and he got up and
14 was walking. And then my uncle opened the door.

15 Q. When you say, "he was walking," who was
16 that?

17 A. Edgar.

18 Q. So, did he follow you into your uncle's
19 room.

20 A. Yes, because he wanted to talk to him.

21 Q. Were you able to tell your uncle what
22 happened?

23 A. No.

24 Q. Why?

25 A. Because I didn't want anything -- because

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1 Edgar was sitting there. I went around him and he was
2 in the middle of the bed and Edgar was on the other
3 side. And I just ran out after he said to give him a
4 hug.

5 Q. After that happened -- was your mother
6 there?

7 A. No. She went to Connecticut for two
8 weeks. My grandma was babysitting me.

9 Q. Do you remember if you told your mother
10 what Edgar did?

11 A. Yes.

12 Q. When did you tell your mother?

13 A. October. I forgot what year -- I mean,
14 what day it was.

15 Q. Do you remember how long after this
16 happened between you and Mr. Bushey it was that you
17 told her?

18 A. Yes. It was two days after she came home.

19 Q. Okay, and after you told her what happened
20 then did you have an opportunity to talk to a police
21 officer?

22 A. Yes, Detective Baker.

23 Q. Do you remember where you were when you
24 spoke to Detective Baker?

25 A. We were at my counseling with Nancy

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1 Comono.

2 Q. And he took your statement there?

3 A. Yes.

4 Q. Do you remember talking to anyone else
5 about what happened?

6 A. My mom called my grandma.

7 MS. WOLFE: Objection.

8 May we approach?

9 THE COURT: Yes.

10 (Bench conference on the record.)

11 MS. WOLFE: This child may be getting into
12 hearsay at this point, and I'm objecting to
13 that. She has already testified as to what
14 happened, you know, as far as telling about all
15 of the other people she spoke to about it. They
16 are not going to testify and it's not relevant,
17 and I think the State is trying to skirt the
18 hearsay issue by getting it in through the
19 backdoor.

20 THE COURT: I agree there has been
21 hearsay. She said her mom called her grandma.
22 But we are beyond that. There is no hearsay
23 left.

24 (End of bench conference.)

25 BY MS. BURNS:

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1 Q. After your mom called your grandma did you
2 have a chance to talk to her?

3 A. Yes.

4 Q. Okay. Don't say what was said, okay?

5 A. Okay.

6 Q. I'm just asking who you spoke to, okay?

7 A. (Witness nods head.)

8 Q. After you spoke with Detective Baker did
9 you meet with anyone else to talk about what had
10 happened?

11 A. No.

12 Q. Do you remember ever going to the State
13 Attorney's Office?

14 A. Not that I remember.

15 Q. To my office?

16 A. Yes.

17 Q. And we talked about the case?

18 A. Um-hum.

19 Q. Do you remember going to anyone else's
20 office and talking about the case?

21 A. I went to -- I forget her name.

22 Q. Do you recognize the lady in this
23 courtroom?

24 A. Yes.

25 Q. Do you remember talking to her?

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1

A. Yes.

2

Q. Where did that take place?

3

A. In her office.

4

Q. Who was present?

5

A. Who was what?

6

Q. Who was there when you talked to her?

7

A. My mom, her and me.

8

Q. Was I there?

9

A. No.

10

Q. Was there a Court Reporter there?

11

A. No.

12

Q. Do you remember when that was?

13

A. No.

14

Q. Shay, do you see Mr. Bushey in the

15

courtroom today?

16

A. Yes.

17

Q. Would you mind pointing him out to the

18

jury as to where he is seated and describe what he is

19

wearing?

20

A. He has on a blue and white striped shirt,

21

with beige pants.

22

MS. BURNS: May the record reflect that

23

she has identified the defendant in this case?

24

THE COURT: Yes.

25

BY MS. BURNS:

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1 Q. Is this the person that placed his hand
2 inside of your bodysuit and --

3 A. Yes.

4 Q. -- And placed his finger in your vagina?

5 A. Yes.

6 MS. WOLFE: Objection.

7 May we approach?

8 THE COURT: Yes.

9 (Bench conference on the record.)

10 MS. WOLFE: That is a misstatement of the
11 witness' testimony. The child never testified
12 that he placed his finger in her vagina. She
13 said,

14 "He placed it on the outside near the area
15 where I go to the bathroom."

16 The prosecutor has completely distorted
17 that and I move to strike it and move for a
18 mistrial.

19 THE COURT: Motion denied.

20 MS. BURNS: Thank you.

21 MS. WOLFE: Is the motion to strike
22 denied?

23 THE COURT: Yes.

24 (End of bench conference.)

25 MS. BURNS: Thank you.

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1 No further questions.

2 THE COURT: Ms. Wolfe.

3 CROSS EXAMINATION

4 BY MS. WOLFE:

5 Q. Good morning, Shay.

6 Can you hear me okay?

7 A. Yes.

8 Q. Do you remember me?

9 A. Yes.

10 Q. You know I'm Edgar's lawyer?

11 A. Yes.,

12 Q. Shay, let's go back and talk about a
13 couple of things that you have just mentioned.

14 First of all, you have known Edgar for a
15 long time, right?

16 A. Yes.

17 Q. And he has come over to your house often
18 and met with your family?

19 A. Yes.

20 Q. And you have always felt pretty
21 comfortable with him, haven't you?

22 A. Um-hum.

23 Q. Comfortable enough that you have
24 frequently sat on his lap and tickled and played with
25 him?

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1 A. Monday when my dad was with my mom, my mom
2 was nervous because he kept on tickling me. And she
3 told me --

4 Q. I'm sorry. We can't say anything about
5 that. Your mom may have said that to you, but my
6 question to you is that you have been comfortable after
7 playing around with him before, tickling and wrestling,
8 haven't you?

9 A. Not wrestling.

10 Q. Tickling and sitting on his lap?

11 A. Um-hum.

12 Q. Answer out loud.

13 A. Yes.

14 Q. On the day Edgar came over, back in
15 October, almost two years ago, he and you were watching
16 TV?

17 A. No.

18 Q. Sitting in the living room?

19 A. No.

20 Q. Not watching TV?

21 A. No.

22 Q. Just sitting there and --

23 A. Yes.

24 Q. -- And talking, tickling and so forth?

25 A. Yes.

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1 Q. Now you were wearing a -- you call it a
2 bodysuit. That's like a bathing suit?

3 A. Yes.

4 Q. And there were no stockings or panties
5 over that?

6 A. Right.

7 Q. You said a moment ago that Edgar put his
8 hand inside the bodysuit and touched you near the top
9 of your vagina, right?

10 A. Yes.

11 Q. And he never put his finger inside of your
12 vagina, did he?

13 A. No.

14 Q. Shay, don't you want to go and live with
15 your dad?

16 A. No.

17 Q. No?

18 A. I don't want to say goodbye to my
19 brothers.

20 Q. But haven't you said in the past that you
21 would like to go and live with your dad?

22 A. Yes.

23 Q. And is it difficult for you living at
24 home?

25 A. Yes.

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1 Q. You and your mom?

2 A. Yes.

3 MS. BURNS: Judge, objection to the
4 relevance of this questioning.

5 THE COURT: Sustained.

6 MS. WOLFE: Okay. Judge, Shay appears to
7 be upset and I have no more questions.

8 THE COURT: Ms. Burns?

9 MS. BURNS: No other questions.

10 THE COURT: Thank you.

11 Shay, you may step down.

12 Next witness, Ms. Burns?

13 MS. BURNS: Susan Charles.

14 MS. WOLFE: Your Honor, there was one more
15 question I did want to ask Shay Charles, if I
16 could recall her when she is feeling better?

17 THE COURT: Okay.

18 S U S A N C H A R L E S

19 having been first duly sworn by the Clerk, was examined
20 and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BURNS:

23 Q. Good morning, ma'am.

24 A. Good morning.

25 Q. Please state your full name and spell your

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1 last name for the Court Reporter?

2 A. Susan Charles. My last name is spelled
3 C-H-A-R-L-E-S.

4 Q. Move closer to the microphone. It's hard
5 to hear you unless you speak right into it.

6 A. Okay.

7 Q. Where do you live?

8 A. Boynton Beach, 5840 Sunpointe Circle.

9 Q. Were you living there in October of 1994?

10 A. Yes.

11 Q. That's in Palm Beach County?

12 A. Boynton Beach, yes.

13 Q. Do you know an individual by the name of
14 Edgar Bushey?

15 A. Yes.

16 Q. How did you come to know Mr. Bushey?

17 A. I met him eight years ago. He owned a
18 religious store. I was looking for one and made a
19 phone call and he gave me directions to come there. I
20 went there and we started to talk and became friends.
21 I was looking for a job at that time.

22 Q. And did you start working for him?

23 A. Not right away.

24 Q. At some point did you start working for
25 him?

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1 A. Yes.

2 Q. That was somewhere around eight years ago?

3 A. It was around that time. It wasn't right
4 after I met him though. But he knew I needed work and
5 tried to help me out.

6 Q. Did anyone else in your family start
7 working for him?

8 A. My mother and grandfather.

9 Q. How many religious stores are owned by the
10 Bushey family?

11 A. There are two; a catholic store and
12 Bushey's Religious Store.

13 Q. Which store do you work for?

14 A. I was up at the catholic store.

15 Q. Where is that?

16 A. In North Palm Beach.

17 Q. Where did your mother start working?

18 A. Bushey's Religious Store in Delray.

19 Q. Which store did Mr. Bushey operate?

20 A. He did operate Bushey's Religious Store
21 and then they opened another one and he is up there now
22 at the other one.

23 Q. The store that you were working at then,
24 was that being run by Mr. Bushey or somebody else in
25 his family?

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1 A. I don't know as far as that part of it. I
2 know he was the one that was always there. I don't
3 know if he owned it.

4 Q. Then did you become friends?

5 A. Yes.

6 Q. Did there come a point in time when he
7 started coming and visiting your home?

8 A. Yes. He would come over and talk about --
9 you know, his business and how he wanted to better it.
10 That kind of thing.

11 Q. And at some point did you introduce him to
12 your daughter, Shay?

13 A. Yes, when he came over. He knew I had two
14 children.

15 Q. How old were your children then?

16 A. Oh, gosh. This was -- I don't know. They
17 were very young.

18 Q. Infants or toddlers?

19 A. Toddlers.

20 Q. And did they become friendly with each
21 other? Did there seem to be any problems?

22 A. No. They became friends with Edgar and he
23 was fun. They would jump around and that kind of
24 thing.

25 Q. I would like to draw your attention to

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1 October, 1994. In the latter part of October of that
2 year do you remember where you were?

3 A. At the time it happened?

4 Q. Yes.

5 A. Where I was? Yes, I remember where I was.

6 Q. Where were you?

7 A. At the Rader Institute.

8 Q. Where?

9 A. In Seminole Florida for two weeks.

10 Q. Where were your children while you were
11 gone?

12 A. My mom was watching my children. They
13 were in Boynton, and my mom had come over to watch them
14 at my house.

15 Q. This was at your house?

16 A. Yes.

17 Q. Was anybody else in the house besides your
18 mom and the two children?

19 A. My brother Steven was living there.

20 Q. When you returned from your trip did you
21 eventually learn that something had occurred between
22 Mr. Bushey and your daughter?

23 A. My daughter came up to me and --

24 MS. WOLFE: Objection.

25 BY MS. BURNS:

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1 Q. Okay, you will not be able to tell us what
2 the discussion was. But did there come a point in time
3 when you learned from your daughter that something had
4 occurred?

5 A. Yes.

6 Q. How did you react to that?

7 A. I was angry, scared and I was frightened.

8 Q. What did you do?

9 A. I was laying on the bed and I asked my
10 daughter what happened when she came to me and
11 mentioned it to me. I was shocked and said, did
12 somebody touch you and who --

13 MS. BURNS: Don't talk about what was
14 discussed.

15 MS. WOLFE: May we approach please?

16 THE COURT: Yes.

17 (Bench conference on the record.)

18 MS. WOLFE: Objection to this entire line
19 of questioning. The prosecutor is attempting to
20 circumvent the hearsay rule and get it in by
21 inference, and I'm moving to have all of the
22 testimony stricken.

23 THE COURT: Motion denied.

24 (End of bench conference.)

25 BY MS. BURNS:

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1 Q. After you had the conversation with your
2 daughter what did you do?

3 A. I made a phone call to my grandmother.

4 Q. And after you made a phone call to your
5 grandmother what did you do?

6 A. Made a second phone call to my mother.

7 Q. And then after that phone call what did
8 you do?

9 A. I was very upset and expressed my feelings
10 and then said something needs to be done. So then I
11 talked to Edgar after that, but not directly after the
12 two phone calls because I had to think about what was
13 going on.

14 Q. You said you talked to Edgar. Can you
15 tell the jurors how this conversation took place?

16 Was it in person or over the phone?

17 A. It was over the phone and I was very
18 angry. The more I thought about it, the more angry I
19 was. I called up and said, how could you do this and
20 in my house?

21 Q. Did you explain to him the conversation
22 you had with your daughter?

23 A. I said, Shay said --

24 Q. Not what you said, but did you explain to
25 him the conversation?

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1 A. Yes.

2 Q. And what was his response to you if he
3 gave a response?

4 A. He said it was not true.

5 Q. And did he say anything else about it?
6 Did he give an explanation as to what may
7 have happened?

8 A. Not offhand, no.

9 Q. Did he indicate to you that anything at
10 all, even if by accident, had happened?

11 A. After several phone calls. After some
12 phone calls.

13 Q. What did he indicate to you?

14 A. That he just touched her with his thumb,
15 and that it was down there between her legs -- kind of
16 between there, and that was it.

17 Q. Did you discuss with him either during
18 that conversation or in a later conversation, the
19 incident again?

20 A. Yes.

21 Q. And did he make any comments to you at
22 that time regarding the incident?

23 A. Yes. That he was sorry for what he had
24 done to the family and -- with all of this pressure and
25 everything -- and to "tell Shay I'm sorry."

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1 when I needed it.

2 Q. Are you working at the location where Mr.
3 Bushey is?

4 A. The one in Boynton Beach where my mom is.

5 Q. Is Mr. Bushey at that location?

6 A. No. He is basically at the other one, the
7 catholic store.

8 Q. In Palm Beach Gardens?

9 A. Right.

10 Q. Did you speak to anyone else regarding
11 this case?

12 A. Just the people that I know, I mean as far
13 as, if there was a court date or something and what was
14 going on.

15 Q. Were you ever invited to Ms. Wolfe's
16 office to speak to her about this case?

17 A. I spoke to her. There was a deposition.

18 Q. Yes.

19 A. It was canceled and I wanted to make sure.
20 So I made a phone call and I did go there that same
21 day.

22 Q. By whose invitation?

23 A. She asked me if I wanted to come up there
24 and talk about -- she wanted to meet Shay.

25 Q. Did you do that?

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25 everything -- and to "tell Shay I'm sorry."

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3 Bushey is?

4 A. The one in Boynton Beach where my mom is.

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8 Q. In Palm Beach Gardens?

9 A. Right.

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11 this case?

12 A. Just the people that I know, I mean as far
13 as, if there was a court date or something and what was
14 going on.

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16 office to speak to her about this case?

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18 Q. Yes.

19 A. It was canceled and I wanted to make sure.
20 So I made a phone call and I did go there that same
21 day.

22 Q. By whose invitation?

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24 and talk about -- she wanted to meet Shay.

25 Q. Did you do that?

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1 A. Yes.

2 Q. You took Shay up there?

3 A. Yes.

4 Q. Do you remember what was discussed during
5 that visit?

6 A. Yes.

7 MS. WOLFE: Objection.

8 May we approach?

9 THE COURT: Yes.

10 (Bench conference on the record.)

11 MS. WOLFE: I don't know where the
12 prosecutor is going with this. I have a right
13 to meet with the witnesses. And if she is going
14 to relay the discussions we have had in my
15 office, I will object that it's hearsay.

16 I think there is an implication here that
17 I have done something wrong and I have not. And
18 I resent this being brought up to the jury.

19 THE COURT: There's nothing for me to rule
20 on.

21 (End of bench conference.)

22 BY MS. BURNS:

23 Q. Do you remember what was discussed in the
24 conference between you and Ms. Wolfe?

25 A. I remember.

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1 Q. What was discussed?

2 A. What happened to Shay. We went over what
3 happened to Shay and how she felt.

4 Q. Okay. And was your deposition ever taken?

5 A. No, not that I know of.

6 Q. Was I present at that conference?

7 A. No, you were not.

8 MS. BURNS: Nothing further.

9 Thank you.

10 THE COURT: Ms. Wolf.

11 CROSS EXAMINATION

12 BY MS. WOLFE:

13 Q. Good morning, Susan. How are you?

14 A. Good morning.

15 Q. You have mentioned several conversations
16 that you had with Mr. Bushey regarding comments he has
17 made about this incident. Isn't it true that he did
18 tell you that he did not intentionally do this to Shay
19 and that if any touching took place it was an accident?

20 A. Did he mention that, yes. That is the way
21 it was mentioned.

22 Q. Thank you.

23 THE COURT: Any redirect Ms. Burns?

24 MS. BURNS: No, Judge.

25 THE COURT: Thank you, Ms. Charles. You

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1 may step down.

2 Next witness?

3 MS. BURNS: Detective Frank Baker.

4 F R A N K J. B A K E R

5 having been first duly sworn by the Clerk, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. BURNS:

9 Q. Good morning.

10 A. Good morning.

11 Q. Please state your full name?

12 A. Frank J. Baker.

13 Q. How are you employed?

14 A. Palm Beach County Sheriff's Department.

15 Q. How long have you been with the Palm Beach
16 County Sheriff's Office?

17 A. A little over nine years.

18 Q. I would like to take your attention to
19 June of 1995 and ask you if you were on -- I guess June
20 15, 1995, if you were on duty that day?

21 A. Yes, I was.

22 Q. In what capacity were you working at that
23 time?

24 A. I was a detective with the Crimes Against
25 Children Division.

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1 Q. What were your duties and responsibilities
2 in that regard?

3 A. I handled all crimes against children
4 including rape, incest and homicide.

5 Q. Have you had any special training or
6 education?

7 A. Yes, I have.

8 Q. Can you tell the jurors what type of
9 special training or education you've had to be a
10 detective?

11 A. Well, when you become a detective they
12 periodically send you to school. And I have been to
13 interrogation school, advanced interrogation school,
14 interviewing victims -- adult victims and four hours in
15 different courses and seminars that I have attended
16 throughout Florida sponsored by the FDLE and the FBI
17 and law enforcement.

18 Q. Did you have an opportunity to become
19 involved in an investigation regarding allegations made
20 by a young girl, Shay Charles?

21 A. Yes, I did.

22 Q. How did you become involved in that
23 investigation?

24 A. I was contacted by a therapist, Nancy
25 Comono, who Shay was going to counseling with.

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1 Q. Has he addressed or confronted you about
2 the pending case?

3 A. I, more or less, wanted to know what was
4 going on, and where he stood as far as what was
5 happening and that.

6 Q. Did he indicate to you in any way how he
7 wanted you to handle the case?

8 A. I think that he was just scared and didn't
9 want to go to jail.

10 Q. Did he, in any way, suggest to you what
11 you should or should not do regarding this case?

12 A. He didn't want me to really follow through
13 with it.

14 Q. Did he indicate to you what you should do
15 if you were required to come here and testify?

16 A. What I should do?

17 Q. Yes.

18 A. Can you repeat that?

19 Q. Did he indicate or suggest to you what you
20 should do if you were called here or if Shay was called
21 here to testify?

22 A. Not to show up, really.

23 Q. Have you continued to work for the Bushey
24 family?

25 A. On and off to make a little bit more money

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1 when I needed it.

2 Q. Are you working at the location where Mr.
3 Bushey is?

4 A. The one in Boynton Beach where my mom is.

5 Q. Is Mr. Bushey at that location?

6 A. No. He is basically at the other one, the
7 catholic store.

8 Q. In Palm Beach Gardens?

9 A. Right.

10 Q. Did you speak to anyone else regarding
11 this case?

12 A. Just the people that I know, I mean as far
13 as, if there was a court date or something and what was
14 going on.

15 Q. Were you ever invited to Ms. Wolfe's
16 office to speak to her about this case?

17 A. I spoke to her. There was a deposition.

18 Q. Yes.

19 A. It was canceled and I wanted to make sure.
20 So I made a phone call and I did go there that same
21 day.

22 Q. By whose invitation?

23 A. She asked me if I wanted to come up there
24 and talk about -- she wanted to meet Shay.

25 Q. Did you do that?

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1 Q. What did you do after you were contacted?

2 A. Set up an appointment with the therapist
3 to meet with the child at her office for an interview.

4 Q. Did you interview her?

5 A. Yes.

6 Q. Did you take any other interviews other
7 than the child's?

8 A. I interviewed Shay's mother and I
9 interviewed Mr. Bushey.

10 Q. Okay. As far as Mr. Bushey goes, do you
11 remember when you interviewed him?

12 A. I believe it was on the 15th of June.

13 Q. Where did that interview take place?

14 A. That took place at his bookstore on
15 Federal Highway in Delray Beach.

16 Q. Did you make any prior arrangements to
17 meet with him there?

18 A. Yes.

19 Q. While at the bookstore did you discuss the
20 allegations made by Shay Charles?

21 A. Yes.

22 Q. What do you remember discussing with Mr.
23 Bushey?

24 A. I walked into the bookstore, introduced
25 myself as a detective with the Palm Beach County

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1 *Sheriff's Office and told him I was there to speak*
2 *about the allegations made by Shay Charles. And his*
3 *response was, and I quote: "I was expecting you."*

4 *We went back into his office. He sat down*
5 *at his desk and I told him about the allegations Shay*
6 *had made and asked him if he would like to make a*
7 *response to that.*

8 *Q. Did he respond to you?*

9 *A. Yes.*

10 *Q. What was his response to you at that time?*

11 *A. He told me he had touched her private*
12 *area, but that it was unintentional.*

13 *Q. Did he describe how that touching*
14 *occurred?*

15 *A. Yes, he told me --*

16 *Q. How did he describe it?*

17 *A. He told me that he was a friend of the*
18 *family and went over to visit the family. She was*
19 *sitting on the living room couch. He sat down next to*
20 *her and they began to tickle and play. He accidentally*
21 *put his hand inside of her bodysuit and his thumb*
22 *accidentally touched her vagina.*

23 *Q. Did he indicate to you what caused his*
24 *hand to go inside of it?*

25 *A. Yes.*

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1 Q. What was that?

2 A. That Shay was sitting on his lap and
3 punched his thigh, and while he was telling me this he
4 was demonstrating it to me. And he stated that his
5 body went into a spasm, and his hand flew out from his
6 side, and that when his hand flew out from his side it
7 went under her bathing suit and his thumb touched her
8 vaginal area.

9 Q. After Mr. Bushey gave you that account
10 then did you have the opportunity to speak with him
11 again?

12 A. Yes.

13 Q. What was the purpose for speaking to him
14 again?

15 A. Well, he looked at me and stated, "is
16 there anything I can do about this to make things
17 better?" And I suggested, "why don't you write a
18 letter of apology to the victim?" And he said, "okay,"
19 and he wrote down a letter of apology on some
20 stationery. After he finished that, it was not exactly
21 what he was telling me.

22 Aside from the letter, I said, "Mr.
23 Bushey, I find this hard to believe." And I said, "why
24 don't you write me another letter with the truth in
25 it?" And he stated, "okay, but I don't want to do it

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1 now." I said, "I'll give you over the weekend and come
2 back Monday and pick up the second letter," and he
3 agreed.

4 Q. Did you go back or contact him regarding
5 the second letter?

6 A. I called him, which was on June 19th, by
7 phone. And he stated that he was busy and his store
8 was busy and he didn't have time to write it but would
9 complete it by Wednesday, the 21st. And I said I would
10 come back on Wednesday, the 21st.

11 Q. Did you go back?

12 A. Yes, about 3:00 in the afternoon just
13 before my shift ended. And he met me in the parking
14 lot, handed me the second letter and said, "this is
15 short, sweet and to the point. Thank you very much."
16 And we shook hands and I left.

17 Q. I'm going to show you what was previously
18 marked as State's Exhibit 1 for identification purposes
19 and ask you if you recognize it?

20 A. Yes, this is a copy that I furnished to
21 the State and it's on Mr. Bushey's letterhead.

22 Q. And is that the first letter that you
23 indicated that he handed you?

24 A. Yes.

25 Q. And on what date did he hand you that

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1 letter?

2 A. That was on the 15th.

3 Q. Okay, and then what did you do with the
4 letter he handed you on the 15th?

5 A. I went back to the office and put it with
6 my case file.

7 Q. Okay. I'll show you now what was
8 previously marked as State's Exhibit-2 for
9 identification purposes, and ask you if you recognize
10 that document?

11 A. Yes.

12 Q. How do you recognize it?

13 A. This was the second letter he gave to me
14 that I made a photocopy of for the State. And this is
15 the letter he gave to me in the parking lot.

16 Q. Are each of these copies identical to the
17 original document that he handed you?

18 A. Yes, they are.

19 Q. Are they altered in any way whatsoever?

20 A. No, they are not.

21 MS. BURNS: Judge, at this time the State
22 would move State's Exhibits-1 and 2 into
23 evidence.

24 MS. WOLFE: May I voir dire the witness?

25 THE COURT: Yes.

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MS. WOLFE: Thank you.

VOIR DIRE EXAMINATION

BY MS. WOLFE:

Q. Good morning, Detective.

A. Hello.

Q. I understand that this is not actually the original letter that Mr. Bushey gave you. These are photocopies?

A. Yes.

Q. Could you explain what happened to the original?

A. Sure. At the time it was in June, prior to this case. I had requested a transfer out of the Crimes Against Children Division. I spent six years there and it was time to move on because of stress. At that time I had my own office and my own filing cabinet. This was the final case I was working on. I had done my duties and was working to clean up my office.

I had hundreds of files I had to destroy or shred, according to our departmental policy. I had the secretary and administrative people helping me. And unbeknownst to me, I had errored and put this case file with the closed out case files and they got destroyed. By who? I don't know. Probably a cadet or

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1 some of the help. I take responsibility for it. It
2 was my error. They destroyed the original document,
3 but I had furnished a copy to the State, which they
4 have in their possession right now.

5 Q. Did you yourself make these copies or the
6 secretary?

7 A. I made them.

8 Q. And at any time did you compare the
9 documents, line for line, to make sure that they were
10 an exact replica of the original?

11 A. Yes, they are exact copies. And I, in my
12 report, also stated quotations and exactly what
13 happened with the document.

14 Q. Okay. Thank you!

15 MS. WOLFE: Your Honor, it appears that
16 there has been no deliberate effort to destroy
17 the evidence and no bad faith.

18 No objection.

19 THE COURT: The State's Exhibit is
20 admitted without objection.

21 MS. BURNS: The State would ask to publish
22 these?

23 THE COURT: Yes.

24 BY MS. BURNS:

25 Q. After you did your interviews and

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1 collected the letters from the defendant, did you have
2 any further involvement in this case?

3 A. No, that was it.

4 Q. Okay, thank you.

5 MS. BURNS: I have no other questions.

6 THE COURT: Ms. Wolfe?

7 CROSS EXAMINATION

8 BY MS. WOLFE:

9 Q. Detective Baker, you never recorded a
10 statement from Mr. Bushey?

11 A. No, I did not.

12 Q. And the statements that you have related
13 to the jury here are based upon your recollection of
14 what he said to you?

15 A. Yes. I had taken notes and the report.
16 The letter will give the date, and the date I
17 interviewed him was the date I dictated the report. I
18 did the report within an hour.

19 Q. When Mr. Bushey made the statements to
20 you, isn't it true that it was in response to the
21 various questions you asked? There was dialogue going
22 back and forth? In other words, he didn't say it
23 happened this way and then gave you a complete --

24 A. Yes, that's true. There would have been
25 about a 15 minute dialogue with questions going back

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1 and forth. It was a loose setting.

2 I said, "Mr. Bushey, what happened? Tell
3 me in your own words." And he would respond. And I
4 would say, "well, can you tell me more about that?"

5 Q. Right. So the statements you gave to the
6 jury are a little bit out of context in that he did not
7 sit down and say this, this, this, and this? It was in
8 response to various questions?

9 A. It was taken fully in context.

10 Q. At some point did he not say to you,
11 "anything is possible. I don't remember doing that,
12 but I guess anything is possible."

13 Weren't those his words to you?

14 A. Yes, and I recorded the statement that he
15 was not admitting guilt, in my report. That he said,
16 "it was unintentionally, and it was an accident, and
17 I'm sorry for causing this problem." I documented that
18 in my report also.

19 Q. Thank you.

20 THE COURT: Any redirect, Ms. Burns?

21 REDIRECT EXAMINATION

22 BY MS. BURNS:

23 Q. In spite of him indicating that it was
24 unintentional, did he give two different accounts?

25 A. His account was different in what he wrote

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1 down in the note the second time.

2 Q. Thank you.

3 THE COURT: Thank you, Detective. You may
4 step down.

5 Ms. Burns, see if Shay is ready to return.

6 MS. BURNS: Yes, I will.

7 (Whereupon, there was a pause in the
8 proceedings.)

9 THE COURT: Come on up. They just want to
10 ask you a couple of more questions.

11 S H A Y C. C H A R L E S

12 having been previously sworn by the Clerk, was examined
13 and testified further as follows:

14 FURTHER CROSS EXAMINATION

15 BY MS. WOLFE:

16 Q. Feeling better?

17 A. (Witness nods head.)

18 Q. Not feeling better?

19 A. No.

20 Q. One quick question: When you went to your
21 uncle's door that day the door was locked, wasn't it?

22 A. Yes.

23 Q. He was not in his bedroom?

24 A. Yes, he was.

25 Q. And the door was locked?

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A. Yes.

Q. And he never opened the door?

A. Yes, he did.

Q. He did?

A. Yes.

Q. Okay. That's all I wanted to ask you.

THE COURT: Any follow-up, Ms. Burn?

MS. BURNS: No.

THE COURT: Okay. Thank you.

Next witness?

MS. BURNS: The State rests.

THE COURT: We'll take a fifteen minute
recess.

Counsel, remain for a moment.

The jury is excused.

(Whereupon, the jury leaves the
courtroom.)

MS. WOLFE: Yes, Your Honor?

THE COURT: Any motions?

MS. WOLFE: Yes.

Defense moves for a Judgment Of Acquittal
based upon the failure of the State to make a
prima facie case of capital sexual battery to
have occurred.

The child testified that Mr. Bushey did

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1 not penetrate her vagina with his finger, but
2 merely touched the outer part of the vagina.
3 And based upon that, we move for a Judgment Of
4 Acquittal of capital sexual battery.

5 MS. BURNS: The State has made a prima
6 facie case. It's up to the jury to decide upon
7 the testimony, and whether the testimony of the
8 child indicated that it was in the vagina or
9 not. She indicated that it was not where she
10 went to the bathroom at, but further back.

11 Also in this case the jury is permitted to
12 find, that if the State has not shown the main
13 charge, that perhaps they have shown a lesser.

14 THE COURT: Motion denied.

15 What are you presenting, Ms. Wolfe?

16 MS. WOLFE: I have two witnesses to
17 present: Mr. Kopins and my client.

18 (Recess.)

19 THE COURT: Mr. Kopins is here?

20 All set, Ms. Wolf?

21 MR. WOLFE: Yes.

22 THE COURT: Bring them in.

23 (Whereupon, the jury enters the
24 courtroom.)

25 THE COURT: Ms. Wolf?

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MS. WOLFE: We call Steven Kopins.

(No response.)

THE COURT: Call your next witness.

MS. WOLFE: May we take a brief recess?

Mr. Kopins is here. He is under subpoena.

THE COURT: My understanding is that he is not here and you may call your next witness.

MS. WOLFE: I want Mr. Bushey to be --

THE COURT: I understand that. But he is not here. So call your witness.

MS. WOLFE: May we approach?

THE COURT: Yes.

(Bench conference on the record.)

MS. WOLFE: Yes, Judge, please. You gave --

THE COURT: There is nothing you can do about --

MS. WOLFE: You gave Ms. Burns two days to get her witnesses. Give me five minutes.

THE COURT: We took a 15 minute break a half hour ago.

MS. WOLFE: He went to the bathroom. I just have to go and find him.

Elliot, do you want to find him?

THE COURT: Do you know what he looks

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1 like?

2 MS. WOLFE: He is very red faced.

3 THE COURT: So is Elliot.

4 MS. WOLFE: Thank you, Judge.

5 THE COURT: Members of the jury, step into
6 the jury room. We will be with you in just a
7 couple of minutes.

8 THE COURT: We are in recess.

9 (Recess.)

10 THE COURT: Ms. Wolfe.

11 MS. WOLFE: We found Mr. Kopins.

12 THE COURT: That's what I understand.
13 Bring them in.

14 (Whereupon, the jury comes into the
15 courtroom.)

16 THE COURT: Okay. Call the next witness.

17 MS. WOLFE: We call Steven Kopins.

18 S T E V E N K O P I N S

19 having been first duly sworn by the Clerk, was examined
20 and testified as follows:

21 D I R E C T E X A M I N A T I O N

22 BY MS. WOLFE:

23 Q. Good morning, Mr. Kopins.

24 Would you introduce yourself to the jury?

25 A. I'm Steven Kopins.

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Q. Your occupation?

A. Engineer for Ocean Properties.

Q. Do you know Edgar Bushey?

A. Yes.

Q. How long have you known him?

A. Two years.

Q. How did you come to meet Mr. Bushey?

A. I moved down from Connecticut two years ago, moved in with my sister, and that is how I met him.

Q. What type of relationship do you have with Mr. Bushey?

A. At the beginning of the relationship it was that I was unemployed and doing some bookkeeping for his business.

Q. What is his business?

A. He owns a religious store -- actually, two stores.

Q. And so initially you were his bookkeeper?

A. Yes.

Q. And did the relationship develop beyond a business relationship?

A. Yes, as friends. He was a friend of the family at that point.

Q. Did he frequently visit with your family?

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1 A. Yes.

2 Q. With Shay and her mother?

3 A. Yes.

4 Q. Back in October of 1994 where were you
5 living?

6 A. I was living with my sister, Susan.

7 Q. That is Shay's mother?

8 A. Yes.

9 Q. Who else was living in the household?

10 A. Her children: Christopher, Shay and
11 Tyler.

12 Q. And during that period did Mr. Bushey
13 frequently come and share in fellowship with the
14 family?

15 A. Probably, three or four times a week on a
16 regular basis, yes.

17 Q. Do you have a recollection of the events
18 that occurred back in October of 1994?

19 A. Yes.

20 Q. And for which we are here today?

21 A. Yes.

22 Q. Tell me how that day started out?
23 Who was present in the house?

24 A. Susan was at an institution called the
25 Rader Institution. She has a eating disorder. And my

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1 mother and I were babysitting the children: Tyler,
2 Christopher and Shay.

3 Q. And you and your mother were in the home
4 at the time Mr. Bushey came to visit?

5 A. Yes, correct.

6 Q. For what purpose did Mr. Bushey come that
7 day?

8 A. He would come over on a regular basis
9 during that period of time because I was doing his
10 bookkeeping. I was unemployed and this was something I
11 did on the side.

12 Q. During the occasions when Mr. Bushey has
13 visited with your family has there been some
14 playfulness between him and the children?

15 A. Yes. In fact, it was on a regular basis
16 that -- on a regular basis that Edgar would come over
17 and play with the children, wrestle with them and play
18 with them, and throw pillows at them, like an adult
19 just plays with children.

20 Q. Have you had an opportunity to observe
21 Edgar interact with other children besides your niece
22 and nephews?

23 A. No.

24 Q. Have you been involved with Edgar in any
25 church activities?

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1 A. Occasionally.

2 Q. And in those church activities has he been
3 involved with children?

4 A. Yes.

5 Q. In what capacity?

6 A. The same capacity; being just an adult and
7 being friendly with children.

8 Q. And what has been your observation of how
9 children react to him?

10 A. Very friendly. He is a funny guy and
11 children like him.

12 Q. And you and your family have trusted him
13 as a friend?

14 A. Without a doubt, yes.

15 Q. On the occasion when Susan was away and
16 you and your mother were babysitting, and Mr. Bushey
17 came to visit, on that day, was that for business
18 purposes or just to visit?

19 A. That was for business purposes.

20 Q. Did you and Mr. Bushey conduct any
21 business that morning?

22 A. Yes. It was not morning.

23 Q. That afternoon?

24 A. It was late in the afternoon, yes.

25 Q. Where did that business meeting take

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1 place?

2 A. In the living room.

3 Q. And who was present besides you and --

4 A. The three children: Christopher, Shay and
5 Tyler.

6 Q. What were the children doing while you and
7 Mr. Bushey were there?

8 A. Watching Jurassic Park.

9 Q. At some point, did your business meeting
10 end?

11 A. Basically, what he did was he came over
12 with the mail two or three times a week. I would open
13 up the mail and go through some of the bills he had,
14 and kind of counsel him on which bills we wanted to pay
15 first.

16 On that particular day I was doing my
17 laundry. So it was kind of mixed: A little business,
18 a little kind of doing my laundry, a little bit of
19 babysitting the three children. My mother was in the
20 other room. So that's what was happening on that
21 particular day.

22 Q. Would you be able to draw a brief diagram
23 of the layout of the house?

24 A. Yes.

25 Q. And where each room was?

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- 1 A. Um-hum.
- 2 Q. Thank you. Now you are an engineer?
- 3 A. Yes.
- 4 Q. We don't need anything drawn to scale?
- 5 A. Okay. I would like to make sure that if I
- 6 am going to explain it, it's simple because of my
- 7 lay-out.
- 8 Q. Just step aside so that the jurors on the
- 9 end have a good view of this.
- 10 Where is the living room in the house
- 11 located?
- 12 A. The front door is here. The living room
- 13 is an open area right here.
- 14 Q. Do you want to step on the side here so
- 15 they can see?
- 16 Would you mark where the living room is
- 17 please, and where the --
- 18 A. The living room is right in this open area
- 19 here.
- 20 Q. What does this denote?
- 21 A. This is a couch.
- 22 Q. Mark that "couch," then.
- 23 And where was your bedroom located?
- 24 A. My bedroom was right here. There is
- 25 another one right here.

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1 Q. You need to mark those.

2 Where is the laundry room located?

3 A. Right here are the washer and dryer.

4 Q. Your meeting with Mr. Bushey took place on
5 the couch in the living room?

6 A. No. Actually, my meeting was at the front
7 door.

8 Q. When you went to open the mail with --
9 went over the mail with --

10 A. He knocked on the door and I opened it up
11 and he handed me the mail.

12 Q. After that, he came into the house?

13 A. Yes.

14 Q. Where did he go?

15 A. He came right into the living room and sat
16 on the couch?

17 Q. And the three children were in the living
18 room?

19 A. Yes.

20 Q. Where were you?

21 A. In the living room.

22 Q. What were you doing?

23 A. Folding laundry.

24 Q. Were you standing?

25 A. Standing right here. My work-out

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1 equipment was right behind here.

2 Q. Do you want to mark where you were please
3 and where Mr. Bushey was?

4 A. I was here. Mr. Bushey was right here.

5 Q. And where were the children?

6 A. To the best of my knowledge, they were
7 sitting in the area of -- I don't know whether they
8 were on the couch or what. But the TV is here, and I
9 have a large screened TV with a speaker and that.

10 Q. So you were actually behind the couch
11 folding laundry? *

12 A. Yes.

13 Q. And Edgar was in front of the TV?

14 A. Yes.

15 Q. And the children were in this area?

16 A. Yes.

17 Q. Thank you very much. If you would just
18 take a seat back on the witness stand.

19 Do you recall seeing your niece, Shay,
20 sitting on Edgar's lap?

21 A. No.

22 Q. You do not recall her sitting on his lap?

23 A. No.

24 Q. Where were the children?

25 A. I recall Edgar sitting on the couch and

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1 playing with the children, is what I recall.

2 Q. With all three of them or just with Shay?

3 A. Off and on, yes. It was a normal thing.

4 He liked to play with the children.

5 Q. And what kind of playing was going on?

6 A. Wrestling and just -- you know, fooling
7 around, throwing pillows -- you know, fun things. They
8 enjoyed it.

9 Q. At any point did anything out of the
10 ordinary happen?

11 A. Not that I saw, no.

12 Q. Were you observing or were you watching?

13 A. I was there the whole time watching
14 Jurassic Park. It was for like the fiftieth time that
15 we watched it. But all three children liked to watch
16 it. I was folding my laundry and they were just
17 fooling around.

18 Q. At any time did you observe that Shay
19 became upset and ran out of the room?

20 A. No.

21 Q. Do you recall whether or not your bedroom
22 door was locked on that particular day?

23 A. Yes.

24 Q. Why?

25 A. It's locked constantly, when I'm not

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1 there, with a key. When I am not in my room my door is
2 locked.

3 Q. Why is that?

4 A. Because I don't want anyone in my room. I
5 had moved down here, and everything that I have is in
6 my room, and I don't want the kids in there.

7 For example, when I'm not in the house I
8 don't want the kids in my room. When I'm in the garage
9 I don't want the kids in my room. I don't want anybody
10 in my room.

11 Q. And on this particular day, Shay did not
12 come to you and tell you anything?

13 A. No.

14 Q. Did you remain in the living room area or
15 were you --

16 A. I walked back and forth to the washer and
17 dryer while I was watching the movie.

18 Q. About how many times, if you recall, were
19 you in and out of the room?

20 A. Once or twice. I don't know.

21 Q. And for how long a period would you have
22 been out of the room?

23 A. Well, if you look at the diagram, they are
24 not actually out of the room. There are no doors. I'm
25 actually in the room, but in one area of the room. I

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1 can't really say I was out of room. I just walked to
2 get my laundry and came back.

3 Q. So this is open?

4 A. This is an open area and --

5 Q. From any point in the living room you're
6 able to see?

7 A. There are no doors. It's a complete
8 opening.

9 Q. At some point you stepped over here to
10 pick up your laundry and walked back?

11 A. That's correct.

12 Q. Would you have taken more than a moment?

13 A. I may have taken more than a moment, yes.

14 Q. Okay. How long would you have been?

15 A. How long would it take me to walk from the
16 couch area to the laundry area?

17 Q. Yes.

18 A. Maybe two seconds. It's right there.
19 It's an open area. There are no doors.

20 Q. So you just picked up the laundry and
21 brought it back into the room?

22 A. Yes, and just folded my laundry and
23 watched the movie with everybody else.

24 Q. And during this time were you aware of
25 Edgar and children?

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1 A. I never left. I was right there the whole
2 time.

3 Q. You were aware of the tickling or playing
4 going on between Edgar and the children at that time?

5 A. Edgar came over to my house, Susan's
6 house. I was living there for ten months. He would
7 come over two or three times a week and he liked to
8 play with the children -- nothing out of the ordinary.
9 It just occurred that day that he was just wrestling
10 with the kids and throwing pillows and that was it.

11 Q. How long did Edgar stay?

12 A. Until the end of the movie; about
13 forty-five minutes to an hour.

14 Q. When the movie was over what happened?

15 A. I told Edgar that I didn't feel like doing
16 the paperwork right now and he left.

17 Q. So he left at the end of the movie?

18 A. Right.

19 Q. And what did the children do after he
20 left?

21 A. They were there just acting like they
22 always do.

23 Q. And at that time did Shay come to you and
24 say anything had happened?

25 A. No.

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1 MS. WOLFE: No further questions.

2 THE COURT: Ms. Burns.

3 MS. WOLFE: I'm sorry. This is blocking
4 your view. Let me move it out of your way.

5 CROSS EXAMINATION

6 BY MS. BURNS:

7 Q. Sir, you indicated that Mr. Bushey came
8 regularly to the home where you were staying, even as
9 often as two or three times a week; is that correct?

10 A. That is correct.

11 Q. And during the month of October there was
12 nothing different about that?

13 A. No.

14 Q. So during the month of October, two to
15 three times a week he was coming over there?

16 A. That's correct.

17 Q. And during the time that your sister,
18 Susan Charles, was gone for that two week stay,
19 approximately, how many times do you believe Mr. Bushey
20 visited the home?

21 A. Two or three times a week.

22 Q. So if we are talking about two weeks, we
23 are talking about four to six times during the period
24 of time she was gone that he would have been at that
25 home?

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1 A. That's correct.

2 Q. And do you know exactly which day the
3 incident occurred on?

4 A. If you are asking me the day of the week,
5 no. If you ask me the time of the day, I can give you
6 the time of the day only because after a week or so
7 after this happened I was approached by my sister,
8 Susan, who told me about the incident. And, yes, I do
9 recall.

10 Q. Isn't it true, sir, that you told her that
11 you didn't see anything because you were not even in
12 the room; is that correct?

13 A. That is not correct.

14 MS. BURNS: Nothing further.

15 THE COURT: Any redirect, Ms. Wolfe.

16 MS. WOLFE: No.

17 THE COURT: Sir, you can step down.

18 Next witness?

19 MS. WOLFE: Edgar Bushey.

20 - - -

21 (Whereupon, Janet Carter, Court Reporter,
22 was replaced by Cathy Dore, Official Court
23 Reporter, for the lunch hour.

24 Proceed To Volume 3 for Mr. Bushey's
25 testimony.)

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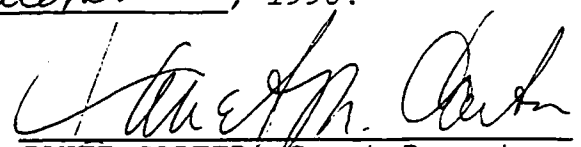
C E R T I F I C A T E

The State Of Florida)
:
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I, JANET CARTER, a Stenographic Court Reporter and Notary Public, do certify that I was authorized to and did report the above trial at the time and place herein stated, and that it is a true and correct transcription of my stenographic notes taken during said trial.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the said certifying reporter.

In witness whereof I have hereunto set my hand this 10th day of December, 1996.



JANET CARTER, Court Reporter

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