

NO. 36602-9-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JASON A. SWAN, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Vicki L. Hogan

No. 05-1-02947-3

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the jury have sufficient evidence to convict defendant of first degree child molestation when the State presented evidence that defendant was never married to M.P., that defendant was 21 years older than M.P., that defendant touched M.P.'s buttocks and wiggled his finger in her vagina, and that M.P. was nine-years-old at the time of the crime?

2. Did the court properly overrule defendant's objections to hearsay and improper character when the evidence to which he objected did not contain any out-of court statements, was not offered for the truth of the matter asserted, and was offered to rehabilitate the credibility of Shawnte Papac?

3. Did defendant receive effective assistance of counsel?

4. Has defendant failed to show that he is entitled to relief under the cumulative error doctrine?

B. STATEMENT OF THE CASE.

1. Procedure

On June 15, 2005, the Pierce County Prosecutor's Office filed an information charging JASON A. SWAN, hereinafter "defendant," with one charge of first degree child molestation. CP 1-2. The court held a

child hearsay hearing and found that the statements of the victim, defendant's minor daughter M.P.,¹ were admissible under ER 803(a)(3) and (a)(4). RP(2) 72.² Before trial, defendant moved to suppress any reference to past instances in which defendant had straddled or "humped" M.P. under ER 403 and ER 404. RP(2) 82-93. The State argued that these past events helped establish that defendant had contact with M.P. for purposes of sexual gratification, which is an element of first degree child molestation. RP(2) 82-93. The court admitted the statements, but ordered the State not to use the phrase "lustful disposition" when referring to this evidence. RP(2) 93-94.

The matter proceeded to a jury trial on March 15, 2007. RP(3) 18. During trial, the State called Shawnte Papac, the victim's mother. RP(3) 87. Defense counsel cross examined Ms. Papac, in part, as follows:

[DEFENSE COUNSEL:] When you got this information, this information regarding alleged abuse, you must not have been happy about it. It must have bothered you, correct?

[MS. PAPAC:] Correct.

[DEFENSE COUNSEL:] You knew that a crime had been, according to [M.P.], committed, correct?

¹ As the victim in this case is a minor, the State will refer to her by her initials to protect her privacy.

² The Verbatim Report of Proceedings is contained in 6 volumes labeled Volume I through Volume VI. Citations to the record will be preceded by "RP([volume number])" (E.g., "RP(1) 2" refers to Volume I, page 2).

[MS. PAPAC:] Yes.

[DEFENSE COUNSEL:] And you didn't call the police, correct?

[MS. PAPAC:] No.

[DEFENSE COUNSEL:] Instead, you called CPS, correct?

[MS. PAPAC:] Yes.

[DEFENSE COUNSEL:] You called CPS instead of the police because -- that's because you knew what was the best way to keep [M.P.] from having contact with her father, correct?

[MS. PAPAC:] That's how I knew to keep her safe.

[DEFENSE COUNSEL:] You had just been told that, apparently, a serious crime was committed, correct?

[MS. PAPAC:] Correct.

[DEFENSE COUNSEL:] Yet you didn't call the police?

[MS. PAPAC:] Correct.

[DEFENSE COUNSEL:] How many times, Ms. Papac, have you asked the Court in Thurston County, over the last four years, to

keep my client, Jason Swan, from having contact with his children?

[MS. PAPAC:] I believe it's just once that I've asked that.

[DEFENSE COUNSEL:] Really?

[MS. PAPAC:] In regards to the one situation.

[DEFENSE COUNSEL:] Okay. Well, I'm talking about the whole relationship. Isn't it true that several times you have asked the Court, over the last several years, to keep Jason from having contact with his kids?

[MS. PAPAC:] Yes.

RP(3) 99-100. In redirect examination, the State sought to show that Ms. Papac had legitimate reasons for previously seeking to prevent defendant from seeing the children:

[STATE:] Counsel asked you about asking the Court to limit contact between your girls and the defendant. My question to you is this: Did you want to completely eliminate contact between your daughters and the defendant?

[MS. PAPAC:] No.

[STATE:] Why did you ask that contact be limited?

[MS. PAPAC:] For their safety.

[STATE:] Okay, and what had happened, if

anything, that gave you concerns for their safety?

[MS. PAPAC:] His use of drugs and alcohol.

[STATE:] Can you give us an example that led you to ask the Court from Thurston County to limit contact between your girls and their father?

RP(3) 101-102. Defendant objected that defendant's past use of drugs and alcohol was hearsay and improper character evidence. RP(3) 102-104. The jury was excused and the State argued that the evidence was neither hearsay nor character evidence because it was "being introduced to explain why she took the actions that she took, with respect to limiting or requesting limitations on visitation." RP(3) 104. The court overruled the objection and the testimony continued as follows:

[STATE:] Ms. Papac, can you give us an example on what might prompt you to go to the courts in Thurston County and, ask for limitations on visitation with your girls?

[MS. PAPAC:] An example would be when we met with a guardian ad litem to discuss the children, and Jason had shown up intoxicated.

[STATE:] Did that give you concern –

[MS. PAPAC:] Yes.

[STATE:] -- for their safety?

[MS. PAPAC:] Yes.

RP(3) 105. When the State later cross examined defendant on this point, defense counsel successfully objected to the testimony and the jury was instructed to disregard it:

[STATE:] Okay. Well, isn't it true though that in December of 2002, December 12th, you came into the treatment agency requesting a copy of the compliance report, but you appeared to be under the influence and refused to take a saliva test?

[DEFENSE COUNSEL:] I will object. That is, obviously hearsay there, and asking how he appeared to someone else.

THE COURT: I am going to sustain the objection.
Jury is instructed to disregard.

RP(4) 204-205. While examining defendant during his case-in-chief, defense counsel clarified that defendant had never jeopardized his children's safety by drinking alcohol. RP(4) 179-180. In closing argument, neither the State nor defense counsel referenced defendant's visit with the guardian ad litem or the allegation that defendant was intoxicated during that meeting. RP(5) 250-282.

The jury found defendant guilty as charged. RP(5) 288-289. The court sentenced defendant to 55 months' confinement and lifetime community custody. RP(6) 303; CP 75-88. The court also ordered

defendant to pay legal financial obligations. RP(6) 306; CP 75-88. From entry of this judgment and sentence, defendant filed a timely notice of appeal. CP 95.

2. Facts

Defendant has two daughters with a woman named Shawnte Papac. RP(3) 87. M.P., one of defendant's daughters, was born on December 12, 1994, and is 21 years younger than defendant. RP(3) 61, 88, RP(4) 178, 194; Ex. 10, 12.³ M.P. and defendant have never been married. RP(3) 67; RP(4) 194. Between June 1, 2004, and July 30, 2004, defendant was living in his Aunt Debra Swan's home in Buckley, Washington. RP(3) 67. During this time, defendant's daughters would spend a few days at a time living with defendant at Ms. Swan's home. RP(3) 105-106. During these visitations, nine-year old M.P. shared a bed with her father in the back room of the house. RP(3) 71-74; Ex. 10, 12. Over a period of twelve weeks, defendant often straddled M.P. while she was in bed with him and humped her, pressing his pelvis into hers while they were both clothed. Ex. 10, 12; RP(4) 131. Defendant sometimes did not wear a shirt when this occurred, and during the humping M.P. could

³ Exhibit 12 is an audio-only recording of an interview of M.P. conducted by Maggie Wettig on July 26, 2004, and it was admitted as substantive evidence at trial. CP 98-99. A transcript of this interview was utilized for demonstrative purposes at trial as Exhibit 9. While Exhibit 9 was not admitted as substantive evidence, it accurately reflects the interview recorded on Exhibit 12 and is attached as "Appendix A" for the Court's convenience. RP(4) 140-143, 162-163.

feel defendant's penis through his clothing. Ex. 10, 12. This humping continued for 6-12 weeks. Ex. 10, 12. To escape this humping, M.P. would often have to "head butt" defendant in the stomach so that he would get off of her. Ex. 12.

On the evening of the last day of one visitation, M.P. and defendant were in a bedroom at the back of Ms. Swan's house lying on defendant's bed and watching television. RP(3) 71-75; Ex. 10, 12. Defendant began rubbing M.P.'s back and slipped his hand down to her shorts. RP(3) 71-74; Ex. 10, 12. He moved his hand under M.P.'s underpants, touched her "butt" with his hand, and then move his hand around and fondled M.P.'s vagina. RP(3) 71-74; Ex. 10, 12. Defendant put his index finger into M.P.'s vagina and "wiggled it back and forth." Ex. 10, 12. At this point, M.P. pretended that she had been sleeping and was just waking up. Ex. 10, 12. Defendant stopped touching M.P., and M.P. moved to the floor, where she slept for the rest of the night. Ex. 10, 12. M.P. felt too uncomfortable to tell Ms. Swan or defendant's grandmother (who also lived at Ms. Swan's house) about this incident. Ex. 12.

The next morning, Ms. Swan drove M.P. and her sister to meet Ms. Papac at the Top Foods pharmacy in Lacey, Washington. RP(3) 80, 91. Once Ms. Papac and her daughters arrived at their home, M.P. immediately told her mother about the molestation. RP(3) 75, 91-92. Ms. Papac reported the incident to Child Protective Services that evening.

RP(3) 94. Ms. Papac then took M.P. to be examined at Mary Bridge Hospital. RP(3) 94-96.

At trial, defendant testified and called Ms. Swan to testify on his behalf. Defendant testified that he had argued about a CD with M.P. during the visitation. RP(4) 178-217. He denied that he had any sexual contact with M.P. RP(4) 178-217. Ms. Swan also testified that defendant argued with M.P. about the CD. RP(5) 229-230. Ms. Swan said that M.P. did not complain to her about an inappropriate contact by defendant. RP(5) 26-237.

C. ARGUMENT.

1. THE JURY HAD SUFFICIENT EVIDENCE TO CONVICT DEFENDANT OF FIRST DEGREE CHILD MOLESTATION.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Also, challenging the sufficiency of the evidence admits the truth of the State's evidence and any reasonable

inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (citing *State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)); *State v. Turner*, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *State v. Salinas*, 119 Wn.2d 192; *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. Credibility determinations are necessary because witness testimony can conflict; these determinations should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

[G]reat deference . . . is to be given the trial court's factual findings. It, alone, has had the opportunity to view the witness' demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted). Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

A person commits the crime of first degree child molestation if the person has “sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.” RCW 9A.44.083(1). “Sexual contact” means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.” RCW 9A.44.010(2).

The State provided ample evidence to support defendant’s first degree child molestation conviction. Defendant did not dispute at trial that M.P. was less than 12-years-old at the time of the crime, that defendant was more than 36 months older than M.P., or that defendant and M.P. have never been married. RP(3) 87, 61, 67, 88; RP(4) 178, 194; Ex. 10, 12. The State provided evidence that defendant had sexual contact with M.P. when he touched M.P.’s “butt” and put his finger into her vagina and “wiggled it back and forth.” RP(3) 71-74; Ex. 10, 12. This act was clearly done “for the purpose of gratifying [defendant’s] sexual desire.” RCW 9A.44.010(2). The fact that defendant had regularly humped M.P. in the weeks leading up to this contact further indicated that the contact

was to gratify defendant's sexual desire. RP(4) 131; Ex. 10, 12. The State provided sufficient evidence of child molestation.

2. THE COURT PROPERLY OVERRULED
DEFENDANT'S OBJECTION TO EVIDENCE THAT HE
WAS INTOXICATED WHEN SPEAKING TO THE
GUARDIAN AD LITEM

Defense counsel objected to evidence that Ms. Papac saw defendant was intoxicated when defendant met with the guardian ad litem, claiming that the evidence was hearsay and improper character evidence. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801(c). Hearsay is generally inadmissible. ER 802. "Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility...may, in the discretion of the court, if probative for truthfulness or untruthfulness, be inquired into on cross examination of the witness...concerning the witness' character for truthfulness or untruthfulness." ER 608(b)(1). Once a party has attacked a witness's character for truthfulness, the other party may rehabilitate that witness's credibility by allowing the witness to explain or clarify the specific instance of the witness's conduct." *State v. Kwan Fai Mak*, 105 Wn.2d 692, 711, 718 P.2d 407 (1986) ("[W]hen a party opens up a subject of inquiry on direct or cross-examination, he contemplates that the rules will permit cross-examination or redirect examination, as the case may be, within the scope of the examination in which the subject

matter was first introduced.”). Appellate Courts review a lower court’s admission of evidence for an abuse of discretion. *State v. Thomas*, 150 Wn.2d 821, 856, 83 P.3d 970 (2004). An abuse of discretion occurs “only if no reasonable person would have decided the matter as the trial court did.” *Id.*

Evidence that defendant was intoxicated when he met with the guardian ad litem was not hearsay because it did not present any out-of-court statements and was not offered for the truth of the matter asserted. Ms. Papac was present at the meeting when defendant was intoxicated; there is no indication in the record that her testimony about the incident relied on anything but her own observations. RP(3) 105. Moreover, the testimony was not offered to show that defendant was intoxicated, but only to show that Ms. Papac believed he had come to the meeting intoxicated. Ms. Papac’s belief that defendant went to the meeting intoxicated served as a basis for her desire to obtain custody of M.P. and her sister, undercutting defense counsel’s suggestion that her motives were vindictive. The State was entitled to rehabilitate Ms. Papac’s credibility after defendant had suggested that Ms. Papac’s custody battles were made in bad faith and that this case was an extension of those custody battles.

Evidence that defendant was intoxicated when he met with the guardian ad litem was not improper character evidence because it was offered to refute defendant’s suggestion that Ms. Papac had coached M.P. to lie about the events in this case. On cross examination, defense counsel

tried to establish that Ms. Papac had frequently tried to prevent defendant from seeing his children. RP(3) 99-100. The implication of this questioning was that Ms. Papac coached M.P. to lie about the molestation so that Ms. Papac could secure custody of the children. RP(3) 99-105; RP(5) 269. The State then attempted to rehabilitate Ms. Papac's credibility by establishing that she had reasons to try to limit defendant's contact with his children. RP(3) 101-102. One of those reasons was that Ms. Papac believed defendant had once attended a meeting with a guardian ad litem intoxicated. RP(3) 102-105. The evidence was thus used to show that Ms. Papac's reasons for seeking custody were based on her legitimate belief that defendant was dangerous to the children. It dispelled defendant's suggestion that Ms. Papac's testimony was tainted by a desire to win a child custody dispute.

3. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

The right to effective assistance of counsel is the right "to require the prosecution's case to survive the crucible of meaningful adversarial testing." *United States v. Cronin*, 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L.Ed.2d 657 (1984). When such a true adversarial proceedings has been conducted, even if defense counsel made demonstrable errors in judgment or tactics, the testing envisioned by the Sixth Amendment has occurred. *Id.* "The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and

prosecution that the trial was rendered unfair and the verdict rendered suspect.” *Kimmelman v. Morrison*, 477 U.S. 365, 374, 106 S.Ct. 2574, 2582, 91 L.Ed.2d 305 (1986).

A defendant who raises a claim of ineffective assistance of counsel must show: (1) that his or her attorney’s performance was deficient, and (2) that he or she was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Under the first prong, deficient performance is not shown by matters that go to trial strategy or tactics. *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994). Under the second prong, the defendant must show that there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different. *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

Judicial scrutiny of a defense attorney's performance must be “highly deferential in order to eliminate the distorting effects of hindsight.” *Strickland*, 466 U.S. at 689. The reviewing court must judge the reasonableness of counsel's actions “on the facts of the particular case, viewed as of the time of counsel's conduct.” *Id.* at 690; *State v. Benn*, 120 Wn.2d 631, 633, 845 P.2d 289 (1993).

What decision [defense counsel] may have made if he had more information at the time is exactly the sort of Monday-morning quarterbacking the contemporary assessment

rule forbids. It is meaningless...for [defense counsel] now to claim that he would have done things differently if only he had more information. With more information, Benjamin Franklin might have invented television.

Hendricks v. Calderon, 70 F.3d 1032, 1040 (C.A. 9, 1995).

When the ineffectiveness allegation is premised upon counsel's failure to litigate a motion or objection, defendant must demonstrate not only that the legal grounds for such a motion or objection were meritorious, but also that the verdict would have been different if the motion or objections had been granted. *Kimmelman*, 477 U.S. at 375; *United States v. Molina*, 934 F.2d 1440, 1447-48 (9th Cir.1991). An attorney is not required to argue a meritless claim. *Cuffle v. Goldsmith*, 906 F.2d 385, 388 (9th Cir.1990). The standard of review for effective assistance of counsel is whether, after examining the whole record, the court can conclude that defendant received effective representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988). A presumption of counsel's competence can be overcome by showing counsel failed to conduct appropriate investigations, adequately prepare for trial, or subpoena necessary witnesses. *Id.* An appellate court is unlikely to find ineffective assistance on the basis of one alleged mistake. *State v. Carpenter*, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

- a. Defense counsel was not ineffective for choosing not to request a Petrich instruction.

Criminal defendants have a right to a unanimous jury verdict. Const. art. 1, § 21. A defendant may be convicted only when a unanimous jury concludes that the criminal act charged in the information has been committed. *State v. Stephens*, 93 Wn.2d 186, 190, 607 P.2d 304 (1980). Jury unanimity issues can arise when the State charges a defendant with committing a crime by more than one alternative means, *State v. Arndt*, 87 Wn.2d 374, 553 P.2d 1328 (1976), or when the State presents evidence of several acts that could form the basis of one count charged. *State v. Petrich*, 101 Wn.2d 566, 570, 572, 683 P.2d 173 (1984). In an alternative means case the threshold test is whether sufficient evidence exists to support each of the alternative means presented to the jury. If the evidence is sufficient to support each of the alternative means submitted to the jury, a particularized expression of unanimity as to the means by which the defendant committed the crime is unnecessary to affirm a conviction. *State v. Ortega-Martinez*, 124 Wn.2d 702, 708, 881 P.2d 231 (1994); *State v. Whitney*, 108 Wn.2d 506, 739 P.2d 1150 (1987).

When the prosecution presents evidence of several acts that could form the basis of one count charged, either the State must tell the jury which act to rely on in its deliberations or the court must instruct the jury to agree on a specific criminal act. *State v. Petrich*, 101 Wn.2d at 570-

572. If the State fails to employ one of these options, error has occurred. *State v. Kitchen*, 110 Wn.2d 403, 411, 756 P.2d 105 (1988). However, this type of error is subject to harmless error analysis under a constitutional standard. *Id.* The standard for determining whether the error is harmless may be stated as follows: the error is not harmless if a rational trier of fact could have a reasonable doubt as to whether each incident established the crime beyond a reasonable doubt. *Id.* This approach presumes that the error was prejudicial and allows for the presumption to be overcome only if no rational juror could have a reasonable doubt as to any one of the incidents alleged. *Id.*

Defense counsel was not ineffective for not requesting a *Petrich* instruction because the State specified in closing that the sexual contact in question occurred when defendant touched M.P.'s buttocks and vagina. As the State was listing the elements of first degree child molestation, it said,

the State must prove that [M.P.] had sexual contact with the Defendant, or that the Defendant had sexual contact with [M.P.]. Again, there is very little dispute as to this when you look at what [M.P.] has said. She described his hands or his fingers touching her buttock and then her vagina. If you believe [M.P.], that element is clearly met as well.

RP(5) 250-251. The State did not even mention the word "hump" in closing argument. RP(5) 250-281. During defense closing, defense

counsel asked “Well, do they have any proof that any contact that he did was to satisfy sexual desires?” RP(5) 273. In rebuttal, the State relied only on the actual charged sexual contact, saying, “anytime you touch a 9-year old girl on her buttocks and move around to her vagina and wiggle a finger around there, common sense tells you that's done for sexual gratification, sexual contact, and when they are under the age of 12 that is child molestation in the first degree.” RP(5) 279. The State told the jury which act to rely on in its deliberations, so no *Petrich* instruction was required. *Petrich*, 101 Wn.2d at 570-572. Defense counsel had no obligation to request an instruction that was not required. Defendant was not prejudiced by the lack of a *Petrich* instruction because the jury knew which act was the basis of the charge.

- b. Defense counsel was not ineffective for choosing not to request a limiting instruction regarding evidence that defendant humped M.P.

Even when trial counsel can request a limiting instruction, there may be legitimate tactical reasons that justify the decision not to request such an instruction. *State v. Price*, 126 Wn. App. 617, 649, 109 P.3d 27 (2005); *State v. Barragan*, 102 Wn. App. 754, 762, 9 P.3d 942 (2000); *State v. Donald*, 68 Wn. App. 543, 551, 844 P.2d 447 (1993). For example, an appellate court can “presume that counsel did not request a limiting instruction regarding the use of ER 404(b) evidence of prior bad

acts because ‘to do so would reemphasize this damaging evidence’ to the jury.” *Price*, 126 Wn. App. at 649; *Barragan*, 102 Wn. App. at 762.

Defense counsel’s decision not to request a limiting instruction regarding evidence that defendant humped M.P. was a legitimate tactical decision. Defense counsel could reasonably have concluded that instructing the jury to disregard evidence that defendant had humped M.P. would place undue emphasis on the fact that defendant had humped M.P. By minimizing the number of times the jury heard about these humping incidents, defense counsel minimized the severity of those incidents’ effect on the jury. Defense counsel’s tactical decision did not fall below a reasonable level of performance.

Moreover, defendant was not prejudiced by the fact that defense counsel did not ask for a limiting instruction. The State did not raise the humping incidents in closing argument, so the instruction would not have prevented the State from making any of its arguments. RP(5) 250-282. Defense counsel only raised it to argue that Ms. Wettig’s interview of M.P. was inappropriately suggestive. RP(5) 276. By choosing not to request the limiting instruction, defense counsel actually minimized the number of times the jury heard about the humping incidents, preventing the incidents from being overemphasized to the jury.

- c. Defense counsel was not ineffective for choosing not to request a limiting instruction regarding evidence that defendant was intoxicated when he met with the guardian ad litem.

Defense counsel's decision not to request a limiting instruction regarding his intoxication was a legitimate tactical decision. Defense counsel could have reasonably concluded that instructing the jury to disregard evidence that defendant was intoxicated when he visited the guardian ad litem would overly emphasize that evidence to the jury. Defense counsel validly chose to object to the testimony and then move on when he lost the objection, advocating for his client while minimizing the number of times the jury heard about the incident. RP(3) 99-105. Defense counsel's tactical decision did not fall below a reasonable level of performance.

Defendant was not prejudiced by the lack of a limiting instruction. The jury was already instructed to disregard evidence that defendant had been intoxicated during the meeting with the guardian ad litem when defense counsel successfully objected to that evidence during the State's cross-examination of defendant. RP(4) 204-205. Furthermore, neither the State nor defense counsel discussed defendant's visit with the guardian ad litem during closing argument, so the jury was not exposed to that evidence during argument. RP(5) 250-282. By choosing not to request

the limiting instruction, defense counsel successfully minimized the number of times the jury heard about the incident of intoxication, preventing the incident from being overemphasized to the jury while securing a *sua sponte* limiting instruction from the court. RP(4) 204-205.

Defense counsel was not ineffective because his performance was not deficient and defendant was not prejudiced by the lack of the instructions defendant addresses in this case.

4. DEFENDANT IS NOT ENTITLED TO RELIEF UNDER THE DOCTRINE OF CUMULATIVE ERROR.

The doctrine of cumulative error is the counter balance to the doctrine of harmless error. Harmless error is based on the premise that “an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt.” *Rose v. Clark*, 478 U.S. 570, 577, 106 S. Ct. 3101, 92 L.Ed.2d 460 (1986). The central purpose of a criminal trial is to determine guilt or innocence. *Id.* “Reversal for error, regardless of its effect on the judgment, encourages litigants to abuse the judicial process and bestirs the public to ridicule it.” *Neder v. United States*, 119 S. Ct. 1827, 1838, 144 L.Ed.2d 35 (1999) (internal quotation omitted). “[A] defendant is entitled to a fair trial but not a perfect one, for there are no perfect trials.” *Brown v. United States*, 411 U.S. 223, 232

(1973) (internal quotation omitted). Allowing for harmless error promotes public respect for the law and the criminal process by ensuring a defendant gets a fair trial, but not requiring or highlighting the fact that all trials inevitably contain errors. *Rose*, 478 U.S. at 577. Thus, the harmless error doctrine allows the court to affirm a conviction when the court can determine that the error did not contribute to the verdict that was obtained. *Id.* at 578; *see also*, *State v. Kitchen*, 110 Wn.2d 403, 409, 756 P.2d 105 (1988) (“The harmless error rule preserves an accused's right to a fair trial without sacrificing judicial economy in the inevitable presence of immaterial error.”).

The doctrine of cumulative error, however, recognizes the reality that sometime numerous errors, each of which standing alone might have been harmless error, can combine to deny a defendant not only a perfect trial, but also a fair trial. *In re Lord*, 123 Wn.2d 296, 332, 868 P.2d 835 (1994); *State v. Coe*, 101 Wn.2d 772, 789, 684 P.2d 1281 (1984); *see also State v. Johnson*, 90 Wn. App. 54, 74, 950 P.2d 981, 991 (1998) (“although none of the errors discussed above alone mandate reversal...”). The analysis is intertwined with the harmless error doctrine in that the type of error will affect the court’s weighing those errors. *State v. Russell*, 125 Wn.2d 24, 93 94, 882 P.2d 747 (1994), *cert. denied*, 574 U.S. 1129, 115 S. Ct. 2004, 131 L.Ed.2d 1005 (1995). There are two dichotomies of harmless errors that are relevant to the cumulative error doctrine. First, there are constitutional and nonconstitutional errors. Constitutional errors

have a more stringent harmless error test and therefore they will weigh more on the scale when accumulated. *Id.* Conversely, nonconstitutional errors have a lower harmless error test and weigh less on the scale. *Id.* Second, there are errors that are harmless because of the strength of the untainted evidence and there are errors that are harmless because they were not prejudicial. Errors that are harmless because of the weight of the untainted evidence can add up to cumulative error. *See, e.g., Johnson*, 90 Wn. App. at 74. Conversely, errors that individually are not prejudicial can never add up to cumulative error that mandates reversal because when the individual error is not prejudicial, there can be no accumulation of prejudice. *See, e.g., State v. Stevens*, 58 Wn. App. 478, 498, 795 P.2d 38, *review denied*, 115 Wn.2d 1025, 802 P.2d 38 (1990) (“Stevens argues that cumulative error deprived him of a fair trial. We disagree, since we find that no prejudicial error occurred.”) (emphasis added).

As these two dichotomies imply, cumulative error does not turn on whether a certain number of errors occurred. Compare, *State v. Whalon*, 1 Wn. App. 785, 804, 464 P.2d 730 (1970) (holding that three errors amounted to cumulative error and required reversal), with *State v. Wall*, 52 Wn. App. 665, 679, 763 P.2d 462 (1988) (holding that three errors did not amount to cumulative error), and *State v. Kinard*, 21 Wn. App. 587, 592 93, 585 P.2d 836 (1979) (holding that three errors did not amount to cumulative error). Rather, reversals for cumulative error are reserved for truly egregious circumstances when defendant is truly denied a fair trial,

either because of the enormity of the errors, *see, e.g., State v. Badda*, 63 Wn.2d 176, 385 P.2d 859 (1963) (holding that failure to instruct the jury (1) not to use codefendant's confession against Badda, (2) to disregard the prosecutor's statement that the state was forced to file charges against defendant because it believed defendant had committed a felony, (3) to weigh testimony of accomplice who was State's sole, uncorroborated witness with caution, and (4) to be unanimous in their verdicts was to cumulative error), or because the errors centered around a key issue, *see, e.g., State v. Coe*, 101 Wn.2d 772, 684 P.2d 668 (1984) (holding that four errors relating to defendant's credibility combined with two errors relating to credibility of state witnesses amounted to cumulative error because credibility was central to the State's and defendant's case); *State v. Alexander*, 64 Wn. App. 147, 822 P.2d 1250 (1992) (holding that repeated improper bolstering of child rape victim's testimony was cumulative error because child's credibility was a crucial issue), or because the same conduct was repeated so many times that a curative instruction lost all effect, *see, e.g., State v. Torres*, 16 Wn. App. 254, 554 P.2d 1069 (1976) (holding that seven separate incidents of prosecutorial misconduct was cumulative error and could not have been cured by curative instructions). Finally, as noted, the accumulation of just any error will not amount to cumulative error—the errors must be prejudicial errors. *See Stevens*, 58 Wn. App. at 498.

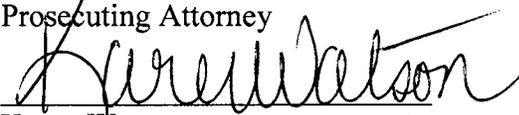
Defendant is not entitled to relief under the cumulative error doctrine. As argued above, the State offered sufficient evidence to convict defendant of first degree child molestation. Defendant received effective assistance of counsel and the court properly overruled defendant's objection to evidence that defendant was intoxicated when he met with a guardian ad litem. This evidence, and the evidence that defendant had humped M.P., were not prejudicial because they did not play any role in the arguments the parties made to the jury. RP(5) 250-282. The errors defendant alleges are not supported by the record; defendant does not allege sufficient error to entitle him to relief under the cumulative error doctrine.

D. CONCLUSION.

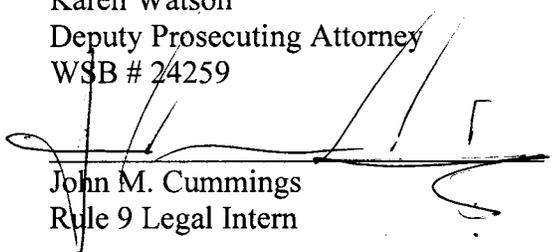
For the foregoing reasons, the State asks this court to affirm defendant's judgment and sentence.

DATED: May 19, 2008.

GERALD A. HORNE
Pierce County
Prosecuting Attorney



Karen Watson
Deputy Prosecuting Attorney
WSB # 24259



John M. Cummings
Rule 9 Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5.19.08 Theresa K
Date Signature

FILED
COURT OF APPEALS
DIVISION II
08 MAY 21 PM 1:45
STATE OF WASHINGTON
BY [Signature]
DEPUTY

APPENDIX "A"

Exhibit 9: Transcript of Ms. Wettig's interview of M.P.

INTERVIEW OF MORGAN PAPAC
INTERVIEW CONDUCTED BY: MAGGIE WETTIG
FOR CHILDREN'S ADMINISTRATIVE SERVICES

Date Sent: 07-26-04

Date Completed: 07-27-04

Interviewer: Maggie Wettig

Interview Participants: None

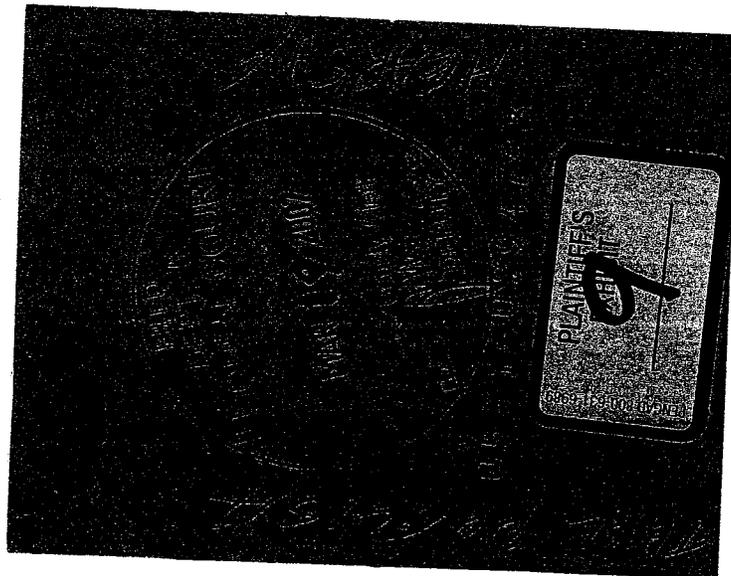
Location: Region 6 Office: Olympia

Requested by: Cheryl Christensen 360.725.6702

Social Worker: Maggie Wettig 360.725.6735

Proceedings Transcribed by: Tonya Canario, TC INK

WHEREUPON, the following proceedings were had and done, to wit:



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Proceedings Transcribed by: Tonya Canario, TC INK

WHEREUPON, the following proceedings were had and done, to wit:

1 difference between telling the truth and telling a lie.

2 MISS PAPAC: I know, I know the difference.

3 MS. WETTIG: Okay. So, I will have to tell you a
4 story now--

5 MISS PAPAC: Uh huh.

6 MS. WETTIG: --and you listen to it and you tell me
7 what the right answer is, okay?

8 MISS PAPAC: (Inaudible).

9 MS. WETTIG: Joe ate all the cookies. Joe's mom asked
10 if he ate the cookies and Joe said no, the dog ate the
11 cookies. Is Joe telling the truth or is he telling a lie?

12 MISS PAPAC: A lie.

13 MS. WETTIG: Okay. And why is he telling a lie,
14 explain that to me?

15 MISS PAPAC: Because he ate the cookies and he's-- and
16 he's blaming it on the dog.

17 MS. WETTIG: That's correct, absolutely correct. Is
18 it right or is it wrong to tell the truth?

19 MISS PAPAC: It's right.

20 MS. WETTIG: Okay. Is it right or is it wrong to tell
21 a lie?

22 MISS PAPAC: Wrong.

23 MS. WETTIG: Okay. What happens if people tell a lie?

MISS PAPAC: They can get in a lot of trouble.

25 MS. WETTIG: That's correct, okay. So, I see that you

1 know the difference between telling the truth and telling a
2 lie.

3 MISS PAPAC: Uh huh.

4 MS. WETTIG: You were right, you do know it. So, when
5 we talk today do you promise to tell me nothing but the
6 truth?

7 MISS PAPAC: Yes.

8 MS. WETTIG: Okay. So, that's one of the ground rules
9 and we have a few other ground rules to cover.

10 MISS PAPAC: Uh huh.

11 MS. WETTIG: Okay. So, if I asked you a question and
12 you don't remember the answer to that question, just say I
don't remember Maggie.

14 MISS PAPAC: Okay.

15 MS. WETTIG: Okay. And if I ask you a question and
16 you simply don't know the answer, just say I don't know.

17 MISS PAPAC: Okay.

18 MS. WETTIG: And I make a mistake, for example you're
19 saying something and I am repeating something that you
20 said--

21 MISS PAPAC: Uh huh.

22 MS. WETTIG: --but I make a mistake--

23 MISS PAPAC: Uh huh.

MS. WETTIG: --just correct me.

25 MISS PAPAC: Okay.

1 MS. WETTIG: Okay.

2 MISS PAPAC: Yep.

3 MS. WETTIG: And so, and if I ask you a question more
4 than once.

5 MISS PAPAC: Uh huh.

6 MS. WETTIG: It doesn't mean that you gave me the
7 wrong answer the first time.

8 MISS PAPAC: Right.

9 MS. WETTIG: It just means that sometimes I forget and
10 sometimes I'm confused so I ask the question so that I
11 could clarify it in my mind because I want to make sure I
12 understand everything you're saying. Okay?

MISS PAPAC: Okay.

14 MS. WETTIG: And I wasn't there in your life to see
15 what happens, so therefore, I'll be asking a lot of
16 questions and I'm going to ask you to tell me everything
17 that happened.

18 MISS PAPAC: Okay.

19 MS. WETTIG: Because that's the only way I can
20 understand really what happened is if you tell me about it.
21 So, if I ask you what is my dog's name, what would you say?

22 MISS PAPAC: I don't know.

23 MS. WETTIG: Smart girl, that's right because you
really don't know, right?

25 MISS PAPAC: Uh uh.

1 MS. WETTIG: Okay. And if I say that you're name is
2 Mary, is that right or is it wrong?

3 MISS PAPAC: It's wrong.

4 MS. WETTIG: Okay. So, if I look at you and say,
5 "Hey, Mary, how are you doing", what would you say to that?

6 MISS PAPAC: My name is Morgan and not Mary.

7 MS. WETTIG: So, you will correct me?

8 MISS PAPAC: Uh huh.

9 MS. WETTIG: Smart girl, that's absolutely correct and
10 that's exactly what I want you to do. If I make a mistake,
11 ke-- I want you to correct me. Okay. So, now I want to

12 get to know you, so, tell me about yourself. Like for
13 example, tell me about school, what do you like about
14 school? What don't you like about school?

15 MISS PAPAC: I like math, reading, spelling, those
16 kind of things. What I don't like about school is recess.

17 MS. WETTIG: Tell me more about that?

18 MISS PAPAC: You know why?

19 MS. WETTIG: Huh?

20 MISS PAPAC: Because on-- then all the kids go wild
21 and it really stinks.

22 MS. WETTIG: What happens when they go wild?

23 MISS PAPAC: They get really hyper and they don't--
24 and they don't get their energy out, they just get more.

25 MS. WETTIG: Uh huh.

1 MISS PAPAC: (Inaudible).

2 MS. WETTIG: So, you're saying that they get hyper but
3 they don't get rid of their hyperness?

4 MISS PAPAC: No, uh uh.

5 MS. WETTIG: They just get worse?

6 MISS PAPAC: Yeah.

7 MS. WETTIG: Is that what you mean?

8 MISS PAPAC: Yeah.

9 MS. WETTIG: So, what happens when it gets worse?

10 MISS PAPAC: They get in trouble, big deep trouble.

11 MS. WETTIG: Okay. So, are you one of those kids?

12 MISS PAPAC: No.

13 MS. WETTIG: Okay. But does that affect you in any
14 way?

15 MISS PAPAC: Uh uh.

16 MS. WETTIG: No, okay. So, why is it that you don't
17 like it though? How-- how does it impact you?

18 MISS PAPAC: Because then all the kids are hyper and
19 they don't listen.

20 MS. WETTIG: Okay.

21 MISS PAPAC: It's hard for the other kids to listen.

22 MS. WETTIG: Okay. So, what happens to you though
23 when they get hyper?

24 MISS PAPAC: They basically start screaming around the
25 room, basically. They don-- they don't get up and run

1 around but they're crazy.

2 MS. WETTIG: They're crazy?

3 MISS PAPAC: Yeah.

4 MS. WETTIG: And where are you when this happens?

5 MISS PAPAC: In my seat.

6 MS. WETTIG: In your seat?

7 MISS PAPAC: Uh huh.

8 MS. WETTIG: Okay. So, does anybody hit you when that
9 happens?

10 MISS PAPAC: No.

11 MS. WETTIG: Or yell at you? So, it's--

12 MISS PAPAC: No.

13 MS. WETTIG: --just what you're saying it's just
14 because you're there it affects you?

15 MISS PAPAC: Yeah.

16 MS. WETTIG: Because you don't like to hear it?

17 MISS PAPAC: At school.

18 MS. WETTIG: Okay.

19 MISS PAPAC: At school. But now--

20 MS. WETTIG: Okay.

21 MISS PAPAC: --but-- but right now I'm going to day
22 camp and--

23 MS. WETTIG: How is that going?

MISS PAPAC: It was pretty much horrible.

25 MS. WETTIG: Horrible at camp?

1 MISS PAPAC: Yes.

2 MS. WETTIG: Tell me about that?

3 MISS PAPAC: Well, there's this little boy name Sye
4 and he--

5 MS. WETTIG: Sye, okay.

6 MISS PAPAC: And he-- yeah. And at the end of the day
7 he started whipping me with a plastic string.

8 MS. WETTIG: He started whipping you with a plastic
9 string?

10 MISS PAPAC: Yeah.

11 MS. WETTIG: Uh--

12 MISS PAPAC: And yest-- and yesterday at the end of
13 the day he stabbed me in the neck twice with a-- with a
14 plastic spork and it was--

15 MS. WETTIG: Did it leave a mark?

16 MISS PAPAC: --(Inaudible) right here.

17 MS. WETTIG: Oh, my gosh, let me see, let me see. Oh,
18 my gosh, I see that.

19 MISS PAPAC: Uh huh.

20 MS. WETTIG: There's two bruises there or two little
21 scars on your left side of the neck.

22 MISS PAPAC: Uh huh.

23 MS. WETTIG: That is-- so did you report that?

24 MISS PAPAC: Uh huh.

25 MS. WETTIG: And did you tell-- who did you report

1 some-- well, we were eating some of-- of the counselor's
2 sunflower seeds and he gave us some.

3 MS. WETTIG: Uh huh.

4 MISS PAPAC: So, we-- well, Sye started, you know, you
5 know they-- they're round at one end and pokey at the
6 other?

7 MS. WETTIG: Uh huh.

8 MISS PAPAC: Well, he switched it so the pokey side
9 was like this and he spit them, started spitting them and
10 (Inaudible) he went and Carlie told him to go inside. He
11 came out with a plastic spork and jabbed me in the neck.
12 Nobody else got hurt.

MS. WETTIG: Oh, my gosh, okay. When did camp start?
14 This is--

15 MISS PAPAC: Um--

16 MS. WETTIG: Yeah, okay.

17 MISS PAPAC: A couple-- a few weeks ago.

18 MS. WETTIG: Uh--

19 MISS PAPAC: It started in July.

20 MS. WETTIG: July, this month you mean?

21 MISS PAPAC: Yeah, yeah, yeah, this month.

22 MS. WETTIG: Oh, okay.

23 MISS PAPAC: And we've had pretty much just a great
time. We went to Wild Waves, we went to the Roller Dome
25 and went to see a movie, and then we went to--

1 MS. WETTIG: Well--

2 MISS PAPAC: --the roller rink again.

3 MS. WETTIG: --what-- what-- what movie?

4 MISS PAPAC: Oh, we went to see Shrek Two.

5 MS. WETTIG: Oh, how was that, did you like it?

6 MISS PAPAC: And-- uh huh. And then we-- and then we--

7 and then we went to the Roller Dome again and we went to
8 the Cinemas I think it's called.

9 MS. WETTIG: Huh.

10 MISS PAPAC: Well, no, not the Yelm Cinemas, that's
11 where we went the first time, but down in I think downtown
12 Olympia.

MS. WETTIG: Uh huh, okay.

14 MISS PAPAC: And we watched Garfield.

15 MS. WETTIG: All right. So, how was camp otherwise
16 apart from this incident that you had with this little boy?

17 MISS PAPAC: Well, he's been like starting clubs.

18 MS. WETTIG: Uh huh.

19 MISS PAPAC: And well there's-- well, it's at a-- the
20 camps at a school, Mountain View, there's a huge field,
21 there's a little-- some bushes and then there's a lot of
22 trees and he's digging around the roots of the trees.

23 MS. WETTIG: Oh, my. What's he digging with?

2 MISS PAPAC: Sporks, sticks.

25 MS. WETTIG: Well, is he allowed to do that?

1 MISS PAPAC: They let him do it.

2 MS. WETTIG: So, they let him do it?

3 MISS PAPAC: Uh huh.

4 MS. WETTIG: Okay.

5 MISS PAPAC: And that--

6 MS. WETTIG: Oh. How about other things at camp, I
7 mean, do you-- have you made some friends?

8 MISS PAPAC: Yeah.

9 MS. WETTIG: Yeah?

10 MISS PAPAC: Not really real friends.

11 MS. WETTIG: Okay. How come?

12 MISS PAPAC: Because they always turn their back on
me.

14 MS. WETTIG: Okay. Do they do that to other kids to?

15 MISS PAPAC: Uh huh.

16 MS. WETTIG: Okay. So, I would say what, would you
17 say that's pretty normal for kids to do that?

18 MISS PAPAC: Not in my life, but for them yeah, it's
19 normal.

20 MS. WETTIG: Okay. Okay. How about this morning,
21 tell me everything that happened from the time you woke up
22 this morning to you came here?

23 MISS PAPAC: Okay. This morning, I woke up, got
ready, went to camp. Well, when we came back from my
25 sister's school, right when we were about to leave there

1 was a huge car crash right in front of my sister's school,
2 right in front of the entryway, two cars and a huge car--

3 MS. WETTIG: In front of where?

4 MISS PAPAC: In-- in front of Stepping Stones.

5 MS. WETTIG: Stepping Stones, okay.

6 MISS PAPAC: Yeah.

7 MS. WETTIG: Wow, okay.

8 MISS PAPAC: (Inaudible) a huge car crash.

9 MS. WETTIG: Uh huh.

10 MISS PAPAC: And this-- well, the-- one of the lady's
11 they had like an applefreeze, their applefreeze started
12 leaking.

13 MS. WETTIG: Oh, the antifreeze.

14 MISS PAPAC: Antifreeze, yeah.

15 MS. WETTIG: Oh, okay.

16 MISS PAPAC: Started leaking.

17 MS. WETTIG: Okay. And where was that?

18 MISS PAPAC: Stepping Stones, I don't know where it
19 is.

20 MS. WETTIG: Okay. But I mean it was right at school
21 you mean at-- at camp?

22 MISS PAPAC: Uh huh, not at camp--

23 MS. WETTIG: Or at daycare?

24 MISS PAPAC: My sister's school.

25 MS. WETTIG: Your sister's school, got it, okay.

1 Okay. All right. So, then you went-- so, what was it that
2 you did today activities wise?

3 MISS PAPAC: Oh, in the morning, well, they kept the
4 lights off because it was so hot out and--

5 MS. WETTIG: That makes sense.

6 MISS PAPAC: Uh huh. And they had like 20 fans on.
7 So, it was good and then we-- what we do is we do circle
8 time, sing a song, we have classroom, we-- and today was
9 pajama day and we had to bring our baby photo.

10 MS. WETTIG: Okay.

11 MISS PAPAC: And we-- we put them up on the big-- on
12 the light board we taped them up and they were numbered and
13 everybody had to guess who's was who's.

14 MS. WETTIG: Oh, my gosh, and did you guess?

15 MISS PAPAC: Yeah, I got them all right.

16 MS. WETTIG: You did?

17 MISS PAPAC: Exc-- except one.

18 MS. WETTIG: Except one, well, congratulations, that's
19 wonderful. What time did you--

20 MISS PAPAC: We really-- what?

21 MS. WETTIG: What time did you get up this morning?

22 MISS PAPAC: I got up at like, okay, well, when my mom
23 started taking a shower and that's like a half hour before
24 I get up.

25 MS. WETTIG: Okay.

1 MISS PAPAC: She wakes me up when she's all dressed,
2 she's got her teeth brushed, her hair brushed.

3 MS. WETTIG: Uh huh.

4 MISS PAPAC: Like she still does her hair even though
5 (Inaudible).

6 MS. WETTIG: So, in other words, you're not sure what
7 time it was?

8 MISS PAPAC: No.

9 MS. WETTIG: Is that--

10 MISS PAPAC: Well, somewhere in the (Inaudible) like
11 five because I usually get up at 6:30 or something.

12 MS. WETTIG: Okay.

MISS PAPAC: Maybe 5:30, I don't know.

14 MS. WETTIG: Okay. So, think about what you heard and
15 what you saw today, this morning when you were getting
16 ready to go to school?

17 MISS PAPAC: (Inaudible).

18 MS. WETTIG: Uh huh, from when you woke up for
19 example, you know?

20 MISS PAPAC: Yeah.

21 MS. WETTIG: Just say-- try to picture it in your
22 mind, what was it that you-- you saw and you heard?

23 MISS PAPAC: Well, I got ready. I got up, you know,
that thing and when I was at camp, we did classroom, the
25 guessing thing.

1 MS. WETTIG: Uh huh.

2 MISS PAPAC: (Inaudible) baby pictures. And then in
3 art, we did body art markers, they're like tattoos that we
4 can draw.

5 MS. WETTIG: Okay.

6 MISS PAPAC: And-- and then for sports, we did-- we
7 had a water fight and we went down our-- we have this big
8 tube slide.

9 MS. WETTIG: Uh huh.

10 MISS PAPAC: I mean, it's like huge.

11 MS. WETTIG: Uh huh.

12 MISS PAPAC: And like, and we put water in it and it
like when-- when kids sat there right when they started
14 slipping down, like we'd pour it and he'd slip-- he'd act--
15 I was the first one (Inaudible) and I slipped.

16 MS. WETTIG: Ohh.

17 MISS PAPAC: Yeah. And I-- and I like landed off it--

18 MS. WETTIG: Uh huh.

19 MISS PAPAC: --and landed on the bark. I mean, it was
20 like wet bark.

21 MS. WETTIG: Uh huh.

22 MISS PAPAC: Like muddy bark, it was disgusting.

23 MS. WETTIG: Did you get hurt?

MISS PAPAC: No.

25 MS. WETTIG: No. That's good, okay.

1 MISS PAPAC: This little girl named Brook, her-- when
2 she went down, her-- her pinky right here, it started
3 getting bruised and it started pussing up. Yeah. She
4 landed and her pinky went ugghh.

5 MS. WETTIG: Ohh, okay, that doesn't sound good.

6 MISS PAPAC: Well, no. They don't think she broke it.

7 MS. WETTIG: Okay. Did it hurt a lot though?

8 MISS PAPAC: Uh huh.

9 MS. WETTIG: Yeah.

10 MISS PAPAC: I bet.

11 MS. WETTIG: Okay. And who-- who do you live with at
12 home, so--

MISS PAPAC: My mom and my sister.

14 MS. WETTIG: Okay. And you're sister is younger or
15 older than you?

16 MISS PAPAC: She's younger.

17 MS. WETTIG: Younger. What's her name?

18 MISS PAPAC: Her names Mallory and she's give years
19 old.

20 MS. WETTIG: Wait a minute, tell me her name again?

21 MISS PAPAC: Mallory.

22 MS. WETTIG: Mallory, that's another pretty name. So,
23 you got Morgan and Mallory.

2 MISS PAPAC: Uh huh.

25 MS. WETTIG: Very nice, very pretty names. Okay. All

1 right. Well, do you know why you came here today to see me?

2 MISS PAPAC: Not really.

3 MS. WETTIG: Okay. Why do you think you're here?

4 MISS PAPAC: I-- because I have two answers. Well,
5 it's because you're asking me about camp and Sye, I thought
6 it was about camp, I-- before I came here, I thought it was
7 about my dad.

8 MS. WETTIG: Okay. And why is it that you think it's
9 about your dad?

10 MISS PAPAC: Because he's being inappropriate with me.

11 MS. WETTIG: Okay. So, tell me about that?

12 MISS PAPAC: Well, a couple weeks ago, a few weeks ago
13 about four weeks ago when we were with him, like about the
14 second night on Saturday night, I-- he touched my private
15 area.

16 MS. WETTIG: Okay.

17 MISS PAPAC: (Inaudible).

18 MS. WETTIG: What is your private area, what do you
19 mean by your private area?

20 MISS PAPAC: My vagina.

21 MS. WETTIG: Okay. Can you point to it so I'll make
22 sure that we're talking about the same thing? Just point
23 to it?

MISS PAPAC: (Inaudible).

25 MS. WETTIG: Okay, and you pointed to your vagina.

1 Okay. Do you have any other private parts?

2 MISS PAPAC: Yeah, my butt.

3 MS. WETTIG: Okay. I like that straight forward and
4 to the point.

5 MISS PAPAC: (giggle).

6 MS. WETTIG: Very good. You're doing well, okay. So,
7 a few weeks ago, maybe about four you said?

8 MISS PAPAC: Uh huh.

9 MS. WETTIG: He tri-- he touched your private part,
10 okay.

11 MISS PAPAC: Uh huh.

12 MS. WETTIG: And the private part being the vagina?

13 MISS PAPAC: Uh huh.

14 MS. WETTIG: And the butt or not the butt, or?

15 MISS PAPAC: Yes.

16 MS. WETTIG: Okay. Why don't you just tell me about
17 it in your own words?

18 MISS PAPAC: Well--

19 MS. WETTIG: Tell me everything that happened, how it
20 started and everything that happened?

21 MISS PAPAC: He's only touched my private area once
22 and then he like-- well, when I just wake up, I wake up
23 late, I'm still in bed with him and then when we get up, he
starts like-- well, he rolls over on me like, you know, on
25 me and he starts like-- it feels like he's humping me.

1 MS. WETTIG: Uh huh. Okay. And when you wake up with
2 him, okay. When-- when does this happen?

3 MISS PAPAC: Every other weekend.

4 MS. WETTIG: Okay. What happens every other weekend
5 though? How-- why-- why is it that you get to see him?
6 You don't live with him you said?

7 MISS PAPAC: No.

8 MS. WETTIG: Right?

9 MISS PAPAC: Right.

10 MS. WETTIG: Okay.

11 MISS PAPAC: He lives up in Buckley.

12 MS. WETTIG: Okay. And you go visit him?

MISS PAPAC: Uh huh.

14 MS. WETTIG: Is that--

15 MISS PAPAC: For three days.

16 MS. WETTIG: Okay.

17 MISS PAPAC: (Inaudible) week-- he picks us up at 6:00
18 on Friday and drops us off at 6:00 on Sunday.

19 MS. WETTIG: Us, meaning who?

20 MISS PAPAC: My dad and my aunt. My dad lives with my
21 aunt and my grandma.

22 MS. WETTIG: (Inaudible).

23 MISS PAPAC: My nasty old grandma.

MS. WETTIG: Oh, okay.

25 MISS PAPAC: She's--

1 MS. WETTIG: Does Mallory go to?

2 MISS PAPAC: Yes.

3 MS. WETTIG: Okay. So, he picks you and Mallory up?

4 MISS PAPAC: Uh huh.

5 MS. WETTIG: Okay. Okay. So, now it's become more
6 clear, I understand. So, you go-- you and Mallory go and
7 visit him every other weekend?

8 MISS PAPAC: Yeah, uh huh.

9 MS. WETTIG: Friday to Sunday, right?

10 MISS PAPAC: Uh huh.

11 MS. WETTIG: Okay. So, what happens when you get
12 there Friday night for example?

13 MISS PAPAC: We like eat a snack, watch movie and go
14 to bed.

15 MS. WETTIG: Okay.

16 MISS PAPAC: And we fall asleep watching a movie and
17 that's when the private area thing happened.

18 MS. WETTIG: Okay.

19 MISS PAPAC: Uh--

20 MS. WETTIG: Where do you fall asleep?

21 MISS PAPAC: I fall-- well, he has two mattresses
22 stacked on top-- stacked on top of each other, that's where
23 he sleeps.

24 MS. WETTIG: Uh huh.

25 MISS PAPAC: And when we come over, he-- he lays it

1 think she'd tell you?

2 MISS PAPAC: I can betcha that she'd tell-- that she'd
3 tell me while we were there or she'd tell my mom when she
4 got-- when we got there, or if my dad--

5 MS. WETTIG: Uh huh.

6 MISS PAPAC: --(Inaudible) in the room when we called
7 her, she'd probably tell her on the phone.

8 MS. WETTIG: Okay. Okay.

9 MISS PAPAC: And I'm so happy that we are not going
10 there for a while.

11 MS. WETTIG: Okay.

12 MISS PAPAC: I hate it there.

13 MS. WETTIG: Okay. I can understand that. I can
14 really understand that. So, okay. So, where-- what room
15 in the house do you sleep in--

16 MISS PAPAC: Um--

17 MS. WETTIG: --when you go there?

18 MISS PAPAC: Well, there's a back-- there's like a
19 hallway.

20 MS. WETTIG: Uh huh.

21 MISS PAPAC: My grandma's room, the bathroom, my
22 aunt's room and then in the very back there's no door.

23 MS. WETTIG: Uh huh.

24 MISS PAPAC: There's just an entry way and then
25 there's the room.

1 MS. WETTIG: Okay.

2 MISS PAPAC: They've got a TV in there, nightstand and
3 the bed.

4 MS. WETTIG: Okay.

5 MISS PAPAC: In fact, yeah, (Inaudible) and a closet.

6 MS. WETTIG: Well, is that like a living room or is--

7 MISS PAPAC: Yes.

8 MS. WETTIG: --it--

9 MISS PAPAC: There's like a living room, a dining
10 room, and a kitchen, a huge backyard and a huge front yard.
11 We've got very friendly neighbors there.

12 MS. WETTIG: Okay. But then where does your dad lay
13 the mattresses, that's why I'm trying to know?

14 MISS PAPAC: Well, there's like a big bedroom, the
15 mattresses are stacked here, he flips this one over so
16 that--

17 MS. WETTIG: On the floor you said?

18 MISS PAPAC: --(Inaudible). Yeah.

19 MS. WETTIG: Uh huh, okay. But is that a separate
20 room or is it all part of the living room, dining room
21 area?

22 MISS PAPAC: No, it's like-- it's down, well, the
23 living room, the dining room and the kitchen, down the
24 hallway.

25 MS. WETTIG: Okay.

1 MISS PAPAC: Like grandma's room, bathroom, aunt's
2 room and our be-- room, so yeah, it's apart.

3 MS. WETTIG: It's apart. Okay.

4 MISS PAPAC: But there is no door.

5 MS. WETTIG: And is there a-- oh, there is no door on
6 it?

7 MISS PAPAC: No door, no door.

8 MS. WETTIG: But there is a TV there?

9 MISS PAPAC: There's a TV.

10 MS. WETTIG: And a piano?

11 MISS PAPAC: And a piano.

12 MS. WETTIG: And then the mattresses on the floor. Is
there a bed frame there?

14 MISS PAPAC: No.

15 MS. WETTIG: No. Okay. Okay. So, what-- what is
16 your aunt doing when this happens, your aunt and grandma,
17 what are they doing--

18 MISS PAPAC: She's-- well, my--

19 MS. WETTIG: --while this happens (Inaudible)?

20 MISS PAPAC: --my grandma is-- they're both in bed.

21 MS. WETTIG: Okay. And are they sleeping in bed or is
22 it-- what-- what are-- are they resting, what--

23 MISS PAPAC: Well-- that-- there's--

MS. WETTIG: --what happens?

25 MISS PAPAC: --their sleeping.

1 MISS PAPAC: Yes. All--

2 MS. WETTIG: --private areas?

3 MISS PAPAC: Uh huh.

4 MS. WETTIG: So, let's talk about that one time type--
5 touching. You're saying that that's the only time that it
6 ever happened--

7 MISS PAPAC: Uh huh.

8 MS. WETTIG: --where he touched you?

9 MISS PAPAC: Uh huh.

10 MS. WETTIG: Okay. So, tell me about that? Tell me
11 exactly what happened from beginning to end?

12 MISS PAPAC: Well, I-- I took a big like feather
pillow and put it on his stomach and laid there.

14 MS. WETTIG: Uh huh.

15 MISS PAPAC: Well, I laid my stomach on there so I
16 went all the way across him.

17 MS. WETTIG: Uh huh.

18 MISS PAPAC: So, it looked like an X.

19 MS. WETTIG: Uh huh.

20 MISS PAPAC: If you looked at it front ways. And--
21 and then he starts rubbing my back and he gets deeper into
22 my-- to my butt and then his hand goes into my private
23 area.

MS. WETTIG: Okay. So, you're laying across him
25 right?

1 MISS PAPAC: Yeah.

2 MS. WETTIG: With the pillow, okay.

3 MISS PAPAC: So, (Inaudible).

4 MS. WETTIG: So--

5 MISS PAPAC: This is him, I laid like this is my head.

6 MS. WETTIG: Uh huh. So, you're-- you're got--

7 because the tape recorder can't tell what we're-- what

8 we're doing.

9 MISS PAPAC: Yeah.

10 MS. WETTIG: So, you got your arm on the table

11 stretched out and then you got the other arm--

12 MISS PAPAC: The other arm.

13 MS. WETTIG: --crossing it?

14 MISS PAPAC: Yeah.

15 MS. WETTIG: Like this, right?

16 MISS PAPAC: Yeah.

17 MS. WETTIG: So, it's like an X. Okay. And You're

18 laying face down?

19 MISS PAPAC: Yeah. Like--

20 MS. WETTIG: Okay. So, he's rubbing your--

21 MISS PAPAC: And then--

22 MS. WETTIG: --back?

23 MISS PAPAC: And then he-- like, he's rubbing my back.

24 MS. WETTIG: Okay.

25 MISS PAPAC: And then he started like getting like on

1 the edge and then he starts rubbing my butt.

2 MS. WETTIG: Your butt, okay.

3 MISS PAPAC: And then he starts rubbing my-- well, not
4 rubbing, but touching my vagina.

5 MS. WETTIG: Okay. So-- so, he goes from the butt to
6 the-- he goes from the back to the butt, okay. So, while
7 he's on the butt area, does he do anything? That-- what
8 the-- you know, tell me exactly what happens while he's on
9 the butt area?

10 MISS PAPAC: Okay. Well, my butt goes like this and
11 then--

12 MS. WETTIG: Yeah.

13 MISS PAPAC: --he takes his hand and goes like that,
14 like squeezing it, I don't know why.

15 MS. WETTIG: Squeezes it, okay.

16 MISS PAPAC: Well, yeah, I don't know why.

17 MS. WETTIG: Okay. His-- okay, that's the-- what
18 you're showing with the hand, that's what that-- that's
19 what it looks like.

20 MISS PAPAC: Uh huh.

21 MS. WETTIG: The curling of fingers and--

22 MISS PAPAC: Yeah.

23 MS. WETTIG: --that's what you-- okay. And so that's--
24 - and does he do anything else to the butt?

25 MISS PAPAC: No.

1 MS. WETTIG: Okay. So, from the butt then he goes--
2 he does what?

3 MISS PAPAC: He goes-- well, he starts getting further
4 and further into my vagina.

5 MS. WETTIG: Okay.

6 MISS PAPAC: And--

7 MS. WETTIG: And how does he do that?

8 MISS PAPAC: He just like start rubbing further and
9 further and further.

10 MS. WETTIG: Uh huh.

11 MISS PAPAC: And then he starts touching my vagina.

12 MS. WETTIG: Okay. And all this time are you still
13 laying on your back?

14 MISS PAPAC: Well--

15 MS. WETTIG: Or, on your belly, I'm sorry.

16 MISS PAPAC: Uh huh.

17 MS. WETTIG: On your belly?

18 MISS PAPAC: Uh huh.

19 MS. WETTIG: Okay. So, how is he touching your
20 vagina? Tell me about that.

21 MISS PAPAC: With his finger and it-- it really felt
22 weird. I didn't know what to do.

23 MS. WETTIG: Okay. You know none of this is your
24 fault.

25 MISS PAPAC: Uh huh.

1 it. Okay, I understand.

2 MISS PAPAC: Uh huh.

3 MS. WETTIG: Okay. All right. Does it hurt?

4 MISS PAPAC: It did, yes.

5 MS. WETTIG: It did, okay. Okay. So, what happens
6 after that, after he does that, after he puts his finger in
7 your--

8 MISS PAPAC: Well--

9 MS. WETTIG: --vagina and he wiggles?

10 MISS PAPAC: --well, when he stops, he starts rubbing
11 my butt and my back.

12 MS. WETTIG: Okay.

-- MISS PAPAC: And then I pretend that I-- I was asleep
14 I'm waking up and he stops rubbing my back and then I just
15 get-- I just go to sleep on the floor.

16 MS. WETTIG: Okay.

17 MISS PAPAC: So, I wouldn't be anywhere near him right
18 then.

19 MS. WETTIG: Okay. All right. So, does anything else
20 happen?

21 MISS PAPAC: No.

22 MS. WETTIG: Okay.

23 MISS PAPAC: Except the humping, yeah.

24 MS. WETTIG: Okay. So, that's a separate, and so
25 we'll talk about that in a little while then. If I can

1 remember, I kind of-- well, like this one grouping the
2 humping and then the other one was the touching.

3 MISS PAPAC: Uh huh.

4 MS. WETTIG: Okay. So, is there anything else that
5 you want to tell me about the touching?

6 MISS PAPAC: No.

7 MS. WETTIG: Anything else that-- you--

8 MISS PAPAC: No.

9 MS. WETTIG: --you need to close your eyes and think
10 back and--

11 MISS PAPAC: No

12 MS. WETTIG: --picture it's to re-- to make sure you
remember everything?

14 MISS PAPAC: No.

15 MS. WETTIG: No, okay. So, there's nothing else then?

16 MISS PAPAC: No.

17 MS. WETTIG: Okay. All right. So, about the humping
18 then. You said it's been going on for a long time?

19 MISS PAPAC: Uh huh.

20 MS. WETTIG: Okay. So, tell me how does it start, you
21 know, tell me everything that happens from when it starts
22 until it's over?

23 MISS PAPAC: Well, I-- well, I'm laying down-- it's
not (Inaudible) all the way humping, it's like halfway.

25 MS. WETTIG: Okay.

1 MISS PAPAC: I'm laying down flat.

2 MS. WETTIG: Okay. And--

3 MISS PAPAC: And he's sitt-- he's sitting like right
4 here.

5 MS. WETTIG: With your-- and you're laying down on
6 your back?

7 MISS PAPAC: Yes, on my back.

8 MS. WETTIG: Okay.

9 MISS PAPAC: He's sitting like right-- like on my
10 stomach.

11 MS. WETTIG: He's sitting?

12 MISS PAPAC: Go-- well, like on my-- yeah, like right
here, my thighs.

14 MS. WETTIG: Is he straddling or is he sitting
15 crossways or is he-- I-- I'm-- I'm not getting this.

16 MISS PAPAC: Well, I'm laying down flat.

17 MS. WETTIG: Okay, I see that, okay.

18 MISS PAPAC: And then he's laying down on the
19 (Inaudible).

20 MS. WETTIG: Okay. So, what you're showing me is like
21 he's straddling you then?

22 MISS PAPAC: Yeah.

23 MS. WETTIG: He's got-- okay. Because the-- what I
was trying to clarify is if he was sitting on you, he'd be
25 crushing you because you know, you're a kid and he's heavy,

1 you know, so if he's really sitting sitting, so.

2 MISS PAPAC: Uh huh.

3 MS. WETTIG: So, that's why, he's straddling you.

4 Okay. So, he's straddling you and?

5 MISS PAPAC: And then I don't really want to say this,

6 but, and then he starts pushing his penis onto my-- my

7 vagina.

8 MS. WETTIG: Okay. How-- so that means, what's he

9 doing? How is he doing that? Because if he's sitting up,

10 how would he be able to touch your vagina with his penis?

11 MISS PAPAC: Well, like he's got pants on, I've got

12 shorts on.

13 MS. WETTIG: Okay.

14 MISS PAPAC: And he's just, you know, humping me

15 basically.

16 MS. WETTIG: Okay. So--

17 MISS PAPAC: So, he's like sitting on top.

18 MS. WETTIG: Okay. Yeah.

19 MISS PAPAC: (Inaudible) sit like that.

20 MS. WETTIG: Oh, okay, I got it.

21 MISS PAPAC: (Inaudible) and he's--

22 MS. WETTIG: Ah, okay, I see now.

23 MISS PAPAC: (Inaudible).

24 MS. WETTIG: So, what you did is you got on the floor

25 and you went into a straddling position and you made

1 take a drink after-- because it smells like it if you take
2 a drink after you went outside and he said yeah and I was
3 just-- Well, I take pills because I have migraines and I
4 just (Inaudible) other faucet.

5 MS. WETTIG: Okay.

6 MISS PAPAC: Because I don't want that in my stomach.

7 MS. WETTIG: Okay. Yeah, it does-- it does when
8 somebody smokes and they--

9 MISS PAPAC: Uh huh.

10 MS. WETTIG: --come in the house and you can smell it
11 and it smells, yeah.

12 MISS PAPAC: Uh huh.

13 MS. WETTIG: I-- I know exactly what you mean.

14 MISS PAPAC: Your whole body smells like it.

15 MS. WETTIG: Yeah.

16 MISS PAPAC: Like when you have cologne.

17 MS. WETTIG: Yeah, I understand. Okay. So, you're
18 saying you have your clothes on and he's got clothes on
19 then?

20 MISS PAPAC: Uh huh.

21 MS. WETTIG: So, do his clothes stay on all the time,
22 do they come off, what happens?

23 MISS PAPAC: Well, they stay on while he's in public
24 vision, yes.

25 MS. WETTIG: Public vision?

1 MISS PAPAC: Like when people are looking at him.

2 MS. WETTIG: Uh huh.

3 MISS PAPAC: Like-- like when he takes a shower, goes
4 to the bathroom, he locks the door.

5 MS. WETTIG: Oh, okay.

6 MISS PAPAC: So.

7 MS. WETTIG: And I guess I was specifically asking
8 about the humping when he humps you?

9 MISS PAPAC: Uh huh, uh huh.

10 MS. WETTIG: Are his clothes on, are his clothes off,
11 does he?

12 MISS PAPAC: His clothes are on.

13 MS. WETTIG: Okay. And is that always--

14 MISS PAPAC: Like-- yes, always.

15 MS. WETTIG: So, there's always clothes between you
16 and him?

17 MISS PAPAC: Yes.

18 MS. WETTIG: Okay. Okay. So, what happens after
19 that, after he humps you?

20 MISS PAPAC: Well-- well, the only way I can
21 personally get him off--

22 MS. WETTIG: Uh huh.

23 MISS PAPAC: --is well, when he-- the only way I can
really get him off is-- well, what I do when we're up, is I
25 take my head and I start from way back and I head butt him.

1 MS. WETTIG: Okay.

2 MISS PAPAC: In-- in the stomach.

3 MS. WETTIG: Uh huh.

4 MISS PAPAC: And so, I just-- I'm laying down on my
5 back.

6 MS. WETTIG: Uh huh.

7 MISS PAPAC: And I just curl up and go, ugghh, in his
8 stomach.

9 MS. WETTIG: Okay.

10 MISS PAPAC: Because that's the only way to get him
11 off.

12 MS. WETTIG: Okay. So, what is he doing when-- when
13 you do that?

14 MISS PAPAC: He just-- well, he's sitting up and he
15 just crawls back.

16 MS. WETTIG: Ah, okay.

17 MISS PAPAC: Or he (Inaudible).

18 MS. WETTIG: Okay. And what happens after that?

19 MISS PAPAC: Then I get up and he just starts into a
20 game, he starts tickling me and I yell for help from
21 Mallory.

22 MS. WETTIG: Uh huh.

23 MISS PAPAC: And start tickling him and so he has
24 some-- two ticklish spots, his feet and his neck.

25 MS. WETTIG: Uh huh.

1 MISS PAPAC: And when you've got one side and you
2 can't get your fingers in there, free side. And when he's
3 like this, (Inaudible) the feet.

4 MS. WETTIG: Okay. All right. Oh, so, going back to
5 the-- the time that he touched you.

6 MISS PAPAC: Uh huh.

7 MS. WETTIG: Were-- were you-- did you have your
8 clothes on?

9 MISS PAPAC: Yes.

10 MS. WETTIG: Okay. So, how did he get his hand in
11 there?

12 MISS PAPAC: I-- okay, he went into my pants, inside
my underwear.

14 MS. WETTIG: Okay. I got it. Okay. Did he have his
15 clothes on?

16 MISS PAPAC: Yes.

17 MS. WETTIG: Okay. All right. Is there anything
18 else?

19 MISS PAPAC: Well, he had his-- he also had his shirt
20 on.

21 MS. WETTIG: Okay. All right. What else can you tell
22 me about those incidents about the humping and the--

23 MISS PAPAC: Well, there's not really anything else to
tell about it. I don't know.

25 MS. WETTIG: Okay. Did he touch you with any other

1 just out in the couch watching TV.

2 MS. WETTIG: Okay. So, do they know that--

3 MISS PAPAC: No.

4 MS. WETTIG: No, okay. So, who else have you told
5 about this?

6 MISS PAPAC: My mom, some other people.

7 MS. WETTIG: Uh huh, like who?

8 MISS PAPAC: Well, a gentleman, I think it's called
9 Southsound something. Well--

10 MS. WETTIG: Oh.

11 MISS PAPAC: --some people that like went--

12 MS. WETTIG: South Sound Mental Health?

13 MISS PAPAC: I think.

14 MS. WETTIG: Okay.

15 MISS PAPAC: Uh huh.

16 MS. WETTIG: All right. So, when did you tell your
17 mom about this?

18 MISS PAPAC: I told my mom a few weeks ago.

19 MS. WETTIG: Okay. So, what did your mom say when you
20 told her?

21 MISS PAPAC: I can't really remember. I think she
22 said something like okay, we'll take care of it, don't
23 worry (Inaudible) nothing was your fault, stuff like that.

MS. WETTIG: Okay.

25 MISS PAPAC: And she tried to cheer me up because I

1 was scared to tell.

2 MS. WETTIG: Okay.

3 MISS PAPAC: Because it was embarrassing.

4 MS. WETTIG: Okay.

5 MISS PAPAC: It was really embarrassing.

6 MS. WETTIG: I can believe that.

7 MISS PAPAC: Uh huh.

8 MS. WETTIG: Okay. Huh. So, after you told your mom-

9 -

10 MISS PAPAC: Uh huh.

11 MS. WETTIG: --did you go back and visit your dad?

12 MISS PAPAC: No, we haven't been there since. We're

13 supposed to be there this weekend, but I think she had--

14 she went to court and it--

15 MS. WETTIG: Oh, your mom did.

16 MISS PAPAC: Uh huh.

17 MS. WETTIG: Okay.

18 MISS PAPAC: And she's got something that says that

19 he-- he's not allowed to come to our house, call our house-

20 -

21 MS. WETTIG: Oh, I think that's--

22 MISS PAPAC: --not come in--

23 MS. WETTIG: --called a no contact order or--

24 MISS PAPAC: Uh huh.

25 MS. WETTIG: --a restraining order.

1 MISS PAPAC: Uh huh.

2 MS. WETTIG: Okay. Okay. All right. Okay--

3 MISS PAPAC: And--

4 MS. WETTIG: Yeah.

5 MISS PAPAC: --and she doesn't trust him, so we're
6 staying at our-- at her very close friend's house, her
7 name's Sarah.

8 MS. WETTIG: Okay.

9 MISS PAPAC: And her husband Albert.

10 MS. WETTIG: Okay.

11 MISS PAPAC: And today we're going to our-- well, she-
12 - not really, not really our nana and papa's but they're
13 very close friends.

14 MS. WETTIG: Uh huh.

15 MISS PAPAC: So, we just call them-- call them nana
16 and papa, we're going to their house for dinner and then
17 we're going to be staying at Albert and Sarah's house. And
18 they've got four boys.

19 MS. WETTIG: Oh, okay.

20 MISS PAPAC: A nine year old named Eric, a-- I think,
21 wait three boys.

22 MS. WETTIG: Uh huh.

23 MISS PAPAC: And the dad. And I think, yeah, I think
24 a four year old named Parker and a-- I think either one or
25 two I can't really remember named Jensen.

1 for a long time.

2 MS. WETTIG: Okay.

3 MISS PAPAC: And I have-- when I-- I went to Girl
4 Scouts the Storm game for basketball.

5 MS. WETTIG: Uh huh.

6 MISS PAPAC: And the LA Lakers, well I got a book that
7 talks about drugs and alcohol.

8 MS. WETTIG: Uh huh.

9 MISS PAPAC: And I brought it my dad's house to work
10 on and he said that he didn't want me to work on it.

11 MS. WETTIG: Oh. Okay.

12 MISS PAPAC: And I betcha I know why?

13 MS. WETTIG: Why?

14 MISS PAPAC: Because he drinks beer, he smokes and he
15 does-- and he's an alcoholic.

16 MS. WETTIG: Okay.

17 MISS PAPAC: And he doesn't know--

18 MS. WETTIG: Yeah.

19 MISS PAPAC: And he doesn't know that I know and he
20 doesn't let me find out. So--

21 MS. WETTIG: Uh huh, okay. So, have you and your dad
22 talked about this?

23 MISS PAPAC: No, no.

24 MS. WETTIG: Okay. How come?

25 MISS PAPAC: (Inaudible) ones he cussed at me.

1 MS. WETTIG: Tell me about that?

2 MISS PAPAC: He-- well, he would-- last week--

3 MS. WETTIG: Uh huh.

4 MISS PAPAC: --we were sitting in the car going to Mud
5 Mountain, we were listening to my mom's CD, Dixie Chicks, I
6 Fly-- Fly.

7 MS. WETTIG: Ah, okay.

8 MISS PAPAC: We listened to Goodbye Earl and well, it
9 said (Inaudible) FFA and my dad said, did you know I was in
10 the FFA and I didn't answer because I couldn't hear him.

11 MS. WETTIG: Uh huh.

12 MISS PAPAC: And he turned off the radio and called my
13 a slum (Inaudible).

14 MS. WETTIG: Ah okay. Okay. So, when I asked you if
15 you talked to dad and you said no, how come you didn't talk
16 to dad about these things?

17 MISS PAPAC: Because I don't trust him.

18 MS. WETTIG: Okay. What do you think would happen if
19 you-- if you talked to him about it?

20 MISS PAPAC: He'd probably tell Debbie and then she'd
21 have a talk with me.

22 MS. WETTIG: Who's Debbie?

23 MISS PAPAC: My aunt.

24 MS. WETTIG: Oh, okay. All right. Has he ever talked
25 to you about what he's doing?

1 MISS PAPAC: No.

2 MS. WETTIG: No?

3 MISS PAPAC: Never.

4 MS. WETTIG: Okay.

5 MISS PAPAC: Because he just-- he doesn't know that I
6 know that he's an alcoholic, drinks beer.

7 MS. WETTIG: Okay.

8 MISS PAPAC: And he smokes.

9 MS. WETTIG: Well--

10 MISS PAPAC: And he doesn't (Inaudible).

11 MS. WETTIG: --well, how about the humping and the
12 private parts incident?

13 MISS PAPAC: He doesn't-- he doesn't know that this is
14 happening, he doesn't know. I do--

15 MS. WETTIG: Your dad?

16 MISS PAPAC: Yeah, I don't think he knows that I'm
17 right here right now.

18 MS. WETTIG: Oh, okay. But what-- what I'm asking is,
19 have you ever talked to your dad about the humping--

20 MISS PAPAC: No.

21 MS. WETTIG: --and the touching?

22 MISS PAPAC: Uh uh.

23 MS. WETTIG: Okay.

24 MISS PAPAC: Because he'll just deny it.

25 MS. WETTIG: Oh, he'll just-- okay. He'll say--

1 MISS PAPAC: Yeah, he will deny it.

2 MS. WETTIG: He'll say what to you?

3 MISS PAPAC: That, no, I didn't.

4 MS. WETTIG: Okay.

5 MISS PAPAC: And plus, I wouldn't say anything like
6 that in front of him.

7 MS. WETTIG: Okay. How come?

8 MISS PAPAC: Because he doesn't take it seriously.

9 MS. WETTIG: Okay. Well, has he ever talked to you
10 about it?

11 MISS PAPAC: Uh uh.

12 MS. WETTIG: No?

13 MISS PAPAC: No.

14 MS. WETTIG: Okay. Has he ever asked you not to tell
15 anybody?

16 MISS PAPAC: Nope. Because he doesn't know that I
17 know.

18 MS. WETTIG: About the humping and the touching?

19 MISS PAPAC: Uh huh. No, he doesn't know that-- I
20 guess he doesn't know that it's a bad thing.

21 MS. WETTIG: Well, wait a minute. How--

22 MISS PAPAC: (Inaudible).

23 MS. WETTIG: --how do you figure-- wait a minute, wait
a minute. How do you figure he doesn't know that you know?

25 MISS PAPAC: Well, because you know, maybe I don't

1 know that what he was doing I didn't-- maybe I didn't know
2 that it was called humping and maybe--

3 MS. WETTIG: Okay.

4 MISS PAPAC: --if he thought I was asleep when he
5 touched me.

6 MS. WETTIG: Okay.

7 MISS PAPAC: He did think I was asleep.

8 MS. WETTIG: He did?

9 MISS PAPAC: Uh huh.

10 MS. WETTIG: Oh, okay. I understand, got it. Okay.
11 So, when you go to your dad's house, do you feel safe?

12 MISS PAPAC: No.

MS. WETTIG: How come?

14 MISS PAPAC: Because there's-- first of all, huge
15 snake field behind her house, I mean--

16 MS. WETTIG: Okay.

17 MISS PAPAC: --there's snakes everywhere in her yard.

18 MS. WETTIG: Okay.

19 MISS PAPAC: I mean, you could just go looking through
20 the grass and you can find them.

21 MS. WETTIG: Okay.

22 MISS PAPAC: But it's like one of those tiny gardener
23 snakes.

MS. WETTIG: Okay.

25 MISS PAPAC: Uh huh.

1 MS. WETTIG: So why else?

2 MISS PAPAC: Well, we-- what we do is, me and my
3 friend we-- we catch them, we give them names and we let
4 them go into the field.

5 MS. WETTIG: Okay.

6 MISS PAPAC: Because they usually come back. And my
7 aunt is so glad that they're-- that they're building houses
8 there because she doesn't like them at all.

9 MS. WETTIG: Yeah, and (Inaudible) the snakes go away,
10 (Inaudible).

11 MISS PAPAC: Uh huh.

12 MS. WETTIG: Yeah, okay. So, why else though, you
don't feel safe at your dad's house because of the snakes.
14 Is there any other reason?

15 MISS PAPAC: Uh huh. Well, not because of the snakes,
16 because there's a huge field over there.

17 MS. WETTIG: Okay.

18 MISS PAPAC: And he lets us go all the way down to the
19 road on our bikes.

20 MS. WETTIG: Okay.

21 MISS PAPAC: He'll let Mallory go down there by
22 herself, she's-- and she's--

23 MS. WETTIG: Okay.

24 MISS PAPAC: --she's give years old, she doesn't know.

25 MS. WETTIG: Okay. Okay. So why else don't you feel

1 safe?

2 MISS PAPAC: Well, there's lots of old people around
3 our house.

4 MS. WETTIG: Uh huh.

5 MISS PAPAC: Or, you know, they're mid age, about like
6 my dad's age or your age.

7 MS. WETTIG: Okay.

8 MISS PAPAC: And I just-- I don't--

9 MS. WETTIG: Okay.

10 MISS PAPAC: --feel safe.

11 MS. WETTIG: Okay. Do you feel safe when he humps
12 you?

MISS PAPAC: No. Not one bit.

14 MS. WETTIG: Okay, how come?

15 MISS PAPAC: God, because I don't feel it's
16 appropriate. I don't feel safe.

17 MS. WETTIG: Okay. Do you feel safe when he touches--

18 MISS PAPAC: No.

19 MS. WETTIG: --your private parts?

20 MISS PAPAC: No.

21 MS. WETTIG: Okay.

22 MISS PAPAC: Probably I don't even feel much safer
23 than I do when he's humping me.

MS. WETTIG: Okay. You know, I've asked you a lot of
25 questions.

1 MS. WETTIG: Okay. You sure?

2 MISS PAPAC: Uh huh.

3 MS. WETTIG: Okay. I want to thank you very much.

4 MISS PAPAC: Uh huh.

5 MS. WETTIG: You did really well.

6 MISS PAPAC: Uh huh.

7 MS. WETTIG: Okay.

8 MISS PAPAC: Do you (Inaudible)?

9 MS. WETTIG: I'm going to turn off the-- yeah.

10 MISS PAPAC: Okay.

11 MS. WETTIG: I need to turn this off now and the time
12 is 5:25.

MISS PAPAC: (Inaudible).

14 [End of Recording]

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