

PLAINTIFF'S APPENDIX

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Motion -- testimony of Rachel Bailey

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1 MS. O'MALLEY-SEPTOSKI: Okay.

2 MR. ENGRAM: -altogether vague. I'm not sure if
3 we're still talking about the prosecutor's-

4 MS. O'MALLEY-SEPTOSKI: Okay.

5 MR. ENGRAM: -768 motion-

6 MS. O'MALLEY-SEPTOSKI: Your Honor-

7 MR. ENGRAM: -or if she moved to *limine*.

8 MS. O'MALLEY-SEPTOSKI: -I'll back up. And I'm
9 going to move into the motion *in limine*.

10 THE COURT: Now we're on the motion-

11 MS. O'MALLEY-SEPTOSKI: Yes.

12 THE COURT: -*in limine*?

13 MS. O'MALLEY-SEPTOSKI: Yes. And I'm just not
14 asking it very well, and I apologize. I'm going to back up.

15 BY MS. O'MALLEY-SEPTOSKI:

16 Q Through the investigation with regard to this case, some
17 information came out about things that Jackie previously said;
18 is that correct?

19 A Yes, ma'am.

20 Q Okay. That's what I want to talk about for a moment. Okay?
21 That had to do with your ex-husband; is that right?

22 A Yes, ma'am.

23 Q And had she made-What kinds of comments had she made to you
24 about your ex-husband?

25 A At one point, when I was discussing with my children getting

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1 back with their father, her and my other daughter stated
2 that--they said that their dad had touched them.

3 Q Is that all they said, just touched them?

4 A Yes.

5 Q Did they give any further explanation?

6 A No.

7 Q Okay. And did you take that to mean sexual touching?

8 A I didn't know if they meant sexual or just physical because he
9 had, in the past, put his hands on them kind of hard.

10 Q Okay. And when they told you--they say that, what was that in
11 response to, or what was their concern?

12 A That I was going to get back with him.

13 Q Okay. And so they told you they were going to say these
14 things?

15 A Yeah, they wanted--they did not want me to get back with their
16 father.

17 Q After you had this conversation with Lana and Jackie, did you
18 get back together with their father?

19 A Yes.

20 Q Okay. And, when you got back together with their father, do
21 you know how long you were together with their father back
22 then?

23 THE COURT: Meaning like a dating relationship or
24 living--still married or what?

25 MS. O'MALLEY-SEPTOSKI: . . . (inaudible)

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1 THE WITNESS: Approximately a month.
2 BY MS. O'MALLEY-SEPTOSKI:
3 Q Were you living with him at that point?
4 A Yes, we did end up living with him.
5 Q And, when you say we, do you mean the girls?
6 A Me and the children.
7 Q Okay. So you're all living together, including Jackie and
8 Lana?
9 A Yes, ma'am.
10 Q Do you remember when that was?
11 A I know that he came and got us sometime in August and we went
12 to Iowa with him--
13 Q Of what year?
14 A --and lived in Iowa.
15 Q Of what year?
16 A It had to have been over three years ago now.
17 Q Okay. So--
18 A So '14--
19 Q --2014?
20 A --2014, approximately.
21 Q And you said that you lived together for approximately a month
22 after the girls had made this comment?
23 A Yes, ma'am.
24 Q At any point in time, did Jackie ever say that your husband
25 did anything inappropriate during the time . . . (inaudible)

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- 1 A No, ma'am.
- 2 Q Did she ever make any police reports or talk to CPS or do
3 anything like?
- 4 A No, ma'am.
- 5 Q Did she ever talk to teachers that you know of?
- 6 A No, ma'am.
- 7 Q Did she ever tell you anything?
- 8 A No, ma'am.
- 9 Q And you said that was about three years ago?
- 10 A Yes, ma'am.
- 11 Q Was that prior to your new relationship with defendant?
- 12 A Yes, ma'am.
- 13 Q Okay. And, when you and the defendant started dating, did you
14 talk with him about those statements?
- 15 A Oh, I talked to them before that. When it first—When they
16 first made the statements, I talked to them about it.
- 17 Q Okay. So the defendant has known about those statements?
- 18 A Oh, him. I thought—
- 19 Q Yeah.
- 20 A —you meant—
- 21 Q No.
- 22 A —my children. Yes, I told him when we first started seeing
23 each other, and I also told his family because I was
24 explaining to them how terrible the marriage had been and how
25 it was so terrible that my children were willing to go to such

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1 It says, when applying MRE 403 to the evidence
2 admissible under the statute, the courts must weigh the
3 propensity inference in favor of the evidence probative value,
4 rather than its prejudicial effect.

5 And I do find that it—it just should not be admitted
6 for those reasons; and it is substantially outweighed, in this
7 Court's opinion, for all the reasons I said.

8 So the Court will deny the motion—or if it was just
9 a notice—I guess if you want to call that a notice and not a
10 motion and the defendant had a motion. How do you want to go?

11 MS. O'MALLEY-SEPTOSKI: I noticed it. The
12 defendant objected. I guess it's his motion *in limine*.

13 THE COURT: Just for purposes of ease, I'll call it
14 a notice and motion to introduce evidence under 768.27a is
15 denied for the reasons stated.

16 Now regarding the motion *in limine* to introduce the
17 statement made by the victim, there was testimony at the
18 prelim—And the Court remembers this.—that the victim said
19 something about the defendant touched me—I will say, rather,
20 that my father touched me if—if my mother allows the father to
21 move back in the house in 2014.

22 I do note that the prosecutor was quick to point out
23 that that was three years old versus the 35 and 28 years of
24 the other acts. Some time has passed, but that isn't all that
25 significant.

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1 However, the Court does find that that is a hearsay
2 statement. It definitely is an assertion or a statement made
3 by a witness, while not under oath in court, and it is not an
4 inconsistent statement. I agree with the prosecutor's
5 argument on that. She testified the same way under oath at
6 the preliminary examination acknowledging that statement. It
7 would not be to rebut some kind of charge about recent
8 fabrication, and that wasn't even argued by Counsel. And it's
9 not one of identity.

10 I'm not sure how that would be used specifically for
11 impeachment purposes because there isn't an inconsistency
12 there, and she acknowledges that she specifically made the
13 statement.

14 However, to say we're not using that statement for
15 the truth of the matter asserted, we're using it to show,
16 well, I guess, that she's a liar or she would lie or she said
17 she would lie under other circumstances.

18 I go back and reflect on this on the old law school
19 example, somebody yells out, wait, be careful, there's ketchup
20 on the floor. You could bring that statement in. It's not to
21 show the proof of the matter asserted that there's, in fact,
22 ketchup on the floor, but to show that a warning was given in
23 some kind of liability case.

24 In this case, the defense attorney is trying to
25 argue that—well, not trying to say that she said she would lie

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1 about her father or trying to say that she said she'll lie. I
2 can't imagine any real purpose that's significant other than
3 for the proof of the matter asserted, indicating that she
4 would lie. And, in fact, the testimony was received and not
5 rebutted in any form that her father did, in fact, move back
6 in with the mother for a time period and she never made that
7 assertion that her father had improperly touched her.

8 And, other than maybe a brief reference in the
9 transcript where Counsel asked about CSC, all the references
10 the Court has is of a touching; and I'm not sure if that meant
11 a physically abusive touching or a sexual touching. There
12 wasn't much clarification on that particular issue, but I
13 think Counsel may have asked one question about the CSC.

14 So, even now at this juncture, I think it's a little
15 bit unclear as to what she meant; and that makes it even less
16 relevant. But it is hearsay. I don't see a legitimate
17 purpose for it coming in to prove the truth of the matter
18 asserted. I don't see how it's relevant if it's not to prove
19 the truth of the matter asserted because it's, basically, in
20 essence, in this case, the same thing. That's not always the
21 case; but, in this case, it is. And it really hasn't been
22 clarified what she was talking about in the statement when she
23 said touching.

24 So the motion *in limine* by the People to exclude
25 that statement is granted.

- 1 incident happened?
- 2 A. Yes, ma'am.
- 3 Q. Okay. At some point Jacqueline did you talk with anybody else
4 about what happened?
- 5 A. I talked to my sister and her boyfriend.
- 6 Q. Okay. And I want to take you to that day, okay. Was that
7 February 17th of this year?
- 8 A. Yes, ma'am.
- 9 Q. And what were you guys doing. Where were you when you talked
10 with your sister and her boyfriend?
- 11 A. We were on a walk from the store.
- 12 Q. Okay. You were on walk from the store.
- 13 A. Yes, ma'am.
- 14 Q. So is this during the day. Is it in the evening? When was
15 it?
- 16 A. The day.
- 17 Q. During the day. Okay. And you sister, which sister?
- 18 A. Lana.
- 19 Q. And who else was with you?
- 20 A. Tanner, her boyfriend.
- 21 Q. Okay. And tell me, Jacqueline, at that point did you tell
22 them what you just told us?
- 23 A. No, ma'am.
- 24 Q. Okay. Did you tell them something different?
- 25 A. Yes, ma'am.

1 Q. What did you tell them?

2 A. I told them --

3 MR. ENGRAM: I'm gonna object. This is hearsay at
4 this point.

5 MS. O'MALLEY: It's not for the truth of the matter
6 your Honor, it's just to explain what happened next,
7 essentially.

8 THE COURT: Well, why do you need what she said
9 then?

10 MS. O'MALLEY: I think it will be -- I'll wait, yo
11 Honor, I'll go back to that.

12 THE COURT: Okay. For now I'll sustain the
13 objection.

14 BY MS. O'MALLEY:

15 Q. Backing up, you didn't tell them everything you just told us.
16 Is that fair?

17 A. Yes.

18 Q. Okay. Was your mom there when this happened?

19 A. When I told them?

20 Q. Yes.

21 A. No.

22 Q. Did you seek your mom out and talk to your mom about this?

23 A. No.

24 Q. Okay. So once you commented to your sister what happened?

25 A. My mom was talking about letting him come back to the house.

1 Q. I'm gonna back up a little. You're really quiet. You said
2 your mom was talking. Did you mom come and talk to you
3 specifically?

4 A. We were talking about her letting him come back into the house
5 after being arrested.

6 Q. Jacqueline let's back up a little. Okay. When you talked to
7 your sister Lana -- you made a comment to your sister Lana.
8 Right? And did that comment prompt your mom to come talk to
9 you about the defendant?

10 A. Yes, ma'am.

11 Q. Okay. And did your mom ask you about what had happened with
12 the defendant?

13 A. Yes, ma'am.

14 Q. And did you want to talk to your mom about what had happened
15 with the defendant when she came to you?

16 A. No.

17 Q. Was that that same day, February 17th?

18 A. Yes, ma'am.

19 Q. Okay. And did you talk to your mom about what happened?

20 A. Yes, ma'am.

21 Q. Okay. And when you talked to with your mom how did that feel?

22 MR. ENGRAM: Objection. Relevance.

23 MS. O'MALLEY: And again, your Honor, I don't know
24 how her emotions and how when she's talking about something
25 that happened to her aren't relevant to this case. Certainly

1 the beginning of February. Correct?

2 A. Yes, ma'am.

3 Q. And Mr. Engram asked you if you talked to the police and he
4 said you would know that he'd get arrested and then you'd be
5 safe, essentially is what he just asked you. Right?

6 A. Yes, ma'am.

7 Q. Did he get arrested?

8 A. Yes, ma'am.

9 Q. He got arrested for something different. Right?

10 A. Yes, ma'am.

11 Q. Okay. And if I were to tell you that that incident happened
12 on January 29th of 2017, would you disagree with me on that or
13 does that sound about right?

14 A. That sounds right.

15 Q. Okay. Did you talk to Cam about what happened with the
16 defendant prior to that domestic violence incident?

17 A. Yes, ma'am.

18 Q. Okay. And these messages that we looked at a little while
19 ago, exhibits 8 through 18, those were actually before. Right?

20 A. Yes, ma'am.

21 Q. Okay. And in those messages and in that conversation did you
22 tell Cam what happened on the bed sometime in early December?

23 A. Yes, ma'am.

24 MS. O'MALLEY: Your Honor, at this time I'd move to
25 admit People's 8 through 18.

1 THE COURT: Mr. Engram.

2 MR. ENGRAM: I assume she's admitting those under
3 the rule regarding the first person that a client makes an
4 alleged disclosure to. So I have no objection if that's the
5 case.

6 THE COURT: All right.

7 MS. O'MALLEY: Your Honor, I'm actually admitting
8 them as non-hearsay because --

9 THE COURT: As what?

10 MS. O'MALLEY: As non-hearsay because here by the
11 defense, I think, as very clearly just outlined was that this
12 was a fabrication after the defendant was out of the house
13 because of that domestic violence incident. So if this was
14 prior to that domestic violence incident this would be a
15 consistent statement prior to whatever the allegation is of a
16 recent fabrication. Therefore, it's not hearsay it comes in.
17 That is the basis under which I'm asking to move it in.

18 THE COURT: And is offered to rebut an expressed or
19 implied charge declarant of recent fabrication. So I will
20 allow it.

21 MS. O'MALLEY: Thank you.

22 THE COURT: Non-hearsay under that rule.

23 BY MS. O'MALLEY:

24 Q. Okay. These are really hard to see if I put them up on ELMO
25 because they're on a white, kind of a white background. So

Trial -- testimony of Rachel Bailey

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- 1 A. No, ma'am.
- 2 Q. Did you talk to Jacqueline?
- 3 A. Yes, eventually.
- 4 Q. Okay. Did you go to Jacqueline though and --
- 5 A. I called her to me.
- 6 Q. Okay. Was that based on information you had gotten from Lana?
- 7 A. Yes, ma'am.
- 8 Q. When you talked with Jacqueline about what happened did she
- 9 seem like she wanted to talk about it?
- 10 A. No, ma'am.
- 11 Q. Did she deny anything at first or did she have a difficult
- 12 time talking to you?
- 13 A. She had a very difficult time.
- 14 Q. And when you say she had a difficult time what do you mean?
- 15 A. I asked --
- 16 Q. Without specifics of what was said --
- 17 A. Okay.
- 18 Q. Tell me how she acted, I guess.
- 19 A. She acted like she was keeping something from me. And I just
- 20 kind of like she didn't want to tell me.
- 21 Q. Is that how she normally is with you?
- 22 A. No.
- 23 Q. Okay. How long did you talk with her?
- 24 A. It was probably 30 minutes.
- 25 Q. And at some point did that change?

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Trial -- testimony of Rachel Bailey

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- 1 A. Yes, ma'am.
- 2 Q. And at some point did she tell you what had happened?
- 3 A. Yes, ma'am. I asked her a specific question and she started
- 4 balling.
- 5 Q. When --
- 6 A. Sorry.
- 7 Q. When you talked to her about what happened you said she started
- 8 balling did she continue to be upset?
- 9 A. Yes, ma'am.
- 10 Q. What did you do in response to the conversation you had with
- 11 her at that point?
- 12 A. After I consoled her, told her how sorry I was, I called her
- 13 father, I called my sister, and I called the police.
- 14 Q. Okay. Her father where is he?
- 15 A. As far as I know California.
- 16 Q. So he's not -- you're -- he's not around.
- 17 A. No.
- 18 Q. Your sister, who's your sister?
- 19 A. Pardon.
- 20 Q. Who's your sister?
- 21 A. Roxanne Tancil.
- 22 Q. Okay. Did you call Roxanne just simply for support is that
- 23 it.
- 24 A. Yes.
- 25 Q. Okay. And did she come to be with you and your kids?

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- 1 A. Yes, ma'am she came right away.
- 2 Q. Okay. I assume she is local then.
- 3 A. Yes, ma'am.
- 4 Q. Okay. You called the police you said?
- 5 A. Yes, ma'am.
- 6 Q. Do you remember about what time of the day it was when you
7 called the police?
- 8 A. It was late in the night. It was, I would say after 11. I'
9 not exactly positive.
- 10 Q. Eleven p.m.?
- 11 A. Yes, ma'am.
- 12 Q. Okay. And when the police came did they talk with you?
- 13 A. Yes, ma'am.
- 14 Q. Was it Deputy Walls that came?
- 15 A. Yes, ma'am.
- 16 Q. And he is a male. Correct?
- 17 A. Yes, ma'am.
- 18 Q. Did he talk with Jacqueline?
- 19 A. Yes, ma'am.
- 20 Q. Were you there when he talked with Jacqueline?
- 21 A. Yes, ma'am.
- 22 Q. And how was Jacqueline's demeanor when she was talking with
23 Deputy Walls?
- 24 A. She was obviously upset.
- 25 Q. Okay. And when you say obviously upset what do you mean by

- 1 A. Yes, ma'am.
- 2 Q. Would you say the two of you are friends still?
- 3 A. Yes, ma'am.
- 4 Q. Okay. And did there come a point and time where you and she
5 were messaging on Facebook and she told you about something
6 that had happened with her?
- 7 A. Yes, ma'am.
- 8 Q. And did she tell you that that did happen with her mother's
9 boyfriend, Juan Martinez?
- 10 A. Yes, ma'am.
- 11 Q. What did she call him?
- 12 A. Johnny.
- 13 Q. Okay. And do you remember about when it was that you had this
14 conversation with her?
- 15 A. January. Early January. I do believe.
- 16 Q. Of 2017?
- 17 A. Of 2017, yes ma'am.
- 18 Q. Okay. And tell me this you got some -- or had some messages
19 back and forth. Correct?
- 20 A. Yes, ma'am.
- 21 Q. And how -- what kind of -- how did the two of you communicate,
22 I guess?
- 23 A. Through Facebook.
- 24 Q. Okay.
- 25 A. Most of the time.

Trial -- testimony of William Shirely

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- 1 Q. Is it a messaging program, is it a texting program, how did
2 you --
- 3 A. It's a messaging app. Messenger.
- 4 Q. Okay. So are the two of you having a conversation back and
5 forth?
- 6 A. Yes, ma'am.
- 7 Q. And is anybody else able to participate in that conversation
8 or is it just the two of you?
- 9 A. Just the two of us.
- 10 Q. Okay. And did that conversation start because -- well, why
11 did that conversation start. Let me but it that way.
- 12 A. She was just upset and I was -- I noticed it so I asked her
13 what was wrong and she told me about what had happened.
- 14 Q. When said she was upset had the two of you had any problems or
15 anything that caused you to think she was upset.
- 16 A. Yes. I noticed that she was pulling away and just wasn't
17 exactly what -- exactly acting like herself anymore. And I
18 asked her what was going on and, I mean I kind of had a
19 feeling it was something towards that nature. I just --
- 20 MR. ENGRAM: Objection. Speculation at this point.
- 21 THE COURT: I'll sustain that.
- 22 THE WITNESS: And I just was who it was with but in
23 knew it someone close that she trusted.
- 24 BY MS. O'MALLEY:
- 25 Q. So did you --

1 MR. ENGRAM: I think I made an objection and the
2 Court sustained it and he kept on going.

3 THE COURT: I'm not quite sure what he -- I have a
4 little trouble understanding some of what he's saying. So ask
5 the specific question.

6 MS. O'MALLEY: Sure.

7 THE COURT: Because I'm not sure I understood the
8 last sentence.

9 MS. O'MALLEY: Well, how about we back up a little

10 THE WITNESS: Okay. My apologies.

11 BY MS. O'MALLEY:

12 Q. Did you have some concerns about her?

13 A. Yes.

14 Q. Okay. And then did that prompt you to ask her if everything
15 was okay or talk with her about it?

16 A. It did.

17 Q. And did that discussion then lead into her telling you
18 something happened with the defendant?

19 A. Yes, ma'am.

20 Q. Okay. Do you remember what she told you?

21 A. Ma'am?

22 Q. Do you remember what she told you?

23 A. She said that I -- he --

24 MR. ENGRAM: I would object. This is hearsay.

25 MS. O'MALLEY: Again your Honor, there's a

1 consistent statement the defense has all long been that she
2 lied to keep the defendant out of the house after the incident
3 that happened at the end of January. He's indicated this was
4 -- this conversation was early January so again it is a
5 consistent -- prior consistent statement which is not hearsay

6 THE COURT: Under 801 hearsay definition, a prior
7 statement that is consistent with the declarant's testimony
8 offered to rebut or express an implied charge that the
9 declarant made recent fabrication or improper influence or
10 motive is not hearsay by definition.

11 So I will allow you to continue. Overrule the
12 objection.

13 MS. O'MALLEY: Thank you, your Honor.

14 BY MS. O'MALLEY:

15 Q. Do you remember what she told you?

16 A. She said that -- I can't remember her exact words because it's
17 been awhile but that he had touched her inappropriately and
18 tried to move forward.

19 Q. And all of that was captured by these messages. Correct?

20 A. Correct.

21 Q. And did you in fact forward those messages so that we would
22 have those messages?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. O'MALLEY: Your Honor, may I approach the

1 witness?

2 THE COURT: Yes.

3 BY MS. O'MALLEY:

4 Q. I'm gonna show you People's exhibit 8 through 18. There's 8
5 - 10 pages, my math isn't right. Look at those and tell me
6 those are the message that you sent.

7 A. These are January 16th so they would be the messages that were
8 sent. And here's the statement where she told me exactly what
9 happened.

10 Q. Okay. I'm gonna have you hold on to that one you pointed out
11 specifically. Can you go back to that one?

12 A. Yes, ma'am. My apologies.

13 Q. No, you're fine. Your fine.

14 A. It's right here.

15 Q. What number is that? There's a red sticker at the bottom.
16 Take a look at that.

17 A. That is #12.

18 Q. Okay. And so I want to just kind of ask you a few questions.
19 So those messages were sent by you, correct, to me in fact so
20 that we would have them.

21 A. Yes, ma'am.

22 Q. Is that right?

23 A. An e-mail I do believe.

24 Q. Okay. And that's what I was gonna ask you. How did those
25 messages get sent?

1 may, it's been a while since you've looked at them, but in
2 that conversation did you actually ask her if she wanted you
3 to talk to somebody about it.

4 A. I -- it does sound like something I would say but I'd have to
5 read over it.

6 Q. Hold on just one second.

7 MS. O'MALLEY: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes.

10 BY MS. O'MALLEY:

11 Q. I'm gonna show you People's 17. It's just a little further
12 into the conversation I think just a different page. Could
13 you take a look at that? And did you actually offer to talk
14 with --

15 A. Yes.

16 Q. -- the defendant actually. Right?

17 A. I did.

18 Q. And she -- what did she say?

19 A. She said no. And I told her well it's not my place to but I
20 do believe you need to speak to someone.

21 Q. Okay. Thank you. Thank you Cam, I have nothing further.

22 A. Does that mean I can get up?

23 THE COURT: Are you all done Ms. O'Malley?

24 MS. O'MALLEY: Your Honor, I have nothing further of
25 this witness. I'd pass the witness.