

1 A. Yes.

2 Q. It would be inexcusable to ignore viable leads,
3 would it not?

4 A. Yes, it would.

5 Q. And you believed that you performed a competent
6 investigation in this case?

7 A. Absolutely.

8 Q. You believed you did your best to leave no stone
9 unturned?

10 A. Yes.

11 MR. KURTZ: Your Honor, at this time I believe I
12 would like to be heard.

13 THE COURT: Members of the jury, I need for you to
14 step to the jury room for a moment. Please leave your
15 notebooks there in your chair, and we'll have you return
16 shortly.

17 (The jury left the courtroom.)

18 THE COURT: Let the record reflect that all members
19 of the jury have left the courtroom. You need to be heard
20 outside the presence of the jury?

21 MR. KURTZ: Yes, Your Honor. At this time, it would
22 be my intent to go into an area that we have discussed
23 previously, the question of Detective Dismukes becoming aware
24 on July 12th that Clea Morwick had seen -- or had spoken with
25 Bella Cooper, and that Bella had reported she had seen her

1 mom on that morning. And I believe Detective Dismukes was
2 the first Detective who overheard Ms. Morwick, and that he
3 chose at that time not to follow up on it.

4 He's testified that leads at that point, anybody
5 who would have seen her in the morning would be critical to
6 the investigation, that he was doing what he could to leave
7 no stone unturned, and, in fact, this is a viable witness
8 that was never questioned.

9 THE COURT: Do you want to ask him some questions?

10 MR. KURTZ: Yes, sir.

11 THE COURT: You may.

12 VOIR DIRE

13 BY MR. KURTZ:

14 Q. Detective Dismukes, on the afternoon of July 12th,
15 did there come a time when you encountered Clea Morwick?

16 A. Yes.

17 Q. And Clea was speaking with a group of other women
18 in the Cooper yard, correct?

19 A. Yes, that's correct.

20 Q. As she was speaking, she spoke of her conversation
21 with Bella Cooper?

22 A. Yes.

23 Q. She was telling the other people present that she
24 had a conversation with Bella moments prior?

25 A. I'm trying to find that point in my notes. Can you

1 repeat your question?

2 Q. You were aware that Clea was telling women -- you
3 overheard Clea speaking with women outside?

4 A. Yes, sir.

5 Q. And she was telling women outside that she had
6 spoken with Bella?

7 A. I don't know what she was telling the females, but
8 I did interrupt and talk with Ms. Morwick.

9 Q. ^?

10 A. I did not know what she was talking about with the
11 females, but I did interrupt and made contact with Ms. Clea
12 Morwick.

13 Q. Why did you interrupt her at that time?

14 A. Because I -- through the information I was getting,
15 I learned that she lived in the neighborhood and was a friend
16 of Mr. and Ms. Cooper.

17 Q. Isn't it true that you heard her speaking and you
18 interrupted her and asked her to go inside your patrol car?

19 A. Yes.

20 Q. And you asked her if she would mind retelling the
21 story that she was telling the ladies outside?

22 A. Yes.

23 Q. You specified, retell the same story?

24 A. Yes.

25 Q. You knew the story that she was telling the ladies

1 outside?

2 A. I didn't know the story, but I heard her talking to
3 the females.

4 Q. You heard enough of the story to understand that
5 she was saying that Bella had seen her mom that morning?

6 A. Yes.

7 Q. And once in your car, Clea told you that she had
8 met with Brad that morning and taken custody of the Cooper
9 children?

10 A. Yes.

11 Q. And that it was about 5 o'clock that afternoon when
12 she had spoken with Bella, who was four-and-a-half years old?

13 A. Yes.

14 Q. And that according to Bella, she'd seen her mommy
15 that day?

16 A. Yes.

17 Q. Clea told you that Bella specified that her mommy
18 was wearing black shorts and a white T-shirt?

19 A. Yes.

20 Q. You didn't ask any follow-up questions of Ms.
21 Morwick at that point?

22 A. I continued the interview. I spoke with her ---

23 Q. Did you ask her what Bella's state of mind was?

24 A. I did not, no.

25 Q. Didn't ask whether she was crying, whether she was

1 happy?

2 A. No.

3 Q. Whether she was scared, sad, nothing?

4 A. No.

5 Q. You didn't ask if Clea knew any other details?

6 A. I believe that was all the details that Ms. Morwick
7 provided me with.

8 Q. But you didn't push her for additional details?

9 A. I believe I got all the details that she provided
10 to me.

11 Q. You could have asked her additional questions,
12 couldn't you?

13 A. I did ask her additional questions.

14 Q. About Bella?

15 A. No, about the -- about Nancy Cooper.

16 Q. If Bella had seen her mother that morning, that
17 would be incredibly important to your investigation, wouldn't
18 it?

19 A. If Bella did, yes.

20 Q. But hearing Ms. Morwick recount that information to
21 you, that didn't match up with the theory you already had,
22 did it?

23 A. That is incorrect.

24 Q. Where was Bella at the time that Ms. Morwick made
25 this statement?

1 A. At this point, I do not know.

2 Q. You don't have any notes where Bella was?

3 A. I know that Clea Morwick had taken custody of the
4 two Cooper children, but at the time of talking to Clea, I
5 did not know where Bella was at that very moment.

6 Q. Well, why didn't you ask her?

7 A. Because I was conducting an investigation with the
8 people at the scene.

9 Q. But if you're conducting an investigation, isn't
10 the most important possible type of information somebody that
11 could talk to you about seeing Nancy in the morning?

12 A. Due to Ms. Cooper being reported as missing and
13 that -- the stress and trauma it can cause, I did not speak
14 with a four-and-a-half-year-old child about her missing
15 mother.

16 Q. But in your training, you've been taught how to
17 interview children?

18 A. I have not attended one class for interviewing
19 children.

20 Q. You have never had any education or training as a
21 police officer for talking with children?

22 A. I am not a juvenile investigator. We have
23 investigators specialized to do that task, and that is not my
24 area of expertise.

25 Q. And you do have juvenile investigators who are

1 specialized to do that at the Cary Police Department?

2 A. We do.

3 Q. And as a Detective in the case, they would be at
4 your disposal if you required them to intervene and assist
5 you in the investigation?

6 A. Yes.

7 Q. Yet you did not choose to call any such
8 investigator?

9 A. On July the 12th, we did not.

10 Q. What follow-up questioning have you done with Bella
11 Cooper?

12 A. I have not done any follow-up questioning with
13 Bella Cooper.

14 Q. Has the Cary Police Department ever done any
15 follow-up questioning with Bella Cooper?

16 A. No, and the reason for that was statements made by
17 Mr. Cooper that Bella Cooper slept 'til 8:30 that morning on
18 July 12th, and we did not find a reason to follow up with
19 Bella Cooper about that, since she slept until 8:30 and Mr.
20 Cooper reported Nancy leaving at 7.

21 Q. You have no way of knowing if Bella had woken up
22 early in of the morning without Mr. Cooper's knowledge, do
23 you?

24 A. We were going on the statements of Mr. Cooper and
25 what he reported at the time.

1 Q. You had already discarded many of Mr. Cooper's
2 statements. You were noting that he was -- he appeared to be
3 deceitful to you, didn't you?

4 A. I documented my conversation with Mr. Cooper. I do
5 not remember reporting anywhere in there that he was
6 deceitful.

7 Q. You felt that he was acting when he was told about
8 his wife being missing and when you discussed it with him?

9 A. That was describing his demeanor upon the
10 notification.

11 Q. You were actively questioning his honesty at this
12 point, weren't you?

13 THE COURT: We need to kinda get back to whether or
14 not we're gonna allow this issue about the child in.

15 MR. KURTZ: Yes, sir.

16 THE COURT: It appears as though we're kind of
17 straying far afield. Maybe you can go back to the issue.

18 MR. KURTZ: Your Honor, I have no further questions
19 on this subject.

20 THE COURT: Do you want to be heard?

21 MS. FITZHUGH: Yes, Your Honor.

22 THE COURT: You're at this time seeking to elicit
23 from this witness a statement made by Ms. Morwick to him,
24 which was a statement made by the child to Ms. Morwick.

25 MR. KURTZ: I am seeking to impeach Detective

1 Dismukes on the quality of his investigation.

2 THE COURT: You can question him about, did you ever
3 talk to the Cooper children, when he talked to the Cooper
4 children, but any statement made by Bella is not coming in.
5 It has not -- you have not satisfied the Rules of Evidence
6 for that statement to come in. I don't know any of the
7 intended circumstances around which that statement was made.
8 I don't know anything that I can make findings that it was a
9 trustworthy statement. I don't know of any exception to the
10 hearsay rule that it would come in under. It's two layers of
11 hearsay.

12 If you want to cross him about not talking to the
13 children, I think that's fair game. At what point did you
14 talk to the children? Of course, I strongly suspect the
15 State, if he doesn't say it, the State will ask him on
16 redirect what their version of that is. But as far as any
17 statement made, that is not coming in.

18 MR. ZELLINGER: I just have a question about your
19 ruling, Your Honor, but I didn't mean to interrupt you.

20 THE COURT: Go ahead.

21 MR. ZELLINGER: Well, with allowing the Defendant to
22 ask questions about whether the children were talked to,
23 there's a line that seemingly needs to be drawn as to -- I
24 mean, if the Defendant asks Detective Dismukes, "Did you talk
25 to the children that day?" and Detective Dismukes says no,

1 or, "Did you have any idea what the children were saying at
2 that point?" and Detective Dismukes says no, he doesn't have
3 first person knowledge of it, but here he's acquired some
4 information via Ms. Morwick via Bella Cooper. And at that
5 point I'm sure Mr. Kurtz is then going to ask for the right
6 to impeach him on that information, so there's a lot of gray
7 area here.

8 THE COURT: Well, that's what I'm saying. He can
9 ask it a very narrowly drawn, limited question: Did you ever
10 talk to the Cooper children? And I'm not going to restrict
11 him to a point where he's going to say something incorrect,
12 which would then turn around and allow for some sort of
13 impeaching. We need to be very careful and proceed very
14 carefully.

15 But the form of your question -- I think it's
16 perfectly appropriate for you to ask, if you're impeaching
17 the integrity of the Cary Police Department or the quality of
18 their investigation, who they talked to or who they didn't
19 talk to. But if you want to ask him, "Did you ever talk to
20 the Cooper children?" And he's going to give an answer. And
21 based on that answer, we'll move on.

22 Now, the State may in turn ask: "Why didn't you
23 talk to them?" Well, one was two and the other one was
24 four-and-a-half, and it wasn't -- apparently all the
25 information they have was she was sound asleep when her

1 mother left her. At least that's what the Defendant's
2 version was.

3 MR. ZELLINGER: Thank you, Your Honor.

4 THE COURT: And that's -- I think it's fair to allow
5 him to ask, did you -- what steps they took in their
6 investigation, but you've got to be real careful.

7 MR. KURTZ: I think I understand the Court's ruling,
8 but I just wanted to clarify, as I do not want to overstep my
9 bounds.

10 THE COURT: No, because I don't want to have to
11 mistry this, but anyway go ahead.

12 MR. KURTZ: None of us do, Judge. I want to know if
13 it is acceptable for me to ask if he spoke with them, and if
14 he did not, why he did not, and they do have resources to
15 actually speak with children, without going into any of the
16 substance.

17 THE COURT: Which was very similar to the questions
18 you just asked, and I -- I think that very carefully, yes,
19 you can, "Did you speak to the Cooper children?" The answer,
20 I suspect, is going to be no. "Why didn't you speak to the
21 Cooper children?" And he's going to say something to the
22 effect of, "Because Brad told us they were asleep in bed."
23 And then you'll say, "Well, doesn't the Cary Police
24 Department have juvenile investigators that can do this kind
25 of thing?" And then he'll say yes. "Did you call them?"

1 "No, I didn't." "And why?" Once again -- or whatever his
2 answer is. I'm not putting words in his mouth.

3 I think that that's fair, because it -- it's
4 allowing you to explore the quality of and investigation and
5 -- but it's -- that's a very narrow field. I think that the
6 form or the manner in which you asked those questions to him
7 on voir dire was okay. Does the State want to be heard.

8 MR. ZELLINGER: Thank you, Your Honor. I think it's
9 entirely appropriate.