

14 MR. KURTZ: Your Honor, it is my intent to ask Ms.
15 Duncan about her knowledge regarding Bella's statements that
16 she had seen her mother on July 12th. I don't know the
17 details of her information, but I do know that Ms. Duncan had
18 posted on her blog, which was, I think, nancycooper.
19 blogspot.com, that Bella had seen her mom Saturday morning.
20 She posted that on July 14, 2008.

21 THE COURT: Well, I need to know -- and I think it
22 would be proper, I guess, at this point to have at least some
23 sort of offer of proof, or tender the witness so that I know
24 when the statements were made, what the statements were, what
25 the circumstances around the statements were, who was

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1 present, what type of statements were made that elicited
2 these statements, or the statements made by the child, are
3 they the result of any questioning by adults?

4 To the extent possible, I'd like to know how old
5 the child is. I've heard that she was four, but is she 49
6 months or is she 59 months? And I think there was something
7 that maybe she was born in February of '06?

8 MR. KURTZ: I believe she was almost exactly four
9 and a half years old.

10 THE COURT: Okay. But those are all things that I
11 would like to know, or at least factors that I think I would
12 need to consider in order to make an informed decision about
13 the admissibility or not of those statements.

14 MR. KURTZ: Absolutely, Your Honor. The other
15 issues that I -- I feel would be -- also appropriate to go
16 into for -- with respect to the question of the value of the
17 information as impeachment of the investigation also would be
18 questions as to Ms. Duncan's knowledge of law enforcement
19 knowledge of those statements.

20 THE COURT: Run that by me again, I'm sorry, the
21 very last part.

22 MR. KURTZ: Ms. Duncan's understanding of the law
23 enforcement understanding of what statements were made at
24 that time. The question of impeachment with respect to law
25 enforcement is, did they know that the child made these

1 statements and did they investigate the circumstances, did
2 they look into it themselves, did they investigate in any
3 way, shape, or form, or did they simply ignore the
4 statements? And so to the extent that Ms. Duncan knows the
5 answer as to what law enforcement was told or whether she
6 spoke with them about it, I believe that's also relevant to
7 that part of the question.

8 THE COURT: Do you want to be heard?

9 MR. ZELLINGER: I would, Your Honor. Obviously,
10 there's a great deal of prejudice that comes out from this
11 question being asked to Ms. Duncan. I think there's sort of
12 a twofold issue here. The first one is Ms. Duncan's personal
13 knowledge of what Bella allegedly said on July 12th, or I
14 don't even know if it's on July 13th. That -- that's one
15 issue.

16 The second issue is, is this issue of now it is
17 treble hearsay. There's the first level of Bella telling Ms.
18 Morwick, then Ms. Morwick telling Detective Dismukes, and
19 then I guess what the Defendant has just alluded to is
20 Detective Dismukes or whoever speaking to Ms. Duncan. So
21 that's three levels of hearsay that the Defendant is seeking
22 to elicit at this point.

23 I think that without a -- a showing by the
24 Defendant of how reliable these statements are, there's not a
25 good faith basis for the Defendant to ask about these

1 statements, because they are far more prejudicial than
2 probative on this issue. So without a -- with an absence of
3 showing by the Defendant, showing the circumstances
4 surrounding these statements, alleged statements, by Bella
5 Cooper, the State would object.

6 THE COURT: Well, I'm gonna give them the
7 opportunity to at least make an offer of proof at least some
8 showing at this point. And actually, because this is
9 essentially a motion to suppress evidence, I think we have to
10 go off the record as far as the media's concerned. Go ahead.

11 MR. KURTZ: Thank you, Your Honor.

12 VOIR DIRE EXAMINATION

13 BY MR. KURTZ:

14 Q. Ms. Duncan, good afternoon. Am I correct that you
15 had a blog called nancycooperblogspot.com?

16 A. Yes.

17 Q. And when was that blog active?

18 A. I believe I started it on Sunday, the first day
19 that we were searching, I think. It might be really late
20 night Saturday.

21 Q. And what was your screen name on that blog?

22 A. Art2emis, A-r-t-2-m-i-s.

23 Q. And on that blog you posted different information
24 surrounding the search for Nancy?

25 A. Yes.

1 Q. Among the information that you put on there people
2 listed where they had searched, they listed when they had
3 searched, people with whom they had spoken. One of the posts
4 that you put on the blog was that Bella Cooper had seen her
5 mother Saturday morning?

6 A. (Nodding head.)

7 Q. I'm sorry, could you ---

8 A. Yes, I did.

9 Q. From whom did you come into that information? How
10 did you hear that information?

11 A. I actually can't remember. It was either from Clea
12 or from one of the police officers. I -- I can't remember
13 from whom I heard it.

14 Q. Do you remember when you heard the information?

15 A. I believe it was on Saturday in -- in the
16 afternoon, when there was lots of questions and comments and
17 people talking, lots of people talking.

18 Q. Would that be Saturday, July 12th?

19 A. Yes.

20 Q. Do you remember where you were?

21 A. I think I was in front of the Cooper's house, more
22 sort of towards their house than mine.

23 Q. And ---

24 A. And a lot of talk was happening in the -- in the
25 street.

1 Q. Who was there?

2 A. I do not remember that.

3 Q. Do you remember -- well, do you remember that Ms.
4 Morwick was there?

5 A. No, I don't. I -- I -- honestly, I just don't
6 remember when I heard -- I mean, I sort of remember hearing
7 it there. I remember receiving the knowledge there; I just
8 don't remember from who, and I -- I apologize.

9 Q. Do you not remember any other human being that was
10 out there at that time on the 12th?

11 A. Oh, there were a lot of people. I don't -- I mean,
12 there were police officers, there were -- the Morwicks they
13 were there at one point, but they were mostly of their house.
14 There were a lot of people.

15 Q. I understand that there were a lot of people. And
16 I understand that you can't recall them all. Can you recall
17 any individuals that were present at the time?

18 A. No.

19 Q. When you heard the information that Clea had seen
20 her mother -- that Bella had seen her mother, what was your
21 reaction to that?

22 A. I don't remember having any particular reaction. I
23 -- other than -- other than, how did she say it -- I -- I --
24 I honestly don't remember.

25 Q. What -- wasn't that a significant moment for you?

1 A. No, not really.

2 Q. Wasn't a significant question at that point whether
3 or not Nancy had gone jogging in the morning?

4 A. Yes. It was -- it was of interest. It surprised
5 me, yes.

6 Q. And a lot of people were already voicing concerns
7 that they believed Brad had something to do with this.

8 A. No, not that I recall.

9 Q. You were interested in trying to find Nancy?

10 A. Yes.

11 Q. You wanted as much information as possible to
12 assist in that process?

13 A. Yes.

14 Q. Whether or not Nancy went jogging that morning
15 would have been extremely valuable information to you?

16 A. I was operating under the presumption that she had.

17 Q. And so anybody who might have seen her would have
18 been important to you at that time?

19 A. Yes.

20 Q. And throughout the course of the search you kept
21 track of people that reported back that they had seen her?

22 A. Yes.

23 Q. You actually put those on your blog?

24 A. Yes.

25 Q. And you put details surrounding sightings?

1 A. Sightings? I don't remember. Other people were
2 posting on the blog other than me.

3 Q. The clothing that somebody said Nancy was wearing
4 when I saw her, that would have been important to you?

5 A. Yes, and it was on the flyers that were
6 distributed.

7 Q. And you -- what you heard Bella had said included
8 the clothing that she was wearing that day?

9 A. Yes.

10 Q. What was the description of the clothing that you
11 heard from Bella?

12 A. I didn't hear it from Bella.

13 Q. That you heard Bella had said?

14 A. I heard she had said that Nancy was wearing a white
15 top and dark jogging shorts.

16 Q. And that is consistent with clothing that you would
17 expect Nancy to wear going jogging?

18 A. Yes, and that's probably why I didn't lend a lot of
19 credence. I also had a four year old at the time, and they
20 have no sense of timing.

21 Q. And you knew that Bella was four and a half at that
22 time, correct?

23 A. Yes.

24 Q. Where was Bella at the time you heard this
25 information?

1 A. I think she was still at the Morwicks, but I'm not
2 entirely sure.

3 Q. Since that time, have you discussed this matter,
4 the question of whether Bella had seen her mother, with
5 anybody?

6 A. Detective Dismukes did call me about it at one
7 point and asked if I had posted something on a blog saying
8 that -- that Bella had said she'd seen Nancy and ---

9 Q. And what did you tell Detective Dismukes?

10 A. I said I didn't think I had but I will look,
11 because I was thinking of a -- of a main posting. This
12 actually was a comment on the thread.

13 Q. When you say "comment on a thread," it's just a --
14 it is still a comment posted on the blog.

15 A. It is, but is part of a -- there's usually a main
16 posting and then people comment. It is in response to
17 something.

18 Q. Did you ever talk to Clea about that subsequently?

19 A. I do not remember talking to Clea about it.

20 Q. You were friends with Clea, weren't you?

21 A. Yes.

22 Q. Wouldn't that be something that you would generally
23 discuss with your friend?

24 A. Possibly. It -- it was -- it was such a confusing
25 time. I -- I basically took the statement at -- at its word.

1 Q. You actually -- you talked to a WRAL reporter about
2 this, didn't you?

3 A. I don't know, did I?

4 Q. You don't recall on Sunday, July 3rd -- 13th saying
5 that you told a reporter that Bella told you that she saw her
6 mommy? You don't remember that statement?

7 A. I don't.

8 Q. Do you remember speaking with an Asian reporter on
9 that day specifically?

10 A. Which day was it, rather than date?

11 Q. That would be on Sunday, July 13th?

12 A. I do remember an Asian. Was it the very early
13 morning -- probably the first reporter I talked to.

14 Q. Well, if Detective Dismukes says in his note that
15 Diana said the oriental female reporter asked her who last
16 saw Nancy, and Diana told the reporter that it was reported
17 to her that Bella last saw Nancy, was that true?

18 A. Yes.

19 Q. And you are aware that at some point Clea Morwick
20 did a televised interview for Fox News?

21 A. I'm aware of it, I don't think I saw it. I'm
22 pretty sure I didn't see.

23 Q. I would assume that friends of yours discussed that
24 interview?

25 A. I don't -- there -- there was a lot of stuff going

1 I don't remember asking her about it.

2 Q. And when you spoke with Detective Dismukes, it was
3 about 5:15 p.m., and it was by telephone, wasn't it?

4 A. I have no idea. It was by telephone, but I don't
5 know what time it was.

6 Q. And you told Detective Dismukes that you did speak
7 with Bella on the 12th, didn't you?

8 A. I did speak with Bella on the 12th, yes.

9 Q. And what did Bella tell you?

10 A. Bella said, "Mommy is missing, momma is missing."

11 Q. I assume that she was upset at that point?

12 A. She was actually very matter of fact about it. She
13 was playing -- we were playing a game together on the floor.
14 I hadn't asked her any questions about it; she just told me
15 that momma's missing.

16 Q. Spontaneously?

17 A. Yes.

18 Q. At that point, how many people were around?

19 A. I remember Mike being in the room, Mike Morwick. I
20 don't particularly remember anyone else. The other kids
21 might have been there. I don't remember.

22 Q. And when you say "other kids," who are you
23 referring to?

24 A. The -- Bella and Katie and Ethan and Asher and
25 Caelan.

1 on. I don't remember particularly pointing it out for
2 discussion.

3 Q. There was a lot going on. The question was where
4 Nancy was, wasn't it?

5 A. Yeah.

6 Q. And while Nancy was missing, Clea did an interview
7 on national television, and in that interview she said that
8 Bella had seen her mom that morning?

9 A. You're telling me.

10 Q. I'm asking you ---

11 A. I -- I don't know ---

12 Q. -- if you're aware of that?

13 A. -- I haven't seen it.

14 THE COURT: She said that she did not watch the
15 interview.

16 THE WITNESS: I didn't.

17 MR. KURTZ: I'm asking if she is aware of the
18 interview, Your Honor.

19 A. I was aware that she had done one, if not multiple.
20 I think she -- she did several interviews, but I don't
21 remember seeing them.

22 Q. And this was never a subject of discussion to your
23 knowledge?

24 A. No.

25 Q. Are you aware as to whether law enforcement ever

1 spoke with Bella Cooper?

2 A. I am not aware.

3 MR. KURTZ: Nothing further.

4 THE COURT: Based on the information that has been
5 provided and the testimony elicited from this witness on this
6 subject, I cannot find that there has been a sufficient basis
7 to admit any statements made by Bella Cooper through this
8 witness that this was a present sense impression or an
9 excited utterance. And I also cannot make the necessary
10 findings that this statement would be admissible under
11 804(b)(5) as another exception, because there is nothing that
12 the Court can base any findings on regarding the manner in
13 which the statement was made, who was present, and the like,
14 which would allow me to find the circumstantial guarantees of
15 trustworthiness of the statement, and I'm not going to allow
16 an inquiry into this witness about the statement of Bella
17 Cooper. Anything else before we bring in the jury?

18 MR. KURTZ: No, Your Honor. I didn't know if we