

1 **THE COURT:** Thank you.

2 **THE BAILIFF:** Judge, this witness has
3 been sworn.

4 **THE COURT:** Thank you.

5 **THE WITNESS:** Morning.

6 **THE COURT:** Good morning.

7 **JERRY MCCLURE,**
8 having been previously duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **Q.** **(BY MS. BYRNE)** Are you the same Sergeant
11 McClure that has previously testified in this case?

12 **A.** Yes.

13 **Q.** Okay. I don't want to rehash all of your
14 testimony, you understand you have been brought here
15 for a very specific purpose today, correct?

16 **A.** Yes.

17 **Q.** Okay. You have already testified to the
18 jury that you interviewed the defendant two times; is
19 that correct?

20 **A.** Yes.

21 **Q.** One of those was on February 8, 2013?

22 **A.** Yes.

23 **Q.** And another time was on February 14, 2013,
24 at approximately 10:00 or 11:00 in the morning. Does
25 that sound right?

1 A. That's correct.

2 Q. Okay. Was that interview audio and video
3 recorded?

4 A. Yes, it was.

5 Q. Okay. Was the defendant handcuffed during
6 that interview?

7 A. No.

8 Q. Was he free to leave at any point in time?

9 A. Yes.

10 Q. Did he willingly come into the interview
11 room to speak with you?

12 A. Yes.

13 Q. Was he arrested after that interview?

14 A. No.

15 Q. Okay.

16 **MS. BYRNE:** I'm going to show you
17 what's been marked as State's Exhibit No. 80. Would
18 you agree what's contained on State's Exhibit 80 is
19 two very brief clips from that February 14th of
20 2013 interview with the defendant?

21 A. Yes.

22 Q. Okay. And those two brief clips have not
23 been tampered with or altered in any way?

24 A. That's correct.

25 Q. Okay.

1 **MS. BYRNE:** At this time I would offer
2 State's Exhibit No. 80 into evidence and tender to
3 the Defense.

4 **MS. WILLIAMS:** May I -- may I take the
5 witness on voir dire?

6 **THE COURT:** Yes, ma'am.

7 **VOIR DIRE EXAMINATION**

8 **Q.** **(BY MS. WILLIAMS)** I think with regard to
9 this recording, Sergeant McClure, were there times
10 that you would go in and out of the room in which you
11 were interviewing Mr. Fisher?

12 A. Yes.

13 **Q.** And it's difficult to tell when that
14 occurred simply by watching this; is that correct?

15 A. Yes.

16 **MS. WILLIAMS:** Judge, may we approach?

17 **THE COURT:** Yes, ma'am.

18 **(At the Bench)**

19 **MS. WILLIAMS:** I do understand that
20 you're not going into any of the --

21 **THE COURT:** Just a minute. You
22 understand what?

23 **MS. WILLIAMS:** I think she has
24 redacted this --

25 **THE COURT:** Okay.

1 **MS. WILLIAMS:** -- according to --

2 **MS. BYRNE:** Would you like me to tell
3 you what I have done? I am not offering the entire
4 statement. I have pulled out two very specific brief
5 clips. One of which is when the defendant reiterates
6 a total stranger walking down the road gave him the
7 ride home. And that's a very brief clip, and --

8 **THE COURT:** Prior inconsistent
9 statement?

10 **MS. BYRNE:** Yes. I'm okay for
11 impeachment purposes of the defendant's testimony.
12 And then there is one other brief clip that deals
13 with the defendant saying that he never went back to
14 the property after the baby was in the hospital, and
15 that is inconsistent with his statement that he
16 didn't buy that substance until after the fact and
17 brought it home.

18 So, I'm just offering these very two
19 small clips for impeachment purposes. I know that
20 she had some concerns based on some of the other
21 discussions on the recording, and none of which are
22 included in the clips that I redacted.

23 **THE COURT:** So, do you have any
24 objection to the exhibit, Ms. Williams?

25 **MS. WILLIAMS:** No, Your Honor.

1 **THE COURT:** Thank you.

2 **(End of Bench Discussion)**

3 **THE COURT:** And I believe that was
4 No. 80, wasn't it?

5 **MS. BYRNE:** Yes, ma'am.

6 **THE COURT:** Admitted.

7 **MS. BYRNE:** Permission to publish?

8 **THE COURT:** Granted.

9 **DIRECT EXAMINATION (CONTINUED)**

10 **Q.** **(BY MS. BYRNE)** In that second interview,
11 did you and the defendant have a discussion about how
12 he got back to his home on the night of Thursday,
13 February 7, 2013?

14 A. Yes, we did.

15 **Q.** Okay.

16 **(Exhibit Published)**

17 **THE COURT:** Excuse me. Was the jury
18 able to hear that?

19 **A JUROR:** Yes.

20 **THE COURT:** Thank you.

21 **Q.** **(BY MS. BYRNE)** Did you also at some point
22 during the interview of February 14, 2013, discuss
23 with the defendant whether or not he had ever gone
24 back to the property after the baby had been injured?

25 A. Yes.

1 Q. Okay.

2 (Exhibit Published)

3 Q. (BY MS. BYRNE) If the defendant told you he
4 hadn't been back to the property from the time that
5 the baby had been injured and taken to the hospital,
6 would you expect that he would have had the
7 opportunity to put anything else in that home that
8 you may have observed on February 9, 2013?

9 A. Yes. I'm sorry. Could you repeat the
10 question?

11 Q. If the defendant told you that he hadn't
12 been back to the property since the baby went to the
13 hospital on February 8, 2013, would you expect that
14 he would be able to place anything inside that home
15 after that time?

16 A. No. No.

17 Q. Okay.

18 MS. BYRNE: I pass the witness.

19 THE COURT: Thank you.

20 Ms. Williams?

21 MS. WILLIAMS: Can I have just one
22 second?

23 THE COURT: Yes, ma'am.

24 (Brief pause)

25

1

CROSS-EXAMINATION

2

Q. (BY MS. WILLIAMS) Sergeant McClure, did you personally find the substance that I think has been referred to as kush?

3

4

A. I observed it, yes.

5

Q. Where was it when you observed it?

6

A. From my recall, I believe it was on a kitchen table. Some type of table.

7

8

Q. Okay.

9

A. In the living room or kitchen. Kitchen area.

10

11

MS. WILLIAMS: Pass the witness.

12

THE COURT: Thank you.

13

MS. BYRNE: Nothing further.

14

THE COURT: Thank you.

15

Is this officer excused, then, for all purposes?

16

17

MS. BYRNE: No objection.

18

MS. WILLIAMS: No objection.

19

THE COURT: Thank you so much, sir.

20

THE WITNESS: Thank you.

21

(Witness released)

22

MS. BYRNE: At this time the State rests and closes.

23

24

THE COURT: Thank you.

25

1 Any rebuttal from the Defense?

2 **MS. WILLIAMS:** No, Your Honor. We
3 have -- we rest. We have a motion.

4 **THE COURT:** Thank you. Approach the
5 bench, then, on your motion.

6 **(At the Bench)**

7 **THE COURT:** Yes, ma'am?

8 **MS. WILLIAMS:** Judge, can you hear me?

9 **THE COURT:** Uh-huh (affirmative.)

10 **MS. WILLIAMS:** There has been no
11 evidence that -- well, there has been evidence that
12 an offense has been committed; but there has not been
13 any evidence --

14 **THE COURT:** Stop just a minute. What
15 did she say?

16 **MS. BYRNE:** She said there has been
17 evidence that an offense has been committed, but
18 there has not been any evidence that --

19 **MS. WILLIAMS:** -- that ties Mr. Fisher
20 to the -- to committing the offense.

21 **THE COURT:** Okay. Repeat that again.

22 **MS. BYRNE:** She says there is no
23 evidence that ties this defendant to the offense.

24 **THE COURT:** Okay.

25 **MS. WILLIAMS:** And so based on -- or