

Description	REARDON / MASTERS / VALCICH 042822		
Date	4/28/2022	Location	1A-CRT400
Time	Speaker	Note	
8:32:00 AM		AARON VON EHLINGER CR01 21 34839 JURY TRIAL - DAY THREE	
8:32:24 AM		Present: Katelyn Farley and Whitney Welsh for the State	
8:33:08 AM		Jon Cox for the defense now present	
8:33:52 AM	Cox	Defendant's coming through security.	
8:34:03 AM	Court	Let's talk about instructions first. You've received the most recent copy of the instructions - any objections?	
8:34:20 AM	Counsel	No	
8:34:27 AM	Court	Re #11	
8:35:03 AM	Counsel	Agree the instructions are complete and proper.	
8:35:22 AM	Cox	I have motions.	
8:35:30 AM		Defendant now present, ROR	
8:35:43 AM	Cox	Under Rule 29, ask that the Court consider a judgment of acquittal for Count II as charged. State has provided insufficient evidence to sustain that count. Specifically, I'm relying on Instruction #14. Re element 4: There's no testimony from Ms. Wardle that JV did anything other than make excuses for why she didn't want to do it.	
8:39:42 AM		Re element #5 - There is no testimony from Ms. Wardle that defendant ever threatened JV, forced her legs open, or pinned her down and inserted his fingers.	
8:40:59 AM		In re Count I - No evidence of JV attempting to stop the act from occurred. Ask for judgment of acquittal on this count also.	
8:42:25 AM	Farley	Ask that defendant's motion be denied under Rule 29.	
8:44:12 AM	Court	It appears to me there's sufficient evidence of the use of force. Deny motion for judgment of acquittal under Rule 29.	
8:45:22 AM		Will Mr. Von Ehlinger be testifying?	
8:45:24 AM	Cox	Could I have five minutes?	
8:45:29 AM	Court	Yes. We'll take a brief recess.	
8:45:54 AM		Court in recess	
8:52:59 AM		Court reconvenes; all parties present	

8:53:01 AM	Cox	Ask the Court to lay on the record defendant's rights whether he testifies or not.
8:53:19 AM	Court	Advise defendant of his rights re testifying.
8:53:58 AM	Defendant	I understand those rights. I choose to testify.
8:54:12 AM	Court	Then I will omit Instruction #16 from the final group. Anything else to take up?
8:54:36 AM	Cox	No
8:54:38 AM	Farley	At the beginning of trial, there were two areas that it was indicated we would not be going into. One is JV having a child, and I wanted to be sure that there would be no testimony concerning that. Additionally, in opening Mr. Cox went into some detail about conversations or things JV said. Those are hearsay and should not be allowed in. Also, as Mr. Cox has indicated that some statements have an effect on the listener, the effects of anything JV said after the fact are not relevant and the effect they had on Mr. Von Ehlinger can have no effect on the issues of consent or anything before the Court. State wants an order prohibiting Mr. Cox from asking any questions that elicit any hearsay statements of JV from defendant.
8:56:03 AM	Cox	Response
8:56:50 AM	court	Not sure at this point how I'd make a blind ruling. I will agree with the State that there should be no mention of JV having a daughter. And there should be no questions or references to JV's attempted testimony in trial yesterday.
8:57:33 AM		Direct defendant that he may not incidentally mention that in testimony.
8:57:51 AM	Cox	Yesterday Ms. Farley had Det. Joseph review a set of text messages.
8:58:25 AM	Court	They're marked as Ex. 4.
8:58:30 AM	Cox	I might today attempt to introduce those.
8:58:37 AM	Farley	He would be attempting to introduce hearsay statements from JV.
8:58:58 AM	Cox	Ask the Court to review those messages - I don't think there's anything objectionable in there.
9:00:03 AM	Court	//reviews Ex. 4//
9:01:16 AM	Cox	I think they're relevant because the State is using the argument in her case that there was an element of control. Those text messages show otherwise.
9:02:09 AM		It may be appropriate to redact...
9:02:14 AM	Court	If you want the entire text stream, the entire text stream would come in.

9:02:32 AM	Farley	Again, Mr. Cox can argue they're relevant but he cannot lay the foundation needed to get them in.
9:03:24 AM	Cox	I'd be willing to redact Thursday at 6:58, if that's what she's concerned about.
9:03:48 AM	Farley	My concern is that trials are governed by the rules of evidence.
9:04:22 AM	Cox	Ms. Farley has laid part of the foundation; defendant just needs to further lay the foundation as these being the true content of the texts between him and JV.
9:05:27 AM		They're not being offered for the truth of what's being said, but just to show that she's the one that initiated contact, she's the one that asked him to meet her outside, that she was just coming by to bug him. It's all just contextual.
9:07:24 AM	Court	At this point I'm not going to admit Ex. 4. If you can establish relevancy -
9:07:38 AM	Cox	They're not being offered for the proof of the truth of these conversations, simply that they happened.
9:07:55 AM	Court	Won't admit it now. If you lay the foundation that they are relevant during his testimony, then I will consider it. But if 4 comes in, it's coming in in its entirety.
9:09:36 AM	Counsel	Nothing else.
9:10:52 AM		Jury reconvenes; all present
9:11:17 AM	Court	State rested yesterday. Mr. Cox, do you have evidence to present?
9:11:22 AM	Cox	Yes. Call defense's first witness.
9:11:27 AM		Aaron Von Ehlinger (defendant) sworn; direct examination begins.
9:14:46 AM	Farley	Objection (non-responsive)
9:14:53 AM	Court	Sustained
9:18:01 AM	Farley	Objection (non-responsive)
9:18:03 AM	Court	Directs defendant to answer just the question asked.
9:18:09 AM	Farley	Objection
9:18:11 AM	Court	You may ask a specific question, Mr. Cox.
9:18:59 AM	Farley	Objection (non-responsive)
9:19:06 AM	Court	I'll allow it briefly.
9:22:18 AM	Farley	Objection (hearsay)
9:22:20 AM	Court	Overruled.
9:25:18 AM	Farley	Objection (speculation)

9:25:18 AM	Court	Sustained
9:27:51 AM	Farley	Objection (non-responsive)
9:27:52 AM	Court	Sustained
9:28:29 AM	Farley	Objection (relevancy)
9:28:38 AM	Court	I'll allow it.
9:28:47 AM		//side bar//
9:29:30 AM	Court	The objection is sustained.
9:30:29 AM	Farley	Objection (non-responsive)
9:30:39 AM	Court	I'm going to allow it in this context.
9:32:54 AM	Farley	Objection (leading)
9:32:55 AM	Court	It is to pin down the memory, so I'll allow it.
9:33:12 AM	Farley	Objection (leading)
9:33:13 AM	Court	That is leading.
9:33:51 AM	Court	I'll allow his memory to be refreshed.
9:34:03 AM	Farley	Objection (needs to be a foundational question asked first)
9:34:11 AM	Court	You understand how this works, Mr. Cox.
9:34:52 AM	Farley	Objection (hearsay)
9:34:57 AM	Cox	Directs witness that he can't say what JV said.
9:38:39 AM	Farley	Objection (non-responsive)
9:38:40 AM	Court	Yes
9:39:47 AM	Farley	Objection (speculation)
9:39:48 AM	Court	Overruled
9:44:43 AM	Farley	Objection (we haven't got to that part yet)
9:44:44 AM	Court	Overruled
9:46:55 AM	Farley	Objection (relevance)
9:46:56 AM	Court	Sustained
9:47:00 AM	Cox	Response
9:47:07 AM	Court	Sustained
9:53:01 AM	Farley	Objection (relevance). Move to strike.
9:53:05 AM	Court	Overruled
9:54:33 AM	Farley	Objection (non-responsive, well beyond the scope)

9:54:39 AM	Cox	Response
9:54:41 AM	Court	Overruled
10:00:21 AM	Farley	Begins cross-examination.
10:05:17 AM	Cox	Objection (relevancy)
10:05:18 AM	Court	Overruled
10:06:40 AM	Cox	Objection (relevance)
10:06:40 AM	Farley	Response
10:06:48 AM	Court	Overruled
10:07:06 AM	Cox	Objection (relevance)
10:07:07 AM	Court	Overruled
10:09:40 AM	Cox	Objection (speculation)
10:09:42 AM	Court	Sustained
10:09:48 AM	Farley	Response
10:10:08 AM		//side bar//
10:14:06 AM	Court	This may take a bit longer, so I'm going to excuse the jury. Admonishes jury.
10:15:05 AM	Court	Ms. Farley, you've handed me two letters - one Bates stamped 47 and continuing to Bates stamped 53, which purports to be a letter from Scott McKay. The other letter is to Det. Iverson, authored by Edward Dindinger on 04/03/2021.
10:15:54 AM		I understand your argument that there is a reference to JV as being an intern in that letter. Not sure where you want to go with these letters.
10:16:14 AM	Farley	Response.

<u>10:18:11 AM</u>	Cox	Reply
<u>10:19:11 AM</u>	Farley	I will not be asking that these be admitted. They're simply to gauge his credibility.
<u>10:20:18 AM</u>	Court	I don't see a 403 analysis coming into play. There needs to be further foundation before you can ask about specific statements in the letters - it would need to be done outside the presence of the jury.
<u>10:20:46 AM</u>	Farley	Questions witness.
<u>10:21:15 AM</u>	Cox	Objection (relevance)
<u>10:21:21 AM</u>	Court	Overruled for now.
<u>10:21:40 AM</u>	Cox	Objection
<u>10:21:43 AM</u>	Court	I'm going to let her ask the questions. If you have an objection, just state the basis.
<u>10:21:54 AM</u>	Cox	Attorney-client privilege
<u>10:22:13 AM</u>	Cox	Attorney-client privilege
<u>10:22:16 AM</u>	Court	If the answer is yes, it is specifically outside privilege.
<u>10:23:35 AM</u>	Farley	Believe that is sufficient foundation.
<u>10:23:43 AM</u>	Court	Let's take five minutes before we bring the jury back.
<u>10:23:54 AM</u>		Admonishes witness.
<u>10:24:02 AM</u>		Court in recess
<u>10:25:32 AM</u>		
<u>10:32:45 AM</u>		Court reconvenes; all parties present
<u>10:33:10 AM</u>		Jury reconvenes; all present

<u>10:34:13 AM</u>	Farley	Continues cross-examination.
<u>10:36:44 AM</u>	Cox	Objection
<u>10:37:06 AM</u>	Court	Ms. Farley, rephrase the question.
<u>10:38:26 AM</u>	Cox	Objection (facts not in evidence)
<u>10:38:36 AM</u>	Court	Sustained
<u>10:39:29 AM</u>	Cox	Objection (calls for speculation, foundation)
<u>10:39:32 AM</u>	Court	I heard the foundation for it, but I don't know how it's speculative. Sustain the objection.
<u>10:40:22 AM</u>	Cox	Let her have him answer the question.
<u>10:40:31 AM</u>	Court	Directs witness to just answer the question.
<u>10:41:21 AM</u>	Cox	Objection (argumentative, relevance)
<u>10:41:29 AM</u>	Court	Sustained
<u>10:41:35 AM</u>	Cox	Objection (relevance)
<u>10:41:37 AM</u>	Farley	Response
<u>10:41:44 AM</u>	Court	Sustained
<u>10:45:51 AM</u>	Cox	Objection (argumentative)
<u>10:45:52 AM</u>	Court	Sustained
<u>10:54:02 AM</u>	Cox	Objection (argumentative)
<u>10:54:03 AM</u>	Court	Sustained

<u>10:54:48 AM</u>	Cox	Defendant has only testified one time.
<u>10:54:56 AM</u>	Court	Fair enough. It is also fair to make clear what the witness is testifying about the duration.
<u>10:56:51 AM</u>	Cox	Objection (argumentative)
<u>10:56:54 AM</u>	Court	Sustained
<u>10:58:07 AM</u>	Cox	Objection (calls for speculation, relevance)
<u>10:58:10 AM</u>	Court	Overruled
<u>10:58:42 AM</u>	Cox	Objection (calls for speculation)
<u>10:58:50 AM</u>	Court	Overruled
<u>10:59:27 AM</u>	Cox	Objection (speculation)
<u>10:59:29 AM</u>	Court	There may be another way to phrase that question, Ms. Farley.
<u>11:00:40 AM</u>	Cox	Objection (calls for speculation)
<u>11:00:43 AM</u>	Court	Sustained
<u>11:00:56 AM</u>	Cox	Objection (calls for speculation)
<u>11:00:59 AM</u>	Court	Again, Ms. Farley, as to the form of the question, I'm going to sustain the objection.
<u>11:01:10 AM</u>	Cox	Objection (calls for speculation)
<u>11:01:13 AM</u>	Court	Overruled
<u>11:02:54 AM</u>	Cox	Begins redirect.
<u>11:05:16 AM</u>	Farley	Begins re-cross.

<u>11:05:28 AM</u>	Cox	Objection (argumentative)
<u>11:05:31 AM</u>	Court	Sustained
<u>11:05:44 AM</u>	Cox	Objection - it's two different tribunals.
<u>11:05:54 AM</u>	Court	Overruled
<u>11:06:10 AM</u>		Witness steps down.
<u>11:06:21 AM</u>	Cox	Defense rests.
<u>11:06:26 AM</u>	Farley	Request brief recess to determine if the State will have rebuttal.
<u>11:06:39 AM</u>	Court	Yes. Admonishes jury
<u>11:06:47 AM</u>		Jury in recess
<u>11:07:30 AM</u>	Court	If the State determines it's not going to put on rebuttal evidence, we'll go straight into closing instructions. Each side will have 30 minutes for closing arguments
<u>11:07:57 AM</u>	Farley	May we have longer?
<u>11:08:12 AM</u>	Court	I appreciate there's a lot of conflict about the evidence, but there hasn't been a great deal of evidence. I'll give you 40min.
<u>11:09:31 AM</u>		Court in recess
<u>11:17:06 AM</u>		Court reconvenes; all parties present
<u>11:17:13 AM</u>	Farley	No rebuttal.
<u>11:17:19 AM</u>	Court	Then we'll bring the jury back, explain that both sides have rested, deliver the closing instructions, then give you each time for closing arguments.
<u>11:19:02 AM</u>		For the benefit of the gallery, once closing arguments have begun I don't want any reactions from members of the gallery - nothing audible, no facial expressions, no head-nodding, etc.

<u>11:20:54 AM</u>		Jury reconvenes; all present
<u>11:21:17 AM</u>	Farley	State will not be providing any further evidence.
<u>11:21:27 AM</u>	Court	Advises jury they have now heard all the evidence in the case.
<u>11:21:45 AM</u>		Reads final jury instructions.
<u>11:30:27 AM</u>	Farley	Begins closing argument.
<u>11:43:41 AM</u>	Cox	Object to the characterization.
<u>11:43:47 AM</u>	Court	The jury will recall the evidence that came in.
<u>12:01:49 PM</u>	Court	We'll take a brief recess
<u>12:02:01 PM</u>		Court and jury in recess
<u>12:11:23 PM</u>		Court reconvenes; all parties present
<u>12:12:00 PM</u>		Jury reconvenes; all present
<u>12:12:27 PM</u>	Cox	Begins closing argument.
<u>12:14:26 PM</u>	Farley	Objection
<u>12:14:27 PM</u>	Court	Sustained
<u>12:18:39 PM</u>	Farley	Objection (improper)
<u>12:18:41 PM</u>	Court	I'm going to ask you to move on.
<u>12:22:13 PM</u>	Farley	Objection (facts not in evidence)
<u>12:22:16 PM</u>	Court	Sustained

<u>12:22:28 PM</u>	Farley	Objection
<u>12:22:29 PM</u>	Court	Overruled
<u>12:24:17 PM</u>	Farley	Objection - 412
<u>12:24:18 PM</u>	Court	I've not heard an argument that suggests 412.
<u>12:26:46 PM</u>	Farley	Objection (facts not in evidence, improper argument)
<u>12:27:08 PM</u>		//side bar//
<u>12:27:58 PM</u>	Court	The obejction is sustained.
<u>12:34:22 PM</u>	Farley	Objection (facts not in evidence)
<u>12:34:24 PM</u>	Court	It's argument at this point. I'll allow it.
<u>12:36:44 PM</u>	Farley	Objection (facts not in evidence)
<u>12:36:47 PM</u>	Court	Again, it's argument. I'm going to allow it.
<u>12:43:04 PM</u>	Farley	Begins rebuttal closing argument.
<u>12:47:39 PM</u>	Court	Addresses jury re alternate.
<u>12:48:28 PM</u>		#3 selected as alternate
<u>12:48:50 PM</u>	Court	Addresses #3
<u>12:49:03 PM</u>		Bailiff sworn
<u>12:49:39 PM</u>		Jury retires for deliberations
<u>12:50:22 PM</u>	Court	Directs counsel and defendant to remain within 10 minutes of the courthouse. Counsel are to give their phone numbers to the clerk.

12:50:23
PM

Court in recess

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