

# State v. Jeremiah Yoder

by Susan Elizabeth Reese

**Case:** *State v. Jeremiah Yoder*

**Defense Counsel:** Jason Thompson

**Investigator:** Peter De Muniz

**Court:** Marion County Circuit Court

**Judge:** The Honorable Albin W. Norblad

**Prosecutor:** Nicole Theobold

**Date:** January 10-12, 2011

**Charges:** Sodomy in the First Degree ("Jessica's Law"), Sexual Abuse in the First Degree

**Verdict:** Not guilty on both counts

Thirty-year-old Jeremiah Yoder faced the trial of his life when his nine-year-old daughter, Hailey, claimed that he had sexually abused her.

Hailey was born to Jeremiah and his wife, Nicole Lillie, in September 2001. The couple's relationship was a stormy one, and in 2005 Nicole took the couple's daughter and moved to Arizona. She filed for divorce that July and in 2006 she returned to Oregon and began living with a boyfriend, Brian Scherer. Jeremiah had remained in Oregon the entire time.

At the time of the charges against him, Jeremiah had remarried. He and his wife, Amber Heidi, enjoyed parenting time with Hailey on alternating weekends, but Jeremiah and Nicole continued to have battles over her. Indeed, on December 21, 2009, Jeremiah had to ask for help from the Polk County Sheriff when Nicole and Brian refused to allow Hailey to visit her father during the Christmas holiday. Interestingly, Hailey's allegations about her father came up a year later, just about the same time that Jeremiah was to have a pre-Christmas visit with her.

In the autumn of 2010, Hailey was acting out and causing problems for her mother. On November 21, 2010, in the context of her misbehaving, Hailey said something to Nicole which sounded like her dad "would get in trouble." In response to Nicole's questions, Hailey claimed that in the "summer of 2009," on one occasion, her dad had taken her into the bedroom and touched her vagina. When questioned by Salem Police Department's Detective Jeff Staples, Hailey said that after it happened Jeremiah told her to go back outside and play. Hailey also said that she knew the date, because it was when Amber had the "red car."

Following the allegations, Detective Staples contacted Jeremiah, who then made what the state considered a "full" confession. In the recorded statement, which was played for the jury at trial, Jeremiah

can be heard conceding, "Well, I guess I gave my daughter oral sex." Before the officer turned on the recording, however, Jeremiah denied several times that he had done anything wrong. When asked what Hailey was wearing, Jeremiah said he assumed she was wearing what she usually wears at night – "My tee shirt."

Defense investigator De Muniz was able to find pivotal witnesses, several of whom challenged the prosecutor's timeline. The evidence showed that Amber Heidi had owned a red car from June through November of 2009. James Heidi, Amber's father, specifically remembered the time he helped his daughter and Jeremiah move from the apartment in Salem to Condon in late March of 2009, so they were not even living in Salem in June of that year. Ruth Lusby, the property manager, produced a lease and testified that her records reflected that their lease had expired in April, 2009, and they had moved away by November of 2009.

At trial, Hailey changed her statement about the time of the event and said that she was sure the abuse had occurred in July of 2007. She claimed, "I looked at a calendar just after it happened." In July of 2007, Amber was not even living in the apartment, although Hailey had claimed that she was in the apartment when the event occurred.

The defense introduced evidence of the custody and parenting time disputes between Jeremiah and Nicole. At Halloween of 2010, Amber had told Nicole that she and Jeremiah were going to seek full custody, which would have then reversed the parenting time so that Nicole and Brian would have alternate weekends. The allegations against Jeremiah surfaced shortly after this conversation.

Curiously, following Hailey's complaint about her father to her mother, Nicole resisted further interviews. She contacted both the detective and Liberty House and directed that there be no forensic assessments of her daughter.

Amber testified that one time, when she and Jeremiah were involved in an act of oral sex, Hailey had walked in. When Hailey questioned Amber about it, Amber explained to the youngster

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that Jeremiah was “tickling me.” When Hailey discussed what she claimed her father had done to her, she said that it tickled.

At trial, the defense called twelve witnesses, including Jeremiah. Dr. Kirk Johnson, from the Vancouver Guidance Clinic, criticized the police interview. He noted that the detective took no history, sought no information concerning prior disclosures, and discounted the impact of the ongoing custody battle between the parents. Dr. Johnson noted that Det. Staples had not explored any sexual knowledge that Hailey had or where she might have learned about sexual behavior. He also found fault with the detective’s allowing Nicole to be present during the beginning of his questioning with Hailey.

At a pretrial hearing, the prosecution sought to prevent Dr. Daniel Reisberg from testifying about proper interrogation techniques and false confessions. Judge Norblad ruled that even though this was a case of first impression, Dr. Reisberg could discuss studies of prior cases involving false confessions, including that of the Central Park jogger. Dr. Reisberg also pointed out that studies have shown that people are more susceptible to confessing falsely to things they have not done when they suffer from a drug or alcohol addiction (including nicotine); under those circumstances, a person might see the path of least resistance as an agreement with the questioner, which would, presumably, then lead to a satisfaction of the craving (in this case, a cigarette).

The tape recording of Jeremiah’s statements was critically important at the trial. During the recording, Jeremiah is heard asking for a cigarette. He testified that he smokes about a pack a day when he is under stress, and on the day the detective questioned him, he was on the way to the store to purchase cigarettes. He testified that when he appeared to agree with the officer’s questions, he simply wanted a cigarette. On cross-examination, he said he only agreed with the officer because he was tired of the questioning and wanted to get it over.

The recording also reflected that the “confession” was simply Jeremiah Yoder’s responses to a series of leading questions. He provided no detail except one, that of Hailey’s clothing, and this detail was inconsistent with her testimony. She testified that the event had happened during the day and, presumably, she would have been fully clothed. A cold record of the interrogation, without the recording, would have missed the nuances and emotion of Jeremiah’s questioning.

Not only was the defense able to challenge the timing in Hailey’s accusation, but they learned that she enjoyed acting in school. Her friends had remarked that she would be a “good actor” if she chose that profession, something she admitted in cross-examination. Defense attorney Thompson told the jury that the case was one of “a fabricated allegation, a false confession and a faulty investigation.”

Facing a possible 25-year mandatory minimum if he were convicted, Mr. Yoder received a new future when, after several long hours of deliberation, the jury returned with beautiful words on both counts. ■



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