

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Robin B. Stilwell

Appellate Case No. 2017-001585

The State, ... Appellant,

v.

Dwayne Cameron Tallent, ... Respondents.

RECORD ON APPEAL

Volume I

Alan Wilson
Attorney General

David Spencer
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

William W. Wilkins, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street
Greenville, SC 29601
(864) 467-8282

Attorneys for Respondent

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
(864) 467-9595

Counsel for Appellant

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SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2014-GS-23-11873-11875;

11877

ORIGINAL

STATE OF SOUTH CAROLINA)

PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

DWAYNE C. TALLENT)

DEFENDANT)

July 17-19, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge; and a
jury.

A P P E A R A N C E S:

MARK MOYER, ASSISTANT SOLICITOR
Attorney for the State

MATTHEW KAPPEL, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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STATE EXHIBITS

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DEFENDANT EXHIBITS

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1 July 17, 2017

2 THE COURT: Okay. Call to bar the case of State
3 vs. Dwayne C. Tallent. This looks as though there
4 are four indictments before the court. Have you had
5 the opportunity to read the substance of the
6 indictments?

7 MR. KAPPEL: Yes.

8 MR. MOYER: Yes.

9 THE COURT: All right. Anything objectionable
10 on the face of the indictments?

11 MR. MOYER: Not from the State.

12 MR. KAPPEL: Judge, there was one little minor
13 issue I brought to the State's attention that I just
14 wanted to make sure was into the record, and that was
15 the contributing to delinquency of a minor has the
16 date range on the back of it that -- Judge, the date
17 range on the back of it has the period that for one
18 of the victims that exceeds his age of minority. So,
19 I just brought that to the Prosecution's attention
20 that I think that the date range as it indicates
21 exceeds the victim's age of minority.

22 THE COURT: Okay.

23 MR. KAPPEL: And I just brought that to his
24 attention. I don't know if he wanted to amend it or
25 not, but I think that that's potentially defective

1 because at some point, the jurors are going to make
2 the decision and I don't think they're going to
3 articulate a particular date for the offense.

4 THE COURT: All right. We can deal with that as
5 we go forward. What I'll do is when I'm reading out
6 the allegations, I'll leave the date range off. So,
7 it won't create any issues while we're selecting a
8 jury.

9 MR. KAPPEL: Yes, sir, that's fine.

10 THE COURT: Okay. All right.

11 Okay, what other issues do we have that we need
12 to take up before we begin the trial of the case?

13 MR. KAPPEL: Judge, we've got basically two.
14 One's bigger than the other.

15 THE COURT: Okay.

16 MR. KAPPEL: The first issue that we have is a
17 Lyle 404(b) motion where there is a second alleged
18 victim that wishes to testify in this trial. We
19 would move to suppress that testimony. I think we
20 probably would have to take some testimony from her.
21 And then I've got some cases that I think are
22 applicable and appropriate that I would like to
23 present to the Court to restrict her testimony from
24 the trial.

25 THE COURT: Okay, good enough.

1 MR. KAPPEL: The second issue was just the
2 motion to sever. And I've read the cases on that and
3 just kind of want to put that into the record, cite a
4 case or two on that.

5 THE COURT: Okay, good enough.

6 All right, Mr. Moyer.

7 MR. MOYER: There's one evidentiary issue that's
8 probably going to come up with several different
9 witnesses that we need to discuss with you. The
10 Defendant spent a couple years in jail. I think
11 they're going to have relevance in the trial with a
12 couple of witnesses. Anyway, that's a matter I just
13 wanted to bring up.

14 THE COURT: Okay. All right. Well, that's
15 sensitive. We'll have to talk about how you're going
16 to be able to do that. Okay. Good enough.

17 You have jurors?

18 (WHEREUPON, the jury venire came into open court
19 at approximately 11:30 a.m.)

20 THE COURT: All right, ladies and gentlemen,
21 welcome upstairs, good to see you again. Look
22 forward to working with you on the case that is being
23 called to bar.

24 Now, ladies and gentlemen, we're going to go
25 through the process of selecting a jury on the

1 particular case that's being called to bar. Now,
2 understand that that is very similar to the process
3 for qualification and exemptions. That is, I ask you
4 questions and you respond to the questions. The
5 distinction is that I'm not asking you general
6 questions about your qualification to serve as a
7 juror in the County of Greenville or the State of
8 South Carolina. I'm asking you specific questions to
9 determine whether it's suitable and appropriate for
10 you to serve as a juror on the trial of this specific
11 case. Now, I remind you that you continue under the
12 oath that you took downstairs to tell the truth in
13 response to questions that I pose.

14 Now, ladies and gentlemen, before we get started
15 with the selection of this jury, I need to read to
16 you the allegations on the indictments in this case.
17 Now, understand, ladies and gentlemen, that the
18 indictments are the charging papers generated by the
19 State in its prosecution of the Defendant.

20 Now, these are the allegations of the State. I
21 want to be very, very clear that because I read to
22 you these allegations, that does not mean that I'm
23 telling you that these are the facts in the case. I
24 am not. I'm simply telling you what the case is
25 about so that you can intelligently answer the

1 questions that I pose to you.

2 Now, understand, ladies and gentlemen, that
3 ultimately 12 deliberating jurors will determine what
4 the facts are in the case. I'm not in a position to
5 tell you what the facts are in the case. I'm not
6 allowed to have an opinion about the facts as the
7 judge in the case. Twelve deliberating jurors will
8 determine what the facts are in the case.

9 In any prosecution in the United States of
10 America, the State has the burden of proofing each
11 and every element of the offense beyond a reasonable
12 doubt. The defendant in any case that comes before
13 the Court is presumed innocent and does not have to
14 prove anything. Therefore, ladies and gentlemen,
15 when you are considering the case, understand, again,
16 that the burden is upon the State to prove each and
17 every element of the offense beyond a reasonable
18 doubt.

19 So, the Defendant in this case is Mr. Dwayne C.
20 Tallent. Mr. Tallent is presumed innocent. As he
21 sits here right now, he enjoys the presumption of
22 innocence. So imagine, if you will, that he's
23 wearing a robe exactly like I'm wearing and that robe
24 signifies innocence. And he'll retain that robe
25 until 12 deliberating jurors at the end of the case

1 determine whether the State has met its burden of
2 proof.

3 Ladies and gentlemen, there are four indictments
4 that are before the Court this morning. The first
5 indictment, ladies and gentlemen, is indictment
6 2014-GS-23-11873, that is The State vs. Dwayne C.
7 Tallent, and that is an indictment for criminal
8 sexual conduct with a minor first degree. Ladies and
9 gentlemen, in that proceeding, the State would allege
10 that Mr. Tallent did in Greenville County between
11 September 8th, 1991, and September 7th, 1998, commit
12 a sexual battery on EFG, who was then less than 11
13 years of age.

14 Ladies and gentlemen, the second indictment that
15 is before the Court is The State vs. Dwayne C.
16 Tallent, indictment No. 11875, and that is for a lewd
17 act upon a child. And in that proceeding, ladies and
18 gentlemen, the State would allege that Mr. Tallent
19 did in Greenville County between September 1991 and
20 September 2002, being over the age of 14, willfully
21 and lewdly commit or attempt a lewd and lascivious
22 act upon the body or its parts of EFG, a child under
23 the age of 16 years with the intent of arousing,
24 appealing to or gratifying the lust, passions or
25 sexual desires of himself or the child.

1 Ladies and gentlemen, the third indictment is
2 indictment 11877, and that is an indictment for
3 criminal sexual conduct with a minor second degree.
4 And ladies and gentlemen, in that indictment, the
5 State would allege that Mr. Tallent did in Greenville
6 County between September 8th, 1998, and
7 September 8th, 2002, commit a sexual battery on EFG,
8 who is 14 years of age or less, but who was, at
9 least, 11 years of age.

10 Ladies and gentlemen, the fourth indictment that
11 is before the Court in this matter is The State vs.
12 Mr. Tallent, indictment No. 11874, and that is a
13 charge of contributing to the delinquency of a minor.
14 Ladies and gentlemen, in that indictment, the State
15 would allege that Mr. Tallent did in Greenville
16 County between September 8th, 1991 -- or excuse me,
17 that Mr. Tallent did in Greenville County knowingly
18 and willfully encourage, aid or cause EFG and/or CLG,
19 minors, to violate a law or municipal ordinance to
20 engage in an occupation that is a violation of the
21 law, to associate with a moral or vicious person, to
22 frequent a place the existence of which is a
23 violation of the law, or to deport themselves as to
24 willfully injure or endanger their morals or health.

25 Now, ladies and gentlemen, having read those

1 allegations to you, is there anyone among you who has
2 any prior knowledge, any prior opinion or any
3 predisposition regarding the parties or the
4 allegations in this case?

5 Yes, ma'am, will you stand and tell me your name
6 and juror number?

7 PROSPECTIVE JUROR: Judy Odumodu, Juror 127. I
8 am a former child of sex abuse.

9 THE COURT: Okay. And do you think given that
10 fact that you could be a fair and impartial juror in
11 this case?

12 PROSPECTIVE JUROR: I don't think so.

13 THE COURT: Okay. All right, I'll remove you
14 from the list, ma'am. Thank you.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: Cindy Hudson, Juror 85.
17 I've been involved in some case like this before and
18 I think I would have to be relieved.

19 THE COURT: Okay. Do you think given that fact
20 that you could be a fair and impartial juror in the
21 trial of this case or do you think that would be
22 problematic for you?

23 PROSPECTIVE JUROR: I think it would be
24 problematic for me, sir.

25 THE COURT: Okay, I'll remove you from the role

1 of jurors.

2 Yes, ma'am, name and juror number?

3 PROSPECTIVE JUROR: Vernita Bretsford, 26. I
4 was molested as a child and have three granddaughters
5 that have been molested.

6 THE COURT: Okay. And --

7 PROSPECTIVE JUROR: And still in court.

8 THE COURT: Okay. Do you think you can still be
9 fair and impartial or do you think that would be a
10 problem for you?

11 PROSPECTIVE JUROR: That would be a problem.

12 THE COURT: Okay. I'm going to remove you from
13 the juror list as well. What's your juror number,
14 ma'am?

15 PROSPECTIVE JUROR: Twenty-six.

16 THE COURT: Twenty-six.

17 And yours, ma'am?

18 PROSPECTIVE JUROR: Eighty-five.

19 THE COURT: Twenty-six and 85. Okay.

20 All right, ladies and gentlemen, as I've told
21 you previously, the Defendant in this case is
22 Mr. Dwayne C. Tallent. Is there anyone among you who
23 has a personal, professional or family relationship
24 with Mr. Tallent?

25 (There was no response.)

1 THE COURT: All right, let the record reflect no
2 affirmative response.

3 Ladies and gentlemen, Mr. Matt Kappel of the
4 Greenville County Bar represents Mr. Tallent in this
5 matter. Is there anyone among you who has a
6 personal, professional or family relationship with
7 Mr. Kappel?

8 (There was no response.)

9 THE COURT: Ladies and gentlemen, the State is
10 being represented in this matter by Mr. Mark Moyer of
11 the 13th Circuit Solicitor's Office. Is there anyone
12 among you who has any personal, professional or
13 family relationship with Mr. Moyer or with any
14 employee of the Greenville County Solicitor's Office?

15 (There was no response.)

16 THE COURT: All right, let the record reflect no
17 affirmative response.

18 Yes, ma'am.

19 PROSPECTIVE JUROR: I have family in the
20 solicitor's office.

21 THE COURT: Your name and juror number?

22 PROSPECTIVE JUROR: Ninety-eight, Kerry Killen.

23 THE COURT: Okay. Who's in the solicitor's
24 office?

25 PROSPECTIVE JUROR: My cousin and church

1 members.

2 THE COURT: Okay. Now, do you think given that
3 fact, you could still be a fair and impartial juror
4 in the trial of this case?

5 PROSPECTIVE JUROR: I do.

6 THE COURT: Okay. Thank you for telling me, I
7 do appreciate it.

8 Yes, ma'am.

9 PROSPECTIVE JUROR: Kerry Deese, 44. I have
10 done a business transaction with a member of the
11 solicitor's office, but will not --

12 THE COURT: Did you take advantage of them or
13 did they take advantage of you? You don't have to
14 disclose that, I just have to find out after the
15 fact. Do you think given that fact, you can still be
16 fair and impartial?

17 PROSPECTIVE JUROR: Absolutely.

18 THE COURT: Thank you, I appreciate that.

19 All right. Anyone else?

20 (There was no response.)

21 THE COURT: All right, ladies and gentlemen, I'm
22 going to read off a list of potential witnesses in
23 this case. Now, this may be a complete list or it
24 may not be. There may be witnesses who ultimately
25 are called to trial who don't appear on this list,

1 but it may be, also, only a portion of these
2 witnesses are called. But as I sit here right now,
3 these are the witnesses that we anticipate may be
4 called in this trial. When I read them off for you,
5 the question is going to be the same as the one I've
6 asked you, do you have any personal, family or
7 business relationship with any of these people.

8 E.G. [REDACTED] Eric Cervantes, Christopher Greco,
9 Joey Greco, C.R. [REDACTED] Sherry Tallent, Will
10 Richter of the Greenville County Sheriff's Office,
11 Jill Finley, T. L. Patton, Andrea R. Rogers Rowe,
12 Selena Brunson, Russell Brunson, Lenore Brissey,
13 Debbie Seymore, Diana Rogers, Michael Cervantes,
14 Denise Baker, Pam Massey.

15 Ladies and gentlemen, is there anyone among you
16 have any personal, professional, family relationships
17 with any of those prospective witness?

18 (There is no response.)

19 THE COURT: Ladies and gentlemen, is there
20 anyone among you who has either previously been or
21 has an immediate family member who has been employed
22 by law enforcement?

23 Yes, ma'am.

24 PROSPECTIVE JUROR: My dad is a detective for
25 Spartanburg County Sheriff's Office. Then my mom,

1 also, is the Clerk of Court for Landrum City.

2 THE COURT: Your name and juror number?

3 PROSPECTIVE JUROR: Jordan Jenkins, Juror No.
4 92.

5 THE COURT: Do you think given that fact, you
6 could still be a fair and impartial juror in the
7 trial of this case?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: Okay. Thank you for telling me, I
10 appreciate it.

11 Anyone else?

12 (There was no response.)

13 THE COURT: Ladies and gentlemen, is there
14 anyone among you who is a member of or a contributor
15 to any organization which advocates for criminal
16 prosecution or for victims' rights? And just by way
17 of example, MADD, Mothers Against Drunk Driving, or
18 SADD, Students Against Drunk Driving, or any other
19 like organization, again, that advocates for criminal
20 prosecution or for victims' rights? Anyone?

21 (There was no response.)

22 THE COURT: All right, let the record reflect no
23 affirmative response.

24 Ladies and gentlemen, is there anyone among you
25 who has either yourself been -- and if you've already

1 responded to this question, don't respond again,
2 okay. Who has either been the victim of a sexual
3 offense or has an immediate family member who has
4 been a victim of a sex crime?

5 All right. Yes, sir.

6 PROSPECTIVE JUROR: My sister was molested.

7 THE COURT: Okay. What's your name and juror
8 number?

9 PROSPECTIVE JUROR: Christopher Minard, 117.

10 THE COURT: Do you think you could still be a
11 fair and impartial juror in this case given that
12 fact, sir?

13 PROSPECTIVE JUROR: I do.

14 THE COURT: Okay, thank you, Mr. Minard, I
15 appreciate you telling me.

16 Okay. Ladies and gentlemen, is there anyone
17 among you who, for whatever reason, feels you cannot
18 be a fair and impartial juror in the trial of this
19 case?

20 (There was no response.)

21 THE COURT: All right, let the record reflect no
22 affirmative response.

23 Counsel, any additional questions of voir dire?

24 MR. MOYER: Not from the State.

25 MR. KAPPEL: None from us, Judge.

1 THE COURT: All right, ladies and gentlemen,
2 we're going to go forward now with selection of the
3 jury.

4 Now, the clerk of court has generated a random
5 strike list from among everyone who was downstairs
6 and you appear in a random order. What will happen
7 is the clerk of court will call out your name. When
8 she calls out your name, what I'd like for you to do
9 is stand up exactly where you are, just stand there.
10 The attorneys will exercise their peremptory
11 challenges or jury strikes.

12 Now, in this instance, the State gets five
13 strikes and the Defense gets ten strikes. Now,
14 parties, attorneys are given great latitude in
15 exercising juror strikes. Generally speaking, an
16 attorney or parties are going to exercise strikes in
17 keeping with their strategy of the case. If you're
18 stricken from the trial of the case, please don't
19 take offense. You won't know why you're stricken.
20 You honestly won't. I won't know why you're stricken
21 either. But the attorneys will calculate their
22 strikes in keeping with their strategy of the case.
23 You and I may not know what that strategy may be at
24 first blush. Also, don't take offense if you're
25 selected for a jury as well. Again, you may be

1 selected because the attorney wants you to be on the
2 jury.

3 So, ladies and gentlemen, what will happen is
4 when your name is called, if you stand up, the State
5 will strike first and then the Defense will strike.
6 So, if you hear, if you hear from either attorney,
7 please excuse the juror from the trial of this case
8 or please strike the juror, then just sit back down
9 where you are, you will have been stricken from the
10 trial of the case. If you hear, however, from both
11 attorneys, from both of them, please seat the juror
12 or please have the juror take a seat in the jury box,
13 then you will have been selected for this case. So,
14 you would bring all the things that you have with you
15 and come forward and have a seat in the jury box.

16 We're going to pick 12 jurors and I'm going to
17 pick two alternates. Now, understand, if you're
18 chosen as an alternate, that does not mean that your
19 service is any less meaningful or important as the 12
20 primary jurors. It comes to pass from time to time
21 that primary jurors can't continue in a case, either
22 because they find out they know something about the
23 case they didn't know at first blush. Or sometimes,
24 they have family emergencies or personal emergencies
25 which cause them to have to leave. So, the alternate

1 jurors oftentimes end up being main jurors. So, it's
2 important that I have, ultimately, when we conclude
3 the testimony, 12 jurors because I can't proceed with
4 a number less than 12, okay.

5 So, having said that, ladies and gentlemen, I'll
6 turn it over to the clerk of court to call the roster
7 of jurors.

8 THE CLERK: All right. Juror No. 173, Nikki
9 Stafford.

10 (Nikki Stafford, an Asian female, stood.)

11 THE CLERK: What says the State?

12 MR. MOYER: Please present Ms. Stafford.

13 THE CLERK: What says the Defendant?

14 MR. KAPPEL: Please excuse the juror.

15 THE CLERK: All right, you may be seated.

16 You've been excused from this case.

17 Juror 117, Christopher Minard.

18 (Christopher Minard, a white male, stood.)

19 THE CLERK: What says the State?

20 MR. MOYER: Please present Mr. Minard.

21 THE CLERK: What says the Defendant?

22 MR. KAPPEL: Please excuse this juror.

23 THE CLERK: You may be seated, sir. You've been
24 excused from this case.

25 Juror 189, Jennifer Williams.

1 (Jennifer Williams, a black female, stood.)

2 THE CLERK: What says the State?

3 MR. MOYER: Please present Ms. Williams.

4 THE CLERK: What says the Defendant?

5 MR. KAPPEL: Please swear the juror.

6 THE CLERK: Ma'am, if you will please bring your
7 things, come have a seat in the jury box.

8 Juror No. 168, Nicholas Sinicropi.

9 (Nicholas Sinicropi, a white male, stood.)

10 THE CLERK: What says the State?

11 MR. MOYER: Please excuse the juror in this
12 case.

13 THE CLERK: You may be seated, sir. You've been
14 excused from this case.

15 Juror 115, Cynthia Miller.

16 (Cynthia Miller, a white female, stood.)

17 THE CLERK: What says the State?

18 MR. MOYER: Please present Ms. Miller.

19 THE CLERK: What says the Defendant?

20 MR. KAPPEL: Please excuse this juror.

21 THE CLERK: You may be seated, ma'am. You've
22 been excused from this case.

23 Juror 174, Doris Stenhouse.

24 (Doris Stenhouse, a black female, stood.)

25 THE CLERK: What says the State?

1 MR. MOYER: Please present Ms. Stenhouse.

2 THE CLERK: What says the Defendant?

3 MR. KAPPEL: Please swear the juror.

4 THE CLERK: Ma'am, please bring your things,
5 come have a seat in the jury box.

6 Juror No. 166, Howard Shunkwiler.

7 (Howard Shunkwiler, a white male, stood.)

8 THE CLERK: What says the State?

9 MR. MOYER: Please present Mr. Shunkwiler.

10 THE CLERK: What says the Defendant?

11 MR. KAPPEL: Please excuse this juror.

12 THE CLERK: All right, you may be seated, sir.

13 You've been excused from this case.

14 Juror No. 74, Jennifer Hudson -- Henson, excuse
15 me, Jennifer Henson.

16 (Jennifer Henson, a white female, stood.)

17 THE CLERK: What says the State?

18 MR. MOYER: Please present Ms. Henson.

19 THE CLERK: What says the Defendant?

20 MR. KAPPEL: Please excuse this juror.

21 THE CLERK: You may be seat, ma'am. You've been
22 excused from this case.

23 Juror 146, Bobby Ramsey.

24 (Bobby Ramsey, a white male, stood.)

25 THE CLERK: What says the State?

1 MR. MOYER: Please present Mr. Ramsey.
2 THE CLERK: What says the Defendant?
3 MR. KAPPEL: Please swear the juror.
4 THE CLERK: Sir, would you please come have a
5 seat in the jury box.
6 Juror No. 158, Kimberly Saunders.
7 (Kimberly Saunders, a white female, stood.)
8 THE CLERK: What says the State?
9 MR. MOYER: Please present Ms. Saunders.
10 THE CLERK: What says the Defendant?
11 MR. KAPPEL: Swear the juror.
12 THE CLERK: Ma'am, please bring your things and
13 come have a seat in the jury box.
14 Juror No. 23, Melanie Bowman.
15 (Melanie Bowman, a white female, stood.)
16 THE CLERK: What says the State?
17 MR. MOYER: Please present Ms. Bowman.
18 THE CLERK: What says the Defendant?
19 MR. KAPPEL: Please swear the juror.
20 THE CLERK: Ma'am, please bring your things and
21 have a seat in the jury box.
22 Juror No. 170, Lakisha Smith.
23 (Lakisha Smith, a black female, stood.)
24 THE CLERK: What says the State?
25 MR. MOYER: Please present Ms. Smith.

1 THE CLERK: What says the Defendant?

2 MR. KAPPEL: Please swear the juror.

3 THE CLERK: Ma'am, please have a seat in the
4 jury box.

5 Juror No. 44, Kerry Deese.

6 (Kerry Deese, a white female, stood.)

7 THE CLERK: What says the State?

8 MR. MOYER: Please present Ms. Deese.

9 THE CLERK: What says the Defendant?

10 MR. KAPPEL: Please excuse this juror.

11 THE CLERK: All right, ma'am, you may be seated.
12 You've been excused from this case.

13 Juror No. 124, Alisa Nomikos.

14 (Alisa Nomikos, a white female, stood.)

15 THE CLERK: What says the State?

16 MR. MOYER: Please seat Ms. Nomikos.

17 THE CLERK: What says the Defendant?

18 MR. KAPPEL: Please excuse this juror.

19 THE CLERK: You may be seated, ma'am. You've
20 been excused from this case.

21 Juror No. 64, Norman Gourley.

22 (Norman Gourley, a white male, stood.)

23 THE CLERK: What says the State?

24 MR. MOYER: Please present Mr. Gourley.

25 THE CLERK: What says the Defendant?

1 MR. KAPPEL: Please swear the juror.

2 THE CLERK: Sir, please come have a seat in the
3 jury box.

4 Juror No. 84, John Hoyle.

5 (John Hoyle, a white male, stood.)

6 THE CLERK: What says the State?

7 MR. MOYER: Please present Mr. Hoyle.

8 THE CLERK: What says the Defendant?

9 MR. KAPPEL: Please excuse this juror.

10 THE CLERK: All right, you may be seated, sir.
11 You've been excused from this case.

12 Juror 92, Jordan Jenkins.

13 (Jordan Jenkins, a white female, stood.)

14 THE CLERK: What says the State?

15 MR. MOYER: Please present Ms. Jenkins.

16 THE CLERK: What says the Defendant?

17 MR. KAPPEL: Please excuse this juror.

18 THE CLERK: You may be seated, ma'am. You've
19 been excused from this case.

20 THE COURT: Mr. Kappel, I think count nine for
21 you.

22 MR. KAPPEL: That's what I have, too, Judge.
23 Thank you.

24 THE CLERK: Juror 108, Marianne Martin.

25 (Marianne Martin, a white female, stood.)

1 THE CLERK: What says the State?

2 MR. MOYER: Please present Ms. Martin.

3 THE CLERK: What says the Defendant?

4 MR. KAPPEL: Swear the juror.

5 THE CLERK: Ma'am, please come have a seat in
6 the jury box.

7 Juror 109, Thomas Martin.

8 (Thomas Martin, a white male, stood.)

9 THE CLERK: What says the State?

10 MR. MOYER: Please excuse this juror.

11 THE CLERK: You may be seated, sir. You've been
12 excused from this case.

13 Juror 77, Michael Herring.

14 (Michael Herring, a white male, stood.)

15 THE CLERK: What says the State?

16 MR. MOYER: Please present Mr. Herring.

17 THE CLERK: What says the Defendant?

18 MR. KAPPEL: Please swear the juror.

19 THE CLERK: Sir, please come have a seat in the
20 jury box.

21 Juror 54, Maura Eguigure.

22 (Maura Eguigure, a Hispanic female, stood.)

23 THE CLERK: What says the State?

24 MR. MOYER: Please present Ms. Eguigure.

25 THE CLERK: What says the Defendant?

1 MR. KAPPEL: Please swear the juror.

2 THE CLERK: Ma'am, please come have a seat in
3 the jury box.

4 Juror No. 161, Claire Seely.

5 (Claire Seely, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. MOYER: Please present Ms. Seely.

8 THE CLERK: What says the Defendant?

9 MR. KAPPEL: Please excuse this juror.

10 THE CLERK: You may be seated, ma'am.

11 Juror No. 63, Linda Gosnell.

12 (Linda Gosnell, a white female, stood.)

13 THE CLERK: What says the State?

14 MR. MOYER: Please excuse this juror.

15 THE CLERK: All right, you may be seated, ma'am.

16 Juror No. 47, Brynne Dieterie.

17 (Brynne Dieterie, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. MOYER: Please present Ms. Dieterie.

20 THE CLERK: What says the Defendant?

21 MR. KAPPEL: Please swear the juror.

22 THE CLERK: Ma'am, please, come bring your
23 things and have a seat in the jury box.

24 Juror No. 98, Elizabeth Killen.

25 (Elizabeth Killen, a white female, stood.)

1 THE CLERK: What says the State?

2 MR. MOYER: Please present Ms. Killen.

3 THE CLERK: What says the Defendant?

4 MR. KAPPEL: Please excuse this juror.

5 THE COURT: Not so sure that you have an
6 additional strike.

7 MR. KAPPEL: Yep, I'm sorry. My apologies.

8 THE COURT: That's okay.

9 MR. KAPPEL: Please swear the juror.

10 THE CLERK: All right, ma'am, please come have a
11 seat in the jury box.

12 THE COURT: Okay, so we will select two
13 alternates. The strikes will be one for the State,
14 two for the Defense.

15 THE CLERK: Juror 58, Xavier Evans.

16 (Xavier Evans, a black male, stood.)

17 THE CLERK: What says the State?

18 MR. MOYER: Please present Mr. Evans.

19 THE CLERK: What says the Defendant?

20 MR. KAPPEL: Please swear the juror.

21 THE CLERK: Sir, please come have a seat in the
22 jury box.

23 Juror No. 3, Raymond All.

24 (Raymond All, a white male, stood.)

25 THE CLERK: What says the State?

1 MR. MOYER: Please present Mr. All.

2 THE CLERK: What says the Defendant?

3 MR. KAPPEL: Please excuse this juror.

4 THE CLERK: You may be seated, sir. You've been
5 excused from this case.

6 Juror 5, Kimberly Allen.

7 (Kimberly Allen, a white female, stood.)

8 THE CLERK: What says the State?

9 MR. MOYER: Please present Ms. Allen.

10 THE CLERK: What says the Defendant?

11 MR. KAPPEL: Please swear the juror.

12 THE CLERK: Ma'am, please come have a seat in
13 the jury box.

14 THE COURT: All right, counsel, any exceptions,
15 issues or matters of law to take up with respect to
16 the qualifications or selection of this jury?

17 MR. MOYER: Not from the State.

18 MR. KAPPEL: None from the Defense.

19 THE COURT: Okay. All right. Those of you who
20 weren't selected, I extend my condolences to you.
21 Perhaps, next time. If you would, please go back
22 downstairs. I don't know what is remaining, but you
23 can receive additional instructions from Ms. Olson.
24 Thank you. Hope you have a good week.

25 (WHEREUPON, the jury venire was excused at

1 approximately 12:05 p.m.)

2 THE COURT: All right, ladies and gentlemen, I
3 look forward to working with you on this case this
4 week. What I'm going to do now is I'm going to give
5 y'all an extended lunch break. The reason I'm going
6 to do that is because there are several matters of
7 law that I have to take up with these attorneys
8 before we can begin the case.

9 There are some evidentiary issues that I've got
10 to decide before they can really start the recitation
11 of their evidence and make their opening statement to
12 you. Also, there are some other unrelated cases that
13 I have to do some work on. So, I'm going to ask you
14 to be back if you would, please at 3:00.

15 That's a long time, but understand that I'm
16 going to be working for probably a couple of hours,
17 but I have to give the court personnel and the staff,
18 the officers, the bailiffs, the clerk, the court
19 reporter, they all have to have the opportunity to
20 take lunch, too. I can't suck up all that time from
21 them.

22 So, what we'll do is we'll come back at 3:00.
23 If y'all will be back, please, at 10 minutes till
24 three so that we can start as timely as possible.
25 Not out of consideration for me or consideration for

1 the attorneys or the parties, but out of
2 consideration for each other. Because I can't start
3 until all 14 of you are back. So, out of
4 consideration for each other, please be on time so
5 that we can start as timely as possible.

6 When we start this afternoon, I don't anticipate
7 going much beyond 5:00. How late we go always
8 depends on the evidence to be admitted and where we
9 stand with any particular witness of the case. But I
10 don't anticipate going after 5:00 today.

11 When we start this case at three, I'm going to
12 give you an opening charge just to explain to you
13 what your role is, what your duties are as jurors in
14 the trial of the case, and I'm going to explain the
15 process to you as well. So, you will understand
16 where we are and where we're going and you won't be
17 left guessing about what the end game is. I will
18 also tell you what I know at that time about this
19 case. Right now, I don't really know any more than
20 y'all do. But I will tell you at that time how many
21 witnesses we can expect to hear from the State and
22 the Defense, and kind of give you an indication of
23 how long I think the case will last. I am not in the
24 business of making guarantees because I don't control
25 the introduction of evidence, but I'll give you an

1 idea of how long I think it's going to last. As we
2 go along in the case, I'll update you if the case
3 changes so that you will know everything I know about
4 where we stand in the case.

5 So, if you will, please, go ahead and take your
6 break. Be back, again, at 10 till three. Don't
7 discuss the case. You don't know anything about the
8 case yet. However, it's not appropriate for you to
9 begin any discussions about the case. Just think
10 about something else and when you come back, we'll
11 start fresh. Thank you very much. If you'll follow
12 Ms. Fryer out, she'll show you how to get in and out
13 and she'll show you where your jury room is.

14 (WHEREUPON, the jury left open court at
15 approximately 12:09 p.m.)

16 THE COURT: Okay. All right, gentlemen, be
17 happy to hear any motions that are pending.

18 MR. KAPPEL: Judge, may it please the Court?

19 THE COURT: Yes, sir.

20 MR. KAPPEL: There is a witness that has been
21 subpoenaed on behalf of the State who alleges that my
22 client sexual abused her. There are charges pending
23 as a result of her statements to law enforcement.
24 It's my understanding that the State wishes to
25 introduce her testimony in this case under the theory

1 of Lyle 404(b). I've read her statement, but I think
2 we're going to need to take some testimony from her
3 to get some more specifics and details from her. I'm
4 sure Mr. Moyer will have some questions for her as
5 well. Then I would argue a couple of questions as to
6 why I believe -- depending on her answers, based on
7 what I've read so far, I think a couple of cases are
8 applicable that would require her testimony be
9 stricken from this trial.

10 THE COURT: Okay. Mr. Moyer.

11 MR. MOYER: Yes, Your Honor, may it please the
12 court. Actually, I think that will probably be the
13 longest matter that we have, so I would suggest maybe
14 we move to the other matters that we have before we
15 get to that one.

16 MR. KAPPEL: You're talking about the other
17 motions?

18 MR. MOYER: The other motions, yeah.

19 THE COURT: I defer to y'all.

20 MR. KAPPEL: I'm happy to do that, Judge.

21 THE COURT: Before you get started, Mr. Moyer,
22 just as an administrative matter, Ms. Olson is asking
23 me about -- Mr. Moyer, about what you -- if you need
24 the additional jurors. If you're going to pick
25 another jury. I suppose at this point, you don't

1 really know.

2 MR. MOYER: I don't know what's going on in the
3 other courtroom. They're supposed to draw a jury in
4 the other courtroom, right?

5 THE COURT: I don't know. I have no idea. She
6 sent me, I presume we can excuse all the extra jurors
7 for the day once panels are selected. So, I'm
8 assuming after he's picked a jury, we would be okay.

9 MR. MOYER: That's correct, Your Honor.

10 THE COURT: Okay. Good enough. Thank you. I'm
11 sorry, Mr. Moyer.

12 MR. KAPPEL: Judge, just as a practical matter,
13 we would ask that all witnesses be sequestered. I
14 understand the State has an officer that wishes to
15 probably be here and two alleged victims, but their
16 witnesses and our witnesses, we'd ask they all be
17 sequestered.

18 I don't know if you have any objection to that.

19 THE COURT: Do you have an issue with that, sir?

20 MR. MOYER: However the Court wants to handle
21 that is fine with us.

22 THE COURT: As a matter of course, I'll grant
23 request for sequestration evenly applied. All I'll
24 tell you is that as people come and go from the
25 courtroom, I don't know who they are and I don't know

1 who is a proposed witness, so y'all have to police
2 the order of sequestration. So, you have your
3 prosecuting officer and victims in the courtroom.

4 MR. KAPPEL: Thank you, Judge.

5 THE COURT: Yes, sir.

6 MR. KAPPEL: The other matter is -- the issue
7 is, basically, severing the case. I guess I'll try
8 to summarize briefly what's involved here. Judge --

9 MR. MOYER: Well, actually, before we move
10 forward, I assume this sequestration starts at this
11 point. So, may I just have a minute to speak with
12 the witnesses?

13 THE COURT: Sure.

14 MR. KAPPEL: Judge, can I take advantage of this
15 moment to reiterate my previous conversation, but
16 they're out in the hall, if I can have a quick talk
17 with them?

18 THE COURT: Yeah, yeah. Okay.

19 MR. KAPPEL: Judge, the motion is -- well, let
20 me just kind of give a little background as to what
21 we're doing.

22 THE COURT: Okay.

23 MR. KAPPEL: Your Honor, this is, basically, a
24 delayed reporting case. It was first reported in
25 2014 for alleged conduct that occurred in 1991 for a

1 period of time to 2001. And in the course of the
2 statements that were provided by the alleged victim
3 and the alleged victim's brother, initially, at
4 least, from the alleged victim were violations of her
5 by my client as well as drug use, firearms, drug
6 manufacturing, and I guess to put it politely,
7 extortion, intimidation and a variety of other acts
8 of misconduct.

9 Subsequent to the process of the case, the State
10 made another indictment where they included the
11 alleged victim and her brother on this contributing
12 to the delinquency of a minor charge. And I think
13 what the State intends to do is they intend to bring
14 in a very wide swaff of information, material in
15 prosecution of this case. Mostly in the name of,
16 obviously, in sex charges, but it's -- a lot of it
17 pertains to the contributing to the delinquency of a
18 minor charge.

19 It's our position that, clearly, what we want is
20 we want to narrowly focus the case on the acts of
21 sexual misconduct and to have allegations of the
22 extortion, criminal manufacturing of drugs, drug
23 use -- in our view, it's not exactly coupled tightly
24 enough with the sex charge where it should be
25 properly brought in.

1 The case that I'm referring to mostly is the
2 State vs. Jones case. And, you know, in it, I'm sure
3 the Court's well familiar with this, but they have to
4 be -- the charges have to be of the same general
5 nature. And I think what the State will say in their
6 response is that the contributing to the delinquency
7 of a minor charge can include the sexual misconduct.
8 And I would agree with that, I think that if the
9 initial alleged victim had a charge of contributing
10 to the delinquency of a minor and the offer of proof
11 to show the jury was that he engaged in these sexual
12 acts, I think is clearly consistent with trying those
13 charges together.

14 But our issue is that what the testimony is
15 going to be is it's going to be regarding drug use,
16 it's going to be regarding drug deals, it's going to
17 be regarding drug manufacturing. These two
18 individuals statements are replete with just a wide
19 variety of various and sundry criminal allegations.
20 And I think what will happen is, is, at some point, I
21 think my client's character is going to be brought in
22 necessitating some sort of response and we'll end up
23 with kind of trials within the trial. And it's our
24 belief that that case should be narrowly focused. I
25 think, initially, the contributing case was brought

1 simply because of sexual acts and then that charge
2 was modified to include the initial victim's brother.
3 In his statement, he was not sexually abused. And
4 his basis is going to be primarily that my client fed
5 him a string of diet of cocaine and other drugs,
6 marijuana, along with physical intimidation and other
7 matters.

8 That's the basis of the motion. And I can give
9 a copy of State vs. Jones to the Court if you want or
10 just the citation.

11 THE COURT: Yeah, if that's the case upon which
12 you rely, if you'll hand it to me, I'll be happy to
13 look at it and consider the context of that ruling.

14 While you're bringing it up, Mr. Moyer, you can
15 respond.

16 MR. MOYER: Yes, Your Honor, if it please the
17 Court. You're familiar with the indictments that are
18 before you and the State is going forward on. One of
19 them is this case of contributing to the delinquency
20 of a minor. As Your Honor knows, it's a very broad
21 statute. It incorporates all manner of different
22 types of improper conduct.

23 Some of the conduct that will be presented to
24 support the charge of contributing to the delinquency
25 of a minor will be the sexual abuse that took place

1 with the victim, E.G. Under State v.
2 Rodrigues, which is 302 S.E.2d 666, 1983, Supreme
3 Court case, talks about lewd act on a minor being in
4 underlying support that could lead to convictions for
5 the charges of contributing to the delinquency of a
6 minor.

7 In addition to the sex abuse, Your Honor, there
8 was other conduct that took place in the home that
9 contributed to the delinquency of both the victim of
10 the sexual abuse, who is E.G. and also her
11 brother, Christopher Greco. There was open drug use
12 in the home done by this Defendant from the very
13 beginning. Using drugs in front of the children and
14 the family. In addition to that, he began
15 manufacturing drugs in the home. There was drug
16 sales that went on in the home. Other people would
17 come into the home and use drugs. In addition to
18 that, the Defendant actually gave drugs and alcohol
19 to these victims.

20 So, Your Honor, we -- it is the State's
21 intention to go into all of that testimony. We think
22 it's certainly relevant to support this charge. And
23 we would seek to have it all introduced as part of
24 our evidence to support this charge.

25 THE COURT: Okay.

1 Would you like to respond?

2 MR. KAPPEL: Judge, I agree with Mr. Moyer that
3 the testimony he's just summarized clearly is
4 relevant and appropriate for contributing to the
5 delinquency of a minor charge. What I don't think is
6 appropriate is trying that case along with this case.
7 For the simple reason that it is so prejudicial and
8 not necessarily related to the sex charges that it
9 would not be appropriate to be tried together.

10 I think if they were to confine themselves on
11 the contributing case to say that we're going to use
12 the sexual acts to make the contributing charge,
13 then, clearly, I would withdraw the objection. But
14 when they're talking about manufacturing, use, other
15 people coming in the home and transactions, I mean,
16 all that is wholly unrelated to the criminal sexual
17 conduct charges.

18 THE COURT: Okay. All right. Generally,
19 generally, I think that the charges are so connected
20 and interrelated that it's not appropriate for
21 sequestration. Now, that doesn't necessarily address
22 the issue of whether some of the specific testimony
23 about alleged drug transaction, manufacture, things
24 of that sort are admissible under a 403 analysis or a
25 relevance analysis. I don't know, and I'm not

1 commenting on any of those things.

2 I do find that given what I know as I sit here
3 that it was all part of a continuing relationship
4 between the Defendant and all of these other persons.
5 And they are all interconnected and interwoven that
6 it is appropriate to try them together. But again, I
7 am sensitive to the introduction of specific items of
8 testimony or specific items of evidence that may be
9 unduly prejudicial. I'm not prejudging any of that,
10 I just haven't heard any of it yet.

11 So, on that basis, I respectfully deny the
12 motion with the -- while reserving the right to
13 include certain testimony if it is unduly
14 prejudicial, okay.

15 All right. Okay. Next matter?

16 MR. KAPPEL: Our next matter, Judge, is the Lyle
17 issue. I know that the State has a motion.

18 If you want to go out of turn. If you want to
19 talk about criminal record, whatever it is.

20 MR. MOYER: Yes, Your Honor, there are two brief
21 matters that I would like to bring up before we get
22 into the issue of the witness that we would seek to
23 introduce pursuant to Rule 404(b).

24 One of them is the Defendant -- I envision
25 testimony being introduced in this trial of the fact

1 that the Defendant went to jail. And that was -- it
2 would come out in several different context with
3 several witnesses. First off, with the victim
4 herself of this case, E.G. [REDACTED] It will come out
5 with her testimony as part of her explanation for why
6 she disclosed the sexual abuse. She was --

7 Quick background, Your Honor. The incident took
8 place continuously over close to a 10-year period,
9 from about the time she was age four or five years
10 old up until she was about age 14. She did not
11 disclose for another -- until she was about 26.
12 Obviously, in cases of this nature, and as we've
13 already heard Mr. Kappel make mention of the late
14 disclosure, that is a big issue in these kinds of
15 cases. Why did the victim not talk about it early on
16 and then why did she eventually tell about it?

17 And one of the reasons why she did decide to
18 disclose is that the Defendant went to prison. He
19 was not a threat anymore. He was not a danger. He
20 was -- that nothing would be able to happen to her if
21 she told. So, that helps to explain why she told.

22 The other witness, Your Honor, will be the
23 witness that you are going to make a decision on
24 whether or not we can have her testify. She is a
25 second victim of very similar conduct to what

1 happened to the first victim, E.G. [REDACTED] The
2 Defendant moved on from this first family where the
3 allegations are sexual abuse of a child to a second
4 family where the allegations would be that he abused
5 another child. Again, very similar circumstances,
6 from about age five up -- for her up until age 11.
7 Her testimony will have to incorporate why the sexual
8 abuse stopped. And why the sexual abuse stopped in
9 her situation was that the Defendant went to prison.

10 So, it's going to be extremely relevant for both
11 of these witnesses. Now, I would say --

12 THE COURT: Did he go to prison incident to an
13 arrest or did he go to prison incident to a
14 conviction?

15 MR. MOYER: Pursuant to a conviction for
16 manufacturing methamphetamine.

17 THE COURT: Okay.

18 MR. MOYER: Now, I can think of several ways to
19 limit any damaging effect of this testimony in that
20 we wouldn't have to say why he went to prison. We
21 wouldn't have to say how long he went to prison.
22 Just that he did go to prison.

23 Your Honor, along these lines, I would also say
24 that when we consider the prejudicial effect of this
25 testimony, I think we have to take it in light of all

1 the other evidence that's going to come in in this
2 case. I mean, the Defendant is going to be bombarded
3 with very serious allegations by two witnesses about
4 very graphic and specific sexual abuse that took
5 place really, when you consider both victims, over
6 almost 20 years. A good 15 years anyway. Depending
7 on how much evidence you hear about drug abuse and
8 drug use, there's going to be all that testimony in
9 play as well.

10 So, the jury is going to be hearing lots of
11 damning testimony about the Defendant anyway. And I
12 think in light of that, that makes the impact of him
13 doing some prison time much less than it would be in
14 other scenarios. And in considering that and in
15 considering the very, very probative value of that
16 testimony, I don't see any other way around having a
17 fair trial for this jury without allowing that
18 testimony to come in.

19 THE COURT: Okay. Mr. Kappel.

20 MR. KAPPEL: Thank you, Your Honor, may it
21 please the Court?

22 THE COURT: Yes, sir.

23 MR. KAPPEL: It is true, my client does have a
24 conviction for manufacturing methamphetamine, but it
25 wasn't until 2013, which would be 12 years removed

1 from the last allegation. Last allegation was in the
2 fall, winter of 2001, and he went to jail for about
3 12, 14 months from 2013 to 2014.

4 And Judge, I'm kind of looking at some of the
5 transcripts from her interviews. And she offers a
6 lot of reason as to why there was a delay. And most
7 of the time it doesn't really involve him being in
8 prison. Because, I mean, he simply wasn't in prison
9 for 12 years. It's mostly just simple explanations
10 as to -- and I can read them for the Court if the
11 Court wants to hear it. But it's, basically, I had
12 it in my head that no one would believe me, that he
13 would lie his way out of it, felt embarrassed about
14 what he was doing to me. I was worried about what
15 other kids would think. So, I just got to the point
16 where I'm sick and tired of dealing with it by
17 myself. It shouldn't be my burden.

18 So, it's not so much a jail thing to me reading
19 the transcript. It's just more of a maturity thing
20 and coming to the point where she reached a certain
21 age where she felt she had to report it.

22 I think reporting that he was in jail, again, is
23 putting my client's character in to where then we
24 have to respond to try to explain it and then we bog
25 down into something else that we really shouldn't be

1 talking about in the first instance. I just totally
2 disagree with the State's theory.

3 THE COURT: Okay. All right. I'm going to --
4 I'm going to deny your motion to allow that evidence
5 in. Now, she can say that he was no longer a threat
6 to me, that he could no longer get to me. But I do
7 think that under a 403 analysis that it's unduly
8 prejudicial to The State that he went to jail. But
9 she can talk around it as surgically as she wants to,
10 but I think the fact that he was no longer a threat
11 doesn't necessarily have to have the accompanying
12 testimony that he was in jail.

13 She can say that he wasn't a threat now,
14 understanding that it may be -- it may be appropriate
15 that she respond in that way if certain questions are
16 asked in cross-examination. That is, if you start
17 delving into why he was no longer a threat and why he
18 was no longer around and started delving into her
19 mental state and any greater specificity, then it may
20 be appropriate for her to respond in that way.

21 So, I would just say that at a threshold, it
22 violates the 403 analysis. So, she can testify that
23 he was no longer a threat and not say specifically
24 that he was in jail. But be careful in
25 cross-examination how you ask those questions.

1 MR. KAPPEL: I am thinking just that. And,
2 clearly, part of our defense is going to be attacking
3 her credibility. And I'm trying to interpret your
4 comments to try to understand exactly what is and
5 what is not inappropriate. I know you're not going
6 to give me advice on that, it's just something I have
7 to work through.

8 THE COURT: Yeah, and this is what I'm telling
9 you, trials are not automated and witnesses are going
10 to say what witnesses are going to say. Just know if
11 you ask a question that provokes that response, I'm
12 not going to declare a mistrial on that. Okay.

13 MR. KAPPEL: I understand. Also, the victim's
14 in the courtroom, so, I mean, she's hearing these
15 comments, too. I don't want her on a spring-loaded
16 gun to just jump up there within two seconds and say
17 well, he was in jail.

18 THE COURT: Mr. Moyer will advise her that she
19 is not to testify as to his period of incarceration.
20 And again, again, understand a very, very limited and
21 unique set of circumstances, it may be appropriate
22 depending on what you ask her. That is, if you're
23 grilling her about why weren't you scared, why
24 weren't you scared, why weren't you scared, then it
25 may be that the only response that she can

1 conceivably offer is because he was in jail and he
2 couldn't get to me. So, just be careful.

3 Okay. All right. Mr. Moyer.

4 MR. MOYER: I believe that takes us to the final
5 issue about this witness. I think we would have to
6 take some testimony from the two individuals who will
7 testify.

8 THE COURT: Okay.

9 MR. MOYER: The State would call E.G. [REDACTED] to
10 the stand.

11 MR. KAPPEL: Judge, may I have two seconds to
12 run to restroom?

13 THE COURT: Yeah, yeah, we'll take a short break
14 and we'll come back in.

15 MR. MOYER: Sure.

16 THE COURT: We'll take about five minutes.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: Okay, we ready to proceed?

19 MR. KAPPEL: We're ready, Your Honor.

20 THE COURT: Okay, Mr. Moyer, call your witness.

21 MR. MOYER: E.G. [REDACTED]

22 THE CLERK: E.G. [REDACTED], please pause at the end
23 of the bench, place your left hand on the Bible and
24 raise your right hand. Left hand on the Bible, left
25 hand.

E.G. [REDACTED] DIRECT BY MR. MOYER

1 THE WITNESS: Sorry.

2 THE CLERK: That's okay.

3 E.G. [REDACTED] after being duly
4 sworn, testified as follows:

5 THE CLERK: Thank you. Please be seated. State
6 your name for the record.

7 THE WITNESSES: My name is E.G. [REDACTED]

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. MOYER:

11 Q And you go by E.G. right?

12 A Yes.

13 Q So, I'm going to call you E.G. or E.G. [REDACTED] How
14 old are you?

15 A Twenty-nine.

16 Q Okay, 29 years old. Do you know the Defendant
17 in this case?

18 A Yes.

19 Q Okay. How do you know him?

20 A He was my step-dad.

21 Q Okay. So, he's not your biological father; is
22 that right?

23 A Correct.

24 Q About how old were you when he came into your
25 life?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A I was -- I wasn't even quite a toddler.

2 Q So, you were under age five?

3 A Yeah, I don't actually specifically remember
4 when he came into my life.

5 Q Okay.

6 A Because I was little.

7 Q Okay. And he married your mother?

8 A Yes.

9 Q Okay. Now, did -- and he's the subject of the
10 sexual abuse that this case is about?

11 A Yes.

12 Q Is that right? Okay. About how old were you
13 when that began?

14 A About five years old.

15 Q Now, we're not going to go into all the details
16 about that right now, but what I want you to do is just
17 tell the Court what different type of sexual abuse did he
18 do?

19 A There was touching.

20 Q Okay, let me stop you right there. When you say
21 touching, what was he touching?

22 A There was touching of my genitals, me touching
23 his genitals, him masturbating in front of me and,
24 eventually, getting me to do him sexual favors.

25 Q So, he would touch you -- when you say your

E. G. [REDACTED] DIRECT BY MR. MOYER

1 genitals, you're talking about your vagina?

2 A Yes.

3 Q And that was with his hands?

4 A Yes.

5 Q When you say sexual favors, what do you mean by
6 that?

7 A Oral sex, as well as him rubbing his genitals
8 next to mine. And -- yeah.

9 Q Okay, you talking about rubbing his penis?

10 A Yes.

11 Q Rubbing it against your vagina?

12 A Yes.

13 Q Did he rub it against your rectum, also?

14 A Yes.

15 Q Okay. Now, you mentioned oral sex. Was it him
16 on you or you on him?

17 A It was both.

18 Q Okay. So, all of that type of conduct happened?

19 A Yes.

20 Q Okay. Now, did it escalate or progress as time
21 went on?

22 A As I got older, it progressively got worse, more
23 frequent.

24 Q Okay. So, when it first began when you said you
25 were around age five, what type of conduct took place

E. G. [REDACTED] DIRECT BY MR. MOYER

1 initially?

2 A It started out when I was five. And the first
3 thing was -- I was little, I was bored. When we lived on
4 Deer Run Road, which is actually -- it's a different name
5 now. I went into the bedroom, he was in the bedroom, and
6 I plopped down on him. And that's when it first began.
7 And he would -- he was rubbing his genitals up against me
8 through the blanket.

9 Q So, were you clothed?

10 A Yes.

11 Q And he was clothed?

12 A Yes.

13 Q Okay. Then as you were really young, around
14 that age, would it be mostly touching with his hands and
15 rubbing up against you?

16 A Yes, it was very subtle at that time.

17 Q And then later, it progressed into the oral sex;
18 is that right?

19 A Yes, and, eventually, full penetration.

20 Q How many times did that happen, the full
21 penetration?

22 A I cannot give you a number of how many times
23 that happened.

24 Q And how old were you when that happened?

25 A When I was nine, I was pretty much accustomed to

E. G. [REDACTED] DIRECT BY MR. MOYER

1 him touching me and doing those sort of things, so -- and
2 then there was one instance when we were on the couch and
3 he would take his penis and he would rub it in between my
4 legs. He would please himself in that manner. And I was
5 on my belly and he was doing that and it slipped and
6 actually penetrated my vagina.

7 Q So, it seemed like it was actually kind of an
8 accident on that occasion?

9 A Uh-huh.

10 Q Okay. Like I said, I'm not going to go into all
11 the details about that now, but the other penetration,
12 what would that be of?

13 A That was of my rectum.

14 Q That's what happened -- and how old were you
15 when that --

16 A Fourteen.

17 Q You were 14 when that happened. So, it's fair
18 to say there was progression from touching and rubbing up
19 against you to the oral sex to the one time he penetrated
20 your vagina until to other times?

21 A Yes.

22 Q Okay. Now, how old were you when it stopped?

23 A Fourteen.

24 Q What led to it stopping?

25 A I went to live with my father.

E. G. [REDACTED] DIRECT BY MR. MOYER

- 1 Q Okay. So, you moved out of the house --
- 2 A Yes.
- 3 Q -- pretty much? Okay. Now, did he ever say
- 4 anything to keep you from talking about it or?
- 5 A Yeah. In the beginning, it was our secret.
- 6 Q That's what he said?
- 7 A Yeah. And that, you know, we couldn't tell
- 8 anybody. You know, that was a no-no, it was hush-hush, it
- 9 was something special.
- 10 Q Something special. Okay. Would he say why you
- 11 couldn't talk to other people about it?
- 12 A Huh-uh.
- 13 Q He just said it was something special?
- 14 A Yeah, it was between us.
- 15 Q Between you. And other people wouldn't
- 16 understand it?
- 17 A Yes.
- 18 Q Now, would this happen -- where would this
- 19 activity take place?
- 20 A Normally, in bedrooms.
- 21 Q So, it would be in a house?
- 22 A Yes.
- 23 Q Would be in the house where y'all were living?
- 24 A Yes.
- 25 Q And what -- you say bedrooms, like whose

E. G. [REDACTED] DIRECT BY MR. MOYER

1 bedroom?

2 A Most of it was all in his bedroom. From the
3 incident when I was nine, it was actually our living room,
4 but my mother and him stayed in the living room and I had
5 the bedroom. But that incident happened in the living
6 room.

7 Q Okay. Would it happen in your bedroom ever?

8 A Actually, the incident when I was 14.

9 Q That happened in your bedroom?

10 A That was in my bed.

11 Q But it was usually in his bedroom?

12 A (No response.)

13 Q It was usually in his bedroom?

14 A It was usually in his bedroom.

15 Q Where would your mom be?

16 A At work or the store.

17 Q Did you move around to several different
18 residences?

19 A I did.

20 Q We don't need to go into all of those right now.
21 Was one of them a residence on Ferguson --

22 A Yes.

23 Q Ferguson Drive or Ferguson Road?

24 A On Ferguson Road.

25 Q Ferguson Road, okay. And how old were you when

E. G. [REDACTED] DIRECT BY MR. MOYER

1 that began on Ferguson Road?

2 A First, we were at 77 Ferguson Road, which was on
3 the side of his mother's home. It was like a little
4 apartment. And that's where -- when he penetrated my
5 vagina. Then we actually moved next door to 79 Ferguson
6 Road and all of that continued.

7 Q Now, is that all on like a big plot of land --

8 A Yes.

9 Q -- those two residences?

10 A That his mother owned.

11 Q So, his mother -- did his mother -- his mother
12 lived on that compound, for lack of a better word?

13 A Yes.

14 Q She had a house there?

15 A Yes. We were in her house at 77 Ferguson Road.

16 Q So, did some incidents happen at 77?

17 A Yes.

18 Q And others at 79 Ferguson when you moved into
19 there?

20 A Yes.

21 Q Where would -- like where would your mother be
22 when incidents like this would take place?

23 A He would take advantage, basically, if she had
24 to go to the grocery store or anything of that nature.
25 That was his go-to, when we were alone.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q So, she would often be -- usually be out of the
2 house?

3 A Yes.

4 Q Okay.

5 MR. MOYER: Okay. That's all the questions I
6 have at this time.

7 THE COURT: Yes, sir.

8 MR. KAPPEL: Thank you, Your Honor, may it
9 please the Court.

10 CROSS-EXAMINATION

11 BY MR. KAPPEL:

12 Q As I understand it, your statements to the
13 investigators and to DSS were that this began when you
14 were roughly about four years old?

15 A Four or five, yes.

16 Q That would have been in 1991?

17 A Whenever I was four or five, I don't remember
18 the year.

19 Q Okay. You talked to them about the abuse
20 occurred when you plopped on him in the bed?

21 A Uh-huh.

22 Q Is that correct?

23 A Yes.

24 Q And you said he got an erection and then he --
25 or, at least, the form of it was is that he would touch

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 your vagina while he would masturbate, correct?

2 A Multiple times, yes.

3 Q And that was the very first occasion, correct?

4 That type of activity was the first occasion?

5 A The first occasion that I can clearly remember
6 is him being -- having an erection and rubbing it on my
7 side. That is the first, when it started.

8 Q Right. Did he masturbate also on that occasion?

9 A Not the first time.

10 Q So, he just rubbed his penis on your vagina?

11 A Eventually. The first time, it was through a
12 blanket.

13 Q Okay. And it, as you said, progressed --

14 A Yes.

15 Q -- to other types of acts?

16 A Yes.

17 Q And would you describe him kind of rubbing
18 himself through a blanket to be kind of a -- not the
19 common occurrence between the two of you, it was actually
20 more contact, so to speak. In other words, there weren't
21 any barriers between you and him, does that sound correct?

22 A Yes, there was a barrier the first time.

23 Q The first time, but the rest of the time, it's
24 my understanding, there wasn't a blanket, there wasn't
25 clothing, there wasn't anything of that sort?

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 A Even my pants might have been off, sometimes I
2 would have a shirt, sometimes I wouldn't, sometimes we
3 have would be completely naked.

4 Q Okay. And the conduct progressed from there to
5 include digital penetration, correct?

6 A Yes.

7 Q Just so I'm clear, the digital penetration was
8 of your rectum, correct?

9 A He slipped. He did penetrate with his penis in
10 my vagina once. He also full penetration of my rectum as
11 well as using his fingers in other times to penetrate me.

12 Q Okay. So, as you indicated before, the
13 penetration of your vagina was, as the prosecutor said,
14 like an accident?

15 A Yes.

16 Q I mean, you used the word slipped, so I guess
17 we're kind of inferring that it was an incident. So, what
18 you're saying is that the primary penetration was of your
19 rectum, correct?

20 A Yes.

21 Q And that was with his fingers?

22 A And his penis.

23 Q But it started off with his finger, correct?

24 A Yes.

25 Q And then it progressed -- I think you indicated

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 once you moved to Ferguson, it progressed to the head of
2 his penis, correct?

3 A Yes.

4 Q It was partial. And that was at 77 Ferguson,
5 correct?

6 A Yes.

7 Q Then once you went to -- and I believe once you
8 got to 77 Ferguson, it also progressed to oral sex, isn't
9 that right?

10 A Yes.

11 Q So, the oral sex didn't occur prior to 77
12 Ferguson, did it?

13 A I can't say that it didn't for sure. You have
14 to understand, I was conditioned and that was everything I
15 knew. That's what he made me do, okay, and being a kid.
16 But I can't sit there and remember exact of everything,
17 other than like the major times that stuck out. It was so
18 often and frequent and --

19 Q But I think you indicated in your statement to
20 law enforcement that you had to learn to give oral sex
21 when you arrived at 77 Ferguson, does that sound correct?

22 A Yeah.

23 Q And oral sex would be you performing it on him,
24 correct?

25 A Yes.

E.G. CROSS BY MR. KAPPEL

1 Q Would he also perform oral sex on you?

2 A Yes.

3 Q In the law enforcement's report, they are
4 putting like times, the number to times. And I heard your
5 testimony previously, but law enforcement is trying to
6 estimate certain numbers, which we all know is very
7 difficult to do given the time length, but we're talking
8 dozens and dozens and dozens of times; is that correct?

9 A Yes.

10 Q That you would perform oral sex or he would
11 perform oral sex on you, correct?

12 A Yes.

13 Q Then he was also penetrating your rectum with
14 his fingers, correct?

15 A Yes.

16 Q And inserting partially part of his penis into
17 your rectum as well, correct?

18 A Yes.

19 Q Was this also including masturbation?

20 A Yes.

21 Q Okay. So, it's kind of a whole litany of
22 things, the masturbation, digital penetration of your
23 rectum, partial penile penetration of your rectum,
24 correct?

25 A Yes.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q Then, ultimately, it progressed even further,
2 according to your statement, that he had -- he fully
3 penetrated instead of partially penetrating your rectum
4 with his penis when you got to Pander Road?

5 A Yes.

6 Q Is that right?

7 A Yes.

8 Q And that would have be in, roughly, summer, fall
9 2001?

10 A I was 14.

11 Q Okay. And you were born in 1987?

12 A Yes.

13 Q So, would that be 2001?

14 A About, yes.

15 Q Okay. You also described him, you know, rubbing
16 his penis on your vagina until ejaculation, correct?

17 A Yes, but he wouldn't like ejaculate on me.

18 Q He would ejaculate --

19 A Normally, on him.

20 Q -- on his hand or on his stomach?

21 A Yes.

22 Q Did that happen many, many times as well?

23 A Yes.

24 Q Okay. So, it sounds, based in the totality of
25 everything, that it kind of started off with this kind of

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 rubbing business through the blanket, and then it really
2 more progressed to, at a minimum, rubbing while
3 masturbating or digital penetration, masturbating; is that
4 right?

5 A Yes.

6 Q To partial penetration of your rectum to full
7 penetration of your rectum and it included oral sex, both
8 ways?

9 A Yes.

10 Q And we're talking dozens and dozens and dozens
11 and dozens of times; is that right?

12 A Yes.

13 Q So, when you're talking about that first
14 incident where he was just kind of touching you, that's
15 kind of in the minority of the occasions. The majority
16 or, seems like, the overwhelming majority of occasions
17 occurred through digital penetration and penile
18 penetration; is that correct?

19 A Yes.

20 Q If you were to put a percentage on the number of
21 assaults that you endured, what percentage of it would
22 have been penetration, do you know?

23 MR. MOYER: Your Honor, I would object to that
24 question. That calls for speculation. I can't
25 imagine how she could --

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 THE COURT: What's the question again?

2 MR. KAPPEL: Judge, what I'm asking her is just
3 to kind of try to describe of the totality of the
4 experiences that she had the percentage of -- and it
5 can be as vague as she wants, of actual penetration,
6 whether it's digital or penile penetration.

7 THE WITNESS: Okay. You can ask that question.
8 But I presume all of the questions that you're asking
9 are calculated to demonstrate dissimilarities with
10 the other victim?

11 MR. KAPPEL: Yes, sir. Yes, sir.

12 THE COURT: All right. You can ask that
13 question.

14 THE WITNESS: It wasn't as frequent as him
15 masturbating while touching my vagina. It wasn't as
16 frequent.

17 BY MR. KAPPEL:

18 Q Well, you indicated that -- or, at least, to law
19 enforcement indicated that the rectal penetration was 48
20 to 96 times. Is that a correct number?

21 A It's still --

22 Q More than that?

23 A I mean, you've got to understand this has been
24 years. So, I can't actually put a number on it.

25 Q Okay. So, it's a significant number of times

E. G. [REDACTED] REDIRECT BY MR. MOYER

1 for penetration, correct?

2 A Yes.

3 Q And for oral sex as well?

4 A Yes.

5 Q Okay.

6 MR. KAPPEL: Just a moment, Judge.

7 THE COURT: Yes, sir.

8 MR. KAPPEL: Thank you, that's all I have,
9 Judge.

10 MR. MOYER: Just a couple quick followup.

11 THE COURT: Yes, sir?

12 REDIRECT EXAMINATION

13 BY MR. MOYER:

14 Q So, he did touch you with his fingers on your
15 vagina as well?

16 A Yes.

17 Q Did he ever kiss you?

18 A Yes.

19 Q Tell me about that.

20 A Also, on Pander Road, he wanted me to French
21 kiss him. So, eventually, I gave and I did. And I told
22 him that I didn't like it and I thought it was disgusting.
23 I didn't --

24 Q That's something he wanted to do with you?

25 A Yeah.

E. G. [REDACTED] RECROSS BY MR. KAPPEL

1 MR. MOYER: Okay, I have nothing further.

2 THE COURT: Any recross? You don't have to,
3 Mr. Kappel.

4 MR. KAPPEL: No, I have one question I want to
5 ask. It's a little bit outside of everybody's
6 questions right now. If the Court will indulge me
7 for one question.

8 THE COURT: Yes, sir.

9 RECROSS-EXAMINATION

10 BY MR. KAPPEL:

11 Q In your testimony -- or in your statement to the
12 police officer, you described arriving at Ferguson and
13 having your first paranormal experience. Do you remember
14 saying that?

15 MR. MOYER: I object. I don't know what the
16 relevance of this is.

17 THE COURT: Yeah, it's -- I know it's not within
18 the scope. I understand what you're trying to do.
19 That probably, if it's admissible, is more
20 appropriate for the jury than me.

21 MR. KAPPEL: I understand. Anyway, I'll
22 withdraw it, that's fine.

23 THE COURT: Okay. Thank you, ma'am. You may
24 step down. I appreciate it.

25 Do you have another witness?

C.R. [REDACTED] DIRECT BY MR. MOYER

1 MR. MOYER: Yes, the State calls C.R. [REDACTED]

2 [REDACTED]

3 THE CLERK: Ms. [REDACTED] please come forward. If
4 you'll please pause at the end of the bench, place
5 your left hand on the Bible and raise your right
6 hand.

7 C.R. [REDACTED] after being duly
8 sworn, testified as follows:

9 THE CLERK: Thank you. Please be seated. State
10 your name for the record.

11 THE WITNESS: C.R. [REDACTED]

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. MOYER:

15 Q You go by C.R. [REDACTED]

16 A Yeah.

17 Q So, I may call you Ms. [REDACTED] or C.R. [REDACTED] How
18 old are you?

19 A I'm 15.

20 Q Fifteen years old. Okay. Do you know the
21 Defendant in this case, Dwayne Tallent?

22 A Yeah.

23 Q How do you know him?

24 A He's my step-dad.

25 Q Was he actually ever married to your mom?

C.R. DIRECT BY MR. MOYER

1 A No.

2 Q Okay. You doing okay there? You need any
3 water?

4 A No.

5 Q Have you ever had to --

6 A (The witness shook her head.)

7 Q Little nervous?

8 A Yeah.

9 Q We're not going to go into all the details right
10 now, but I just have some questions about some things that
11 you said he did to you, that you told the police about,
12 okay? You have to say yes or no because this lady has to
13 write down everything you say?

14 A Yes.

15 Q Okay. So, how -- so, did he live -- you called
16 him your stepfather?

17 A I called him my dad because he was, basically,
18 my dad.

19 Q So, you called him your dad when you were
20 growing up?

21 A (The witness nods.)

22 Q About how old were you when he moved into your
23 life?

24 A About two, I was 18 months.

25 Q So, you were still just a baby?

C.R. [REDACTED] DIRECT BY MR. MOYER

1 A Yeah.

2 Q Okay. So, did he pretty much raise you?

3 A Pretty much.

4 Q Did you consider him a father figure then?

5 A Yeah.

6 Q Okay. And so, did your father -- was your
7 father, your real biological father, was he in the picture
8 at all?

9 A No.

10 Q So, you never -- the man you considered your
11 father was the Defendant, Dwayne Tallent?

12 A It is.

13 Q Now, about how old were you when the abuse
14 began?

15 A About five.

16 Q About five. And where did this -- where were
17 you living when it took place?

18 A At 79 Ferguson Road.

19 Q 79 Ferguson Road. Okay. So, was that -- is
20 that a house on the same property where his mother lives?

21 A No -- well, it's on the same property. It was
22 just next door.

23 Q On the same property, so it's kind of like a big
24 farm, right?

25 A Yes.

C.R. [REDACTED] DIRECT BY MR. MOYER

1 Q And it's his mother's property, his house is
2 there?

3 A It goes Debbie's house, then my grandma's, then
4 our house.

5 Q So, y'all were the 79 Ferguson?

6 A Yes.

7 Q So, he moved in there?

8 A Well, it was his house. We, basically, moved in
9 there.

10 Q So, y'all moved in there with him?

11 A Yeah.

12 Q So, you said it started when you were about
13 five. How old were you when it ended?

14 A About 11, right after they went to prison.

15 Q Okay. So, is that when it stopped, when he went
16 to prison?

17 A Yeah.

18 Q Okay. You said you were 11 years old then?

19 A Yeah.

20 Q Okay. Now, we're not going to go into all the
21 details of it right now, but I want you to just tell us
22 what different kind of sex acts did he do with you.

23 A Do I have to like talk about it?

24 Q Just mention the different kinds of things he
25 did.

C.R. [REDACTED] DIRECT BY MR. MOYER

1 A Just like touch around on me, and yeah.

2 Q When you say touch around on you, would he use
3 his hand to touch around on you?

4 A Yeah.

5 Q Okay. And where would he touch you?

6 A On my private parts.

7 Q You're talking about like your vagina then?

8 A Yeah.

9 Q Did he ever touch your backside, your bottom?

10 A Sometimes, but not as much.

11 Q Okay. And did he touch under your clothes or
12 over your clothes?

13 A Both.

14 Q Did his fingers ever go inside you?

15 A No.

16 Q It did not. So, would he touch around on you?

17 A (The witness nods.)

18 Q Did he ever use his -- did he ever touch you
19 with his penis?

20 A No.

21 Q Okay. So, it was with his fingers?

22 A (The witness nods.)

23 Q And this would happen in the house?

24 A 79 Ferguson Road.

25 Q What different areas of the house would this

C.R. [REDACTED] DIRECT BY MR. MOYER

1 happen in?

2 A My parents' room and my room.

3 Q Okay. So, your parents, you're talking about
4 Dwayne and your mom's room?

5 A Yeah.

6 Q Then sometimes in your room?

7 A (The witness nods.)

8 Q Did -- where would your mom be when this stuff
9 occurred?

10 A Work.

11 Q She would be at work?

12 A (The witness nods.)

13 Q Okay. Did he -- did he ever want to kiss you?

14 A (The witness nods.) Yeah.

15 Q Okay. Did he tell you anything about wanting to
16 kiss you?

17 A Huh-uh.

18 Q He just tried to kiss you?

19 A No, I was -- when I was younger, I asked him
20 about like kissing, and then he showed me. And, yeah.

21 Q He showed you?

22 A (The witness nods.)

23 Q Was this -- was it around the time he was
24 touching you as well?

25 A (The witness nods.) Uh-huh.

C.R. [REDACTED] DIRECT BY MR. MOYER

1 Q Okay.

2 A Yeah.

3 Q Did you -- what did you do when he did that?

4 A Nothing really because at the time, I was
5 younger and I didn't know that that was a problem.

6 Q Okay.

7 A I didn't really understand it until I got older.

8 Q And was the kissing, this happened that one
9 time?

10 A Yeah.

11 Q Did you tell him anything when he did it about
12 whether it was --

13 A No.

14 Q Okay. Did he ever say anything to you about
15 what he did to you to keep you from telling other people?

16 A He just told me that nobody would understand it.

17 Q Okay. Did he say anything about whether he
18 cared for you or not?

19 A Yeah, he said that nobody would like understand
20 the love he had for me.

21 Q Okay. So, he would say that to you so you would
22 not tell other people?

23 A No, it was just -- I mean, I wouldn't tell other
24 people because, like I said, I didn't know that that was a
25 problem.

C.R. [REDACTED] CROSS BY MR. KAPPEL

1 Q Okay. But he said no one else would understand?

2 A Yeah.

3 Q Okay.

4 MR. MOYER: Okay. That's all the questions I
5 have for you right now about this stuff. So, please
6 answer any questions that Mr. Kappel has for you.

7 MR. KAPPEL: Thank you, Your Honor, may it
8 please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. KAPPEL:

12 Q I think you just indicated in your testimony
13 that the touching that you experienced was use of his
14 hands?

15 A Yeah.

16 Q Correct? And it was mostly on your vagina?

17 A Yes.

18 Q And you just indicated he never used his penis;
19 is that correct?

20 A Correct.

21 Q And there was no penetration?

22 A Correct.

23 MR. KAPPEL: That's all I have, Judge.

24 THE COURT: Okay.

25 MR. MOYER: I have nothing further. Thank you.

1 THE COURT: Thank you, ma'am. You may step
2 down.

3 MR. MOYER: Your Honor, I have no further
4 witnesses on this matter.

5 THE COURT: Okay. All right. Do you have any
6 evidence you wish to present with regard to this
7 issue?

8 MR. KAPPEL: No, Your Honor.

9 THE COURT: All right. I'll be happy to hear
10 arguments.

11 MR. KAPPEL: Thank you, Your Honor. Our
12 argument, of course, is in reference to State vs.
13 Lyle. It was grounded in two cases. I'll be happy
14 to hand those up. It's the State vs., I call it
15 Tutton case and the State vs. Rogers. And,
16 essentially, Judge, what the Court did in those cases
17 is it distinguished between two different victims
18 based upon the manner of the sexual abuse. And they
19 distinguished witnesses that described touching with
20 others that described penetration.

21 And in this particular case, what we have is we
22 have one victim describing a period of penetration,
23 masturbation, oral sex and the second individual
24 simply describes something a lot different. It's
25 touching. There was no penetration, there was no

1 oral sex.

2 And I think if you look at the two cases, you
3 will see that the courts have in its history made --
4 distinguished between the two. I think -- in reading
5 all of the cases, I think this is the primary
6 principle between the 404(b) and the sex cases. And
7 when you have different levels of sexual abuse, it's
8 more coming from the same victim. In other words, if
9 you have episodes that are occurring one year that
10 involve a certain type of conduct and then subsequent
11 years, you have more extreme types of conduct, the
12 courts have been more inclined to let that kind of
13 conduct come in. They refer to it as grooming or
14 other things.

15 Here, what we have is -- and they term it as
16 escalation. They start off with the first instances
17 of conduct. They talk about grooming and escalation
18 and it's just a natural progression of the common
19 plan or scheme or what have you. In this case, we
20 don't quite have that because we have two different
21 victims of -- the last allegation of abuse with the
22 first victim was in the fall 2001. And she indicates
23 that she was five years -- the second victim
24 indicates she was five years old, which would be
25 2006. So, it was a five year difference. In

1 addition, what she describes is wholly different than
2 the conduct experienced by the first victim.

3 In some sense, if you were to try to
4 characterize the first series of events with the
5 second series, it would be a deescalation, it would
6 not be an escalation like the courts have used when
7 they try to analyze 404(b) in admitting prior bad
8 acts into evidence. They determine well, it starts
9 off in a certain area and then escalates.

10 And in this situation, what we have is a
11 deescalation in the type of behavior. And I think it
12 fits squarely into Rogers where they describe in one
13 instance where these siblings were being excused that
14 that one described intercourse with penetration and
15 the other did not and that was enough for the
16 appellate court to determine that prior bad acts
17 should not be admitted.

18 So, I think in trying to characterize what we
19 just heard, I think one is, you know, if the
20 allegations are believed to be true, it was terrible,
21 no question about it. I'm not trying to minimize one
22 or the other, but what I am trying to say is that the
23 second testimony is wholly different in character
24 than the first testimony in a very technical sense
25 and specific sense. The first described just an

1 enormous amount of penetration, masturbation and oral
2 sex, where the subsequent victim did not. It was
3 just simple touching. It was rubbing, but it did not
4 involve the penis or did not involve penetration.

5 THE COURT: Okay. All right.

6 MR. KAPPEL: I would just simply refer to the
7 cases. I'm sure the Courts has looked at them. And
8 that's our argument.

9 THE COURT: Yes, okay. Thank you.

10 Mr. Moyer.

11 MR. MOYER: If it please the Court, what the
12 Defense has done, and I completely understand why
13 they did it, is to leave out all the other factors
14 that come into play in this analysis. And I'm
15 looking now at State v. Taylor and State v. Wallace,
16 talks about the Court is to consider all of the
17 relevant factors in determining the degree of
18 similarity to decide whether this testimony should be
19 admitted. The age of the victim when the abuse
20 occurred, the relationship between the victims and
21 the perpetrator, the location where the abuse
22 occurred, the use of coercion or threats, and the
23 manner of occurrence.

24 This case, Your Honor, I would argue is as clear
25 cut a case of when a subsequent conduct of this type

1 should be admitted. You can check off every box.
2 The age of the victim, they both started with them
3 when they were about five years old. It ended with
4 the second victim earlier only -- I would argue only
5 because the Defendant went to jail. The relationship
6 between the victims and the perpetrator was
7 identical. The Defendant came into their lives
8 around the same time. Even though he wasn't married
9 to second victim's mother, he raised her as a
10 daughter. He, essentially -- she called him dad.
11 She, essentially, was -- he, essentially, was her
12 father. The location -- in fact, we have the actual
13 exact house where much of the activity took place,
14 79. All occurred in houses. They occurred in the
15 same places within that house. And for much of the
16 activity, it occurred in the actual house. The use
17 of coercion or threats. I mean, we've talked about
18 what was his manner of trying to keep these children
19 from talking about it. It would be we have a special
20 relationship, no one else would understand. That's
21 identical in both. And then the manner of --

22 THE COURT: Did the second young lady say that?

23 MR. MOYER: She did, Your Honor.

24 THE COURT: All right. I just want to make
25 sure. I just didn't recall that.

1 MR. KAPPEL: I'm sorry, can you repeat that?

2 MR. MOYER: The manner of -- about his talking
3 about how they have a special relationship, no one
4 else can understand it. That was the same, Your
5 Honor.

6 Then, finally, the manner --

7 THE COURT: Is that your recollection of the
8 testimony?

9 MR. KAPPEL: It's not, but.

10 MR. MOYER: I'll be happy to go back and check.

11 THE COURT: That's okay. I can look at it.

12 MR. MOYER: Then, finally, the manner of
13 occurrence or the type of incidents that took place,
14 which is, of course, where the Defense spent all of
15 their time focusing on. I would argue that the
16 actual types of occurrences were similar. I would
17 argue the only reason why it probably did not become
18 a little more similar with the second victim is that
19 it ended earlier. The first victim talked about how
20 it escalated and the penetration was not until she
21 was much older. It was touching, it was him touching
22 her around her private parts, in the particular
23 bedrooms.

24 Your Honor, surely the rules would not require
25 an exact mirror image of every single type of sexual

1 activity that took place. So, the totality of the
2 circumstances, these are as similar as any two
3 situations could be, Your Honor, we would argue and
4 ask that they be allowed to testify.

5 THE COURT: What are the two cases that you
6 refer to? Is it Taylor?

7 MR. MOYER: Your Honor, State v. Taylor and
8 State v. Wallace. State v. Wallace is 683 S.E.2d
9 275. And I would also refer the Court to State v.
10 Hallman, which is 379 S.E.2d 115, State v. McClellan,
11 which is 323 S.E.2d 772. Those are the cases that I
12 would --

13 THE COURT: Okay.

14 MR. MOYER: -- rely on.

15 THE COURT: Okay. Good enough.

16 Yes, sir.

17 MR. KAPPEL: Just in response, the second
18 individual you heard from lived with my client from,
19 basically, I think it was 2002 or '3, all the way up
20 until 2011. So, there's a significant period of time
21 where she was in the same household as he was. So,
22 it's the same period.

23 And yes, the courts are very clear about look at
24 the time, look at the location, look at the manner,
25 but they also look at what actually happened. I've

1 got other cases if the Court wants them. There's a
2 case called Claxby. There's McClellan is another one
3 that we have. Ethan was another one, Barry. They
4 all talk about those kinds of things, but a number of
5 these courts have distinguished between when the acts
6 are only to a certain degree and others are not. And
7 it is therefore distinguishable and not permitted.

8 THE COURT: Okay. Yeah, I just -- just for your
9 education, last week, I had a very similar issue
10 where there was -- where the State offered evidence
11 of prior bad acts under 404(b), and I did allow that
12 in. And the distinction between that and this is
13 that there are two separate alleged victims. In a
14 lot of these cases, such as Claxby, the one that you
15 talked about, it's very clear that 404(b) evidence
16 can be introduced in instances of prior bad acts of
17 sexual abuse, but that's just one victim.

18 And there's a lot of case law out there on this.
19 I just need to go back and I need to read it. My
20 concern, again, is first and foremost, you go through
21 all the questions. It is reliable? Has it been
22 demonstrated by clear and convincing evidence? Is it
23 similar? And then your 403.

24 But another way to look at it, too, and some of
25 the case law kind of goes into this, is are you -- it

1 can only be introduced to demonstrate motive, intent,
2 common plan or scheme, and I'm leaving one out, too.
3 But it can't be introduced to show character. So,
4 the question is if it's remote time, is it
5 demonstrating the common plan or scheme or it is
6 showing character? I don't know. I got to look at
7 it.

8 As I sit here right now, I can't tell you what
9 I'm inclined to do because I just need to read that
10 case law. As y'all indicated, there's a lot of
11 discretion given to the Court, it's just a matter of
12 particular facts in each and every particular case.
13 So, let me -- I'm going to look at it and I'm going
14 to make a determination, okay.

15 Anything else we need to put on the record?

16 MR. MOYER: Not at this time, Your Honor.

17 MR. KAPPEL: Nothing from us, Judge.

18 THE COURT: I'll see y'all back here at three.

19 Let me ask you this, Mr. Moyer, how many
20 witnesses do you intend to offer?

21 MR. MOYER: You talking about total?

22 THE COURT: Total, yeah.

23 MR. MOYER: I would think six or seven.

24 THE COURT: Okay. All right. And at this
25 time -- and I'm not holding you to it, but how many

1 do you think the Defense may offer?

2 MR. KAPPEL: Well, we've listed nine, so I would
3 go with nine.

4 THE COURT: Oh, is that right? I'll hold you in
5 contempt if it's less than nine, okay.

6 MR. KAPPEL: I just don't know, Judge. I think
7 Mr. Moyer and I both believe that the case will
8 probably move pretty well.

9 THE COURT: Okay. All right. Well, this
10 afternoon when we start, what I intend to do is my
11 opening charge, opening statements and then maybe one
12 or two witnesses. I don't want to go past 4:00, so
13 you might want to calculate who you intend to call in
14 your prep. Opening charges and y'all's statement,
15 the time, all said and done, will probably be 4:00
16 before you're done with that. Might be a little bit
17 sooner than that.

18 MR. MOYER: Your Honor, the victim is going to
19 be the first witness.

20 THE COURT: Is she going to take a long time?

21 MR. MOYER: She'll probably be the longest
22 witness.

23 THE COURT: If you want her to be your first
24 witness and you think she might be long, then just
25 tell me and we'll start her tomorrow morning.

1 MR. MOYER: I mean, I --

2 THE COURT: I mean, you're not going to make me
3 mad. We've got all week to try this case. Okay.
4 I'm not really in any -- this week, I'm not
5 necessarily inclined to push you and rush you unless
6 y'all are going so slow, it looks like we're going
7 into the weekend.

8 MR. MOYER: I think once we get -- I mean, she's
9 going to be a fairly long witness. The others
10 shouldn't been that long. But I would seek to start
11 with her.

12 THE COURT: All right, good enough. We'll talk
13 about it. That might be all we get done, it might
14 not be.

15 MR. MOYER: Okay.

16 THE COURT: I'll see y'all back at three.

17 Everyone else in the courtroom, we're doing a
18 plea at 2:45, okay.

19 (WHEREUPON, a lunch break was taken.)

20 THE COURT: We're back on the record. I'll go
21 ahead and address the outstanding issues. I have had
22 the opportunity to read any number of cases that bear
23 upon the --

24 MR. KAPPEL: Judge, can we get my client out
25 here?

1 THE COURT: I'm sorry. I'm sorry. Well, I tell
2 you what we'll do. I'll just wait until I'm given
3 word that the jury comes back. I hadn't intended to
4 go straight from the plea into this anyway. Y'all
5 were just looking at me with that pregnant
6 anticipation that you just wanted me to say something
7 to you, you were craving it.

8 MR. KAPPEL: Good afternoon would have been
9 fine.

10 THE BAILIFF: Your Honor, the jury is back in
11 the jury room.

12 THE COURT: Okay.

13 All right. Mr. Moyer, what do you want to do
14 this afternoon? You just want to do your opening
15 statements or do you want to attempt to put some
16 evidence into the record?

17 MR. MOYER: Well, Judge, if you really want to
18 stop at 4:00, I don't think I have time to.

19 THE COURT: No, no, I don't want to stop at
20 4:00. I didn't say I was going to stop at 4:00. I
21 said we could probably get started with the
22 introduction of evidence at 4:00.

23 MR. MOYER: Oh, I thought you said you wanted to
24 stop at 4:00.

25 THE COURT: No, no, no, I don't want to stop at

1 IV. I just want to start with the introduction of
2 evidence. I was saying we could stop if you thought
3 it was going to be a couple of hours.

4 MR. MOYER: Judge, I suspect Mr. Kappel is going
5 to have a pretty lengthy cross-examination.

6 MR. KAPPEL: I mean, this case is going to be --
7 depending on your ruling, of course, this is going to
8 be the first witness. It's going to be lengthy.
9 What I fear is that we end up having to split the
10 witness, you know, today and tomorrow. I can't
11 finish the cross today or tomorrow. I think just --
12 I think it's in everybody's best interest if we do
13 the openings, then come in tomorrow and just start at
14 9:00 o'clock with the first witness. That way, we
15 don't have any chance of having to split the witness.
16 You know, I think there's some witnesses where it
17 probably wouldn't be that big of a deal, but all
18 intents and purposes, you know, the case is going to
19 be heard with this witness.

20 THE COURT: Okay. Fair enough. Fair enough.

21 Okay. If we can bring your client in.

22 All right. We're back on the record in the case
23 of State vs. Dwayne C. Tallent. The outstanding
24 issue that we had -- that we had discussed on which
25 we had proffered testimony was whether the additional

1 testimony from another victim would be admissible
2 under 404(b) as evidence of a common scheme or plan.

3 And I have had the opportunity to look at any
4 number of cases, additionally class B case, where it
5 sets forth the requirements for determining whether,
6 in fact, it's admissible. The first requirement is
7 to determine, in fact, whether it's relevant. I find
8 that it is. The next matter is to determine whether
9 it is -- whether there's a close similarity between
10 the acts alleged between both the victim and the
11 other witness. In looking at similarities, look to
12 see whether the similarities outweigh the
13 dissimilarities. And then after having determined
14 that, you look and see whether under a 403 analysis
15 the prejudicial value -- excuse me, the probative
16 value outweighs the prejudicial effect.

17 I've read a long line of cases which had very
18 similar, very similar facts. And under all of the
19 prevailing cases and under the greater weight of
20 jurisprudence in the State of South Carolina, the
21 testimony from the -- from the second young lady is
22 admissible under 404(b) and 403.

23 I'm looking right now at the case of Scott -- or
24 excuse me, State v. Wallace, where, in particular,
25 the Court goes through just some items that may lend

1 guidance to a trial court, which include the age of
2 the victims, the relationship between the victims and
3 the perpetrator, the location where the abuse
4 occurred, the use of coercion or threats, the manner
5 of the occurrence, for example, the type of sexual
6 battery. In looking at all of those factors, looking
7 the age of the young girls, looking at the
8 relationship of the young girls to the Defendant in
9 this case, the location of where it happened in each
10 alleged incident, also, looking at the manner of
11 coercion and abuse, specifically, the verbiage that
12 was used, given all of that together, I find clearly
13 in this instance that the similarities outweigh the
14 dissimilarities in the case.

15 Under a 403 analysis in each of the various
16 cases which I've looked at, the courts, both the
17 Court of Appeals and the Supreme Court has determined
18 that the -- when in these types of situations in a
19 case of alleged sexual abuse, that the probative
20 value outweighs the prejudicial effect.

21 So, I also note for the record that there was
22 one instance in which the Court of Appeals found that
23 it was inappropriate for that evidence to have been
24 introduced. And the Supreme Court overruled them and
25 said, in fact, it was properly admitted under not the

1 same, but under similar circumstances.

2 So, in keeping with the established
3 jurisprudence in the State of South Carolina, I find
4 that it is admissible under a 404(b) and a 403
5 analysis and I'll allow it.

6 Okay. Anything further before we start?

7 MR. MOYER: Not from the State.

8 MR. KAPPEL: Nothing from us, Judge.

9 THE COURT: All right, good enough.
10 We ready for the jury?

11 MR. MOYER: Yes, sir.

12 THE COURT: Ready?

13 MR. KAPPEL: Yes, sir.

14 THE COURT: Okay, bring them in, please.

15 (WHEREUPON, the jury came into open court at
16 approximately 3:06 p.m.)

17 THE COURT: All right. Good afternoon,
18 everybody, welcome back. Hope you had a good lunch.

19 Ladies and gentlemen, we're about to start the
20 case of the State of South Carolina vs. Dwayne C.
21 Tallent. Now, before we get started, I find that
22 it's always helpful for me to explain to you what
23 your role is as jurors in the trial of the case and
24 also explain to you the process that will follow.

25 So, let's start with your role. Your role as

1 jurors in the trial of the case is to be the finders
2 of fact, the judges of the fact. You will determine
3 based on the evidence that's presented in this case
4 what the facts are. Now, the parties to this case
5 have opinions about what the facts are. I have no
6 opinion about what the facts are. Ultimately, you
7 have the sole and exclusive authority to determine,
8 based on your analysis of the evidence, what the
9 facts are in this case.

10 Now, you'll determine that, again, by looking at
11 the evidence. Evidence can come in any number of
12 different forms. It can come in testimony from
13 witnesses who take the stand and testify. It can be
14 documents, it can be audio tapes, videotapes. It can
15 be actual physical objects that are placed into the
16 record. But from all of the evidence that is placed
17 into the record, you will evaluate that evidence,
18 you'll weigh the evidence and you'll determine what
19 the facts are. Once you determine what the facts
20 are, then you apply the law to the facts as you have
21 determined them to be.

22 Now, you will get the law from me. And I will
23 tell you what the law is as it applies to the
24 evidence in this case. My role in this court, as
25 distinguished from yours as the judge of the facts,

1 is to be the judge of the law. Which means that I'll
2 tell you what the law is as it relates to this
3 evidence. Now, I'm not going to tell you what the
4 law is until the very end of the case because I'm in
5 the same position that you're in right now, and that
6 is that I haven't seen the evidence that's going to
7 be presented in this case. I haven't listened to the
8 witnesses. I haven't looked at any documents or
9 tapes or listened to them. I don't know what's going
10 to be admitted in this case. We're going to see it
11 for the first time. So, I'm going to wait until I've
12 seen all the evidence before I give you a charge on
13 the law so that I can give you only the charge --
14 only the charges applicable to the evidence that's
15 received in the case.

16 Also, ladies and gentlemen, in keeping with my
17 responsibility as judge of the law, I ensure that
18 each party to this case gets a fair trial, by
19 extension that you get a fair trial as well. So
20 imagine, if you will, that I'm the umpire or the
21 referee and I'm here calling balls and strikes,
22 making sure that it's fair to both sides. I don't
23 have any stake in the outcome of this trial. I don't
24 have any stake in what you determine the facts are
25 and what your ultimate verdict is. The only thing --

1 the only concern that I have is that it's a fair
2 trial. If you hear me say anything during the course
3 of this trial that gives you the impression that I
4 have an opinion or a preference one way or the other,
5 disregard that because I truly don't.

6 Also, know that during the course of the trial,
7 the attorneys are going to make objections and they
8 may offer motions to the Court. When they do, I'm
9 going to rule for one side and against the other.
10 Now, when I rule for one side and against the other,
11 please don't take that as me having a preference or
12 bias for or against either side. Again, I'm just
13 making clinical decisions based on my understanding
14 of the law and of the rules of court.

15 So, ladies and gentlemen, the first thing that
16 will happen after I give you this brief opening
17 charge is that each party will have the opportunity
18 to make opening statements to you. Now, those
19 opening statements that they make are not evidence.
20 That's essentially the opportunity for each side to
21 introduce themselves and to introduce their theory of
22 the case. Again, that's not evidence, it's generally
23 very short. But after you've heard from both
24 parties, then the State has the authority and the
25 ability to begin the introduction of evidence.

1 Now, the State goes first. The State goes first
2 because, as I've told you already, the State has the
3 burden of proof. In each and every criminal
4 proceeding in the United States of America, the State
5 has the burden of proving each and every element of
6 the offense beyond a reasonable doubt. And because
7 they have the burden of proof, they go first.

8 Now, when the State begins to introduce
9 testimony, generally, what they're going to do is
10 they're going to call to the stand a witness. That
11 witness will take the stand and give the oath of a
12 witness and the attorney will examine and/or ask that
13 witness questions. After the State has asked all the
14 questions that it has, the Defense will have the
15 opportunity to cross-examine that same witness.
16 After all of the questions have been asked of that
17 witness, that witness will be excused and the next
18 witness will take the stand. And this process will
19 be the same.

20 After the State has called all of its witnesses
21 and introduced all of its evidence, then the State
22 will rest. When the State rests, then the Defense
23 has the opportunity to begin presenting his case, if
24 he choses to. Now, understand, ladies and gentlemen,
25 as I told you, the Defense doesn't have any burden of

1 proof and doesn't have to present any evidence.
2 Doesn't have to say, do or prove anything. So the
3 Defense may elect to simply not put anything into the
4 record. That is certainly in the discretion of the
5 Defense.

6 However, if they do elect to put evidence into
7 the record, then they will follow the same exact
8 format that the State did. That is, call witnesses
9 to the stand, examine those witness. The State then
10 has the opportunity to cross-examine and then that
11 witness will be excused. After the Defense has
12 offered any evidence that it intends to offer, then
13 they will rests. Then we'll move to closing
14 arguments and closing charge.

15 Now, closing arguments, each party gets the
16 opportunity to offer those closing arguments. And
17 again, just like opening statements, that's not
18 evidence. At that point, you will have heard all the
19 evidence that you will hear in the case and the
20 attorneys will simply be commenting on the evidence
21 in an attempt to advocate for their respective side
22 and to persuade you to their position. You'll get to
23 hear from both sides.

24 Once you've heard from both sides, then I'll
25 give you a closing charge on the law. Again, I wait

1 until the very end so that I'll know what law is
2 relevant for your consideration. Now, just like I
3 wait until the very end, you will wait until the very
4 end as well to begin any deliberations on this case.
5 After I give you a charge, I'll send you back to your
6 jury room and I'll let you begin your deliberations
7 not long thereafter. But understand, it's important
8 that you not start any deliberations or discussions
9 about the case until the very end of the trial when I
10 give you specific instructions to do so.

11 Now, you probably know if you think about it for
12 just a second why that's important. And at the risk
13 of insulting your intelligence, I'm going to tell you
14 anyway, okay. You know that in your lifetime, you've
15 never been able to make an intelligent and informed
16 decision until you've heard everything that bears
17 upon the matter to be decided. Court is the same
18 way. It's important that you hear everything before
19 you begin deliberations. At some point in your life,
20 somebody has come to you, whether it was a friend, a
21 brother, a child and they said you're not going to
22 believe what happened and they told you a story. And
23 you were convinced of it until you heard the other
24 side and then it changed your perception. Well,
25 court is like that. Wait until the end and you hear

1 everything.

2 When I say don't discuss the case, don't discuss
3 the case. If you listen to a witness and you have an
4 opinion about that witness and you're walking out of
5 the courtroom back to your jury room for some reason,
6 because we're taking a break, don't discuss your
7 opinion about that witness, that he or she was
8 believable or not believable or a good witness or a
9 bad witness. Just keep your powder dry, okay.
10 Because you'll have the opportunity to discuss it as
11 much as you want to, but you don't want to get into
12 sidebar conversations and you don't want to begin
13 deliberating before it's time, okay. Because your
14 opinion may change based on the remainder of the
15 evidence that's presented.

16 Also, ladies and gentlemen, as we take breaks
17 for the evening, for lunch, please don't discuss the
18 case with anyone outside of the jury. It seems
19 innocent enough, but it's not because when you leave
20 the courtroom, if you begin a conversation with
21 somebody who's not on the jury, as innocent as that
22 conversation may be, understand that ultimately what
23 happens is that becomes a form of deliberation
24 because you're talking to somebody about the
25 evidence. You're talking to them about what you saw.

1 And invariably, again, it -- to whomever you're
2 speaking, they begin asking additional questions and
3 additional questions and additional questions and
4 before you know it, you're having a full on
5 discussion and/or deliberations. So, don't do that.

6 Also, don't go and try to do any self-help.
7 Meaning, don't get on the computer and see if you can
8 find out any information about this case. I don't
9 think there's been any published reports about this
10 case that I know of. I know that there's nothing in
11 the clerk of court's office on their website that
12 would give you any information about this case. But
13 having said that, don't go try because the only thing
14 that's relevant to your consideration in this case is
15 the evidence that's presented in trial in accordance
16 with the law and the rules of court.

17 So, ladies and gentlemen, we're about to get
18 started. Just so you know, we're going to take
19 regular breaks in this trial, about every hour to
20 hour and a half, depending on where we are in the
21 presentation of evidence. But I do want you to know
22 that right now, you're the 14 most important people
23 in this courtroom. So, if you for whatever reason
24 need to take a break, I want you to let me know.
25 Okay. Just raise your right hand or get Ms. Fyer's

1 attention and we'll take a break. It's more
2 important that y'all are paying attention to what's
3 going on on the stand as opposed to wondering when
4 are we going to get to take a break because I'm not
5 catching any of this. Let me know you're not
6 catching any of it and we'll take a break and we'll
7 come back.

8 Now, ladies and gentlemen, as I sit here right
9 now, it's my understanding that the State has --

10 What did you say, approximately -- how many
11 witnesses did you say you had?

12 MR. MOYER: I would say seven -- well, between
13 seven and nine, at the most.

14 THE COURT: So, they got between seven and nine,
15 some may be longer or shorter than others. The
16 Defense may have some witnesses as well. But as I
17 sit here right now, based on my discussions with the
18 attorneys and how long they think it may take to
19 present their respective case, I'm thinking that
20 probably we'll conclude this case on Wednesday. I
21 don't know that for sure, could be sooner, it could
22 be later, probably we will conclude it on Wednesday.
23 I'm not in the business of making promises, so that's
24 not an absolute assurance, but as things change, I'll
25 let you know, okay.

1 Today, what we're going to do is we're going to
2 make a modest start. We're going to do opening
3 statements. And then I don't know that we're going
4 to call a witness today. The reason is because the
5 first witness who may be called may be a critical
6 witness for the State's case and it may take some
7 deal of time. If we do both direct examination and
8 cross-examination, y'all are probably going to be
9 here until after six o'clock this afternoon. And I
10 told you we weren't going to stay past 6:00. If
11 we're going to stay past 5:00 or 5:30, I'll let you
12 know beforehand, but today, I haven't advised you of
13 that, so I don't expect you to stay because I know
14 you've got things going on.

15 So, we're going to get as much out of the way as
16 we can possibly get out of the way. We'll do opening
17 statements and then it may be that we retire for the
18 day and then come back tomorrow morning. Okay. That
19 all depends on how long it takes for us to get done
20 with the opening statements, okay. All right.

21 So, before we get started, ladies and gentlemen,
22 you've got to take one more oath. You took an oath
23 to tell truth earlier this morning. This is a
24 different oath. This is an oath to truly and verily
25 try the case in accordance with the law and in

1 accordance with the evidence.

2 So, ladies and gentlemen, I'll hand it over to
3 the clerk of court to administer the oath.

4 THE CLERK: All right, if you will please stand
5 and raise your right hand for the oath in this case.
6 The proper response is, "I will".

7 (WHEREUPON, the jury was sworn.)

8 THE CLERK: Thank you, please be seated.

9 THE COURT: Mr. Moyer.

10 OPENING STATEMENT

11 MR. MOYER: Thank you, Your Honor, may it please
12 the Court?

13 THE COURT: Yes, sir.

14 MR. MOYER: Good afternoon, ladies and
15 gentlemen. Again, my name is Mark Moyer. I
16 represent the State in this case that is before you.
17 I work for the 13th Circuit Solicitor's Office. I'm
18 a prosecutor. It's my privilege to represent the
19 people of Greenville County in cases that come before
20 juries here in this circuit. Seated with me, Andrea
21 Phillips. She works with my office. She works with
22 me. She's a legal investigator that's been assisting
23 me. And we have Will Richter, who is the
24 investigator with the sheriff's office who is
25 involved in this case.

1 My opening remarks are going to be very short.
2 I'm going to accomplish three things. I'll tell you
3 first what this case is about. I'm going to talk a
4 little bit about the law, a few matters of the law
5 and then I'm going to give you a preview of the
6 evidence that you're going to hear in this case.

7 So, what is this case about? This case is about
8 how something like this can take place. How can
9 something like this take place? And it's going to
10 hinge on how someone who's in a position of authority
11 over a young child, how that will provide opportunity
12 for something like what you're going to hear takes
13 place. It's also going to hinge on age of the
14 victim. You're going to hear the victim in this case
15 was five years old when the incident began and it
16 lasted over a period of close to 10 years. We're
17 going to talk about how the age of a child provides
18 opportunity for something like this to happen.

19 Children, especially ones that young, trust. They
20 trust adults. They trust especially adults who are
21 in positions of authority over them, as you're going
22 to hear the Defendant was in this case. They trust
23 what adults do. They trust what adults say.
24 Something about children.

25 We're also -- what this case is about, ladies

1 and gentlemen, is how something like this can
2 continue to take place over a long period. Now, as I
3 stated, you're going to hear that what happened to
4 the victim in this case, a young lady by the name of
5 E.G. [REDACTED] who's seated here in the front row, took
6 place over a period of about 10 years. We're going
7 to talk about how a child grapples with understanding
8 something like this taking place. I mean, children
9 have a hard time understanding pretty much everything
10 that comes to them new in life. You're going to have
11 to start trying to understand how a child can
12 understand things and touching of a sexual nature.
13 And how then as time goes by and as the child begins
14 to realize that these touches are not right and are
15 actually not good for her, how is that child then
16 going to react? What is she going to do? Think
17 about this new world that she is faced with as she
18 begins over time to understand what is taking place.

19 Think of that dilemma. Here, on the one hand,
20 is this who's in position of authority, who is a
21 protector, a provider, supporter for the family.
22 Does generous and nice things on many occasions. Is
23 liked and loved by those she likes and loves. That's
24 one side of it, but that's not all. There's this
25 other side that provides pain and hurt. And how does

1 that child react as this insight begins to dawn on
2 her? What does she do when faced with that dilemma?
3 Does she turn her world upside down and tell or does
4 she try to figure out a way to just cope and hope
5 that life can keep going on the way it was? That's
6 what this case is about, how can something like this
7 happen and how can it continue?

8 Let me just talk about a couple matters of law
9 now. As you heard, there are four different charges.
10 One of them is contributing to the delinquency of a
11 minor. And as His Honor has already just told you,
12 he is going to instruct you fully on all matters of
13 law at the end of this case. It's going to be a bit
14 more lengthy, quite a bit more lengthy. And
15 contributing to the delinquency of a minor actually
16 will take a little while to fully explain, but I can
17 narrow it down to just a sentence. Essentially, it
18 is to encourage or to help a child to engage in
19 behavior that is injurious to his or her health or
20 morals. That's pretty much what it boils down to.
21 So that is one of the charges that is before you.
22 There are also two charges of criminal sexual
23 conduct. There's a charge of criminal sexual conduct
24 first degree and then one in the second degree.

25 What is criminal sexual conduct? Well, there

1 are several different elements. One of which is a
2 sexual battery. Sexual battery. What is a sexual
3 battery? Well, it covers a pretty wide range of
4 activities. Among those are sexual intercourse, oral
5 sex, both on a male and on a female, and it includes
6 any intrusion, however slight, of a part of the body
7 into the genital openings of the other. That is a
8 sexual battery. So, it can be just slight
9 penetration or it can be oral sex.

10 What else does criminal sexual conduct entail?
11 Well, it entails age. Criminal sexual conduct with a
12 minor does. In a normal -- well, I say a normal, but
13 in a criminal sexual conduct case involving an adult
14 victim, there would be this element of consent,
15 whether force was used or not. But when we're
16 talking about children, that issue is not to be
17 considered. It doesn't matter. Instead, there's the
18 issue of age. If the victim is a child, then the
19 issue of whether there was force or whether it was
20 consent or anything like that does not matter.

21 What's the difference between first and second
22 degree criminal sexual conduct? Well, it's the
23 magical -- it's the age of 11. That's why there are
24 two charges before you. Because you're going to hear
25 that this conduct started when she was very young and

1 went past the age of 11. So, the activity that
2 occurred before that age will be first degree and the
3 activity that occurred after would be second degree.

4 The final charge that's going to be before you
5 is the charge of lewd act on a minor. And this,
6 basically, covers sexual touching that is not sexual
7 battery. No sexual touching that does not involve
8 penetration or oral sex.

9 Let me give you now in closing a preview of the
10 evidence that you're going to hear. You're going to
11 hear that E.G. [REDACTED] was sexually assaulted by this
12 Defendant, her stepfather, over a period of, as I
13 said, about 10 years, starting about the age of five.
14 You're going to hear that the Defendant moved into
15 her family by marrying her mother when E.G. [REDACTED] was just a
16 very young child. You're going to hear that E.G. [REDACTED] came
17 forward -- she's now 29 years of age. About three
18 years ago, she came forward and she told what
19 happened to her when she was a child. And she's
20 going to explain to you what led her to do this.

21 And she's going to talk to you about how this
22 came about when she was five years old. And,
23 incredibly, tragically, this began right after she
24 was actually sexually assaulted by a different
25 person. You're going to hear testimony that there

1 was a man that used to stay at her home on occasion
2 while E.G. was about five years old. At night, this
3 man would come to her, and did on several occasions,
4 and sexually abused her at that age. She's going to
5 explain to you what happened and how that took place.

6 You're going to hear that this Defendant found
7 out about it. And that this Defendant beat the man
8 up, kicked him out of the house. You're also going
9 to hear then that about a couple of months later,
10 this Defendant began doing the same exact conduct to
11 E.G. and it lasted over time.

12 And E.G. is going to explain to you and talk to
13 you about how she had to try to simulate what was
14 going on in her young mind. How this person in a
15 position of trust and authority began doing this and
16 how it effected her. And how it began slowly and got
17 more and more egregious as time went by and how she
18 had to deal with it and how -- and what she did to
19 cope.

20 Her method of dealing with it was to keep it to
21 herself. To keep it a secret, to not let it out, to
22 not tell. And to -- when confronted by others, to
23 not tell the truth about it and say nothing was
24 happening. You're going to hear that there was at
25 one point, law enforcement and DSS actually got

1 involved because E.G. brothers saw some things that
2 made them wonder what was going on. And how E.G.
3 even at that age, decided she did not want this to
4 come out. And she again, kept it to herself. She,
5 as I said, is going to tell you what led her to
6 eventually come forward with this.

7 You're going to hear from some other witnesses
8 as well. You're going to hear some corroboration.
9 Now, as you can imagine, these kind of crimes are not
10 the kind of crimes that -- like, maybe a burglary or
11 assault and battery, has witnesses. Has people who
12 can come in and say they observed all this activity.
13 This is the kind of case, this is the kind of crime
14 that is secretive, that is done in stealth, that a
15 great deal of effort is taken to not allow it to be
16 seen or observed by others. However, you are going
17 to hear some corroboration in this case. You're
18 going to hear from her brothers, who are going to
19 give some testimony and it is going to corroborate
20 things and details that E.G. is going to testify
21 about.

22 Other corroboration is going to be another young
23 lady. You're going to hear that after the Defendant
24 moved on from E.G. family and E.G. he went into
25 another situation with another woman with another

1 young child, you're going to hear how this began
2 again. And you're going to hear from that young lady
3 as well.

4 At this time, ladies and gentlemen, what I would
5 ask of you is to just listen closely to everything
6 that you hear in this case. As His Honor just told
7 you a few minutes ago, I want to reiterate that, just
8 pay close attention to everything you hear. Use your
9 common sense and good judgment to weigh that evidence
10 and then at the end of this case, do justice. Thank
11 you.

12 THE COURT: Mr. Kappel.

13 OPENING STATEMENT

14 MR. KAPPEL: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 MR. KAPPEL: May it please the Court.

17 Mr. Moyer.

18 Ladies and gentlemen of the jury, good
19 afternoon. My name is Matt Kappel. I'm a lawyer
20 here in Greenville. It's my distinct pleasure to be
21 representing Dwayne Tallent today. As the Court told
22 you earlier, the opening statements are not evidence.
23 They're simply an introduction, but I'm going make a
24 few comments on my own.

25 This morning, we all sat in the jury

1 qualification room downstairs -- and I'm going to
2 borrow a line from Your Honor where he said the
3 courthouse is a place where we eliminate settling
4 scores in the streets. I never heard someone say it
5 like that before, but I actually appreciate it, I
6 like that. Trials are not about settling scores.
7 We're not in the street, but this isn't about
8 settling scores. We're not here to act on our
9 emotions, impulses. We're here -- y'all are here to
10 look at the evidence and take a close look at the
11 evidence and do it without passion, without
12 prejudice, without settling any kind of scores, but
13 doing justice. And as y'all know, Lady Justice is
14 blind. She's blind because it's supposed to be an
15 objective independent review of the evidence.

16 These charges that you've heard -- I mean, this
17 is something we all can agree on. I mean, these
18 charges are very serious charges. I mean, back in
19 the day when people would be accused of committing
20 some heinous act, as the Judge said this morning, we
21 used to have a history of settling that score in the
22 street. We all know about them. Emmitt Tills, the
23 Leo Frank from Atlanta, my hometown. How many people
24 we've had in our history where people have heard
25 about a crime, acted upon their prejudice or their

1 passion and exacted some form of punishment? Time
2 and again. That's not why we're here today.

3 You have to eliminate right now any
4 predisposition or pre-prejudice or passion that you
5 may have when you hear these crimes. Your immediate
6 reaction might be I don't need to hear anything,
7 these crimes are so serious. That's not what this is
8 about. That's not what this process is about. This
9 process is about taking our judicial system to a
10 higher level. Higher level than where we were in the
11 civil rights era, the 1950's, to the 1800's, or what
12 we're seeing all over the world with the way people
13 are handling themselves. That's not the way we do
14 it. Your job is to calmly and carefully listen and
15 evaluate the evidence and not act on your prejudice
16 or your passion, whatever the charge may be.

17 Now, it's a hard job. It's not easy. Winston
18 Churchill said that performing jury duty is the
19 highest form of service you can do for your country
20 in peace time. That's how important this is. This
21 is what keeps us out of the street and settling
22 scores. It keeps us in a courtroom where we do
23 things ethically and honorably and to our best
24 ability and for y'all to look at the evidence and
25 make a decision. It's a hard job.

1 We've said it before, that we appreciate your
2 being here. You may be tired of hearing that. But
3 we appreciate you being here. We couldn't do this
4 without you. Dwayne can't get a fair trial without
5 you. The State can't get a fair trial without you.
6 And that's what this is about. It's about fairness,
7 it's about justice, it's about having people from all
8 different walks of life who can discuss a case at the
9 end of the day and make a decision, collectively,
10 unanimously. It must be beyond a reasonable doubt.
11 Beyond any reasonable doubt.

12 Now, let's talk about the case for a minute.
13 The allegation in this case starts in 1991 and ends
14 in late 2001. The charge was not brought until 2014.
15 Now, I want you to think about, as we progress in
16 this case, the difficulty that presents for the
17 Defense. Memories, documents, corroborating
18 evidence, neighbors, friends, acquaintances,
19 anything. When a certain occurrence happens, the
20 best opportunity to get the evidence to figure out
21 whether it happened or not is immediately, whether
22 it's a car wreck, running a stop sign or anything.

23 So, Dwayne and I are here faced with this
24 statement of conduct that occurred more than 25 years
25 ago. And we're having to go back to recreate and try

1 to figure out how we can say that this didn't happen.
2 We're here pleading not guilty, of course, we're
3 saying this did not happen.

4 You're going to hear from -- the family calls
5 her [E.G.] I might call her [E.G.] [E.G.] [E.G.]
6 whatever. I don't mean any disrespect to her, but we
7 just keep hearing the name [E.G.] So, [E.G.] is going
8 to come in and say that -- and she's going to
9 chronical a period of time where she's going to say
10 that that was occurring. Yet, nobody knew about it,
11 no one was ever told. And I appreciate the
12 prosecutor's opening dialogue about what may or may
13 not happen, but what you're going to hear is that
14 [E.G.] had plenty of opportunities to tell.

15 And the first was police and DSS involvement
16 with this family in January 2001. [E.G.] mother,
17 Sherry, and Dwayne had separated. [E.G.] was going to
18 her mother's -- or to her natural father's, you'll
19 hear about this. Dwayne is not her parent. There is
20 no reason for her to not disclose it. You're going
21 to hear -- she's going to tell you about her emotions
22 at the time when she was five, six, seven, eight
23 years old. There is no reason for her in 2001 to not
24 disclose this to somebody. She is in the care of
25 professionals who are interviewing her and taking

1 care of her and checking on her constantly. And yet,
2 she never tells.

3 Now, she said it in 2014, so you have to look at
4 her credibility and you have to determine whether or
5 not you believe her. As the Judge said, you are the
6 judges of the facts and it's whether or not you
7 believe her. You can believe some of what she says,
8 none of what she says or all of what she says. But
9 the fact is that she was interviewed in 2001 in
10 January. She was interviewed again in April 2001.
11 Again, I think March -- or excuse me, she was
12 interviewed again in May 2001 by professionals.
13 Professionals, who were investigating. And it was
14 never disclosed. And she was not with Dwayne.
15 Dwayne couldn't have been any closer to her. Her
16 mother and Dwayne had separated. That eliminates --
17 that failure to disclose eliminates any kind of
18 ability to corroborate, ability for anybody to try to
19 investigate or try to check and see if this really
20 did happen. Instead, it's just eliminated.

21 Now, what you're going to hear is you're going
22 to hear from [E.G.] brother, Christopher. And
23 Christopher is going to come forward and he's going
24 to talk about seeing things. He gave a statement to
25 law enforcement where he talks about these things

1 that he saw, or things that he observed. And what
2 you're going to see, I think, with Christopher is
3 you're going to see someone who can be easily
4 manipulated, someone who can be easily told what to
5 say.

6 The reason why I say that is when you look at
7 his statement -- he was interviewed by this gentleman
8 right here, Mr. Richter with the sheriff's office.
9 Mr. Richter did one of the things that you tell
10 investigators never to do, particularly when you do
11 not have corroborating evidence, is that he
12 interviewed Christopher with **E.G.** sitting next to
13 him. I mean, first, when you have two kids that are
14 fighting, the first thing you want to do if you want
15 to really find out what happened is you separate
16 them. You talk to them separately. You don't talk
17 to -- or two people that are involved, you don't talk
18 to them together where one can manipulate the other.

19 The one thing that Mr. Richter did do is he did
20 tape record this interview with Christopher and **E.G.**
21 sitting next to him. It's about a 30-minute
22 interview. And **E.G.** interrupted Chris, in
23 substantive and non-substantive ways, 27 times in 30
24 minutes. When Mr. Richter would ask a question,
25 there would be an interruption or a correction or

1 some coaching. That's not the way you do an
2 investigation, particularly on something that
3 happened so long ago as this. Why? Because people
4 can assert their influence, their words, their story,
5 their position on the other. That's why we don't do
6 that. That why we interview people separately.

7 This police officer, who's going to be here,
8 January 2001 when she interviewed E.G. in 2001, the
9 first thing she did was she took E.G. and her mother
10 and separated them to talk to them. When she
11 separated them in 2001 to talk to them, she found out
12 or made a decision that the case did not have merit.
13 That the allegations of criminal sexual conduct did
14 not have merit. The first thing she did was take
15 E.G. and her mother and separate them, get them
16 apart from one another. Why? Because she did not
17 want someone influencing E.G. She did not want
18 someone trying to put words in E.G. mouth.

19 You'll also hear from E.G. interview with
20 Mr. Richter that there was real kind of haphazard
21 idea of letting E.G. go talk to other people. And
22 that's another major, major flaw. And you're going
23 to hear about it. When you're interviewing
24 somebody -- when you're interviewing E.G. the main
25 victim in this case, from an occurrence that happened

1 27 years ago or however long it was, the last thing
2 you do is encourage that person to go out and do the
3 investigative work.

4 And on three separate occasions during his
5 interview with E.G. he encouraged her to talk to
6 other people. Encouraged her to talk to this girl
7 named C.R. and her sister, R.R.
8 Why? Because you don't want -- when you're doing an
9 investigation, particularly in a case like this, you
10 don't want people running around talking to each
11 other to find out what you said, what did she say,
12 how do you want me to say it, what do you want me to
13 say, how is this going to work out for us? You don't
14 do that. And this investigation is replete with that
15 kind of activity from this officer.

16 How do mistakes get made? Mistakes are made
17 when you have people who are working together for a
18 common goal and will say whatever it is they need to
19 say. And it's hard to deal with when you have an
20 officer taking a very lax attitude with trying to
21 keep people straight and honest when you have a case
22 that you're investigating that's 27 years old.

23 You're going to hear from someone by the name of
24 Ma. That's Dwayne's mom. Her first name is Lenore.
25 I think you will find that she's got a heart of gold.

1 You'll find that she did everything she could to try
2 to take care of this family, whether they were blood
3 relatives or not. You're going to hear from Ma about
4 a relationship with both of these young ladies. She
5 is in the position to tell you really what was going
6 on, how everyone was doing, what they were doing,
7 etcetera, etcetera.

8 Ma was born in Germany, immigrated to the United
9 States, who became a nurse. She has done very well
10 for herself, very bright. Her mind is still with
11 her. And she obtained 14 or 15 acres in Greenville
12 County that she lives on. It's very valuable
13 property.

14 When Dwayne married Sherry, that E.G. mother,
15 they lived -- I think they lived for a time at 77
16 Ferguson Road, which is where Ma lives, but they --
17 eventually, they moved and they ended up on this Deer
18 Run or Covenant Court. But after a period of time,
19 they moved into the apartment next to Ma at 77
20 Ferguson. And you're going to hear from Ma talk
21 about how she used to take E.G. shopping. They have
22 horses, so they'd go horseback riding. They had a
23 very special and unique relationship. They talked
24 about everything from physiology, you know, the
25 little girl's physiology, to boys to school and never

1 did Ma ever see or hear something like this. She'll
2 tell you that never did E.G. ever act as if
3 something like this was happening. You take this
4 other young lady, C.R. and it's the same thing.

5 E.G. is not a blood relative, again, of Ma.
6 She's Sherry's daughter, yet, Lenore treated E.G. as
7 her own. C.R. same thing. C.R. belongs to a
8 woman named Cindy. Dwayne dated Cindy and was --
9 arrived on the scene when C.R. was about 17 months
10 old. And they lived at 79 Ferguson Road, which is
11 where Dwayne lived. And Ma did the same thing. Ma
12 treated C.R. and her older sister, R.R. as her
13 own. They had a swimming pool. They had horseback
14 riding. They'd go shopping. They had a special,
15 unique relationship. And she is going to tell you
16 that never once did any notion of something like this
17 ever occur. That nothing was ever said to her,
18 nothing was ever disclosed to her. Nothing ever gave
19 her even the remotest sense of this actually
20 happening.

21 With regards to E.G. Ma is going to tell you
22 about a story that I want to tell you real quick.
23 And that is, E.G. is going to tell you that Ferguson
24 Road was the hell of her past. She's going to
25 describe it has pure misery and pain, that as a young

1 little girl, she hoped to die. That she was scared
2 from her life. Scared for her brother's life.
3 Scared for her natural father's life. And what Ma is
4 going to tell you is that in 2001, when Sherry was
5 leaving Dwayne, that E.G. grabbed Ma and cried not
6 wanting to leave. That she loved Dwayne and did not
7 want to leave.

8 My point in telling you this part of the case is
9 simply to let you know that there is another side
10 that's going to be presented. And what the Court has
11 told you is important. That you cannot make your
12 decisions based on any one part of this case. You
13 cannot make a decision until you've heard everything.
14 And once you hear about the manipulation of the
15 investigation, you hear from Ma, who I think you will
16 find to be extremely credible, and you look at the
17 whole case in its entirety, then you get to make your
18 decision, then you get to decide. And the point is
19 you must find beyond all reasonable doubt that this
20 happened. And if you have hesitation -- when you get
21 the case at the end of day, if you have any
22 hesitation, you cannot convict Dwayne.

23 Now, it's my honor to be here before you. This
24 is not an easy case. The subject matter is very
25 difficult. We're going to try our hardest to do this

1 as quickly as possible so you can get back to your
2 day-to-day lives. But we appreciate your being here.
3 I'm glad that you're here. We know that you will
4 carefully consider all the evidence. And I'm
5 convinced that after you've heard everything and
6 reviewed everything, that you will find that the
7 government and the State has not made their case
8 beyond a reasonable doubt. And that you will have no
9 choice but to come back with verdicts of not guilty.
10 Thank you.

11 THE COURT: All right, ladies and gentlemen,
12 what we're going to do is break for the day. I don't
13 like to stop and start like this, but, again, if we
14 start now, I've got to go through direct examination
15 and cross-examination and then you're going to be
16 here for a while. So, let's start tomorrow morning.
17 If you'll be here at 9:15, we'll start as promptly as
18 possible.

19 When you go home tonight, please don't discuss
20 the case. I know somebody may try to discuss it with
21 you, don't discuss it.

22 Ms. Martin, if you're husband tries to discuss
23 it with you, you tell him I'm looking for a reason to
24 put him in jail, okay, and I have been for years and
25 years, all right.

1 So, y'all have a great evening and I'll see you
2 back here at 9:15 tomorrow morning. Thank you.

3 (WHEREUPON, the jury left open court at
4 approximately 3:55 p.m.)

5 THE COURT: Okay. Anything further for the
6 record this afternoon?

7 MR. MOYER: No, Your Honor.

8 MR. KAPPEL: Nothing, Judge.

9 THE COURT: All right, if y'all need me, come
10 get me at 8:30 or 9:00. I told the jury to be here
11 at 9:15 and that's so that we can start at 9:15, not
12 come in the courtroom at 9:15 and discuss additional
13 issues that bear upon the case. Tell me earlier so
14 we can get it over with earlier. Okay. Thank you,
15 very much. I appreciate it.

16 (WHEREUPON, the proceedings were concluded for
17 the day to be reconvened on July 18, 2017.)
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1 July 18, 2017

2 THE COURT: Okay, we're back on the record. I
3 think there are a few things that the attorneys
4 intend to put on the record before we get started. I
5 know that the first thing of interest to the Court,
6 particularly, is one of the jurors indicated to the
7 bailiff yesterday before we left that he actually
8 knew part of the Defendant's family and lived close
9 thereby. That he didn't necessarily know the
10 Defendant's mother, but he did know other members of
11 the family. And although, he wouldn't characterize
12 it as a close relationship, it is a relationship. He
13 indicated that he thought that he could be fair and
14 impartial, but he also indicated that he thought
15 there might be some reason to be uncomfortable if he
16 were to join in a verdict which was negative to the
17 Defendant and his family, particularly since he lives
18 in such close proximity.

19 And I believe, if I'm not mistaken, that's Juror
20 No. 146, Mr. Bobby Ramsey; is that correct?

21 THE CLERK: That's right.

22 THE COURT: Okay. So, we had a discussion in
23 chambers about that. And I have elected because he
24 has indicated that he would experience some
25 discomfort from a verdict that was negative to the

1 Defendant, and, also, because he stated that although
2 he recognizes he has a right to serve on a jury, he
3 did not have any strong feelings one way or the other
4 and would certainly accept disqualification and would
5 not assert his right to serve on the jury. Had this
6 discussion in full with the attorneys and I have
7 elected to remove him from the jury in this case.
8 Leaves us with 13. I think which will be sufficient
9 given the time we have remaining in this case.

10 Is there anything the State needs to put on the
11 record with respect to the removal of that juror?

12 MR. MOYER: No, Your Honor. Just that I do want
13 to make it clear that the State did object to having
14 that juror remain on the jury.

15 THE COURT: Okay. Good enough.

16 From the Defense?

17 MR. KAPPEL: I need an objection that we would
18 ask that he would remain on the jury. I think he
19 indicated clearly that he could be impartial, that he
20 would follow his oath. And I understand the Court's
21 ruling.

22 THE COURT: Okay, good enough. All right. For
23 those reasons that I've articulated, I've elected to
24 remove him from the jury.

25 Okay. All right. I know we have additional

1 issues that we need to put on the record. I defer to
2 you.

3 MR. MOYER: The other issue, Your Honor, I want
4 to put on the record was the plea negotiations that
5 took place between the State and the Defendant. I
6 just want to make clear that I'm not doing this as
7 any reflection of Mr. Kappel's thoroughness as an
8 attorney, but simply because I've had two cases that
9 have been overturned recently based on Defendant's
10 saying they never were given plea offers.

11 The initial plea offer in this case was that the
12 State would dismiss the criminal sexual conduct first
13 degree charge, allow the Defendant to plead guilty to
14 criminal sexual conduct second degree and lewd act
15 and there would be no recommendation as to sentence.

16 The case was on the docket several times. About
17 six months -- and even was continued. About six
18 months ago, the case was on the docket and Mr. Kappel
19 and I reopened plea negotiations at that time. The
20 State's offer was for a recommendation of seven years
21 on criminal sexual conduct second degree. The
22 Defendant turned that down. Subsequently, the
23 Defendant was arrested on more charges for criminal
24 sexual conduct with a minor and was incarcerated back
25 in jail for those charges and also for a bench

1 warrant for failure to appear. There have been no
2 plea negotiations since then.

3 I also want to put on the record that it's my
4 understanding that Mr. Kappel didn't realize at the
5 time that he was talking to the Defendant, that the
6 criminal sexual conduct first degree charge carries a
7 sentence of zero to 30 years. That charge currently
8 carries a sentence of 25 to life. But at the time
9 the Defendant is alleged to have committed the acts
10 that led to his arrest for the charge, the sentence
11 was zero to 30. I just want to make sure the record
12 is clear that the Defendant was aware of that before
13 his decision to go forward with the trial.

14 THE COURT: All right. Thank you.

15 Mr. Kappel, you take exception to any of those
16 representations?

17 MR. KAPPEL: None, your Honor. We've had very
18 good lines of communication throughout. The plea
19 negotiations have been thoroughly communicated to my
20 client. He made it very clear to me throughout that
21 he was not going to accept then, particularly, the
22 last offer that was made by the State of seven years.
23 We have had full discussions individually and with
24 his family at two different locations on the same day
25 to try to sort through the plea offer. So, I offer

1 that to alleviate any of the Court's concerns. I'm
2 very familiar with the Fry case and all that, so.

3 THE COURT: Okay. All right, good enough.

4 Anything additional we need to put on the
5 record?

6 MR. MOYER: No, Your Honor.

7 MR. KAPPEL: No, sir.

8 THE COURT: All right. So, I am going to -- it
9 looks as though our alternate, our first alternate is
10 Mr. Xavier Evans. So, I am going to replace
11 Mr. Ramsey with Mr. Xavier Evans, Juror No. 58.

12 If you bring the jury out, please. And tell
13 Mr. Ramsey that he can stay and then let him know
14 that he's been excused from service on this jury.

15 THE BAILIFF: So, he can sit out?

16 THE COURT: He can sit out there or he can go
17 back downstairs and turn in all of his information.

18 MR. KAPPEL: Judge, before she does that, I just
19 want -- we had chatted briefly about the juror that
20 was -- had a connection with the solicitor's office.

21 THE COURT: Yes, sir.

22 MR. KAPPEL: I neglected to try to remove her
23 for cause. I know that based on your ruling this
24 morning, we still have an additional alternate. And
25 request to revisit that issue because that particular

1 juror could be replaced by an alternate. I wanted to
2 get that into the record.

3 THE COURT: Okay.

4 MR. KAPPEL: She indicated, of course, to you
5 that she could be fair and impartial. And it's our
6 belief that her connection to the prosecution is too
7 close to -- mostly, for the same reasons you just
8 articulated for Mr. Ramsey.

9 THE COURT: Right. She indicated -- I'll
10 respectfully deny that. I would say that during jury
11 qualification, I would have denied that request for
12 cause as well. She indicated very clearly on the
13 record that she could be fair and impartial. Each
14 party was advised of her relationship to the
15 solicitor's office. She's given no one in this
16 courtroom any cause to believe that she would be
17 uneasy about a verdict one way or the other, or that
18 she could not be fair and impartial.

19 The distinction that I draw is that this
20 relationship of the individual juror that I've
21 excused was so significant that he brought it to the
22 Court's attention. And he -- there was some deal of
23 equivocation about whether he would be easy or uneasy
24 about the results of the case.

25 So, given that fact -- given the fact that it

1 was clear to me that he was uncomfortable, that I
2 decided that that would be probably the better course
3 of action would be to excuse him.

4 All right. So, for purposes of the record, I
5 respectfully deny the motion. I will also say that
6 had you made the motion at the time, I would have
7 denied it.

8 Okay. Good enough. Y'all ready now?

9 MR. MOYER: We're ready.

10 THE COURT: Okay.

11 (WHEREUPON, the jury came into open court at
12 approximately 9:42 a.m.)

13 THE COURT: All right, welcome back, ladies and
14 gentlemen. I hope you had a good evening. Thank you
15 for being on time today. We had a few issues to
16 discuss today. I've excused Mr. Ramsey from service
17 on this jury because he indicated that he knew
18 someone who was going to be a perspective witness.
19 He didn't realize that at the time. So, I replaced
20 Mr. Ramsey with Mr. Evans.

21 So, Mr. Evans, you'll be on the jury now as one
22 of the main jurors, okay.

23 Okay, good enough. Having said that, ladies and
24 gentlemen, we will start today with the introduction
25 of evidence. The State, as I indicated to you, has

1 the burden of proof. Therefore, the State will go
2 first. So, I will turn it over to Mr. Moyer to call
3 your first witness.

4 MR. MOYER: Thank you, Your Honor, may it please
5 the Court. The State calls E.G. [REDACTED]

6 THE CLERK: E.G. [REDACTED], if you would please pause
7 at the end of the bench. Please place your left hand
8 on the Bible and raise your right hand.

9 E.G. [REDACTED] after being duly
10 sworn, testified as follows:

11 THE CLERK: Thank you. Please be seated. State
12 your name for the record.

13 THE WITNESS: E.G. [REDACTED]

14 DIRECT EXAMINATION

15 BY MR. MOYER:

16 Q E.G. [REDACTED], I'm going to ask you to make sure you
17 speak into the microphone so everyone on the jury can hear
18 you loudly and clearly. Would you spell your last name
19 for the jury?

20 A E.G. [REDACTED].

21 Q Okay. How old are you?

22 A Twenty-nine.

23 Q When is your birthday?

24 A E.G. [REDACTED] [REDACTED].

25 Q And you're married?

E.G. [REDACTED] DIRECT BY MR. MOYER

1 A Yes.

2 Q This is your husband seated back here?

3 A Yes.

4 Q How long you been married?

5 A Since 2006.

6 Q How many children do you have?

7 A Two.

8 Q How old are they?

9 A Thirteen and nine.

10 Q Okay. Are you employed right now?

11 A Yes, I am.

12 Q Where do you work?

13 A I work for a plant.

14 Q Okay. And how long have you worked there?

15 A Just a few months, actually. It was a job
16 opportunity that I took that was better than what I had.

17 Q Okay. So, where were you -- were you born in?

18 A I was born in New Jersey.

19 Q New Jersey. When did you move to South
20 Carolina?

21 A I was just a baby.

22 Q Who is your mother?

23 A Sherry Tallent.

24 Q Who is your father?

25 A Joseph Edward Greco, Sr.

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Q Okay. Now, did your father raise you?

2 A No.

3 Q Did he and your mother divorce?

4 A Yes.

5 Q Did you -- how old were you when they divorced?

6 A I don't know exactly how old I was, but I wasn't

7 two.

8 Q Before you were age two?

9 A Yes.

10 Q Did he have a role in your life?

11 A Not as much as what he should have.

12 Q And it came about more later; is that right?

13 A Yes.

14 Q We'll talk about that a little bit later. You

15 have brothers and sisters?

16 A Yes, I have two brothers.

17 Q What are their names?

18 A Joseph Greco, Jr. and Christopher Greco.

19 Q Okay. Are they older or younger than you?

20 A They are both older than me.

21 Q Can you -- do you know how much older they are?

22 A My brother, Chris, is four years older and my

23 brother, Joey, is six years older.

24 Q Okay. Now, do you know the Defendant in this

25 case, Dwayne Tallent?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A I do.

2 Q How do you know him?

3 A He was my step-dad.

4 Q How old were you when he moved into your life?

5 A From what I'm told, I was 18 months.

6 Q So, he is the first father figure that you knew
7 in your life?

8 A Yes.

9 Q He married your mom?

10 A Yes.

11 Q Is that right? And how old were you when he
12 moved out? Or when --

13 A Fourteen.

14 Q Okay. You were 14. Now, are your mom and this
15 Defendant still married?

16 A Yes.

17 Q So, they never actually got divorced?

18 A Correct.

19 Q But he moved out?

20 A Well, we moved out.

21 Q You all moved out, okay. Now, let's talk about
22 some different locations you lived when you were a child.
23 That is going to become relevant later. Where did you
24 live when you were around age four and five years old?

25 A In a trailer on Deer Run Road, Greenville

E. G. [REDACTED] DIRECT BY MR. MOYER

1 County.

2 Q Okay. Is that -- that road actually is a
3 different road now?

4 A It's changed to Covenant.

5 Q Okay. And tell us about the residence on that
6 road. Was it a house? Was it a trailer?

7 A It was a double-wide.

8 Q Okay. And that's in Greenville County, you
9 said?

10 A Yes, off of Highway 25.

11 Q Who all lived there?

12 A Me, my mom, Dwayne Tallent.

13 Q Did other people ever come and go while you were
14 living there?

15 A Yes.

16 Q Numerous people or?

17 A Mostly, Michael, the Defendant's nephew, was
18 there a good bit and also one of his friends that his name
19 was Mikey.

20 Q We'll talk about him a little bit later, but he
21 used to stay there on some occasions?

22 A Frequently, yes.

23 Q Now -- so, your brothers weren't living with you
24 there?

25 A No.

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Q Where were they?

2 A They were with my father.

3 Q Where was your father?

4 A I believe he was in Nevada.

5 Q Did your brothers ever live with you?

6 A Not until we lived at 79 Ferguson Road. And I
7 was maybe 11 or so when they moved in.

8 Q Okay. What grade were you in when you moved
9 away from that location?

10 A I was in the second grade when we moved away
11 from Deer Run Road.

12 Q So, you were about -- how old were you then?

13 A I guess about six or seven.

14 Q Okay. Where did you move from there?

15 A We moved to a house in Seneca.

16 Q And how long did you stay there?

17 A We didn't stay there long. It was actually two
18 residences. We stayed at the one house longer than the
19 next before we moved back to his mother's.

20 Q Who all lived there in those locations?

21 A It was just us. Me, my mom and Dwayne.

22 Q Okay. Then where did you move after that place
23 in Seneca?

24 A We moved back in with his mother in Greenville.

25 Q In Greenville County?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A Yes.

2 Q So, you actually lived with his mother?

3 A Yes.

4 Q What was the address there?

5 A 77 Ferguson Road.

6 Q Okay. Tell us about that property.

7 A Well, it's a house, it's a barn. They had cows,
8 horses. And her house had like an apartment side. It was
9 actually her mother's because her mother had lived there.
10 And we ended up moving into the apartment side of it.

11 Q So, it was sort of an attachment to the house
12 there?

13 A You would -- you could walk into her kitchen and
14 walk through these double doors -- well, it was a door and
15 then like a pantry room with a sink and like a little back
16 room. And then the next door was the apartment side of
17 the house.

18 Q Okay. And who all lived on that apartment side
19 of that house there?

20 A Me, my mom and Dwayne.

21 Q Who all lived in the main part of the house?

22 A His mother, Lenore, and father, Hugh.

23 Q And you were about how old when you moved into
24 that?

25 A About nine, I guess, eight or nine.

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Q Okay. Now, did you know his mother before you
2 all moved in there?

3 A Yes.

4 Q Did you use to spend much time with his mother?

5 A Not as much as what I would have liked.

6 Q So, you liked her?

7 A Yes.

8 Q Do you still like her?

9 A (There was no response.)

10 Q Let me retract that question. So, at the time,
11 were you close to her?

12 A I loved her very much.

13 Q She was good to you?

14 A Yes.

15 Q Did you like spending time with her?

16 A Yes, I did.

17 Q Okay. Then when -- did you move away from 77
18 Ferguson Road?

19 A I did. We moved next door to 79 Ferguson Road.

20 Q Was that on the same --

21 A It's all on the same property.

22 Q Same property, okay. So, tell us about that
23 house -- or was it a house or a trailer or what?

24 A It was a house.

25 Q Okay. And how close was it to 77 Ferguson?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A It was close. It's right next door. We had to
2 walk through the field to get there.

3 Q Okay. But it was next door. And about how old
4 were you when you moved into there?

5 A I would say about 10, maybe 11, close to 10.

6 Q Who all lived there when you moved into 79
7 Ferguson?

8 A At first, it was just me, my mom and Dwayne.
9 Then eventually, my two brothers moved in.

10 Q That's when you said you were 11 or 12 years
11 old?

12 A (The witness nods.)

13 Q Then you moved away from there to what location?

14 A Into a trailer on Painter Road.

15 Q How old were you when you moved there?

16 A Fourteen.

17 Q Who lived there?

18 A Me and my mother, at first.

19 Q Okay.

20 A Then Dwayne came to stay.

21 Q Did Dwayne stay very long after y'all moved into
22 there?

23 A It wasn't a very long period of time before --
24 once he came back into the picture before I ended up
25 living with my father.

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Q So, that's when you moved with your father?

2 A Yes.

3 Q And where did he live?

4 A In Belton.

5 Q You said you were about 14 years old?

6 A Yes.

7 Q You stayed there about how long?

8 A Until I was 16.

9 Q Then where did you move then?

10 A With my mother in Greer.

11 Q Was Dwayne Tallent with your mother at that time
12 when you moved back in with her?

13 A No.

14 Q Okay. Did you use to -- until your brothers
15 moved in with you when you lived at 79 Ferguson Road, did
16 you used to see them much?

17 A No, not very often.

18 Q How often? Do you recall how often you did see
19 them?

20 A I was supposed to see them and my father every
21 other weekends, but that didn't always happen.

22 Q For a long period of time, they lived out of
23 state, right?

24 A Yes.

25 Q Did you see them at all when they lived in

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Nevada?

2 A There was times when I did see my father when I
3 was a lot younger. He had moved to Greenville, but it
4 wasn't -- it wasn't very often.

5 Q Okay. Now, when is the last time -- other than
6 in court yesterday and today, when's the last time you saw
7 Dwayne Tallent?

8 A When I was 14.

9 Q And that was that house on Painter Road?

10 A Yes.

11 Q So, you hadn't seen him since?

12 A No.

13 Q Okay. Let's go back to when you said you were
14 four or five years old on Deer Run Road. You mentioned
15 you lived there with your mother and Dwayne, and that a
16 guy name Mikey would be there on some occasions. What do
17 you remember about Mikey?

18 A He was friendly. Not too much other than a few
19 incidents.

20 Q I know you were really young then, but do you
21 remember how often he used to stay there at the house?

22 A It was frequently. Definitely something when I
23 look back, I can remember him being there. He was an
24 often visitor.

25 Q Okay. Did he -- so, he would spend the night?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A Yes, he would.

2 Q Where would he stay?

3 A He would sleep in the living room.

4 Q Where would you stay?

5 A In my bedroom adjacent to the living room.

6 Q Was it your room by yourself? Did anyone else
7 stay in that room?

8 A No, it was just my room.

9 Q Where would this guy, Mikey, stay?

10 A He would be -- basically, it was right outside
11 my door. The living room was right outside my door.

12 Q So, he was kind of a friend of the family?

13 A Yeah -- well, friend of Dwayne's.

14 Q Okay. So, something ever happen with Mikey?

15 A Yes.

16 Q Tell the jury what happened.

17 A He would come into my room at night and he would
18 get me out of my bed and he would lay me down in front of
19 the TV on his sleeping bag. And then he would rub his
20 genitals against me.

21 Q When you say genitals, you talking about his
22 penis?

23 A Yes.

24 Q Do you remember -- how many times would you say
25 this happened?

E.G. [REDACTED] DIRECT BY MR. MOYER

1 A It didn't happen -- maybe five, maybe.

2 Q Okay. So, a few times maybe?

3 A Just a few times.

4 Q Okay. Do you remember any -- did he take his
5 clothes off or leave his clothes on, do you know?

6 A I don't really remember. I remember an incident
7 where he did have just his underwear on.

8 Q Okay. Did -- so, he rubbed it then between your
9 legs?

10 A Yes.

11 Q Is that right? Did he ever -- were your clothes
12 on?

13 A Yes.

14 Q So, was there ever any penetration?

15 A No.

16 Q Was there any pain involved?

17 A No.

18 Q What do you remember thinking when this would
19 happen?

20 A I didn't think anything of it. I would lay
21 there. I would watch TV and I would just fall back
22 asleep.

23 Q Okay. Anything like that ever happen to you
24 before?

25 A No.

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Q Did you understand what was happening to you?

2 A No.

3 Q Okay. Now, do you remember a time period when
4 that activity from this guy, Mikey, stopped?

5 A One night, my mother had woke me up and we were
6 rushed into the car -- or rushing into the car. And
7 Dwayne was in the car, too. And we ended up riding to his
8 sister's and they were looking for Michael, the nephew.
9 And I wasn't aware of what was going on until I got older.

10 Q Okay. So, did you ever see Mikey again after
11 that night?

12 A No.

13 Q Did you ever learn what happened that night?

14 A I did.

15 Q How did you learn?

16 A Dwayne had told me.

17 Q Was it right then or was it a later time?

18 A It was -- it was at a later time. I remember
19 specifically when we were at 79 Ferguson Road discussing
20 it. And he was saying he had wondered if I had remembered
21 it.

22 Q What did he tell you happened?

23 A That he, from my understanding, overheard Mikey
24 saying something. Basically, he beat him up. He figured
25 out what he was doing to me.

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Q Figured out what Mikey was doing to you?

2 A Yes.

3 Q And beat him up. Now, at the time -- you said
4 you were living at 79 Ferguson Road at that time?

5 A When we spoke about it, yes.

6 Q When you spoke about it, yes. So this was years
7 later then?

8 A Yes.

9 Q When he -- so when he told you about what he did
10 to Mikey, was this at a time when he was doing the sexual
11 abuse to you?

12 A Yes.

13 Q Okay. And the actual incident when he told you,
14 was it on an occasion where he had done anything
15 inappropriate to you?

16 A We were just, basically, hanging out in his
17 bedroom and we had brought it up. I don't remember
18 exactly how the conversation was brought up.

19 Q Okay. Okay. So now, after this incident where
20 Mikey was -- you know, left the house and you didn't see
21 him anymore, did law enforcement get involved?

22 A No.

23 Q Did you ever have to go speak to anyone with
24 DSS?

25 A No.

E.G. [REDACTED] DIRECT BY MR. MOYER

1 Q Or the police?

2 A No.

3 Q Were you ever taken for counseling or anything
4 like that?

5 A No.

6 Q When you -- years later, when you disclosed what
7 Dwayne Tallent did to you, is this the detective that you
8 spoke to?

9 A Yes.

10 Q Did you tell him at that time what Mikey had
11 done?

12 A Yes.

13 Q Did you know his last name?

14 A I don't.

15 Q Have you seen him since?

16 A No.

17 Q Do you have any idea where he is?

18 A No.

19 Q Okay. So, after these incidents with this guy
20 named Mikey, was that the last time you were abused as a
21 child?

22 A No.

23 Q Who else abused you?

24 A Dwayne.

25 Q When you say Dwayne, you're referring to the

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Defendant in this case?

2 A Yes.

3 Q When did that start?

4 A In the same house when I was about five.

5 Q So, was it then -- do you have any idea how long
6 after the incident with Mikey this began with Dwayne?

7 A Just a few months.

8 Q So, you were still --

9 A I was still very little.

10 Q Okay. Now, do you remember the very first time
11 Dwayne did something to you?

12 A The first time --

13 Q So, you do remember that?

14 A Yes.

15 Q Tell the jury about what details you remember
16 about the first time Dwayne did something to you?

17 A I was little. I was bored. He was in his
18 bedroom. I went into the bedroom and I plopped down on
19 him. And then from that point, he had an erection and he
20 started to rub it up against me through the blanket, but
21 in the same manner.

22 Q Same manner?

23 A From Mikey.

24 Q Okay. Was there anyone else in the room with
25 him?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A No.

2 Q Do you remember if there was anyone else in
3 house at that time?

4 A No.

5 Q Did he take his clothes off?

6 A No.

7 Q Did he take your clothes off?

8 A No.

9 Q So, he was rubbing his penis against you then?

10 A Yes, through --

11 Q What --

12 A -- the blanket.

13 Q I'm sorry, I didn't mean to speak over you.

14 What part of your body was he rubbing it against?

15 A My side.

16 Q What do you mean by your side? Where?

17 A I was laying beside him and he was, basically,
18 rubbing up against the backside of me.

19 Q When you say your backside, are you talking
20 about your buttocks?

21 A Yes.

22 Q Do you know if he ejaculated or not?

23 A I don't remember.

24 Q What -- and so you mentioned this was similar to
25 what Mikey had been doing to you?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A Yes.

2 Q Do you recall what thoughts went through your
3 mind on this first occasion when he was doing that?

4 A I was getting attention.

5 Q Okay. Did you know anything about whether or
6 not it was right or wrong?

7 A I didn't know anything about sex.

8 Q Now, did anything -- so, was that the last time
9 anything happened with Dwayne?

10 A No.

11 Q Well, tell us what else happened -- do you
12 remember if any other incidents happened while you were
13 still living there at Deer Run Road?

14 A I can't remember.

15 Q Okay. So, do you know -- you then ended up
16 moving to this residence, you said, in Seneca when you
17 were, what, six or seven years old?

18 A (The witness nods.)

19 Q Okay. What do you recall about whether anything
20 happened while you were at that residence?

21 A I don't remember specific events.

22 Q Okay.

23 A And it wasn't very frequent at all with him,
24 basically, masturbating with me in the room. Small
25 things, things that wasn't hurting me.

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Q Okay. Tell us what -- when you say he was
2 masturbating, could you see his penis when he would
3 masturbate?

4 A Like I said, if I sat there and I told you a
5 story of me being able to remember when I was that young,
6 actually, being able to see him, I would probably be lying
7 to you. When everything -- when I was physically capable
8 of seeing him and remembering more details was more so
9 when I was nine.

10 Q Okay. Well, let's talk about a little bit more
11 from when before you turned nine, when you start to
12 remember more details. Did other sexual contact happen
13 prior to age nine?

14 A Just, basically, him masturbating and putting
15 his hands in my pants while he done so.

16 Q Okay. While he done -- while he did what?

17 A While he masturbated.

18 Q So, he would put his hands -- where would he
19 touch you when he --

20 A My vagina.

21 Q Did he ever penetrate your vagina with his
22 fingers?

23 A No, he would just rub it. He wasn't hurting me.

24 Q Okay. Where would this take place?

25 A Always in his room.

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Q Okay. Now, let's talk then -- you said when you
2 were about nine and you moved to these residences on
3 Ferguson Road. Did the improper touching continue when
4 you were there?

5 A Yes.

6 Q Did it get -- did it change over time?

7 A Yes, it did.

8 Q In what way did it change?

9 A It got worse and it got more frequent.

10 Q Let's talk about when it was starting up. Tell
11 the jury what he would do to you.

12 A Aside from him -- basically, from that point, it
13 was a normal occurrence that he would -- he would massage
14 my vagina, basically, and he would masturbate. That was
15 the normal thing.

16 Q That's kind of the way it was early on?

17 A Early on. And he wouldn't hurt me.

18 Q Then how did things change over time?

19 A It got to the point where, eventually, he would
20 start to put his fingers -- well, he would also take his
21 penis and rub it between my legs without entering my body.
22 And then --

23 Q Would he take his clothes off when he did that?

24 A He would have his pants off, yes.

25 Q All right. Would --

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A He would be skin to skin.

2 Q Okay. So, he would rub it around your private
3 parts between your legs?

4 A Yes. And he would, basically, use my thighs up
5 against my genitals to get off.

6 Q Would he ejaculate?

7 A Not on me. It was always on him.

8 Q But he would?

9 A Yes.

10 Q Okay. And what other activity would he do?

11 A He would eventually step up and he would put his
12 fingers around my rectum. He would insert the tip of his
13 fingers and whatnot into my rectum. He would kiss me, my
14 breasts. Eventually, there would be oral sex, and then
15 more.

16 Q Now, the oral sex you're talking about, are you
17 talking about would he do it to you or would you do it to
18 him?

19 A He would do it to me while he masturbated.

20 Q Okay. Would it -- did you ever do it to him?

21 A Eventually, yes.

22 Q Okay. Now, tell us about that. Did -- was --
23 how did that come about, that oral sex took place on him?

24 A He just -- he wanted me to put my mouth on his
25 penis and he wanted me to suck.

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1 Q Okay. Did he have to show you or tell you what
2 to do?

3 A Yes.

4 Q Now, when he would touch your rectum with his
5 fingers, would that ever be followed up with anything
6 else?

7 A Eventually, yes.

8 Q And what would happen then?

9 A He would use his fingers -- he would first
10 insert his fingers and then he would insert the head of
11 his penis into my rectum.

12 Q These activities that you're talking about, did
13 they happen before you turned age 11? Would the oral sex
14 and the -- would the oral sex and him putting his fingers
15 in your rectum and vagina, did that happen before you
16 turned age 11?

17 A I remember more of the oral sex being when I was
18 in the house of 79 Ferguson Road, which would have been
19 right at 10 or 11.

20 Q Did it ever occur before you turned 11?

21 A Yes.

22 Q What activities?

23 A Basically, it was more of him doing oral sex on
24 me and masturbating and -- I can't remember.

25 Q Okay. Now, can you tell the jury a little bit,

E. G. [REDACTED] DIRECT BY MR. MOYER

1 especially when you were younger, what you thought about
2 what he was doing to you? What went through your mind?

3 A When I was younger, nothing really went through
4 my mind. I didn't know any better. You know, he wasn't
5 hateful. I was a kid and I didn't know any better.

6 Q Okay. Now, did -- especially early on, did what
7 he do to you physically hurt you?

8 A Early on, no.

9 Q And was he mean to you or --

10 A No.

11 Q Was he loving to you?

12 A (The witness nods.)

13 Q You're nodding yes?

14 A Yes.

15 Q So, what were your feeling towards him during
16 this time?

17 A I was -- he was my step-dad. I looked up to
18 him. He was my -- you know, supposed to be a parent to
19 me.

20 Q Did he treat you like a parent?

21 A Yes, he did.

22 Q Did you love him?

23 A I did.

24 Q Did you care from him?

25 A I did.

██████████ E.G. DIRECT BY MR. MOYER

1 Q You viewed him as your dad?

2 A Yes.

3 Q Did other -- and setting aside what he did to
4 you, what -- how did he treat you?

5 A He was -- he was good. He was nice. You know,
6 we did things that kids are supposed to do. You know, he
7 took us camping. You know, I remember going fishing. He
8 wasn't always bad. He was good. He was caring.

9 Q Now, did he say anything to you about what he
10 was doing? Like --

11 A Basically, it was our secret.

12 Q That's what he would say? Did he ever talk
13 about whether or not you should say anything about what
14 was taking place to anybody else?

15 A One time, we were at his sister's house and, you
16 know, I'm five or -- and I remember her saying -- I guess,
17 I remember her saying something about if anybody ever
18 touched you, you know, to tell her.

19 Well, one day, we went to her house and
20 well, I told her that he had touched me. And then she ran
21 after him. And I guess, you know, asked him about what
22 was it? Well, they never came back to me or asked me
23 anymore questions. And, basically, it was dismissed by
24 him rubbing up on me, he told her that he must have
25 thought that I was my mother.

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1 Q Okay. Did he ever say anything to you about it
2 after that incident?

3 A When we were there at the house, he looked at me
4 like I was in trouble. He gave me that stern look like I
5 had done something wrong. And when we got back to our
6 home, you know, that's when he expressed that, you know,
7 people are not going to understand that, that's our
8 secret, that's something special that we have.

9 Q Did he say that more than once, things like
10 that?

11 A I don't remember specifically, but.

12 Q You remember that time?

13 A Yes.

14 Q About how old were you then?

15 A Five.

16 Q That's when you were really young?

17 A Yes.

18 Q Okay. Now, what areas in your house would this
19 take place?

20 A Mainly, it would always be in his bedroom. Even
21 in the apartment that was on the side of his mom's house,
22 they actually stayed in the living room, so they -- they
23 used the living room as a bedroom because it only had one
24 bedroom. My mom put me in the bedroom and they slept in
25 living room. So, incidents happened in the living room

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1 and the kitchen area because it's just one open area.

2 Q And the other place, like 79 Ferguson?

3 A Always in his room.

4 Q Where would your mom be?

5 A My mom would either have been at work or off to
6 the grocery store.

7 Q Did the -- did the activity continue when your
8 brothers moved into the house?

9 A Yes.

10 Q Okay. How would it -- did that effect it at all
11 when your brothers moved in?

12 A I think it made it a little bit harder for him
13 to find more time, but yet.

14 Q Okay. So, it would still happen in his room?

15 A Yes.

16 Q Okay. Would your brothers sometimes be around?

17 A Yes.

18 Q We'll talk about that in a minute, but was there
19 an occasion, at least, one occasion where you were found
20 out?

21 A Yes.

22 Q Okay. Would it be different times of the day or
23 would it --

24 A Yes, it would be different times of the day.
25 Any time that he thought he could do it and, basically,

E. G. [REDACTED] DIRECT BY MR. MOYER

1 whenever my mom was gone.

2 Q How frequently would this take place?

3 A At least, once a week. It would differ. If he
4 don't have a chance -- he would take any and every chance
5 that he could.

6 Q Were there some weeks it would happen more than
7 once?

8 A Yes, sir.

9 Q And sometimes less?

10 A And sometimes less, yes.

11 Q Just depends on the opportunity?

12 A Circumstances and opportunity, yes.

13 Q Now, I need to ask you -- I hate to ask you
14 specific questions, but you realize I have to ask these
15 questions for the record, right?

16 A Yes.

17 Q Let me talk about when he -- talked about him
18 doing oral sex on you. So, what parts of his body would
19 he use?

20 A I would be on my back and his tongue, lips would
21 be on my vagina.

22 Q Did it ever -- was it around your vagina or did
23 it ever go inside your vagina?

24 A Just around my vagina, my clitoris.

25 Q Would you be totally naked or was it different

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1 every time?

2 A It was different. I wasn't always completely
3 naked. If my pants could go down without having to be
4 taken completely off, then...

5 Q Okay. And as far as the oral sex on him, did --
6 you said he had to show you how to do this?

7 A Yes.

8 Q Do you remember where you were when it first
9 happened on him?

10 A What I remember, I remember like images. And
11 the -- if I can remember the first initial time, we were
12 in the apartment side and he was sitting in a chair. I
13 remember having to put my mouth on him and being told --

14 Q On his penis?

15 A Yes. And being told that, you know, you just
16 suck on it like a sucker.

17 Q Okay. Did he kiss other parts of your body?

18 A He did.

19 Q Did you ever ask him not to do any of those
20 things?

21 A Yeah.

22 Q Okay. What was that?

23 A I wanted to keep my virginity.

24 Q Okay. What about kissing?

25 A I didn't. We didn't really talk about it until

E. G. [REDACTED] DIRECT BY MR. MOYER

1 I was 14.

2 Q Okay. And then what happened with that?

3 A He wanted me to kiss him.

4 Q Okay. Kiss him where?

5 A On his mouth.

6 Q Okay. What did you -- what did you -- how did
7 you react to that request?

8 A I did it. And then I made him think that just
9 the whole nature of tongue kissing was disgusting.

10 Q So, more you didn't like the activity as opposed
11 to him?

12 A Correct.

13 Q Was that the only time that happened?

14 A Yes.

15 Q All right. You mentioned about your virginity,
16 wanting to keep that. Did you?

17 A To an extent.

18 Q Okay. Tell the jury -- first of all, about how
19 old were you on this occasion that you're about to tell us
20 about?

21 A I was nine.

22 Q Okay. Where were you living at that time?

23 A We were at 77 Ferguson Road.

24 Q Okay. What happened?

25 A We were in the living room. My mom was gone.

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1 We were on the couch and he was on top of me. I was face
2 down and he was rubbing his penis in between my legs where
3 it would brush up against my vagina. And he was getting
4 off and it slipped and it poked -- it went in my vagina.

5 Q His penis?

6 A Yes.

7 Q Did he go all the way?

8 A No.

9 Q How did it physically feel?

10 A It made me bleed.

11 Q Okay. Did it hurt at all?

12 A Yes, it did.

13 Q Okay. Did you tell him?

14 A He realized he had slipped and he stopped.

15 Q Okay. You said it bled, did it get blood
16 anywhere?

17 A I went to the bathroom and I was wiping blood.

18 Q Okay. Did you say anything to anyone in your
19 house about that?

20 A I told my mother I got my period because I
21 couldn't -- I couldn't stop the bleeding and I had to wear
22 pads.

23 Q Okay. So, you were nine years old at that time?

24 A Yes.

25 Q Okay. Now, you told us how you felt about

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Dwayne, the Defendant, when you were young and he started
2 doing these things to you. Did your feelings change as
3 you got older and as the activity got more egregious?

4 A Yes.

5 Q How did your feelings change? How did you feel
6 as you got older?

7 A I started to realize that what was happening
8 wasn't okay and that it was wrong.

9 Q Okay. And --

10 A I didn't know how to stop it because the older I
11 got, the more of a girlfriend to him is the relationship
12 that was created. And I would -- I was scared to tell him
13 that I didn't want that, so I played along.

14 Q Was there ever any penetration of your rectum?

15 A Yes.

16 Q Okay. We'll start with his fingers. Did that
17 ever take place?

18 A Yes, he would -- he would stick his finger in my
19 rectum while he got off. And eventually, he would start
20 to put the head of his penis in my rectum.

21 Q Okay. Did it ever get any more egregious?

22 A Yes.

23 Q That activity? Tell the jury what that led to.

24 A I was sick and I stayed home from school one
25 day. And this was at Painter Road. And I was 14. And I

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1 believe this was the first sexual encounter after my mom
2 and him had split apart and he came to our home. And he
3 had fully put himself, his penis in my rectum.

4 Q Did that happen more than one time or one time?

5 A Just the one time.

6 Q Now, generally, when he would put his -- the tip
7 of his penis into your rectum, would he ejaculate?

8 A He would always finish, but not in me.

9 Q Now, when your brothers moved in, in the house
10 with y'all at 79 Ferguson Road, how did the Defendant act
11 toward you and your brothers as far as any interaction you
12 had with him?

13 A I was not allowed to be in the same room with my
14 brothers unless he was in the room.

15 Q Okay.

16 A He did not want me to communicate. He kept me
17 around him.

18 Q Okay. Do you remember any instances where --
19 where anyone saw anything that was taking place in the
20 bedroom?

21 A Yes.

22 Q Tell the jury about that.

23 A We were in the bedroom.

24 Q You and Dwayne?

25 A Me and Dwayne. We had the bedroom door closed.

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1 And he was masturbating with his hand in my vagina -- or
2 rubbing my vagina. And my brother had walked in and seen
3 it. And I pretended that I was asleep.

4 Q Okay. What did -- how did your brother react
5 when he --

6 A I remember hearing him -- like when he opened
7 the door, he asked how long has this been going on?

8 Q What did Dwayne do?

9 A He got up and my brother ran out the room and
10 Dwayne ran after.

11 Q Okay. Did you go out and see what happened out
12 there?

13 A No, I laid in the bed. I did eventually go out.

14 Q Okay. Did you ever talk to your brother about
15 it? I mean, I'm talking about back, not in recent?

16 A No.

17 Q Did you ever go to him and tell him what he saw
18 was accurate?

19 A No.

20 Q So, you kept it from your brother?

21 A Yes.

22 Q Okay. Now, this is what led to you being
23 actually talked to by some law enforcement officers?

24 A Yes.

25 Q And some people from the Department of Social

E. G. [REDACTED] DIRECT BY MR. MOYER

1 Services, DSS?

2 A Yes.

3 Q Okay. And do you remember officers coming to
4 your house?

5 A Yes.

6 Q Did they ask you about whether any abuse was
7 happening with Dwayne?

8 A Yes.

9 Q What did you tell them?

10 A I told them nothing happened.

11 Q Okay. Why -- can you look back at your
12 14-year-old self and think about why you denied it?

13 A I was scared of any and all consequences that
14 could -- I didn't want people to know. I feared what
15 people would have thought of me. I feared at what if they
16 didn't believe me, and whether or not if I said something
17 and they didn't believe, he would try to hurt people I
18 cared about.

19 Q So, at this time, you said you almost felt a
20 little bit like a girlfriend to him. Did you feel some
21 blame yourself for what was going on?

22 A Kind of.

23 Q Now, then you were spoken to by some people from
24 DSS, right?

25 A (The witness nods.)

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1 Q And you didn't tell them either?

2 A (The witness shook her head.)

3 Q You have to say yes or no, sorry.

4 A No, I did not tell them.

5 Q For the same reasons?

6 A Yes.

7 Q Okay. At a later date, I think a few months
8 later, you were talked to by another police officer and
9 you, again, denied it?

10 A Correct, yes.

11 Q Okay. And I think you were actually then --
12 after DSS got involved, you were spoken to by a forensic
13 interviewer, do you remember that?

14 A Yes.

15 Q And taken in a room by yourself with the
16 interviewer?

17 A Yes.

18 Q At that time, what did you say about whether
19 anything was going on?

20 A I didn't want to tell anyone that I knew
21 anything was going on. I think I proposed the idea that I
22 don't know about my brother seeing stuff, but I didn't
23 think anything was going on.

24 Q Okay. So, at this time in your life, you were
25 denying it to everybody who would ever speak to you about

E. G. [REDACTED] DIRECT BY MR. MOYER

1 it?

2 A Correct.

3 Q Okay. And you don't disagree that you had
4 multiple opportunities where you could have said
5 something, right?

6 A Yes.

7 Q And you didn't for those reasons you just told
8 us about?

9 A Right.

10 Q So, were you telling the truth when you spoke to
11 those officers back then?

12 A No.

13 Q Now, you and your mom after that time, y'all
14 moved into that other place on Painter Road?

15 A (The witness nods.)

16 Q You're nodding yes, right?

17 A Yes.

18 Q And then do you remember about how long after
19 that Dwayne came back in to live with y'all?

20 A It wasn't long.

21 Q Like weeks or months?

22 A Maybe months. I'm not accurately sure.

23 Q You were still 14 at that time?

24 A Yes.

25 Q And was -- when he moved back in with y'all, who

E.G. [REDACTED] DIRECT BY MR. MOYER

1 all lived there at that residence?

2 A Me and my mother.

3 Q Your brothers had moved out?

4 A Yes, my brothers didn't live with us on Painter
5 Road.

6 Q Was his demeanor or the way he treated you any
7 different when he moved in at this time?

8 A Not much.

9 Q Did the sexual abuse continue?

10 A Yes.

11 Q Was it the same kind of activity that --

12 A No, that is when he fully penetrated my rectum.

13 Q That was when that happened. But did it happen
14 on more than one occasion that he sexual abused you?

15 A Yeah.

16 Q Okay. The other occasions, was it more of the
17 same thing as far as the oral sex and the touching?

18 A Yes.

19 Q Okay. Then from there, is that when you said
20 you moved in with your father?

21 A Yes.

22 Q And you have not -- up until yesterday, you had
23 not seen Dwayne since then?

24 A Up until the time we were at court the last
25 time.

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1 Q Okay.

2 MR. MOYER: Your Honor, at this time, there's
3 one matter of law that we need to have addressed by
4 the Court.

5 THE COURT: Okay. All right.

6 Ladies and gentlemen, I need to take up a matter
7 of law. If you will return to your jury room, I'll
8 take up the matter and we'll come back out very
9 shortly and resume testimony.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:34 a.m.)

12 MR. MOYER: Your Honor, at this time, I was
13 getting ready to talk about the drug activity that we
14 did bring up briefly in pre-trial.

15 THE COURT: Yes, sir.

16 MR. MOYER: I just -- before I went into that
17 area too far, we didn't have a real clear direction
18 from the Court about that.

19 THE COURT: Drug activity, I presume, goes to
20 the issue of the contributing to the delinquency of a
21 minor?

22 MR. MOYER: That's correct, Your Honor. The
23 testimony, in summary, is essentially going to be
24 different levels of that. From him openly using
25 marijuana in front of her from a very young age to