

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

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SC Court of Appeals

The State, ... Appellant,

v.

Dwayne Cameron Tallent, ... Respondents.

RECORD ON APPEAL

VOLUME III

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DEFENDANT EXHIBITS

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

- 1 A Around 11.
- 2 Q Okay. And that's when he moved away?
- 3 A Yeah.
- 4 Q For a period of time?
- 5 A For a period of time.
- 6 Q So, it stopped when he moved away for that
- 7 period of time?
- 8 A Yeah.
- 9 Q Now, how often would this happen?
- 10 A It would happen like, at least, once a day.
- 11 Q And --
- 12 A Like, he wouldn't have to, like, touch me. He
- 13 just, like, pull on my arm or, like, play around with me.
- 14 It wouldn't be like a sexual thing. Like, he'd just mess
- 15 around with me, like, on an everyday type of thing. But
- 16 once a day, at least, he messed with me, like.
- 17 Q When you say messed with you, is that what
- 18 you're talking about the touching?
- 19 A Like touching.
- 20 Q On your vagina?
- 21 A Yeah, or my chest.
- 22 Q He would touch your chest, too?
- 23 A Yes.
- 24 Q What would he touch your chest with?
- 25 A His hands.

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

1 Q Okay. Did he ever kiss any parts of your body?

2 A I mean, he kissed me before, but he never kissed
3 any parts of my body.

4 Q When he kissed you, where did he kiss you?

5 A On my lips.

6 Q Do you remember how old you were when that
7 happened?

8 A No. I think I was around six or seven.

9 Q Do you remember how that came about that he did
10 that?

11 A Because I asked him about how do people kiss and
12 he showed me. And, yeah.

13 Q Did it just happen that one time?

14 A That one time. Because I felt awkward after
15 that.

16 Q You didn't like that?

17 A No.

18 Q Okay. Did -- when he would touch you, would
19 your clothes be on or would your clothes be off?

20 A Both. I mean, my clothes -- sometimes my
21 clothes would be on, sometimes they wouldn't be on.

22 Q The times your clothes were not on, how would
23 they get off of you?

24 A By him.

25 Q He would take your clothes off? Like, all of

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

1 your clothes or --

2 A Just some of them.

3 Q What about his clothes? Would his clothes --

4 A His clothes would be on.

5 Q Okay. Do you ever recall him touching you with
6 any other parts of his body?

7 A No.

8 Q Do you recall any instances where he touched you
9 with his private parts?

10 A No.

11 Q You didn't remember anything like that?

12 A (The witness shook her head.)

13 Q Okay. Do you remember having spoken to another
14 officer earlier when you first came forward with this?

15 A The only person I really remember talking to was
16 Richter when he came to my school.

17 Q Okay. And you spoke to him. We'll get to that
18 in just a minute. But then after you spoke to him, didn't
19 you speak to another officer about what happened, someone
20 from DSS?

21 A Yes, I did.

22 Q Did you tell them anything about him touching
23 you with his penis?

24 A I didn't tell them the part about him touching
25 me with his penis, I told them about how he touched me and

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

1 messed around with me. But I don't know his name, but I
2 did talk to another officer after that.

3 Q You did?

4 A Okay.

5 Q Now, would he ever say anything to you about
6 what he was doing?

7 A No. He just told me that nobody would
8 understand it and that nobody would understand his love
9 for me.

10 Q Was there anything he said, either that or
11 anything else, that kept you from telling other people
12 about what he was doing?

13 A No.

14 Q So, what kept you from -- or did anything keep
15 you from talking about this to anyone else?

16 A Well, when I first -- well, what kept me from
17 saying it is because at the time when I was younger, I
18 didn't think anything was wrong with it because I didn't
19 know that's not okay. But when E.G. [REDACTED] when I heard
20 about what happened to E.G. [REDACTED] I realized, you know, if I
21 tell and say that this is true, then I might lose my
22 family, the only family that I have. That's what I was
23 really scared about about coming out at first is that I'm
24 going to get sent away, which that did happen, I did get
25 sent away. And I was scared that, you know, my family's

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

1 not going to want to be around me no more, you know,
2 because they might not believe me because they didn't
3 believe E.G. I didn't know if they would believe me or
4 not.

5 Q Did you know E.G.

6 A No.

7 Q When did you first meet E.G.

8 A Yesterday.

9 Q And before you told about what happened to you,
10 did you ever -- did she or anyone from her family ever
11 talk to you or put pressure on you to say anything?

12 A No. I mean, she did text me hey one day and I
13 texted her back, but she wasn't pressuring me. She was
14 just trying to make conversation with me.

15 Q Did you ever feel any pressure from anyone when
16 you finally came out about this?

17 A No, I was just scared.

18 Q Okay. Now, when you first talked to
19 Investigator Richter, that was at your school?

20 A Yes, sir.

21 Q Did you know he was coming to speak to you
22 before he ever spoke to you?

23 A No.

24 Q So, he took you off in a room then?

25 A Yeah, we were sitting in the officer's room at

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

1 the school. I was in math class and I got called out.

2 Q Okay. Was it just you and him?

3 A Yeah, it was just me and him.

4 Q Was there anyone else in the room --

5 A No.

6 Q -- that you recall? Okay, did you tell him what
7 happened?

8 A No.

9 Q Did you feel -- did you come close to it, were
10 you tempted to?

11 A I was tempted to, but, at the same time, I just
12 didn't want that to ruin my day at school. I had the rest
13 of the day and it was just -- I ain't had nobody there
14 with me.

15 Q Were you still having these other feelings that
16 you talked about earlier about not wanting to break up
17 your family?

18 A Yeah, that's what I was feeling at the time. I
19 didn't want the truth to come out and ruin my family, the
20 only family that I have.

21 Q Okay. And then on a later occasion, you ended
22 up telling?

23 A Yes.

24 Q Who did you tell first?

25 A Brittany Peterson.

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

1 Q Is that someone from DSS?

2 A Yes.

3 Q Did she ask you about it?

4 A She said that there were allegations against my
5 step-dad for something that's he'd done to me and I just
6 started crying. And she talked to me about it and she was
7 like, Did he do these things? And I admitted to her that
8 he did do those things.

9 Q Were you telling the truth at that time?

10 A Yes, sir.

11 Q Okay. Now, did he ever -- did the Defendant
12 ever give you anything to wear or anything like that?

13 A Like, underwear.

14 Q Tell us about that. He gave you underwear?

15 A It was just -- like, just underwear.

16 Q Like, would that be in the context of when he
17 was touching you that he would give you the underwear?

18 A No, he just gave me underwear and that would be
19 it, basically. But sometimes, I would wear them and
20 sometimes, I wouldn't.

21 Q Sometimes, you'd wear them when he was touching
22 you?

23 A No, I'd just wear them.

24 Q So, where did he give the underwear to you? Was
25 it in front of the family or was it privately?

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

1 A I mean, I really don't remember.

2 Q You don't remember?

3 A No.

4 Q Okay. Now, did he ever rub up against you,
5 anything like that ever happen?

6 A I mean, he has before, but not -- it's not a
7 constant thing.

8 Q Okay. When you say he rubbed up against you
9 before, what would he do? Can you describe it?

10 A Like come up behind me and just, like, come
11 close to me and then walk away.

12 Q Okay. Did that ever happen when you were in
13 either his room or your room?

14 A No.

15 Q That never happened? Did he ever touch your --
16 you talked about him touching your private area?

17 A Yeah.

18 Q Okay. Did he ever touch your backside, your
19 bottom?

20 A No -- I mean, well, not really, but my legs,
21 yeah, he touched my legs, but he would not touch anywhere
22 on my back or down.

23 Q But he would touch your legs?

24 A Yeah, my legs and my area.

25 Q Your private -- your vagina?

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

1 A Yeah.

2 Q Okay. Did you ever do anything or say anything
3 during this time to indicate -- to try to get him to stop
4 or indicate you didn't want him to do it?

5 A No, I didn't.

6 Q Did you ever push away against him --

7 A I did push away. Plenty of times, I did push
8 away, but I didn't never say nothing to him about it.

9 Q You didn't say anything, but you would -- what
10 would he do if you would push away?

11 A He just still do what he was doing. It wouldn't
12 stop him.

13 Q Okay. So, you mentioned that when he first
14 started doing stuff to you, you didn't really understand
15 it; is that right?

16 A Yeah.

17 Q You didn't know it was wrong?

18 A Yeah, basically.

19 Q And as you got older, did you start -- how did
20 it make you feel as you started to get older and started
21 to realize it?

22 A I felt weird and I felt disgusted with myself.

23 Q You felt disgusted with yourself?

24 A Yeah.

25 Q Okay. One minute, please. Just a couple other

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

1 questions. Did you -- you loved him?

2 A Yes.

3 Q You still love him?

4 A Yeah, I do.

5 Q Okay. Go ahead, I'm sorry.

6 A Yeah, I do.

7 Q Did you want to have to come to court?

8 A No, I didn't.

9 Q Was your life any easier or any harder on you
10 when you finally did talk about it, disclose it?

11 A It was so much harder on me.

12 Q How was it harder?

13 A Because knowing that I came out, I knew that
14 right then and there, the place that I was at was not a
15 safe environment. And I knew that DSS would think it was
16 not a safe environment. I knew that I would be taken
17 from my home. I knew that I would be taken away from my
18 family, which I, basically, have been. Then after all
19 that happened, I was not allowed to see my mom. I
20 wasn't -- now, I'm not even allowed to go anywhere with my
21 brother or my sister. I'm barely able to do anything. I
22 can't call my mom. I can't text her. And, you know,
23 that's my mom and it's hard.

24 Q Okay. You feared all that would happen if you
25 told?

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

1 A I feared that I would lose my family. A lot
2 worse happened than what I thought would happen.

3 Q Okay. So, it's actually been worst than you
4 feared?

5 A Yep.

6 Q Have you had any pressure put on you to change
7 your story?

8 A Yeah.

9 Q Who has that come from?

10 A His side of the family.

11 Q Anyone in particular?

12 A No.

13 Q You didn't want to mention it, but you have had
14 pressure from his side of the family to change your story?

15 A Yeah.

16 MR. MOYER: Okay. Please answer any questions
17 that the Defense has.

18 CROSS-EXAMINATION

19 BY MR. KAPPEL:

20 Q C.R. [REDACTED] there was a time where you were very
21 close to Ma, correct?

22 A Yeah.

23 Q When you lived at 79 Ferguson, you would go to
24 77 Ferguson quite a bit to visit with her and be with her;
25 isn't that right?

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

1 A Yeah.

2 Q She had a swimming pool in the back -- or she
3 does. And she'd take you horseback riding?

4 A Yeah.

5 Q Isn't that right? And you have said that what
6 Dwayne did to you started when you were five, so that
7 would have been in 2006?

8 A Yeah.

9 Q Because you were born?

10 A 2001.

11 Q August 2001. And I guess my question is you're
12 aware that the Department of Social Services came and did
13 some work with the family in 2005, correct?

14 A Yeah.

15 Q That was something unrelated, but DSS became
16 heavily involved with the family; is that right?

17 A Yeah.

18 Q Now, they didn't make you leave?

19 A No.

20 Q And your mother and Dwayne didn't leave from 79
21 Ferguson, but they became highly active with the family;
22 isn't that right?

23 A Yeah.

24 Q And as a result, you had a series of meetings
25 with DSS for the next three to four years they were around

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

1 and involved; isn't that correct?

2 A Yeah.

3 Q And these meetings would be visits with you,
4 visits with the family, and they would talk to you about
5 all kinds of things; isn't that right?

6 A Yeah.

7 Q And by my estimation, you met with DSS no less
8 than 20 times in that three and a half year period, does
9 that sound about correct? Maybe more?

10 A Probably more.

11 Q Okay. And then following, in 2009, that's when
12 you went to live with Ma for a little while, right? You
13 moved next door for a few months; isn't that correct?

14 A Yeah, for a few months.

15 Q Then subsequently, DSS closed their file and you
16 returned to 79 Ferguson Road; isn't that right?

17 A Yeah.

18 Q And then you resumed living with your mother and
19 Dwayne?

20 A Yes, sir.

21 Q Okay. And then in 2012, you moved again back to
22 live with Ma at 79 Ferguson?

23 A Yeah.

24 Q Or excuse me, 77 Ferguson, right?

25 A Yeah.

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

1 Q And you stayed at 77 Ferguson all the way up
2 until this year?

3 A Yeah.

4 Q Isn't that correct?

5 A Yeah.

6 Q And DSS became involved again in 2012 and you
7 moved to 77 Ferguson to be with Ma?

8 A Yeah.

9 Q The DSS again was heavily involved with the
10 family; isn't that correct?

11 A Yes, sir.

12 Q And from 2012 to 2013, you had, again, my
13 estimation, probably no less than 14 meetings with them
14 where they would come and meet with the family, meet with
15 you individually and provide services and talk to you,
16 etcetera, etcetera; correct?

17 A Yeah.

18 Q And at no time during any of these meetings,
19 three, five or more meetings with DSS, you never mentioned
20 any of this to them; isn't that correct?

21 A Yes, sir.

22 Q Now, your relationship with Ma is kind of a
23 complex one, would you not agree?

24 A Yeah.

25 Q Back when you lived with her in 2009 and you

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

1 were there -- you were at 79 Ferguson and you moved in for
2 a couple of months in 2009, you were, give or take, eight
3 years old, eight or nine years old and you had an
4 exceptionally close relationship with her then at that
5 time; isn't that right?

6 A Yes, sir.

7 Q And for all those reasons we've talked about,
8 the swimming pool, the horseback riding and everything
9 else. Now, in 2012, you moved back in with Ma and lived
10 with her up until 2017. It wasn't quite the same
11 relationship, was it?

12 A I mean, it was, but --

13 Q Well, it was starting off?

14 A Yeah.

15 Q But it, ultimately, became very tense, did it
16 not?

17 A Yeah.

18 Q Would you not attribute that to growing pains,
19 you were becoming a teenager?

20 A Yeah.

21 Q You had trouble following direction and
22 instruction from her?

23 A Yeah.

24 Q And you did not want to follow her rules; isn't
25 that correct?

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

1 A Yes, sir.

2 Q And that applied to boyfriends and dating and
3 social activities and everything else; isn't that right?

4 A Does that have to do anything with the --

5 Q I'm just asking you a question. I would just
6 like if you would just answer the question.

7 A Yeah.

8 Q Isn't that correct?

9 A Yes, sir.

10 Q So, what happened from 2012 until 2017 was a
11 very strained relationship between you and Ma even before
12 you reported these events; isn't that correct?

13 A Yes, because I was ADHD and I was a growing
14 teenager.

15 Q Okay. And then when DSS did finally -- when
16 they did intervene and they were sitting down talking to
17 you recently about going to your sister's grandfather's
18 house, they instructed you that you had to follow the
19 rules of the house; did they not?

20 A Yes, sir.

21 Q Do you remember what your reaction was to the
22 caseworker?

23 A Yeah.

24 Q You were very upset over it?

25 MR. MOYER: Your Honor, I object to this line of

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

1 questioning. I understand the earlier line of
2 questioning, but this has no relevance.

3 THE COURT: All right. I'll give you some
4 latitude with regards to cross-examination.

5 BY MR. KAPPEL:

6 Q Isn't that correct?

7 A No, it was not correct.

8 Q So, you went willingly to your sister's
9 grandfather's house and had no problem with the rules of
10 the house or following the rules there; is that right?

11 A In all honesty, I didn't have a problem living
12 with my Poppy. The only problem I had with being over
13 there was I was not allowed to talk to my mother. That
14 was my problem.

15 Q Okay.

16 A And I have all kind of respect for my Poppy.
17 Yeah, he's old, he's grouchy, but that man is my grandpa
18 and I -- any rules that he has, I will stick with them.
19 But the only thing I was mad about was I was not allowed
20 to talk to my mother.

21 Q Okay. Now, you said earlier that -- you
22 described Dwayne as a good person, right?

23 A Yes.

24 Q And that he -- you were about to describe the
25 good things that he does and he treated you like your

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

1 own -- like you were his own daughter, correct?

2 A Yeah.

3 Q And Ma did the same; isn't that right?

4 A Yes, sir.

5 Q And I suppose the issue is to have all this
6 interaction with DSS and you never once felt comfortable
7 talking to them about what had happened?

8 A Because they were talking to me, they were
9 questioning me about were my parents doing drugs at the
10 time. They did not bring up any sex allegations, sexual
11 activity allegations. And because at the time, like I
12 said, I was young and I didn't think what he was doing was
13 wrong.

14 Q But the last date of the DSS was 2013, you were
15 12 then?

16 A Yeah.

17 Q You weren't that young.

18 A Okay. Like I said, I was scared. I didn't want
19 to tell because I was going to lose my family, which to
20 this day, as we can see, I did lose my family.

21 Q All right.

22 MR. KAPPEL: Just a minute, Judge. One last
23 question.

24 BY MR. KAPPEL:

25 Q The activity that you described, no one saw

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

1 this, correct? No one observed this or saw this or
2 anything like that?

3 A No.

4 Q And you didn't tell your sister, R.R. [REDACTED]

5 A No.

6 Q Okay.

7 MR. KAPPEL: All right, that's all I have.
8 Thank you.

9 MR. MOYER: No redirect, Your Honor.

10 THE COURT: Okay. Thank you, ma'am. I
11 appreciate you being here. You may step down.

12 MR. MOYER: One moment, Your Honor.

13 THE COURT: Yes, sir.

14 MR. MOYER: Your Honor, at this time, the State
15 rests.

16 THE COURT: All right, ladies and gentlemen,
17 when the State rests, that means I must necessarily
18 take up some matters of law. I'm going to have a
19 discussion with the attorneys and hear some motions
20 on the record. Then I'm going to talk to the Defense
21 to see if we're prepared to go to the Defense's case.
22 If the Defense is prepared to call a witness -- which
23 again, I've told you, the Defense doesn't have to put
24 any evidence into the record. They have no burden of
25 proof. But if they have a witness they would like to

1 call this afternoon, then we'll continue. If not,
2 probably, what we'll do is we'll start back tomorrow
3 morning. That remains to be seen. I have to have
4 the conversation.

5 So, please take a break, don't discuss the case.
6 And I'll either send a message back to you about what
7 time to be back tomorrow or we'll come back into the
8 courtroom and take more testimony. All right, thank
9 you very much.

10 (WHEREUPON, the jury left open court at
11 approximately 4:10 p.m.)

12 THE COURT: All right, motions?

13 MR. KAPPEL: Judge, just like to renew all our
14 objections that we made prior to, including all the
15 pre-trial motions and then move for a directed
16 verdict. The evidence in the light most favorable to
17 the State does not support a conviction.

18 THE COURT: Okay.

19 Yes, sir, Mr. Moyer, would you like to respond
20 to that?

21 MR. MOYER: Your Honor, the evidence is very
22 clear. I don't think I need to go back over every
23 element, but every element of every charge has been
24 testified to by the witnesses all for the charges
25 that are before the Court.

1 THE COURT: All right. Based on the requisite
2 standard for directed verdict motions, I do view the
3 evidence in the light most favorable to the State and
4 I don't look for the sufficiency or the weight of the
5 evidence. I don't judge the credibility of the
6 witnesses, just look to see whether there's any
7 evidence in the record which would support the
8 allegations upon which a jury could find that the
9 State has met its burden of proof. And under that
10 standard, I respectfully deny the motion for directed
11 verdict.

12 Okay, anything else?

13 MR. KAPPEL: No, sir. Those are the only
14 motions I have, Judge.

15 THE COURT: Okay. Do you intend to offer any
16 evidence, sir?

17 MR. KAPPEL: We do.

18 THE COURT: Do you have any witnesses that you
19 want to call this afternoon that will be short?

20 MR. KAPPEL: My preference would be to start
21 first thing in the morning. I anticipate just
22 having -- let me think for just a minute. Can I have
23 one second, Judge?

24 THE COURT: Sure, yeah.

25 MR. KAPPEL: Well, I'm just going to go off

1 memory. I know I have one, two, three witnesses,
2 Judge. One would -- I think my preference would be
3 just to start in the morning. I think I will be
4 finished -- if we start at 9:00, I would be done
5 conceivably by 10:30, at the latest.

6 THE COURT: All right, good. I don't want to
7 start at 9:00 only because there's so many things
8 that could happen between 9:00 and 9:30, that is
9 things that we need to take up. And then, also, make
10 sure that everybody can get here after whatever they
11 may have to do for their families. I like to start
12 at 6:30 or 7:00, but nobody else seems to agree with
13 me in that regard, so I have really fashioned my
14 practice after what everybody else wants, so 9:30.
15 Let's start at 9:30 tomorrow morning. I'm going to
16 tell the jury to be back at 20 minutes after 9:00 and
17 we'll start as promptly as possible. If there are
18 any issues that y'all need to discuss, you may come
19 see me at 9:00, okay, so we can resolve those before
20 the jury gets here. Okay.

21 Also, if you have any requests for charge, go
22 ahead and give those to me this afternoon. And
23 tomorrow at the close of the testimony, we'll have a
24 charge conversation. If you're done at 10:30, then
25 we may go straight into argument and charge,

1 depending on what time that happens.

2 All right. Thank you. Have a good evening.

3 Tell them to be back at 9:20 tomorrow morning.

4 Don't back it up to 9:15 or 9:10, 9:20 because we're
5 going to try to start at 9:30, okay. Okay.

6 (WHEREUPON, the proceedings were concluded for
7 the day to be reconvened on Wednesday, July 19,
8 2017.)

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1 July 19, 2017

2 MR. MOYER: Your Honor, the Defendant has not
3 been counseled yet as far as whether or not he will
4 testify. I don't know.

5 THE COURT: Do you intend to put your client on
6 the stand, sir?

7 MR. KAPPEL: Your Honor, we do not. I spoke
8 with him this morning and he confirmed that he does
9 not wish to take the stand. Of course, that could
10 change during the course of our presentation. Just
11 for the record, we've had plenty of time to discuss
12 it and he knows it's his decision.

13 THE COURT: Okay. At the close of your case,
14 I'll conduct the colloquy, okay?

15 MR. KAPPEL: Yes, sir.

16 (WHEREUPON, the jury came into open court at
17 approximately 9:41 a.m.)

18 THE COURT: Welcome back, ladies and gentlemen.
19 The State has rested. I have entertained motions
20 from the attorneys and now we're prepared to hear
21 from the Defendant.

22 So, Mr. Kappel, it is your case, sir, you may
23 call your first witness.

24 MR. KAPPEL: Thank you, Your Honor. We would
25 call Ms. Selena Brunson.

1 THE CLERK: Ms. Brunson, please come forward.
2 If you'll please pause at the end of the bench, place
3 your left hand on the Bible and raise your right
4 hand.

5 SELENA BRUNSON, after being duly
6 sworn, testified as follows:

7 THE CLERK: Thank you, please be seated. State
8 your name for the record.

9 THE WITNESS: Selena Brunson. I probably won't
10 need that, I'm pretty loud.

11 THE COURT: Just turn the volume down just a
12 little bit, how about that?

13 DIRECT EXAMINATION

14 BY MR. KAPPEL:

15 Q Good morning.

16 A Good morning.

17 Q Will you introduce yourself to the jury, please?

18 A My name is Selena Brunson. I'm a substitute
19 teacher for the school district in Pickens County. I live
20 in Pickens, South Carolina.

21 Q Okay. Where did you grow up?

22 A In Pickens.

23 Q And you still live in Pickens?

24 A Still live in Pickens.

25 Q Have you lived there pretty much your whole

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 life?

2 A I was born and raised there, but I moved to
3 Greenville when I was about 17 when I met my husband.

4 Q Okay. And you're married?

5 A Yes, sir.

6 Q Do you have children?

7 A We have four children.

8 Q All right. And your husband's name is?

9 A Russell Brunson. He's a firefighter, EMT out of
10 Greenville County.

11 Q Okay. Do you know Dwayne Tallent?

12 A Yes, sir, I've known Dwayne for about 25 years
13 now.

14 Q How did you meet Dwayne?

15 A I met him, actually, the first day I met my
16 husband. They -- I was at work. Like I said, I was 17.
17 And him and my husband came into Little Caesar's where I
18 worked at the time and I've known him ever since.

19 Q Okay.

20 A That was August 31st of 1991.

21 Q So, you remember the date to the exact?

22 A To the exact date, yes.

23 Q How do you remember that?

24 A Because that's -- I mean, who doesn't remember
25 when they meet their, you know, love of their life, who

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 they end up marrying and staying married for -- you know,
2 we've been together 26 years now, so.

3 Q Now, how long did y'all date?

4 A About two years.

5 Q Did you, ultimately, get married? Obviously,
6 you just said so, so you got married?

7 A Yes.

8 Q How old were you when you got married?

9 A I was 19.

10 Q All right. And did you at some point live with
11 Russell before you got married?

12 A Yes, sir, we did.

13 Q How old were you when that happened?

14 A Let's see, I was -- between 17 and 18. It was
15 the summer before I turned 18.

16 Q So, you were pretty young?

17 A Yes, sir.

18 Q How did that go over at your household?

19 A My father was not very happy with the fact that
20 I had moved in with Russell. And we ended up, actually,
21 having to kind of run away. I ran away from home and we
22 ended up, actually, living with Dwayne for a couple of
23 months.

24 Q So, when you say you ended up leaving with
25 Dwayne, was it because --

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 A It was because I was hiding out from my father,
2 yes. I didn't -- yeah. I was trying to get a little bit
3 further away from Pickens.

4 Q So, where was Dwayne living when you and Russell
5 moved in with him?

6 A In Ware Shoals.

7 Q Do you remember the street?

8 A Deer Run, I believe, was the name of the actual
9 road.

10 Q Okay. And what kind of residence was it? Was
11 it a house, a condominium? Was it a trailer?

12 A It was a doublewide trailer, yes, sir.

13 Q And how many bedrooms were in there?

14 A Three, I believe.

15 Q Who was Dwayne living with at that point in
16 time?

17 A He was living with Sherry and E.G.

18 Q Okay. So, there were four of y'all in this
19 residence?

20 A Well, five. There was my husband, myself --

21 Q I'm sorry, five?

22 A Yes, five.

23 Q Do you recall approximately when it was that you
24 moved in?

25 A It was July of 1992.

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 Q Okay. Were you working then?

2 A I was not.

3 Q Was your husband -- or was Russell working then?

4 A He was not working. He wasn't working when we
5 moved in and then he started working.

6 Q Now, you were not working, correct?

7 A No, sir.

8 Q All right. Did you have a lot of -- did you
9 have any money?

10 A No, no, I didn't have any money. I didn't have
11 a car.

12 Q So, what did you do every day?

13 A I read a lot. I read every day. We'd go to the
14 library about once a week and I'd get plenty of books and
15 I would just read. I was always an avid reader. I still
16 am.

17 Q Okay. Well, did you have your own bedroom at
18 Deer Run?

19 A Yes, we did.

20 Q Would you stay in the bedroom and read?

21 A No. It was a very small bedroom, so I was
22 usually sitting out on the couch, you know, just reading.

23 Q Okay. Did you ever leave the house?

24 A You know, to go to the library, but not very
25 far. We had a motorcycle at the time and I really didn't

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 like riding it very much, so I tried to avoid that.

2 Q Okay. So, was your day-to-day existence in this
3 residence?

4 A Yes, sir.

5 Q And how many months did you live there with
6 Dwayne and Sherry and E.G.

7 A About four months.

8 Q Okay. So, if that's four months, that would be
9 July, August, September --

10 A September --

11 Q -- October?

12 A Yes, it was definitely part of October. I don't
13 know the exact date that we moved out.

14 Q All right. So, then that would have -- if
15 E.G. birthday was in 1987, that would have
16 been her fifth birthday; is that correct, in 1992?

17 A As far as I know, she was, yeah.

18 Q Do you recall celebrating her birthday while you
19 were there?

20 A I don't.

21 Q All right. Was there anyone by the name of
22 Mikey that was around at that point in time?

23 A No.

24 Q That was living there or there?

25 A I don't recall anybody by that name there at

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 all.

2 Q Did you interact with Sherry much?

3 A Not an awful lot. She kept to herself a lot.
4 She did stay in her bedroom an awful lot when she was
5 there.

6 Q Did you interact with Dwayne a lot?

7 A Yes.

8 Q Did you subsequently become friends with Dwayne?

9 A Yes.

10 Q What about with E.G. did you interact with her
11 much?

12 A Yeah, she was just a bright, cheerful, little
13 girl running around. I didn't have a lot of cause to talk
14 to her much. She was three or four. But, I mean, she ran
15 around, played, that sort of thing.

16 Q Okay. Did you observe anything unusual, any
17 kind of erratic behavior, any kind of bruising, any kind
18 of -- anything at all that would indicate that something
19 wasn't right?

20 A No, never.

21 Q Okay. Did you -- when you moved out in
22 October 1992, where did you move to?

23 A We moved to our own apartment. We finally saved
24 up enough money and moved to the Bluffs over off of Pelham
25 Road.

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 Q And did you stay in contact with the Dwayne and
2 Sherry?

3 A Oh, absolutely. He was in our wedding.

4 Q What about your children, what are their names?

5 A Russell is -- we have the oldest, who's 22.
6 He's named after my husband, Russell, Russell Brunson, IV.
7 Then our middle son is Austin Cameron. He was actually
8 named after Dwayne, Dwayne Cameron.

9 Q Okay. Did y'all travel together?

10 A We did. We went on several trips together over
11 the years. I know we went camping and I remember that
12 more distinctly because I was extremely pregnant and that
13 was the last time I went camping pregnant ever. We went
14 on a ski trip together with them. And I've always been
15 one to take a lot of pictures, so I've taken pictures over
16 the years of us all together.

17 Q Okay.

18 (WHEREUPON, Defendant's Exhibits Nos. 1 & 2 were
19 marked for identification only.)

20 BY MR. KAPPEL:

21 Q Can you identify what's been marked just for ID
22 for right now Defendant's Exhibits 1 and 2?

23 A All right. In this first picture was one of the
24 --

25 Q Just -- I'm sorry, go ahead, go ahead. I'm

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 sorry. I didn't mean to interrupt you.

2 A Was one of the earliest pictures I have of all
3 of us together. We had gone for a cookout at one of the
4 parks. I'm not exactly sure which --

5 MR. MOYER: At this point without them being in
6 evidence --

7 BY MR. KAPPEL:

8 Q I just want you to briefly just -- just, you
9 know, what are they?

10 A They're pictures of us together with Dwayne and
11 Sherry and E.G.

12 Q Okay. Just a minute. So, do you recognize
13 these pictures?

14 A Yes, sir.

15 Q Did they come from your photo album?

16 A Yes, sir.

17 Q Does it have you and your husband and Dwayne's
18 family in these photographs?

19 A Well, the first one has just my husband in it
20 because I was the one taking the picture. But the second
21 one, we got a server at the restaurant and it has all of
22 us in it.

23 MR. KAPPEL: At this time, Judge, I move Defense
24 1 and 2 in.

25 MR. MOYER: Objection on relevance.

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 THE COURT: Okay. All right. I'll overrule the
2 objection and over objection, I'll allow it into
3 evidence as Defendant's Exhibit -- that might be 2.
4 Which one is that?

5 THE WITNESS: It's 1 and 2, sir.

6 THE COURT: All right, good enough. So
7 admitted.

8 MR. KAPPEL: Thank you, Judge.

9 (WHEREUPON, Defendant's Exhibits Nos. 1 & 2 were
10 admitted into evidence.)

11 BY MR. KAPPEL:

12 Q All right. Let's take them chronologically.
13 Which one is the first one?

14 A This one right here.

15 Q Do you have any idea what year that was
16 approximately?

17 A It has to be '92, early '93. One of the
18 gentleman in this picture was Matt Moon, and he no longer
19 hung out with us. I don't remember very much. I know
20 after our wedding, he wasn't even in the picture. I don't
21 think we even saw him again. I don't know what happened
22 to him. So, I know it's '92 or early '93.

23 Q Okay.

24 A And then this one right here, the second
25 picture, is from 1999. And I know the exact date of that

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 one because the couple that's -- one of the couples that's
2 in the picture, it was actually their honeymoon trip, and
3 we all went skiing together. So, it was March 2nd of
4 1999.

5 Q So, there's about a seven -- or excuse me, about
6 a three year span in these pictures?

7 A No, more like about six or --

8 Q Six years?

9 A Yeah, six years.

10 Q All right. And when you would go on these
11 trips, E.G. would go with y'all?

12 A Yes, sir.

13 Q And did you, again, observe anything unusual,
14 anything that caused you to be concerned?

15 A Absolutely not.

16 Q Did you observe any inappropriate contact or
17 touching between E.G. and Dwayne?

18 A No.

19 Q Was E.G. a happy child to you?

20 A She was. I mean, she was -- even in the
21 picture, she's smiling. She was a happy little girl,
22 bubbly, excitable, glad to be going with us and getting to
23 do stuff. I mean, you know, in one -- I don't have the
24 picture here, but it was one that I had brought to you. I
25 don't know if you just didn't have it, but we went camping

SELENA BRUNSON-DIRECT BY MR. KAPPEL

1 with them in between these two pictures where we are in
2 tents. And, you know, she was running around and, you
3 know, acting like little girls do. I have kids, I know
4 how they act.

5 Q Okay.

6 MR. KAPPEL: Just a minute, Judge.

7 THE COURT: Yes, sir.

8 BY MR. KAPPEL:

9 Q Do you -- has Dwayne spent any time with your
10 children?

11 A Oh, yes, sir.

12 Q How old are they now?

13 A Seventeen, 18, 19 and 22.

14 Q Boys? Girls?

15 A The youngest is a girl.

16 Q Okay. Ever have any concerns with Dwayne being
17 around your children?

18 A No, never.

19 Q Ever observe anything unusual with your children
20 and Dwayne?

21 A No.

22 Q Okay.

23 MR. KAPPEL: I don't have anything further.

24 THE COURT: Yes, sir.

25 MR. MOYER: I have no questions, Your Honor.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 THE COURT: Thank you, ma'am, appreciate your
2 being here. You may be excused.

3 Mr. Kappel, you may call your next witness.

4 MR. KAPPEL: We call Lenore Brissey.

5 THE CLERK: Ms. Brissey, if you'll please come
6 forward. If you'll please pause at the end of the
7 bench, place your left hand on the Bible and raise
8 your right hand.

9 LENORE BRISSEY, 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: Lenore Brissey.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MR. KAPPEL:

17 Q Good morning.

18 A Good morning.

19 Q Will you do me a favor, just introduce yourself
20 to the jury.

21 A My name is Lenore Brissey and I'm Dwayne's
22 mother.

23 Q Okay. You'll need to really try to scoot up so
24 everybody can hear you, okay?

25 A Okay.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

- 1 Q Lenore, where were you born?
- 2 A Berlin, Germany.
- 3 Q How long have you been living in South Carolina?
- 4 A Since '62.
- 5 Q And where do you live?
- 6 A 77 Ferguson Road, Piedmont.
- 7 Q How long have you been at Ferguson Road?
- 8 A Since '85.
- 9 Q And were you living there with your first
- 10 husband, initially?
- 11 A Yes.
- 12 Q Can you describe Ferguson Road to the -- well,
- 13 let me back up for a second. Tell me about your
- 14 education.
- 15 A Well, of course, high school, college, nursing
- 16 school.
- 17 Q Okay. Are you a registered nurse?
- 18 A Yes.
- 19 Q How long have you been a nurse?
- 20 A I graduated in '82.
- 21 Q So, when did you retire?
- 22 A The end of 2011.
- 23 Q All right. How many children do you have?
- 24 A Three.
- 25 Q What are their names?

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 A Debbie, Diana and Dwayne.

2 Q Okay. Now, Ferguson Road, tell the jury what --
3 what is Ferguson Road?

4 A It's a road with maybe -- I've never counted,
5 but about 10, 12 houses and all houses have acreage.

6 Q Do you have acreage?

7 A Yes, I do.

8 Q How many do you have?

9 A Thirteen -- well, 13 to 14.

10 Q Okay. Is it just your house on the property?

11 A No.

12 Q How many houses do you have there?

13 A My daughter's on one side and my son's on the
14 other.

15 Q Okay. Have they always been there?

16 A Not always, no.

17 Q Okay. So, how did they come to live on the farm
18 with you?

19 A Well, my daughter moved after they lost -- sold
20 their house in Piedmont. I -- to be honest with you, I'm
21 really bad with the timeline, so I don't know what year.
22 I'm assuming around '90.

23 Q Okay. So, you have a daughter. Is she married?

24 A Yes.

25 Q And she leaves near you?

LENORE BRISSEY-DIRECT BY MR. KAPPEL

- 1 A Yeah, next door.
- 2 Q Okay. And who else lives out there?
- 3 A My son and Cindy.
- 4 Q That would be Dwayne?
- 5 A Yeah.
- 6 Q Where do they live?
- 7 A They live on -- if you're facing the front, on
- 8 the left side.
- 9 Q Okay. And you -- did you already have the house
- 10 there?
- 11 A Yes. We moved it from White Horse Road.
- 12 Q What do you mean you moved it?
- 13 A Well, they were putting a road through and it
- 14 belonged to my mother-in-law, so we took the house up and
- 15 moved it there.
- 16 Q Was this a second house on the property?
- 17 A Yes.
- 18 Q Who initially lived in the house when you put it
- 19 there?
- 20 A Initially, I rented it.
- 21 Q Okay. And then subsequently?
- 22 A Dwayne moved in.
- 23 Q Dwayne moved in?
- 24 A Uh-huh.
- 25 Q All right. And when he moved in, he had -- who

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 did he have with him?

2 A Initially, he had Sherry and E. G.

3 Q Okay. And did they live with you for a little
4 while before they moved into --

5 A They were in the mother-in-law apartment until
6 the renters finished their lease.

7 Q Now, I want to talk about this because I want
8 you to try to describe -- you called it a mother-in-law
9 suite. I want you to try to describe that for me for the
10 jury.

11 A It's an open kitchen, dining, living room and it
12 has a bathroom and a bedroom.

13 Q But is it connected to your house?

14 A Via the laundry room and it has its own
15 entrance.

16 Q Okay. So, you have your house. And the
17 mother-in-law suite is on the left-hand side or the
18 right-hand side?

19 A If you're facing the house, it's on the
20 right-hand side.

21 Q And it has its own separate entrance?

22 A Yes, it does.

23 Q Does it share a porch?

24 A No.

25 Q And there's a way to go back and forth from one

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 side to the other?

2 A Right, through the laundry room.

3 Q All right. Now, how many bedrooms were in the
4 mother-in-law suite?

5 A Just one.

6 Q And you said it was Sherry, Dwayne and E. G.
7 that moved in initially?

8 A Initially. Well, my mother was there.

9 Q Well, I'm sorry, but when -- your mother was
10 there --

11 A Until she passed away.

12 Q Okay. So, after your mother passed away,
13 Dwayne, Sherry and E. G. moved into the mother-in-law
14 suite?

15 A Yeah.

16 Q Now, if there's only one bedroom, how could they
17 accommodate the three people?

18 A Well, E. G. was like my granddaughter, so, at
19 times, she would come in, stay upstairs or sleep on the
20 couch, just depended on what the situation was.

21 Q All right. So she could come and go in your
22 house as much as she wanted to?

23 A Right, as much as she wanted to.

24 Q So, did it feel more like a one large house with
25 a connection?

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 A To be honest with you, it did.

2 Q Okay. Now, E. G. was not your natural -- do you
3 have natural grandchildren?

4 A Yes.

5 Q How many?

6 A Three.

7 Q E. G. was not a grandchild?

8 A No. Not biologically, no.

9 Q Did that cause you to treat her any differently?

10 A No. I always felt that she was my
11 granddaughter.

12 Q All right. Would you -- tell me about -- talk
13 about some of the things that you would -- well, do you
14 have any idea how old E. G. was when she moved into the
15 mother-in-law suite?

16 A The mother-in-law suite, it must have been after
17 my mom passed, so it would have to be about '96.

18 Q Okay.

19 A Or thereabouts. Like I said, I'm not great at
20 timelines.

21 Q Okay. So, she was about nine years old or so?

22 A Approximate.

23 Q All right. Let's talk about some of the things
24 that are on the farm that you could do with her as far as
25 activities?

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 A Well, summertime, I have a swimming pool, so we
2 could swim. I have horses, so we'd go horseback riding.
3 One of her favorite things to do was go shopping. We did
4 that.

5 Q Okay. Did you do those activities with E.G. as
6 much as you did with your other grandchildren?

7 A Yes.

8 Q Okay. And did she enjoy spending time with you
9 as best you could tell?

10 A As best I could tell, she did.

11 Q As best you could tell, she enjoyed the
12 horseback riding?

13 A Yes.

14 Q Talk to the -- how long was this activity of
15 horseback riding? Try to explain to the jury if you don't
16 mind -- you know, 13 acres, how would you -- what would
17 you do?

18 A Well, we wouldn't just stay on my property.
19 There was like 40 acres up the road and across the road,
20 there was, at least, 40 more until they built a
21 subdivision. And we would ride, we would talk. It was
22 just a nice relaxing time. Just pleasure riding, you
23 know, just relaxed.

24 Q Okay. Did you have a route that you would
25 usually do?

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 A No, it was sort of spontaneous. Just wherever
2 we felt like going.

3 Q Was there a time -- a typical time period --
4 well, let me -- the duration of the horseback rides, would
5 it typically take a certain amount of time?

6 A Well, it couldn't be under an hour because by
7 the time you get them saddled, brushed and everything, you
8 still have to unsaddle them and brush them down and wash
9 them off before you put them up.

10 Q All right. Did E.G. help you with the saddling
11 and the brushing and all those things?

12 A Yeah, I tried to show her how to take care of
13 the horses and do all that.

14 Q How many horses did you have or do you --

15 A Two.

16 Q Two?

17 A Uh-huh.

18 Q So, was this activity just -- this was a
19 two-person activity?

20 A Right, that's all it would be.

21 Q If you could guess the number of times she went
22 horseback riding, do you have any idea?

23 A I have not a clue. Probably once a week, maybe.
24 And I was working so, you know, had to get the time
25 schedule right. Probably once a week because I enjoyed

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 it.

2 Q Okay. The -- you have a swimming pool as well?

3 A Yes.

4 Q Talk about that a little bit.

5 A Well, we would go swimming. In the summertime,
6 that was just one of the favorite activities. And it was
7 available to her because it was next door at any time.

8 Q So, when you say next door, you're referring to
9 when they moved to 79 Ferguson?

10 A Yeah, yeah.

11 Q Okay. Do you recall what year it was that
12 Sherry and E.G. moved?

13 A Next door?

14 Q No, I'm sorry, when they moved from 79 Ferguson?

15 A When they moved from 79 --

16 Q Do you remember?

17 A It was after 2011.

18 Q You mean --

19 A 911.

20 Q 911?

21 A Yeah, 911.

22 Q So, would October of 2001 sound right to you?

23 A Yes.

24 Q So, E.G. basically, lived, as best as you can
25 tell, either in the mother-in-law suite for a while and

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 then this house next door for about five years?

2 A Probably, yeah.

3 Q I think you said '96?

4 A Yeah.

5 Q So, '96 to 2001?

6 A Uh-huh.

7 Q And did you spend a great deal of time with her
8 during that period?

9 A As much as I could, yes.

10 Q I understand grandparents want to spend as much
11 time as they possibly can with their grandchildren, it
12 still may not translate to a whole lot of time --

13 A Well, as I said, I was working, so the days I
14 had off and, of course, she was going to school, too. So,
15 yeah.

16 Q All right. Did you -- did you help her with her
17 schoolwork at all or help her with her studying or
18 anything of that sort?

19 A Some.

20 Q Did you talk to her about kind of -- I'm going
21 to say it as delicately as I can, but adolescent womanly,
22 kind of physiological things?

23 A Yes, definitely.

24 Q Did you have those talks with her as well?

25 A Yes.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 Q Did you feel that you had grown -- or made a
2 special connection with E.G.

3 A I felt like that, yes.

4 Q When Sherry and E.G. moved in October 2001, did
5 that come as a surprise to you?

6 A Yes, it did.

7 Q How come?

8 A Well, Sherry and I never had a really close
9 relationship, so she wouldn't be telling me anything. So,
10 of course, I didn't know.

11 Q Do you recall watching or seeing them move --

12 A Yes.

13 Q -- their belongings?

14 A Yes.

15 Q Did you have an occasion on that day to talk to

16 E.G.

17 A Yes.

18 Q Can you describe to the jury what her demeanor
19 was or what she said to you on that day?

20 A She was crying. She didn't want to go. She
21 hugged me. I hugged her back, you know, told her I was
22 always open for her, whenever she was ready, she could
23 come and do things together.

24 Q All right. Did she make any comments to you
25 about her feelings toward your son, Dwayne?

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 A She said she wanted her mom and Dwayne to stay
2 together so she could stay there.

3 Q Okay. After they moved -- did you have a whole
4 lot of contact with [E.G.] after they moved?

5 A No, I did not.

6 Q Okay. Did you ever see any correspondence
7 response from her after she moved?

8 A A letter not too long after she moved that
9 Dwayne showed me. I can't give you the exact words, but
10 the whole summary of the letter was, basically, that she
11 missed him as a dad. Talking to him about she missed the
12 farm and she missed being there and would like to be, you
13 know, back together again.

14 Q Now, was the letter addressed to you or was it
15 addressed to --

16 A It was addressed to Dwayne.

17 Q Okay. Do you have any other activities at the
18 farm that you do with the kids? You said you golf or
19 something, I don't know.

20 A Yeah, we do golf. But that more started more
21 with my second husband than it did with the first. He
22 didn't golf.

23 Q Okay. So, that's just something you did with
24 your current husband?

25 A Yes.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 Q Now, of all the years that you were there with
2 E.G. -- or E.G. was there with you, from 1996 to 2001,
3 and the horseback rides that you would do where it would
4 be just the two of you for, at least, an hour at a time,
5 all the conversations you had with her about school and
6 biology and whatever, of all those occasions, did you ever
7 have any opportunity to observe anything that would give
8 you some concern about E.G. welfare?

9 A No.

10 Q Okay. Did you ever see her with any bruising,
11 any kind of physical condition of any sort that would give
12 you any kind of concern?

13 A No.

14 Q Did E.G. ever confide in you at all at any time
15 that she was in danger or that she was upset or anything
16 about whatever Dwayne may have been or may not have been
17 doing to her?

18 A No.

19 Q If you did have a concern about it, what would
20 you have done?

21 A That's something that would not have been
22 tolerated. I, myself, would have called the police.

23 Q Okay. Realizing it's your son, you sure about
24 that?

25 A Yes.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 Q Now, I want to talk to you about somebody else,
2 of course, and that's C.R. And she is
3 someone else that you know; isn't that correct?

4 A That's right.

5 Q She is also not a biological grandchild of
6 yours?

7 A Right.

8 Q She is the daughter of Cindy?

9 A Right.

10 Q Okay. And do you remember -- so E.G. and
11 Sherry left in October of 2001. Do you recall when Cindy
12 and C.R. moved in, and R.R.

13 A Not exactly. Might have been 2003, somewhere
14 along there?

15 Q So, it might have been a couple years
16 afterwards?

17 A Yeah.

18 Q You were okay having them there?

19 A Yeah.

20 Q Did you do some of the same things that we've
21 already discussed with C.R. and R.R.

22 A Yes.

23 Q I'm referring to your swimming pool, horses?

24 A Yes, sir.

25 Q Did they like those activities?

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 A [C.R.] wasn't too great with the horses, but
2 she liked the swimming.

3 Q So, she preferred swimming?

4 A Yes.

5 Q Did you spend a lot of time with her as well?

6 A Yes.

7 Q Did you have kind of the same, similar
8 relationship with [C.R.] as you did with [E.G.]

9 A Yes.

10 Q Did you help her with her schoolwork?

11 A Yes.

12 Q Did you help her with other activities?

13 A Yes.

14 Q I mean --

15 A Soccer. She liked soccer.

16 Q Would you help drive her to soccer?

17 A Yes.

18 Q Was she taking dance lessons or things --

19 A No, soccer was her main.

20 Q All right. And at some point, [C.R.] and
21 [R.R.] -- or [C.R.] came to live with you, correct?

22 A Right.

23 Q That would be moving -- she would move from 79
24 to 77 Ferguson?

25 A Yes.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 Q Do you remember when that was?

2 A End of 2011.

3 Q Okay. Now, was there another occasion where she
4 came in and lived with you as well? Was there another
5 period of time where she might have lived with you?

6 A When she was about eight years old for about
7 three months.

8 Q So, that would have been 2009?

9 A Yeah.

10 Q And when she moved in with you in 2009 where it
11 was just next door, was it just you and C.R. and your
12 husband?

13 A Yes.

14 Q And did you take care of her?

15 A Yes.

16 Q She was eight years old?

17 A Uh-huh.

18 Q I'm sorry, you need to say yes or no.

19 A Yes, I did take care of her, yes.

20 Q You cooked for her, I suppose?

21 A I cooked, washed, cleaned.

22 Q Okay.

23 A Provided transportation, took her to church, you
24 know, all the things a parent's supposed to do.

25 Q Okay. And I suppose that that furthered your

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 bond or connection with C.R. correct?

2 A Yes.

3 Q So, that was for a couple of months in 2009?

4 A About three months.

5 Q About three months in 2009?

6 A Uh-huh.

7 Q At some point, finally, she moved back to 79
8 Ferguson?

9 A Correct.

10 Q To be with Dwayne and Cindy?

11 A Right.

12 Q Okay. And would you still see her from time to
13 time?

14 A Oh, yeah.

15 Q Would you still even in 2010 or what have you
16 when she's 10 years old, would you do horseback riding
17 or -- you said she didn't like that very much, but the
18 swimming and --

19 A Yeah.

20 Q -- other activities?

21 A Yes, of course.

22 Q Would you take C.R. shopping as well like you
23 did E.G.

24 A I did.

25 Q Where would y'all go shopping, if you remember?

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 A Well, different places. She liked the mall.
2 She liked Plato's Closet when she was 13. That was one of
3 the places and the prices were right.

4 Q Now, at some point, she came back to live with
5 you again, correct?

6 A Yeah, the end of 2011.

7 Q So, basically, early 2012?

8 A Yes.

9 Q And how long did she live with you there?

10 A Until this year.

11 Q Until 2017?

12 A Yes.

13 Q And it was C.R. and her sister were there?

14 A Right.

15 Q R.R.

16 A Uh-huh.

17 Q Once again, it was yourself, your husband and
18 these two in your household?

19 A Yes.

20 Q All right. And you cooked for them, took care
21 of them, what have you?

22 A Right.

23 Q Helped them with their schoolwork?

24 A Yes.

25 Q Did activities, went shopping, all of those

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 kinds of things?

2 A That's correct.

3 Q And had C.R. attitude changed at all or
4 her -- toward you at all from the period of 2009 to 2011
5 or '12, did it change at all?

6 A Her attitude towards us didn't change -- or
7 towards me.

8 Q Right.

9 A What changed was she became 13.

10 Q Well, talk about that. What happened?

11 A Well, you know, you get puberty, then their
12 attitude changes, yes.

13 Q All right. How did that effect your
14 relationship with C.R.

15 A Well, I had to be more of a disciplinarian than
16 she liked.

17 Q Okay. And did that put a strain on your
18 relationship with her?

19 A I don't believe so. She knew that it was right.

20 Q Okay. What kind of restrictions would you place
21 on her?

22 A She was grounded. I took her phone. She had to
23 do extra chores.

24 Q Okay.

25 A She couldn't go anywhere.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 Q All right. Would you discipline her when she
2 would do things that were wrong?

3 A Yes.

4 Q Would you restrict her ability to date or go
5 out?

6 A Dating, I was very leery about because -- I just
7 thought it would be a good idea that it was done under
8 supervision. So, I would allow her boyfriend to come to
9 the house, we would be there. She wanted to walk
10 downtown, I would -- me and Heyward, we'd walk behind and
11 she'd walk in front of us. We'd do the different things,
12 you know, the different things they have downtown, some of
13 the music or whatever. And that's what I would allow.

14 Q Okay. Did that -- did she ever express any
15 frustration about that to you?

16 A Yeah. She expressed frustration, but it was
17 just to her best interest not to do that.

18 Q Okay. Do you think that your structure as we're
19 talking about, do you think that -- do you think she was
20 happy living under those restrictions?

21 A Well, I'm sure --

22 MR. MOYER: Objection to speculation.

23 THE COURT: All right. I sustain that
24 objection.

25

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 BY MR. KAPPEL:

2 Q Did she ever express any frustration to you
3 about the restrictions she was living under?

4 A Yes. She wanted to have a little more freedom
5 to go off, but because of her, I decided that was not in
6 her best interest.

7 Q Did she ever raise her voice to you at all?

8 A Definitely.

9 Q Well, talk about that for a minute.

10 MR. MOYER: Your Honor, I would object to this
11 line of questioning as continuing on as just not
12 being relevant and veering off into, I guess,
13 character evidence of the witness.

14 THE COURT: Okay. I'll overrule.

15 You may ask the question, sir.

16 MR. KAPPEL: Thank you.

17 BY MR. KAPPEL:

18 Q Talk about that if you don't mind.

19 A When she would yell at me?

20 Q Yes, ma'am.

21 A I yelled back.

22 Q Okay. Did that -- that's not kind of an ideal
23 grandmother or grand or --

24 A Oh, yeah, it is.

25 Q -- step-grandchild relationship, but --

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 A If I got louder than her, she understood what I
2 was talking about.

3 Q Okay. Would she follow your instruction? I
4 mean, if you got louder than she did, would she --

5 A Yes, then she would do what she was supposed to
6 do.

7 Q Okay. Now, talking about C.R. and all the
8 time you spent with her, both from when they lived at 79
9 Ferguson from 2003 or '4, whenever, to when she moved in
10 with you in 2009 at 77 for two or three months, and then
11 from 2009 or 2010 until early 2012, when she was back at
12 79 Ferguson, 2012 to 2017, did she ever tell you that your
13 son, Dwayne, was touching her inappropriately?

14 A No.

15 Q Did you ever have any reason to believe that was
16 happening?

17 A No.

18 Q As a nurse, did you notice any kind of physical
19 problems or anything that would give you some concern that
20 her safety or welfare was not good?

21 A No.

22 Q Of all the times that you were -- I suppose you
23 were with her by herself, just the two of y'all numerous
24 times, correct?

25 A Yes.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 Q Whether it's in the car driving to soccer, the
2 two of y'all going shopping, correct?

3 A Right.

4 Q The two of all swimming?

5 A (The witness nods.)

6 Q All of those activities, never at any time was
7 she ever -- or did she ever explain to you or tell you
8 that Dwayne was touching her inappropriately?

9 A Never.

10 Q If she had told you, even though it's your son,
11 what would you have done?

12 A Like I said, I don't tolerate that type of
13 behavior and I would have gotten some legal help in there.

14 Q Okay. Excuse me for just a minute.

15 MR. KAPPEL: Just a minute, Judge, please.

16 THE COURT: Yes, sir.

17 BY MR. KAPPEL:

18 Q I want to ask you one quick question.

19 A Okay.

20 Q That's in inference to E.G. brother,
21 Christopher.

22 A Yes.

23 Q Do you recall Christopher and the older brother,
24 Joseph, would come and visit?

25 A Uh-huh.

LENORE BRISSEY-DIRECT BY MR. KAPPEL

1 Q On weekends or what have you, correct?

2 A Yes.

3 Q Did you ever have any opportunity to observe
4 Christopher's physical condition at any time when he came
5 to visit?

6 A You're referring to?

7 Q I'm just asking did you ever see anything --
8 physical condition that was unusual or anything?

9 A Yes, they called me one time. Evidently, his
10 father was a preacher of some sort and he was talking
11 about demons, so he decided that he would cut himself in
12 order to let the demons out. And his mother called me to
13 look at the cuts because he had also poured wax in them.

14 Q They asked you because you're a nurse?

15 A Right.

16 Q Okay.

17 MR. KAPPEL: Lenore, the Solicitor is going to
18 ask you some questions now, so if you would please
19 answer his questions.

20 THE WITNESS: Okay.

21 MR. MOYER: I have no questions, Your Honor.
22 Thank you.

23 THE COURT: All right. Thank you, ma'am,
24 appreciate your being here. Thank you.

25 MR. KAPPEL: Judge, I would ask if -- I don't

DIANA ROGERS-DIRECT BY MR. KAPPEL

1 intend to call her again. If she can remain in the
2 courtroom, Ms. Brissey?

3 THE COURT: Sure, you may.

4 You don't intend to call her, do you?

5 MR. MOYER: No, sir.

6 THE COURT: Sure.

7 MR. KAPPEL: Judge, we're ready for our next
8 witness.

9 THE COURT: Okay.

10 MR. KAPPEL: Diana Rogers.

11 THE CLERK: Ms. Rogers, if you would please come
12 forward. If you'll please pause at the end of the
13 bench, place your left hand on the Bible and raise
14 your right hand.

15 DIANA ROGERS, after being duly sworn,
16 testified as follows:

17 THE CLERK: Thank you, please be seated. State
18 your name for the record.

19 THE WITNESS: My name is Diana Rogers.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. KAPPEL:

23 Q Good morning.

24 A Hi.

25 Q How are you?

DIANA ROGERS-DIRECT BY MR. KAPPEL

1 A I'm fine.

2 Q Okay. You are one of Lenore's daughter,

3 correct?

4 A Yes, sir, I am.

5 Q And you're obviously, therefore, Dwayne's

6 sister?

7 A Yes, sir.

8 Q And tell me, where do you live?

9 A I live at 77 Ferguson Road.

10 Q So, you live with your mom?

11 A Yeah.

12 Q Are you married?

13 A Well, I'm a widow.

14 Q Widow. Do you have any children?

15 A No, sir.

16 Q Okay. You -- I want to take you back to 1992.

17 A Okay.

18 Q Were you living at the farm in 1992?

19 A No.

20 Q Do you recall if you were living near Dwayne?

21 A I lived one street over.

22 Q Okay. So, would that be close to Dwayne?

23 A Oh, yeah. Uh-huh.

24 Q Did you visit or spend any time with Dwayne?

25 A Sure.

DIANA ROGERS-DIRECT BY MR. KAPPEL

1 Q In 1992?

2 A Sure.

3 Q Do you recall who was living with him?

4 A Yes, he was living with Sherry and E.G. and I
5 believe -- I'm not quite sure who else was living there,
6 maybe Debbie and Selena.

7 Q So, you knew Sherry and E.G.

8 A Oh, yes, sir.

9 Q Okay. And did you spend some time with them?

10 A Yes, sir.

11 Q Did you do any activities with them, go out for
12 dinner?

13 A We played cards a lot.

14 Q Would you do that at their house?

15 A No, they usually came to our house.

16 Q And this was your house and your husband?

17 A Yes, sir.

18 Q Did you have any time to spend with E.G. just
19 the two of you?

20 A Yeah.

21 Q What would y'all do, just the two of y'all?

22 A We watched a lot of Barney.

23 Q Okay. I suppose E.G. was very young at that
24 point?

25 A Yes, sir.

DIANA ROGERS-DIRECT BY MR. KAPPEL

1 Q Do you have any idea how old she was during that
2 period of time?

3 A Let's see, about three or four.

4 Q Okay. Anytime after that, after she was four,
5 did y'all spend time together, too?

6 A Yeah, a little here and there. She was a friend
7 of my granddaughter's. My husband's granddaughter, let me
8 rephrase that.

9 Q Okay.

10 A Uh-huh.

11 Q Did you observe anything about her behavior,
12 E.G. behavior, or any kind of thing about her physical
13 condition that gave you any concern that her safety or
14 welfare was in jeopardy?

15 A Oh, no, sir.

16 Q Did E.G. ever approach you and tell you at any
17 time that your brother, Dwayne, was touching her
18 inappropriately?

19 A No, sir.

20 Q Now, understanding you're his sister?

21 A Oh, yeah, I know. I wouldn't care. If I had
22 known something like that, there would have been a
23 problem.

24 Q Okay. So, what you're suggesting then is that
25 you would have done something about it?

DIANA ROGERS-DIRECT BY MR. KAPPEL

1 A Oh, yeah.

2 Q Is that something if she had told you, you would
3 have remembered, you think?

4 A Oh, definitely. How could you forget something
5 like that? It's not something you would forget.

6 Q Okay. To be clear, did she ever tell you
7 anything?

8 A No, huh-uh.

9 MR. KAPPEL: All right. Just a minute, Judge.

10 THE COURT: Yes, sir.

11 BY MR. KAPPEL:

12 Q Let me ask you this real quick, did Dwayne and
13 your husband work together?

14 A Yes.

15 Q Did you work then at that time?

16 A No, huh-uh.

17 Q Okay. So, when Dwayne would go to work, would
18 he bring **E.G.** to your house?

19 A Every once in a while. Most of the time, she
20 was on the bus with her mother. Because her mother drove
21 a school bus.

22 Q So, her mom, typically, would take **E.G.** on the
23 bus?

24 A Yeah, because she drove a school bus, so, you
25 know.

DIANA ROGERS-DIRECT BY MR. KAPPEL

1 Q But you did -- you said a few times she would
2 come stay with you?

3 A Yeah, there were times that she would not be
4 going to school or something. She'd stay at the house
5 with me and watch cartoons, eat, play.

6 Q Okay.

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

8 THE COURT: Any cross-examination?

9 MR. MOYER: No questions, Your Honor.

10 THE COURT: All right, thank you, ma'am. I
11 appreciate your being here.

12 THE WITNESS: Thank you.

13 THE COURT: You have any additional witnesses?

14 MR. KAPPEL: Judge, I have one more.

15 THE COURT: All right.

16 MR. KAPPEL: Debbie Seymore. Debbie Seymore.

17 THE CLERK: Ms. Seymore, please come forward.

18 If you'll please pause at the end of the bench, place
19 your left hand on the Bible and raise your right
20 hand.

21 DEBBIE SEYMORE, after being duly
22 sworn, testified as follows:

23 THE CLERK: Thank you, please be seated. Please
24 state your name for the record.

25 THE WITNESS: Debbie Marie Seymore.

DEBBIE SEYMORE-DIRECT BY MR. KAPPEL

DIRECT EXAMINATION

BY MR. KAPPEL:

Q Good morning.

A Morning.

Q You are one of Lenore's daughters?

A Yes, I am.

Q Where do you live?

A At 75 Ferguson Road.

Q Is that on the farm?

A Yes, it is.

Q Okay. How long have you lived there?

A Twenty years almost.

Q Okay. And that would put us back to what year
would that be?

A 1997.

Q Okay. Who do you live there with?

A My husband, Kenneth Seymore.

Q All right. And are you married?

A Yes, I am.

Q Do you have children?

A Yes, I do.

Q How many children do you have?

A Three sons.

Q Okay. And Dwayne is your younger brother?

A Yes, sir, my only brother.

DEBBIE SEYMORE-DIRECT BY MR. KAPPEL

1 Q Your only brother, but younger brother?

2 A Yes.

3 Q And do you recall a time where your brother was
4 living at 79 Ferguson Road?

5 A Yes.

6 Q Do you remember who he was living there with?

7 A Yes, I do.

8 Q Who was that?

9 A It was Sherry and E. G.

10 Q Okay. Did you spend time with Sherry and E. G.

11 A Yes.

12 Q Would you see them periodically?

13 A Oh, yes.

14 Q Describe when or where you would see them?

15 A Almost daily, I mean, in passing because we
16 lived on the farm together. So therefore, you know, we'd
17 see each other all the time.

18 Q Would y'all have activities at the swimming pool
19 where everybody would be together?

20 A At the swimming pool, family gatherings,
21 holidays.

22 Q Cookouts or whatever?

23 A Yes.

24 Q Did you spend any time specifically with E. G.

25 A Yes.

DEBBIE SEYMORE-DIRECT BY MR. KAPPEL

1 Q And did you develop any kind of relationship
2 with her?

3 A I believe so, yes.

4 Q It was kind of like an aunt --

5 A Yes.

6 Q -- niece relationship?

7 A Yes.

8 Q Did she look to you at all for any kind of
9 support for anything?

10 A Well, I mean, we did crafts together.

11 Q Right.

12 A So, if she had a project at school, I'd help her
13 out and that sort of thing.

14 Q Where would y'all do that?

15 A At my house.

16 Q At 75?

17 A Yes, sir.

18 Q Now, at any time, did you -- would you take care
19 of **E. G.** when she was not feeling well?

20 A Yes. I mean, I specifically went and got her
21 one day when she was sick from school and kept her all
22 day.

23 Q You kept her at your house?

24 A Yes, I did.

25 Q Okay. Do you recall, did she have the flu or a

DEBBIE SEYMORE-DIRECT BY MR. KAPPEL

1 fever?

2 A It was like the flu, yes. She was throwing up,
3 had that fever.

4 Q All right. Did she -- you specifically
5 recollect that day?

6 A Yes, I do.

7 Q Was that the only time you ever took care of
8 her --

9 A All day, yes, it is.

10 Q -- when she wasn't feeling well?

11 A Yes, it is.

12 Q Do you have any idea where E.G. was living at
13 that point in time?

14 A Yeah, she was living at 79 Ferguson.

15 Q So, she was still living on the farm?

16 A Yes, she was.

17 Q Okay. When -- you said you kept her the whole
18 day?

19 A Yes.

20 Q When did she go home?

21 A After Sherry got home from work.

22 Q So, Sherry came home and just picked her up and
23 took her back to --

24 A Took her back to her house, yes.

25 Q Did E.G. express any objection to leaving your

DEBBIE SEYMORE-DIRECT BY MR. KAPPEL

1 home?

2 A No.

3 Q Okay. Of all the times that you have seen her
4 and spent time with her, have you ever noticed anything
5 about her physical appearance, any kind of bruising or any
6 kind of comments that she might have made?

7 A No.

8 Q Or touching that you might have observed between
9 Dwayne and E.G. that would give you any concern about her
10 welfare?

11 A No, sir.

12 Q Never, never once?

13 A Never once.

14 Q Okay. Now, you're Dwayne's sister?

15 A Yes, I am.

16 Q That means something. If you had observed
17 something of that sort, would you have done something
18 about it?

19 A Oh, yes, immediately.

20 Q Okay.

21 A We don't tolerate anything like that.

22 Q Okay.

23 MR. KAPPEL: All right. Just a moment, Judge.

24 THE COURT: Yes, sir.

25 MR. KAPPEL: Thank you very much. I have no

DEBBIE SEYMORE-DIRECT BY MR. KAPPEL

1 further questions. He may, so.

2 MR. MOYER: No questions, Your Honor.

3 THE COURT: Okay. Good enough.

4 Thank you, ma'am. You may step down. I
5 appreciate your being here.

6 All right. Anything further from the Defense?

7 MR. KAPPEL: No, Judge. I think we're probably
8 at a good spot to take a quick break.

9 THE COURT: All right. Ladies and gentlemen, at
10 this point, I want to -- I want you to take a break,
11 but I'm going to give you a little homework while
12 you're in your jury room, okay. Someone needs to act
13 as the foreperson of the jury. Now, a foreperson of
14 the jury has the responsibility of ensuring that
15 everyone during deliberation has a voice. That is,
16 everyone has the opportunity to offer their opinion.

17 Now, when 12 people who don't know each other
18 come together from different walks of life, different
19 parts of the county, there will be some people who
20 are going to be louder and more opinionated than
21 others, some who will be more reluctant and more
22 resent to give their opinion and offer their opinion
23 in deliberations. So the foreperson's job is just to
24 make sure that everyone has the opportunity to be
25 heard.

1 Now, beyond that, I really can't tell you how
2 you're going to conduct your deliberations. I've
3 never been on a jury. I'm not allowed to encroach
4 upon a jury's space. So, I don't know how juries
5 specifically conduct deliberations. But I do know
6 that each juror settles on its own most effective and
7 efficient way of conducting deliberations. And I'm
8 sure you'll settle in on the most effective and
9 efficient way of doing so as well. Again, the
10 foreperson can take whatever control of that process
11 he or she deems appropriate. And moreover, will just
12 ensure that everyone has the opportunity to be heard,
13 okay.

14 So, additionally, what the foreperson will do is
15 if the jury has any questions during deliberations,
16 the foreperson will write those down, deliver them to
17 the bailiff and I will answer those to the extent
18 that I'm capable of answering the question.
19 Sometimes I get questions that I just can't answer.
20 So, you write those down, you send them to me and
21 I'll answer them if I can. Also, the foreperson will
22 fill out the verdict forms as well.

23 So, if you'll go back in there, I want you to
24 elect your foreperson.

25 And then, also, Ms. Fryer, what I want you to do

1 is get some menus and I want you pass out some menus.

2 We're going to order your lunch today so that we
3 can continue to work on this case and resolve it
4 before close of business today if you deem
5 appropriate. Ultimately, it's your decision when you
6 end your deliberations. All right, so I'm going to
7 take up some business with the lawyers. Y'all do
8 that for me. And then we'll come back in as promptly
9 as possible. Okay. Thank you.

10 (WHEREUPON, the jury left open court at
11 approximately 4:27 a.m.)

12 THE COURT: Okay. Mr. Kappel, your client does
13 not intend to testify in this case?

14 MR. KAPPEL: I believe that is his -- he wishes
15 to exercise his right to remain silent. I don't know
16 if you want to question him or I can tell you about
17 our discussion.

18 THE COURT: Yeah, let me get some matters on the
19 record. It will be very short. And you can add
20 anything you want to.

21 Mr. Tallent, would you stand and raise your
22 right hand.

23 DWAYNE TALLENT, after being duly
24 sworn, testified as follows:

25 EXAMINATION

DWAYNE TALLENT-EXAMINATION BY THE COURT

1 BY THE COURT:

2 Q You understand that you have a right to remain
3 silent under the Constitution, that's a right against
4 self-incrimination, which mean that in this proceeding,
5 you're not compelled to do, say or prove anything. You
6 can exercise your right not to testify if you want to.
7 Understand that if you elect not to testify, you will not
8 have the opportunity to tell the jury your side of the
9 story. That's a risk that you assume when you choose not
10 to testify. However, if you do choose not to testify,
11 that is a sacred constitutional right. And I will
12 instruct the jury that they cannot hold that against you,
13 that you have no -- you have no requirement to testify or
14 offer any evidence. Not only is that so sacred that they
15 cannot even discuss in the jury room your election not to
16 testify.

17 Now, understand as well that you do have a
18 corresponding right to testify if you want to. But
19 understand if you testify, again, you do assume certain
20 risks. And that is The State can ask you questions in an
21 attempt to impeach your credibility. Ask questions
22 related to the story that you offer to the jury and could
23 potentially ask you questions related to any prior record
24 that you may have. And I don't know whether you have one
25 or not, nobody has advised me of that. But in any event,

DWAYNE TALLENT-EXAMINATION BY THE COURT

1 you understand, again, that you incur certain risks if you
2 elect to testify or not.

3 Now, ultimately, the decision to testify or
4 not is yours. You may discuss it with Mr. Kappel and he
5 may give you certain advice in that regard, but,
6 ultimately, it's your decision. You can discuss it with
7 family members. They may offer their opinion as well.
8 But again, it's your decision ultimately and no one
9 else's.

10 So, Mr. Tallent, have you made the decision
11 whether you wish to testify or not?

12 A Yes, sir.

13 Q And are you going to testify?

14 A No, sir.

15 Q And that is your decision, sir?

16 A Yes, sir.

17 THE COURT: Thank you, Mr. Tallent, I appreciate
18 it. You make take your seat.

19 All right. Anything further, Mr. Kappel?

20 MR. KAPPEL: Judge, we just have that one other
21 issue and wanting to call that one additional
22 witness. I'll be happy to proffer her testimony
23 right now.

24 THE COURT: Let's just make sure we understand
25 what the issue is. I don't know that it's been

1 articulated on the record.

2 MR. KAPPEL: It hasn't.

3 THE COURT: At the beginning of the case, the
4 Defense counsel made a motion to sequester witnesses,
5 which I granted. There is a witness remaining which
6 the defense wishes to call, however, that witness was
7 in the courtroom during the proceedings, listened to
8 testimony, listened to the testimony of, as far as I
9 know, the relevant witness, which was Ms. Rosado, if
10 I'm not mistaken.

11 MR. KAPPEL: That's correct.

12 THE COURT: And her testimony would be offered
13 in response or reply or bearing upon Ms. Rosado's
14 testimony; is that correct?

15 MR. KAPPEL: That's correct.

16 THE COURT: So, having heard that at bar, I
17 elected to deny her ability to testify in this case.

18 If you want to proffer that testimony, you can
19 bring her up.

20 MR. KAPPEL: All right, thank you, sir.

21 CYNTHIA ROSADO, after being duly
22 sworn, testified as follows:

23 THE CLERK: Thank you, please be seated. State
24 your name for the record.

25 THE WITNESS: Cynthia Marie Rosado.

CYNTHIA ROSADO-DIRECT BY MR. KAPPEL

DIRECT EXAMINATION

1

2 BY MR. KAPPEL:

3 Q Good morning.

4 A Good morning.

5 Q I just have a few questions for you and it's in
6 reference to your daughter, C.R. [REDACTED]

7 A Okay.

8 Q I wanted to ask you specifically about where
9 she's living right now.

10 A With her grandfather.

11 Q What is his name?

12 A Carl Rosado.

13 Q Do you know what she calls him?

14 A Poppy.

15 Q Do you know if she has been compliant with -- or
16 let me ask you this question. As C.R. [REDACTED] mother, have
17 you had numerous discussions with the Department of Social
18 Services?

19 A I have only had one discussion with Brittany.
20 And the only reason I got that discussion because one day,
21 R.R. [REDACTED] had gone down there to talk to her. I've been
22 asking them to call me or try to call them. They haven't
23 called me or answered. She told me -- she told R.R. [REDACTED] at
24 that point she was too busy because -- well, R.R. [REDACTED] went
25 down there and asked her why we haven't spoken and the

CYNTHIA ROSADO-DIRECT BY MR. KAPPEL

1 lady told her that I wasn't answering my calls. And I
2 told her no, she hasn't called me.

3 Q I want to ask you a question and I want you to
4 listen to my question carefully, okay?

5 A Yes.

6 Q Do you know how C.R. has been doing at
7 Poppy's?

8 A No, not according to any official person. I
9 haven't actually been notified that she was at Poppy's.

10 Q Do you know if the police have been called
11 regarding any kind of disputes between her and Poppy?

12 A I know C.R. called me crying telling me that
13 Poppy called the cops on her a couple times the day before
14 yesterday.

15 Q When did C.R. call you?

16 A Not day before yesterday, the day before --
17 maybe Sunday, this past weekend, her grandfather called --
18 supposedly called the cops on her. I texted R.R. and
19 C.R. but.

20 Q Do you know if the police were really called?

21 A I have no idea.

22 Q Do you know if she's been following Poppy's
23 directions or instructions?

24 A I don't know what his instructions are, but I do
25 know that she has said that she's going to do what she

CYNTHIA ROSADO-CROSS BY MR. MOYER

1 wants. I mean, I've seen hickies on her neck. I've seen
2 just different attitudes that really just floors me.

3 Q All right.

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

5 THE COURT: I don't presume you have any
6 cross-examination in as much as it's simply proffered
7 evidence? You can.

8 CROSS-EXAMINATION

9 BY MR. MOYER:

10 Q You were in the courtroom when C.R. [REDACTED]
11 testified, weren't you?

12 A I was.

13 MR. MOYER: That's all the questions I have.

14 THE COURT: Okay.

15 All right, thank you, Ms. Rosado. I appreciate
16 it.

17 Okay, anything further from the Defense?

18 MR. KAPPEL: No, nothing further.

19 THE COURT: Okay. Anything in reply from the
20 State, sir?

21 MR. MOYER: No, not on this matter.

22 THE COURT: All right. If y'all will -- we're
23 going to take a brief recess. We'll come in chambers
24 and we'll discuss charge, which shouldn't take us
25 very long. I haven't received any proposed jury

1 charges from you, so I presume you have none?

2 MR. MOYER: No, Your Honor, I don't believe I
3 have.

4 THE COURT: That's fine.

5 MR. KAPPEL: We'll just talk about a couple in
6 particular.

7 THE COURT: We'll do that. You still need to go
8 to your office to get those notes?

9 MR. KAPPEL: I do.

10 THE COURT: We'll do it pretty quick and then
11 you can go pretty quick.

12 The reason I let them elect their foreperson is
13 to give some homework to do so they wouldn't be
14 sitting there doing nothing while we're doing all
15 this. Okay, so y'all come on back and let's talk
16 through it.

17 MR. MOYER: Just for the record, Your Honor, you
18 did deny allowing the witness to testify?

19 THE COURT: I did. Inasmuch as that witness is
20 sympathetic to the Defense posture, was sitting in
21 the courtroom during testimony. And inasmuch as I
22 gave specific instructions at the beginning of the
23 trial that that sequestration order had to be policed
24 by the attorneys and she was in the courtroom.
25 Again, deny her opportunity to offer evidence in this

1 matter.

2 MR. MOYER: Thank you.

3 (WHEREUPON, a short break was taken.)

4 THE COURT: Okay.

5 Yes, sir.

6 MR. KAPPEL: Judge, before we bring the jury in,
7 I need to rest in front of them.

8 THE COURT: Sure.

9 MR. KAPPEL: And just out of my own sense of
10 caution, I wanted just to simply renew all my motions
11 of directed verdict, etcetera. I don't know that
12 it's necessary, but.

13 THE COURT: All right. Okay, well, you renew
14 those motions. And the rulings articulated by the
15 Court remain the same.

16 All right. Bring the jury in, please.

17 And for everyone's information, the jury has
18 selected Mr. Gourley, Juror No. 64, as the foreperson
19 of the jury.

20 (WHEREUPON, Court's Exhibit No. 1 was marked for
21 identification only.)

22 (WHEREUPON, the jury came into open court at
23 approximately 11:27 a.m.)

24 THE COURT: All right, Mr. Gourley, I see that
25 you've been elected as foreperson of the jury.

1 MR. FOREPERSON: Yes, sir.

2 THE COURT: Congratulations. You must have run
3 a very successful campaign.

4 MR. FOREPERSON: It was a vote.

5 THE COURT: Well, congratulations. You can put
6 that on your resume as you apply for jobs.

7 Mr. Kappel, does the Defense rest, sir?

8 MR. KAPPEL: We do, Judge. I just want to take
9 a quick moment to renew all the motions that we've
10 made, direct verdict, all the motions that have been
11 articulated by the Court.

12 THE COURT: Okay, you're protected on the record
13 in that regard.

14 Ladies and gentlemen, the Defense rest at this
15 time. It's my understanding that the State does not
16 intend to offer any evidence in reply. So, we'll
17 move to closing arguments and to charge on the law.

18 Before I do that, I do want to say that you note
19 that the Defendant, Mr. Tallent, elected not to
20 testify in this case. As I told you at the very
21 beginning of this case, the Defendant does not have
22 the burden of proving anything in the case. And
23 under the Constitution, we all have a right to remain
24 silent, and Mr. Tallent has elected to exercise that
25 Constitutional right.

1 Now, ladies and gentlemen, because that is a
2 Constitutional right that we all enjoy, you cannot
3 hold that fact against him. That is, you can't hold
4 it against him in your deliberations that he elected
5 to exercise his constitutional right to remain
6 silent. As a matter of fact, it's so important, so
7 important to us as a society and in the justice
8 system, that you're not even allowed to discuss it in
9 your deliberations in this case.

10 Now, ladies and gentlemen, as we go to closing
11 arguments, I remind you what I said when we began,
12 that closing arguments are not evidence. You've
13 already heard all the evidence that you will receive
14 in the case. Each party will have the opportunity to
15 attempt to convince you of their position, to
16 persuade you to their side. They'll be commenting on
17 the evidence, but you will have already heard all the
18 evidence.

19 Understand as well, from time to time, attorneys
20 will have disagreements about what the evidence
21 shows, about what the facts are. And understand
22 that, ultimately, notwithstanding what either party
23 may say about what the evidence showed or what you
24 should take from the evidence, it's entirely up to
25 you to determine what the evidence was, what the

1 value of that evidence is and what the facts are in
2 the case.

3 Ladies and gentlemen, The State will have the
4 opportunity to open, then the Defense will have the
5 opportunity to argue and respond. And then, lastly,
6 The State will have the opportunity to get up and
7 briefly respond to the Defense's argument. Then I'll
8 give you a closing charge on the law.

9 All right, Mr. Moyer, your argument, sir.

10 CLOSING STATEMENT

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

13 THE COURT: Yes, sir.

14 MR. MOYER: Good morning, Mr. Foreman and ladies
15 and gentlemen of the jury. First thing I want to
16 mention as I start my closing argument and remarks is
17 that, as you've heard, the evidence portion of this
18 trial is now over. So, you're not going to be
19 receiving any more witnesses. I say that because
20 every once in a while, we've had jurors who send a
21 note back saying well, we want to hear from so and so
22 or we'd like to see this or we'd like to see that.
23 That's over with. For the most part, things like
24 witness statements and police reports, things like
25 that are not admissible into evidence under the

1 rules. They are -- every once in a while, there
2 are -- there actually was one in this case where you
3 were able to hear Christopher Greco's interview with
4 Investigator Richter. Other than that, there will be
5 no more evidence that will be introduced.

6 Now, as you've heard a number of times
7 throughout this trial, the State has the burden of
8 proof. The Defendant comes into this courtroom
9 innocent. And he is innocent until that burden --
10 until that burden of proof is met by the State. I
11 want to tell you, ladies and gentlemen, up front that
12 the State gladly accepts the burden in this case. We
13 understand that's a fundamental principle of our
14 jurisprudence and of our law and we gladly accept it
15 in this case.

16 Keep in mind, ladies and gentlemen, that the
17 burden -- what that burden of proof is, it is beyond
18 a reasonable doubt. So, it's a doubt supported by
19 reason. Another way of describing it is being firmly
20 convinced after hearing all the evidence of the
21 Defendant's guilt. So, it's not all doubt, or it's
22 not every doubt. I once heard someone call it a
23 shadow of a doubt. Whatever that is, it's not that
24 either. They're very few things in this world that
25 we can know beyond any doubt. The criminal justice

1 system does not require that either. So, it's beyond
2 a reasonable doubt.

3 So, in every case, from the most seemingly
4 insignificant case that can come before a jury -- for
5 example, in South Carolina, you can get a jury trial
6 for a traffic ticket. In that situation, you would
7 not have to pay that fine for running a red light
8 until a jury was convinced beyond a reasonable doubt.
9 So, from that to the most seemingly significant case.
10 Say, for example, a capital murder case. It's the
11 same in all criminal cases.

12 So, in every case where somebody has been found
13 guilty and held responsible for a crime, a jury just
14 like yourself has had to meet -- has had to look at
15 the evidence and decide that that evidence has been
16 met by a beyond a reasonable doubt.

17 So, let's talk first about what the charges are
18 before you. I talked about this a little bit at the
19 beginning of the case. And His Honor is going to
20 instruct you fully here when the Defense attorney and
21 I are both finished. But I want to talk just a
22 little bit about the four charge that are before you.

23 Contributing to the delinquency of a minor is
24 one of the charges. And under that, it is unlawful
25 for a person, for an adult to contribute to the

1 delinquency of a person who's under the age of 18.
2 So, the law actually list many ways this can happen.
3 And among them are several that I have flagged that
4 are applicable in this case. It is unlawful to
5 encourage, to aid or to cause a child to violate the
6 law. It is unlawful to encourage a child to
7 associate with immoral persons, or to frequent the
8 place, the existence of which is in violation of the
9 law. Or to import himself or herself in a way that
10 would endanger his or her morals or health.

11 So, think back over the evidence that we have
12 heard in this case. Have those elements been met in
13 this case? Well, we have heard from two juvenile
14 children, two juveniles. We have heard from
15 E.G. [REDACTED] and from Christopher Greco, who
16 testified that while they were both under the age of
17 18, this Defendant did aid, encourage or enlist them
18 in situations where these crimes are committed.

19 For example, we know about the sexual conduct
20 that occurred with E.G. That would fit. What else
21 do we know? We know about the drug activity. We
22 know about the Defendant gave marijuana to E.G. from a
23 very young age up until around the time she left the
24 home. We know he did the same thing to Christopher.
25 We know that he was cooking crack cocaine in the

1 house. When Christopher had that accident and he got
2 that sum of money, you heard testimony from the boys
3 that he would take that money and he would go out and
4 he would bring cocaine into the house. And after
5 they got tired of snorting all that cocaine, he
6 taught them how to cook crack cocaine so they could
7 take it in a different form.

8 That ladies and gentlemen, all of that activity,
9 I think makes it very clear that the Defendant is
10 guilty of the crimes. And you can find that he was
11 guilty of that towards either one of those children
12 because the statute has the initials of them both,
13 both **EG** and Chris. And if you find that his conduct
14 in the home endangered their health or their morals
15 or made it a place that -- where crimes were
16 committed for either one of them, then he's guilty of
17 this charge.

18 The next charge is criminal sexual conduct and
19 there are first degree and second degree. And as I
20 talked about in my opening, criminal sexual conduct
21 requires several different elements in order to have
22 been violated. One is a sexual battery. Sexual
23 battery is a variety of conduct, but is sexual
24 intercourse. It is oral sex, both cunnilingus and
25 fellatio and any intrusion however slight of any part

1 of a person's body into the genital openings of
2 another. So, it covers digital penetration, even
3 slightly, or vaginal or rectal penetration. And the
4 child has to be -- for first degree has to be under
5 age 11.

6 So, think back again through the evidence with
7 regard to E.G. Did we have sexual battery with
8 regard to E.G. when she was under the age of 11? She
9 testified that this conduct, the touching, which
10 started to include penetration of her vagina and
11 started to include penetration, even slight, of her
12 rectum and oral sex both on her and him -- and her on
13 him all happened from a much earlier age than age 11.
14 She flagged it at about age nine.

15 And I picked up on one specific instance where
16 she testified when she was nine years old and she
17 testified about how the incident when they were on
18 the couch. And she said, It seemed accidental, but
19 he was moving like he often did, moving between her
20 legs and that it partially slipped into her vagina.
21 So, there's an incident under age of 11. Did it
22 happen over the age of 11? And if it did, he would
23 be guilty of second degree criminal sexual conduct.
24 And once again, she testified very clearly that all
25 of that conduct, both the digital penetration, the

1 partial penetration of his penis into her all
2 happened -- and oral sex, all took place after the
3 age of 11, also. We can think of, also, another very
4 specific incident that she talked about when she was
5 age 14 when he actually inserted his penis all the
6 way into her rectum. So, her testimony clearly met
7 all of the elements of criminal sexual conduct first
8 degree and second degree.

9 The final charge, the fourth charge is lewd act
10 on a minor. And this covers sexual touching that
11 took place that was not sexual battery. In other
12 words, it would incorporate all the times he touched
13 her in places he shouldn't have on her body that did
14 not include a sexual battery. And the evidence --
15 the record is replete with evidence of that.

16 So, what is the evidence that we have in this
17 case that the Defendant did this conduct? Well, we
18 have [E.G.] testimony. We have [E.G.] testimony, first
19 and foremost. She was the first witness who
20 testified. As you know, she stayed on the stand the
21 longest. And what did she say? She spent a lot of
22 time -- and I had to go into graphic details, which I
23 hated to do both for her sake and for your sake, but
24 it is necessary under the circumstances. But she
25 spent a great deal of time looking back over these

1 years of her life from about age five to age 14
2 recalling incidents that happened over all of these
3 many years of her life.

4 And as you remember, she talked about it both in
5 generalities and detail. And why is that? And it's
6 understandable. Think about activities that you did
7 routinely over a long period of time. For example,
8 going to school. You can look back and say yes, I
9 know I went to school every day when I was seven
10 years old. You can't recall many instances
11 specifically where you were there other than those
12 that stood out. That is why she testified the way
13 she did. She remembers over these long period of
14 time there would be the touching. And you recall,
15 she said it would happen multiple times a week in
16 general. In the case of C.R. [REDACTED] it happened, she
17 testified, especially towards the end, almost every
18 day. E.G. testified how that happened.

19 Then she give you some specifics. She talked
20 about the very first time. As you recall, that stood
21 out to her because it was the first time. The way --
22 she remembers the way he -- on the very first
23 occasion, he rubbed up against her with his penis.
24 Now, why did that stand out? Well, yes, it was the
25 first time, but why else did it stand out? Because

1 it's exactly what that other man was doing to her.
2 That man called Mikey. Remember how she testified
3 that months before the Defendant started doing this
4 to her, this guy who was in the home was doing the
5 same thing? She didn't understand what it was, but
6 she recognized it when the Defendant did it. And
7 then it took place.

8 And she gave you other instances. She gave you
9 instances that the stood out. For example, when his
10 penis actually -- she used the word slipped into her
11 vagina and when he penetrated her fully anally. And
12 she gave you no reason -- and I'm going to talk about
13 this in a few minutes, but she gave you no reason why
14 she would not be telling the truth. And that's all
15 you would need to convict, ladies and gentlemen.
16 This case could have ended then. And in many
17 situations like this, it does. It could have ended
18 with just the victim's word.

19 Because why is that? Because these are the
20 kinds of crimes that are done in secret. They are
21 done in private. The Defendant doesn't want to be
22 caught. He takes care and he takes effort to make
23 sure the situation is such that he won't be caught.
24 It's in a bedroom. Mother's gone out to work or to
25 the store and he has these moments alone. But in

1 this case, we have more than that. We have
2 corroboration. We have corroboration first from two
3 brothers who were in the home. How did that happen?
4 The Defendant got lazy. The Defendant let his guard
5 down. He started having the victim come into his
6 room, as you heard them talk about many, many times,
7 many times. And on a couple of occasions, he was
8 caught.

9 Let's talk about what Joey testified to. You
10 remember Joey. He's actually seated here in the
11 first row. He's the oldest brother. Lives up in
12 North Carolina now. He came down here to testify in
13 this trial. And what did he -- he talked to you
14 about three specific instances where he saw something
15 that looking -- well, the first two of which looking
16 back on now fits. And he understands. But as he
17 testified yesterday, at the time, he didn't want to
18 believe what the worst possible explanation could be.
19 Because it's too awful to think about.

20 What's the first instance he talked about? He
21 talked about how he went back -- the door was
22 cracked. He went back to go to the bathroom, the
23 door to the Defendant's room was cracked open a
24 little bit. And when he looked in, all of a sudden,
25 the Defendant jumped away from the bed where he had

1 been, towards the end of the bed, which would be
2 towards where the feet of E.G. would be. He jumped
3 away. E.G. is in the bed, under the covers. The
4 Defendant jumped away and had a startled look in his
5 eyes. Deer in headlights is what he said.

6 And he said, What?

7 And Joey just went on. And like I said, surely,
8 it can't be, surely, it can't be the worst
9 explanation. And he went on.

10 Then there's the other incident. And the other
11 incident he testified about, again, a similar
12 scenario where he saw into the room and, again, E.G.
13 is in the bed. E.G. is under the covers. And the
14 Defendant is moving in such a way that it appeared
15 that he was masturbating. And once again, the worst
16 possible explanation is just too horrible to
17 understand and to believe. So, at the time, he just
18 chose to think it can't be what -- it can't be that.

19 But then there was a final explanation -- there
20 was a final incident. And this is the incident he
21 didn't actually see, but Christopher did. Joey was
22 in the home and he was sitting on the couch.
23 Christopher went to the back and, all of a sudden, a
24 few minutes later, Christopher comes running out and
25 makes the comment that Dwayne is molesting our

1 sister, goes running outside. And following him is
2 this Defendant, who's throwing coolers at him.
3 That's the final time. And that's when they left the
4 home. They haven't seen him since, you heard.
5 That's when he was gone. He also talked about how,
6 again, in retrospect, looking back on it, how the
7 Defendant always seemed to be touching her, always
8 seemed to be touching E. G.

9 And then Christopher testified. Christopher
10 testified, again -- and you heard it when he was
11 interviewed by Investigator Richter. Investigator
12 Richter said, When's the first time you started
13 noticing something was wrong?

14 Once again, Christopher says, Well, looking back
15 on it, he was always touching her. He would be
16 rubbing the inside of her thighs. He would be
17 touching her all the time.

18 Then there was the other incident. It was the
19 incident where he saw it when he went to the
20 bathroom. He looked -- he heard a moan. He heard
21 moaning coming from inside the room. He was able to
22 look into the room through the keyhole and what did
23 he see? He saw the Defendant, one hand on E. G. and
24 one hand masturbating himself. And you heard what he
25 said, he opened the door.

1 And he said, How long has this been going on you
2 sick bastard?

3 At that point, the Defendant comes running out
4 of the room chasing him. Christopher runs down the
5 hallway, tells his brother what he said, runs out.
6 The Defendant starts throwing coolers at him saying,
7 This could ruin my life. This could ruin my life.

8 And what happened? They tell their dad. Their
9 dad tells law enforcement. DSS and law enforcement
10 gets involved. They tell that to the authorities,
11 but E.G. is not ready to tell. So, it doesn't go
12 anywhere.

13 Then we have other corroboration, and that is
14 the testimony from C.R. As you recall, C.R.
15 testified yesterday. And the reason she testified
16 yesterday is because of how absolutely similar her
17 case was to E.G. Keep in mind, these girls didn't
18 know each other. E.G. and C.R. didn't know each
19 other. They knew of each other. They had heard
20 about each other, but they didn't know each other,
21 they didn't talk. There can be no explanation that
22 they somehow got together and confabulated stories.

23 What did C.R. talk about? Let's think about
24 the similarities in the scenarios. Age, number one.
25 Both started at age five. It ended with C.R. at

1 age 11, which is a few years before it ended with E.G.
2 only because the Defendant moved out of her life at
3 that point. Relationship. The Defendant was a
4 father figure. He was actually E.G. stepfather, but
5 he lived like a father and acted like a father for
6 C.R. In both scenarios, he was a father figure.
7 What else is similar? Number three, the family
8 dynamic. The Defendant got involved in both
9 scenarios with a woman who had an infant daughter.
10 In both scenarios, that family comes to live with him
11 on his property, or his mother's property, and
12 becomes dependent on him for where they lived.
13 Number four, the type of conduct and contact. It
14 both begins with touching.

15 Now, the very first scenario, as you heard E.G.
16 testified to with the Defendant, was when he rubbed
17 up against her. And that was the very first time.
18 She ran into the back room and she jumped on him and
19 started playing and he began rubbing his erect penis
20 against her body through the covers. After that, she
21 said there was touching. And it progressed as time
22 went on. And that's exactly what happened with
23 C.R. Touching.

24 Number five, what is similar? When it would
25 happen. It was when the mother was out of the house.

1 It was when the mother was out of the picture. She
2 was working or she went to the store or whatever.
3 How often it would happen. Whenever the chance
4 arose. Whenever the opportunity came up. When the
5 mother was away, when the mother went out. That
6 opportunity came, the Defendant took it.

7 Where it happened, number six, is also similar.
8 It happened in his room or in the girl's room.
9 Usually, his room. In fact, it was even the same
10 house for most of the conduct. Number eight, and
11 most significantly, I would say, is even what he
12 would say. What did he say to both of these young
13 girls when he started touching when they were young
14 and they were infants and they were trying to figure
15 out what's going on and doesn't want them to tell?
16 In both scenarios, he said you are someone special.
17 Let's not talk about this because no one else would
18 understand the love I have for you. He said that to
19 both girls.

20 Now, ladies and gentlemen, as I told you, in my
21 opening, what this case is about, and I think
22 something that has become clear through the testimony
23 that has run throughout this whole case, is about how
24 can abuse go on like this for years? There is no
25 question that E.G. did not tell anyone until she was

1 an adult. [C.R.] didn't tell anyone until just a
2 few months ago. They both freely have told you that.
3 They both were absolutely open, didn't back away.
4 When [E.G.] was questioned over and over and over on
5 cross-examination, Weren't you alone with your
6 mother? Weren't you alone with your aunt? Weren't
7 you alone with this person or that person and you
8 never told? And [E.G.] in every scenario had a one-word
9 answer, no, no. Just like she testified when I asked
10 her.

11 So, it should come as no surprise that four
12 people who loved the Defendant very much would get up
13 and take the stand as they did today and tell you
14 that no, she didn't tell me. Ladies and gentlemen, I
15 didn't have a question for them because as I said, it
16 should come as no shock. That could have gone on for
17 days. We could have brought in a teacher. We could
18 have brought in their friends. They told you they
19 were not going to tell. And you would have that in
20 any case in a scenario like this one where you have a
21 child who is delayed disclosure for whatever period
22 of time. Because they don't tell for reasons that
23 they explained to you and as I'm going to recap in
24 just a moment.

25 And it also shouldn't surprise you that one

1 witness took the stand today and said well, I let him
2 around my children and he didn't molest my child.
3 And not to sound flippant on this point, but that
4 would be like having a bank robbery case where you
5 had the bank managers of every other bank in
6 Greenville come in and say well, he didn't rob my
7 bank. He didn't rob my bank. For whatever reason,
8 he chose C.R. and he chose E.G. and that's who he
9 sexually molested.

10 So, how can it continue? How can abuse like
11 this continue on without a child saying anything?
12 And to understand that, we have to understand and
13 think about how the abuse starts. The abuse starts
14 with touching. It starts very innocuously. It
15 doesn't start right off with sexual penetration. It
16 doesn't start right off with oral sex or vaginal sex
17 or anal sex. It starts off with touching.

18 And why is that significant? Because, in
19 general, touching is a good thing. We all like to be
20 touched. We need to be touched, right? Adults even
21 do, but especially children. Young children have
22 both a physical and a biological need for physical
23 contact. They get it all day long constantly. They
24 want to be held, they want to be hugged. Maybe at
25 night, they come into mom or dad's room and they want

1 to be touching mommy or daddy and they need that
2 physical contact. So, touching and closeness, in
3 general, is normal. And they don't know the
4 difference between good touching and bad touching. A
5 five year old simply does not.

6 Then you consider that in light of the position
7 of the person doing the touching. Someone who is in
8 a position of authority and trust. Children have an
9 innate trust and belief in adults. They believe that
10 what an adult says or does is right. They trust
11 that. And what an adult does around a child is
12 normal, that's what they assume. And, in general,
13 that's a good thing, right? Because when mommy or
14 daddy says don't touch the stove because it's hot or
15 don't run out in the road, don't talk to strangers,
16 it's a good thing that children -- that that's the
17 way they are designed, to trust adults. So, that's
18 what they do. And they assume that this touching is
19 right. And they assume that when the abuser says we
20 have a special relationship, let's keep this between
21 ourselves, they assume that's correct.

22 Then times goes by. And as time goes by, they
23 start to gain understanding about what's going on.
24 And then the touching starts getting more egregious.
25 But what is also going on as they are aging and

1 getting more understanding? They also have been
2 being touched for years. This special relationship
3 has gone on for years.

4 In the situation of E.G. you heard her testify
5 that in a weird twisted sort of way, she felt like
6 his girlfriend. So, by the time they start to
7 understand, that's the position they're in. And how
8 does that make a child feel? They start to feel
9 partially responsible. That's the way -- they both
10 told you that, both E.G. and C.R. even at her age.
11 Even though the sexual abuse didn't get as bad with
12 C.R. she still testified to you that in a way,
13 she felt responsible. So, they feel responsible and
14 they feel shame. They feel shame because they know
15 it isn't right. And they know it's been going on for
16 years and they feel like they've been letting it go
17 on for years. They don't have the objective
18 viewpoint as preteens in that situation to know what
19 we do, that it's not their fault.

20 Then you couple that with other real world
21 issues. The abuse is not the overarching part of the
22 relationship with that abuser. Eighty to 90 percent
23 of the time, he's not that abuser. He's the nice guy
24 in the relationship. He's the protector. He loves
25 momma. Momma loves him. He does good things for

1 them. He's generous. He takes them on trips. He
2 takes them, apparently, skiing. So he's, in many
3 overarching aspects of the relationship, is not bad.
4 So, they want that person in a certain way in their
5 life. You can't trade in a dad or a granddad or
6 whoever the abuser is, he's the only one. If he goes
7 away, there's no one to take his place.

8 And then as the child grows, the child begins to
9 understand how wrong it is, they understand the
10 ramifications of this becoming known and of making it
11 become known. It takes an enormous amount of courage
12 to go public about being sexual abused. And why?
13 Because it brands you. You look like a trouble
14 maker. You take the risk of not being believed and
15 being branded a liar or someone who is trying to ruin
16 other people's lives. They understand that it will
17 turn their world upside down. Here's this man, who,
18 again, has been the protector and the provider and
19 the supporter who will no longer be there. Who will
20 do that now? Where will they go? Especially of
21 these two children. They are dependent on him. They
22 are living in his home. What happens if that
23 relationship ends? Where do they go? Imagine the
24 fear a child has about that. And if they tell, it's
25 over. And what if they're not believed, who's fault

1 it is? It's her. She's the one to blame. The child
2 has ruined the life not only for themselves, but for
3 others, for mom and for brother and sister.

4 So, C.R. cracked at an earlier age than E.G.
5 did. She said when Investigator Richter spoke to her
6 a few months ago, she almost cracked. She almost
7 told him, but she was still dealing with all those
8 thoughts and couldn't do it. Then the DSS employee
9 confronted her with it and she broke down and started
10 crying and she told.

11 And what happened to her? What happened to her?
12 It's been awful. You saw her come to tears on the
13 stand when she testified what happened to her after
14 she finally told. She talked about all the fear she
15 would have if she did tell. And I asked her, Has it
16 been that bad?

17 She said, No, it's been worse. It's been worse.

18 E.G. didn't tell as a child. And she waited
19 until she was an adult. And you can understand why,
20 because telling turns your life inside out. And so
21 many like C.R. and E.G. just decide to grit their
22 teeth and figure out a way to cope, to just deal with
23 it. Just get through with that one part of this
24 awfulness in your life, put up with those bad times,
25 those short bad times that are interludes between all

1 of the good times in life and all of the normalcy.

2 A crime like this is not one where the injury
3 fully hits you when it happens. This is a very
4 different crime than say, if we had a case where
5 someone was stabbed or shot, beaten up, they come in
6 and testify about that. That injury goes away. By
7 the time they're testifying, in many cases, they're
8 feeling better. But the injury in a case like this
9 is worse because it's not until they realize, until
10 they're adults. It eats away at them. You heard E.G.
11 talk about the nightmares and the dark thoughts. It
12 effects relationships.

13 And it's not until you're an adult and you can
14 look back and you can see how you were robbed of a
15 normal childhood. That's why E.G. told. That's why
16 E.G. told as an adult. And that's why E.G. can look
17 back now at those times when she was at 79 Ferguson
18 Road and, as she told Investigator Richter, say it
19 was hell. Because it was. It was both. It was both
20 in some sense a normal childhood, being with her
21 mother and her brothers, having the love of her
22 mother and her brothers and having the good times,
23 but it was also hell at the same time. It was hell
24 during those times when she had to go through what
25 she had to go through. It was hell then -- she was

1 living through hell then and she's still living
2 through hell now. She didn't realize it, but --
3 fully, but she does now.

4 Ladies and gentlemen, I'm going to have a chance
5 to come back and talk to you again for one -- for a
6 very brief moment, but at this time, that's all I
7 have to say. Thank you.

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

9 THE COURT: Yes, sir.

10 CLOSING STATEMENT

11 MR. KAPPEL: Mr. Moyer.

12 Mr. Foreman, ladies and gentlemen of the jury.
13 Mr. Moyer spent a great deal of time talking to you
14 about what we know. He said this is what we know.
15 But what's important for you to think about when you
16 start your deliberations is all you know and the
17 charges and the indictments that will be sent to you
18 is coming from three people. That's it. There's no
19 other evidence. There's no medical evidence.
20 There's no videotape evidence. It's all coming from
21 just three people, E.G. Chris and Joey.

22 And really this case, for me, begins with this
23 peephole incident. And I think that's where you
24 should start to look to try to figure out if really
25 what you're hearing is actually the truth or not the

1 truth. You recall, Joseph testified and said there
2 was no such peephole in the door. There was no such
3 keyhole in the door. If there's no such keyhole in
4 the door, then how can Christopher look inside?
5 Christopher, if you recall, we heard a lot about a
6 broken back. How can he lean over and look through a
7 keyhole? If he can -- if there's a keyhole and he
8 can look over into a keyhole, how are you going to
9 see what's going on inside the room? Yet, he says
10 that that was the moment where he discovered that his
11 sister was being abused by Dwayne.

12 Now, Chris tells DSS in his interview, you
13 recall his testimony, he tells DSS that this occurred
14 about a year and a half before his interview. His
15 interview was in June of 2002. That would put his
16 interview in January of 2001. Both Chris and Joey
17 said that when this incident occurred, they
18 immediately told their father, and that their father
19 immediately called the police, and that the police
20 immediately responded. And we know that that
21 response by the police was in January of 2002. And
22 if you recall, I asked Joey, so this event occurred
23 in January 2002, you know, a week before?

24 And he said, Yes.

25 But by Christopher's own statement, it didn't

1 occur, the January 2001, so the DSS.

2 In addition, the other thing we know, which is
3 curious, is that Sherry and E.G. moved from Ferguson
4 Road in October 2001. So, in January 2002, they
5 weren't even living on Ferguson Road. So, this idea
6 that Christopher saw something through a peephole,
7 that did not exist, by bending over on a back that
8 was wounded or injured in a house they weren't even
9 living in at the time, could not have happened.

10 You recall that Christopher told you all and his
11 brother, Joey, that they were using lots of drugs,
12 lots of cocaine, trying to make crack, making crack,
13 whatever, smoking methamphetamine, smoking marijuana.
14 What evidence do we have that there was rampant drug
15 use? It's coming from these three people. It's
16 coming from nowhere else. There's no other evidence,
17 nothing in front of you that indicates that this kind
18 of drug use was going on. But they do tell you,
19 Dwayne was making them use Christopher's money to buy
20 drugs. And that when Christopher moved out after the
21 peephole incident, remember, he said he had nothing
22 left. But then when he meets with DSS six months
23 later, the first thing in his interview, he tells
24 them I'm coming into some money and I'm buying some
25 land.

1 So, do we have a wreck report, a settlement
2 statement, a copy of the canceled check to see if, in
3 fact, he did have a settlement and when he got it?
4 We got nothing. What we've got is a statement from a
5 guy who says he got it, blew through it in 2001.
6 Then a statement from a guy to DSS where he says, I'm
7 coming into some money and I'm buying some land. Do
8 we really know?

9 The most important thing in a case like this
10 is -- obviously, is credibility, who do you believe?
11 I'm going to mention a couple of things. Of course,
12 the Judge is going to instruct you on credibility,
13 what you should believe or what you should do with
14 credibility, but you are allowed to listen to a
15 witness and believe everything they tell you, you can
16 believe some of what they tell you, or none. And the
17 credibility in this case is the center piece of the
18 whole case. There's no evidence here. We've got a
19 couple of pictures and a copy of the interview, but
20 there's no evidence here. There's no photographs of
21 medical records or wounds or injuries of any of that
22 sort.

23 And you heard **E. G.** tell you that she was
24 interviewed by forensic interviewer at DSS and they
25 videotaped it. I mean, wouldn't that be nice, that

1 way you can see what her demeanor was, what her
2 appearance was, what she sounded like, what she said
3 back in 2002. There is no videotape before you.
4 That would help you really see if she really is
5 telling the truth then or is she telling the truth
6 now. We don't have it.

7 And the investigator did what I think is
8 improper. When I was a prosecutor, I never liked to
9 see it. And that was interviewing the people at the
10 same time. And I think you can use your common sense
11 to understand that that is just a big no-no.
12 Regardless -- and he spent a great deal of time
13 talking about why he did it and why he thought it was
14 appropriate. He still thought it was appropriate
15 even yesterday because of the timing. The fact of
16 the matter is, is that's no excuse to take two
17 witnesses and put them in the same room at the same
18 time and interview them.

19 The word I used was drafting. I said that one
20 drafts off the other. I don't know if you remember
21 that question or not, but that's the way I looked at
22 that. When I'm reading these statements or reports,
23 what I want to know is I want to know what the
24 witness knows. I don't want to know what the other
25 witness is telling them. I don't want to know what a

1 witness is telling me while sitting in the presence
2 of a loved one who is offering them support. You've
3 got a portion of this interview. You don't have the
4 whole interview, you've got a portion of it. At the
5 very last moment that it was cut off, you heard E.G.
6 say, What else did he make me do? You'll hear it if
7 you choose to listen to it. What else did he make me
8 do? And what kind of question is that? How do you
9 take an interview in a criminal case with so much at
10 stake, so much going on and so much riding in the
11 balance of this and you take an interview with
12 someone where you've got one witness asking questions
13 of another witness? Was it really a question or was
14 it prompting?

15 This is how mistakes get made. This is how
16 innocent people get charged. We all know about two
17 people saying to one another -- you see it on TV a
18 lot, but I'm sure it happens in the real world, hey,
19 we need to get together to get our story straight.
20 Before you're interviewed at school for an infraction
21 or a problem or done some crime with somebody or just
22 something silly, like cutting school or what have
23 you, hey, before you go home and tell your mom where
24 we were today, we need to get our story straight. We
25 need to make sure we're in the right place. You

1 can't have these interviews at the same time.

2 I don't care if the investigation is for a crime
3 that was committed this morning or 10 years ago,
4 you're never going to test the ability of someone's
5 memory and what they know by interviewing people in
6 the same room together. Never. And if it's a matter
7 of laziness because you don't want to have an
8 interview and then another interview and you have to
9 go back to a witness to try to reconfirm or ask
10 additional questions, but that's just the way you do
11 it. That's what's required. That's trust that's
12 been placed in him to do a proper investigation. And
13 he can't do that, particularly in a case like this.

14 What do we have? All we know -- what do we
15 have? Everything we know is coming from three
16 people. And we have two of them in the same witness
17 room at the same time. And one of them is telling
18 you that he was paid a bunch of money and they blew
19 through it and then he tells somebody else that he
20 didn't get it until June of 2002. I mean, what do we
21 really know that Chris knows?

22 And you heard what Lenore said, who's a nurse.
23 I think you could see her testifying. I mean, you
24 know, Lenore is treating children that are not her
25 blood relatives as her own. You can see that she has

1 a big heart. I mean, Christopher comes on the scene
2 at the farm and he's not in a good place and who
3 calls, but Christopher's mom and calls Lenore and
4 says, Please check him. Something's not right. He's
5 cut himself to let the demons out and putting hot wax
6 over his wounds. I mean, is that the testimony of
7 someone you're going to go to the bank with?
8 Probably not. You will want some additional
9 understanding of what this person knows and you
10 should demand that an interview of a witness such as
11 this should not be accompanied by the alleged victim.
12 Period.

13 E.G. I'm sorry, I should say E.G. . The
14 family calls her E.G. I think you heard everyone
15 call her E.G. E.G. testified and her
16 testimony -- or her case came out in 2014. So, we
17 received the report and we then have to go back to
18 try to figure out really how to defend this. What do
19 we do? What can we do? And there was some
20 equivocation on her age when this began. And it was
21 a very important fact, very important to understand
22 when this allegedly occurred.

23 There was a lot of talk of it was five, four or
24 five. But at one point in time in her statement to
25 Investigator Richter, she said, Well, this Mikey

1 thing happened, I was closer to four than I was five.
2 And she was four in August of 1991. And Officer
3 Richter's report confirmed that it happened in the
4 autumn. So, turns four in August of 1991, you're in
5 the autumn of September, October, I assume that's the
6 Mikey episode and she said it was a short period of
7 time later that Dwayne started doing the same things.
8 She initially said that Dwayne's reaction was one of
9 normalcy, that he was very upset, kicked the guy out
10 and physically reacted.

11 So, what do we do? We have to go back to 1991
12 and try to figure out what can we say? What can we
13 do? We've got this testimony that's from 27 years
14 ago, or for however long, how can we go back that
15 far? Luckily, we have Selena. And you saw her
16 testify today. She's been married to Russell for 26
17 years or something of that sort. They named their
18 middle child after Dwayne. They've known him for a
19 long time. She's a school teacher, a bookworm, a
20 fairly well-spoken person. And we have Selena. I
21 mean, thankfully, there was this unusual episode
22 where she ran off with her future husband and they
23 took up residence in this house. And, fortunately,
24 for us, she didn't work. Fortunately, for us, she
25 didn't ride a motorcycle. Fortunately, for us, she

1 was a bookworm. She sat on the couch and read books.
2 We have an actual fly on the wall in this residence
3 on Covenant Court, Deer Run Road, whatever it was
4 called, from June 1992, all the way to October 1992.

5 And what does she tell you? She tells you
6 nothing out of the ordinary occurred. Nothing. That
7 they would take trips together, that they would go
8 camping. That they continued to stay in contact with
9 one another after 1992 when they moved and there was
10 nothing of this sort. And you'll have a couple
11 pictures and you'll see these pictures and you'll see
12 the entire family in these pictures and it's one of
13 normalcy. If this were to have been occurring when
14 E.G. [REDACTED] was four and five years old at the
15 frequency that she suggests, it would have been
16 observed by Selena Brunson sitting on the couch,
17 reading a book.

18 You recall then after this period of time at
19 Deer Run, they moved to Seneca. And this is kind of
20 a minor point, you may or may not recall this, but
21 she testified that it was ongoing in Seneca and then
22 was corrected that her statement to law enforcement
23 was that she really had no recollection of anything
24 happening in Seneca. Further, they moved to 77
25 Ferguson into the mother-in-law suite, where they're

1 right next door to Lenore. And the houses connect.
2 And I believe that Lenore said that E.G. had run of
3 the house, that she would go back and forth. That
4 she looked at Lenore as a grandmother, that they did
5 horseback riding. They did swimming. They did all
6 kinds of activities and shopping. And nowhere did
7 this ever come up. She's a nurse. I suppose that
8 she would notice some change in behavior. Some --
9 just something, but nothing.

10 Then they moved to 79 Ferguson Road. And that's
11 where E.G. suggests that this became a lot
12 worse. And she described her experience of wishing
13 she was dead, wishing she would not wake up in the
14 morning, wishing she would die and get out of this.
15 And maybe if that were true, then, perhaps, she would
16 have welcomed law enforcement when they arrived in
17 January 2002. She would have welcomed being
18 interviewed by DSS in April 2002, then again, in June
19 of 2002. There were other periods of time before
20 that where she went off to live with her dad and was
21 away from Dwayne and away from the family and a
22 place -- not as safe with DSS, but in a place where
23 she could have described what was happening to her.

24 When you're deliberating, you have to think does
25 this make sense? Mr. Moyer is offering you his own

1 position on what makes sense and y'all can think of
2 any other number of ways of what makes sense or what
3 doesn't make sense. But if you are being tortured
4 and abused and you're out of that place, it's one
5 thing to report it to law enforcement. It's one
6 thing to call up and say I need to report this. It
7 quite another to want to go back. That's a very much
8 lower threshold to reach. To say I don't want to
9 report this because I'm afraid that I'm not going to
10 be able to leave. I'm afraid I'm going to break up
11 the family. What if you're already removed from that
12 location? It's just simply saying to somebody no, I
13 really want to go back there. I love them and I want
14 to go back.

15 And if you recall when Sherry and E.G. were
16 moving in October of 2001, Lenore described it quite
17 clearly that E.G. did not want to move. When she
18 talked to law enforcement in 2002, she said it didn't
19 happen and I want them to get back together. I mean,
20 those are the people that are going to keep you from
21 being tortured and victimized again and again and
22 again if it's happening. You don't necessarily have
23 to say yes, I want to go on the record and say this
24 is happening. But you could say, I don't want to go
25 back over there.

1 And I think the most compelling thing to me is
2 the forensic interview. And you may or may not know
3 much about what a forensic interview is, but a
4 forensic interview is one that's done to try to
5 determine whether or not there's any abuse. The
6 protocol is to interview the alleged victim alone,
7 with no one else in the room with them, and that they
8 do it over a substantial period of time. They can't
9 just bring a young child into a room and just ask the
10 ultimate question and expect to get the right answer.
11 They have to spend a tremendous amount of time
12 building rapport and trust and showing this
13 individual that they're in a safe place. And on top
14 of it, to make it even more safe, they videotape it.

15 Mr. Richter talks about audio taping, that's one
16 thing, but the DSS people videotape it. And you
17 heard E.G. [REDACTED] saying she looked right into the
18 video camera and told them they were stupid and this
19 just didn't happen. That's a critical piece of
20 information, critical piece of evidence for us and
21 for you to look at. But there's no video. That
22 would be something I would believe that you would
23 want to see to actually make a determination if this
24 is actually true or not.

25 Now, you have another person here C.R. [REDACTED]

1 [REDACTED] And she appeared having made a disclosure in
2 2017. And you have to determine for yourself if you
3 think it's relevant, if that should be a part of your
4 deliberations. The case today, the alleged victim is
5 not C.R. [REDACTED] It's E.G. [REDACTED] And on
6 the contributing charge, it's E.G. [REDACTED] and
7 Christopher, but it's not C.R. [REDACTED] So, you
8 have to determine if C.R. [REDACTED] testimony is
9 even relevant to your discussion before you choose to
10 evaluate it and use it in making your decision.

11 I will tell you this, that C.R. [REDACTED] story is
12 very similar to E.G. [REDACTED] to E.G. [REDACTED] And we do
13 know that Officer Richter interviewed E.G. [REDACTED] -- or
14 interviewed Christopher with E.G. [REDACTED] present and we
15 do know that he actively encouraged C.R. [REDACTED] sister
16 to communicate with E.G. [REDACTED] I've already talked about
17 that and I've already told you what I think about
18 that, but I want to remind you about statements made
19 by Mr. Richter to R.R. [REDACTED] to talk to E.G. [REDACTED]
20 [REDACTED]

21 And then sometime after we had the disclosure
22 from C.R. [REDACTED] But evaluating the disclosure from
23 C.R. [REDACTED] and comparing it to E.G. [REDACTED] -- as Mr. Moyer
24 said, the stories are pretty similar. Age, perhaps,
25 relationship in terms of step-dad to stepdaughter.

1 But if you look at the actual statements made by
2 C.R. [REDACTED] they're wildly different than the statements
3 made by E.G. [REDACTED] [REDACTED] talks about -- and I
4 apologize for having to use -- really apologize for
5 this, but as Mr. Moyer, the circumstances require it.

6 E.G. [REDACTED] documents through her testimony an
7 allegation of longstanding abuse through penile
8 penetration and oral sex. C.R. [REDACTED] testimony didn't
9 allege any of that. If you recall, I seem to recall
10 Mr. Moyer asking C.R. [REDACTED] Did he hurt you?

11 She said, Well, no, but he touched me.

12 When you look at the two, they're not much the
13 same. One would think that if someone were actually
14 doing this, if this was actually somebody's DNA, this
15 is what they're doing, is that they abuse young
16 people, they would do it the same way again and again
17 and again.

18 Mr. Moyer talks about the progression. With
19 E.G. [REDACTED] it started off with touching, but then it
20 progressed. Well, with C.R. [REDACTED] it never progressed.
21 According to C.R. [REDACTED] it never escalated. It never
22 became something similar to what E.G. [REDACTED] had
23 described. To the point that C.R. [REDACTED] said to
24 Mr. Moyer that he never physically hurt her.

25 There's some complexity with C.R. [REDACTED] living with

1 Lenore and living with someone that is not a
2 biological parent or biological grandparent and
3 having discipline. And the way I view this is the
4 reporting was probably for potentially something that
5 she wanted, which was to get away from Lenore's
6 discipline. And you heard them, they would scream at
7 one another. Not the best way to communicate with a
8 young person, but we all know that people who are 12
9 and 13 or 14 or 15 years old, C.R. is 15, is that
10 they're hormonal, going through puberty and very
11 impulsive. And do we really know that what she is
12 describing happened? Again, there is no other
13 evidence -- or excuse me, information. There's no
14 disclosure, no physical exam of any sort regarding
15 her saying this to law enforcement.

16 You've heard the description about Lenore. I
17 mean, I think you can -- she's just a wonderful lady.
18 She's worked very hard in her life. She's acquired a
19 nice piece of land, has horses and a swimming pool
20 and spends time with grandchildren and with
21 grandchildren that aren't her blood relatives that
22 she just chooses to take care of and soccer. She
23 distinguishes between no one in terms of spreading
24 some of her generosity. I mean, if I had to imagine
25 the person that I would think that someone would grow

1 close to and fond of to where a disclosure would
2 ultimately be made, I mean, she would be the picture
3 that I would imagine in my mind, the type of person.
4 On the long horseback rides or by the swimming pool
5 or wherever.

6 You heard that she had a tremendous amount of
7 personal contact with both of these people, with
8 E.G. and with C.R. Whether it was around the
9 house or certain activities, a very close
10 relationship. You heard Lenore testify that when
11 C.R. was moving -- or excuse me, E.G. was
12 moving with Sherry in October of 2001, that she was
13 clinging to Lenore crying not wanting to go and
14 wanting them to get back together. Does that make
15 sense? Again, it's one thing to disclose. It's one
16 thing to call law enforcement up and say, you know
17 what, I need tell you something. It's quite another
18 to say, you know what, I don't want to report
19 anything, but I just want to stay here. I like it
20 here too much, I want to stay here.

21 Then you have Diana, who spoke to you briefly.
22 She lived about a block away from them when they were
23 on Deer Run. Never did E.G. ever tell Diana
24 that this was going on. You heard her say she
25 wouldn't care if it was her brother, she wouldn't

1 care if it was the pope, she said if she heard
2 something like that was going on that she would not
3 have allowed it. Same with Debbie, same with Lenore,
4 that if someone had told them, they would have done
5 something. And if you recall, E.G. [REDACTED] claims to
6 have told Diana, at least, one time, maybe other
7 times that this was happening. Do you think that
8 Diana would hear this from a five year old, that this
9 was actually happening, do you think that Diana would
10 listen to this and just somehow dismiss it, and say,
11 well, we're just going to ignore this? I don't think
12 so.

13 It's my view that The State has not proven this
14 case beyond a reasonable doubt. It's my view that
15 the only evidence you have is coming from three
16 people. And I can't explain why. If you believe
17 what they tell you, that there was a tremendous
18 amount of drug use and activity in this household,
19 the only thing I can think of regarding this alleged
20 peephole incident that I've already talked about is
21 settling some sort of dispute, some sort of drug
22 dispute.

23 We talked about that from the beginning as far
24 as the courtroom is where -- you know, we don't
25 settle our scores in the street, we settle them here

1 in the courtroom. But we all know law enforcement
2 can be manipulated just like anybody else can. And
3 the truth of the matter is, there could have been any
4 kind of dispute between those boys and Dwayne. That
5 story that came out in 2002 that was reported to law
6 enforcement could have come from any number of
7 arguments or disagreements they may have had or
8 anything, whether it's drugs or whatever.

9 Now, the Judge is going to talk to you about the
10 law and instruct you about what reasonable doubt is.
11 And I'm going to give you what I think he's going to
12 say, but if Judge Stilwell says something different,
13 then go with what Judge Stilwell says. But I think
14 what the Judge is going to say with regard to
15 reasonable doubt is it would cause a reasonable
16 person to hesitate to act. So, after you have
17 deliberated and thought about this case and thought
18 about the evidence or lack of evidence that you have,
19 and you're handed a pen to sign your name on to the
20 indictment and say guilty and you hesitate before
21 signing your name, then you can't do it. If you have
22 a hesitation, then it's not guilty. And it's my
23 belief that there is plenty here to cause you to
24 hesitate. Therefore, what I'm asking for is for a
25 fair deliberation, let everyone have their opinions

1 heard and I'm confident that the group of you will
2 come back with a verdict of not guilty. Thank you.

3 THE COURT: Mr. Moyer, would you like respond,
4 sir?

5 MR. MOYER: Thank you, Your Honor, just briefly.

6 THE COURT: Yes, sir.

7 CLOSING STATEMENT

8 MR. MOYER: Just a few final remarks, ladies and
9 gentlemen, before you go back to deliberate. I asked
10 you at the beginning of this case when I did my
11 opening to do three things. I asked you to listen
12 closely and pay close attention to all the evidence
13 that you receive, all the witnesses that you hear,
14 all the testimony that you get. I have every reason
15 to believe you did that. Just looking at you
16 throughout the trial, you all appeared to be paying
17 very close attention. We appreciate that.

18 The second thing I asked you to do was to use
19 your common sense and your good judgment to weigh the
20 evidence. I feel quite certain you were doing that
21 throughout the testimony of yesterday and this
22 morning as well. And what I want to ask you now is
23 to continue to do that. I want to ask you that when
24 you go back in that jury room and as you start going
25 back over the evidence in this case is to use your

1 common sense about what happened in several respects.
2 I'm going to only mention a couple now in response to
3 what the Defense just said.

4 The Defense makes comments -- he talked about
5 his witnesses that testified this morning. The four
6 people who love the Defendant and come in here to
7 testify. And he said that each one of those people
8 would have reported this had either EG or CR
9 told them about it. Well, I don't know if they would
10 have or not. I don't think that's really relevant.
11 But the matter is that's the reason EG and CR
12 did not tell them because that's exactly what they
13 did not want to happen. They did not want this to
14 get out. And I won't go back through all the
15 arguments and reasoning that I gave you when I spoke
16 just a few minutes ago, but that's exactly what they
17 didn't want to happen. They did not want this to
18 come out.

19 You're also going to have to use your common
20 sense and good judgment to weigh the credibility of
21 witnesses. And there's several ways to do this. And
22 His Honor is going to have an instruction about this.
23 One of the ways to look at it is who has an interest
24 in the outcome of this case? Or what kind of
25 interest do the witnesses have in the outcome of this

1 case? What does [EG] have? [EG] isn't going to get a
2 prize if you come back with a guilty verdict. She's
3 not going to get money. She's not going to get
4 anything. The only thing she would get out of this
5 case is peace of mind knowing that justice has been
6 done.

7 What about [C.R.]. You heard her testify
8 yesterday. You heard the conflicting feelings that
9 she had. She said she didn't even want to be here.
10 She said she loves the Defendant. In a way, it is
11 possible that she would -- that the outcome of this
12 case for her life might be better if you didn't
13 convict, which is not what we're asking of you. She
14 didn't come in here and try to get you to convict the
15 Defendant. She came in here to tell you what
16 happened, to tell you the truth.

17 Another thing to consider when you use your
18 common sense to weigh the credibility of witnesses is
19 what possible reason could they have for making this
20 up? Because be very clear, this isn't a situation
21 where they could be mistaken. This isn't like an
22 armed robbery where there's an identification issue,
23 where the witnesses are coming in and you're having
24 to decide whether or not -- well, maybe they were
25 wrong. Maybe they didn't quite identify the

1 Defendant exactly. No. If you find the Defendant is
2 not guilty, you're going to have to believe that they
3 lied, that they came in here and lied.

4 And why? What possible reason could they have
5 for that? E.G. [REDACTED] told you that she loved the
6 Defendant. She loved him. We've heard -- none of
7 the other witnesses we put up said anything other
8 than that. There's never been any big dispute.
9 There's never been any big argument. Why would she
10 possibly lie? What about C.R. [REDACTED] She said the same
11 thing. Not only did she love him, but she said she
12 still loves him.

13 So, why would you lie? Why would somebody want
14 to be stigmatized forever in open court in an open
15 record as a victim of rape? Why would you want that
16 to come out? Why would you say that? Who wants to
17 have to go through this ordeal? Go to the police,
18 talk to DSS, talk to investigators, talk to
19 prosecutors, then have to sit up here and be
20 cross-examined in front of an open court. Who would
21 want to go through all of that to be dragged through
22 the mud? And for what? For what? What possible
23 benefit could they receive for doing that?

24 Now, ladies and gentlemen, the third thing I
25 asked you to do was at the end of this case, do

1 justice. Ladies and gentlemen, justice requires that
2 people who commit crimes like these be held
3 responsible for what they did. This Defendant robbed
4 two human beings of their childhood. As I stated
5 earlier, this is not the kind of crime that's done
6 and over with, but it's also going to effect them for
7 the rest of their lives, for the rest of their lives.

8 I'm asking you, ladies and gentlemen, to find
9 this Defendant guilty because that would be justice.
10 Not just to them, but to the State. Thank you.

11 JURY CHARGE

12 THE COURT: All right, ladies and gentlemen, I'm
13 about to give you the closing charge on the law.
14 It's going to take about 15 to 20 minutes. Does
15 anybody need a break before I get started? Everybody
16 good?

17 Okay, when we started this trial, ladies and
18 gentlemen, I told you you had a certain role and
19 function to perform and that I had a certain role and
20 function to perform. Your role, of course, is to be
21 the finders of the fact. Mine is to be the judge of
22 the law. When you took your oath, you swore that you
23 would follow the evidence and the law as I gave it to
24 you. So, keep in mind as I charge you on the law,
25 understand that if you come into this courtroom with

1 any prior notion, any prior disposition, or any prior
2 opinion about what the law is or about what the law
3 should be, under your oath, you must disregard that
4 and accept the law as give it to you.

5 Now, ladies and gentlemen, as I've indicated to
6 you, you are the finders of the facts and you'll
7 determine whether the State has met its burden of
8 proof. I told you when we started, the Defendant is
9 presumed innocent. And he retains that presumption
10 of innocence right now as we sit here right now.
11 Twelve deliberating jurors will determine whether, in
12 fact, The State has met its burden of proof of
13 proving each and every element of the offense beyond
14 a reasonable doubt.

15 Now, ladies and gentlemen, when you are
16 considering that, understand you've got four separate
17 and distinct indictments. And when you go to your
18 jury room, I'm going to give you four separate and
19 distinct verdict forms. Now, it's important that you
20 know that you must consider each and every indictment
21 and each and every charge independently of the other.
22 You must apply the burden of proof and you must apply
23 the facts as you determine them to be to the evidence
24 and determine whether The State has met its burden of
25 proof on each and every separate indictment. As you

1 know, your separate indictments are criminal sexual
2 conduct with a minor first, criminal sexual conduct
3 with a minor second, contributing to the delinquency
4 of a minor and lewd act upon a child.

5 Now, ladies and gentlemen, again, when you go
6 into your jury room and you deliberate, if you find
7 that The State has met its burden of proof with
8 respect to one of the indictments, that doesn't
9 necessarily mean that you have to find -- that they
10 have met their burden of proof with respect to the
11 remainder of the indictments. You don't have to be
12 monolithic in your decision, meaning you can find
13 that The State has met its burden of proof on one,
14 two, three or four. And you may, likewise, find that
15 on the remaining charges that they have -- they have
16 failed to meet their burden of proof. It's entirely
17 up to you. Consider them separately and
18 independently.

19 Now, ladies and gentlemen, in this case, again,
20 the burden of proof is beyond a reasonable doubt.
21 Now, you've probably heard that burden of proof
22 about -- you may have heard also in either watching
23 TV or in your personal experiences other burdens of
24 proof. In civil court, usually, the burden of proof
25 is by a preponderance of the evidence, which means

1 more likely than not, greater than 50 percent. In
2 some civil proceedings, you have what's called clear
3 and convincing evidence, which sometimes you have it
4 in a fraud cause. You have if someone is requesting
5 punitive damages. And that's a higher burden of
6 proof than by a preponderance of the evidence. But
7 in criminal court, the burden of proof is beyond a
8 reasonable doubt.

9 Now, there are several ways that you could
10 possibly define proof beyond a reasonable doubt.
11 Some people may define it as that proof which would
12 cause a reasonable person to hesitate to act. Also,
13 you can define proof beyond a reasonable doubt as
14 proof that leaves you firmly convinced of the
15 Defendant's guilt.

16 Now, understand that there's nothing on earth
17 that you can know with absolute certainty. And the
18 law doesn't require that The State meet its burden or
19 prove its case beyond any possible doubt. However,
20 after your review and analysis of the evidence, if
21 you are firmly convinced of the Defendant's guilt,
22 then under your oath, you find him guilty. However,
23 if after your review of the evidence, you feel that
24 there is a real possibility that the Defendant is not
25 guilty, then you would under your oath find the

1 Defendant not guilty.

2 Now, you determine whether that burden has been
3 met by, again, reviewing and weighing the evidence.
4 And in doing so, you're going to look at the
5 witnesses and determine who's credible and who is to
6 be believed. Now, ladies and gentlemen, you make
7 those decisions about credibility based on your own
8 common sense, your life experiences. You base
9 whether you believe someone on what you saw them say,
10 what you heard them say. That is, what did they have
11 to say? How did they say it? How did they express
12 themselves? Did they have any facial expressions?
13 Did they have any body language? Also, you would
14 look and decide did they have something to gain or
15 something to lose as a consequence of their
16 testimony? You'll look at all of that and you'll
17 determine whether to believe someone or whether not
18 to believe someone. That's in your sole and
19 exclusive determination. You decide who to believe
20 and who not to believe. You decide whether you
21 believe part of a witness' testimony and discard the
22 rest. You decide whether it's all valuable or none
23 of it's valuable. You'll decide. And in doing so,
24 you'll decide what the facts are in this case.

25 Now, ladies and gentlemen, in any case that

1 comes before the Court, in any case, in a civil
2 trial, in a criminal trial, evidence is going to take
3 one of two forms. It's either going to be direct
4 evidence or it's going to be circumstantial evidence.
5 Now, direct evidence is evidence which immediately
6 establishes the fact to be proven. Circumstantial
7 evidence is proof of collateral facts or a chain of
8 facts that when taken together prove the main fact to
9 be proven. Now, that's a simple definition. But
10 really, out of context, it may not make -- it may not
11 really resonate with you. So I'm going to give you
12 an example, which, hopefully, will help you
13 understand the distinction.

14 Let's say that on a January morning, you are
15 going to sleep and you walk past your front door or
16 front window and you look out in your front yard and
17 there's no perception on the ground. You go to
18 sleep. You come back that next morning and you look
19 on the ground and there's a blanket of snow. You
20 also see in that blanket of snow footsteps which lead
21 to your door and then lead away. So, under that set
22 of circumstances, you've got direct evidence that it
23 snowed last night because the snow is readily
24 apparent. You can touch it, you can feel it, it's
25 there. You have circumstantial evidence, however,

1 that somebody, either that night or early that
2 morning, came to your door and walked away. You
3 don't see that person, you can't talk to that person,
4 you can't touch that person, but you know as a
5 consequence of the timing of the snowfall and the
6 existence of the footprints in the snow that someone
7 must have come to your door and walked away.

8 Now, ladies and gentlemen, the law does not
9 prefer direct evidence over circumstantial evidence
10 or circumstantial evidence over direct evidence. You
11 decide what has weight and what has value, regardless
12 of whether it's characterized as direct or
13 circumstantial evidence. Do understand, ladies and
14 gentlemen, that if The State relies upon
15 circumstantial evidence, then all of that evidence
16 when taken together must point exclusively to the
17 guilt of the accused beyond a reasonable doubt and
18 must not merely create a suspicion.

19 Ladies and gentlemen, in this case, as you know,
20 as you've sat through the case, you know that there
21 has been some evidence presented of a prior bad act
22 or a prior occurrence. The case that we have before
23 the Court now alleges acts against a particular
24 victim. Now, there was another young lady who came
25 in and testified that there were bad acts that had

1 been committed. Well, those bad acts, you're not
2 here to adjudicate guilt or not guilty for those bad
3 acts.

4 Ladies and gentlemen, if this testimony, if you
5 conclude it's true, the testimony as to other bad
6 acts, not the subject of this proceeding, you can
7 consider that testimony and that evidence only on the
8 question of whether there was a common scheme or plan
9 and for no other reason and for no other purpose.
10 You give this evidence what weight, if any, that you
11 think it should have on the sole issue of whether
12 there was a common scheme or plan. You must not
13 consider the evidence or the commission of this other
14 act as proof of the Defendant's guilt for the charge
15 that we're trying today.

16 All right. Now, I'm going to read a little bit
17 to you. I apologize. I don't like to read to you,
18 but I need to get the definitions for the specific
19 crimes precisely right. So, I'm going to read to you
20 the definitions for the crimes that are before the
21 Court so that I'll get them precisely right. As you
22 know, ladies and gentlemen, the first crime the
23 Defendant is charged with first degree criminal
24 sexual conduct with a minor. The State must prove
25 beyond a reasonable doubt that the Defendant engaged

1 in a sexual battery with the victim. A sexual
2 battery is sexual intercourse, fellatio, anal
3 intercourse or any intrusion, however slight, of any
4 person's body or of any object into the genital or
5 anal openings of another person's body.

6 The State must then prove beyond a reasonable
7 doubt that the victim was less than 11 years old at
8 the time of the sexual battery. Consent,
9 willingness, indifference, or ignorance on the part
10 of a minor, if any, as to what was taking place does
11 not in any way affect the charge of criminal sexual
12 conduct of a minor because an unmarried woman under
13 the age of 14 cannot legally consent to sexual
14 intercourse.

15 Ladies and gentlemen, the next count that is
16 before you is second degree criminal sexual conduct
17 with a minor. The State must prove beyond a
18 reasonable doubt that the Defendant engaged in a
19 sexually battery with the victim. A sexual battery,
20 again, intercourse, cunnilingus, fellatio, anal
21 intercourse or any intrusion, however slight, of any
22 part of person's body or an object into the genital
23 or anal openings of another person's body.

24 The State must then prove beyond a reasonable
25 doubt that the victim was, at least, 11 years old,

1 but not more than 14 years old at the time of the
2 sexual battery, that is between 11 and 14, or that
3 the victim was less than 16 years old, but, at least,
4 14 years old and that the Defendant was either in a
5 position of familial, custodial or official authority
6 to coerce the victim to submit or that the Defendant
7 was older than the victim. Again, consent,
8 willingness, indifference or ignorance on the part of
9 the minor as to what was taking place does not effect
10 the charge because the minor cannot consent.

11 Third charge, ladies and gentlemen, is
12 contributing to the delinquency of a minor. A minor
13 is a person who is less than 18 years old. The State
14 must first prove beyond a reasonable doubt that the
15 Defendant was over 18 years of age. The State must
16 then prove beyond a reasonable doubt that the
17 Defendant knowingly and willfully encouraged, aided
18 or caused a minor to do any act which caused or
19 influenced the minor to -- and we'll go through a
20 list. One, violate the law or any municipal
21 ordinances; or to engage in any occupation, which is
22 in violation of the law; or to associate with moral
23 or vicious persons; or to frequent any place the
24 existence of which is the violation of the law; or to
25 behave in any way which would willfully injure or

1 endanger the minor's morals or the health or the
2 morals or the health of others.

3 Ladies and gentlemen, the last count which you
4 will consider is lewd act on a minor. Ladies and
5 gentlemen, a minor, again, is a person under the age
6 of 18. The State must prove beyond a reasonable
7 doubt that the Defendant was over the age of 14.
8 Next, The State must prove that the Defendant
9 willfully and lewdly committed or attempted a lewd or
10 lascivious act on or with the body or its parts of a
11 child under the age of 16 years with the intent to
12 arouse, appeal to or gratify the lust, passion or
13 sexual desires of the Defendant or the child.
14 Willfully means voluntarily and intentionally with
15 the specific intent to do something the law forbids.
16 Lascivious means intending to incite the lust, lewd,
17 indecent, obscene or tending to deprave the morals in
18 respect to sexual relation.

19 All right, ladies and gentlemen, I'm not going
20 to read to you anymore. I'm going to send back into
21 your jury room these four verdict forms. I'm also
22 going to send back to you all the evidence that has
23 been presented in this case. I'm going to go over
24 one of the verdict forms with you just so you know
25 what you're looking at when you get back there. I'm

1 not going to go over all of them because they're all
2 pretty consistent. But just for example, the one I'm
3 showing you now is the verdict form on criminal
4 sexual conduct with a minor first degree. You see it
5 has the caption, it's got the charge, it's got the
6 indictment number. Then it begins, We, the jury, by
7 unanimous agreement find the Defendant. Now, that's
8 important for you because understand that your
9 verdict in this case must be unanimous. You must all
10 agree on the verdict. It can't be 11 to one or 10 to
11 two, it must be a unanimous verdict.

12 Also, ladies and gentlemen, understand your
13 verdict, again, must be based on the law and the
14 evidence that was presented at trial. It can't be
15 based on passion, prejudice. It can't be based on
16 sympathy. It can't be based on emotion. It must be
17 based reasonably on the law and the evidence that has
18 been presented in this case.

19 So, ladies and gentlemen, after that, you'll see
20 you've got two options, not guilty and guilty. Now,
21 look, I prepared these. I don't put your options in
22 any particular order. I've got two options for you.
23 And I can't -- I -- one has to go before the other.
24 But I don't want you to think that I'm sending you
25 any signals by what order I put it in, it's just an

1 order. Okay. And you'll decide, you'll decide,
2 first of all, whether The State has met its burden of
3 proof. So, when you go through your deliberations on
4 each and every distinct indictment, you'll decide has
5 The State met its burden of proof?

6 If you determine that The State has not proven
7 each and every element of the prescribed offense
8 beyond a reasonable doubt, then, Mr. Gourley, you
9 check or initial not guilty. Then you would sign as
10 foreperson of the jury indicating that that's the
11 jury's unanimous decision. If on the other hand, you
12 decide that The State has met its burden of proving
13 each and every element of the offense beyond a
14 reasonable doubt, then, Mr. Gourley, you would either
15 check or you would initial guilty and sign as
16 foreperson of the jury.

17 Now, after you've gone through each and every
18 indictment and each every verdict form, you come to a
19 unanimous decision on each, then you indicate to
20 the -- to Ms. Fryer, the bailiff, that you have
21 reached a unanimous decision and we'll come out and
22 we'll receive the verdict.

23 Now, ladies and gentlemen, I'm about to give you
24 the case to begin your deliberation, but I don't want
25 you to do it quite yet. Because this is the

1 opportunity for the attorneys to correct me. If I
2 made a misstatement of the law or if I failed to
3 include something that's appropriate and relevant,
4 they're going to correct me and tell me. If I have,
5 I'm going to bring you back out. If I don't bring
6 you back out, what I'm going to do is I'm going to go
7 ahead and send these verdict forms back to you. When
8 you get these verdict forms from the bailiff and her
9 indication of you can begin your deliberations, then
10 you'll know you can begin your deliberations. Not
11 long thereafter, after the attorneys have an
12 opportunity to do an inventory of all the exhibits
13 and make sure everything is there, then I'll send
14 those back to you as well.

15 Okay. So, please return to your jury room.
16 Don't begin your deliberations quite yet.

17 (WHEREUPON, the jury left open court at
18 approximately 1:00 p.m.)

19 THE COURT: All right, exceptions to the charge?

20 MR. MOYER: No, Your Honor.

21 MR. KAPPEL: None, Your Honor.

22 THE COURT: Okay. All right, gentlemen, thank
23 you, appreciate it. You tried an excellent case.

24 I want to thank everybody in the courtroom as
25 well. Everybody has been very civil and treated

1 everyone civilly and professionally and I thank you
2 for it.

3 We will be in recess until we get a decision
4 from the jury. I want y'all to do your inventory of
5 the exhibits. There may not be many. After you're
6 satisfied, give them to the bailiff and tell them to
7 take them back. In the meantime, I'm going to
8 dismiss the alternate from chambers.

9 (WHEREUPON, deliberations began at approximately
10 1:01 p.m.)

11 (WHEREUPON, court was in recess awaiting a
12 verdict.)

13 THE COURT: I've got a note they want to hear
14 the audio. So, you want queue it up and we'll play
15 it.

16 (WHEREUPON, Court's Exhibit No. 2 was marked for
17 identification only.)

18 MR. MOYER: We don't have the audio. The actual
19 disk is back with them.

20 THE COURT: Oh, yeah. And, also, bring the --
21 well, we'll get it at the end, the note they brought
22 out the previous time, okay.

23 (WHEREUPON, the jury came into open court at
24 approximately 2:46 p.m.)

25 THE COURT: All right, ladies and gentlemen,

1 we're going to queue it up. We're going to play the
2 portion that we played. Usually, what I do is I send
3 a computer back where y'all can just listen to it.
4 The problem is there were portions of that that I
5 ruled should be redacted because they weren't
6 relevant to the case. So, of an audio tape that I
7 think is over an hour, you heard I think like 13
8 minutes of it. So, in order for us to just play that
9 unredacted portion, that's why we're bringing you
10 back in the courtroom, okay.

11 (WHEREUPON, State's Exhibit No. 1 was played for
12 the jury.)

13 THE COURT: All right, is that it? All right,
14 ladies and gentlemen, thank you. You can return to
15 your jury room.

16 (WHEREUPON, the jury left open court at
17 approximately 3:00 p.m.)

18 THE COURT: Okay, we'll be in recess until we
19 hear further. Thank you.

20 (WHEREUPON, deliberations continued.)

21 (WHEREUPON, court was in recess awaiting a
22 verdict.)

23 (WHEREUPON, Court's Exhibit No. 4 was marked for
24 identification only.)

25 THE COURT: Okay, I received a note from the

1 jury, which says, Unable to come to an agreement on
2 first degree. We do agree on the other three
3 charges. Signed by Mr. Gourley, the foreperson of
4 the jury.

5 So, I'm going to bring them out and I'm going to
6 give them an Allen charge. So, if you would, please
7 bring the jury out.

8 (WHEREUPON, the jury came into open court at
9 approximately 5:10 p.m.)

10 THE COURT: All right, ladies and gentlemen, I
11 received your note. And I recognize that on one of
12 the charges, y'all are hung. That is, you can't come
13 to a unanimous resolution. I appreciate that. I
14 know that it's very difficult for 12 people who have
15 never met one another to come together in an
16 agreement. It's hard enough for two people to agree
17 on any given thing. My wife and I will probably
18 argue about what we're going to eat for supper
19 tonight. But understand that this case, of course,
20 is important. It's important because the resources
21 of both The State, the resources of the county and
22 the resources of the Defendant have been brought to
23 bear for the last several days to have some
24 resolution to this case. If y'all are unable to come
25 to a resolution in this case, understand that the

1 same people, the same witnesses, the same parties
2 will simply have to come back to court and retry this
3 case in its entirety.

4 Now, I would submit to you that there are no
5 other 12 people in the County of Greenville who are
6 any more capable or competent of coming to a decision
7 than the 12 of you. If we have another trial,
8 they'll have the same information, they'll go through
9 the same witnesses and they'll have the same
10 evidence. So again, there are no 12 other people who
11 are any more competent or capable than the 12 of you
12 are. So, I'd like you to continue to deliberate and
13 see if you can come to a unanimous decision.

14 Now, in doing that, those people in the minority
15 should consider the views of those in the majority.
16 Those in the majority should consider the views of
17 those in the minority. I'm not asking any of you to
18 give up or compromise any of your closely-held
19 beliefs or convictions. I'm just asking for you to
20 go back and reconsider it so that we don't have to
21 try this case again.

22 Now, ladies and gentlemen, I'm not telling you
23 to go back into that jury room and suggesting that
24 I'm going to keep you there all night until you come
25 to a decision. I want you to go back and try. But I

1 do want you -- if you get to a point where your
2 continued deliberations are just not productive and
3 you're not getting anywhere and you don't see any
4 possibility that you're going to get anywhere, I
5 rather you tell me sooner as opposed to later, okay.
6 Because I don't want to be here at midnight just for
7 y'all to give me another note that says we can't come
8 to a decision. I'm not telling you to give up. What
9 I'm telling you is I want y'all to make a collective
10 decision as to whether your continued deliberations
11 are productive or nonproductive, okay.

12 So, with that, I'm going to ask you to return to
13 your jury room. Now, if y'all do decide that you're
14 going to be here for some additional period of time,
15 then I can order supper for you, okay. And if you
16 want me to order supper for you because you think
17 you're continuing with productive deliberations, tell
18 me so I can go ahead and get it ordered, okay. All
19 right, thank you very much.

20 (WHEREUPON, the jury left open court at
21 approximately 5:15 p.m. and continued
22 deliberations.)

23 THE COURT: All right. We'll be in recess until
24 we hear further from the jury.

25 MR. KAPPEL: Judge, is there a standard Allen

1 charge? Did you read that Allen charge or is that
2 just --

3 THE COURT: I didn't read that Allen charge,
4 but, substantively, it's the same thing on the bench
5 book with the South Carolina Judicial Department.

6 MR. KAPPEL: It is possible that I could see a
7 copy of the bench book?

8 THE COURT: Yeah. Y'all want to come on back
9 and I'll show it to you.

10 (WHEREUPON, court was in recess awaiting a
11 verdict.)

12 THE COURT: All right, counsel, it's my
13 understanding that the jury has reached a verdict.

14 Is the State prepared to receive a verdict?

15 MR. MOYER: Yes, Your Honor.

16 THE COURT: Is the Defense prepared to receive a
17 verdict?

18 MR. KAPPEL: We are, Your Honor.

19 THE COURT: Bring them in, please.

20 (WHEREUPON, the jury came into open court at
21 approximately 5:45 p.m.)

22 THE COURT: All right, Mr. Gourley, has the jury
23 reach a unanimous verdict, sir?

24 MR. FOREPERSON: We have.

25 THE COURT: Will you pass the verdict forms to

1 the bailiff, please, sir?

2 Ms. Troupe, you may publish the verdict, ma'am.

3 VERDICT

4 THE CLERK: Your Honor, in the case of
5 2014-GS-23-11873, criminal sexual conduct with a
6 minor in the first degree, the State of South
7 Carolina vs. Dwayne C. Tallent, we, the jury, by
8 unanimous agreement find the Defendant guilty. In
9 the case of contributing to the delinquency of a
10 minor, 2014-GS-23-11874, we, the jury, by unanimous
11 agreement find the Defendant guilty. Lewd act upon a
12 child, 2014-GS-23-11875, we, the jury, by unanimous
13 agreement find the Defendant guilty. In the case of
14 criminal sexual conduct with a minor second degree,
15 2014-GS-23-11877, we, the jury, by unanimous
16 agreement find the Defendant guilty. These are
17 signed by Mr. Gourley, our foreperson.

18 Ladies and gentlemen, if you agree these are the
19 verdicts you reached in your deliberation room, would
20 you please raise your right hand.

21 (WHEREUPON, all members of the jury panel raised
22 their right hand.)

23 THE CLERK: Thank you.

24 THE COURT: All right. Anything further for
25 this jury from the State?

1 MR. MOYER: No, Your Honor.

2 THE COURT: Anything from the Defense?

3 MR. KAPPEL: Nothing, Your Honor.

4 THE COURT: All right, ladies and gentlemen,
5 thank you. I appreciate that. Y'all can return to
6 your jury room and collect all of your things. I'm
7 going to come back there and just dismiss you less
8 formally. I won't take up any additional amount of
9 your time, but I'll give you the opportunity to ask
10 me any questions that you may have about the case,
11 about jury duty and give you the opportunity to make
12 any comments that you would like to make, too. So,
13 I'll be back in just a few seconds, okay. Thank you
14 very much.

15 (WHEREUPON, the jury left open court at
16 approximately 5:49 p.m. and was excused from
17 jury service.)

18 THE COURT: All right, counsel, I'm going to go
19 dismiss the jury informally. When I come back in,
20 we'll proceed to any post-trial motions and to
21 sentencing. All right. Thank you.

22 (WHEREUPON, Court's Exhibit No. 5 was marked for
23 identification only.)

24 (WHEREUPON, a short break was taken.)

25 SENTENCING

1 THE COURT: All right, keep your seats.

2 All right, any post-trial motions from the State
3 or the Defense?

4 MR. MOYER: Not from the State.

5 MR. KAPPEL: Judge, just renew all the motions
6 that we filed and now move for a new trial based on
7 the evidence in the light most favorable to The State
8 doesn't support a conviction.

9 THE COURT: All right. And I'll respectfully
10 deny your motions on that. I feel that there was
11 evidence in the record upon which a jury could find
12 that The State has met its burden of proof. And I'll
13 not exercise the Court's privilege as the 13th juror.
14 I don't think it's appropriate in this case.

15 All right, sir. Any other motions?

16 MR. KAPPEL: No.

17 THE COURT: Okay, y'all come forward for
18 sentencing, please.

19 All right, Mr. Moyer, certainly, I've heard the
20 facts in this case. Is there anything additional
21 that The State needs to put on the record concerning
22 sentencing?

23 MR. MOYER: Yes, Your Honor. I just would like
24 to make the Court aware of his criminal history.

25 THE COURT: Yes, sir.

1 MR. MOYER: He has a conviction for attempting
2 to possess crack cocaine in 1998. He has a domestic
3 violence in 2006. And he has manufacturing
4 methamphetamine conviction in 2013. I don't believe
5 the victim wishes to address the Court. She did want
6 me to just mention how grateful she is to the jury
7 for its verdict in this case. And I know she's very
8 grateful that this long ordeal is now over.

9 THE COURT: All right. Thank you very much.

10 Mr. Kappel.

11 MR. KAPPEL: Judge, I'm not quite sure there's a
12 whole lot for me to tell you at this point after
13 having a trial. You've kind of met a good number of
14 his family members. His mother, Lenore, is just a
15 super terrific person. He comes from a real good
16 family. He's got a prior record, of course, that you
17 just heard. Some charges in there significant. The
18 manufacturing methamphetamine I think is somewhat
19 significant. However, I would ask the Court to
20 consider issuing the lowest sentence the Court sees
21 fit.

22 I know you're very well familiar with the facts
23 or, at least, as they've been outlined in this court.
24 I really don't have a whole lot of mitigation to try
25 to explain or otherwise. All I can do is just put my

1 client in front of you and receive sentence.

2 He's 47 years old. He's been employed in a
3 variety of things. He had a tree trimming business
4 for a long time. He worked for a water tech company.
5 And his most recent occupation was remodeling and
6 repairing homes. Every time I tried to talk to him
7 or meet with him, he was always very dirty and had,
8 obviously, been working very hard every time I met
9 with him. So, I think he has a very good work ethic
10 and I think that was kind of born out in the
11 testimony of the trial, that he was putting food on
12 the table and working or what have you.

13 But as far as the convictions and what the
14 sentence is he's facing, obviously, he's facing a
15 maximum of 68 years. I would certainly wish and hope
16 the Court would sentence something substantially less
17 than that. At 47 years old and having to serve
18 85 percent of whatever the sentence is under the CSC
19 first charge will be a substantial time for him. And
20 he will be, you know, somewhat of an elderly fellow
21 before he's eligible for release. I'd ask the Court
22 to take that into consideration.

23 THE COURT: Okay, thank you.

24 Mr. Tallent, anything you'd like to tell me,
25 sir?

1 MR. TALLENT: No, sir.

2 MR. MOYER: Your Honor, I do have his -- the
3 number of days he's been in jail for the Court.

4 THE COURT: Okay.

5 MR. MOYER: It's a total of 103 days. He spent
6 27 days initially, got out on bond. And then when
7 the new charges came about, he was reincarcerated
8 both on the new charges and on a bench warrant for
9 the old charges. I don't know if he's eligible for
10 those 76 days or not. But it was 27 days initially,
11 then 76 on the bench warrant for these charge.

12 THE COURT: Total of?

13 MR. MOYER: Total of 103 days.

14 THE COURT: So 103, okay.

15 Mr. Kappel, does that sound like an accurate day
16 count?

17 MR. TALLENT: Yes, sir, it sure does.

18 THE COURT: Okay. Okay.

19 Mr. Tallent, there's nothing that I can say that
20 is any louder or more profound than the jury's
21 verdict, so I'll not attempt to. I'll simply issue a
22 sentence in this matter. On your contributing to the
23 delinquency of a minor, the sentence of the Court is
24 you be committed to the Department of Corrections for
25 a period of three years, concurrent, credit from time

1 served, 103 days. Lewd act on a minor, the sentence
2 of the Court is you be committed to the Department of
3 Corrections for a period of 15 years, concurrent,
4 credit for time served, 103 days. On the criminal
5 sexual conduct with a minor second degree, 20 years,
6 concurrent, credit for time served, 103 days. And on
7 the criminal sexual conduct with minor first degree,
8 that's 30 years in the Department of Corrections,
9 concurrent, credit for time served. I wish you luck,
10 sir.

11 All right, thank you. I appreciate it. Thank
12 y'all, have a great weekend.

13 (WHEREUPON, the proceedings were concluded.)
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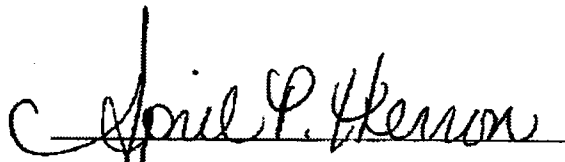
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Greenville County, South Carolina, on
the 17th-19th day of July, 2017.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

February 2, 2018



APRIL P. HERRON, Court Reporter

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER
2014A2330208081

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pro...
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date.

AMENDED INDICTMENT
DOCKET NO. 2014-GS-23-011873
LMM

The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2016

THE STATE

vs.

DWAYNE C. TALLENT

Amended Indictment for
0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on
County present upon their oath.

DEC 13 2016

the Grand Jurors of Greenville

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and September 7, 1998, commit a sexual battery on E. F. G., who was less than eleven years of age. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER
2014A2330208082

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Proctor
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date.

AMENDED INDICTMENT
DOCKET NO. 2014-GS-23-011874
LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2016

THE STATE

vs.

DWAYNE C. TALLENT

Amended Indictment for

0048

CONTRIBUTING TO THE DELINQUENCY OF A
MINOR

VIOLATION § 16-17-0490

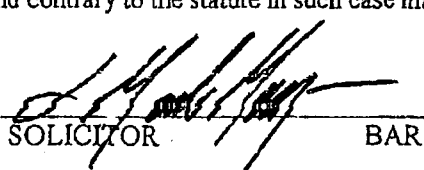
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CONTRIBUTING TO THE DELINQUENCY OF A MINOR

At a Court of General Sessions, convened on **DEC 13 2016** the Grand Jurors of Greenville
County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and September 8, 2002,
knowingly and willfully encourage, aid, or cause E. F. G. and/or C. L. G., minors, to violate a law or municipal
ordinance, to engage in an occupation that is in violation of law, to associate with immoral or vicious persons, to
frequent a place the existence of which is in violation of law, and/or to deport themselves so as to willfully injure
or endanger their morals or health. This is in violation of §16-17-0490 of the South Carolina Code of Laws
(1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER
2014A2330208083

ACTION OF GRAND JURY

FRUE BILL

Thomas J. Pugh
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date.

AMENDED INDICTMENT
DOCKET NO. 2014-GS-23-011875

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2016

THE STATE

vs.

DWAYNE C. TALLENT

Amended Indictment for
2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

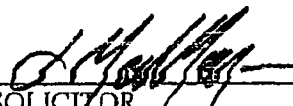
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on **DEC 13 2016** the Grand Jurors of Greenville
County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and September 8, 2002,
being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or
with the body, or its parts, of E. F. G., a child under the age of sixteen years, with the intent of arousing, appealing
to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-0140
of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER

2014A2330208085

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED INDICTMENT
DOCKET NO. 2014-GS-23-011877

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2016

THE STATE

vs.

DWAYNE C. TALLENT

Amended Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE

VIOLATION § 16-03-0655(B)(1)

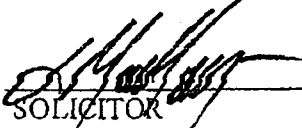
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

At a Court of General Sessions, convened on **DEC 13 2016** the Grand Jurors of Greenville
County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1998 and September 8,
2002, commit a sexual battery on E. F. G., who was fourteen years of age or less but who was at least
eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South
Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155