

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

Court of Appeals Appellate Case No. 2017-001585

Supreme Court Case No. _____

The State, Respondent,

v.

Dwayne Cameron Tallent, Appellant.

APPENDIX VOLUME I

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Dwayne Cameron Tallent, Appellant.

Appellate Case No. 2017-001585

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Opinion No. 5729
Heard March 17, 2020 – Filed June 10, 2020

AFFIRMED

Matthew J. Kappel, of Law Office of Matthew J. Kappel, PC, and J. Falkner Wilkes, both of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General David A. Spencer, both of Columbia; and Solicitor William Walter Wilkins, III, of Greenville, all for Respondent.

HEWITT, J.: This case is chiefly about whether the trial court abused its discretion in declining to sever criminal charges from being tried together. The State alleged that Dwayne C. Tallent sexually abused his minor stepdaughter for several years and he gave her and one of her brothers (the only brother who was a minor at the time) illegal drugs and alcohol after the brothers moved into the house Tallent shared with the siblings' mother. Tallent was charged with first and second

degree criminal sexual conduct with a minor; lewd act upon a child; and a single count of contributing to the delinquency of stepdaughter and brother. A jury convicted him of the charges. The trial court ordered concurrent sentences of thirty years' imprisonment.

Here, Tallent argues the trial court erred in denying his motion to sever the contributing to the delinquency of a minor charge from the other charges. He also argues the trial court erred in admitting evidence of his manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine. In his view, allowing the more egregious drug-related testimony into evidence violated Rule 403 of the South Carolina Rules of Evidence.

We reject these arguments for the same basic reason: both decisions are reviewed under the abuse of discretion standard, and the record reveals no abuse of discretion. Thus, we affirm.

FACTS

This was a delayed reporting case. The abuse allegedly began in the early 1990s when stepdaughter was five or so years old. Stepdaughter testified Tallent's abusive conduct escalated over several years. Details of the abuse need not be repeated here.

Stepdaughter said the abuse ended when she was approximately fourteen years old and went to live with her biological father. She reported the abuse to authorities when she was twenty-six.

Stepdaughter also recalled being around illegal drugs in the household as early as five years old. She testified Tallent let her try marijuana when she was twelve and continued providing her with marijuana and alcohol until she moved out. Stepdaughter also testified crack cocaine and other drugs were present in the home.

The brothers moved into the home some years after their sister. Tallent allegedly exposed both brothers to illegal drugs and alcohol. Both brothers also testified to witnessing Tallent's odd behavior with their sister and, eventually, his abuse of her.

For example, the younger brother stated marijuana use was common in the house. He recalled that Tallent provided all of the children with marijuana, gave the brothers cocaine and other drugs, and taught the brothers how to make crack cocaine.

The younger brother also recalled Tallent frequently touched stepdaughter and rubbed her inner thigh in ways that seemed awkward and inappropriate. He stated it was not uncommon for stepdaughter to be in bed with Tallent. He additionally testified that on one occasion he looked through the keyhole of the bedroom door, witnessed Tallent sexually abusing stepdaughter, kicked the door open, and confronted Tallent.

Older brother corroborated this account about the illegal drug activity and the episode where younger brother witnessed his sister being sexually abused.

Before trial, Tallent moved to sever the contributing to the delinquency of a minor charge from the remaining charges on the ground that trying the charges together would cause undue prejudice by allowing evidence that would otherwise be inadmissible if the trial only involved the CSC and lewd act charges. Tallent argued his involvement in manufacturing, selling, and using cocaine, crack cocaine, and methamphetamine had no substantial connection to the CSC or lewd act charges and would have never passed the probative versus prejudicial threshold if offered as "prior bad acts" in a trial solely concerning the alleged sexual abuse.

The trial court disagreed and found that the charges were interconnected and interwoven. Therefore, the court determined it was appropriate to try them together. The court nevertheless reserved the right to exclude certain testimony if it was unduly prejudicial and specifically mentioned that it was not ruling evidence of drug *transactions* and *manufacturing* would be admitted.

Prior to stepdaughter's testimony regarding drug activity in the house, the State requested that the jury be sent out of the courtroom to seek clarification on the trial court's ruling. The State said it planned to introduce testimony that Tallent provided stepdaughter with marijuana and alcohol, provided cocaine and other drugs to other people in the household, and manufactured crack cocaine in front of stepdaughter. The State argued this evidence was relevant to the contributing to the delinquency of a minor charge.

Tallent objected, arguing the drug evidence was so prejudicial that he would not be able to receive a fair trial and its admission would violate Rule 403. Tallent acknowledged evidence that he gave stepdaughter marijuana and alcohol was relevant to the contributing to the delinquency of a minor charge and admissible. However, Tallent claimed testimony and evidence regarding drug manufacturing, drug transactions, extortion, and firearms was more prejudicial than probative and inadmissible.

The trial court held testimony regarding drug activity was relevant to the contributing to the delinquency of a minor charge and admissible. However, and as before, the court noted Tallent should object if he felt specific testimony violated Rule 403 or went "beyond simply proving the elements of contributing to the delinquency of a minor."

The trial court and the parties continued addressing this issue throughout the trial as various drug-related testimony came out. The court generally allowed testimony regarding drug use and manufacturing in which stepdaughter and her brothers were personally involved. The court also sustained objections and provided curative instructions as to testimony of drug transactions with third parties and other evidence not directly related to Tallent's charges.

Multiple witnesses testified in Tallent's defense, generally stating they did not witness any inappropriate conduct by Tallent toward stepdaughter or other minors. The jury convicted Tallent of all four charges.

SEVERANCE

Tallent argues the trial court erred in denying his motion to sever the contributing to the delinquency of a minor charge. Tallent contends this charge was not "the same general kind of charge, or related in kind, place or character sufficiently to be tried with the sexual offense charges." Additionally, Tallent claims the evidence related to his manufacture, sales, and use of cocaine, crack cocaine, and methamphetamine was unrelated and overly prejudicial with regard to the CSC and lewd act charges. In his view, the court improperly focused on whether the drug-related evidence was relevant to the contributing to the delinquency of a minor charge rather than asking whether this evidence would be admissible if the CSC and lewd act charges were tried alone.

In simple terms, the law explains that multiple charges can be tried together when they have a logical relationship to each other and when there is no prejudice. The "test" is that the charges must "(1) arise out of a single chain of circumstances, (2) [be] proved by the same evidence, [and] (3) [be] of the same general nature" *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). Further, no real right of the defendant can be prejudiced. *Id.* "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's

substantive rights would not be prejudiced." *State v. Rice*, 368 S.C. 610, 614, 629 S.E.2d 393, 395 (Ct. App. 2006).

Decisions on severance and joinder are reviewed under a deferential standard. These rulings "should not be disturbed unless an abuse of discretion is shown." *Tucker*, 324 S.C. at 164, 478 S.E.2d at 265. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Rice*, 368 S.C. at 613, 629 S.E.2d at 395.

Cases use variants of the same general language to describe when the joinder of charges is appropriate. Recent precedent describes joinder as being appropriate for crimes that involve "connected transactions closely related in kind, place, and character." *State v. Beekman*, 415 S.C. 632, 637, 785 S.E.2d 202, 205 (2016) (quoting *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005)). This same decision rejected a restrictive reading of the phrase "a single chain of circumstances." *Beekman*, 415 S.C. at 636, 785 S.E.2d at 204.

"Offenses are considered to be of the same general nature where they are interconnected." *Rice*, 368 S.C. at 614, 629 S.E.2d at 395. "Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." *Id.*

Mindful of these principles, we do not see an abuse of the trial court's discretion in denying Tallent's motion to sever the charges. In our view, one can sensibly say that these charges arose out of a single chain of circumstances, were proved by the same evidence, and were of the same general nature and Tallent was not unfairly prejudiced. *See Tucker*, 324 S.C. at 164, 478 S.E.2d at 265.

First, Tallent's abuse of stepdaughter covered a period of years in various homes where the family lived. During parts of this same period, Tallent supplied stepdaughter and her brothers with illegal drugs and alcohol. He also taught the brothers how to manufacture crack cocaine during this same time period. Although the charges did not arise out of a single isolated incident, the CSC, lewd act, and contributing to the delinquency of a minor charges "arose from, in substance, a single course of conduct or connected transactions." *Beekman*, 415 S.C. at 636-37, 785 S.E.2d at 204 (quoting *State v. Beekman*, 405 S.C. 225, 231, 746 S.E.2d 483, 486 (Ct. App. 2013)). In short, there was evidence that this improper conduct was continuous and spanned several years.

Second, the charges were proved by common evidence. All four charges were proved by the same witnesses—stepdaughter and her brothers. *See Beekman*, 415 S.C. at 638, 785 S.E.2d at 205 (stating that although the defendant's charges were distinct crimes, testimony from many of the same witnesses was used to prove both charges, and rejecting the defendant's argument that joinder required the charges to rely on identical evidence).

Third, the charges were of the same general nature. *See Rice*, 368 S.C. at 614, 629 S.E.2d at 395 ("Offenses are considered to be of the same general nature where they are interconnected."). The State presented evidence showing Tallent abused stepdaughter in the same locations and during the same time periods that he supplied her and her younger brother (the only brother mentioned in the indictment) with drugs and alcohol.

The State's witnesses also testified Tallent's providing stepdaughter with marijuana and alcohol was evidence of Tallent "grooming" stepdaughter so he could abuse her. Although the charges in this case technically differ from each other in that some were sexual in nature and the contributing to the delinquency of a minor charge was drug-related, all are more broadly of the same general nature and could be fairly characterized as involving abusive conduct toward minors.

Fourth, and critically, it is hard to say the joinder of these charges caused unfair prejudice. Tallent contends he was harmed by the drug evidence because it was not relevant to the CSC and lewd act charges. But the test is not so narrow, and precedent says "there may be evidence that is relevant to one or more, but not all, of the charges." *Beekman*, 415 S.C. at 638, 785 S.E.2d at 205. Additionally, and as discussed below, we fail to see how evidence of Tallent's use, manufacture, and sale of cocaine, crack cocaine, and methamphetamine would have a tendency to suggest an improper basis upon which a jury would rely upon in finding he committed CSC or a lewd act. The evidence was harmful to be sure. But we do not think it was unfairly harmful.

In addition to *Beekman*, the present case strikes us as fairly similar to *State v. Davis*, 422 S.C. 472, 812 S.E.2d 423 (Ct. App. 2018). There, the defendant was charged with a property crime—burglary—and possession of methamphetamine with intent to distribute. *Id.* at 476, 812 S.E.2d at 426. The charges stemmed from an incident in which the defendant broke into a home, fled the scene, but left a vehicle behind. *Id.* at 477, 812 S.E.2d at 426. When officers searched the vehicle, they discovered drug paraphernalia and two bags of methamphetamine. *Id.* at 478, 812 S.E.2d at 426-27.

Davis argued the charges should have been severed because the methamphetamine was unrelated to the burglary, not proved by the same evidence, and the joinder of the charges would cause significant prejudice. *Id.* at 481, 812 S.E.2d at 428. This court disagreed, finding the possession with intent to distribute charge arose from the same chain of circumstances as the burglary and was proved through testimony of many of the same witnesses and the defendant did not suffer any prejudice due to the joinder. *Id.* at 481-82, 812 S.E.2d at 428-29.

If there was no winning case for joinder causing unfair prejudice in *Davis*, we think there is not a winning case for unfair prejudice here. Tallent's basic argument seems to be that certain types of especially harmful drug-related evidence would necessarily sway a jury to improperly convict a defendant on charges that are not drug-related. Although that may be true in some individual cases, we respectfully disagree with such a blanket proposition and note that if it were true, the result in *Davis* would be different.

ADMISSION OF DRUG EVIDENCE

Tallent argues the trial court erred in admitting evidence of his manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine because the danger of unfair prejudice from this evidence substantially outweighed its probative value.

Rule 403, SCRE, is a familiar one and provides, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Precedent explains "[u]nfair prejudice means an undue tendency to suggest a decision on an improper basis." *State v. Huckabee*, 419 S.C. 414, 423, 798 S.E.2d 584, 589 (Ct. App. 2017) (quoting *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)).

As already noted, a deferential standard of review applies here as well. "A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." *Id.* (quoting *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014)).

We find the trial court acted within its discretion in admitting evidence of Tallent's use, manufacture, and sale of cocaine, crack cocaine, and methamphetamine. Tallent was charged with contributing to the delinquency of stepdaughter and one of her brothers. The statute says it is unlawful "for any person over eighteen years of age to . . . cause or influence a minor: (1) [t]o violate any law or any municipal ordinance" S.C. Code Ann. § 16-17-490 (2015). Stepdaughter and both brothers testified Tallent provided them with various drugs and taught the brothers how to make crack cocaine.

This testimony was obviously probative of the contributing to the delinquency charge. Indeed, we are unable to formulate a sensible argument that this testimony is not probative.

Tallent's core argument is unfair prejudice, but we think the danger of unfair prejudice from this testimony was relatively low. Although evidence of drug activity is admittedly not relevant to the elements of the CSC and lewd act charges, we fail to see how evidence of drug-related activity would have a tendency to suggest an improper basis for the jury to convict Tallent of CSC or committing a lewd act. *See Huckabee*, 419 S.C. at 423, 798 S.E.2d at 589 ("Unfair prejudice means an undue tendency to suggest a decision on an improper basis." (quoting *Lyles*, 379 S.C. at 338, 665 S.E.2d at 206)). Nothing suggests the jury would be tempted to find Tallent guilty of sexual abuse if it believed Tallent exposed stepdaughter and her brothers to drugs and alcohol.

A holding in Tallent's favor here would be tantamount to a holding that certain drug-related evidence that is probative on one charge inherently causes unfair prejudice on other charges that are not drug-related. We are not aware of any support for that proposition. Accordingly, we find the trial court did not abuse its discretion in admitting testimony regarding Tallent's drug activity.

CONCLUSION

The trial court did not abuse its discretion in denying Tallent's motion to sever and in admitting evidence related to drug use and manufacturing. Thus, Tallent's convictions and sentences are

AFFIRMED.

LOCKEMY, C.J., and GEATHERS, J., concur.

The South Carolina Court of Appeals

The State, Respondent,

v.

Dwayne Cameron Tallent, Appellant.

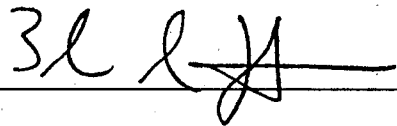
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ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

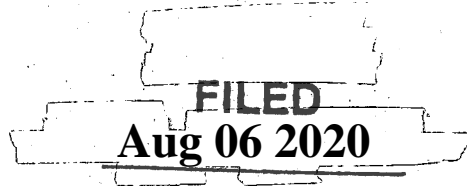
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Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
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The Honorable Robin B. Stilwell


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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
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The Honorable Robin B. Stilwell

Appellate Case No. 2017-001585

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SC Court of Appeals

The State, Respondent,

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Dwayne Cameron Tallent, Appellant.

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STATEMENT OF THE ISSUES

1. Did the trial court err in denying the Appellant's motion to sever the charge of contributing to the delinquency of a minor from the trial of CSC and Lewd Act?
2. Did the trial court err in admitting evidence of the Appellant's manufacture, sale and use of cocaine, crack cocaine, and methamphetamine?

STATEMENT OF THE CASE

The Appellant was indicted by grand jury in Greenville County for Criminal Sexual Conduct With a Minor, First Degree (2014-GS-23-11873); Contributing to the Delinquency of a Minor (2014-GS-23-11874); Lewd Act Upon a Child (2014-23-CP-11875); and Criminal Sexual Conduct with a Minor, Second Degree (2014-23-GS-11877). A jury trial was held on July 17-19, 2017, the Honorable Robin B. Stilwell, presiding. The State was represented by Mark Moyer, Assistant Solicitor. The Appellant was represented at trial by Matthew J. Kappel. The jury returned a verdict of guilty on all charges and the Appellant sentenced to: CSC, 1st thirty years; CSC, 2nd twenty years; Lewd Act on a Minor fifteen years; Contributing to the Delinquency of a Minor three years. All sentences were concurrent. A timely notice of appeal was filed. J. Falkner Wilkes joined in the representation of the Appellant on appeal and this brief follows:

STATEMENT OF FACTS

The Appellant was tried on charges of CSC 1st, CSC 2nd, and lewd act based on allegations of sexual acts committed against the prosecutrix over an period of approximately eleven years. R. 498-505. The Appellant was also tried on a fourth indictment on a charge of contributing to the delinquency of a minor involving the prosecutrix and one of her two brothers. R. 500-501. The Appellant moved to sever the contributing charge on the ground that it would cause undue prejudice by allowing in evidence that would be highly prejudicial on the far more serious charges involving criminal sexual conduct. R. p. 6-7. Of particular concern was the potential for the state to introduce highly inflammatory evidence of the Appellant's bad character through his involvement in the manufacture, sales and use of cocaine, crack cocaine, and methamphetamine, as well as other acts that had no substantial connection to the CSC or lewd act charges. R. p. 36-42. The trial court denied the Appellant's motion *in limine* to sever the contributing charge and allowed the State to proceed at trial on all charges. R. 41-42.

Prior to its admission before the jury the defense argued against the introduction of the Appellant's drug related activity. R. 169-174. The trial court again conducted an analysis but focused only on whether the drug related evidence would be admissible to support the elements of the contributing charge, rather than its prejudicial impact on the CSC and lewd act charges. R. 169-174. At the first introduction of the evidence the defense raised a contemporaneous objection which the court overruled but allowed to be considered as a continuing objection throughout the trial. R. 176; 264. (Additional facts in Argument).

ARGUMENT**I. THE TRIAL COURT ERRED IN FAILING TO GRANT A SEVERANCE OF CHARGES AND ADMISSION OF PREJUDICIAL EVIDENCE OF THE APPELLANT'S MANUFACTURE, USE, AND SALE OF COCAINE, CRACK COCAINE, AND METHAMPHETAMINE.**

At the beginning of the trial the defense moved to sever the contributing to the delinquency of a minor charge arguing that evidence of the Appellant's unrelated drug activity that the State intended to offer under the contributing charge would create undue prejudice as to the other, and far more serious, CSC and lewd act charges. R. p. 6-7; 36; 169-177; 264. "A motion for severance is addressed to the sound discretion of the trial court." State v. Rice, 368 S.C. 610, 613, 629 S.E.2d 393, 394 (Ct. App. 2006). "The trial court's ruling will not be disturbed on appeal absent an abuse of that discretion." *Id.* "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* at 613, 629 S.E.2d at 395. In analyzing the issue in the Appellant's case the trial court failed to properly apply the law. The denial of the Appellant's motion therefore constitutes an error of law.

Under appropriate circumstances separate indictments can be tried together. Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced. State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981); State v. Williams, 263 S.C. 290, 210 S.E.2d 298 (1974). Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together. *See, e.g., State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986) (holding although prison escapee committed two murders within a few miles of each other and

attempted an armed robbery, the trial judge erred in consolidating the charges for one trial where the crimes did not arise out of a single chain of circumstances and they required different evidence); State v. Tate, 286 S.C. 462, 334 S.E.2d 289 (Ct.App.1985) (finding that joint trial on identical but unrelated forgeries violated defendant's right to a fair trial). Here, given the evidence that was offered, the record fails to show how the contributing charge is the same general kind of charge, or related in kind, place or character sufficiently to be tried with the sexual offense charges.

The majority of the evidence offered under the contributing charge related to the Appellant's manufacture, sales, and use of cocaine, crack cocaine and methamphetamine. Although arguably relevant to the contributing charge, this evidence was unrelated and overly prejudicial in regards to the CSC and lewd act charges. Pursuant to the defense's motion to sever the trial court was required to conduct an analysis of the evidence in relation to the CSC and lewd act charges separate and apart from contributing charge. "In cases where the defendant argues prejudice from the admission of evidence of the other charges tried in the same case, our courts have analyzed whether evidence of one or more charges would be admissible in a trial involving only the other charge." State v. McGaha, 404 S.C. 289, 298–99, 744 S.E.2d 602, 606–07 (Ct. App. 2013). Here, rather than determining whether the Appellant's drug related activity would be admissible if the CSC or lewd act charges were tried alone, the trial court looked only to see whether the drug related evidence would be admissible to establish elements of the contributing to the delinquency of a minor charge. R. 172-173. As a result, the court held that all of the evidence proving the Appellant's drug related activity, including the manufacture, sales, and use of cocaine, crack cocaine, and methamphetamine, was admissible as it proved the elements of contributing to the delinquency of a minor. R. p. 173. This was clear error.

At issue was an overwhelming amount of evidence that would have been inadmissible in the CSC or lewd act cases had they been tried separately from the contributing charge. At the onset of the Appellant's trial the state announced its intention to introduce evidence of "manufacturing drugs in the home" and "drug sales in the home" and "open drug use in the home by the Defendant." R. p. 40. The solicitor specifically stated "it is the State's intention to go into all of that testimony" on the claiming that it was "certainly relevant to support this charge." "This charge" clearly being the contributing to the delinquency of a minor. Then during the direct examination of the prosecutrix the State announced to the court that it was about to start getting into the drug activity discussed previously which was related to the contributing charge. R. 169-170. This included everything from using drugs in front of the prosecutrix to the manufacture, use and sales of drugs which later turned out to be cocaine, crack cocaine and methamphetamine. The defense again objected pointing out that even if admissible to the contributing charge, the evidence would not be admissible as to the other charges and served only to place the defendant's bad character in front of the jury on the CSC and lewd act charges. R. p. 169. The defense specifically raised the issue as to what the drug evidence was intended to prove as to the CSC and lewd act charges. R. p. 170-171. The state's response was that the testimony of sexual abuse "creates such a high level of putting the Defendant in such a bad light ... the fact that drugs being in the home are really -- doesn't take it too much to a greater level." R. p. 172. Despite the trial court indicating some difficulty with accepting the State's argument, it nevertheless allowed the testimony without conducting the proper analysis.

The vast majority of drug related evidence in the Appellant's case has no relevance to the CSC and lewd act charges. The one minor exception to the overall lack of probative value of any

of the drug related evidence to the CSC and lewd act charges involves testimony that the Appellant gave the prosecutrix marijuana and alcohol. And even this is tenuous. While the State argued that the jury could “take” that the Appellant provided drugs and alcohol to the prosecutrix as “part of the grooming process” to make her more compliant with the “sexual favors he was getting,” it failed to offer any testimony that would support such a conclusion. R. p. 171. Yet even assuming *arguendo* that providing marijuana and alcohol to the prosecutrix were relevant to the CSC and lewd act charges, evidence of the Appellant’s manufacturing, sales and use of cocaine, crack cocaine, and methamphetamine, and other bad acts involving others remain inadmissible under a proper State v. McGaha and 403/404 analysis.

In its analysis, while the trial court seemed to recognize that the drug related evidence would not be appropriate if to show action and conformity with the defendant’s character, the court held that evidence of drug activity would be admissible to establish the offense of contributing to the delinquency of a minor. R. p. 172. The court failed to go further and determine whether that evidence would be admissible if the CSC and lewd act were tried separately from the contributing charge, which is the required analysis. *See State v. McGaha*, 404 S.C. 289, 298–99, 744 S.E.2d 602, 606–07 (Ct. App. 2013). Had the trial court conducted the proper analysis under McGaha the evidence would have been excluded as the record fails to show how evidence of the Appellant’s manufacture, use and sale of cocaine, crack cocaine, and/or methamphetamine involving third parties would be admissible in a separate trial on the CSC and lewd act charges alone. As a result, the trial court’s ruling on the Appellant’s motion to sever the contributing charge was based on an error of law, and as a result, wrong.

The record in this case fails to show any relevance in the Appellant’s manufacture, sales and use of cocaine, crack cocaine, and methamphetamine to the CSC and lewd act charges. As to

the CSC and lewd act charges, the drug evidence is simply evidence of the Appellant's bad character. "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." SCRE 404(B). Under State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), clear and convincing evidence of other relevant crimes is admissible to prove: 1) motive; 2) intent; 3) absence of mistake or accident; 4) a common scheme or plan that embraces several previous crimes so closely related to each other that proof of one tends to establish the other; or 5) identity. Regardless of any relevance it may have to the contributing charge, the drug evidence fails at issue fails to prove any of the foregoing as to the CSC and lewd act charges. But even if it did have some relevance, it would still fail when any probative value is weighed against its prejudicial effect as to the CSC and lewd act charges. *See State v. Parker*, 315 S.C. 230, 433 S.E.2d 831 (1993).

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct.App.1998). "Once bad act evidence is found admissible under Rule 404(b), the trial court must then conduct the prejudice analysis required by Rule 403, SCRE." State v. Wallace, 384 S.C. 428, 435, 683 S.E.2d 275, 278 (2009) (*emphasis added*). The court may exclude the 404(b) evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant. *Id.* State v. Spears, 403 S.C. 247, 252–53, 742 S.E.2d 878, 880–81 (Ct. App. 2013).

The prejudicial effect of evidence is evident where it stands to suggest a decision on an

improper basis. By potentially insinuating a that the Appellant is a drug dealer the testimony could unfairly impugn the Appellant's character and cloud the issues. The risk of confusion or misdirection therefore required an analysis under Rule 403, SCRE, which the trial court failed to perform. Given the tenuous probative link between the drug related evidence and the CSC and lewd act charges, the prejudicial effect of proving the Appellant a drug dealer outweighs any value the evidence may hold. *See State v. Lyles*, 379 S.C. 328, 340, 665 S.E.2d 201, 207–08 (Ct. App. 2008).

Here the trial court failed to properly consider the prejudicial effect of the drug related testimony in relation to the CSC and lewd act charges in isolation of the contributing charge. The trial court made no specific findings on the record as to why the drug related testimony had probative value as to the CSC and lewd act charges, the nature of the unfair prejudice, or whether the probative value of the testimony was substantially outweighed by the danger of unfair prejudice. Given the record it is neither implicit or apparent that the trial court considered whether the probative value of the cocaine, crack cocaine and methamphetamine manufacturing, sales and use testimony was substantially outweighed by unfair prejudice. The trial court gave no indication that it considered Rule 403 solely in regards to the CSC and lewd act charges. The court's failure to conduct a proper an on-the-record Rule 403 balancing test constitutes an error of law requiring remand or reversal. *See State v. Spears*, 403 S.C. 247, 254, 742 S.E.2d 878, 881 (Ct. App. 2013).

Given the record as a whole the error in the Appellant's case can not be considered harmless. In the Appellant's case there was no physical evidence offered in the case as to the sexual offense charges. The case was made on the testimony of the prosecutrix and a 404(b) witness, along with testimony of the prosecutrix's two brothers. But for the issue of undue

prejudice, the allegations based on sexual misconduct would have turned on the credibility of witnesses. As to credibility, there was evidence offered that could have caused the jury to doubt the testimony of State's witnesses. The record shows that prosecutrix had multiple opportunities to report the allegations yet did not. The prosecutrix was interviewed by the police in January of 2002 and denied that any abuse had occurred. R. 194-195. She was later interviewed by DSS and again denied any sexual abuse. R. p. 198. Approximately ten years after the alleged abuse when the allegations were made the prosecutrix was present during the police interview with her brother where she repeatedly corrected her brother and added statements for her brother to agree with throughout the entire interview. R. p. 310-326. The 404(B) witness, who also claimed sexual abuse by the defendant, also had extensive contact with DSS over the course of many years and yet never disclosed any of alleged sexual abuse by the Appellant despite numerous opportunities to do so. R. p. 345-358. The 404(B) witness further testified that she had been contacted by the prosecutrix prior to trial, and as a result had been communicating with her prior to making her own allegations of abuse. R. p. 344. Given the record as a whole, the evidence of guilt can not be said to be overwhelming. The prejudicial impact of the evidence showing the Appellant's bad character is therefore substantial. Absent physical evidence, given the repeated denials of abuse by the prosecutrix, and the case turning on the credibility of the State's witnesses the trial court's improper admission of drug related evidence can not be deemed harmless error. *See State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94-95 (2011).

Here the trial court failed to conduct a proper analysis and determine whether the evidence offered under the contributing charge would also be admissible in a separate trial for CSC and lewd act. This includes the failure to place on the record its analysis and findings as to the probative value versus the prejudicial impact of the drug related testimony as to the CSC and

lewd act charges, separate and apart from the contributing to the delinquency of a minor charge. As a result, the trial court erred in denying the Appellant's motion for a severance. The Appellant was prejudiced by the court's erroneous ruling by the admission of evidence that was unduly prejudicial, and therefore, the Appellant's convictions should be reversed. *See State v. Smith*, 322 S.C. 107, 109–11, 470 S.E.2d 364, 365–66 (1996).

CONCLUSION

Based on the foregoing the convictions and sentences of the Appellant should be reversed and set aside.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

RECEIVED

JAN 31 2019

SC Court of Appeals

Appellate Case No. 2017-001585

The State, Respondent,

v.

Dwayne Cameron Tallent, Appellant.

CERTIFICATE OF COUNSEL

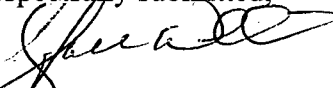
I certify that on January 30, 2019, I served the Final Brief of Appellant and the Final Reply Brief of the Appellant on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below, and to others if so indicated:

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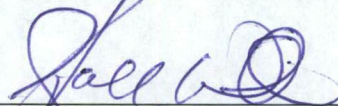
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CERTIFICATE

I certify that the Final Brief of Appellant is in compliance with Rule 211(b).

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STATE OF SOUTH CAROLINA

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Appeal from Greenville County
The Honorable Robin B. Stillwell, Circuit Court Judge

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THE STATE,

Respondent,

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DWAYNE CAMERON TALLENT,

Appellant.

Appellate Case No. 2017-001585

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IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Robin B. Stillwell, Circuit Court Judge

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STATEMENT OF ISSUE ON APPEAL

Because the offenses were offenses against minors and therefore of the same nature, and evidence for the offenses relied primarily on the same three witnesses, and mostly occurred during the same time period in the same household, the trial court did not abuse its discretion by denying the motion for severance.

STATEMENT OF THE CASE

The Greenville County grand jury indicted Appellant Tallent for criminal sexual conduct with a minor in the first degree, criminal sexual conduct with a minor in the second degree, lewd act on a child, and contributing to the delinquency of a minor. A jury convicted Tallent of all charges following trial on July 17-19, 2017, before the Honorable Robin B. Stillwell. Judge Stillwell sentenced Tallent to thirty years imprisonment for CSC 1st, and concurrent sentences of twenty years imprisonment for CSC 2nd, fifteen years imprisonment for lewd act, and three years for contributing to the delinquency of a minor.

STATEMENT OF FACTS

Victim was twenty-nine years old at the time of trial. She was around five years old when Tallent began sexually abusing her. R. pp. 146-47. Victim testified it began when she was little and she was bored. She ran into the bedroom and plopped down on him. Tallent had an erection and began to rub up against Victim through the blanket. R. p. 147. This occurred in a trailer in Deer Road Run. R. pp. 134-35. Victim's biological mother and father divorced before she was two years old and he had a limited role in her life. On the other hand, Tallent was her father figure from when she was eighteen months old until she would finally move away at fourteen years old. R. pp. 133-34.

Victim was already sexually abused by someone else before Tallent began sexually abusing her. Victim explained a family friend named "Mikey" stayed at the house sometimes when the family lived at Deer Run Road. Mikey would take her from her bed at night and lay her on his sleeping bag and rub his genitals against Victim. Tallent somehow learned about the abuse and in later years told Victim that he beat Mikey up back then. She does not know Mikey's last name or where he is, although she told law enforcement about it years later. R. pp. 142-45.

Victim testified the family later moved to Seneca, where Tallent continued to abuse her. She remembered him masturbating while Victim was in the room, but she found it hard to remember details. R. pp. 149-50. The family moved to Tallent's mother's farmhouse when she was eight or nine years old; they lived in an attachment to the house. Tr. pp. 138-39. Subsequently, when by her estimate she was ten or eleven years old, Tallent, Victim, and her mother moved to a doublewide trailer on the same property. R. pp. 138-39.

Victim testified she was nine years old when Tallent masturbated while touching, but not

penetrating, Victim's vagina. R. p. 150. Victim explained it became a normal thing that he would massage her vagina while he masturbated. R. p. 151. Eventually, he began to rub his penis between Victim's legs without entering her body. He used her thighs against her genitals to ejaculate. R. pp. 151-52.

The contact escalated to him putting either his fingers or the tip of his penis in her rectum. He would also kiss Victim's breasts and perform oral sex on Victim while masturbating. Tallent started making Victim perform oral sex on him. All this conduct began before Victim turned eleven years old and continued thereafter. R. pp. 152-53. She specifically recalled the first time he made her perform oral sex on him, she had to put her mouth on him and he told her to "just suck on it like a sucker." R. p. 159.

She recounted an incident when she was nine years old and Tallent was on top of her. She was face down and Tallent rubbed his penis between her legs and it brushed up against her vagina. It slipped and went in her vagina to the extent it hurt and she bled. R. pp. 160-61.

She testified at this age, she did not know any better. She loved and cared for Tallent. Tallent wasn't always bad. He was caring and took the family camping and fishing. R. pp. 153-54. Tallent told her the conduct was their secret. R. p. 155, lines 9-11.

Victim told Tallent's sister about the abuse once. The sister ran after Tallent. Tallent later glared at Victim as if she were in trouble. He later told her people would not understand and it was their secret. It was something special they had. R. pp. 155-56.

When she was about eleven years old, her two brothers, Christopher and Joseph, moved into the doublewide. Her brothers were not in her life much before then: for several years they lived in

Nevada, and later, compliance for their visitation with her mother was sporadic. R. p. 136; pp. 140-41. After her brothers moved in, the sexual abuse continued despite the challenges for Tallent to find opportunities. However, the abuse would occur when her mother was gone. It usually still happened at least once a week. R. pp. 157-58.

As Victim was older, she began to realize what was happening was wrong, but explained, "I didn't know how to stop it because the older I got, the more of a girlfriend to him is the relationship that was created. And I would – I was scared to tell him that I didn't want that, so I played along." R. p. 162, lines 10-13.

Victim was not allowed to be alone with the brothers unless Tallent was present: "He kept me around him." R. p. 163, lines 9-17. Victim recalled being around marijuana in the household as early as five years old. Victim was curious and Tallent let her try marijuana when she was twelve years old. From that point on, she continued to smoke marijuana provided by Tallent. He also let her drink alcohol. R. pp. 76-79. Crack cocaine and other kinds of drugs were present in the household. She described what she saw:

I seen them make little white rocks out of little glass vials. I remember them making stuff in the kitchen. They were scraping it out of a bowl, a white substance. And they would snort stuff, too. They would walk around with the little tin foils and smoke it.

R. p. 179, lines 7-11. Tallent made crack cocaine and showed her brothers how to make crack too. Strangers came into the house to use crack cocaine. Tallent used the drugs in front of Victim. R. p. 179, lines 13-24; p. 180, lines 2-9.

One day, Tallent was masturbating and rubbing Victim's vagina in the bedroom when her brother walked in the room. He asked, "[H]ow long has this been going on?" Then Tallent chased

him out of the room. Later officers came to the house and Victim told them nothing happened. R. pp. 163-65. She explained why:

I was scared of any and all consequences that could – I didn't want people to know. I feared what people would have thought of me. I feared at what if they didn't believe me, and whether or not if I said something and they didn't believe, he would try to hurt people I cared about.

R. p. 165, lines 13-18. She also admitted at the time she felt some blame for what was happening.

R. p. 165, lines 19-22. She later denied abuse to law enforcement and to a forensic interviewer, but she explained she was not telling the truth back then. R. pp. 166-67.

Victim and mother moved to a house on Painter Road when she was fourteen years old. One day, Tallent came to their home after she stayed home from school. Tallent “fully put himself, his penis, in [Victim's] rectum.” R. p. 162, line 24 – p. 163, line 3. Several months later Tallent also moved in and he continued sexually abusing Victim. R. pp. 167-68. The abuse ended when she moved in with her biological father. It was the last time she saw Tallent until trial. R. p. 168.

Victim reported the abuse when she was twenty-six years old. R. p. 180, line 25 – p. 181, line 4. She also was with her brother when he spoke with law enforcement. Refuting a defense claim, she testified she did not tell the brother what to say. R. p. 181. She explained the reason she reported: “It got to a point where, really, it was over-willing me. I was having nightmares. I just – I couldn't put it behind me and I couldn't keep it closed.” R. p. 182, lines 1-3.

Joseph Greco, Victim's oldest brother, testified his parents separated when he was six or seven years old. He lived with his father until he moved in with his mother and Tallent in tenth grade. At the time, Tallent seemed alright, and he enjoyed going camping with him. R. pp. 230-33.

Joseph noticed Tallent hugged Victim alot and always had “skin” contact. “He’d always have his hands on her.” R. p. 234. He would pat her on the butt. Tallent spent a lot of time in the bedroom with Victim and always called for her. Tr. pp. 234-35. Joseph told the jury all Tallent did was lay in bed. R. p. 238, lines 10-11. He might call Joseph and his brother in the bedroom to smoke a cigarette or marijuana. Joseph testified everyone smoked marijuana around Victim. R. pp. 235-36. Victim usually wore a nightgown-type of tee-shirt. R. p. 237.

One time he walked into the bedroom and Tallent “shot up like a deer in the headlights, you know, wide-eyed, like didn’t know I was there.” R. p. 236, lines 20-24. Joseph explained before Tallent shot up, Victim was on the bed and Tallent was on top of her, towards her feet. R. pp. 236-37. He also recalled on another occasion seeing them both under the covers and Tallent moving his hand “pretty funny” around his crotch area, which “weirded” Joseph out. R. p. 238.

Joseph’s brother was in a car wreck and came into a lot of money. Another friend also came into the house with a lot of money. They started using the money to buy cocaine and methamphetamine. They gave Tallent the money and he would buy the drugs. Tr. p. 243. They started to freebase cocaine but their noses started bleeding. R. pp. 243-44. Tallent then taught them how to make crack cocaine, which they made right in the kitchen. R. pp. 244-45. Vicitm was there while it was made and while it was used. R. p. 245.

Things changed the day Joseph’s brother walked into Tallent’s bedroom and Joseph heard him shout and come out of the room with Tallent chasing him out of the house. R. p. 239. On the way out he said, “Dude, Dwayne’s molesting [Victim].” R. p. 240, lines 12-13. The brothers moved out of the house afterwards. Joseph would not see Tallent again for another fifteen years. Joseph

and his brother told their father about the incident. Their father reported it to law enforcement, and the brothers told law enforcement what they saw. R. pp. 240-41.

Christopher Greco testified he and his brother moved in with Tallent around the time he turned eleven years old. Christopher had trouble getting along with Tallent. Tallent seemed awkward and distant. Christopher noticed Tallent always touched Victim, rubbing her inner thigh. He found it awkward and inappropriate. R. pp. 256-57. He testified it was not uncommon for Victim to be in bed with Tallent. R. p. 258. The only time Christopher was invited into the bedroom was to use drugs. R. p. 259.

Christopher described the marijuana use in the household as all day, every day. R. p. 263. He saw Tallent give Victim and her friend marijuana one time. R. p. 264. Tallent also gave marijuana to Christopher from the time he was eleven. He confirmed they consumed other drugs and converted cocaine to crack cocaine. They were using cocaine when he was seventeen years old, but they did not start manufacturing crack until he was eighteen. R. pp. 264-66.

Christopher was up to use the bathroom when he heard a slight moaning. He looked through the keyhole of the bedroom and saw Tallent and Victim under the covers. Tallent was touching himself and Victim with his other hand. He told her "that is how you do it." Christopher kicked open the door and demanded to know how long it had been going on. He called Tallent sick. Tallent "freaked out" and jumped out of bed. Tallent chased Christopher outside, threw coolers at him, and told Christopher that Christopher could ruin his whole world. R. p. 260; p. 274, lines 18-24 (direct quote). When asked if they were clothed, Christopher testified Tallent was in his boxers, he could not tell whether Victim was dressed or not. R. p. 262. Christopher and his brother moved out

afterwards. They told their father and Christopher told DSS about what happened. R. p. 261.

CR provided Lyle testimony. She was fifteen years old when she testified at trial. Her and her mother moved in with Tallent. Tallent was a father figure in CR's life. At the time of trial, she lived with her sister's grandfather since being placed there by DSS. R. p. 331. She lived at both Tallent's mother's farmhouse and Tallent's doublewide trailer. At the time, she was close to Tallent's mother. She is not anymore. Tallent started touching CR when she was around five years old, and she did not know it was wrong. As she later realized the abuse was wrong, she kept it to herself because she was scared. R. pp. 336-38. She explained she still loved Tallent and even told the jury Tallent is a good person. Nonetheless, she explained Tallent would touch around her vagina. The abuse would continue until Tallent moved away when CR was eleven years old. R. pp. 339-40. Tallent also touched CR's chest and kissed her on the lips. R. pp. 340-41. Sometimes the abuse occurred with the clothes on and sometimes Tallent took her clothes off. R. p. 341. Tallent told her not to tell because nobody would understand it and that nobody would understand his love for her. R. p. 343, lines 7-9. She explained she did not want to tell anyone because she was worried she would lose the only family she had, and she noted that is exactly what happened, she lost her family after she disclosed and was living with her sister's grandfather. R. p. 343.

Deputy Richter visited her at school – she did not know he was going to visit. Although tempted to disclose the abuse, she decided she did not want to tell Richter because it would ruin her school day, and ruin her family. R. pp. 344-45. She later disclosed the abuse to a DSS caseworker. R. pp. 345-46.

The prosecutor asked if her life was easier or harder since she disclosed, and she replied, "It

was so much harder on me.” Tr. p. 349, lines 9-11. She explained why:

Because knowing that I came out, I knew that right then and there, the place that I was at as not a safe environment. I knew that I would be [taken] from my home. I knew that I would be [taken] away from my family, which I, basically, have been.

R. p. 349, lines 13-23. CR explained she was afraid she would lose her family, and in the end, it was worse than she feared. She admitted Tallent’s family put pressure on her to change her story. R. p. 350, lines 1-15.

The first defense witness, Selena Brunson, and her future husband lived with Tallent for four months in 1991 when she was seventeen or eighteen. She said she never saw anything wrong and testified there was no “Mikey” living there at the time. R. pp. 364-75.

Lenore Brissey, Tallent’s mother, testified. She used to go horseback riding with Victim. She testified when Victim and her mother left Tallent, Victim told her she did not want to leave and hugged her. Tr. pp. 383-88. Victim never told her Tallent was doing anything. Brissey testified if she did, Brissey would have called the police. R. p. 389. Brissey testified she also had a close relationship with CR. R. pp. 390-91. CR never told her Tallent was touching her inappropriately either. R. p. 398.

Tallent’s sister, Diana Rogers, testified Victim never disclosed any abuse to her. R. p. 404. Likewise, Tallent’s other sister, Debbie Seymore, testified she did not see any inappropriate touching and Victim never disclosed abuse to her. R. p. 411.

ARGUMENT

Because the offenses were offenses against minors and therefore of the same nature, and evidence for the offenses relied primarily on the same three witnesses, and mostly occurred during the same time period in the same household, the trial court did not abuse its discretion by denying the motion for severance.

Tallent complains the trial court erred in denying his motion for severance. However, Victim was a victim in all four charges, and her brother was also a victim for the contributing charge. Victim and her brother were the primary witnesses for the sexual assault offenses and the contributing charge. The evidence comprising the contributing charge occurred while Tallent was still sexually abusing Victim and occurred in the same household. The offenses were proved by the same evidence. The offenses, all against minors, were of the same general nature and no real right of Tallent's was infringed upon. Therefore, the trial court did not abuse its discretion.

Standard of Review

A motion for severance is addressed to the sound discretion of the trial court. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); McCrary v. State, 249 S.C. 14, 152 S.E.2d 235 (1967); State v. Carter, 324 S.C. 383, 478 S.E.2d 86 (Ct. App. 1996); State v. Anderson, 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995). The court's ruling will not be disturbed on appeal absent an abuse of that discretion. Tucker, 324 S.C. at 164, 478 S.E.2d at 265; State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); State v. Deal, 319 S.C. 49, 459 S.E.2d 93 (Ct. App. 1995); see also State v. Harris, 351 S.C. 643, 572 S.E.2d 267 (2002) (stating a motion for severance is addressed to the trial court and should not be disturbed unless abuse of discretion is shown). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.

State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005).

Pre-trial and in camera arguments

During Tallent's pretrial motion to sever, the trial court expressly indicated it was not addressing testimony of drug manufacture or drug transactions being admissible under Rule 403 analysis, but noted "given what I know as I sit here that it was all part of a continuing relationship between the Defendant and all these other persons. And they are interconnected and interwoven that it is appropriate to try them together." R. p. 41, line 18 – p. 42, line 14. The trial court noted certain testimony might be excluded if it was unduly prejudicial. R. p. 42, lines 11-14.

During trial, in the middle of Victim's direct-examination, the prosecution requested the jury be sent out of the courtroom, and to seek clarification on the trial court's ruling regarding testimony about illegal drugs. The prosecution noted the evidence concerning the illegal drugs included testimony Tallent provided her with marijuana, drugs were used in her presence, drugs were shared with other people visiting the house, and crack cocaine was made in the home. R. pp. 169-70. In response, Tallent's counsel argued the drug evidence was too prejudicial under Rule 403, SCRE, and his client would not have a fair trial. R. pp. 170-71. In response, the prosecution noted some of the drug activity was relevant to the grooming process and it was all relevant to the charge of contributing to the delinquency of a minor for both Victim and Christopher. R. p. 171. The trial court found, based on the proffer, the evidence was admissible to prove contributing to the delinquency of a minor. He advised defense counsel that defense counsel would need to make specific objections to any evidence he believed was too prejudicial. R. p. 174, lines 3-8. Trial counsel indicated he would object to whatever comes in, and argued evidence of providing marijuana

and alcohol should be sufficient to prove the elements of contributing to the delinquency of a minor without evidence of the other drugs. R. p. 174, lines 9-18.

When Victim subsequently testified about marijuana being present in the house as early as five years old, defense counsel objected and asked for a continuing objection, to which the trial court indicated “was fine by me.” R. p. 176, lines 15- 25. When counsel objected to testimony about drug deals, the trial court sustained the objected and provided a curative instruction. R. p. 180, lines 17-23.

Discussion

Criminal charges may be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the discretionary power to order the indictments tried together if the defendant’s substantive rights would not be prejudiced. State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005); State v. Sullivan, 277 S.C. 35, 43-44, 282 S.E.2d 838, 843 (1981) (where offenses charged in separate indictments are of same general nature, involving connected transactions closely related in kind, place and character, the trial judge has authority, in his discretion, to order indictments tried together over the objection of the defendant absent a showing that the defendant’s substantive rights were violated); McCrary v. State, 249 S.C. 14, 36, 152 S.E.2d 235, 246 (1967) (stating “[t]he two offenses were of the same general nature, involving connected transactions closely related in time, place and character; and the

trial judge had power, in his discretion, to order them tried together over objection by the defendant in the absence of a showing that the latter's substantive rights would have been thereby prejudiced.”).

In State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996), the Supreme Court found the charges of murder and burglary were interconnected because the reason Tucker burglarized a church was to avoid capture for the murder charge. The Court found severance was not warranted because the crimes arose out of a single chain of circumstances, evidence of the break-ins were admissible as evidence of flight and identity for the murder, and the crimes were of the same general nature.

Recently, this Court found joinder of charges for first-degree burglary and possession with intent to distribute methamphetamine proper because the burglar's vehicle was parked on the burglarized property and during an inventory search of the vehicle, officers found methamphetamine in the vehicle and the burglar in the house. State v. Davis, 422 S.C. 472, 482, 812 S.E.2d 423, 429 (Ct. App. 2018). This Court noted the offenses originated from the same chain of events and required the same witnesses. Id.

In State v. McGaha, 404 S.C. 289, 297, 744 S.E.2d 602, 606 (Ct. App. 2013), this Court found, “Thus a substantial portion of the testimony the State presented at trial to prove the crimes against one child was the same evidence it would have used to prove the crimes against the other. Even though some of the evidence related only to one child, we find the evidence described above supports the trial court's determination that the separate charges would be proven by the same evidence.”

In the instant case, the offenses are of the same general nature: they are offenses against

children. Further, all the offenses rely on the same three principle witnesses, Victim and her brothers. The brothers were witnesses to sexual abuse and provided probative evidence of the nature of the relationship between Tallent and Victim. They also witnessed a portion of the evidence constituting the contributing to delinquency of a minor charge as to Victim. Victim was a witness to the evidence constituting contributing to the delinquency of a minor against Christopher. Further, the offenses were closely related in time. The sexual abuse continued while the brothers lived in the home and the drug-use proving contributing to the delinquency of a minor was ongoing during this time.

Additionally, the drug evidence was admissible as *res gestae*. Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). Under the *res gestae* theory, evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004).

This evidence of other crimes is admissible:

when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘res gestae’ “ or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be

fully shown without proving the other ... '[and is thus] part of the res gestae of the crime charged.' And where evidence is admissible to provide this 'full presentation' of the offense," [t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "res gestae."

Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980) (citations omitted)).

Tallent concedes the probative worth of Victim's marijuana and alcohol use. The use and manufacture of other drugs in the household is likewise relevant and admissible as res gestae evidence because it constitutes the environment Victim lived in before the brothers left the household. The brothers were only allowed in the bedroom to smoke drugs. Victim was shoed away at least some of the time in a half-hearted attempt to shield her from the household environment of heavier drugs. It also explains the limitations on the brothers' limited opportunity to observe sexual abuse of Victim.

In the instant case, the trial court did not err in denying the motion to sever the charges. Victim and the two brothers were the primary witnesses for both the sexual and the drug-related offenses. The offenses were of the same character, both involved offenses against minors who were in Tallent's custody. The sexual assaults were ongoing at the time the brothers moved in and the use of drugs occurred at the same time after the brothers moved into the house. The offenses also all occurred at the same location, Tallent's home. Tallent begrudgingly concedes the probative value of testimony he shared marijuana and alcohol with Victim. This evidence is admissible for both the sexual assault charges and the contributing to Victim's delinquency and therefore is admissible evidence in both cases. The use of cocaine and methamphetamine, the production of crack cocaine,

and allowance of strangers to use drugs inside the house all are probative evidence of the contributing charge. They also provide the context of the responsible-parent free environment in which Victim was always in Tallent's bedroom in a nightgown, Tallent lay in bed all day, drugs were freely used by the children, and Victim filled the role of Tallent's girlfriend.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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January 15, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Robin B. Stillwell, Circuit Court Judge

RECEIVED
JAN 15 2019
SC Court of Appeals

THE STATE,

Respondent,

vs.

DWAYNE CAMERON TALLENT,

Appellant.

Appellate Case No. 2017-001585

CERTIFICATE OF COUNSEL

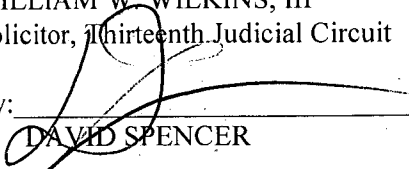
The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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January 15, 2019

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

RECEIVED
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SC Court of Appeals

The State, Respondent,,

v.

Dwayne Cameron Tallent, Appellant.

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APPEAL FROM GREENVILLE COUNTY
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STATEMENT OF THE ISSUES IN REPLY

1. Does proof Appellant's manufacturing, distribution, and sales of crack cocaine and methamphetamine prove CSC charge sufficiently to justify joinder of charges.

ARGUMENT

I. EVIDENCE OF APPELLANT'S MANUFACTURING AND DISTRIBUTION OF DRUGS, OFFERED TO PROVE CONTRIBUTING TO THE DELINQUENCY OF BROTHERS, FAILS TO PROVE THE CSC ALLEGATIONS AGAINST SISTER SUFFICIENTLY FOR JOINDER OF CHARGES.

Separate offenses may be joined and tried together if the offenses arise out of a single chain of circumstances, are proved by the same evidence, and are of the same general nature, and if no real right of the defendant will be jeopardized by trying the offenses together. State v. Deal, 319 S.C. 49, 52, 459 S.E.2d 93, 95 (Ct. App. 1995). Here, the evidence of the Appellant's manufacture, distribution, and use of crack cocaine, offered to prove contributing to the delinquency of the brothers failed to prove any element of the CSC allegations as to the sister.

The cases relied on by the State are easily distinguished. In Tucker the court found that the defendant had committed subsequent burglaries solely to avoid capture by police for the prior crimes. Evidence of the subsequent break-ins was therefore admissible to prove the prior crimes as evidence of flight and identity. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). In Tucker the proof of one charge tended to prove the others. Similarly, in Anderson the court held that charges could be tried together where all arose out of the same traffic stop. Evidence obtained as a result of a single traffic stop showed that the defendant was driving under the influence, driving with a suspended license, and driving while his license was suspended under the Habitual Traffic Offender Act. State v. Anderson, 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995). In Anderson the evidence as to one charge tended to prove the other charges. The same was true in Deal. There the defendant sought to sever a charge of exposing another to HIV from a CSC involving the same assault on the same victim. While the defendant admitted the sexual

encounter he claimed that it was consensual. Because the victim knew prior to the incident that the defendant was HIV positive the court found the defendant's HIV status would have been relevant to the issue of consent, and therefore would have been admissible in a trial on the assault and criminal sexual conduct. State v. Deal, 319 S.C. 49, 459 S.E.2d 93 (Ct. App. 1995). Again, one charge tended to prove the other. The same was true in McGaha where charges against two victims occurred under almost identical circumstances. There the court found that "[a] substantial portion of the testimony the State presented at trial to prove the crimes against one child was the same evidence it would have used to prove the crimes against the other." State v. McGaha, 404 S.C. 289, 744 S.E.2d 602 (Ct. App. 2013). Again, proof of one proved the other. Similarly, in Davis the joinder of a first-degree burglary and PWID methamphetamine offenses was held proper where the arrest for PWID methamphetamine arose out of the police's inventory of the car at the scene of the burglary investigation. Therefore, Davis's offenses originated from the same chain of events and required the same witnesses. State v. Davis, 422 S.C. 472, 812 S.E.2d 423 (Ct. App. 2018), *reh'g denied* (Apr. 26, 2018), *cert. denied* (Aug. 21, 2018). Again, proof of one tended to prove the other.

Here the record fails to meet the requirement that evidence of one tends to prove the other. While there was testimony that the Appellant allowed the victim to smoke marijuana, there was no evidence that she was involved in the manufacturing, distribution or sale of crack cocaine or methamphetamine. While the state has argued that drugs were used in the "grooming" of the victim, there was no evidence that she was ever given, offered, or participated in the manufacturing, distribution or sale of crack or meth. Other than to prove the bad character of the defendant all of the evidence offered under the contributing charges establish nothing as to the

CSC allegations. It was therefore error for the court to deny the Appellant's motion to sever.

CONCLUSION

Based on the foregoing the convictions and sentences of the Appellant should be reversed and set aside.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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JAN 31 2019

SC Court of Appeals

Appellate Case No. 2017-001585

The State, Appellant,

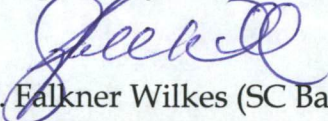
v.

Dwayne Cameron Tallent, Respondents.

CERTIFICATE OF COUNSEL

I certify that the Final Reply of Appellant is in compliance with Rule 211(b).

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The State, Respondent,

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CERTIFICATE OF COUNSEL

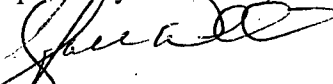
I certify that on January 30, 2019, I served the Final Brief of Appellant and the Final Reply Brief of the Appellant on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below, and to others if so indicated:

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THE STATE OF SOUTH CAROLINA
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Jun 25 2020

SC Court of Appeals

Appellate Case No. 2017-001585

The State, Appellant,

v.

Dwayne Cameron Tallent, Respondents.

PETITION FOR REHEARING

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PETITION FOR REHEARING

The Court's opinion exceeds the scope of all prior cases and essentially opens the door for the State to join cases to introduce evidence at trial that would otherwise be inadmissible.

Criminal charges can be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). To make this case fit the "are of the same general nature" requirement of Tucker, this Court relied on State v. Rice: "Offenses are considered to be of the same general nature where they are interconnected." *See Rice*, 368 S.C. at 614, 629 S.E.2d at 395. A review of Rice and other relevant decisions shows that the Appellant's case lacks the necessary level of interconnection between Appellant's sex offense charges involving the step-sister and the contributing charge involving the brothers that the State used to bring in evidence that the Appellant manufactured and sold crack cocaine and methamphetamine. The Court's opinion overlooks the fact that as to the CSC and lewd act charges against the step-daughter evidence of the Appellant's manufacturing and sale of crack and methamphetamine with the brothers would be inadmissible character evidence.

In Rice the court found that joinder of a murder and trafficking cocaine charge into a single trial was appropriate where the trafficking charge arose out of a traffic stop the police set up because they suspected defendant of the victim's murder. There the police found a gun believed to be the murder weapon in the same search of the car that produced the cocaine and money that formed the basis of the cocaine trafficking charge. The State sought to prove that Rice murdered the victim to retrieve cocaine and money the victim previously stole from Rice.

Moreover, the trial testimony was that the relationship between defendant and the victim was based on selling drugs. In Rice the court found that the defendant suffered no prejudice from the joinder of charges because, without the evidence of cocaine trafficking, the jury would not have received an accurate portrayal of the case. State v. Rice, 368 S.C. 610, 611, 629 S.E.2d 393, 394 (Ct. App. 2006). As a result, the evidence relating to Rice's drug charge would have been admissible in Rice's burglary trial if the charges were tried separately. Rice is therefore clearly distinguishable.

Unlike the case in Rice, the Appellant's charges could have been tried separately without damaging the State's ability to fairly present each charge to separate juries. Also unlike Rice, evidence of the Appellant's manufacturing and sale of crack and methamphetamine would not have been admissible in a separate trial on the sexual offense charges involving the step-daughter. The record is devoid of evidence showing that the manufacture and sale of crack cocaine and methamphetamine was used in the commission of the CSC or Lewd Act offenses involving the step-daughter. While there was some evidence that the Appellant allowed the step-daughter to drink alcohol and use marijuana, that was completely unconnected to the allegations involving the Appellant's manufacturing and sale of crack and methamphetamine with the brothers. The contributing charge was simply used as a vehicle by the State to admit highly prejudicial evidence of the Appellant's drug manufacturing not otherwise admissible in the CSC or lewd act cases had the charges been tried separately. Unlike Rice, evidence of Appellant's manufacturing and sale of crack and methamphetamine does not show motive, it does not establish any of the elements of the CSC or lewd act charges, and its admission was not necessary to allow the jury to receive an accurate portrayal of the case on the sex offenses

involving the step-daughter. In relation to the sexual offense charges it is simply evidence of bad character.

The court further likened this case to that of State v. Davis. Davis is also easily distinguishable. Davis involved the joinder of first degree burglary and PWITD methamphetamine, charges clearly not of the same general nature. To meet the requirements for joinder in a single trial the Davis court relied on what it perceived as an interconnection between the charges. Although the term “interconnected” is used frequently in case law, it is not defined or quantified. Although not expressly quantified, a review of the facts of relevant cases show that there must be a significant level of interdependence between the evidence proving the elements of each charge if the cases are to be joined. As in Rice, the facts of Davis show that Davis' charges for burglary and PWITD were inextricably intertwined. The temporal aspect was so close that it was clear that the charges were not only interconnected, but intertwined in such a way that one could not be prosecuted without evidence of the other. Davis was caught in the commission of a burglary with the getaway car in the driveway. The unfamiliar car in the driveway led to the discovery of the burglary and the police being called. Drugs were found in the car along with Davis' driver's license and other personal effects. Davis had drug paraphernalia on her when she was caught on the roof of the house and admitted to possession of the drugs in the car. Davis' PWITD charge could not have been proven without the facts of where the drugs were found in relation to Davis, or that the drugs were discovered as the result of the burglary, or that the confession of Davis as to the drugs occurred during the burglary investigation. Likewise, the jury could not have an accurate understanding of the events relating to the burglary without evidence of the drugs, especially where the drug charge could establish motive for the burglary.

In the present case the manufacturing and sale of crack and methamphetamine involving the brothers is not relevant, much less necessary, to the CSC and Lewd Act charges involving the stepdaughter. The facts of the present case therefore fail to rise to the level of connectivity seen in Davis, Rice, or any other case affirming the denial of a motion to sever. The record fails to show the manufacturing and sale of crack and methamphetamine facilitated, furthered, or used to aid in the concealment of the sexual offenses against the step-daughter. While there was evidence that the Appellant allowed the step-daughter to use marijuana or alcohol that has no meaningful connection to allegations that Appellant was making and dealing crack and methamphetamine with the brothers or third parties. The record simply fails to show sufficient interconnection between evidence portraying the Appellant as a dealer of crack and methamphetamine and the sexual offense charges. Unlike Rice, Davis or other cases, the drug dealer evidence is not necessary to the sexual offense charges and can be excluded without diminishing the state's ability to present its case as to the sexual offense charges. Each charge could be tried independently of the other. As to the sexual offense charges the only purpose served by evidence that the Appellant was a drug dealer was to prove that the Appellant was of bad character.

The Court has applied the analysis of Rice and Davis so loosely in this case that it opens the door for joinder of dissimilar charges virtually without limitation. The Court's opinion in the Appellant's case has essentially done away with the rule that the charges must be interconnected in some meaningful way and sets the stage through joinder of charges for the unbridled admission of evidence that would be otherwise inadmissible. An examination of the origin of the language used in Rice and Davis shows how far the Court's opinion has deviated from the original scope of the rule. In State v. Harry the court stated: "In this case, the charges arose out of

a single chain of circumstances beginning with the arson and continuing to the false insurance claim. Furthermore, much of the same evidence would have been admissible at both trials. The charges are of the same general nature because they are interconnected." State v. Harry, 321 S.C. 273, 278, 468 S.E.2d 76, 79 (Ct. App. 1996). In Harry the defendant burned down a house and then made an insurance claim for the damage. He was charged with arson and the making a false insurance claim. Factually, burning down a house and making a false claim for the house that was burned down are obviously so intertwined that the false claim charge couldn't be prosecuted without the evidence of the arson. This Court's opinion has taken an often repeated phrase completely out of context with the facts of each case that gave it definition. When the Court in Harry, and later Davis and Rice, found that charges were of the same general nature because they were interconnected, the holdings were based on charges with facts that were intertwined in such a way that one or more of the charges could not be effectively prosecuted without evidence of the other. The Appellant's case lacks that level of interconnection and this Court's loose interpretation of "interconnected" opens the door for the admission of evidence that would be inadmissible but for joinder of dissimilar charges. The Court's opinion in this case substantially changes the long standing application of the law on joinder and severance of charges and erodes the protections previously afforded defendants in criminal cases.

Conclusion

Based on the foregoing the Appellant moves this Court to grant a rehearing.

[signature page follows]

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June 25, 2020.

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CERTIFICATE OF COUNSEL

I certify that on June 25, 2020, I served the Appellant's Petition for Rehearing on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below, and to others if so indicated:

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June 25, 2020

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Clerk of the Court of Appeals
P.O. Box 11629
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RECEIVED
Jun 25 2020
SC Court of Appeals

Re: State, Respondent v. Dwayne Cameron Tallent, Appellant
Appellate Case No.: 2017-001585

Dear Ms. Kitchings,

Enclosed please find the Appellant's petition for rehearing, certificate of service and check for the filing fee. I am filing and serving the documents via email.

Sincerely,

s/J. Falkner Wilkes
J. Falkner Wilkes

c:
David A. Spencer, Asst. Atty. General
P.O. Box 11549
Columbia, SC 29211
via AIS email only to: dspencer@scag.gov

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2017-001585

The State, Appellant,

v.

Dwayne Cameron Tallent, Respondents.

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) 2014-GS-23-11873-11875;
) 11877

ORIGINAL

STATE OF SOUTH CAROLINA)
)
) PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
DWAYNE C. TALLENT)
)
) DEFENDANT)

July 17-19, 2017
Greenville, South Carolina

B E F O R E:

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

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

MARK MOYER, ASSISTANT SOLICITOR
Attorney for the State

MATTHEW KAPPEL, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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

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

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

10 THE COURT: Okay. All right.

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

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

15 THE COURT: Okay.

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

25 THE COURT: Okay, good enough.

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

5 THE COURT: Okay, good enough.

6 All right, Mr. Moyer.

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

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

17 You have jurors?

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

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

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

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

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

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

1 questions that I pose to you.

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

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

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

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

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

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

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

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

25 Now, ladies and gentlemen, having read those

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

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

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

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

12 PROSPECTIVE JUROR: I don't think so.

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

15 Yes, ma'am.

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

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

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

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

1 of jurors.

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

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

6 THE COURT: Okay. And --

7 PROSPECTIVE JUROR: And still in court.

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

11 PROSPECTIVE JUROR: That would be a problem.

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

15 PROSPECTIVE JUROR: Twenty-six.

16 THE COURT: Twenty-six.

17 And yours, ma'am?

18 PROSPECTIVE JUROR: Eighty-five.

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

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

25 (There was no response.)

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

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

8 (There was no response.)

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

15 (There was no response.)

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

18 Yes, ma'am.

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

21 THE COURT: Your name and juror number?

22 PROSPECTIVE JUROR: Ninety-eight, Kerry Killen.

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

25 PROSPECTIVE JUROR: My cousin and church

1 members.

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

5 PROSPECTIVE JUROR: I do.

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

8 Yes, ma'am.

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

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

17 PROSPECTIVE JUROR: Absolutely.

18 THE COURT: Thank you, I appreciate that.

19 All right. Anyone else?

20 (There was no response.)

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

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

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

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

18 (There is no response.)

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

23 Yes, ma'am.

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

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

2 THE COURT: Your name and juror number?

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

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

8 PROSPECTIVE JUROR: Yes, sir.

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

11 Anyone else?

12 (There was no response.)

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

21 (There was no response.)

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

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

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

5 All right. Yes, sir.

6 PROSPECTIVE JUROR: My sister was molested.

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

9 PROSPECTIVE JUROR: Christopher Minard, 117.

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

13 PROSPECTIVE JUROR: I do.

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

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

20 (There was no response.)

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

23 Counsel, any additional questions of voir dire?

24 MR. MOYER: Not from the State.

25 MR. KAPPEL: None from us, Judge.

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

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

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

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

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

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

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

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

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

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

11 THE CLERK: What says the State?

12 MR. MOYER: Please present Ms. Stafford.

13 THE CLERK: What says the Defendant?

14 MR. KAPPEL: Please excuse the juror.

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

16 You've been excused from this case.

17 Juror 117, Christopher Minard.

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

19 THE CLERK: What says the State?

20 MR. MOYER: Please present Mr. Minard.

21 THE CLERK: What says the Defendant?

22 MR. KAPPEL: Please excuse this juror.

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

25 Juror 189, Jennifer Williams.

1 (Jennifer Williams, a black female, stood.)
2 THE CLERK: What says the State?
3 MR. MOYER: Please present Ms. Williams.
4 THE CLERK: What says the Defendant?
5 MR. KAPPEL: Please swear the juror.
6 THE CLERK: Ma'am, if you will please bring your
7 things, come have a seat in the jury box.
8 Juror No. 168, Nicholas Sinicropi.
9 (Nicholas Sinicropi, a white male, stood.)
10 THE CLERK: What says the State?
11 MR. MOYER: Please excuse the juror in this
12 case.
13 THE CLERK: You may be seated, sir. You've been
14 excused from this case.
15 Juror 115, Cynthia Miller.
16 (Cynthia Miller, a white female, stood.)
17 THE CLERK: What says the State?
18 MR. MOYER: Please present Ms. Miller.
19 THE CLERK: What says the Defendant?
20 MR. KAPPEL: Please excuse this juror.
21 THE CLERK: You may be seated, ma'am. You've
22 been excused from this case.
23 Juror 174, Doris Stenhouse.
24 (Doris Stenhouse, a black female, stood.)
25 THE CLERK: What says the State?

1 MR. MOYER: Please present Ms. Stenhouse.

2 THE CLERK: What says the Defendant?

3 MR. KAPPEL: Please swear the juror.

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

6 Juror No. 166, Howard Shunkwiler.

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

8 THE CLERK: What says the State?

9 MR. MOYER: Please present Mr. Shunkwiler.

10 THE CLERK: What says the Defendant?

11 MR. KAPPEL: Please excuse this juror.

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

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

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

17 THE CLERK: What says the State?

18 MR. MOYER: Please present Ms. Henson.

19 THE CLERK: What says the Defendant?

20 MR. KAPPEL: Please excuse this juror.

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

23 Juror 146, Bobby Ramsey.

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

25 THE CLERK: What says the State?

1 MR. MOYER: Please present Mr. Ramsey.

2 THE CLERK: What says the Defendant?

3 MR. KAPPEL: Please swear the juror.

4 THE CLERK: Sir, would you please come have a
5 seat in the jury box.

6 Juror No. 158, Kimberly Saunders.

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

8 THE CLERK: What says the State?

9 MR. MOYER: Please present Ms. Saunders.

10 THE CLERK: What says the Defendant?

11 MR. KAPPEL: Swear the juror.

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

14 Juror No. 23, Melanie Bowman.

15 (Melanie Bowman, a white female, stood.)

16 THE CLERK: What says the State?

17 MR. MOYER: Please present Ms. Bowman.

18 THE CLERK: What says the Defendant?

19 MR. KAPPEL: Please swear the juror.

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

22 Juror No. 170, Lakisha Smith.

23 (Lakisha Smith, a black female, stood.)

24 THE CLERK: What says the State?

25 MR. MOYER: Please present Ms. Smith.

1 THE CLERK: What says the Defendant?

2 MR. KAPPEL: Please swear the juror.

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

5 Juror No. 44, Kerry Deese.

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

7 THE CLERK: What says the State?

8 MR. MOYER: Please present Ms. Deese.

9 THE CLERK: What says the Defendant?

10 MR. KAPPEL: Please excuse this juror.

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

12 You've been excused from this case.

13 Juror No. 124, Alisa Nomikos.

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

15 THE CLERK: What says the State?

16 MR. MOYER: Please seat Ms. Nomikos.

17 THE CLERK: What says the Defendant?

18 MR. KAPPEL: Please excuse this juror.

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

21 Juror No. 64, Norman Gourley.

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

23 THE CLERK: What says the State?

24 MR. MOYER: Please present Mr. Gourley.

25 THE CLERK: What says the Defendant?

1 MR. KAPPEL: Please swear the juror.

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

4 Juror No. 84, John Hoyle.

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

6 THE CLERK: What says the State?

7 MR. MOYER: Please present Mr. Hoyle.

8 THE CLERK: What says the Defendant?

9 MR. KAPPEL: Please excuse this juror.

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

12 Juror 92, Jordan Jenkins.

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

14 THE CLERK: What says the State?

15 MR. MOYER: Please present Ms. Jenkins.

16 THE CLERK: What says the Defendant?

17 MR. KAPPEL: Please excuse this juror.

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

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

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

24 THE CLERK: Juror 108, Marianne Martin.

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

1 THE CLERK: What says the State?

2 MR. MOYER: Please present Ms. Martin.

3 THE CLERK: What says the Defendant?

4 MR. KAPPEL: Swear the juror.

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

7 Juror 109, Thomas Martin.

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

9 THE CLERK: What says the State?

10 MR. MOYER: Please excuse this juror.

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

13 Juror 77, Michael Herring.

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

15 THE CLERK: What says the State?

16 MR. MOYER: Please present Mr. Herring.

17 THE CLERK: What says the Defendant?

18 MR. KAPPEL: Please swear the juror.

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

21 Juror 54, Maura Eguigure.

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

23 THE CLERK: What says the State?

24 MR. MOYER: Please present Ms. Eguigure.

25 THE CLERK: What says the Defendant?

1 MR. KAPPEL: Please swear the juror.

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

4 Juror No. 161, Claire Seely.

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

6 THE CLERK: What says the State?

7 MR. MOYER: Please present Ms. Seely.

8 THE CLERK: What says the Defendant?

9 MR. KAPPEL: Please excuse this juror.

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

11 Juror No. 63, Linda Gosnell.

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

13 THE CLERK: What says the State?

14 MR. MOYER: Please excuse this juror.

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

16 Juror No. 47, Brynne Dieterie.

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

18 THE CLERK: What says the State?

19 MR. MOYER: Please present Ms. Dieterie.

20 THE CLERK: What says the Defendant?

21 MR. KAPPEL: Please swear the juror.

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

24 Juror No. 98, Elizabeth Killen.

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

1 THE CLERK: What says the State?

2 MR. MOYER: Please present Ms. Killen.

3 THE CLERK: What says the Defendant?

4 MR. KAPPEL: Please excuse this juror.

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

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

8 THE COURT: That's okay.

9 MR. KAPPEL: Please swear the juror.

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

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

15 THE CLERK: Juror 58, Xavier Evans.
16 (Xavier Evans, a black male, stood.)

17 THE CLERK: What says the State?

18 MR. MOYER: Please present Mr. Evans.

19 THE CLERK: What says the Defendant?

20 MR. KAPPEL: Please swear the juror.

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

23 Juror No. 3, Raymond All.
24 (Raymond All, a white male, stood.)

25 THE CLERK: What says the State?

1 MR. MOYER: Please present Mr. All.

2 THE CLERK: What says the Defendant?

3 MR. KAPPEL: Please excuse this juror.

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

6 Juror 5, Kimberly Allen.

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

8 THE CLERK: What says the State?

9 MR. MOYER: Please present Ms. Allen.

10 THE CLERK: What says the Defendant?

11 MR. KAPPEL: Please swear the juror.

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

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

17 MR. MOYER: Not from the State.

18 MR. KAPPEL: None from the Defense.

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

25 (WHEREUPON, the jury venire was excused at

1 approximately 12:05 p.m.)

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

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

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

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

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

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

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

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

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

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

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

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

19 THE COURT: Yes, sir.

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

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

10 THE COURT: Okay. Mr. Moyer.

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

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

18 MR. MOYER: The other motions, yeah.

19 THE COURT: I defer to y'all.

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

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

1 really know.

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

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

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

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

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

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

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

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

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

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

4 MR. KAPPEL: Thank you, Judge.

5 THE COURT: Yes, sir.

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

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

13 THE COURT: Sure.

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

18 THE COURT: Yeah, yeah. Okay.

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

22 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Okay.

1 Would you like to respond?

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

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

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

1 commenting on any of those things.

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

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

15 All right. Okay. Next matter?

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Okay.

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

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

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

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

19 THE COURT: Okay. Mr. Kappel.

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

22 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Okay. All right. Mr. Moyer.

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

8 THE COURT: Okay.

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

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

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

15 MR. MOYER: Sure.

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

17 (WHEREUPON, a short break was taken.)

18 THE COURT: Okay, we ready to proceed?

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

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

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

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

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

1 THE WITNESS: Sorry.

2 THE CLERK: That's okay.

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

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

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

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. MOYER:

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

12 A Yes.

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

15 A Twenty-nine.

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

18 A Yes.

19 Q Okay. How do you know him?

20 A He was my step-dad.

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

23 A Correct.

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

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

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

2 Q So, you were under age five?

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

5 Q Okay.

6 A Because I was little.

7 Q Okay. And he married your mother?

8 A Yes.

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

11 A Yes.

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

14 A About five years old.

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

19 A There was touching.

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

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

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

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

1 genitals, you're talking about your vagina?

2 A Yes.

3 Q And that was with his hands?

4 A Yes.

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

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

9 Q Okay, you talking about rubbing his penis?

10 A Yes.

11 Q Rubbing it against your vagina?

12 A Yes.

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

14 A Yes.

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

17 A It was both.

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

19 A Yes.

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

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

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

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

1 initially?

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

9 Q So, were you clothed?

10 A Yes.

11 Q And he was clothed?

12 A Yes.

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

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

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

19 A Yes, and, eventually, full penetration.

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

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

24 Q And how old were you when that happened?

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

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

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

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

9 A Uh-huh.

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

13 A That was of my rectum.

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

16 A Fourteen.

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

21 A Yes.

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

23 A Fourteen.

24 Q What led to it stopping?

25 A I went to live with my father.

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

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

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

1 bedroom?

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

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

8 A Actually, the incident when I was 14.

9 Q That happened in your bedroom?

10 A That was in my bed.

11 Q But it was usually in his bedroom?

12 A (No response.)

13 Q It was usually in his bedroom?

14 A It was usually in his bedroom.

15 Q Where would your mom be?

16 A At work or the store.

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

19 A I did.

20 Q We don't need to go into all of those right now.

21 Was one of them a residence on Ferguson --

22 A Yes.

23 Q Ferguson Drive or Ferguson Road?

24 A On Ferguson Road.

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

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

1 that began on Ferguson Road?

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

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

8 A Yes.

9 Q -- those two residences?

10 A That his mother owned.

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

13 A Yes.

14 Q She had a house there?

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

16 Q So, did some incidents happen at 77?

17 A Yes.

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

20 A Yes.

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

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

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

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

3 A Yes.

4 Q Okay.

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

7 THE COURT: Yes, sir.

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

10 CROSS-EXAMINATION

11 BY MR. KAPPEL:

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

15 A Four or five, yes.

16 Q That would have been in 1991?

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

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

21 A Uh-huh.

22 Q Is that correct?

23 A Yes.

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

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

1 your vagina while he would masturbate, correct?

2 A Multiple times, yes.

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

4 That type of activity was the first occasion?

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

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

9 A Not the first time.

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

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

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

14 A Yes.

15 Q -- to other types of acts?

16 A Yes.

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

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

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

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

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

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

6 A Yes.

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

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

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

15 A Yes.

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

20 A Yes.

21 Q And that was with his fingers?

22 A And his penis.

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

24 A Yes.

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

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

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

3 A Yes.

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

6 A Yes.

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

10 A Yes.

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

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

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

22 A Yeah.

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

25 A Yes.

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

1 Q Would he also perform oral sex on you?

2 A Yes.

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

9 A Yes.

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

12 A Yes.

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

15 A Yes.

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

18 A Yes.

19 Q Was this also including masturbation?

20 A Yes.

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

25 A Yes.

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

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

5 A Yes.

6 Q Is that right?

7 A Yes.

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

10 A I was 14.

11 Q Okay. And you were born in 1987?

12 A Yes.

13 Q So, would that be 2001?

14 A About, yes.

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

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

18 Q He would ejaculate --

19 A Normally, on him.

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

21 A Yes.

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

23 A Yes.

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

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

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

5 A Yes.

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

9 A Yes.

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

12 A Yes.

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

19 A Yes.

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

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

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

1 THE COURT: What's the question again?

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

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

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

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

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

17 BY MR. KAPPEL:

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

21 A It's still --

22 Q More than that?

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

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

E. G. ██████████ REDIRECT BY MR. MOYER

1 for penetration, correct?

2 A Yes.

3 Q And for oral sex as well?

4 A Yes.

5 Q Okay.

6 MR. KAPPEL: Just a moment, Judge.

7 THE COURT: Yes, sir.

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

10 MR. MOYER: Just a couple quick followup.

11 THE COURT: Yes, sir?

12 REDIRECT EXAMINATION

13 BY MR. MOYER:

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

16 A Yes.

17 Q Did he ever kiss you?

18 A Yes.

19 Q Tell me about that.

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

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

25 A Yeah.

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

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

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

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

8 THE COURT: Yes, sir.

9 RECCROSS-EXAMINATION

10 BY MR. KAPPEL:

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

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

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

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

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

25 Do you have another witness?

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

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

2 [REDACTED]

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

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

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

11 THE WITNESS: C.R. [REDACTED]

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. MOYER:

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

16 A Yeah.

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

19 A I'm 15.

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

22 A Yeah.

23 Q How do you know him?

24 A He's my step-dad.

25 Q Was he actually ever married to your mom?

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

1 A No.

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

4 A No.

5 Q Have you ever had to --

6 A (The witness shook her head.)

7 Q Little nervous?

8 A Yeah.

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

14 A Yes.

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

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

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

21 A (The witness nods.)

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

24 A About two, I was 18 months.

25 Q So, you were still just a baby?

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

1 A Yeah.

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

3 A Pretty much.

4 Q Did you consider him a father figure then?

5 A Yeah.

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

9 A No.

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

12 A It is.

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

15 A About five.

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

18 A At 79 Ferguson Road.

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

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

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

25 A Yes.

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

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

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

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

6 A Yes.

7 Q So, he moved in there?

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

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

11 A Yeah.

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

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

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

17 A Yeah.

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

19 A Yeah.

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

23 A Do I have to like talk about it?

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

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

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

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

4 A Yeah.

5 Q Okay. And where would he touch you?

6 A On my private parts.

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

8 A Yeah.

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

10 A Sometimes, but not as much.

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

13 A Both.

14 Q Did his fingers ever go inside you?

15 A No.

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

17 A (The witness nods.)

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

20 A No.

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

22 A (The witness nods.)

23 Q And this would happen in the house?

24 A 79 Ferguson Road.

25 Q What different areas of the house would this

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

1 happen in?

2 A My parents' room and my room.

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

5 A Yeah.

6 Q Then sometimes in your room?

7 A (The witness nods.)

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

10 A Work.

11 Q She would be at work?

12 A (The witness nods.)

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

14 A (The witness nods.) Yeah.

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

17 A Huh-uh.

18 Q He just tried to kiss you?

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

21 Q He showed you?

22 A (The witness nods.)

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

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

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

1 Q Okay.

2 A Yeah.

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

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

6 Q Okay.

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

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

10 A Yeah.

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

13 A No.

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

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

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

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

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

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

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

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

2 A Yeah.

3 Q Okay.

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

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

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. KAPPEL:

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

15 A Yeah.

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

17 A Yes.

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

20 A Correct.

21 Q And there was no penetration?

22 A Correct.

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

24 THE COURT: Okay.

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

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

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

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

8 MR. KAPPEL: No, Your Honor.

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

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

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

1 oral sex.

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

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

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

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

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

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

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

5 THE COURT: Okay. All right.

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

9 THE COURT: Yes, okay. Thank you.

10 Mr. Moyer.

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

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

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

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

23 MR. MOYER: She did, Your Honor.

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

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

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

6 Then, finally, the manner --

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

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

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

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

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

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

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

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

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

13 THE COURT: Okay.

14 MR. MOYER: -- rely on.

15 THE COURT: Okay. Good enough.

16 Yes, sir.

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

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

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

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

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

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

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

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

15 Anything else we need to put on the record?

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

17 MR. KAPPEL: Nothing from us, Judge.

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

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

21 MR. MOYER: You talking about total?

22 THE COURT: Total, yeah.

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

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

1 do you think the Defense may offer?

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

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

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

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

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

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

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

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

1 MR. MOYER: I mean, I --

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

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

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

15 MR. MOYER: Okay.

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

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

19 (WHEREUPON, a lunch break was taken.)

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

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

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

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

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

12 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

21 Okay. If we can bring your client in.

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

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

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

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

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

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

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

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

1 same, but under similar circumstances.

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

6 Okay. Anything further before we start?

7 MR. MOYER: Not from the State.

8 MR. KAPPEL: Nothing from us, Judge.

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

11 MR. MOYER: Yes, sir.

12 THE COURT: Ready?

13 MR. KAPPEL: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 everything.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 accordance with the evidence.

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

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

7 (WHEREUPON, the jury was sworn.)

8 THE CLERK: Thank you, please be seated.

9 THE COURT: Mr. Moyer.

10 OPENING STATEMENT

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

13 THE COURT: Yes, sir.

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

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

7 So, what is this case about? This case is about
8 how something like this can take place. How can
9 something like this take place? And it's going to
10 hinge on how someone who's in a position of authority
11 over a young child, how that will provide opportunity
12 for something like what you're going to hear takes
13 place. It's also going to hinge on age of the
14 victim. You're going to hear the victim in this case
15 was five years old when the incident began and it
16 lasted over a period of close to 10 years. We're
17 going to talk about how the age of a child provides
18 opportunity for something like this to happen.
19 Children, especially ones that young, trust. They
20 trust adults. They trust especially adults who are
21 in positions of authority over them, as you're going
22 to hear the Defendant was in this case. They trust
23 what adults do. They trust what adults say.
24 Something about children.

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

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

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

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

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

25 What is criminal sexual conduct? Well, there

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: Mr. Kappel.

13 OPENING STATEMENT

14 MR. KAPPEL: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 MR. KAPPEL: May it please the Court.

17 Mr. Moyer.

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

25 This morning, we all sat in the jury

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 MR. MOYER: No, Your Honor.

8 MR. KAPPEL: Nothing, Judge.

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

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

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July 18, 2017

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

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

THE CLERK: That's right.

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

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

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

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

15 THE COURT: Okay. Good enough.

16 From the Defense?

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

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

25 Okay. All right. I know we have additional

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

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

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

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

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

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

14 THE COURT: All right. Thank you.

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

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

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

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

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

6 MR. MOYER: No, Your Honor.

7 MR. KAPPEL: No, sir.

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

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

15 THE BAILIFF: So, he can sit out?

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

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

21 THE COURT: Yes, sir.

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

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

3 THE COURT: Okay.

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

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

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

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

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

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

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

9 MR. MOYER: We're ready.

10 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

13 THE WITNESS: E.G. [REDACTED]

14 DIRECT EXAMINATION

15 BY MR. MOYER:

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

20 A E.G. [REDACTED].

21 Q Okay. How old are you?

22 A Twenty-nine.

23 Q When is your birthday?

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

25 Q And you're married?

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

1 A Yes.

2 Q This is your husband seated back here?

3 A Yes.

4 Q How long you been married?

5 A Since 2006.

6 Q How many children do you have?

7 A Two.

8 Q How old are they?

9 A Thirteen and nine.

10 Q Okay. Are you employed right now?

11 A Yes, I am.

12 Q Where do you work?

13 A I work for a plant.

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

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

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

18 A I was born in New Jersey.

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

21 A I was just a baby.

22 Q Who is your mother?

23 A Sherry Tallent.

24 Q Who is your father?

25 A Joseph Edward Greco, Sr.

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

- 1 Q Okay. Now, did your father raise you?
- 2 A No.
- 3 Q Did he and your mother divorce?
- 4 A Yes.
- 5 Q Did you -- how old were you when they divorced?
- 6 A I don't know exactly how old I was, but I wasn't
- 7 two.
- 8 Q Before you were age two?
- 9 A Yes.
- 10 Q Did he have a role in your life?
- 11 A Not as much as what he should have.
- 12 Q And it came about more later; is that right?
- 13 A Yes.
- 14 Q We'll talk about that a little bit later. You
- 15 have brothers and sisters?
- 16 A Yes, I have two brothers.
- 17 Q What are their names?
- 18 A Joseph Greco, Jr. and Christopher Greco.
- 19 Q Okay. Are they older or younger than you?
- 20 A They are both older than me.
- 21 Q Can you -- do you know how much older they are?
- 22 A My brother, Chris, is four years older and my
- 23 brother, Joey, is six years older.
- 24 Q Okay. Now, do you know the Defendant in this
- 25 case, Dwayne Tallent?

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

1 A I do.

2 Q How do you know him?

3 A He was my step-dad.

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

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

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

8 A Yes.

9 Q He married your mom?

10 A Yes.

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

13 A Fourteen.

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

16 A Yes.

17 Q So, they never actually got divorced?

18 A Correct.

19 Q But he moved out?

20 A Well, we moved out.

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

25 A In a trailer on Deer Run Road, Greenville

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

1 County.

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

4 A It's changed to Covenant.

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

7 A It was a double-wide.

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

10 A Yes, off of Highway 25.

11 Q Who all lived there?

12 A Me, my mom, Dwayne Tallent.

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

15 A Yes.

16 Q Numerous people or?

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

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

22 A Frequently, yes.

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

25 A No.

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

1 Q Where were they?

2 A They were with my father.

3 Q Where was your father?

4 A I believe he was in Nevada.

5 Q Did your brothers ever live with you?

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

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

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

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

13 A I guess about six or seven.

14 Q Okay. Where did you move from there?

15 A We moved to a house in Seneca.

16 Q And how long did you stay there?

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

20 Q Who all lived there in those locations?

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

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

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

25 Q In Greenville County?

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

1 A Yes.

2 Q So, you actually lived with his mother?

3 A Yes.

4 Q What was the address there?

5 A 77 Ferguson Road.

6 Q Okay. Tell us about that property.

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

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

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

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

20 A Me, my mom and Dwayne.

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

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

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

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

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

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

3 A Yes.

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

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

6 Q So, you liked her?

7 A Yes.

8 Q Do you still like her?

9 A (There was no response.)

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

12 A I loved her very much.

13 Q She was good to you?

14 A Yes.

15 Q Did you like spending time with her?

16 A Yes, I did.

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

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

20 Q Was that on the same --

21 A It's all on the same property.

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

24 A It was a house.

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

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

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

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

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

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

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

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

12 A (The witness nods.)

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

14 A Into a trailer on Painter Road.

15 Q How old were you when you moved there?

16 A Fourteen.

17 Q Who lived there?

18 A Me and my mother, at first.

19 Q Okay.

20 A Then Dwayne came to stay.

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

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

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

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

2 A Yes.

3 Q And where did he live?

4 A In Belton.

5 Q You said you were about 14 years old?

6 A Yes.

7 Q You stayed there about how long?

8 A Until I was 16.

9 Q Then where did you move then?

10 A With my mother in Greer.

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

13 A No.

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

17 A No, not very often.

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

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

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

24 A Yes.

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

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

1 Nevada?

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

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

8 A When I was 14.

9 Q And that was that house on Painter Road?

10 A Yes.

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

12 A No.

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

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

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

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

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

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

1 A Yes, he would.

2 Q Where would he stay?

3 A He would sleep in the living room.

4 Q Where would you stay?

5 A In my bedroom adjacent to the living room.

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

8 A No, it was just my room.

9 Q Where would this guy, Mikey, stay?

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

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

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

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

15 A Yes.

16 Q Tell the jury what happened.

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

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

23 A Yes.

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

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

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

2 Q Okay. So, a few times maybe?

3 A Just a few times.

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

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

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

10 A Yes.

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

13 A Yes.

14 Q So, was there ever any penetration?

15 A No.

16 Q Was there any pain involved?

17 A No.

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

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

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

25 A No.

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

1 Q Did you understand what was happening to you?

2 A No.

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

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

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

12 A No.

13 Q Did you ever learn what happened that night?

14 A I did.

15 Q How did you learn?

16 A Dwayne had told me.

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

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

22 Q What did he tell you happened?

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

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

1 Q Figured out what Mikey was doing to you?

2 A Yes.

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

5 A When we spoke about it, yes.

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

8 A Yes.

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

12 A Yes.

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

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

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

22 A No.

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

25 A No.

E. G. ██████████ DIRECT BY MR. MOYER

1 Q Or the police?

2 A No.

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

5 A No.

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

9 A Yes.

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

12 A Yes.

13 Q Did you know his last name?

14 A I don't.

15 Q Have you seen him since?

16 A No.

17 Q Do you have any idea where he is?

18 A No.

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

22 A No.

23 Q Who else abused you?

24 A Dwayne.

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

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

1 Defendant in this case?

2 A Yes.

3 Q When did that start?

4 A In the same house when I was about five.

5 Q So, was it then -- do you have any idea how long
6 after the incident with Mikey this began with Dwayne?

7 A Just a few months.

8 Q So, you were still --

9 A I was still very little.

10 Q Okay. Now, do you remember the very first time
11 Dwayne did something to you?

12 A The first time --

13 Q So, you do remember that?

14 A Yes.

15 Q Tell the jury about what details you remember
16 about the first time Dwayne did something to you?

17 A I was little. I was bored. He was in his
18 bedroom. I went into the bedroom and I plopped down on
19 him. And then from that point, he had an erection and he
20 started to rub it up against me through the blanket, but
21 in the same manner.

22 Q Same manner?

23 A From Mikey.

24 Q Okay. Was there anyone else in the room with
25 him?

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

1 A No.

2 Q Do you remember if there was anyone else in
3 house at that time?

4 A No.

5 Q Did he take his clothes off?

6 A No.

7 Q Did he take your clothes off?

8 A No.

9 Q So, he was rubbing his penis against you then?

10 A Yes, through --

11 Q What --

12 A -- the blanket.

13 Q I'm sorry, I didn't mean to speak over you.

14 What part of your body was he rubbing it against?

15 A My side.

16 Q What do you mean by your side? Where?

17 A I was laying beside him and he was, basically,
18 rubbing up against the backside of me.

19 Q When you say your backside, are you talking
20 about your buttocks?

21 A Yes.

22 Q Do you know if he ejaculated or not?

23 A I don't remember.

24 Q What -- and so you mentioned this was similar to
25 what Mikey had been doing to you?

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

1 A Yes.

2 Q Do you recall what thoughts went through your
3 mind on this first occasion when he was doing that?

4 A I was getting attention.

5 Q Okay. Did you know anything about whether or
6 not it was right or wrong?

7 A I didn't know anything about sex.

8 Q Now, did anything -- so, was that the last time
9 anything happened with Dwayne?

10 A No.

11 Q Well, tell us what else happened -- do you
12 remember if any other incidents happened while you were
13 still living there at Deer Run Road?

14 A I can't remember.

15 Q Okay. So, do you know -- you then ended up
16 moving to this residence, you said, in Seneca when you
17 were, what, six or seven years old?

18 A (The witness nods.)

19 Q Okay. What do you recall about whether anything
20 happened while you were at that residence?

21 A I don't remember specific events.

22 Q Okay.

23 A And it wasn't very frequent at all with him,
24 basically, masturbating with me in the room. Small
25 things, things that wasn't hurting me.

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

1 Q Okay. Tell us what -- when you say he was
2 masturbating, could you see his penis when he would
3 masturbate?

4 A Like I said, if I sat there and I told you a
5 story of me being able to remember when I was that young,
6 actually, being able to see him, I would probably be lying
7 to you. When everything -- when I was physically capable
8 of seeing him and remembering more details was more so
9 when I was nine.

10 Q Okay. Well, let's talk about a little bit more
11 from when before you turned nine, when you start to
12 remember more details. Did other sexual contact happen
13 prior to age nine?

14 A Just, basically, him masturbating and putting
15 his hands in my pants while he done so.

16 Q Okay. While he done -- while he did what?

17 A While he masturbated.

18 Q So, he would put his hands -- where would he
19 touch you when he --

20 A My vagina.

21 Q Did he ever penetrate your vagina with his
22 fingers?

23 A No, he would just rub it. He wasn't hurting me.

24 Q Okay. Where would this take place?

25 A Always in his room.

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

1 Q Okay. Now, let's talk then -- you said when you
2 were about nine and you moved to these residences on
3 Ferguson Road. Did the improper touching continue when
4 you were there?

5 A Yes.

6 Q Did it get -- did it change over time?

7 A Yes, it did.

8 Q In what way did it change?

9 A It got worse and it got more frequent.

10 Q Let's talk about when it was starting up. Tell
11 the jury what he would do to you.

12 A Aside from him -- basically, from that point, it
13 was a normal occurrence that he would -- he would massage
14 my vagina, basically, and he would masturbate. That was
15 the normal thing.

16 Q That's kind of the way it was early on?

17 A Early on. And he wouldn't hurt me.

18 Q Then how did things change over time?

19 A It got to the point where, eventually, he would
20 start to put his fingers -- well, he would also take his
21 penis and rub it between my legs without entering my body.
22 And then --

23 Q Would he take his clothes off when he did that?

24 A He would have his pants off, yes.

25 Q All right. Would --

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

1 A He would be skin to skin.

2 Q Okay. So, he would rub it around your private
3 parts between your legs?

4 A Yes. And he would, basically, use my thighs up
5 against my genitals to get off.

6 Q Would he ejaculate?

7 A Not on me. It was always on him.

8 Q But he would?

9 A Yes.

10 Q Okay. And what other activity would he do?

11 A He would eventually step up and he would put his
12 fingers around my rectum. He would insert the tip of his
13 fingers and whatnot into my rectum. He would kiss me, my
14 breasts. Eventually, there would be oral sex, and then
15 more.

16 Q Now, the oral sex you're talking about, are you
17 talking about would he do it to you or would you do it to
18 him?

19 A He would do it to me while he masturbated.

20 Q Okay. Would it -- did you ever do it to him?

21 A Eventually, yes.

22 Q Okay. Now, tell us about that. Did -- was --
23 how did that come about, that oral sex took place on him?

24 A He just -- he wanted me to put my mouth on his
25 penis and he wanted me to suck.

E. G. DIRECT BY MR. MOYER

1 Q Okay. Did he have to show you or tell you what
2 to do?

3 A Yes.

4 Q Now, when he would touch your rectum with his
5 fingers, would that ever be followed up with anything
6 else?

7 A Eventually, yes.

8 Q And what would happen then?

9 A He would use his fingers -- he would first
10 insert his fingers and then he would insert the head of
11 his penis into my rectum.

12 Q These activities that you're talking about, did
13 they happen before you turned age 11? Would the oral sex
14 and the -- would the oral sex and him putting his fingers
15 in your rectum and vagina, did that happen before you
16 turned age 11?

17 A I remember more of the oral sex being when I was
18 in the house of 79 Ferguson Road, which would have been
19 right at 10 or 11.

20 Q Did it ever occur before you turned 11?

21 A Yes.

22 Q What activities?

23 A Basically, it was more of him doing oral sex on
24 me and masturbating and -- I can't remember.

25 Q Okay. Now, can you tell the jury a little bit,

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

1 especially when you were younger, what you thought about
2 what he was doing to you? What went through your mind?

3 A When I was younger, nothing really went through
4 my mind. I didn't know any better. You know, he wasn't
5 hateful. I was a kid and I didn't know any better.

6 Q Okay. Now, did -- especially early on, did what
7 he do to you physically hurt you?

8 A Early on, no.

9 Q And was he mean to you or --

10 A No.

11 Q Was he loving to you?

12 A (The witness nods.)

13 Q You're nodding yes?

14 A Yes.

15 Q So, what were your feeling towards him during
16 this time?

17 A I was -- he was my step-dad. I looked up to
18 him. He was my -- you know, supposed to be a parent to
19 me.

20 Q Did he treat you like a parent?

21 A Yes, he did.

22 Q Did you love him?

23 A I did.

24 Q Did you care from him?

25 A I did.

██████████ E.G. DIRECT BY MR. MOYER

1 Q You viewed him as your dad?

2 A Yes.

3 Q Did other -- and setting aside what he did to
4 you, what -- how did he treat you?

5 A He was -- he was good. He was nice. You know,
6 we did things that kids are supposed to do. You know, he
7 took us camping. You know, I remember going fishing. He
8 wasn't always bad. He was good. He was caring.

9 Q Now, did he say anything to you about what he
10 was doing? Like --

11 A Basically, it was our secret.

12 Q That's what he would say? Did he ever talk
13 about whether or not you should say anything about what
14 was taking place to anybody else?

15 A One time, we were at his sister's house and, you
16 know, I'm five or -- and I remember her saying -- I guess,
17 I remember her saying something about if anybody ever
18 touched you, you know, to tell her.

19 Well, one day, we went to her house and
20 well, I told her that he had touched me. And then she ran
21 after him. And I guess, you know, asked him about what
22 was it? Well, they never came back to me or asked me
23 anymore questions. And, basically, it was dismissed by
24 him rubbing up on me, he told her that he must have
25 thought that I was my mother.

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

1 Q Okay. Did he ever say anything to you about it
2 after that incident?

3 A When we were there at the house, he looked at me
4 like I was in trouble. He gave me that stern look like I
5 had done something wrong. And when we got back to our
6 home, you know, that's when he expressed that, you know,
7 people are not going to understand that, that's our
8 secret, that's something special that we have.

9 Q Did he say that more than once, things like
10 that?

11 A I don't remember specifically, but.

12 Q You remember that time?

13 A Yes.

14 Q About how old were you then?

15 A Five.

16 Q That's when you were really young?

17 A Yes.

18 Q Okay. Now, what areas in your house would this
19 take place?

20 A Mainly, it would always be in his bedroom. Even
21 in the apartment that was on the side of his mom's house,
22 they actually stayed in the living room, so they -- they
23 used the living room as a bedroom because it only had one
24 bedroom. My mom put me in the bedroom and they slept in
25 living room. So, incidents happened in the living room

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

1 and the kitchen area because it's just one open area.

2 Q And the other place, like 79 Ferguson?

3 A Always in his room.

4 Q Where would your mom be?

5 A My mom would either have been at work or off to
6 the grocery store.

7 Q Did the -- did the activity continue when your
8 brothers moved into the house?

9 A Yes.

10 Q Okay. How would it -- did that effect it at all
11 when your brothers moved in?

12 A I think it made it a little bit harder for him
13 to find more time, but yet.

14 Q Okay. So, it would still happen in his room?

15 A Yes.

16 Q Okay. Would your brothers sometimes be around?

17 A Yes.

18 Q We'll talk about that in a minute, but was there
19 an occasion, at least, one occasion where you were found
20 out?

21 A Yes.

22 Q Okay. Would it be different times of the day or
23 would it --

24 A Yes, it would be different times of the day.

25 Any time that he thought he could do it and, basically,

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

1 whenever my mom was gone.

2 Q How frequently would this take place?

3 A At least, once a week. It would differ. If he
4 don't have a chance -- he would take any and every chance
5 that he could.

6 Q Were there some weeks it would happen more than
7 once?

8 A Yes, sir.

9 Q And sometimes less?

10 A And sometimes less, yes.

11 Q Just depends on the opportunity?

12 A Circumstances and opportunity, yes.

13 Q Now, I need to ask you -- I hate to ask you
14 specific questions, but you realize I have to ask these
15 questions for the record, right?

16 A Yes.

17 Q Let me talk about when he -- talked about him
18 doing oral sex on you. So, what parts of his body would
19 he use?

20 A I would be on my back and his tongue, lips would
21 be on my vagina.

22 Q Did it ever -- was it around your vagina or did
23 it ever go inside your vagina?

24 A Just around my vagina, my clitoris.

25 Q Would you be totally naked or was it different

██████████ E.G. ██████████ DIRECT BY MR. MOYER

1 every time?

2 A It was different. I wasn't always completely
3 naked. If my pants could go down without having to be
4 taken completely off, then...

5 Q Okay. And as far as the oral sex on him, did --
6 you said he had to show you how to do this?

7 A Yes.

8 Q Do you remember where you were when it first
9 happened on him?

10 A What I remember, I remember like images. And
11 the -- if I can remember the first initial time, we were
12 in the apartment side and he was sitting in a chair. I
13 remember having to put my mouth on him and being told --

14 Q On his penis?

15 A Yes. And being told that, you know, you just
16 suck on it like a sucker.

17 Q Okay. Did he kiss other parts of your body?

18 A He did.

19 Q Did you ever ask him not to do any of those
20 things?

21 A Yeah.

22 Q Okay. What was that?

23 A I wanted to keep my virginity.

24 Q Okay. What about kissing?

25 A I didn't. We didn't really talk about it until

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

1 I was 14.

2 Q Okay. And then what happened with that?

3 A He wanted me to kiss him.

4 Q Okay. Kiss him where?

5 A On his mouth.

6 Q Okay. What did you -- what did you -- how did
7 you react to that request?

8 A I did it. And then I made him think that just
9 the whole nature of tongue kissing was disgusting.

10 Q So, more you didn't like the activity as opposed
11 to him?

12 A Correct.

13 Q Was that the only time that happened?

14 A Yes.

15 Q All right. You mentioned about your virginity,
16 wanting to keep that. Did you?

17 A To an extent.

18 Q Okay. Tell the jury -- first of all, about how
19 old were you on this occasion that you're about to tell us
20 about?

21 A I was nine.

22 Q Okay. Where were you living at that time?

23 A We were at 77 Ferguson Road.

24 Q Okay. What happened?

25 A We were in the living room. My mom was gone.

██████████ E.G. DIRECT BY MR. MOYER

1 We were on the couch and he was on top of me. I was face
2 down and he was rubbing his penis in between my legs where
3 it would brush up against my vagina. And he was getting
4 off and it slipped and it poked -- it went in my vagina.

5 Q His penis?

6 A Yes.

7 Q Did he go all the way?

8 A No.

9 Q How did it physically feel?

10 A It made me bleed.

11 Q Okay. Did it hurt at all?

12 A Yes, it did.

13 Q Okay. Did you tell him?

14 A He realized he had slipped and he stopped.

15 Q Okay. You said it bled, did it get blood
16 anywhere?

17 A I went to the bathroom and I was wiping blood.

18 Q Okay. Did you say anything to anyone in your
19 house about that?

20 A I told my mother I got my period because I
21 couldn't -- I couldn't stop the bleeding and I had to wear
22 pads.

23 Q Okay. So, you were nine years old at that time?

24 A Yes.

25 Q Okay. Now, you told us how you felt about

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

1 Dwayne, the Defendant, when you were young and he started
2 doing these things to you. Did your feelings change as
3 you got older and as the activity got more egregious?

4 A Yes.

5 Q How did your feelings change? How did you feel
6 as you got older?

7 A I started to realize that what was happening
8 wasn't okay and that it was wrong.

9 Q Okay. And --

10 A I didn't know how to stop it because the older I
11 got, the more of a girlfriend to him is the relationship
12 that was created. And I would -- I was scared to tell him
13 that I didn't want that, so I played along.

14 Q Was there ever any penetration of your rectum?

15 A Yes.

16 Q Okay. We'll start with his fingers. Did that
17 ever take place?

18 A Yes, he would -- he would stick his finger in my
19 rectum while he got off. And eventually, he would start
20 to put the head of his penis in my rectum.

21 Q Okay. Did it ever get any more egregious?

22 A Yes.

23 Q That activity? Tell the jury what that led to.

24 A I was sick and I stayed home from school one
25 day. And this was at Painter Road. And I was 14. And I

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

1 believe this was the first sexual encounter after my mom
2 and him had split apart and he came to our home. And he
3 had fully put himself, his penis in my rectum.

4 Q Did that happen more than one time or one time?

5 A Just the one time.

6 Q Now, generally, when he would put his -- the tip
7 of his penis into your rectum, would he ejaculate?

8 A He would always finish, but not in me.

9 Q Now, when your brothers moved in, in the house
10 with y'all at 79 Ferguson Road, how did the Defendant act
11 toward you and your brothers as far as any interaction you
12 had with him?

13 A I was not allowed to be in the same room with my
14 brothers unless he was in the room.

15 Q Okay.

16 A He did not want me to communicate. He kept me
17 around him.

18 Q Okay. Do you remember any instances where --
19 where anyone saw anything that was taking place in the
20 bedroom?

21 A Yes.

22 Q Tell the jury about that.

23 A We were in the bedroom.

24 Q You and Dwayne?

25 A Me and Dwayne. We had the bedroom door closed.

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

1 And he was masturbating with his hand in my vagina -- or
2 rubbing my vagina. And my brother had walked in and seen
3 it. And I pretended that I was asleep.

4 Q Okay. What did -- how did your brother react
5 when he --

6 A I remember hearing him -- like when he opened
7 the door, he asked how long has this been going on?

8 Q What did Dwayne do?

9 A He got up and my brother ran out the room and
10 Dwayne ran after.

11 Q Okay. Did you go out and see what happened out
12 there?

13 A No, I laid in the bed. I did eventually go out.

14 Q Okay. Did you ever talk to your brother about
15 it? I mean, I'm talking about back, not in recent?

16 A No.

17 Q Did you ever go to him and tell him what he saw
18 was accurate?

19 A No.

20 Q So, you kept it from your brother?

21 A Yes.

22 Q Okay. Now, this is what led to you being
23 actually talked to by some law enforcement officers?

24 A Yes.

25 Q And some people from the Department of Social

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

1 Services, DSS?

2 A Yes.

3 Q Okay. And do you remember officers coming to
4 your house?

5 A Yes.

6 Q Did they ask you about whether any abuse was
7 happening with Dwayne?

8 A Yes..

9 Q What did you tell them?

10 A I told them nothing happened.

11 Q Okay. Why -- can you look back at your
12 14-year-old self and think about why you denied it?

13 A I was scared of any and all consequences that
14 could -- I didn't want people to know. I feared what
15 people would have thought of me. I feared at what if they
16 didn't believe me, and whether or not if I said something
17 and they didn't believe, he would try to hurt people I
18 cared about.

19 Q So, at this time, you said you almost felt a
20 little bit like a girlfriend to him. Did you feel some
21 blame yourself for what was going on?

22 A Kind of.

23 Q Now, then you were spoken to by some people from
24 DSS, right?

25 A (The witness nods.)

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

1 Q And you didn't tell them either?

2 A (The witness shook her head.)

3 Q You have to say yes or no, sorry.

4 A No, I did not tell them.

5 Q For the same reasons?

6 A Yes.

7 Q Okay. At a later date, I think a few months
8 later, you were talked to by another police officer and
9 you, again, denied it?

10 A Correct, yes.

11 Q Okay. And I think you were actually then --
12 after DSS got involved, you were spoken to by a forensic
13 interviewer, do you remember that?

14 A Yes.

15 Q And taken in a room by yourself with the
16 interviewer?

17 A Yes.

18 Q At that time, what did you say about whether
19 anything was going on?

20 A I didn't want to tell anyone that I knew
21 anything was going on. I think I proposed the idea that I
22 don't know about my brother seeing stuff, but I didn't
23 think anything was going on.

24 Q Okay. So, at this time in your life, you were
25 denying it to everybody who would ever speak to you about

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

1 it?

2 A Correct.

3 Q Okay. And you don't disagree that you had
4 multiple opportunities where you could have said
5 something, right?

6 A Yes.

7 Q And you didn't for those reasons you just told
8 us about?

9 A Right.

10 Q So, were you telling the truth when you spoke to
11 those officers back then?

12 A No.

13 Q Now, you and your mom after that time, y'all
14 moved into that other place on Painter Road?

15 A (The witness nods.)

16 Q You're nodding yes, right?

17 A Yes.

18 Q And then do you remember about how long after
19 that Dwayne came back in to live with y'all?

20 A It wasn't long.

21 Q Like weeks or months?

22 A Maybe months. I'm not accurately sure.

23 Q You were still 14 at that time?

24 A Yes.

25 Q And was -- when he moved back in with y'all, who

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

1 all lived there at that residence?

2 A Me and my mother.

3 Q Your brothers had moved out?

4 A Yes, my brothers didn't live with us on Painter
5 Road.

6 Q Was his demeanor or the way he treated you any
7 different when he moved in at this time?

8 A Not much.

9 Q Did the sexual abuse continue?

10 A Yes.

11 Q Was it the same kind of activity that --

12 A No, that is when he fully penetrated my rectum.

13 Q That was when that happened. But did it happen
14 on more than one occasion that he sexual abused you?

15 A Yeah.

16 Q Okay. The other occasions, was it more of the
17 same thing as far as the oral sex and the touching?

18 A Yes.

19 Q Okay. Then from there, is that when you said
20 you moved in with your father?

21 A Yes.

22 Q And you have not -- up until yesterday, you had
23 not seen Dwayne since then?

24 A Up until the time we were at court the last
25 time.

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

1 Q Okay.

2 MR. MOYER: Your Honor, at this time, there's
3 one matter of law that we need to have addressed by
4 the Court.

5 THE COURT: Okay. All right.

6 Ladies and gentlemen, I need to take up a matter
7 of law. If you will return to your jury room, I'll
8 take up the matter and we'll come back out very
9 shortly and resume testimony.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:34 a.m.)

12 MR. MOYER: Your Honor, at this time, I was
13 getting ready to talk about the drug activity that we
14 did bring up briefly in pre-trial.

15 THE COURT: Yes, sir.

16 MR. MOYER: I just -- before I went into that
17 area too far, we didn't have a real clear direction
18 from the Court about that.

19 THE COURT: Drug activity, I presume, goes to
20 the issue of the contributing to the delinquency of a
21 minor?

22 MR. MOYER: That's correct, Your Honor. The
23 testimony, in summary, is essentially going to be
24 different levels of that. From him openly using
25 marijuana in front of her from a very young age to

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.

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1 using other drugs in front of her to giving her drugs
2 and alcohol. And then later to him actually making
3 crack cocaine in the house while she was present in
4 the home and other people coming and using and being
5 given drugs by him. So, that's it in a nutshell
6 where we would be going.

7 THE COURT: Yes, sir.

8 MR. KAPPEL: Naturally, we object to that. And
9 I think that, you know, the question, of course,
10 comes from what's the purpose of this material? Is
11 it for the purpose of contributing to the delinquency
12 of a minor? It is for the purpose of injecting my
13 client's character into the record? It is just
14 simply 403, just to make things so prejudicial that
15 my client can't get a fair trial?

16 The purpose of the statute, of course,
17 encompasses sexual conduct. The testimony of
18 E.G. ██████████ this morning, if it's to be believed, is
19 clearly sufficient to meet the statute. The question
20 is now, for what purpose would the drug evidence be?
21 And, of course, my position is that it's to do
22 nothing more than to inject such animosity from the
23 jurors' perspective toward my client that he can't
24 get a fair trial.

25 The drug possession positioning, of course, is

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

1 one level. The drug sharing is another level. But
2 then when we start getting into -- like I said
3 yesterday, you start getting into manufacturing,
4 extortion, firearms, and everything else, in my view,
5 it's so far over the top for contributing to the
6 delinquency of a minor that -- again, character's an
7 issue, then 403 is an issue. And I just don't see
8 how a jury can hear that kind of information and then
9 try to be fair and impartial regarding the most
10 important issue, which are the criminal sexual
11 conduct charges.

12 THE COURT: Any response?

13 MR. MOYER: One thing I would say, Your Honor,
14 the fact that the evidence is damning evidence, I
15 don't think factors into the equation. Contributing
16 to the delinquency clearly covers activity as having
17 drugs in the home and creating an environment where a
18 child is unsafe because people who use drugs and take
19 drugs come into the home.

20 And I think as far as the being provided with
21 drugs and alcohol, I think the jury can certainly
22 take from that evidence of part of the grooming
23 process that this Defendant was undergoing with the
24 victim to make her more compliant with the sexual
25 favors that he was getting from her. So, we would

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

1 argue that's very relevant.

2 I would just reiterate something I said when we
3 argued pre-trial. There's evidence both from this
4 victim and from the other girl who's going to testify
5 about the sexual abuse, that creates such a high
6 level of putting the Defendant in such a bad light, I
7 think that needs to be taken into consideration as
8 well. I mean, should the jury -- you know, hearing
9 all of these allegations of that nature, the fact of
10 drugs being in the home are really -- doesn't take it
11 too much to a greater level.

12 THE COURT: I understand. I'm a little
13 uncomfortable with that particular argument, which is
14 there is so much damning and prejudicial evidence
15 that what difference does it make if we're going to
16 offer more? I think that's kind of dangerous for the
17 Court to take that position. Because, as we know who
18 have experienced jury trials over and over, you never
19 know what they're going to hang their hat on.

20 Now, with respect to all of that activity, I
21 agree, it's only relevant to provide the elements of
22 contributing to the delinquency of a minor. It's not
23 relevant to show character, it's not relevant to show
24 any action and conformity therewith to his character.
25 But it's relevant to show the elements of the crime

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

1 of contributing to the delinquency of a minor.

2 Pre-trial when we had this discussion, I didn't
3 know what the evidence was going to be, what the
4 testimony was going to be. And I knew that there was
5 certainly the potential for there to be evidence that
6 could violate a 403 analysis. But in so far as the
7 evidence is offered for the limited purpose of
8 supporting the elements of contributing to the
9 delinquency of a minor, it is admissible. If the
10 Defense feels while it is being offered into evidence
11 that there's something objectionable, that is
12 something specific that violates 403, or that it goes
13 beyond simply proving the elements of contributing to
14 the delinquency of a minor, then you can lodge a
15 contemporaneous objection.

16 Everything that you've articulated so far,
17 everything that you've told me that she is going to
18 say is, in my estimation, appropriate. That is,
19 everything that you've told me so far would support
20 the allegation of contributing to the delinquency of
21 a minor.

22 So, I didn't mean to necessarily limit your
23 examination. I just want to make sure that it was
24 clear that I wasn't making a whole cloth ruling that
25 you could say anything you wanted to say with regard

E. G. DIRECT BY MR. MOYER

1 to contributing to the delinquency of a minor, okay.

2 MR. MOYER: Yes, sir.

3 THE COURT: And I can't -- you know, I can't
4 give you any greater guidance than what I've given
5 you. You just have to make a contemporaneous
6 objection if you think it violates a 403 analysis or
7 if you think it goes beyond the elements of that
8 crime. Okay. All right.

9 MR. KAPPEL: I mean, I understand the Court's
10 ruling, I think. But there again, I mean, I'm going
11 to be objecting to, you know, pretty much whatever
12 comes in. I think that the elements can be
13 satisfied, as I've stated, you know, merely providing
14 alcohol or providing marijuana. I think some of
15 these other anecdotes that we're going to hear,
16 again, I mean, once the question is asked, once it
17 starts coming out, I may not have any choice but to
18 object to it.

19 THE COURT: I understand. And you may be right,
20 it very well may be sufficient. But it's not the job
21 of the Court to limit otherwise relevant testimony
22 unless it violates the 403. If you think it violates
23 the 403, you just have to make those
24 contemporaneously and I have to make a ruling on it,
25 okay.

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

1 MR. KAPPEL: Judge, before we bring -- I'm
2 sorry, I don't mean to interrupt the Court. I got a
3 note from my client that had one word on it, it said
4 Bathroom, so.

5 THE COURT: Yeah, I'm doing the same thing.
6 Let's take a break.

7 Ma'am, you can take a break, too. You just
8 can't discuss your testimony with anyone. Okay.

9 (WHEREUPON, a short break was taken.)

10 THE COURT: Okay. All right. We ready for
11 jury?

12 Okay. Bring them in, please.

13 MR. KAPPEL: Judge, we'll need a second I think
14 to --

15 THE COURT: No problem. They'll come in about
16 the same time, if experience is any guide.

17 (WHEREUPON, the jury came into open court at
18 approximately 10:57 a.m.)

19 THE COURT: All right. Mr. Moyer, your witness,
20 sir.

21 MR. MOYER: Thank you, may it please the Court?

22 THE COURT: Yes, sir.

23 BY MR. MOYER:

24 Q Okay. E.G. [REDACTED], let me turn now to another
25 subject and that is the subject of illegal drugs. When --

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

1 do you recall the Defendant having illegal drugs in the
2 home --

3 A Yes.

4 Q -- when you were young? At about what age was
5 it that you first remember that?

6 A I grew up with pot being around a lot. Then
7 other things were introduced later.

8 Q Okay. So pot, talking about marijuana?

9 A (The witness nods.)

10 Q So, is that -- you nodded yes?

11 A Yes.

12 Q Was that from the earliest age you can remember?

13 A The earliest age is when I was five. I remember
14 pot was passed around like a cigarette.

15 MR. KAPPEL: Judge, I'm going to lay an
16 objection just at this point. Just for all the
17 reasons I provided already.

18 THE COURT: Yes, sir, yes, sir. And you're
19 protected on the record in that regard. I know your
20 objection is on the 403, if I'm not mistaken. The
21 ruling that I previously articulated stands and I
22 respectfully overrule the objection.

23 MR. KAPPEL: I just want -- so I'm not having to
24 keep objecting, I assume that will carry through?

25 THE COURT: It is absolutely fine with me.

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

1 MR. KAPPEL: Right. Thank you, Judge.

2 BY MR. MOYER:

3 Q So, would he use marijuana in front of you?

4 A Yes.

5 Q How frequently?

6 A All the time. That was the normal.

7 Q Once a week?

8 A Every day.

9 Q Every day. And that's from when you were very
10 young?

11 A Yes.

12 Q As young as like the ages you were talking about
13 this abuse?

14 A Yes.

15 Q Like five years old or so?

16 A I think he tried to keep it a little bit more
17 discrete, but, eventually, it was every day.

18 Q Now, did you ever use marijuana in the home?

19 A I did.

20 Q How did that come about?

21 A I was asking him about it and then he allowed me
22 to smoke it.

23 Q Okay. Tell me about it. How did it come about
24 that he allowed you to smoke it?

25 A We were in the living room. I was already

E. G. DIRECT BY MR. MOYER

1 smoking cigarettes, and then the pot came up. I was 12
2 years old. And I was curious about it and I asked him
3 about it. And he pretty much asked me if I wanted to
4 smoke it and then I obviously said yes. He packed me a
5 little wooden bowl and I had smoked it.

6 Q Okay. Now, from that point on, did you use it
7 more?

8 A Yes.

9 Q Where would you get it when you used it?

10 A From Dwayne.

11 Q He would just give it to you?

12 A Yes.

13 Q What about alcohol?

14 A He would allow me to drink as well.

15 Q What kind of alcohol?

16 A Fuzzy Navel's was one and like the Daiquiri
17 drinks. And when he would get beer -- because I didn't
18 like beer, he would buy me Fuzzy Navel's and things like I
19 liked to drink.

20 Q This started at around age 12, you said?

21 A Yes.

22 Q Did you ever see him with other drugs?

23 A I did.

24 Q Okay.

25 A Eventually, at 79 Ferguson Road, there were a

E. G. [REDACTED] DIRECT BY MR. MOYER

1 lot of drugs.

2 Q What kind of drugs?

3 A Crack cocaine, things of that nature. I'm not a
4 drug user, I just know what I remember seeing. I can show
5 you -- or I can tell you what I seen.

6 Q Tell us what you did see.

7 A I seen them make little white rocks out of
8 little glass vials. I remember them making stuff in the
9 kitchen. They were scraping it out of a bowl, a white
10 substance. And they would snort stuff, too. They would
11 walk around with the little tin foils and smoke it.

12 Q When you say they, you're talking about?

13 A I'm talking about Dwayne as well as other people
14 who were coming into the home.

15 Q Were your brothers making it with him?

16 A He showed my brothers how, yes.

17 Q Would they make it in your house?

18 A Yes, they would.

19 Q What room of your house?

20 A The kitchen.

21 Q Okay.

22 A At one time, I remember -- I'm not sure exactly
23 what he was doing, but he had it in a glass vial and they
24 were lighting the glass vial and he was shaking it.

25 Q So, he never gave you that drug?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A No.

2 Q But he did use it in front of you?

3 A Yes.

4 Q You said other people would come in the house?

5 A Yes.

6 Q People who weren't related to you all?

7 A Yes.

8 Q That was related to drug activity?

9 A Yes.

10 Q What sort of drug activity?

11 A Drug deals for personal use.

12 MR. KAPPEL: Judge, I'm going to just object.

13 It's getting too far now.

14 THE COURT: I sustain. I sustain.

15 BY MR. MOYER:

16 Q Okay.

17 MR. KAPPEL: I move to strike the last response
18 and ask for curative instruction.

19 THE COURT: All right. We'll strike that.

20 Ladies and gentlemen, any evidence of any
21 alleged drug deals are not relevant to your
22 consideration in this matter. You should disregard
23 it. We'll strike the record of that comment.

24 BY MR. MOYER:

25 Q Okay, now, you were how old when you reported

E. G. [REDACTED] DIRECT BY MR. MOYER

1 what Dwayne was doing to you?

2 A Twenty-six.

3 Q Okay. You're 29 years old now?

4 A Yes.

5 Q Okay. And you came in and spoke to this officer
6 here?

7 A Yes.

8 Q Did you go in by yourself the first time?

9 A I believe so, yes.

10 Q And you spoke to him for quite a long time, did
11 you not?

12 A Yes.

13 Q Okay. Then you're aware that your brother,
14 Christopher, also came in and spoke to Investigator --

15 A Yes.

16 Q -- Richter? Did you ever influence Christopher
17 to go in and tell? Did you put pressure on him or
18 influence what he had to say at all?

19 A No.

20 Q You never did that?

21 A No.

22 Q Did you ever put words in his mouth?

23 A No, I did not tell him what to say.

24 Q Okay. So, what led you to come forward at age
25 26 to talk about this?

E. G. [REDACTED] DIRECT BY MR. MOYER

1 A It got to a point where, really, it was
2 over-willing me. I was having nightmares. I just -- I
3 couldn't put it behind me and I couldn't keep it closed.

4 Q Okay. Did you tell anyone -- before you came in
5 to tell the officer, did you tell anyone else?

6 A I did tell my mother that he was abusing me, but
7 I didn't tell her exactly what.

8 Q You didn't go into all the details?

9 A No. I spoke -- there's a young girl that I care
10 about and I look at her kind of like my daughter. She
11 actually had an incident and I did share with her, that
12 she wasn't alone because I, too, were abused.

13 Q Okay. Was that long before you ended up going
14 --

15 A (The witness shook her head.)

16 Q You're shaking your head no?

17 A It wasn't very long because as more of my past
18 kept starting to over-will me and I kept wanting to tell.
19 And it seemed like everything just triggered all of my
20 past.

21 Q What do you mean by overrule you?

22 A It got to the point where I was having
23 nightmares and I just -- I couldn't -- I couldn't get it
24 out of my head.

25 Q Okay. Now, during all that time, from when you

E. G. [REDACTED] DIRECT BY MR. MOYER

1 were 14 when you moved out until when you did tell, would
2 you think about it occasionally over the time?

3 A Occasionally, but I would just bury it down
4 because I wanted to make it not exist.

5 Q So, it wasn't like you had not thought about it
6 during that whole time period; is that right?

7 A Right. I just ignored it.

8 Q Then it became harder and harder to ignore?

9 A Yes.

10 Q Okay. Now, do you know the family that came
11 into Dwayne's life after he left you and your mother and
12 your family?

13 A I do not know the person, no.

14 Q Up until we started getting ready for court here
15 recently, had you ever met any of them?

16 A No.

17 Q Cindy Rosado is the woman that he is with now.
18 Do you know her?

19 A No.

20 Q As far as you know, have you ever met her?

21 A No.

22 Q How about C.R. [REDACTED] the other young girl
23 who came forward, do -- did you -- at the time she came
24 forward, did you know her?

25 A No.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q Had you ever met her?

2 A No.

3 Q As far as you know, had you ever spoken to her?

4 A No.

5 Q So, you didn't have any interaction with this
6 new family then?

7 A Correct.

8 MR. MOYER: Okay. Please answer any questions
9 the Defense may have.

10 MR. KAPPEL: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. KAPPEL:

14 Q Okay. I want to take you back to the beginning.
15 We've had some discussion as to when this incident
16 occurred with Mikey. Were you not four years old when
17 that happened?

18 A I was four or five.

19 Q Were you not closer to four than five?

20 A I'm not really sure.

21 Q Okay. Did you give a statement to Officer
22 Richter about how close it was to your fourth birthday
23 when you were interviewed by him?

24 A I don't remember.

25 Q Okay. Okay. You were interviewed by Officer

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Richter the first time on July 31st, 2014; is that right?

2 A (The witness nods.) Yes.

3 Q Okay. And he asked you a lot of questions, did
4 he not?

5 A Yes.

6 Q Okay. And the interview was recorded, wasn't
7 it?

8 A Yes.

9 Q You were aware that it was being recorded,
10 correct?

11 A Yes.

12 Q And at one point in time, he asked you how old
13 were you when you thought this happened with Mikey and you
14 gave an answer. Do you recall?

15 A Four or five.

16 Q Okay. Do you recall saying I was probably
17 closer to four than I was five?

18 A Maybe.

19 Q Would you like to review the transcript or would
20 you like me to play the audio for you so you can hear it?

21 A That is okay. Yes. If that is what it is.

22 Q So, was your answer closer to four?

23 A Yes.

24 Q I'm sorry?

25 A Yes.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q Okay. So, you were born in September 1987?

2 A Yes.

3 Q So, your fourth birthday would have been
4 September 1991, correct?

5 A Correct.

6 Q And then you said that Mikey had assaulted you
7 four or five times?

8 A (The witness nods.)

9 Q Right?

10 A Yes.

11 Q In fact, you told Investigator Richter that you
12 thought it was in the fall. Autumn, I think was the word,
13 correct? Do you recall that?

14 A Yes.

15 Q Okay. So, if it occurred in the fall when
16 you're closer to your fourth birthday, one would then
17 think that this was sometime [REDACTED] of 1991.
18 Does that sound right?

19 A Yes.

20 Q All right. After it stopped, what was it, about
21 a month or so that Mikey was doing this to you?

22 A I can't remember exactly.

23 Q But it was a relatively short period of time,
24 wasn't it?

25 A Yes.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q So, once it stopped, then your statement is that
2 Dwayne caught him, correct?

3 A Yes.

4 Q And then Dwayne physically beat him up for doing
5 it, right?

6 A Yes.

7 Q So, Dwayne's reaction to what was happening to
8 you was consistent and appropriate for whatever you
9 thought, you know, a step-dad should act, correct?

10 A When I was four, yes.

11 Q Okay. But then you say that about two months
12 later, one to two months later, Dwayne started doing the
13 same thing, right?

14 A Yes.

15 Q That would put us maybe, you know, the beginning
16 of 1992, right?

17 A Maybe, yes.

18 Q Okay. And what you suggest is that he was --
19 well, you plopped on him and he rubbed himself on you and
20 masturbated, correct?

21 A I remember the first time, he was just rubbing
22 up against me.

23 Q And that was on Deer Run?

24 A Yes.

25 Q All right. And you testified -- or you've

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 stated that this was a fairly frequent occurrence at that
2 point, correct?

3 A That was my childhood, yes.

4 Q And it continued all throughout your time at
5 Painter Road?

6 A Yes.

7 Q And then subsequently to your time on Painter
8 Road, it was you, Dwayne, your mother; right?

9 A Yes.

10 Q You, ultimately, moved from Painter Road to
11 Seneca -- not Painter Road, excuse me, Deer Run Road to
12 Seneca, correct?

13 A Yes.

14 Q So, you stated that it continued when you're in
15 Seneca when you just testified. Do you recall saying
16 that?

17 A Yes.

18 Q Do you remember answering any questions to
19 Mr. Richter about Seneca?

20 A No.

21 Q Okay. Again, you were interviewed by
22 Investigator Richter and it was recorded. And it says,
23 Did anything ever happen to you when you were living in
24 Seneca? And you gave an answer. Do you recall your
25 answer?

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 A No.

2 Q Do you want to listen to your answer or do you
3 want me to -- well, I'll just tell you.

4 You said, To be honest, I don't remember
5 too much in Seneca.

6 Do you remember giving that answer?

7 A That would be correct.

8 Q In fact, you never elaborated that anything
9 happened to you in Seneca?

10 A (There was no response.)

11 Q There's one big blank in the timeline, which is
12 Seneca. Do you know that?

13 A Yes.

14 Q And now, you're suggesting that it's not blank,
15 that there are occurrences that happened in Seneca?

16 A Yes, I just can't remember, I can't tell you
17 exactly of what.

18 Q But you never suggested to Officer Richter that
19 it continued when you were in Seneca. In fact, the
20 comment was that you couldn't remember if anything
21 happened in Seneca.

22 A (There was no response.)

23 Q Is that correct?

24 A Yes.

25 Q All right. Now, you've gone into a tremendous

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 amount of why you didn't report this and why you didn't
2 tell anybody. And the fact is, you knew -- I call her
3 Lenore. You knew Ms. Brissey; isn't that right?

4 A Who?

5 Q Ma.

6 A Yes.

7 Q And you knew her from a very early age; isn't
8 that correct?

9 A Yes.

10 Q You were very close to her from the very
11 beginning; isn't that also correct?

12 A I loved her very much.

13 Q She treated you like a grandchild and you
14 treated her like a grandmother?

15 A Yes.

16 Q Now, at some point when you were five -- this is
17 according to your statement, you told Diana?

18 A Yes.

19 Q And you told Diana several times; isn't that
20 right?

21 A One time.

22 Q So, you only told her one time?

23 A One time.

24 Q What did you tell her?

25 A I told her that he was touching me.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q Okay. And you felt that she -- did she hear
2 you?

3 A Yes.

4 Q Do you think she understood what you said to
5 her?

6 A Yes.

7 Q Okay. But nothing happened from it?

8 A No.

9 Q Do you presume -- did Ma know?

10 A No.

11 Q So, you don't know if Diana had told Ma your
12 comments?

13 A I don't know.

14 Q Okay. Ma never approached you to talk to you
15 about it?

16 A If she did, I don't remember.

17 Q So, your experience was that you told Diana and
18 then nothing happened?

19 A Correct.

20 Q Is that right? Nothing was said -- was
21 something said to Dwayne?

22 A I remember her running out in the room to go to
23 where he was, and that was it. And then when he come into
24 the room, it looked like I was in trouble.

25 Q Okay. Who was in the room when that happened?

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Was your mother there?

2 A No.

3 Q Well, who was there?

4 A I just -- I remember him looking at me like I
5 had done something wrong.

6 Q Right, but was he the only one standing next to
7 you? Was anybody else in the room when this discussion
8 was going on?

9 A They didn't discuss it in front of me.

10 Q Okay. All right. So, we're talking 1991 at
11 Deer Run. Seneca, you said you didn't remember, now you
12 remember something. Then from Seneca, you moved to 77
13 Ferguson, correct?

14 A Yes.

15 Q And that's when you indicate that things got
16 worse?

17 A Yes.

18 Q At 77 Ferguson, that's when you had to learn to
19 do oral sex, correct?

20 A Yes.

21 Q And was that when the penetration started to
22 occur as well?

23 A Yes.

24 Q Okay. And this -- you were at 77 Ferguson for
25 maybe a year?

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 A Maybe.

2 Q From about nine to 10 years old?

3 A Yes.

4 Q Then at 10, you moved next door to 79 Ferguson?

5 A Yes.

6 Q And you described 79 Ferguson as the -- you

7 described it as the hell of your past, correct?

8 A Yes.

9 Q And when you were at 79 Ferguson, you were there

10 for -- well, when you were 10, so that would have been

11 1997, correct? Thereabouts?

12 A Yes.

13 Q And you and your mother did not move out until

14 the fall of 2001; is that right?

15 A I was 14.

16 Q So, it would have been right around your 14th

17 birthday, right, which would have been [REDACTED] 2001;

18 correct?

19 A Yes.

20 Q And when you moved out, you moved to Painter

21 Road -- excuse me, you moved to your dad's house, did you

22 not?

23 A I moved to Painter Road.

24 Q I thought you moved -- excuse me, I thought you

25 moved to an outbuilding behind your dad's house before you

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 moved to Painter Road?

2 A I moved to Painter Road.

3 Q Okay. You didn't move to an outbuilding with
4 your dad -- behind your dad's house with your mom and your
5 brother and a guy named John Wood?

6 A No.

7 Q Y'all didn't live there for a little period of
8 time?

9 A No. After 77 Ferguson Road, my mother and I
10 moved to Painter Road.

11 Q Well, I thought you were in 79 Ferguson and then
12 you move to Painter Road?

13 A Yes.

14 Q But I thought you lived for a period of time at
15 your dad's in an outbuilding with a guy named John Wood?

16 A I did not live in the outbuilding with a guy
17 named John after -- once I finally got to go live with my
18 father, there was a building to which they stayed in. I
19 stayed in the home with my father.

20 Q So, when you moved from 79 to Painter Road, did
21 you ever cry about leaving the farm?

22 A Yes.

23 Q Did you scream and yell that you did not want to
24 leave?

25 A I don't remember screaming and yelling, but I do

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 remember crying.

2 Q Do you recall saying to Ma that you loved Dwayne
3 like a father?

4 A I'm sure I did.

5 Q And that you did not want to leave and go with
6 your mother?

7 A I don't remember, but I don't deny it, either.

8 Q Okay. In fact, when you moved to Painter Road,
9 did you not send a letter to Dwayne?

10 A I don't remember.

11 Q Okay. You don't recall sending a letter to
12 Dwayne that said that you loved him like a father and that
13 you wanted to move back to the farm?

14 A I don't remember.

15 Q Okay. In the fall of 2001, you moved to Painter
16 Road and that's when -- and in January, that's when the
17 police were called, January 2002; isn't that right?

18 A Yes.

19 Q And the result of the police being called was
20 based on your brothers telling your father --

21 A Yes.

22 Q -- something? Correct?

23 A Yes.

24 Q All right. When the police arrived, they talked
25 to you and interviewed you?

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 A Yes.

2 Q They did that with your mother present, correct?

3 Your mother was there, was she not?

4 A Yes.

5 Q And the officers, did they separate you and your

6 mother?

7 A Yes.

8 Q Okay. One officer talked to you, another

9 officer talked to your mother; isn't that right?

10 A Yes.

11 Q Do you recall what you said to the police

12 officers?

13 A I denied anything and everything.

14 Q Okay. Did you -- were you more specific with

15 the officer as to why this was coming up?

16 A I believe I blamed it on the separation.

17 Q Okay. Did you go further and say that this was

18 all because your father was trying to get custody of you?

19 A I may have.

20 Q And that you didn't want to go live with him?

21 A Probably.

22 Q And you didn't like him?

23 A Yeah.

24 Q And you were angry at him --

25 A (The witness nods.)

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q -- for not being your father, correct?

2 A Yes.

3 Q And that this story was nothing more than just a
4 smokescreen to try to keep you from having to move?

5 A Yep.

6 Q And you were familiar then at that point in time
7 of your life of how statements can be made to law
8 enforcement to prevent the movement from one place to
9 another. Basically, your statement to the police that it
10 was all part of the -- part of the custody to try to stop
11 from moving to your dad's?

12 A (The witness nods.)

13 Q Isn't that correct?

14 A Yep.

15 Q In fact, the true fact based on your letter, was
16 that you really wanted to go move back in with Dwayne;
17 correct?

18 A Correct.

19 Q That's even after, as you've described it to
20 Officer Richter, that 79 Ferguson Road was the hell house
21 of your past?

22 A Yes.

23 Q Do you recall making that statement?

24 A Yes.

25 Q And when you're living on Painter Road, at

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 least, for a period of time, you were free of Dwayne,
2 right?

3 A Yes.

4 Q And here you have law enforcement in front of
5 you acting on your behalf to free you from this burden, to
6 free you from this humiliation and this hell hole that you
7 claim to be living in, correct?

8 A Yes.

9 Q And you, instead, told them that it wasn't true?

10 A (The witness nods.)

11 Q And you told Dwayne that you wanted to move
12 back, correct?

13 A Yeah.

14 Q All right. That interview was on January 10th,
15 2002; is that correct?

16 A Yes.

17 Q And you were 14 years old in several months,
18 right.

19 A Yes.

20 Q You were interviewed again by Department of
21 Social Services, right?

22 A Yes.

23 Q And you were -- you're familiar with DSS,
24 correct?

25 A Yes.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q You know what their job is, do you not?

2 A Yes.

3 Q That are to protect children?

4 A Yes.

5 Q They're trained to protect children, do you
6 agree?

7 A Yes.

8 Q They're trained to interview children, right?

9 A Yes.

10 Q And do you recall being interviewed with --
11 excuse me for just one moment. Do you remember being
12 interviewed by the Department of Social Services on
13 April 24th, 2002?

14 A Yes.

15 Q And that was three months after the first
16 interview with law enforcement, right?

17 A Yes.

18 Q And after law enforcement got involved in
19 January 2002, you never saw Dwayne, right?

20 A Right.

21 Q As you indicated, you hadn't seen him since
22 January 2002 until court?

23 A Yes.

24 Q So, that was three months removed from ever
25 seeing Dwayne, right?

E G. [REDACTED] CROSS BY MR. KAPPEL

1 A Yes.

2 Q And when you were interviewed by law
3 enforcement, do you recall what you -- or excuse me, by
4 Department of Social Services, do you recall what you said
5 to them?

6 A I said that he didn't do anything, he didn't
7 touch me.

8 Q You indicated that you had never seen him
9 masturbate?

10 A Correct.

11 Q And that you didn't believe the allegation,
12 correct?

13 A Correct.

14 Q You indicated that when asked if he had ever
15 touched you in a sexual way, you said never?

16 A Correct.

17 Q Do you recall that?

18 A Yes.

19 Q And I suppose you did it in a convincing way,
20 did you not?

21 A Yes.

22 Q Okay. You also indicated that -- you know, you
23 kind of maligned your brothers, too, did you not?

24 A (There was no response.)

25 Q I'm sorry, you kind of disparaged your brothers

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 or spoke ill of your brothers in that interview, correct?

2 A (There was no response.)

3 Q Do you recall?

4 A (The witness shook her head.)

5 Q Well, it was your brother that reported it to
6 your father, right?

7 A Yes.

8 Q Then that's what caused DSS to get involved,
9 correct?

10 A Yes.

11 Q And you told DSS that there's no telling what
12 they saw, right?

13 A Yes.

14 Q The reason you said that was because, mentally,
15 they're not really there; isn't that right?

16 A Yes.

17 Q Okay. You were subsequently interviewed
18 again -- excuse me for one minute. You were interviewed
19 again by DSS, do you recall? On June 5th, 2002, do you
20 remember that?

21 A I don't remember. I know I was, yes.

22 Q In fact, the solicitor referred to it, he said
23 you had a forensic interview, do you remember?

24 A Yes.

25 Q And in your forensic interview, you continued to

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 say never happened, right?

2 A Yes.

3 Q And you commented, actually, one time to Officer
4 Richter about this because you were videotaped, do you
5 remember?

6 A I remember --

7 Q Do you remember saying to Officer Richter in
8 your recorded interview that you said, I looked right into
9 that camera and said it never happened. Do you remember
10 making that statement?

11 A Yes.

12 Q Okay.

13 A Well -- go ahead.

14 Q In fact, you said, Once again, I sat there in
15 front of the camera and acted like they were stupid.

16 Do you remember saying that?

17 A Yes.

18 Q And that was consistent with your whole story to
19 them that it never happened?

20 A Yep.

21 Q Now, at some point, you went and started to live
22 with your dad?

23 A Yes.

24 Q Do you recall that?

25 A (The witness nods.)

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q And you were with your mother at Painter Road,
2 the police get involved. Do you recall why you ended up
3 going to your dad's?

4 A Yes.

5 Q Why?

6 A My mother had a breakdown.

7 Q Okay. So, your mother has had -- and I'm not
8 trying to be difficult, but your mother has had some
9 mental health problems --

10 MR. MOYER: I would object on relevancy.

11 THE COURT: Well, I'll let you ask that
12 question, sir.

13 MR. KAPPEL: Thank you, sir.

14 BY MR. KAPPEL:

15 Q Your mom's had mental health issues; isn't that
16 right?

17 A Yes.

18 Q So, it was to the point where DSS moved you to
19 your dad's house?

20 A Yes.

21 Q And her mental health issues were pretty --

22 MR. MOYER: Again, I object. There's no
23 relevancy to her mother's -- any mental health
24 issues.

25 THE COURT: I don't know what the next question

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 is going to be, but I'm not going to let you go into
2 much detail on that.

3 MR. KAPPEL: That's fine.

4 THE COURT: If you have specific questions, you
5 can call her mother as a witness.

6 MR. KAPPEL: That's fine. That's fine.

7 BY MR. KAPPEL:

8 Q So, when you moved to your dad's house, you
9 stayed there for a while, too, did you not?

10 A Yes.

11 Q But that didn't go very well either, did it?

12 A Not until I was -- I stayed there until I was

13 16.

14 Q But didn't you try to run away from your dad?

15 A Yes.

16 Q And that kind of caused a problem, too, did it
17 not?

18 A Yes.

19 Q Do you remember the subject of why you tried to
20 run away?

21 A My father's a hypocrite.

22 Q I'm sorry? Your brother's a hypocrite?

23 A My father.

24 Q Oh, your father?

25 A I was not getting along.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Q Was it not --

2 MR. MOYER: Your Honor, I object. There's no
3 relevance to what was going on with her biological
4 father.

5 THE COURT: I don't know if there's another
6 question. That question was okay, so I overrule to
7 that extent.

8 MR. KAPPEL: Thank you.

9 THE COURT: You'll have to object to his
10 question after he poses it.

11 MR. KAPPEL: Thank you.

12 BY MR. KAPPEL:

13 Q So, wasn't the real issue this guy named John
14 Wood?

15 A No.

16 Q All right. John Wood was --

17 MR. MOYER: May we approach, Your Honor?

18 THE COURT: I'll sustain your objection as to
19 John Wood. She said that wasn't the issue.

20 MR. KAPPEL: All right. Well, then I need to be
21 heard on this because I think, ultimately, I can tie
22 this in for relevancy.

23 THE COURT: All right.

24 Y'all excuse us for a second, please. Please
25 return to your jury room, don't discuss the case.

E.G. [REDACTED] CROSS BY MR. KAPPEL

1 (WHEREUPON, the jury left open court at
2 approximately 11:33 a.m.)

3 THE COURT: Yes, sir.

4 MR. KAPPEL: Judge, the testimony that I believe
5 that's going to come out is that there was a person
6 by the name of John Wood that was friends with her
7 brothers that lived with the family from time to time
8 and lived in this outbuilding behind her dad's house.
9 I don't have John Wood. I don't think anyone's been
10 able to find John Wood. He's not here.

11 The issue is that when she -- when E.G. [REDACTED]
12 moved to Painter Road that there was an occurrence
13 where she was going to run off with John Wood. And
14 she describes in her testimony to Officer Richter
15 that this was something -- someone that she cared
16 very much about, that she had a crush on. And the
17 reason that it's important to us is that when she was
18 about to run off with John Wood from the address at
19 Painter Road that E.G. [REDACTED] mother, Sherry,
20 actually, called my client to come and stop it.

21 THE COURT: Okay.

22 MR. KAPPEL: That's the relevance.

23 THE COURT: Okay.

24 Mr. Moyer.

25 MR. MOYER: I don't see how that's relevant. I

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 mean, especially in light of our rape shield statute,
2 which I think is where the Defense is trying to make
3 this -- get close to and plant in the jury's mind.
4 First off, the victim would deny that there was any
5 sexual activity between her and this other fellow.
6 But she said did say -- I think she would testify if
7 asked that yes, she was looking towards some other
8 man at this stage in her life and, possibly, would
9 have. However, none of that is relevant. The fact
10 that her mother called the Defendant to stop her from
11 running away from home for whatever reason,
12 especially this reason, just has no relevance to
13 whether or not the Defendant committed these acts.

14 THE COURT: Okay.

15 MR. KAPPEL: Judge, I don't know if I need to
16 respond to that or not.

17 THE COURT: I think you've articulated the basis
18 for relevance. And I see where him being called and
19 being in a position of trust could be relevant to
20 your defense. My issue was before you asked that
21 question, it sounded to me like you were about to
22 articulate this John Wood relationship. Well, that's
23 not your place to articulate the John Wood
24 relationship. I don't know that the details of the
25 John Wood relationship are necessary for you to ask

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 the ultimate question of wasn't he called to try to
2 remedy the situation? That is, wasn't he a person of
3 trust in your family?

4 So, you can ask her if she was having a
5 relationship with someone else, if she was planning
6 on running away, all of those various questions.
7 You can even mention John Wood and ask her if a
8 statement refreshes her memory. But I don't know if
9 salacious details regarding John Wood --

10 MR. KAPPEL: It's not my intent to get into
11 salacious details. I don't think it's unusual for
12 anyone to try to understand that a 14 year-old girl
13 can have a crush on someone. It doesn't mean that
14 they're sexually engaged with them. But I think the
15 purpose of this is not to draw upon that, it's just
16 simply to say that she was looking to a relationship
17 with this person and that the mother called my client
18 to come over from Ferguson to Painter Road to keep
19 her from running off with him. And I think it's
20 highly relevant to the case.

21 THE COURT: I agree.

22 I note your objection on it.

23 MR. MOYER: There's another objection, she can't
24 testify about what her mother did. How in the world
25 can she testify that her mother made a phone call?

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 THE COURT: She might not be able to.

2 MR. MOYER: And if she can't testify to that,
3 then that makes all of that whole line of questioning
4 irrelevant.

5 MR. KAPPEL: It doesn't because we can tie it in
6 later in our case.

7 MR. MOYER: Well, he can -- I'm sorry, I didn't
8 mean --

9 THE COURT: Y'all are okay. But y'all are
10 anticipating the questions that are going to be asked
11 and the responses that will be elicited. She's here.
12 She's obviously listening to our argument. But
13 cross-examination is a very open process. And he's
14 articulated the relevance of the ultimate question
15 that he wants to ask. How he gets there could or
16 could not be problematic. I don't know.

17 Whether she knows whether her mother called him
18 or not, I don't know. Because she might say I don't
19 know anything about that. And she might continue to
20 say I don't know anything about that. I don't know.
21 I don't know. But I don't think the question itself
22 is irrelevant. The details of the relationship may
23 be, though. That was my concern when the jury went
24 out. I didn't want Defense counsel in the form of
25 question to give a narrative about this relationship.

E.G. [REDACTED] CROSS BY MR. KAPPEL

1 But go ahead, Mr. Moyer.

2 MR. MOYER: That's the only thing I was going to
3 add is then the gateway into this whole line of
4 questioning should be done with whether or not she
5 has any information about whether her mom or anyone
6 else made this call to the Defendant. Because if she
7 answers that in the negative, then it shuts down the
8 whole line of questioning. If it goes the other way
9 around and he starts getting out all this information
10 that would not become relevant, then it's all out
11 there. So, I just -- I mean, I'm not sure the Court
12 understands.

13 THE COURT: I understand exactly what you're
14 saying.

15 MR. MOYER: The only way this becomes relevant
16 is if she has personal information -- and not from
17 hearsay, but personally knows that her mother made
18 this call to the Defendant and that the Defendant got
19 involved even, too. If none of that is true, then
20 none of this is relevant.

21 MR. KAPPEL: What is true is that she did
22 respond to questions to Officer Richter about this
23 individual and indicated that she had an interest in
24 him. So, the principle question is, of course, do
25 you know him? Did you have an interest in him? And

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 if you were to run off -- did you try to run off with
2 him? She can say no. And say, well, you never ran
3 off with him? Your mother never called Dwayne to
4 come over and intervene to stop you from doing that?
5 She would say no and that would be the end of the
6 question.

7 THE COURT: And I don't know -- as I stand here
8 right now, I don't know what the Defense's entire
9 theory of the case is, so a negative response could
10 potentially be relevant as well. I don't know.

11 But y'all are asking me right now to rule in a
12 vacuum, okay. And I'm going to tell you now, I'm not
13 going to have all of the testimony which could
14 potentially be nonrelevant proffered into evidence
15 and to look at it beforehand. I'm really not.
16 Sometimes, we just need to tee it up and see what
17 happens.

18 Now, I will tell you this, if you want to
19 proffer in the specific questions that you're going
20 to ask her in this line of questioning, I'll be happy
21 to listen to them, okay. But y'all right now are
22 discussing potentialities. Y'all are discussing what
23 could happen, what may happen, if then, I'm not
24 playing that game in this trial or any other trial,
25 okay. So, proffer the questions that you're going to

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 ask and let's hear what she's going to say.

2 MR. KAPPEL: My understanding is that the Court
3 had found it to be relevant.

4 THE COURT: I do find that it's relevant where
5 you're going with it. I don't really have any
6 position with respect to the questions in between.

7 BY MR. KAPPEL:

8 Q All right. So, you're aware of the individual
9 by the name of John Wood?

10 A Yes.

11 Q And you were aware that -- you were interviewed
12 about a variety of matters, but John Wood's name was part
13 of your interview, do you recall that?

14 A Yes.

15 Q And you indicated to the officer that you had a
16 crush on John Wood; isn't that right?

17 A I did.

18 Q And John Wood was in and around your family when
19 you were around 14 years old, correct?

20 A Yes.

21 Q And that would have put you into the fall of
22 2001, January 2002; isn't that right?

23 A Yes.

24 Q Okay. At some point in time when you were --
25 this was after your mother and Dwayne separated and you

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 moved with your mother to Painter Road, right?

2 A Yes.

3 Q Do you recall that at any time that you were
4 going to run away from your mother to go be with John
5 Wood?

6 A I wished for that, but that was never anything
7 that -- never acted on it, was never an actual plan.

8 Q Okay. Did you tell your mother at that point in
9 time that you wished to run away with John Wood? Did you
10 ever disclose that to her?

11 A No. No.

12 Q Do you know if your mother ever called Dwayne to
13 come over and keep you from running away with John Wood?

14 A No.

15 Q Okay.

16 MR. MOYER: Based on it, there's nothing
17 relevant from that line of questioning.

18 THE COURT: You still want to offer that
19 testimony and ask that line of questioning?

20 MR. KAPPEL: I do, yes, I do.

21 THE COURT: Okay. What purpose do you want to
22 offer it at this point?

23 MR. KAPPEL: Well, because I think that we'll
24 have testimony that will contradict that. And I
25 think it shows again -- I've already asked and she's

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 already answered about crying and not wanting to move
2 away. She's somewhat admitted to writing a letter to
3 Dwayne saying that she loved him. This is just more
4 consistent that she and Dwayne had kind of more of a
5 parental relationship.

6 THE COURT: So, what I'm hearing you say is that
7 you intend to offer evidence that would impeach her
8 credibility in that regard?

9 MR. KAPPEL: That's correct.

10 THE COURT: Yes, sir.

11 MR. MOYER: If it please the Court, the evidence
12 that he would introduce is that Dwayne was called
13 from the mother. She testified she doesn't know if
14 her mom called or not, so that would not impeach her.
15 I have no idea who the mom called. She very well
16 could have, but that does not effect her knowledge of
17 the situation of that matter. He can testify --
18 well, he can call the mother to say that she called.
19 But coming in through this witness would be improper
20 because it also skirts so close to the rape shield
21 statute. That's all -- it's going --

22 THE COURT: I'm afraid I don't understand that
23 point about the rape shield statute. You're going to
24 have to articulate that more finely because I just
25 don't understand it.

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 MR. MOYER: He's trying to soil her reputation
2 for being interested in other men.

3 THE COURT: But he's not alleging that she had
4 sex with him or any other type of inappropriate
5 relationship. He's just alleging she had a crush.
6 That's not violative of the rape shield statute.

7 MR. MOYER: A crush and wanting to run away with
8 him. I mean, I think that's the very next logical
9 step that could be implanted in a jury's mind. I
10 mean, what do kids do when they run away with people?
11 I mean, what's the reason --

12 THE COURT: I'm afraid I just don't follow your
13 logic on that. I think we're putting way too much
14 time into this very, very minor point.

15 I'm going to let you ask the questions, but I'm
16 not going to let you go beyond that.

17 MR. KAPPEL: That's fine.

18 THE COURT: I'm going to let you ask what you've
19 asked.

20 Right now, y'all might be a little too close to
21 this case. I want you to back up and think what's
22 the big picture, okay. This line of questioning,
23 ultimately, in a day or two or three days of
24 testimony is not going to make a hill of beans. And
25 the only reason it's going to make any impression on

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 the jury is because we've stopped to talk about it
2 and they're probably going to wonder why we stopped
3 to talk about it because it's so relatively
4 innocuous. Okay.

5 So, let's go ahead -- let's bring them back in,
6 please.

7 (WHEREUPON, the jury came into open court at
8 approximately 11:45 a.m.)

9 THE COURT: All right, Mr. Kappel, your witness.

10 MR. KAPPEL: Thank you, Your Honor. May it
11 please the Court?

12 THE COURT: Yes, sir.

13 BY MR. KAPPEL:

14 Q E.G. [REDACTED], you recall we were talking about a
15 person by the name of John Wood?

16 A Yes.

17 Q And he was around your family when -- in about
18 the fall of 2001, 2002; is that correct?

19 A Yes.

20 Q And I believe when you were interviewed by
21 Officer Richter, you indicated you had a crush on him; is
22 that correct?

23 A Yes.

24 Q When you were living on Painter Road, it was you
25 and your mother, did you have a plan to run away with John

E. G. [REDACTED] CROSS BY MR. KAPPEL

1 Wood?

2 A No.

3 Q Did you think about it?

4 A As a girl, yes.

5 Q But you never did it?

6 A No.

7 Q Do you recall at any time that your mother found
8 out about -- or did you ever talk to your mother about
9 thinking about running away with John Wood?

10 A No.

11 Q And you don't recall if your -- or do you recall
12 if your mother ever called Dwayne to come over to try to
13 intervene to keep you from running away with John Wood?

14 A No.

15 Q All right. I want to talk to you briefly about
16 your brother, Christopher. You are a younger sister to
17 him, correct?

18 A Yes.

19 Q Do you feel that you have -- even though you're
20 younger than him, do you feel you have to kind of take
21 care of him?

22 A I feel that way about all of my family.

23 Q But him in particular, correct? I mean, you
24 worry about him?

25 A Not now.