IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CF-2019-1273
	)	
DALLAS CHRISTOPHER NORTON,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

HAD ON AUGUST 31, 2022

AT THE CLEVELAND COUNTY COURTHOUSE

BEFORE THE HONORABLE THAD BALKMAN

DISTRICT JUDGE

AND A JURY

REPORTED BY: ANGELA THAGARD, CSR, RPR, CRR

APPEARANCES:

ON BEHALF OF THE STATE:
MS. JENNIFER AUSTIN
MS. JACOBI WHATLEY
ASSISTANT DISTRICT ATTORNEYS
CLEVELAND COUNTY DISTRICT ATTORNEY'S OFFICE
201 S. JONES, SUITE 300
NORMAN, OK 73069

ON BEHALF OF THE DEFENDANT:
MR. KEITH NEDWICK
ATTORNEY AT LAW
130 EAST EUFAULA
NORMAN, OK 73069

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EXHIBITS

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P R O C E E D I N G S

THE COURT: Let's go ahead and go on the record, State of Oklahoma vs. Dallas Christopher Norton, CF-2019-1273. Today we have scheduled formal sentencing.

I will begin by stating that I understand that there are a couple of other preliminary matters. I did receive a letter last week, I guess it was actually the start of this week -- no, it was last week -- from Mr. Norton. And I have read that letter. He's asking for a new trial. I've also received Mr. Nedwick's written motion asking for that same relief.

I will certainly allow for argument on that. I will tell you, based on the written briefs, if you will, I'm not inclined to grant a new trial. I understand that Mr. Norton feels there were things that were done that he doesn't agree with.

I don't see a legal basis for granting that relief, but I absolutely want to give Mr. Nedwick an opportunity to address the Court on that matter.

MR. NEDWICK: Thank you, your Honor. Do you want to hear that now, your Honor?

THE COURT: Yeah.

MR. NEDWICK: Okay. Your Honor, the first seven paragraphs of the motion for new trial address -- so that's page 1 -- address issues that were raised at trial. And then

the second page are things that were not raised at trial or occurred afterwards.

I would like to make argument on the grounds listed there in the first seven paragraphs. Paragraphs 1, 2, 3, and 5 can really all be summed up with the evidence was insufficient to sustain the State's burden beyond a reasonable doubt.

There was -- the record was riddled with inconsistencies. And the evidence did not rise to the level that would establish beyond -- guilt beyond a reasonable doubt.

I think one of those paragraphs is probably my -- pointing out my -- you overruling my demurrer based upon the same argument at the time. So that's included there.

Paragraph 4, I'll address in just a moment. But the other issues and really the ones I want to focus on, Judge, as far as the first seven paragraphs, are the paragraph 6 and 7. That's me raising issues that I objected to at trial.

And the first one is the testimony of Bailey Ferguson. I won't spend a lot of time on that. The Court allowed me to make quite a record at trial on that, and I do believe that that was improper character evidence, bad character evidence, and it prejudiced Mr. Norton.

So I would like to focus more, though, Judge, on the second ground, which is the child hearsay. That's where I think, particularly given the way things played out after the Court ruled on the motion, on my objection to the child

hearsay, particularly of Jeffrey Jackson, the Court conducted -- the State alleged that those -- the statements from the accuser to her father were made to him in a reliable setting and that there were other instances of reliability, so as to meet the burden, we had a reliability hearing on that. And we heard argument on it.

So the Court agreed with the State, over my objection, that that was -- the circumstances surrounding that statement were made in a reliable setting and that the statement itself had other indications of reliability.

I argued at the time that the statements to Jeffrey Jackson were inconsistent with the other child hearsay that the State introduced, which was the forensic interview and the testimony of the forensic interviewer. The Court objected -- disagreed and overruled both of those.

Then we get to the part where I think it's relevant for today. In closing argument, Judge, after having alleged that the statements were made in a reliable setting, after having argued that the statements were, in fact, reliable, the statement from the accuser to her father, Jeffrey Jackson, the State argued in closing and admitted in closing that they were not reliable.

In fact, much of her closing was based upon convincing the jury that, hey, you can't believe what Jeffrey Jackson relayed to you about what the accuser said because he -- the

circumstances under which he was relayed that information, anybody would have made those mistakes.

She said, Imagine -- and this was playing to the jury's emotions -- Imagine he hears his daughter say, I've been molested by somebody who is -- who's entrusted to care for me. And spent quite a time -- and frankly, I thought it was very, very effective at the time. No doubt about it.

But, Judge, to make those kinds of inconsistent arguments to the jury may raise other issues, but it certainly -- it's a -- it's now a de facto admission by the State that that evidence should have never been admitted. They have not only admitted it, but emphasized it in their closing. Went into great detail about how it's not reliable, the circumstances aren't reliable, any of us could have messed that up, and that's exactly what happened here. Disregard what he says the child told him.

So that ruling, that pretrial ruling and trial ruling was clearly erroneous based upon the State's admissions that it's not reliable, which is the standard for child hearsay.

So on that basis alone, Judge, I believe that a new trial is warranted, one in which the State is not allowed to introduce child hearsay that it later admitted that it's not reliable.

They certainly, certainly shouldn't be able to take such a contradictory -- even after the Court ruled -- as matter

of law, the Court ruled that that statement was reliable. And for the State to use it in closing the way they did raises a different issue. But that -- raising it in closing and emphasizing it and doing the theatrics that went along with it was -- had the effect of inflaming the jury.

She was asking them, Imagine you were in his position, the father's position, having just heard this. And Counsel was actually throwing pieces of paper on the floor as she was giving that argument to point out and emphasize that, oh, you can't trust what he remembers the child saying, because he was, just as any of you would have been, under extreme stress and so on and so forth.

So Judge, for those reasons, based upon the issues that have already been raised in -- at trial, I do believe that fundamental fairness, due process, warrant Mr. Norton getting a new trial, free from that inadmissible evidence.

As to the rest of the allegations, Judge, in the motion -- and to be clear, that's paragraphs 8, 9, 10, 11, and 12. The Court will notice that each of those sentences begin with, Defendant alleges. Those are not assertions that I necessarily agree with, which leaves me in a difficult position.

But if Mr. Norton wants to be heard on those and provide testimony on those issues relating to the influence he was under when he waived his right to testify and so on and so forth, then I suppose I have no objection to him being heard on

those.

In other words, those are not things I can argue, because I don't -- I don't agree with them.

THE COURT: Thank you, Mr. Nedwick.

MR. NEDWICK: With one exception, your Honor. Paragraph 12, which may also require testimony from Mr. Norton as far as the prejudice element, any prejudice that he would have suffered from the juror misconduct.

In the discussions we've had, neither one of us have identified -- due to the content of the conversation that was overheard, neither one of us -- at least in prior conversations, neither one of us have identified prejudice. He may want to be heard on that though.

THE COURT: All right.

Mr. Norton, do you care to address me and argue any of these statements that are contained in the motion for new trial?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Would you please, first, stand and raise your right hand so I can place you under oath.

(Defendant sworn)

THE COURT: Okay. Go ahead.

THE DEFENDANT: Well, I explained a lot of it in the letter I wrote to you. Explaining it in person may be a little bit easier for you to understand or me to convey, especially as

it pertains to the -- me giving up my defense, you know, my right to testify, my right to call witnesses.

That was not of my choosing, not even a thought process of mine, you know, that we subpoenaed multiple witnesses to testify and had plans for a defense. At the close -- we broke for lunch one day, I believe it was the day that the State rested. And on the way out of the courthouse, Mr. Nedwick said that we were not going to call any witnesses that day, and I did not need to testify.

MR. NEDWICK: Your Honor, I have to as my duty, for candor of the Court, I can't allow him to testify to something I know is false. I didn't say those words ever. But to say that I even had a conversation about that as we're leaving the courthouse is absolutely false.

THE COURT: Thank you. That will be noted.

Go ahead, Mr. Norton.

THE DEFENDANT: In my memory, that is what was said. We were not going to call any witnesses, and, in fact, Mr. Douglas was with us at the time, commented that that's a bold move. His exact words, That's a bold move.

We went over to Mr. Nedwick's office. We finally settled down and started talking before we had to come back. And I argued that point, that we're not going to call any witnesses. I said, Well, why not. You know, do we at least need to call -- what purpose does it serve? Every question or

time I questioned him about it, I was met with, you know, more questions from him, What purpose does it serve, why do we need to call them.

The bottom line is at that particular time, at the hearing, what I heard said about me throughout the trial, I wasn't in a correct mindset to even be -- propose the question of should we change our plans. We made those plans prior to trial when I had a clear mind.

We argued that point up until it was time to come back to court. And at that time, I digressed my argument and put the trust in my attorney, you know, to make the decision. And that's when we approached after the jury came in and did that all in whispers over there. And I was instructed that whatever Mr. Douglas asked me, just, yes, sir, yes, sir, so.

THE COURT: All right.

MR. NEDWICK: Your Honor, I'm sure you don't want to hear all the contradictions, but just as -- just to make sure I do my duty and candor to the Court, much of what he just testified to is not true.

THE DEFENDANT: In his opinion.

MR. NEDWICK: Not in my opinion. Factually.

THE COURT: Okay. Well, and Mr. Nedwick, as is any licensed member of the bar, has an ethical obligation to be truthful and to point out -- he's standing to object and to fulfill that duty.

Mr. Norton, I, at the beginning of these proceedings, I placed you under oath and I fully expect that when you are addressing me, you're telling me the truth.

THE DEFENDANT: Yes, sir.

THE COURT: And I'm being put in a position, I've got to determine who's being truthful or not. So is there anything else you want to tell me?

I understand that there was an affidavit, I believe, sent by your father. Do you want to address that?

THE DEFENDANT: I did not actually hear the conversation that pertains to that affidavit firsthand. So I don't really have anything to address on that.

THE COURT: Okay. Okay. Thank you, Mr. Norton.

We'll let the State respond.

MS. AUSTIN: Your Honor, as to the motion for new trial, specifically, I believe that the burden of proof was met by the State of Oklahoma. All of the elements were proven beyond a reasonable doubt to this jury. The jury was able to have that evidence, make a determination, and render their verdict.

As to the specific topic of the child hearsay that was allowed, in that Mr. Nedwick addressed, I believe this Court has made the proper ruling based on Title 12 §2803.1. The information that was presented by the -- Brianna Jackson's

father, Jeffrey Jackson, was appropriate under the law to be admitted, as he was the first person that she had made a disclosure to.

There was argument made by myself and Ms. Whatley during trial about the specific statements that were made by Mr. Jackson after they were raised in closing argument by defense. And the -- it is reasonable for us to argue that any inferences that the jury wants to make based on the evidence, they can do.

Inferences as, of course, Mr. Nedwick addressed, that we talked about the shock of someone hearing what their daughter says about being molested, they could get the rooms wrong or they could be mistaken.

But Mr. Jackson was consistent with the other witnesses. That Brianna Jackson told him very clearly that this defendant had touched her privates and had touched her privates and on her leg, which is what she testified. So there was consistency throughout.

The only thing that was different were the rooms, and it's a reasonable inference for the jury to conclude, based on the circumstances, that he could be confused over that. That is an absolutely appropriate thing to be argued and was argued to this jury by the State of Oklahoma.

There was also -- there are statements or things included within the motion for a new trial that this Court was

present for, those being decisions that were made during the trial and that they were discussed to be strategic decisions, such as the transcript that has been prepared of the partial proceedings had on June 23, 2022, when this Court was addressing and making a record, addressing Mr. Norton specifically, asking him about not calling witnesses and his right to testify.

We approached the bench. There was a record made. The defendant was under oath, just as he was today. Under oath on that day, on June 23rd, page 4, this Court listened to Mr. Douglas make a record, where he said, line 16, Mr. Douglas said: I understand that you -- I understand that you choose not to call any of the witnesses that we've talked about, notwithstanding we've discussed them for years. That you do choose not to call any witnesses on your own behalf at this time. Is that correct?

And the defendant responded: Yes.

Mr. Douglas then asked: And has Mr. Nedwick or myself at all ever pressured you to making this decision not to call witnesses.

The defendant responded: No.

He was asked: And this can be based on your interpretation that the State's failed to prove their case. Is that correct?

Defendant responded: Yes.

Then they move on, on page 5, to talk about the defendant testifying. Mr. Douglas asked, on line 16 -- or line 13, I'm sorry: One of the things that we have spent even more time with is your right to testify. Is that correct?

And the defendant responded: Yes.

And you've known all along that you have an absolute right to testify, don't you?

The defendant responded: Yes.

The Judge can't stop you, the DAs can't stop you, we can't stop you. If you want to testify, you can testify, correct?

Yes.

Okay. Now, you also have the right not to testify. Do you understand that?

Yes.

And that no one can force you to not testify. The Judge, the DAs, or Mr. Nedwick and I. Do you understand that?

Yes.

And do you feel like you've been properly advised on the rights that you have with respect to your testimony?

Yes.

And if you do testify, you understand you're going to be cross-examined by the parties?

Yes.

And have you made a decision -- I'm sorry.

Okay. Have you made a decision on your own, although with our counsel, have you made a decision on your own as to whether or not you will choose to testify?

Yes.

And what is that?

And the defendant responded: I will not.

Mr. Douglas said, You're not going to testify. And has Mr. Nedwick or I, either one, pressured you into making that decision?

No.

Those were all statements made by this defendant under oath. Today he says that that was not what he wanted to do. So I don't know which time he's telling the truth. I have no idea if he is perjuring himself today or if he was perjuring himself on that day. I have no idea.

But under oath, this defendant very clearly told this Court at the time when it was right then, make these decisions, that not only did he not want to call any of the witnesses that were in the hallway, he did not want to testify. That was very clear.

Mr. Douglas made an excellent record, and the defendant had the opportune time to tell the Court that he did want to testify or had the opportune time to call witnesses. He could have done both. He chose not to. The Court asked. He said no.

To say now that he did want to and these other things that he's alleging today goes against what he testified to on that day, because the results did not turn out the way the defendant wanted when he clearly said that it was based on he didn't feel the State had met its burden.

I think based on all of the facts that this Court has before it and the testimony that you heard and all the evidence that you heard during the trial, that it would be proper at this time for the Court to overrule the defendant's motion for a new trial and to proceed with sentencing.

THE COURT: I will not set aside the verdict of the jury, and I will overrule the motion for new trial on these grounds. The grounds that are alleged by the defendant are not persuasive.

We made a very clear record. We had attorneys present. It was recorded. Ms. Austin just read from it. I have every reason to believe that Mr. Norton was of sound mind. He was placed under oath and he voluntarily and in no uncertain terms represented to this Court that he chose not to testify or call witnesses.

As to the grounds for new trial argued by Mr. Nedwick, I believe that the child hearsay was reliable and admissible and properly considered pursuant to 12 OS Section 2803.1. I also believe that there was no error in admitting testimony of Bailey Ferguson and that the State met its burden

of proof in presenting sufficient evidence to support the jury's verdicts.

So with that said, I would like to proceed to sentencing.

Ms. Austin?

MS. AUSTIN: Judge, I'm sorry. I forgot to address the issue of the juror misconduct that was raised by the affidavit that was provided in the motion for new trial.

As we have -- well, Mr. Nedwick discussed it a little bit. But the burden for that -- or the burden is on the defendant to show that there was prejudice from those statements that were made. And I don't believe he has shown that at this time. I don't believe -- the opportunity was given. He did not have any burden. He didn't know anything about it.

Those statements that were presented to the Court in the affidavit that are listed in the motion are statements that are of jurors overheard talking about inconsistencies in the evidence, if, in fact, that did happen, and were not brought to the Court's attention at the time that -- if those were heard.

But I do not see any prejudice from those particular statements. In fact, I think they weigh in favor of the defendant because they are talking about inconsistencies within the evidence.

So I don't think that any prejudice has been shown. So

I think that is yet another reason for the Court to overrule the motion. I just wanted to make a record on that. I'm sorry.

THE COURT: Yes. I would agree with the statements you made, and that even taken in the light -- even assuming everything as alleged is true, I find no prejudice to the defendant if indeed those things happened.

So for sentencing, I want to state at the outset that Mr. Nedwick prepared a sentencing packet that contains, I believe, six, maybe seven letters from Mr. Norton's family and friends.

But before we proceed with the actual arguments on sentencing, there is an objection that I anticipate the State has either made or will make with regards to how those letters are presented to the Court.

MS. AUSTIN: And that's correct, Judge. And I apologize I did not give the Court a copy of my response to the motion that defendant filed that was entitled -- I'm sorry, the defendant's motion -- the Defendant's Memorandum Support in Request for Suspended Sentence.

THE COURT: So before I hear from the State and Mr. Nedwick, here's where I think the issue really crystallizes. In 1971, the Court of Criminal Appeals in a case called *Ayers vs. State*, stated that testimony, live testimony is required unless a witness is declared unavailable.

And then a few years later, I believe it was in 1978, the Oklahoma legislature adopted the civil procedure code, for lack of a better word. And that within that code, I believe it's 12 OS 2103, that the laws of -- or the rules of civil procedure are not applicable in sentencing.

And I think the question is, where you have a specific case from an appellate court in 1971, and then later on the legislature makes a general rule regarding evidence, which is controlling.

Ms. Whatley.

MS. WHATLEY: Well, I don't think it's as simple as that, your Honor, in this case. Because what we're talking about is we're talking about the fact that, number one, Mr. Norton does not -- I repeat does not -- get to offer any evidence in mitigation of his sentence because he was found guilty by a jury.

And the law is incredibly, incredibly clear as it relates to that. And that's based on 22 OS -- let's see. That is the 926 or 927. Well, it starts in 927 -- 926.1, and then moves on into the other -- like powers of the Court whenever it gives the Court power to sentence if a jury cannot punish.

And so basically, where we're at is, once you elect -- once a criminal defendant elects punishment by a jury, the only time that a criminal defendant, after they've elected to have a jury punish them, would a judge then get to elect punishment

would be in a couple of very specific circumstances, which would be if a jury comes back and they're like, look, Judge, like, we agree on guilty, but we're deadlocked as to punishment, which could happen, and there's specific instructions for that.

Or if they come back and they have guilty but they do something that's like -- they write down the punishment that's not prescribed by law, that's like outside of something prescribed by law. Then that would allow the Court to assess punishment.

And then those particular circumstances, even though a criminal defendant has elected a jury trial, that would give the Court the power to hear circumstances in aggravation or mitigation.

I do want to point out that we're talking about -- I know we're talking about the evidence code. I know that was enacted in the 1970s. I can't remember the exact date of that. But when you look at the case law that the State of Oklahoma has cited, we've got to be very, very careful here because I understand when we're talking about -- we're talking about the *Ayers* case and the *Ayers* case was before the evidence code.

But the State of Oklahoma cites *Malone v. State*, 2002 OK CR 34. That talks about there's no mitigation and there's no aggravation after you have a jury verdict and a jury announces punishment.

And I know we're talking a lot about semantics, Judge, because, you know, we have a jury verdict and then we always use the words that we're going to come back here for formal sentencing. We're really here for judgment. We're here for the Court to pronounce judgment. That's what we're here for, because Mr. Norton chose a jury trial and he chose punishment by the jury.

So we're really here for the Court to pronounce judgment. We're really not here for sentencing, because you don't have the power under any of those sentencing powers under 926.1, through the rest of those statutes that the State has cited, to even hear aggravation or mitigation. And *Malone* is incredibly clear about that. That's *Malone v. State*, 2002 OK CR 34.

Now, I understand -- and I'm not for one second saying that the Court does not have the power under 22 §991(A), and then you go down to C, so if the Court chose -- now, I'm going to be very specific, I don't believe -- the State does not believe the Court should do this, but I'm not saying that the Court doesn't have the authority.

The Court does have the authority to suspend a portion of the 25-year sentence. The Court does have that authority. Okay. But the Court cannot hear any factors in aggravation or mitigation. So we're not -- we're not even into any of that.

So it doesn't -- this whole aggravation/mitigation

thing, and the testimony as it relates to that, that's going to be if we're hearing something in aggravation or mitigation. But the law is clear, you can't hear any evidence in aggravation or mitigation because the jury's already found him guilty. And *Malone v. State* comes after *Ayers*. *Malone v. State* comes after the evidence code. And we've cited all of that in our brief.

I mean, *Malone v. State*, its's so -- it's so clear, your Honor, that when the defendant has demanded the jury to assess punishment or the trial judge has allowed the jury to assess punishment, there simply is no provision allowing for mitigating evidence to be presented in the sentencing stage of the trial.

This is a limitation enacted by our legislature, and the limitation is undoubtedly constitutional. Then if you go to -- if we're talking about we're back into the sentencing and mitigation, what we're talking about when we talk about witnesses, in 22 §926.1, The Court shall render a judgment according to such verdict except as hereinafter provided. And then that's when it goes into all of those situations where the jury couldn't assess punishment.

So I know that in this courthouse and a lot of other courthouses that I've worked in, we call it formal sentencing, but this is really a judgment, right. This is really the time to pronounce judgment. Again, not telling the Court they don't

have the authority under 991(A),(C), to suspend a portion of that, but you cannot hear any evidence in mitigation or aggravation because we're passed that.

Now, would you be able to hear such evidence if he had entered a blind plea and we were here for sentencing? You betcha. You betcha. And I want to point the Court's attention to a case that we did not cite in our motion, but I want to point this out to the Court. It's *Wade v. State*, 1981 OK CR 14.

And in that case, it's talking about -- it was in -- what happened in that case was it was a case where there was a two-stage proceeding. And one of the parties was arguing that since, hey, we're already past guilt and we're in the sentencing portion of a proceeding, hey, evidence code was enacted in the '70s, and here we're in 1981, well, rules of evidence don't apply.

And the Court of Crims said, oh, no, no, no, no, no, not so fast. They said the rationale for exempting sentencing proceedings from the rules of evidence is to provide the widest range of relevant information to guide the Judge in imposing a sentence. We are convinced that second stage jury proceedings are not within the reason for the rule.

And that's important, because that second stage jury proceeding's when the jury is pronouncing the punishment. And that's exactly what we have in this case where the jury already

pronounced punishment.

So when Mr. Nedwick wants to talk about, yeah, they have -- this is a sentencing hearing, this is not a sentencing hearing. This is a hearing where the Court pronounces judgment.

So my argument to the Court is that, yes, you have the power to suspend a portion of this. You do. You have that authority. I don't think you should use it. The State doesn't think you should use that power, but you do have that power.

But we're not here in a blind plea situation, Judge. We're not hear in a sentencing hearing where, you know, we're going to list the facts of the case to you and the State's going to get up and make some big long argument to you to try to give you information about this case so that you have all of the facts.

Why would we do that? We wouldn't do that in these circumstances because we already gave the jury the facts. The jury in this case was the finder of fact. And they found the facts and they assessed the punishment. And so we're here to ask you to pronounce the judgment in accordance with what the jury's verdict was.

So I know that's a long way of a -- kind of a convoluted way of getting to your answer, but I don't think we're even in this section of the law, if that makes sense, because you can't hear mitigating and aggravating

circumstances.

Now, you could decide, based on your own judgment, that you suspend a portion of that sentence, but we're not even in aggravation or mitigation. So you just can't.

Malone is so clear, and *Malone* is after all the other cases. It's after the *Ayers* case because Malone is in 2002 OK CR 34. And the other case I cited for you, that *Wade v. State* case, where one of the parties was trying to argue that the rules of evidence didn't apply in sentencing and that second stage jury proceedings were sentencing because that's what they were there to do was the sentencing portion of the trial, that case was *Wade v. State*, and that was in 1981 OK CR 14. And so, again, that's after the *Ayers* case as well.

So, yes, you have the authority, but this isn't some sentencing hearing at a blind plea. We're here for you to pronounce judgment. The only testimony that should be taken today, honestly, is the Victim Impact Statement because that is prescribed by law as something that can happen at today's proceeding.

Anything else is a violation of Title 22 §975 -- yes, of 975: No affidavit or testimony or representation of any kind, verbal or written, can be offered to or received by the Court or a member thereof in aggravation or mitigation of the punishment except as provided in the last two sections.

And I don't mean to continue on, but in the last two

sections, that's all about PSIs. And so there was a PSI, and I'm not saying that that's improper for the Court to consider. So even statements by the defendant, cannot consider that in aggravation or mitigation because that statute says you can't. And then that statute obviously was before the evidence code, but then after that, we have the *Malone* case.

So the only thing that we should be considering here today is -- that the Court should allow to be heard today is the Victim Impact Statement, and then that's it. That's it. The PSI, read the PSI, Victim Impact Statement.

Again, I'm not saying any other motions that are allowed, like motions for new trial, shouldn't be considered. I'm just talking about the judgment portion of the proceedings today.

So I hope that I've answered your question. I hope I've made it a little bit more clear because I know sometimes it can be convoluted because we have the statutes that were enacted prior to the evidence code being enacted.

But I think with that and the case law, that *Wade* case and that *Malone* case, I think it's crystal clear. And if you think about it, that makes sense, because today we're not here to relitigate anything. We're not here to relitigate what the jury already found.

If Mr. Norton wanted you to be the trier of fact and he wanted you to be the decider of his -- of his fate, he would

have either, A, asked for a nonjury trial, or, B, pled guilty and asked you to be the person who sentenced him. But he did none of those things. He asked for a jury to sentence him, and they did.

And so we're going to ask you to sentence him in accordance with that verdict. And we're going to ask you to follow the law. We're going to ask you to not allow any mitigation or aggravation; to only allow the Victim Impact Statement and to follow the law as it's prescribed in that *Malone* case and in that *Wade* case.

THE COURT: So before you sit down, the defendant, pursuant to 991(A)(C), asked the Judge to suspend a portion of the sentence, which happens more often than not, that's different than mitigating a sentence. Would you agree with that?

MS. WHATLEY: Yes, I do agree with that. And I believe that you have the power to do that. However, I don't believe that you have the power to hear any evidence as it relates to that because you've already sat through the trial.

There's nothing to hear in support -- in aggravation or mitigation of that, because we're not in a sentencing hearing. We're in a hearing for judgment. This is to pronounce a jury's verdict and a jury's judgment. So I believe you have that sentencing power, right.

I mean, the State's not saying I agree with it, but I

believe you have that power, Judge.

THE COURT: So your position is in a sentencing hearing or a pronouncing judgment hearing like we have today, where pursuant to 991(A)(C), I'm being asked to suspend this sentence or a portion of this sentence, the only proper thing for me to consider other than arguments of counsel is a Victim Impact Statement?

MS. WHATLEY: And the PSI.

THE COURT: And the PSI.

MS. WHATLEY: Because the statutes are clear about that, your Honor. Yes, I am.

THE COURT: Okay. Thank you, Ms. Whatley.

Mr. Nedwick?

MR. NEDWICK: Thank you, your Honor.

Your Honor, this isn't as confusing as it seems. The way we've been doing it since I've stepped out of law school and started practicing law and the way it's been done since you took the bench, your Honor took the bench, doesn't change -- doesn't become wrong or improper because Counsel gets up and cites a couple of cases that are being misconstrued.

Malone and *Wade* are both second stage sentencing cases. That's where the jury is considering the sentencing. In other words, if they're bifurcated trials, the jury first hears evidence on guilt and innocence, and then once they find him guilty, they hear evidence on sentencing. Both of those cases

are those.

The cases that are relevant to this proceeding are the ones that are cited in my brief, our memorandum, which point out that not only does the Court consider suspended sentences after jury trial and pronouncement of jury trial, the clear authority says the Court can't even hold that against him, can't even hold the fact that somebody exercised their right to jury trial against them in considering whether or not to grant a suspended sentence.

So it's clear that it's proper for the Court to consider a suspended sentence after a jury trial. And it's as clear that the fact that he exercised his right to a jury trial cannot be considered.

Then we get to what evidence can be presented. The State would like there to be nothing other than a victim's impact and a PSI that's prepared by DOC. The problem with that is the case law, as cited in my brief, and -- which has been the practice since both of us started practicing law.

We've been following the case law as cited there in my brief, which says that the Court is to consider previous character, prior actions of the accused, their lack of criminal history, and how they'll do on probation and how they will -- how compatible they are with society, being out in society.

Those are the factors that are listed at least once in the *Gillespie* case, the *Cavaness* case, both of which are cited

there. And there's endless examples of them. I think I cited a case -- going to the letters now -- whether -- because that really wasn't addressed. The State seemed to kind of bypass the issue of how the evidence should come in; instead, focused on there should be no evidence.

But we know from that -- I believe it was the *Shriver* case, which was a 1980 case, two years after the legislature passed that, the evidence code exempting sentencing hearings from the rules of evidence, that case the Court considered 25 character letters. It's right there.

Not to mention this Court is aware of endless examples of this Court and other judges in this courthouse and across the state considering character letters after a jury trial. It's been happening at least since 1978. And I suspect it will continue, notwithstanding the recent position of the State, until somebody changes the law, which I don't expect will happen.

So there's nothing about the authority that Counsel cites that contradicts what we've been doing forever. And what the cases I cite there make clear is appropriate. The Court should not only consider all those issues in determining whether or not to suspend the sentence, but should also not require the letters to be -- the authors of the letter to be cross-examined or have to give sworn testimony in order for the Court to consider those. It's clearly proper.

There's nothing wrong -- how many cases have gone up on appeal since 1978? Have any of the courts ever said, when considering whether to suspend a portion of a sentence or suspend the sentence, the Court cannot consider the character. No. It says the opposite. It says these are the factors you should -- previous character. That's right there from the case law.

It doesn't -- none of them say you can't submit letters. Some of them provide examples of where as many as 25 letters were considered. That's not coincidence. It's not by accident. And I appreciate the State's recent position, but -- and I get that it's confusing, but it doesn't have to be.

So anyway, Judge, I would ask you, of course, to consider all relevant evidence in considering whether to suspend all or a portion of his sentence. And also, I would ask you to consider those letters without putting the authors of those letters through the rigors of cross-examination.

THE COURT: Mr. Nedwick, you quote or you cite *Gillespie* and what the Court must consider, those factors, whether a defendant is a first-time offender, previous character, prior actions, whether the defendant will abide by the terms of probation, whether the defendant can reasonably be expected to be compatible in society. I believe all of those matters -- in fact, I know they are -- are contained in the PSI.

The *Cavaness* case stands for the proposition that a judge shouldn't let the fact that a defendant exercised his right to jury prejudice them in their consideration of a sentence. So that leaves me with *Shriver*. And I don't know that I know enough about *Shriver*. I may have to take a break and read that case all the way through.

What I don't know is, was *Shriver* a two-stage case? Was it a blind plea? Was it a non-judge trial? I think all those things would be very relevant and pertinent to know in order to determine whether or not it is binding precedent on the decision that's before me today.

MR. NEDWICK: Well, to make clear, Judge, as I pointed out in my memo, to my knowledge, the Court has not -- has not ruled specifically that letters are disapproved or approved. The *Shriver* case is simply used by -- to provide an example of when the Court did consider 25 character letters.

And again, every appeal that's gone up for the last 40 years has had this same process in place, and the Court has never said, wait a minute, you can't consider character letters. Never. Same thing in federal court. It's no different in federal court. Just did a sentencing up there two months ago. Character letters were considered then as well.

So I don't know where this idea that a person's character is not relevant when the Court's considering a suspended sentence, but the cases cited by the State are

bifurcated trials where the jury was hearing both guilt and punishment.

THE COURT: Ms. Whatley?

MS. WHATLEY: Just a couple of things that I want to point out for the Court.

While I appreciate Mr. Nedwick making comments on my argument, what I want to point out is I'm not asking this Court to do what's always been done. Just because this is the way something's always been done, doesn't mean that it's been the way that the law says it should be done. I'm asking this Court to follow the law.

And I also want to point out, Mr. Nedwick wants to talk about, oh, all these appeals that have gone up and all this that's happened. Who appeals cases from convictions? Defendants. The State of Oklahoma doesn't get to appeal something when someone is acquitted. That's not how it happens.

So why would a defendant appeal and then raise a proposition of error, oh, golly gee, they let in too many character letters. That's not going to be a proposition of error that goes up. And also, it would have to be objected to to be a proper -- a proper proposition at an appeal.

So I don't know that he's -- he's like this is the way it's always been done and judges here do this and judges here do that. That doesn't mean that everybody's following the law.

I'm basing my argument on statutes and on case law, not on the way things have always been done.

And again, this case, *Malone*, I'm going to -- the eighth paragraph, Certain evidence that may be in fact mitigating or aggravating will inevitably be introduced throughout any trial. Although that evidence is admitted to prove the elements of the crime to support a legal defense or to impeach a witness, a criminal defendant's story will, in fact, be told by the witnesses he or she chooses and through his or her own testimony. But a criminal trial is not to be based on so-called character evidence. And the same principle applies to sentencing proceedings.

I mean, that's clear. That is incredibly clear. And then so are the statutes when it talks about aggravating and mitigating evidence when you've selected the jury to punish you.

I'm not talking about situations in which you selected this Court to punish you, because I know -- I've stood before this Court and done lots of blind pleas. I understand those situations. I'm not talking about that. And I'm not talking about the Court having sentencing powers under 991(A) and (C), to suspend it.

I'm just talking about your authority to hear the aggravating and mitigating circumstances. You don't have the power to do that according to the law, because he picked a jury

trial and he picked jury sentencing. And that's where we're at.

So just -- Mr. Nedwick's argument that that's the way it's always been done and, you know, I don't know on why the State -- when you know better, you do better. When you realize the law is different, you ask to start following it. And I'm asking the Court to follow the law.

MR. NEDWICK: That law doesn't apply to this case, Judge. The law that applies to this case is the law that applies to 991(A). And that's to consider the previous character, previous actions. And don't forget the case that Ms. Whatley -- the language Ms. Whatley cited in *Wade*, one of the cases she brought up that wasn't in the brief.

It is very telling in distinguishing what they were considering compared to what they called sentencing. They said, The exemption from the rules of evidence of sentencing hearings is to allow the courts the widest latitude in taking into consideration all -- anything that would go to sentencing.

And so it describes not only the law, but the intent of the law, which is to allow somebody and the courts the widest discretion in hearing evidence that the Court wants to hear on the issue of sentencing.

And certainly, one's prior character as stated in all those cases, and their previous actions, are part of that, both of which are not addressed in a PSI. A PSI can't address those

things. PSIs can't speak to his prior actions. And if that was the same, synonymous, with prior criminal history, then they wouldn't both be listed in those list of factors.

So clearly, it contemplates more than what the PSI covers.

THE COURT: Well, what we have here is a sentencing after a jury trial where a defendant elected to have trial by jury. A jury found him guilty on two counts and affixed punishment at 25 years on both counts.

The law provides that a PSI be prepared that assists this Court in determining what judgment to pronounce on sentencing. The law also is clear through some of the cases that have been cited today, *Malone*, the *Wade* case, *Ayers*, what can and cannot be allowed.

I am not convinced that the law allows for more than the PSI and all of the evidence that's been considered through -- over the course of the jury trial.

So I'm prepared to hear arguments from the State and from the defendant, but I believe it is correct that the admission of mitigation evidence as well as letters or affidavits in support of the defendant would not be proper. And that's my finding.

MR. NEDWICK: To be clear, Judge, many of the people that wrote letters are here. So I just want to make sure I understand. You're also saying that they can't present their

testimony on behalf --

THE COURT: I should have been more clear. Not just letters, but evidence that is in support of mitigation that's outside the PSI or outside of what you are prepared to argue based upon the facts of the trial would be improper.

MR. NEDWICK: Okay. And I'll just use the letters that the Court has seen already and we'll need to enter those in the record just as my offer of proof on what they would have testified to.

THE COURT: They can be admitted as a Court's exhibit, but not to be considered as part of the evidence.

MR. NEDWICK: Gotcha.

MS. AUSTIN: Did you file your sentencing packet?

MR. NEDWICK: No.

MS. AUSTIN: Okay.

THE COURT: Mr. Nedwick, I believe there are eight letters. Is that right? Yeah. Eight letters. They are attached to the sentencing packet. We can remove the presentence investigation and mark this sentencing packet as Defense Court's Exhibit 1.

MR. NEDWICK: I brought extra copies of all those, Judge, to mark them.

THE COURT: Okay.

MR. NEDWICK: There is another letter that was presented today. I haven't even seen it, but there was a

letter that I think we made a copy of and gave to -- it was delivered to me in the courtroom, and I think we gave it to the State.

THE COURT: Okay. Hold on a second. Mr. Nedwick, I'm going to instruct you to take the eight letters that you had previously submitted together with the extra one and submit those all together as Court's Exhibit 1.

MS. AUSTIN: Did we already have Court's 1?

THE COURT: Court's Exhibit 10.

Ms. Whatley or Ms. Austin, who's going to argue?

MS. AUSTIN: Judge, I do have a Victim Impact Statement that has been written by Brianna Jackson. And according to Title 21 §142(A)8, the State will read it into the record for Brianna Jackson.

THE COURT: You may proceed.

MS. AUSTIN: What Dallas did to me has changed the way I view people and life.

MR. NEDWICK: Your Honor, I will object to that, given the Court's ruling on the defendant not being able to present any kind of evidence. I know it's statutory. But any statute that would permit the State to provide aggravating evidence while not allowing a defendant to do the same for mitigating evidence would clearly be unconstitutional.

So I don't think that's what was contemplated. I don't -- I think a defendant is able to present evidence on

his own behalf. But anyway, given the Court's ruling, that, in my view, would make it certainly unconstitutional to allow that kind of evidence notwithstanding the statute.

MS. AUSTIN: And Judge, I would point out in the Victim Impact -- this is not aggravating evidence. It's the victim's ability to let the Court and the defendant know the impact it has had on her life.

THE COURT: I overrule the objection and will allow you to proceed.

MS. AUSTIN: What Dallas did to me has changed the way I view people and life. It has made me a better person. I don't like him for what he did, but I do forgive him for what he did, because the Bible says you need to forgive to be forgiven.

I am just happy he cannot do it to another person. What he did has changed me as a person. So I'm going to tell you how it's changed me.

First, it gave me depression, anxiety, and made me insecure about my body and how people view me. I quit interacting with everyone I knew because I thought everyone was staring at me.

The good way it changed me is I realized how much everyone cares for me and how much I should live life instead of hiding. I have also realized that not all men are bad. It was hard trusting men again, but it is getting better.

It also took me a while to figure out who I was, but now -- I know now who I am. I do understand if you are mad at me or my mom for everything, but it is not our fault for what he did. It was his fault.

I want everyone in his family to know that I am sorry he is in jail. I also want Dallas to know what he did made me push away the thing I loved doing because it reminded me of him, and that is basketball. For a while, I quit basketball, but I started playing again. And now it is helping me with my anxiety and depression.

Nothing is going to stop me from doing what I love, because I won't let it happen. I am going to keep working hard and trying to get -- to get a basketball scholarship. So what I'm saying is you or anyone else is never going to stop me. And I will do anything it takes to keep going and not give up.

I want to thank Dallas for making me stronger, and I'm going to continue doing the things that make me happy. I also want to thank the DA for helping me and my mom to get through this. And I want to thank my mom for being with me every step of the way. From Brianna Jackson.

Judge, this Court was present and heard all the testimony that went on from Brianna Jackson and the other witnesses that testified in this trial. What you heard is you heard a girl that was 10 or 11 years old. Brianna Jackson is moved in with this defendant when her mom begins a relationship

with him.

And this defendant was someone she liked, someone she cared about, and someone she trusted enough that she was willing to go and crawl into bed and snuggle with him; something they had done before. And when she did it on this occasion, when this defendant touched her, it did not turn out the way it had before.

He took advantage of her innocence. He took advantage of her trust. He took advantage of the relationship that he had with her when he touched her when she got into bed with him.

And remember what she testified to, that when he touched her vagina, he wiggled his finger in there and he was wiggling on the skin. She wasn't able to articulate penetration, but we had charged the touching the vagina and touching on the buttocks because he also grabbed her buttocks and moved his hand slowly up on her leg and tapped her legs to have her move her legs apart so that he could touch her.

She was supposed to be safe in her own home. This defendant had taken on the role of protecting her in her own home. And instead of doing that, he violated her. This defendant took advantage of it and is now reaping the benefits, or the downfall, of that.

Brianna's obviously stronger now because she stood up to the defendant. This defendant chose a jury trial, and he

knew that 25 to life was the range of punishment. And the jury heard the evidence and found that 25 years was appropriate. That is what this defendant has earned.

He took things from her that she will never get back. And that was very, very clear with the jury's verdict. They didn't find him guilty on just one count. They found him guilty on both counts. And they sentenced him to 25 years on both counts.

25 years is what's appropriate in this particular case. It won't be 5 years that Brianna Jackson's better. It won't be 10 years. This is a lifetime. He has changed her for life, because again, he took her first sexual experience from her. That will be something she will always have to tell. It will always be a part of her.

She was supposed to be safe in her own home and she wasn't. And she had to live with that secret. And she told the Court and the jurors why she lived with that secret, because she thought her mom was happy with the defendant. So she pushed down that anxiety and pushed down that until her mom ran into Bailey Ferguson and Bailey Ferguson told her what the defendant had been doing to her. And that's when she asked and she was able to tell.

Now, this defendant, in his presentence investigation, it talks about this wasn't the first time this defendant had had issues. This defendant had been in trouble before for

something of a sexual nature.

In fact, I think the presentence investigation, the way it words it is that he has a pattern of sexually deviant behavior, is what the presentence investigation concluded, based on the fact that this defendant had previously been charged with indecent exposure, which was reduced down to outraging public decency when he had exposed himself in a car and was masturbating and was caught for that and pled guilty to outraging public decency.

So we have an individual that obviously has problems controlling his sexual behavior because we see it in his prior, what is in the presentence investigation, from what Brianna Jackson says, and then what you heard from Bailey Ferguson when he sent her photographs of his penis and photographs that were unsolicited.

This defendant has earned every bit of 25 years in the Department of Corrections for what he did to Brianna Jackson. And we would ask that you sentence the defendant according to that jury's verdict. It was loud and clear. He didn't want to blind plea. He didn't want a nonjury trial. He wanted this jury to decide his fate. And they spoke.

25 years on each count, and we ask this court run them consecutively. That is justice for Brianna Jackson, and it's justice for what this defendant did.

THE COURT: Thank you, Ms. Austin.

Mr. Nedwick?

MR. NEDWICK: Thank you, your Honor.

Are we going to put the PSI in as an exhibit or just as --

THE COURT: No one's moved for admission.

MS. AUSTIN: It's -- I believe it's filed in the court clerk's office and it's part of the record.

MR. NEDWICK: Why don't we go ahead and admit it as an exhibit.

THE COURT: If you would like to move it for admission as an exhibit as part of this hearing, I'll admit that as Defendant's Exhibit 20. Just mark it No. 20.

MR. NEDWICK: Your Honor, before I proceed with argument, I know that the defendant had indicated to me that he wanted to address the Court. I don't know, given the Court's ruling, how the Court feels about that.

It would certainly be in the nature of, you know, requesting relief that's not in the PSI. But I think it's appropriate. I think it's pretty clear that it's appropriate. But again, I don't know where that goes in line with your ruling. So I don't want to have him address you unless --

THE COURT: Does the State object? Does the State object to the request for the defendant to speak?

MS. AUSTIN: I believe if he's just asking about

whether a suspended or deferred is appropriate. I think that is okay. But I think as far as mitigation being offered, of course, we would fall back on our previous record made.

THE COURT: I'm going to allow for Mr. Norton to address me.

I previously placed you under oath. Feel free to make any statement you would like to.

THE DEFENDANT: This is a little difficult, but, your Honor, today I come before you and ask for your mercy and leniency. For me asking for help does not come easy. I'm usually the one being asked for help.

At 36 years old, I live a life that just about any man could be proud of. I started early, not off on the best foot, by dropping out of school at age 14. However, I did not become as many do who follow that path.

I started working full time and learning a trade with my father. By the age of 16, I was the youngest licensed HVAC apprentice in the state of Oklahoma.

At 17, I reconnected with a girl I knew, found out what horrible time she had endured since we last spoke, and soon knew what my life's meaning was. That was to become a father. Since then I was blessed with two other children and 13 years with the same girl.

Owned a business and a house by the age of 25. And all of this, of course, didn't come without struggle, but I endured

it. I learned a lot from my parents; my loving, kind, giving side from my mother, my work ethic, discipline, and determination from my father.

Without my family, there's no doubt I would not have achieved any of that. My family and children are what drives me every day still. My family would tell you that I'm the strong one. And without them, I would be nothing.

My life took a turn in 2016 when my son was injured. Nearly died at just 9 years old. That event changed the very fiber of my being. I didn't know it was impossible -- or I didn't know it was possible to hurt that bad, but, again, I endured because of my kids and my family.

The stress of this event proved too much for my marriage and we separated -- talking about my son's injury. I'm telling you -- I'm not telling you this for pity, but to give you an idea of how important kids and family are in my life so that you may understand when I say my punishment began when these accusations were made three years ago.

Since then, I've suffered immeasurably, lost jobs, denied other jobs, forced to sell my house, denied apartments, lost friends, and worst of all, I spent three years afraid to hug my own children.

My oldest daughter, Tayra, is a senior this year. She's fielding academic scholarship offers and short listed for valedictorian. My son, Austin, will turn 16, learning to drive

and entering high school. My young Riley is beginning that critical part of life known as middle school.

They're all at a crucial point in their life where they need their father. My mother is undergoing radiation for breast cancer. My father just had another back surgery, a number of which I can't count anymore.

I have a girlfriend who has stood by me through all of this that I have plans to marry. I've been told that this isn't a time for me to talk to you about my innocence or my guilt anymore. But I maintained my innocence throughout this case and that will not change at this point.

I would finally would like to thank you for your time and consideration throughout this process and, again, beg for mercy and leniency today.

THE COURT: Thank you, Mr. Norton.

MR. NEDWICK: Your Honor, at this time, I attempt to call all the people present who wrote letters that are depicted in Court's Exhibit 10 for the record, and the offer of proof on what they would testify to if the Court allowed their testimony as contained in the letters themselves.

THE COURT: Thank you, Mr. Nedwick.

MR. NEDWICK: May I call them as witnesses?

THE COURT: Pursuant to my previous ruling, I will deny that request.

MR. NEDWICK: Thank you, your Honor.

Your Honor, Counsel has emphasized over and over again that Mr. Norton exercised his right to a jury trial and insinuates that because he did that, he should not be considered for a suspended sentence, and that the Court should just blindly fall in line with the 25-year sentence on each count, without -- just because the jury said so.

The case law that I have cited in my memo, which includes *Boyles v. State, Gillespie v. State, and Cavaness v. State*, along with several other cases, make it clear that the Court cannot, in considering whether or not to grant a suspended sentence, consider the fact that he exercised his right to a jury trial.

Nothing could be clearer from the law on that. And as it's cited in my -- in my memo, the provisions providing for a suspended or a deferral were not enacted to provide the district attorney with more leverage and plea bargaining process. And that, again, comes from *Cavaness v. State*, 581 P.2d 475.

And, Judge, that's important because it has routinely -- in this courthouse and in this courtroom, defendants are granted suspended sentences in cases of this type after jury trial, after bench trial, after an agreed plea, and a blind plea.

So just by way of example, I picked some recent ones that fit into all those categories. State -- this is from

Cleveland County, State v. Lawrence McEwen, CF-2019-341. That was a bench trial in front of Judge Walkley. And there were six counts, I believe. Some of those counts he was -- were dismissed. These are lewd acts, by the way.

And then Judge Walkley sentenced 10 in, 5 out. 10 in, 5 out, ran them concurrent. And then on the remaining two counts, 15 years of probation to run after serving the first two counts.

A blind plea that was last year in front of this Court, State v. John Rodriguez, it was lewd acts and incest, one count of each. The Court sentenced -- after he pled guilty on a blind plea, Mr. Rodriguez received a sentence -- a split sentence of 13 in and 7 out running concurrent.

An agreed plea in front of Judge Walkley again, and again, this is from very recent, last -- I think 2021. It's CF-2019-342, State v. Gabriel Wright, an agreed plea in which the defendant pled guilty to two counts of lewd acts and received 2 in and 8 out on each count running concurrently.

And again, I didn't cherry pick those, your Honor. I picked those just because they're recent and because they provide an example of how every type of way the issue becomes in front of the Court.

The point being to sentence -- to not consider a suspended sentence in Mr. Norton's case would seem to be based upon what the State has urged over and over again. Because he

exercised his right to a jury trial. But the law prohibits that. He's got to be treated like other similar situated defendants without regard to how we got here.

He's entitled to the Court's full consideration for a suspended sentence. The facts of his case -- while the crime is egregious, there's no question about that. This is a serious crime, just as all of those others that I read into the record were serious crimes, your Honor.

But in comparison to these type of cases, this wasn't the worst set of facts that we come across in these kind of cases. So in addition, we've got a PSI -- by the way, did you find that?

We've got a PSI that shows that he has no prior felony convictions or guilty pleas or findings of guilt on felonies. It lays out an employment history, a strong employment history. It shows he has strong family support. All things that are important when considering whether he is a good candidate for community probation.

And they all weigh in his favor. And even the PSI recommends -- not only do they show -- document those factors which are important, but they also recommend that the Court sentence him to some incarceration and then that he be released on probation with rules and conditions of supervised probation.

That's exactly what I think the Court should do in this case, Judge. Considering everything other than the right --

the fact that he exercised his right to a jury trial, there's no reason to treat him differently than so many other cases that get before the Court in a different manner and not after jury trial.

Therefore, I would ask the Court to suspend all or a portion of the sentence imposed by the jury. I think that a -- suspending 20 years of the 25 years on each count would be in line with many of the sentences that regularly happen in similar cases here in this courthouse, Judge. And that's what I'd ask you to do.

THE COURT: Thank you, Mr. Nedwick.

Ms. Austin.

MS. AUSTIN: Judge, I think what's being misunderstood is that we're not saying that because the defendant requested a jury trial that that's why he doesn't deserve a suspended sentence.

We're saying because he requested a jury trial and this community has spoken as to what is appropriate, that's why he does not deserve a suspended sentence.

This defendant had an opportunity to allow -- well, he knew before he went to jury trial, because that's something Mr. Nedwick and I discussed, that a jury can't give a suspended sentence. A jury can only give 25 -- no less than 25. If he had blind pled to the Court, the Court at that point in time could have given a suspended sentence. He did not do that.

And by not doing that, this victim came in here and had to testify. A lot of these things he's talking about on these other cases like on Rodriguez, that was a case that was -- that was my case. That was an agreed plea. He initially entered a blind plea. But at the time of sentencing, he changed his mind and it was an agreed plea. My victim was an adult at the time. And that was a plea bargain.

Had he gone to trial, we would have asked for more than 13 years. That's why it's called a plea bargain.

Mr. McEwen that he talks about was an individual that was an adult also by the time he testified, and the defendant -- the facts of that case, he tricked him into masturbating in front of him. He didn't actually lay hands on the victim. Very different set of facts. Very different set of facts than the facts we have here.

We have a girl under the age of 12. And the legislature has enacted a specific range of punishment if a child is under 12. We used to -- you know, if they're over 12, it is 3 to 20. And that is the range of punishment the jury is given.

Specifically for children under the age of 12, because of the impact it has and all the things that go along, as you heard in the victim impact letter, all the things that go into that, not less than 25 is the range of punishment. And that is what this jury was instructed on.

This defendant threw himself on the mercy of the community, on the mercy of his peers, of the jury, and pled not guilty, and they did not believe he was not guilty. They believed that the evidence beyond a reasonable doubt showed this defendant molested a child, and they sentenced him according to the law to 25 years.

Now, this defendant is not, I think, a candidate for a suspended sentence based on his -- the things in the PSI, based on the fact that it says he has a pattern of sexually deviant behavior. This defendant is not a candidate.

He also indicates in there that he guesses if he does counseling he can maybe benefit from that. But he doesn't think he has a problem because he says he didn't do it. So what we have is an individual who has been found guilty by a jury, and the jury said 25 years and says, Well, I don't really need counseling. He doesn't really think he did anything wrong. But yet wants a suspended sentence from this Court when he isn't even acknowledging what he did.

The Court has a lot of things to consider. And I went over some of those things in my first closing. But the -- we're not here, like Mr. Nedwick said, about treating all defendants the same. We are not treating all defendants the same.

We shouldn't be looking at other cases. We should be looking at this defendant as an individual. You have the PSI

to look at, who this defendant is, he read you a letter to tell you who he was. And then you look at the facts of this case. Not what happened in another courtroom, not what happened in another state, not what happened in some of the cases Mr. Nedwick just cited, *Gillespie*, those others, a 1960 case and 1972 case. What happened in this courtroom.

You heard the evidence. Not all cases are treated the same. But this defendant, when presenting the evidence to a jury, a jury said loud and clear, on each count, 25 years is what's appropriate. If he wanted a suspended sentence, a plea bargain was the way to go. That's what he should have done. He should not have put Brianna Jackson through this.

He came in here, denies any guilt to the Court, but yet asks this Court for mercy. He's still telling you he didn't even do it, but wants you to give him mercy. It is appropriate that this defendant is sentenced to what this community feels is right, what the legislature said was right, which is 25 years for these types of crimes for kids this little.

It is appropriate and it's what this defendant deserves for stealing this childhood from this girl. Brianna Jackson has had depression, anxiety, all of those things. And you heard her testify about that too, when she was in court. This has affected her life, and this defendant stole that from her.

25 years on each count, running consecutively, is what we're asking, and we think that's appropriate. Thank you.

MR. NEDWICK: May I, your Honor, real quick?

THE COURT: I don't normally, but I'll --

MR. NEDWICK: That's okay. I'm not asking for special treatment here.

THE COURT: I heard Mr. Norton just a few minutes ago under oath tell me -- and I wrote it down -- I maintain my innocence.

Just like every other person who's charged with a crime in the United States of America, Mr. Norton enjoyed the presumption of innocence until there was a jury trial. And at the conclusion of that four-day trial, after all the evidence, after all the witnesses that came in, the jury deliberated and they found that the State had met its burden of proof of proving beyond a reasonable doubt each and every element for which Mr. Norton was charged with.

Pursuant to that jury's verdict and their pronouncement, it's my duty as a judge to determine whether or not I should grant the request of Mr. Nedwick to suspend the sentences or any portion of them.

Let me be very clear. My decision, which will include some suspension -- my sentencing decision is not based at all on the fact that Mr. Norton decided to exercise his right to have a jury trial instead of enter a blind plea or accept a plea bargain. He has that right and he should not be punished because he wanted to have a jury listen to the facts. I've --

I sat through that trial. I heard all the facts. I'm entitled to make a decision based on what I heard, together with what was compiled and presented in the PSI.

I listened to Mr. Norton throw himself at the mercy of this Court today. And I believe that Mr. Norton's sentence on Count I, that I'm going to suspend 7 years of that sentence and order him to serve 18 years in the Department of Corrections.

On Count II, I'm going to suspend all 25 years, and however, Count II will run consecutive to Count I.

What that means for you, Mr. Norton, is that you will serve your time in prison, which I think is deserved. And when you are released, you will then begin your probation of a period of 7 years on Count I and 25 years on Count II.

I wasn't the original trier of fact. There were 12 individuals who were randomly selected who came into this courtroom, not having any bias or predisposition. But they heard the facts and they believed you are indeed guilty. And pursuant to their verdict, that is my sentencing.

I'll ask -- Mr. Nedwick, will you assist your client in filing any type of appeal, or how is that going to work?

MR. NEDWICK: Yes, your Honor. Mr. Norton and I have previously gone over a Notice of Intent to Appeal. That has all been filled out, signed, and everything with the exception of a few, to write the Court's sentencing into that. But anyway, that is prepared.

I would like to present that actually, Judge, get your signature on it. And he's made an application for indigency, which is also contained in the paperwork on the Notice of Intent to Appeal. We would ask that you find him indigent based upon the information contained in the notice and along with an attached affidavit from his parents who provided financial assistance.

So those are things that we have. We've previously gone over the Summary of Facts and signed that as well.

We -- he's previously gone over a set of Rules and Conditions for Sex Offenders, but he has not executed those. We'll need to -- I'll need to have him execute those and first talk with him and make sure he doesn't have questions about those even though he has gone over them before.

THE COURT: Okay. Please present the paperwork for my signature when it's ready.

If there's nothing else, we will be adjourned.

(End of proceedings)

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, Plaintiff,	)	
vs.	)	Case No. CF-2019-1273
DALLAS CHRISTOPHER NORTON, Defendant.	)	

CERTIFICATE OF THE COURT REPORTER

I, Angela Thagard, Certified Shorthand Reporter and Official Court Reporter for Cleveland County, do hereby certify that the foregoing transcript in the above-styled case is a true, correct, and complete transcript of my shorthand notes of the proceedings in said cause.

I further certify that I am neither related to nor attorney for any interested party nor otherwise interested in the event of said action.

Dated this 19th day of December, 2022.

ANGELA THAGARD, CSR, RPR, CRR
STATE OF OKLAHOMA
CERTIFIED SHORTHAND REPORTER
CSR# 1711
MY CERTIFICATE EXPIRES: 12/31/2022

Angela Kay Thagard
State of Oklahoma
Certified Shorthand Reporter
CSR # 1711
My Certificate Expires 12/31/2022