

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 JANUARY 31, 2022  
AT THE CLEVELAND COUNTY COURTHOUSE  
BEFORE THE HONORABLE THAD BALKMAN  
DISTRICT JUDGE

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

**INDEX****PAGE :****BAILEY FERGUSON TESTIFIES:**

DIRECT EXAMINATION BY MS. AUSTIN	5
CROSS-EXAMINATION BY MR. NEDWICK	29
REDIRECT EXAMINATION BY MS. AUSTIN	40
RECROSS-EXAMINATION BY MR. NEDWICK	42
STATE'S CLOSING ARGUMENT	43
DEFENDANT'S CLOSING ARGUMENT	45
STATE'S FINAL CLOSING ARGUMENT	49
DEFENDANT'S FURTHER ARGUMENT	52
STATE'S FURTHER ARGUMENT	53
DEFENDANT'S FINAL ARGUMENT	55
COURT'S RULING	57
REPORTER'S CERTIFICATE	60

P R O C E E D I N G S

THE COURT: Before I left out of town, we had a hearing and we heard from Ms. Cornett. And then we also talked about the res gestae *Burks* evidence. I believe we were going to hear from Ms. Ferguson before trial, or is she available today? I wasn't quite sure.

MS. AUSTIN: I'm sorry?

THE COURT: On Ms. Ferguson?

MS. AUSTIN: She's present and ready.

THE COURT: So I know we have some other housekeeping matters. Do we want to do that first?

MS. AUSTIN: I think as far as motions go, I think the other -- the child hearsay, we had two different portions to it. One was Ms. Cornett and one was Mr. Jackson, who lives in Arizona. And so we had talked about doing his child hearsay right before he testifies. And he's getting on the road today, so he'll be here to testify.

And then the *Burks* res gestae motion, the only witness we had was Ms. Ferguson. So I think after the testimony today, we can resolve that motion and the child hearsay. But for Mr. Jackson, we're finished with that. And I don't believe the State has any other motions. And I think the defendant's motions were mainly objections to those.

MR. NEDWICK: That's right. And the Court does have -- already have the interview, the recording of the

1 interview. That's the other thing to remind you of.

2 THE COURT: I do, yeah. I have not listened to it  
3 yet, but I will.

4 MR. NEDWICK: Okay.

5 MS. AUSTIN: Okay.

6 THE COURT: Okay. Well, let's go ahead and call --  
7 State may call its witness.

8 MS. AUSTIN: Okay.

9 **BAILEY FERGUSON**

10 was called as a witness, and after having been first duly  
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. AUSTIN:

14 Q Would you please state your name and spell your name,  
15 please, for the record.

16 A Bailey Ferguson. B-A-I-L-E-Y, F-E-R-G-U-S-O-N.

17 Q And, Ms. Ferguson, how old are you?

18 A 21.

19 Q 21? Okay. Do you know a Dallas Norton?

20 A Yes.

21 Q How do you know him?

22 A A family friend.

23 Q Okay. And how long would you say that you've known him or  
24 known of him?

25 A Since I was probably 12.

1 Q Okay. Did you live close to each other when you were  
2 younger?

3 A Yes.

4 Q At some point, did you start to babysit for Mr. Norton's  
5 children?

6 A Yes.

7 Q And do you see Mr. Norton in the courtroom today?

8 A Yes.

9 Q Can you please tell us where he's seated and what he's  
10 wearing?

11 A Blue shirt.

12 Q Okay.

13 MS. AUSTIN: May the record reflect identification of  
14 the defendant?

15 THE COURT: Yes, it will.

16 Q (By Ms. Austin) When you were babysitting for his  
17 children, where would you do that?

18 A I did it in two places. They lived in Lexington Crossing  
19 for just a little bit; there, and then Fawn Run Crossing in  
20 Norman.

21 Q So Lexington Crossing, is that over kind of by Norman  
22 North?

23 A Yeah.

24 Q And then Fawn Run Crossing, is that what you said?

25 A Yes.

1 Q And is that a neighborhood, is that a street name,  
2 apartment name, what is that?

3 A I think that was a street name.

4 Q Okay. And was that in Norman also?

5 A Yes, ma'am.

6 Q Okay. And you said that you babysat for his children.  
7 Was the job you were going to babysit for all of his children  
8 or mainly one of them, or how was it?

9 A Mainly one.

10 Q And who was that?

11 A Austin.

12 Q And how old was Austin when you were babysitting him?

13 A Ten, maybe.

14 Q Okay. And did he attend school?

15 A Home school.

16 Q Okay. And you said that you watched him at Lexington  
17 Crossing and at Fawn Run Crossing. And did you know a person  
18 by the name of Tiffany Norton?

19 A Yes, ma'am.

20 Q And did Tiffany have children also that you babysat  
21 sometimes?

22 A Sometimes, yes.

23 Q And did you babysit -- when you babysat at Lexington  
24 Crossing, was Tiffany Norton and her children, were they in the  
25 picture at that time?

- 1 A Yes, ma'am.
- 2 Q And at Fawn Run Crossing?
- 3 A Uh-huh.
- 4 Q And how many kids were there total that you would babysit?
- 5 A Total at a time would be like four to five.
- 6 Q But would it mainly be Austin like during the day?
- 7 A Mainly, yeah, Austin during the day.
- 8 Q Did the other children go to school?
- 9 A Yes.
- 10 Q Okay. And how old were you when you were babysitting?
- 11 A 17 and 18.
- 12 Q Okay. And you said 17 and 18. When you finished
- 13 babysitting, was it at the Fawn Run Crossing or the Lexington
- 14 Crossing?
- 15 A Fawn Run.
- 16 Q So started at Lexington, they moved to Fawn Run, and you
- 17 continued over there?
- 18 A Yes, ma'am.
- 19 Q Okay. And you said that Austin was home schooled. Were
- 20 you home schooled also?
- 21 A Uh-huh.
- 22 Q Is that a yes?
- 23 A Yes.
- 24 Q Okay. She's typing down what you're saying, so.
- 25 Did you guys do the home schooling together on those days



1     that you were there?

2     A     Sometimes. Just helping him mostly.

3     Q     And what was the babysitting job? Was it all day every  
4     day?

5     A     All day, Monday through Friday, sometimes Saturdays.

6     Q     Like 8:00 to 5:00 or 7:00 to 4:00 or?

7     A     Yeah, like 8:00 to 6:00.

8     Q     Okay. And you said that sometimes, 4 to 5 kids. Would  
9     the other kids come home from school and then you would watch  
10    them too?

11    A     Yeah.

12    Q     When you were babysitting for the defendant, did you  
13    communicate mainly with him or Ms. Norton, or how was it?

14    A     More so Tiffany, sometimes Dallas.

15    Q     Okay. And you said that you had known Dallas for a period  
16    of time. Did you have communications with him in person also?

17    A     Yeah.

18    Q     Do you know when you stopped working or stopped  
19    babysitting for them?

20    A     The exact date, I do not.

21    Q     Do you know about the timeframe?

22    A     Yes.

23    Q     When was that?

24    A     Close to the end of the year of 2018.

25    Q     Okay. So when do you remember -- when's your birthday?

1 A October 9, 2000.

2 Q 2000? Okay. And do you remember whether or not you were  
3 working for them or babysitting for them when you turned 18?

4 A Yes, I was babysitting for them when I turned 18.

5 Q And how do you remember that?

6 A I remember because I remember having -- they got me like a  
7 cookie cake for my 18th birthday.

8 Q So for sure, you were still working there October of 2018?

9 A Yes, ma'am.

10 Q And then do you think that you were working there at  
11 Christmas time?

12 A I don't think so. I think I quit before Christmas.

13 Q So sometime between October and Christmas you quit working  
14 there. Would that be accurate?

15 A Yes. Yes.

16 Q And did you start working someplace else in January of  
17 '19?

18 A Yes.

19 Q Now, before you quit -- well, when you quit, was there a  
20 reason that you quit?

21 A Yes.

22 Q What were the reasons?

23 A I wasn't getting paid enough, the kids had trouble  
24 listening to me, and then just -- I just started to get  
25 uncomfortable.

1 Q And you say kids not listening. Just Austin or all of  
2 them together?

3 A All of them together, yeah.

4 Q When you had four or five kids all at once, that was  
5 probably kind of a difficult job as an 18-year-old?

6 A Yeah. Some of them were a little bit older, but, I  
7 mean...

8 Q And then you said not getting paid enough. Were you  
9 getting paid -- you said you were Monday through Friday,  
10 sometimes Saturday all day. Did you feel like you weren't  
11 making enough money there doing that?

12 A Yeah, I was not making enough money.

13 Q Was it also kind of inconvenient for you getting there and  
14 back?

15 A Sometimes, yes.

16 Q Did you have your own car?

17 A No.

18 Q And you said that you also became uncomfortable. What  
19 were you uncomfortable about?

20 A Just towards the end, before I quit, Dallas would start  
21 making, you know, uncomfortable comments towards me.

22 Q And you said towards the end before you quit. So is that  
23 after your 18th birthday?

24 A Yes.

25 Q What kind of comments was he making towards you?

1 A First it was just, You look nice, You look pretty. Then  
2 it just started escalating to my whole body in general.

3 Q And what do you mean by, "my whole body in general"?

4 A Just that, You filled out nicely, or stuff like that.

5 Q And would that be in person he would say those things?

6 A Yes.

7 Q And what did you say in response to some of those things?

8 A Thank you.

9 Q Okay. And you said they started out just nice and pretty.  
10 Did they become -- I mean, when he told you you looked nice or  
11 pretty, did that make you uncomfortable?

12 A No.

13 Q Was it the things he was saying later that made you  
14 uncomfortable?

15 A Yeah. It just started kind of escalating, and I started  
16 to get a little uncomfortable.

17 Q Did you tell him it was making you uncomfortable?

18 A No.

19 Q And would anyone else be around or hear these comments  
20 that you know of?

21 A Not that I know of.

22 Q Okay. And you said that they were in person. Did he  
23 also -- did he ever text or message you in any way with  
24 comments that made you uncomfortable during that timeframe?

25 A During the timeframe when I was babysitting?

1 Q Yes.

2 A No, not text.

3 Q Okay. Did you communicate over phone somehow about --

4 A Sometimes, yeah.

5 Q -- how to deal with the kids, pick up, drop off, that kind

6 of stuff?

7 A Yes.

8 Q Would you communicate mainly with Dallas Norton or Tiffany

9 Norton?

10 A Mainly Tiffany.

11 Q Now, you said that it was making you uncomfortable. Did

12 you ever say anything to Tiffany that he was making you

13 uncomfortable?

14 A No.

15 Q Okay. Now, these things he said to you, you filled out

16 nicely and things like that, did he ever attempt to touch you

17 or do anything in furtherance of that?

18 A No.

19 Q Just the words?

20 A Yes.

21 Q Okay. And I think you said that you quit sometime before

22 Christmas. How was it that you quit?

23 A I sent Dallas a text message.

24 Q And what did you say in the text, if you remember?

25 A Just that I was quitting and I wasn't coming back.

1 Q Okay. And did you give him a notice or anything like  
2 that?

3 A No.

4 Q So did you text like a few days before you were supposed  
5 to work, or how was it?

6 A I think I messaged him on a Saturday morning, and I was  
7 supposed to go back to work Monday morning.

8 Q And did you message Tiffany also or just Dallas?

9 A No. Just Dallas.

10 Q And why did you do just Dallas instead of Tiffany?

11 A Because I was mainly there to watch Austin. Austin is his  
12 kid.

13 Q Tiffany's stepson, but Dallas's son?

14 A Yes.

15 Q Okay. Did he have any response to that when you text him  
16 that you were quitting?

17 A Yeah. He just told me that he wished I would have given  
18 him a longer notice.

19 Q And why didn't you give a longer notice?

20 A I just didn't want to go back.

21 Q And why didn't you want to go back?

22 A I was just tired of working there and --

23 Q Was it the combination of everything?

24 A Yeah, it was the combination of everything.

25 Q Okay. Did Tiffany ever message you after that, after you

1 quit?

2 A Not that I recall.

3 Q Okay. Now, after you left there, did you have further  
4 communications with Dallas Norton?

5 A In what?

6 Q Any way. Phone, person, any contact with him after that?

7 A Not really.

8 Q Okay. Did you ever see him again after that?

9 A Not that I recall.

10 Q Okay. What about you said that you didn't have -- that he  
11 texted you and said, Good luck. Did he ever reach out to you  
12 again via phone, text message, app, any of those things?

13 A A while after that, after I quit.

14 Q A little while after?

15 A Yes.

16 Q I'm sorry. Did you say a while or a little while?

17 A A little while after.

18 Q Okay. And what type of contact was that?

19 A It was just, How are you doing.

20 Q And was it like to call you or text you, or how was it?

21 A It was through Snapchat.

22 Q And you said, asking how you were doing.

23 A Yes.

24 Q So just very -- just polite conversation?

25 A Yes.

1 Q Anything wrong with that? Were you offended by that in  
2 any way?

3 A No.

4 Q And did you respond to him when he sent that?

5 A Yes.

6 Q And what -- I mean, did you respond and tell him what was  
7 going on in your life?

8 A Yeah. Just that I was good and I was here working.

9 Q Did you tell him where you were working or anything like  
10 that?

11 A I don't believe so.

12 Q Okay. Did that -- him reaching out to you, did that start  
13 you guys communicating?

14 A Not regularly. Not very often at all.

15 Q Okay. And when you say not very often at all, how often  
16 would it be, if you know?

17 A Probably once every month or every couple of months.

18 Q So would it be him reaching out or you reaching out?

19 A Him reaching out.

20 Q And when he would reach out, would it cause you guys to  
21 message back and forth a little bit?

22 A Sometimes, depending on what was being said.

23 Q Okay. And what type of conversations would they be?

24 A Sometimes just, How are you doing. Other times, it was  
25 just sliding up on Snapchat on my selfies. It just depended.



1 Q And were there times when he would make those comments  
2 again like he had made when you were leaving?

3 A Yes.

4 Q What kind of things did he say to you?

5 A Just that I look beautiful, you look nice, you look  
6 pretty.

7 Q And would you respond when he said those things?

8 A Yes.

9 Q And what would you say?

10 A Thank you.

11 Q And you said that it was every -- like every other month  
12 or every couple of months. So did this go on for a few months,  
13 this type of communication?

14 A No.

15 Q How many messages would you say that you total sent back  
16 and forth to each other?

17 A Probably ten, max.

18 Q Okay. Like ten little conversations, like, How are you  
19 doing. Fine. Or --

20 A Yeah. It was very short conversations.

21 Q Okay. And then at what point did you stop the  
22 communications between you and Mr. Norton?

23 A After he sent me some photos on Snapchat.

24 Q Okay. Do you remember when that was that he sent you  
25 photos?

1 A No.

2 Q You said that you started working at a new job in January.

3 Is that right?

4 A Yes.

5 Q Were you still working at that job?

6 A Yes.

7 Q And where were you when you got these photos sent to you?

8 A I was in my car on my lunch break.

9 Q And were they -- how did the photos come? What messaging

10 system, or how did they come to you?

11 A Snapchat.

12 Q Okay. And had you -- I mean, Snapchat, you have to

13 obviously accept someone and follow them and that type of

14 thing. Had you accepted him as a friend and following him back

15 and forth?

16 A Yes.

17 Q And so when these messages came to you on Snapchat, did

18 they come under his user name?

19 A Yes.

20 Q You said it was photos. Did they come in separate or were

21 they in one message, how was it?

22 A It was one message with a few pictures.

23 Q And was there any communication earlier that day to let

24 you know he was going to be sending anything?

25 A Not that I recall.

1 Q Okay. And what were they pictures of?

2 A They were pictures of his penis.

3 Q Okay. And you say his penis. Could you see his face?

4 A No.

5 Q Okay. They came from him, though, is that right, in his

6 user name?

7 A Yes.

8 Q And did you -- well, could you tell, how many pictures

9 were there?

10 A There were multiple. No more than three I would say.

11 Q Okay. And could you see backgrounds in these pictures?

12 A Yes.

13 Q And could you tell like what type of location they were

14 taken in?

15 A Yes.

16 Q What were they?

17 A I believe a car and then I know a couch.

18 Q Okay. And was it a couch that you recognized?

19 A Yes.

20 Q And what was that couch that you recognized? From where?

21 A It was a brown couch from Newalla, Skyridge Road.

22 Q From, I'm sorry?

23 A Skyridge Road.

24 Q Skyridge Road? Had the defendant lived on Skyridge Road

25 before?

- 1 A Yes.
- 2 Q Is that where you lived by him growing up?
- 3 A Yes.
- 4 Q So you recognized the couch in one of the photos as the
- 5 one from his house on Skyridge Road?
- 6 A Yes.
- 7 Q And then the car, did you -- could you recognize any
- 8 surroundings from the car?
- 9 A No.
- 10 Q Could you just tell from what was around?
- 11 A Yeah.
- 12 Q Were there any other items in these pictures?
- 13 A Yes, ma'am.
- 14 Q What was there?
- 15 A A Monster can.
- 16 Q And was the Monster can just sitting there, or how was it?
- 17 A It was sitting in his hand.
- 18 Q Okay. And you said that they were of his penis. Did he
- 19 have on clothing?
- 20 A Yes. It looked like a shirt.
- 21 Q But no pants?
- 22 A Not that I could see.
- 23 Q And the penis that you could see, was it erect?
- 24 A Yes.
- 25 Q Okay. Was there any message that came along with those

1 photos?

2 A No.

3 Q So when you -- I think you said you were sitting in your  
4 car at lunch when you got those. What did you do when you got  
5 those pictures?

6 A I opened them and then I swiped out of it and then I  
7 blocked him.

8 Q When you said you swiped out of it, what does that mean?

9 A I opened the Snapchat and then I looked at it and then I  
10 swiped away from it.

11 Q Does that mean like closed -- close it?

12 A Close it, yes.

13 Q Did you close the whole program, like the whole app, or  
14 did you just close that message?

15 A I closed that message, and then I blocked him.

16 Q When you say you blocked him, what does that mean?

17 A I -- where he cannot contact me on Snapchat, can't see  
18 what I post or anything.

19 Q Did you comment anything back to him before you blocked  
20 him and closed that out?

21 A Not that I recall.

22 Q Once you blocked him, did you ever unblock him to go back  
23 and see if the pictures were there?

24 A No.

25 Q And so when you block someone, are you able to go back and

1 look at them?

2 A No.

3 Q Does it tell the other person that you've been blocked?

4 A No.

5 Q Okay. If they try to contact you, do they know they've  
6 been blocked?

7 A Yes.

8 Q It doesn't like send them a message and say so and so  
9 blocked you, but if they try to reach out again they can't?

10 A They can't.

11 Q Okay. Did you try to save or preserve these pictures in  
12 any way?

13 A No.

14 Q On Snapchat, you're probably the most familiar person in  
15 this room with Snapchat maybe. On Snapchat, when you are given  
16 or sent pictures or images, do they save automatically to your  
17 phone or how is it?

18 A No. You have to save them yourself.

19 Q And did you save them?

20 A No.

21 Q If you save them, does it tell the person that sent them  
22 that they're being saved?

23 A Yes.

24 Q But you did not save them?

25 A No, ma'am.

1 Q Okay. After you got those pictures, did you reach out to  
2 anyone and tell anyone about those?

3 A No.

4 Q Okay. After you left babysitting for the defendant, had  
5 you been around or had you seen Tiffany Norton at all?

6 A Yes.

7 Q And when did you see her?

8 A I saw her at Wal-Mart sometime this summer.

9 Q And was that after these pictures had been sent to you?

10 A Yes.

11 Q Okay. So from the time you quit there at their house up  
12 until you saw Tiffany Norton at Wal-Mart, had you talked to her  
13 at all?

14 A No.

15 Q Okay. Had you messaged with her or anything like that?

16 A No, not that I recall.

17 Q So when you saw her in Wal-Mart, what -- tell us how that  
18 conversation went.

19 A I saw her in Wal-Mart and she called out to me and I went  
20 up to her. We started talking. She showed me who she was  
21 with, a boyfriend, and then we kind of talked. And then I  
22 asked how the kids were doing.

23 Q So did you do a little bit of catching up on how things  
24 were?

25 A Yeah, for a minute.

1 Q Did the subject of why you left babysitting come up?

2 A Yes.

3 Q Okay. And do you know who brought that up?

4 A Tiffany.

5 Q Okay. And do you remember how she brought it up or what

6 she said?

7 A I do not remember exactly how she brought it up, no.

8 Q Do you remember kind of what the nature of it was?

9 A Yes.

10 Q What was that?

11 A Just asking me where I went and just kind of why I quit.

12 Q And did -- looking back now, do you -- did you feel like

13 you quit rather abruptly?

14 A Yes.

15 Q Okay. At the time, did you notice that at all when you

16 were 18?

17 A No. I just knew I didn't want to go back.

18 Q Okay. And so when the subject came up about you quitting,

19 did she ask you why you quit?

20 A Yes.

21 Q And what did you tell her?

22 A That I wasn't making enough money, the kids weren't

23 listening that well, and that Dallas just made me

24 uncomfortable.

25 Q Did that cause her to ask you any questions?



- 1 A Yes.
- 2 Q And what did you tell her?
- 3 A I told her exactly what -- I mean, what he was saying,  
4 just that some of his comments made me feel uncomfortable, and  
5 then I told her about the pictures that he sent me.
- 6 Q So everything we've talked about here today?
- 7 A Yes.
- 8 Q And when you told her that, did she appear upset?
- 9 A Yes.
- 10 Q Okay. Did you guys talk about anything further after  
11 that?
- 12 A I don't believe so.
- 13 Q Okay. And did she say anything about what she was going  
14 to do or anything?
- 15 A No.
- 16 Q Okay. Was there -- I mean, did she keep talking for a  
17 long time after that, or was that it?
- 18 A That was pretty much it.
- 19 Q And did you have any further contact with her right around  
20 that time?
- 21 A No.
- 22 Q Okay. At some point after that, did the police contact  
23 you?
- 24 A Yes.
- 25 Q Okay. About this?

1 A Yes.

2 Q And did you talk with a detective about what we have  
3 talked about here today?

4 A Yes, ma'am.

5 Q And was that pretty soon after you talked with Tiffany?

6 A Yeah, it was pretty soon.

7 Q If the records show that Tiffany talked to the police in  
8 July of 2019, does that sound about right?

9 A Yes.

10 Q Okay. And so if you left working for them around December  
11 of '18 and this happened in July of '19, obviously, it had to  
12 happen sometime in the beginning or first six months of '19.  
13 Would that be safe?

14 A Yes, ma'am.

15 Q Was it a long time before you saw Tiffany at the store or  
16 was it a short time before that he had sent the pictures to  
17 you?

18 A I believe it was a short time before or after. I  
19 apologize. After he sent me the pictures.

20 Q So was it more like a couple of months, three months, a  
21 month?

22 A Only about a month.

23 Q Okay. Now, did you document in any way exactly what day  
24 those pictures were sent to you or what day you blocked him or  
25 anything like that?

- 1 A No, ma'am.
- 2 Q Okay. Had you -- after you received those pictures, had  
3 you planned on doing anything whatsoever about that?
- 4 A No.
- 5 Q Just blew it off and went on?
- 6 A Yes.
- 7 Q So did it matter to you to document them?
- 8 A No.
- 9 Q Okay. Now, after you saw Tiffany and the police contacted  
10 you, did you try to tell them everything that you remembered?
- 11 A Yes.
- 12 Q Now, I know we've talked a little bit about timeframes  
13 here, and we've kind of gone over timeframes quite a bit, would  
14 that be safe to say, with getting out dates of when this  
15 happened and when your birthday was, and things like that?
- 16 A Uh-huh.
- 17 Q Did you go over it like that with the detective?
- 18 A Not as far into it, I would say.
- 19 Q Okay. And did you tell the detective like it was years  
20 that it had been since this happened?
- 21 A Since -- from now to then?
- 22 Q From when you talked to the detective, did you think it  
23 had been a longer time?
- 24 A Yes.
- 25 Q Okay. But when we go through it here, you worked for them

1 up until December-ish of 2018?

2 A Yes.

3 Q Okay. And I think you have been very clear both with the  
4 detective and when we've talked that you don't think that any  
5 of these comments that the defendant made or the pictures that  
6 were sent to you, you were over 18 when all of those were sent,  
7 right?

8 A Yes.

9 Q And all of those comments made?

10 A Yes.

11 Q I know we talked a little bit about the comments that he  
12 was making to you that made you uncomfortable. Did you feel  
13 like those comments -- well, what did you feel like those  
14 comments were that he was making to you at the house before you  
15 quit?

16 A Kind of just flirty, flirty comments.

17 Q Okay. Never tried to act on any of those comments?

18 A No, ma'am.

19 Q Okay. Were they always flirty, or did they start out  
20 differently?

21 A They did start out as flirty, and then it just escalated  
22 to more flirty.

23 Q And is that when you became uncomfortable?

24 A Yes, ma'am.

25 Q Okay. Did you tell your mom or anyone about these things?

1 A I told my mom, but I mean, other than that, nothing really  
2 came out of it.

3 Q Okay. All right. Thank you, Ms. Ferguson.

4 MS. AUSTIN: Pass the witness.

5 Mr. Nedwick is going to have some questions for you.

6 CROSS-EXAMINATION

7 BY MR. NEDWICK:

8 Q Hello, Ms. Ferguson.

9 A Hello.

10 Q My name is Keith Nedwick. I have a few questions for you  
11 if you don't mind?

12 A Uh-huh.

13 Q Let's start where you ended there. You said you told your  
14 mom. What was it that you told your mom?

15 A Just that Dallas had said a few things to me and it just  
16 didn't really turn out to be anything.

17 Q Was it -- I take it that was before you talked to Tiffany  
18 at the Wal-Mart in the summer of 2019?

19 A Yes, that was before.

20 Q Do you remember about when that was when you talked to  
21 your mom about it or told her about it?

22 A Pretty sure as soon as it happened or when I got home.

23 Q So we're just talking about the comments from --

24 A Yes, the comments.

25 Q So you just told your mom that Dallas had made some

1     comments that you didn't like?

2     A     Yes, sir.

3     Q     Okay. And was that while you were still babysitting?

4     A     Yes, sir.

5     Q     So right before you quit?

6     A     Yes.

7     Q     What about the pictures? Did you tell your mom about the  
8     pictures?

9     A     No.

10    Q     What did you tell your mom about the comments?

11    A     Just what Dallas had said and that I thought that it was  
12    weird.

13    Q     And what was her reaction?

14    A     Nothing really.

15    Q     Okay. Did you tell her at that time that because of that,  
16    you might consider finding a new job?

17    A     Yes.

18    Q     So is that kind of the context in which you brought it up  
19    to her?

20    A     Yes.

21    Q     Okay. I know that you said that when you talked to  
22    Tiffany in, we'll call it July of 2019, at the Wal-Mart, that  
23    you told her the same things that you testified to before we  
24    had got to that point in your testimony when you were  
25    responding to, what did you say to Tiffany. It's kind of

1 important to know exactly what you told her.

2 Would you mind being a little more detailed about -- and  
3 just think about it a moment -- of what you told her and what  
4 you didn't tell her. In other words, you might have told her  
5 more or less than what you testified to today, and it's  
6 important to me, anyway, that I know what exactly you told her.

7 A Yes. I know for a fact I told her about the pictures and  
8 even about the comments, I believe. You know, just that he was  
9 making comments about me that I didn't feel -- that made me  
10 feel uncomfortable. That was the first thing I brought up.  
11 And then the pictures were brought up.

12 Q Okay. So when you said he made some comments that I  
13 didn't like or made me feel uncomfortable, you didn't tell her  
14 what the comments were, or you did tell her what the comments  
15 were?

16 A I don't think I told her what the comments were.

17 Q And then -- and forgive me. But when you told her about  
18 the pictures, did you -- what kind of detail did you say about  
19 that? Did you say he sent me inappropriate pictures, or did  
20 you say he sent me photos of his penis, or?

21 A Yes. I said, He sent me dick pics.

22 Q Okay. And did she ask questions about that?

23 A No, not really. Just asked when it was and when it  
24 happened. And that was just the end of it.

25 Q Do you remember what you told her, as far as when it

1 happened?

2 A I can't remember what I told her as to when it happened.

3 I know that it happened not shortly after I saw her at

4 Wal-Mart.

5 Q Okay. That summer was also eventful for you -- or was it

6 in the summer when you graduated? You graduated somewhere

7 around between the time you left the babysitting job and --

8 A Uh-huh.

9 Q -- the time you ran into Tiffany at Wal-Mart, correct?

10 A Correct.

11 Q When was that?

12 A My graduation?

13 Q Yes.

14 A June of 2019.

15 Q Okay. Were the pictures sent before or after your

16 graduation?

17 A I believe they were sent after my graduation.

18 Q So that would have been very close then in time to when

19 you ran into Tiffany?

20 A Yes.

21 Q Did you go to -- did Mr. Norton go to your -- attend your

22 graduation?

23 A No.

24 Q And you had invited him to the graduation, correct?

25 A Yes.



1 Q Were you expecting him to attend the graduation?

2 A Not really.

3 Q Didn't he say he was going to?

4 A Not that I recall.

5 Q Okay. Let's go back to the -- well, let's talk about

6 those photos that you mentioned. Those were sent via Snap --

7 and when I say Snap, I'm talking about Snapchat.

8 A Yeah.

9 Q And other than coming from his account, there was nothing

10 that identified those photos as being him, was there?

11 A No.

12 Q There was no conversations about, Hey, look at this, or

13 anything like that?

14 A Not that I recall.

15 Q And what about -- were there any conversations -- I was

16 unclear on that -- you mentioned that you guys had talked or

17 exchanged messages, I was unclear, about once a month after you

18 left before the pictures. Was that via text message, or was

19 that via Snapchat?

20 A Mostly Snapchat.

21 Q Okay. And if I understood you correctly, he would comment

22 on photos that you would have up on Snapchat and say the same

23 kind of things that he told you in person, Oh, you look

24 beautiful in this photo, or what have you, correct?

25 A Correct.

1 Q Now, there were other people -- you knew that there were  
2 other people in the house that you had been babysitting in,  
3 right?

4 A Yeah.

5 Q A number of children and then Tiffany. Tell me about the  
6 children. What were their ages? We had some teenage children?  
7 Is that correct?

8 A Yeah. There was -- I think only one was a teenager at the  
9 time. The others were close; around 12, 13 maybe, at the most.  
10 And then the younger, Austin, I think was 10. Brianna was 10  
11 as well, I believe, and then the smaller children were, I  
12 believe, first grade age.

13 Q You're referring to Ryley?

14 A Yes.

15 Q Okay. What about -- so there was a teenager, Tara, was in  
16 the home, correct?

17 A Yeah. Dylan was a teenager; Tara, 12, 13; and then  
18 Connor, I believe, was 12.

19 Q And these teenagers, I know that you mentioned that one of  
20 the reasons you didn't want to stay at that job is nobody was  
21 listening to you?

22 A Yeah.

23 Q Tell me, there were times when some of the male children  
24 acted inappropriately towards you sexually. Isn't that  
25 correct?

1 A Yes.

2 Q Who was that, and what did you do?

3 A That was just Connor, and he just would talk  
4 inappropriately more so, you know, say that I was sexy, things  
5 like that.

6 Q And he -- there were times when he touched you  
7 inappropriate, correct, grabbing your butt, that kind of stuff?

8 A Yes.

9 Q Was that kind of conversation going on not just directed  
10 towards you, but amongst the kids in the house? Was there  
11 some, let's say, age inappropriate conversations about sexual  
12 stuff going on from time to time with Connor and the other  
13 kids, not just directed towards you?

14 A No, not that I recall.

15 Q Did they show an interest in stuff, like on the internet,  
16 that kind of thing?

17 A Not that I recall.

18 Q Okay. So other than the comments he was making to you --  
19 anybody else making comments of that nature to you, other than  
20 Connor?

21 A In the house?

22 Q Yes.

23 A Just Dallas. Dallas and Connor.

24 Q Well, Dallas's, we talked about, those were complimentary.  
25 Made you feel uncomfortable, but there was nothing sexually

1 explicit about those comments, right?

2 A No.

3 Q Okay. You saw then Mr. Norton and Brianna from time to  
4 time interact with one another during these hours and weeks,  
5 week after week --

6 A Yes.

7 Q -- that you would babysit, correct?

8 A Yes.

9 Q And did Brianna show any kind of indication that she was  
10 uncomfortable around Dallas?

11 A Never.

12 Q Did she seem to be excited to see him and playful with him  
13 and that kind of stuff?

14 A Yes.

15 Q Okay. And that was true for the entirety of the time that  
16 you babysat?

17 A As long as I was there, yes.

18 Q There was never a change in the way she treated Dallas or  
19 Dallas treated her?

20 A No.

21 Q And forgive me. When I say Dallas, I'm talking about  
22 Mr. Norton.

23 A Yes.

24 Q Okay. Some of these other kids, they did have their own  
25 social media accounts. Is that correct?

1 A Yes.

2 Q Did they ever interact with Dallas on social media, to  
3 your knowledge?

4 A Not to my knowledge.

5 Q Did they as a family look at stuff together on their  
6 phones or on computers, including with Dallas?

7 A Yes.

8 Q Sometimes he would show them stuff, they would show him  
9 stuff. Hey, look at this funny video, that kind of thing?

10 A Yes.

11 Q Why didn't -- if I understood, you didn't tell your mother  
12 about the pictures, correct?

13 A Yeah, correct.

14 Q Were you still living with her when that happened?

15 A Yes.

16 Q Was there -- is there a reason why you didn't tell her  
17 about those?

18 A I just didn't want to tell her about them.

19 Q Okay. And you said that there was a boyfriend that was  
20 with Tiffany at Wal-Mart when you guys had the conversation?

21 A Yes.

22 Q Do you remember that person's name?

23 A No.

24 Q You had not met him before. Is that correct?

25 A I had never met him before that time.

1 Q None of the children were present? At least not -- they  
2 didn't interact with you or you didn't see them?

3 A Not that I recall. I think it was just Tiffany and the  
4 boyfriend.

5 Q Okay. Now, you mentioned that when you quit, Mr. Norton  
6 had sent you a message saying, look, I really wish you would  
7 have given more notice. Is that right?

8 A Yes.

9 Q Now, leading up to that, you had started to be a little  
10 bit -- it had become a problem for you to get to work  
11 sometimes. Is that right?

12 A Yes.

13 Q And there started to be a little bit of -- I'm not going  
14 to say drama, I don't think it was that strong -- but started  
15 to be a little bit of complaints about, hey, we've got to be  
16 able to rely upon you, this really puts us in a bind when you  
17 can't get here to watch Austin, correct?

18 A Yes.

19 Q And how long did that go on before you quit, where they  
20 were expressing to you a problem with you not getting over  
21 there to babysit on schedule?

22 A That was only a few times. I would say probably three to  
23 four times.

24 Q Okay. For several months leading up to you leaving,  
25 though?

1 A Yes.

2 Q Were there times when you were babysitting -- I know you  
3 said normally you were there all day from like 8:00 to 6:00 or  
4 something like that, but were there times when you actually  
5 would spend the night at the Norton house?

6 A Yes.

7 Q And when you would do that, what was the sleeping  
8 arrangement there in the house? Like did the girls --

9 A Where I would sleep?

10 Q Yeah. Did the girls have a room and the boys have a room?

11 A Yes. The girls had a room, the boys had a room, and then  
12 I slept on an air mattress in the living room.

13 Q In the living room?

14 A Uh-huh.

15 Q Okay. And what was Mr. Norton's schedule? Was he home  
16 during the daytime or no?

17 A No.

18 Q Okay. So in the evenings that you were there, did you  
19 ever see Mr. Norton watching television back in the master  
20 bedroom, or would that take place in the living room?

21 A I mean, he would watch television in the living room.

22 Q Okay. Did you -- was that normally with all the kids?

23 A Yeah.

24 Q Did you -- was there ever a time when he was -- was it  
25 common, or to your knowledge anyway, for him to just be like,

1 I'm going in to watch TV in here, I'm tired of these kids, or,  
2 I don't want to, you know, be bothered, or anything like that?

3 A Not to my knowledge. He was always in the living room.

4 Q Okay. All right.

5 MR. NEDWICK: That's all I have, your Honor.

6 REDIRECT EXAMINATION

7 BY MS. AUSTIN:

8 Q So just so we can clear up for a second, Ms. Ferguson.  
9 When you left or told them you weren't coming back, had there  
10 been a discussion about you were going to be fired if you  
11 weren't on time or anything like that?

12 A No.

13 Q Okay. We had talked earlier on direct about how it was  
14 hard for you to get there sometimes because you didn't have a  
15 car?

16 A Right.

17 Q Did you have to rely on others to get you there?

18 A Most of the time, if I wasn't able to take my family's  
19 car.

20 Q Okay. And so there had been some issues maybe, you said  
21 three or four times, and I think what -- I just wanted to clear  
22 up, as Mr. Nedwick said, for several months. Are you telling  
23 us it was like three or four times every month this was  
24 happening or three or four times over several months?

25 A Three or four times over several months.



1 Q Did it happen in the weeks leading up to this, like right  
2 before you quit?

3 A I think it started just getting harder. Whenever I quit,  
4 it was just too much between trying to get the other kids to  
5 school, making sure I was where I needed to be at the time I  
6 needed to be there.

7 Q Okay. Did you take the other kids to school, or did  
8 someone else take them?

9 A Someone else took them. And my mother's kids, not Dallas  
10 or Tiffany's children.

11 Q But when you left and you sent the text saying you were  
12 quitting, was there any bad blood between you and the defendant  
13 that you were aware of?

14 A That I was aware of, no.

15 Q What about bad blood between you and Tiffany Norton?

16 A No.

17 Q You and the kids getting along?

18 A Yeah. I just didn't see them that much after.

19 Q Now, this issue that we talked about that was brought up  
20 about Connor touching inappropriate, I think you said touching  
21 your butt and making comments, did you address that with  
22 Tiffany and Dallas?

23 A Yes.

24 Q And did you guys talk about that and address it?

25 A They talked to Connor about that.

1 Q So did you tell them about it, or did they witness it?

2 A I think maybe they saw it one time, and then I believe I  
3 had to come to them about it before.

4 Q Okay. And was -- you didn't watch Connor every day all  
5 day, did you?

6 A No.

7 Q He was just there, after school times?

8 A Yeah.

9 Q And this time that you're babysitting them, was it just  
10 during school time, or was it summer also?

11 A Just during school time, I believe.

12 Q Okay. Thank you, Ms. Ferguson.

13 MR. NEDWICK: Just a couple of questions from that.

14 RECROSS-EXAMINATION

15 BY MR. NEDWICK:

16 Q Some of those times, Mr. Norton would drive you home after  
17 babysitting. Is that correct?

18 A That is correct.

19 Q And he never did anything to make you feel uncomfortable  
20 when you guys were alone in the vehicle or anything like that,  
21 right?

22 A Never.

23 Q You mentioned that you told Tiff and Dallas about that  
24 touching that you didn't like. Was it common for the kids to  
25 tell on one another if they did something wrong and stuff like

1     that to Tiffany and Mr. Norton?

2     A     Yes.

3     Q     And did that include Brianna? Did she ever have any  
4     trouble expressing -- telling on people when somebody did  
5     something she didn't like?

6     A     Not most of the time. I mean, sometimes she wouldn't tell  
7     on them for stuff. If Tiffany would come home and ask, Who did  
8     this, she wouldn't. And then she would -- Tiffany would have  
9     to just talk to her.

10    Q     But if somebody picked on her or made her mad, she would  
11    tell -- she would make it clear that she was upset, correct?

12    A     Correct.

13                 MR. NEDWICK: That's all I have, Judge.

14                 THE COURT: All right. Ms. Ferguson, thank you. You  
15    may be excused.

16                 THE WITNESS: Thank you.

17                 THE COURT: All right. Ms. Austin, do you want to  
18    make any closing arguments?

19                 MS. AUSTIN: Judge, I believe we argued this the  
20    other day when we were here for motions. I told the Judge -- I  
21    told the Court my reasonings and the reasons that it's  
22    admissible, and they were both cited in my motion under *Jackson*  
23    *vs. State* and *Warner vs. State*.

24                 And *Jackson vs. State* is the one that gives the language  
25    that the evidence is necessary to give the jury a complete

1 understanding of the crime and is central to the chain of  
2 events, that it's intertwined with the crime charged, and that it  
3 doesn't require a limiting instruction because it's res gestae.

4 I would argue still that this is res gestae. This is not  
5 bad acts because I don't think anything that Ms. Ferguson has  
6 testified to would be anything that's a chargeable offense.  
7 She said very clearly that she was over 18 when the comments  
8 were made. I don't believe any of the comments were illegal  
9 that were made in any way. And the sending of the photo, she  
10 was over 18 when the defendant sent those to her also.

11 So I think that in order to give this jury the picture,  
12 the complete picture of why Ms. Norton then had her ex-husband  
13 approach her daughter as, did anything inappropriate happen  
14 when Dallas Norton was living in the home, gives the full  
15 picture for the jury to understand.

16 I know that when we addressed this the other day, we  
17 argued our case law, we argued all of our reasons, and the  
18 Court said you wanted to hear from Ms. Ferguson first before  
19 you made your finding, just basically for clear and convincing,  
20 to determine whether or not her testimony was admissible.

21 I know Mr. Nedwick was arguing that it should come in  
22 through Ms. Norton and not through Ms. Ferguson, but I believe  
23 it's appropriate to come in through Ms. Ferguson because it  
24 happened to her. It would be hearsay coming in through what  
25 she told Ms. Norton. She told us today what she told

1 Ms. Norton and where she was and what happened and what  
2 happened to her.

3 I think that based on the cases that we have cited and  
4 previous argument, that this would be admitted under res  
5 gestae.

6 THE COURT: Thank you, Ms. Austin.

7 Mr. Nedwick?

8 MR. NEDWICK: Thank you, your Honor.

9 Your Honor, first, to address counsel's argument about it  
10 not being a crime and therefore not fitting under the general  
11 rule about uncharged bad acts, that's what they call it,  
12 uncharged bad acts, not just uncharged crimes. And it, of  
13 course, applies to charged crimes as well.

14 And even the jury instruction, it has -- in the  
15 alternative, it has misconduct, bad acts, crimes, uncharged  
16 crimes, and you pick one. So clearly, it's all kinds of what  
17 would be perceived as bad acts, not just criminal acts.

18 Those -- that's what's intended to be excluded, that's  
19 what must be excluded in order to give a defendant a fair trial  
20 and make sure that he's found guilty, if at all, based upon the  
21 evidence of the crime that he's charged with, not based upon  
22 them thinking he's just the kind of guy that would do something  
23 like this or he's a -- you know, he's a bad guy, a creepy guy,  
24 because he was sending photos of his penis, albeit even if it  
25 was legal. It applies all the same. So that's of no

1 significance.

2 And a case that stands for that principle, Judge, *Mahorney*  
3 *vs. State*, 664 P.2d 1042, and that's Court of Criminal Appeals.

4 Next, your Honor, to counsel's point about my argument  
5 from whenever that was, a couple of Fridays ago, to be clear, I  
6 wasn't saying that Ms. Norton should be able to come in and  
7 testify to it. I was saying if anybody should be able to come  
8 in and testify to it, it would be Ms. Norton.

9 The reason being -- the only reason I've understood that  
10 counsel gave for that testimony coming in is to explain why the  
11 child was asked. If that's the case, whether it's true or not,  
12 regardless of the details that Ms. Ferguson has, the only thing  
13 that matters is what was relayed to Ms. Norton.

14 So Tiffany now -- because it's going to get confusing;  
15 she's an ex now, so -- but Tiffany. It's -- she's the one,  
16 according to the State, that makes this relevant. She heard  
17 this, and then therefore, that's what caused her to ask the  
18 child what happened, if something ever happened to her.

19 So assuming that that's proper for that kind of evidence  
20 to come in at all, it's certainly not proper for it to come in  
21 through Ms. Ferguson. It would just come in through  
22 Ms. Norton.

23 Now, the reason it shouldn't even come in through  
24 Ms. Norton is this, Judge. Counsel talks about this *Jackson*  
25 case and this *Warner* case, and she does so in the context of

1 it's necessary to explain the events, it's an integral part of  
2 the events of the crime. That's the part she doesn't focus on.  
3 You look at both of those cases and all the cases, it's an  
4 essential element and event involved in the crime. Not in the  
5 reporting of the crime. That's not something that we allow  
6 them to prove through bad conduct.

7 Think about it this way. If we took counsel's argument  
8 that they should be able to -- a jury should be able to hear  
9 the reason why they became suspicious, think about an officer,  
10 a law enforcement officer, investigating a rape, unknown --  
11 they don't know who the assailant is.

12 Commonly, they're going to, from their own memory if  
13 they're in a small town, they're going to know the five or six  
14 prime suspects from, you know, if they've been there a while.  
15 But then they might also do a search to see recent sexual  
16 offenders who had been released. Happens all the time. And  
17 they focus their investigation on that.

18 They go to that person's home and they knock on the door  
19 and they start an investigation into that person based upon the  
20 fact that they know that they have done stuff to completely  
21 other people in the past. That clearly, they would not be  
22 allowed to come in and testify to that in front of a jury, come  
23 in and say, Well, yeah, I got the call, and then the next thing  
24 you know, I went back to my office, and of course, I knew Jim  
25 Brown there, he's a known sex offender around here, I've known

1 him for years, so I went and knocked on his door along with a  
2 couple other creeps that I knew from my experience on the force  
3 the last 20 years, and he was the only one that didn't have an  
4 alibi, so that's why I focused my investigation towards that.  
5 That's the equivalent of what we're talking about here.

6 So to allow her -- it's not an essential part of the  
7 crime. It's an essential part of maybe the investigation, but  
8 those cases that counsel cited and many more like them, when  
9 they talk about *res gestae*, it is necessary because they're a  
10 necessary event in the crime, leading up to the crime.

11 These things didn't have anything to do with this crime.  
12 It had one thing, and that is the investigation well after the  
13 crime is alleged to have occurred. That's never been found to  
14 be important enough to put that kind of evidence in front of a  
15 jury and allow them to hear what has been universally  
16 identified as being so prejudicial that we specifically exclude  
17 it from every criminal trial unless there's -- it falls under  
18 one of the specific enumerated exceptions.

19 Counsel hasn't identified which one, if she's doing her  
20 fallback to *Burks* instead of *res gestae*. I'm not sure which  
21 one of the motive, intent, so on and so forth, she is relying  
22 upon, but I would certainly welcome the opportunity to address  
23 that if she does. My understanding is she's primarily focused  
24 on the *res gestae* element, so thus my argument has been towards  
25 that.



1           Even -- and this is to a lesser degree because that's the  
2           important part of this argument. Even if the Court were going  
3           to consider allowing her, Ms. Ferguson, to testify, the reality  
4           is she got pictures of a penis she had never seen before, can't  
5           identify it as being his, comes strictly from a Snapchat  
6           account, no context to it, nothing more than the fact that it  
7           comes from his Snapchat account to suggest that it came from  
8           him.

9           We could have a whole trial on that issue, Judge. If  
10          whether or not he sent pictures is so important in this trial,  
11          we could have a whole trial on that issue. It's not necessary,  
12          it's uncalled for, prejudicial, confusing, gets us way off  
13          course of what this jury is going to need to focus on, your  
14          Honor.

15                 THE COURT: All right. Thank you, Mr. Nedwick.

16                 MS. AUSTIN: Judge, I would cite the Court to  
17          *Eizenber*, which is *E-I-Z-E-N-B-E-R vs. State*, 164 P.3d, 208.  
18          And in that case, the Court of Criminal Appeals explained that  
19          evidence of bad acts and/or other crimes charged should only be  
20          considered *res gestae* when one of these three: One, it is so  
21          closely connected to the charged offense as to form part of the  
22          entire transaction. Two, it is necessary to give the jury a  
23          complete understanding of the crime. Or, three, it is central  
24          to the chain of events.

25                 In that case, it says: Evidence of a defendant's deceit

1 and affair with a married woman was held admissible as res  
2 gestae because it provided the jury with a complete  
3 understanding of the events they were about to hear at trial.

4 And that's exactly what we have here, Judge, is it is  
5 central to the chain of events, and that's why I've offered it  
6 under both *Burks* and res gestae. It's kind of a notice that we  
7 give, a motion that I file for notice, to let this defendant  
8 know that we are offering this evidence.

9 It is admissible under the cases that are cited in my  
10 motion and under *Eizenber*. Very clearly said it is central to  
11 the chain of events, and that's what we have here. This chain  
12 of events that we have for this jury to see is the  
13 disclosure -- or the statements that are made to Ms. Norton by  
14 Ms. Ferguson that this happened to me, and Ms. Norton felt that  
15 it was necessary for her then to check with her child.

16 Otherwise, we just have Ms. Norton coming in to say, I  
17 called my ex-husband and told -- I asked did Dallas ever do  
18 anything inappropriate to her. It makes no sense, and it  
19 doesn't have the full picture for the jury to understand the  
20 chain of events of how this crime unfolded and how this crime  
21 came to be.

22 In the *Eizenber* case, they're talking about his deceit and  
23 affair with a married woman was admissible in his murder trial.  
24 So it wasn't that was happening at the time of the murder.  
25 It's something prior that leads up to the entire chain of

1 events, and that's what we have in this particular case.

2 Ms. Norton will be testifying before this Court and before  
3 this jury and talk about receiving that information from Bailey  
4 Ferguson. Obviously, she would be judging Ms. Ferguson's  
5 credibility when Ms. Ferguson's making those statements to her  
6 before she decides, This is truthful, I need to go and go down  
7 this path and even have my ex-husband ask my daughter, who's in  
8 Arizona, what happened.

9 If she didn't believe what Ms. Ferguson said, she wouldn't  
10 have gone down there, but she had to believe what Ms. Ferguson  
11 was saying in order to go and ask her daughter about that. So  
12 that is also very important for this jury to hear.

13 It's so central, the information is so connected to the  
14 charged offense to form the entire transaction necessary to  
15 give the jury the complete understanding of the crime and is  
16 central to the chain of events. That's what *Jackson vs. State*  
17 suggests.

18 Now, counsel wants to say that, you know, someone has sent  
19 pictures of his penis to Ms. Ferguson. Remember Ms. Ferguson's  
20 testimony. She said she had been communicating with him on  
21 that account. She had been communicating with him for a couple  
22 of months, she said, and then when these messages were sent to  
23 her that had the photographs, she recognized one of them as the  
24 couch in his house that was across the street from hers. So  
25 she recognized that as the defendant's home, and these were

1 being sent from the defendant's account, after he had been  
2 saying these same things to her that he was saying when she was  
3 babysitting for him: You're beautiful, you look nice, those  
4 types of things.

5 So it is clear that she believed it to be him. She  
6 believed it, and based on factors, other than it just coming  
7 from him, but from things she knew from personal of this  
8 defendant and personal things that had happened to her using  
9 the same words with the defendant.

10 So I think under the cases that we have cited, the *Jackson*  
11 *vs. State*, *Warner vs. State*, and *Eizenber vs. State*, that this  
12 is necessary and is central to the chain of events for the jury  
13 to understand and is admissible under *res gestae*.

14 MR. NEDWICK: Your Honor, just briefly.

15 That *Eizenber* case is like so many others. They all stand  
16 for the same principle as the same, *Jackson* and *Warner*, that  
17 counsel cited in her brief. That one says the same thing.  
18 Central to the chain of events of the crime leading to the  
19 crime. It tells the story of the crime, not the investigation.

20 Counsel completely ignored the analogy about an officer  
21 being able to testify as to why he went and did something  
22 relating to an investigation, had nothing to do with the crime  
23 being committed. It wasn't a chain of event, didn't tell the  
24 story of the crime; it told the story, if at all, of the  
25 investigation, why he did -- why he started the investigation,

1     why he went to the door of this particular person. That's  
2     clearly, clearly inadmissible. I don't think anybody would  
3     argue that it's not. And that's exactly what they're asking to  
4     do here.

5             They think that it's so important to know why this  
6     investigation got going, that we should be able to bring  
7     otherwise inadmissible, prejudicial evidence in and let the  
8     jury hear it. That's unheard of.

9             Counsel continues to beat that drum about is central to  
10    the chain of events. That's always the same. Central to the  
11    chain of events of the crime charged, not the investigation.

12            THE COURT: Okay. Thank you, Mr. Nedwick.

13            MS. WHATLEY: Judge, I just want to be very clear,  
14    and I'm not trying to get into a tit-for-tat. That is not what  
15    *Eizenber* says. *Eizenber* says: Central to the chain of events.

16            In the *Eizenber* case, the evidence that was brought in was  
17    that the defendant was having an affair with a married woman.  
18    That's not about the crime. That's central to what happened.  
19    And again, in that *Jackson* case that Ms. Austin has already  
20    cited several times, that *Jackson* case was a death penalty case  
21    because the defendant in that case had beat up the decedent's  
22    child.

23            He was watching the child. She was a nurse. He beat up  
24    that child, hit the child, strangled the child, did all sorts  
25    of bad stuff to the child, realized the child was about to die

1 or he had hurt the child bad, went and hid the child in a  
2 vacant house that was like on the same road as the house he had  
3 been keeping the child in. And then when the mother got home  
4 from her shift at the hospital, he stabbed and killed the  
5 mother. And the State's theory of that case was that obviously  
6 he did that because he was scared she was going to find out  
7 what he had done with the child.

8 But in that case, the child -- what he did to the child,  
9 the Court ruled that that was *res gestae* as well and not *Burks*  
10 because it was the reason for what happened. It's the whole  
11 reason there was an altercation between the decedent, the  
12 mother of the child that he had beat, and the defendant when he  
13 killed her.

14 And so in those two cases, it's very clear that it's this  
15 part of this entire chain of events. It does not say, of the  
16 crime. I know Mr. Nedwick continues to say that over and over  
17 and over, but that's not what it says, because clearly, in that  
18 *Eizenber* case, it was about the prior affair and how that --  
19 what that had to do with the way that the crime took place.  
20 And certainly, somebody having an affair or having an  
21 extramarital affair is obviously not an element of any crime,  
22 or no crime that I at least know of.

23 And it's -- you know, the State of Oklahoma has, to a  
24 certain degree, anticipate what possible defenses are. It's  
25 absolutely important to paint a clear understanding for the

1 jury of how exactly this disclosure happened. If you take away  
2 the conversation with the former babysitter and, I mean, for  
3 lack of a better word, the dick pics that were discussed at  
4 that discussion at the grocery store or whatever store it was,  
5 it doesn't make sense.

6 So otherwise, the jury's going to be left with, why is  
7 there this random -- this random disclosure. Why is Jeffrey,  
8 the father of the victim, asking her in Arizona out of the  
9 blue, Hey, did anything ever happened that made you feel  
10 uncomfortable, has anybody ever done anything to you that makes  
11 you feel uncomfortable. That does not make sense. That does  
12 not make sense unless you have the original part of the chain  
13 of events to explain why he's even asking that question to  
14 begin with. It just doesn't make sense to the jury, and it's  
15 very confusing for the jury.

16 Now, I'm not going to disagree with Mr. Nedwick, sure,  
17 it's prejudicial. I would argue all of the State of Oklahoma's  
18 evidence is always prejudicial. Always. But that's not what  
19 we have to show. It has to be substantially more prejudicial  
20 than probative, and it's absolutely probative because it's part  
21 of that whole chain of events, and it's necessary to give the  
22 jury a full and clear understanding of what happened in this  
23 event.

24 MR. NEDWICK: Your Honor, apparently, I'm not doing  
25 as well at making my point as I thought I was. But when

1 counsel was describing the *Jackson* case in support of her  
2 position, it seemed obvious to me the distinction between what  
3 I'm talking about and what they're talking about. Of course it  
4 was -- the Court found that the murder of the child, or the  
5 abusing of the child and hiding the child was part of the  
6 necessary chain of events to explain why he had to kill the  
7 wife, or the mother of the child. Because otherwise, he was  
8 going to be in trouble. He had committed this, and so the only  
9 way -- that was the reason why he killed her, because he's  
10 going to get busted.

11 That's -- all those cases tell that same story, whether  
12 it's in that *Jackson* case or all of them. It tells the events  
13 leading up to the crime, and it's not about the elements. It  
14 can be part of telling the whole story. It doesn't have to go  
15 to a specific element necessarily, but it's never to explain  
16 the investigation. That's never been important enough.

17 And when counsel says that, Well, how's it going to make  
18 sense to the jury. Again, using my example about law  
19 enforcement, it happens that way all the time. We have trials  
20 like that all the time. It's not an essential element to tell  
21 why the investigation started or what have you if it's based  
22 upon inadmissible evidence.

23 So I don't know why counsel doesn't look at that scenario  
24 that I described in both instances for both points and  
25 distinguish it on those grounds, because, again, officers don't



1 get to come in here and testify that way, but yet the  
2 investigation started somehow.

3 THE COURT: Okay. I've heard enough. I am going to  
4 allow for the State to elicit this testimony from Bailey  
5 Ferguson over the objection of the defendant.

6 Here's why. I believe that they've shown that it would be  
7 helpful to a jury, as it is central to the chain of events  
8 pursuant to that line of cases; the *Eizenber* case, *Jackson*, the  
9 *Warner* case, I think this is consistent with what those cases  
10 stand for. And so the State may elicit that testimony from  
11 Ms. Ferguson at trial.

12 MR. NEDWICK: Your Honor, are we going to have a  
13 limiting instruction? What are -- is that coming in for the  
14 substance of it, or are we going to have a limiting instruction  
15 that identifies the reason for it to come in and they're not to  
16 consider it as proof that he committed the charged crimes?

17 MS. WHATLEY: Your Honor, if it's *res gestae*, there  
18 is no limiting instruction. I mean, that's a specific  
19 instruction that is given for 2404-B evidence, and it's usually  
20 given at the time that the evidence is received from the jury.  
21 If it's *res gestae*, then by definition, it's not 2404-B and  
22 there would be no limiting instruction.

23 I mean, I don't want to comment on what -- I mean, what  
24 Mr. Nedwick wants to have happen. But sometimes -- well, if  
25 you give limiting, then that means you define it as *Burks*, and

1     you haven't defined it as *Burks*.

2                 THE COURT: I haven't. My intent is not to have a  
3     specific instruction, other than the State and the defense  
4     needs to be aware of what the rules of evidence are, what needs  
5     to be proven at trial, and if this testimony is used  
6     inappropriately, then it can -- you know, I suppose I would  
7     entertain a motion for a specific instruction.

8                 But as we have determined these matters today, the  
9     testimony from Ms. Ferguson relating to the exchanges with  
10    Mr. Norton is *res gestae* evidence that would not qualify or  
11    necessitate a separate instruction, as would typical *Burks*  
12    evidence.

13                MR. NEDWICK: In that case, if it's coming in for the  
14    substance, then I would assume that Ms. Norton will not be able  
15    to testify to it, because, obviously, it would be hearsay  
16    coming through her.

17                MS. AUSTIN: That's correct, Judge. I don't plan on  
18    asking her for the hearsay when we've got the person who  
19    actually said what she said to her. I intend upon asking  
20    Ms. Norton, Did you have a conversation with Bailey. Based on  
21    that conversation, what did you do.

22                THE COURT: And if you feel like you need to object  
23    at trial, you can, and we can discuss that. But I'm obviously  
24    going to sustain a hearsay objection unless there's some  
25    specific exception to it.

1 MR. NEDWICK: Thank you, your Honor.

2 THE COURT: Let's go off the record.

3 (End of proceedings)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   IN THE DISTRICT COURT OF CLEVELAND COUNTY

2                   STATE OF OKLAHOMA

3  
4           STATE OF OKLAHOMA,                   )

5                               Plaintiff,                   )

6                               vs.                   )

Case No. CF-2019-1273

7           DALLAS CHRISTOPHER NORTON,                   )

8                               Defendant.                   )

9                   CERTIFICATE OF THE COURT REPORTER

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

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

18                   Dated this 28th day of March, 2022.

19  
20                   \_\_\_\_\_  
21                   ANGELA THAGARD, CSR, RPR, CRR  
22                   STATE OF OKLAHOMA  
23                   CERTIFIED SHORTHAND REPORTER  
24                   CSR# 1711  
25                   MY CERTIFICATE EXPIRES: 12/31/2022

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MARCH 28, 2022

**INVOICE**

TO: MR. KEITH NEDWICK  
Attorney at Law

RE: STATE vs. NORTON  
Case No. CF-2019-1273

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS

HAD ON JANUARY 31, 2022

BEFORE THE HONORABLE THAD BALKMAN

\* \* \* \* \*

Transcript = \$420.00

Less deposit 0.00

TOTAL AMOUNT DUE: \$420.00

THANK YOU!  
ANGELA THAGARD, CSR, RPR, CRR  
200 S. PETERS  
NORMAN, OK 73069  
(405) 366-0298