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DEC 19 2022

In the office of the  
Court Clerk MARILYN WILLIAMS

COPY

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DALLAS CHRISTOPHER NORTON, )  
 )  
Defendant. )

Case No. CF-2019-1273

TRANSCRIPT OF PARTIAL PROCEEDINGS

HAD ON JANUARY 21, 2022

AT THE CLEVELAND COUNTY COURTHOUSE

BEFORE THE HONORABLE THAD BALKMAN

DISTRICT JUDGE

RECEIVED

DEC 29 2022

APPELLATE DIVISION

REPORTED BY: ANGELA THAGARD, CSR, RPR, CRR

1     **APPEARANCES:**

2     **ON BEHALF OF THE STATE:**

3         MS. JENNIFER AUSTIN  
4         MS. JACOBI WHATLEY  
5         ASSISTANT DISTRICT ATTORNEYS  
6         CLEVELAND COUNTY DISTRICT ATTORNEY'S OFFICE  
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9     **ON BEHALF OF THE DEFENDANT:**

10        MR. KEITH NEDWICK  
11        ATTORNEY AT LAW  
12        130 EAST EUFAULA  
13        NORMAN, OK 73069  
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**P A R T I A L   P R O C E E D I N G S**

1  
2           MS. AUSTIN: And, Judge, as far as the State's notice  
3 under the child hearsay, I had spoken with Mr. Nedwick a little  
4 bit about this. The second individual that's listed on there  
5 is Jeffrey Jackson, testifying that Brianna made a disclosure  
6 to him. Mr. Jackson is her biological father. He lives in  
7 Arizona where she was at the time of the disclosure. He'll be  
8 flying in for this case to testify. And so we would ask that  
9 the Court hear his testimony just right ahead of his testimony  
10 so that we can do it all at once so we're not -- well, we're  
11 not able to fly him in twice.

12           THE COURT: I understand.

13           MS. AUSTIN: We do not have the budget for that. I  
14 apologize. And with the current state of trying to keep  
15 everybody isolated as long as possible, I think it's wise to  
16 only bring him in the one time. So I spoke with Mr. Nedwick  
17 about that. I believe we could quickly before he testifies --  
18 as we've done in cases before, quickly before he testifies,  
19 doing it quick out of hearing of the jury, in camera hearing,  
20 on Mr. Jackson's testimony to satisfy the second paragraph that  
21 I have listed there.

22           THE COURT: Okay. Thank you.

23           MS. AUSTIN: So as of now, I have no further  
24 witnesses. But I would point out to the Court in paragraph 1  
25 that I have listed there for Christi Cornett, there is a

1 line -- fourth line down -- it reads: Further, that she  
2 disclosed that it felt weird, and it happened at her  
3 grandmother's house in the bedroom while she was coloring. I  
4 would like to strike that. That is an error on my part on a  
5 cut and paste to a previous case. So that does not apply to  
6 this particular case. The other items do.

7 THE COURT: I think I know what case that's from.

8 MS. AUSTIN: Yes. But it's not this particular case.

9 So based on the testimony that was presented by  
10 Ms. Cornett, I would ask that the forensic interview be allowed  
11 and her testimony about the forensic interview be allowed. Of  
12 course, once we have satisfied the 2803.1 requirement, that  
13 Brianna Jackson testify first. Once we have satisfied that  
14 requirement, I believe her testimony and the forensic interview  
15 satisfy the requirements of 2803.1 in which this Court must  
16 hold this hearing and determine, among other things, the  
17 factors must be the spontaneity and consistent repetition of  
18 the statement, the mental state of the declarant, whether the  
19 terminology used is expected of a child of similar age or of an  
20 incapacitated person, and whether there's a lack of motive to  
21 fabricate exists.

22 I think based on the testimony that the Court has heard  
23 today we have met all of those elements, and once the Court has  
24 had an opportunity to review State's Exhibit No. 1 in  
25 conjunction with the testimony today, I believe that all the

1 elements of 2803.1 will be satisfied and we would ask that this  
2 Court admit this testimony and the State's Exhibit No. 1 after  
3 Brianna Jackson has testified.

4 THE COURT: Thank you, Ms. Austin.

5 Mr. Nedwick?

6 MR. NEDWICK: Thank you, your Honor.

7 Your Honor, the only thing I would ask the Court to  
8 consider is really on each of the relevant factors, which  
9 Ms. Austin just went over, the evidence was either absent of  
10 any kind of evidence indicating that these elements were met,  
11 or it went in the opposite direction as far as reliability.

12 The spontaneity of it, again, that may be her description  
13 of spontaneity within a forensic interview, but this is not a  
14 disclosure that the child just made to somebody. She came in  
15 there knowing why she was coming in there, according to the  
16 testimony, and it was in response to that that she made the  
17 disclosure. So spontaneous, not exactly, not by any other  
18 definition of it other than within the context of forensic  
19 interviewing, apparently.

20 The terminology, again, the witness testified that  
21 children frequently use terms that are not what we would as  
22 adults. This child at 11 years old made -- referred to these  
23 things as -- these body parts the same way you or I would, as  
24 penis and vagina, so on and so forth. So the terminology,  
25 again, not consistent with somebody her age.

1           The issue of lacking motive to fabricate, the witness  
2 testified that in her view, the part of the interview that  
3 really goes to that is making sure that she wasn't influenced  
4 prior to the interview with her. And in this case, we know  
5 that the child had made the disclosures in response to  
6 questioning by her father in Arizona before ever coming back to  
7 Oklahoma. And so therefore, again, that weighs against  
8 reliability.

9           The consistent repetition, she really didn't -- that would  
10 be one of the elements that the record I think, from my  
11 recollection of it, it's just absent of any evidence there,  
12 other than the fact that the interviewer, Ms. Cornett, would  
13 repeat the allegations each time she would ask a follow-up  
14 question.

15           No indication that the child witness repeated it  
16 consistently. So in light of those, Judge, if the Court just  
17 follows the letter of the law and applies what we heard on the  
18 stand today, it sure seems like the reliability issue weighs  
19 against the admission of the forensic interview.

20           THE COURT: I'll take the arguments under advisement,  
21 and once I watch the interview that's Exhibit 1, I'll be able  
22 to make a determination on whether the State has satisfied all  
23 the elements under 2803.1.

24           Ms. Austin, do you want to present the *res gestae Burks*  
25 evidence?

1 MS. AUSTIN: Judge, I have stated in my motion the  
2 witness -- and I put BF. I did not put her name in here,  
3 Bailey Ferguson. There have been reports provided to counsel  
4 about what Bailey Ferguson has said. She was possibly 17, 18  
5 around the time. That's the reason I listed an initial. And  
6 we also with any kind of sexual assault type of things, we list  
7 it. Even though there wasn't a sexual assault, I just felt it  
8 was necessary to go ahead and do initials in that. I'm not in  
9 any way saying that that was a chargeable offense or anything  
10 like that. I just felt it was appropriate to do initials.

11 In this particular case, we have Bailey Ferguson will  
12 testify to this Court that there were some comments made to her  
13 while she was babysitting this defendant's children, and that  
14 he also sent her pictures through Snapchat of an erect penis,  
15 and this was after she had been working for him and his  
16 ex-wife.

17 She didn't tell anyone, and she later told Tiffany Norton,  
18 who is the mother of Brianna Jackson. When she tells Brianna  
19 Jackson on -- I'm sorry -- Tiffany Norton on July 14th of 2019,  
20 when they happen to run into each other, that's when Tiffany  
21 Norton then contacts Jeffrey Jackson in Arizona and asks him to  
22 ask Brianna if anything's ever happened to her. Based on that,  
23 that is when Brianna Jackson makes the disclosure to her  
24 father, which then leads to the forensic interview about a week  
25 later or ten days later.

1           So it's *res gestae*, in that it is the reason that -- that  
2 testimony is the reason that Tiffany Norton prompted to even  
3 raise the issue with Brianna Jackson. It is a part of a whole  
4 picture. It is not necessarily a bad act necessarily because  
5 Bailey Ferguson is an adult. She's 18 at the time these  
6 photographs are sent to her. The comments that are made to  
7 her, they've been given to counsel. They were comments like,  
8 You're beautiful, and things of that nature. They are not a  
9 crime in any way, shape or form. But I felt I needed to do a  
10 *Burks* slash *res gestae* just because of the nature of this case.

11           Sending someone nude pictures as an adult is not  
12 necessarily something that is a crime. And she deleted those  
13 when she got those. There was no further response from the  
14 defendant. He didn't continue to send her. He didn't make any  
15 gestures or comments when he sent those to her. They were just  
16 unsolicited.

17           So they're not necessarily falling under *Burks* as a bad  
18 act, but I felt we needed to give notice of that properly by  
19 doing this motion. But I also feel it's admissible under the  
20 *res gestae* more than anything to show this is how this came  
21 about. This is what prompted the inappropriate actions for  
22 Ms. Norton to even ask Brianna Jackson had anything happened to  
23 her.

24           The story is incomplete otherwise. If we just go and say,  
25 Hey, Jeffrey Jackson, did you just ask Brianna for no reason at



1 all, did you just go up and ask, Hey, did Dallas Norton do  
2 anything when you lived with him, the story doesn't make sense.  
3 Under the *res gestae* case I cited in my motion, it talks about  
4 that it is so connected to the charged offense as to form part  
5 of the entire transaction necessary to give the jury a complete  
6 understanding of the crime and is central to the chain of  
7 events. And that's *Jackson vs. State*, 146 P.3d 1149.

8       There is this chain of events that went on in this  
9 particular case, and it is the conversation that Tiffany Norton  
10 has with Bailey Ferguson that then causes her to contact  
11 Jeffrey Jackson, which causes him to ask Brianna if something  
12 has happened. I've never -- well, I've spoken with Brianna  
13 Jackson and I know Ms. Cornett did too. These images and  
14 things were not discussed with Brianna that Bailey had said  
15 these things; they were solely for this chain of action.

16       The acts -- asking of the child victim about action of the  
17 defendant only makes sense if the entire chain of custody or  
18 chain of events is given to the jury. So it is necessary to  
19 complete this understanding of this crime. I don't think it's  
20 necessarily a bad act, but if the Court does believe that this  
21 does fall under the bad act, then I think under the *Burks* cases  
22 where it is common scheme or plan, it could be, in that it is a  
23 sexual type advance made to an individual, which is what he did  
24 to Brianna Jackson, when she put his hand in her pants and was  
25 touching her vagina.

1           So it is so closely intertwined also that I believe it is  
2 relevant and admissible. If this Court does not feel it is res  
3 gestae, then we would ask that it be admitted under the *Burks*  
4 exception. So I would ask that it either be admitted one way  
5 or the other.

6           I know Ms. Ferguson is willing to testify. We've spoken  
7 with her. She was just unable to be here today. So if the  
8 Court would like to have that testimony before the Court makes  
9 a ruling as to the clear and convincing part of it, then I  
10 think that's appropriate.

11           She can be here on the Monday before we start trial, but  
12 she was unable to be here today. She's got some work  
13 scheduling, and the subpoena we sent her shows Monday and she  
14 couldn't do both. Showed the Monday of the 31st.

15           So if the Court would like to hear that, if counsel would  
16 like to do that also, I don't know how the Court would like to  
17 take that up.

18           THE COURT: You said that's Ms. Norton?

19           MS. AUSTIN: I'm sorry, no, it's Ms. Ferguson.  
20 Bailey Ferguson.

21           THE COURT: Yeah. Okay. I would like to hear  
22 Mr. Nedwick out first.

23           MR. NEDWICK: Your Honor, I would just point out to  
24 the Court that certainly over a week ago, and I'll find it here  
25 in a minute if it's relevant, but I served a subpoena on Bailey

1 Ferguson for this hearing. And so she has apparently a trial  
2 subpoena from the State, but she was also subpoenaed for this  
3 hearing as well.

4 MS. AUSTIN: Actually, it was served on my office.  
5 It was placed in my box for me to get to her, and I did not  
6 receive it in time to get it to her. And I apologize. I  
7 should have told the Court that. It was in my box. I was out  
8 sick. I did not get it to her in time.

9 So by the time I had notice of it, I was not able to get  
10 it to her within the statutory required time, so that is not --  
11 I just -- I forgot to put that on the record, and I needed to  
12 put that on the record.

13 MR. NEDWICK: Well, I hope we're not going to get in  
14 the habit of allowing witnesses to ignore subpoenas without at  
15 least addressing the subpoena. They can object to it if they  
16 don't feel like they've been served timely or what have you.  
17 But if we're going to start down that path, this is going to be  
18 problematic throughout. But she certainly didn't move to quash  
19 the subpoena.

20 At any rate, my argument, Judge, really, it's less -- it  
21 makes Ms. Ferguson's appearance less important because  
22 Ms. Ferguson, even assuming the Court believes that this is res  
23 gestae and therefore admissible, it's only admissible, even  
24 according to counsel's argument, to explain why Ms. Norton did  
25 what she did. That's the mother. And that is somebody told

1 her that Mr. Norton had made inappropriate comments to her, and  
2 that prompted her to call her ex-husband and say, Hey, why  
3 don't you ask her if anything's ever happened to her.

4 So even if the Court believes that that type of evidence  
5 is otherwise admissible, it comes in for that limited purpose  
6 through Tiffany Norton. Bailey Ferguson doesn't need to nor  
7 would it be appropriate for her to come in and get into the  
8 substance of what she says happened.

9 It's a little bit, I know -- and I do need to ask  
10 Ms. Austin about something she said. I may have overlooked it.  
11 But I don't have the details of the, quote, Inappropriate  
12 advances or language, text messages, what I always heard, that  
13 he had sent inappropriate text messages. But beyond that, I  
14 don't know that I've ever --

15 MS. AUSTIN: It's in Detective Judy's audio that I  
16 gave you.

17 MR. NEDWICK: In the audio, just -- so you said,  
18 You're beautiful --

19 MS. AUSTIN: It was in the audio of her interview  
20 with Detective Judy, a phone interview.

21 MR. NEDWICK: But you interviewed her too the other  
22 day.

23 MS. AUSTIN: Yes. Yes.

24 MR. NEDWICK: Did she give you details about -- what  
25 statements are we talking about? What did she say was

1 inappropriate?

2 MS. AUSTIN: That he was saying things like, You're  
3 beautiful, and she felt like it was testing the waters when he  
4 would say things to her like, You're beautiful, while she was  
5 babysitting and saying things to her that made her  
6 uncomfortable.

7 MR. NEDWICK: Okay. Judge, those kind --

8 MS. AUSTIN: Being flirty is how she describes it.

9 MR. NEDWICK: Okay. That's clearly speculative on  
10 her part, which would make it -- on Ms. Ferguson's part -- to  
11 say that that's what he was doing by saying, You're beautiful.  
12 But at any rate, the only relevance in this case is how it  
13 impacted -- arguably -- is how it impacted Tiffany Norton to  
14 ask the child if she's ever been -- experienced anything.

15 So allowing Ms. Ferguson to come in and testify to  
16 whatever her relationship was with Mr. Norton is not useful.  
17 It's not admissible. I don't even think counsel really has  
18 explained why it would be in light of what she -- what counsel  
19 has argued, which is she admits that it's relevant, if at all,  
20 for the purpose of explaining why Tiffany Norton initiated the  
21 questioning of the child.

22 And I still think we need to get to the bottom of really  
23 what Tiffany says, what Tiffany's going to testify to, as far  
24 as what Bailey told her. Again, from the reports, she says,  
25 she being Tiffany, that she ran into her, and she talked about

1 inappropriate comments that were made. And if that's what all  
2 that it's going to be, then honestly, you know, that lessens  
3 the prejudicial impact, and for whatever probative value the  
4 Court thinks that -- it's certainly not an essential part of  
5 the State's case to have Ms. Norton testify that somebody told  
6 her that he was a creep and therefore she started asking her  
7 child questions.

8 But if there's any relevance to it at all, then doing it  
9 that way, having Ms. Norton come in and testify that, I ran  
10 into a former baby-sitter of ours, adult baby-sitter, who said  
11 that he had made inappropriate comments to her, that would  
12 be -- that's the whole story. That's the only relevance.

13 And certainly, that would be much less prejudicial than  
14 allowing Bailey Ferguson to come in here and just talk about  
15 text messages and photos that don't exist anymore. So we would  
16 be getting into best evidence on top of that. She would be  
17 testifying to things that she saw on her phone, I suppose, that  
18 were at one time in existence but no longer in existence.  
19 Violate the best evidence rule -- it violates so many rules of  
20 evidence, his fundamental right to a fundamental fairness under  
21 due process. So Ms. Ferguson's not necessary.

22 To the extent that the Court thinks that it's necessary to  
23 explain to the jury why this investigation started, then  
24 Ms. Norton can testify, you know, on a limited basis to that,  
25 although we would object to that. We think the prejudicial

1 impact of that is greater than any probative value that it has.

2 But I think that's really where we are is talking about  
3 whether Tiffany should be able to -- Ms. Norton should be able  
4 to testify to it. I think the Bailey Ferguson part of it,  
5 clearly, there's nothing admissible about having her come in  
6 and talk about how she perceived her relationship with  
7 Mr. Norton.

8 So that's our position, Judge. I also think that to the  
9 extent that the Court feels like that in order for the State to  
10 tell their full story or meet their burden Tiffany should be  
11 able to explain why she became suspicious, then perhaps we save  
12 it for rebuttal and see if that issue is brought up. If we --  
13 you know, if we insinuate that Ms. Norton just did this out of  
14 vengeance, then certainly that will become more relevant.

15 So anyway, I think that's another way to address that, and  
16 I certainly came across a number of cases in researching where  
17 that's exactly what they did, is used *Burks* type evidence in  
18 rebuttal based upon what the defense actually was.

19 THE COURT: Okay. Thank you.

20 MS. AUSTIN: And, Judge, I think what I hear  
21 Mr. Nedwick saying is that he would just prefer that Tiffany  
22 Norton testify to hearsay testimony about what someone else  
23 told her and then what she did in response to that. That would  
24 be inappropriate for her to do.

25 Ms. Norton has been interviewed by the police, and it was

1 recorded. I've given a recording of that to him. And it's  
2 also documented in police reports that she had a conversation  
3 with Bailey Ferguson. Bailey told her things, and then based  
4 on those things that Bailey told her, which were unwanted  
5 sexual advances and sending nude photographs, is what she was  
6 told, that prompted her to take action on that.

7 If she is not allowed to testify -- well, she would be  
8 testifying about it, but her credibility is going to be at  
9 issue. Tiffany Norton's credibility is going to be at issue in  
10 this particular case because this defendant is her ex-husband.  
11 At the time, they were separated at the time. And there was a  
12 divorce that had been filed and dismissed. Then another  
13 divorce came right after this. Her credibility is going to be  
14 at issue, that she's coming up with something and making her  
15 daughter say something to get to the defendant.

16 But the whole part of the story is that she only asked her  
17 daughter because of what Ms. Ferguson told her. And instead of  
18 having Ms. Norton come in and just say, Somebody told me  
19 something, and not give this jury a full picture, or say,  
20 Somebody told me something that caused me to call my ex-husband  
21 in Arizona and ask my daughter, who was there for visitation  
22 for the summer, if something had ever happened to her, that you  
23 have to have a full story.

24 And the evidence code allows us to -- and the case law  
25 allows us to give the jury the full story. And instead of



1 someone's credibility who's at issue like Ms. Norton, that  
2 they're going to be questioning her, Ms. Ferguson is the person  
3 that says it happened to her, and if he has concerns about she  
4 doesn't have those photographs anymore, he can cross-examine  
5 her on that all day long. Why don't you have those photographs  
6 anymore, what happened, what did you do with them, how did this  
7 happen, how did that make you feel. She would be the  
8 appropriate person to testify about that; not having Ms. Norton  
9 dance around and say, Somebody told me something.

10 Because I guarantee you when they get up on  
11 cross-examination, they're going to think she's -- they're  
12 going to question her and cross her that she's not telling the  
13 truth, and we're -- we know we have someone to say, Yes, that  
14 did happen. So it's -- well, it gives the jury the full  
15 picture of all the chain of events that I would like to say  
16 that it's inappropriate, but the evidence code allows for it.  
17 It's inappropriate to hide something from the jury when the law  
18 says we can give them the full picture.

19 Now, it is Ms. Ferguson that would be saying these things  
20 happened to me, and they would have the opportunity -- so due  
21 process is not being violated because they would have the  
22 opportunity to cross-examine her and say, Did these things  
23 happen, did you call the police, did you do anything, do you  
24 have photos, all of those things they can, to talk to  
25 Ms. Ferguson about it. But the important part would be that

1 these are the things that she said happened to her that she  
2 relayed to Ms. Norton, which then prompted Ms. Norton to  
3 contact Mr. Jackson.

4 There is no -- there's no doubt on what Ms. Ferguson told  
5 Ms. Norton because it is in both the police reports and  
6 Ms. Ferguson's audio where she talks about, I told her that  
7 these things happened. So I think that through the evidence of  
8 cross-examination, they can broach whether or not it was --  
9 whether it was flirty or not, that's her interpretation. Of  
10 course it is. That's why they have cross-examination.

11 So I think the credibility of both Ms. Norton and of  
12 Brianna Jackson of why she came forward with her disclosure and  
13 Mr. Jackson, Why did you go ask her, it explains the story.  
14 And that is specifically the scenario that *Jackson vs. State*  
15 has put in place. And *Warner vs. State*, 144 P.3d 838, it is  
16 necessary to give the jury a complete understanding of the  
17 crime and is central to the chain of events.

18 It is absolutely central to the chain of events. People  
19 just don't ask their children, Did someone do something to you,  
20 unless there is something that caused them to do it. And  
21 defense -- I guarantee you, their defense will be, She's making  
22 it up. And so this gives a reason for why she is coming  
23 forward with it and why Ms. Norton would even have her husband  
24 ask Ms. Jackson and have her ask her that day, the same day she  
25 had contact. She had contact with Bailey Ferguson that

1 morning, and she will tell you -- or that afternoon -- and she  
2 contacted her ex-husband the same day, and then the police were  
3 contacted that same day by Ms. Jackson and Ms. Norton.

4 So I think it's relevant to the chain of events. He can  
5 cross-examine on it. There's no best evidence rule. They can  
6 ask her about the photos and ask her where they are and all of  
7 that. It is relevant, and it is not more prejudicial than  
8 probative. It meets all the evidentiary -- it doesn't go  
9 (indistinguishable) anywhere of the evidence code, and it is  
10 proper for this Court to admit for this jury to hear.

11 THE COURT: So I see this as a question of *res gestae*  
12 rather than *Burks*. I'm going to set aside time to invite  
13 Ms. Ferguson to testify before I make any ruling on that.  
14 Okay?

15 MR. NEDWICK: May I, your Honor?

16 THE COURT: Yes.

17 MR. NEDWICK: Just respond to a couple of things  
18 Ms. Austin said? First, your Honor, as far as it being  
19 hearsay, it's not hearsay for Tiffany Norton to come in and say  
20 what Ms. Ferguson said to her, because it's not being offered  
21 for the truth of the matter. That's the whole point.

22 If we get into making it relevant for the truth of the  
23 matter, if we have a trial on whether he said inappropriate  
24 things to her, that's exactly what every defendant under our  
25 constitution has the right to avoid. They are to be charged

1 based upon the charged offense and have a trial on that, not  
2 based upon their bad character or, you know, the fact that they  
3 may -- people may not like them. So that's the whole point.

4 The whole thing that makes this relevant is that it caused  
5 Ms. Norton to do something, and that's fine. So that -- her  
6 coming in and testifying that she did this because she was told  
7 these things, that's not hearsay. By definition, it's not  
8 being offered for the truth of the matter. It's being offered  
9 to show why she did what she did next.

10 We have that same objection in every trial with police  
11 officers. They testify that they got a call about this or  
12 that, reporting that. Objection, hearsay. No, it's not being  
13 offered for the truth of the matter. It's being offered to  
14 show why I went to the defendant's house and talked to him.  
15 That's how this goes. It's no different.

16 So it's -- we don't have to get into the prejudice versus  
17 probative on Ferguson's testimony because it's completely  
18 irrelevant. It has nothing to do with this case, other than  
19 violating the basic principles that we all know. You're to be  
20 tried on the case that you're charged with, not on other  
21 uncharged bad acts.

22 And when counsel invites me to cross-examine her, we're  
23 not having a trial on whether -- whether he said things that  
24 made her uncomfortable or she perceives as uncomfortable. It  
25 has nothing to do with this case, except for it prompted

1 Tiffany to start. So it's easy enough to handle by that  
2 method.

3 There was one other thing that I wanted to address that  
4 counsel indicated. Those cases that counsel cited and then  
5 brought up in her argument, Judge, I just mention in response  
6 to those that those were -- by analogy, they would fit,  
7 possibly allowing Tiffany's explanation. That's the event that  
8 is part of this case is her running into her, hearing something  
9 that caused her to do the investigation. Those other events  
10 that may or may not have happened don't have anything to do  
11 with this.

12 And the cases that counsel cites, those events in *Warner*,  
13 it was a videotape, the guy put a videotape in just before  
14 molesting this child, and they used it to show that he was  
15 getting aroused prior to molesting the child, and therefore,  
16 that bad act of watching this adult pornography was admissible  
17 because it explained the chain of events that actually happened  
18 there. This does not. Bailey Ferguson's account of what  
19 happened doesn't. Tiffany's account does. It arguably does  
20 explain why we are here today.

21 THE COURT: Well, I appreciate your arguments. I  
22 will certainly consider those before I make any final  
23 determinations.

24 Let's talk about trial. The term starts on the 31st, but  
25 our jurors are not coming until the 1st. So could we get

1 Brianna and Ms. Ferguson to testify on the 31st?

2 MS. AUSTIN: Brianna?

3 THE COURT: Not Brianna. Sorry.

4 MS. AUSTIN: Okay. Ms. Ferguson? Bailey?

5 THE COURT: Yeah.

6 MS. AUSTIN: Yes, Bailey can be here on that Monday.

7 THE COURT: Okay. That would be great. Maybe 1:00?

8 Well, let's say 1:30 on Monday. Is that all right?

9 MR. NEDWICK: Just to clarify, that would be  
10 Mr. Jackson as well, your Honor?

11 THE COURT: That's what I was thinking of.

12 MS. AUSTIN: I'm sorry. He will not be here yet  
13 because he is not going to testify until Wednesday.

14 THE COURT: So we'll take care of that just on a  
15 break or we'll start late. So we'll take care of the child  
16 hearsay with Mr. Jackson.

17 MS. AUSTIN: Yes. And we will not mention that in  
18 opening or -- well, if I can -- I will probably have him here  
19 to do that possibly before opening?

20 THE COURT: Okay. If you can.

21 MS. AUSTIN: Yes. If he's not here and you haven't  
22 made a determination yet, we'll cross that bridge.

23 THE COURT: Okay.

24 MR. NEDWICK: I got a little alarmed there when  
25 counsel said he's not testifying until Wednesday. And the

1 reason is because I have a jury call docket and motion hearing  
2 Friday of that week, and we've always felt like we would have  
3 plenty of time to complete this trial.

4 THE COURT: We're not starting until Tuesday. Jurors  
5 are not going to be here until Tuesday.

6 MR. NEDWICK: Yeah.

7 THE COURT: Who's your call docket with?

8 MR. NEDWICK: Well, that's the tricky thing. It's  
9 Judge Elliott, who's retiring, and then we're set to start on  
10 Monday. So my understanding is that the DA has set these  
11 motion hearings on the motions she filed in front of Judge Mai.  
12 I haven't even been able to follow up on that because it  
13 literally just unfolded.

14 THE COURT: I'm sure we can sort that out. I know  
15 Judge Mai and Judge Elliott pretty well, and I bet we can  
16 coordinate things.

17 MR. NEDWICK: Okay.

18 THE COURT: Okay. So we'll continue this hearing  
19 until January 31st at 1:30. At that time, Ms. Ferguson will  
20 come. We'll plan on starting the trial at 9:00 a.m. on the  
21 1st. We will, at the very minimum, conclude with jury  
22 selection on that Tuesday. If we can get into opening  
23 arguments, that's even better -- opening statements, excuse me.

24 And just so everyone knows, I said a minimum because we  
25 won't go home that Tuesday until we have a jury picked. So I'm

1 pretty lenient about letting you ask questions, but if it means  
2 we stay here past 5:00 until dinner time, then so be it. I  
3 think we were here until 8:00 last time.

4 I do want to address some of the points that Mr. Nedwick  
5 brought up as far as trying to keep the wheels on the car, so  
6 to speak, in light of the COVID situation. It's been the  
7 experience of the district court recently that the jurors who  
8 show up for jury trial generally don't have a lot of  
9 trepidation or fear of being here.

10 I'm going to invite them to wear a mask. I'm not going to  
11 enforce it. I will address masking and COVID awareness at the  
12 outset of the trial. We will select two alternates, and in the  
13 event that a juror believes that they have COVID symptoms, we  
14 will excuse them. If a juror has had exposure and if they --  
15 we'll follow the CDC guidelines, which my understanding is that  
16 someone who has been exposed to COVID but is vaccinated with  
17 the current boosters, as long as they wear a mask, they are  
18 okay to come to work. If you've heard differently -- I mean,  
19 that's what I understand, so that's what I was planning to how  
20 to treat that situation.

21 I think, Mr. Nedwick, you asked about the availability of  
22 COVID tests. There is no COVID testing that's provided to the  
23 general public at the courthouse. We'll ask that jurors be  
24 responsible for that because they would in any other  
25 circumstance.



1 I think as far as witnesses go, I expect every witness to  
2 be here physically present, and it will be a very high burden  
3 to convince me that they cannot appear in person. I think only  
4 once have I allowed someone to appear remotely, and it was a  
5 situation where it was a police officer who was testifying and  
6 like literally the night before either got COVID or a child had  
7 COVID. And so we allowed him to testify over Zoom. But I  
8 mean, you all know the law. The witness has to be declared  
9 unavailable, and it takes a lot to convince me that a witness  
10 is unavailable.

11 Mr. Nedwick, do you have any other questions that I didn't  
12 cover, or would you like any further clarification or raise any  
13 concerns?

14 MR. NEDWICK: I don't think so, Judge. I mean, when  
15 you said we'll just follow the CDC guidelines, that pretty much  
16 tells me what I need to relay to people, and I mean, that's  
17 fine with me. I'm not -- I'm less concerned about the illness  
18 and more concerned about the interruption once we start.  
19 That's the only thing that is of particular concern to me, is  
20 that to the extent we can, we avoid getting in a situation  
21 where somebody's infected during the trial and has to -- can't  
22 appear to testify or to finish --

23 THE COURT: Sure.

24 MR. NEDWICK: -- hearing it.

25 THE COURT: We'll have our jurors -- we'll let them

1 know to check in, to call the Court if they wake up one morning  
2 and feel ill before they come and spread it to everybody else.  
3 And like I say, we'll have two alternates, and if we need to  
4 use them, we'll use them.

5 MR. NEDWICK: Sounds good.

6 MS. AUSTIN: I know that previously we've had the  
7 COVID questionnaire that they are asked as they're walking in  
8 the door as they come in. Is that something we're still going  
9 to do so people don't come in with symptoms?

10 THE COURT: I didn't do that last term, and I -- that  
11 would probably be a decision that would need to be made uniform  
12 with the other judges. So I will talk to them about that.

13 MS. AUSTIN: I mean, I know we had used it before. I  
14 don't know sometimes if it excludes people, just by thinking  
15 they can check certain things on the document and not have to  
16 come on in. But I know we had done that just so if there were  
17 people experiencing symptoms, and I think they were even taking  
18 temperatures at the door.

19 THE BAILIFF: And the court clerk did the forms.

20 THE COURT: Yeah. That would be a conversation I  
21 could have with our court clerk and other judges. It's not my  
22 intention that we do that, but if that's what we agree upon as  
23 a district court, then I'll follow that.

24 MS. AUSTIN: Okay. Perfect. Also, how many are we  
25 pulling?

1 THE BAILIFF: We ordered 40 or 45, but since it's in  
2 two weeks, we can always change that.

3 MS. AUSTIN: Okay. I just didn't know. I'll be  
4 interested to see on Monday what the numbers are, what shows.  
5 That will give us a good idea.

6 THE BAILIFF: And there was juror excuse that  
7 happened today. She had a docket maybe at 10:30 this morning.  
8 So we'll get a lot more information from that.

9 THE COURT: Judge Edwards tried a case here at the  
10 courthouse a week or two ago, and we all were nervous about how  
11 many showed up. And it was a civil case, but it was a four-day  
12 case and they didn't have problems.

13 MS. AUSTIN: Good. I think that it helps that  
14 there's a panel coming in Monday, so we can kind of see, get an  
15 idea of how many.

16 THE COURT: We'll have the benefit of sitting back  
17 for a week to see how it pans out.

18 MS. AUSTIN: I don't know if there's anything going,  
19 but at least we'll see all the numbers, how many show up.

20 THE COURT: Correct.

21 THE BAILIFF: And did we discuss -- are we going to  
22 social distance, are we going to mask? What's the game plan?  
23 For all the 40 or 45 people that are here.

24 THE COURT: Yeah. I am going to encourage people to  
25 wear masks. But I'm not going to --

1 THE BAILIFF: We're not going to separate?

2 THE COURT: I'm not going to separate.

3 MS. AUSTIN: Well, and since it's only 40 or 45, they  
4 can space themselves out a lot better than when we had a murder  
5 trial in here.

6 THE BAILIFF: Right. And then I'll walk around with  
7 the microphone with a mask.

8 MS. AUSTIN: Okay.

9 THE BAILIFF: For the initial, since we can't hear in  
10 here without the microphone. And then we won't have them  
11 passing it around, so there's no worry about that. And if I  
12 have a mask on, they're not going to make a big deal about me  
13 being right in their face. And we can tell them I just had it  
14 if we have to, if it makes you feel better.

15 MS. AUSTIN: When we come in here Monday for the  
16 motion that the Court has just set, will the chairs be set up  
17 so we can kind of see how the chairs will be?

18 THE BAILIFF: Yeah. I just think it's easier to go  
19 ahead and do it that afternoon when we're all here and we all  
20 see what we're doing.

21 THE COURT: You two are experienced attorneys, so you  
22 probably have already thought about this. But because we're  
23 going to be concerned about spacing, if you anticipate a lot of  
24 family members or otherwise coming, maybe discourage them from  
25 coming the first day?

1 MS. AUSTIN: Absolutely. I always do.

2 THE COURT: It's kind of boring and --

3 MS. AUSTIN: Too many people.

4 THE COURT: -- a lot of people.

5 THE BAILIFF: Well, and we usually -- if family  
6 members do come, they have to sit in the back row anyway. We  
7 don't let them sit up here.

8 THE COURT: For that first day.

9 THE BAILIFF: Right, for the first day when the  
10 jurors are everywhere. And I don't know if Mr. Nedwick knows.  
11 We usually pull alternates with -- I mean, we don't do it  
12 separately. You guys just know that the six --

13 THE COURT: -- the last six --

14 THE BAILIFF: -- are alternates.

15 THE COURT: Okay.

16 MS. AUSTIN: Okay. All right. Sounds good.

17 THE COURT: Well, I thank you all.

18 MR. NEDWICK: Thank you, Judge.

19 THE COURT: Okay.

20 (End of partial proceedings)

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. )

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 2nd 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  
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CSR # 1711

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