

APPENDIX

Judgment.....App. A

State’s Closing and Rebuttal Closing ArgumentsApp. B

APPENDIX A

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA, Plaintiff, vs. EDWARD JEFFREY ALLEN, Defendant.	CAUSE NO. DC 19-1379 JUDGE ASHLEY HARADA JUDGMENT
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On November 18, 2019, Defendant appeared in District Court for initial arraignment.

On November 13, 2020, a Jury found the following:

Defendant was Acquitted of COUNT I: SEXUAL ASSAULT (FELONY), COUNT III: INDECENT EXPOSURE (FELONY) and COUNT IV: INDECENT EXPOSURE (FELONY). Defendant is Guilty of COUNT II: SEXUAL ASSAULT (FELONY).

On July 28, 2021, Defendant appeared before the Court with Counsel Joshua R. Kotter and Clark R. Ramsey for sentencing.

The Court inquired whether Defendant had any legal cause to show why judgment should not be pronounced. No legal cause was offered.

This case involves the grooming of an 11-year-old boy who was a family member of the Defendant. The boy relied on the Defendant as a role model. This Defendant betrayed the trust of the boy and his family and took away the innocence of the child. Defendant had inappropriate sexual contact with the youth's genitals. The boy is now a scared, anxious, angry, and suspicious victim of sexual assault who will never be the same. The psychosexual evaluation indicates Defendant tries to present himself in a favorable light, has poor judgment, has poor insight into others, and is comfortable with dishonesty. Defendant struggles with appropriate boundaries and is in need of sex offender treatment. The Community sex offender treatment is not a consideration or possibility in this case, given the circumstances. The Psycho-Sexual Evaluation conducted on April 30, 2021, also recommended treatment in a correctional facility. The community needs to be protected from this Defendant. The Defendant went to trial, which was his constitutional right, however, he is unable or unwilling to accept responsibility. Defendant asserts

he was consuming excessive alcohol during the time of his life when this offense occurred and it is possible that it happened. The Court does not find this to be a compelling acceptance of responsibility or appropriate apology for the harm caused.

The sentencing policy of the State of Montana requires the Court to punish offenders commensurate with the nature and degree of harm caused by the offense. Mont. Code Ann. 46-18-101(2)(a). The sentencing policy is intended to protect the public, reduce crime, and increase the sense of public safety by incarcerating violent offenders and serious repeat offenders. Mont. Code Ann. 46-18-101(2)(b). The Court also considered rehabilitative prospects and restorative justice. There were many mitigating and aggravating factors in this case, including Defendant's lack of criminal history, Defendant's substance abuse problems, and the circumstances of the offense. This sentence is also commensurate with similarly situated offenders.

The sentence imposed will allow the Defendant to have some time for treatment in Montana State Prison and

IT IS ORDERED that for COUNT II: SEXUAL ASSAULT (FELONY) Defendant is committed to the Montana State Prison under § 46-18-201, MCA, for THIRTY (30) YEARS WITH TEN (10) YEARS SUSPENDED.

IT IS FURTHER ORDERED that Defendant will receive credit for time spent in pre-trial incarceration as follows: November 14, 2019 through November 18, 2019 and November 13, 2020 through July 28, 2021.

IT IS FURTHER ORDERED that Defendant is designated as a Level 1 Sexual Offender under § 46-23-509(3)(b), MCA. The Defendant must complete phases 1 and 2 of sexual offender treatment at the Montana State Prison.

IT IS FURTHER ORDERED that for any period of community supervision, the following conditions of probation will apply:

1. The Defendant shall be placed under the supervision of the Department of Corrections, subject to all rules and regulations of Adult Probation & Parole.
2. The Defendant must obtain prior written approval from his/her supervising officer before taking up residence in any location. The Defendant shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.
3. The Defendant must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.
4. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the Defendant must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.
5. Unless otherwise directed, the Defendant must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his/her supervising officer or designee when directed by the officer.

6. The Defendant is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.
7. The Defendant must obtain permission from his/her supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.
8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.
9. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.
10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.
11. The Defendant is prohibited from gambling.
12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.
13. The Defendant shall pay the following fees and/or charges:
 - a. The Probation & Parole Officer shall determine the amount of supervision fees (§46-23-1031, MCA) to be paid each month in the form of money order or cashier's check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 (\$50 per month if the Defendant is sentenced under §45-9-202, MCA, dangerous drug felony offense and placed on ISP). The DOC shall take a portion of the Defendant's inmate account if the Defendant is incarcerated.
 - b. Surcharge of \$15 for each misdemeanor. [§46-18-236(1)(a), MCA]
 - c. Surcharge of the greater of \$20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA]
 - d. Surcharge for victim and witness advocate programs of \$50 for each misdemeanor or felony charge under Title 45, Crimes; §61-8-401 (DUI); §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-tetrahydrocannabinol). [§46-18-236(1)(c), MCA]
 - e. \$10.00 for court information technology fee. (§3-1-317, MCA)
 - f. Costs of assigned counsel: The defendant has retained Counsel. \$0
 - g. A \$50 fee at the time a PSI report is completed, unless the court determines the Defendant is not able to pay the fee within a reasonable time (§46-18-111, MCA). The Defendant shall submit this payment to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620.
The Defendant did not pay the PSI fee.

- h. The Defendant shall pay court-ordered restitution by money order or cashier's check sent to the Department of Corrections, Collection Unit, P.O. Box 201350, Helena, MT 59620. The Defendant shall be assessed a 10% administration fee on all restitution ordered. All of the methods for collection of restitution provided under §46-18-241 through §46-18-249, MCA, shall apply, including garnishment of wages and interception of tax refunds. Pursuant to §46-18-244(6)(b), MCA, the Defendant shall sign a statement allowing any employer to garnish up to 25% of his/her wages. The Defendant shall continue to make monthly restitution payments until he/she has paid full restitution, even after incarceration or supervision has ended. **If the Court orders restitution to be paid.**
 - i. The Defendant shall pay costs of legal fees and expenses defined in §25-10-201, MCA, plus costs of jury service, prosecution, and pretrial, probation, or community service supervision or \$100 per felony case or \$50 per misdemeanor case, whichever is greater. (§46-18-232, MCA)
14. If the Defendant is convicted of a crime listed in §46-23-502(9), MCA, he/she shall register as a sex offender. [§46-18-201(7), MCA]
 15. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, MCA)
 16. The Defendant shall be given credit against the time served in jail prior to or after conviction. (§46-18-403, MCA)
 17. The Defendant shall not abscond from supervision. Absconding is a non-compliance violation as defined in §46-23-1001(1), MCA.
 18. The Defendant shall obtain a chemical dependency evaluation by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.
 19. The Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.
 20. The Defendant shall enter and complete any programming deemed necessary and appropriate as identified through the use of a validated risk and needs assessment or subsequent secondary assessment.
 21. The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications.
 22. The Defendant shall not enter any bars.
 23. The Defendant shall not enter any casinos.
 24. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.
 25. The Defendant shall attend self-help meetings at the direction of the Probation & Parole Officer and treatment provider.

26. The Defendant shall advise all medical personnel of addiction history/conviction, including all prescribed narcotics and/or medical marijuana.
27. The Defendant shall inform the Probation & Parole Officer of all prescriptions obtained from medical personnel prior to filling them. The Defendant shall take all prescription medications as prescribed and in the manner in which they were prescribed.
28. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.
29. The Defendant shall enter and successfully complete sexual offender treatment with a clinical provider who is a member in good standing with MSOTA or its equivalent, and who is approved by the Probation & Parole Officer. The Defendant shall pay for the costs of the treatment and abide by all treatment rules and recommendations of the provider.
30. The Defendant shall obtain a psychosexual evaluation by a clinical provider who is a member in good standing with MSOTA or its equivalent and who is approved by the Probation & Parole Officer. The Defendant shall pay the costs of the evaluation and follow all recommendations of said evaluation. **The Court may grant credit for the evaluation completed by Michael D. Sullivan.**
31. The Defendant shall not knowingly have contact, oral, written, electronic or through a third party, with the victim(s) or the immediate family unless such contact is voluntarily initiated by the victim(s) through the Department of Corrections. DOC staff may notify victims about the availability of opportunities for facilitated contact with their offenders without being considered “third parties.”
32. The Defendant shall not have contact with any individual under the age of 18 unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant’s sexual conviction and is approved by the Probation & Parole Officer and sexual offender treatment provider. The Defendant shall sign a “No Contact” contract and abide by all conditions of the contract.
33. The Defendant shall not frequent places where children congregate unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant’s sexual conviction and is approved by the Probation & Parole Officer and sexual offender treatment provider. This includes, but is not limited to, schools, parks, playgrounds, malls, movies, fairs, parades, swimming pools, carnivals, arcades, parties, family functions, holiday festivities, or any other place or function where children are present or reasonably expected to be present. The Defendant shall obtain permission from the Officer prior to going to any of the above places.
34. The Defendant shall not access or have in his/her possession or under his/her control any material that describes or depicts human nudity, the exploitation of children, consensual sexual acts, non-consensual sexual acts, sexual acts involving force or violence, including but not limited to computer programs, computer links, photographs, drawings, video tapes, audio tapes, magazines, books, literature, writings, etc., without prior written approval of the Probation & Parole Officer and therapist. The Defendant shall not frequent adult book stores, topless bars, massage parlors, or use the services of prostitutes.
35. The Defendant shall not view television shows or motion pictures geared toward his/her sexual offending cycle, or as a stimulus to arouse deviant thoughts or fantasies (i.e., shows based on sexualization of underage girls or boys, etc.).
36. The Defendant shall not have access to the internet without prior permission from the Probation & Parole Officer and sexual offender therapist, nor can the Defendant have on any computer

he/she owns any software that is intended for data elimination, encryption or hiding data. If Internet access is allowed, the Defendant must allow the Department to install rating control software and conduct random searches of the hard drive for pornography or other inappropriate material.

37. The Defendant shall not possess or use any computer or other device with access to any on-line computer service including, but not limited to "Cloud" data storage, without the prior written approval of the Probation & Parole Officer. The Defendant shall allow the Probation & Parole Officer to make unannounced examinations of his/her computer, hardware, and software, which may include the retrieval and copying of all data from his/her computer and computing and data storage devices. The Defendant shall allow the Probation & Parole Officer to install software to restrict the Defendant's computer access or to monitor the Defendant's computer access. The Defendant shall not possess encryption or stenography software. The Defendant shall not utilize software designed to eliminate traces of internet activity. The Defendant shall provide records of all passwords, internet service, and user identifications (both past and present) to the Probation & Parole Officer and immediately report changes. The defendant shall sign releases to allow the Probation & Parole Officer to access phone, wireless, internet, and utility records.
38. The court shall designate the Defendant as a Level 1, sexual offender based on the psychosexual evaluation and other pertinent documentation. (§46-23-509, MCA)
39. The Defendant's chaperone/supervisor shall sign a statement of responsibility and be approved by both the Probation & Parole Officer and the treatment provider.
40. The Defendant shall not be involved in any type of employment, service or recreational pursuit which involves the supervision of children. Under no circumstances should the Defendant be in a position of power and authority over children.
41. The Defendant shall be subject to reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses. [§46-18-255(1), MCA]
42. The Defendant's residence, changes and any co-habitants must have prior approval of the Probation & Parole Officer. The Defendant shall not reside in a residence where there are any children under the age of 18 without the written approval of the therapist and the Officer.
43. The Defendant shall not have a cell phone, or such other technology/device with photo, video, or Internet capabilities unless approved by the therapist and Probation and Parole Officer.
44. If cell phone use is allowed, all bills and records shall be made available to the Probation & Parole Officer.
45. The Defendant shall remain in Aftercare or Relapse Prevention Class for the entirety of his/her supervision unless released at the discretion of the Probation & Parole Officer and therapist.
46. The Defendant shall reenter treatment at any time if deemed appropriate by the Probation & Parole Officer and therapist.
47. The Defendant shall submit to annual polygraph testing **for treatment purposes.**
48. The Defendant shall not date, live with, or otherwise be aligned with any person with children under the age of 18 without the express prior approval of the therapist and Probation & Parole Officer. If this approval is granted, they shall both be involved with the Defendant's treatment to the extent recommended by the treatment provider.

49. The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation.

If Defendant fails to comply with any of the above-listed conditions, the Court will issue a Bench Warrant of Arrest, apprehend the Defendant and require him to appear before the Court for further proceedings.

Sentence was imposed for the following reasons:

1. The Court considered the contents and recommendation of the pre-sentence report along with any corrections / modifications made at Sentencing Hearing.
2. The Court considered Defendant's statement presented at the Sentencing Hearing.
3. The Court considered the following criteria for sentencing: violent circumstances / facts of the offense, Defendant's age, Defendant's lack of employment, Defendant was found Guilty at trial, Defendant's lack of criminal history and amount of pre-trial incarceration / detention time served along with the recommendations / arguments of counsel.
4. The Court, for the above-stated reasons, finds the interest of justice and the needs of public truly require the level of security provided by imprisonment; needs of Defendant better served in the state prison; imprisonment of the Defendant will not create an excessive hardship on the Defendant or the Defendant's family; this type of sentence / commitment provides numerous programs to assist Defendant along with the authority to place offender in community-based programs upon eligibility.

The Bond, if any, is exonerated.

Pursuant to § 46-8-113, MCA, if you were ordered to pay all or a portion of the cost of Public Defender representation as a condition of this Judgment - payments can be made online at <http://svc.mt.gov/opd/ClientPayments> OR by mailing a money order, certified check or cashier's check payable to OPD to Office of the State Public Defender, 44 W. Park Street, Butte, MT 59701. Please include your District Court case number, address and phone number with payment.

If the written Judgment differs from the sentence the Judge pronounced orally, then the State or Defendant has only One Hundred Twenty (120) days to contest the written Judgment as set forth in § 46-18-116, MCA. If no party contests the written judgment within One Hundred Twenty (120) days, the written Judgment is presumed correct.

DONE IN OPEN COURT on July 28, 2021.

cc: YCAO cadocs@co.yellowstone.mt.gov - tg
Billings Police Department (C&O 19-45214)
Probation & Parole CORP&PREGIV@mt.gov
Defense - Joshua R. Kotter
Defense - Clark R. Ramsey

APPENDIX B

1 deliberations to communicate with me, you may send a
2 note, through the bailiff, signed by any one or more of
3 you. No member of the jury should ever attempt to
4 communicate with me except by signed writing, and I will
5 respond to the jury concerning the case only in writing
6 or here in open court.

7 If you send out a question, I will consult
8 with the lawyers before answering it, which may take
9 some time. You may continue your deliberations while
10 waiting for the answer to any question.

11 You are not to tell anyone, including me, how
12 the jury stands numerically or otherwise on any question
13 submitted to you, including the question of the guilt of
14 the defendant, until after you have reached a unanimous
15 verdict or have been discharged.

16 So, ladies and gentlemen, now I will have
17 closing arguments; and the attorneys have indicated they
18 will probably be about 20 minutes each. So we will go
19 ahead and start with the State, and then the defense
20 will have an opportunity to make a closing, and then the
21 State will have an opportunity to make their final
22 remarks.

23 So, Ms. Hyde, the floor is yours.

24 MS. HYDE: Thank you, Judge.

25 Ladies and gentlemen of the jury, thank you

1 for your service as jurors this week. Thank you for
2 your patience with us during these difficult times, and
3 thank you for your attention and thoughtful
4 consideration of the evidence in this matter.

5 At the beginning of this trial the State set
6 out to prove that the defendant, Edward Allen committed
7 Count 1, sexual assault; Count 2, sexual assault,
8 Count 3, indecent exposure; or in the alternative to
9 Count 3, Count 4, indecent exposure. The State has done
10 this.

11 Throughout this entire case the defendant has
12 tried to muddy the waters on matters unrelated to the
13 elements of each offense the defendant has been charged
14 with. The defendant has tried to convince you that Joey
15 Escobar, a now 13-year old 7th grader, has created this
16 entire narrative to get out of going to work. Because
17 he would rather be a kid during the summer, Joey falsely
18 accused his Uncle Ed of one of the most abhorrent acts
19 imaginable. This is preposterous.

20 In jury selection we talked about not checking
21 your common sense if you were sworn to the jury.

22 The defendant spoke to you about lies, about
23 children lying to protect their own self-interests. The
24 defendant laid the groundwork to convince you later on
25 that Joey Escobar got trapped in a lie and had to stick

1 with it or he would get in trouble. Think about that.

2 Really think about it.

3 Children lie, everyone knows that. The State
4 is not denying that. Children lie about eating candy
5 before dinner. Children lie about tracking mud into the
6 house; blame the dog, blame a sibling. But to say that
7 Joey Escobar created a lie of this magnitude, a lie that
8 ultimately subjected him to the reality of having to
9 tell his mother, tell his family members, tell multiple
10 members of law enforcement, tell a doctor, tell a
11 counselor, tell prosecutors and come in here and tell a
12 room full of strangers that the defendant molested him,
13 makes no sense.

14 The risk to Joey, the fallout, the
15 embarrassment, the shame, the trauma that he will have
16 to deal with for the rest of his life is real. It is
17 real and it is not going away.

18 You heard testimony that this matter has torn
19 the family apart; that Cheri was close to her sister and
20 her niece and her great nephew before this, that each
21 side of the family still struggles. It is against
22 reason and common sense that Joey would have fabricated
23 something like this to get out of a job he did not even
24 have to do.

25 During opening statements I asked you to focus

1 on motives as you listened to the testimony in this
2 trial. You heard from Dawn that Joey was never required
3 to work, you heard that they were excited at the
4 prospect of Joey having a job, learning new skills,
5 having a possible male influence in his life, a father
6 figure. But Joey wasn't required at any point to keep
7 this job. He could have quit at any time. You heard
8 that from Dawn and you heard that from Joey.

9 Joey told you that he enjoyed having spending
10 money, but he was never required to work to help his mom
11 pay bills, to pay for groceries; that he bought his own
12 haircuts because he kind of liked the independence.
13 Joey told you that he would have 100 percent liked to
14 keep this job if the defendant had not molested him.

15 Why, then, would Joey make up such a massive
16 tale to get out of a job he doesn't have to keep in the
17 first place; a job he enjoyed. Joey did not want to go
18 to work any more because his uncle made him
19 uncomfortable. His untaught TOEKD to hem open a
20 permanent mass base and female genitalia.

21 Joey was able to put up with some of the
22 conversation to keep the job, but things were getting
23 worse and worse for Joey. His uncle, when no one was
24 around, made these inappropriate conversations come to
25 fruition by masturbating Joey on two occasions, and by

1 exposing his penis to Joey, showing what a real penis
2 looks like.

3 The defendant is the one with a motive. That
4 makes sense. A motive to deny these charges, a motive
5 to paint Joey and his mother as liars to escape
6 accountability for what he did.

7 The defendant, this entire trial, has focused
8 on what he has categorized as glaring inconsistencies.
9 That Joey at one point said he was erect and ejaculated
10 when the defendant molested him; and then at another
11 point he did not have an erection or ejaculate.

12 The defendant has capitalized on a child's
13 inability to fully understand adult sexual acts. The
14 defendant has browbeaten each one of the State's
15 witnesses on the fact that Joey must be lying because he
16 could not accurately explain what his body was doing
17 when an old man molested him.

18 We do not live in a society that has an
19 expectation that a 12-year old child will accurately
20 describe sexual conduct that they have no real
21 understanding of to begin with.

22 Joey testified that he knew what some of the
23 stuff was because of a 5th grade sexual education class.
24 That was the breadth of his knowledge.

25 The defendant has been so utterly pedantic

1 about extraneous details about this trial that it is
2 surprising that Joey and Dawn did not get cross-examined
3 about the fact that Joey said he got chicken nuggets and
4 french fries, and Dawn said he got french fries and a
5 milk shake.

6 The law does not require you to find that Joey
7 had an erection or not. The law does not require you to
8 find that Joey ejaculated or did not. The law requires
9 you to find that on two occasions when Joey was in the
10 6th grade, an old man touched his penis knowingly. Joey
11 testified that on two occasions the defendant took him
12 to a bathroom with no surveillance, pulled his pants
13 down and attempted to masturbate him, attempted to give
14 him an erection. Joey testified directly that it was
15 loud when this was happening.

16 The law requires you to find that an old man
17 purposely or knowingly exposed his penis to a child.
18 The old man knew the exposure would likely cause alarm
19 or affront; that it was an attempt to abuse, or
20 humiliate, or harass, or degrade the child.

21 Joey testified that he was shocked after the
22 defendant showed him his penis. Joey had trouble
23 articulating his feelings on the stand. He did his best
24 to explain how he felt, but was unable to state a
25 statutory word: Abuse, humiliate, harass or degrade.

1 Relevant synonyms for the word harass are
2 intimidate, tease, disturb. Relevant synonyms for the
3 word humiliate are abuse, shame, demean. Relevant
4 synonyms for the word abuse are violate, victimize. And
5 relevant synonyms for the word degrade are demean,
6 belittle, diminish.

7 The defendant showed Joey his penis so that
8 Joey knew what a real penis looks like. That Joey was
9 not able to accurately describe each word in the statute
10 does not mean he did not feel any of those things. Joey
11 told you that he was shocked. He didn't really know how
12 to react; he didn't really know what to do. He was
13 uncomfortable. Shock, alarm and affront are all the
14 same.

15 This is another one of those situations where
16 you do not have to abandon your common sense. You were
17 just instructed that you are permitted to infer a mental
18 state from what the defendant does and says, and from
19 all the facts and circumstances involved.

20 On what planet would a grown man show a child
21 his penis without causing some sort of affront or alarm.
22 The defendant cannot deny that he was unlikely to cause
23 affront or alarm to his great nephew. He cannot deny
24 that it was in an attempt to abuse, or humiliate, or
25 harass, or degrade Joey Escobar.

1 Ed Allen used inappropriate conversations to
2 begin priming Joey for the later assault. Ed Allen used
3 inappropriate sexual conversation to see how far he
4 could push, to see just how far he can get, to see if
5 Joey would tell, to see just how much he could exploit
6 Joey's vulnerability. When Joey said nothing, the
7 defendant took it a step further and molested him.

8 Joey has been consistent where it matters. He
9 has consistently disclosed that some time during his
10 work for the defendant, when he was in the 6th grade and
11 12 years old, the defendant took him to the bathroom,
12 got him alone and masturbated him on two occasions; that
13 he the defendant chose to do this on Saturdays.

14 There has been no evidence presented that
15 contradicted Joey's testimony that the shop was closed
16 to the public on Saturdays. He has consistently
17 disclosed that on one occasion when Joey was 12 years
18 old, the defendant exposed his penis to him.

19 The law does not require at any point that
20 Joey Escobar know a definitive date and time. The law
21 only requires that the time and place of the offense be
22 stated as definitely as can be determined. This is why
23 cases are permissibly charged as on or about.

24 The testimony you heard in the defendant's
25 case in chief was self-serving, offered nothing of

1 substance, and was provided by people with the only true
2 motives to deny what happened. Cheri Allen, the
3 defendant's wife, Tara Kulesa, the defendant's employee
4 and renter, and the defendant himself.

5 The only thing Tara provided was that she
6 didn't see Joey shave the defendant. Well, big whoop.
7 Tara told you she didn't work on Saturdays when the
8 abuse happened. Tara's employment with the defendant is
9 her only source of income. The defendant puts a roof
10 over her head.

11 You heard from Cheri Allen that she and the
12 defendant are better as a team. The defendant cannot do
13 the business books without her. She testified that she
14 loves her husband. She said she likes to do the books
15 on Saturdays, a convenient day to pick; but that was it.
16 Not how many Saturdays, not when, nothing; just that she
17 does the books on Saturdays. But admitted it was in a
18 separate office away from the bathroom.

19 Sadly, their business is in crisis. The
20 defendant needs Cheri and Cheri needs him.

21 Cheri further testified that she lost all
22 train of thought in time when these allegations came
23 out. Her memory about fine details and the accurate
24 description of time lines have been diminished by this.
25 She even testified she was not confident in her answers

1 about timing.

2 She explained Dawn is prompting Joey to tell
3 his story during the family meeting. There was no
4 explanation to that statement, just that Dawn prompted
5 Joey approximately three times. Is that he outside of
6 the realm of possibility that prompting was really
7 encouragement? That Joey Escobar had finally told his
8 mother what had been happening to him, then had to tell
9 more family members right after this, a situation no
10 12-year old should have to face.

11 Prompting of a mother to assist her child in
12 telling his family members sounds a lot like supporting
13 and encouraging the child to be strong and let the
14 family know what happened.

15 A whirl wind ensued, and that Dawn and Joey
16 did their best to navigate the fallout is somehow
17 indicative of them randomly colluding to make up a story
18 that has torn their previously tight-knit family apart.

19 Then it was painted as if the family wasn't
20 going to call the police at all, that they were going to
21 just let this slide, that Cheri had to call the police
22 because the family was just sitting there.

23 Dawn and Joey both testified in this trial.
24 Their participation in the prosecution of the defendant,
25 their testimony in this trial is not the reflection of a

1 family who is going to let this slide.

2 The defendant even spent time victim blaming
3 Joey Escobar. He cross-examined Dawn Escobar about the
4 fact that Joey has a cell phone, that he could have
5 called 911 at any time. That a child who has been
6 exposed to one of the most traumatic experiences
7 imaginable would have the understanding and wherewithal
8 to just pick up the phone, while he was at work, and
9 dial 911; that because he did not, he must be lying.

10 Then you heard from the defendant. He waived
11 his right to remain silent. He took the stand and he
12 was led through a short series of leading questions.
13 Did you at any time ask Joey Escobar to show you his
14 penis? No. Did you at any time ask Joey Escobar if you
15 could suck his penis? No. Did you at any time ask Joey
16 Escobar about the color of come, of sperm? No.

17 And as easy as that, after seeing all the
18 evidence, hearing all the testimony and telling his
19 story at the end, he gets to just say no.

20 The defendant testified that he loved and
21 cared about Joey at one point. The State has showed
22 that the defendant perhaps loved Joey too much; cared
23 about him too much; that he wanted to masturbate him.
24 He wanted to show him what a real penis looks like.

25 The State has showed that the defendant did

1 just that when Joey Escobar was 12 years old.

2 The defendant has suffered a bad belly,
3 depression, stress, weight loss since Joey had the
4 courage to tell people what the defendant did to him.
5 The defendant's ailments are nothing compared to what
6 Joey Escobar will have to face for the rest of his life.

7 The State asks you to deliver a verdict
8 consistent with the evidence that was presented to you
9 and find the defendant guilty.

10 THE COURT: Mr. Kotter?

11 MR. KOTTER: Yes, Your Honor.

12 Morning, ladies and gentlemen of the jury.
13 Here we are. Its been a long week, and appreciate your
14 service. This is, as I said in the beginning, one of
15 the most difficult types of cases to be on.

16 Can you all hear me? Okay.

17 Like I said, this is one of the most
18 difficult, if not the most difficult type of case to be
19 on. A child or children are involved. Very emotional.
20 And at the conclusion of all of these types of cases,
21 defense attorneys and the defendant always look like
22 horrible, horrible people. We are not; and Ed Allen is
23 not a horrible person and he's not guilty of this.

24 I struggled last night, in preparing this
25 closing argument, more than I ever struggled with any

1 interviewed the person who called the police, my
2 client's wife. She was the complainant that called the
3 police. They didn't talk to her.

4 The alleged facts have been changed over and
5 over and over again in testimony. You have heard it, I
6 have now recounted it to you.

7 The State wants you to not pay attention to
8 the facts. Look at this hand, don't look at that hand.
9 Facts matter. Jury instruction number 5, please read it
10 over and over again. Jury instruction number 5 tells
11 you all about judging the credibility of witnesses, and
12 that's what this case is about. My client did not do
13 this. Please find him not guilty on all charges.

14 THE COURT: All right, thank you.

15 Ms. Hyde.

16 MS. HYDE: Ladies and gentlemen, I will be
17 brief. You have all been very alert and conscientious
18 in your job here this week.

19 The only two people who know what happened are
20 Joey Escobar and the defendant. The defendant just went
21 through the testimony of trial and cherry-picked and
22 slightly altered what witnesses said, misquoting them at
23 some points.

24 Joey Escobar has consistently told us that on
25 two occasions his great uncle touched his penis and on

1 one occasion supposed himself to him. There are no
2 pictures, there are no videos, because molestation is
3 not a spectator sport.

4 The defendant went through a lot of extraneous
5 scales unrelated to the elements of the offenses. I
6 urge you to pay close attention to your jury
7 instructions, because focusing on those details will
8 take away your attention from the elements.

9 They have planted reasonable doubt on details
10 immaterial to your job of focusing on the elements as
11 outlined in your jury packets.

12 At the beginning of this case, in opening
13 statements, the defendant categorized Dawn and Joey's
14 family unit as horribly dysfunctional, and again brought
15 it up in closing that Dawn was lying about having a good
16 relationship with her mother because of an eight year
17 old Facebook post when Oscar, their father, was still in
18 their life. Dawn was very candid that once Oscar was
19 removed and was no longer controlling them, that her
20 relationship with her mother improved.

21 The defendant spent a lot of time putting sort
22 of emphasis and buzz words on the jury instructions and
23 focusing on those, again muddying the waters, as the
24 State has previously said. They told you that the
25 defendant is not a bad person and that defense attorneys

1 are not bad people either.

2 Your job here is not to judge if the defendant
3 or his attorneys are bad or good people. Rather, your
4 job is to find if the defendant is guilty of the
5 offenses with which he has been charged beyond a
6 reasonable doubt.

7 The State is confident that you will read your
8 jury instructions, and although you are all tired, you
9 will remain alert and conscientious and that as you have
10 sat here and listened to all of the testimony this week,
11 you will weigh what people have said, you will evaluate
12 their motives, their biases, their prejudices, and that
13 you will focus on the elements of each offense.

14 Joey Escobar has been credible and consistent
15 on the things that matter, ladies and gentlemen. You
16 have more than enough in front of you to find the
17 defendant guilty beyond a reasonable doubt on the
18 elements of the offenses. Thank you.

19 THE COURT: All right. Thank you, Ms. Hyde.

20 Ladies and gentlemen, now is the time where I
21 will release the alternate jurors. There are two
22 alternates. We were wanting to make sure that we had
23 enough people present in order to get through a
24 week-long trial with a day break in the middle during
25 COVID 19. So I appreciate that the alternates were