No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES,
Respondent,

v.

WILLIAM GAUDET,
Defendant, Petition.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES

COURT OF APPEALS FOR THE FIRST CIRCUIT

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI

Submitted October 29, 2019 by:

Peter J. Cyr (88045)
Attorney for Appellant
Law Offices of Peter J. Cyr
85 Brackett Street
Portland, ME 04102
(207) 828-5900
peter@peterjcyrlaw.com

United States Court of Appeals
For the First Circuit

No. 18-1396

UNITED STATES,

Appellee,

v.

WILLIAM GAUDET,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. George Z. Singal, U.S. District Judge]

Before

Howard, Chief Judge,
Thompson and Barron, Circuit Judges.

Peter J. Cyr, with whom Law Offices of Peter J. Cyr was on brief, for appellant.

Renee M. Bunker, Assistant United States Attorney, Appellate Chief, with whom Halsey B. Frank, United States Attorney, was on brief, for appellee.

August 1, 2019

BARRON, Circuit Judge. In 2017, William Gaudet ("Gaudet") was convicted, after trial, in the United States District Court for the District of Maine for federal sex offenses. He was sentenced to life imprisonment. Gaudet now challenges his conviction and sentence on appeal. We affirm.

I.

Gaudet was indicted on December 14, 2016, on one count of Transportation of a Minor with the Intent to Engage in Criminal Sexual Activity, 18 U.S.C. § 2423(a), and one count of Travel with the Intent to Engage in Illicit Sexual Conduct, 18 U.S.C. § 2423(b), in relation to allegations made by his daughter, T.G. Specifically, she testified at trial that he sexually abused her during a 2010 trip to Maine that he took with her and other family members and during a 2010 trip that he took with her and other family members to the Great Wolf Lodge in Pennsylvania.

At his trial -- which took place between November 13, 2017, and November 16, 2017 -- the government relied, in part, on recorded testimony given by Gaudet's other daughter, Jenny, from a separate trial,[1] which was admitted in evidence over Gaudet's motion to exclude. In that recorded testimony, Jenny stated that Gaudet had, on two separate occasions during her childhood, abused her in a manner similar to the abusive conduct described by T.G.

[1] Jenny passed away prior to the instant case and was therefore unable to testify in person.

The government also introduced evidence of Gaudet's conviction for sexually abusing Jenny that resulted from that separate trial.

At the close of the government's case, Gaudet moved for judgment of acquittal under Federal Rule of Criminal Procedure 29. The District Court denied that motion. Gaudet renewed his motion after the close of all evidence. The District Court again denied his motion. The jury found Gaudet guilty of both counts against him.

On May 1, 2018, the District Court sentenced Gaudet to life imprisonment on Count One and 360 months of imprisonment on Count Two. In doing so, the District Court applied the United States Sentencing Guidelines enhancement for obstruction of justice, see U.S.S.G. § 3C1.1, which increased Gaudet's base offense level ("BOL") under the guidelines by two levels. According to the District Court, the enhancement for obstruction of justice was warranted because Gaudet had "deliberately [given] false testimony . . . involv[ing] a material matter [i.e. whether he had sexually abused T.G.] and the testimony was not a result of any mistake or faulty memory and was thus willful." Gaudet timely objected to the District Court's application of the sentence enhancement, and the District Court overruled that objection. Gaudet then filed this timely appeal.

II.

Gaudet first contends that the District Court erred in denying his Rule 29 motion because the evidence was not sufficient to support his two convictions. We review the denial of a Rule 29 motion for judgment of acquittal de novo. United States v. Gómez-Encarnación, 885 F.3d 52, 55 (1st Cir. 2018). "[W]e must affirm unless the evidence, viewed in the light most favorable to the government, could not have persuaded any trier of fact of the defendant's guilt beyond a reasonable doubt." Id. (citing United States v. Acevedo, 882 F.3d 251, 258 (1st Cir. 2018)).

The government's case depended in substantial part on the credibility of the testimony of T.G., who testified at trial that Gaudet sexually abused her while she resided with him in Stoneham, Massachusetts between 2008 and 2010, that he sexually abused her during the 2010 family trip to Maine, and that he sexually abused her during the 2010 trip to the Great Wolf Lodge in Pennsylvania. Gaudet points, however, to what he contends are features of her account that so undermine her credibility as to make it unreasonable for a jury to have credited it.

Gaudet emphasizes in particular that T.G. did not disclose that she had been sexually abused by Gaudet until four years after the alleged abuse occurred; that she did not disclose the abuse to her mother until after her sister, Jenny, told her mother that she suspected that Gaudet had abused T.G. as a child;

and that she denied that the abuse occurred when questioned by her teacher. Additionally, Gaudet argues that T.G.'s account of her abuse at trial varied from the account that she provided during the first of her two recorded interviews with a social worker in 2014. In particular, Gaudet highlights the fact that, in that first interview, T.G. stated that Gaudet had never penetrated her during any of the alleged abusive conduct, while she stated during her second interview, as she then also testified at trial, that Gaudet had both penetrated her and forced her to perform oral sex on him while they were in Maine.

In reviewing a challenge to the sufficiency of evidence, however, "[i]t is not our role to assess the credibility of trial witnesses or to resolve conflicts in the evidence[;] instead we must resolve all such issues in favor of the verdict." United States v. Hernandez, 218 F.3d 58, 66 n.5 (1st Cir. 2000). And, when T.G.'s testimony is viewed in that verdict-friendly light, as well as in the context of the evidence as a whole, the aspects of the record that Gaudet highlights do not require the conclusion that her statements "could not have persuaded any trier of fact of the defendant's guilt beyond a reasonable doubt." Gómez-Encarnación, 885 F.3d at 55 (quoting Acevedo, 882 F.3d at 258).

T.G.'s basic story remained unchanged from her first recorded interview, to her second, to her testimony at trial. In each instance, she recounted that her father sexually abused her

while she lived with him in Massachusetts, that he sexually abused her on their family trip to Maine, and that he sexually abused her again on their subsequent trip to the Great Wolf Lodge.

Moreover, the government provided expert testimony from Dr. Ann Burgess -- an expert in the behavior of domestic and sexual assault victims -- in which she testified that delayed disclosures are "[v]ery common" in abuse victims and stem from the way the brain processes, stores, and recalls traumatic experiences. Thus, the government introduced evidence that a reasonable juror could credit as offering a ready explanation for what Gaudet characterizes as the inconsistencies in T.G.'s accounts over time concerning his abuse.

Gaudet also argues that, in light of the "inconsistencies" in T. G.'s accounts that we have just considered, her testimony fails to provide a supportable basis for a rational juror's finding of guilt because of the testimony of his son, Matthew Danner. He points out that, at trial, Danner testified that he was sleeping near T.G. during both the Maine and Great Wolf Lodge vacations and that he was not aware of any of the abusive conduct that allegedly occurred. Gaudet contends that, if T.G.'s allegations were true, then Danner would have been awoken by the noise and would have been aware of what occurred.

But, Danner testified that he was a "heavy sleeper" and may have had difficulty waking even if there were nearby

disturbances. Thus, Danner's testimony hardly provides a basis for concluding that no reasonable jury could have credited T.G.'s testimony concerning the abuse that she endured.

Wholly apart from Gaudet's challenge to the credibility of T.G.'s testimony, he also contends that the evidence was insufficient for a different reason. He notes, rightly, that both 18 U.S.C. § 2423(a) and 18 U.S.C. § 2423(b) require that the government prove that the defendant traveled "with intent to engage in" the alleged sexual conduct. 18 U.S.C. §§ 2423(a), 2423(b). He then argues that, even if T.G.'s testimony sufficed to permit a reasonable juror to find that he had sexually abused her during the Maine and Great Wolf Lodge trips, the government failed "to present sufficient evidence relating to [his] intent . . . while traveling/transporting in interstate commerce." He bases that contention largely on the fact that he testified at trial that his sole intent in engaging in such travel was to take his children whale watching in Maine and to the Great Wolf Lodge in Pennsylvania.

The intent element of these offenses, however, requires proof only that "criminal sexual activity [was] one of the several motives or purposes . . . not a mere incident of the trip or trips, but instead was at least one of the defendant's motivations for taking the trip in the first place." United States v. Tavares, 705 F.3d 4, 17 (1st Cir. 2013) (quoting United States v. Ellis,

935 F.2d 385, 390 (1st Cir. 1991)) (alteration in original) (emphases added). Notwithstanding Gaudet's self-serving testimony concerning what he contends was his innocuous intent in traveling to Maine and the Great Wolf Lodge, a jury could have reasonably found from this record that he undertook such travel with the additional purpose of engaging in the sexual abuse that T.G. alleged occurred.

First, the government presented evidence from T.G. that Gaudet had abused her repeatedly at their home in Stoneham, Massachusetts before the interstate travel underlying the two offenses ever occurred. See Ellis, 935 F.2d at 391 (noting that evidence of other instances of sexual abuse between the defendant and the victim "is relevant on the issue of the purpose or intent of the transportation"). Second, the government presented testimony from T.G. that Gaudet abused her during both the family trip to Maine and the trip to the Great Wolf Lodge. Cf. United States v. Abrams, 761 F. App'x 670, 677 (9th Cir. 2019) ("Where sexual misconduct occurs both before and after crossing state lines, [a] rational trier of fact could have found that one of the dominant purposes [of the interstate transportation was] immoral, sexual purposes." (alterations in original) (citation omitted)); United States v. Al-Zubaidy, 283 F.3d 804, 809 (6th Cir. 2002) (opining that evidence of "what actually happened" is relevant to the questions of whether a defendant traveled interstate with the

intent to harm (quoting Washington v. Davis, 426 U.S. 229, 253 (1976) (Stevens, J., concurring))). Finally, the government presented evidence of Jenny's testimony from Gaudet's prior trial, during which she accused him of earlier abusing her in precisely the same manner as T.G. alleged he had abused her on the trips. See United States v. Raymond, 697 F.3d 32, 38-39 (1st Cir. 2012) (holding that one type of evidence probative of intent is evidence that the defendant committed an earlier crime that "bore a strong resemblance to the charged conduct"). In the face of this evidence, a jury was not obliged to take Gaudet at his word about the innocence of his intent.

III.

Gaudet also contends that, even if the evidence was sufficient to support the convictions, they still may not stand, due to evidentiary errors that the District Court committed. In particular, he challenges the District Court's decision to admit, over his motion to exclude, Jenny's testimony from the earlier trial and to admit into evidence his conviction from that trial.

"This Court reviews a district court's evidentiary rulings for abuse of discretion . . . ." United States v. Sweeney, 887 F.3d 529, 537 (1st Cir. 2018). Under that standard, we will reverse "only if the Court is 'left with a definite and firm conviction that the court made a clear error of judgment.'" Id.

(quoting United States v. Joubert, 778 F.3d 247, 253 (1st Cir. 2015)).

We start with the District Court's decision to admit Jenny's testimony. Gaudet does not dispute the District Court's determination that Jenny's testimony was admissible -- insofar as its admission would not violate Federal Rule of Evidence 403 -- pursuant to Federal Rules of Evidence 413 and 414.[2] Rather, he contends only that the admission of that testimony did violate Rule 403 because it was unduly prejudicial.

We have consistently held, however, that there must be more than mere prejudice for a court to exclude evidence under Rule 403. Instead, under a Rule 403 inquiry, a court must find that the challenged evidence was "unfairly prejudicial" and that such unfair prejudice "substantially outweighed" the evidence's probative value. Sweeney, 887 F.3d at 538 (emphasis added); see

[2] At oral argument, Gaudet did raise for the first time a contention that his indictments under § 2423(a) and § 2423(b) did not constitute "accus[ations]" of sexual assault within the meaning of Rule 413. We have not previously addressed whether charges under § 2423(a) or § 2423(b) constitute accusations of sexual assault within the meaning of Rule 413. There is, however, precedent to support the conclusion that such charges do constitute such accusations, though this precedent does not directly address the relevant text of the Rule. See, e.g., United States v. Batton, 602 F.3d 1191, 1195-96 (10th Cir. 2010). But Gaudet conceded that this argument was not raised, at least in any clear way, in his briefing to us. Accordingly, we treat that argument as waived. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

also id. at 539 (concluding that even though the challenged evidence was "surely prejudicial," it was not "unfairly prejudicial such that it violated [Rule 403]"); United States v. Rodriguez-Estrada, 877 F.2d 153, 156 (1st Cir. 1989) ("By design, all evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided."). Our Court has defined unfair prejudice as "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Sweeney, 887 F.3d at 538 (quoting United States v. Jones, 748 F.3d 64, 70 (1st Cir. 2014)).

The District Court's balancing of the probative value of evidence as compared to its tendency to unfairly prejudice the defendant is entitled to great weight. Id. at 537-38. Thus, "[o]nly rarely -- and in extraordinarily compelling circumstances -- will we, from the vista of a cold appellate record, reverse a district court's on-the-spot judgment concerning the relative weighing of probative value and unfair effect." Freeman v. Package Mach. Co., 865 F.2d 1331, 1340 (1st Cir. 1988).

Applying this past guidance here, we conclude that the District Court did not abuse its discretion in ruling that the prejudicial impact of Jenny's testimony -- which was considerable -- did not "substantially outweigh" the testimony's probative value. Jenny's testimony was, after all, highly probative of Gaudet's guilt in multiple ways.

First, Jenny's testimony was directly probative of Gaudet's intent in traveling to Maine and the Great Wolf Lodge. As stated previously, both § 2423(a) and § 2423(b) require that the government prove beyond a reasonable doubt that the defendant traveled "with intent to engage in" the alleged sexual conduct. 18 U.S.C. §§ 2423(a), 2423(b). We have previously held that one type of evidence probative of such intent is evidence that the defendant committed an earlier crime that "bore a strong resemblance to the charged conduct." Raymond, 697 F.3d at 38-39. Here, Gaudet's daughter, T.G., accused him, in part, of molesting her as a young child by bringing her into his bedroom while she slept, undressing her, and rubbing her inappropriately. In the evidence that Gaudet now challenges, Jenny, Gaudet's other daughter, accused him of molesting her in precisely the same manner: he transported her across state lines to his home in New Hampshire, she fell asleep on the couch, he carried her into his room, he undressed her, and he proceeded to rub her inappropriately until she awoke.

Second, Jenny's testimony was probative because it helped to establish the credibility of T.G.'s testimony. Indeed, much of Gaudet's strategy at trial involved discrediting T.G.'s credibility by highlighting inconsistencies in her testimony. The evidence of Jenny's testimony, therefore, was probative because the near identical account of abuse that she offered helped to

corroborate T.G.'s allegations by illustrating that his other daughter had leveled nearly identical allegations against Gaudet previously. See Joubert, 778 F.3d at 254 ("The uncharged child molestation testimony was probative of [the victim's] veracity because it corroborated aspects of [the victim's] testimony, particularly the nature of the abuse and [the defendant's] modus operandi in approaching his victims.").

It is true that the abuse that Jenny described in her recorded testimony occurred several years before the abuse that T.G. described at trial. See Raymond, 697 F.3d at 39 n.5 (describing the importance of the "temporal proximity" between two unrelated assaults as it pertained to the defendant's intent to commit the more recent assault). But Gaudet does not argue that the challenged evidence was improperly admitted because the abuse that Jenny described occurred too long ago. And given the nearly identical nature of the allegations included in Jenny's testimony and those provided by T.G. at trial, the time gap between the two incidents does not in and of itself render it an abuse of discretion for the District Court to have concluded that the testimony was admissible under Rule 403's unfairly prejudicial standard.

In pressing his case under Rule 403, Gaudet relies chiefly on Martinez v. Cui, 608 F.3d 54 (1st Cir. 2010). But, there we merely upheld a District Court's exercise of discretion

to preclude the admission of testimony concerning allegations of a defendant's past sexual abuse on the ground that they were too different from the allegations of sexual abuse for which the defendant was being tried. Id. at 60-62. Thus, Martinez provides no support for concluding that the District Court was required to exclude Jenny's testimony of Gaudet's sexual abuse, when that testimony alleged abuse nearly identical to the kind for which he was charged.

We turn, then, to Gaudet's challenge to the District Court's decision to admit the evidence of his conviction. But, Gaudet does not explain why, if Jenny's testimony was admissible under Rule 403, the admission of the conviction would not have been. We thus reject this challenge as well. See United States v. Majeroni, 784 F.3d 72, 75-76 (1st Cir. 2015) (considering similar factors to those relied on here to determine that the District Court did not err in admitting evidence of a prior conviction of child molestation); Sweeney, 887 F.3d at 538-39 (admitting evidence of a prior assault and battery conviction in a child pornography case).

IV.

We come, then, to Gaudet's challenges to his sentence. We review sentences imposed under the guidelines for abuse of discretion. United States v. Velez-Soto, 804 F.3d 75, 77 (1st Cir. 2015). Under this standard, we review factual findings for

clear error and the District Court's construction of the guidelines de novo. Id.

First, Gaudet challenges the District Court's application of a two-level sentence enhancement for obstruction of justice under § 3C1.1 of the Guidelines. U.S.S.G. § 3C1.1 (recommending a two-level sentence enhancement in cases where "the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice"). Gaudet argues to us -- as he did below -- that such an application was improper, as there was no indication that he "willfully" provided false testimony. For that reason, Gaudet contends, the District Court's perjury determination amounted to little more than a conclusion that the defendant "disagree[d] with the Government's case" and the jury's ultimate verdict.

Gaudet is right that, to apply the § 3C1.1 enhancement, the District Court was required to make "independent findings necessary to establish" willfulness. United States v. Dunnigan, 507 U.S. 87, 95 (1993). But, the District Court expressly stated that Gaudet had perjured himself at trial because, in the District Court's view, "the defendant deliberately gave false testimony denying the abuse . . . and the testimony was not a result of any mistake or faulty memory and was thus willful." Given that the District Court was well-positioned to assess the defendant's credibility independent of the jury's verdict or the government's

evidentiary showing, see United States v. Shinderman, 515 F.3d 5, 19 (1st Cir. 2008) ("Where, as here, the sentencing judge has presided over the trial, we must allow him reasonable latitude for credibility assessments [regarding perjury]."), and that the ample evidence presented at trial flatly contradicted Gaudet's assertions that he never sexually abused T.G., we find no error in the District Court's application of the obstruction of justice enhancement, see id. (noting that the "irreconcilable differences" between the defendant's testimony and that of a separate witness supported the District Court's perjury determination).

Gaudet's challenges to the reasonableness of his sentence are also unpersuasive. Gaudet first argues that the District Court did not "impose a sentence sufficient, but not greater than necessary," as required by 18 U.S.C § 3553(a). Specifically, he contends that this is so because the District Court did not appropriately consider his advanced age and the fact that he was already facing imprisonment as a result of his separate state sentence. But, the District Court expressly stressed that its aim was to impose a sentence that was "sufficient but not greater than necessary to effectuate the goals of 18 U.S.C § 3553(a)," and, in doing so, explicitly addressed Gaudet's age and existing state sentence as factors that it considered in imposing the chosen sentence. Accordingly, while Gaudet may have wished that the District Court weighed these factors differently, our job

in reviewing a District Court's sentence is not to "substitute [the defendant's] judgment for that of the sentencing court," United States v. Clogston, 662 F.3d 588, 593 (1st Cir. 2011), because "the weighing of different sentencing factors is largely within the court's informed discretion." United States v. Colon-Rodriguez, 696 F.3d 102, 108 (1st Cir. 2012) (internal quotation omitted).

Gaudet's other challenge also fails. He contends that the District Court erred by imposing its sentence without considering "the totality of the circumstances," specifically, his past abuse at the hands of his father and the fact that he spent much of his adult life caring for his grandmother and the rest of his family. But, while the District Court did not expressly address the two mitigating factors cited by the defendant, we have no reason to believe that the District Court overlooked them. Each of these aspects of Gaudet's background was expounded upon, in detail, by defense counsel during the sentencing hearing, and the District Court expressly stated that it had considered "the evidence presented at the [sentencing] hearing" and "everything [it] heard from counsel." As we have stressed previously, the District Court need not "walk, line by line, through" each of the mitigating factors that a defendant presents during sentencing. United States v. Cortés-Medina, 819 F.3d 566, 571 (1st Cir. 2016). Accordingly, "we discern no abuse of discretion in the sentencing

court's failure to acknowledge explicitly that it had mulled the defendant's arguments." Id.

V.

We, therefore, affirm Gaudet's conviction and sentence.

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	Docket no. 2:16-cr-173-GZS
WILLIAM GAUDET,	)	
	)	
	)	
Defendant.	)	

ORDER ON DEFENDANT'S MOTION IN LIMINE

Before the Court is Defendant William Gaudet's Comprehensive Motion *in Limine* Regarding Exclusion/Limitation of Evidence at Trial (ECF No. 45). For the following reasons, the Court DENIES IN PART, GRANTS IN PART, and DEFERS RULING IN PART on the Motion.[1]

I. BACKGROUND

Defendant William Gaudet is charged in a two-count indictment with Transportation with Intent to Engage in Criminal Sexual Activity, 18 U.S.C. § 2423(a), and Travel with Intent to Engage in Illicit Sexual Conduct, 18 U.S.C. § 2423(b). These charges arise from Defendant's alleged transporting of his minor daughter, T.G., between Maine and Pennsylvania in May and July of 2010 with the intent to engage in criminal sexual activity with her. Defendant has moved to limit or exclude certain evidence at trial.[2]

[1] The Court has determined that oral argument on Defendant's Motion is not necessary. See D. Me. Loc. R. 7(f).

[2] The Government represents that it *does not* intend to present at trial (1) evidence of physical or sexual abuse of J.D.G., T.G.'s mother, perpetrated by Defendant *through J.D.G.'s testimony* during its case-in-chief; (2) the testimony of J.G., Defendant's eldest daughter or his "older daughter from his first wife," during its case-in-chief; and (3) evidence of Defendant's prior conviction for sexual assault involving Jenny G., Defendant's second oldest daughter or his "second daughter from his first wife." (See Gov't Response (ECF No. 54), PageID #s 132-35.)

II. ANALYSIS

A. Testimony of T.G. Regarding Prior Incidents of Abuse

The Government intends to present testimony by the named victim about prior incidents in which Defendant subjected her to sexual abuse. Defendant asks the Court to exclude this evidence at trial because it is "not admissible under Rules 403, 404, 413, 414, or otherwise." (Def.'s Mot. in Limine (ECF No. 45), PageID # 92.) The Government persuasively provides several reasons why this evidence is admissible, including that the prior conduct is not extrinsic to the charged offenses, or, in the alternative, that the prior conduct can be introduced pursuant to Federal Rule of Evidence 404(b) as evidence of motive or intent.[3] (Gov't Response (ECF No. 54), PageID # 132-33.) However, the best support for admission of the evidence is Federal Rule of Evidence 414, which provides,

> In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.

Fed. R. Evid. 414(a).[4]

[3] Federal Rule of Evidence 404(b) provides that evidence of an uncharged "crime, wrong or other act" that is inadmissible to show a person's propensity to commit the charged crime "may be admissible [for the purpose of] proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(1), (2). Both charged offenses in this case require that a defendant transported the minor or traveled with an intent to engage in impermissible sexual conduct. See 18 U.S.C. § 2423(a) ("A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce . . . *with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense,* shall be fined under this title and imprisoned not less than 10 years or for life.") (emphasis added); 18 U.S.C. § 2423(b) ("A person who travels in interstate commerce or travels into the United States . . . *for the purpose of engaging in any illicit sexual conduct with another person* shall be fined under this title or imprisoned not more than 30 years, or both.") (emphasis added).

[4] Defendant argues for the first time in his Reply that Rule 414 does not apply because the charged offenses are not "child molestation" offenses within the meaning of the Rule. (Def.'s Corr. Reply (ECF No. 72), PageID #s 171-73.) The Rule defines "child" as "a person below the age of 14" and "child molestation" as "a crime under federal law or under state law . . . involving: (A) any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child; (B) any conduct prohibited by 18 U.S.C. chapter 110; (C) contact between any part of the defendant's body—or an object—and a child's genitals or anus; (D) contact between the defendant's genitals or anus and any part of a child's body; (E) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or (F) an attempt or conspiracy to engage in conduct described in subparagraphs (A)-(E)." Fed. R. Evid. 414(d)(1), (2). Defendant does not cite to any case law to support his argument. Considering the plain language of the Rule, this

It is well established that "Rule 414 removes Rule 404(b)'s blanket ban on propensity inferences in child-molestation cases." United States v. Jones, 748 F.3d 64, 70 (1st Cir. 2014). "This Rule 414 evidence remains subject to Rule 403's balancing between probative value and unfair prejudice." United States v. Joubert, 778 F.3d 247, 254 (1st Cir. 2015). But "district courts must apply Rule 403 with awareness that [Rule 414] reflects a congressional judgment to remove the propensity bar to admissibility of certain evidence." Martinez v. Cui, 608 F.3d 54, 60 (1st Cir. 2010) (specifically discussing Rule 415, which removes the bar to propensity evidence in civil cases involving sexual assault or child molestation). Federal Rule of Evidence 403 provides that a "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of," among other considerations, "unfair prejudice."

Applying Rule 403 to testimony by T.G. concerning prior incidents of abuse by Defendant, the Court concludes that the evidence's probative value is not substantially outweighed by a danger of unfair prejudice. To the contrary, the evidence of other incidents of abuse is highly probative—the prior incidents involve the named victim and may shed light on Defendant's motive or intent regarding the charged offenses—and any danger of *unfair* prejudice can be mitigated by a proper limiting instruction. See United States v. Majeroni, 784 F.3d 72, 75 n.3 (1st Cir. 2015) (approving this Court's use of limiting instructions when evidence of a defendant's prior conviction for

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Court readily determines that Defendant has been accused of a federal crime involving conduct prohibited by 18 U.S.C. chapter 109A, namely, aggravated sexual abuse of a child under 18 U.S.C. § 2241(c). That offense ordinarily requires that the child is younger than 12 years old, and it appears from the parties' representations that T.G. was younger than 12 at the time of the charged offenses. Furthermore, the Court does not doubt that the specific sexual contact alleged between Defendant and T.G. likely places the matter within the Rule. The Court also notes that, regarding the prior incidents of abuse, Defendant represents they are alleged to have taken place when T.G. was 6 years old. (See Def.'s Corr. Reply, PageID # 174.) For these reasons, the Court concludes that Rule 414 does apply and joins those other courts that have applied the rule in prosecutions for 18 U.S.C. § 2423 offenses. See, e.g., United States v. McGuire, 627 F.3d 622, 626-27 (7th Cir. 2010). Because the Court determines that Rule 414 is applicable, it does not consider whether the evidence of prior incidents of abuse of T.G. would be admissible in the alternative pursuant to Rule 413, which allows for the admission of evidence that a defendant "committed any other sexual assault" in a sexual assault case. Fed. R. Evid. 413(a).

possession of child pornography was admitted in evidence pursuant to Rule 414). For these reasons, the Court DENIES Defendant's Motion to the extent it seeks to exclude T.G.'s testimony about prior incidents in which Defendant allegedly subjected her to sexual abuse. This denial is WITHOUT PREJUDICE to Defendant renewing any objection to this evidence at trial.

B. Testimony of T.G. Regarding Her Observations of Physical and Sexual Abuse of J.D.G. by Defendant

The Government also intends to present a "limited amount" of testimony by T.G. regarding observations she made of physical and sexual abuse of her mother, J.D.G., by Defendant. The Government seeks to introduce this evidence "to show that it caused T.G. to fear the Defendant and explain why she did not report her own abuse for years, despite similar reports by her older sisters and the incarceration of the Defendant."[5] (Gov't Response, PageID # 134.) Defendant argues that this evidence "is not admissible under Rules 403, 404, 413, 414, or otherwise." (Def.'s Mot. in Limine, PageID # 92.)

Assuming for purposes of deciding Defendant's Motion that the presentation of such evidence would be within the ambit of Rule 413, the Court concludes, pursuant to Rule 403, that the evidence's probative value is substantially outweighed by the danger of unfair prejudice to Defendant. On the one hand, the probative value of the evidence regarding J.D.G. is relatively limited: although testimony by T.G. about her mother's abuse could help explain any unwillingness on T.G.'s part to report her own abuse, Defendant's abuse of J.D.G. is not clearly relevant to his propensity to abuse his own daughter or to his intentions in taking his daughter across state lines. On the other hand, testimony about Defendant's abuse of J.D.G. poses a clear risk of inflaming the jury against Defendant. See Jones, 748 F.3d at 71 (explaining that evidence

[5] The parties do not appear to dispute that T.G. reported her sexual abuse by Defendant several years after the abuse allegedly occurred.

can be unfairly prejudicial if it "cause[s] the jury to condemn a defendant based on passion or bias [or causes a jury who is unsure of guilt to] convict[] anyway because it believes the other-crimes evidence shows the defendant is an evildoer who must be locked up.") (footnote omitted). The Court also notes that T.G. could testify to her fear of Defendant without testifying about abuse of her mother. Given these considerations, the Court GRANTS Defendant's Motion to the extent he seeks to exclude testimony by T.G. regarding her observations of Defendant's abuse of her mother. However, the Court excludes this evidence WITHOUT PREJUDICE to the Government seeking to admit this evidence at trial in the event that Defendant references or presents evidence concerning any delay by T.G. in reporting her own abuse.

C. Evidence of Prior Sexual Abuse of Jenny G. by Defendant

Finally, the Government intends to introduce a recording or certified transcript of prior sworn testimony by Jenny G., Defendant's now deceased daughter, regarding her sexual abuse by Defendant. Defendant argues that this evidence "is not admissible pursuant [to] Fed. R. Evid. 403, 404, 413, 414, or otherwise."[6] (Def.'s Mot. in Limine, PageID # 92.) This evidence may well be admissible pursuant to Rules 413 and/or 414[7] because it goes to Defendant's propensity to engage in sexual abuse and, in particular, sexual abuse against his own daughters.[8] Furthermore, the Jenny

[6] In Defendant's Motion, defense counsel states his understanding that the Government would not be presenting certain evidence regarding Defendant's abuse of Jenny G. in its case-in-chief. (Def.'s Mot. in Limine (ECF No. 45), PageID # 92.) In its Response, the Government clarifies that it does not intend to present evidence of Defendant's prior conviction for sexually abusing Jenny G. but does intend to present Jenny G.'s sworn testimony regarding her abuse. (Gov't Response, PageID # 134 & n.2.)

[7] The Government mentions both rules and it is not entirely clear from the parties' filings whether or not Jenny G.'s abuse constituted "child molestation" within the meaning of Rule 414. See Fed. R. Evid. 414(d)(2).

[8] To the extent that the Government is proffering sworn testimony from a prior judicial proceeding in which Jenny G. was subject to cross-examination by Defendant, as the Government suggests, the hearsay exception for sworn testimony by an unavailable declarant is triggered, see Fed. R. Evid. 804(b)(1), and there is no Confrontation Clause problem.

G. evidence could conceivably be highly probative as to Defendant's intent regarding the charged offenses. However, the Court does not have enough information about Jenny G.'s testimony at this time to determine its admissibility and balance the evidence's probative value against the risk of unfair prejudice or the risk of diffusing the jury's focus on the charged offenses. See Fed. R. Evid. 403. The Court therefore DEFERS RULING on this evidence and ORDERS the Government to submit to the Court by November 1, 2017, the transcript or recording excerpts of Jenny G.'s prior testimony it would seek to admit at trial if the Court were to admit any of her prior testimony.[9] If any excerpt is provided, Defendant shall notify the Court whether he intends to seek admission of any additional portions of the testimony pursuant to Federal Rule of Evidence 106, and provide those portions to the Court, no later than November 3, 2017.

III. CONCLUSION

For the foregoing reasons, the Court (1) DENIES WITHOUT PREJUDICE Defendant's Motion to the extent it seeks to exclude T.G.'s testimony about prior incidents in which Defendant allegedly subjected her to sexual abuse; (2) GRANTS Defendant's Motion to the extent it seeks to exclude testimony by T.G. regarding her observations of Defendant's abuse of her mother, with the caveat that the Government may seek admission of this evidence at trial if Defendant references or presents evidence regarding any delay by T.G. in reporting her own abuse; and (3) DEFERS RULING on the admission of Jenny G.'s prior testimony and ORDERS the parties to submit transcript or recording excerpts of Jenny G.'s prior testimony they would seek to admit at trial, if

[9] The Court notes that both Rule 413 and Rule 414 require that the Government disclose to a defendant any witness statement or summary of expected testimony regarding evidence of a similar crime "at least 15 days before trial or at a later time that the court allows for good cause." See Fed. R. Evid. 413(b) & 414(b).

the Court were to admit any of her prior testimony, in accordance with the deadlines laid out in this Order.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 26th day of October, 2017.

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA, CRIMINAL ACTION

Plaintiff Docket No: 2:16-cr-173-GZS

-versus-

WILLIAM GAUDET,

Defendant

Transcript of Proceedings

Pursuant to notice, the above-entitled matter came on for **Sentencing** held before **THE HONORABLE GEORGE Z. SINGAL**, United States District Court Judge, in the United States District Court, Edward T. Gignoux Courthouse, 156 Federal Street, Portland, Maine on the 1st day of May, 2018 at 1:00 p.m. as follows:

Appearances:

For the Government: Darcie N. McElwee, Esquire
Assistant United States Attorney

For the Defendant: Peter J. Cyr, Esquire

Dennis R. Ford
Official Court Reporter

(Prepared from manual stenography
and computer aided transcription)

(Open court. Defendant present.)

THE COURT: Good afternoon, counsel.

MS. MCELWEE: Good afternoon, Your Honor.

MR. CYR: Good afternoon, Your Honor.

THE COURT: We are here on criminal docket 16-173, United States of America versus William Gaudet. We are here today for determination and imposition of sentence.

Counsel, if you would indicate your appearance, please.

MS. MCELWEE: Good afternoon, Your Honor. Darcie McElwee, Assistant United States Attorney for the United States.

MR. CYR: Peter Cyr. I represent William Gaudet and he is present in the courtroom, Judge.

THE COURT: Very good. And Mr. Gaudet, let me speak to you for a moment. And your name is William Gaudet; is that correct?

THE DEFENDANT: Yes. Yes, sir.

THE COURT: How old are you?

THE DEFENDANT: 50.

THE COURT: How far did you go in school?

THE DEFENDANT: GED, sir.

THE COURT: Do you read and write English?

THE DEFENDANT: Yes.

THE COURT: And have you used any drugs or alcohol in the last 24 hours?

THE DEFENDANT: No.

THE COURT: Do you understand why you are here today?

THE DEFENDANT: Yes.

THE COURT: All right. I find this defendant is competent to be sentenced. You're represented here today by your attorney, Mr. Cyr; is that correct?

THE DEFENDANT: Correct.

THE COURT: Do you authorize him to speak and act for you?

THE DEFENDANT: Correct.

THE COURT: Have you received a copy of the revised presentence investigation report?

THE DEFENDANT: Yes, I have.

THE COURT: And have you had a chance to thoroughly review it with your counsel?

THE DEFENDANT: I did.

THE COURT: Did you understand it?

THE DEFENDANT: Yes, I did.

THE COURT: All right. Mr. Cyr, other than your objection for obstruction of justice and your disagreement with the facts contained in the presentence investigation report, do you have any other

objections?

MR. CYR: No, Judge.

THE COURT: All right. And Mr. Gaudet, are you aware that these are the objections your attorney has indicated you have relative to the presentence investigation report?

THE DEFENDANT: Yes, sir.

THE COURT: And do you understand he's filed no additional objections?

THE DEFENDANT: Yes, sir.

THE COURT: And that's with your permission?

THE DEFENDANT: Yes.

THE COURT: All right. You may be seated. Mr. Cyr, with regard to the facts that you contest, and I understand you disagree with the findings of the jury, et cetera, do you have any other evidence or exhibits relevant to those facts themselves?

MR. CYR: No, Judge.

THE COURT: All right, thank you. Now, with regard to the obstruction of justice enhancement, that's the Government's burden. Let's touch on that.

MS. MCELWEE: Thank you, Judge. Your Honor, on three separate occasions during the defendant's testimony during trial in November of 2017, Mr. Cyr asked Mr. Gaudet if he sexually molested his daughter

Tessa and on those three occasions he said I did not.

Specifically, he was asked whether he sexually molested her in Stoneham, Massachusetts and the defendant said I did not. He asked did you sexually molest Tessa at the Great Wolf Lodge? Mr. Gaudet said no. He asked did you sexually molest Tessa during the trip to Maine? He said I did not.

Based on that testimony, which the jury's finding reflects was false, the Government believes the obstruction of justice enhancement is applicable.

THE COURT: Thank you. Mr. Cyr.

MR. CYR: Your Honor, William took the stand in his own defense. He testified truthfully and the obstruction of justice comes into play here in the sense that pursuant to the guidelines, he's getting points that are added to his guideline calculations for what he would suggest is his right to come and testify and say look, I didn't do this, essentially.

And I understand that the facts here are contested. I understand that the jury found Mr. Gaudet guilty. It is --

THE COURT: I think you're arguing to me that a person can disagree with the Government's case and not be committing perjury.

MR. CYR: That's correct, Judge. Clearly that

-- what was -- well, let me leave it at that, Judge. That's -- essentially we're contesting the enhancement for the obstruction of justice. Thank you, Judge.

THE COURT: All right. With regard to the objections to the facts, I find the facts amply supported in the record in this case and that objection is overruled.

With regard to the obstruction of justice enhancement, regardless of what the jury found, my feeling is that perjury was committed in each of those instances and I believe that the defendant deliberately gave false testimony denying the abuse, and that denial and false testimony involved a material matter and the testimony was not a result of any mistake or faulty memory and was thus willful, and therefore I believe the obstruction enhancement applies.

All right, counsel, what I'm thinking of in the order here is that everyone should get their exhibits into evidence so that the record is complete as far as exhibits are concerned. Your sentencing memos obviously are already on the record, as well as the attachments, which you're free to make those exhibits. Then we will deal with the restitution issue and then we will hear from the victim if she wishes to speak, and I assume the victims have been notified here?

MS. MCELWEE: They have, Your Honor.

THE COURT: And then I'll indicate what I've reviewed and then we'll hear from counsel and witnesses.

All right, Government have exhibits?

MS. MCELWEE: I do, Judge. For the benefit of the record, Judge, the Government is offering in evidence under seal Government's Exhibit D, which is a disc and it is entitled Government's sentencing exhibits.

On that disc is Government's Exhibit 1, a recording of an interview of JH on 11/9/2010. Accompanying that is a transcript of the recording of the interview and that is marked as 1-T.

Government's Exhibit 2 is on the disc. That is a recording of the interview of JH on March 2nd of 2011 accompanied by 2-T, which is a transcript of the recording of the interview on the same date.

Government's Exhibit 3 is a transcript of the trial testimony of JH and of Jenny G dated February 15th of 2012.

Government's Exhibit 4 is a recording of an interview of Jenny G on 11/19/2010, accompanied by a transcript of that recording, which is Government's Exhibit 4-T.

Government's Exhibit 5 is a recording of an interview of Jenny G dated March 13, 2011, accompanied by a transcript of that recording, which is Government's Exhibit 5-T.

And Government's Exhibit 81-A is a Cumberland County Jail incident report dated January 31, 2018.

I should note, Judge, as reflected in the list I gave you previously, Government's Exhibit 2-T is being prepared and will be supplemented on the record in the event of an appeal.

The Government offers in addition the four victim impact statements that were previously provided as courtesy copies to the Court. Those are also being moved under seal, Judge.

Government's Exhibit V-1 is the impact statement of Mary Mallach, M-A-L-L-A-C-K -- excuse me -- A-C-H. Government's Exhibit V-2 is the victim impact statement of JH. Government's Exhibit V-3 is the impact statement of Jessica Danner Gaudet -- excuse me -- Jennifer, Jennifer Danner Gaudet and Government's Exhibit V-4 is the impact statement of JG, who is a minor. I would move that all these exhibits be filed under seal, Judge.

THE COURT: Any objection, Mr. Cyr, as far as exhibit are concerned?

MR. CYR: Given that this is a sentencing hearing, my objection does not go to their admissibility, but to their weight and I will get to that further on. Thank you.

THE COURT: Those are all admitted and I'll give them the weight I believe to be appropriate.

MR. CYR: Thank you, Judge.

THE COURT: And I have received these previously. I have copies.

MS. MCELWEE: Thank you, Judge. That's all I have for evidence.

THE COURT: All right. Mr. Cyr, do you have any exhibits?

MR. CYR: Judge, I have the three exhibits that I submitted with my sentencing memorandum.

THE COURT: All right. And those are already within the knowledge of the Court and I have reviewed them.

MR. CYR: Thank you, Judge.

THE COURT: Thank you. There has been a request for restitution in this case in the sum of $10,500, with an attachment of a physician and a counselor indicating the counseling that's presently being given to the victim.

The Government is requesting that that restitution

be made part of any judgment, correct?

MS. MCELWEE: Yes, Your Honor.

THE COURT: And Mr. Cyr, the Court's required to consider that issue. Do you have any objection to that amount?

MR. CYR: Judge, I have -- I do have an objection to the amount and the objection comes in the form of the speculative nature of the amount.

THE COURT: Um-hmm.

MR. CYR: I don't believe that there are ongoing costs. So in other words, it's my understanding that TG is -- has been in counseling and is in counseling, that that is being paid for by a third-party. It's not an expense to her or her mom and I don't think any of that $10,000 has to do with past expenses or current expenses.

It's my understanding that it's all for expenses that may occur, and I have read the letter from the counselor indicating that she thought that it was likely that there would be counseling needed. The problem is we don't necessarily know exactly how much or what that is going to entail and that would be the form of my objection. Thank you.

THE COURT: Thank you. Ms. McElwee, Mr. Cyr indicates that it's the amount as being speculative is

the part of his objection; do you want to address that issue?

MS. MCELWEE: Sure, Judge. So as the Court is aware, TG is presently 16 years old and the Government must make its restitution request within the next 90 days and we're not going to know any more in 90 days than we know now in terms of what TG will need based on the trauma she's experienced as a result of the defendant's crimes.

So what we have done is, based on a fairly standard formula when dealing with situations of future counseling and prospective counseling, is we look at the facts, and TG is in all likelihood going to be covered by the current assistance she's on until -- at least until she moves out of her mother's home or is -- graduates from college, and at that time she will be in her late 20s, mid to late 20s and we asked for a mere five years of counseling.

We used the figure provided to us by her counselor of how much an out-of-pocket counseling session costs. We were incredibly conservative, I would suggest, in asking for once a month at $150 a session, that's assuming that at the time she doesn't have any insurance coverage.

And with regard to medications, we went with

another conservative approach of $25 a month for medications for a five-year period. Those two calculations together came to $10,500.

Based on the record here, I think the Court could find, taking into consideration the letters from her providers, that that's an incredibly conservative request under the circumstances. It's much more likely that TG will require counseling medication after she's 31 years old, but that was what we were comfortable with in light of the sentence we're asking for because Mr. Gaudet will be incarcerated for much of that time.

THE COURT: Thank you. Do you want to add anything else, Mr. Cyr?

MR. CYR: No, Your Honor. Thank you.

THE COURT: All right. I don't think the amount is speculative. I think it's a minimal amount. Even after TG reaches the age of 21, her life expectancy is well in excess of 50 years.

The attachment to the request for restitution indicates that the need for counseling for Post Traumatic Stress Disorder is going to be with her forever and 50 years -- that's only $200 a year to cover medication and counseling sessions and a little bit of medication for a year. It just doesn't appear to me to be speculative and I believe that's a

conservative amount.

All right, let's move -- and that issue is decided. Does anyone who's a witness, a victim or otherwise wish to address the Court? Government first. Whoever wants to speak, just identify yourself so I know who you are.

MS. JESSICA GAUDET: Jessica Gaudet.

THE COURT: Move the microphone down a little bit more. Tell me again.

MS. JESSICA GAUDET: Jessica Gaudet.

THE COURT: Go right ahead.

MS. JESSICA GAUDET: Um, it's really -- I can't -- I can't -- I can't do this. I'm really sorry, I can't.

MS. MCELWEE: Your Honor, Ms. Gaudet, as you know, has been referenced throughout the case as JH. You have previously seen her victim impact statement already. I believe it is marked as Government's Exhibit V-2, and so we would ask that you consider that given her discomfort with speaking here.

THE COURT: I understand. All right.

MS. TESSA GAUDET: Um, I'm Tessa Gaudet. Your Honor, first I'd like to thank you for giving me the opportunity to speak. I truly do believe this will help me gain some closure.

So I really have a lot to say. I really don't know where to start, so I'm going to start by asking this to my father. I don't know if you're proud of me -- um, sorry -- I don't know if you're proud of me for being so strong throughout the years of pain you've inflicted on me and my family. I don't know if you're mad at me for going through with all of this. I don't know if you even love me or if you've ever loved me, but all I do know is you have no reason to feel any emotion towards me because, um, simply you're not my father.

Yeah, you might have helped create me, but you will never, ever be my father because fathers are supposed to protect their daughters from the bad guys, except you were the bad guy and I had to fend for myself.

So Mr. Gaudet, a/k/a my father, is my worst nightmare. He's every girl's biggest fear and I think the absolute worst part about it is that he's supposed to be my dad. He's supposed to protect me from the scary monster, but instead he was the scary monster and the only person I had to protect myself most of my time was myself, and I was a little girl and he's a big man so you can probably imagine how me defending myself would have gone.

When I first opened up about what had happened to me, I went downhill. I ended up in a hospital twice. My grades were bad. I fought constantly with my mom and two brothers. I had no friends. I blamed myself for the stuff that this man had done to me, but as I started opening up more about it and talking about it, I realized that I was hopeless and that everything that had happened to me was not because of me, but because of this man I once called my father.

After starting to realize that my life is so unfair and now that I'm here, 16 years old, I realize that the way my life has turned out -- me making honor roll, being a cheerleader, wanting to pursue my life -- is all because of my mother and my two brothers and myself.

I will never, ever give this man credit that all -- that my family deserves. They love me even when I hated myself and thought all of this was my fault. I always thought that if I did something different, I could have changed the outcomes of all of this, but the truth is that Mr. Gaudet is a sick, abusive, perverted no life that put me and my family through constant hell and now he's going to pay the price for what he's done to us.

The years of abuse is going to come back and haunt

him, and not just the abuse he put me and my family through, but the abuse he put anyone through because God knows we weren't his only victims and I pray that they will heal from the internal wounds my father has inflicted on them as me and my family have.

I just want Mr. Gaudet to know that he may have -- he may have thought he was going to get away with this horrible, sick thing he's done to me and my family, but he was so wrong and because of that, he's going to pay the price.

He never got to see me go to my first dance. He never got to protect me from the people who are going to hurt me. He never got to tell me he's proud of me for any of my biggest accomplishments in my life so far. He never got to celebrate me winning first place in my cheer competition and he never got to go to my dance recitals. He never got to witness the happy tears from the first or second time I saw my number on the cheerleading tryout list showing that I made the team. He'll never see me cheer at the Friday night lights or on the court.

He'll never send me off to my first prom and he'll never see me go to college and pursue my dream of being a children's trauma therapist. He will never get to walk his little girl down the aisle and he'll never get

to meet his grandchildren and, most importantly, he will never have the unconditional love me and my family once gave him ever again and with that, I hope he realizes what he has lost.

I hope he's happy with the choices he has decided to make and I really hope that he's glad he chose abuse, alcohol and drugs over his family. I hope he's happy because I know for a fact me and my mom and my brothers are happy that we will never see him again after today, and I know I'm happy that he will never hurt someone the way he hurt us ever again.

Thank you all for listening to me and I would especially like to thank Darcie, Pam, Heather, Melody and Geo for all the help, hard work and dedication you guys have given to me.

THE COURT: All right, Ms. McElwee, do you have anyone else who wishes to address the Court?

MS. MCELWEE: Yes.

THE COURT: Go right ahead.

MS. MCELWEE: JH is going to give it another try, Judge.

THE COURT: You take your time.

MS. JESSICA GAUDET: Okay.

THE COURT: All right. This is -- your name again is Jessica Gaudet, correct?

MS. JESSICA GAUDET: Yes. Jessica Gaudet.

THE COURT: You go right ahead and take your time.

MS. JESSICA GAUDET: For years you, Mr. Gaudet, ruined my life for a long time and then I just gave you a chance one day thinking well, he isn't the man he was when I was a kid. Then I did, I gave him a chance and then just one look in his eyes I saw that he was not the person I was hoping he was gonna be.

You manipulated me, making me think that life was that sleeping around would make people like me. I had never dreamed at least -- my life has been upside down. I was a teen mom at 16. I thought it was okay to do the things I was doing because that's what I was used to with Mr. Gaudet.

He was the fun dad everybody wanted, but it was all a coverup. He has a mask, a really scary mask. Now, I really wish that we had our other sister here today to help put him away much longer, but she's right here with us and you're never ever going to hurt my sister, Tessa ever again or me.

I can't sleep. I wake up screaming. I just have a hard time dealing with it and I'm hoping this will be the last time I ever see you or hear your voice ever sounding again. Thank you so much for taking up the

time to let me talk. I'm done.

THE COURT: Ms. McElwee, anyone else?

MS. MCELWEE: That's it.

THE COURT: Thank you. Mr. Cyr, do you have anyone who wishes to address the Court other than your client?

MR. CYR: No, Your Honor.

THE COURT: All right. I've reviewed all of the exhibits, everything that's been filed with the Court. I've listened to the disc and I think that's all that's been filed and that's what I have reviewed.

Let me hear from the Government with regard to sentence.

MS. MCELWEE: Your Honor, today you will sentence William Gaudet for reprehensible abuse perpetrated on his eight-year old daughter. It is difficult to imagine a more disturbing series of crimes than that which the defendant committed against Tessa and while that conduct alone is outrageous, there is so much more to this defendant's sorted tale.

As the Court is aware, Congress has identified a broad array of factors in 3553(a) which you are called upon to consider in arriving at your sentence today. Those statutory factors include, for the record, the nature and circumstances of the offense, the history

and characteristics of this defendant, the need for the sentence to provide deterrence, respect for the law and just punishment and the need to avoid unwarranted sentencing disparities. As I mentioned in my sentencing memorandum, the Government intends to make its formal presentation on those factors now.

First, the Court is asked to consider the nature and circumstances of the offense. Your Honor, this factor alone supports a sentence within the advisory guideline range of life imprisonment. As you know, the crimes of which the defendant stands convicted merely require that the defendant intend to commit an illicit or illegal sex act when traveling interstate, but this defendant didn't just travel once from Maine to Pennsylvania and back intending to sexually abuse Tessa, and then from Maine to Pennsylvania again intending to sexually abuse her. He actually did sexually abuse Tessa.

He traumatized her those two times and countless times during those trips and before then in Stoneham, Massachusetts, at least in 3 different states for years. He also committed severe physical abuse of Tessa during and in-between the sexual assaults.

Your Honor, it goes without saying that traveling interstate to engage in illegal sex acts is a serious

crime deserving of a lengthy sentence, even if it just occurs once, but this was far more than once and the relevant conduct involved hundreds of acts committed on a young child, his child. Such a cruel, unspeakable crime warrants a sentence of life imprisonment.

The Court is also called upon to consider the history and characteristics of the defendant. The trial in this matter provided a perfect opportunity for you to truly see this defendant. As the Court will recall, the defendant spent much of his testimony boasting about himself, his intelligence, his skills, talents and successes. He dismissed Tessa's allegations with zero emotion, without any concern or sympathy.

Not only is the defendant a rapist and an abuser, but he was simply a neglectful and selfish parent who cared far more about his own bank account than his children's welfare. He took Matthew, Tessa and JG in only when it was convenient and financially lucrative for him and, of course, then he could prey on Tessa more frequently because she was trapped, forced to sleep in his bed.

The defendant's true character was revealed when he, after complaining to the courts that Jennifer was an unfit mother, gladly let his three youngest children

move to Pennsylvania with her when she agreed to abandon child support and then he only visited those children twice in seven months, and as we know, those two trips serve the basis of the two counts of the indictment of which the defendant stands convicted.

Knowing that in sentencing the defendant you will consider a balance of aggravating and mitigating characteristics, I took a great deal of time and careful consideration trying to think of any mitigating factors upon which you could be justified in showing leniency to Mr. Gaudet. I found none.

His criminal history is atrocious. His record reflects that he has emotionally, physically and sexually abused women and children throughout his life, as reflected in numerous paragraphs of the PSR and in our sentencing memorandum in which we outlined them.

He has illegally provided alcohol to 11 minors, one of whom he touched sexually. In addition, the defendant has driven intoxicated or while under suspension or revocation 13 times. He has been arrested or charged with 25 crimes in 25 years.

Off and on for at least 18 of those year, Mr. Gaudet raped and physically assaulted not one, not two, but three of his own daughters. He manipulated everyone around him to get what he wanted. His crimes

were always done in secret, in the shower, in the middle of the night. They were committed without witnesses and he banked on that.

He preyed on those closest to him, his own daughters who were accessible to him, girls who loved him, who he could control, who he could pick up and carry to his bed, and his abuse and intimidation of his daughters ensured that it would be their word against his. His treatment of his children is nothing short of monstrous, but that's not all.

There is also the horrific physical and sexual abuse he inflicted on his first wife, Mary Mallach, the mother of JH and Jenny G, whose victim impact statement you had read, and of Tessa's mother Jennifer, who was mistreated to an extreme by this defendant from whom, based on manipulation and lies, he nearly took her children forever.

Even today incarcerated at the local jail, the defendant continues to mistreat people, spewing verbal insults and bullying other inmates. Your Honor, the history and characteristics of this defendant weigh as heavily as any other factor in favor of a life sentence.

The Court also must consider the need for the sentence imposed to reflect the seriousness of the

offense, to promote respect for the law and provide just punishment. These factors are related and provide an opportunity to address the significant impact of the defendant's crimes on so many victims.

Jennifer's mental anguish at the hands of this man's crimes is extraordinary. She experiences guilt that she was unable to stop him from abusing the older girls, and guilt that she did not know about Tessa's abuse, and that weight is heavy, so heavy, and she works on it daily. But it is a burden and a trauma that she carries with her, entrenched in her life, and while she is battling it remarkably well because she's such a strong mother and woman, she fights for her children's safety, but it has taken its toll.

JH and Jenny G were in their own ways able to tell you what the defendant did to them, and the record is full of examples of the ways that his abuse affected the lives of his two older daughters, and Tessa very bravely told you herself in her own words how his crimes have impacted her life, just as Mary and JG did in their victim impact statements.

The victims here deserve the real kind of justice that comes from a life sentence. They all suffered a lifetime's worth of abuse at his hands, so just punishment supports the imposition of that sentence.

The Court must consider the need for the sentence imposed to also afford adequate deterrence to criminal conduct and to protect the public from further crimes from Mr. Gaudet, and these two factors are sometimes said to reflect the need for general and specific deterrence.

Regarding specific deterrence, the defendant has shown he is capable of unfathomable level of disregard for so many people, including his own children. He has demonstrated the capacity for cruelty and manipulation beyond comprehension with absolutely no remorse or expression of concern for anyone but himself.

When he wasn't with his children, he resorted to drinking with and preying on other minors, and make no mistake, Mr. Gaudet is a predator. Protection from the public and for these victims is necessary.

The last 3553(a) factor I will address is the need to avoid unwarranted sentencing disparities. To compare this defendant to other child sex abusers is a challenge. It is, I suggest, too rare an occurrence that a defendant should stand before you for sentencing having committed what translates to hundreds of vile sex acts on each of his three separate minor daughters, occurring over the course of approximately 18 years, starting in 1992 with JH's first memory of abuse and

ending with Tessa at the Great Wolf Lodge in 2010, and when accused, to take all three daughters to trial, never taking any responsibility, and like he had with both older daughters before, he forced Tessa to come before 12 strangers and tell the most intimate dark nightmares.

She sat in this chair, Judge, for hours being cross-examined and challenged by the defendant at the tender age of 15, terrible detailed accounts of unconscionable betrayal and pain caused by the one man she should have been able to trust the most.

The only other case which in my experience comes close is United States of America versus David Miller, who was sentenced before Judge Hornby in October of 2017 for one Mann Act violation, which followed a plea, not a trial and revealed over 13 years of sexual abuse of a stepdaughter in frighteningly similar circumstances, including physical abuse of his victim and her mother.

And in that case involving one count of conviction, following a plea with acceptance of responsibility, Judge Hornby sentenced Mr. Miller to 27 and a quarter years in prison, the top end of the advisory guideline range based on four bases for upward departure. All of those four bases are factors which

exist in this case, but which our guideline range recognizes.

Unlike in the Miller case, Mr. Gaudet did not plead guilty and still today refuses any responsibility. He took the stand in his own defense and falsely denied sexually abusing Tessa, and the conduct described in the PSR involving Tessa alone results in a life guideline range sentence -- guideline range, rather. For the conduct involving Tessa alone, even if you completely disregarded his prior conviction on Jenny G, even if you disregard the allegations of severe abuse by JH, the advisory guideline range is still life. You would be justified, Your Honor, imposing a life sentence on the conduct related to Tessa alone without any concern for sentencing disparity.

There is a wake of deception behind this defendant and his outrageous crimes against this family, but they are strong and have great professionals taking care of them and their work towards healing will take time. It could take a lifetime, and so as the Court has now imposed, we requested $10,500 in restitution.

In light of even the minimum sentence this Court must impose, there is a high likelihood that Tessa will only see a portion of that restitution figure, but she

is resilient and her mother is resourceful and the defendant gets no credit for that. He showed no mercy in his extraordinary betrayal and he has shown zero remorse.

The story of this defendant's life spent abusing others is, frankly, astonishing. We submit that engaging in this conduct that involves the most egregious way you can commit a Mann Act offense calls for the maximum statutory sentence, which is life in prison on Count 1 and 30 years on Count 2, to run concurrently to one another but consecutively to the defendant's yet undischarged New Hampshire state sentence. Thank you.

THE COURT: Thank you, Ms. McElwee. Mr. Cyr.

MR. CYR: Thank you, Your Honor. May I stand here or would you like me at the podium?

THE COURT: Any place that's convenient to you.

MR. CYR: Thank you, Your Honor. Your Honor, we are asking the Court to impose a 20 year sentence, followed by five years of supervised release. A 20 year sentence is a significant amount of time. It is the length of someone's professional career. It is essentially getting someone midway through college. It's a significant period of time that I would suggest

to you would not diminish the gravity of the offense.

Mr. Gaudet has shown and there are mitigating factors, Your Honor. He was the person who took care of his grandmother in Stoneham. He was there for 2 or 3 years taking care of her before she passed away and after taking care of her, her estate and her belongings.

The exhibit that I have submitted to you from Glen Crooker, who was a neighbor, who indicated that during that time in Stoneham that it appears, from Mr. Crooker's perspective, that Mr. Gaudet was taking care of his grandmother and taking care of his kids and working and on -- at least on the outside was doing some good things in that house and for his grandmother.

Mr. Gaudet is a hardworking individual that -- probation has indicated in the revised presentence report he has been steadily employed throughout his life. He has also used the time that he's been in the state facility in New Hampshire to gain his GED and also he had engaged in -- or was engaged in paralegal training, which he will be looking at and continuing throughout that incarceration. Actually, he just reminded me, he already graduated from the paralegal study he had been given in the state of New Hampshire. So we have a hardworking individual who has shown that

he can care for other individuals and take care of them.

Mr. Gaudet, I would suggest it's worth noting, in his childhood experienced physical and emotional abuse from his stepfather. That has been recorded and is contained in the revised presentence report. There was early exposure to very serious drug use from his brothers and stepsisters. He has experienced some very significant trauma with respect to -- both of his sisters have passed away as a result of drug use.

In that sense, Judge, he comes into the world, he comes into adulthood having somewhat of a crutch, I would suggest. Not a great childhood, physical and emotional abuse and I would ask the Court to take that into consideration.

Your Honor, as you go through the sentencing factors, I would suggest to you that 20 years is a sufficient deterrent, both a specific deterrent and a general deterrent. As I've indicated before, it is a significant period of time.

Mr. Gaudet -- we are also asking that it run concurrently with the state of New Hampshire. I believe that it's within the Court's discretion to order concurrent or consecutive sentences and I would suggest to you that it would be appropriate in this

case to run it concurrently.

This -- the way that this case unfolded is not what I would suggest to be the worst-case scenario, which is Mr. Gaudet being arrested and convicted and spending and doing a period of time in prison for a sexual abuse or a sexual assault case, and then walking out of prison after serving that term and then perpetrating the same conduct.

I would suggest to you that that would be an appropriate case -- if you look at it in that sense, it separates the conduct. You have conduct, you're punished for it, you have an opportunity for rehabilitation and then you get out and you commit the same conduct.

That is a worst-case scenario than what you have here, which is there were disclosure by Jessica, which then prompted the disclosure by Jenny. He was tried. He was acquitted with respect to the conduct as far as Jessica's concerned. He was convicted with respect to Jenny and then while he's serving that sentence in New Hampshire, TG's disclosure is made, and so there was not an opportunity for any rehabilitation. It was essentially he was in prison and then TG's disclosure came about and then this trial and now this conviction.

So for those reasons, I would suggest that the 20

year sentence, followed by the five years of supervised release concurrent to be served with New Hampshire, would be appropriate. Nothing further, Judge. Thank you.

THE COURT: Thank you, Mr. Cyr. Mr. Gaudet, as the defendant in this matter, you have the right to address the Court. You can tell me anything you'd like, including anything that may impact on your sentence. You're also free to say nothing at all. Is there anything you'd like to say to me?

THE DEFENDANT: No, Your Honor.

THE COURT: Thank you. Is there anything else from the Government?

MS. MCELWEE: Nothing, Your Honor.

THE COURT: All right. I've indicated the documents I've reviewed. I've also obviously reviewed the contents of the revised presentence investigation report, which I take into account. I take into account everything I've heard from counsel, the evidence presented at the hearing and what I've heard today. I've indicated my rulings on all disputed issues.

At this time I make the following advisory guideline calculations. I find the facts as set forth in the presentence report as amended. With regard to Count 1, base offense level is 28. Defendant is a

parent, raising it to 30. This offense involved the commission of a sexual act with sexual contact, two levels are added to 32. It was a minor, eight levels are added to 40. Defendant obstructed justice, as I indicated earlier, raising it to 42.

With regard to Count 2, base offense level is 24. Defendant is a parent, raising it to 26. Involved sexual contact, raising it to 28. A minor, raising it to 36. Again, obstruction of justice, as I indicated earlier, raising it to 38. The adjusted offense level is 32, increasing the level that brings it up to 40 -- 42 that brings it up to 44.

Because of the adjustment pursuant to Chapter 5 Part A, comment.n.2, the offense level is treated as 43. Criminal History Category is V and the guideline range for Count 1 is life. The guideline range for Count 2 is up to 30 years, which is the maximum.

The guideline range for supervised release for Counts 1 and 2 is five years to life. He's ineligible for probation. The fine range is $25,000 to $250,000. The special assessment fee of $100 is mandatory. I've already discussed the issue of restitution.

Government have any objections?

MS. MCELWEE: No, Your Honor.

THE COURT: Mr. Cyr, reserving your prior

objections, do you have any additional objections?

MR. CYR: No, Your Honor.

THE COURT: All right. In determining sentence in this case, I've determined the sentence I'm imposing is sufficient but not greater than necessary to effectuate the goals of 18 USC section 3553(a). In setting the sentence, I've carefully considered the sentencing range set forth in the advisory guidelines.

I have considered all of the factors set forth in 18 USC section 3553(a). Most important in this case, the nature of the offense, the seriousness of the offense, the personal characteristics of this defendant, the need for just punishment and the need for deterrence, as well as the need to protect the public.

It's rare in federal court where most of the cases involve dollars and cents or aren't on emotional facts to imagine that there exists in this country the type of brutality and sexual abuse that has been displayed in this case.

In reading the statement where Mr. Gaudet's two wives that I've reviewed as part of this matter, I am struck with the degree of physical violence, sexual abuse and also a sadistic delight in causing pain on a weaker individual, but it didn't end there.

We find here that we have a -- not one instance of sexual abuse of a child, multiple, which goes to the characteristics of this defendant. We have a history of sexual abuse that spanned over 15 years.

Tessa said that the purpose of a father is to protect children from bad guys, not to be the bad guy. In this case we have an individual who crossed state lines or transported a minor across state lines for purposes of engaging in the most humiliating, painful, long-lasting, virtually unbelievable series of sexual events that could happen to an eight year old, or even younger in some of these involving her sister, not committed by a stranger, but by one's own parent, a parent who helped bring that young girl into the world in this case.

I can't imagine a more serious offense absent taking someone's life, and someone might argue that even that may not be as serious. And the consequences of what occurred in this case didn't end with the end of the sexual abuse. Unfortunately, it continues as the doctors indicate, and will continue, the effects of that, throughout the young woman's life.

Mr. Gaudet, when he began his sexual abuse, would tell his daughter that they're going to play a game and if his daughter told anyone about the game, she would

lose the game. Other times, he indicated that harm might befall the mom if she told. The degree of cruelty displayed here is virtually beyond belief.

So the nature and circumstances of this offense cry out for significant punishment. The history and record of this defendant disclose a series of domestic abuse incidents, a series of offenses involving minors being provided alcohol with some physical contact by him and a series of offenses of driving after revocation, driving after suspension, which in themselves may cause one to think that they're minor crimes, but when you see them over a period of years, you're dealing with someone who doesn't care what the public thinks with regard to the law, who doesn't care what inhibitions are imposed on him by public law or morality, an individual who does what he thinks he can do, especially when he thinks he may get away with it. That's very troublesome in itself.

The need for just punishment is self-evident and what cries out from this case is the need not only to deter Mr. Gaudet, and one might say that he'll be deterred from any type of prison sentence at his age, but to deter others to the extent this type can be deterred knowing that civilization and the law will not deal kindly with this type of behavior.

One might argue, and Mr. Cyr has argued, that 20 years is a long time for someone as old as Mr. Gaudet who's still serving an underlying sentence for sexual abuse of his stepdaughter. In my view, it's not, and in my view a sentence as recommended by the Government is quite appropriate as a message that our country, our system of laws, our system of right and wrong cannot take such conduct less seriously.

Defendant will rise for sentence. This defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of life on Count 1 and 360 months on Count 2, to be served concurrently and consecutive to his sentence in New Hampshire presently being served in the Carroll County Superior Court, docket number 11-67.

I recommend to the Bureau of Prisons that he be placed at a facility that can provide sex offender treatment. Upon release from imprisonment, he shall be on supervised release, if he is ever released, for a term of life on each Counts 1 and 2 to be served concurrently.

He shall not commit any other federal, state or local crime. He shall not unlawfully possess a controlled substance. He shall refrain from any unlawful use of a controlled substance and shall submit

to one drug test within 15 days of being placed on supervised release and at least two drug tests during the term of supervision, but not more than 120 drug tests per year annually as directed by the probation officer.

He shall make restitution in accordance with law. He shall cooperate in the collection of DNA as directed by the probation officer. He shall comply with the requirements of Sex Offender Registration Notification Act as directed by the officer, the Bureau of Prisons, any state sex offender registration agency in which he resides, works, is a student or was convicted of a qualifying offense.

He shall comply with the standard conditions previously adopted by this Court and also the following additional conditions:

Number 1. He shall provide the supervising officer with any requested financial information.

Number 2. He shall report to the supervising officer any financial gains, including income tax refunds, lottery winnings, inheritances, judgments, whether expected or not, and apply them to any outstanding court ordered financial obligations.

He shall not incur new credit charges or open additional lines of credit without the supervising

officer's advanced approval.

Defendant shall submit to periodic random polygraph exams as directed by the probation officer to assist in treatment and case planning related to behaviors potentially associated with sex offender conduct. No violation proceedings will arise solely on his failure to pass a polygraph exam or on the defendant's refusal to answer polygraph questions based on 5th Amendment grounds. Such an event could however generate a separate investigation. Defendant shall pay or co-pay for such services to the supervising officer's satisfaction.

This defendant shall not associate and have verbal, written, telephonic or electronic communication with persons under the age of 18, except in the presence of a responsible adult who is aware of the nature of his background and current offense and who has been approved by the supervising officer. This restriction does not extend to incidental contact during the ordinary daily activities of public places.

This defendant shall fully participate in sex offender treatment as directed by the officer, and pay or co-pay for such services to the officer's satisfaction and shall abide by all policies and procedures of the program.

He shall participate in mental health treatment as directed by the officer until released from the program and shall pay or co-pay for such services during treatment to the officer's satisfaction.

He shall not possess or use any controlled substance, alcohol or other intoxicant and shall participate in a program of drug and alcohol abuse therapy to the supervising officer's satisfaction. This shall include testing to determine if he's used drugs or intoxicants. He shall pay or co-pay for such services during the course of treatment to the officer's satisfaction. He shall not obstruct or tamper with or attempt to obstruct or tamper with in any way such testing.

I'm imposing a mandatory $200 assessment. I find that this defendant does not have the ability to pay a fine. The Court is waiving the fine in this case.

With regard to restitution, where should the payments be made, Ms. McElwee? We will get the address from the victim advocate after.

MS. MCELWEE: Yes. Thank you.

THE COURT: I'm ordering restitution to TG in the amount of $10,500. Payments are to be made first to the assessment and then to restitution. Payments are to be made in full. Any amount the defendant is --

now. Any amount that the defendant is unable to pay now is due and payable during the term of incarceration.

If he is ever released from incarceration, any remaining balance shall be paid in monthly installments to be initially determined by the supervising officer. Payments are to be made during the period of supervised release subject to my review at the request of the defendant or the Government. No interest on the restitution.

Ms. McElwee, do you have any objection to the terms of supervised release should they every come into force?

MS. MCELWEE: I do not, Judge. Should they ever come into force, just as a precaution, we would ask the defendant have no contact of any kind, direct or indirect, with TG or any member of her family. And I would like to state on the record, based on previous experiences, that any contact through the defendant's wife or mother who would be viewed as being on his behalf.

THE COURT: Mr. Cyr, your position on that additional request? Do you want to talk to your client briefly?

(Discussion off the record between the defendant and

counsel)

MR. CYR: Judge, I don't have any objection to the no contact, no direct or indirect contact with TG or any member of her family.

THE COURT: All right. I'm adding that to the judgment. The defendant shall not have any direct or purposeful indirect contact with TG or any member of her family.

Do you have any objection to the other terms of supervised release should they ever come into force?

MR. CYR: No, Judge.

THE COURT: Mr. Gaudet, I must advise you that you have a right to appeal your conviction as well as your sentence. If you wish to effectively exercise that right of appeal, you must file a written notice of appeal with the clerk of this court no later than 14 days of today and not after that. If you fail to file it within that period of time, you will have given up your rights of appeal. If you cannot afford to appeal, all you have to do is ask and the clerk of this court will file it for you without cost; do you understand?

THE DEFENDANT: I do.

MR. CYR: Judge, we would ask that the notice of appeal be filed.

THE COURT: The clerk is ordered to file a notice of appeal both on the conviction and the sentence.

Anything else for the Government?

MS. MCELWEE: Thank you, Your Honor, no.

THE COURT: Mr. Cyr, anything?

MR. CYR: Thank you, Judge, no.

THE COURT: Defendant is remanded in execution of judgment. We're in recess.

(End of proceeding)

C E R T I F I C A T I O N

I, Dennis Ford, Official Court Reporter for the United States District Court, District of Maine, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated: May 2, 2018

/s/ Dennis Ford

Official Court Reporter