

APPENDIX

APPENDIX A:

**UNPUBLISHED DECISION OF THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT, DATED APRIL 19, 2017**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of September, two thousand seventeen.

PRESENT: DENNIS JACOBS,
PIERRE N. LEVAL,
REENA RAGGI,
Circuit Judges.

- - - - -X
UNITED STATES OF AMERICA,
Appellee,

-v.-

15-3703

KENNETH GRAHAM,
Defendant-Appellant.

- - - - -X
FOR APPELLANT: ROBERT A. CULP; Garrison, NY.

FOR APPELLEE: MONICA J. RICHARDS for James P. Kennedy, Jr., Acting United States Attorney for the Western District of New York; Buffalo, NY.

1 Appeal from a judgment of the United States District Court
2 for the Western District of New York (Arcara, J.).

3 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
4 **DECREED** that the judgment of the district court be **AFFIRMED**.

5 Kenneth Graham appeals from a judgment of conviction entered
6 in the United States District Court for the Western District
7 of New York (Arcara, J.) pursuant to jury verdict. We assume
8 the parties' familiarity with the underlying facts, the
9 procedural history, and the issues presented for review.

10 Graham was charged with three counts of sex trafficking in
11 violation of 18 U.S.C. § 1591. Specifically, the indictment
12 alleged sex trafficking by force, fraud, or coercion with respect
13 to Victims 1 and 2 (in violation of § 1591(a) and (b)(1)); and
14 sex trafficking of a minor with respect to Victims 2 and 3 (in
15 violation of § 1591(a)(1) and (b)(2)). All three victims
16 testified against Graham, minor Victim 3 by means of two-way
17 closed-circuit television. After conviction on all three
18 counts, Graham was sentenced to 30 years of incarceration
19 (consecutive 15-year terms on Counts One and Two and a concurrent
20 10-year term on Count Three), restitution of \$366,000, and
21 forfeiture of \$80,000.

1 Graham argues (1) insufficiency of evidence as to an effect
2 on interstate commerce (Count One) and participation in a
3 “venture” (as to all three counts); (2) constructive amendment
4 as to Counts Two and Three; (3) erroneous jury instruction as
5 to knowledge of causation; (4) abuse of discretion in allowing
6 Victim 3 to testify remotely; (5) abuse of discretion in
7 precluding evidence under Rule 412 of the Federal Rules of
8 Evidence; and (6) abuse of discretion in denying a new trial
9 based on a claim of ineffective assistance of counsel.

10 **1.** “We review challenges to the sufficiency of evidence
11 de novo,” while “view[ing] the evidence in the light most
12 favorable to the government, drawing all inferences in the
13 government’s favor and deferring to the jury’s assessments of
14 the witnesses’ credibility.” United States v. Pierce, 785 F.
15 3d 832, 837-38 (2d Cir. 2015). “[T]he evidence must be viewed
16 in conjunction, not in isolation,” United States v. Persico,
17 645 F. 3d 85, 104 (2d Cir. 2011), and “[w]e will sustain the
18 jury’s verdict if *any* rational trier of fact could have found
19 the essential elements of the crime beyond a reasonable doubt.”
20 Pierce, 785 F.3d at 838 (internal quotation marks omitted).

1 We need not decide whether the evidence was sufficient to
2 establish that Graham participated in a “venture.” Section
3 1591(a) contains two subdivisions in the disjunctive--(a)(1)
4 prohibits certain conduct with respect to victims of sex
5 trafficking, and (a)(2) prohibits the receipt of financial or
6 other benefits from “participation in a venture” that engages
7 in the conduct prohibited by (a)(1). A violation of either
8 subdivision therefore constitutes a violation of § 1591(a). The
9 jury was instructed as to both subdivisions and returned special
10 verdict sheets that indicate separate unanimous guilty verdicts
11 as to each count under both (a)(1) and (a)(2). The question
12 whether the evidence was sufficient to show a “venture” under
13 (a)(2) is therefore of no consequence.

14 The evidence as to Count One (and all counts) was sufficient
15 to establish that the violation was in and affecting interstate
16 commerce. “[I]t is well established that the burden of proving
17 a nexus to interstate commerce is minimal.” United States v.
18 Elias, 285 F.3d 183, 188 (2d Cir. 2002) (discussing interstate
19 commerce nexus in context of the Hobbs Act). “Even a potential
20 or subtle effect on commerce will suffice.” Id. (internal
21 quotation marks omitted). The conduct underlying Graham’s

1 conviction was inherently commercial, and the government adduced
2 evidence that its commission as to all three counts involved
3 the use of internet advertisements, condoms, hotels, and rental
4 cars. Considering that evidence in its totality and in the light
5 most favorable to the government, it is sufficient to establish
6 that the violation as to each count occurred in and affecting
7 interstate commerce.

8 **2.** “To prevail on a constructive amendment claim, a
9 defendant must demonstrate that the terms of the indictment are
10 in effect altered by the . . . jury instructions which so modify
11 *essential elements* of the offense charged that there is a
12 substantial likelihood that the defendant may have been
13 convicted of an offense other than that charged in the
14 indictment.” United States v. D’Amelio, 683 F.3d 412, 416 (2d
15 Cir. 2012) (internal quotation marks omitted). We view
16 “constructive amendment as a *per se* violation of the Grand Jury
17 Clause requiring reversal,” but we have “consistently permitted
18 significant flexibility in proof, provided that the defendant
19 was given *notice* of the *core of criminality* to be proven at
20 trial.” Id. at 417 (footnote and internal quotation marks
21 omitted).

1 Section 1591(a) prohibits the conduct described in (a)(1)
2 and (a)(2) if it is committed while “knowing, or . . . in reckless
3 disregard of the fact, that means of force, threats of force,
4 fraud, coercion . . . or any combination of such means will be
5 used to cause the person to engage in a commercial sex act, or
6 that the person has not attained the age of 18 years and will
7 be caused to engage in a commercial sex act.” Section 1591(c)
8 provides that “[i]n a prosecution under subsection (a)(1) in
9 which the defendant had a reasonable opportunity to observe the
10 person . . . the Government need not prove that the defendant
11 knew, or recklessly disregarded the fact, that the person had
12 not attained the age of 18 years.” Taken together, the effect
13 of these provisions is that in § 1591 cases based on the victim’s
14 age, the government must prove knowledge or reckless disregard
15 of the victim’s age under (a)(2) but only a reasonable
16 opportunity to observe the victim under (a)(1).

17 Graham argues that his indictment was constructively
18 amended because the jury was instructed on § 1591(c) even though
19 the indictment did not charge him under that subsection.
20 Subsection (c), however, does not state a separate offense; it
21 expressly refers to “prosecution[s] under subsection (a)(1)”

1 and it provides “an alternative to proving any mens rea with
2 regard to the defendant’s awareness of the victim’s age.”

3 United States v. Robinson, 702 F.3d 22, 32 (2d Cir. 2012).

4 Regardless, we need not here decide whether the indictment’s
5 failure to reference subsection (c) bears on the core of
6 criminality charged because the jury returned separate verdicts
7 of guilty under (a)(1) and (a)(2). Cf. D’Amelio, 683 F.3d at
8 417. It thus necessarily found that Graham knew or recklessly
9 disregarded his victims’ respective ages (which is necessary
10 under (a)(2)), so the inclusion of the lesser “opportunity to
11 observe” instruction in the charge cannot have altered the
12 verdict.

13 **3.** Section 1591(a) prohibits certain conduct with respect
14 to sex-trafficking victims committed while knowing or recklessly
15 disregarding that force, fraud, or coercion “will be used to
16 cause the person to engage in a commercial sex act,” or when
17 the victim is under 18 and is “caused to engage in a commercial
18 sex act.” Graham argues that the instruction allowed the jury
19 to convict without finding knowledge of causation.

20 The district court, consistent with Sand’s Modern Federal

Jury Instructions (2012), charged the jury to determine whether Graham “knew or was in reckless disregard of the fact that force, threats of force, fraud or coercion would be used with respect to” the victims and that they “would engage in a commercial sex act.” App. 243–45. It is true that this formulation is not explicit about causation of the sex act. However, the district court referred to the requirement of causation elsewhere in the jury charge, including the definitions, and in its recitation of the indictment and of the statute itself. The statutory wording, including causation, was also repeated on the special verdict sheets, on which the jury recorded its verdict as to each count. App. 249–50. “[I]t is basic law that a jury charge should be examined in its entirety, not scrutinized strand-by-strand. We will reverse a jury verdict due to an erroneous instruction only if we are persuaded that the error was prejudicial or the charge was highly confusing.” Time, Inc. v. Petersen Pub. Co. L.L.C., 173 F.3d 113, 119 (2d Cir. 1999) (internal citation and quotation marks omitted). In the full context of the entire jury charge, we conclude that the instruction on causation was sufficient.

4. In a proceeding involving an alleged offense against

1 a child, the district court may order, under certain
2 circumstances and upon application, that the testimony of the
3 child be taken by closed-circuit television. 18 U.S.C.
4 § 3509(b)(1). One such circumstance is that “[t]he child is
5 unable to testify because of fear.” 18 U.S.C.
6 § 3509(b)(1)(B)(i). The district court must support a ruling
7 on the child’s inability with factual findings on the record.
8 18 U.S.C. § 3509(b)(1)(C).

9 Moreover, to invoke a statutory procedure that forecloses
10 in-person cross-examination, the district court must preserve
11 “the essence of effective confrontation” guaranteed by the
12 Confrontation Clause of the Sixth Amendment. Maryland v. Craig,
13 497 U.S. 836, 857 (1990). To satisfy the Sixth Amendment’s
14 constitutional requirements, the court must make “a proper
15 finding of necessity,” including that “the emotional distress
16 suffered by the child witness in the presence of the defendant
17 is more than ... mere nervousness or excitement or some
18 reluctance to testify.” Id. at 856-57. We review the district
19 court’s findings of fact for clear error. United States v.
20 Ledee, 762 F.3d 224, 228 (2d Cir. 2014).

1 The district court allowed Victim 3, who was 16 during the
2 events in question and 17 when testifying, to testify by two-way
3 closed-circuit television. The district court, on voir dire,
4 found that she was “extremely nervous and uncomfortable and
5 fearful,” App. 121, and credited her statement that she was
6 afraid of facing Graham in court. Id. These apprehensions of
7 appearing for live testimony may fail to meet our demanding
8 constitutional standard absent specific indicia of the emotional
9 trauma the child witness would experience “not by [testimony
10 in] the courtroom generally, but by the presence of the
11 defendant.” Craig, 497 U.S. at 856.

12 To examine these constitutional concerns more closely, we
13 reviewed the psychiatric assessment of Victim 3’s mental status
14 submitted by the U.S. Attorney’s office. This assessment
15 reinforced the government’s submission that the child witness
16 would suffer specific psychiatric trauma and be unable to
17 reasonably communicate if forced to testify in the live presence
18 of the defendant. Id. (“[A] determination that the child
19 witness will suffer ‘serious emotional distress such that the
20 child cannot reasonably communicate’ clearly suffices to meet
21 constitutional standards”) (internal citations omitted). The

1 district court credited this psychiatric assessment in approving
2 the government's motion. App. 121. In such a close case, a more
3 complete record identifying particular findings on the mental
4 status of the child witness would have been helpful. However,
5 viewing the record in its entirety including the psychiatric
6 assessment, we cannot say the district court committed clear
7 error in its findings of fact. See Anderson v. City of Bessemer
8 City, 470 U.S. 564, 573-74 (1985).

9 **5.** The district court granted the government's motion to
10 preclude evidence that Victims 1 and 3 worked as prostitutes
11 before or apart from the conduct alleged in the indictment on
12 the basis that "evidence offered to prove that a victim engaged
13 in other sexual behavior" is generally inadmissible in a
14 proceeding involving alleged sexual misconduct. Fed. R. Evid.
15 412. We review evidentiary decisions for abuse of discretion
16 and will reverse only in instances of "manifest error." United
17 States v. Miller, 626 F.3d 682, 687-88 (2d Cir. 2010).

18 We cannot state that the district court's decision should
19 be reversed for manifest error because Graham ultimately
20 suffered no harm from this ruling. See id. (In reviewing

1 evidentiary rulings for manifest error, we “affirm if the error
2 was ‘harmless’—that is, if we can conclude that the error did
3 not affect substantial rights.”) (citing Fed. R. Crim. P. 52(a)).
4 The government brought out through the testimony of the victims
5 that they had worked as prostitutes prior to their first contact
6 with Graham. Graham was free to cross-examine the victims on
7 this point and argue to the jury that their prior willingness
8 to engage in commercial sex rebuts the allegation that he coerced
9 or forced them to engage in commercial sex.

10 **6.** The district court denied Graham’s post-trial motion,
11 made through new counsel, for a new trial under Rule 33 of the
12 Federal Rules of Criminal Procedure. “We review a district
13 court’s denial of a Rule 33 motion deferentially and will reverse
14 only for abuse of discretion.” United States v. Snype, 441 F.3d
15 119, 140 (2d Cir. 2006).

16 Graham argued that trial counsel was unconstitutionally
17 ineffective, and swore in an affidavit that he would have
18 accepted a plea offer if counsel would have told him that the
19 victims’ prior histories of prostitution would not be
20 admissible. The government submitted affidavits from Graham’s

1 trial counsel and his trial counsel's law partner in which they
2 affirmed that they both unsuccessfully sought to persuade Graham
3 that he had no viable defense and should plead guilty. The
4 district court credited counsel's version of events and found
5 Graham's to be "self-serving, not credible, and contradictory
6 to the rest of the record." Special App. 35. Graham provides
7 no basis upon which to find an abuse of discretion in the district
8 court's conclusion.

9 Accordingly, and finding no merit in appellant's other
10 arguments, we hereby **AFFIRM** the judgment of the district court.

11 FOR THE COURT:
12 CATHERINE O'HAGAN WOLFE, CLERK

APPENDIX B:

**ORDER OF THE COURT OF APPEALS, DATED NOVEMBER 28, 2017,
DENYING THE PETITION FOR REHEARING OR REHEARING *EN BANC***

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of November, two thousand seventeen.

United States of America,

Appellee,

v.

Kenneth Graham,

Defendant - Appellant.

ORDER

Docket No: 15-3703

Appellant, Kenneth Graham, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



APPENDIX C:

**ORDER OF THE DISTRICT COURT FROM THE BENCH, JANUARY 11,
2013, GRANTING THE GOVERNMENT'S MOTION TO PERMIT A
WITNESS TO TESTIFY BY CLOSED CIRCUIT TELEVISION**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA, * Docket No. 12-CR-311
4 *
5 *
6 v. * Buffalo, New York
7 * January 11, 2013
8 * 9:42 a.m.
9 KENNETH GRAHAM, *
10 *
11 Defendant. *
12 *
13 * * * * *

14
15
16 TRANSCRIPT OF TRIAL
17 BEFORE THE HONORABLE RICHARD J. ARCARA
18 UNITED STATES DISTRICT JUDGE
19
20
21

22 APPEARANCES:

23 For the United States: ROBERT C. MOSCATI, ESQ.,
24 and KATHLEEN A. LYNCH, ESQ.

25 For the Defendant: MICHAEL S. DEAL, ESQ.

Court Reporter: YVONNE M. GARRISON, RPR
Official Court Reporter
yvonne_garrison@aol.com

1 THE CLERK: Criminal Action, 12-CR-311 rendering of
2 court's decision on government's motion.

3 Counsel, please state your name and the party you
4 represent for the record.

5 MR. MOSCATI: Good morning, Judge. Robert Moscati
6 and Kathleen Lynch for the United States.

7 MR. DEAL: Good morning Your Honor, Michael Deal for
8 Mr. Graham.

9 THE COURT: Good morning.

10 The court's decision and order will be as follows:
11 The government has made a motion requesting that victim 3,
12 who's a minor at the time of the event and a minor today, be
13 permitted to give live testimony by a two-way closed circuit
14 television. Victim 3 is 17 years old.

15 Section 3509(b) (1) (A) of the Child Victims and child
16 witness -- Witnesses Rights Act provides that in a proceeding
17 involving a child under the age of 18 the government may apply
18 for an order that the child's testimony be taken in a room
19 outside the courtroom and be televised by two-way closed
20 circuit television. The statute provides that a person seeking
21 an order shall apply for an order at least seven days before
22 the trial date unless the Court finds on direct the need for
23 the order was not reasonably foreseeable.

24 Here the government filed a pretrial motion on
25 December 29th, 2012, seeking closure of the courtroom during

1 the victim's testimony pursuant to 3509(e). During oral
2 argument the government withdrew its motion to close the
3 courtroom subject to the right to renew its motion or to
4 request to proceed via two-way closed circuit television either
5 upon the completion of the mental health examination of victim
6 3 or if other circumstances arose during the course of the
7 trial which warrant the Court's consideration.

8 On January 9th, the government informed the Court
9 that a psychiatric assessment had been completed with respect
10 to victim 3 by a psychiatrist. Based on this assessment, the
11 government requested victim 3 be permitted to testify by a
12 two-way closed circuit television.

13 Based upon these facts, the Court finds that it had
14 sufficient notice of the government's request and assumes
15 reasonably foreseeable and a psychiatric assessment was
16 completed.

17 With respect to the merits of the motion the Child
18 Victim and Child Witnesses Rights Act provides that the Court
19 may allow that the testimony of the child be taken by closed
20 circuit television if the Court finds that the child is unable
21 to testify in open court in the presence of the defendant for
22 any of the following reasons: One, the child is unable to
23 testify because of fear; two, there's substantial likelihood
24 established by expert testimony that the child would suffer an
25 emotional trauma from testifying; three, the child suffers a

1 mental or other infirmity; or four, the conduct by the
2 defendant or defense counsel caused the child to be unable to
3 continue testifying, 18 U.S.C. United States Code Section 3509
4 (b) (1) (B) .

5 The government has submitted under seal a psychiatric
6 assessment of victim 3 in support of its motion. The
7 assessment is then sworn. The doctor who's a psychiatrist who
8 has provided the assessment has not been called to testify
9 under oath. Therefore, the Court finds that the government has
10 not shown that there is substantial likelihood established by
11 expert testimony that the child would suffer emotional trauma
12 from testifying. The motion about will not be granted on this
13 basis.

14 However, Section 3509(b) (1) (B) provides that a Court
15 may permit a child to give live testimony by a two-way closed
16 circuit television if the Court finds that the child is unable
17 to testify in open court in the presence of the defendant
18 because of fear.

19 In considering this request, the Court must consider
20 the defendant's constitutional rights. The Sixth Amendment
21 confrontation clause guarantees a defendant a face-to-face
22 meeting with the witnesses appearing before the trier of fact
23 Coy versus Iowa 487 U.S. 1012 at page 1016 (1988). However,
24 this right not absolute and must accommodate the government's
25 compelling interest and protection of a minor victims of sex

1 crime from further trauma and embarrassment, Globe Newspaper
2 Company versus Superior Court 457 U.S. 596 (1982).

3 Accordingly, where necessary to protect the child witness from
4 trauma that would cause by testifying the physical presence of
5 a defendant at least the trial would impair the child's ability
6 to communicate, the confrontation clause does not prohibit the
7 usual procedure which allows for essence of confrontation.

8 That's Green versus Craig at 497 U.S. 837 at page 851 (1990).

9 Testimony by closed circuit television which is
10 permitted by statute satisfies the essence of confrontation
11 because testimony is provided under oath that is subject to
12 contemporaneous cross examination and is observed by the judge,
13 jury and defendant. That's at page 851 of the Maryland versus
14 Craig case.

15 Further, the defendant is provided with the means of
16 private contemporaneous communication with the defense counsel
17 during testimony and cross examination, see 18 U.S.C.
18 3509(b) (1) (D). Before invoking this for such a procedure this
19 Court must find that one of the specific requirements of
20 Section 3509(b) (1) (B) is met.

21 Defendant Graham argues that the psychiatrist's
22 assessment cannot serve as a basis for allowing victim 3 to
23 testify by closed circuit television because no expert
24 testimony has been provided. However, as I've stated,
25 Section 3509(b) (1) does not require an expert to support quote

1 because of fear end of quote finding.

2 In United States versus Giordano at 172 Fed. Appx 340
3 (2d Cir 2006) the Second Circuit upheld the district court's
4 decision to allow a child victim to testify remotely due to
5 fear even though that conclusion was not based upon expert
6 testimony. See also U.S. versus Rouse, that's R-O-U-S-E, at
7 111 F.3d 561 Eighth Circuit (1997) holding that a finding under
8 Section 35(b)(1)(B) does not require expert support and can be
9 based upon the Court's own observation and questioning of a
10 frightened child. The defendant further argues that victim 3
11 does not have a reasonable basis to fear the defendant. She's
12 merely expressing a general desire not to testify in this
13 matter. The Court disagrees.

14 On January 10th, 2013, the government and the
15 defendant voir dired victim 3 outside the presence of the jury
16 and through two-way closed circuit television regarding her
17 fear to testify in the instant case. I also want to note that
18 at that time this was a setup where the defendant could talk to
19 his attorney by way of some kind of telephone. At that time
20 the Court had an opportunity to question victim 3 and observe
21 her demeanor and appearance. Victim 3 appeared to be extremely
22 nervous and uncomfortable and fearful during the testimony.
23 She had difficulty verbalizing answers to a number of questions
24 posed to her. She stated more than once that she is afraid of
25 testifying in the presence of the defendant. She stated that

1 she was afraid of facing the defendant and his family in Court,
2 and she would be unable to testify in front of the defendant
3 because she is afraid and that she would breakdown if made to
4 testify in the presence of the defendant and his family.

5 Moreover, in response to the government's questioning, victim 3
6 acknowledged that she was afraid something could happen to her
7 outside the courtroom as a result of her testimony. When asked
8 who she thought might threaten her she stated, "relative,
9 friend, I'm not sure," and that's a quote. When asked
10 specifically why she feared the defendant victim 3 stated that
11 she was concerned, and that's a quote, "concerned," about her
12 safety because of the things she had seen and heard before end
13 of quote. She stated the defendant is quote, "not a very good
14 man," end of quote and the defendant is quote "sneaky and plots
15 and plans a lot," end of quote. Victim 3 also stated quote by
16 fear to testify against Kenneth Graham and "him being angry or
17 sending out someone or something about those lines," end of
18 quote.

19 Based on this testimony and the Court's observation
20 of victim 3 during voir dire, the Court finds that victim 3 is
21 unable to testify in the presence of the defendant because of
22 fear. Victim 3 articulated that she is afraid of the defendant
23 as well as his friends and family and that she will be unable
24 to provide effective testimony in his presence. While defense
25 counsel may question the basis for her fear, the Court credits

1 victim 3's testimony that she is afraid of what the defendant
2 may do if she testifies against him. The Court concludes that
3 this fear will prevent her from being able to effectively
4 communicate in his presence, and find that victim 3 may testify
5 by closed circuit television. The Court also credits her
6 psychiatric assessment. The assessment is confidential and
7 will not be discussed in detail herein.

8 However, the Court notes that the psychiatrist who
9 evaluated victim 3 found her to be extremely fearful of the
10 defendant and clearly apprehensive about her safety. He gave
11 concrete examples of why victim 3 was afraid of the defendant
12 and explained how testifying in the defendant's presence would
13 affect her. The psychiatrist concluded that quote, "she would
14 be overcome with fear if she were put in the presence of
15 Mr. Graham or had any face-to-face contact with him at all,"
16 end of quote.

17 These findings by the Court are enough to satisfy the
18 standard set forth in Section 3509 (b)(1)(B) the child victim
19 and child rights act. The government's motion to permit victim
20 3 to provide live testimony by two-way circuit television is
21 granted.

22 All right. I think we're all set up to go. We'll
23 start at 10:00.

24 MR. MOSCATI: Judge --

25 THE COURT: I'm going to give a cautionary