IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELMER DOBSON,

DEFENDANT BELOW,

APPELLANT,

v. : **No.** 617, 2012

STATE OF DELAWARE

PLAINTIFF BELOW, APPELLEE

AMENDED DEFENDANT APPELLANT'S OPENING BRIEF ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR SUSSEX COUNTY

LAW OFFICE OF EDWARD C. GILL, P.A.

/s/ Stephen W. Welsh Stephen W. Welsh, Esquire Attorney for Defendant P.O. Box 824 Georgetown, DE 19947 (302) 854-5400

DATED: August 2, 2013

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¹ Pseudonym for minor child.

- B. THE STANDARD AND SCOPE OF REVIEW: THE STANDARD AND SCOPE OF REVIEW IS PLAIN ERROR. WHETHER THE TRIAL JUDGE MADE A PLAIN ERROR THAT AFFECTED A SUBSTANTIAL RIGHT. WAINWRIGHT V. STATE, 504 A.2d 1096 (Del. 1986).
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- B. THE STANDARD AND SCOPE OF REVIEW: THE STANDARD AND SCOPE OF REVIEW IS THAT OF ABUSE OF DISCRETION, WHETHER THE TRIAL COURT'S DECISION WAS BASED UPON CONSCIENCE AND REASON, AS OPPOSED TO CAPRICIOUSNESS OR ARBITRARINESS.
- C. MERITS OF THE ARGUMENT: THE TRIAL COURT ABUSED ITS DISCRETION IN SUSTAINING THE STATES OBJECTION. THE PURPOSED LINE OF QUESTIONING WAS BOTH RELEVANT TO THE CREDIABILTY OF THE WITNESSES AND TO THE POTENTIAL BIAS OF THE WITNESS.

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NATURE AND STAGE OF THE PROCEEDINGS

Elmer L. Dobson was originally charged by indictment by the Grand Jury in the Superior Court of The State of Delaware in and for Sussex County on February 6, 2012, with seven counts consisting of six counts of Rape in the second degree, and one count of endangering the welfare of a child.

Trial occurred from September 10, 2012 through March 12, 2012.

After the trial defendant was found guilty of all seven counts. (A80-81)

On November 16, 2012 the defendant was sentenced to twenty five years of level five incarceration for each of the six counts of Rape in the second degree, a cumulative sentence of 150 years. As the count of endangering the welfare of a child the defendant was sentenced to, two years at level five incarceration suspended for two years of level four work release or home confinement, which will be suspended after six months for one year of level three probation. (Exhibit A) Defendant took a timely appeal to this Court. Prior counsel filed an opening brief on April 26, 2013 under rule 26(c). After review by the Court on May 24, 2013, the Court granted prior counsel's motion to withdraw, but found that the appeal was not totally devoid of arguable issues and appointed present counsel. This is defendant appellant's opening brief on appeal.

SUMMARY OF ARGUMENT

- I. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT ALLOWED EVIDENCE OF UN-INDICTED CHARGES TO BE ENTERED INTO EVIDENCE THROUGH WITNESS B.C.
- II. THE TRIAL COURT COMITTED PLAIN ERROR WHEN IT SENT TO THE JURY THE INDICTMENT WITHOUT CLARIFYING WHICH ALLEGED OCCURRENCES WERE BEING CHARGED IN COUNTS FIVE AND SIX.
- III. THE TRIAL COURT COMMITTED ERROR WHEN IT SUSTAINED THE STATE'S OBJECTION TO THE QUESTIONING OF WITNESS CASSANDRA CANNON REGARDING AN INVESITATION BY THE DEPARTMENT OF FAMILY SERVICES.

STATEMENT OF FACTS

The complainant B.C. testified at the time of trial that the Defendant Elmer Lewis Dobson, whom she refers to as, Lewis "touched me on my cock" between August 16, 2010 and August 15, 2011. It is presumed based in the testimony and the context that B.C. was referring to her vagina when she says, "my cock". B.C. also called it her "private ... where I pee." (A6-7) She testified that the Defendant touched in her with his finger, indicating to the jury that he moved the finger in a up and down motion. (A-8) B.C. testified that the Defendant touched her in this manner on multiple occasions all taking place in the claimant's residence in Seaford Delaware.

B.C. testified that during the period of the alleged offenses from August 16, 2010 to August 15, 2011, she lived with her Mother, Cassandra Cannon, her younger sister, B.R.C.², her older brother, B.Y.C.³, her cousin, J.C.⁴, and the Defendant Elmer Lewis Dobson. (A-9) B.C. testified that the six of them, lived in a three bedroom home, which also included a living room, kitchen and a single bathroom. B.C. testified that the Defendant touched her in a similar manner as described above in four different rooms of the home, B.C.'s bedroom, the living room, Cassandra Cannon's bedroom and the bathroom. (A-10)

B.C. testified that the Defendant touched her when she was in her bedroom, at the Seaford residence. She stated that it was at night and that her Mother was at work. Her older brother was up and watching television. (A-11) She testified that her sister was asleep in bed next to her. (A-10) B.C. later testified that her sister was watching television. (A-11) On cross

² Pseudonym for minor child.

³ Pseudonym for minor child.

⁴ Pseudonym for minor child.

examination B.C. described and depicted for the jury her bedroom with her bed surrounded by walls on two sides with no room in between the bed and the wall. She describes the foot of the bed as having some room between it and the wall and one side of the bed completely open. B.C. testified that she sleeps with her sister and that she sleeps on the side of the bed closet to the wall and her sister sleeps on the open side. (A41-46) B.C. testified that the Defendant would stand next to the bed during these occurrences. (A-13) On cross examination B.C. testified that he would physically get into bed with her and lie down. (A-48) She testified that her sister was always in bed with her and that she never woke up when this occurred. (A48-49). She further testified that the Defendant would not say anything to her but that she knew he wanted her to spread her legs, "because he always walked inside the room then he will take off my panties and he will touch me." B.C. later testified that he only came into her room two times. (A49-50)

B.C. testified that the Defendant touched her in the manner described above two times in the living room in the Seaford residence. (A-19) She testified that the Defendant would come into her room at night when everyone else in the house was asleep including her younger sister. (A-17) B.C. testified that the Defendant would come into her room which she shared with her younger sister, and wake her from her bed that she also shared and ask her to come to the living room. (A-18) She testified that her sister would remain sleeping when this occurred. (A-17) B.C. testified first that the Defendant did not say anything to her when this occurred nor directly after. (A-20) She later stated that the Defendant told her "Don't tell anybody."

B.C. testified that that the Defendant touched her in the manner described above two times in her mother, Cassandra Cannon's room in the

Seaford residence. (A-25) She testified that that an incident occurred in the morning when her mother was working. (A21-22) B.C. testified that her brother and sister were on the couch watching television in the living room. That she then went into her mother's bedroom where the Defendant was watching television on the bed. (A-22) B.C. testified that the bedroom door was open. (A-26) B.C. testified that she was touched in the manner described above on two separate occasions, one time in the morning and one time at night. (A-54)

B.C. testified that the Defendant touched her in the manner described above on two occasions in the bathroom of the Seaford residence. She testified that on one such occasion she entered the bathroom, where the Defendant was using the toilet. B.C. testified that her brother and sister were awake and in the hallway fighting. (A27-28) She testified that the Defendant was in the bathroom and asked her to come in, then later testified that they, B.C. and the Defendant, walked into the bathroom together. (A30-31) B.C. also testified to an incident that occurred when she was in the bathtub. She testified that the Defendant touched her in the manner described above when she was in the tub taking a bath. She testified that her brother, her sister and her cousin were all in the home watching television in the living room when this occurred. (A34-36)

Cassandra Cannon testified that the Defendant was her boyfriend and that he lived in her home from 2006 until May or June 2011, when the relationship ended. (A-91) On cross examination Cannon testified that the parties relationship ended in May or June of 2011 and that there were allegations of cheating made by the Defendant and allegations of cheating on face book made by Ms. Cannon. (A-92) Ms. Cannon further testified that

there was some dispute over a car insurance policy after the parties broke off their relationship. (A-93)

The Defendant took the stand and adamantly denied touching B.C. or any other children in an inappropriate manner. The Defendant also testified about a dispute involving the vehicle purchased by Ms. Cannon and the Defendant as well as a dispute over the insurance on the vehicle and other vehicles owned by the Defendant and Ms. Cannon. (A65-83).

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ARGUMENT I

- A. QUESTION PRESENTED: DID THE TRIAL JUDGE ERR IN ALLOWING EVIDENCE OF UN-INDICTED CHARGES TO BE ENTERED INTO EVIDENCE THROUGH WITNESS B.C. ?(A21-36)
- B. THE STANDARD AND SCOPE OF REVIEW: THE STANDARD AND SCOPE OF REVIEW IS PLAIN ERROR. WHETHER THE TRIAL JUDGE MADE A PLAIN ERROR THAT AFFECTED A SUBSTANTIAL RIGHT. WAINWRIGHT V. STATE, 504 A.2d 1096 (Del. 1986).
- C. MERITS OF THE ARGUMENT: THE TRIAL COURT ERRED AS A MATTER OF LAW IN ALLOWING EVIDENCE OF PRIOR BAD ACTS THAT WERE UN-IDICTED WITHOUT CONDUCTING A GETZ ANALYSIS NOR GIVING A LIMITING INSTRUCTION

The State indicted the Defendant on six counts of Rape in the second degree. Each of these counts included the exact same language for each count.

ELMER DOBSON (DOB: 05/20/62), on or about and between the 16th day of August, 2010 and the 15th day of August, 2011, in the County of Sussex, State of Delaware did intentionally engage in sexual penetration with B.C. (DOB: 8/16/00), who had not yet reached her twelfth birthday and the defendant had reached his eighteenth birthday in violation of Title 11, Section 772(a)(2)(g) of the Delaware Code.

During the course of the trial, complainant B.C. testified to eight different incidents involving claimed digital penetration by the Defendant. B.C. testified that two such incidents occurred in her bedroom (A10-16). B.C. could not provide any dates nor any substantive testimony differentiating

one incident from another. The only evidence presented that the claimed offense happened on more then one occasion was the testimony of B.C. that the Defendant came in her room two times(A-16).

B.C. testified that the Defendant committed similar acts in the living room of there shared home, as well as in her Mother's room and the bathroom. As to each location B.C. claimed that the incidents happened two times. Like the testimony regarding her bedroom B.C. was unable to provide any distinguishing details regarding the two incidents in the living room. B.C. did submit that one of the incidents in her Mother's bedroom happened at night and one during the day. (A-54) B.C. also provided some distinguishing information as to the two incidents in the bathroom.

Specifically, she testified that one incident occurred when she was taking a bath, and one occurred when the Defendant was using the bathroom. (A27-36)

The testimony provided by B.C. consisted to eight separate alleged occurrences. The Defendant was only indicted on six counts of rape in the second degree. At the time of the testimony that State had yet to delineate which count corresponded with which alleged incident. It was only later that the State clarified to the Court, without amending the indictment, which count corresponded with which allegation. In doing so the State did not

Cannon's room, and one of the alleged occurrences that took place in Cassandra Cannon's room, and one of the alleged occurrences that took place in the bathroom. The State never clarified nor was the jury ever instructed as to which alleged occurrence from Cassandra Cannon's room nor which alleged occurrence from the bathroom was part of the indictment, and which was merely a separate bad act. As such two of the alleged occurrences testified to are un-indicted bad acts and as such should have been subject to an evaluation under the standard set forth in Getz v. State, 538 A.2d 726(Del. 1988).

Under Delaware Rule of Evidence Rule 404(b), "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith." D.R.E. 404(b) does provide specific exception's if such bad acts are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. This Court in *Getz* set forth an analysis to be conducted in determining whether evidence of prior bad acts are admissible under the 404(b) exceptions. The *Getz* Court states,

[w]e take the occasion to set forth the following guidelines which should govern the admissibility of such evidence in future cases; 1) The evidence of other crimes must be material to an issue or ultimate fact in dispute in the case. If the State elects to present such evidence in its case-in-chief it must

demonstrate the existence, or reasonable anticipation, of such a material issue. 2) The evidence of other crimes must be introduced for a purpose sanctioned by Rule 404(b) or any other purpose not inconsistent with the basic prohibition against evidence of bad character or criminal disposition. (3) The other crimes must be proved by evidence which is "plain, clear and conclusive.(4) The other crimes must not be too remote in time from the charged offense. 5) The Court must balance the probative value of such evidence against its unfairly prejudicial effect, as required by D.R.E. 403. (6) Because such evidence is admitted for a limited purpose, the jury should be instructed concerning the purpose for its admission as required by D.R.E. 105. *Id* at 734

In the matter at bar trial counsel for the Defendant did not object to the introduction of the evidence of prior bad acts. However, such objection would have required prior knowledge as to which of the alleged occurrences corresponded with which count in the indictment, and which alleged occurrences were left un-indicted. This information would have allowed trial counsel to object when the State elicited testimony from B.C. regarding the two un-indicted occurrences. However, it was not until after the close of evidence and before closing that the State revealed to the Court and to the Defense which count corresponded with which alleged occurrence. (A-86) Thus, trial counsel had no way of knowing during the presentation of evidence which alleged occurrences were objectionable un-indicted prior bad acts.

In Williams v. State, 796 A.2d 1281(Del.2002), this Court took under review the introduction of prior bad acts, without objection of trial counsel. The Court in its decision does not find plain error, but does so through a Getz analysis in coming to its conclusion, finding that in Williams a Getz analysis had it be preformed by the trial court, would have allowed for the prior bad act testimony. In the matter at bar there can be little doubt that the testimony provided regarding the un-indicted bad acts do not pass Getz scrutiny. Firstly, based on the record it is still not possible to tell which alleged occurrences in Cassandra Cannon's room and which in the bathroom were charged occurrences and which were prior bad acts. This remains even with the limited clarification provided by the State after the close of evidence. (A-86) For the sake of argument a Getz analysis on any of the four occurrences testified to in Cassandra Cannon's room or in the bathroom fails. Under factor one, the testimony of the other occurrences is in no way material to proving the elements of the six charged offense. Under factor two, there does not seem to be any exception that could be used in order to introduce said evidence under D.R.E. 404(b). Under factor three the evidence of the prior bad acts is in no way clear and convincing as the jury was not explained what consisted of a prior bad act and what was a charged offense. Under factor four, it is admitted that the testimony regarding the

time span of the occurrences would qualify as not being to remote in time.

Under factor five, these alleged occurrences are highly prejudicial as they are evidence of the exact crimes alleged to be committed by the Defendant, allegedly perpetrated on the same complainant on or about the same time or in close proximity thereto. It would be impossible for the jury not to confuse the issues of the multiple occurrences within the same time frame, some charged and some not. As to factor six, no limiting instruction was given to the jury as is required in *Getz*.

The introduction of prior or contemporaneous bad acts deprived Mr. Dobson of his right to a fair trial. The State withheld presumably as part of its strategy, which count corresponded to which testified to occurrence. This in and of itself is not necessarily objectionable, but when the State then elicited testimony of allegedly identical acts that were un-indicted it made it impossible for Mr. Dobson to know what occurrences he was being charged with and what was objectionable prior bad acts. This robbed Mr. Dobson of a fair trial. Further, the jury was irrevocably tainted, by the testimony of prior bad acts. Therefore, Defendant respectfully submits that the convictions at bar should be reversed.

ARGUMENT II

- A. QUESTION PRESENTED: DID THE TRIAL JUDGE ERR IN SENDING TO THE JURY COUNTS FIVE AND SIX OF THE INDICTMENT? (A95-96)
- B. THE STANDARD AND SCOPE OF REVIEW: THE STANDARD AND SCOPE OF REVIEW IS PLAIN ERROR. WHETHER THE TRIAL JUDGE MADE A PLAIN ERROR THAT AFFECTED A SUBSTANTIAL RIGHT. WAINWRIGHT V. STATE, 504 A.2d 1096 (Del. 1986).
- C. MERITS OF THE ARGUMENT: THE TRIAL COURT ERRED IN ALLOWING COUNTS FIVE AND SIX TO PROCEED TO THE JURY WITHOUT FURTHER INSTRUCTION AS TO WHAT ALLGED OCCURRENCES CORRESPONDED WITH THESE COUNTS.

As explained above of Argument I, the State indicted on six counts of Rape in the second degree but provided evidence of eight counts of Rape in the second degree. After the presentation of evidence and prior to summation the State clarified to the Court that count one and two corresponded with the alleged occurrences in complaints bedroom. That counts three and four corresponded with the alleged occurrences in the living room. That count five corresponded with one of the alleged occurrences in Cassandra Cannon's, complainants' mother, bedroom. And that count six corresponded with one of the occurrences in the bathroom (A86-87).

The Court then instructed the jury in this manner. (A95-96) The Court explained to the jury which count corresponded with which alleged

occurrence, "Count 5 refers to the alleged incident in mothers bedroom; and Count 6 refers to the alleged incident in the bathroom." (A-96)

This constitutes plain error because the evidence by way of testimony from B.C. was that two occurrences happened in her Mother's room, and two occurrences happened in the bathroom. (A25-36) B.C. testified that one occurrence in her Mother's room occurred at night and one during the morning.(A-54) B.C. testified that one occurrence in the bathroom occurred when she was in the bathtub and one in which the Defendant was using the bathroom. (A27-36) Without some sort of further clarification the jury had no instruction as to which occurrence the Defendant had been charged with, and as such it is not clear whether in fact the twelve jurors found the Defendant guilty of the offense in the bathtub or the other alleged occurrence in the bathroom. Nor is clear whether some of the jury found the Defendant guilty of count six for the bathtub occurrence and some of the jury found the Defendant guilty of the other bathroom occurrence. This same argument applies to count five. There is a clear defect in the indictment with regards to counts five and six.

The primary purpose of an indictment is "to put the accused on full notice of what he is called upon to defend, and to effectively preclude

subsequent prosecution for the same offense." Malloy v. State, 462 A.2d 1088, 1092 (Del. 1983).

The indictment fails in its primary purposes, as even after clarification provided by the State it is still unclear as to which alleged act the Defendant was charged with. While generally the Court grants wide leeway in use of broad indictments, in this matter because of the six counts being charged and evidence of eight charges being presented, Mr. Dobson was not on full notice of what alleged act he was being called to defend.

Wherefore, Defendant respectfully submits that the convictions at bar should be reversed as the indictment was defective on its face in that it did not provide the Defendant adequate notice of what he was being called to defend, and because there was not amendment nor further clarification it is not clear what alleged occurrence Mr. Dobson was actually convicted of.

ARGUMENT III

- A. QUESTION PRESENTED: DID THE TRIAL COURT ERR IN SUSTAINING THE STATE'S OBJECTION TO THE QUESTIONING OF WITNESS CASSANDRA CANNON REGARDING AN INVESITATION BY THE DEPARTMENT OF FAMILY SERVICES? DEFENDANT PRESERVED THIS ISSUE BY OPPOSING SAID OBJECTION.(A58-64)
- B. THE STANDARD AND SCOPE OF REVIEW: THE STANDARD AND SCOPE OF REVIEW IS THAT OF ABUSE OF DISCRETION, WHETHER THE TRIAL COURT'S DECISION WAS BASED UPON CONSCIENCE AND REASON, AS OPPOSED TO CAPRICIOUSNESS OR ARBITRARINESS.
- C. MERITS OF THE ARGUMENT: THE TRIAL COURT ABUSED ITS DISCRETION IN SUSTAINING THE STATES OBJECTION. THE PURPOSED LINE OF QUESTIONING WAS BOTH RELEVANT TO THE CREDIABILTY OF THE WITNESSES AND TO THE POTENTIAL BIAS OF THE WITNESS.

Witness Cassandra Cannon is the Mother of B.C. and the girlfriend and housemate of Defendant Elmer Lewis Dobson at the time of the charged offenses. Ms. Cannon was called as a witness by the State. During the course of the cross examination defense counsel questioned Ms. Cannon about a report and investigation by the Department of Family Services. The state objected to the question, on relevancy grounds. Defense counsel explained at sidebar, that counsel had reason to believe it was the Defendant that reported Ms. Cannon to the Division and that counsel was seeking to pursue this line of questioning to connect the bad blood between Ms.

Cannon and the Defendant to the allegations made by B.C.. Counsel argued by implication that the questioning was relevant because it went to the potential bias of the witness against the Defendant. Delaware Rules of Evidence rule 606, states, "For the purpose of attacking the credibility of a witness, evidence of bias, prejudice or interest of the witness for or against any party to the case is admissible." The line of questioning clearly went to the potential bias of Ms. Cannon, and thus should have been allowed under D.R.E. 606. In sustaining the objection the Court took away the ability of the defense to show that the bias of the victims' Mother and to infer on its own whether this bias had any potential effect of her daughters testimony. The Defendant was prejudiced by this ruling in that the entirety of the States' case is based on the testimony of B.C., there was no physical of forensic evidence presented at trial. The only possible defense was to attack to the creditability or recollection of the State's witnesses. By sustaining this objection the Court took away the ability of the defense to substantially attack the creditability of Ms. Cannon and by extension B.C.

The Court should have overruled the objection and allowed the defense to question Ms. Cannon about the Division of Family Services investigation. The Court's sustaining of the objection substantially

prejudiced Mr. Dobson's trial rights. Therefore, Defendant respectfully submits that the convictions at bar should be reversed.

CONCLUSION

For the reasons set forth herein Defendant respectfully prays that the Defendant's convictions at bar be reversed and an order be entered that all charges against the defendant are dismissed or, if that remedy is not granted, that all convictions of the Defendant be reversed and the matter remanded to the Superior Court for a new trial.

LAW OFFICE OF EDWARD C. GILL, P.A.

/s/ Stephen W. Welsh Stephen W. Welsh, Esquire Attorney for Defendant 16 North Bedford Street P.O. Box 824 Georgetown, De 19947 854-5400

DATED: August 2, 2013

EXHIBIT "A"

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE

VS.

ELMER L DOBSON

Alias: ELMER L DOBSON

DOB: 05/20/1962 SBI: 00603601

CASE NUMBER: 1112004250

CRIMINAL ACTION NUMBER:

IS12-02-0345
RAPE 2ND <12(F)
IS12-02-0346
RAPE 2ND <12(F)
IS12-02-0347
RAPE 2ND <12(F)
IS12-02-0348
RAPE 2ND <12(F)
IS12-02-0349
RAPE 2ND <12(F)
IS12-02-0350
RAPE 2ND <12(F)
IS12-01-0018
ENDANG. CHILD(F)

COMMITMENT

Nolle Prosequi on all remaining charges in this case SEX OFFENDER NOTIFICATION IS REQUIRED TIER 3

SENTENCE ORDER

NOW THIS 16TH DAY OF NOVEMBER, 2012, IT IS THE ORDER OF THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged. The defendant is to pay the costs of prosecution and all statutory surcharges.

AS TO IS12-02-0345- : TIS RAPE 2ND <12

Effective December 27, 2011 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5
- No probation to follow.
 APPROVED ORDER 1 November 16, 2012 15:11

STATE OF DELAWARE vs.

ELMER L DOBSON DOB: 05/20/1962

SBI: 00603601

AS TO IS12-02-0346- : TIS RAPE 2ND <12

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5
 - No probation to follow.

AS TO IS12-02-0347- : TIS RAPE 2ND <12

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5
 - No probation to follow.

AS TO IS12-02-0348- : TIS RAPE 2ND <12

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5
 - No probation to follow.

AS TO IS12-02-0349- : TIS RAPE 2ND <12

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5
 - No probation to follow.

AS TO IS12-02-0350- : TIS RAPE 2ND <12

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5
 - No probation to follow.

AS TO IS12-01-0018- : TIS ENDANG. CHILD

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5
 - Suspended immediately
 - For 2 year(s) supervision level 4 WORK RELEASE

STATE OF DELAWARE VS.

ELMER L DOBSON DOB: 05/20/1962 SBI: 00603601

- Or supervision level 4 HOME CONFINEMENT
- Suspended after 6 month(s) at supervision level 4
- For 1 year(s) supervision level 3

Probation is concurrent to any probation now serving.

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE

VS.

ELMER L DOBSON DOB: 05/20/1962

SBI: 00603601

CASE NUMBER: 1112004250

Have no contact with Breana Cannon

Have no contact with Cassandra Cannon

The defendant shall have no contact with the victim(s) residence, workplace and/or victim(s) family members.

Have no unsupervised contact with any minor under age of 18.

Pursuant to 29 Del.C. 4713(b)(1), the defendant having been convicted of a sex offense, it is a condition of the defendants probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

Pursuant to 11 Del.C. 3912, the defendant shall undergo HIV testing under the direction of the Division of Public Health and the results shall be made available to the state, pursuant to statute.

The provisions of 11 Del. C. Sections 4120, 4121 and 4336 - Sex Offender Registration and Community Notification - apply to this case. NOTE: Victim is under 16 years of age.

JUDGE JEROME O HERLIHY

FINANCIAL SUMMARY

STATE OF DELAWARE

VS.

ELMER L DOBSON DOB: 05/20/1962

SBI: 00603601

CASE NUMBER: 1112004250

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	600.00
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	75.00
SHERIFF, SUSSEX ORDERED	150.00
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	7.00
DELJIS FEE ORDERED	7.00
SECURITY FEE ORDERED	70.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	105.00
SENIOR TRUST FUND FEE	
TOTAL	1,214.00

1,214.00

AGGRAVATING-MITIGATING

STATE OF DELAWARE VS.

ELMER L DOBSON DOB: 05/20/1962 SBI: 00603601

> CASE NUMBER: 1112004250

AGGRAVATING

NEED FOR CORRECTIONAL TREATMENT UNDUE DEPRECIATION OF OFFENSE VULNERABILITY OF VICTIM OFFENSE AGAINST A CHILD STATUTORY AGGRAVATION CHILD DOMESTIC VIOLENCE VICTIM

MITIGATING

NO PRIOR CONVICTIONS

AFFIDAVIT OF ELECTRONIC MAILING

BE IT REMEMBERED that on this 2nd day of August, 2013, Elizabeth Stewart, Secretary for the Law Office of Edward C. Gill, P.A., does state that she forwarded, via electronic filing, one copy of: Amended Defendant Appellant's Opening Brief on Appeal from the Superior Court of the State of Delaware in and for Sussex County

to: Gregory E. Smith, Esquire
Deputy Attorney General
820 North French Street, 7th Floor
Carvel State Building
Wilmington, Delaware 19801

/s/ Elizabeth Stewart
Secretary