IN THE SUPREME COURT OF THE STATE OF DELAWARE

MELVIN L. MORSE, Defendant-Below, Appellant, v. STATE OF DELAWARE, Plaintiff-Below, Appellee.	)))))))))))	No. 200, 2014 COURT BELOW: In The Superior Court of the State of Delaware, In and For Sussex County, I.D. 1208005897

APPELLANT'S OPENING BRIEF

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NATURE OF THE PROCEEDINGS

On August 7, 2012, the Defendant was arrested on multiple felony Counts, entered a plea of "not guilty" at the arraignment on November 7, 2012 and participated in a Hearing, on October 12, 2013, to determine what "other bad acts" evidence would be admissible at trial. (A-1 – A-14).

The Court issued an Order on January 27, 2014 indicating, essentially, save one exception, all other bad acts evidence sought to be admitted by the State would be admissible notwithstanding objection by the defendant to the same. (A-8, Docket 76) Trial began on January 27, 2014. The alleged victim, Anna Morse, provided testimony on February 3rd and February 4, 2014. (Vol.D)

The jury retired to deliberate on February 12, 2014. A jury note was delivered to the Court on February 13, 2014. As a result of that note, the Trial Court decided to permit the replaying of the Child Advocacy Center interview of Anna Morse and Melody Morse, in their entireties, while ignoring the request of the jury to review prior testimony provided by Pauline Morse, the mother of Anna and Melody. The defendant objected to the replay process. (TK-13-17,21-23,28; A-102-106, 108-111)[1]

[1] "TK" refers to the transcript of the trial on February 13, 2014.

The defendant was convicted of Reckless Endangering in the First Degree and which charge was based upon an allegation that Anna Morse had been "water-boarded" in a second floor bathroom of the family home. He was convicted of Reckless Endangering in the Second Degree for "water-boarding" alleged to have occurred in the kitchen of the same home.

The defendant was sentenced on April 11, 2014 and which included a period of lengthy incarceration.

The appeal was filed on April 22, 2014, and this is the Defendant's Opening Brief in support of his appeal.

SUMMARY OF ARGUMENT

I. THE ADMISSION OF THE TOTALITY OF OTHER BAD ACTS EVIDENCE, QUANTITATIVELY AND QUALITATIVELY, WAS AN ABUSE OF DISCRETION IN THAT THE NATURE AND BREADTH OF THE OTHER BAD ACTS INJECTED UNFAIR PREJUDICE INTO THE PROCEEDINGS IN VIOLATION OF D.R.E. 402, 403 AND 404.

II. THE DECISION OF THE TRIAL COURT TO PERMIT THE JURY TO RE-HEAR THE, OUT-OF-COURT, VIDEOTAPE INTERVIEWS OF ANNA MORSE AND MELODY MORSE WHILE DENYING THE REQUEST TO RE-HEAR THAT OF PAULINE MORSE WAS ERRONEOUS ON BOTH EVIDENTIARY AND CONSTITUTIONAL GROUNDS.

III. PROSECUTORIAL MISCONDUCT RAISING A FAIR PROBABILITY OF PREJUDICE REQUIRES REVERSAL.

STATEMENT OF FACTS

Pauline Morse is the mother of Anna Morse who was born on May 22, 2001. (TF-16; A- 77)[2] Pauline met and married the defendant in 2004. The defendant and Pauline Morse gave birth to a daughter, Melody Morse, in August of 2006. (TF-26; A-79) The family, consisting of the defendant, Pauline Morse, Anna Morse, Melody Morse and Pauline's daughter of another relationship, Ashley, moved to Delaware in late 2006. (TF-25; A-78) The defendant was the primary source of discipline for the children.

Multiple acts of what is considered abusive behavior, on the part of the defendant, were described including frequent episodes of the victim having to stand in one location, for hours, with her arms extended, confinement to her bedroom and which would restrict her access to a bathroom so that body elimination functions were deposited in her toy box or closet, (TF-44,45,47; A-80-82), standing near a wall with the requirement that she lean toward the wall so that her head and the wall were in contact for hours at a time, as well as various other forms of discipline perpetrated by the defendant and which ran the gambit from abusive to brutal. Post, 11-14. (TF-49, 50; A-83, 84) One of the forms of discipline, as alleged by the State, was effected by the defendant holding the victim in his arms, face up,

[2] "TF" refers to the transcript of the trial on February 6, 2014.

and positioning her so that her face was situated under a faucet with water running onto her head, face and into her nose and mouth, a/k/a "water-boarding". (TF-73; A-86) It was this activity which the State alleged constituted Reckless Endangering in the First Degree. This behavior was alleged to have occurred in the kitchen and, on one occasion, according to the victim, in a bathtub situated on the second floor of the family residence. (TF-73; A-86)

Pauline Morse opined that the "water-boarding" had occurred a "couple of times", but upon further questioning, conceded that there was but one occasion where she had observed the defendant holding the victim's head under the faucet in the kitchen sink. (TF-72; A-85)

Melody Morse, the eight-year-old sister of the victim, through the CAC videotape interview, recalled one occasion, occurring in the kitchen of the home, where the defendant had the victim positioned under the kitchen sink faucet, but remembered little else, other than her mother, Pauline, standing nearby. (Ct.Exh.20, TG-93; A-98)

Neither Pauline Morse nor Melody Morse were able to corroborate the victim's contention that she had been placed in the second floor bathtub, by the defendant, where she claimed that he turned on the faucet so that water was striking her face and disturbing her ability to breathe. (TF-75; A-87)

With that grisly[3] "back story" at hand, the events leading to the arrest of the defendant and Pauline Morse were recounted by all four members of the family. The family had gone out to a retail food business and at which time Anna placed her hands on a glass display counter after being forbidden to do so and which action resulted in the defendant telling her to go to the car and wait. (TF-80; A- 88) When the family arrived at home, the defendant told the victim she had to remain in the car. She remained outside for an extended period of time and after which the defendant went to the car, opened the car door, grabbed the victim by the ankle/foot and dragged her into the house. (TF-81; A-89) She was pulled/dragged to her first floor bedroom and, later, told Pauline that the defendant had struck her with such intensity that she could not see. (TF-81; A-89) The victim testified that the defendant told her, that evening, that she was going to experience the worst punishment in her life the next day. (TF-84; A-90) In order to avoid that happening, the victim gathered some personal effects together, got on her bicycle and "ran away". (TF-85, 86; A- 91, 92) The victim was interviewed by the authorities on August 6, 2012, and the videotape was introduced as a State exhibit. (TF-88; A-93)

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[3] The defendant concedes that the account of the background rendered, thus far, does not, standing alone, validate the use of the characterization "grisly". That particular adjective will demonstrate full force and effect when the "avalanche" of "other bad acts", unrelated to the "water-boarding", are identified post.

As a result of the preliminary investigation, both children were placed in foster care and remained in that capacity through the pendency of the criminal proceedings in the Superior Court. (TF-73; A-86)

The defendant and Pauline were both interviewed by the police on August 7, 2012. (TF-88, 105-107; A- 93, 95-97) The defendant also submitted to an interview with the police on July 13, 2012. (TI-94, 95; A-99, 100)[4]

Ultimately, Pauline Morse entered a guilty plea to multiple misdemeanors of Child Endangering on May 20, 2013. She received a period of probation and which was conditioned on her agreement to cooperate with the State by testifying against the defendant. (TF-89; A-94)

[4]"TI" refers to the transcript of the trial on February 11, 2014.

I. THE ADMISSION OF THE TOTALITY OF OTHER BAD ACTS EVIDENCE, QUANTITATIVELY AND QUALITATIVELY, WAS AN ABUSE OF DISCRETION IN THAT THE NATURE AND BREADTH OF THE OTHER BAD ACTS INJECTED UNFAIR PREJUDICE INTO THE PROCEEDINGS IN VIOLATION OF D.R.E. 402, 403 AND 404.

A. Question Presented.

Did the admission of the other bad acts evidence constitute error to such an extent that unfair prejudice permeated the proceeding so as to facilitate the jury to decide facts in the case on an improper basis?

The issue was preserved by appropriate and timely objection. (A- 19 - 27) Also see TD-25; A- 33)[5]

B. Scope and Standard of Review.

When, as here, a defendant complains that disputed evidence has been rendered admissible and which has infected the fairness of the trial process, this Court must determine whether or not the Trial Court abused its discretion. See D.R.E. 402, 403 and 404. Campbell v. State, 974, A.2d 156 (Del.2009).

C. Merits of the Argument.

On October 13, 2013, a "404" Hearing was conducted by the Trial Court to hear evidence so that the arguments of the defendant seeking exclusion of a host of other bad acts alleged on the part of the defendant

[5] "TD" refers to the transcript of the trial on February 3, 2014.

against the victim could be determined. On January 23, 2014, the Court articulated a decision, from the Bench. (TOC)[6]

The Court determined that the other bad acts evidence was relevant and material and that its relevance was measured in its contribution to allow the State to prove "motive, opportunity, domination, plan and intent". (TOC-12; A-28) The Court went on to indicate that the other bad acts were inextricably interwoven into the evidentiary narrative of the water-boarding so as to be a necessary ingredient in a proper factual finding. (TOC-15;A-29) Finally, the Court determined that the probative value of the various acts, considered separately and jointly, outweighed the risk of unfair prejudice impacting on the ability of the jury to fairly decide the matter.

As a result of that ruling, a legal "wrecking ball to the dam" of protection afforded by D.R.E. 403, a veritable "flood" of other bad acts "flooded" the courtroom and became the "center ring"; i.e. the "main event" capturing the time and attention of the jury.

Had the "dam" of protection remained in place, the State's evidence would have been the incident of July 12th, which Anna reported, on July 13th, indicating mental and physical abuse occurring at the hands of the defendant the night before. The victim told the mother of her friend Savannah. (TD-9,

[6] "TOC" is the designation for the transcript prepared as a result of the January 23, 2014 Office Conference.

63; A-32,34), Trooper Haupt of the Delaware State Police, several staff members of the Beebe Hospital, a DFS worker and the Delaware State Police Detective. In addition, she was examined by a physician and photographs were taken of the various sites of injuries that were visible.

Her account of the manner in which she was removed from the family car were corroborated by Pauline Morse who witnessed those events and as were described. Supra at p. 6.

The victim testified that she had been subjected to what she called "water-boarding", a characterization created by the defendant, and described the process, in detail, while indicating the alleged criminal acts took place in the kitchen on multiple occasions and in the second floor bathroom on one occasion.[7] (TD-74 – 83, 104-106; A- 35-44, 56-58)

Both Pauline Morse and Melody Morse offered corroborating testimony of the fact that each had witnessed, on one occasion, the same event occurring in the kitchen and which description paralleled, albeit not in as much detail, the description provided by the victim. (TF-72, 73, 75; A-85-87) (Ct.Exh.20, (TG-93; A-98)[8]

It was with that evidentiary landscape at hand when the "floodgates"

[7] A similar description was offered in "live and living color" in the August 6th videotape which was marked as a Court exhibit so as to prevent it from being available in the jury room and with the potential of offering "undue emphasis" on her version of events.

[8] "TG" refers to the trial transcript on February 7, 2014.

were ignored, and the dam of damning other bad acts evidence surged as a result of the Court's ruling. The emotionally-inciting abusive behaviors consisted of the following:[9]

1. The defendant slapped the victim's face, after dinner, at the dinner table, approximately one or two times a week. (TD-85; A-45) (TE-54; A-70)[10]

2. Placed a trash bag over her head in order to interrupt or prevent her breathing.[11] (TD-86; A-46)

3. The defendant prohibited the victim from eating the evening meal as a form of punishment. (TD-87; A-47)

4. The defendant forced the victim to consume food after she had signaled that she was full, and if he wasn't satisfied, would actually force food into her mouth and make her swallow it and which induced vomiting on her part. (TD-87, 88; A-47, 48) This punishment did occur "mostly every night". (TE-54; A-70)

5. She was banished to her bedroom and not allowed to move about the house freely. (TD-88; A- 48) To insure compliance with her imprisonment, the defendant installed Christmas bells on her door and on the wall adjoining the door to her bedroom so that any attempt to leave the room was noted. (TD-89; A- 49) The time frame when she was restricted to quarters ranged anywhere from half a day to an

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[9] No attempt is made to prioritize, in terms of hostility engenderment, the prejudicial evidence, but rather lists chronologically parallel production of the testimony at trial.

[10] "TE" refers to the transcript of the trial on February 4, 2014.

[11] Although the defendant conceded admissibility in advance of the January 23, 2014 decision regarding the alleged behavior of the defendant placing his hand over the victim's mouth while pinching her nose shut with the fingers of his other hand, the "bag over the head" claim did not arise until the time of trial, and there had been no concession regarding that act which was cumulative and especially prejudicial.

entire day. (TD-88; A-48) So rigid was the imprisonment that she was denied use of bathroom facilities so as to facilitate human elimination processes, and, instead, was forced to resort to her toy box or her closet floor as a repository for body wastes. (TD-89, 90; A-49, 50)(TF-44, 45, 47; A-80, 81, 82)

6. The defendant required the victim to stand, for extended periods, in various rooms with her arms out-stretched at what amounted to a 90-degree angle. (TD-90-92; A-50-52) During these punishment sessions, she was required to create a separation between her feet and the base of the wall and lean back so that her head was the fulcrum of support of her body, and for extended periods, while remaining in that position. It was painful to her. (TD-90-92; A-50-52) The same form of standing punishment occurred on those occasions when he took her to the doctor's office where he worked part time. (TD-94; A-53) As was the case with being "confined to quarters", the victim was denied use of bathroom facilities when she endured this form of punishment. (TD-92; A-52)

7. Another form of punishment required her to sit, for extended periods of time, in a chair of the defendant's choosing. (TD-94; A-53) She had to do that at his work place either in the lobby or in his office. (TD-94; A-53) It would last as long as a day. (TD-94; A-53) He made her maintain that position past her bedtime, and it occurred on school nights and occurred approximately once or twice every other week. (TD-95; A-54)

8. Notwithstanding the fact that she claimed that she was not tired when she awakened for school, there were occasions where she was awakened by the defendant having splashed a cup of water in her face. (TD-95; A-54) She recounted an episode, while identifying a bathroom pictured in State's Exhibit 42, a video of the family residence, where, because she had not flushed the toilet after use, the defendant tried to

put her head in the toilet to give her a closer look at the materials that remained after her use of it.[12] (TD-102; A-55)

9. Clearly, the "nuclear IED" that was detonated were the photographs (St's.Exh.52, et. seq.) evidencing the pain, fear and humiliation of the victim .[13] (TD-117-119; A-59-61; A-15, 16)

10. She was required to offer what has been described in the American culture, vulgar edition, perhaps, as a "one-finger salute" and/or "shooting the finger". (TD-117; A-59) In fact, not satisfied with one salute, he ordered that two be extended. (A- 17)

11. The defendant placed his hand over her nose and mouth, on more than one occasion, and the effect of which was to effect suffocation. (TD-121-123; A-62-64) On one occasion, that action caused her to urinate in her pants.[14] (TD-121; A-62) On another occasion while hand suffocation occurred, she dropped to the floor and

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[12] Probably the defendant should be grateful that the Prosecutor didn't ask her what she observed.

[13] Counsel, deliberately, has refrained from a verbal description of the scene subscribing to the maxim "A picture is worth a thousand words." Counsel wanted to, as best as possible, have the Court perceive the sudden "rush of emotion" that seeing that pictorial display would create in the absence of any verbal description and which would condition the Court for what lay ahead. Of course, the color component that the jury saw as well as the dimensions of the photographic portrayal presented in the jury room on the wall facing the jury and which measured approximately five feet by five feet could not possibly be visited onto the Court's perception as it would have been on the jury's.

[14] It is to be understood that the defendant accepted, however grudgingly, the proposition that the previously-identified hand suffocation was relevant and material given the fact that the defendant admitted that the act of placing her head under the faucet occurred, but offered that it was solely in order to wash her hair which she was adamant in refusing to do. His intention and motivation, therefore, was at issue. What was not previously indicated by the State was her act of self-urination. That was not previously agreed to by the defendant. It was not probative in the termination of whether water-boarding had occurred and should not have been offered.

"pretended I was dead".[15] (TD-123, 124; A-64, 65)

12. The defendant placed a black heavy-duty garbage bag over her head while intending to suffocate her by tightening the bag around her neck.[16] (TD-125; A-66)

13. The defendant required her to stand in the tub with her arms out pretending she was a tree while he would pour water over her head. (TD-135; A-67)

14. Almost every night, the defendant prohibited her from eating, by throwing her food in the garbage can, forcing her to eat the food that she had to retrieve from within and its unsavory contents. (TE-57; A-71)

15. The defendant had struck the victim with a broom. (TE-58; A-72) The defendant had struck the victim in the head with a wooden spoon. (TE-58; A- 72) The defendant poured vomitus over the head of the victim (her vomit albeit not anymore pleasant, counsel would submit). (TE-98; A-76) She also mentioned coffee or coffee grounds being poured over her head, but in light of the specter of cascading vomitus, the coffee or coffee grounds are not of any particular moment. (TE-98; A-76)

A full and complete description of the concept of unfair prejudice was presented to the Trial Court and now is referenced for the Court's review. (A-19-27)

The defendant maintains that the unfair prejudice dramatically outweighed the probative value of the "wall-to-wall" litany of events that

[15] This latter "wrinkle" of "playing dead", likewise, was never announced in the State's proffer and was objectionable.

[16] This was not part of the State's proffer regarding hand suffocation and was cumulative and highly, unfairly prejudicial.

demonstrated a disposition of abject cruelty on the part of the defendant – a character disposition that could not be ignored in this setting and which was highlighted in the most dramatic form with the finger/nose photographs. Furthermore, the sheer number of events discussed brings to the fore what is known as the "Cumulative Error Doctrine". See Garza v. United States, 2013 WL 5529600 (S.D.Ala.2013); State v. Robinson, 2013 WL 5517978 (Ohio App.2013); Moore v. State, 2013 WL 5476410 (Wyo.2013). Multiple errors which may not, individually, create prejudice requiring reversal, when viewed in the context of the cumulative effect assume an attenuated potential for unfair prejudice that requires reversal of the verdict below.

No better statement of the atmosphere of prejudice, occurring in the courtroom could be found than the comments of former Chief Justice Steele in State v. Long, 1992 WL 2077258 (Del.). He noted the danger of evidence which shifts "the jury's focus away from the incident in issue or to create a risk of a mini trial...". He goes on to say, referring to character evidence, that it tends to distract from what happened on the particular occasion, and "It subtly permits the Trier of Fact to reward the good man and to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.".

A calculation of the testimonial verbiage, admittedly not a scientific methodology of calibration, nonetheless is revealing. (A- 18)

II. THE DECISION OF THE TRIAL COURT TO PERMIT THE JURY TO RE-HEAR THE, OUT-OF-COURT, VIDEOTAPE INTERVIEWS OF ANNA MORSE AND MELODY MORSE, WHILE DENYING THE REQUEST TO RE-HEAR THAT OF PAULINE MORSE WAS ERRONEOUS ON BOTH EVIDENTIARY AND CONSTITUTIONAL GROUNDS.

A. Question Presented.

Was the decision of the Trial Court to permit the jury to re-hear the, out-of-court, videotape interviews of Anna Morse and Melody Morse, while denying the request to re-hear that of Pauline Morse erroneous on both evidentiary and constitutional grounds?

The defendant preserved his right of appeal. (TK-13 – 17, 20, 22, 23; A-102-107, 109, 110)

B. Scope and Standard of Review.

When an appeal is based upon a contention that the Court has incorrectly admitted evidence and implicitly violated the Rules of Evidence, the standard of review is abuse of discretion. Discretionary rulings made, while considering D.R.E. 403, are reviewed for an abuse of discretion. Smith v. State, 913 A.2d 1197 (Del.2006).

Constitutional error claims are subject to de novo appellate review. Wilkerson v. State, 953 A.2d 152, 156 (2008).

C. Merits of the Argument.

1. ABUSE OF DISCRETION RULES OF EVIDENCE.

A note was delivered to the Court and, paraphrasing the Court, sought the following materials:

a. The videotape of the Morse family home prepared by the Delaware State Police.

b. The CAC videotape of Melody Morse.

c. The transcript. Anna; kitchen sink.

d. The transcript of the trial testimony of Pauline Morse as it pertained to the water-boarding at the kitchen sink.

e. The CAC videotape of Anna Morse.

The State's position reflects the obvious crucial nature of the out-of-court statements as was reflected in the words, "Certainly, Anna's testimony is central to the case.". Even the State noted that the victim had "testified sometime ago" and that although the videotape had been played, "It was played sometime ago.". The State went on to note, "It's been a lengthy trial.". The State continued, "There's been a lot of evidence since then.".[17]

The defendant objected while noting that the logistics of having a superfluous, unconfronted, unchallenged, out-of-court statement which could be referenced during jury deliberations provided a decided tactical and

[17] Unknowingly, the lead prosecutor became the lead protagonist demonstrating that the time lapse had dimmed the memories of the jurors not only with regard to State's allegations advanced, but with regard to the content of cross-examination as well. Put another way, the State stressed the undue emphasis aspect now complained about by the defendant as well as the diminution of cross-examination caused by the passage of time. (TK-11; A-101)

strategic advantage to a party having such ability. (TK-15; A-104) Counsel also objected on the grounds that the immediacy of what was being viewed and heard, as jury deliberations were at "full throttle", was a decided advantage in "bolstering" the content of what was seen and heard in that context. (TK-15; A-104)

Counsel also lamented the diminution of effective cross-examination since the version offered in the videotape was provided by a solicitous trained social worker where passivity and acceptance is the "trademark". (TK-16; A-105) Noteworthy is the fact that the defendant specifically asked that excerpts made from the CAC videotape, and prepared by the defendant be provided, but were excluded from review by the jury.

Admittedly, the Trial Court has discretion whether or not to permit a re-hearing of testimony or testimonial equivalence during jury deliberations. The Supreme Court has specifically identified the present situation; viz., a request from the jury, as one of those circumstances where discretion may be exercised. To be remembered, however, is that this practice is "fraught with some danger to a fair trial and ought to be indulged in with caution". State v. Dickson, 614 N.W.2d 288 (Neb.2000). A Court's discretion is not without limits. State v. A.R., 65 A.3d (N.J.2013). It is not "unbridled". State v. Wilson, 762 A.2d 647 (N.J. 2000). Neither is it boundless. U.S. v.

Richard, 504 F.3d 1109 (9th Cir.2007). Strong factors to be considered, in the exercise of discretion, is the importance of the testimony in relation to other evidence and the "quantum of other evidence against the defendant". United States v. Sacco, 869 F.2d 501 (9th Cir.1989); U.S. v. Ringcon, 28 F.3d 921 (C.A.9, 1994); State v. Harris, 808 P.2d 453 (Mont.1991); U.S. v. Richard, supra. Notwithstanding that a jury generates a request, the Court must proceed with "caution" because:

> "The heightened danger that undue emphasis will be placed on detailed video statements of victim-witnesses is exaggerated in cases like the present one, where minimal evidence corroborates the victim's statements and testimony...". People v. Jefferson, 2014 WL 2769104 (Colo.Ct.App.)

Casting aside generalities, the defendant points to the specific dynamics of the instant case which all but makes certain undue emphasis was given of the content provided in the replay:

1. The MEMORY FACTOR was dominant. Even the State expressed, albeit for different reasons, a rational basis for noting the dimming effect on mental clarity posed by the passage of time. Ante at 22. The victim had completed her testimony on February 4, 2014 and which was nine days before the replay. In State v. Littlefield, 876 A.2d 712 (N.H.2005), the New Hampshire Supreme Court noted that Courts take a "dim view" of replay of trial testimony while recognizing that undue emphasis occurs because the "spoken words readily before them physically while the spoken words uttered at trial can only be conjured up by memory". In People v. Pierce, 291 N.E.2d 58 (Ill.Ct.App.1972), undue emphasis factor was described by the words, "[I]t does not follow that, in all instances, and, at all times, men and

women called for jury duty are endowed with infallible powers of retention. The Court noted an enhanced risk in the context of lengthy trials. In Wright v. Premiere Alcorn Co., 16 S.W.3d 570, 572 (Ky.App.1999), the Court voiced a concern, "[T]here is concern that jurors may accord great weight to testimony, re-examined during deliberations, as compared to the 'live' evidence heard at trial, because the un-reviewed testimony 'can only be conjured up by memory'.". Also see 75B Am. Jur. 2d *Trial*, §1671 at 454 (1992) and State v. Montoya, 773 P.2d 623 (Colo.Ct.App.1989).

2. The TRIAL LENGTH exacerbates the memory fade and its effect in creating undue emphasis. In Commonwealth v. Richotte, 796 N.W.2d 890 (Mass.Ct.App.2003), the Court noted that "freshly reviewed testimony might acquire unfair additional cogency as compared to portions of the trial record not subject to review". In accord, Commonwealth v. Seybert, 7 N.E.3d 494 (Mass.Ct.App.2014) which listed the "length of the trial" as a major consideration in engendering undue emphasis. In State v. Monroe, 27 P.3d 1249 (Wash.Ct.App. 2001), the Court noted that in the case of a lengthy trial allowing testimonial evidence to be made available during deliberations would "likely cause it to overwhelm the jury's memory via oral testimony".

3. The LACK OF CONTEXT is of critical dimensions. By that is meant that, at trial, direct examination was promptly followed by cross-examination and which provided, as best as can be ferreted out, the product of competing legal rationales. In this instance, the gentle questioning of the CAC interviewer provided a "lopsided" slant of interpretation which is the antithesis of an impartial review. A great many cases absolutely require as that the child sex victim's related cross-examination at trial also be made available when there is to be a playback or re-hear. State v. Morales, 2009 WL 1658480 (N.J.Super.), citing Burr v. State, 921 A.2d 1135 (N.J.Super.2007) where remarkably similar circumstances existed and that the child's allegations were repeated several times throughout the trial, the child's

mother testified as to the child's allegations, the child testified in Court, and the same videotaped interview , permitted to be replayed during deliberations, was played in the Court testimony. The Court critiqued the process because it allowed the jury to review the child's demeanor for a second time, without the ability to view the child's demeanor during cross-examination. The Court emphasized the importance of providing cross-examination contemporaneously with the replay. The cases of Thomas v. State, 878 So.2d 458 (Fla.Ct.App.2004); Tullis v. State, 716 So.2d 819 (Fla.Ct.App.1998); Mullins v. State, 78 So.3d 704 (Fla.Ct.App.2012); People v. Clark, 968 NYS 2d 249 (N.Y.A.D.2013); State v. Wilson, supra; Havron v. State, 506 S.E.2d 421 (Ga.1998), all decried a playback without the contemporaneous exhibition of related cross-examination such that reversal of convictions were required in cases involving child victims.

4. The UNIQUENESS OF VIDEOTAPE also weighs heavily as a key ingredient in fostering undue emphasis in this case. Multiple Courts have expressed concern when the re-read or playback involves the medium of videotape. The authority found in 65 ALR. 6th, 537, Propriety of Audio or Video Playback of Testimony or Statement to Jury (2011) instructs the factors including hearing the testimony of the witness in the cadence, tone and voice of the witness as well as seeing the witness's gestures, body language and facial expression for a second time has an obvious impact on the danger of undue emphasis. In State v. Gould, 695 A.2d 1022 (Conn.1997), the Connecticut Supreme Court noted that videotape replays are amenable to engender the passion, animation and sympathy when there are child victims of abuse. State v. Michael, 625 A.2d 489 (N.J.Super.1993) expressed the same observation noted in Gould, but noted that those cognitive commodities are on display for a second time. In United States v. Binder, 769 F.2d 595 (C.A.9, 1985), rev'd on other grounds, the Court, in effecting reversal, noted that there was no physical evidence, and the only acts of molestation were through children's videotaped testimony. It noted that credibility was a crucial issue and

under those circumstances, a videotaped testimony may have taken on a greater significance and ruled that allowing the jury to see and hear the videotape during deliberations unduly emphasized the testimonies. The Court was clear in its indication that a videotape replay is the functional equivalent of a second round of live testimony and that second repetition was fatal to the conviction. In accord, State v. A.R., supra, and which noted the truism "It is difficult to deny that there is an advantage that may be gained in such circumstances" commenting on a videotape replay of a State's witness; People v. Jefferson, supra. The replay is such that "in essence the witness is brought before the jury a second time". Also see State v. Koontz, 41 P.3d 475, 479 (Wash.2002) noting the same language of "difficult to deny that there is an advantage..." already cited. The Oklahoma Court of Appeals in Martin v. State, 747 P.2d 316, 319 (Okla.Crim.App.1987) offered a particularly insightful comment:

> "[T]here is an important distinction between having parts of testimony dispassionately read to a jury and allowing the jury to hear, and see, the entire testimony of an empathetic witness, such as a child describing a painful experience in his young life. The possibility for abuse is ... substantially increased with video technology... the tape... is not merely an exhibit, it is testimony.".

5. The REPETITION COMPONENT of learning is a matter of common knowledge which begins in elementary school. It does not end in the doorway leading to the jury room. Repetition occurs when the witness is brought before the jury a second time during deliberations. State v. A.R., supra; Young v. State, 645 So.2d 965 (Fla.1994); Binder, supra; Koontz, supra; Givens v. State, 705 P.2d 1139 (Okla.Crim.App.1985).

Specific commentary from three cases is instructive. In State v. Mayes, 825 P.2d 1196 (Mont.1992), the Trial Court permitted the jury to hear, during deliberations, testimony of

two State's witnesses and the Supreme Court, in reversing the decision below, indicated that the testimony of those witnesses was "critical to the case of the State". In the instant case, the prosecutor's characterization of the testimony of the State's two witnesses was tantamount to the characterization offered in Mayes; viz., "The children's testimony in this case was certainly central to the case. Certainly, Anna's testimony is central to the case.". Ante at 22, 23. (emphasis supplied) In People v. Mitchell, 588 N.E.2d 1247 (Ill.App.1992) (overruled on other grounds), the Court of Appeals reviewed the decision of the Trial Court to permit a victim's video replay after a request for the replay by the jury during deliberations, and it was essentially a "credibility" war, a close case, and by virtue of the video replay, the victim's testimony was twice heard, and the Court observed, "We fail to see how this evidence could not have had a prejudicial effect on the jury.". Finally, on this point, in People v. Halstead, 881 P.2d 401 (Colo.Ct.App.1994), the Court, in upholding the jury deliberation replay of a victim's statement noted:

> "This is not a situation where we had one witness who came in and testified one way and another witness who came in and testified in another way so that the jury is having to resolve credibility issues, one witness as compared to the other.".

Because it was not that situation, diametrically the opposite to the present situation, the Court allowed the request of replay. The dynamics of this videotape playback reached the extreme of undue prejudice caused by the fusion of (1) the nature of the videotape with elevated prominence of other bad acts while portraying the conduct being prosecuted as a "side dish" thereby punctuating repeatedly the portrayal of the defendant as a cruel, heartless, subhuman sadist, (2) the nature of the videotape, itself, where a young child is viewed in a setting that underscores her vulnerability, (3) the nature of the inter- view questions which included language and tone of reassurance from the trained interviewer and with a continual and fluent restatement and repetition of what the

victim had clearly stated not only with such restatements occurring at the time of the child's statement, but with frequent returns to the topic after other topics had been addressed and examples of which were:

> "Q: Flick your nose, pull your hair, put his thumb under your arm." [This type of restatement was a verbal device used repeatedly immediately prior to asking a different question.]
> "Q: And you said you were scared."
> "Q: And you said it would go in your nose."
> "Q: You said you would try to hold your breath and that it was hard for you to breathe."
> "Q: You said your dad pulled your hair."
> "Q: [After the interview had already treated the water-boarding topic, a second "coat of paint" was introduced.] You told me about what you called water-boarding where he would hold, hold you, and hold your head under the water in the kitchen."[18]

The complete absence of any challenge to the victim's statements as the videotape unfolded, the temporal separation between the original Court testimony and the replay [9 days and nights – 216 hours] and the decision of the Court not to allow the jury to hear Pauline Morse's account of the water-boarding based on the Court's conclusion, without inquiry of the Prosecution, 'With regard to the request for a transcript, 'Anna, kitchen sink; Pauline, kitchen sink'. Transcripts are not available and cannot be provided to you." (TK-31, 32; A-112, 133) (emphasis supplied)[19]

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[18] All of these remarks, and many more, are easily heard, as was the original response of the victim, by viewing the videotape of the victim as was done by the jury.

[19] The record should reflect that the Prosecution had in its possession a redacted transcript of the August, 2012 interview between the police and Pauline Morse yet chose not to reveal that to the Court. Defense counsel notes that Rule 3.3 of the Code of Professional Responsibility requires a lawyer to disclose "legal authority... known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel". Logically, a prosecutor, one would think, has an obligation to advise the Court of any material circumstance which the prosecutor knows is misunderstood by the Court. Defense counsel is not aware of any case where this Court, or any other Delaware Court, has discussed the implications of this Rule in a situation such as this and, respectfully,

> The repetition of a one-sided presentation in living color at that critical phase of the trial, most certainly, created an unmistakable vehicle of "undue emphasis"!

2. CONSTITUTIONAL ERROR – SIXTH AMENDMENT.

The Sixth Amendment's securing the right of effective cross-examination is unchallenged. Douglas v. Alabama, 380 U.S. 415 (1965). Not only is the term "cross-examination" guaranteed, but the witness must be "subject to full and effective cross-examination. California v. Green, 399 U.S. 149, 158 (1970). The Federal rights, of course, flow to the State through the Fourteenth Amendment. Herring v. New York, 422 U.S. 853 (1975). It is the last requirement, "full and effective" that is at issue.

The defendant was afforded his Sixth Amendment right on February 3rd and February 4, 2014. However, on February 12th, during the second rendition of critical testimony, the witness was not confronted in any way. The State contends that a "cobbled together" cross-examination had trial nine days before satisfied the constitutional requirement of "effective' and "full". The defendant disagrees.

The "essence of effective confrontation [consists of] testimony by a competent witness, under oath, and subject to contemporaneous cross-

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invites this Court to touch upon that less than clear topic in the Opinion ultimately to be issued.

examination". (emphasis supplied) United States v. Rouse, 111 F.3d 561 (C.A.8, 1997), citing Maryland v. Craig, 497 U.S. 836, 851 (1990).

The recognition of the contemporaneity of the cross-examination with the direct testimony has been echoed and re-echoed in the Judicial System. In Beavers v. State, 492 P.2d 88 (Ala.1971), the Alabama Supreme Court held:

> "The chief merit of cross-examination... Its principle virtue is in its immediate application of the testing process, its strokes fall where the iron is hot...".

In Blades v. United States, 25 A.3d 39 (D.C.Ct.App.2011), the Court noted:

> "Not only the cross-examination, but 'its timing' could significantly affect the impact of the witness's testimony."

The Court, colorfully, described the "punch" of a separated cross-examination which "could be considerably more diluted" than had the rule of contemporaneity been observed. The Illinois Supreme Court, in People v. Bastien, 541 N.E. 2d 670 (Ill.1989), in overturning a statute that violated the Sixth Amendment said:

> "We are convinced that the statute, by prohibiting contemporaneous cross-examination, unnecessarily and impermissibly infringes on an accused's right of confrontation.".

In short, to use the language of Beavers, supra, "The iron was hot on February 4th. The defendant had no iron with which to defend himself on

February 12th.".

3. THE VIDEOTAPE REPLY ABRIDGED RIGHT TO DUE PROCESS OF LAW.

The authority found in 22 J. Marshall L. Rev. 331 (1988), cites Lee v. Illinois, 476 U.S. 530 (1986), in that the idea of a fair trial is to insure that both parties engage in an open and even contest. The defendant suggests what happened with the playback was anything but an "even contest". That Article recognized a Due Process right of a defendant to have available contemporaneous cross-examination, and that the absence thereof offers a "distinct disadvantage". Other cases recognize the relationship of Due Process in the context of jury deliberation playbacks. U.S. v. Monserrate-Valentine, 729 F.3d 31 (C.A.1, 2013); State v. Koontz, supra.

Finally, in support of the defendant's contention his Due Process right was violated by the videotape replay, the defendant cites State v. Apilando, 900 P.2d 135 (Ha.1995) and where the Hawaii Supreme Court stated legal reality:

> "Belated cross-examination is not cross-examination, at all, because the passage of time destroys the defendant's opportunity to subject the [out-of-court] statement to an immediate challenge to determine the truthfulness and credibility... it's [referring to cross-examination] principle virtue is in its immediate application of the testing process. It's strokes fall while the iron is hot...". (citation omitted)

The separation of the belated cross-examination from the direct testimony renders it meaningless. In essence, it was not cross-examination at all because the passage of time destroyed the defendant's opportunity to subject the statement to an immediate challenge to determine its truthfulness and credibility.

Finally, the Trial Court, here, was fully cognizant of the risks that allowing the admissibility of the multitude and variety of the inhumane acts of the defendant, as alleged:

> "If believed, the testimony about the defendant's bad acts is extremely prejudicial. It makes him a child molester... Consequently, there is a significant risk of unfair prejudice to the defendant." (emphasis supplied)

The Court reasoned that admissibility of these bad acts was proper based upon its conclusion that in crimes of incest, extremely heinous crimes, "uncharged incestuous conduct between the parties is generally admissible...", the defendant, respectfully, disagrees in that this Court in Getz v. State, 538 A.2d 276 (Del.1988) and subsequent decisions has "drawn a line in the sand" when other bad acts of heinous crimes are sought to be introduced, and recognizes, implicitly, the impotency of so-called curative instructions with those crimes at hand.

The conduct alleged, in the other bad acts, were clearly acts of "torture"! Would a curative instruction be more effective in telling a jury

that the jury is to disregard the purposeful campaign, spanning over the years of a very vulnerable child's life, daily doses of torture, than would be the case if the acts were "only" sexually charged in nature? The Trial Court was willing to take that risk. Unfortunately, the defendant had no choice.

Due Process demands a fair trial. The defendant contends that fairness was compromised because the jury could not help but factor in the portrait of cruelty and inhumanity that was presented to them. The destructive impact of the defendant's decayed character, while not being able to be measured, nonetheless, had to enter into the fact-finding process of at least one previously fair-minded juror. See Banther, post at 31. One can imagine an imaginary poll, conducted of the jury after the verdict was rendered, "What do you think of the character of Melvin Morse?". Does anybody doubt that there would be unanimity in the verdict, "He is a cruel and sick [expletive deleted]."? What happened in that courtroom with the introduction of that evidence was "just not fair". Adding to the unfairness quotient was the video replay which, in excruciating detail, recounted his acts of character, not for the first time (trial testimony) , not for the second time (playing videotape in Court), but for the third time. "Repetition is the mother of all learning!"

III. PROSECUTORIAL MISCONDUCT RAISING A FAIR PROBABILITY OF PREJUDICE REQUIRES REVERSAL.

A. Question Presented.

Does prosecutorial misconduct raising a fair probability of prejudice require reversal?

The defendant did not preserve the issue.

B. Scope and Standard of Review.

When a defendant, at trial, fails to make appropriate objection or fails to seek Court action and, later, seeks to appeal what has occurred without such action, the standard of review is "plain error". Jones v. State, 2005 WL 2473789 (Del.). The Court must examine the record to determine whether there are material defects, apparently on the face of the record, which are "basic, serious and fundamental..." and which deprive an accused of a "substantial right", or which clearly show "manifest injustice". Id.

C. Merits of the Argument.

A fundamental of Due Process is the requirement that the Prosecution has a duty to disclose material evidence that is favorable to the defendant. Kyle v. Whitley, 514 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83, 87 (1963). This principle applies, with equal force, not only in a pretrial setting, but in the course of trial itself. Banther v. State, 783 A.2d 1287 (Del.2001); Napue v. Illinois, 360 U.S. 264 (1959). In Napue, the Court

spoke on the subject of false evidence being introduced with the Government permitting it to be introduced without raising the issue to the Court and defense counsel. Id. at 269. Not only does the requirement go to substantive issues only, but, in the same fashion, matters involving impeachment. Jackson v. State, 770 A.2d 506 (Del.2010); Michael v. State, 529 A.2d 752, 756 (Del.1987). Due Process is violated when the Prosecution knowingly permits perjured testimony to occur notwithstanding there is no active participation in implementing the perjurious testimony. State v. Duonnollo, 2009 WL 3681674 (Del.Super.). Finally, a violation occurs irrespective of the good faith or bad faith of the Prosecution. Giglio v. U.S., 405 U.S. 150 (1972).

Once a Due Process violation has been demonstrated, the Court must analyze the state of the record to determine if there is a "reasonable probability" that the failure to disclose was material. A reasonable probability is "one sufficient to undermine confidence in the outcome of the trial". Id.

The victim was questioned as to whether or not she had told any other person about her allegations of water-boarding prior to the disclosure in July of 2012. She was under oath. She testified that she had told the truth at all times during the times that she had been questioned with regard to the

accusations against the defendant. (TE-24, 25; A-68, 69) She went on to claim that she told her teacher that the defendant "hit me too hard and that he said he was washing my hair, but I couldn't breathe". (TE-63, 68; A-73, 74) She, further testified, "... I remember telling all of my friends.". (TE-70; A-75) She went on to identify a friend that she told as Elena Vicente. (TE-70; A-75) She was then challenged with the words, vis-à-vis her conversations with the Prosecution, "You've always said that you've never told anybody, haven't you?". She sat on the witness stand without answering.

As that questioning took place where the State's witness, under oath, declared that she had told her teacher and "all her friends" including naming one friend, regarding the unpleasant water experience, a/k/a water-boarding, the Prosecution team sat silently nearby. What makes that silence and inaction controversial is a passage from the office conference occurring on January 27, 2014 with the Trial Court, when one of the prosecutors was heard to remark:

> "With respect to the water-boarding, I mean, I've asked her that directly, Your Honor. She indicated to me she never told anybody about it because she didn't even really understand how bad it was because he told her it was something the police and army did, and she just thought he was allowed to do this sort of technique with her.". (TOC-24, 25; A-30, 31)

The Court then specifically directed the prosecutor's attention to a Motion which was directed toward revelations that the victim indicated she

had made to her friends and the same prosecutor replied:

> "I've asked her that question, directly, Your Honor, and she indicated to me she never told anybody about it.". (emphasis supplied). (TOC-25; A-31)

Credibility was vital to the outcome of this case. Corroboration was almost non-existent as is evidenced by the State's desperate need to introduce anything negative about the defendant's treatment of the victim that the State could get its proverbial, "hands on".

Had the Prosecution come forward, as it was required to do so under concepts of Due Process, it is clear that the jury would have no recourse but to conclude that the victim was deliberately deceptive with the Prosecution. Unfortunately, that conclusion couldn't be reached when defense counsel explored that very issue with an employee of the Department of Justice, Laurel Bronstein, as is recorded in the following question and answer:

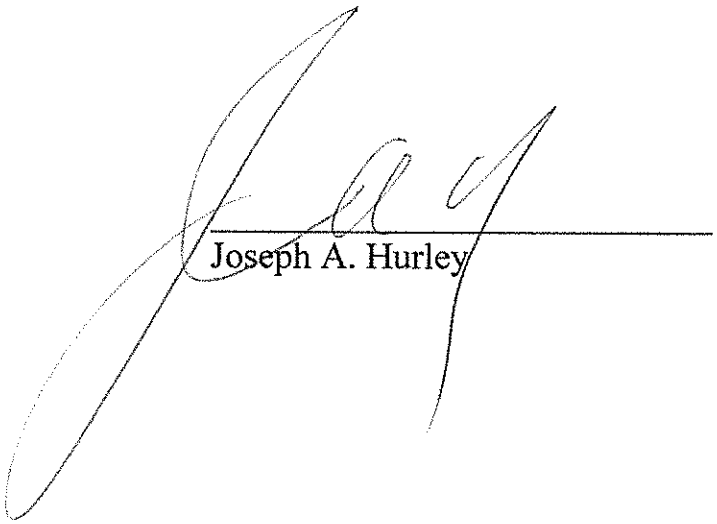
> "Q: Did she ever tell the assembled Prosecution team that she told a friend of hers at school so that her version could be corroborated?
> A: I don't recollect that."[20]

[20] A foggy answer at best.

CONCLUSION

For any or all of the reasons advanced, the defendant seeks reversal of the conviction below.

Respectfully submitted,



Joseph A. Hurley

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

STATE OF DELAWARE

VS.

MELVIN L MORSE

Alias: See attached list of alias names.

DOB: 12/11/1953
SBI: 00707400

CERTIFIED
AS A TRUE COPY
Attest: Joyce M. Collins
Prothonotary
Per: J. Reynolds
Clerk

CASE NUMBER:
1208005897

CRIMINAL ACTION NUMBER:
S12-08-0965I
RECK END 1ST(F)
PS12-08-0963I
RECK END 2ND(M)
LIO:RECK END 1ST
S12-09-1049I
ASSAULT 3RD(M)
S12-08-0968I
END.WELF.CHILD(M)
S12-09-1050I
END.WELF.CHILD(M)
S12-09-1052I
END.WELF.CHILD(M)

COMMITMENT
SEE NOTES FOR FURTHER COURT ORDER-TERMS/CONDITIONS

SENTENCE ORDER

NOW THIS 11TH DAY OF APRIL, 2014, 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 S12-08-0965-I : TIS
RECK END 1ST

Effective April 11, 2014 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5 with credit for 8 day(s) previously served

- Suspended after 3 year(s) at supervision level 5

- For 2 year(s) supervision level 3

STATE OF DELAWARE
VS.
MELVIN L MORSE
DOB: 12/11/1953
SBI: 00707400

Probation is concurrent to any probation now serving.

AS TO PS12-08-0963-I : TIS
RECK END 2ND

- The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number 12-08-0965 .

AS TO S12-09-1049-I : TIS
ASSAULT 3RD

- The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number 12-08-0965 .

AS TO S12-08-0968-I : TIS
END.WELF.CHILD

- The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number 12-08-0965 .

AS TO S12-09-1050-I : TIS
END.WELF.CHILD

- The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number 12-08-0965 .

AS TO S12-09-1052-I : TIS
END.WELF.CHILD

- The defendant is placed in the custody of the Department

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of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number 12-08-0965 .

SPECIAL CONDITIONS BY ORDER

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DOB: 12/11/1953
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1208005897

The defendant shall pay any monetary assessments ordered during the period of probation pursuant to a schedule of payments which the probation officer will establish.

Have no contact with the victim(s) Anna Morse , the victim's family or residence.

While at Level 3, the defendant shall perform 5 hour(s) to 35 hours of community service per week unless fully employed.

Pursuant to 29 Del.C. 4713(b)(2), the defendant having been convicted of a Title 11 felony, it is a condition of the defendant's probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

Participate in any recommended mental health and/or substance abuse treatment at the discretion of the Probation Officer.

Must comply with any special conditions imposed at any time by the supervising officer, The Court, and/or The Board of Parole.

Probation may be transferred to Maryland if accepted by that state and in agreement with probation officer.

Defendant shall receive mental health evaluation and comply with all recommendations for counseling and treatment deemed appropriate.

Should the defendant be unable to complete financial obligations during the period of probation ordered, the defendant may enter the work referral program until said obligations are satisfied as determined by the Probation

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Officer.

Defendant be evaluated by a DVCC certified agency for treatment and follow any and all recommendations.

Have no contact with codef. Pauline Morse.

NOTES

1) Contact between the defendant and his minor child, Melody Morse, shall be pursuant to the orders of Family Court and/or the Division of Family Services.
2) The medical staff of the Department of Correction shall review the defendant's medical records and, as much as possible, coordinate his medical treatment with his current physicians.
3) The defendant shall continue with his psychiatric care and comply with all treatment and medications ordered.

JUDGE RICHARD F STOKES

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
MELVIN L MORSE
DOB: 12/11/1953
SBI: 00707400

CASE NUMBER:
1208005897

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	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	345.00
PUBLIC DEF, FEE ORDERED	
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	6.00
DELJIS FEE ORDERED	6.00
SECURITY FEE ORDERED	60.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	90.00
SENIOR TRUST FUND FEE	
TOTAL	607.00

LIST OF ALIAS NAMES

STATE OF DELAWARE
VS.
MELVIN L MORSE
DOB: 12/11/1953
SBI: 00707400

CASE NUMBER:
1208005897

MELVIN MORSE

AGGRAVATING-MITIGATING

STATE OF DELAWARE
VS.
MELVIN L MORSE
DOB: 12/11/1953
SBI: 00707400

CASE NUMBER:
1208005897

AGGRAVATING
CHILD DOMESTIC VIOLENCE VICTIM
UNDUE DEPRECIATION OF OFFENSE
VULNERABILITY OF VICTIM
OFFENSE AGAINST A CHILD

MITIGATING
PHYSICAL/MENTAL IMPAIRMENT
NO PRIOR CONVICTIONS