

THE STATE OF IOWA

V.

MH

THE CHARGES

- SEXUAL ABUSE IN THE SECOND DEGREE:
- -PERFORMING A SEX ACT WITH A PERSON UNDER THE AGE OF 12
- INDECENT CONTACT WITH A CHILD
- -FONDLED OR TOUCHED THE CLOTHING COVERING THE INNER THIGH, GROIN, BUTTOCK, OR BREAST OF A CHILD
- -VICTIM UNDER 14, DEFENDANT OVER 18, NOT MARRIED
- -DEFENDANT DID SO WITH THE SPECIFIC INTENT TO AROUSE OR SATISFY THE SEXUAL DESIRES OF THE DEFENDANT OR THE VICTIM

THE PRESUMPTION OF INNOCENCE

- The defendant is presumed innocent and not guilty. This presumption of innocence requires you to put all suspicion which might arise from the arrest, charge, or the present situation of the defendant. The presumption of innocence remains with the defendant throughout the trial unless the evidence establishes guilt beyond a reasonable doubt.

REASONABLE DOUBT AND THE BURDEN OF PROOF

- The burden is on the State to prove MH guilty beyond a reasonable doubt.
- A reasonable doubt is one that fairly and naturally arises from the evidence or lack of evidence produced by the State.
- If after a full and fair consideration of all of the evidence, you are firmly convinced of the defendant's guilt, then you have no reasonable doubt and you should find the defendant guilty.
- But, if after a full and fair consideration of all of the evidence or lack of evidence produced by the State, you are not firmly convinced of the defendant's guilt, then you have reasonable doubt and you should find the defendant not guilty

BEYOND A REASONABLE DOUBT

- “FIRMLY CONVINCED”
- “NOT FIRMLY CONVINCED”

BEYOND A REASONABLE DOUBT

- IF YOU BELIEVE AZ, YOU ARE FIRMLY CONVINCED AND HAVE NO REASONABLE DOUBT AND YOU SHOULD FIND THE DEFENDANT GUILTY

FIRMLY CONVINCED

- BELIEVE AZ=FIRMLY CONVINCED=NO REASONABLE DOUBT
- GUILTY!

DO YOU BELIEVE AZ?

- LOOK TO THE LAW...INSTRUCTION NUMBER 7
- “CREDIBILITY OF WITNESSES”
- WHAT TO CONSIDER IN DECIDING IF YOU BELIEVE A WITNESS.....WHAT TO CONSIDER IN DECIDING IF YOU BELIEVE AZ
- WHAT TO CONSIDER TO DECIDE IF YOU ARE FIRMLY CONVINCED OF THE DEFENDANT’S GUILT

REASONS TO BELIEVE AZ

- WHETHER AZ'S TESTIMONY IS REASONABLE AND CONSISTENT WITH OTHER EVIDENCE THAT YOU BELIEVE
- WHETHER AZ HAS MADE INCONSISTENT STATEMENTS
- AZ'S APPEARANCE, CONDUCT, AGE, INTELLIGENCE, MEMORY AND KNOWLEDGE OF THE FACTS
- AZ'S INTEREST IN THE TRIAL, HER MOTIVE, CANDOR, BIAS AND PREJUDICE

AZ'S TESTIMONY

“He would do bad things”

AZ'S TESTIMONY

- “He would touch me”
- “In my privates”
- “vagina”
- “with his fingers”

AZ'S TESTIMONY

- “Sometimes both over and under the clothes”
- “in the bedroom”
- “when watching TV”

AZ'S TESTIMONY

THE FIRST TIME

- “I was around 6”
- “at the house on Holiday”
- “it happened at both houses”

AZ'S TESTIMONY

- “He would come close to me”
- “mom’s bedroom, on the bed, laying down”

AZ'S TESTIMONY

- “He would scoot closer”
- “He would start touching me”
- “He would start with the thigh”
- “on top of the leg”
- “then he touched my private”
- “he touched my butt....and my back”
- “a couple of times he touched my boobs”

AZ'S TESTIMONY

- “Sometimes over the clothing”
- “he would just rub”
- “Sometimes under the clothing”
- “he would put his hand under my clothes”

AZ'S TESTIMONY

- “pants and a tank top”
- “underwear”
- “both over and under the panties”
- “he would start making his hand move around”

AZ'S TESTIMONY

- “touching my thigh and privates”
- “vagina”
- “started at age 6”
- Age 7
- Age 8
- Age 9
- Age 10

AZ'S TESTIMONY

- “sometimes he touched my butt, a couple of times”
- “at the house on Holiday”
- “Two times he touched my boobs”
- “age 8 or 9”
- “at the house on 6th street”
- “touched the boobs over the clothing”

AZ'S TESTIMONY

- “he touched my thigh, more than once, both over and under the clothing”
- “on the side of my leg, both inside and outside”
- “at the house on Holiday”

AZ'S TESTIMONY

- “didn’t want it to happen”
- “would move his hand”
- “he would put ‘more strength’”
- “tried to move his hand, more than once on the private parts”

AZ'S TESTIMONY

- “more than 50 times”

AZ'S TESTIMONY

- “started at 6”
- Age 7
- Age 8
- Age 9
- Age 10
- “On Holiday and 6th street”

AZ'S TESTIMONY

- “I told him to move his hand away and go to the other side”

AZ'S TESTIMONY

- “he licked it”

AZ'S TESTIMONY

- “happened once”
- “6th street”
- “downstairs bedroom”
- “on the bed”
- “clothes were off”
- “he pulled them off”
- “jeans and underwear”

AZ'S TESTIMONY

- “my private”
- “vagina”

AZ'S TESTIMONY

- “felt uncomfortable with him on the bed”
- “thought he would do it again”
- “when laying in bed he was all around me”
- “on our sides”
- “facing away”
- Felt penis on my back

AZ'S TESTIMONY

- “Brothers and sisters were around”
- “outside”
- “bedrooms”
- “living room”

AZ'S TESTIMONY

- “When they came downstairs he would stop”

AZ'S TESTIMONY

- “never told”
- “too scared to”
- “What he would do to me and my family and what would they think of”

- AZ'S GLASSES,
- They broke while she testified

CROSS EXAMINATION

- Points about opportunities to tell teachers at school, tell her sister, tell her mom
- Reasons she didn't tell right away:
- 1. "I was scared" 2. "Mom was happy"
- "It was both"
- February 16 at Project Harmony (CAC) she gave "both" reasons.....

REASONS TO BELIEVE

- AZ's testimony is reasonable and consistent with other evidence you believe:
- OTHER EVIDENCE.....The testimony of the other witnesses of the State

Eldest brother's TESTIMONY

- Both AZ and younger brother would watch tv with MH
- Younger brother would be down in his room and then come back up stairs
- This would happen when mom was at work
- He was concerned about the amount of time AZ spent with MH

Mother's TESTIMONY

- Walked down stairs and saw MH and AZ lying in the dark, cuddling, with MH's hand in AZ's lap

Mother's TESTIMONY

- February 14, 2011 spent afternoon with MH having lunch
- That evening watched Intervention with AZ and her sister
- Child was sexually abused
- What if it was MH
- “If it was MH, he’d be out on his ass”
- AZ got laundry, come help me mom

Mother's TESTIMONY

- He is touching me
- Who is touching you
- MH
- How long has this been going on
- A long time
- I cant protect you if you don't tell me
- Im sorry

Mother's TESTIMONY

- Called MH
- “What, where is this coming from. I don't need this right now”
- Called police
- Took report
- Project Harmony
- Counseling the next week
- MH knew this happened in our family and how hard it was on us.

Mother's TESTIMONY

- AZ hoards feel good things like candy, pop, lotion
- Aggressive towards her siblings
- She couldn't say his name in counseling, didn't want to talk about it
- Sit in her room, on her bed, alone
- Dont trust older men
- Cant have any one over that she doesn't know
- Constantly taking baths

OFFICER G

- Responded to sexual assault call
- AZ cried whole time
- Curled up in a ball
- Mother was visibly upset having to hear the details again
- Just got minimal details from AZ
- Let Project Harmony interview her and other children
- Set up Project Harmony interviews

OFFICER H

- Assisted Officer G on sex assault call
- He called MH to speak with him
- MH told him he was going to put a bullet in his head
- Wanted forgiveness
- Confiscated guns and ammunition from home

Forensic Interviewer TESTIMONY

- Interview Specialist at Project Harmony
- Conduct a structured interview with a child that is video taped
- Abby disclosed she was touched over and under her clothes on her private parts and that MH licked her privates
- After the disclosure dolls were used to demonstrate the abuse and positions of her and MH
- The demonstration was consistent with the abuse reported

Forensic Interviewer TESTIMONY

- WHY DELAY IN REPORTING
- Don't think they will be believed
- They will get in trouble
- They really like the person that abused them
- Don't want the person who did the abuse to get into trouble
- Don't want to hurt the other parent
- Abby didn't want to ruin her mom being happy and scared of the consequences of telling.

Forensic Interviewer TESTIMONY

- Training, Education, Schools
- Forensic interviewing techniques
- Sexual Abuse dynamics
- Delayed disclosure
- Less than 1% of children make false claims of being sexually abused
- It is very rare

Therapist TESTIMONY

- Director of Therapy Services and Mental Health Counselor
- AZ was a client referred from Project Harmony
- Curled up in a ball and couldn't answer questions
- Withdrawn from peers
- Irritable
- Anxiety
- Saw her every week for six to nine months

Therapist TESTIMONY

- AZ didn't like yelling or fighting
- Fear of change in the house
- Very close with mom
- Wanted to please mom and keep mom happy

Therapist TESTIMONY

- WHY DELAY IN REPORTING
- Self Protection
 - Emotion
 - Physical
- Protect the family
 - Emotional
 - Physical
- Make someone mad and will change the family dynamics

Therapist TESTIMONY

- Post Traumatic Stress Disorder
- Two Standardized Tests
- Observations of licensed mental health experienced counselor
- Did not disclose any other traumatic event

MH TESTIMONY

- Good relationship with mother
- Good relationship with AZ
- Good relationship with Older brother
- No problems with sister
- No problems with younger brother
- I was never alone with them
- Ok may be 10-15 minutes at most
- Kids may go to friend's house

MH TESTIMONY

- He would lay in bed and watch TV with AZ
- Sometimes the lights will be out

MH TESTIMONY

- Received phone call from mother
- What the hell are you talking about
- Shocked
- Devastated
- Left work and drove home
- Saw police at house so left
- Text mother and told police he was going to kill himself

REASONS TO BELIEVE AZ

- CONSISTENT STATEMENTS
- AZ has made consistent statements all the way through this process
- 1. To her mom
- 2. To the police
- 3. To forensic interviewer
- 4. To therapist
- 5. To the defense attorney

- And AZ made consistent statements to you, the jury, the finders of fact at this trial on Tuesday afternoon

REASONS TO BELIEVE AZ

- AZ's conduct, age, intelligence, memory and knowledge of the facts
- The details,
- AZ's memory
- AZ's demeanor

REASONS TO BELIEVE AZ

- Her interest in the trial, her motive, candor, bias , and prejudice
- No motive
- No reason to make this up

FIRMLY CONVINCED

- NO REASONABLE DOUBT

GUILTY

- SEX ABUSE IN THE SECOND DEGREE
- INDECENT CONTACT WITH A CHILD