##### STATE’S CLOSING STATEMENT IN

**CHILD SEXUAL ABUSE CASE**

##### State of Minnesota

**Prosecutor:** Your Honor, Counsel, Members of the Jury:

On behalf of the State of Minnesota, I would like to thank each member of the jury for the seriousness with which you have approached your obligations as jurors, and the attentiveness you have displayed in this courtroom is something appreciated not only by me, but by every officer of the court.

Now let’s turn to the matter before you. The Defendant, V.P., is charged with seven crimes—actually eight crimes involving the sexual assault and kidnapping of J.N. and one crime involving the sexual assault of A.J. When you listen to the Judge instruct you this morning as to the elements of each of these nine crimes, and as you compare the testimony of J.N. and A.J. to the elements of those crimes, one thing will become crystal clear; namely, if you believe the testimony of J.N. and A.J., then the Defendant is guilty of each of those nine crimes.

I would like to go through with you briefly each count and compare the elements of those crimes with the testimony of those two children so that the point I have made becomes obvious.

Count 1 involves criminal sexual misconduct in the first degree involving the rape of J.N. The first element of this crime is, “The Defendant intentionally sexually penetrated J.N.” Sexual penetration includes, “Any intrusion of the penis into the female genital opening, however slight. Emission of semen is not necessary to accomplish sexual penetration.”

Applying that element to the testimony of J.N., we recall that she did testify that the Defendant penetrated her with his penis. She said she knew that because it caused her physical pain. This was not some sort of accidental penetration, if that’s even possible. She told you that the Defendant instructed her to, “Put it in now,” and that he said so in a firm, aggressive voice. She knew what he meant, and she knew what he wanted. Under oath J.N. said that she was penetrated.

The second element of this crime is, “Sexual penetration occurred without the consent of J.N. ‘Consent’ means a voluntary and uncoerced agreement to perform a particular sexual act with the person at the time the act takes place.”

At the time the act takes place. According to J., she did not consent to the penetration in the wooded area. J. said she explicitly told the Defendant no, and the Defendant testified yesterday that in any language, he understands that no means no.

Now it may or may not be that the victim J.N. consented to the sexual touching on the back porch. There was conflicting testimony in that regard. But even if you conclude that J. consented to the touching on the back porch, that is irrelevant to the question of whether or not she consented to the penetration in the wooded area.

According to the Court’s instruction, consent must be given at the time of the act.

The third element of criminal sexual misconduct in the first degree is that, “The Defendant caused personal injury to J.N. Personal injury means physical pain.” And I think you can stop there, but there is a longer list of what it could include. “It means physical pain or injury, illness, any impairment of physical condition, severe mental anguish, or pregnancy.”

In this case, J. testified that the Defendant caused pain. She said the act of penetration hurt. That in and of itself is sufficient for that particular element. She also testified as to bruises and scratches. She also testified as to mental anguish. She said she was frightened and that she remains so. In her letter she says that she cannot close her eyes without seeing the Defendant. Clearly, J.’s testimony supports a finding that this element has been met.

The fourth element is that, “The Defendant used force or coercion to accomplish the penetration.” Folks, pinning a victim down, pushing her down and holding her there against her will is force.

The final element of this crime, which applies to all the crimes, so I am only going to mention it once, is that you have to conclude that these events took place on or about September 9 in …County. And I think you all know that Mountain Lake is in …County.

If you believe J.’s testimony, the Defendant’s conduct in the wooded area constitutes criminal sexual misconduct in the first degree.

The second count is criminal sexual misconduct in the second degree. This charge is identical to criminal sexual misconduct in the first degree, with one exception. Under this crime, I do not have to prove penetration. I merely have to prove sexual contact. The Judge will give you a definition of sexual contact. Basically, it means touching the clothing covering the intimate parts of the victim for sexual gratification, or obviously anything beyond that.

If you believe J.’s testimony that she was forcibly raped in the wooded area, the Defendant is guilty of criminal sexual misconduct in the second degree, even if you find there is reasonable doubt as to whether or not he completed the act of penetration.

The Defendant is also charged with two counts of criminal sexual misconduct in the third degree. Under one count I have to prove that the Defendant penetrated J. using force or coercion and without her consent, but I don’t have to prove that he caused her any personal injury. Again, if you believe J.’s testimony, the Defendant is guilty of this charge. He did use force to accomplish the penetration. He pushed her down, he pinned her there.

Under the other count I only have to prove penetration and that the Defendant is more than 24 months older and that J. is between the ages of 13 and 16. Under that charge, consent is irrelevant. From her testimony, we know that J. is 14. The Defendant testified that he is 26. J. said he did penetrate her. If you believe J., he is also guilty of that offense.

The Defendant is charged with two counts of criminal sexual misconduct in the fourth degree involving his conduct with J. Under one count I have to prove J. is between the ages of 13 and 16, and the Defendant is more than 48 months older than she is, and that he engaged in sexual contact. Remember, sexual contact includes touching the clothing covering the child’s intimate parts; and under that charge, consent is irrelevant.

Well, folks, the Defendant violated that statute even before he got J. into the wooded area. When the Defendant touched the clothing covering J.’s breasts on that porch, he committed this crime. He wasn’t a doctor conducting an examination. He had no lawful purpose for doing that. He was a man seeking sexual gratification. Consent is irrelevant when you seek sexual gratification with a child. If you believe J., the Defendant also is guilty of that crime.

The other count of fourth degree sexual misconduct requires that I prove the Defendant uses force or used force or coercion to accomplish sexual contact. Again, if you believe J.’s testimony as to what transpired in the wooded area, the Defendant did use force on J., causing her to submit to sexual contact.

The final two charges involving the Defendant’s attack on J. are kidnapping and false imprisonment. I am only going to address the former because I think the other is a lesser included, and if you find the Defendant guilty of kidnapping, he is also guilty of false imprisonment.

To prove the crime of kidnapping, I have to show the Defendant confined J., meaning simply he deprived her of freedom. Second, that J.’s parents did not consent to this confinement. And, finally, that the confinement was for the purpose of facilitating the crime of sexual misconduct.

According to J.’s testimony, she was confined for at least a period of time. He pinned her to the ground. This was against her will. She told him no. Her mother, obviously, wasn’t around to consent to this confinement; and, of course, even if she was, no mother would. If you believe the testimony of J.N. as to what transpired in the wooded area, the Defendant is guilty of those charges.

The final count is criminal sexual misconduct in the fourth degree involving the Defendant’s touching of A.J. To convict the Defendant under this count I must prove A. is between the ages of 13 and 16, and the Defendant is more than 48 months older, and that he engaged in sexual contact. Consent is irrelevant, although I did give you three witnesses who told you that A. told him to knock it off, but consent is irrelevant. A. testified that the Defendant touched the clothing covering her breasts. She told you she is 14. The Defendant agrees that he is 26. If you believe A., that crime has also been proved.

Now if it is true what I have told you, that the testimony of J. and A. would be sufficient to convict the Defendant on each of these nine crimes, it seems to me the operative question then before you can convict him is simply, why should you believe them?

Members of the Jury, there are at least ten reasons why I believe that you should believe these children.

First, J. and A. testified under oath. Each of them told you that they knew what that oath meant because I had told them.

Second, the testimony of J. and A. is corroborated by the testimony of each other, and both is corroborated by the testimony of J.B. Three witnesses. Not one, not two; three witnesses, J., A. and J., told you of the Defendant’s sexual touching on the porch. And while only J. was present with the Defendant in the wooded area, both A. and J. saw the Defendant take J. back there. Both A. and J. said that when J. returned, she wasn’t the same girl that went into the woods.

It may be more difficult in a case where we have one victim and one Defendant and the question of guilt or not guilty rests on the credibility of the two, but that’s not this case. In this case, there are three witnesses who observed at least some of the sexual assault.

Third, you should believe J. and A. because of the manner in which this crime was reported. Neither J. nor A. ever went to the police to report this assault. Accordingly, it is clear that they are not fabricating something in order to get the Defendant in trouble. They are not here—they were not here because they wanted to be. They did not charge the Defendant. It was the police who arrested him. It was the State that charged him. And I think you can conclude from their demeanor on the witness stand that this was not something that they found to be fun.

J. wrote a letter to her friend. You will see that letter. I am going to talk about it and read part of it to you in a few minutes. In that letter she begs her friend to keep this a secret. She was a victim of sexual assault, and she was scared. The last thing she wanted to do was to share her pain with 12 people she had never met before.

Fourth, you can believe these girls because they are afraid. In her letter J. describes the Defendant as evil, and she expresses fear. It seems to me that fear is consistent with rape. And in a secret letter, never intended to be read by this jury, J. writes, “Every time I see him, I get so scared.”

Folks, if J. had not been forcibly raped, why would she be afraid to see the Defendant if, as the Defendant claimed yesterday, she likes him? Why would she express such fear in a secret letter?

Fifth, you should believe the testimony of J.N. as to what happened in the wooded area because there is physical evidence to support her testimony.

Police Chief D.H. found a bruise on her arm consistent with being pinned to the ground. Now it is certainly true a teenager, anybody, can bruise their arm in any number of ways and claim it occurred in a manner that it did not. But in this case, J. had no idea that Officer H. was going to come and speak to her about being raped. Again, she never reported it. Officer H. discovered it. And, folks, it is quite a coincidence that when Officer H. appears at her house and talks to her about this matter, that she just happens to have an injury to support her claim of rape.

Sixth, you should believe the testimony of the victims because the Defendant himself corroborated them. At the police station the Defendant announced that he not hurt no 14 year-old girl; and, besides, he has a girlfriend. He said it twice. Unfortunately for the Defendant, no one had told him that he was being accused of a crime; and unless he had actually abused these children, unless he knew that they were 14, he wouldn’t have known what the police wanted to talk to him about. In the Defendant’s eagerness to proclaim his innocence, he tripped himself up. And, by the way, he also lied to the police when he said he had a girlfriend. S.P. testified they had broken up before this event.

Seventh, the Defendant displayed a consciousness of guilt consistent with the victims’ version of events. The Defendant asked and asked repeatedly, up until the eve of the trial he called S.P. and suggested that she lie to this jury and to say that he was home with her, even though S. has no knowledge where he was because she wasn’t home herself that night. What the Defendant did not count on is that S. is not the kind of girl who submits to everyone’s wishes. And despite the Defendant’s insistence—every day since his arrest she said he calls her, and despite that insistence, S. did not perjure herself. And, by the way, it goes without saying that if the Defendant is urging S. to tell you something that isn’t true, how much stock can you put in his denial?

Eighth, the Defendant’s version of the evening makes no sense. The Defendant tells his friend M. that he was home with S. at the time of the rape. Of course, the only problem with that is S. testified under oath that she wasn’t home that night.

The Defendant testified and told you guys that he went home early so that he could go to Iowa the next morning for a soccer game. The only problem with that version is that the soccer game wasn’t that weekend, it was the weekend of the 17th, according to S., and she said she had to keep track of those things because it was her car that the Defendant used for those soccer trips.

The night of the rape, the Defendant told S. that he had been to the city park and then to the L— Store. Well, folks, now that means he has given three different versions of where he was and what he was doing the night of the rape. He gave one version to M., one version to S., and one version to you guys. I think when you consider those three different accounts, and you consider the Defendant’s 1992 conviction for kidnapping, which the Court will instruct you may be considered in evaluating the believability of the Defendant, I think you also need to consider this: Perhaps the Defendant is the man who doesn’t speak the truth so much as he shows it.

When the Defendant drives by J. after the rape and grins at her, that smirk means I know what I did. And when the Defendant sweats profusely when Police Chief H. arrests him, that sweat means I know I have been caught.

Ninth, you should believe J. as to what she described happened in the wooded area because she described an injury consistent with forcible rape and not consensual sexual intercourse.

J. said the insertion of the Defendant’s penis caused pain. You know, when Officer H. first asked her did he penetrate you, she said I don’t remember, and I am not quite sure what she meant because the question could have been confusing. She might have not remembered if he put in it or she put it in because he asked her to put it in, if you recall. But whatever she meant, he then followed it up and said, did it cause pain? That’s hard to forget. And then she went on to say clearly that she was penetrated. If this was a consensual act of intercourse, you know from high school biology that J.’s vagina would likely have provided natural lubrication. Consensual sexual intercourse is not supposed to be painful. But on the other hand, if we know anything about rape, we know that it is not sexually exciting. It is a degrading, humiliating experience; and as J. reminded us yesterday, it hurts.

Finally, and most importantly, you can believe these girls because they look and they act like victims. J. (victim) was different when she came back from the woods. J. (witness) told you that. When Officer H. spoke to her, she had tears. She cried yesterday. In her letter she describes anguish.

A professor at Harvard by the name of S. E. wrote, “Someday maybe there will exist a well-reasoned, well-informed, and yet fervent public conviction that the most deadly of all possible sins is the mutilation of a child’s spirit.”

Members of the Jury, if you have never heard what a mutilated spirit of a child sounds like, let me read one to you:

“Dear C. Hey, girl, something happened to me Friday. It was probably the worst thing that ever happened to me. S.’s boyfriend raped me. See him and M. invited us to a party at his house, and we went, but it wasn’t as great as we thought it would be. M. didn’t come home ‘til after it happened. We were outside, and it was like 9:30 p.m. He told me to go for a walk with him. I knew A. liked him, so I was going to ask him out for her. But we ended up somewhere in the back woods. He totally changed. He was so mean. He held me down and told me to put it in NOW.”

And when you read the letter, I hope you notice that when she says “now,” she capitalizes each letter.

“He was so evil. I couldn’t move or yell for help. He was touching me and threw my clothes somewhere so I couldn’t run. All I could do was look at the sky and hope someone would come and help me and cry. I trusted him so much, and he did that. I got home at 10 something, and Mom was pissed because I was supposed to be at the football game. A. is the only person who knows, so don’t fucking say anything to anyone. Please, C. He is bad enough. My arms were scratched and red from where he held me down. My neck was red, too. I ran into him at the park yesterday, and he was grinning at me. Every time I see him, I get so scared. He drove past my apartment last night so many times. Everywhere I go, he is there. When I close my eyes, he is there. I am so scared. I don’t know what to do. What if I am pregnant? If I am, I have to go. C., I haven’t ever been this scared before.”

And then she goes on to talk about boys and the other things that teenagers think about.

That is a mutilated spirit.

Now the Defendant may suggest to you that the conduct of J. on September 9th is not consistent with a rape victim. After all, wouldn’t a reasonable person cry out? She had friends who were nearby. Nobody says the Defendant had a knife or gun or threatened her explicitly. Wouldn’t a reasonable person who had just been raped, once she was safe, promptly report that rape to the police so that evidence of semen or pubic hair, or whatever else might have been on her body, would have been preserved? I think that’s true of a reasonably prudent adult. But J. is not an adult. She is not, therefore, like any member of this jury or anyone else in this courtroom. She is not grown up. She hasn’t raised a family. She is not employed. She doesn’t pay taxes. She is 14, and at the time of the rape she was barely 14. She thinks about boys. She goes to high school football games. She is concerned when her mom gets mad at her because she doesn’t stay at the game or she is out too late. Like most kids, she believes that nothing bad can happen to her.

And because J. thinks like a girl and not like a woman, it makes sense that when V.P. forced his penis inside her, J. was not thinking so much about getting the Defendant successfully prosecuted as she did the loss of her childhood.

And if you are thinking like a child, maybe what you do at that moment in your life is you do look at the sky and pretend it is not real.

But it was real. And because it was real, there is little need for me to tell you where the evidence leads. Beyond a reasonable doubt, the Defendant is guilty.