

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Greenville County Court of General Sessions
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2017-001016

State of South Carolina,.....Respondent.

v.

Gabriel Betancourt Jr., ...Appellant.

RECORD ON APPEAL
VOLUME TWO

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1 Q. Can you tell the jury some of the
2 topics that you have written about in the
3 past?

4 A. Yes, I've written on a variety of
5 topics.

6 I've written about post-trauma stress
7 disorder.

8 I've written about mild traumatic brain
9 injury.

10 I've written about malingering or fraud.

11 I've written about conceptualizing
12 psychological injury claims.

13 I've written about false claims of sexual
14 abuse against clergy.

15 I've written about intellectual testing
16 and how it correlates to other testing.

17 Things of that nature.

18 Q. Thank you, Dr. Price. Let's turn to
19 your actual experience of treating patients.
20 Again, how long have you been licensed?

21 A. I have been licensed since 1983.

22 Q. During that time -- and I know this
23 is probably a difficult question to answer,
24 but about how many patients have you treated?

25 A. Well, prior to being licensed in

1 1983 I had over six thousand hours of
2 supervised experience treating patients, so
3 I've really been treating patients since
4 1977. I've treated patients in the
5 thousands. I couldn't give you a number.

6 Q. Dr. Price, have you treated children
7 patients before?

8 A. I have. When I was at the Lee
9 County Head Start, our program was developed
10 for special need children and children with
11 emotional difficulties.

12 When I was in private practice with
13 Behavior Resources, the bulk of my practice
14 focused on children/adolescents with conduct
15 disorders and various problems.

16 I was trained at Auburn as both an adult
17 clinical psychologist and a child clinical
18 psychologist.

19 Q. So, Dr. Price, you've treated
20 children with behavior disorders before?

21 A. I have.

22 Q. And you've treated children with
23 oppositional defiance disorder before?

24 A. Okay.

25 Q. Dr. Price, are behavioral disorders

1 a subject that you learn about during your
2 training and education to become a
3 psychologist?

4 A. You do. Behavioral disorders are
5 actually some of the most common child
6 disorders that present for treatment at
7 mental health centers or mental health
8 facilities.

9 Q. Switching gears for a moment, Dr.
10 Price. Have you ever testified before as an
11 expert witness in a criminal case?

12 A. I have.

13 Q. Approximately how many times?

14 A. I testify about twelve times a year.
15 It's divided between civil and criminal
16 cases. But since 1983, that would be in the
17 hundreds.

18 Q. Dr. Price, do you always testify for
19 the defense?

20 A. No, I've testified for the
21 prosecution and the defense.

22 Q. And, Dr. Price, are you being
23 compensated to testify today?

24 A. I am, (affirmative nod).

25 Q. Does the fact that you're being paid

1 to testify in any way influence your opinion
2 as a psychologist?

3 A. Not at all.

4 MR. GOLDSTEIN: Your Honor, at this
5 time we would offer Dr. Price as an expert in
6 Psychology, in particular as an expert in the
7 area of behavioral disorders such
8 oppositional defiance disorder.

9 THE COURT: Subject to the previous
10 objections, anything further?

11 SOLICITOR SUSTAKOVITCH: Nothing from
12 the State.

13 THE COURT: Thank you. The Court does
14 find that Dr. Price is an expert in the area
15 of psychology and behavioral disorders. You
16 may proceed.

17 MR. GOLDSTEIN: Thank you, Your Honor.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. GOLDSTEIN:

20 Q. Dr. Price, earlier in this case we
21 heard testimony about oppositional defiance
22 disorder. Can you please explain to the jury
23 what oppositional defiance disorder is?

24 A. Oppositional defiant disorder is a
25 disorder first seen in childhood, early

1 adolescence.

2 It has three major components: anger or
3 irritability mood of the child; the second
4 one, defiant behavior; and, third, that they
5 will show some vindictiveness.

6 The behavior generally has to exist for
7 six months before you make the diagnosis.

8 Q. So is oppositional defiance
9 disorder, is that the type of behavioral
10 disorder that we were talking about before?

11 A. It is.

12 Q. And how is oppositional defiance
13 disorder diagnosed in a child?

14 A. Generally when we diagnose an
15 oppositional defiance disorder, it may not
16 necessarily be noticeable in the clinic
17 because they're in a novel situation; they
18 know that they've had some ramifications for
19 their behavior. So generally we evaluate it
20 through interviews or questionnaires with the
21 caregivers, parents in the home or in the
22 school. That's where most children spend
23 their time, either daycare or home or at
24 school. It is in the structured environment
25 that they are most likely to show the ODD.

1 Q. Dr. Price, if a child is diagnosed
2 with oppositional defiance disorder, is that
3 disorder likely to resolve on its own without
4 treatment?

5 A. It may resolve on its own without
6 treatment in later adolescence. Generally in
7 early childhood, early adolescence, it will
8 not.

9 Generally the ramifications for being
10 defiant, they get in trouble at school, they
11 get in trouble at home, they get in trouble
12 at daycare.

13 Q. I understand. Dr. Price, are you
14 familiar with the Diagnostic and Statistical
15 Manual of Mental Disorders, also known as the
16 DSM.

17 A. I am.

18 Q. Dr. Price, do experts in the field
19 of psychology rely on this treatise?

20 A. They do, (affirmative nod).

21 Q. Do you rely this publication?

22 A. I do, (affirmative nod).

23 Q. Is the DSM a reliable authority in
24 your field?

25 A. It is.

1 MR. GOLDSTEIN: If I could please have
2 this marked for identification.

3 COURT REPORTER: Defendant's Exhibit 3,
4 for identification.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. GOLDSTEIN:

7 Q. Dr. Price, would you please flip to
8 Page 462 in the Fifth Edition of the DSM?

9 A. (Complies).

10 Q. This is the section discussing
11 oppositional defiance disorder?

12 A. Yes, sir.

13 Q. Dr. Price, if you couldn't mind,
14 could you please read the section labeled
15 "Diagnostic Criteria of Oppositional Defiance
16 Disorder" from the start until you reach what
17 is written besides numeral eight?

18 A. Okay. Just for some background for
19 the jury, we have diagnostic criteria in the
20 DSM-5 and it's generally -- it's a hierarchy
21 of things that someone would have to read in
22 order to make that diagnosis. So when I read
23 this diagnostic criteria, I'm basically
24 reading the three parts:

25 Part A, which will list the symptoms

1 displayed by a child that gets this
2 diagnosis. Part A starts off with,
3 (reading): "A pattern of angry, irritable
4 mood, argumentative-defined behavior or
5 vindictiveness lasting at least six months as
6 evidenced by at least four symptoms from many
7 of the following categories and who exhibits
8 interaction with at least one individual who
9 is not a sibling:

10 Angry/Irritable Mood:

- 11 1. Often loses temper.
12 2. Is often touchy or easily annoyed.
13 3. Is often angry or resentful.

14 Argumentative Defiant Behavior:

- 15 4. Often argues with authority figures,
16 other children, adolescents or adults.
17 5. Often actively defies or refuses to
18 comply with requests from authority figures
19 or with rules.
20 6. Often deliberately annoys others.
21 7. Often blames others for his or her
22 mistakes or behavior.

23 Vindictiveness:

- 24 8. Has been spiteful or vindictive at
25 least twice within the past six months."

1 Q. Dr. Price, can you please give the
2 jury some examples of these sorts of
3 behaviors that you've seen in your clinical
4 experience?

5 A. Well, one of the most common ones
6 that generally gets them referred for
7 treatment is the preponderance of temper
8 tantrums. They lose their temper easily.
9 They get angry.

10 Then when they are angry they are
11 resentful. They just sort of perpetually
12 pout.

13 They can be very argumentative even when
14 the facts clearly prove them wrong, when they
15 can't argue their position.

16 They don't comply with rules or
17 regulations. That's what gets them in
18 trouble with school by defying authority
19 figures, defying classroom routines.

20 Then three, the vindictiveness.
21 Typically they want to get back at someone
22 that they are angry at and they do activities
23 -- spiteful activities. They may break
24 someone's favorite toy. They may talk about
25 them behind their back.

1 Personally I've seen one flush somebody's
2 pet goldfish down the toilet when they're
3 angry or take it out on their pets, things of
4 that nature.

5 Q. Dr. Price, would you please describe
6 to the jury the dynamics between a child that
7 is diagnosed with oppositional defiance
8 disorder and an authority figure?

9 A. Well, it's hard to be defiant with
10 someone who is not in authority. So
11 typically someone with oppositional defiant
12 disorder is having difficulty with parents,
13 caregivers and at school or daycare.

14 Q. Dr. Price, do psychologists regard
15 parents as authority figures?

16 A. We do.

17 Q. Dr. Price, again I want to refer to
18 the DSM, Exhibit 3. If you could, on Page
19 463 there is a heading that says "Diagnostic
20 Features." Can you please read the final
21 sentence of the second paragraph under the
22 heading starting, "Also..." ---

23 A. (Reading): *"Also because symptoms*
24 *of the disorder are also typically more*
25 *evident in interactions with adults or peers*

1 whom an individual knows well, they may not
2 be apparent in a clinical examination."

3 Q. Dr. Price, can you explain that?

4 A. Certainly. They have more trouble
5 with people that they spend the most time
6 with. They may not necessarily exhibit
7 defiant behavior in a fifteen-minute
8 interview in a mental health clinic.

9 Q. Dr. Price, I want to ask you a few
10 hypothetical questions. Suppose that a child
11 reports being sexually abused by an adult and
12 that child had a previous diagnosis of
13 oppositional defiance disorder. The child is
14 then interviewed about the allegations.
15 Would the previous diagnosis of oppositional
16 defiance disorder be an important fact for
17 the interviewer to know about?

18 A. Well, you want to know about any
19 mental health problems the subject had when
20 you're interviewing them.

21 Q. In this particular context, a child
22 making allegations of sexual abuse in an
23 interview, why would it be important to know
24 about a prior diagnosis of oppositional
25 defiance disorder?

1 A. Well, one of the reasons is that the
2 allegation may be something from being
3 vindictive, so you'd want to rule that out.

4 You also -- mental disorders don't occur
5 in a vacuum. If you have a oppositional
6 defiant disorder, you're more likely than not
7 to have a pre-existing attention deficit/
8 hyperactivity disorder.

9 You can also have a co-morbid disorder of
10 anxiety or depression that you'd want to know
11 about.

12 And then, finally, you want to rule out
13 that it hadn't evolved into a conduct
14 disorder. And the reason that you want to
15 rule out that it is not a conduct disorder
16 is that a conduct disorder and an antisocial
17 personality disorder are the only two mental
18 disorders in this book that have deceitful-
19 ness as one of the criteria, so you'd want to
20 rule that out.

21 Q. Dr. Price, I think that we touched
22 on this earlier, but would it always be
23 readily apparent to the interviewer that a
24 child had an oppositional defiant disorder on
25 its face?

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1 A. Not initially. Over time it would
2 become readily available (sic), but the first
3 couple of interactions, no. It's the novelty
4 of the situation that keeps the child from
5 exhibiting.

6 Q. In your opinion, would it be best
7 practice for the interviewer to review the
8 child's medical records before conducting the
9 interview?

10 A. It's always the best practice to
11 know as much as you can about the person that
12 you are going to interview, (affirmative
13 nod).

14 Q. Dr. Price, I want to turn briefly
15 now to the relationship, if any, between a
16 post-trauma stress disorder and oppositional
17 defiance disorder. Specifically, would it be
18 possible for a child to have both PTSD and
19 oppositional defiance disorder at the same
20 time?

21 A. Yes.

22 Q. And just like oppositional defiance
23 disorder, is there a specific diagnostic test
24 used to diagnose post-trauma stress disorder?

25 A. Well, we have a diagnostic criteria

1 for post-trauma stress disorder. But
2 generally when you diagnose a post-trauma
3 stress disorder -- we already know that
4 oppositional defiance disorder has a high
5 incidence of anxiety disorders and depressive
6 disorders with it. So post-trauma stress
7 disorder is an anxiety disorder. Up to the
8 DSM-5, it was listed under the anxiety
9 disorders. Now it's in the listing of
10 trauma-induced disorders.

11 So you want to rule out that the symptoms
12 of anxiety were not related to the PTSD but
13 related to a pre-existing condition, in a
14 child or in an adult for that matter. So
15 you'd want to carefully evaluate that.

16 Then you'd want to carefully evaluate the
17 potentially traumatic events, the stressor
18 that could cause the post-trauma stress
19 disorder. You'd want to evaluate those
20 because identifying the specifics that caused
21 PTSD is an integral part of the treatment.

22 It actually is very common that people
23 have more than one mental disorder. So you
24 always want to look at the comorbid disorders
25 in developing a diagnosis and treatment plan

1 for an individual.

2 Q. Okay. Dr. Price, if a mental
3 health professional is treating a child for
4 post-trauma stress disorder and saw that the
5 child had been previously diagnosed with
6 oppositional defiance disorder, would it be
7 best practice for that professional to do a
8 diagnostic test to confirm whether or not the
9 child still had an oppositional defiance
10 disorder?

11 A. You'd want to follow up with
12 caregivers and school teachers to see if
13 they're still exhibiting that, (affirmative
14 nod).

15 Q. Dr. Price, I want to turn now to
16 attention deficit disorder. Can you please
17 explain what that is to the jury?

18 A. Attention deficit disorder, by rule,
19 should be observable before the age of six
20 and can last until adulthood. It is
21 individuals that have difficulty maintaining
22 attention and concentration for extended
23 period of time. Generally because of that
24 they engage in disruptive behavior, they
25 annoy others, they generally have difficulty

1 with playmates because they can't engage in
2 meaningful interaction(s) with playmates.

3 Q. And what is the relationship between
4 attention deficit disorder and oppositional
5 defiance disorder?

6 A. Well, generally a child that has
7 oppositional defiant disorder, more times
8 than not, will have the attention deficit
9 disorder diagnosed first and then they will
10 have the oppositional defiant disorder with
11 that. That can evolve into having a conduct
12 disorder as well.

13 Q. Okay. Could those potentially
14 evolve into other disorders also?

15 A. In criminal court, I have known some
16 to have comorbid disorders of ADD/ADHD,
17 oppositional defiance disorder, then conduct
18 disorder and then as an adult have an anti-
19 social personality disorder.

20 Q. Dr. Price, are you familiar with the
21 research in your field about the allegations
22 of sexual abuse?

23 A. I am.

24 Q. Dr. Price, what is your opinion
25 about the relationship between behavioral

1 disorders such as oppositional defiance
2 disorder and allegations of sexual abuse by
3 children?

4 A. It can be a mitigating factor.

5 Q. Can you explain that?

6 A. Well, again, generally when you have
7 false allegations of child sexual abuse it
8 can be one of two ways. The child can
9 frankly lie or other things can interfere
10 with their ability to recall the memory
11 exactly or their telling of it. So the
12 mental disorders -- it's not just the ODD,
13 the conduct disorders, some of those can
14 affect the recall of the event. Or the fact
15 that adults can influence their recall of the
16 event.

17 Q. Okay. Dr. Price, have you relied on
18 any articles in forming that opinion that you
19 just expressed?

20 A. Well, I've relied on my own article
21 of false claims of clergy sexual abuse.

22 Then I relied on another article of
23 children's allegation(s) of sexual abuse, a
24 model for forensic assessment.

25 Q. That academic journal, Psychological

1 Injury and Law, is that a reliable publica-
2 tion in your field?

3 A. Yes, sir.

4 Q. Do other psychologists rely on that
5 publication?

6 A. Yes, sir.

7 Q. Have you relied on that publication?

8 A. Yes, sir.

9 MR. GOLDSTEIN: Can you please mark
10 this for identification purposes?

11 COURT REPORTER: Yes, sir. Defendant's
12 Exhibit 4, for identification.

13 MR. GOLDSTEIN: Thank you.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. GOLDSTEIN:

16 Q. Dr. Price, I am showing you Page 149
17 from that article that we just discussed.
18 There is a subheading here, "A Model of the
19 Pathways to False Allegations of Child Sexual
20 Abuse." Could you please read this paragraph
21 underneath the subheading beneath that, that
22 the child is lying.

23 A. (Reading): "Children don't always
24 tell the truth. It is not the case that
25 there are special topics such as their own

1 *abuse in which children are incapable of*
2 *lying. As a field, we know little about the*
3 *variables that cause children to lie or to*
4 *tell the truth. Research has suggested that*
5 *personality variables, habits, a developing*
6 *central nervous system, a congenitally-*
7 *acquired defect in the central nervous*
8 *system, the presence of an emotional*
9 *disturbance, the desire to please other*
10 *(parents, therapist, lawyer, friend) and*
11 *behavioral disorders, such as conduct*
12 *disorder and oppositional defiance disorder*
13 *may contribute to a child lying and this*
14 *would result in an invalid statement."*

15 Q. Dr. Price, what is your expert
16 opinion regarding that research?

17 A. I think that it is reasonable
18 research that is published in reasonable
19 publications.

20 MR. GOLDSTEIN: Thank you, Dr. Price.
21 No additional questions.

22 THE COURT: Cross-examination,
23 Solicitor?

24 SOLICITOR SUSTAKOVITCH: Yes, sir.
25 Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY SOLICITOR SUSTAKOVITCH:

3 Q. Good morning, Dr. Price.

4 A. Good morning.

5 Q. Good to see you again?

6 A. Good to see you.

7 Q. So I want to hear back to -- you
8 have a long history in Psychology. I wanted
9 to ask you specifically as to pediatric
10 psychology, are you a pediatric psychologist?

11 A. I am.

12 Q. On a daily basis, are you dealing
13 day-in and day-out with children in your
14 practice?

15 A. I deal with children on a weekly
16 basis in my practice. Yes, ma'am.

17 Q. And with the forensic network, you
18 testified that's your business now. Right?

19 A. That's correct.

20 Q. And I know you've testified for the
21 State previously?

22 A. That's correct.

23 Q. And for defense?

24 A. (Affirmative nod).

25 Q. Would it be accurate to say that you

1 testify more primarily for the defense as a
2 paid expert?

3 A. (No verbal response).

4 Q. Just on average, that that would be
5 primarily what you do?

6 A. Actually I do more civil work than
7 criminal work.

8 Q. Okay, you do a lot of civil work.
9 But in the criminal work that you do, you're
10 generally a paid expert for the defense; is
11 that correct?

12 A. That's correct.

13 Q. And how much did you get paid to
14 come today?

15 A. I charge three fifteen (\$315) an
16 hour.

17 Q. I wanted to go to the treatment of
18 children where there's a concern that there
19 is sexual abuse going on.

20 We just heard a lot of information about
21 -- well, before we go to this, I want to
22 understand more about oppositional defiant
23 disorder. So just to help the jury
24 understand that better, because it sounds
25 like a big term, if you're -- if I am

1 hypothetically five years old, what types of
2 things am I doing to get a diagnosis like
3 that? What are some examples of what a five-
4 year-old, who is really young, would be doing
5 to get that kind of diagnosis?

6 A. Deliberate disobedience, temper
7 tantrums, destruction of somebody else's
8 property in their vindictiveness.

9 Q. Being vin---, -- I'm sorry, go
10 ahead.

11 A. Irritability, defiance of house
12 rules generally, problems in daycare; things
13 of that nature.

14 Q. Right. It could be things as simple
15 as pinching, biting siblings, -- right?

16 A. If it is repetitive; yes, ma'am.

17 Q. And you mentioned maybe flushing of
18 a goldfish down a toilet?

19 A. That's correct.

20 Q. Or it could be that at school you
21 don't eat your food well, you don't clean up
22 well. I mean, that's being oppositional to
23 the people at school in not cleaning up after
24 yourself. Right?

25 A. It would depend on the extent of

1 that, but it could be.

2 Q. And so when you're talking about --
3 you just looked at the DSS-5, the criteria
4 for oppositional defiance disorder. You read
5 through it, Dr. Price.

6 A. Yes, ma'am.

7 Q. It talked about vindictiveness.

8 A. Yes, ma'am.

9 Q. Vindictiveness in five-year-olds,
10 can you give some examples of what that's
11 like?

12 A. Well, I gave you one. About
13 flushing the goldfish down the toilet?

14 Q. Right.

15 A. Throwing away something that
16 somebody else likes, telling stories about
17 them, trying to get them in trouble. Things
18 like that. Now, the vindictiveness for the
19 DSM-5 only has to occur twice a month. It's
20 not something that has to occur daily.

21 Q. But for oppositional defiant
22 disorder, lying is not one of the criteria
23 in here. It's not listed as one of the
24 criteria. Correct?

25 A. Correct.

1 Q. Going back to age five, hypo-
2 thetically if I go in and get treatment for
3 -- it's more of a behavioral issue where I'm
4 exhibiting certain behaviors.

5 A. That's correct. Although children
6 with oppositional defiance disorders and
7 conduct disorders do have some different
8 neurological things versus other children,
9 but not to the point that we can reliably
10 diagnose based on that.

11 Q. Okay. So diagnosing a child at age
12 five is basically, I think you testified,
13 you're getting secondary statements from,
14 say, the mom, the teachers at school, the
15 people that are telling you what is going on
16 if you're the person diagnosing, giving you
17 examples of what the child is doing wrong to
18 be defiant. Right?

19 A. More or less, yes.

20 Q. And if those symptoms subside, if a
21 five-year-old subside, if a five-year-old
22 quits biting their sibling, starts cleaning
23 up after themselves at school, start doing
24 better with those things, would that five-
25 year-old be able -- if they quit doing that,

1 over time would you be able to say that they
2 no longer have oppositional defiant disorder
3 if those behaviors stopped?

4 A. Well, I would want to verify that
5 from more than just person, but it could.

6 Q. Okay. And then fast forward to,
7 say, five years later and then there's -- let
8 me go to this. We just talked about child
9 sexual abuse and false allegations.

10 A. (Affirmative nod).

11 Q. Would it be -- I don't know the
12 article that you just cited. Can I look at
13 it?

14 A. Yes, ma'am, (tendering).

15 Q. You would agree that there is a lot
16 of literature that states that children
17 making up allegations of sexual assault is
18 very rare; you would agree with that,
19 correct?

20 A. That's correct.

21 Q. Could you put a number on how rare
22 you'd say that it is for children to make up
23 allegations of sexual abuse?

24 A. My personal experience is that the
25 false allegations occur between one and five

1 percent.

2 Q. So it's the rare situation where a
3 child would do that.

4 A. (No verbal response).

5 Q. Let me ask you this, if the child
6 had an oppositional defiance disorder, that
7 child is no more likely to lie than Susie
8 over here; correct? Another child? Right?

9 A. Not necessarily.

10 Q. Well, I believe that we just took
11 some testimony in-camera and you stated that
12 a child with ODD is no more likely to lie
13 than an average child. Is that correct?

14 A. No, I don't think that is correct.
15 I don't think that they lie like they do to
16 the extent in a conduct disorder. But in
17 their vindictiveness, they can tell lies.

18 Q. We are not talking about a conduct
19 disorder, we're talking about ODD at this
20 point. But the rarity -- it's very rare for
21 a child to make up a false allegation.
22 Correct?

23 A. That's correct.

24 Q. Say time goes forward, I'm ten years
25 old now. I'm not exhibiting symptoms of ODD.

1 Would that in your professional opinion make
2 a difference, that we've had five years of
3 times and I'm not longer exhibiting ODD
4 symptoms, in thinking that I still have ODD?

5 A. In my evaluation of you, I'd
6 evaluate to see if you had ODD or not; yes.

7 Q. But say you talked to teachers at
8 school and things like that and I'm
9 compliant, not having problems. That would
10 factor into your opinion that I don't have
11 ODD anymore, right?

12 A. If that was the case, yes.

13 Q. In that scenario, you'd probably
14 opine that I don't have ODD; right?

15 A. Uhhhh, I would do a little bit more
16 than that; but maybe. Yes, ma'am.

17 Q. All right.

18 SOLICITOR SUSTAKOVITCH: I beg the
19 Court's indulgence.

20 THE COURT: Take your time.

21 CROSS EXAMINATION CONTINUED

22 BY SOLICITOR SUSTAKOVITCH:

23 Q. Going back to ODD and five-year-old
24 children, you would probably agree that
25 children, whether they have ODD or not, have

1 no -- no specialized knowledge of how sexual
2 assault actually feels. Right?

3 A. You would hope not.

4 Q. And you would agree that a child
5 with ODD or a normal child would not have
6 specific knowledge on how semen tastes?

7 A. That's correct.

8 Q. And you would agree that a child,
9 with ODD or not, would not have specific
10 knowledge on how anal penetration felt?

11 A. That's correct.

12 Q. And my last question would be, you
13 would probably agree that whether it's a
14 child with ODD or not that child should have
15 no specialized knowledge on how to simulate
16 masturbation. Right?

17 A. Not necessarily. At the age of ten
18 they may have knowledge of that, I think.

19 Q. All right. Back to your research
20 you cited, in your practice you did state
21 that your knowledge is that only one to five
22 percent have ever been false allegations; in
23 your personal experience?

24 A. That's correct.

25 Q. The wealth of knowledge on that,

1 have you read other scientific articles that
2 weigh to the fact that kids generally don't
3 make up these allegations?

4 A. I've read pros and cons. The fact
5 of the matter is that we don't really have an
6 exact estimate of how many are factual and
7 how many are not.

8 Q. Thank you.

9 SOLICITOR SUSTAKOVITCH: Thank you,
10 Your Honor. No further questions.

11 THE COURT: Redirect?

12 MR. GOLDSTEIN: No additional
13 questions, Your Honor.

14 THE COURT: Thank you, Doctor. You may
15 step down. You are certainly free to leave
16 the courthouse or you're welcome to remain
17 with us. I imagine you'll want to leave the
18 courthouse.

19 WITNESS: I do, Your Honor. Thank
20 you. This is an exhibit right here.

21 COURT REPORTER: I'll take it.

22 WITNESS: (Tenders).

23 COURT REPORTER: Thank you.

24 (WITNESS STEPS DOWN)

25 THE COURT: Defense may call its next

1 witness.

2 MR. SARRATT: Defense calls Ray Meyers.

3 (WITNESS TAKES STAND)

4 RAY MEYERS, having been duly sworn to
5 tell the truth, and nothing but the truth,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SARRATT:

9 Q. Good morning, Dr. Meyers?

10 A. Good morning.

11 Q. How are you?

12 A. Good. Well, thank you.

13 Q. I just want to ask you starting out,
14 can you tell us -- well, first, what kind of
15 doctor are you?

16 A. I'm in general medicine.

17 Q. Okay. And where did you go to
18 school?

19 A. Dental School was at University of
20 Louisville.

21 Prior to that, my bachelor's degree from
22 Cal Poly, California Polytechnic Institute in
23 California.

24 Q. All right. And were you licensed as
25 a dentist?

1 A. Yes, a licensed dentist in North
2 Carolina.

3 Q. And tell me, what kind of experience
4 Dentistry?

5 A. I'm in general medicine.

6 Q. And did you have a practice?

7 A. I had a practice in Hendersonville
8 and a practice in Tryon. And during the time
9 I saw families all the time, both children
10 and adults.

11 Q. How long did you have that practice?

12 A. Ten years in Hendersonville, ten
13 years in Tryon.

14 Q. All right. Do you still currently
15 practice?

16 A. I do not. I'm retired.

17 Q. You're retired. Okay. Full
18 disclosure, were you at one time my dentist?

19 A. Yes.

20 Q. All right.

21 MR. SARRATT: At this time, Your
22 Honor, I'd offer Dr. Meyers as an expert in
23 general dentistry.

24 THE COURT: I think the question
25 is, what kind of patient was Mr. Sarratt?

1 WITNESS: It wasn't easy.

2 THE COURT: All right. Solicitor?

3 SOLICITOR SUSTAKOVITCH: No

4 objection, Your Honor.

5 THE COURT: All right. I find
6 that Dr. Meyers is an expert in the area of
7 dentistry.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. SARRATT:

10 Q. Dr. Meyers, just to bring the jury
11 up to speed a little bit. You don't know
12 anything about this case, other than what I
13 provided you last week; is that correct?

14 A. That is correct.

15 Q. Okay. And last week, was it Tuesday
16 or Wednesday, I can't honestly remember. But
17 one day in the last week, we met and went
18 over some dental x-rays I provided you?

19 A. That's correct.

20 Q. And then you also sat down with the
21 Solicitor and the three of us all went over
22 those records?

23 A. That's correct.

24 Q. Okay. I'm going to show you what
25 has been marked for identification purposes

1 only as Defense Exhibit 2. Do you recognize
2 that?

3 A. I do.

4 Q. Okay. How do you recognize that?

5 A. Again, please?

6 Q. How do you recognize that?

7 A. It's an enlargement of the x-ray we
8 reviewed.

9 Q. And is that an x-ray of
10 Minor, as far as you're aware?

11 A. As far as I'm aware, yes.

12 Q. Okay. Can you tell from looking at
13 that document what date that x-ray was taken?

14 A. It was taken on February the 21st in
15 2013.

16 Q. Okay. Now, looking at that x-ray
17 can you tell me what that's an x-ray of?

18 A. The upper front six teeth.

19 Q. Okay. And in looking at that x-ray,
20 can you tell me is the right lateral incisor
21 depicted on that x-ray?

22 A. It is.

23 Q. Is the right canine tooth also,
24 depicted on that x-ray?

25 A. It is.

1 Q. Okay. Can you give me your medical
2 opinion to a reasonable degree of certainty
3 as to what type of tooth the right lateral
4 incisor is in that x-ray?

5 A. The right lateral incisor is clearly
6 the permanent upper right lateral.

7 Q. Okay. Just by way of explanation,
8 that's the adult tooth?

9 A. The adult tooth; that's correct.

10 Q. And the baby tooth has already
11 fallen out from looking at that x-ray?

12 A. It's fallen out and the lateral
13 incisor is identical to the one on the left.
14 All four, they're in their proper positions
15 for that age.

16 Q. Okay. Now, can you also identify on
17 that the canine tooth?

18 A. The canine is right behind the
19 lateral. I can see the permanent canine.
20 It's in an eruption process. And the
21 deciduous or the baby canine is still in
22 place.

23 Q. Okay. So just to summarize, the
24 adult -- the right lateral incisor is an
25 adult tooth. The canine, back in 2013 was

1 still a baby tooth?

2 A. That's correct.

3 MR. SARRATT: I beg the Court's
4 indulgence.

5 THE COURT: Sure.

6 MR. SARRATT: I have no further
7 questions, Your Honor.

8 THE COURT: Cross-examination.

9 SOLICITOR SUSTAKOVITCH: Just
10 very briefly.

11 CROSS-EXAMINATION

12 BY SOLICITOR SUSTAKOVITCH:

13 Q. Good morning, Dr. Meyers?

14 A. Good morning.

15 Q. Nice to see you. I just wanted to
16 double-check. We met last week; right?

17 A. We did.

18 Q. Mr. Sarratt, the three of us got
19 together?

20 SOLICITOR SUSTAKOVITCH: Is this
21 entered into evidence or ---

22 MR. SARRATT: No.

23 THE COURT: It's marked for
24 identification, I believe.

25 CROSS-EXAMINATION CONTINUED

1 BY SOLICITOR SUSTAKOVITCH:

2 Q. Well, I'm walking up to you just so
3 I can see, you testified these four are
4 permanent teeth?

5 A. That's correct.

6 Q. And this one over here's a baby
7 tooth, next to it?

8 A. This one right here. This is the
9 baby tooth.

10 Q. Right.

11 A. Here is the permanent canine ---

12 Q. Got you.

13 A. --- in the eruption process.

14 Q. Okay. And on this side, that's also
15 a baby tooth?

16 A. That's exactly right. And also the
17 permanent canine in the eruption process.

18 Q. Okay. And as far as -- I asked you
19 just in a child's mouth, if a child's
20 pointing toward a tooth, these two are --
21 well, in my mouth, they're really close
22 together; right? This tooth and this tooth?

23 A. That's correct.

24 Q. All right.

25 SOLICITOR SUSTAKOVITCH: I don't

1 have any further questions. Thank you.

2 THE COURT: Anything in follow-up?

3 MR. SARRATT: Nothing further, Your
4 Honor.

5 THE COURT: Thank you, Dr. Meyers.
6 You can step down and you are free to leave
7 the courthouse or you're welcome to remain
8 with us.

9 (WITNESS STEPS DOWN)

10 THE COURT: Does the defense have
11 any further witnesses?

12 MR. SARRATT: The Defense rests,
13 Your Honor.

14 THE COURT: Okay. All right.
15 Solicitor? You had indicated that you had
16 several witnesses in rebuttal?

17 SOLICITOR SUSTAKOVITCH: We
18 potentially do. We'd ask for a short break
19 jut to consider them.

20 THE COURT: Okay. All right.
21 Very good.

22 All right. Madam Forelady and
23 ladies and gentlemen of the jury if you'll go
24 back to the jury room for a brief recess and
25 the State will make a determination whether

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1 or not they want to call any witnesses in
2 reply to the Defense case.

3 So take a few minutes and we'll get
4 you back out. Again, no discussion about
5 this case.

6 (JURY OUT @ 11:35 A.M.)

7 THE COURT: We'll be in recess
8 about ten minutes.

9 (BRIEF RECESS)

10 (DEFENDANT PRESENT)

11 THE COURT: Are you ready,
12 Solicitor.

13 SOLICITOR SUSTAKOVITCH: Yes,
14 sir. Thank you.

15 THE COURT: Bring in the jury.

16 (JURY IN @ 11:55 A.M.)

17 THE COURT: And let the record
18 reflect the jury is back in the courtroom.
19 Ladies and gentlemen, what we're going to do,
20 we're going to go ahead and break for lunch.
21 The State indicates that they are going to
22 have one, maybe two reply witnesses, but
23 those witnesses are not here yet. So we're
24 going to go ahead and break for lunch.

25 Please be back at 1:30 and we'll

1 finish with the State's case and then we'll
2 go straight into closing arguments, and then
3 I will charge you the law in this case. So
4 have a good lunch. Again, no discussion
5 about this case and we'll see you back at
6 1:30.

7 (JURY OUT @ 12:00 P.M.)

8 THE COURT: Okay. Give me about
9 fifteen minutes and we should be in a
10 position to e-mail you the draft charge and
11 the verdict form.

12 Let's try, if we can before we do
13 any kind of lunch, let's kind of have at
14 least our informal charge conference. We can
15 certainly wait until after 1:30 to go on the
16 record concerning the charge. So hang around
17 and hopefully in about fifteen minute we will
18 be in a position to e-mail the draft charge,
19 okay?

20 SOLICITOR SUSTAKOVITCH: You're
21 talking about that after we read or just read
22 ---

23 THE COURT: Yeah. I mean, after
24 we e-mail it to you. Take a look at it. If
25 y'all want to come on back in chambers and

1 we'll sit down and discuss whatever we need
2 to discuss, okay?

3 SOLICITOR SUSTAKOVITCH: Yes,
4 sir.

5 MR. SARRATT: Thank you.

6 (COURT IN RECESS)

7 (CHARGE CONFERENCE IN CHAMBERS)

8 (DEFENDANT PRESENT)

9 THE COURT: Okay. We're ready.
10 Solicitor, I think you had one witness you
11 indicated?

12 SOLICITOR SUSTAKOVITCH: Yes,
13 sir.

14 THE COURT: Is that right?

15 SOLICITOR SUSTAKOVITCH: Yes,
16 sir.

17 THE COURT: Okay. All right.
18 Let's bring the jury out.

19 (JURY IN @ 1:45 P.M.)

20 THE COURT: All right. Let the
21 record reflect the jury is back in the
22 courtroom. Solicitor, you may proceed.

23 SOLICITOR SUSTAKOVITCH: Thank
24 you, Your Honor. May it please the Court?
25 The State calls Casey Page.

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(WITNESS TAKES STAND)

CASEY PAGE, having been duly sworn to
tell the truth, and nothing but the truth,
testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SUSTAKOVITCH:

Q. Good afternoon, Ms. Page. I believe
you testified earlier in the week?

A. Yes.

Q. Can you remind the jury what
relationship you have to Minor in this case?

A. I was her fifth grade teacher two
years ago.

Q. And when she disclosed sexual abused
in 2015, January of 2015, were you, in fact,
her teacher?

A. Yes.

Q. When did Minor start in your fifth
grade class that year?

A. In August of 2014.

Q. And can you describe to the jury
Minor's demeanor as your student with what
you observed in class from the time you had
her with, from August throughout disclosure
and after that?

1 A. She was a well-behaved student,
2 respectful of adults, teachers and other
3 students. Easy going, followed the rules,
4 did her work, complacent.

5 Q. Did she ever disrupt your class?

6 A. No.

7 Q. Did she ever refuse to obey your
8 commands?

9 A. No.

10 Q. Did she ever show vindictiveness or
11 anything like that?

12 A. No.

13 Q. Let me ask you this. In your years
14 that you taught school, have you had occasion
15 to see children who had oppositional defiant
16 disorder?

17 A. Yes.

18 Q. And what types of behaviors did they
19 display?

20 A. Refusal to obey the first, second or
21 even the third time you asked them to do
22 something. Bothering, picking on, bullying
23 other students, disrespecting authority
24 figures in particular, disrespecting other
25 students.

1 Q. Did Minor display any of the traits
2 that you've seen in other kids that had that?

3 A. No.

4 Q. Was that ever a concern for you as
5 her teacher that she would have any issue
6 like that?

7 A. No.

8 SOLICITOR SUSTAKOVITCH: Please
9 answer any questions Defense counsel has.

10 THE COURT: Any cross-examination?

11 MR. SARRATT: None for this witness,
12 Your Honor.

13 THE COURT: All right. Thank you,
14 ma'am. You can step down.

15 (WITNESS STEPS DOWN)

16 THE COURT: Solicitor, anything
17 else in reply?

18 SOLICITOR SUSTAKOVITCH: Nothing
19 further. The State rests.

20 THE COURT: All right. The
21 evidentiary record in this case is now
22 closed.

23 Ladies and gentlemen, we will be
24 starting in just a few minutes the lawyers'
25 closing arguments and then follow up with my

1 charge on the law.

2 There's a couple of things that we
3 need to do before those closing arguments
4 begin, so I need to send you back to your
5 jury room. And it will be for just a few
6 minutes, and then we'll get you back out and
7 the lawyers will engage in their closing
8 arguments, okay? So if you'd go back to the
9 jury just for a few minutes.

10 (JURY OUT @ 1:50 P.M.)

11 THE COURT: Okay. Does the
12 defense have any Motions at this time?

13 MR. SARRATT: At this time I'd renew
14 my Motion for a directed verdict.

15 THE COURT: Okay. All right. I
16 had indicated to the lawyers in chambers that
17 I had an opportunity to go through all of my
18 notes. And I was able to, either by way of
19 Minor's age or location match the allegations
20 up with each of these six indictments. So
21 I'm comfortable in denying your motion for
22 directed verdict. It is based solely on the
23 State's case. I did not consider anything.
24 Matter of fact, I think I went through it
25 before the Defense even put up any evidence.

1 But nonetheless, I viewed only the
2 State's case and I found the existence of
3 evidence to support sending each indictment
4 to the jury.

5 MR. SARRATT: Thank you, Your Honor.

6 THE COURT: Okay.

7 SOLICITOR SUSTAKOVITCH: Thank
8 you, Your Honor.

9 THE COURT: All right. Now, we --
10 with respect to the jury charge, we did
11 insert one provision as requested by the
12 State concerning time not being an element of
13 CSC.

14 SOLICITOR SUSTAKOVITCH: Thank
15 you, Your Honor.

16 THE COURT: And I think that's
17 without objection from the defense?

18 MR. SARRATT: That's correct.

19 THE COURT: And then lastly, based
20 upon our conversations in chambers concerning
21 the verdict form, does the State have a final
22 position as it relates to the insertion as to
23 the three CSC first degree offenses, having
24 the jury indicate the type of sexual battery
25 based upon 16-3-655 subsection (d), I think?

1 SOLICITOR CLARK: Your Honor, the
2 State has made a final determination if we
3 may just explain that determination for the
4 record?

5 THE COURT: Okay. Please?

6 SOLICITOR CLARK: Your Honor, the
7 State's preference is that the verdict form
8 not include those check-boxes of the actual
9 types of criminal sexual conduct. First, we
10 believe that terminology would only serve to
11 confuse the jury.

12 THE COURT: Okay.

13 SOLICITOR CLARK: And furthermore,
14 under 16-3-655, although there is that
15 subsection of (d)(1) that says that the judge
16 must designate whether that conduct
17 constituted sexual battery that included anal
18 intercourse or intrusion, we believe that
19 must be read in conjunction with the next
20 sentence that follows that sentence.

21 And the next sentence refers to the
22 second offense, essentially saying that if a
23 person already has a prior criminal sexual
24 conduct with a minor under the age of eleven,
25 then the judge must designate on that verdict

1 form.

2 So, Your Honor, the State would
3 simply request that that be read in
4 conjunction with one another. And,
5 therefore, is not needed on this first
6 verdict form.

7 THE COURT: Okay. All right.
8 Defense, do you have a position either way?

9 MR. SARRATT: Our preference would
10 be that (d) be included. I believe that it
11 must be included.

12 THE COURT: All right. Well, let
13 me read subsection (d) again. As I indicated
14 to the lawyers in chambers, I have done it
15 both ways.

16 (Upon review), well, Solicitor, I
17 read it that the prior conviction or the
18 first conviction or this conviction has to
19 have that designation by a judge or jury,
20 certainly judge if it were a bench trial;
21 jury, a jury trial. So I respectfully deny
22 your request to take it out. I'm going to
23 leave it in.

24 SOLICITOR CLARK: Thank you, Judge.
25 And if I may make just one additional comment

1 about the verdict form?

2 THE COURT: Yes, ma'am.

3 SOLICITOR CLARK: Unless we're
4 looking at incorrectly, we just want to
5 ensure that all the language in those
6 checkboxes are all uniform throughout those
7 three ---

8 SOLICITOR SUSTAKOVITCH: I think
9 it's just the penetration "however slight."
10 On one of them, it's slightly different than
11 the other two. If we could just -- that last
12 line.

13 THE COURT: Okay. Let me -- yeah.
14 I see exactly what you're saying. We'll make
15 that change. In the first one, in number
16 one, the intrusion language does not have
17 that extra bit. That's just an oversight on
18 my part. We'll certainly fix that.

19 SOLICITOR CLARK: Thank you, Your
20 Honor.

21 THE COURT: We'll probably take a
22 little break between closing and charge so
23 we'll fix that, okay? Thank you for bringing
24 that to our attention.

25 All right. And the discussion in

1 chambers, based upon the recent *Bailey*
2 ruling, the State will close in full and
3 defense closes in full and then the State has
4 the option, if it so chooses, to reply to any
5 new matters brought out by the defense. And
6 I think that's by agreement?

7 SOLICITOR SUSTAKOVITCH: Yes,
8 sir.

9 THE COURT: Or our interpretation.
10 We have the same interpretation.

11 Okay. Are you ready for your
12 closing?

13 SOLICITOR SUSTAKOVITCH: Yes,
14 sir.

15 MR. SARRATT: Yes, Your Honor.

16 THE COURT: Very good. Let's
17 bring the jury out, please?

18 (JURY OUT IN @ 2:02 P.M.)

19 THE COURT: All right. Let the
20 record reflect that the jury is back in the
21 courtroom. Solicitor, are you ready to
22 proceed?

23 SOLICITOR SUSTAKOVITCH: Yes,
24 sir, Your Honor.

25 THE COURT: May it please the

1 Court?

2 SOLICITOR SUSTAKOVITCH: Yes,
3 ma'am.

4 CLOSING STATEMENT

5 BY SOLICITOR SUSTAKOVITCH:

6 Good afternoon. What is this case
7 about, ladies and gentlemen? It's about a
8 young girl who was sexually assaulted by her
9 mother's boyfriend.

10 What is this case about? It's about
11 a search for the truth.

12 This is a court of justice and what
13 we're doing here is vitally important. What
14 you're doing is vitally important. I've
15 taken some notes because of the importance.
16 I'm going to be referring to some of them
17 throughout this to make sure I don't forget
18 something, to make sure I don't.

19 I want to go back through the
20 evidence in this case to prove to you that
21 the State has met its burden.

22 First, the State does have the
23 burden to meet beyond a reasonable doubt --
24 the burden of doubt, beyond a reasonable
25 doubt and we welcome that burden. Every

1 defendant is entitled to a fair trial. And
2 at the end of that trial, if the State has
3 not met its burden, the victim deserves
4 justice. We submit that we have met the
5 burden of proof in this case.

6 What is reasonable doubt? It's not
7 an unreasonable doubt. It's not against any
8 and all doubts. It's when you have evidence
9 that leaves you firmly convinced that
10 somebody has committed crimes against someone
11 else.

12 There are very few things in life
13 that we know with all certainty and the law
14 doesn't require that. It requires that you
15 feel firmly convinced of this man's guilt.

16 I want to go first to the law in
17 this case. The elements of CSC first would
18 be that somebody engages in a sexual battery
19 with a child under the age of eleven.

20 A "sexual battery" -- these terms
21 are all graphic, but it's essentially anal
22 penetration by a finger. It could be by a
23 penis/vaginal penetration however slight,
24 into the genitals of a child or oral sex with
25 a child. The big words are fellatio and

1 cunnilingus, depending on if it's on the
2 child or the child has to do it on the
3 defendant.

4 The elements of lewd act and CSC
5 with a minor -- and those, ladies and
6 gentlemen, are essentially the same charge.
7 The legislature changed the name in June of
8 2012. It's a legal thing. You might see
9 that date on the indictment. But at the end
10 of the day lewd act and CSC with a minor are
11 essentially the same charge. And it's
12 basically what it sounds like. It's when
13 somebody touches the body of a child in a
14 lewd and lascivious way to gratify their own
15 arousal. In this case it would be the
16 touching of Minor's breast and also having
17 her masturbate the defendant.

18 Finally, the charge of dissemination
19 of obscene materials. That one is pretty
20 straightforward. If you believe that this
21 defendant showed her pornography, as she
22 described, then he's guilty of dissemination
23 of pornographic materials.

24 The pictures are in evidence. I
25 didn't spend a lot of time showing them to

1 you because some people don't like looking at
2 porn. And I leave that to you back in the
3 jury room to look at them if you want to.

4 I want to talk about time. In a
5 charge for criminal sexual conduct with a
6 minor, time is not an essential element of
7 the offense. And what I mean by that is that
8 the State does not have to prove what day
9 Minor was sexually assaulted in this way and
10 that and this way and that way because
11 children are horrible historians. And when
12 there's chronic abuse, they don't know what
13 day it was. And so the law does not require
14 that. We are given expanded timeframes to be
15 able to -- in this case, we show when they
16 moved from different addresses:

17 Address One to

18 Address Two to

19 Address Three

20 And when you go back through the evidence
21 you see that the abuse started, Minor says
22 when she was five or six, when she was living
23 at Address One. That's when her mom went to
24 jail. You all heard from Minor's mom
25 testifying about going to jail. You heard

1 the defendant corroborate that she went to
2 jail in the Fall of 2009. There was some
3 incident between Gabriel and the mother and
4 she went to jail, charges were dismissed.
5 That's the marker of time where Minor
6 remembers it starting, a very specific memory
7 for her that's corroborated by two grownups
8 who lived it, who were there.

9 She testified in her interview with
10 the interviewer, she talked about it started
11 at a two-story house with stairs and bricks.
12 Now, this is how kids talk. Right? You saw
13 the pictures. Minor lived in trailers,
14 except for that first house, Address One.
15 And in that house she described vaginal
16 penetration with this defendant's fingers.

17 Then we talk about how she moved to
18 Address Two. She discloses oral sex, both
19 on her and what she had to perform on the
20 defendant. She also describes an incident
21 where the defendant ejaculated on her in the
22 way that she describes it. She said it felt
23 slimy, wet.

24 Then they moved to Address Three
25 and we hear about how they move there. Minor

1 was in fourth grade at Blythe Elementary.
2 You can see from the school records. She
3 started there on August 21st, 2013.

4 I just give you those dates because
5 time is not an essential element, but I
6 didn't want you to get stuck on that. That's
7 the move thing and you've heard testimony
8 from the witnesses as far as when they moved
9 there from place, to place, to place.

10 But we get back to the essential
11 question, was Minor sexually abused by
12 this defendant for years? And the evidence
13 in this case shows you she was.

14 The evidence in this case shows you
15 the State has met its burden. I want to say
16 from the beginning, sexual assault charges
17 against children they're different kinds of
18 crimes. They happen in secret. People don't
19 invite five friends over and say 'hey, look
20 at this.' Where's a video camera? They
21 don't do it at 12:00 in a church parking lot.
22 It's in secret. It's a crime so that no one
23 will believe the child.

24 It's a crime of power. When you
25 look at it, it all boils down to credibility

1 and the corroborating evidence in a case. Do
2 you believe the victim's disclosure and the
3 corroborating evidence around it?

4 The defense would have you believe
5 all we have is what Minor disclosed, but you
6 have much more than that in this case.

7 Now, under the law, you could have
8 a charge for criminal sexual conduct where a
9 mom walks into the police station, brings the
10 child, the child says this, and that's it.
11 And the State can move forward with that.

12 That is not what you've been
13 brought. You've been brought a case with a
14 lot of other corroborating evidence as to
15 what happened to this child.

16 Scenario one would be enough under
17 state law, if you believed the child as they
18 disclosed it to you.

19 But I want to go back to the case we
20 have, which is her disclosure and the other
21 corroborating evidence. Let's look about
22 credibility here of the victim. What would
23 the victim have to gain by making this up?
24 What? What is she getting out of this? It
25 was painfully obvious to everyone how hard it

1 was for her to come into this courtroom. She
2 did not want to be here. As she walked in,
3 she was crying. She locked up. Had
4 difficulty testifying. We all saw it. She
5 didn't get to tell you everything that she
6 told you in that interview with Robin Smith.
7 But she didn't have to. She told you enough
8 and you'll have the interview to go back to.

9 You think about the contrast. It's
10 not surprising that happened. When you think
11 about the fact -- look at the difference of
12 being in a courtroom. I had an expert
13 witness who'd testified fifty times who got
14 nervous on the stand, said she "blanked out"
15 for a second. Think about being the victim
16 of child sexual assault, having to walk in a
17 courtroom two years after you've been abused,
18 for the first time face the person who did
19 it, and then look at a bunch of strangers.
20 As nice as everybody here is, it's hard.

21 But she told you enough. She stated
22 here in court that it started happening when
23 she was five to ten -- between the ages of
24 five and ten and when mom went to jail.

25 She testified that he licked her

1 wrong spot.

2 He put his penis in her wrong spot.

3 His hands were in her wrong spot.

4 She remembers, and I go back to my
5 notes, fingers in her bottom that, quote,

6 "felt bad."

7 He licked her wrong spot.

8 She testified she saw pus coming
9 from his penis. I asked her did she know
10 what that was. She does know now. When she
11 was ten, she didn't know. She didn't
12 understand.

13 She talked about how she had to look
14 at videos of naked girls and guys.

15 She wanted to tell her mom but she
16 was threatened, so she didn't tell her mom.
17 When I asked her why did she tell at school,
18 she said she wanted it to stop.

19 She said she didn't want to be here.
20 She was telling the truth and being here felt
21 horrible.

22 And I want to go to this defendant's
23 testimony. First, let me say this. In a
24 criminal trial, one of the most sacred tenets
25 in this courtroom is that the burden of proof

1 is always on the State. That never changes,
2 ever. But one thing does change when a
3 defendant decides to testify then you get to
4 assess his credibility just like any other
5 witness.

6 Who has the most motive to lie?

7 Who has the motive to be truthful
8 with you?

9 Let's go back to his testimony that
10 corroborates so much of what Minor disclosed.
11 First, the timeline of the houses they lived.
12 He corroborates all of her testimony. He
13 corroborates that he had care and custody of
14 Minor when her mom was working or when she
15 went out with friends. He said nothing about
16 vindictiveness or not getting along or any
17 problems with Minor. No, none of that. You
18 didn't hear that.

19 He admitted to having porn. But
20 then one of the most bizarre, I would say
21 lie, he doesn't admit to his Social Security
22 card being in there. What is that? Why lie
23 about that? Are we to believe Minor put it
24 in there in the closet? No, that's his porn,
25 as he admitted to, with his Social Security

1 card for whatever reason. I guess that's
2 where you keep it.

3 He didn't come -- he even
4 corroborates the confrontation with Minora.
5 And think about that. That doesn't always
6 happen. But he testified Minora confronted
7 him the night the allegations came out. He
8 admits Minora said, "Did you do it?" He
9 admits that Minora -- he and Minora both say
10 he started crying. So then we know this
11 event happened, this whole confrontation.
12 The only thing he doesn't admit is to
13 answering her question about 'why did you do
14 it' when asked if he did it. And Minora said
15 that he answered, "I don't know why."

16 And then he corroborated that Minora
17 was mad. She wanted to kill him.

18 Back to his motive to lie, it's
19 plenty. I want to boil this down because
20 there's all these theories. And in these
21 cases it's, it's like a Ferris wheel. In
22 every case there will be a defense theory and
23 a lot of them come back around. And so I
24 don't know if these are weak theories, but
25 I'm just going to hit a couple. I'll

1 probably miss a few.

2 When you break this thing down you
3 all heard what occurred, a horrific heinous
4 crime against a child where you heard a lot.
5 So let's go to it.

6 What's theory one? "Mean mom" put
7 the child up to lying about the perpetrator.
8 That does not work. That dog does not hunt
9 in this case.

10 The evidence points to the fact that
11 Minora didn't know. You've got the testimony
12 of Investigator Picone. He talks about when
13 she comes to the school. You've got her
14 direct testimony. She didn't know why she
15 was there. She was shocked. And then she
16 was mad, she wanted to kill him; which are
17 all pretty reasonable feelings/reactions when
18 parents find out that their child is being
19 abused. He had to talk her down, say 'no,
20 no, let us handle it.' But that is the
21 direct testimony of her contemporaneous
22 response.

23 And then you get from that -- I
24 apologize. You look at the confrontation the
25 mother has with the defendant and we've

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1 already talked about. She had no clue about
2 this abuse. And look at the results for her.
3 She got kicked out of the home she lived in,
4 the mom. She lost her kids to foster care.
5 There's no credible evidence to support that
6 rabbit trail theory.

7 Another one that you could hear kind
8 of coming out from the evidence, and I don't
9 know if this is where it's going to go, but
10 another one was 'okay, let's talk about
11 Minora, the mom.' Got some issues there,
12 right? Yes. She's schizophrenia. When
13 Gabriel met her, she was a stripper in a
14 nightclub. They met. She's got
15 schizophrenia. She's got trouble.

16 She believes that a man shouldn't
17 change a child's diaper. We would all
18 probably agree that's odd. I think men
19 should change a kid's diaper. That's a good
20 thing. But somehow the mother having that
21 feeling had some impact on Minor.

22 And you heard the testimony from
23 Investigator Picone that the day after, on
24 January 14th, when the mom found out for the
25 first time, he told her not to bring it up

1 with Minor unless Minor brought it up with
2 her. And then on cross-examination, defense
3 counsel dug into that. And the mom said she
4 didn't bring it up. But what did Minor say?
5 Minor brought up, you know, what he did to me
6 it was like flipping a light on and off, up
7 and down like a light switch on her vagina.
8 What ten-year-old comes up with that unless
9 someone has manipulated your vagina up and
10 down? That wasn't from anybody but Minor.

11 Minor knew sensory things that no
12 ten-year-old should know. There's no
13 scenario in this world where a ten-year-old
14 should ever know what physical pain from a
15 penis in your butt feels like. It shouldn't
16 happen. A child should not know that.

17 In her interview she described the
18 pain, and I don't mean to be graphic. I'm
19 just trying to take you back to the evidence
20 here. It's difficult to talk about but we
21 have to. She said, 'I was laying on my belly
22 and he hurt me, because when his wrong spot
23 was in my behind, it hurt really bad.'
24 That's a sensory feeling. That's not
25 describing porn. That's what you feel when

1 you're ten, when somebody puts their penis or
2 their fingers into your bottom.

3 And then she talked about the taste
4 of semen. He started touching me and stuck
5 his wrong spot in my mouth and then -- Robin
6 said, 'Well what happened when he stuck it
7 your mouth?' Quote, "it tasted really
8 nasty." What ten-year-old knows what that
9 tastes like?

10 She described the look of semen.
11 She saw pus come out. And then she talked
12 about how semen feels. In one of the
13 assaults she said that he was moving up and
14 down and it made her feel slimy. These
15 sensory descriptions are beyond the capacity
16 of a ten-year-old child's mind.

17 You look at the other corroborating
18 evidence in this case, let's go to Jenna
19 Toney. You have a direct triggering event
20 and why this child came forth. You don't
21 just have to wonder. Mom shows up at the
22 police station, there's the child. What
23 happened? No, you saw the presentation. You
24 saw what was present to Minor and her
25 classmates. And it was in that moment that

1 she said, 'I feel safe enough. I think I'm
2 going to tell my teacher. I want this to
3 stop', and so she did. You heard that
4 testimony.

5 You heard about how delayed
6 disclosure is very common, most common. You
7 heard from Dr. Crosswell when she explained
8 the difference in acute and chronic exams.
9 Acute is when -- it doesn't happen that
10 often, but say a child is sexually assaulted
11 and runs out of the room and says 'take me to
12 the ER right now.' That's an acute exam. A
13 chronic exam is what happens most of the
14 time, she testified to, which is the child is
15 abused either -- you know, it can be weeks,
16 months, years. It could be into adulthood
17 that they wait to tell. And we've all seen
18 this.

19 You met Caitlin Sauer. Her
20 description when Minor - this is all
21 corroborated in the evidence, ladies and
22 gentlemen. This is more than the just the
23 child's word versus the defendant's. This is
24 all corroborating evidence that leads you to
25 one truth, which is that this child was

1 sexually abused.

2 Caitlin testified as to Minor's
3 demeanor. She was, quote, "scared and
4 apprehensive."

5 You go to Casey Page. That's who
6 she disclosed to, her teacher that just
7 testified.

8 And I'm going to spend just a brief
9 amount on this oppositional defiant disorder.
10 I like to call things rabbit trails, okay?
11 And that is a rabbit trail. They wanted to
12 bring in a paid expert to essentially -- what
13 you do is you attack the victim. You go
14 after her. You say she's a liar. You try to
15 say all kind of -- she's schizophrenic and
16 you try to get it in as much as you can. But
17 the bottom line is you heard Erica Van Wagner
18 say that child had -- when she saw her after
19 disclosure -- PTSD. PTSD. And no signs of
20 this ODD that she had when she was a five-
21 year-old child. You heard the descriptions
22 of what five-year-olds do. I think flush
23 fish down the commode or pinch people, but
24 you also heard Casey Page just testify, her
25 teacher, that none of that was present. And

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1 she had opportunity to see her every day.

2 It's a rabbit trail, ladies and gentlemen,

3 and I would ask you not to follow it.

4 I'll briefly touch on this, the
5 tooth defense. The defense put up was a
6 dentist. Okay. The significance they're
7 going to tell you today is that Minor said
8 she was slapped by the defendant. They're
9 going to say she said she was beaten. There
10 should be all these bruises. She never said
11 she had bruises, never. She said she was
12 struck in the face. In a forensic interview
13 she shows, she points to where she was
14 struck. And the big thing to this, I guess,
15 is during the medical exam Dr. Crosswell said
16 she probably said she pointed to this tooth.
17 The child was pointing to her third tooth.
18 And Dr. Crosswell admitted that she could
19 have misunderstood. So what you have here,
20 she had a baby tooth. The baby tooth was the
21 one that was loose, came out. It is a rabbit
22 trail.

23 You look at Claire Burnette's
24 testimony. She said Minor was shaken. We
25 have all this demeanor testimony. What is

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1 it? Is it just an acting show for Minor?
2 She just said one day, 'you know what, I'm
3 going to come in that school. It's going to
4 be the day that they show me this stranger
5 danger presentation. And then what I'm going
6 to do is I'm going to act scared to this
7 teacher or that teacher and then I'm going to
8 go disclose this abuse, because it was true.'

9 Going back to Dr. Crosswell, she
10 explained to you the medical evidence in this
11 case and she talked about anal penetration,
12 how we have a history of anal penetration.
13 You're not going to have evidence of scaring
14 and tearing and things like that. It's just
15 the nature of that organ.

16 And then oral sex, we can all
17 understand what that is. We're not going to
18 have evidence there. She explained vaginal
19 assault. Children -- we have the labia but
20 grownups we think of penetration in a
21 different way. And I don't mean to be blunt,
22 but we think of penetration as an intercourse
23 that you might have a spouse or a boyfriend,
24 but it's different as a kid. When a kid says
25 no, he put it in, they could easily be

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1 talking about in between their labia and not
2 the kind of penetration we're talking about,
3 but it's "penetration, however slight." She
4 talked about how you could have a tear or you
5 could bleed and that could repair itself.
6 And that is what Dr. Crosswell's evidence was
7 in this case.

8 Picone testified that he went to the
9 house in hopes of collecting evidence.
10 That's what police try to do, they try to go
11 -- Minor disclosed in her interview that she
12 had to wear a dress. You talk about
13 corroborating evidence, what do we have? The
14 child -- you saw the interview. You all are
15 able to assess things. You saw her in that
16 room describing -- and I will tell you, you
17 saw expert testimony that kids mix thing up.
18 When you watch the interviewer try to
19 interview Minor, there's no doubt that some
20 of these events are mixed in between things.
21 You know, the interviewer keeps trying to
22 bring her back to the red dress because it's
23 hard to -- if you have a child of chronic
24 abuse trying to tell you in the span of an
25 hour what happened to them over five years,

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1 it's next to impossible to get everything
2 down. No human being, much less a ten-year-
3 old can come in and regurgitate that like
4 that. They just can't.

5 But Picone testified that he went to
6 the house because Minor said she had to wear
7 a red dress. What do they find? A red
8 dress. Corroborating evidence.

9 Minor said she had to watch through
10 a door while her mom had sex. What did they
11 find? The hole in the door. Corroborating

12 And Minor said she had to watch
13 porn. There's many cases where a child says
14 that they had to watch porn. They go in,
15 they try to find it. It's gone. There may
16 have been a gap in time that a defendant got
17 rid of it. They can't find it. In this
18 case, the porn was there. Corroborating
19 evidence.

20 We talked about -- Erica Van Wagner,
21 talked about how she met with Minor from
22 March through September. Is that six months?
23 Six months of counseling. And how when she
24 came in she was suicidal. It was an
25 emergency meeting because she was so

1 distraught. She talked about PTSD the signs
2 of that, the flashbacks, the nightmares, how
3 she, over time, it lessened. But that was
4 there. Corroborating evidence.

5 It all adds up to the fact that this
6 crime happened. It is not a figment of this
7 child's imagination. And it is not some
8 sophisticated horrible lie.

9 You saw the child in that video. If
10 anybody thinks that person drawing on the
11 board, staring straight ahead was
12 sophisticated enough to make that up, to come
13 up with all those specific instances
14 (negative gesture).

15 Ladies and gentlemen, the State has
16 zero interest in convicting innocent people.
17 But when the State has met its burden, it has
18 the interest of protecting children. And I
19 can't cherry pick this for you. If you
20 believe this child's testimony you heard a
21 horrible crime and it's your duty to convict.
22 What you have is a consistent sequence of
23 events and corroborating evidence that leads
24 you to but one truth.

25 And I mentioned these crimes happen

1 in secret. They don't happen in a church
2 parking lot. At the beginning of this case,
3 I asked you, I said, keep your eye on the
4 ball. Don't follow the rabbit trails. All
5 it takes is one of you to go look at the
6 shiny object over here, look at this, or
7 follow that rabbit trail over here. And what
8 I would say is if one of you is having a
9 moment of hesitation, I'd direct you to go
10 back to her forensic interview or to her
11 interview. You go back to around forty-eight
12 minutes in the interview. And this is just a
13 small spot. It says:

14 Minor: I didn't mean to touch him.

15 Robin: And what did he make you do when
16 you touched him?

17 Minor: Um, like that.

18 You saw the jerking motion she just
19 started doing.

20 Minor: He showed me, okay?

21 Robin: What did he do, how did he do
22 that? What did he say?

23 Minor: He said it's like you go up and
24 down, not side to side. It's like you're
25 shaking a milk bottle.

1 Robin: What would happen when that would
2 happen?

3 Minor: It got slimy. It got slimy.

4 Robin: Did you have to do that one
5 time or more than one time?

6 Minor: More than once.

7 Robin: Did it more than once. And how
8 did it make you feel?

9 Minor: It tasted really nasty. I
10 didn't want to live anymore. I wanted to
11 kill myself because I didn't want it to
12 happen anymore.

13 Ladies and gentlemen, you can play
14 that at forty-eight minutes into that
15 interview from here to eternity and you are
16 hearing a disclosure of sexual assault.

17 I want to thank you for your time
18 and I ask that you return a verdict that
19 seeks justice.

20 THE COURT: Thank you, Solicitor.
21 Mr. Sarratt, are you ready, sir?

22 MR. SARRATT: Yes, Your Honor.

23 CLOSING STATEMENT

24 BY MR. SARRATT:

25 Good afternoon, ladies and

1 gentlemen. This is a case about a series of
2 questions that we're here to answer. And
3 serious charges require serious proof.

4 What the State has told you is don't
5 keep your eye -- 'don't take your eye off the
6 ball.' Now, what do they mean by that? What
7 they mean by that is that they want you to
8 believe that there is at least some kernel of
9 truth in what you've heard both from Minor on
10 the stand and the forensic interview.

11 They say "don't take your eye off
12 the ball." Ladies and gentlemen, it is the
13 bare allegation that Minor made. They don't
14 want you to look anywhere else but the
15 allegation. It is an allegation. 'Why would
16 you doubt this story?'

17 What reasons do you have to believe
18 that any of this is true? Lots. First, no
19 teachers ever suspected any abuse despite the
20 graphic abuse that she alleged or violent
21 abuse that she's alleged. There are no signs
22 of any bruising. There are no signs of SDTs.

23 Now, if Gabriel was to have
24 backhanded her so hard as to knock one of her
25 teeth loose, there would be some evidence.

1 There would be some blood, some bruising.

2 There would be a missing tooth. We didn't
3 find any. That's reasonable doubt.

4 The mother, Minora, she never saw
5 any signs of abuse. She never said anything,
6 like said, 'oh, yeah, I remember that tooth
7 was missing. It went missing right before
8 this happened.' In fact, Minora said that
9 she was shocked when she heard the
10 allegations. She had no idea that anything
11 like this was happening; because it wasn't.
12 That's reasonable doubt.

13 The mother says that Minor disclosed
14 to her about the light switch. The State has
15 just emphasized that to you, how she flipped
16 it up and down, that that came straight from
17 Minor. But you didn't hear Minor say that.
18 Minor never said that on the stand and she
19 didn't say it in that video. That came from
20 Minora. That's reasonable doubt.

21 Minor told Dr. Crosswell that she
22 has perfect memory and perfect vision, but
23 she can't keep her stories straight in an
24 interview. It was all over the place. And I
25 encourage you to go back and watch that

1 interview in its entirety if you wish. It
2 doesn't make any sense. She can't keep it
3 straight because she's making it up.

4 Minor told Dr. Crosswell the last
5 time it happened, though, and this was in
6 February of 2015, "was one month ago today."
7 That would have been January 4th of 2015.

8 Then she says the last time it
9 happened was the day before she told her
10 teachers, that would be January 14th 2015.

11 Minor told -- Dr. Crosswell asked
12 Minor what kind of abuse happened. Minor
13 says, 'Well, I can't remember because I
14 didn't have my glasses on.' That is
15 reasonable doubt.

16 Dr. Crosswell found no physical
17 evidence of any kind of abuse. Now, Dr.
18 Crosswell said that that's not uncommon, that
19 in cases where maybe it only happens one or
20 two times, acute cases -- or rather not acute
21 but chronic. In chronic cases you don't see
22 that kind of evidence very often because it
23 all heals very quickly. But, again, the most
24 recent time was supposed to have been one day
25 before she told her teachers. And one day

1 before is not chronic violent abuse, yet no
2 evidence was found, no physical evidence
3 whatsoever on Minor's body.

4 Minor's mother told Dr. Crosswell,
5 and just about everybody else in this case,
6 that Minor is schizophrenic and bipolar.
7 Now, this should have raised a lot of red
8 flags in the minds of pretty much everybody
9 involved in this case, but it didn't. Dr.
10 Crosswell said she wanted to see those
11 medical records. She wanted to review that,
12 but she never got them. Nobody ever followed
13 up. That's reasonable doubt.

14 Let's go back to that tooth real
15 quick. Again, Dr. Crosswell said that she
16 was very precise in her report. She's a
17 medical doctor. She doesn't write things
18 down willy-nilly. She wasn't sure which
19 tooth it was. She would not have said the
20 right lateral incisor. That's about the most
21 accurate description of a tooth I've ever
22 heard. If it would have been some tooth on
23 the right side of the mouth, she would not
24 have described it as the right lateral
25 incisor. But she indicates the tooth was the

1 right lateral incisor. I got the dental
2 records and you heard from the witness that I
3 called that that was physically impossible.
4 It could not have been the right lateral
5 incisor because one year and eight months
6 prior to the allegation, she already had an
7 adult right lateral incisor. So that tooth
8 could not have grown back in.

9 Now the State says, 'well, oops,
10 back up one second. Wrong tooth. It was
11 actually the canine tooth, not the right
12 lateral incisor.' But if you go back and
13 watch that video, at one point Minor says
14 that he knocked a tooth loose. She wasn't
15 saying teeth.

16 Let's talk about Minora. Go ahead
17 and get Minora's side right now. Minora says
18 that she wanted to kill Gabriel for what he
19 did. And rightfully so if she believes that
20 this happened. Of course she does. She's
21 angry. But she's so angry that she's
22 motivated to lie and, so, she did. She told
23 you that Gabriel confessed to her. That
24 never happened.

25 You heard Gabriel. You can assess

1 his credibility. He's telling the truth.
2 She confronted him and Minor had made
3 terrible, terrible accusations against him,
4 accusations of which he's innocent. And he
5 was upset and he was crying, but he was
6 telling you the truth when he says, "I never
7 confessed because I didn't do it."

8 Minora found the pornography in the
9 closet. The police said they didn't tell her
10 to look there. She went immediately to the
11 closet and started rifling through. And what
12 did she find? She finds pornography
13 conveniently with Gabriel's Social Security
14 card tucked in the cover. Now, you heard him
15 say that's not where he keeps his Social
16 Security card. That's a very odd place to
17 put your Social Security card. He said he
18 left it in a folder with the rest of his
19 documents.

20 Minora already knew about that
21 pornography. Gabriel said they bought it
22 together. She knew where to look for it.
23 She knew where it was. She knew where his
24 Social Security card was. She put it in the
25 sleeve. She put it on the shelf, and then

1 when the police arrived she conveniently went
2 and found it.

3 Now, let's talk about the Julie
4 Valentine Center interview. Here's how you
5 know that Minora is deeply involved in this
6 case and is trying to manipulate things, I
7 think she had something to do with that.

8 When Minor is in the Julie Valentine
9 interview, Robin Smith goes to the drawings,
10 okay? The anatomical drawings so that they
11 can label what the different body parts are.
12 When you go back and watch that video, I want
13 you to pay attention because Robin Smith
14 says, 'I'm going to show you a picture of a
15 little girl.' And Minor's response is, "Oh,
16 my mom told me this was coming." Minora was
17 not supposed to talk to Minor because
18 everybody said we want those to be Minor's
19 words, not anybody else's. But clearly we
20 know that Minora did talk to Minor and told
21 her exactly how that interview was going to
22 go. If Minor knows about the diagrams, she's
23 been told what to say.

24 Now, there's another instance that I
25 want you to pay attention to. And, again, I

1 would urge you to go back and watch that,
2 that interview. When Robin Smith goes to get
3 the dolls, the anatomical dolls so Minor can
4 show exactly how things happened. Minor
5 says, "Oh, my mom told me this was going to
6 happen." She's not nervous. She's been
7 rehearsed. She knows what to do. Her mama's
8 told her what's going to happen. Go back and
9 watch the video. You can see it.

10 Now, here's another thing and this
11 is a big red flag. When I asked Minora, "Did
12 you know anything about all of the
13 allegations that come out in that video?"
14 And Minora said, 'no, I had no idea.' I
15 believe she said not until a few months.

16 So if Minora has no idea about the
17 red dress, but when you go and watch the
18 video, this is at the very beginning. One of
19 the first things that Minor starts talking
20 about is the red dress. And what does Minor
21 say? She says, "Oh, somebody's going to
22 bring it. Somebody's going to bring it."
23 What does that mean? Nobody's supposed to
24 know about the red dress. This is supposed
25 to be the first time that the red dress is

1 ever mentioned, but somebody's going to bring
2 it? Minora's going to bring it because
3 Minora is talking to her. Minora put the red
4 dress there.

5 Here's another one. In the Julie
6 Valentine interview Minor said that Gabriel
7 knocked her tooth out while she was wearing
8 the red dress. And that she was on the bed
9 sheets. And this is all, again, just a few
10 weeks prior to this interview taking place.
11 And during that time when she was wearing the
12 red dress, and we have to talk about these
13 things, that Gabriel ejaculated in her anus
14 without wearing a condom. Yet, Gabriel's DNA
15 was not found on that red dress. Gabriel's
16 DNA was not found on the bed sheets. The
17 most important thing, Minor's DNA is not on
18 the dress.

19 Minor said that she was raped in the
20 red dress five times. She's wearing the red
21 dress when he backhands her and knocks out
22 one of two teeth. Now, all right. Maybe
23 backhanded would not have left a bruise.
24 Maybe that tooth was so loose that it could
25 have gotten knocked out. But if you knock

1 the tooth out, there's going to be blood.
2 There's going to be blood on the red dress.
3 There's certainly going to be blood on the
4 bedsheets. Nobody ever found any blood on
5 anything.

6 That same time in the red dress,
7 Minor says that she fought Gabriel off. You
8 can go back and watch the video where she
9 says she was kicking him. All right. First
10 of all, Minor's a child. She's supposed to
11 have fought off a grown man who's on top of
12 her? She describes how she punched him off,
13 got him off of her. But remember, Minor
14 broke her arm. She broke her arm and it was
15 in a cast, but she fights off a grown man by
16 pushing him off of her? On the Julie
17 Valentine video -- oh, I'm sorry. There's
18 one more thing about fighting him off. She
19 also says that -- first of all, there have
20 not been any bruises. He backhands her so
21 hard that she says he knocked her
22 unconscious. I mean, she's knocked out. Not
23 any bruise.

24 But then she says that when she woke
25 up from being knocked unconscious, that she

1 kicked him in the wrong spot but he kept
2 going. You kick somebody in the wrong spot
3 and they just keep on going? That's a red
4 flag.

5 Now, here's the deal. Go back and
6 watch the video. When she's using the
7 anatomical dolls -- now, Robin Smith has
8 asked her, 'now show me exactly how it
9 happened.' You can see that she's -- first
10 she stands them up on the backrest of the
11 chair. And then Robin Smith says, 'no, I
12 want you to show me exactly how it happened.'
13 So then she shifts and she sort of sitting
14 down and she had the two dolls here and she's
15 trying to reenact how she says it happened.
16 And I'm sorry I can't give you the exact time
17 stamp, but go back and watch that part. What
18 you will see is that she says 'and, so then
19 he is on top of me like this and then I was
20 like that.' And she's holding onto the doll
21 that is supposed to be her by the head. She
22 loses her grip. And you can see the doll
23 slides and starts to slide off the chair.
24 And she says, and then "I fell off the bed."
25 She's improvising. She's making it up as she

1 goes along. Watch that video.

2 The State asks how would Minor know
3 what semen looks like or how it would come
4 out. You know she does say she saw some pus
5 stuff came out. But what did she say about
6 it? She says it was green. Green. She
7 doesn't know what she's talking about. She's
8 making it up.

9 Then going back to how Minor was
10 just completely unable to tell anything
11 coherent or sensible in that video. One time
12 when she's asked 'now, how old were you when
13 that happened?' She's describing a specific
14 event. And Minor's response is, 'well, I was
15 five.' 'Well, not ten.' Not 'the age I am
16 right now.' She's unable to tell any kind of
17 coherent story. She was making it up as she
18 goes along.

19 In the Julie Valentine video, Minor
20 says the last time it happened was when she
21 was in the bathtub. She was very succinct
22 about this. She says there was a little bit
23 of water in the bathtub. 'He was laying down
24 on top of me. He's kissing me and then he
25 was going like this. And then there was a

1 little water in the bathtub and it slipped
2 and he hurt me and it ripped and I saw
3 blood.' That's supposed to be the last time
4 it happened. You know, one week or one day
5 prior to her disclosing. I asked Minor
6 pointblank about that. She didn't say she
7 couldn't remember, she said "that didn't
8 happen." That's a very specific answer.

9 I could have just stopped at the
10 bathtub when she said, 'I don't remember
11 that. That didn't happen.' It was very
12 specific, just really what she said on the
13 video. All she would have to do was just say
14 'yes.' I served it up to her. She said
15 "that never happened."

16 There's another part of the video
17 where she describes an incident where she
18 says that she is blindfolded and she is made
19 to put her hands on the counter. And she's
20 supposed to be in the bathroom at this time.
21 And she describes how Gabriel comes up behind
22 her. I think she says "he sneaked up on me
23 and he went like this." And she said pushed
24 it in. I think at one point she reenacts it
25 herself and says "like this." But then she

1 says that that caused her to fall backwards
2 but onto her stomach, but she fell in such a
3 way that his wrong spot went inside her wrong
4 spot. If you watch the video she uses the
5 doll. She has the doll and falls backwards
6 and then, realizing she's making it up, she
7 stops. That is in the Julie Valentine video,
8 and this is the only time you heard about it.

9 Minor says that Gabriel touched Hugo,
10 that he masturbated Hugo, stuck his finger in
11 Hugo's butt. That he then pushed his head
12 into his butt. I don't even know who she's
13 talking about at that point. And that
14 Gabriel whipped Minor's butt. And then
15 Gabriel pushed Minor's face into Hugo's butt.
16 Then he grabbed her tongue and made her lick
17 Hugo's butt. And then he made Minor whip
18 Gabriel's wrong spot. And all of this
19 happened on her eighth birthday. That's a red
20 flag. You never heard anything else about
21 that.

22 How about the hole in the door
23 that's supposed to be the corroborating
24 evidence. Gabriel was supposed to force
25 Minor to watch him have sex with Minora?

1 How? How does he force her to do it? And
2 Robin Smith gets all into this. I'll give
3 her credit for that. She says, 'Now tell me,
4 how did he make you do that? How did you
5 know that they were going to have sex?' She
6 can't give any coherent answer. I believe
7 it's on the video and tries to say, 'Well, I
8 would know when they were going to have sex
9 because my mama would go to the closet and
10 start undressing.' How? How does she know
11 that? That's a red flag.

12 There's another time in the house
13 before where she says that he made her watch
14 Gabriel and her mom have sex there too. So
15 this time there's no hole in the door but she
16 describes the way that she was able to watch
17 them have sex, that she puts a straw into the
18 keyhole and watches them have sex through the
19 straw. Well, then one time Gabriel hid it,
20 the straw, and hit her in the eye and it hit
21 her "booby thing." What is she talking
22 about? She's making it up. That's a red
23 flag.

24 Gabriel says -- I'm sorry. One of
25 the most, I'd say, emotional pieces of

1 evidence that came out is Minor talks about
2 how she wanted to kill herself. I can see
3 how that would be compelling. But keep in
4 mind, and they touched on this very briefly,
5 just prior to these allegations Minora's
6 aunt, Mary Ingle (phonetic), had a suicide
7 attempt and that was a very big deal because
8 the paramedics arrived, the police arrive --
9 I'm sorry. Not police. Firefighters arrive.
10 Minor has just seen someone attempt to commit
11 suicide. In her mind, that's where that
12 comes from. That's how she knows about such
13 things at such a young age.

14 Speaking of things that she shouldn't
15 know, at such a young age, Minor says she
16 wants to press charges for child molestation.
17 What is she talking about? She thinks she
18 knows about this whole thing. She doesn't
19 know what she's talking about. She's a kid.

20 And speaking of just being a kid,
21 you watch the video. When Robin Smith goes
22 out and Minor goes over and sits on the chair
23 for about two seconds, and then you can tell
24 she's just leaning forward. And what does
25 she do? She picks up the bear. She starts

1 dancing around and she starts singing a song.
2 She goes up, she gets on her tiptoes and she
3 leans at the camera and she sticks her tongue
4 out. Ladies and gentlemen, I hate to say
5 this but it was like it was a game to her.
6 It's like this was all just fun. She's
7 getting attention by acting out.

8 I wish I could point to exactly why
9 she made this up, but she doesn't appreciate
10 what she's saying in that video. She thinks
11 this is all just a big game and nothing's
12 going to happen. And then she got on the
13 witness stand -- she's older now, she's
14 twelve. She's a little bit wiser. She now
15 sees that that wasn't a game. This has
16 serious consequences and she could not bring
17 herself to repeat these lies on the stand
18 because she knows they're not true.

19 Now, all of this, everything we've
20 touched on, none of this ever prompted any
21 skepticism of anybody that investigated this
22 case and it should have. It should have.

23 Investigator Picone never went back
24 to follow up with any of the teachers after
25 learning that she was hit so hard that it

1 knocked her unconscious just prior to her
2 disclosing.

3 Investigator Picone didn't go back
4 for any mental health records after everybody
5 was talking about how Minor was schizo-
6 phrenic, bipolar. And she's not. I'm not
7 trying to claim that she is. I don't think
8 she's just crazy from schizophrenia. But
9 that should have prompted further
10 investigation and it didn't.

11 Picone testified that as far as he
12 knows, she never admitted this. I had to do
13 that, go through those records. That's not
14 my job. They should have investigated this
15 case.

16 And then finally, Investigator ~
17 Picone didn't wait for the DNA results to
18 come back before he made the arrest. Why
19 not? Because they had "corroborating
20 information", and that's all that he could
21 say. They don't want you to take your eye
22 off of that ball.

23 Now, I want to wrap this up, sort of
24 do what I can to tie all of this together.

25 How does Minor know about these

1 things? A really good question. I'm telling
2 you, I've never spoken to Minor beyond when
3 they put her on the stand today. I've never
4 spoken to Minora so this is my best guess.
5 Feel free to form your own theories. It's
6 your job to decide the facts, not mine.

7 But What I think that Minor has
8 heard talk about these things, that she has
9 been coached. That's how she knows about
10 these things. That's how she can describe
11 them. Honestly, I think maybe she has
12 watched Gabriel and her mother have sex
13 through that bedroom door, but he didn't make
14 her do it. She did it on her own.

15 And the language that she uses,
16 it's dirty talk. It's something you would
17 hear on a pornographic video. Maybe it's
18 something she did hear in the bedroom between
19 two adults, and that's how she can talk about
20 these things. Maybe she heard it on the TV
21 when the pornographic videos were playing.

22 Again, Minora was motivated, highly
23 motivated to come in and claim evidence, to
24 plant the red dress, to find the pornography,
25 plant, the Social Security card in the DVD.

1 Minora infected this case with lies.

2 Minor could not perpetuate the lies.
3 She just told a lie, a story that spun out of
4 control and it's too late for her to take it
5 back. But your job is to see it for what it
6 is. You can take it back. You can stop
7 this.

8 The State says they don't want you
9 to take your eye off the ball, but remember
10 the Judge told you there's a presumption of
11 innocence in these cases. You don't come in
12 believing a story is true and hoping it
13 doesn't get deconstructed. You come
14 believing that Gabriel is innocent and then
15 they have to prove that he did it.

16 We talk about burdens of proof,
17 proof beyond a reasonable doubt. There's an
18 easy way to think about it. We're all
19 familiar with the idea of the scales of
20 justice. In a criminal case we don't just
21 have the scales of justice and weigh them if
22 one is more believable than the other and you
23 find a defendant guilty, guilty or not
24 guilty.

25 In criminal court you walk with the

1 scales of justice tipped. It's tipped in
2 favor of innocence. And only until the State
3 can push the scales not just here but beyond
4 a reasonable doubt, only then can you
5 convict. You have to give him the benefit of
6 the doubt. If you think there's a real
7 possibility that this didn't happen, if you
8 think there's a real possibility that Gabriel
9 is innocent, you must find him not guilty.
10 And there's more than a real possibility in
11 this case, ladies and gentlemen, Gabriel is
12 innocent and this is the doubt.

13 This (indicating exhibits) is
14 reasonable doubt. They have to overcome all
15 of this for you to find him guilty.

16 Now, when you're back there you're
17 going to have several charges, several
18 verdict forms, and I have faith that you'll
19 find him not guilty on all the charges.

20 But if there's a dispute among you,
21 I can tell you that you're going to want to
22 compromise. You're going to want to say
23 'well, let's just convict him for the
24 lesser.' Don't do that. Don't compromise.
25 It's your verdict. And each and every one of

1 you has a voice and you have your own
2 verdict. Don't give in. Don't do the easy
3 thing. Don't do the popular thing. Do
4 justice. Gabriel deserves that. He's
5 innocent. Find him not guilty.

6 THE COURT: Thank you, Mr.
7 Sarratt. Solicitor do you have any reply
8 argument?

9 SOLICITOR SUSTAKOVITCH: None
10 from the State, Your Honor.

11 THE COURT: All right. Before we
12 get into the Court's charge on the law, I
13 think we need to take a short little break.
14 So Madam Forelady, ladies and gentlemen of
15 the jury, if you'll go back to your jury room
16 and take a short break. Again, don't start
17 your deliberations yet. We're getting close,
18 but don't start them yet.

19 (JURY OUT @ 2:55 P.M.)

20 THE COURT: All right. We'll take
21 a fifteen-minute break.

22 (BRIEF RECESS)

23 (DEFENDANT PRESENT)

24 THE COURT: We're ready for the jury.

25 (JURY IN @ 3:10 P.M.)

1 THE COURT: Let the record reflect
2 the jury is back in the courtroom.

3 Madam Forelady, and ladies and
4 gentlemen of the jury, I will now charge you
5 the law applicable to this case and you must
6 consider the charge as a whole and not go to
7 some portions to the exclusion of other
8 portions.

9 The indictments in this case charge
10 the Defendant with three counts of first
11 degree criminal sexual conduct with a minor;
12 one count of third degree criminal sexual
13 conduct with a minor; one count of lewd act
14 upon a child; and, one count of disseminating
15 obscene material to a minor.

16 I remind you the fact that the
17 defendant was arrested, charged and indicted
18 in this case is not evidence in this case and
19 cannot be considered by you as evidence of
20 guilt in this case, nor does it create any
21 presumption or inference of guilt. These
22 documents are simply the formal written
23 instruments, which contain the charges made
24 against the defendant. These are the formal
25 documents by which this case is brought into

1 this Court. The indictments in this case
2 allege six offenses against the Defendant.

3 Each indictment charges a separate
4 and distinct offense. You must decide each
5 indictment separately on the evidence and the
6 law applicable to it uninfluenced by your
7 decision as to any other indictment. The
8 Defendant may be convicted or acquitted on
9 any or all of the offenses charged. You will
10 be asked to write a separate verdict of
11 guilty or not guilty for each indictment. I
12 have a verdict form, which I will go over
13 with you at the conclusion of this charge.

14 Now, the defendant has exercised his
15 constitutional right and has pled not guilty
16 to these indictments. And, therefore, that
17 plea of not guilty puts the burden on the
18 State to prove the defendant guilty. A
19 person charged with committing a criminal
20 offense in South Carolina is never required
21 to prove himself innocent.

22 I charge you that it is an important
23 rule of the law that the Defendant in a
24 criminal trial, no matter what the
25 seriousness of the charge may be will always

1 be presumed to be innocent of the crime for
2 which the indictment was issued unless guilt
3 has been proven by evidence satisfying you of
4 that guilt beyond a reasonable doubt.

5 This presumption of innocence does
6 not end when you begin your deliberations,
7 but it accompanies the defendant throughout
8 the trial, unless you reach a verdict of
9 guilt based on evidence satisfying you of
10 that guilt beyond a reasonable doubt.

11 Now, this presumption of innocence
12 is like a robe of righteousness that's placed
13 about the shoulders of the defendant, which
14 remains with a defendant unless it has been
15 stripped from the defendant by evidence
16 satisfying you of the defendant's guilt
17 beyond a reasonable doubt.

18 Now, this presumption of innocence
19 is not mere legal theory. It's not just a
20 legal phrase that judges and lawyers use. It
21 is a substantial right to which every
22 defendant is entitled unless you, the jury
23 are satisfied from the evidence of the
24 defendant's guilt beyond a reasonable doubt.

25 Now, let me discuss with you this

1 concept of reasonable doubt. Some of you may
2 have served as jurors in civil cases where
3 you were told by the Court that it is only
4 necessary to prove that a fact is more likely
5 true than not true, such as by the greater
6 weight or the preponderance of the evidence.
7 In criminal cases, the State's proof must be
8 more powerful than that. It must be beyond a
9 reasonable doubt.

10 Proof beyond a reasonable doubt is
11 proof that leaves you firmly convinced of the
12 defendant's guilt. Now, there are very few
13 things in this world that we know with
14 absolute certainty. And in criminal cases
15 the law does not require proof that overcomes
16 every possible doubt.

17 If, based on your consideration of
18 the evidence you are firmly convinced that
19 the defendant is guilty of the crimes
20 charged, then you must find the defendant
21 guilty.

22 If, on the other hand you think
23 there's a real possibility that the defendant
24 is not guilty, you must give the defendant
25 the benefit of the doubt and find him not

1 guilty. You make this analysis as to each of
2 the six indictments.

3 Now, I remind you and as I told you
4 this at the beginning of this case, that you
5 and I have had certain duties to perform. As
6 the trial judge, it has been my response-
7 bility to preside over the trial of this
8 case. And I also have the duty to rule on
9 the admissibility of the evidence offered
10 during the trial. You are to consider only
11 the competent evidence before you.

12 If there was any testimony ordered
13 stricken from the record in this case during
14 this trial, you must disregard that
15 testimony.

16 You are to consider only the
17 testimony, which has been presented from the
18 witness stand, any exhibits which have been
19 made a part of the record in this case, and
20 any stipulations of counsel.

21 I have the additional duty to charge
22 you the law applicable to this case. As the
23 presiding judge, I'm the sole judge of the
24 law in this case. And it is your duty as
25 jurors to accept and to apply the law as I

1 now state it to you. If you already have any
2 idea as to what the law is or what the law
3 ought to be, if it does not agree with what I
4 now tell you the law is, you must abandon
5 your idea because you are sworn to accept the
6 law and apply the law exactly as I state it
7 to you.

8 Also, as I told you at the outset of
9 this case, in every case tried in this court
10 before a jury, the jury becomes the sole and
11 exclusive judge of the facts in the case.

12 A trial judge cannot intimate,
13 state, comment on or make any statement to a
14 trial jury about the facts in a case. Since
15 you, the jury, are the sole judge of the
16 facts in this case, you're not to infer from
17 what I have said during the progress of this
18 trial and the ruling upon the admissibility
19 of evidence or otherwise or anything that I
20 say now during the course of this instruction
21 to you, that I have any opinion about the
22 facts in this case. The law does not allow
23 me to have an opinion about the facts in this
24 case. This is a matter solely for you, the
25 juror, to determine.

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State of South Carolina v Gabriel Betancourt

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Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Court's Charge on The Law

1 As jurors, it is your duty to
2 determine the facts, the value and the weight
3 of the evidence presented during this trial.

4 Now, Madam Forelady and ladies and
5 gentlemen of the jury, there are two types of
6 evidence, which are generally presented
7 during a trial: direct evidence and
8 circumstantial evidence.

9 Direct evidence directly proves the
10 existence of a fact and does not require
11 deduction.

12 Circumstantial evidence is proof of
13 a chain of facts and circumstances indicating
14 the existence of a fact.

15 Crimes may be proven by
16 circumstantial evidence. The law makes no
17 distinction between the weight or value to be
18 given to either direct or circumstantial
19 evidence.

20 However, to the extent the State
21 relies on circumstantial evidence, all of the
22 circumstances must be consistent with each
23 other, and when taken together point
24 conclusively to the guilt of the accused
25 beyond a reasonable doubt. If these

1 circumstances merely portray the defendant's
2 behavior as suspicious, the proof has failed.

3 The State, once again, has the
4 burden of proving the defendant guilty beyond
5 a reasonable doubt and that burden rests with
6 the State regardless of whether the State
7 relies on direct evidence, circumstantial
8 evidence, or some combination of the two.

9 Necessarily, it's your job to
10 determine the credibility of the witnesses
11 who have testified in this case and the
12 evidence presented.

13 Credibility simply means
14 believability. It becomes your duty as
15 jurors to analyze and to evaluate the
16 witnesses and the evidence and determine the
17 credibility of the witnesses and the
18 evidence.

19 In determining the credibility of
20 witnesses who have testified in this case,
21 you may believe one witness over several
22 witnesses or several witnesses over one
23 witness.

24 You may believe a part of the
25 testimony of a witness and reject the

1 remaining part of the testimony of that very .
2 same witness.

3 You may believe the testimony of a
4 witness in its entirety or reject the
5 testimony of a witness in its entirety.

6 You may consider whether any witness
7 has exhibited to you any interests, bias,
8 prejudice or other motive in this case.

9 You may also consider the appearance
10 and manner of the witness while on the
11 witness stand.

12 Now, we have had several expert
13 witnesses testify in this case. As I
14 explained to you, and I'll go into a little
15 bit more detail about that, the rules of
16 evidence ordinarily do not permit witnesses
17 to testify to opinions or conclusions, which
18 I told you the other day. An exception to
19 this rule exist for a witness we call expert
20 witnesses. A witness, who by education and
21 experience, has become an expert in some art,
22 science, profession or calling, may state an
23 opinion as to relevant and material matter in
24 which the witness claims to be an expert and
25 may also state the reasons for that opinion.

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1 You should consider any expert
2 opinion received into evidence in this case
3 and like any other evidence, give it the
4 weight you think it deserves. If you decide
5 that the opinion of an expert witness is not
6 based on sufficient education and experience
7 or if you conclude that the reasons given in
8 support of the opinion are not sound, or that
9 the opinion is outweighed by other evidence,
10 then you may disregard the opinion entirely.
11 An expert witness's testimony is to be given
12 no greater weight than that of other
13 witnesses simply because the witness is an
14 expert. Furthermore, you're not required to
15 accept an expert's opinion even though it is
16 not contradicted.

17 Now, during this trial you have
18 heard testimony from a child. When a witness
19 is a child you must determine, as with any
20 other witness, whether that testimony is
21 believable. In deciding believability you
22 may consider not only matters that I've
23 already discussed with you a moment ago, but
24 you may also consider the age of the child,
25 the child's ability to observe and remember

1 facts, and the child's ability to understand
2 and answer question.

3 Because young children may not fully
4 understand what is happening here it is up to
5 you to decide whether the child understood
6 the seriousness of appearing as a witness at
7 this criminal trial, whether the child
8 understood the questions, whether the child
9 has a good memory, and whether the child
10 understands the difference between lying and
11 telling the truth.

12 In addition, young children may be
13 influenced by the way the questions are
14 asked. It is up to you to decide whether the
15 child understood the questions asked.

16 Now, Madam Forelady and ladies and
17 gentlemen of the jury, in order to establish
18 criminal liability, criminal intent is
19 required. For example, the mental state
20 required to be proven by the State for a
21 particular crime might be purpose, intent,
22 knowledge, recklessness or criminal
23 negligence. Criminal intent must be proven
24 by the State beyond a reasonable doubt.

25 Criminal intent is always a matter

1 that must be determined by the jury from the
2 circumstances surrounding the situation.
3 There's no way to prove intent to a
4 mathematical certainty. There's no way
5 medical science can dissect a person's brain
6 and determine what the person had in mind.
7 So the law says that criminal intent may be
8 inferred from the circumstances shown to have
9 existed. This is how you make the
10 determination of whether or not the element
11 requiring intent was present. It's not
12 necessary to establish intent by direct and
13 positive evidence, but intent may be
14 established by inference in the same way as
15 any other fact, by taking into consideration
16 the acts of the parties and all of the facts
17 and circumstances in the case.

18 Criminal intent is defined as a
19 mental state, a conscious wrongdoing. It's
20 up to you to determine what the Defendant
21 intended to do, based on the circumstances
22 shown to have existed.

23 Criminal intent can arise from
24 action or failure to act. It may arise from
25 negligence, recklessness, or an indifference

1 to duty, or to consequences that is
2 considered by the law to be the equivalent of
3 criminal intent.

4 Now, let me charge you the law
5 applicable to the six offenses that the
6 Defendant has been charged with. We have
7 three charges of first degree criminal sexual
8 conduct with a minor. And let me explain to
9 you what that is. The State must prove
10 beyond a reasonable doubt that the Defendant
11 engaged in a sexual battery with the victim.

12 A sexual battery is either sexual
13 intercourse, cunnilingus, fellatio, anal
14 intercourse or any intrusion, however slight,
15 in any part of the person's body or of any
16 object into the genital or anal openings of
17 another person's body, except when the
18 intrusion is accomplished for medically
19 recognized treatment or diagnostic purposes.

20 The State must then prove beyond a
21 reasonable doubt that the victim was less
22 than eleven years old at the time of the
23 sexual battery. Consent, willingness,
24 indifference, or ignorance on the part of the
25 minor, if any, as to what was taking place,

1 does not in any way effect the charge of
2 criminal sexual conduct with a minor.

3 An unmarried woman under the age of
4 fourteen cannot legally consent to sexual
5 intercourse. Time is not an essential of the
6 crime of criminal sexual conduct with a
7 minor.

8 Now, the defendant is also charged
9 with one count of third degree criminal
10 sexual conduct with a minor. And let me
11 explain to you what that is. The State must
12 first prove beyond a reasonable doubt that
13 the defendant was over -- the defendant was
14 over the age of fourteen.

15 Next, the State must prove beyond a
16 reasonable doubt that the defendant willfully
17 and lewdly committed or attempted to commit a
18 lewd or lascivious act upon or with the body
19 or it's parts of a child under sixteen years
20 of age with the intent of arousing, appealing
21 to or gratifying the lust, passions or sexual
22 desires of the actor or the child.

23 "Lewd" means obscene, lustfully,
24 indecent or lecherous.

25 "Lascivious" means intending to

1 incite lust, lewd, indecent, obscene or
2 tending to deprave the morals and respect to
3 sexual relations.

4 The next charge is dissemination of
5 the obscene material. The State must prove
6 beyond a reasonable doubt the Defendant
7 knowingly: one, sold, delivered, provided,
8 offered, or agreed to sell, deliver or
9 provide any obscene writing, picture, record
10 or other representation or description of the
11 obscene; two, presented or directed an
12 obscene play, dance, or other performance or
13 participated directly in the portion of the
14 performance which made it obscene; or three,
15 published exhibited or otherwise made
16 available anything obscene to any group or
17 individual; or four, exhibited, presented,
18 rented, sold, delivered, provided, offered,
19 or agreed to exhibit, present, rent, or
20 provide any motion picture, film, film strip,
21 projection slides, sound recording, sound
22 take, sound track, videotape or recording or
23 any material which is a representation,
24 description, performance, or publication of
25 the obscene.

1 "Knowingly" means having general
2 knowledge of the content of the material or
3 performance or failing, after reasonable
4 opportunity, to recognize reasonable
5 inspection, which would have shown the
6 content of the material or the performance.

7 Material is considered obscene if:
8 one, to the average person applying
9 contemporary community standards, the
10 material shows or describes sexual conduct in
11 a patently offensive way; or two, the average
12 person applying contemporary community
13 standards relating to the showing or
14 description of sexual conduct would find that
15 the material taken as a whole appeals to the
16 prurient interest in sex; or three, to a
17 reasonable person the material taken as a
18 whole lacks serious literary, artistic,
19 political, or scientific value; and four, the
20 material as used is not otherwise protected
21 or privileged under the Constitution of the
22 United States or of this State.

23 "Person" means any individual,
24 corporation, partnership, association, firm,
25 club or other legal or commercial entity.

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Court's Charge on The Law

1 A "minor", for purposes of this
2 statute, is a person twelve years of age or
3 younger.

4 In deciding whether the materials in
5 this case are obscene, you are not to base
6 your decision on your personal tastes or
7 personal standards as to what you think is
8 obscene. Instead, you must decide whether an
9 ordinary child in this county would find the
10 materials to be obscene as I have defined
11 that term to you. The materials must be
12 judged as a whole in their entire context and
13 you're not to consider separate portions of
14 the materials in reaching a conclusion as to
15 whether they are obscene.

16 Lastly, lewd act on a minor. The
17 defendant is charged with committing a lewd
18 act on a minor. A minor is a person under
19 the age of eighteen years. The State must
20 first prove beyond a reasonable doubt that
21 the defendant was over the age of fourteen
22 years at the time. Next, the State must
23 prove that the defendant willfully and lewdly
24 committed or attempted a lewd or lascivious
25 act on or with the body or its parts of a

1 child under the age of sixteen years with the
2 intent to arouse, appeal to or gratify the
3 lust, passions or sexual desires of the
4 defendant or the child.

5 "Willfully" means voluntarily and
6 intentionally with the specific intent to do
7 something the law forbids.

8 Madam Forelady and ladies and
9 gentlemen of the jury, I realize that that
10 was a considerable amount that I just read to
11 you. And by virtue of that, you will have a
12 copy of what I've just read to you back in
13 the jury room for your use in whatever manner
14 that you wish to use it.

15 Now, since we have six charges there
16 are possible verdicts, two for each charge:
17 either not guilty or guilty.

18 Your verdict as to each charge must
19 be unanimous among the twelve of you. And
20 when you have reached a unanimous verdict as
21 to each charge, you will notify the bailiff
22 and inform the bailiff that a verdict has
23 been reached.

24 Now I'm going to come down and show
25 you the verdict form. It's rather lengthy,

1 but I'll explain it to you. And y'all are
2 all smart people and I'm sure you can
3 certainly understand how to complete it.

4 Madam Forelady, you'll be the one to
5 actually complete this. Certainly, the other
6 members of the jury can have access to it.
7 And it's broken down as to each of the six
8 charges. You'll see one, two, three, four,
9 five, and six.

10 The first three, one, two and three,
11 deal with the first degree criminal sexual
12 conduct with a minor. And you will make a
13 determination whether the defendant is guilty
14 or not guilty as to each one of those
15 charges.

16 Now, the fact that we've put Guilty
17 before Not Guilty is of no significance. One
18 has to go before the other. There's no
19 significance to that.

20 So, you will put your initials,
21 Madam Forelady, as to which verdict you reach
22 as to each one.

23 Now, as to the first degree criminal
24 sexual conduct with a minor charge, you also
25 -- if you were to find the defendant guilty,

1 then you also have to select a battery or the
2 batteries that he committed. Remember, I
3 defined for you what a sexual battery is
4 under the law. And there are five different
5 types of batteries. And so you need to
6 decide which battery or batteries that he
7 committed, only if, naturally, if you find
8 him guilty.

9 Certainly, if you find him not
10 guilty on that charge, then you would not
11 have to check that, okay?

12 So that applies to all three of the
13 first degree criminal sexual conduct charges.

14 And then on the third degree, the
15 lewd act, and the dissemination charges, you
16 just decide whether or not the defendant is
17 guilty or not guilty, okay?

18 Now, what you will be given back in
19 the jury room is not only the verdict form
20 that I've just showed you but a copy of the
21 charge that I've just read.

22 Just for your reference purposes, we
23 have made copies of the six indictments that
24 you can refer to and use in whatever manner
25 that you need to use. And you'll also be

1 given all of the exhibits in this case.

2 Now, what I need for you to do, all
3 fourteen of you go back to the jury room. Do
4 not begin your deliberations yet. I need to
5 talk with the lawyers and make sure that I
6 don't need to bring you out for any
7 additional charge or any additions,
8 corrections of the Court's charge.

9 If I don't, then the bailiff's will
10 bring to you these materials, along with the
11 exhibits, and that will be your cue for two
12 things to happen. One, I'll need for the
13 alternates to exit the jury room. And the
14 second thing to happen, you will begin your
15 deliberations.

16 I'm sure that they've provided pen
17 and paper back there in the jury room for
18 your use. But go back to the jury room and
19 don't begin your deliberations yet, okay?

20 (JURY OUT @ 4:10 P.M.)

21 THE COURT: Does the State have
22 any objections or exceptions or additions to
23 the Court's charge?

24 SOLICITOR SUSTAKOVITCH: None
25 from the State, Your Honor.

1 THE COURT: And defense?

2 MR. SARRATT: Nothing from

3 Defense.

4 THE COURT: Okay. Thank you very
5 much.

6 Have you had an opportunity to go
7 through the exhibits, make sure we've got
8 everything together?

9 SOLICITOR SUSTAKOVITCH: Yes,
10 sir. Could we check one thing?

11 THE COURT: Yeah. Go ahead.

12 (COUNSEL APPROVAL OF EXHIBITS)

13 (ALTERNATES EXCUSED)

14 (JURY IN DELIBERATION @ 4:13 P.M.)

15 (COURT AT-EASE)

16 (NOTIFIED OF JURY QUESTION @ 4:30 P.M.)

17 (DEFENDANT PRESENT)

18 THE COURT: We have received a
19 question from the jury. Shall we mark this
20 as an exhibit?

21 COURT REPORTER: Yes, sir. Court's
22 Exhibit Number 1.

23 (SO ENTERED AS COURT'S EXHIBIT 1)

24 THE COURT: Okay. We have a
25 question from the jury and it reads as

1 follows: "What was the date the evidence
2 (dress, bedsheets) was taken from the home?"

3 SOLICITOR SUSTAKOVITCH: I think
4 it -- I'm sorry, Your Honor. I think
5 investigator Picone testified to that; didn't
6 he?

7 THE COURT: I think he did. We
8 have basically two options, as I see.

9 One is that y'all stipulate and tell
10 the jury, because I think it was taken the
11 same day as the interview, forensic
12 interview.

13 Either you stipulate to it or I
14 instruct the jury that they have to do the
15 very best that they can to rely on the memory
16 and recollection of the evidence presented.
17 I can handle it one of two ways.

18 MR. SARRATT: We are happy to
19 stipulate.

20 SOLICITOR SUSTAKOVITCH: I'm
21 sorry?

22 MR. SARRATT: We are happy to
23 stipulate.

24 SOLICITOR SUSTAKOVITCH: Was it
25 the same day or was it ---

1 MR. SARRATT: Same day.

2 SOLICITOR SUSTAKOVITCH: Okay.

3 So he left the forensic interview and then
4 went over there by consent, came in and got
5 those items. And I believe that was what was
6 testified to.

7 SOLICITOR CLARK: Correct.

8 SOLICITOR SUSTAKOVITCH: All
9 right.

10 THE COURT: So how do we want to
11 handle it? What you're willing for me to do,
12 Solicitor?

13 SOLICITOR SUSTAKOVITCH: Is
14 stipulate that it was on February ---

15 SOLICITOR CLARK: 3rd.

16 MR. SARRATT: The 3rd? The day of
17 the interview. The interview was ---

18 SOLICITOR SUSTAKOVITCH: Yeah.
19 It's February 3rd, 2015.

20 THE COURT: February 3rd, 2015. Do
21 you want me to tell them that was the same
22 day as the interview at Julie Valentine or
23 just leave it?

24 MR. SARRATT: I think we should do
25 that, too.

1 THE COURT: Okay. All right.
2 I'll do it based on the stipulation from both
3 sides. Let's bring the jury out, please,
4 sir.

5 (JURY IN @ 4:40 P.M.)

6 THE COURT: Let the record reflect
7 the jury's back in the courtroom.

8 Madam Forelady, ladies and gentlemen
9 of the jury, I have presented a - or been
10 presented with a question from the jury which
11 reads as follows: What was the date the
12 evidence (dress, bedsheets) was taken from
13 the home. By stipulation of counsel, it was
14 February 3rd, 2015, which was the same date
15 that the interview took place at the Julie
16 Valentine Center. That's been stipulated to
17 by both lawyers as to my response to your
18 question. So with that said if you'll go
19 back and continue with your deliberations.
20 Thank you very much.

21 (JURY OUT @ 4:45 P.M.)

22 THE COURT: Okay.

23 (COURT IN RECESS)

24 (NOTIFIED OF JURY QUESTION @ 6:05 P.M.)

25 (SO ENTERED AS COURT'S EXHIBIT 2)

1 THE COURT: I had the bailiffs
2 inquire and we have a note from the jury that
3 they would like for us to order some dinner,
4 so the bailiffs are taking care of that.

5 COURT REPORTER: Court's Exhibit 2.

6 (SO ENTERED AS COURT'S EXHIBIT 2)

7 (NOTIFIED OF JURY QUESTION @ 6:10 P.M.)

8 (SO ENTERED AS COURT'S EXHIBIT 3)

9 (DEFENDANT PRESENT)

10 THE COURT: The jury is requesting
11 to watch the forensic interview again.

12 (OFF RECORD DISCUSSION)

13 (VIDEO AVAILABLE TO JURY IN JURY ROOM)

14 (DEFENDANT PRESENT)

15 THE COURT: All right. Let's put
16 this on the record, just kind of bring us up
17 to date.

18 The jury had sent out a question
19 indicating they wanted to watch the forensic
20 interview. So per agreement with the State's
21 investigator, a laptop, along with my law
22 clerk, the laptop and my law clerk went back
23 to the jury room for purposes of playing the
24 video. And, of course, my law clerk being
25 back there just to make sure that the jury

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1 didn't try to go to any part of the laptop,
2 even though that may not have been possible.
3 Because she was back there just to kind of
4 safeguard that. And they've -- and that's
5 been for about an hour. We've learned that
6 during the course of that, in my law clerk's
7 presence, they were discussing/deliberating
8 while they're watching the video. And only
9 got about twenty minutes into it.

10 I just feel -- I'm just reluctant to
11 have my law clerk back there during their
12 deliberations, even though quite naturally
13 I'm one hundred and fifty percent confident
14 that my law clerk had no participation in the
15 deliberations. But I just feel reluctant for
16 her to be back there any further.

17 So per agreement as well, we're
18 going to bring the jury out and instruct them
19 that my law clerk is not going to remain back
20 there. They can spend whatever amount of
21 time they want to viewing the video, but they
22 are instructed not to try to gain access or
23 do anything else with the computer, other
24 than to use it to watch and listen to the
25 forensic video. Is that correct, Solicitor?

1 SOLICITOR SUSTAKOVITCH: Yes,
2 sir.

3 THE COURT: Okay. Mr. Sarratt?

4 MR. GOLDSTEIN: And, again, it's
5 my understanding that everything is password
6 protected. And they won't try accessing the
7 internet.

8 THE COURT: Right. Okay. All
9 right. So, with that said if you can bring
10 the jury out.

11 SOLICITOR SUSTAKOVITCH: Your
12 Honor, I was advised by my investigator the
13 internet is disconnected. Do you think if
14 the foreman is advised just not to click off
15 the forensic interview screen, that'd
16 probably be the safest bet?

17 THE COURT: All right. We're
18 ready for them.

19 (JURY IN @ 7:23 P.M.)

20 THE COURT: All right. Let the
21 record reflect the jury's back in the
22 courtroom. I hope you've had a chance to at
23 least eat part of your supper. What we're
24 going to do is my law clerk is not going to
25 remain in the jury room while you finish your

1 supper or while you are viewing the video.
2 Certainly, we want you to spend whatever time
3 you deem necessary with the video. And I
4 understand that there's been, while you were
5 viewing the video with my law clerk there,
6 there was discussion and deliberation.
7 That's fine. But she's not going to remain
8 in there.

9 Not to suggest that you would do
10 anything, but we do not want you trying to
11 gain access to anything on that computer,
12 internet or anything else. You are to use it
13 strictly to view the video and nothing else.
14 And I trust that all twelve of you will
15 follow that. And then when you are finished
16 with the video and no longer in need of it,
17 if you'll just stop and let the bailiff's
18 know and they can go ahead and get the laptop
19 out and the video.

20 If for some reason you thought you
21 were finished with it and later on during
22 your deliberations you want to see it again,
23 by all means we'll provide it back to you,
24 okay? So everybody understand the
25 instructions from the Court?

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1 MADAM FORELADY: Yes, sir.

2 THE COURT: Okay. Thank you very
3 much. Thank you. Go back, continue
4 deliberations and with eating your meal.

5 (JURY OUT @ 7:25 P.M.)

6 THE COURT: Okay. The State and
7 Defense satisfied with those instructions of
8 where we are with respect to this laptop and
9 video? Solicitor?

10 SOLICITOR SUSTAKOVITCH: Yes,
11 sir.

12 THE COURT: Mr. Sarratt?

13 MR. SARRATT: Yes, Your Honor.

14 THE COURT: Okay. Thank you very
15 much. Everybody be at-ease.

16 (COURT IN RECESS)

17 (NOTIFICATION OF VERDICT @ 8:50 P.M.)

18 (DEFENDANT PRESENT)

19 THE COURT: Is there anything that
20 we need to put on the record before we
21 receive the verdict from the jury?

22 SOLICITOR SUSTAKOVITCH: No, sir,
23 Your Honor.

24 MR. SARRATT: No, Your Honor.

25 THE COURT: Bring the jury out,

1 please?

2 (JURY IN @ 8:52 P.M.)

3 THE COURT: All right. Let the
4 record reflect the jury is back in the
5 courtroom.

6 Madam Forelady, it's my under-
7 standing that you have reached a verdict in
8 this case?

9 MADAM FORELADY: Yes, Your Honor.

10 THE COURT: All right. And
11 without telling me the verdict as to each
12 charge, is the verdict unanimous among the
13 twelve of you as to each charge?

14 MADAM FORELADY: Yes, Your Honor.

15 THE COURT: Okay. If you'll had
16 the verdict form to the bailiff, please?

17 MADAM FORELADY: (Tenders).

18 BAILIFF: (Tenders verdict form to
19 the judge)

20 THE COURT: I will publish the
21 verdict, but I'll first show it to the clerk
22 and have her inspect it. And then I will
23 publish it.

24 CLERK: (Upon review, returns
25 verdict to the Court.)

1 THE COURT: All right. The State
2 of South Carolina versus Gabriel Betancourt,
3 Jr.

4 As to indictment 2015-GS-23-8459,
5 criminal sexual conduct with a minor first
6 degree, the jury finds the defendant Guilty
7 and indicates the battery or batteries to
8 have been committed cunnilingus and
9 intrusion.

10 As to indictment 2017-GS-23-1209A,
11 charging the defendant with criminal sexual
12 conduct with a minor in the first degree, the
13 jury finds the defendant Not Guilty.

14 As to indictment number 2017-GS-23-
15 1210A, which charges the Defendant with
16 criminal sexual conduct with a minor first
17 degree, the jury finds the defendant Guilty,
18 finding that the defendant committed the
19 following sexual battery or batteries
20 fellatio and intrusion.

21 As to indictment 2015-GS-23-8457,
22 which charges the defendant with criminal
23 sexual conduct with a minor, third degree,
24 the jury finds the defendant Guilty.

25 As to indictment 2017-GS-23-1206A,

1 which charges the defendant with
2 disseminating obscene material to a minor,
3 the jury finds the defendant Not Guilty.

4 And lastly, as to indictment number
5 2017-GS-23-1207A, which charges the defendant
6 with lewd act upon a child, the jury finds
7 the defendant Guilty.

8 Madam clerk, would you please poll
9 the jury?

10 CLERK: Members of the jury, if
11 this your verdict and is this is still your
12 verdict, please indicate by raising your
13 right hand?

14 (UNANIMOUS AFFIRMATIVE RESPONSE)

15 CLERK: Thank you.

16 THE COURT: Let the record reflect
17 that all twelve raised their right hand.

18 Does the State or the Defense
19 request individual polling of the jury?

20 SOLICITOR SUSTAKOVITCH: No, sir,
21 Your Honor.

22 MR. SARRATT: Yes, Your Honor,
23 we'd request it.

24 THE COURT: Okay. Madam Clerk, if
25 you will call out their names individually,

1 please?

2 CLERK: All right. Natalie Burns,
3 is this your verdict?

4 JUROR NUMBER 19: Yes.

5 CLERK: Jacqueline Tollison, is
6 this your verdict?

7 JUROR NUMBER 154: Yes.

8 CLERK: Tresa Lyle is this your
9 verdict?

10 JUROR NUMBER 93: Yes.

11 CLERK: Kelly Isom, is this your
12 verdict?

13 JUROR NUMBER 79: Yes, it is.

14 CLERK: Christopher Cooper, is this
15 your verdict?

16 JUROR NUMBER 33: Yes.

17 CLERK: David Rice, is this your
18 verdict?

19 JUROR NUMBER 131: Yes.

20 CLERK: Amanda Earle, is this your
21 verdict?

22 JUROR NUMBER 42: Yes.

23 CLERK: Nicholas West, is this your
24 verdict?

25 JUROR NUMBER 164: Yes.

1 CLERK: David Waters, is this your
2 verdict? Or Daniel Waters. I'm sorry. Is
3 this your verdict?

4 JUROR NUMBER 163: Yes.

5 CLERK: William Hathaway, is this
6 your verdict?

7 JUROR NUMBER 66: Yes.

8 CLERK: Vickie Hart, is this your
9 verdict?

10 JUROR NUMBER 65: Yes.

11 CLERK: And Elizabeth Thomason, is
12 this your verdict?

13 JUROR NUMBER 153: Yes.

14 CLERK: Thank you.

15 THE COURT: Thank you, Madam
16 Clerk.

17 Ladies and gentlemen, let me just
18 make a few brief closing comments before I
19 dismiss you. Let me, first of all thank you
20 for your jury service this week. This has
21 been a long case, four days. It's been a
22 difficult case. We've heard a lot of things
23 that we typically don't like to hear or to
24 see, but you have been -- we use the word
25 troopers. That's sometimes not reflective of

1 the Highway Patrol but troopers meaning you
2 hung in there. You did your job. You
3 handled what you had to handle and I
4 appreciate that.

5 One of the jobs of a judge, among
6 many that we have to -- the responsibilities
7 that we have during the trial is I need to
8 keep my focus onto you the jury, primarily to
9 make sure that you are being attentive. You
10 know, I told you at the very beginning you
11 needed to do that. And every time I looked
12 at you every single day, you were paying
13 attention. You were looking. You were
14 listening, appearing to take it in. And
15 that's what you need to do serving on a jury.

16 The verdict that you reached in this
17 case as to each charge matters not to me. It
18 does not matter what your verdict turned out
19 to be. But what matters to me is that the
20 twelve of you performed your duty
21 conscientiously, diligently and you did that.
22 I think it's evident -- if nothing else, you
23 spent a lot of time in your deliberations on
24 this case. And you went through the
25 evidence, you looked at it. You discussed it

1 and you did what you were supposed to do.
2 And for that, I thank you for it. I hope
3 that this has been a good experience for you
4 in the sense of civic duty; not finding
5 someone guilty, I'm not saying that's a good
6 experience. But serving on a jury and
7 learning some things, finding out some things
8 that maybe you didn't otherwise know. And I
9 hope that you will be able to take something
10 from your experience this week and maybe
11 sometime down the road that you would like to
12 serve on a jury again.

13 I don't know if I told you this
14 Monday, and I'm about ready to conclude,
15 because I know we're all ready to go home.
16 We have in this State and in this country the
17 greatest judicial system ever created. And
18 what makes it as good as it is, having people
19 such as yourselves serving on a jury and
20 making tough and important decisions. And we
21 all feel very blessed and honored that we are
22 a part of this great justice system.

23 Now, the sentencing phase of this
24 case, I'm going to do that in the morning.
25 You certainly are welcome to come back and

1 observe the sentencing process of this. I'm
2 certainly not requiring you to. Probably
3 some of you need to get to work. But if you
4 want to, I'm going to schedule it at 10:00 in
5 the morning. So if you'd like to come back
6 to sentencing, then you're more than welcome
7 to. Certainly, this is 9:00 Thursday
8 evening. We have no further business for the
9 jury so you do not have to come back tomorrow
10 unless you want to come back and observe the
11 sentencing.

12 I typically like to come down and
13 shake the hands of my jury, so if you'll
14 permit me to do that as you exit the
15 courtroom.

16 Madam Forelady, you'll need to sign
17 the indictments indicating the various
18 verdicts for each charge. So if you will
19 hang around and get with the clerk on that,
20 okay? So I'm going to come down and shake
21 your hands and then you are free to go.

22 You will be receiving a check for
23 your jury service in probably about a week.
24 And unfortunately, the pay to sit on a jury
25 is not very good.

1 Okay. We will be in recess until
2 10:00 in the morning. Defense, you want ten
3 days for post-trial motions?

4 MR. SARRATT: Yes, Your Honor.

5 THE COURT: You've got it. Okay.
6 All right. Anything else before we adjourn
7 for the evening?

8 SOLICITOR SUSTAKOVITCH: No, Your
9 Honor. Thank you.

10 THE COURT: Have a good evening,
11 what we have left it. And I'll see y'all in
12 the morning.

13 (COURT IN RECESS)

14 (TRANSCRIPT CONTINUED NEXT PAGE)

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MARCH 24, 2017

10:00 A.M.

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(DEFENDANT PRESENT)

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THE COURT: Okay. We're on the record this morning in the matter of the State of South Carolina versus Gabriel Betancourt. This is the sentencing phase of this case, the jury having found Mr. Betancourt guilty on four out of the six charges.

Solicitor, how do y'all normally do it? Do y'all come up to the bench? Do you stay at counsel table for sentencing, how do you normally?

SOLICITOR SUSTAKOVITCH: The Solicitor would normally come stand over there and Mr. Betancourt would come would come up ---

THE COURT: Okay. If y'all would come on up?

SOLICITOR SUSTAKOVITCH: Yes, sir.

THE COURT: Okay. I'll hear from the State first concerning sentencing and anybody who wants to address the Court on

1 behalf of the State, and then the same for
2 the Defense?

3 SOLICITOR SUSTAKOVITCH: Your
4 Honor, we would leave it in the Court's
5 discretion. You've heard all the evidence in
6 this case. Thank you.

7 THE COURT: All right. Thank you.
8 All right. Mr. Sarratt, I'll be glad to hear
9 from you, sir.

10 MR. SARRATT: Thank you, Your Honor.
11 Of course, while we're -- you know, we'd
12 expected a different result, we were hoping
13 for it. We understand the jury's spoken.

14 I have spoken with my client prior
15 to trial. Obviously, many times, but in one
16 of those conversations, you know, he told me
17 that in some -- on some level that this has
18 been somewhat of a good thing for him. He
19 has really come to terms with a lot of things
20 in jail. I think like me he's somewhat of a
21 conflict resolver. He says that at the jail
22 he's sort of taken the position that a lot of
23 people will come to him when they have
24 problems. He likes to help diffuse arguments
25 at the jail that -- he just sees himself as

1 sort of a voice of reason there. And, you
2 know, not that he wanted this but that he's
3 learned some things and is doing what he can
4 to better himself as a result of this
5 process.

6 I intended to come in and ask for
7 the minimum, but understanding there are two
8 CSC first degree convictions, I'd ask Your
9 Honor to consider thirty years.

10 THE COURT: All right. There was
11 some mention that maybe the mom wanted Mr.
12 Goldstein to speak on his behalf. I mean,
13 I'll be glad to hear from anybody on your
14 side.

15 MR. GOLDSTEIN: Yes, sir. His
16 family is here to support him but I don't
17 think his mother was able to make it this
18 morning. They just wanted to be here in
19 support of him, Your Honor.

20 THE COURT: Oh, okay. Well,
21 certainly the Court recognizes that there
22 have been a fair number of, presumably family
23 members and friends that have filled up this
24 side of the courtroom.

25 Mr. Betancourt, anything you'd like

1 to tell me. You don't have to. But if
2 there's any thing you'd like to tell me, I'll
3 be glad to hear from you, sir?

4 DEFENDANT: I'm speechless. I
5 really don't know what to say.

6 THE COURT: Okay. All right.
7 Give me just a few minutes. Anything else,
8 Mr. Sarratt?

9 MR. SARRATT: Just in terms of
10 family, some of that family drove up from
11 Atlanta; so I understand they couldn't be
12 here again today.

13 THE COURT: Okay. All right.
14 Everybody be at-ease for just a few minutes
15 and let me complete these sentencing sheets.
16 Mr. Sarratt, how many days has he been
17 incarcerated?

18 MR. SARRATT: Since the day of the
19 report, February 3rd, 2015.

20 THE COURT: All right. While I'm
21 completing the sentencing sheets if you could
22 kind of figure up, calculate and then make
23 sure that you present that number to the
24 Solicitor so there's some agreement on that.

25 SOLICITOR SUSTAKOVITCH: We'll

1 double-check it, Your Honor.

2 MR. SARRATT: Seven hundred and
3 seventy-nine (779).

4 THE COURT: Seven seventy-nine,
5 Solicitor agree with that?

6 SOLICITOR SUSTAKOVITCH: Yes,
7 sir.

8 THE COURT: Okay. If y'all would
9 -- all right. Due to the fact that the two
10 CSC's with a minor first degree offenses are
11 violent, pursuant to section 16-23-500, that
12 would prohibit any future ownership or
13 possession of firearms.

14 I would commend, on the record, the
15 lawyers in this case. An extremely difficult
16 case, no question about it, but all four of
17 you have -- it's clearly evident -- worked
18 extremely hard on behalf of your respective
19 sides. And the Court appreciates that and
20 commends all four attorneys for your very
21 competent and excellent representation of
22 your prospective sides.

23 Mr. Betancourt, what the Court
24 typically does in determining sentencing is
25 looking at the aggravating circumstances

1 involved in the particular, as well as
2 looking for any mitigating circumstances
3 involved in the case.

4 And quite honestly, sir, I can't
5 find any mitigating circumstances. This was
6 a repeated offense over an extended period of
7 time and unfortunately I would have to say
8 that this young girl is going to suffer in
9 the future in many ways as a result of what
10 you unfortunately did to her.

11 The sentences will run concurrent on
12 the two criminal sexual conduct with a minor
13 first degree cases, it'll be a sentence of
14 forty-five (45) years.

15 On the third degree criminal sexual
16 conduct case as well as the lewd act case,
17 there will be a fifteen (15) year sentence.

18 Again, all of those will run
19 concurrent. In addition, you will be placed
20 on the central registry for child abuse and
21 neglect pursuant to statute. And certainly
22 when you're released, you will be required a
23 lifetime sex offender registry. Good luck to
24 you, sir.

25 (TRANSCRIPT CONCLUDED)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the jury trial
held in the within action on March 20-23, 2017,
before The Honorable Donald Hocker;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.

Deborah Garrison

Greenville, South Carolina
August 3, 2017

WITNESSES

D. Picone

Greenville County Sheriffs Office

2/3/2015

ARREST WARRANT NUMBER
2015A2330200999

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Angela J. [Signature]
Foreperson of Petit Jury

Date: 2-23-17

AMENDED INDICTMENT
DOCKET NO. 2015-GS-23-08457

CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2017

THE STATE

vs.

GABRIEL BETANCOURT, JR.

Amended Indictment for

3661

CRIMINAL SEXUAL CONDUCT WITH A MINOR
3RD DEGREE

VIOLATION § 16-03-0655(C)

RECEIVED

APR 24 2017

SC Court of Appeals

ENTERED
NOT

640

642

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

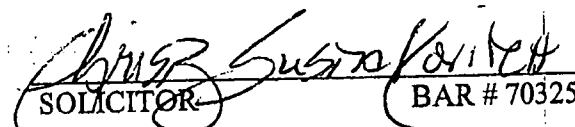
At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

FEB 21 2017

That GABRIEL BETANCOURT, JR., did in Greenville County, between the 18th day of June, 2012 and the 14th day of January, 2015, being over the age of fourteen years, while residing at
-, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of A.H., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-03-0655(C) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR BAR # 70325

STATE OF SOUTH CAROLINA

COUNTY OF GreenvilleSTATE VS.Gabriel Betancourt Jr

AKA:

Race: HISPANIC Sex: M Age: 35

DOB:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: SEX/ Criminal Sexual Conduct with Minor 3rd Degree - U/16yrs & actor over 14yrsin violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Christy Kednoci 70325
Sustakovitch, Christy Kednoci SC Bar#

Defendant

SARRATT, STUART

100228

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 15-GS-23-8459☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit 779 Days☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>2500</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter: Deb Glancy

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2167Sentence Date: 3/24/17

WITNESSES

D. Picone

Greenville County Sheriffs Office

2/3/2015

ARREST WARRANT NUMBER

2015A2330200998

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 3-23-17

AMENDED INDICTMENT
DOCKET NO. 2015-GS-23-08459

CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2017

THE STATE

vs.

GABRIEL BETANCOURT, JR.

Amended Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION §16-03-0655(A)(1)

STERED
ACCT

649

645

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

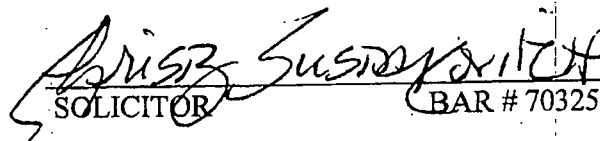
At a Court of General Sessions, convened on
County present upon their oath:

FEB 21 2017

the Grand Jurors of Greenville

That GABRIEL BETANCOURT, JR., did in Greenville County, between the 21st day of August, 2013 and the 14th day of January, 2015, commit a sexual battery on A.H., who was less than eleven years of age, while residing _____ rive. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR BAR # 70325

646

STATE OF SOUTH CAROLINA

1370204

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Gabriel Betancourt Jr
AKA:
Race: HISPANIC Sex: M. Age: 35
DOB:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2015GS2308459
A/W#: 2015A2330200998
Date of Offense: 1/1/2010
S.C. Code § : 16-03-0655(A)(1)
CDR Code #: 0385

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Sex, Crim Sex Cond, 1st Deg W/Min <11 Yr

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Christy Kednec SC Bar# 70325 Defendant SARRATT, STUART SC Bar# 100228

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit 779 days

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED ☐

☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %) \$ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$75.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$3.75

TOTAL \$128.75

Clerk of Court/ Deputy Clerk Paul B. Wickens

Court Reporter: Deb Garrison

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2167

Sentence Date: 3/24/17

WITNESSES

D Picone

Greenville County Sheriffs Office

DOA: 2/3/2015 H/M DOB:

SSN:

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of GRAND JURY

VERDICT

Emily

Foreperson of Petit Jury

Date: 3-23-17

DOCKET NO. 2017-GS-23-
CLK

001207A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2017

THE STATE

vs.

GABRIEL BETANCOURT, JR.

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

ENTERED
ACCT.

WHT

648

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

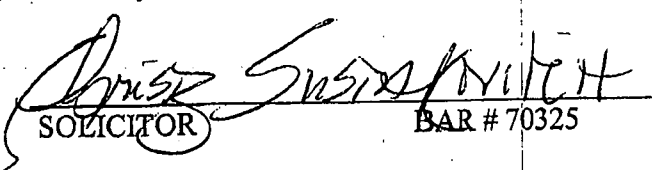
FEB 21 2017

the Grand Jurors of Greenville

County present upon their oath:

That GABRIEL BETANCOURT, JR. did in Greenville County, between April 2, 2011 and June 18, 2012, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of A. H., a child under the age of sixteen years while residing at , with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 70325

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE -VS.

Gabriel Betancourt

AKA:

Race: HISPANIC Age: 35

DOB:

Address:

City:

DL#: 011563526 SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Retired / No Longer Used / Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)in violation of § 16-15-140of the S.C. Code of Laws, bearing CDR Code # 2468☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

70325

Bustakovitch, Christy Kednoci

SC Bar#

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 15-65-23-8459☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections Credit 779 Days☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2301207AA/W#: 2017GS2301207ADate of Offense: 4/2/2011S.C. Code § : 16-15-140CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code: 2167Sentence Date: 3/24/17

1050

001210A

DOCKET NO. 2017-GS-23-
CLK

The State of South Carolina

County of Greenville

[Signature]

COURT OF GENERAL SESSIONS

February TERM 2017

THE STATE

vs.

GABRIEL BETANCOURT, JR.

WITNESSES

D Picone

Greenville County Sheriffs Office

[Signature]

DOA: 2/3/2015 H/M DOB:

SSN:

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY
~~TRUE BILL~~

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 5-23-17

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

ENTERED
ACCT

650

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

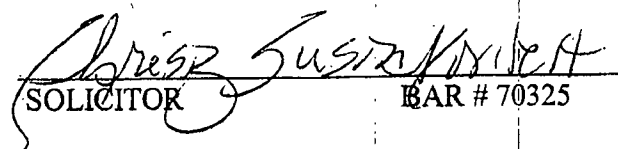
FEB 21 2017

the Grand Jurors of Greenville

County present upon their oath:

That GABRIEL BETANCOURT, JR. did in Greenville County, between April 2, 2011 and August 23, 2013, commit a sexual battery on A. H., who was less than eleven years of age, while residing at
t. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 70325

652

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Gabriel Betancourt

AKA:

Race: HISPANIC Sex: M Age: 35

DOB:

Address:

City, State, Z:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sukakovitch, Christy Kednoci 70325
SC Bar#

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit 779 Days

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2301210A

A/W#: 2017GS2301210A

Date of Offense: 4/2/2011

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

CRS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

15-GS-23-8459

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit 779 Days

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75

Presiding Judge

Judge Code: 2167

Sentence Date: 3/24/17

SCCA/217 (07/2016)

WITNESSES

D Picone

Greenville County Sheriffs Office



DOA: 2/3/2015 H/M DOB:

SSN:

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-23-
CLK

001206 A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2017

THE STATE

vs.

GABRIEL BETANCOURT, JR.

Indictment for

3131

DISSEMINATING OBSCENE MATERIAL TO A
MINOR

VIOLATION § 16-15-0355

453

INDICTMENT FOR
DISSEMINATING OBSCENE MATERIAL TO A MINOR

FEB 21 2017

the Grand Jurors of Greenville

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Priscilla Susinovic
SOLICITOR BAR # 70325

055

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: GABRIEL BETANCOURT

Indictment #: 2017GS2301206A

Address: _____

Warrant/Ticket # 2017GS2301206A

City: Greenville State: SC ZIP: _____

No Warrant: _____

SS#: _____ Sex: M Race: _____

Offense Code: 3131

Date of Birth: _____

Offense Name: Dissem. Obscene Mat. U/12

State: SC Driver's License #: _____

Date of Arrest: February 21, 2017

DATE OF DISPOSITION: 0,0

DISPOSITION:

____ 1. Guilty Plea

* ____ 7. Remanded

____ 2. Trial (Guilty)

____ 8. Dismissed at Prelim

~~____~~ 3. Trial (Not Guilty)

____ 8. No Bill

* ____ 4. Dism/Nol Pros/Pros Ended

* ____ 9. Failure to Appear

* ____ 5. Judicial Commitment

* ____ 10. Other

____ 6. Judicial Dismissal

* Explain: _____

Judge: _____

Ct. Reporter: _____

Defense Attorney: _____

Solicitor: Christy Kednocker Sustakovitch

Bar #: 70325

Offense Code: 3131

Offense Name: Dissem. Obscene Mat. U/12

Sentence: _____

WITNESSES

D Picone

Greenville County Sheriffs Office

DOA: 2/3/2015 H/M DOB: _____

SSN: _____

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY
TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date: _____

DOCKET NO. 2017-GS-23-
CLK

001209A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
February

TERM 2017

THE STATE

vs.

GABRIEL BETANCOURT, JR.

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

1056

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

FEB 21 2017

That GABRIEL BETANCOURT JR. did in Greenville County, between the 9th day of November, 2009 and the 1st day of April, 2011, commit a sexual battery on A. H., who was less than eleven years of age, while residing at 10 Harris Lane. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

BAR # 70325

658

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: GABRIEL BETANCOURT Indictment #: 2017GS2301209A
Address: _____ Warrant/Ticket # 2017GS2301209A
City: Greenville State: SC ZIP _____ No Warrant: _____
SS#: _____ Sex: M Race: _____ Offense Code: 0385
Date of Birth: _____ Offense Name: Sex, Crim Sex Cond, 1st D
State: SC Driver's License: _____ Date of Arrest: February 21, 2017

DATE OF DISPOSITION: 0, 0

DISPOSITION:

- | | |
|---|---|
| ☐ 1. Guilty Plea | * ☐ 7. Remanded |
| ☒ 2. Trial (Guilty) | ☐ 8. Dismissed at Prelim |
| ☒ 3. Trial (Not Guilty) | ☐ 8. No Bill |
| * ☐ 4. Dism/Nol Pros/Pros Ended | * ☐ 9. Failure to Appear |
| * ☐ 5. Judicial Commitment | * ☐ 10. Other |
| ☐ 6. Judicial Dismissal | |

* Explain: _____

Judge: _____ Ct. Reporter: _____
Defense Attorney: _____ Solicitor: Christy Kednocker Sustakovitch
Bar #: 70325

Offense Code: 0385 Offense Name: Sex, Crim Sex Cond, 1st D
Sentence: _____

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by the Petitioner and not any other material.

April 19th, 2018

William G. Yarborough
William G. Yarborough, III
522 N. Church Street
Greenville, South Carolina 29601
(84) 331-1612
Attorney for Appellant

David Spencer
Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Sworn to before me this 19th
day of April, 2018

Theresa Burr
Notary Public for South Carolina

My commission expires: 3/20/24

RECEIVED
APR 20 2018
SC Court of Appeals