

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM DARLINGTON COUNTY

Thomas A. Russo, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MIGUEL HERRERA,

APPELLANT

Appellate Case No. 2012-213538

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DARLINGTON )  
THE STATE OF SOUTH CAROLINA ) 2012-GS-16-01717  
PLAINTIFF )  
VERSUS ) PLEA  
MIGUEL HERRERA ) DECEMBER 3, 2012  
DEFENDANT )  
\_\_\_\_\_)

**BEFORE**

**THE HONORABLE THOMAS A RUSSO**

PATTI MCKENZIE, ESQUIRE  
ATTORNEY FOR THE STATE

RICHARD JONES, ESQUIRE  
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee  
Circuit Court Reporter

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**EXHIBITS****No Exhibits Offered**

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1 (Whereupon, this case was called to order at  
2 1:59 p.m. on Monday, December 3, 2012.)

3 **MS. PARKER:** May it please the Court?

4 **THE COURT:** Yes, ma'am.

5 **MS. PARKER:** I will go ahead and call the case at this  
6 time. It is The State versus Miguel Herrera; 2012-GS-12-  
7 1717. The State charges him with criminal sexual conduct  
8 with a minor. This is second degree where the victim was  
9 between the ages of eleven and fourteen years old. He is  
10 pleading guilty as indicted. The state's recommendation ---  
11 There is no recommendation. He is pleading straight up  
12 without any negotiations or recommendations. And he is  
13 represented by Mr. Rick Jones.

14 **INTERPRETER:** Your Honor, my name is Charles Joseph  
15 Herrera, I am the interpreter.

16 **CLERK OF COURT:** What we are going to do is swear both  
17 of you --- you as an interpreter, and you as the defendant.  
18 Okay? We are going to swear the interpreter first.

19 Will you raise your right hand. Do you solemnly swear  
20 that you will accurately interpret the language requested in  
21 this courtroom to the defendant witness without additions or  
22 subtractions therefrom, and any other amendments of your own  
23 interpretations, so help you God?

24 **WHEREUPON, CHARLES JOSEPH HERRERA**

25 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

1 INTERPRETER HERRERA: I do.

2 WHEREUPON, MIGUEL HERRERA

3 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

4 MR. HERRERA: I do.

5 THE COURT: All right. Sir, you are Miguel Herrera?

6 MR. HERRERA: Yes, sir.

7 THE COURT: Mr. Herrera, Indictment 2012-GS-16-1717  
8 charges you with criminal sexual conduct with a minor in the  
9 second degree. That charge carries a maximum penalty of up  
10 to twenty years in prison. Do you understand that, sir?

11 MR. HERRERA: Yes, sir.

12 THE COURT: Understanding the nature and the charge  
13 against you, and the possible punishment that is associated  
14 with that charge, how do you plead guilty or not guilty?

15 INTERPRETER: Yes, sir.

16 MR. HERRERA: I don't understand your question.

17 THE COURT: Are you pleading guilty or not guilty to  
18 the charge of criminal sexual conduct with a minor in the  
19 second degree?

20 MR. HERRERA: Guilty.

21 THE COURT: Mr. Jones, you represent Mr. Herrera?

22 MR. JONES: I do, Your Honor.

23 THE COURT: Have you discussed with him the charges  
24 that he is before the Court on, and his constitutional rights  
25 to a trial?

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1           MR. JONES:     I have, Your Honor.

2           THE COURT:    Let me ask y'all to step around here for a  
3 second.

4                        (Whereupon, a bench conference was held.)

5           THE COURT:    All right. Mr. Herrera, my understanding,  
6 and I just want to make sure that the record is clear that  
7 you understand English?

8           MR. HERRERA:   Yes, sir.

9           THE COURT:    Do you have a pretty good grasp of the  
10 English language?

11          MR. HERRERA:    I do.

12          THE COURT:    All right. Here is what we are going to  
13 do. Do you feel comfortable in telling me if there is ever a  
14 time that you do not understand something that I have said?

15          MR. HERRERA:    Yes, sir.

16          THE COURT:    In other words, if you ever have any  
17 question about anything that I say, you will let me know?

18          MR. HERRERA:    Yes, sir.

19          THE COURT:    All right. You understand that you have  
20 been charged with this offense of criminal sexual conduct  
21 with a minor in the second degree. Do you understand that  
22 you have been charged with that charge?

23          MR. HERRERA:    Yes, sir.

24          THE COURT:    That charge carries a possible penalty of  
25 up to twenty years. In other words, the Court can sentence

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1 someone under this charge anywhere from zero up to a maximum  
2 of twenty years. Do you understand that?

3 MR. HERRERA: Yes, sir.

4 THE COURT: I don't have any idea what I am going to  
5 do in this case yet, because I don't know anything about this  
6 case. But you understand that that is the range --- that is  
7 the sentence range in this case. Do you understand that?

8 MR. HERRERA: I understand, sir.

9 THE COURT: And, what I am going to ask if you will do  
10 for me, Mr. Herrera, is anytime I ask a question, if when you  
11 answer my question, if you would please respond out loud, and  
12 the reason I say that is this. When someone nods their head  
13 at me I understand what you mean, but the Court reporter has  
14 to take down everything that is said here; do you understand  
15 that?

16 MR. HERRERA: Okay.

17 THE COURT: And, so she needs to make a record of it,  
18 so I need all of the responses to be verbal or out loud?

19 MR. HERRERA: Okay.

20 THE COURT: Now, understanding the nature of the  
21 charge that you are here before the Court on, and  
22 understanding the possible punishment that is associated with  
23 that charge, how do you plead to this charge, guilty or not  
24 guilty?

25 MR. HERRERA: Guilty.

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1 THE COURT: And, Mr. Jones, you represent Mr.  
2 Herrera?

3 MR. JONES: Yes, sir.

4 THE COURT: You have discussed with him the charge  
5 that he is before the Court on, and his constitutional rights  
6 to a trial?

7 MR. JONES: I have, Your Honor.

8 THE COURT: All right. Now, Mr. Herrera, let me  
9 mention something else to you. If I speak to Mr. Jones, or  
10 Ms. Parker, or anyone else, if you don't understand what I am  
11 asking them I want you to let me know. Okay?

12 MR. HERRERA: Yes, sir.

13 THE COURT: In other words, if there is anything that  
14 you don't understand, please let me know and if we need to  
15 get an interpreter for you we will do that, or if you just  
16 have a question about something, if you will let me know I'll  
17 explain that to you; okay?

18 MR. HERRERA: I will.

19 THE COURT: Am I correct that you are thirty-five  
20 years of age?

21 MR. HERRERA: That's correct.

22 THE COURT: Before you were arrested on this charge  
23 were you working anywhere?

24 MR. HERRERA: Yes, sir.

25 THE COURT: What type of work do you do, sir?

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1           **MR. HERRERA:**     I work on the roof.

2           **THE COURT:**    You do roofing work?

3           **MR. HERRERA:**    Yes, sir.

4           **THE COURT:**    All right. Are you married or single?

5           **MR. HERRERA:**    Single.

6           **THE COURT:**    Do you have any children, sir?

7           **MR. HERRERA:**    Yes, I have three. I have two daughters  
8 and one boy.

9           **THE COURT:**    Okay. Two daughters and a son. And how  
10 long have you been in jail on this charge, sir?

11          **MR. HERRERA:**    Seven hundred and fifty-three days.

12          **THE COURT:**    Seven fifty-three, okay. Now, Mr.  
13 Herrera, I am going to go over with you your constitutional  
14 rights. If at any time you have any question about anything  
15 that I ask you, or you don't understand me and you need to  
16 speak with Mr. Jones, if you will let me know, I will stop  
17 and give you whatever time you need to talk with your lawyer;  
18 okay?

19          **MR. HERRERA:**    Okay. Thank you, sir.

20          **THE COURT:**    All right. Do you understand that you  
21 have the right to remain silent, and you have the right to a  
22 jury trial. But when you plead guilty, then you give up both  
23 of those important rights as they relate to this charge. Do  
24 you understand that?

25          **MR. HERRERA:**    Yes, sir. I understand.

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1           **THE COURT:**     All right.  When you give up your right to  
2 a jury trial, you also give up other rights that are  
3 connected to that.  And let me give you some examples.  If  
4 you had a jury trial, you would be presumed innocent of this  
5 charge.  And the state would have the burden of having to  
6 prove you guilty to a jury.  Do you understand that?

7           **MR. HERRERA:**    Yes, sir.

8           **THE COURT:**     And the way they would try to do that is,  
9 during that trial they would call witnesses who would take  
10 the witness stand.  Those witnesses would testify against you  
11 before the jury.  The constitution of the United States says  
12 that every person that is charged with a criminal offense has  
13 the right to confront the accusers or to question those  
14 witnesses; do you understand that?

15          **MR. HERRERA:**    Yes, sir.  I understand.

16          **THE COURT:**     In other words, in that jury trial you  
17 would have the right through your lawyer Mr. Jones, to  
18 question the state's witnesses, and cross examine them about  
19 their testimony.  Do you understand that?

20          **MR. HERRERA:**    Yes, sir.

21          **THE COURT:**     When someone pleads guilty in this case --  
22 - When you plead guilty to a charge, however you give up that  
23 presumption of innocence, and you give up or you relieve the  
24 state of their burden of proof.  And since they don't have to  
25 prove your guilt, that means they don't have to bring their

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1 witnesses into court, and you give up the right to question  
2 those witnesses. Do you understand that?

3 MR. HERRERA: Yes, sir.

4 THE COURT: Okay. Now, if you had a jury trial, Mr.  
5 Herrera, the state is not the only one that can call  
6 witnesses. You can call witnesses in your defense, or you  
7 can take the witness stand and you can testify in your  
8 defense. Do you understand that?

9 MR. HERRERA: Yes, sir.

10 THE COURT: Now, you can do either one of those  
11 things, or you can do both of those things if you had a jury  
12 trial, but you don't have to do anything. In this country, a  
13 person who is charged with a criminal offense is never ---  
14 never has to prove themselves innocent. The burden of proof  
15 is on the state to prove guilt. And you don't have to prove  
16 anything at a trial. Do you understand that?

17 MR. HERRERA: Yes, sir.

18 THE COURT: In other words, you can exercise your  
19 right to remain silent. And if you did that, I would tell  
20 the members of the jury that they could not hold that against  
21 you in anyway. As a matter of fact, I would tell the jury  
22 that the fact that you remain silent could not even be  
23 discussed in the jury room at all. Do you understand, sir?

24 MR. HERRERA: Yes, sir.

25 THE COURT: Now, as I said earlier, the state has the

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1       burden of proof in a trial, and they must prove guilt beyond  
2       a reasonable doubt, and they have to prove guilt to a  
3       unanimous decision. In other words, if you had a jury trial,  
4       all twelve members of the jury would have to agree that you  
5       are guilty or they could not convict you of this charge; do  
6       you understand that?

7               **MR. HERRERA:**     Yes, sir.

8               **THE COURT:**     Now, if you had a jury trial, Mr.  
9       Herrera, if you did have a jury trial and if you were  
10       convicted of this charge, you could appeal that conviction to  
11       a higher court if you thought that was appropriate. Do you  
12       understand that, sir?

13               **MR. HERRERA:**     Yes, sir.

14               **THE COURT:**     And finally, with regards to your rights,  
15       you have a right to appeal with regards to this hearing here  
16       today. In other words, when we finish this hearing, when  
17       everything is completed, if you wish to appeal my decision  
18       here today, you will need to file a Notice of Intent to  
19       Appeal, and you would need to do that within ten days of  
20       today's date. Do you understand that?

21               **MR. HERRERA:**     Yes, sir.

22               **THE COURT:**     Now, when a person enters a guilty plea,  
23       then for purposes of their plea they give up all of these  
24       rights that I just went over with you. You give up your  
25       right to a jury trial, and you give up all of these other

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1 rights. Understanding that, do you still wish to go forward  
2 with your guilty plea?

3 MR. HERRERA: Yes, sir.

4 THE COURT: All right, sir. So, you understand that  
5 you will not have a jury trial, and your case will be handled  
6 through this guilty plea. Do you understand that?

7 MR. HERRERA: Yes, sir.

8 THE COURT: All right, sir. Now, Mr. Herrera, has  
9 anybody promised you anything, held out any hope of reward,  
10 or threatened you in any way to get you to enter this plea?

11 MR. HERRERA: Nobody, sir.

12 THE COURT: Okay. Are you satisfied with the  
13 representation and the advice that Mr. Jones has provided?

14 MR. HERRERA: Yes, sir.

15 THE COURT: Do you have any complaints against him, or  
16 any member of his office?

17 MR. HERRERA: No, sir.

18 THE COURT: Okay. Have you shared with him, Mr.  
19 Herrera, everything that you know about this charge so that  
20 he can look into these matters on your behalf?

21 MR. HERRERA: Yes, sir.

22 THE COURT: Have you cooperated with him and his  
23 defense of your case?

24 MR. HERRERA: Yes, sir.

25 THE COURT: All right, sir. Mr. Jones, let me ask you

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1 for purposes of this plea, have you had any difficulty  
2 communicating with Mr. Herrera, or having him to understand  
3 that you have gone over with him?

4 MR. JONES: Not at all, sir.

5 THE COURT: Has there been any language barrier, or  
6 anything that would prevent you from assisting him in this  
7 case?

8 MR. JONES: There was actually a little bit at the  
9 beginning when he was arrested back in December of 2010.  
10 But, I think he has learned most of his English while he has  
11 been incarcerated at the Detention Center. The longer he was  
12 there, the more he and I were able to communicate. The last  
13 two or three weeks we have had numerous conversations that I  
14 have understood him and he has understood me completely.

15 THE COURT: All right. Would you agree with that, Mr.  
16 Herrera?

17 MR. HERRERA: (Affirmative response.)

18 MR. JONES: You have to say yes.

19 MR. HERRERA: Yes, sir.

20 THE COURT: Now, as you stand before the Court today,  
21 sir. Are you under the influence of any substance that would  
22 affect your ability to understand what you are doing?

23 MR. HERRERA: Yes, Your Honor.

24 THE COURT: All right. Listen carefully to what I am  
25 asking.

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1 Are you under the influence today of any drugs?

2 MR. HERRERA: No, sir.

3 THE COURT: Any alcohol?

4 MR. HERRERA: No, sir.

5 THE COURT: Have you taken any medication or anything  
6 that would cause you not to understand what I am going over  
7 with you?

8 MR. HERRERA: No, sir.

9 THE COURT: Okay. Have you understood all of the  
10 questions that I have asked you?

11 MR. HERRERA: Yes, sir.

12 THE COURT: Do you have any question about anything  
13 that I have gone over with you?

14 MR. HERRERA: No, sir.

15 THE COURT: All right. Now, do you --- You have  
16 indicated to the Court that you are pleading to this charge.  
17 Is that decision to enter this plea of guilty, is that been a  
18 decision that you have made of your own free will?

19 MR. HERRERA: Yes, sir.

20 THE COURT: Has anyone forced you to make that  
21 decision?

22 MR. HERRERA: No, sir.

23 THE COURT: Okay. Are you pleading guilty to this  
24 charge because you are guilty of this charge?

25 MR. HERRERA: Yes, sir.

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1           **THE COURT:**     All right, sir. I am going to ask the  
2     Solicitor to go over the facts with me. I would ask that you  
3     listen carefully. And I will get back with you in just a  
4     minute and talk with you further. Okay?

5           **MR. HERRERA:**    Thank you, sir.

6           **THE COURT:**     Solicitor, if you would go over the facts,  
7     and just speak clearly, and go ahead, ma'am.

8           **MS. PARKER:**    Your Honor, in the early morning hours of  
9     December 26, 2010, this would have been Christmas night,  
10    after midnight, so December 26th. Law enforcement was called  
11    to the residence of Crestview Drive. On that night the  
12    mother of the child victim, Ms. Jessica Vasquez awoke.  
13    Noticed her boyfriend was not in the bed. Went to look for  
14    him, thinking he was in the bathroom, and she found him in  
15    her daughter's room. I believe she surprised him. He tried  
16    to act like he was consoling the child. It was obvious that  
17    he had an erection. An argument immediately broke out. I  
18    believe some of the children was initially involved in what  
19    kind of sounds like a domestic. They did make him stay there  
20    at the house until law enforcement was called. Deputy  
21    Sheriffs arrived, and the defendant was immediately arrested,  
22    Your Honor. The defendant did give a statement shortly after  
23    being arrested with the help of an interpreter who works at  
24    the jail. That statement was video recorded, and in that  
25    statement he did admit to a lot of things that amount to

1 touching, perhaps digital penetration. He stated in his own  
2 words that what he would do was get started on the female but  
3 then finish the act himself. In other words, he would feel  
4 her until he was aroused and then masturbate. The victim,  
5 when she went to the Durant Center disclosed that penetration  
6 had occurred on several occasions, and that this had been  
7 ongoing since her mother was pregnant with the youngest  
8 child. There are five children in this family. Two girls of  
9 which belonged to the mother before she was with Mr.  
10 Herrera, and then three she had with Mr. Herrera. So, when  
11 she was pregnant with the last baby is when this started, and  
12 continued while this baby was a newborn and the mother was  
13 busy with the baby. It did occur while the victim was around  
14 the age of twelve. Some of the abuse could be said that she  
15 was still eleven, but certainly not under eleven. So, he is  
16 pleading to criminal sexual conduct second degree, to  
17 encompass the ages of eleven to fourteen. She did receive a  
18 medical exam. There were not any specific findings. The  
19 doctor did note that it was very hard to examine her, because  
20 she was so anxious.

21 For the record, I did want to note the victims are  
22 present in the courtroom today, and are seated behind the  
23 state's table. The victim did prepare a written statement  
24 that I will read at the appropriate time.

25 **THE COURT:** All right. Mr. Herrera, the facts that  
26 Ms. Parker gave to the Court, are those facts essentially

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1 correct?

2 MR. HERRERA: Uh, not really, sir.

3 THE COURT: Well, can you tell me what --- what they  
4 allege that --- Tell me what you did that would cause this  
5 charge to come?

6 MR. JONES: I might help a little bit, because we have  
7 had untold discussions about this. Mr. Herrera, from the  
8 time he was arrested until today has denied intercourse. He  
9 has admitted facts which as the Solicitor said, meets the  
10 elements of the charge. He has always denied intercourse.  
11 There has been very, very inappropriate touching.

12 THE COURT: Digital penetration?

13 MR. JONES: Yes, sir. Particularly in the rectum.

14 THE COURT: All right.

15 MR. JONES: He has always disavowed any intercourse  
16 with this child. And that is what his confusion is.

17 THE COURT: Is that correct, Mr. Herrera?

18 MR. HERRERA: That's correct, sir.

19 THE COURT: So, pretty much those facts are correct  
20 except for the intercourse?

21 MR. HERRERA: Yes, sir.

22 THE COURT: All right, sir. Now there were things  
23 that I forgot to mention earlier. And, Mr. Jones, did you go  
24 over with Mr. Herrera the strike rule, and the case that this  
25 charge is --

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1           **MR. JONES:**     -- Yes, but if you would do that again, I  
2 think that would be very helpful.

3           **THE COURT:**   Mr. Herrera, this charge under South  
4 Carolina law is classified what we call a most serious  
5 offense. Do you understand that?

6           **MR. HERRERA:**    Yes, sir.

7           **THE COURT:**    And, a most serious offense means --- What  
8 it means is this. If in other words, if you guilty plea goes  
9 forward in this case, then that would be a conviction for a  
10 most serious offense. In the future, if you were to ever be  
11 convicted of a second most serious offense, if you were ever  
12 to get another most serious offense, do you understand that  
13 the state could seek to imprison you for the remainder of  
14 your life without parole on that second offense, if you were  
15 to get one. Do you understand that?

16          **MR. HERRERA:**    Yes, sir.

17          **THE COURT:**    In other words, this would be one strike,  
18 and if you were to get a second strike, then the state could  
19 seek life without parole. Do you understand that?

20          **MR. HERRERA:**    Yes, sir.

21          **THE COURT:**    And understanding that, do you still want  
22 to go forward with this plea?

23          **MR. HERRERA:**    Yes, sir.

24          **THE COURT:**    All right, sir. Has there been --- Mr.  
25 Herrera, has there been anything that we have done here

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1 today, or anything that I have said, or the Solicitor has  
2 said, or Mr. Jones has said that you have not understood?

3 MR. HERRERA: No, sir.

4 THE COURT: Have you understood everything we have  
5 said in other words?

6 MR. HERRERA: Yes, sir.

7 THE COURT: Do you need an interpreter for these  
8 purposes?

9 MR. HERRERA: Not right now, sir. Thank you.

10 THE COURT: All right. And you would have told me if  
11 there was anything that you did not understand?

12 MR. HERRERA: Yes, sir.

13 THE COURT: All right, sir. I find that the state has  
14 provided a substantial factual basis to support the charge  
15 that Mr. Herrera has plead guilty to.

16 I find that his decision to enter this plea to have been  
17 done freely, voluntarily, and intelligently. He has had the  
18 advice and counsel of an outstanding attorney in Mr. Jones.  
19 And Mr. Herrera has indicated to the Court that he is  
20 satisfied with the representation and advice that Mr. Jones  
21 has provided.

22 I have discussed with him his understanding of the  
23 Court's questions. His proceeding without an interpreter.  
24 His understanding of the English language. And I think he  
25 understands everything that has been gone over during the

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1 colloquy of this plea. I think that Mr. Herrera has  
2 indicated that he has understood all of my questions, and his  
3 answers have been responsive and appropriate. And I am going  
4 to accept his plea.

5 Mr. Jones, I will be happy to hear from you. And then  
6 Ms. Parker, after I hear from the defendant if the victims  
7 would like to address the Court, or yourself on their behalf,  
8 however you want to do it.

9 MS. PARKER: Yes, sir.

10 THE COURT: Okay. Mr. Jones.

11 MR. JONES: Thank you, Your Honor. Your Honor, as I  
12 said earlier, and as Mr. Herrera has said, he has been at the  
13 Detention Center since December 26, 2010. I believe that is  
14 seven hundred and fifty-three days. Initially I spoke with  
15 him as I said, we communicated fairly well, but not nearly as  
16 well as we are doing right now.

17 The case has been fairly troubling to my office, because  
18 Mr. Herrera, as I would visit other inmates at the jail,  
19 would always ask me, how about me? He has been patiently  
20 awaiting his day in court. He has from the day, from the  
21 minute that he was arrested told exactly what happened. As  
22 the Solicitor said, the mother came into the room, realized  
23 that something very inappropriate was happening. There was a  
24 tussle, he did not, I think as she said, Mr. Herrera told me  
25 the same thing, there was a very much of a ruckus in the

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1 house. He attempted to leave. He went outside and sat on  
2 the front steps, I think, until law enforcement arrived. And  
3 they got there, he went with them immediately, or as quickly  
4 as the investigators were called. He gave a statement pretty  
5 much as the Solicitor said.

6 Several things that have troubled Mr. Herrera. Number  
7 one. He is in the United States illegally. He has been here  
8 for, if I am correct, a little over twelve years. He has  
9 never been in trouble. I think he told me that he had maybe  
10 one time driving without a license; perhaps two. He was in  
11 the Atlanta area for about eight years. He and the victim's  
12 mother was together approximately nine years. They have had  
13 three children together. And to be perfectly honest, he very  
14 rarely wanted to talk about his situation. He always wanted  
15 me to do what I could to get him some visitation with his  
16 children. I have tried unsuccessfully to get him associated  
17 with someone who could help him in the Family Court. There  
18 was at least one hearing in the Family Court. I think there  
19 was a finding, and I don't think the children were there that  
20 time. And he has basically not been able to see his  
21 children, and I think he is now resigned to the fact that  
22 regardless of what His Honor does today, he is going back to  
23 Mexico, and I am not sure he will ever see his children.  
24 That has troubled him almost as much as the fact that he  
25 understands that his actions with the young lady were  
26 extremely, extremely inappropriate. Inappropriate is not a

1 strong enough word. It basically should not have happened.  
2 He tried to explain, as the Solicitor said. He and the  
3 mother were not having relations at the time. She had her  
4 third child with him. And he decided to do some things that  
5 --- I am not sure what he thought. But, it has resulted in  
6 him being here today. He has never once tried to minimize  
7 his conduct. Nor has he tried to downplay the effects that  
8 it has had on his entire family. He is extremely apologetic.  
9 Knowing that he is going to be leaving the United States as  
10 soon as he serves whatever sentence that he serves, that is  
11 why I ask Your Honor if you would go back over the most  
12 serious phase of it. Because, frankly, he doesn't think that  
13 is ever going to happen, because he is never coming back  
14 here. He is going to be deported and he will be going back  
15 to Mexico. We have talked about the fact that should he try  
16 to get back in the United States, and he has much more  
17 difficult within corrections, and he would certainly spend an  
18 extremely long period of time in jail.

19 Judge, as I told you, he worked. He tells me that since  
20 he has been in the United States, he has been extremely hard  
21 working person. He has done all kinds of construction work.  
22 I believe that in addition to that, he did some after hours  
23 work I think maybe a club in Atlanta. If I understood him  
24 correctly, he did that somewhere in the Darlington area. And  
25 he actually refereed soccer in the Darlington area. There is  
26 nothing in his past. There is no record, there is nothing

## THE STATE V MIGUEL HERRERA

23

1 that would indicate that this is the type of action that he  
2 would have done in the past, nor that he would do in the  
3 future.

4 Knowing that Mr. Herrera will probably spend a lifetime  
5 without seeing his three young children, we would ask you,  
6 Your Honor, to consider --- I hesitate to ask for a time  
7 served sentence, because I know that it is an extremely  
8 serious offense. However, I think that knowing what awaits  
9 him after whatever sentence His Honor gives him, I would ask  
10 that you consider a very light sentence under the  
11 circumstances.

12 **THE COURT:** Thank you, Mr. Jones. Mr. Herrera, is  
13 there anything that you wish to tell the Court, sir? You are  
14 not required to speak, but I will certainly be happy to hear  
15 from you if you would like to address the Court.

16 **MR. HERRERA:** Yes, sir. I would like to say I'm  
17 sorry, and tell the victim that I am sorry.

18 **THE COURT:** All right, sir. Let me, and if there is -  
19 -- I guess to anybody in the courtroom, I am going to go off  
20 of this case for just a moment. There is something helpful  
21 that I picked up last week in Spartanburg. Those of you, if  
22 you have an I-phone, and they may have the same kind of an  
23 app for an Android phone, but there is an app called days  
24 between. And if you punch that in, and it is a free app, you  
25 can put in a date and it immediately tells you how many days

1 from that date to the day. And, I put in December 26, 2010,  
2 and it came up with seven hundred and eight. So, if anyone  
3 wants to double check that, please be free to do that. But,  
4 I mention that to everyone, because I know as lawyers y'all  
5 are often times having to ask your client how long they have  
6 been in jail, but sometimes they can give you a date, but  
7 they can't give you a number of days. And it is extremely  
8 helpful. It has been so helpful to me, so I pass that on for  
9 what that is worth.

10 Now, Ms. Parker, you mentioned that there is a statement  
11 that you wish to read. But is there any other presentation,  
12 anyone wishing to address the Court personally?

13 **MS. PARKER:** No, Your Honor. I don't think anyone  
14 else wishes to address. They are all shanking their heads  
15 over there.

16 **THE COURT:** Okay. Well, I will be happy to hear from  
17 whatever you want to present.

18 **MS. PARKER:** I want to read real quick. This is a  
19 thing they sent from Child counseling. My name is Child  
20 Child I am thirteen years old. My birthday is [REDACTED] the  
21 [REDACTED] My favorite color is blue and hot pink. I have three  
22 sisters and one baby brother. My favorite food is mac and  
23 cheese. I love my mom cause of how she supports me and  
24 because of how nice she is. I like to wear Aeropostale  
25 clothes. The first day it happened I was asleep until I felt

## THE STATE V MIGUEL HERRERA

25

1 something grabbing me and I woke up. I saw it was him, and I  
2 was very scared. I told him to get off of me. I got up, and  
3 I went to the bathroom and I cried for a long time. I was in  
4 there for a long time telling myself, why did this happen to  
5 me. I feel right now sad when I talk about it and scared.  
6 And I wish I could have told my mom the first day it  
7 happened. That was just a note from counseling. I do want  
8 to read what she prepared for today.

9 Since what all happened it has been harder to sleep,  
10 when you dream about what happened. It is hard seeing how  
11 people judge, and they don't even know what we went through.  
12 It was a change. Economically it hurts knowing you don't  
13 have your family complete. Knowing that the person who we  
14 trusted hurt us. We were a family even though we had our  
15 problems. We still were a family. It was wrong what he did.  
16 He betrayed his family. He had it all. A loving woman who  
17 made food for him, and loved him. He also had three children  
18 who really cared about him. Now they ask, where is my dad?  
19 Is he going to come back? It is difficult answering them  
20 back on these questions on what really happened. So, I think  
21 he should stay in jail for a good while so he can think about  
22 what he did. This was written by Child and her  
23 mother Jessica Vasquez, also joined in this victim impact  
24 statement that I just read, Your Honor.

25 In meeting with them, they wanted a substantial prison  
26 sentence. They were not --- they did not want me to make any

1 recommendation. When Mr. Jones and I discussed it, and the  
2 defendant you know probably would plead straight up. The  
3 only thing they were comfortable with me recommending or  
4 working out was a negotiated fifteen. So, Mr. Jones just  
5 said he would go straight up without any recommendation or  
6 negotiation. But, I did want to express to the Court that  
7 they did want substantial time.

8 **THE COURT:** All right. All right. I am taking into  
9 consideration everything that I have heard, the situation  
10 that we have here. In candor, to the victim, I am probably  
11 doing --- Well, I am probably doing less here than I would  
12 have done under a different scenario, where the person is  
13 going to remain in this country, and be exposed to this  
14 family again. But I am taking that into consideration.

15 With regards to Indictment 2012-GS-16-1717, the sentence  
16 of the Court is that you be committed to The State Department  
17 of Corrections for a period of twelve years. Be given credit  
18 for the seven hundred and eight days time that you have  
19 served.

20 And then immigration or whoever has a hold on Mr.  
21 Herrera, then they can deal with that at the conclusion of  
22 that sentence.

23 Good luck to you, sir.

24 **MR. JONES:** Thank you, sir.

25 **MS. PARKER:** Thank you, Judge.

THE STATE V MIGUEL HERRERA

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-- END OF TRANSCRIPT --

(Whereupon, this hearing concluded at 2:43  
p.m. on Monday, December 3, 2012.)

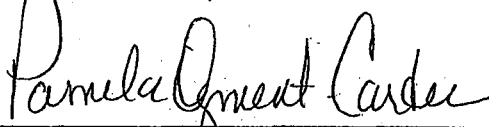
## CERTIFICATE OF REPORTER

28

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Darlington County, South Carolina, on the 3<sup>rd</sup> day of December 2012.

I do further certify that am neither, of kin, counsel, nor interest of any party hereto.

December 29, 2012

Handwritten signature of Pamela Ozment-Cartee in cursive script.

Pamela Ozment-Cartee  
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY  
Court of General Sessions

THOMAS A. RUSSO , Circuit Court Judge

Case No. 2012-GS-16-1717

The State,

Respondent,

v.

Miguel Herrera

Appellant.

SCOTT B. SUGGS  
CLERK OF COURT/R.C.O.  
DARLINGTON COUNTY, S.C.

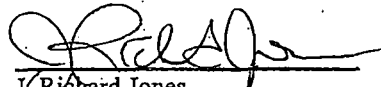
2012 DEC -7 AM 10:10

FILED

NOTICE OF APPEAL

Miguel Herrera appeals his conviction in this case. The sentence was imposed by the Honorable Thomas A. Russo on December 3, 2012.

TRUE CERTIFIED COPY.  
*Scott B. Suggs*  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, S.C.



J. Richard Jones  
Chief Deputy Public Defender  
300 Russell Street, Suite 113  
Darlington, South Carolina 29532  
(843) 398-4069  
Attorney for Appellant

Attorney for Respondent  
Patti Parker, Assistant Solicitor  
Darlington County Courthouse  
1 Public Square  
Fourth Floor  
Darlington, S.C. 29532

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY  
Court of General Sessions

Thomas A. Russo, Circuit Court Judge

Case No. 2012-GS-16-1717

FILED  
2012 DEC - 7 AM 10:10  
SCOTT B. SUGGS  
CLERK OF COURT/R.M.C.  
DARLINGTON COUNTY, S.C.

State of South Carolina,

Respondent,

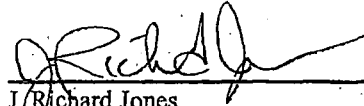
v.

Miguel Herrera,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Patti Parker, Asst. Solicitor by personally delivering a copy of it to his office located at 1 Public Square, Darlington, South Carolina 29532 on December 7, 2012 .



J. Richard Jones  
Chief Deputy Public Defender  
300 Russel Street, Suite 113  
Darlington, South Carolina 29532  
(843) 398-4069  
Attorney for Appellant

TRUE CERTIFIED COPY,  
*Scott B. Suggs*  
CLERK OF COURT/R.M.C.  
DARLINGTON COUNTY, S.C.

WITNESSES

Charles Wright

Darlington County Sheriff

Law Enforcement Case #: 201012-0569

*[Handwritten Signature]*

836

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER  
DAR0923

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

*[Handwritten Signature]*

Date NOV 29 2012

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2012-GS-16-1717

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:  
November 2012

THE STATE

vs.

Miguel Herrera

INDICTMENT FOR

Sex / Criminal sexual conduct with minor -  
victim 11 to 14 years old

§16-03-0655(B)

CDR Code: 0396

TRUE CERTIFIED COPY

*[Handwritten Signature]*

CLERK OF COURT/RMC  
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DARLINGTON )

INDICTMENT FOR

Sex / Criminal sexual conduct with minor - victim 11  
to 14 years old

§16-03-0655(B)

At a Court of General Sessions, convened on November 29, 2012, the Grand Jurors of Darlington County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH A MINOR**  
**SECOND DEGREE**

CDR: 0396 16-03-0655(B)

That Miguel Herrera did in Darlington County, State of South Carolina, on or about March 1, 2010 through December 26, 2010, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree by engaging in sexual battery with a minor who was at least fourteen (14) years or less but who was at least eleven (11) years of age, to wit: Child

12 years old, to wit: did enter the bed of the minor victim and did fondle/sexually assault her, in violation of Section 16-3-655(B) [formerly Section 16-3-655(2)], S. C. Code of Laws, 1976, as amended.

**TRUE CERTIFIED COPY**

*Scott B. Suggs*

**CLERK OF COURT/RMG  
DARLINGTON COUNTY, S.C.**

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

*William B. Rogers, Jr.*

**WILLIAM B. ROGERS, JR.  
SOLICITOR**

COUNTY OF Darlington  
 STATE VS.  
Miguel Herrera  
 AKA: \_\_\_\_\_  
 Race: \_\_\_\_\_ Sex: M Age: 35  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

INDICTMENT/CASE#: 2012-GS-16-1717  
 A/W#: DAR0923  
 Date of Offense: 3/1/2010  
 S.C. Code §: 16-03-0655(2)  
 CDR Code #: 0396

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(2) of the S.C. Code of Laws, bearing CDR Code # 0396  
 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: Patti M Parker 74836 [Signature] [Signature]  
 McKenzie, Patti L SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 12 ~~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 for 708 days time served  
 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$     days/hours Public Service Employment

Payment Terms: TRUE CERTIFIED COPY  
 Set by SCDPPPS [Signature] Obtain GED   
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: CLERK OF COURTS May serve W/E beginning \_\_\_\_\_  
DARLINGTON COUNTY, S.C. Substance Abuse Counseling

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_  
 § 14-1-206 (Assessments 107.5 %) \_\_\_\_\_ \$ \_\_\_\_\_  
 § 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 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
 § 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_  
 § 50-21-114 (DUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 § 36-5-2942(I) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90  
 Other: \_\_\_\_\_

TOTAL \$ 133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Michelle North  
 Court Reporter: Parula Carter  
 SCCA 2.17 (03/2011)

Presiding Judge \_\_\_\_\_  
 Judge Code: 2141  
 Sentence Date: 12-3-12

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## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 1<sup>st</sup> day of February, 2013



Breen Richard Stevens  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT