

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions**

**J. C. Nicholson, Circuit Court Judge**

**2010-GS-10-07730  
2010-GS-10-07731  
Appellate Case No. 2013-000179**

**RECEIVED  
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SC Court of Appeals**

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

**v.**

**Venancio Diaz Perez .....Appellant.**

**RECORD ON APPEAL VOL II  
(Pages 501-560)**

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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28 May 2014

1 most impact. They don't know but they don't try to get  
2 every incident.

3           And what you basically had in the tape was first  
4 she's shown the picture of the children and she  
5 identifies the privates. In the tape, it was the booby,  
6 the culo and the pompi because she was using Hispanic  
7 terms. And she says he touched all three. I think she  
8 stands up and says, Here, here, here.

9           And the therapist says, the boobies, the pompi and  
10 the culo?

11           And she says, Yes.

12           And then what she says is, Tell me about when he  
13 touched the -- tell me about when he touched the culo,  
14 tell me about when he touched pompi, and that is how she  
15 kind of guided that interview.

16           One of the things that I would ask you to really,  
17 really pay attention to and think about is this, and it  
18 was in the tape and in her testimony but it was very,  
19 very substantial. And not knowing -- you know, when you  
20 first hear something you don't know what's going to be  
21 important, but in court she talked first of all about the  
22 time, I think she went to get her PSP -- and I may have  
23 sequences wrong, pardon me if I do, but the time that she  
24 went to get her PSP and he put her in the closet and  
25 that's the time he put his finger inside of her.

1           She talked about another time in court where the  
2 food truck came and the momma and the children were out  
3 at the food truck, and her little brother was sleeping  
4 and she was in, and he touched her that time. And I  
5 said, How did he touch you that time? Did he put his  
6 finger in you?

7           She said, No. That time he did not.

8           If you listen carefully in the tape when she talks  
9 about the time that he touched her culo she starts off by  
10 saying, The food truck was there and this man comes and  
11 sells all the food and they go out.

12           And then Jessica asked her, Well, did he touch you  
13 inside or outside.

14           She says, Outside.

15           That's still what she says today. That particular  
16 time that she gave the details about touching the culo to  
17 Jessica she said, No, that was not the time that he put  
18 his finger in me. She doesn't say it that way. She just  
19 responds, No, it was outside.

20           And Jessica, not wrongly, but didn't go back and  
21 ask her, well, were there other times that he put his  
22 finger in you. And if you remember the way she testified  
23 I probably had to go three levels before she talked about  
24 the finger. She's not going to volunteer, But wait, let  
25 me tell you about another time. He actually did put his

1 finger in me one time. She just responded.

2           You have all of the statements. They are not as  
3 inconsistent in my opinion as Mr. Grimes has discussed.  
4 They are more perhaps not always talking about the same  
5 incident. And she even says to -- I guess said it best  
6 to Mr. Grimes. There are just too many times. It's too  
7 confusing for me to talk about all of them, when she was  
8 trying to explain that how some of them are confused.

9           If she were to come in here and tell you about the  
10 first time, the second time, the third time, the fourth  
11 time and never miss a beat, always exact, I would say  
12 that is not a memory. That is a memorization. When you  
13 talk from memory you pull different recollections out.

14           If you tried to memorize something it's always  
15 going to be exactly the same, and that's a distinction  
16 that I would ask you to look at and to think about. If  
17 it had happened one time it would be much more reasonable  
18 to expect the details to remain exactly the same but it  
19 didn't. It happened many times.

20           I would also ask you to consider the time frame.  
21 It went on from beginning of April until middle of July,  
22 during that time frame. It was two and a half years ago.  
23 That's another difficulty of children in court, the time  
24 frame, and she's a whole different level of development  
25 now. And her age at the time, she had just turned nine.

1           Look at all of the other witnesses. We'll just go  
2 over them briefly. Ms. Jimenez talked about finding the  
3 babysitter. When she took **Minor 1** there she saw Mr. Perez  
4 there. Sometimes when she dropped them off, more often  
5 when she picked them off, but he was there. She worked  
6 from nine to nine. **Minor 1** was not always there until nine  
7 o'clock at night. Sometimes her father picked her up,  
8 but she was sometimes.

9           Ms. Jimenez was honestly shocked and upset. That  
10 was obvious. This is not something she ever planned on  
11 happening to her little girl. It was a shock. She also  
12 felt very guilty, you could tell by her nervousness,  
13 because she is the one who referred **Minor 2's** family to  
14 go to this place, and then something happens to **Minor 2**

15           Now, before **Minor 2** talks about it there had been a  
16 misunderstanding between the families and they were no  
17 longer speaking, because **Minor 2** doesn't tell until  
18 January of 2012. **Minor 1** makes her report in July of 2010.

19           You have **Minor 2's** testimony, you have all these  
20 common things between the two of these children. They  
21 were both females, they were the same age, they had the  
22 same relationship to Mr. Perez. This happened at the  
23 same place. There were various times when he could get  
24 them alone. They were within the same time frame, some  
25 in the trailer and in the house.

1           He touched both of them on their top private, their  
2 bottom private, on their skin and on top of their  
3 clothes. **Minor 2** didn't tell until she just couldn't  
4 hold it in anymore, she says. She just -- she just  
5 couldn't hold it in.

6           Now, it was probably obvious to you that talking  
7 about this was much, much more difficult for **Minor 2**  
8 Whether it was her memory, as she said, I just don't  
9 remember, I just don't remember, or whether it's just  
10 more difficult for her to handle.

11           There's some limitations there that were probably  
12 obvious. There is a language difficulty. And as  
13 Dr. Elsey said, some children just have a more difficult  
14 time talking about it or dealing with it; hence, her  
15 waiting so long to even be able to talk about it at all.

16           I do not actually remember any testimony about any  
17 big difficulty between **Minor 2** and her mother as  
18 Mr. Grimes said but I may be wrong. I just don't  
19 remember any testimony about a huge problem between the  
20 two of them.

21           **Minor 2's** mother, she also took this child to the  
22 babysitter, both at the trailer and the house. She saw  
23 him come in when she left **Minor 2** there. It was very  
24 difficult for her, you saw how upset she got, because  
25 this child can't even talk to her about it.

1           We next heard from Minna. She helped do a physical  
2 -- excuse me, the photo lineup because they wanted to  
3 choose someone who didn't know who he was, didn't know  
4 anything about the case, would be impartial, and when it  
5 began she didn't. She didn't.

6           And she told you the form that she read, the  
7 admonishment she gave to the child, and Minor1 picked it  
8 out. She was 90 percent sure. And as Mr. Grimes said,  
9 the only picture that they could locate was a picture  
10 that was 10 years old from an old ID in North Carolina,  
11 so that is the one that they used which may explain why  
12 it was 90 percent.

13           As far as the ID and when I asked her, Do you see  
14 him now in court, before I talk about that I would like  
15 to just comment on one thing. It seemed that Mr. Grimes  
16 thought or wanted to say to you that this child has been  
17 almost coached. Well, if she was coached don't you think  
18 I would have told her exactly where he was going to be  
19 sitting and made sure that the podium was out of the way  
20 and she could see him? It wouldn't be right, so it  
21 wasn't done.

22           Whether or not she can ID him in the courtroom on  
23 Tuesday isn't the issue for you. The issue for you is  
24 how you know he is the one who did it. She says the  
25 person who did this to me was Minor3's daddy, Minor4's

1 daddy, the babysitter's husband, the man who was there  
2 when I went to the trailer, when I went to the house.

3 How do you know it was him? When I asked her that  
4 she said, Because I saw his face. I was asking her how  
5 did she know which person it was, which man it was. She  
6 said, I saw his face. She told you. The issue for you  
7 about the ID is how you know it was him, and he doesn't  
8 deny that he fits any of those bills. He's the daddy of  
9 both and he is the husband of the babysitter.

10 Minna also explained to you how reluctant  
11 Ms. Jimenez was about the U-Visa, but that it's her life.  
12 It's four years so that she can be here for the  
13 prosecution.

14 Dr. Elsey also spoke just about how children  
15 report, what may impact the way they report, why they may  
16 not report, why they may continue very often to go back  
17 to a place where this is happening.

18 Mr. Grimes insinuated to you, well, it doesn't make  
19 any sense at all that **Minori** would have gone into the  
20 bathroom if this man had been abusing her. Well, that is  
21 exactly why Dr. Elsey was here because the way children  
22 react to sexual abuse does not make any common sense.

23 It would be unfair to you as jurors and it would be  
24 unfair to **Minori** to let you make a decision without that  
25 knowledge based on the research and the expertise of

1 someone who deals with this all the time. Kids go back,  
2 kids follow people that are going to do this. What else  
3 can they do? It's hard for us as adults to really  
4 imagine how vulnerable children are.

5           If your child comes home and the teacher has called  
6 you and said, you know, Johnny said something bad at  
7 school, most parents don't even ask Johnny. They are  
8 going to punish him because adults believe adults. And  
9 children know that, their experience is that. And they  
10 know that if they are saying one thing and an adult is  
11 saying another adults believe other adults.

12           And children lie, of course. Adults are just  
13 better at it because we've had more practice. So the  
14 knowledge that Dr. Elsey gave you was to combat that  
15 exact kind of thought, Well, it doesn't make any common  
16 sense that she would go back or she would go in the room.

17           Detective Lacher made the referrals to have her  
18 examined at the Lowcountry Children's Center and refer  
19 the other people there. Detective Lacher, who by the way  
20 isn't on trial here today, made these decisions to send  
21 these people to other places. Your decision is based on  
22 all of the evidence that you have and not just the police  
23 investigation.

24           Dr. Abel also testified that the exam was normal  
25 but that does not rule out penetration. Let's talk a

1 little bit about that. It may -- I had her describe why  
2 she didn't do swabs and look for trace evidence of DNA,  
3 just because of the time frame, and it may be wasting  
4 your time because it's common sense maybe but maybe not,  
5 just like with Dr. Elsey.

6 The professional stuff may not be -- you see it on  
7 TV all the time when they get DNA 15 years ago, but what  
8 DNA is is just something left on the skin from another  
9 person and they match it back. If it's been days, and  
10 days, and bathed, and showered, and changed clothes and  
11 been different places that's just not there.

12 She at the time of her exam, as you will see from  
13 her report, only had the knowledge of what the child had  
14 told Jessica about, the one time that she told her about  
15 it not being penetration. So she wrote down fondle. But  
16 when she was on the stand I asked her about digital  
17 penetration and she said it would even be less likely to  
18 cause trauma.

19 I think she gave some research that was kind of  
20 shocking, that some of the research where children have  
21 been videotaped being penetrated. I guess it's like  
22 child pornography that she's talking about that. They do  
23 the exam and it's a normal exam. So it does not rule out  
24 penetration.

25 Mr. Perez testified, and just like with every

1 person, think about what motive he may possibly have for  
2 saying what he said. I do not doubt for one moment that  
3 he is a hardworking person and that he does work a lot,  
4 but he wanted to tell you I was absolutely never home  
5 when I asked him. Never, never.

6 Then when I brought up well, what about July 12th  
7 and July 15th? Well, those were days that I was home for  
8 lunch. But, you know, at first it was never. And  
9 ironically, mysteriously the one, the two days out of a  
10 year and a half that he's home are the two days the  
11 police happen to be there.

12 He says he was never angry. He was never home.  
13 The other thing that -- and I do not remember how to  
14 quote this verbatim. I just don't remember, but he was  
15 asked tell the jury, basically, why you would not harm a  
16 child. And he said, I would never harm my daughters, my  
17 parents or my work. Something like that. No mention of  
18 other children. Perhaps he does treasure his daughters  
19 much more than a random child.

20 We also know from the defendant that he -- they  
21 said, Well, he went in late if it rained. Well,  
22 sometimes in Charleston it rains all day. It's basically  
23 he was at home. Enough. Enough.

24 Luis Diaz, he said the defendant was off the day of  
25 the arrest but Mr. Perez says he was at lunch. And

1 Mr. Diaz says, Well, when he goes to lunch if we're close  
2 by we go to lunch and I go with him. That's my thing.

3 He feeds me.

4 The police were there twice. They took the list of  
5 who was there. They told you who was there. Mr. Diaz  
6 was not there. Doesn't make any sense, yet this is his  
7 uncle.

8 Angelica Carmona, think also about her motive. One  
9 of the very saddest things of a prosecutor that gets to  
10 see crime all the time, and just crime, is that there are  
11 always secondary victims. There's your primary victim  
12 but there's the family of the person who committed the  
13 crime, and they are victims, also. And it is sad but it  
14 doesn't lesson the crime. It's a hard thing to deal with  
15 and it may be hard for you thinking, well, look at this  
16 family. But they are the secondary victims. He  
17 committed the crime.

18 Look at what she had on her plate. She was  
19 watching a one-month old, a one-year old, two three-year  
20 olds, and three eight-year olds. Now, we don't know  
21 exactly when they were all there but those were the kids  
22 that she was watching. You all know one-month old,  
23 one-year old, two three-year olds, I don't know. I  
24 couldn't do it. Let's hope, and I would assume, that if  
25 one of them is going to go unsupervised it's going to be

1 an eight-year old and not a one-year old or a three-year  
2 old.

3 And I understand that she loves him and that is  
4 totally understandable but she can't watch all of these  
5 kids and always know where they are. It's kind of a  
6 thing of you have so many people how could it happen?

7 Well, that's why maybe. You know, if it would have  
8 just been her, and Mr. Perez, and **Minor 1** maybe it would  
9 have been a lot more obvious that, where are they, than  
10 you have a whole small little trailer or small little  
11 house full of people.

12 She believes her husband, I don't doubt that for a  
13 moment. And she believes he would not harm his  
14 daughters, and he may not have harmed his daughters. She  
15 said he would never harm his daughters. What about other  
16 children? Only God knows that. I don't know why she  
17 said that but that's what she said.

18 There were two children besides his own daughter in  
19 that home that were old enough to report, and they were  
20 **Minor 1** and **Minor 2**.

21 **Minor 3** also loves her dad, and every child does. No  
22 matter how serious the situation, how bad children love  
23 their parents. She does say though that -- and who knows  
24 why she said it, but there was never a time that **Minor 1**  
25 was out of her sight. Never a time that **Minor 1** was out of

1 her sight, but we know that that's not accurate. I'm not  
2 saying anybody told her to say that. She knows what this  
3 is about and she believes her dad. She loves him.

4 She does say that -- and one time we know she was  
5 out of her sight. They were playing hide and go seek and  
6 he came into the closet. And she says they danced, they  
7 played with their bikes, they played with the PSPs, a lot  
8 of what *Minor I* says.

9 Jessica said there were no follow-up questions, and  
10 looking back perhaps there should have been. I've kind  
11 of gone over that. She does say that *Minor I* had  
12 nightmares. And Mr. Grimes is right. I will tell you  
13 that this is a nightmare for *Minor I*, and it's not going to  
14 be over soon. But this is her day in court to try to  
15 help those nightmares.

16 She also talked about her fear of the defendant  
17 coming back to get her with the therapy because she  
18 remembered that he had gone with her or she had gone with  
19 his family to a waterfront park so he knew where she  
20 lived. And she did tell another child that she was  
21 sexually abused and they did talk with her about that.

22 Beyond a reasonable doubt is the standard that the  
23 State must meet in order to prove Mr. Perez guilty. The  
24 burden is beyond a reasonable doubt. Not any doubt, not  
25 every doubt, not some doubt, not the shadow of a doubt

1 but a reasonable doubt that a reasonable juror seeking  
2 the truth would hesitate to act.

3           There are few things in this world that you will  
4 ever know with absolute certainty. That's not the  
5 standard. The standard is reasonableness and reasonable  
6 doubt. If absolute certainty were the standard there  
7 would never be a conviction. If you knew this with  
8 absolute certainty you would have been there and seen it  
9 and you would have been sitting up there and not there.

10           You came in here on Monday not knowing nothing  
11 about any of these people. If you now believe that  
12 Mr. Perez sexually assaulted and sexually molested *Minor* (  
13 the State has met that burden.

14           *Minor* -- well, first of all, let me address this.  
15 Why an adult would sexually touch, put his finger in,  
16 expose himself to a child is almost if not absolutely  
17 impossible to understand. It is even -- or chase one  
18 around, which may go to the child, that behavior.

19           It's almost impossible to understand but it's even  
20 more impossible to even envision. We don't even want to  
21 go there. And why? To understand why is beyond us and  
22 that's not what we are here about because we know it  
23 happens. Sometimes at the hands of citizens that are  
24 respectable and credible and have all of the good  
25 reputation and it still happens.

1           Minor | told you that Mr. Perez put his finger in her  
2 and that it felt awkward, and she told you all the  
3 circumstances around that. That is the proof that you  
4 have that he committed a criminal sexual assault in the  
5 first degree.

6           She also told you about the touching, a separate,  
7 that's why there are two charges. The touching is the  
8 lewd act upon a minor. You have evidence of both of  
9 these crimes.

10           Minor | doesn't know there's a different crime for  
11 putting the finger inside. She just knows that's what  
12 happened. There would be no reason for her to change it  
13 and say that. She's just telling what happened. That  
14 may be something that was more difficult for her to talk  
15 about but there would be no reason for her to add that.

16           He's guilty of putting his finger in her, he is  
17 guilty of touching her and we would ask that you find him  
18 guilty of both of these crimes that he committed upon  
19 this child. Thank you.

20           THE COURT: We've been going about an hour and 45  
21 minutes. Instead of taking a break let me just let you  
22 all stand and stretch for a few minutes. If you'll stand  
23 and stretch and relax for a few minutes I'll get the  
24 charge on the law and very shortly after that you can  
25 begin your deliberations because I know you've been

1 sitting there almost two hours -- not quite two hours but  
2 an hour and 45 minutes.

3 (PAUSE.)

4 THE COURT: All right. Ladies and gentlemen of the  
5 jury panel, the Court has permitted you to take notes  
6 during the course of this trial. You've not been  
7 obligated to take the notes, but if you have taken notes  
8 these should be used only as memory aids.

9 You should not give your notes precedent over your  
10 independent recollection of the evidence. If you've  
11 chosen not to take notes you should rely on your own  
12 independent recollection of the proceedings and you  
13 should not be influenced by the notes of other jurors.

14 I emphasize that notes are not entitled to any  
15 greater weight than the recollection or impression of  
16 each juror as to what the testimony may have been.  
17 Further, these notes are your notes and you may destroy  
18 them, keep them or the Court will destroy them for you.

19 I will give you a copy of these instructions in  
20 written form. During your deliberations you may refer to  
21 the instructions to guide your decision making. You must  
22 consider the instructions as a whole and not follow some  
23 and ignore others. Please return the instructions to the  
24 Court after you have reached a verdict.

25 The defendant has pled not guilty to the

1 indictments which places the burden on the State to prove  
2 the defendant guilty. A person charged with committing a  
3 criminal offense in South Carolina is never required to  
4 prove himself innocent.

5 I charge you that it's a vital important rule of  
6 law that the defendant in a criminal trial no matter what  
7 the seriousness of the charge may be must also be  
8 presumed to be innocent until his guilt has been proven  
9 beyond a reasonable doubt.

10 This presumption of innocence remains with the  
11 defendant at all times, from the moment he appears in  
12 this court, throughout the trial until you, the jury,  
13 have reached a verdict of guilty beyond a reasonable  
14 doubt based on the testimony and evidence which has been  
15 presented.

16 The presumption of innocence is a substantial right  
17 to which every defendant is entitled unless and until you  
18 reach a verdict beyond a reasonable doubt. If you, the  
19 jury, do not find the defendant guilty beyond a  
20 reasonable doubt it's your duty to acquit the defendant.

21 Now, you've heard evidence that the defendant has  
22 committed a bad act not the subject of a conviction other  
23 than the one for which the defendant is now on trial.  
24 This testimony, if you conclude it is true, may be  
25 considered by you on the question of common scheme or

1 plan and for no other reason or no other purpose.

2           You may give this evidence the weight and value, if  
3 any, which you find it should have on the sole issue of  
4 common scheme or plan. You must not consider evidence of  
5 commission of another bad act not the subject of a  
6 conviction as proof of the defendant's guilt of the  
7 charges we're trying today.

8           INTERPRETER GAINER: Your Honor, the interpreter  
9 cannot follow.

10          THE COURT: Pardon?

11          INTERPRETER GAINER: The interpreter cannot follow,  
12 Your Honor. If Your Honor can slow down a bit.

13          THE COURT: All right. Thank you.

14          INTERPRETER GAINER: Thank you, Your Honor.

15          THE COURT: There's two types of evidence which are  
16 generally presented during a trial. Direct evidence is  
17 the testimony of a person who claims to have actual  
18 knowledge of a fact such as an eyewitness. It is  
19 evidence which immediately establishes the main fact to  
20 be proved.

21               Circumstantial evidence is proof of a chain of  
22 facts and circumstances indicating the existence of a  
23 fact. It is evidence which immediately establishes  
24 collateral facts from which the main fact may be  
25 inferred. Circumstantial evidence is based on inference

1 and not on personal knowledge or observation.

2           The law makes absolutely no distinction between the  
3 weight or value to be given to either direct or  
4 circumstantial evidence, nor is a greater degree of  
5 certainty required of circumstantial evidence than of  
6 direct evidence.

7           You should weigh all the evidence in the case.  
8 After weighing all the evidence if you are not convinced  
9 of the guilt of the defendant beyond a reasonable doubt  
10 you must find the defendant not guilty.

11           The evidence or lack of evidence which you are to  
12 decide the case includes the following: The sworn  
13 testimony of witnesses both on direct and  
14 cross-examination regardless of which side calls the  
15 witness, the exhibits which have been received into  
16 evidence by the Court, any facts agreed or stipulated to  
17 by all the lawyers.

18           The following are not evidence and you may not  
19 consider them in deciding the facts: Arguments and  
20 statements made by the lawyers are not evidence. The  
21 lawyers are not witnesses. Their opening statements,  
22 closing arguments and other statements are intended to  
23 help you interpret the evidence but are not evidence. If  
24 the facts as you remember them differ from the way the  
25 lawyers state, your memory controls.

1           Questions and objections by the lawyers are not  
2 evidence. Lawyers have a duty to their client to make  
3 objections when they believe a question is improper under  
4 the rules of evidence. You should not allow any  
5 objection or the Court's ruling on the objection to  
6 influence you.

7           Testimony that's been stricken that you have been  
8 instructed to disregard is not evidence and must not be  
9 considered. Anything you may have seen on television, or  
10 read in the newspaper, or on the internet, or heard from  
11 others when court is not in session is not evidence.

12           You should base your decision solely on the sworn  
13 testimony of the witnesses, exhibits received into  
14 evidence by the Court, any facts agreed or stipulated to  
15 by all the lawyers.

16           The fact the defendant was arrested, charged and  
17 indicted in this case are not evidence and cannot be  
18 considered as evidence of guilt, nor does it create any  
19 presumption of inference of guilt. The indictment is  
20 simply a formal written instrument which contains the  
21 charges made against the defendant.

22           Now, what is reasonable doubt? A reasonable doubt  
23 is the kind of doubt that would cause a reasonable person  
24 to hesitate to act. The State has the burden of proving  
25 the defendant guilty beyond a reasonable doubt.

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

7           Proof beyond a reasonable doubt is proof that  
8 leaves you firmly convinced of defendant's guilt. There  
9 are very few things in this world that we know with  
10 absolute certainty and in criminal cases the law does not  
11 require proof that overcomes every possible doubt.

12           If based on your consideration of the evidence you  
13 are firmly convinced that the defendant is guilty of the  
14 crime charged you must find the defendant guilty. On the  
15 other hand, if you think there's a real possibility the  
16 defendant is not guilty you must give the defendant the  
17 benefit of the doubt and find the defendant not guilty.

18           Now, under the constitution and code of laws only  
19 you, the jury, can make findings of facts in this case.  
20 I am not permitted to indicate to you how I may feel  
21 about the testimony and evidence which has been presented  
22 throughout this trial. It's been my intention to be fair  
23 and impartial towards each of the parties involved.

24           Necessarily, you must determine the credibility of  
25 the witnesses who have testified in this case.

1 Credibility means believability. It's your duty as  
2 jurors to analyze and to evaluate the evidence and  
3 determine which evidence convinces you of its truth.

4 As you decide whether or not to believe a witness's  
5 testimony about a particular matter you may consider the  
6 following: The manner and appearance of the witness  
7 while on the witness stand. Was he or she  
8 straightforward or hesitant to answer.

9 The testimony of a witness. Was he consistent or  
10 inconsistent? How did the witness come to know the facts  
11 that he or she testified to. Was the witness present  
12 during the incident, the witness happen on the scene  
13 after the incident occurred?

14 The reason the witnesses would want to give  
15 testimony which would help or hurt one side or the other.  
16 Has the witness exhibited to you any interest, bias,  
17 prejudice or other motive in this case, or you may  
18 consider whether the particular witness may gain some  
19 reward, payment, personal advantage, vindication through  
20 his or her testimony.

21 The strength of the witness's testimony. Was the  
22 testimony of a witness straightened or weakened by other  
23 testimony or evidence?

24 The duration or length of time between the incident  
25 and when they were reported. Would the duration or

1 length of time weaken or strengthen the witness's memory  
2 of the incidents?

3 All prior statements. Were the prior statements  
4 made by the witness consistent or inconsistent with the  
5 testimony?

6 In determining the believability of the witnesses  
7 who have testified in this case you may believe one  
8 witness over several, or several witnesses over one. You  
9 may believe a part of the testimony of a witness and  
10 reject the remaining part of the testimony of the same  
11 witness. You may believe the testimony of a witness in  
12 its entirety or reject the testimony of the witness in  
13 its entirety.

14 Now, the same constitution and laws which designate  
15 and make you the finders of fact make me the sole  
16 instructor of the law. It's my duty to charge you the  
17 law applicable to this case and it's your duty as jurors  
18 to accept and apply the law as I now state it to you.

19 The lawyers are not the instructors of the law.  
20 You must accept the law and apply the law exactly as I  
21 say it to you. You must not base your decision making on  
22 your idea of what the law is or what you think the law  
23 should be.

24 First degree criminal sexual conduct with a minor.  
25 The defendant is charged with first degree criminal

1 sexual conduct with a minor. The State must prove beyond  
2 a reasonable doubt that the defendant engaged in a sexual  
3 battery with the victim.

4 A sexual battery is sexual intercourse,  
5 cunnilingus, fellatio, anal intercourse or any intrusion,  
6 however slight, of any part of a person's body or any  
7 object into the genital or anal openings of another  
8 person's body except when the intrusion is accomplished  
9 for medically recognized treatment or diagnostic  
10 purposes.

11 The State must prove beyond a reasonable doubt that  
12 the victim was less than 11 years old at the time of the  
13 sexual battery.

14 Consent, wellness, indifference or ignorance on the  
15 part of minor, if any, as to what was taking place does  
16 not in any way affect the charge of criminal sexual  
17 conduct with a minor because an unmarried woman under the  
18 age of 14 cannot legally consent to sexual intercourse.

19 If you find that the State has failed to prove that  
20 the defendant is not guilty of criminal sexual conduct  
21 first degree you must then decide whether the State has  
22 proven the defendant's guilt of assault and battery of a  
23 high and aggravated nature.

24 In order to prove assault and battery of a high and  
25 aggravated nature the State must prove beyond a

1 reasonable doubt that the defendant committed an assault  
2 and battery with a circumstance of aggravation. A  
3 circumstance of aggravation can be the taking of indecent  
4 liberties or familiarities with a female.

5 Lewd act on a minor. The defendant is charged with  
6 committing a lewd act on a minor. A minor is a person  
7 under the age of 18. The State must prove beyond a  
8 reasonable doubt that the defendant was over the age of  
9 14. Next the State must prove that the defendant  
10 willfully, lewdly committed or attempted a lewd or  
11 lascivious act on or within the body of its parts of a  
12 child under the age of 16 years with the intent to  
13 arouse, appeal to, gratify to the lusts, passions or  
14 sexual desires of the defendant or the child.

15 Willfully means voluntarily and intentionally with  
16 the specific intent to do something the law forbids.  
17 Lewd means obscene, lustful, indecent or lecherous.  
18 Lascivious means intending to incite lust, lewd,  
19 indecent, obscene or intending to deprive the morals in  
20 respect to sexual relations.

21 The defendant is charged with the offense of a  
22 criminal sexual conduct with a minor first degree and  
23 lewd act upon a minor. He may be found guilty if the  
24 proof shows beyond a reasonable doubt that he committed  
25 any one or more of such acts.

1           In order to find the defendant guilty all jurors  
2 must agree that he committed the same act or acts. It is  
3 necessary that the particular act or acts committed so  
4 agreed upon be stated in the verdict.

5           The testimony of a victim may not be corroborated  
6 in prosecutions. The victim is defined as the  
7 complaining witness.

8           The defendant has presented evidence of his good  
9 reputation and character to show that it would be  
10 inconsistent with the defendant committing the crime.  
11 The weight to give to that testimony like all other  
12 testimony in the case is for you to decide.

13           In your good judgment you may consider the  
14 testimony of the defendant's good character along with  
15 all the other evidence in deciding whether or not the  
16 defendant committed the crime.

17           You have been selected as fair and impartial jurors  
18 sworn to impartially try and determine the facts of this  
19 case. When you comply with your oath to do so no one  
20 would have the right to criticize your verdict and you  
21 will have fully discharged your duty as jurors.

22           You decide this case according to testimony you've  
23 heard from the lips of the sworn witnesses along with the  
24 other evidence introduced.

25           I charge you as jurors you must make your decision

1 in this case without bias, without prejudice to any party  
2 and not allow yourself to be governed by sympathy,  
3 prejudice, passion or public opinion, or any other  
4 arbitrary factor. Both the State and the defendant have  
5 the right to expect that each one of you will carefully  
6 and impartially consider all the evidence in this case  
7 and that you will follow the law as I have explained it  
8 to you.

9       Nothing I may have said or done during the course  
10 of this trial has been in any way intended to express or  
11 suggest a view of this case or an opinion as to facts,  
12 the weight of evidence or the credibility of the witness.  
13 If you believe any of my actions or words have indicated  
14 otherwise you must disregard such and form your own view  
15 of this case or your own opinion as to the facts, the  
16 weight of the evidence and the credibility of the  
17 witnesses.

18       Mr. Foreman, ladies and gentlemen of the jury, I  
19 have prepared two verdict forms. The first verdict form  
20 has the name of the case, the case number.

21       As to the charge of criminal sexual conduct with a  
22 minor first degree, we, the jury, by unanimous consent  
23 find the defendant guilty of criminal sexual conduct with  
24 a minor first degree, not guilty.

25       If you find the defendant not guilty of criminal

1 sexual conduct with a minor first degree then as to the  
2 lesser included offense, we, the jury, by unanimous  
3 consent find the defendant guilty of assault and battery  
4 of high and aggravated nature, not guilty, place for the  
5 foreperson to sign it.

6 You cannot find the defendant guilty of both  
7 charges. You can find the defendant innocent of both  
8 charges, or not guilty of both charges.

9 The other verdict form, caption of the case, case  
10 number. As to the charge of lewd act upon a minor, we,  
11 the jury, by unanimous consent find the defendant guilty  
12 of lewd act upon a minor, not guilty, a place for the  
13 foreman to sign.

14 Now, I will tell you the verdict form says your  
15 verdict has to be unanimous. All 12 of you have to  
16 agree. I would ask you to respect each other's opinion  
17 or evaluate your opinions. If you think it's a  
18 collective reasoning process on all 12 of you all's part,  
19 it's a give and take situation, look at the evidence,  
20 discuss the evidence and reach a just and fair verdict.

21 What I'm going do is ask you to go to the jury room  
22 but please -- you may take you notes with you, but please  
23 do not begin your deliberations until I have had an  
24 opportunity to go over my charge with the attorneys for  
25 the State and attorneys for the defense and see if

1 there's anything that I need to bring you back and charge  
2 or change that I make.

3 The bailiff will bring all the exhibits that have  
4 been admitted into evidence along with the charge book  
5 and tell you to begin your deliberations when I have  
6 finished that process.

7 The two alternates, Mrs. Coleman and Mrs. Mikulla,  
8 will you all keep your seats, please, while the rest of  
9 the jurors go to the jury room.

10 Mr. Foreman, if you'll go with the jury to the jury  
11 room, please.

12 (WHEREUPON, the jury leaves the courtroom at  
13 approximately 12:48 p.m.)

14 THE COURT: All right. Any exceptions to the  
15 charge from the State?

16 MS. HERRING-LASH: No, Your Honor.

17 THE COURT: Any from the defendant?

18 MR. GRIMES: Yes, sir, two exceptions. Our first  
19 exception is the charge on the victim's testimony does  
20 not need to be corroborated. We believe that's a comment  
21 on the facts and that charge should be taken out.

22 And our second exception is the charge -- we  
23 believe that your charge on good character was  
24 insufficient. It does not include the language or  
25 language similar that evidence of good character and good

1 reputation and honesty may in and of itself create a  
2 doubt as to the guilt --

3 THE COURT: You got something you want to mark as a  
4 court's exhibit?

5 MR. GRIMES: Yes, sir.

6 THE COURT: Okay. You can mark it as Court's  
7 Exhibit Number 4.

8 (WHEREUPON, Court's Exhibit Number 4, Defendant's  
9 Charge Request, was marked and made a part of the  
10 record.)

11 THE COURT: Any other exceptions?

12 MR. GRIMES: No, sir.

13 THE COURT: All right. I'm going to deny those two  
14 requests.

15 Would the parties come forward and make sure all  
16 the exhibits are present and put on the record the  
17 exhibits are present, and I will get the bailiff to take  
18 the exhibits back along with the charge book and the  
19 verdict form and tell them to begin their deliberations.

20 (PAUSE.)

21 THE COURT: All right. All the exhibits present?

22 MR. GRIMES: Yes, Your Honor.

23 MS. HERRING-LASH: Yes, sir.

24 THE COURT: All right. If you will take the  
25 exhibits and charge book, and I believe the verdict form,

1 and ask the jury to --

2 MR. GRIMES: Does the CD -- I don't think the CD  
3 goes back.

4 THE COURT: Yes. It's redacted. And please tell  
5 the foreman if they want to see the CD I'm going to have  
6 to bring them in the courtroom to see it.

7 (WHEREUPON, the jury was instructed to begin their  
8 deliberations at approximately 12:54 p.m., and the trial  
9 of this case was recessed while awaiting a verdict.)

10 THE COURT: Bring the jury in and tell them to  
11 bring their personal belongings.

12 (WHEREUPON, the jury enters the courtroom at  
13 approximately 5:18 p.m.)

14 THE BAILIFF: All present, Your Honor.

15 THE COURT: Thank you very much.

16 All right. Mr. Foreman, ladies and gentlemen of  
17 the jury, what I'm going to do -- I just got your message  
18 and I understand you all have problems, pick up problems  
19 and daycare pick up problems and other issues so I'm  
20 going to send you home tonight, tell you to come back in  
21 the morning at 9:30 and continue deliberations.

22 Now, I'm going to instruct you again, as I've done  
23 every night, don't discuss the case with anybody; with  
24 your husband, your girlfriend or anybody. If they ask  
25 you just tell them you cannot discuss it. I don't want

1 you to discuss it. I want you to come back at 9:30 and  
2 continue your deliberations.

3 Does anybody else need to go in the jury room to  
4 pick up any personal items?

5 (There was no response.)

6 THE COURT: All right. If you'll go with the  
7 bailiff. It's after five, they'll show you how you can  
8 get out of the courthouse.

9 How are they going to get out of the courthouse?

10 THE BAILIFF: I think the sheriff is going to lead  
11 them out.

12 THE COURT: All right. The sheriff will take you  
13 out of the courthouse since it's after 5:00. So be back  
14 in the jury room 9:30 in the morning to continue  
15 deliberations. I'll see you tomorrow. Have a good  
16 evening.

17 (WHEREUPON, the jury leaves the courtroom at  
18 approximately 5:20 p.m.)

19 THE COURT: Anything from the State before we  
20 break?

21 MS. HERRING-LASH: No, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. GRIMES: No, sir.

24 THE COURT: And for the record, we discussed  
25 sending the jury home tonight and bringing them back

1 tomorrow in the chamber and the State and the defense  
2 agreed to that. Is that correct from the State?

3 MS. HERRING-LASH: Yes, Your Honor.

4 THE COURT: Is that correct from the defense?

5 MR. GRIMES: Yes, sir.

6 THE COURT: All right. Thank you all so very much.

7 (WHEREUPON, the trial of this case was recessed for  
8 the day.)

9 Friday, January 18, 2013

10 (WHEREUPON, the jury returns at approximately 9:30  
11 a.m. to resume deliberations.)

12 (WHEREUPON, Court's Exhibit Number 5, a Note From  
13 Jury, was marked and made a part of the record.)

14 THE COURT: Bring us the jury, please.

15 (WHEREUPON, the jury enters the courtroom at  
16 approximately 10:45 a.m.)

17 THE BAILIFF: All present, Your Honor.

18 THE COURT: I understand the jury would like to  
19 listen to the video, and we'll play it at this time. If  
20 you need the volume higher or lower, please let us know  
21 and we'll adjust the volume so you can hear it.

22 (WHEREUPON, State's Exhibit Number 9, the Forensic  
23 Interview, was played for the jury.)

24 THE COURT: All right, Mr. Foreman. If you all  
25 would go to the jury room and continue with your

1 deliberations.

2 (WHEREUPON, the jury leaves the courtroom at  
3 approximately 11:38 a.m.)

4 (WHEREUPON, the trial of this case was in recess  
5 while awaiting a verdict from the jury.)

6 THE COURT: For the record, during the  
7 deliberations the foreman sent out a letter asking for  
8 explanation on assault and battery. The Court typed up  
9 an explanation, submitted it in response to the letter,  
10 and the State reviewed it and the defense reviewed it and  
11 agreed with the presentation.

12 Is that correct from the State.

13 MS. HERRING-LASH: Yes, Your Honor.

14 THE COURT: Is that correct from the defense?

15 MR. GRIMES: I'm sorry, Your Honor. I was talking.

16 THE COURT: This letter, you know, the assault and  
17 battery question from the jury that I typed out. I'm  
18 just putting it on the record to make it a court's  
19 exhibit. That it was agreed to by the State and the  
20 defendant; is that correct?

21 MR. GRIMES: Yes, sir.

22 THE COURT: Okay. Thank you very much.

23 (WHEREUPON, Court's Exhibit Number 6, Definition  
24 for the Jury of Assault and Battery, was marked and made  
25 a part of the record.)

1 THE COURT: Bring us the jury, please.

2 (WHEREUPON, the jury enters the courtroom at  
3 approximately 3:42 p.m.)

4 THE COURT: Mr. Foreman, I understand you have  
5 reached a verdict; is that correct?

6 THE FOREMAN: We have, Your Honor.

7 THE COURT: Would you hand the verdict forms to the  
8 bailiff, please, sir.

9 (PAUSE.)

10 THE COURT: All right. Would you publish the  
11 verdict, please, sir.

12 THE CLERK: Yes, Your Honor.

13 Please have the defendant stand.

14 The verdict form is in the matter of the State of  
15 South Carolina vs. Venancio Diaz Perez, defendant. The  
16 first form. As to the charge of lewd act upon a minor,  
17 we, the jury, by unanimous consent find the defendant  
18 guilty of lewd act upon a minor, signed by the foreperson  
19 of the jury on January 18, 2013.

20 Ladies and gentlemen of the jury, if this was your  
21 verdict, please raise your right hand.

22 (All hands were raised.)

23 THE CLERK: Thank you. Please let the record  
24 reflect that all 12 jurors raised their right hand.

25 As to the charge of criminal sexual conduct with a

1 minor first degree; we, the jury, by unanimous consent  
2 find defendant not guilty of criminal sexual conduct with  
3 a minor first degree.

4 The alternative; we, the jury, by unanimous consent  
5 find the defendant guilty of assault and battery of a  
6 high and aggravated nature, signed by the foreperson of  
7 the jury on January 18th, 2013.

8 Ladies and gentlemen of the jury, if this was your  
9 verdict, please raise your right hand.

10 (All hands were raised.)

11 THE CLERK: Thank you. Please let the record  
12 reflect that all 12 jurors raised their right hand.

13 THE COURT: Okay. Thank you very much.

14 Mr. Foreman, I have filled in on the indictment  
15 from the verdict form and it's a place for you to sign,  
16 and I have dated it today, January 18th.

17 If I could get him to sign it, please.

18 (PAUSE.)

19 THE COURT: All right. Solicitor, do you have a  
20 sentencing sheet?

21 MS. HERRING-LASH: No, Your Honor. I'll have to  
22 get it.

23 THE COURT: Do you have one on the lewd act?

24 MS. HERRING-LASH: I'll have to go get someone to  
25 get it.

1 THE COURT: How long do you think it will take to  
2 get a sentencing sheet?

3 All right. Before we get to that, Solicitor, if  
4 you'll put that in motion I'd appreciate it.

5 MS. HERRING-LASH: I have. She's doing it from  
6 here.

7 THE COURT: All right. Any motions from the State  
8 as far as the jury is concerned?

9 MS. HERRING-LASH: No, Your Honor.

10 THE COURT: Any from the defense?

11 MR. GRIMES: Yes, sir. We would request that the  
12 jury be polled.

13 THE COURT: All right, if you would, Mr. Clerk,  
14 poll the jury on the lewd act and assault and battery of  
15 a high and aggravated nature.

16 (WHEREUPON, the jury was polled.)

17 THE COURT: All right. It appears the jury has  
18 been polled. All 12 jurors have answered in the  
19 affirmative. Do you have any other motions?

20 MR. GRIMES: Yes, sir.

21 THE COURT: I'll be glad to hear you. You going to  
22 renew your motions from the end of the State's case and  
23 the end of the defense case or is there anything else you  
24 would you like to add?

25 MR. GRIMES: There's one motion I would like to

1 add, Your Honor.

2 THE COURT: Okay. As far as the renewal of the  
3 motions at the end of the State's case and of your case,  
4 those motions are denied. What's the new motion?

5 MR. GRIMES: We don't believe the Court has  
6 jurisdiction over the lewd act on the minor charge  
7 because that was a direct indictment and Mr. Perez was  
8 never formally presented the direct indictment, so the  
9 Court does not have jurisdiction over him and that charge  
10 should be dismissed.

11 THE COURT: You say he was never arraigned?

12 MR. GRIMES: He was never arraigned, never  
13 presented it formally, you know --

14 THE COURT: Was a bond set?

15 MR. GRIMES: No, sir.

16 THE COURT: The bond was never set? Was he ever  
17 brought before a bond hearing?

18 MR. GRIMES: No, sir.

19 THE COURT: Did you bring a motion for a bond  
20 hearing?

21 MR. GRIMES: No, sir.

22 THE COURT: Did you ever make a request for an  
23 arraignment?

24 MR. GRIMES: No, sir.

25 THE COURT: Have you ever done any of that?

1 MR. GRIMES: No, sir.

2 THE COURT: Why do you wait until the end of the  
3 trial to raise a judicial issue? Why didn't you raise it  
4 at the beginning of the trial?

5 MR. GRIMES: Because it could have been easily  
6 cured at the beginning of the trial and if we had won the  
7 case --

8 THE COURT: What's the State's position?

9 MS. HERRING-LASH: Your Honor, the case was called  
10 and he sat here and listened to the case be called, and I  
11 think that is sufficient.

12 THE COURT: You sat through trial. Motion denied.

13 All right. Any other motions?

14 MR. GRIMES: No, sir.

15 THE COURT: All right. When we going to have --

16 MS. HERRING-LASH: She went to get them, Your  
17 Honor.

18 THE COURT: How long is it going to be?

19 MS. HERRING-LASH: Ms. McCoy can check on her.  
20 They printed it before she left.

21 THE COURT: Ladies and gentlemen of the jury, the  
22 only thing left will be the sentencing as soon as I get a  
23 sentencing sheet. You're welcome to stay if you want to  
24 stay. Otherwise, I'll be happy to excuse you at this  
25 time. I want to thank you for your services. But you're

1 welcome to stay. Just as soon as I get the sentencing  
2 sheets I'm going to sentence the defendant this  
3 afternoon. Whatever you want to do. If you want to  
4 stay, fine. If you want to leave, that's fine too. If  
5 you all want go to the jury room.

6 THE FOREMAN: Can some stay and some leave?

7 THE COURT: Yes. That's fine.

8 (WHEREUPON, a juror left the courtroom.)

9 THE FOREMAN: Thank you, Your Honor.

10 THE COURT: All right. Mr. Grimes, be glad to hear  
11 you on sentencing, and I'll be glad to hear anything from  
12 Mr. Perez that he would like to say.

13 MR. GRIMES: Thank you, Your Honor. May I  
14 approach, Your Honor?

15 THE COURT: Yes, sir.

16 (WHEREUPON, a document was handed to the Court.)

17 MR. GRIMES: While the jury was out I was working  
18 on a sentencing memorandum. I think someone from our  
19 office went to print it out and bring it over. I think I  
20 can try to accurately go from memory on most of that.

21 But what I handed up to the Court is some pictures  
22 I took off my phone yesterday when **Minor 3** and **Minor 4** were  
23 able to see their father for the first time in quite a  
24 while, and it was pretty emotional back there. And **Minor 3**  
25 was first laughing with a big smile on her face and then

1 later on with tears.

2 I got a picture of Mr. Perez and his reaction to  
3 seeing his children. It was one of the biggest smiles  
4 I've ever seen on him. And then ~~Minor A~~, she's very  
5 quiet. You know, we would have liked to call her to  
6 testify about whether he'd ever hit her, as ~~Minor I~~ said.  
7 And, you know, she always told us no but I just don't  
8 think she would have been competent to testify in Court.

9 She's very shy and soft spoken and just -- you  
10 know, yesterday we met chambers a little bit about she  
11 did have one request, and that was to be able to give her  
12 dad a hug. And, you know, I'm not sure if or when she'll  
13 ever see him again. He may be going to prison probably  
14 for a substantial period of time then after that going to  
15 be sent to Mexico.

16 And, you know, I don't know if she's going to go  
17 back down there and visit him or what, or if he will even  
18 get out of prison, the way the prison situation is. So  
19 that's why I handed those pictures up, and there's an old  
20 family picture showing, as we talked about yesterday,  
21 what a family man he is, how much he values his family.

22 You know, in preparing for the trial we were  
23 worried about some issues with some of his witnesses  
24 possibly facing deportation if they came to court. And  
25 he said, Well, if there's any chance that could happen I

1 don't want to call them because my family comes first.

2 And when we talked about ~~Minda~~ and whether she  
3 could testify and he said that I don't want her  
4 testifying. She's too young, she has some health  
5 problems. So he's always put his family ahead of him.

6 I think that's one of the most admirable qualities  
7 I've seen in anybody. A lot of defendants would do  
8 anything they can to try to gain an edge or something,  
9 and he was quite the opposite in that respect.

10 And as you know, you heard his testimony, you heard  
11 the character testimony put up how he worked. He is a  
12 46-year-old man who's never even been arrested before.  
13 And while we respect the jury's verdict, we understand  
14 where it comes from, we do respectfully disagree with it.

15 And it's just so out of character for, you know,  
16 the Venancio I know, the Venancio his friends and family  
17 told me about. I think that would just sort of qualify  
18 as one of the grounds I would argue for a minimal  
19 sentence, you know, out of the ordinary conduct.

20 You have someone who's 46 years old, no history of  
21 anything, much less anything this egregious. No motive  
22 to do anything like this. And, you know, he's comes  
23 forward and like I said in closing, I feel like we're  
24 trying to prove a negative. And unfortunately we weren't  
25 able to do that.

1           You know, obviously I think I would argue any  
2 sentence he would get will have a devastating impact on  
3 his family. You heard the testimony when he was  
4 arrested, how they reacted. I'm sure it's going to be  
5 much worse now.

6           And, you know, we didn't want Minor 4 in here to  
7 hear some of this stuff and I'm still not sure how much  
8 she understands what is going on.

9           Minor 3 certainly does and we thought she may not  
10 want to be here to watch the video to hear some things  
11 but she wanted to be in here. She wanted to support her  
12 dad, see what was going on.

13           THE COURT: How long has he been incarcerated?

14           MR. GRIMES: I think I had calculated numbers and I  
15 may have left that in the other folder, but since July  
16 15th of 2010.

17           THE COURT: Since when?

18           MR. GRIMES: July 15th of 2010, which I think was  
19 maybe 918 days.

20           THE COURT: July 15, 2010. Okay.

21           MR. GRIMES: Yes, sir. Another factor we would ask  
22 the Court to consider is his being susceptible to abuse  
23 in the prison system. I was looking at some of the case  
24 law under the federal guidelines, that is a ground for  
25 departure and the cases quoted --

1 THE COURT: You talking about the federal  
2 guidelines or what guidelines you talking about?

3 MR. GRIMES: United States sentencing guidelines,  
4 Your Honor.

5 THE COURT: So what's the downward departure on  
6 that?

7 MR. GRIMES: It's in the Court's discretion.

8 THE COURT: Oh, okay. All right.

9 MR. GRIMES: And there's a case I had, United  
10 States vs. Parish, where they were quoting testimony of  
11 Dr. Scolatti, S-c-o-l-a-t-t-i. As probably the Court  
12 knows anyone convicted of a sex offense involving minors  
13 is going to have a rough time in prison.

14 And the Court said, well, that by itself might not  
15 be a ground for downward departure. When you look at the  
16 person's other factors, such as inexperience in the  
17 prison system, obviously he's never been in prison  
18 before, never been arrested for anything.

19 In that case it went on to talk about the person's  
20 positive and caring nature, and you heard how he  
21 testified about how he was very respectful toward  
22 everybody, that's how he was raised by his family. He  
23 works very hard. So take all those factors in  
24 combination.

25 And then the defendant's inability to speak

1 English. You know, and having probably an ICE hold on  
2 him he's not going to be eligible for any work release  
3 programs, probably not going to be able to get any  
4 education credits because he just can't take the classes.

5           Hopefully maybe he will learn English and  
6 accomplish something like that but he's been here since  
7 2000 and hasn't picked up adequate English yet, so it's  
8 going to be very hard for him to. And that's probably  
9 going to lead to more prison abuse, and that is  
10 something I think the Court can and should consider in  
11 this type of case.

12           And second to last ground I have would be the  
13 federal courts also recognize that someone is deportable  
14 whether they are a resident alien or here illegally that  
15 if they sort of gave up any of their rights to contest  
16 any deportation hearings that that could be a ground for  
17 a departure. And I think, you know, Venancio certainly  
18 would do that and we could put that in writing.

19           And finally, the last case I would cite would be  
20 Justice Sotomayor, one of her first opinions from 2011,  
21 and Peppers vs. United States where basically she says  
22 the sentence fitting the defendant, not merely the crime.

23           And when you look at the defendant I think a time  
24 served sentence would fit him, quite honestly. He will  
25 be sent back to Mexico. He's not going to be any risk to

1 any further citizens of the United States. He'd be  
2 probably back working in the fields doing who knows what.

3 You know, he's probably going to be susceptible to  
4 abuse in Mexico. When you see reports on TV about drug  
5 cartels taking advantage of people and some stories about  
6 where they waited at deportation centers where people  
7 come from the United States and, you know, take advantage  
8 of them there one way or another. Going back to Mexico  
9 may be considered punishment in and of itself.

10 And not to minimize the facts of the case but I  
11 think one thing we don't know on the lewd act charges,  
12 you heard a wide variety of acts --

13 THE COURT: Let's don't get into arguing the facts  
14 of the case. Just tell me something about him and  
15 sentencing. You've been doing that. I don't want to get  
16 into the facts of the case. I heard the case. Okay?

17 MR. GRIMES: I understand, Your Honor. I'm not  
18 trying to get into the facts I just want to -- you know,  
19 it would be one thing if the jury found him guilty of  
20 flashing or an indecent exposure allegation as opposed to  
21 another one. So I think under Prinity (phonetic) vs. New  
22 Jersey about a specific finding on the record of what act  
23 it was I think the Court should assume the least serious  
24 of the acts.

25 THE COURT: You made that request on the charge and

1 I followed South Carolina law on that issue. Okay?

2 MR. GRIMES: Thank you, Your Honor. And yesterday  
3 we had several other people in court who are not here  
4 today. There's Pastor Carlos Valles, V-a-l-l-e-s. I'll  
5 probably mispronounce the name of his church, Iglesia,  
6 I-g-l-e-s-i-a, Bida, B-i-d-a, Nueva, N-u-e-v-a, and  
7 Venancio went sort of occasionally. He didn't go to  
8 church a lot but the pastor has been working with his  
9 wife. He's been there for help and they are very  
10 supportive. He's been, I think, seeing Venancio at the  
11 jail and trying to keep his -- keep up with his spirits.

12 His wife was here yesterday. She's been teaching  
13 Sunday school with *Minor 4* and *Minor 3*.

14 We also have Maria Sanchez in court today. She  
15 works at Northwoods Church, something they have, an Adopt  
16 a Street Program, and somehow they found out about  
17 Ms. Carmona's situation. Ms. Sanchez spoke Spanish, she  
18 had been working with them. She does not really know  
19 Venancio but she can address the impact that his absence  
20 has had on his children. We'd call her at this time to  
21 address those points.

22 MS. SANCHEZ: Yes, sir. My name is Maria Sanchez  
23 and I've know the family for over a year and a half now.  
24 And like he said I don't know --

25 THE COURT: You're going to have to speak up so the

1 court reporter can hear you, okay?

2 MS. SANCHEZ: Sorry. Like I said, I don't know him  
3 personally but I've seen his family suffer for the last  
4 -- for two years. And I just want to say -- (crying).

5 I'm sorry. It's already been hard but I just know  
6 it's going to be way harder now even though they know  
7 exactly where he is because before they knew where he was  
8 but they didn't know where he was going. So I know this  
9 is going to be a huge setback for them. And I mean, I  
10 know they have other family members supporting them but  
11 just seeing them without a dad is going to be really  
12 tough. So I'd just like to say that.

13 THE COURT: Thank you very much.

14 Anything from the State?

15 I'm sorry. You finished, Mr. Grimes?

16 MR. GRIMES: I don't believe so, Your Honor.

17 THE COURT: Pardon?

18 MR. GRIMES: May I have one moment?

19 THE COURT: Yes, sir.

20 (PAUSE.)

21 FEMALE LADY: (Spoke Spanish).

22 THE COURT: Can you tell me what she said, please.

23 INTERPRETER ALMEIDA: My name is Angelica Carmona.

24 I only want to request mercy from you. I want you to

25 look at his daughters and I want to ask you to give him

1 the least amount of time.

2 THE COURT: Tell her thank you very much.

3 Would you tell the defendant if there's anything he  
4 would like to say I'll be glad to hear it.

5 INTERPRETER ALMEIDA: No.

6 MR. GRIMES: Ms. Parnell would like to address the  
7 Court at this time, Your Honor.

8 THE COURT: Okay.

9 MS. PARNELL: If I may, Your Honor?

10 THE COURT: Yes, ma'am.

11 MS. PARNELL: I would just like to say that because  
12 of the language barrier that we were facing in this case  
13 that I've had a rare opportunity as the second chair in  
14 this case to spend a considerable amount of time working  
15 through the case, working with Mr. Diaz Perez, working  
16 with his family and in all of that time I've been able to  
17 hear his words directly from his mouth. I believe I've  
18 been able to get a sense and a meaning from them that  
19 sometimes gets lost in translation.

20 I just want to let the Court know I do believe that  
21 this is a man that has a great sense of respect for  
22 others, of courtesy for others, of kindness, a man that's  
23 good through and through, and this is all shown through  
24 in a time. It must have been probably the most difficult  
25 kind of time that any of us have ever experienced in our

1 lives.

2 I would also like to state that along with  
3 Mr. Grimes I respect very much the judgment of the Court,  
4 that I too would strongly disagree with that verdict but  
5 that I respect the judgment of the Court.

6 I do -- my genuine belief is that this is a man  
7 who truly lives by the motto that he expressed in court,  
8 that he has a great deal of respect for all people,  
9 whether they are older people, whether they are younger  
10 people. I would just ask the Court to consider, among  
11 other things, the manner in which he has conducted  
12 himself since the very day of his arrest to this moment.  
13 That he has shown a great deal of restraint, self  
14 control, kindness.

15 And I would also ask the Court to consider the lack  
16 of a criminal record that this man has. The fact that  
17 that Mr. Diaz Perez is an indisputably very hard worker  
18 and the motivations behind the work that he does. Every  
19 day has been the survival of his family and the  
20 opportunity to provide them with a better life.

21 I do believe that he has a beautiful family here  
22 today that is going to be wrecked by this and I would  
23 just ask that Your Honor keep that in consideration and  
24 spare them in any way that you deem appropriate.

25 THE COURT: Okay. Thank you very much.

1 I'll be glad to hear from the State or anyone you  
2 would like me to hear from.

3 MS. HERRING-LASH: Your Honor, I think Ms. Jimenez  
4 would like to address the Court.

5 MS. JIMENEZ: My full name is Alejandra Jimenez,  
6 A-l-e-j-a-n-d-r-a J-i-m-e-n-e-z. And for me as a mother  
7 discovering that my daughter was going through that  
8 nightmare has been a horrible time.

9 Since the very first day, during all this time that  
10 we have been for therapy, every single day that she came  
11 asking me why was she having these nightmares, I just  
12 have the deal with this feeling of failure for not being  
13 able to protect her, for not being able to see what was  
14 going on because I took her to that house every single  
15 time without knowing she was suffering from this man, and  
16 for that other girl that she went there because I told  
17 the mother.

18 This is something that I will have to deal with for  
19 the rest of my life. Now my daughter had to go through  
20 all this -- (crying). I just don't know how am I going  
21 to be able to deal with this -- (crying) -- deal with  
22 this situation for so long. I didn't know every single  
23 day she was at the mercy of this situation, and God knows  
24 what could have happened if I didn't stop it. (Crying).

25 I am just hoping that this will give her the

1 strength that she'll know that I believe her, that I  
2 support her that -- (crying).

3 THE COURT: Thank you so very much.

4 Yes, ma'am? Anything else, Solicitor?

5 MS. HERRING-LASH: Your Honor, I do not think that  
6 Minor2's family wants to address the Court.

7 To start off with, I would like to say that I think  
8 he is already getting an extreme advantage because I will  
9 dismiss the criminal sexual conduct in the first degree  
10 that involved sexual intercourse with Minor2 and the  
11 lewd act upon a minor just because I don't think that she  
12 has the capabilities of testifying about that through a  
13 whole nother trial.

14 And as far as the potential for advantage being  
15 taken of Mr. Perez, and as far as the potential of him  
16 being harmed, he has already taken advantage of very  
17 vulnerable young, young children. So we know that he has  
18 already done that. And I feel extremely sorry for his  
19 family but they are suffering because of his behavior,  
20 and he has put them in that situation.

21 The other thing, Your Honor, this lewd act was as  
22 far as lewd acts go a very series lewd act. It was  
23 inside of clothes and it was repetitive, and it involved  
24 a lot more as far as the ABHAND and the indecent  
25 liberties. He did this over, and over, and over to these

1 two young girls, and we would ask you to run these  
2 charges consecutive, as his behavior went on for an  
3 extended amount of time he had no mercy. He is asking  
4 this Court for mercy but he had no mercy when he was  
5 dealing with these young girls.

6 THE COURT: Okay. Do the parties agree the max  
7 sentence on the lewd act on a minor is 15 years? Is that  
8 the State's understanding and the defense understanding?

9 MS. HERRING-LASH: Yes, Your Honor.

10 MR. GRIMES: Yes, sir.

11 THE COURT: And the maximum of assault and battery  
12 high and aggravated is 10 years; is that correct?

13 MS. HERRING-LASH: Yes, sir.

14 MR. GRIMES: Yes, sir.

15 THE COURT: Okay. Thank you very much. Anything  
16 else?

17 MR. GRIMES: No, sir.

18 THE COURT: All right. Thank you very much.

19 All right. Mr. Perez, on the indictment 7731,  
20 that's the lewd act on a minor, you're sentenced to the  
21 State Department of Corrections for a period of 15 years.  
22 That's consecutive with the other indictment. I'll give  
23 you credit for jail time since July the 15th, 2010. You  
24 are to be placed on the central registry of child abuse  
25 and neglect.

1 Indictment number 7730, it's assault and battery  
2 with intent to kill [sic], sentenced to the State  
3 Department of Corrections for a period of 10 years.  
4 That's consecutive, give you credit since jail time from  
5 September [sic] 15th, 2010. Thank you so very much.

6 MS. HERRING-LASH: Thank you, Your Honor.

7 MR. GRIMES: Your Honor, one more matter. I  
8 normally don't bring this up but given the sentence we  
9 would object to it as being vindictive.

10 THE COURT: I'm sorry, what now?

11 MR. GRIMES: We object to the sentences being run  
12 consecutively as being vindictive and punishing Mr. Perez  
13 for going to trial. I think there were -- and this is  
14 where I'm a little reluctant to go into detail but we did  
15 have -- I think I have to, to preserve Mr. Perez's rights  
16 to make the record clear. We did have an in-chambers  
17 conference where we talked about potential pleas --

18 THE COURT: I didn't have an in-camera conference.  
19 I was talking to the two of you unofficially, off the  
20 record trying to work out a plea. Now, if you want to  
21 put that on the record I'll put that on the record.

22 I very clearly told you that if I was trying this  
23 case nonjury I would find him guilty of lewd act and high  
24 and aggravated. If you wanted to enter a plea I would do  
25 away with the high and aggravated and let him plead to

1 the lewd act and give you a range of 10 to 15.

2 MR. GRIMES: Yes, sir.

3 THE COURT: That's what I told you.

4 MR. GRIMES: Yes, sir.

5 THE COURT: Now, if you want to take exception to  
6 that, that's fine. That was an informal conference where  
7 I was trying to assist you and the solicitor in  
8 dismissing the case. Is that what you were doing?

9 MR. GRIMES: Yes, sir.

10 THE COURT: Because if it is it's the last time I  
11 will speak with you without a court reporter present.

12 MR. GRIMES: I apologize. But, yes, sir. I think  
13 I have to.

14 THE COURT: Pardon? It was not an in-camera  
15 hearing. I was trying facilitate the disposition of this  
16 case.

17 MR. GRIMES: I apologize if I mischaracterized a  
18 hearing. You are correct. It was unofficial. It was  
19 off the record, but that was what was said.

20 THE COURT: Pardon?

21 MR. GRIMES: That's an accurate summary of what was  
22 said.

23 THE COURT: Okay. Now, do you want to make a  
24 motion on that, what I put on the record?

25 MR. GRIMES: Yes, sir.

1 THE COURT: What's your motion?

2 MR. GRIMES: That running these sentences  
3 consecutively is punishing Mr. Perez for his right to go  
4 to trial.

5 THE COURT: Motion is denied. This Court is of the  
6 opinion that the little girl was abused. This Court is  
7 also of the opinion that there was penetration, digital  
8 penetration based upon her sworn testimony. The jury has  
9 found her not guilty.

10 The Court's of the opinion he's guilty of all the  
11 charges from the testimony I've heard. So it's not any  
12 abuse in giving him the consecutive. You understand?

13 MR. GRIMES: Yes, sir.

14 THE COURT: All right. Motion denied. Anything  
15 else?

16 MR. GRIMES: No, sir.

17 THE COURT: Thank you very much.

18 You all may be excused to the jury room.

19 (WHEREUPON, the jury leaves the courtroom, and the  
20 trial of the case was concluded.)

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## C E R T I F I C A T E

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I, Sharon L. Vizer, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned case in Circuit Court on the 14th through the 18th of January 2013.

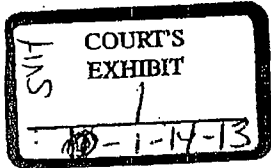
I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

August 6, 2013



SHARON L. VIZER

CIRCUIT COURT REPORTER



# State v Venancio Perez 404 (b) Chart

Description	Minor 1	Minor 2
Age	8-9	8
Gender	Female	Female
Relationship to Defendant	Babysitter's Husband	Babysitter's Husband
Time	Various Times of Day	Various Times of Day
Place	Defendant's Home	Defendant's Home
Sex Acts	Fondling/Digital	Fondling/Sexual Intercourse
Primary Care Giver	Defendant's Wife	Defendant's Wife
Timeframe	March 1, 2010 July 10, 2010	May 1, 2010 July 1, 2010
Friends	With Defendant's Daughter	With Defendant's Daughter
Fondling	On Top & Under Clothes	On Top & Under Clothes



North Charleston Police Department  
Report of Photographic Lineup

OCA #: 2010029513 Date: 7-15-10  
2010029614

Time: 1105 Location 2500 City Hall Lane

Investigating Officer: Det. Lacher

Identifying Witness (name & DOB) Minor1

minor1 I am going to show you a series of photographs of individuals or an array of six photographs of individuals (circle appropriate one).

minor1 These photographs may or may not be the person who committed the crime. It is just as important to clear innocent people as it is to identify possible suspects. Whether or not you identify someone, the police will continue to investigate.

minor1 After you are done, I will not be able to provide you with any feedback or comment on the results of the process.

minor1 4. Do not discuss this identification procedure or the results with other witnesses in this case.

minor1 Focus on the event: the place, view, lighting, your frame of mind, etc. Take as much time as you need.

minor1 People may not appear exactly as they did at the time of the event, because features such as clothing style, hair color, hair style, etc. may change, even in a short period of time.

minor1 1. As you look at the photographs, tell me if you recognize the person in them. If you do, please tell me how you know the person, and in your own words, how sure you are of the identification.

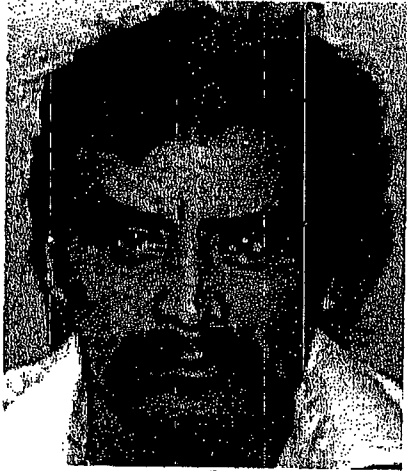
Witness Identification Statements

Identification Made: Yes  No

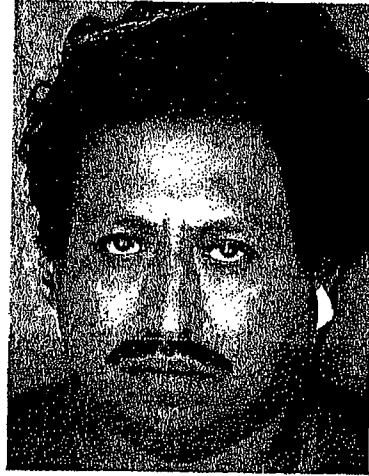
I'm pretty sure its him (#3). He is the father of minor3 and minor4. He is the babysitters husband. I am 9 on the scale of 1 to 10 that it is him.

Mundlossen  
Independent Administrator's Signature

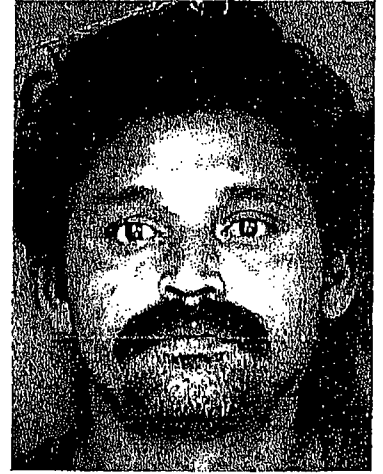
Minor1  
Witness Signature



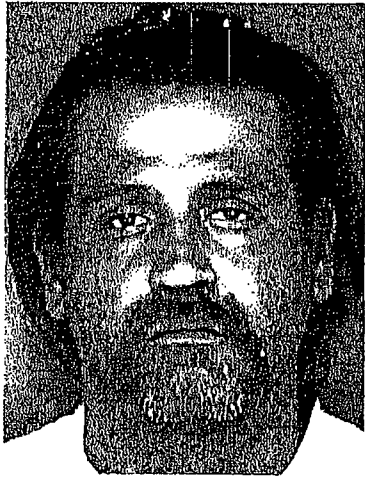
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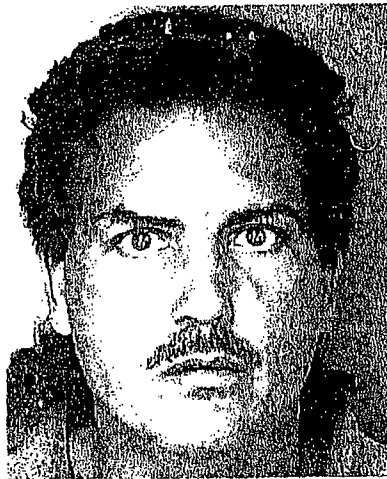
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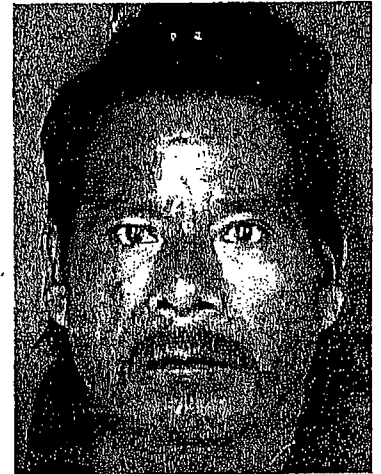
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CERTIFICATE OF COUNSEL FOR APPELLANT

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

6<sup>th</sup> of June, 2014



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