

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Edward W. Miller, Circuit Court Judge
Appellate Case Tracking No. 2017-000890

RECEIVED
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SC Court of Appeals

State of South Carolina,

Appellant,

vs.

Jason Skylar Israel Pogue,

Respondent.

RECORD ON APPEAL

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

ROBERT M. DUDEK, ESQUIRE

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1343

ATTORNEY FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) GENERAL SESSIONS
3 COUNTY OF GREENVILLE) OF THE THIRTEENTH
4) JUDICIAL CIRCUIT
5)
6)
7 THE STATE,)
8)
9 Plaintiff,) TRANSCRIPT OF RECORD
10) 2017-GS-23-02432
11 vs.) 2017-GS-23-02433(a)
12) 2017-GS-23-02434(a)
13 JASON SKYLAR ISRAEL POGUE,) 2017-GS-23-02435(a)
14 Defendant.) 2017-GS-23-02436(a)
15) 2017-GS-23-02437(a)

10 April 6, 2017
11 Greenville, South Carolina

13 B E F O R E:
14
15 HONORABLE EDWARD W. MILLER, Judge.

21 Julie A. Ashbrook,
22 Circuit Court Reporter
23 Seventh Judicial Circuit
24
25

1 A P P E A R A N C E S:

2 RYAN HOLLOWAY, ASSISTANT SOLICITOR
3 For Plaintiff

4 R. KYLE SENN, ATTORNEY GENERAL
5 For Plaintiff

6 DOROTHY MANIGAULT, ESQUIRE
7 For Defendant Pogue

8 THOMAS ADDUCCI, ESQUIRE
9 For Defendant Jefferson

10 JOHN FOWLER, ESQUIRE
11 For Defendant McCall

12 CHARLES PROPST, ESQUIRE
13 For Defendant Henderson

14 SYMMES CULBERTSON, ESQUIRE
15 For Defendant Jenkins

16 Also Present: James Cutler
17 Jacqueline Cutler
18 Pastor Jonathan Crosby
19
20
21
22
23
24
25

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EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED

CITING OF INDICTMENTS

1 THE STATE VERSUS JASON SKYLAR ISRAEL POGUE

2 THE CLERK: Your Honor, this is Indictment
3 2017-GS-23-02432, Jason Skylar Israel Pogue, indicted
4 for Sexual Exploitation of a Minor Second Degree,
5 pleading to the same. It is a waiver.

6 And 2017-GS-23-02433(a), indicted for Sexual
7 Exploitation of a Minor Third Degree, pleading to the
8 same. It is a waiver.

9 2017-GS-23-02434(a), indicted for Sexual
10 Exploitation of a Minor Third Degree, pleading to the
11 same. It is a waiver.

12 2017-GS-23-02435(a), indicted for Sexual
13 Exploitation of a Minor Third Degree, pleading to the
14 same. It is a waiver.

15 2017-GS-23-02436(a), indicted for Sexual
16 Exploitation of a Minor Third Degree, pleading to the
17 same. It is a waiver.

18 2017-GS-23-02437(a), indicted for Sexual
19 Exploitation of a Minor Third Degree, pleading to the
20 same. It is a waiver.

21 2016-GS-23-09822, Sterling Franklin Jefferson,
22 indicted for Malicious Damage to Personal Property,
23 pleading to the same. It is a waiver.

24 2015-GS-23-00252, Jonathan Gregory McCall,
25 indicted for Assault and Battery First Degree, pleading

1 to the same. It is a true bill.

2 2015-GS-23-08426, Robert Henderson, indicted for
3 Domestic Violence First Degree, pleading to Domestic
4 Violence Third Degree. It is a waiver.

5 2016-GS-23-11849, indicted for Domestic Violence
6 of a High and Aggravated Nature, pleading to Domestic
7 Violence First Degree. It is a waiver.

8 2015-GS-23-02081, Martin M. Jenkins, indicted for
9 Obtaining Goods Under False Pretenses, pleading to the
10 same. It is a true bill and there is an order of
11 restitution.

12 Please raise your right hands. (All comply.)

13 Do you swear or affirm to tell the truth, the
14 whole truth and nothing but the truth so help you God?
15 Please answer one at a time.

16 DEFENDANT POGUE: Yes, ma'am.

17 DEFENDANT JEFFERSON: I do.

18 DEFENDANT MCCALL: Yes, ma'am.

19 DEFENDANT HENDERSON: Yes, ma'am.

20 DEFENDANT JENKINS: I do.

21 WHEREUPON,

22 JASON SKYLAR POGUE

23 STERLING FRANKLIN JEFFERSON

24 JONATHAN GREGORY MCCALL

25 ROBERT MARSHALL HENDERSON

1 THE COURT: Oh, the solicitor's office is trying
2 to double up on their money.

3 MR. HOLLOWAY: I will have -- I will speak to
4 that person.

5 THE COURT: All right. In the last 24 hours have
6 you had any drugs or alcohol or medication? Pogue?

7 DEFENDANT POGUE: Yes.

8 THE COURT: What?

9 DEFENDANT POGUE: I had an extra strength Tylenol
10 this morning.

11 THE COURT: Okay. Jefferson?

12 DEFENDANT JEFFERSON: No, sir.

13 THE COURT: McCall?

14 DEFENDANT MCCALL: (Shakes head back and forth.)

15 THE COURT: No?

16 MR. ADDUCCI: Medicine?

17 DEFENDANT MCCALL: This morning.

18 THE COURT: What did you have?

19 DEFENDANT MCCALL: I had a stool softener, fish
20 oil. It's doctor prescribed.

21 THE COURT: Okay. Well in the last three days
22 have you had the right amount?

23 DEFENDANT MCCALL: (Nods head up and down.)

24 THE COURT: You have to speak.

25 DEFENDANT MCCALL: Yes, sir.

1 THE COURT: Does it limit your ability to
2 understand what you're doing?

3 DEFENDANT MCCALL: (Shakes head back and forth.)

4 MR. ADDUCCI: You have to speak up loud.

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. All right, how about you
7 Henderson?

8 DEFENDANT HENDERSON: Yes, sir. I had an
9 OxyContin and Wellbutrin. They're the mental health
10 medications that I get daily. Yes, sir, I can function
11 properly.

12 THE COURT: Okay. How about you Jenkins?

13 MR. CULBERTSON: He had Depakote last night
14 pursuant to prescription.

15 THE COURT: Well, all right. Does it limit your
16 ability to understand what's going on?

17 DEFENDANT JENKINS: No, sir.

18 THE COURT: All right. Have you ever been
19 treated for substance abuse or mental illness? Pogue?

20 DEFENDANT POGUE: Yes, Your Honor.

21 THE COURT: What?

22 DEFENDANT POGUE: I've been treated for sexual
23 addiction by a Dr. Bodtorf. And I've been going to his
24 sessions for a long time now and I have one more
25 session.

1 THE COURT: All right. Any competency issues,
2 counsel?

3 MS. MANIGAULT: None, Your Honor.

4 THE COURT: How about you Jefferson?

5 DEFENDANT JEFFERSON: Yes, sir.

6 THE COURT: What?

7 DEFENDANT JEFFERSON: Drugs and alcohol.

8 THE COURT: When was that?

9 DEFENDANT JEFFERSON: That was in 2014.

10 THE COURT: Well, are you good to go today?

11 DEFENDANT JEFFERSON: Yes, sir.

12 THE COURT: McCall, who treats you?

13 MR. ADDUCCI: Your Honor, he is in the care and
14 custody of DESN. He is currently at -- what's the name
15 of the facility? Correct Care in Columbia. I do have a
16 copy of his competency eval., if the Court would like to
17 review that.

18 THE COURT: Yeah.

19 MR. ADDUCCI: It does have his mental health
20 history. If I could approach.

21 THE COURT: Yeah, give it to Lisa. This is
22 interesting. He's been a consumer of the South Carolina
23 Department of Disabilities and Special Needs. So a
24 consumer. A patient?

25 MR. ADDUCCI: Correct.

1 THE COURT: Okay. All right. How about
2 Henderson, did you have any treatment?

3 DEFENDANT HENDERSON: Yes, sir. I was in the
4 ATU program in 2006. And I successfully attended and
5 completed it. And I was under the program in 2008.

6 THE COURT: Okay. What about your mental health
7 counseling?

8 DEFENDANT HENDERSON: I was doing mental health
9 counseling through the Greenville County Detention
10 Center. Dr. Martin is my doctor. And he prescribed my
11 medication for mental health for depression and anxiety.

12 THE COURT: Okay. How about you Jenkins?

13 DEFENDANT JENKINS: I take medicine from the VA
14 for PTSD.

15 THE COURT: Okay. Any competency issues?

16 MR. CULBERTSON: No, sir, I don't believe so.

17 THE COURT: All right. Pogue, Jefferson,
18 Henderson, you each have an indictment that has not been
19 presented to the grand jury. You have an absolute right
20 to require the State present those cases to the grand
21 jury. They would have to prove more probably than not a
22 crime was committed and you did it. Do you want to give
23 that right up which would let you go forward today?
24 Pogue?

25 DEFENDANT POGUE: Yes, Your Honor.

1 THE COURT: Jefferson?

2 DEFENDANT JEFFERSON: Yes, sir.

3 THE COURT: Henderson?

4 DEFENDANT HENDERSON: Yes, sir.

5 THE COURT: All right. Pogue, your first one
6 alleges you did in Greenville County August 19, 2015,
7 willfully and knowingly commit the crime of sexual
8 exploitation of a minor third degree. You knew the
9 content and the character of the material, possessed
10 material, contained a visual representation of a minor
11 engaging in a sexual activity or in a state of sexually
12 explicit nudity.

13 What does this carry?

14 MR. SENN: Two to ten, if that's the second
15 degree, Judge.

16 THE COURT: That's a third.

17 MR. SENN: Third degree. Third degree is zero to
18 ten and one second degree charge is two to ten.

19 THE COURT: All right. Up to ten, you
20 understand?

21 DEFENDANT POGUE: Yes, sir.

22 THE COURT: The next one alleges you did August
23 19th, 2015, engage in sexual exploitation of a minor
24 third degree, same conduct involving baby four-year-old,
25 New, and that's ten years. Do you understand?

1 DEFENDANT POGUE: Just to clarify, the rep arrest
2 date is that date and not the actual the find that the
3 detective found.

4 THE COURT: Well, what I'm telling you now is
5 what's alleged in the indictment.

6 DEFENDANT POGUE: Uh-huh.

7 THE COURT: Okay?

8 DEFENDANT POGUE: Okay.

9 THE COURT: I'll just read it to you. This
10 indictment alleges you did August 19th, 2015, knowingly
11 -- or willfully and knowingly commit the crime of sexual
12 exploitation of a minor third degree. Okay? You did,
13 while knowing the character or content of the material
14 did possess material that contains a visual
15 representation of a minor engaging in sexual activity or
16 a minor appearing in a state of sexually explicit nudity
17 when a reasonable person would infer the purpose in
18 sexual stimulation in the file titled (pthc) Come On
19 Baby Four Year Old New Complete av.avi, at your
20 residence in Greenville County in violation of the law.
21 It carries up to ten years. Do you understand?

22 DEFENDANT POGUE: Yes, sir.

23 THE COURT: Next indictment alleges you did,
24 August 19, 2015, engage in the same conduct involving
25 file titled: (Hussyfan) (pthc) -K-K New five-year-old Rca

1 *(Marissa)- A Young Girl Lolita Pedo Fuck Brother.avi.*

2 Ten years, do you understand?

3 DEFENDANT POGUE: Yes, sir.

4 THE COURT: Next one alleges you did Greenville
5 County August 19th, 2015, engage in the same conduct
6 with a file titled: *Pthc Lolifuck O -- Opva, O-P-V-A,*
7 *horny seven-year-old Makes Herself Cum With a Marker*
8 *Pen. Hot stuff. Ten years, do you understand?*

9 DEFENDANT POGUE: Yes, sir.

10 THE COURT: Next one alleges you did, Greenville
11 County August 19, 2015, engage in the same conduct with
12 a file entitled: *Pthc 2010_10-year-old Norma New May*
13 *Cum In Face.avi. Ten years, do you understand?*

14 DEFENDANT POGUE: Yes, sir.

15 THE COURT: And the last one alleges you did
16 Greenville County March 11th, 2015, willfully and
17 knowingly commit the crime of sexual exploitation of a
18 minor second degree. That is, you knowingly
19 distributed, transported, exhibited, received, sold,
20 purchased, exchanged or solicited material from a video
21 file entitled: *Pthc_ptscjenny_9year-old-daughter Asking*
22 *For Come New.avi. This carries two to ten years. Do*
23 you understand?

24 DEFENDANT POGUE: Yes, sir.

25 THE COURT: All right. Jefferson, your

1 indictment alleges you did August 8th, 2016, Greenville
2 County, maliciously touch, touch, shoot, maim, wound or
3 destroy personal property of Sage Price, an '06 Nissan
4 Altima. It carries up to ten. Do you understand?

5 DEFENDANT POGUE: Yes, sir.

6 THE COURT: McCall, yours alleges you did
7 Greenville County November 22, 2014, injure or offer to
8 injure David Moore with the present ability to commit
9 the act of assault and battery in the first degree. It
10 carries up to ten years. Do you understand?

11 DEFENDANT MCCALL: (Nods head up and down.)

12 MR. ADDUCCI: Speak up loud.

13 DEFENDANT MCCALL: Yes, sir.

14 THE COURT: Okay. Henderson, yours alleges that
15 you did, Greenville County, November 1, 2016, cause
16 physical harm to Matilda Martinez, a household member.
17 Tendering a plea to a ten-year CDV. Do you understand?

18 DEFENDANT HENDERSON: Yes, sir, I do.

19 THE COURT: All right. And the next one alleges
20 you did, Greenville County August 6th, 2015, cause
21 physical harm to Matilda Martinez. Tendering a plea to
22 a 90-day CDV. Do you understand?

23 DEFENDANT HENDERSON: Yes, sir, I do.

24 THE COURT: All right. Jenkins, yours alleges
25 you did, in Greenville County, between 1 December and 23

1 December, 2014, with the intent to cheat and defraud the
2 victim Labor Smart to get U.S. currency, you by means of
3 false presentations and representations, you turned in
4 false time cards. That carries up to five years. Do
5 you understand?

6 DEFENDANT JENKINS: Yes, sir.

7 THE COURT: All right. How do you want to plead?
8 Pogue?

9 DEFENDANT POGUE: Guilty.

10 THE COURT: Jefferson?

11 DEFENDANT JEFFERSON: Guilty.

12 THE COURT: McCall?

13 DEFENDANT MCCALL: Guilty.

14 THE COURT: Henderson?

15 DEFENDANT HENDERSON: Guilty, sir.

16 THE COURT: Jenkins?

17 DEFENDANT JENKINS: Guilty.

18 THE COURT: Is that your free and voluntary
19 decision? Pogue?

20 DEFENDANT POGUE: Yes, sir.

21 THE COURT: Jefferson?

22 DEFENDANT JEFFERSON: Yes.

23 THE COURT: McCall?

24 DEFENDANT MCCALL: Yes.

25 THE COURT: Henderson?

1 DEFENDANT HENDERSON: Yes, sir.

2 THE COURT: Jenkins?

3 DEFENDANT JENKINS: Yes, sir.

4 THE COURT: Do you understand all of your rights
5 at a trial by jury? Pogue?

6 DEFENDANT POGUE: Yes, Your Honor.

7 THE COURT: Jefferson?

8 DEFENDANT JEFFERSON: Yes.

9 THE COURT: McCall?

10 DEFENDANT MCCALL: Yes.

11 THE COURT: Henderson?

12 DEFENDANT HENDERSON: Yes, sir.

13 THE COURT: Jenkins?

14 DEFENDANT JENKINS: Yes, sir.

15 THE COURT: Are you guilty? Pogue?

16 DEFENDANT POGUE: Yes, sir.

17 THE COURT: Jefferson?

18 DEFENDANT JEFFERSON: Yes.

19 THE COURT: McCall?

20 DEFENDANT MCCALL: Yes, sir.

21 THE COURT: Henderson?

22 DEFENDANT HENDERSON: Yes, sir.

23 THE COURT: Jenkins?

24 DEFENDANT JENKINS: Yes, sir.

25 THE COURT: Are you satisfied with your lawyer?

1 Pogue?

2 DEFENDANT POGUE: Yes, sir.

3 THE COURT: Jefferson?

4 DEFENDANT JEFFERSON: Yes, sir.

5 THE COURT: McCall?

6 DEFENDANT MCCALL: Yes, sir.

7 THE COURT: Henderson?

8 DEFENDANT HENDERSON: Yes, sir.

9 THE COURT: Jenkins?

10 DEFENDANT JENKINS: Yes, sir.

11 THE COURT: Do you know what the evidence is the
12 State has against you? Pogue?

13 DEFENDANT POGUE: Yes, sir.

14 THE COURT: Jefferson?

15 DEFENDANT JEFFERSON: Yes.

16 THE COURT: McCall?

17 DEFENDANT MCCALL: Yes, sir.

18 THE COURT: Henderson?

19 DEFENDANT HENDERSON: Yes, sir.

20 THE COURT: Jenkins?

21 DEFENDANT JENKINS: Yes, sir.

22 THE COURT: Okay. Tell me about it.

23 MR. SENN: May it please the Court?

24 THE COURT: Yes.

25 MR. SENN: On March 11th, 2015, Detective Kevin

1 Murphy with the Berkley County Sheriff's office
2 conducted an investigation of the use of file sharing
3 programs on the internet being used for the possession
4 and distribution of files of children being sexually
5 abused. He found one user sharing files of child
6 pornography and this user sent in two files. These
7 files are video files and they include prepubescent
8 female children as young as what appears to be seven
9 years of age being orally and vaginally raped.

10 After retaining subscriber information for this
11 user, Detective Murphy was able to identify the
12 defendant's residence in Greenville County as a location
13 where the child pornography was being sent from. And
14 this case was then referred to Detective Misty Ross with
15 the Laurens Police Department.

16 A search warrant was executed at the defendant's
17 residence on August 19th, 2015, and pure related items
18 were seized. At that time the defendant admitted to
19 using file sharing programs to download child
20 pornography. He also said he has searched for files of
21 children as young as four years of age using search
22 terms such as underage and PTHC. He also admitted to
23 downloading these types of files for many years.

24 After a forensic examination of the seized
25 computer equipment, it appears there are 50 sexually

1 explicit videos of children were found, along with
2 dozens of sexually explicit still in his files of
3 children. These files include children as young as four
4 years old being vaginally and orally raped.

5 Judge, the defendant doesn't have a record. The
6 State has a recommendation without comment at the
7 appropriate time.

8 THE COURT: All right. True?

9 DEFENDANT POGUE: Yes. Yes, all except the
10 sharing, the second-degree charge. No, you know, I do
11 not -- I just want to add the stipulation that I did not
12 do that on purpose. I do not try to share anything. I
13 did consume those images. I did download those images
14 for personal viewing. And I definitely, I know it's
15 very wrong and I hate it and it's disgusting, but I do
16 not purposely share anything.

17 The file sharing program that I used, you can't
18 disable sharing on it. And that's on their website that
19 you cannot do that. Even when you turn it off it does
20 not turn it off. So that's just -- I just wanted to add
21 that. I'm not saying I'm not guilty. I'm very guilty,
22 but I never shared anything on purpose.

23 THE COURT: All right.

24 MR. SENN: And, Judge, there are, you know, in
25 the statute and under the indictment it also has solicit

STATEMENT OF DEFENSE BY MS. MANIGAULT

1 and receive. I know it's also ---

2 THE COURT: Okay. All right. And what's the
3 recommendation?

4 MR. SENN: Judge, due to the concerned material
5 involving children as young as four years old being
6 sexual assaulted, the defendant made these files
7 available setting them out on the internet, whether
8 purposefully or not, and the fact the defendant did
9 purposefully seek these files out for many years, the
10 State believes the recommendation of six years and a
11 jail sentence is appropriate.

12 MS. MANIGAULT: Your Honor, we rejected that
13 recommendation from this solicitor and from this AG and
14 the previous AG.

15 THE COURT: Okay.

16 MS. MANIGAULT: And told them what we would ask
17 for.

18 THE COURT: Okay. Go ahead. Tell me what you
19 want.

20 MS. MANIGAULT: Your Honor, I would like to hand
21 up to the Court a portfolio from Dr. Karl Bodtorf,
22 B-O-D-T-O-R-F. Do you want me to go ahead?

23 THE COURT: Yeah.

24 MS. MANIGAULT: Okay. Dr. Bodtorf did a psycho
25 -- psychosexual, psychosexual focus evaluation of Jason

1 Pogue in May 16, 2016. And I provided the Court with a
2 copy of that, that evaluation. And in the conclusion,
3 which is on the last two pages of that evaluation,
4 doctor said it is clear that his attraction to such
5 material is ego-dystonic. That is to say, dystonic with
6 the person that he wishes to be, the ideal self image.
7 It does lay the framework for understanding how he may
8 have an interest in such material.

9 He's talking about my client had told him that he
10 was sexually abused as a child by his biological father.
11 He goes on to say: (Reading.) He does acknowledge
12 having had some issues with loneliness. And adult
13 information would suggest that Jason has experienced
14 difficulties in the development of healthy male/female
15 relationship and has retreated to a fantasy life
16 involving prepubescent females. The fact that this has
17 occurred is not surprising given his overall
18 personality.

19 Psychological testing fails to suggest the
20 presence of any significant psychological disturbance,
21 such as bizarre ideation, delusion or hallucinations.
22 There are no indicators to suggest the presence of a
23 personality disorder antisocial and paranoid or
24 narcissistic. (Ends reading.)

25 Your Honor, to summarize what the doctor says

STATEMENT OF DEFENSE BY MS. MANIGAULT

1 that he would include -- he would not be inclined to
2 describe Jason as a classic pedophile. There is a
3 significant difference between classic pedophiles who
4 utilize computers as a means of assessing and
5 communicating and grooming potential victims.

6 Dr. Bodtorf is saying that that was not Jason's
7 aim when he downloaded these materials. His aim was
8 sexual fantasy. That he was not actively recruiting any
9 young child he was viewing, viewing the material, which
10 he, himself, has described as disgusting.

11 Your Honor, he says that the majority of
12 individuals participating in the group that Jason is
13 participating with Dr. Bodtorf have computer related
14 violations of child pornography. Upon successful
15 completion of probation and a sexual offender, specific
16 counseling, Jason's risk to the community would be
17 expected to be in the low risk range.

18 On February the 22nd, 2017, preparing for court,
19 Dr. Bodtorf sent me an update of Jason's progress. At
20 that time he had completed 19 of the 24 classes of the
21 required. As of today Jason has completed 23 of the 24
22 classes and has only had one class left.

23 I would ask the Court, I'm putting this out here
24 first, that if the Court would consider a home
25 incarceration program. Jason has been out of detention.

STATEMENT OF DEFENSE BY MS. MANIGAULT

1 He stayed in for two days. He has been out since August
2 of 2015. He has a good family support system and a good
3 friendship support system.

4 He has three couples here with him today. He has
5 his sister and her husband, Ryan Hudson. He has --
6 Sarah. Ryan was here for the other two court
7 appearances. And Pastor Crosby. We've had -- we've
8 been here several times before and it just didn't get
9 reached.

10 But, Your Honor, I'm asking the Court if you will
11 consider a HIP sentence. Jason is 33 years old. He was
12 a web developer, developing web sites. He has no access
13 to computers in his sister's. He lives with his sister
14 and her husband now, essentially on full house arrest by
15 Pastor Crosby and others that were trying to be a
16 support for him. They allow him no access to a
17 computer. So any time he has to use a computer he asks
18 to get a ride to the county library to use their system
19 to continue to build web sites for other people.

20 He has health issues himself. He has ulcers on
21 his legs and open sores for about 12 years. He takes
22 minimal medication for that. He walks with a noticeable
23 limp. He is in fear of losing his toes, if not his
24 entire foot.

25 Your Honor, with that, I'm going to stop and ask

1 the Court to allow these individuals to speak briefly on
2 his behalf.

3 THE COURT: All right.

4 MS. MANIGAULT: Please give your name and speak
5 loud.

6 MR. CUTLER: My name is James Cutler and I'm a
7 father of eight children. I've got three grandchildren.
8 I've known Jason since 2007. And I'd ask, Your Honor,
9 that Jason needs help, not prison. And the reason I say
10 that, though I love law and order and I'm thankful for
11 this Court, I agree with him that it's a disgusting
12 crime that he did and I've seen his shame in that. And
13 I'm ashamed of him as a father would be ashamed of his
14 son.

15 But I'm a very protective father, Your Honor,
16 with my eight children and my three grandchildren.
17 Jason has been around my family since 2007. He has
18 never given any indication of being a threat to my
19 children, otherwise he wouldn't be around my family.

20 Jason has shown good faith since August,
21 submitting to the intense oversight that the public
22 defender just described to be imposed on him and he's
23 done so willingly. He's also applied, Your Honor, for
24 the Miracle Hill program for in June of 2016 (sic),
25 which I believe will help him to become a -- get the

STATEMENT OF JACQUELINE CUTLER

1 life skills that he needs to become a productive citizen
2 and avoid some of the seclusion that he is prone to in
3 his personality.

4 I'd just ask Your Honor not to belabor it too.
5 Jason needs help and I think a Miracle Hill program
6 would give him the help that he needs so that he doesn't
7 need to be incarcerated. Thank you.

8 THE COURT: All right.

9 MS. CUTLER: Your Honor, I would respectfully --
10 oh, my name is Jacqueline Cutler. I would respectfully
11 like to ask that you consider Jason for the house
12 arrest, as well as admittance to the Miracle Hill
13 Overcomers program as part of that sentencing because
14 Jason needs help. I don't believe he would benefit from
15 jail. He would be no better off as soon as he got out
16 than when he went in.

17 The Miracle Hill program, however, would benefit
18 him in many ways. It would help him to reform and be
19 better suited to transition back into society as a
20 productive member. They include such things as inner
21 healing from destructive thought patterns, healthy
22 living and relationships, and training and planning and
23 life skills that will help him achieve employment and
24 transition back into society.

25 The Overcomers is a strict program that starts at

STATEMENT OF JACQUELINE CUTLER

1 5:30 each morning, including chores and housekeeping,
2 laundry, classes and counseling and a strict schedule
3 that keeps him actively engaged until 10 p.m. each day.
4 Good behavior, attitude and personal hygiene are
5 stressed in the program. And it would help him conquer
6 his addiction, help him with life skills that he lacks.
7 And help him to improve all areas of his life, including
8 spiritual growth.

9 I've known Jason for ten years. He's lived on my
10 property. He interacted with my eight children, age 26
11 down to six years old. He's attended church regularly,
12 including prayer meetings and other voluntary meetings.
13 Never once has there been an issue with him and one of
14 our children, not even a hint.

15 He's attended family events at my home, including
16 Thanksgiving dinner, including the Thanksgiving dinner
17 after he was arrested in August of 2015. I do not
18 believe Jason is a threat to people, but that he needs
19 help. Help that he could receive in the Miracle Hill
20 Overcomer program. Thank you for your time and for
21 hearing what I have to say and your consideration.

22 THE COURT: All right.

23 MR. CROSBY: Your Honor, my name is Jonathan
24 Crosby. I've been a campus pastor here in Greenville
25 County for 33 years. Since the others have given their

STATEMENT OF PASTOR JONATHAN CROSBY

1 statistics, I have seven children and 18 grandchildren
2 and 100 children in my care in the Church of Greenville.
3 I've known Jason 13 years. Baptized him eight years ago
4 and have been his resident pastor the last three.

5 Your Honor, I'm asking if you would consider the
6 house arrest program at Miracle Hill in their Overcomers
7 addiction program. Jason knows, and we totally agree,
8 that he had the egregious, criminal and sinful content
9 in his possession in August of 2015. He's confessed his
10 fault and this repulsive stuff to me and others several
11 times.

12 He never made excuses. There is no excuse. But
13 please consider the related events in your paperwork
14 that he suffered as a young child by his father, who
15 should have been his protector and friend.

16 For 20 months since his arrest Jason has
17 submitted to accountability partners, me included,
18 attended all church services, been transparent to bold
19 questions, and has been free from illegal content.
20 During these 20 months of legal freedom he agreed to
21 house arrest with his married sister without access to
22 an unmonitored computer or to a cellphone with internet.

23 These are all church members that are connected
24 to him today and speaking to you. He's been accountable
25 for his activities and time. Jason is no danger to

STATEMENT OF PASTOR JONATHAN CROSBY

1 society. In all the years those present observed him
2 around our children, grandchildren and church children,
3 there has never even been a questionable inclination or
4 situation that would cause us any concern at all.

5 Your Honor, his personality, fearful, gentle,
6 timid, weak, is not suitable for prison. His internal
7 conflicts need to be dealt with. Rather than
8 rehabilitate or reform him, prison could harm him. The
9 excellent Overcomers program at Miracle Hill Ministries
10 has accepted him for immediate entrance into their
11 program with your approval of HIP. We believe a
12 faith-base structure and continued counseling there will
13 truly help Jason start a new life free from his past
14 bondage.

15 Your Honor, I beg you to consider these reasons
16 why our state and Jason could be best served by HIP.
17 Thank you, Your Honor, for your time.

18 THE COURT: All right.

19 MS. MANIGAULT: Your Honor, I provided a copy of
20 the acceptance letter from Miracle Hill for the Court to
21 review in the packet that I presented. And I also
22 provided a copy of everything to the Attorney General's
23 office. Again, Your Honor, we'd ask the Court to
24 consider a HIP sentence in this case.

25 THE COURT: Anything you want to tell me?

STATEMENT OF PASTOR JONATHAN CROSBY

1 DEFENDANT POGUE: I hate what I've done. I do.
2 And as many have already said, you know, I don't think
3 going to prison with people who aren't -- don't want to
4 get rid of that stuff, don't want to not be around that
5 stuff is gonna help me. I don't want to be around it.
6 I don't want to be anywhere near it.

7 I know I have many issues I'm still going through
8 with the doctor and I have one more session on there.
9 But what I did was horrible looking at those images, but
10 I never hurt anyone, never touched anyone.

11 I don't want to make excuses. I just want to
12 clarify that what I did was wicked and horrible in
13 viewing those perverted images over those many years
14 was, was terrible, but I'm not -- like others have said,
15 I've not done anything to anyone and I don't, I don't
16 think that being in prison would help me at all.

17 Getting help at the Miracle Hill program and
18 being with -- having that structure and having that life
19 there I believe would help me a lot. Yes, sir, and
20 those sessions with Dr. Bodtorf have done very well,
21 helped me understanding a lot of things and about just
22 my relationships and how to interact with other people
23 and how to avoid looking at pornography.

24 I mean, I haven't -- like, I don't have any
25 access, like private access to the internet. I'm a web

1 developer. I've been a web a developer. I got my
2 associates in web design, so I went in and started doing
3 development. And that's what I do. And I do that only
4 by monitored access at the library or at my sister's
5 house.

6 THE COURT: All right. Ten years provided upon
7 four years HIP, five years of probation. Random drug
8 and alcohol testing, sex offender counseling, no
9 unsupervised contact with minors, inpatient at
10 Overcomers. \$500 public defender fund. Ten suspended
11 -- ten consecutive, suspended during probation and ten
12 on all the rest of it, concurrent, suspended during
13 probation.

14 You don't have a prior record. We'll see if you
15 can deal with it. If not you're going to prison. Good
16 luck.

17 MR. SENN: Judge. All right, Judge, the State
18 would argue against the home incarceration program. If
19 it's the second-degree charge is not actually valid for
20 that program.

21 THE COURT: Okay. Well, if you feel it's wrong,
22 you take whatever legal action you need to do, but I
23 just ruled. Okay?

24 MR. SENN: I understand, Judge. The State
25 extends their feelings. I just want to make sure to

1 protect this.

2 THE COURT: Well, thank you for putting that on
3 the record. Have a safe trip back to Columbia.

4 (Whereupon, hearing as to Defendant Pogue
5 concluded at 12:56 p.m.)

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7 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

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3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings and evidence introduced
8 in the hearing and/or trial of the captioned case,
9 relative to appeal, in the Court of General Sessions for
10 Greenville County, South Carolina, on the 6th day of
11 April, 2017.

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

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s/ Julie A. Ashbrook.
Julie A. Ashbrook
Circuit Court Reporter
Seventh Judicial Circuit

34

WITNESSES

Detective Misti Ross – Mauldin Police Department

ARREST WARRANT NUMBER

2015A2320300257

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 201⁷GS-23-

2432

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

2016 TERM

THE STATE

vs.

JASON SKYLER ISRAEL POGUE
D.O.B. _____

Maignant

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)
CDR Code: 0380

ENTERED
ACCT. LPH

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

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF GREENVILLE)

INDICTMENT
 SEXUAL EXPLOITATION OF A MINOR,
 SECOND DEGREE

At a Court of General Sessions, convened on _____, 2016, the
 Grand Jurors of Greenville County present upon their oath:

That Jason Skyler Israel Pogue, on or about March 11, 2015, did willfully and knowingly, commit the crime of Sexual Exploitation of a Minor, Second Degree. To wit: Jason Skyler Israel Pogue, did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the video file titled "pthc_ptsc jenny_9yo daughter asking for cum, new.avi" that contains a visual representation of a minor engaged in sexual activity or a minor appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation, as defined by Sections 16-15-375(5) and Section 16-15-375(6) of the South Carolina Code of Laws. This incident occurred within the County of Greenville, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL



ALAN WILSON (LVF)
 ATTORNEY GENERAL

1600760

HIP

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Greenville

STATE

VS.

INDICTMENT/CASE#: 2017-GS-23 - 2432

Jason Skyler Israel Pogue

AW#: 2015A2320300257

AKA:

Date of Offense: 3/11/2015

Race: W

Sex: M

Age: 33

S.C. Code §: 16-15-405 (A)

DOB:

SS#:

CDR Code #: 0380

City, Sta

607

SENTENCE SHEET

DL#

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Sexual Exploitation of a Minor, 2nd Degree

CONVICTED OF or PLEADS 2-10 years

In violation of § 16-15-405 (A) of the S.C. Code of Laws, bearing CDR Code # 0380

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

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

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

ATTEST:

R. K. S. 77885 Assistant Attorney General SC Bar #

Jason Pogue Defendant

Terethy L. Mangault 3615 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed 4 years and/or to pay a fine of \$; provided that upon the service of 4 months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for 5 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. 2 DAYS

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED

Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve WE beginning 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 61.6 (Public Def/Probation)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 16.00

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: SEX OFFENDER COUNSELING - NO UNSUPERVISED CONTACT WITH MINORS INPATIENT @ OVERCROOKS

TOTAL

\$ 1461.00

Clerk of Court/Deputy Clerk Paul D. Wickman
Court Reporter: Ashbrook

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

Presiding Judge: EDWIN WICK
Judge Code: 2130
Sentence Date: 4/6/17

prob begins upon comp of any early rel prog

CERTIFICATE OF COUNSEL

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.

By: 

WILLIAM M. BLITCH JR.
Assistant Attorney General
S.C. Bar Number 15608
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

July 10, 2018

RECEIVED
JUL 10 2018
SC Court of Appeals