

NO. _____

IN THE
SUPREME COURT
OF THE UNITED STATES
WASHINGTON, D.C.

JASON DIAZ	§	PETITIONER
v.	§	
ERIC GUERRERO (Director, TDCJ-CID)	§	RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
No. 25-20192

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Sixth Amendment guarantees a criminal defendant the right to the effective assistance of counsel at critical stages of a prosecution and prohibits the government from deliberately eliciting statements from a represented defendant in the absence of that protection. *See Massiah v. United States*, 377 U.S. 201, 205–06 (1964).

Does the Sixth Amendment permit the State to obtain statements from a defendant during a police interrogation conducted while he is represented by counsel in pending criminal proceedings, treat those statements as constitutionally protected and unusable in those proceedings, yet use the same statements to prosecute a new, more serious offense solely because it had not yet been formally charged?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, Jason Diaz, was the petitioner in the federal habeas corpus proceedings below and the defendant in the underlying Texas criminal case. The State of Texas prosecuted the state criminal case, and Eric Guerrero, the Director of the Texas Department of Criminal Justice – Correctional Institutions Division, was the Respondent in the federal habeas action.

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PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Comes now Petitioner Jason Diaz, by and through his undersigned counsel, and respectfully requests this Court to grant a writ of certiorari to the United States Court of Appeals for the Fifth Circuit. In support of this Petition, Petitioner offers the following:

INTRODUCTION

This case presents a fundamental breakdown in the Sixth Amendment right to counsel. While represented by counsel in pending, post-indictment felony proceedings, Petitioner was advised by his own attorney to submit to a police interrogation. During that interrogation, he confessed to conduct that became the basis for a new and far more serious charge — one that ultimately resulted in a 30-year sentence. Without that confession, the State's case was materially weaker. With it, conviction was effectively assured. Faced with that reality, Petitioner pleaded guilty.

The Fifth Circuit held that this claim could not even be considered, reasoning that Petitioner's guilty plea waived any challenge to counsel's performance. App. A. That decision cannot be reconciled with the Court's

precedents. A guilty plea is not valid if it is the product of constitutionally ineffective assistance. *See Hill v. Lockhart*, 474 U.S. 52, 56–59 (1985).

The decision below also produces a doctrinal anomaly of constitutional significance. At the time of the police interrogation, Petitioner was represented by counsel in two pending, post-indictment probation revocation proceedings — proceedings in which his liberty was already at stake. There is no dispute that, as to those cases, the Sixth Amendment right to counsel had attached. Yet evidence derived from the same interrogation was deemed constitutionally admissible in a prosecution for a more serious offense solely because the State had not yet formally charged that offense at the time of the interrogation. Under that rationale, a defendant is protected by the Sixth Amendment on the charges that were already formally filed but not protected on a new charge for which his own lawyer facilitates the creation of evidence leading to a first-degree felony conviction.

That result is both illogical and dangerous. It allows the State to exploit an existing attorney-client relationship to generate evidence for future prosecutions while avoiding constitutional scrutiny through formalistic distinctions about the timing of an indictment. And it permits courts to insulate such conduct from review by invoking waiver — even where counsel’s deficient performance is what made the plea inevitable.

This Court’s review is warranted to restore coherence to Sixth Amendment doctrine and to reaffirm a basic principle: a conviction cannot stand when it is the product of a lawyer’s constitutionally deficient performance.

CITATION TO REPORTS OF OPINIONS ENTERED

Fifth Circuit Order Denying Motion for Certificate of Appealability: *Diaz v. Guerrero*, No. 25-20192 (5th Cir. Oct. 27, 2025) (App. A)

District Court Opinion and Order: *Diaz v. Guerrero*, No. 4:23-cv-01614 (S.D.Tex., April 17, 2025) (App. B)

Fifth Circuit Order Denying Petition for Rehearing En Banc: *Diaz v. Guerrero*, No. 25-20192 (5th Cir. Dec. 16, 2025) (App. C)

JURISDICTIONAL STATEMENT

- A. The Fifth Circuit denied Petitioner’s motion for certificate of appealability (COA) on October 27, 2025, affirming the district court’s denial of relief.
- B. The Fifth Circuit denied Petitioner’s petition for rehearing en banc on December 16, 2025. Pursuant to SUP. CT. R. 13(3), this Petition is timely if filed on or before March 16, 2026. On March 14, 2026, Justice Alito granted an application for extension in case number 25A1006, and the deadline was thereby extended to April 15, 2026.
- C. This Court has jurisdiction under 28 U.S.C. §1254(1) because a final judgment has been entered by a federal court of appeals.

RELEVANT CONSTITUTIONAL PROVISION

The *Sixth Amendment* states: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been

previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

STATEMENT OF THE CASE

A.

Basis for Federal Jurisdiction in the Court of First Instance

The Supreme Court of the United States has subject-matter jurisdiction because Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 in the Southern District of Texas, and he alleged that he was in state custody in violation of the Constitution or laws of the United States.

B.

Facts Material to the Question Presented

On December 20, 2019, Petitioner was indicted for Continuous Sexual Abuse of a Child, allegedly occurring on or about January 1, 2019, and continuing through May 28, 2019. ROA.316. At the time of the alleged offense, Petitioner was on deferred adjudication probation on two cases: Possession of Controlled Substance with Intent to Deliver ($\geq 1g < 4g$) and Unauthorized Use of Motor Vehicle; in other words, two additional felony indictments were pending. ROA.276-80 (judgments of deferred adjudication).

Under the advice of Petitioner's trial attorney, Gary Eudy (hereafter, "Trial Counsel"), Petitioner pleaded guilty to Aggravated Sexual Assault of a Child on February 17, 2020. ROA.304-05. Pursuant to the terms of the plea, there was no agreed recommendation of punishment, which would be set by the trial court after a presentence investigation and hearing. *Id.* The State reserved the right to argue for full punishment at the sentencing hearing, and Petitioner agreed to waive his right to appeal. *Id.*

At the sentencing hearing, Kalan Turner, a deputy investigator for the Harris County Sheriff's Office, testified that he met with Petitioner and Trial Counsel for an interview in August 2019. App. E, at 38. As noted above, Petitioner was already on probation in two drug-related cases at this time. During this interview, which was also video recorded, Petitioner immediately admitted to having sexual relations with a child under 14 years old (the complainant, A.F.), with no intervention from his attorney at all. App. E, at 39; *see also* ROA.281 (Audio Recording of Police Interview of Petitioner). Petitioner explained that A.F. appeared to be a fully mature woman based on his observations of her physical characteristics. App. E, at 50. Petitioner estimated that his first sexual encounter with A.F. occurred in early 2019. App. E, at 39. After meeting her online via the Kik application, Petitioner picked her up on a residential roadway in Cypress near

Highway 290. App. E, at 40. According to Petitioner, they got high and had sexual intercourse at his apartment. App. E, at 40.

During this recorded police interview, Petitioner stated that he met A.F. a second time in May 2019 when he picked her up at a church off of Highway 290. App. E, at 41. According to Petitioner, he was alarmed and uncomfortable when A.F. threw her cell phone out the window to avoid being tracked. App. E, at 41. Petitioner further stated that he considered dropping A.F. off somewhere, but he took her back to his apartment because he was afraid she might get into trouble otherwise. App. E, at 42. Investigator Kalan also pointed out that Petitioner described A.F. as a “troubled child” when he asked Petitioner for a description. App. E, at 43. When the investigator asked Petitioner who he thought might be tracking A.F., Petitioner responded that it was likely her parents. App. E, at 44.

In response to the investigator’s questioning, Petitioner also revealed that his Instagram screen name was “J-Skill220.” App. E, at 44. Investigator Kalan testified that he obtained a search warrant for Petitioner’s Instagram account. App. E, at 44. The results of this warrant revealed an Instagram conversation in which Petitioner asked A.F. to sneak out of her home so that he could see her, and she also discussed obtaining drugs from him. App. E, at 45. Investigator Kalan testified that Petitioner asked A.F. to sneak out of her home in at least two separate conversations. App. E, at 45. Furthermore, in some of the exchanges, A.F. told

Petitioner that she was “running away.” App. E, at 45. Investigator Kalan testified that based on his reading of the Instagram conversations, Petitioner had knowledge that A.F. was a child. App. E, at 46.

After the State rested, the defense presented six character witnesses who testified that Petitioner is a good candidate for probation, and he would have family support in obtaining treatment for his substance abuse disorder. App. E, at 53-80.

Petitioner also testified, explaining that he came to Houston from New York in March 2017 for a drug treatment program, which he successfully completed. App. E, at 80. Petitioner then maintained his sobriety at a sober living home for three months. App. E, at 80. After he found a good job in Baytown working for a company that sub-contracts with Exxon Mobile, Petitioner decided to stay in Texas. App. E, at 81. However, Petitioner was laid off after Hurricane Harvey, which led to his fiancée leaving him; Petitioner then became depressed, causing a relapse into substance abuse. App. E, at 81. Petitioner testified that he is willing to enter any programs that the court orders. App. E, at 81-82. He also testified that he never would have engaged in sexual relations with A.F. if he had known she was a child. App. E, at 83.

During closing arguments, the State asked for at least 15 years imprisonment based on Petitioner being on felony probation at the time when he allegedly

committed this offense. App. E, at 106. The trial court ultimately sentenced Petitioner to 30 years' imprisonment. App. E, at 107-109.

C.
Proceedings Below

Petitioner appealed his conviction, but it was voluntarily dismissed after no appealable issues were identified in the record. *See Diaz v. State*, No. 13-20-00346-CR (Tex.App.—Corpus Christi, January 14, 2021, *no pet.*) (mem. op., not designated for publication). ROA.301-03.

On May 17, 2021, Petitioner filed an application for writ of habeas corpus in state court, alleging two grounds of ineffective assistance of trial counsel. ROA.239. The application included an affidavit from a legal expert, Dorian Cotlar, analyzing Trial Counsel's performance and opining that Trial Counsel rendered ineffective assistance. ROA.287-92 (App. F). On March 4, 2022, Trial Counsel filed his affidavit responding to the allegations that he rendered ineffective assistance of counsel. ROA.364-65. On September 23, 2022, the trial court entered its findings of fact and recommended that relief be denied. ROA.485-95 (App. D). Petitioner filed objections on October 4, 2022. ROA.498-511. On February 8, 2023, the Texas Court of Criminal Appeals denied relief without written order based on the findings of the trial court. ROA.529.

On May 2, 2023, Petitioner filed a Petition for Writ of Habeas Corpus under

28 U.S.C. §2254. ROA.4. The district court issued an order and opinion denying relief on April 17, 2025, and the district court further denied a certificate of appealability (COA). App. B. Petitioner timely filed a notice of appeal on May 16, 2025. ROA.116. The Fifth Circuit denied Petitioner's motion for COA on October 27, 2025. App. A. Petitioner then filed a petition for rehearing en banc, which was denied on December 16, 2025. App. C.

REASONS FOR GRANTING THE PETITION

This case presents a recurring and exceptionally important question concerning the scope of the Sixth Amendment right to counsel: whether the State may use statements obtained during a police interrogation conducted while a defendant was represented by counsel in pending criminal proceedings to prosecute a new, more serious offense on the ground that the offense had not yet been formally charged.

I. The decision below creates a constitutionally perverse rule: effective counsel is required when the stakes are lower, but not when they are higher. SUP. CT. R. 10(c).

This case presents a stark and recurring constitutional problem: whether the Sixth Amendment permits the State to exploit an ongoing attorney-client relationship in one criminal proceeding to generate evidence for a more serious,

uncharged offense while simultaneously denying the defendant the protection of that same constitutional right with respect to the uncharged offense.

At the time of the police interrogation, Petitioner was represented by counsel in two pending, post-indictment probation revocation proceedings — proceedings in which his liberty was already at stake. There is no dispute that, as to those cases, the Sixth Amendment right to counsel had attached. Yet evidence derived from the same interrogation that directly undermined those pending proceedings was deemed constitutionally admissible in a prosecution for a more serious offense solely because the State had not yet formally charged that offense at the time of the interrogation.

The result is doctrinal incoherence. Under the rule applied below, a defendant is constitutionally entitled to the effective assistance of counsel when facing revocation of probation, but not when his own lawyer facilitates the creation of evidence that leads to a first-degree felony conviction and a 30-year sentence. The Constitution cannot tolerate a regime in which the right to counsel is strongest where the stakes are lower and disappears where the stakes are highest.

This Court has long recognized that the Sixth Amendment attaches at “critical stages” of a prosecution, including post-indictment interactions with the State that bear directly on the outcome of the case. *See Missouri v. Frye*, 566 U.S.134, 140-44 (2012) (recognizing plea-related proceedings as critical stages at

which the right to effective assistance applies); *see also United States v. Wade*, 388 U.S. 218, 226-27 (1967) (defining “critical stage” as any stage where the absence of counsel may derogate from the accused’s right to fair trial). The interrogation here was unquestionably a critical stage of the already-pending revocation proceedings: Petitioner’s admissions of drug use and criminal conduct were directly relevant to whether his probation would be revoked. The State cannot evade the Sixth Amendment by the simple expedient of labeling the same interrogation as “pre-charge” for a different offense. This Court has cautioned against precisely this kind of formalism in applying the right to counsel. *See Massiah v. United States*, 377 U.S. 201, 205-06 (1964) (prohibiting the deliberate elicitation of statements from an indicted defendant in the absence of counsel).

The decision below effectively creates a loophole that invites manipulation.

Under that rule, the State may:

- Question a represented defendant about conduct that directly impacts pending charges;
- Use counsel’s presence as a shield against constitutional scrutiny;
- And then repurpose the fruits of that interrogation to prosecute a new, more serious offense — free from Sixth Amendment constraints.

That result is not merely incorrect; it is untenable. It allows the State to do indirectly what it cannot do directly: circumvent the right to counsel by

strategically sequencing charges. The Court’s review is warranted to restore coherence to Sixth Amendment doctrine and to prevent the erosion of the right to counsel through formalistic distinctions untethered to the realities of criminal practice.

II. The Fifth Circuit’s waiver holding conflicts with the Court’s precedent and misapprehends the nature of ineffective assistance claims that produce guilty pleas. SUP. CT. R. 10(c).

The decision below also rests on an independent and equally troubling error: the conclusion that Petitioner “abandoned” any challenge to the voluntariness of his guilty plea and that his plea therefore waived his ineffective-assistance claim. *See App. A*, at 2.

That reasoning conflicts with the Court’s precedents recognizing that a guilty plea does not bar an ineffective-assistance claim where counsel’s deficient performance caused the plea itself. *Hill v. Lockhart*, 474 U.S. 52, 56–59 (1985) (holding that a defendant may challenge a guilty plea by showing that, but for counsel’s errors, he would have insisted on going to trial); *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984) (defining deficient performance and prejudice); *see also Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (recognizing that a guilty plea does not bar claims that go to the voluntary and intelligent nature of the plea).

Petitioner’s claim is straightforward: his attorney advised him to submit to a police interrogation that produced the only direct evidence of guilt — a confession to the essential elements of the offense. That error did not merely precede the plea; it created the conditions that made the plea inevitable. Without that confession, the State’s case rested on circumstantial evidence and contested inferences. With it, conviction was all but assured.

In such circumstances, the plea cannot be considered voluntary in any meaningful constitutional sense. A defendant who pleads guilty only after his own counsel has manufactured overwhelming evidence against him has not made a free and informed choice; rather, he has been placed in a position where no rational alternative remains. *See Hill*, 474 U.S. at 56-57.

The Fifth Circuit did not reject this claim on the merits. Instead, it held that Petitioner failed to “challenge” the voluntariness of his plea and therefore abandoned the issue. That conclusion mischaracterizes the claim. Petitioner consistently argued that counsel’s deficient performance “directly resulted” in the charge and conviction — an argument that necessarily encompasses the involuntariness of the resulting plea under *Hill*.

This Court has made clear that habeas pleadings — particularly at the certificate-of-appealability stage — must be evaluated based on substance, not labels. *See Miller-El v. Cockrell*, 537 U.S. 322, 336–38 (2003) (COA inquiry is

limited to whether the claim is debatable among jurists of reason); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (same standard). A claim that counsel's errors forced a defendant to plead guilty is, by definition, a claim that the plea was not knowing and voluntary.

The decision below elevates form over substance and imposes a pleading rigidity incompatible with the Court's habeas jurisprudence. The Court's review is warranted to reaffirm that courts must address the substance of constitutional claims, not dismiss them based on semantic formalities.

At a minimum, this case easily satisfies the standard for a certificate of appealability. A COA should issue whenever "reasonable jurists could debate" the resolution of a constitutional claim. *Id.* Reasonable jurists could at least debate whether the State may use statements obtained during an interrogation conducted while a defendant was represented by counsel in pending criminal proceedings to prosecute a more serious, uncharged offense, and whether a claim that counsel's deficient performance produced those statements necessarily implicates the validity of a resulting guilty plea. The Fifth Circuit's refusal to grant a COA — based on a rigid characterization of Petitioner's claim rather than its substance — conflicts with this Court's instruction that the COA inquiry is a "threshold" one that does not require full merits adjudication. *Miller-El*, 537 U.S. at 336–37.

III. The case presents an important and recurring question at the intersection of Sixth Amendment doctrine and modern plea practice. SUP. CT. R. 10(c).

This case implicates a broader and increasingly important question: how the Sixth Amendment operates in a criminal justice system dominated by guilty pleas. The vast majority of convictions result from pleas, not trials, and the Court has recognized that plea bargaining “is not some adjunct to the criminal justice system; it is the criminal justice system.” *Missouri v. Frye*, 566 U.S. 134, 143–44 (2012). In that system, pre-plea attorney performance is often outcome-determinative.

When counsel’s deficient advice generates the evidence that drives the plea decision, the traditional distinction between “pre-plea” and “plea-stage” errors collapses. Yet lower courts remain uncertain about how to analyze such claims — particularly where, as here, the alleged deficiency occurs during law enforcement interaction before formal charges are filed on the ultimate offense.

This case squarely presents that issue. It asks whether the Sixth Amendment permits counsel to facilitate a client’s self-incrimination during an ongoing representation without constitutional consequence, and whether a guilty plea can be deemed voluntary when it is the direct product of counsel’s deficient performance that created the evidence necessitating the plea.

Those questions go to the core of the right to counsel in the modern criminal process. Absent the Court’s intervention, the rule adopted below will continue to

erode that right through formalistic distinctions that bear little relation to the realities of criminal representation.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari. This case presents a vital opportunity to clarify the scope of the Sixth Amendment's guarantee of effective assistance of counsel, specifically regarding whether it applies to uncharged criminal conduct when the attorney is actively representing the defendant on other, post-indictment charges. The lower court's erroneous legal analysis underscores a critical need for the Court's guidance to ensure consistency in constitutional interpretation and to protect the fundamental rights of criminal defendants nationwide.

Respectfully submitted,

/s/ Christopher M. Perri

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DATE: May 20, 2026

APPENDIX

- A. Fifth Circuit Order Denying Motion for Certificate of Appealability: *Diaz v. Guerrero*, No. 25-20192 (5th Cir. Oct. 27, 2025)
- B. District Court Opinion and Order: *Diaz v. Guerrero*, No. 4:23-cv-01614 (S.D.Tex., April 17, 2025) (ROA.95-111)
- C. Fifth Circuit Order Denying Petition for Rehearing En Banc: *Diaz v. Guerrero*, No. 25-20192 (5th Cir. Dec. 16, 2025)
- D. Trial Court's Findings of Fact and Conclusions of Law (September 23, 2022) (ROA.485-95)
- E. Transcript of Sentencing Hearing (June 25, 2020)
- F. Affidavit of Dorian Cotlar (March 2, 2021) (ROA.287-92)

APPENDIX A

Fifth Circuit Order Denying
Motion for Certificate of Appealability

(Filed October 27, 2025)

United States Court of Appeals
for the Fifth Circuit

No. 25-20192

United States Court of Appeals
Fifth Circuit

FILED

October 27, 2025

Lyle W. Cayce
Clerk

JASON DIAZ,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-1614

ORDER:

Jason Diaz, Texas prisoner # 02319295, seeks a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 application challenging his conviction for aggravated sexual assault of a child under the age of 14. He argued in the application that his defense counsel was ineffective for (i) advising him, while representing him in post-indictment revocation proceedings for prior offenses, to speak to investigators in August 2019 regarding this offense without first discussing the facts of the case with him, advising him of his right to remain silent, or explaining the elements of

No. 25-20192

the offense (Claim 1); and (ii) subsequently failing to obtain a plea offer from the state and advising him that he would likely be sentenced to probation if he pleaded guilty (Claim 2).

Represented by counsel, Diaz now renews his Claim 1 argument. His COA motion and brief do not challenge the district court's determinations as to Claim 2 that his guilty plea was knowing, voluntary, and intelligent and that defense counsel did not perform ineffectively regarding his plea. They also do not address the district court's determination as to Claim 1 that his knowing, voluntary, and intelligent guilty plea waived his claim that trial counsel performed ineffectively with regard to the August 2019 interview. *See Smith v. Estelle*, 711 F.2d 677, 682 (5th Cir. 1983). Because Diaz has failed to brief these issues, he has abandoned any challenge to the bases for the district court's decision. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *see also Beasley v. McCotter*, 798 F.2d 116, 118 (5th Cir. 1986).

Diaz has thus failed to show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see* 28 U.S.C. § 2253(c)(2). Accordingly, his motion for a COA is DENIED.

Leslie H. Southwick

LESLIE H. SOUTHWICK
United States Circuit Judge

APPENDIX B

District Court Opinion and Order

(Filed April 17, 2025)

ENTERED

April 17, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JASON DIAZ,
TDCJ #02319295,
Petitioner,

VS.

ERIC GUERRERO,¹
Respondent.

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CIVIL ACTION NO. H-23-01614

MEMORANDUM AND ORDER

State inmate Jason Diaz (TDCJ #02319295), represented by counsel, filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254 and a brief in support to challenge his conviction and sentence. Doc. Nos. 1 & 3. Respondent has filed an Answer and the pertinent state court records. *See* Doc. No. 9, 12 & 13 and attachments thereto. After carefully considering the petition, brief in support, answer, record, and applicable law, the Court DISMISSES the petition on the merits with prejudice and DENIES a certificate of appealability.

¹ Bobby Lumpkin was the previous named respondent in this action. Eric Guerrero has succeeded Lumpkin as Director of the Texas Department of Criminal Justice, Correctional Institutions Division. Under Rule 25(d) of the Federal Rules of Civil Procedure, Guerrero is automatically substituted as a party.

I. BACKGROUND AND PROCEDURAL HISTORY

In August 2019, Diaz and his then-attorney, Mr. Gary Eudy, met for an interview with Deputy Investigator Kalan Turner of the Harris County Sheriff's Office. At that time, Diaz was on deferred adjudication in four separate cases: (1) a 2018 deferred adjudication for unauthorized use of a motor vehicle; (2) a 2018 deferred adjudication for possession with intent to deliver methamphetamine 1-4 grams; (3) a 2019 deferred adjudication for manufacturing with intent to deliver controlled substance less than 1 gram of oxycodone; and (4) a 2019 deferred adjudication for manufacturing with intent to deliver methamphetamine 4-200 grams.²

During the interview, Turner questioned Diaz about his encounters with a young female individual, A.F.³ Diaz told Turner that the first time he picked up A.F. was in early 2019, having met her online.⁴ Diaz stated that he picked up A.F. off a residential roadway in Cypress, Texas. He told Turner that he and A.F. got high and had sex at his apartment.⁵ He stated that the second time he picked up A.F. was in May 2019 at a church off Highway 290.⁶ He said that A.F. threw her phone out of the window because she did not want to be

² See Doc. No. 12-15 at 88-115, State Habeas Corpus Record ("SHCR"), at 86-113 (Orders of Deferred Adjudication, Conditions of Community Supervision, and Motions to Adjudicate Guilt). On June 25, 2020, the presiding judge of his criminal case discharged his community supervision period and dismissed all four of these cases after Diaz was sentenced to 30 years imprisonment for the aggravated sexual assault of a child case. See *id.* at 124-130, SHCR at 120-128 (State's Writ Exhibit K).

³ Doc. No. 13-2, Presentence Investigation ("PSI") Hearing Transcript, at 38-39 (under seal). To protect the identity of the minor victim, the Court refers to her as "A.F."

⁴ *Id.* at 39:11-15.

⁵ *Id.* at 39:15-24.

⁶ *Id.* at 41:3-9.

tracked, and that this alarmed him.⁷ Diaz stated that he thought that A.F. was eighteen, or if she lied about her age, she was 17.⁸ After the interview, Diaz was charged with continuous sexual abuse of a child under 14. He agreed to plead guilty in exchange for the charge to be reduced to aggravated sexual assault of a child.⁹

Diaz affirmed that the following allegations were true in his Judicial Confession he signed in connection with his guilty plea:

In open court and prior to entering my plea, I waive the right to trial by jury. I also waive the appearance, confrontation, and cross-examination of witnesses, and my right against self-incrimination. The charges against me allege that in Harris County, Texas, DIAZ, JASON, hereafter styled the Defendant, heretofore on or about JANUARY 1, 2019, CONTINUING THROUGH MAY 28, 2019, did then and there unlawfully, during a period of time of thirty or more days in duration, commit at least two acts of sexual abuse against a child younger than fourteen years of age, including an act constituting the offense of aggravated sexual assault of a child, committed against A.F. on or about January 1, 2019, and an act constituting aggravated sexual assault of a child, committed against A.F. on or about May 28, 2019, and the Defendant was at least seventeen years of age at the time of the commission of those acts.¹⁰

At the PSI hearing, Diaz acknowledged the sexual encounters with A.F. in January and May 2019.¹¹ He indicated that he provided her with Xanax, methamphetamine, and marijuana at that time.¹² Diaz testified to his history of addiction and asked for probation, promising to get help.¹³ Deputy Investigator Turner testified regarding the August 2019

⁷ *Id.* at 41:12-15.

⁸ *Id.* at 42:20-43:1.

⁹ *See id.* at 85:5-11; Doc. No. 12-1, Clerk's Record ("CR") at 30, 42.

¹⁰ CR at 31.

¹¹ Doc. No. 13-2 at 85:15-23.

¹² *Id.* at 88:7-12.

¹³ *Id.* at 80:23-83:6.

interview as set forth above, and A.F.'s grandmother and father testified to the devastating effects that the encounters with Diaz had on A.F.¹⁴ Diaz presented several character witnesses and family members who asked the judge for leniency and to sentence Diaz to probation.¹⁵

The Honorable Josh Hill, the presiding judge of Diaz's criminal case, accepted Diaz's guilty plea to aggravated sexual assault of a child under 14 in cause number 1646652 in the 232nd Judicial District Court of Harris County, Texas, and sentenced Diaz to 30 years in TDCJ.¹⁶ The Thirteenth Court of Appeals dismissed Diaz's direct appeal on his motion for voluntary dismissal. *Diaz v. State*, No. 13-20-00346-CR, 2021 WL 161393 (Tex. App.—Corpus Christi-Edinburg, Jan. 14, 2021, no pet.) (mem. op.) (not designated for publication). Diaz filed a state application for habeas corpus on May 17, 2021, which was denied without written order on February 8, 2023. *Ex parte Diaz*, No. WR-92,844-01 (Tex. Crim. App. Feb. 8, 2023); Doc. No. 12-18 (Action Taken Sheet). He timely filed this federal petition for habeas corpus. Doc. No. 1.

In his federal petition, Diaz claims that his trial counsel was ineffective: (1) when he advised Diaz to talk about the alleged offense with investigators without first discussing facts of the case with Diaz, without advising Diaz of his constitutional right to remain silent, and without explaining to Diaz the elements of sexual assault of a child (Ground

¹⁴ *Id.* at 6-32.

¹⁵ *Id.* at 50-77.

¹⁶ *Id.* at 106-107; CR at 32, 60 (Judgment).

One); and (2) when he failed to obtain a plea offer from the State and then advised Diaz to plead guilty with the false promise of probation (Ground Two). Doc. No. 1 at 6.

II. STANDARD OF REVIEW

The writ of habeas corpus provides an important, but limited, examination of an inmate's conviction and sentence. *See Harrington v. Richter*, 562 U.S. 86, 103 (2011) (noting that “state courts are the principal forum for asserting constitutional challenges to state convictions”). The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), codified as amended at 28 U.S.C. § 2254(d), “imposes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt”; it also codifies the traditional principles of finality, comity, and federalism that underlie the limited scope of federal habeas review. *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotations omitted).

AEDPA “bars relitigation of any claim ‘adjudicated on the merits’ in state court, subject only to the exceptions in [28 U.S.C.] §§ 2254(d)(1) and (d)(2).” *Richter*, 562 U.S. at 98. “When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.” *Id.* at 99. For AEDPA to apply, a state court need not state its reasons for its denial, nor must it issue findings, nor need it specifically state that the adjudication was “on the merits.” *Id.* at 98-99.

To the extent that the petitioner exhausted his claims, they were adjudicated on the merits by state courts. This Court, therefore, can only grant relief if “the state court’s adjudication of the merits was ‘contrary to, or involved an unreasonable application of, clearly established Federal law.’” *Berghuis v. Thompkins*, 560 U.S. 370, 378 (2010) (quoting 28 U.S.C. § 2254(d) (1)). The focus of this well-developed standard “is not whether a federal court believes the state court’s determination was incorrect but whether that determination was unreasonable—a substantially higher threshold.” *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). Where a claim has been adjudicated on the merits by the state courts, relief is available under § 2254(d) *only* in those situations “where there is no possibility fairminded jurists could disagree that the state court’s decision conflicts with” Supreme Court precedent. *Richter*, 562 U.S. at 102.

Whether a federal habeas court would have, or could have, reached a conclusion contrary to that reached by the state court on an issue is not determinative under § 2254(d). *Id.* (“even a strong case for relief does not mean that the state court’s contrary conclusion was unreasonable.”). Thus, AEDPA serves as a “guard against extreme malfunctions in the state criminal justice systems,” not as a vehicle for error correction. *Id.* (citation omitted); *see also Wilson v. Cain*, 641 F.3d 96, 100 (5th Cir. 2011). “If this standard is difficult to meet, that is because it was meant to be.” *Richter*, 562 U.S. at 102.

“Review under § 2254(d)(1) focuses on what a state court knew and did.” *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011). Reasoning that “[i]t would be strange to ask federal courts to analyze whether a state court’s adjudication resulted in a decision that

unreasonably applied federal law to facts not before the state court,” *Pinholster* explicitly held that “[i]f a claim has been adjudicated on the merits by a state court, a federal habeas petitioner must overcome the limitation of § 2254(d)(1) on the record that was before that state court.” *Id.* at 185. Thus, “evidence introduced in federal court has no bearing on § 2254(d)(1) review.” *Id.* Courts construe pleadings filed by *pro se* litigants under a less stringent standard than those drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519 (1972); *Bledsue v. Johnson*, 188 F.3d 250, 255 (5th Cir.1999).

III. DISCUSSION

Diaz raises claims of ineffective assistance of counsel in connection with his guilty plea. The Constitution guarantees a criminal defendant the right to effective assistance of counsel pursuant to the Sixth Amendment. *See* U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *see also McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (observing that “the right to counsel is the right to the effective assistance of counsel”). Claims for ineffective assistance of counsel (“IAC”) are analyzed under the following two-prong standard:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland, 466 U.S. at 687. Thus, to prevail under the *Strickland* standard, a defendant must demonstrate both constitutionally deficient performance by counsel and actual

prejudice because of the alleged deficiency. *See Williams v. Taylor*, 529 U.S. 390, 390-91 (2000).

The first prong of the governing standard is only satisfied where the defendant shows that “counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 687. Scrutiny of counsel’s performance must be “highly deferential,” and a reviewing court must make every effort “to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Id.* at 689. There is a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *See United States v. Molina-Uribe*, 429 F.3d 514, 518 (5th Cir. 2005) (citing *Strickland*, 466 U.S. at 687-88), *cert. denied*, 547 U.S. 1041 (2006).

To prove prejudice, the second prong under *Strickland*, a defendant must demonstrate a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

Because Diaz’s ineffective-assistance claims were rejected on state habeas review, the central question is not whether this court “believes the state court’s determination’ under the *Strickland* standard ‘was incorrect but whether the determination was *unreasonable* — a substantially higher standard.” *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009) (quoting *Schriro*, 550 U.S. at 478) (emphasis added). In addition, “because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably

determine that a defendant has not satisfied that standard.” *Id.* When applied together with the highly deferential standard found in 28 U.S.C. § 2254(d), review of ineffective-assistance claims is “doubly deferential” on habeas corpus review. *Knowles*, 556 U.S. at 123; *see also Richter*, 562 U.S. at 105 (emphasizing that the standards created by *Strickland* and § 2254(d) are both “highly deferential,” and “‘doubly’ so” when applied in tandem) (citations and quotations omitted); *Beatty v Stephens*, 759 F.3d 455, 463 (5th Cir. 2014), *cert. denied*, 135 S. Ct. 2312 (2015) (same).

A. Ground One: IAC Regarding August 2019 Interview

Diaz claims that his attorney, Mr. Eudy, rendered ineffective assistance of counsel at his August 2019 interview with the Harris County Sheriff’s Department investigator because Eudy did not talk to Diaz about the facts of the case before allowing Diaz to talk to the investigator, inform him of his right to remain silent, or tell him about the elements of sexual abuse of a child.

Respondent argues that (1) Diaz’s claims are waived by a voluntary, intelligent, and knowing guilty plea; and (2) these claims are foreclosed by *Texas v. Cobb*, 532 U.S. 162, 165 (2001), and *Henderson v. Quarterman*, 460 F.3d 654, 656 (5th Cir. 2006), because the right to counsel had not attached for the child sex crime at the time of the noncustodial interview. Diaz argues that, because he was facing motions to adjudicate guilt in several other cases for which trial counsel Mr. Eudy represented him, he had the right to counsel, and counsel should have advised him not to incriminate himself at the interview.

The state habeas court found, based on the offense report excerpts and Eudy's affidavit which it found to be credible, that Eudy questioned Diaz prior to the police interview and Diaz did not mention that he had sexual relations with anyone underage; Diaz told Eudy only that he may have provided drugs to a young lady.¹⁷ The habeas court further found that when Eudy questioned Diaz before the interview, Diaz was not forthcoming with him about his potential sexual involvement with young girls and gave Eudy the impression that he had not committed any sexual offenses against minors.¹⁸ The state habeas court found that Diaz failed to show that Eudy's performance was deficient or that his actions harmed Diaz.¹⁹ The habeas court also found that "adversary judicial proceedings" had not commenced against Diaz at the time of the interview.²⁰

In *Texas v. Cobb*, the Supreme Court held that the right to counsel is "offense-specific." 532 U.S. at 165. Citing *McNeil v. Wisconsin*, 501 U.S. 171 (1991), it explained:

The Sixth Amendment right [to counsel] ... is offense specific. It cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.

Cobb, 532 U.S. at 167-68 (quoting *McNeil*, 501 U.S. at 175). Thus, "a defendant's statements regarding offenses for which he had not been charged [are] admissible notwithstanding the attachment of his Sixth Amendment right to counsel on other charged

¹⁷ Doc. No. 12-16 at 10, Supp. SHCR at 0008, at Finding of Fact No. 35.

¹⁸ *Id.* at Finding of Fact No. 36.

¹⁹ *Id.* at Finding of Fact No. 37.

²⁰ *Id.* at Finding of Fact No. 38.

offenses.” *Id.* at 168 (citing *McNeil*, 501 U.S. at 176). When the Sixth Amendment right to counsel attaches, it encompasses offenses that, although not formally charged, would be considered the same offense under *Blockburger v. United States*, 284 U.S. 299 (1932). *Id.* at 172-73.

In *Cobb*, the defendant had been charged with burglary in Walker County and was appointed counsel for that crime. *Id.* at 165. Cobb subsequently confessed to his father that he killed the two people who were missing after that burglary of their home. *Id.* Law enforcement questioned Cobb about the disappearances without his lawyer present and without obtaining permission from Cobb’s lawyer. *Id.* at 165-66. The Supreme Court rejected Cobb’s argument that the confession of the murders was obtained in violation of Cobb’s Sixth Amendment right to counsel because the right to counsel for the murders had not attached at the time of questioning because the criminal proceedings had not been initiated for that crime, although it was related to the burglary (and happened during the same criminal episode) for which Cobb had counsel.

Similarly, in *Henderson v. Quarterman*, 460 F.3d 654, 656 (5th Cir. 2006), the Fifth Circuit, following *McNeil* and *Cobb*, held that Henderson “did not have a Sixth Amendment right to counsel for capital child murder when each of the attorneys acted on her behalf prior to her being so charged,” and, therefore, there was no ineffective assistance of counsel for her interviews or map-drawing regarding where the child was buried, when she had only been charged with kidnapping at the time. *Id.* at 661. It explained that the

right to counsel for the murder charge had not attached when law enforcement was questioning Henderson about the murder before charging her with that crime. *Id.*

Here, Eudy was Diaz's counsel for the four cases involving drug possession, drug delivery/manufacturing, and/or the unauthorized use of a motor vehicle. Diaz had not been charged with sexual assault of A.F., and criminal proceedings for that crime had not commenced. The state court's conclusions that criminal proceedings for the child sexual assault crime had not commenced, and that the right to counsel had not attached at the time Diaz gave his statement to Turner, are not contrary to, or an unreasonable application of, Supreme Court precedent. In addition, Diaz fails to show that the state court's conclusion that there was no ineffective assistance claim for the aggravated sexual assault charge was contrary to or an unreasonable application of federal law; there is no ineffective assistance claim where there is no right to counsel. *See Henderson*, 460 F.3d at 661.

Moreover, as discussed below, Diaz's guilty plea was voluntary, knowing, and intelligently made and, therefore, waives this claim for ineffective assistance of counsel for all other ineffective assistance of counsel claims, including this claim. *See Smith v. Estelle*, 711 F.2d 677, 682 (5th Cir. 1983). Therefore, Ground One is denied.

B. Ground Two: IAC Regarding Guilty Plea

A guilty plea is valid only if entered voluntarily, knowingly, and intelligently, "with sufficient awareness of the relevant circumstances and likely consequences." *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005); *United States v. Hernandez*, 234 F.3d 252, 254 (5th Cir. 2000). A plea is intelligently made when the defendant has "real notice of the true nature

of the charge against him.” *Bousley v. United States*, 523 U.S. 614, 618 (1998) (internal quotation marks omitted). A plea is “voluntary” if it does not result from force, threats, improper promises, misrepresentations, or coercion. *United States v. Amaya*, 111 F.3d 386, 389 (5th Cir. 1997). A guilty plea is valid where “the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Hill v. Lockhart*, 474 U.S. 52, 56 (1985); *United States v. Juarez*, 672 F.3d 381, 385 (5th Cir. 2012).

Diaz argues that his guilty plea was involuntary because trial counsel allegedly promised that he would receive probation if he pleaded guilty and because trial counsel should have negotiated a plea deal where there was none. The record belies his contention that there was no plea deal. The state habeas court found that, contrary to Diaz’s claims, Diaz entered a plea deal for a reduced charge in exchange for pleading guilty:

Q. So you’re aware that this case was originally charged as continuous sexual abuse of a child; is that right?

A. I’m aware.

Q. Are you aware you received a plea deal to have it reduced to sexual assault of a child?

A. I’m aware.

Q. But you did have sex with this complainant more than once, correct?

A. Correct.²¹

Diaz acknowledged that he had a plea deal. The state habeas court found that, had Diaz gone to trial on the continuous sexual abuse of a child charge for which he was indicted, if

²¹ Doc. No. 13-2 at 85 (Reporter’s Record (“RR”) 2 at 85) (under seal); *see also* Doc. No. 12-15 at 86 (Trial Court’s Certification that Diaz had no right to appeal because this “is a plea-bargain case”).

convicted he would have faced a minimum sentence of 25 years, a maximum sentence of life, and ineligibility for parole or community supervision.²² The state habeas court further found that Diaz did not show “that he would have insisted on going to trial on continuous sexual abuse of a child instead of pleading guilty to the judge to aggravated sexual assault of a child, given his multiple pending felony cases and potential sentencing exposure from a jury.”²³

Regarding the alleged false promise of probation, the state habeas court found that this claim is contradicted by the plea documents, in which Diaz states that “I intend to enter a plea of guilty without an agreed recommendation of punishment from the prosecutor and request that my punishment should be set by the Judge after a pre-sentence investigation report and hearing. I understand the state reserves the right to argue for full punishment at my sentencing hearing.”²⁴ Further, the habeas court found that Diaz “was admonished in writing, which [he] initialed, that he was facing the full range of punishment for a first degree felony – a maximum of life or 99 years, or a minimum of 5 years.”²⁵ The state habeas court found that Eudy never promised that Diaz would receive probation and that Diaz failed to show that Eudy was deficient or that he was harmed by Eudy’s actions.²⁶

²² Doc. No. 12-16 at 12, Supp. SHCR at 0010, at Finding of Fact No. 57 (citing Tex. Penal Code § 21.02(h), Tex. Code Crim. Proc. art. 42A.053(c)(1) and 42A.102(b)(3), and Tex. Gov’t Code § 508.145(a)(2)).

²³ *Id.* at Supp. SHCR at 0011, at Finding of Fact No. 58.

²⁴ *Id.* at Supp. SHCR at 0010, at Finding of Fact Nos. 52 & 53.

²⁵ *Id.* at Finding of Fact No. 54.

²⁶ *Id.* at Finding of Fact Nos. 55 & 56.

Official court records “are entitled to a presumption of regularity and are accorded great evidentiary weight” on habeas corpus review. *Hobbs v. Blackburn*, 752 F.2d 1079, 1081–82 (5th Cir. 1985) (citations omitted). Likewise, “[s]olemn declarations in open court carry a strong presumption of verity.” *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977). Diaz’s representations in open court on the record, as well as the trial court’s findings accepting the plea as freely and voluntarily made, are a formidable barrier to any subsequent collateral attack. *Id.* A defendant “need only understand the direct consequences of the plea; he need not be made aware of every consequence that, absent a plea of guilty, would not otherwise occur.” *United States v. Hernandez*, 234 F.3d 252, 255 (5th Cir. 2000) (per curiam).

Further, it is well established that the threat of a longer sentence if found guilty at trial does not make the plea involuntary. *See Brady v. United States*, 397 U.S. 742, 749–50 (1970) (holding that the prospect of the death penalty did not render the plea of guilty involuntary); *North Carolina v. Alford*, 400 U.S. 25, 31 (1970) (“That he would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant’s advantage.”).

Diaz does not overcome the strong presumption that his plea in open court and his representations on the record to the trial judge indicate that he entered his plea intelligently, knowingly, and voluntarily. Diaz represented that he had spoken to his attorney about the

plea, he was entering it freely and voluntarily, and no person had made any promises to him regarding the punishment he would receive. He does not meet his burden to show clear and convincing evidence to overcome the state court evidentiary record establishing that he entered a voluntary and knowing plea. *See* 28 U.S.C. § 2254(e)(1).

In sum, the state court's conclusions that Diaz failed to show that his plea was involuntary and that trial counsel's assistance regarding the plea process fell below an objective standard of reasonableness are not contrary to, or an unreasonable application of *Strickland*. Therefore, he does not establish entitlement to habeas relief on this ground, and Ground Two is DENIED.

IV. CERTIFICATE OF APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a certificate of appealability when entering a final order that is adverse to the petitioner. *See* 28 U.S.C. § 2253. A certificate of appealability will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which requires a petitioner to demonstrate "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Under the controlling standard, this requires a petitioner to show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Where denial of

relief is based on procedural grounds, the petitioner must show not only that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right,” but also that they “would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

A district court may deny a certificate of appealability, *sua sponte*, without requiring further briefing or argument. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). For reasons set forth above, this court concludes that jurists of reason would not debate whether the ruling in this case was correct. Therefore, a certificate of appealability will not issue.

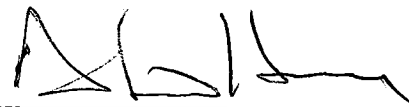
V. CONCLUSION AND ORDER

Based on the foregoing, the Court **ORDERS** as follows:

1. Petitioner Jason Diaz’s petition is **DISMISSED** with prejudice on the merits.
2. All other motions, if any, are **DENIED**.
3. A certificate of appealability is **DENIED**.

The Clerk will enter this Order, providing a correct copy to all parties of record.

SIGNED on this 15th day of April 2025.



ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE

APPENDIX C

Fifth Circuit Order Denying Petition for Rehearing En Banc

(Filed December 16, 2025)

United States Court of Appeals
for the Fifth Circuit

No. 25-20192

United States Court of Appeals
Fifth Circuit

FILED

December 16, 2025

Lyle W. Cayce
Clerk

JASON DIAZ,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice,*
Correctional Institutions Division,

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-1614

ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

Before SOUTHWICK, *Circuit Judge.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R.40 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R.

APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

APPENDIX D

Trial Court's Findings of Fact and Conclusions of Law

(Filed September 23, 2022)

P-11

NO 1646652-A

EX PARTE

§

IN THE 232ND DISTRICT COURT

§

OF

JASON DIAZ,
Applicant

§

HARRIS COUNTY, TEXAS

FILED
Caitlyn Burgess
District Clerk
SEP 23 2022
By _____
Harris County Texas
Deputy

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The trial court has considered the original application for writ of habeas corpus, the documents and exhibits filed in cause number 1646652-A, the credible affidavit of Gary Eudy, and official court records in the above-captioned cause. The trial court recommends that relief be **DENIED**, and enters the following findings of fact and conclusions of law

FINDINGS OF FACT

Jurisdiction

- 1 The applicant, Jason Diaz, is confined pursuant to the judgment and sentence of the 232nd District Court of Harris County, Texas, in cause number 1646652, where the applicant was convicted of the felony offense of aggravated sexual assault of a child
- 2 The trial court, after a presentence investigation hearing, sentenced the applicant to confinement for 30 years in the Texas Department of Criminal Justice - Institutional Division

Direct Appeal

- 3 The applicant was represented by Chris Perri on direct appeal
- 4 The Thirteenth Court of Appeals dismissed the applicant's appeal on January 14, 2021 based on a voluntary dismissal by the applicant *Diaz v State*, No 13-

20-00346-CR, 2021 WL 161393 (Tex App —Corpus Christi-Edinburg, Jan 14, 2021, no pet) (mem op , not designated for publication)

5 The Thirteenth Court of Appeals issued mandate on March 5, 2021

Writ Proceedings

6 The applicant filed the instant application on May 17, 2021

7 The applicant is represented by Chris Perri on the writ proceedings

8 On June 23, 2021, the trial court designated the issue of ineffective assistance of counsel and ordered an affidavit from trial counsel Gary Eudy

9 On June 25, 2021, the District Clerk prematurely forwarded the writ application to the Court of Criminal Appeals

10 On July 28, 2021, the Court of Criminal Appeals remanded the writ application to the trial court to develop the record and make findings of fact and conclusions of law *Ex parte Diaz*, No WR-92,844-01, 2021 WL 3177437, at *1 (Tex Crim App July 28, 2021)

11 On March 7, 2022, Eudy filed his court-ordered affidavit *Affidavit of Gary Eudy*

12 The trial court did not conduct a live evidentiary hearing on the allegations in the writ

13 The trial court finds that the affidavit of Gary Eudy, filed in the instant habeas proceeding on March 7, 2022, is credible and the facts asserted therein are true
Id

14 The Honorable Josh Hill is the current judge of the 232nd District Court and presided over the applicant's plea, sentencing, and writ proceedings

Case History

- 15 On August 27, 2019, the applicant gave a voluntary, non-custodial recorded statement to investigating officers with the Harris County Sheriff's Office *State's Writ Exhibit A, excerpts from "Offense Report," redacted*¹
- 16 On September 18, 2019, the applicant was charged by complaint with the continuous sexual abuse of a child *State's Writ Exhibit B, "Complaint "*
- 17 On October 30, 2019, Eudy made his first court appearance as counsel representing the applicant *State's Writ Exhibit C, "Docket Sheets "*
- 18 On December 20, 2019, the grand jury returned an indictment against the applicant for the continuous sexual abuse of a child *State's Writ Exhibit D, "Indictment "*
- 19 On February 20, 2020, the State agreed to reduce the applicant's charge from continuous sexual abuse of a child to aggravated sexual assault of a child in exchange for the applicant's plea of guilty (C R at 33) *State's Writ Exhibit E, "Plea documents "*
- 20 On February 20, 2020, the applicant entered a plea of "guilty" without an agreed recommendation to aggravated sexual assault of a child and his case was reset for a presentence investigation (PSI) (C R at 31-32) (2 R R at 5) *Id*
- 21 On June 25, 2020, after the PSI hearing, the trial court found the applicant guilty of aggravated sexual assault of a child and sentenced him to 30 years in the Texas Department of Criminal Justice – Institutional Division (C R at 60-65) (2 R R at 109)
- 22 The applicant was represented by Gary Eudy at his police interview, his plea of guilty, and the presentence investigation hearing

¹Confidential information was redacted

Other Cases

- 23 The applicant was facing criminal liability on 4 other felony cases at the time he pleaded guilty to aggravated sexual assault of a child in the instant case
- 24 The applicant was facing a motion to adjudicate his deferred adjudication community supervision on unauthorized use of a motor vehicle case in cause number 1597193 *State's Writ Exhibit F, "Order of Deferred Adjudication" and "Motion to Adjudicate" in 1597193*
- 25 The applicant was facing a motion to adjudicate his deferred adjudication community supervision on possession of a controlled substance with intent to deliver in cause number 1591999 *State's Writ Exhibit G, "Order of Deferred Adjudication" and "Motion to Adjudicate" in 1591999*
- 26 The applicant was previously placed on these two concurrent deferred adjudication community supervision cases on November 29, 2018 *State's Writ Exhibits F & G*
- 27 The applicant had also recently been placed on deferred adjudication community supervision for manufacture/delivery of a controlled substance, namely oxycodone, in cause number 1624637 on August 28, 2019 *State's Writ Exhibit H, "Order of Deferred Adjudication" in cause number 1624637*
- 28 The applicant had also recently been placed on deferred adjudication community supervision for manufacture/delivery of a controlled substance, namely, methamphetamine, in cause number 1624572 on August 28, 2019 *State's Writ Exhibit I, "Order of Deferred Adjudication" in cause number 1624572*
- 29 After the applicant's sentencing of 30 years on the instant case, the State dismissed the two pending motions to adjudicate on June 25, 2020 *State's Writ Exhibit J, "Motion to Dismiss" in cause numbers 1597193 and 1591999*
- 30 The trial court then discharged the applicant from all four of his deferred adjudication community supervision cases on June 25, 2020 *State's Writ Exhibit K, "Discharge Orders" in cause numbers 1597193, 1591999, 1624572, and 1624637*
- 31 Eudy had previously and concurrently represented the applicant in these 4 cases

Ineffective Assistance of Counsel

- 32 In two grounds for relief, the applicant alleges that he received the ineffective assistance of counsel *Applicant's Writ* at 6-9

Alleged Failure to Give Advice

- 33 In his first ground for relief, the applicant claims Eudy improperly advised the applicant to talk to investigators without discussing the facts of the case with the applicant, without advising him of his right to remain silent, and without explaining the elements of the crime of sexual assault of a child *Id* at 6
- 34 In support of this ground, the applicant attached the applicant's recorded statement to police investigators and the applicant's post-conviction declaration *Applicant's Writ Attachment 2, "Audio Recording of Police Interview of Applicant"*, *Applicant's Writ Attachment 3, "Declaration of Jason Diaz"*
- 35 The trial court finds, based on the credible affidavit of Eudy and the offense report excerpts, that Eudy questioned the applicant prior to the police interview. The applicant did not mention that he had sexual relations with anyone underage. The applicant only indicated that he may have provided drugs to a young lady *Eudy Affidavit, State's Writ Exhibit A*
- 36 The trial court finds, based on the credible affidavit of Eudy, that when Eudy questioned the applicant prior to the police interview, the applicant was not forthcoming with Eudy about his potential sexual involvement with young girls. Eudy was left with the impression created by the applicant that the applicant had not committed any sexual offenses against minors *Eudy Affidavit, State's Writ Exhibit A*
- 37 The trial court finds that the applicant fails to show Eudy was deficient or that he was harmed by Eudy's actions
- 38 The trial court further finds that "adversary judicial proceedings" or a "prosecution" had not commenced against the applicant at the time of his police interview because the applicant had not been arrested or charged with a crime at that time *State's Writ Exhibits A & B*

Alleged Failure to Obtain Plea Offer from State

- 39 In his second ground for relief, the applicant claims that Eudy failed to obtain a plea offer from the State *Applicant's Writ* at 8-9
- 40 The applicant claims in his post-conviction declaration that he would have been willing to take any deal that was 15 years imprisonment or less *Applicant's Writ Attachment 3, "Declaration of Jason Diaz,"* p 2
- 41 The trial court finds, based on the credible affidavit of Eudy, that Eudy obtained a plea offer from the State for a 20 year sentence, but that the applicant rejected this offer *Eudy Affidavit*
- 42 During his PSI hearing, Eudy asked the applicant "You're asking this Court to grant you probation and send your probation up to New York where you can get in a 12 step program or whatever program that the Court deems necessary?" (2 R R at 82)
- 43 The applicant testified in response "That's what I been praying to God every day since I been put these charges " (2 R R at 82)
- 44 Eudy also asked the applicant "So to make this clear you're asking this Court to put you on probation and not send you to prison, correct?" (2 R R at 84)
- 45 The applicant testified in response "Yes That is correct " (2 R R at 84)
- 46 The trial court finds that the affidavit of Dorian Cotlar contains speculation concerning plea bargain discussions between Eudy and the State *Applicant's Writ Attachment 4, "Affidavit of Dorian Cotlar "*
- 47 The trial court finds that the sworn declaration of Chris Perri contains speculation concerning plea bargain discussions between Eudy and the State *Applicant's Writ Attachment 5, "Sworn Statement of Christopher M. Perri "*
- 48 The trial court finds that Cotlar's affidavit and Perri's sworn statement do not establish ineffective assistance of counsel on this record
- 49 The trial court finds that the applicant fails to show that there was a plea offer from the State for 15 years imprisonment or less

50 The trial court finds that the applicant fails to show Eudy was deficient or that he was harmed by Eudy's actions

Alleged False Promise of Probation

51 In his second ground for relief, the applicant also claims that Eudy promised that the applicant would receive probation if he pleaded guilty *Applicant's Writ* at 8-9

52 The trial court finds that the applicant's claim that Eudy promised him probation is contradicted by the plea documents *State's Writ Exhibit E*

53 The plea documents explicitly state, which the applicant signed, the following "I intend to enter a plea of guilty without an agreed recommendation of punishment from the prosecutor and request that my punishment should be set by the Judge after a pre-sentence investigation report and hearing I understand the state reserves the right to argue for full punishment at my sentencing hearing" *Id*, p 1

54 The applicant was admonished in writing, which the applicant initialed, that he was facing the full range of punishment for a first degree felony—a maximum of life or 99 years, or a minimum of 5 years *Id*, p 3

55 The trial court finds, based on the plea documents and the credible affidavit of Eudy, that Eudy never promised the applicant that he would receive probation *Id*, *Eudy Affidavit*

56 The trial court finds that the applicant fails to show Eudy was deficient or that he was harmed by Eudy's actions

Voluntariness of Plea and Insistence on a Trial

57 The trial court finds, based on the habeas record, that at the time of his plea, the applicant was facing an indictment for the continuous sexual abuse of a child and if convicted, the following consequences a minimum sentence of 25 years, a maximum sentence of life, ineligibility for community supervision, and ineligibility for parole *See* TEX PENAL CODE § 21 02(h), TEX CODE CRIM PROC art 42A 053(c)(1) and 42A 102(b)(3), TEX GOV'T CODE § 508 145(a)(2)

- 58 The trial court finds that the applicant fails to show that he would have insisted on going to trial on continuous sexual abuse of a child, instead of pleading guilty to the judge to aggravated sexual assault of a child, given his multiple pending felony cases and potential sentencing exposure from a jury (2 R R at 111) *State's Writ Exhibits B, D, F-K*
- 59 The trial court finds, based on the clerk's record, that the applicant signed the plea documents and the trial court's written admonishments *State's Writ Exhibit E*
- 60 The trial court finds that the trial court properly admonished the applicant as to the charge against him, the range of punishment, and the consequences of his plea in accordance with art 26 13 of the Code of Criminal Procedure as reflected in the trial court's written admonishments *Id*
- 61 The trial court finds that the applicant's statements made in his post-conviction declaration regarding the voluntariness of his plea of guilty and his insistence on a trial are neither credible nor persuasive *Applicant's Writ Attachment 3, "Declaration of Jason Diaz"*
- 62 The trial court finds the applicant's plea was freely and voluntarily entered

CONCLUSIONS OF LAW

Alleged Failure to Give Advice

- 1 "Unlike the Fifth Amendment right to counsel, the Sixth Amendment right to counsel does not attach until a prosecution is commenced, that is, 'at or after the initiation of adversary judicial proceedings against the defendant'" *Green v State*, 934 S W 2d 92, 97 (Tex Crim App 1996) (quoting *United States v Gouveia*, 467 U S 180, 187, 104 S Ct 2292, 81 L Ed 2d 146 (1984))
- 2 The Sixth Amendment right to counsel does not attach prior to a defendant's arrest or prior to being charged with a crime *See Ramirez v State*, 76 S W 3d 121, 126 (Tex App —Houston [14th Dist] 2002, pet ref'd)
- 3 The applicant's first ground for relief based on the ineffective assistance of counsel should be denied because the Sixth Amendment right to counsel did not attach when the applicant gave a voluntary statement to police because he

had not yet been arrested or charged with a crime *See Green*, 934 S W 2d at 97, *See Brown v US*, 551 F 2d 619, 620 (5th Cir 1977) (if a defendant elects to retain private counsel at a point when counsel is not constitutionally guaranteed, and that private counsel is ineffective, the defendant cannot allege that his Sixth Amendment rights have been infringed upon), *See Spielbauer v State*, 634 S W 3d 962, 966-67 (Tex App—Amarillo 2021, no pet) (defendant's ineffective assistance of counsel claim denied on appeal in part because no adversary judicial process or prosecution against him had been initiated at the time of his police interview with counsel present, the constitutional right to counsel had not yet attached and therefore he had no constitutionally protected right to the effective assistance of counsel)

Alleged Failure to Obtain Plea Offer from State & Alleged False Promise of Probation

- 4 The applicant's second ground for relief based on the ineffective assistance of counsel should be denied because the applicant fails to show that Eudy's conduct fell below an objective standard of reasonableness, that but for Eudy's alleged deficient conduct, there is a reasonable probability that the result of the proceeding would have been different *See Strickland v Washington*, 466 US 668, 686 (1984), *Hernandez v State*, 726 S W 2d 53, 57 (Tex Crim App 1986) (adopting the *Strickland* standard in Texas), *Narvaaz v State*, 840 S W 2d 415, 434 (Tex Crim App 1992) (defining the two-part *Strickland* standard)
- 5 The totality of the representation afforded the applicant was sufficient to protect the applicant's right to reasonably effective assistance of counsel *See Thompson v State*, 9 S W 3d 808, 813 (Tex Crim App 1999) (holding the reviewing court must look to the totality of the representation and the particular circumstances of each case in evaluating the effectiveness of counsel)

Voluntariness of Plea and Insistence on a Trial

- 6 The applicant fails to show that but for Eudy's alleged errors, he would not have pleaded guilty to aggravated sexual assault of a child and would have insisted on going to trial on continuous sexual abuse of a child given his multiple pending felony cases and potential sentencing exposure from a jury *See Ex parte Akhtab*, 901 S W 2d 488, 490 (Tex Crim App 1995) (citing *Hill v Lockhart*, 474 U S 52, 59 (1985)) (to prevail on a claim of ineffective assistance of counsel where the applicant pleaded guilty, the applicant must show, but for counsel's error, he would not have pleaded guilty and would have insisted on going to trial)

- 7 The trial court properly admonished the applicant, therefore, a presumption arises that the applicant's guilty plea was voluntarily entered *Mitschke v State*, 129 S W 3d 130, 136 (Tex Crim App 2004)
- 8 In a habeas corpus proceeding, there is a presumption of regularity concerning guilty pleas which the applicant fails to overcome *Wilson v State*, 716 S W 2d 953, 956 (Tex Crim App 1986) Since the applicant fails to overcome the presumption of regularity created in the trial court records, the applicant fails to show that his plea was involuntary *Fuentes v State*, 688 S W 2d 542, 544 (Tex Crim App 1985)

Accordingly, it is recommended to the Texas Court of Criminal Appeals that relief be **DENIED**

ORDER

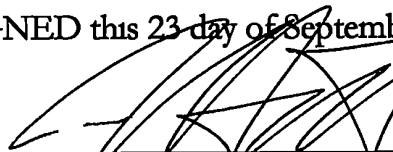
THE CLERK IS ORDERED to prepare a habeas record of all papers filed in cause no 1646652-A, and transmit same to the Court of Criminal Appeals as provided by TEX CRIM PROC CODE ANN art 11 07 The habeas record shall include certified copies of the following documents

- 1 the original application for writ of habeas corpus and all attachments in cause number 1646652-A,
- 2 the trial court's order(s) in cause number 1646652-A,
- 3 the indictment, judgment and sentence, and docket sheets in cause number 1646652,
- 4 the appellate record in 1646652 (including the reporter's record and clerk's record),

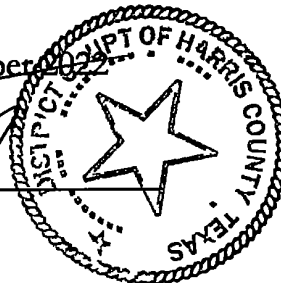
- 5 the affidavit of Gary Eudy,
- 6 all writ exhibits filed by the State,
- 7 the trial court's Findings of Fact and Conclusions of Law in cause number 1646652-A, and
- 8 the *State's Proposed Findings of Fact, Conclusions of Law, and Order* and the Applicant's Proposed Findings of Fact and Conclusions of Law in cause number 1646652-A

THE CLERK is further ORDERED to send a copy of this order to the applicant's attorney, Christopher M Perri, chris@chrisperrilaw.com, and to counsel for the State, Rehana Vohra, Harris County District Attorney's Office, vohra_rehana@dao.hctx.net

SIGNED this 23 day of September, 2023



JUDGE PRESIDING



APPENDIX E

Transcript of Sentencing Hearing

(June 25, 2020)

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APPELLATE COURT NO. 13-20-00346-CR

TRIAL COURT NO. 1646652

VOLUME 2 OF 3 VOLUMES
FILED IN
13th COURT OF APPEALS
CORPUS CHRISTI/EDINBURG, TEXAS

9/15/2020 1:58:46 PM

KATHY S. MILLS

Clerk

JASON DIAZ,) (IN THE DISTRICT COURT OF
Appellant) (
VS.) (HARRIS COUNTY, T E X A S
THE STATE OF TEXAS,) (
Appellee.) (232ND JUDICIAL DISTRICT

PSI HEARING

Arlene F. Webb
Deputy Court Reporter
1201 Franklin Street, 16th Fl.
Houston, Texas 77002
(713) 927-3860

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

2 FOR THE STATE:

3 Ms. Bailee Beilman

4 State Bar No. 24089368

5 Ms. Alaina Danielle Oxford

6 State Bar No. 24084574

7 1201 Franklin Street, Sixth Floor

8 Houston, Texas 77002

9 (713) 274-5800

10

11 FOR THE DEFENDANT:

12 Mr. Gary Eudy

13 State Bar No. 24074187

14 17227 Heritage Bay Drive

15 Webster, Texas 77598-3016

16

17

18 On this the 25th day of June, 2020, the
19 above-entitled and numbered cause came on for Hearing
20 before the Honorable JOSH HILL, Judge Presiding, held in
21 Houston, Harris County, Texas and the following
22 proceedings were had, viz:

23 Proceedings reported by Machine.

24

25

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3	KATIE FIDEL	
4	Direct By The State	2 6
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6	Re-Direct By The State	2 25
7	KYLE FIDEL	
8	Direct By The State	2 28
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10	KALAN TURNER	
11	Direct By The State	2 35
12	Cross By The Defense	2 44
13	Re-Direct By The State	2 49
14	State Rest	2 50
15	DEFENDANT WITNESSES:	
16	HOLLI HUNT	
17	Direct By The Defense	2 50
18	Cross By The State	2 52
19	TODD ALLEN HUNT	
20	Direct By The Defense	2 55
21	Cross By The State	2 57
22	EDWIN DIAZ	
23	Direct By The Defense	2 60
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1	Re-Cross By The State	2	65
2	LUIS DIAZ		
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5	JEREMIAH DIAZ		
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11:32AM 1 THE COURT: Everybody ready to proceed on
11:32AM 2 the PSI on Jason Diaz.

11:32AM 3 We're here in Cause No. 1646652. State of
11:32AM 4 Texas versus Jason Diaz. And I understand you entered a
11:32AM 5 plea of guilty previously and we're here for the PSI
11:33AM 6 Hearing. I have read the entirety of the PSI report.

11:33AM 7 Does either side -- aside from witnesses
11:33AM 8 does either side have any additional documents they wish
11:33AM 9 to add to the report itself?

11:33AM 10 MR. EUDY: I have nothing further, Your
11:33AM 11 Honor.

11:33AM 12 THE COURT: Perfect.

11:33AM 13 MR. EUDY: I have five witnesses. Some of
11:33AM 14 them are family members.

11:33AM 15 THE COURT: And my understanding is the
11:33AM 16 State's witnesses are going to be appearing via Zoom and
11:33AM 17 other witnesses here in person.

11:33AM 18 Is that correct?

11:33AM 19 MR. EUDY: All my witnesses are in person.

11:33AM 20 THE COURT: Both sides ready to proceed?

11:33AM 21 MS. BEILMAN: Yes, sir.

11:33AM 22 The State offers State's 1, the PSI report.

11:33AM 23 THE COURT: I got a copy of it up here.

11:34AM 24 MS. BEILMAN: At this time State is
11:34AM 25 offering the two revised documents and tender to Defense

11:34AM 1 attorney.

11:34AM 2 May I proceed, Judge?

11:34AM 3 THE COURT: Yes. They're admitted without
11:34AM 4 objection and you may publish.

11:35AM 5 MS. BEILMAN: State Exhibit No. 2 Order of
11:35AM 6 Deferred Adjudication. Possession with intent to
11:35AM 7 deliver Methamphetamine one to four grams.

11:35AM 8 State Exhibit No. 3 Motion to Adjudicate
11:35AM 9 Guilt; second degree felony offense of possession with
11:35AM 10 intent to deliver Methamphetamine one for four grams.

11:35AM 11 Offer State's Exhibit 7. On the 29th day of
11:35AM 12 November 2018 -- and this was -- on November 29, 2018,
11:35AM 13 State's Exhibit 7 is a Motion to Adjudicate Guilt for
11:35AM 14 this same probation. It was filed on March 29, 2019.

11:36AM 15 State's 4 is a Motion to Dismiss amended
11:36AM 16 condition and this was signed by the State on
11:36AM 17 August 28th to parole violation filed.

11:36AM 18 State's Exhibit 5 Motion to Adjudicate
11:36AM 19 Guilt and this was filed on November 8th 2019.

11:36AM 20 I'm sorry. I forgot.

11:37AM 21 And, at this time, State offers State's 6
11:37AM 22 through 9 and tender to Defense counsel for objections
11:37AM 23 and offering it, documents, State's 6 through 9.

11:37AM 24 MR. EUDY: No objections.

11:37AM 25 THE COURT: There's no objections it will be

11:37AM 1 admitted.

11:37AM 2 MR. BEILMAN: May I publish Judge?

11:37AM 3 THE COURT: Yes.

11:37AM 4 MS. BEILMAN: So at this time I'm
11:37AM 5 publishing State's Exhibit 6 which is a Order of
11:37AM 6 Deferred Adjudication for unauthorized use of a motor
11:37AM 7 vehicle that was by the defendant on November 29, 2018.

11:37AM 8 And State's Exhibit 7 is a Motion to
11:38AM 9 Adjudicate Guilt that was filed on December --
11:38AM 10 November 29, 2018.

11:38AM 11 State Exhibit 8 is a Motion to Dismiss.
11:38AM 12 The probation reinstated. That was filed August 28th.

11:38AM 13 State's Exhibit No. 9 it's a Motion to
11:38AM 14 Adjudicate Guilt on this same probation due to the new
11:38AM 15 law violation and filed.

11:38AM 16 At this time we offer State's 10 through 12
11:38AM 17 and tender to Defense for any objections.

11:39AM 18 MR. EUDY: No objections to State's 10
11:39AM 19 through 12.

11:39AM 20 THE COURT: Admitted and you can publish
11:39AM 21 those.

11:39AM 22 MS. BEILMAN: At this time publish State's
11:39AM 23 10, which is a Motion to Dismiss, as part of a plea deal
11:39AM 24 in two other cases 1597193 and 159199, which was filed
11:39AM 25 November 29th of 2018.

11:39AM 1 State's 11 is a Order of Deferred
11:39AM 2 Adjudication. Admission of guilt, state jail felony with
11:39AM 3 intent to deliver, was entered into by August 28, 2019.

11:39AM 4 And, State's 12 Order of Deferred
11:40AM 5 Adjudication delivery of controlled substance,
11:40AM 6 Methamphetamine first degree which was --

11:40AM 7 MR. EUDY: No objections.

11:40AM 8 MS. BEILMAN: At this time the State's
11:40AM 9 going to call Ms. Fidel.

11:40AM 10 KATIE FIDEL,
11:40AM 11 Having been duly sworn was called to the stand and
11:40AM 12 testified upon her oath as follows:

11:40AM 13 DIRECT EXAMINATION

11:40AM 14 BY MS. BEILMAN:

11:40AM 15 Q. Ms. Fidel can you hear me?

11:40AM 16 A. Yes.

11:40AM 17 Q. Are you able to see me, too, clearly?

11:40AM 18 A. Yes. I can see you.

11:41AM 19 Q. So for the record can you please state your
11:41AM 20 name?

11:41AM 21 A. Katie Fidel.

11:41AM 22 Q. What is your relationship to the complainant in
11:41AM 23 this case A [REDACTED] F [REDACTED]?

11:41AM 24 A. I'm her grandmother. But I have helped raise
11:41AM 25 her her whole life. Her dad is a single dad and she did

11:41AM 1 not have a mother in her life so I'm -- pretty much
11:41AM 2 been like mom to her.

11:41AM 3 Q. So you're a little more than a grandmother
11:41AM 4 then?

11:41AM 5 A. Right. Yeah. She's lived with me most of her
11:41AM 6 life so she's more like a daughter.

11:41AM 7 Q. And how old is A [REDACTED] now?

11:41AM 8 A. 14.

11:41AM 9 Q. And how old was she in 2019?

11:42AM 10 A. 13.

11:42AM 11 Q. And back in May of 2019 did A [REDACTED] --

11:42AM 12 A. Yes. She went to a youth group meeting on a
11:42AM 13 Wednesday night at church.

11:42AM 14 Q. Okay. And did something unusual happen during
11:42AM 15 that time period?

11:42AM 16 A. While she was there Mr. Diaz came to the church
11:42AM 17 picked her up and took her with him and we did not see
11:42AM 18 her for over a week.

11:42AM 19 Q. So she was missing?

11:42AM 20 A. Yes. Went back to the church to pick her up and
11:42AM 21 she was not there. We went through the security tapes
11:43AM 22 at the church and they could see a car but couldn't get
11:43AM 23 the license plate number or anything like that.

11:43AM 24 Q. And at some point did you come to learn what
11:43AM 25 happened while she was with Mr. Diaz?

11:43AM 1 A. Yes. When she -- when we got her back she told
11:43AM 2 us what had happened.

11:43AM 3 Q. Okay. What did she tell you?

11:43AM 4 A. She said that he took her to his apartment and
11:43AM 5 then part of the time they were at someone else's house
11:43AM 6 and while she was there he basically kept her high on
11:43AM 7 drugs. He gave her methamphetamines and other really
11:44AM 8 strong drugs. So she was pretty much out of it the
11:44AM 9 whole week. And he had sex with her numerous times. He
11:44AM 10 had -- Lawrence Quino had sex with her.

11:44AM 11 MR. EUDY: Objection.

11:44AM 12 MS. BEILMAN: Hold on one second. He has
11:44AM 13 an objection.

11:44AM 14 MR. EUDY: That's hearsay what she said to
11:44AM 15 her grandmother.

11:44AM 16 THE COURT: It's a PSI. Just adding in the
11:44AM 17 information. It's hearsay that gives subject context,
11:44AM 18 background and I'll take into account it's a third
11:44AM 19 party.

11:44AM 20 MS. BEILMAN: May I proceed?

11:44AM 21 THE COURT: I'll overrule the objection.

11:44AM 22 Q. (By Ms. Beilman) Okay. Ms. Fidel, so you
11:44AM 23 learned that he provided her with drugs. Is that
11:45AM 24 correct?

11:45AM 25 A. Yes.

11:45AM 1 Q. You know what they were from what you have
11:45AM 2 learned?

11:45AM 3 A. Well, I know that he forced her to take
11:45AM 4 Methamphetamine. And she said she thought she was going
11:45AM 5 to die because she had so many drugs in her.

11:45AM 6 Q. And how many times did you come to learn that
11:45AM 7 they had sex?

11:45AM 8 A. Three or four times and then he brought in two
11:45AM 9 other men to have sex with her.

11:45AM 10 Q. And yesterday you showed me some pictures of
11:45AM 11 different --

11:45AM 12 A. Yes I did.

11:45AM 13 MS. BEILMAN: And, Your Honor, may I
11:45AM 14 approach?

11:45AM 15 THE COURT: Yes.

11:45AM 16 Q. (By Ms. Beilman) I'm going to show you what
11:45AM 17 I've marked as State's 11, 12, 13, 14 and 15. This is
11:46AM 18 State's 11.

11:46AM 19 Do you recognize this?

11:46AM 20 A. Yes.

11:46AM 21 Q. Okay. Is this a photo, a fair and accurate
11:46AM 22 depiction of your granddaughter?

11:46AM 23 A. Yes. That's at the same age, at 13.

11:46AM 24 Q. So this was taken at or around the time of this
11:46AM 25 offense. Is that correct?

11:46AM 1 A. Correct.

11:46AM 2 Q. Okay. I have to ask you questions about all
11:46AM 3 these individually, so sorry.

11:46AM 4 This is State's 12. Is this a photo you e-mailed
11:46AM 5 me?

11:46AM 6 A. Yes.

11:46AM 7 Q. And do you recognize the people in this photo?

11:46AM 8 A. Myself and my granddaughter.

11:46AM 9 Q. Okay. And is this a accurate depiction of your
11:46AM 10 granddaughter at the time this offense occurred?

11:46AM 11 A. Yes.

11:46AM 12 Q. And I'm showing you State's 13. Did you send
11:46AM 13 me this photo yourself?

11:47AM 14 A. Yes I did.

11:47AM 15 Q. And is this a photo of your granddaughter?

11:47AM 16 A. It's at 14.

11:47AM 17 Q. And is it a fair and accurate depiction of her
11:47AM 18 at 13?

11:47AM 19 A. Yes.

11:47AM 20 Q. All right. And I'm showing you State's 14. Did
11:47AM 21 you send me this photo as well?

11:47AM 22 A. I did. That's A [REDACTED] with her
11:47AM 23 great-grandmother and her cousin.

11:47AM 24 Q. Okay. And is this a fair and accurate
11:47AM 25 depiction of what she looked like at the time of the

11:47AM 1 offense?

11:47AM 2 A. Yes.

11:47AM 3 Q. Give me one second.

11:47AM 4 At this time I admit State's 11 through 14
11:47AM 5 and tender to Defense for any objection.

11:47AM 6 MR. EUDY: No objection.

11:48AM 7 THE COURT: State's 11 through 14 are
11:48AM 8 admitted. And you may question.

11:48AM 9 MS. BEILMAN: May I publish the report?

11:48AM 10 THE COURT: Yes.

11:48AM 11 Q. (By Ms. Beilman) So the photos I just showed
11:48AM 12 you, State's Exhibit 14, a photo of your granddaughter

11:49AM 13 A [REDACTED]?

11:49AM 14 A. Yes.

11:49AM 15 Q. And you said those photos were again when?

11:49AM 16 A. I got photos from around the time in 2019
11:49AM 17 between -- they were between like March I'd say and June
11:49AM 18 of 2019.

11:49AM 19 Q. Okay. And so have you spoken to A [REDACTED] about
11:49AM 20 this incident since it's happened?

11:49AM 21 A. Oh, yes. Many times. Many times.

11:49AM 22 Q. How would you say that this incident has
11:49AM 23 affected her as a person?

11:49AM 24 A. It's affected her. Completely changed her from
11:49AM 25 very innocent, sweet girl to someone who became very low

11:50AM 1 self-esteem, nightmares all the time. I mean it has
11:50AM 2 made her just feel like she's shamed, less of a person.

11:50AM 3 Q. Before this incident had she used any drugs
11:50AM 4 that you know of?

11:50AM 5 A. Yeah she had. She had smoked Marihuana. And
11:50AM 6 that's the only drug that you know we're aware of that
11:50AM 7 -- when she was with him that's when she had the much
11:50AM 8 harder drugs.

11:50AM 9 Q. And since this incident has she had to
11:50AM 10 experience anything other than Marihuana?

11:50AM 11 A. Oh, she's been in several different treatment
11:51AM 12 facilities since the incident. She has been in drug
11:51AM 13 rehab, let's see, two different times at Memorial
11:51AM 14 Hermann and she's been in a facility Sun Down Ranch and
11:51AM 15 we tried -- it took us four months to get her into the
11:51AM 16 facility where she is now, which is strictly
11:51AM 17 specifically for girls 13 to 17 who have been sexually
11:51AM 18 abused or sex trafficked and she's been in there since
11:51AM 19 the beginning of May. Took us four months to get her
11:51AM 20 into the facility and she's still there. Interminate
11:52AM 21 amount of time.

11:52AM 22 This has been very hard emotionally on her as well,
11:52AM 23 the drug addiction and the way she felt about herself.
11:52AM 24 You know the drugs he made her gorge --

11:52AM 25 Q. Part of the reason -- what's the reason she's

11:52AM 1 not here today?

11:52AM 2 A. Well, for one because she's at that facility
11:52AM 3 and No. 2 because I would not subject her to have to,
11:52AM 4 you know to regurgitate any of the information again
11:52AM 5 because anytime she has to talk about it -- I mean this
11:52AM 6 whole time she's had to tell the story over and over to
11:53AM 7 a lot of strangers and I would not subject her to being
11:53AM 8 in a courtroom with a lot of people and having to talk
11:53AM 9 about things that are -- that were just hurtful,
11:53AM 10 horrific and I think it would just set her back from the
11:53AM 11 progress that we have been making with getting her
11:53AM 12 mentally stable again. So, we would not allow her to be
11:53AM 13 there.

11:53AM 14 I mean she's given a statement and we didn't see
11:53AM 15 need to bring her in to repeat it again.

11:53AM 16 Q. Now, what kind of punishment do you believe is
11:53AM 17 appropriate in this case?

11:53AM 18 A. I think that he should get the maximum sentence
11:53AM 19 that is possible. I mean he preyed on a 13-year old
11:53AM 20 girl, met her online. He pretty much groomed her for
11:54AM 21 this. He gave her free drugs then started having sex
11:54AM 22 with her for drugs and then started, you know, pimping
11:54AM 23 her out to other -- other men and I don't want to see
11:54AM 24 another child go through this. And I think he needs to
11:54AM 25 be off of the street where he can't do this to another

11:54AM 1 innocent child.

11:54AM 2 Q. And do you think it would be in A [REDACTED]
11:54AM 3 interest for this Defendant to be on probation?

11:54AM 4 A. Absolutely not. No. One. We -- you know she's
11:54AM 5 afraid of any retaliation that might come on his part,
11:54AM 6 you know for getting him in trouble and you know part of
11:55AM 7 her rehab and all would -- it would definitely hurt her
11:55AM 8 to know that he was out on the streets again. She's
11:55AM 9 afraid.

11:55AM 10 MS. BEILMAN: At this time I'm going to pass
11:55AM 11 the witness.

11:55AM 12 MR. EUDY: May I proceed?

11:55AM 13 THE COURT: Yes.

11:55AM 14 **CROSS EXAMINATION**

11:55AM 15 BY MR. EUDY:

11:55AM 16 Q. Afternoon Mrs. Fidel. How are you?

11:55AM 17 A. I'm fine.

11:55AM 18 Q. You identified some pictures of your
11:56AM 19 granddaughter. I have some pictures of her here and I
11:56AM 20 want you to identify these as your granddaughter also
11:56AM 21 okay.

11:56AM 22 Is this your granddaughter?

11:56AM 23 A. I can't see it.

11:56AM 24 Q. Can you see it now?

11:56AM 25 A. I do.

11:56AM 1 Q. Is this your granddaughter?

11:56AM 2 A. Yes.

11:57AM 3 Q. How about this picture? Is this your

11:57AM 4 granddaughter?

11:57AM 5 A. Yes.

11:57AM 6 Q. One more after this.

11:57AM 7 Is this your granddaughter?

11:57AM 8 I'll take a step back.

11:57AM 9 A. I -- I guess it is. I can't tell. It looks

11:57AM 10 like it could be.

11:57AM 11 Q. And this picture?

11:57AM 12 A. Looks like it's her.

11:57AM 13 Q. Would you agree with me that these pictures are

11:57AM 14 a whole lot different than the pictures that were shown

11:57AM 15 before?

11:58AM 16 THE COURT: Hold on one second. The

11:58AM 17 objection is?

11:58AM 18 MS. BEILMAN: That she's testifying to

11:58AM 19 pictures that are not in evidence.

11:58AM 20 THE COURT: What was the question that

11:58AM 21 you're asking?

11:58AM 22 MR. EUDY: If the pictures looked different

11:58AM 23 than the pictures that were shown her before?

11:58AM 24 THE WITNESS: Yes. Yes. She has more

11:58AM 25 makeup on. She has more makeup on. But --

11:58AM 1 Q. (By Mr. Eudy) Would you say older in these
11:58AM 2 pictures than --

11:58AM 3 MS. BEILMAN: I'm going to object under
11:58AM 4 Rule 412.

11:58AM 5 THE COURT: Yeah. If you want to try to
11:58AM 6 admit the pictures based on whatever testimony you have
11:58AM 7 to -- you can't discuss the contents of those pictures
11:58AM 8 until they're in evidence.

11:58AM 9 MR. EUDY: Okay.

11:59AM 10 MS. BEILMAN: Object under 404 as --
11:59AM 11 inaudible.

11:59AM 12 THE COURT: Some of them she said were her
11:59AM 13 daughter. There were five total.

11:59AM 14 MS. BEILMAN: There is --

11:59AM 15 MR. EUDY: Six different.

11:59AM 16 MS. BEILMAN: May we approach?

11:59AM 17 THE COURT: Yes.

11:59AM 18 Sounded like she said they were her
11:59AM 19 daughter. There were, I believe, two maybe three where
11:59AM 20 she said I believe that's my granddaughter.

11:59AM 21 I don't know if that's because of this
11:59AM 22 camera or because these pictures just look different.
11:59AM 23 I'm not at all certain so I don't mind you showing her
12:00PM 24 the pictures in a way that's more clear to see if she
12:00PM 25 can identify them. I don't mind you showing to see if

12:00PM 1 she can actually identify some of those pictures as to
12:00PM 2 being her granddaughter. So, I mean, look at them and
12:00PM 3 see if they are appropriate.

12:00PM 4 MR. EUDY: She identified two, that they
12:00PM 5 were her granddaughter.

12:00PM 6 THE COURT: Which ones did she identify
12:00PM 7 were her granddaughter?

12:01PM 8 MR. EUDY: This one. And this one.

12:01PM 9 THE COURT: For the record she hadn't stated
12:01PM 10 that any of them were what her granddaughter looked like
12:01PM 11 on or about the time. I don't know if they're ten years
12:01PM 12 old or yesterday. So I'm going to sustain the objection
12:01PM 13 for now. But if you want to clarify whether or not
12:01PM 14 those are her when she was 13 around the time of the
12:01PM 15 offense and which ones weren't and come back up and
12:01PM 16 address them.

12:01PM 17 MR. EUDY: Can I do that now?

12:01PM 18 THE COURT: Sure.

12:01PM 19 Q. (By Mr. Eudy) Can you see that okay? Wave
12:02PM 20 your hand to the camera and -- see the camera is not --
12:02PM 21 see if what she's seeing is on the screen.

12:02PM 22 THE COURT: Try to focus in. Video now
12:02PM 23 appears to be panning. So if you will move the
12:02PM 24 photograph to your left a little bit so that it's right
12:02PM 25 center. There you go.

12:02PM 1 THE WITNESS: What are you asking me; is
12:02PM 2 that her?
12:02PM 3 MR. EUDY: Yes?
12:02PM 4 THE WITNESS: Is that what you're asking?
12:02PM 5 MR. EUDY: Yes, ma'am.
12:02PM 6 THE WITNESS: Yes.
12:02PM 7 Q. (By Mr. Eudy) And was this picture taken around
12:03PM 8 the date of the offense?
12:03PM 9 A. I have no idea. No idea.
12:03PM 10 Q. Well, on the previous picture?
12:03PM 11 A. It could have. You know girls her age -- I
12:03PM 12 didn't take the picture so I can't tell you what date it
12:03PM 13 was taken.
12:03PM 14 Q. Okay. But you would agree with me that these
12:03PM 15 pictures weren't taken a long time before the offense,
12:03PM 16 correct?
12:03PM 17 Sorry. I can't hear you ma'am.
12:03PM 18 A. I'm not sure what you're trying to get at. He
12:03PM 19 had sex with a 13-year old. That's all we know.
12:04PM 20 Whether how old she looks has nothing to do with it. He
12:04PM 21 knew how old she was.
12:04PM 22 Q. I'm just asking you ma'am if this picture was
12:04PM 23 taken in or around the time of the offense?
12:04PM 24 A. Anytime then. Up till now I don't know.
12:04PM 25 Q. Okay. Thank you.

12:04PM 1 A. Somebody could have gotten that off of
12:04PM 2 Instagram.

12:04PM 3 Q. All right. When did you first realize that
12:04PM 4 your daughter was doing drugs, your granddaughter?
12:04PM 5 Excuse me.

12:04PM 6 A. I guess a few months before this happened.

12:05PM 7 Q. And the police information says that it wasn't
12:05PM 8 unusual for her to leave and stay gone for 24 hours. Is
12:05PM 9 that correct?

12:05PM 10 A. That's not correct. She had gone out with
12:05PM 11 friends one time and did not return until the next
12:05PM 12 morning but she was -- hadn't been gone --

12:05PM 13 Q. This report wouldn't be correct that she
12:05PM 14 wouldn't have left and you wouldn't know where she was;
12:05PM 15 she always returned?

12:05PM 16 A. There's been instances where she's run away,
12:05PM 17 yes.

12:06PM 18 Q. Okay. Thank you.

12:06PM 19 You think that your granddaughter solicited my
12:06PM 20 client for drugs and sex?

12:06PM 21 MS. BEILMAN: Objection. Calls for
12:06PM 22 speculation.

12:06PM 23 THE COURT: Sustained.

12:06PM 24 Q. (By Mr. Eudy) Did your granddaughter talk to
12:06PM 25 my client on Snap Chat or any other social media before

12:06PM 1 meeting him?

12:06PM 2 A. I don't know. I don't know.

12:06PM 3 Q. Okay. Did she ask him to pick her up at the
12:07PM 4 church?

12:07PM 5 A. I don't know if she asked him or if he
12:07PM 6 contacted her. She wanted drugs so that's why she would
12:07PM 7 contact him because she was looking for drugs.

12:07PM 8 Q. Shortly thereafter she went to San Antonio.
12:07PM 9 Did she explain to you why she went to San Antonio?

12:07PM 10 MS. BEILMAN: Object. Speculation.

12:07PM 11 Q. (By Mr. Eudy) So without going into the content
12:07PM 12 of it did she indicate to you one way or another why she
12:07PM 13 wanted to go to San Antonio?

12:07PM 14 A. She went down to San Antonio to a friend's
12:08PM 15 house, a girl that she knew but the girl's mom would not
12:08PM 16 let her stay there so she went and got her --

12:08PM 17 Q. Did you know that she was in San Antonio before
12:08PM 18 she called and told you that she was coming home?

12:08PM 19 A. I mean we talked to her a couple times during
12:08PM 20 the week but -- yes. But she was too high to make any
12:08PM 21 sense when we did talk to her.

12:08PM 22 Q. And do you know what she was high on in San
12:08PM 23 Antonio?

12:08PM 24 A. Methamphetamines. I think he gave her a lot of
12:08PM 25 different drugs but I do know for sure that he forced

12:09PM 1 her to swallow Methamphetamine. And I don't know --

12:09PM 2 Q. She went for drugs but yet he forced her to
12:09PM 3 smoke drugs?

12:09PM 4 A. She wanted Marihuana. She did not want hard
12:09PM 5 drugs.

12:09PM 6 Q. So you're saying that she had never done Meth
12:09PM 7 or any other hard drugs before she met my client?

12:09PM 8 A. Not to my knowledge.

12:09PM 9 Q. And where is she now?

12:09PM 10 A. A facility for girls 13 to 17 that have been
12:09PM 11 sexually abused and sex trafficked.

12:09PM 12 Q. You believe that she was sexually abused?

12:10PM 13 A. She was taken advantage of by older men.

12:10PM 14 Q. So she left my client's apartment to meet
12:10PM 15 another fellow?

12:10PM 16 MS. BEILMAN: Objection. Going into
12:10PM 17 something --

12:10PM 18 THE COURT: This information that is
12:10PM 19 written about in the PSI already I know. In the PSI. So
12:10PM 20 there's sexual contact, something else.

12:10PM 21 MS. BEILMAN: I believe it's some testimony
12:10PM 22 that's -- inaudible.

12:10PM 23 THE COURT: Ms. Fidel if you have personal
12:10PM 24 knowledge you may answer. If you're guessing then
12:11PM 25 don't speculate.

12:11PM 1 OVERRULE the objection.

12:11PM 2 THE WITNESS: I could barely hear what you
12:11PM 3 said.

12:11PM 4 THE COURT: If you have personal knowledge
12:11PM 5 and are able to answer these questions based on your own
12:11PM 6 personal knowledge I'll allow him to ask a couple
12:11PM 7 questions in this regard. But, if you would just be
12:11PM 8 guessing in order to answer these questions that would
12:11PM 9 be speculative. Just say that you don't know the answer
12:11PM 10 and then you'll have to move on.

12:11PM 11 THE WITNESS: What's the question?

12:11PM 12 Q. (By Mr. Eudy) I'm sorry.

12:11PM 13 A. What's the question then?

12:11PM 14 Q. I'm asking you -- I was asking you whether she
12:11PM 15 left my client's apartment to have sex with another man?

12:12PM 16 MS. BEILMAN: Calls for speculation.

12:12PM 17 Q. (By Mr. Eudy) Did she leave, to your knowledge,
12:12PM 18 my client's apartment to have sex with another man?

12:12PM 19 MS. BEILMAN: Judge that calls for
12:12PM 20 speculation.

12:12PM 21 THE COURT: Ms. Fidel, if you know you can
12:12PM 22 answer that. If you don't say you don't know.

12:12PM 23 THE WITNESS: I know that what she told me
12:12PM 24 was that this other man came and took her to San Antonio
12:12PM 25 and when he got to his apartment or whatever, house they

12:12PM 1 were at that he had her have sex with this other man and
12:13PM 2 he took the money. He took part of the money that he
12:13PM 3 paid to have sex. So yes, he was aware of that. And she
12:13PM 4 called this other man to get her 'cause she wanted to
12:13PM 5 get to San Antonio.

12:13PM 6 Q. (By Mr. Eudy) So is it your testimony that she
12:13PM 7 went to San Antonio first and had sex with --

12:13PM 8 MS. BEILMAN: Objection. Calls for
12:13PM 9 speculation and also violation of the Rule.

12:13PM 10 THE COURT: This has already been asked and
12:13PM 11 answered. I'll sustain the objection.

12:13PM 12 Q. (By Mr. Eudy) You believe that my client acted
12:13PM 13 as a pimp for your granddaughter?

12:13PM 14 A. I'm sorry. I didn't hear.

12:14PM 15 Q. I'm sorry. I didn't hear that.

12:14PM 16 A. I do.

12:14PM 17 Q. And why do you believe that?

12:14PM 18 A. Of what my granddaughter told me and that he
12:14PM 19 had -- when she was with him staying there he had other
12:14PM 20 men come over and have sex with her and he kept part of
12:14PM 21 the money and he had sex with her.

12:14PM 22 I think that's what the whole case is about is him
12:14PM 23 having sex with her and that's not in dispute. He's
12:14PM 24 pled guilty to that so why are you trying to make my
12:14PM 25 granddaughter the responsible party? She was a 13 year

12:14PM 1 old child. He's a grown man. That's my thoughts.

12:15PM 2 Q. So those pictures I showed you of her could
12:15PM 3 they possibly be considered an 18-year old girl?

12:15PM 4 A. Yes.

12:15PM 5 MS. BEILMAN: Objection.

12:15PM 6 THE COURT: Sustained.

12:15PM 7 THE WITNESS: Thank you.

12:15PM 8 Q. (By Mr. Eudy) There's a police report that she
12:15PM 9 was addicted to various drugs back in May before my
12:15PM 10 client met your granddaughter.

12:15PM 11 Is that correct or is the police report wrong?

12:15PM 12 A. I don't know what you're talking about, when
12:15PM 13 this report was. I don't know if it was before or
12:15PM 14 after and what drugs.

12:15PM 15 Q. This report was after and it starts off on May
12:16PM 16 the 23rd of 2019.

12:16PM 17 A. That's when she was with your client.

12:16PM 18 Q. What I was asking you ma'am was you have any
12:16PM 19 information that she was addicted to various drugs
12:16PM 20 before then, before May of 2019?

12:16PM 21 A. I knew she had smoked Marihuana, yes. We did
12:16PM 22 everything we could to keep her from doing that.

12:16PM 23 Q. Did you know that she was on all these social
12:16PM 24 media sites that where people who were seeking drugs and
12:16PM 25 people -- people who were seeking sex; did you know that

12:16PM 1 she was on these sites?

12:17PM 2 A. I was told after all this happened. I did not
12:17PM 3 know that before. I know that she was on Instagram just
12:17PM 4 like what other kids are on.

12:17PM 5 Q. Did she tell you about a man named Nester
12:17PM 6 Mavis?

12:17PM 7 MS. BEILMAN: Objection hearsay and also
12:17PM 8 under 404 and relevance.

12:18PM 9 THE WITNESS: I'm supposed to answer that
12:18PM 10 question?

12:18PM 11 Q. (By Mr. Eudy) There's a report that her phone
12:18PM 12 was taken away on May 21, 2019, because she was using it
12:18PM 13 to obtain drugs. You know anything about that?

12:18PM 14 A. Phone. What was taken away from her?

12:18PM 15 Q. Phone.

12:18PM 16 A. We had her phone taken away various times, yes.
12:18PM 17 I couldn't tell you the exact dates but yes.

12:18PM 18 MR. EUDY: No further questions.

12:18PM 19 **RE-DIRECT EXAMINATION**

12:18PM 20 BY MS. BEILMAN:

12:18PM 21 Q. Ms. Fidel I have a few more questions for you.
12:19PM 22 How old is Alanise now?

12:19PM 23 A. 14.

12:19PM 24 Q. How old was she in 2019?

12:19PM 25 MR. EUDY: Asked answered.

12:19PM 1 THE WITNESS: 13.

12:19PM 2 Q. (By Ms. Beilman) And in May 2019 was that
12:19PM 3 about --

12:19PM 4 A. A time when she went where?

12:19PM 5 Q. Is that right?

12:19PM 6 A. Yes.

12:19PM 7 Q. Before that as to your knowledge had she had
12:19PM 8 contact with this Defendant in January?

12:19PM 9 A. Not to my knowledge.

12:19PM 10 Q. Not to your knowledge.

12:19PM 11 And to your knowledge before this incident had she
12:19PM 12 used drugs other than Marihuana, to your knowledge?

12:19PM 13 A. Just Marihuana to my knowledge.

12:20PM 14 MR. EUDY: Objection Your Honor. She's
12:20PM 15 saying that but then she agreed that she used her phone
12:20PM 16 to look for drugs and that's why it was taken away on
12:20PM 17 May 23rd.

12:20PM 18 THE COURT: Ms. Fidel, to your knowledge,
12:20PM 19 are you aware of any drug use that she used --

12:20PM 20 THE WITNESS: I didn't say she had her phone
12:20PM 21 taken away for hard drugs. We took it away when we
12:20PM 22 found she had done Marihuana.

12:20PM 23 THE COURT: And was this the May 21st date
12:20PM 24 that her phone was taken away or day or two before this
12:20PM 25 incident and that was for -- you found she was using

12:21PM 1 Marihuana?

12:21PM 2 THE WITNESS: I don't remember the exact
12:21PM 3 date but I do know when she was picked up from the
12:21PM 4 church that night she had a brand new phone and we got
12:21PM 5 her a new one so that we could put all kinds of things
12:21PM 6 on there so that we could track her and all and when she
12:21PM 7 got into the car with Mr. Diaz he threw her phone out
12:21PM 8 the window and we had just given it to her, either that
12:21PM 9 morning -- I think it was that same day.

12:21PM 10 MS. BEILMAN: Pass the witness, Your Honor.

12:21PM 11 THE COURT: Any further questions?

12:22PM 12 MR. EUDY: No Judge.

12:22PM 13 THE COURT: Call your next witness, please.

12:22PM 14 MS. BEILMAN: Your Honor, the next witness
12:22PM 15 is Mr. Fidel.

12:22PM 16 I just realized that he's not been sworn.

12:22PM 17 THE COURT: Mr. Fidel you mind raising your
12:22PM 18 right-hand.

12:22PM 19 MR. FIDEL,

12:22PM 20 Having been duly sworn was called to the stand and
12:22PM 21 testified upon his oath as follows:

12:22PM 22 (Witness Sworn)

12:22PM 23 THE COURT: You may proceed.

12:22PM 24

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DIRECT EXAMINATION

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BY MS. BEILMAN:

Q. Mr. Fidel, can you please state your name for the record?

A. Fidel.

Q. What's your relationship to the complainant in this case? I'm going to ask again. What's your relationship to the complainant A██████████?

A. Her father.

Q. And how old is A██████████?

A. She's 14.

Q. And how old was she in 2019?

A. 13.

Q. How did you come to find out about the event --

A. The day that she went missing from the church I got a phone call from my father who was on his way to pick her up and he said that she wasn't there and that she hadn't been seen inside the church and that's when I -- from the start of the incident that's when I learned about that.

I learned about Jason Diaz after A██████████ had come back.

Q. What did she tell you happened when she was with Mr. Diaz?

A. Everything that you just heard from my mother.

12:24PM 1 She sat down and spoke with both of us and she was
12:24PM 2 crying. She was very upset about the week she had
12:24PM 3 experienced while she was away. I think she didn't
12:24PM 4 really expect what had happened to her being such a
12:24PM 5 young age. She just experienced a lot of things that
12:24PM 6 were very traumatic for a 13 year old.

12:25PM 7 So, yeah. Everything that my mother explained was
12:25PM 8 told to me as well at the same time.

12:25PM 9 Q. Did she tell you that she was provided with
12:25PM 10 Methamphetamine during that time?

12:25PM 11 A. That she had taken -- because she was
12:25PM 12 completely -- when we picked her up we had to drive to
12:25PM 13 San Antonio. She was just visibly -- just not A[REDACTED].
12:25PM 14 Not the A[REDACTED] that I know. So I immediately -- you
12:25PM 15 know I was like what drugs are you on because this is
12:25PM 16 not normal.

12:25PM 17 Q. And did she tell you how many times she had sex
12:25PM 18 with Mr. Diaz?

12:25PM 19 A. That time, that was at least three or four.
12:26PM 20 Now if it was just intercourse or other sexual acts I'm
12:26PM 21 not sure. As a father I really didn't want to hear it
12:26PM 22 and, you know, seeing my daughter traumatized. It's
12:26PM 23 very disheartening.

12:26PM 24 Q. And since have you noticed any physical or
12:26PM 25 emotional changes in A[REDACTED]?

12:26PM 1 A. It has been very traumatic for her as well as
12:26PM 2 everybody in our family and we've all had to endure
12:26PM 3 quite a bit of emotional stress and it -- it's seeing my
12:27PM 4 daughter having to go through what she's going through.
12:27PM 5 She's definitely changed her outlook on pretty much
12:27PM 6 everything. She -- she's been suicidal, she's been
12:27PM 7 self-harming.

12:27PM 8 Q. Okay. And has she had to go to a number of
12:27PM 9 facilities since this happened?

12:27PM 10 A. Sorry. What was that?

12:27PM 11 Q. Has she had to go to a number of facilities
12:27PM 12 since this happened?

12:27PM 13 A. Yes. Memorial Hermann that was for drug rehab,
12:27PM 14 for her to get -- for her to get sober and then she went
12:28PM 15 to Sun Down Ranch, which was a more extended stay to
12:28PM 16 deal with a lot of her emotional trauma.

12:28PM 17 She's been to a couple mental hospitals. Yeah.
12:28PM 18 Quite a few.

12:28PM 19 Q. And how long has --

12:28PM 20 A. Would you mind repeating that?

12:28PM 21 Q. Your answer didn't come through.

12:28PM 22 A. She's been in there since May 4th of this year.

12:28PM 23 Q. And so along with this emotional that you're
12:28PM 24 talking about has this put a strain on you personally?

12:29PM 25 A. My doctor bill was very high. I'm a single

12:29PM 1 father. I'm not able to afford just on my deductible
12:29PM 2 and you know this has been two years so I'm about --
12:29PM 3 totally with all the bills it's about 50,000 that I'm in
12:29PM 4 debt you know -- and this was just to help her with her
12:29PM 5 trauma because it's affected her more so than I can help
12:29PM 6 as a father for her. So yeah.

12:30PM 7 Q. Prior to today was she admitted to any facility
12:30PM 8 that you recall after sending her there?

12:30PM 9 A. I know -- I don't see -- I don't see -- I can't
12:30PM 10 remember the exact dates. I know she went one time
12:30PM 11 prior to this incident but it was just for Marihuana.

12:30PM 12 Q. Was it just for Marihuana?

12:30PM 13 A. Yes. Yes.

12:30PM 14 Q. So is there anything else that you would like
12:30PM 15 to tell the Judge about how this has affected you?

12:31PM 16 A. I think I pretty much laid it out. It's just
12:31PM 17 pretty dim to get my daughter back to a normal
12:31PM 18 childhood. She didn't ask for this. She didn't ask for
12:31PM 19 --

12:31PM 20 MR. EUDY: I'm going to object. The
12:31PM 21 attorney keeps calling her a --

12:31PM 22 THE COURT: Ask that you rephrase.

12:31PM 23 Q. (By Ms. Beilman) Sorry. Mr. Fidel what were
12:31PM 24 you saying?

12:31PM 25 A. You know yeah that's what I was saying is just

12:31PM 1 that you know -- just I just want to get my daughter
12:31PM 2 back, the sweet girl that she was. And I hope she never
12:32PM 3 has to go through any of this again and that's what
12:32PM 4 we're working towards so -- no. That's it. I don't
12:32PM 5 have anything further.

12:32PM 6 Q. Do you have an opinion on what sort of
12:32PM 7 punishment you think is appropriate in this case?

12:32PM 8 A. The maximum sentence. You know this a grown
12:32PM 9 man. I've heard he has children of his own, close to my
12:32PM 10 daughter's age. I just -- I can't really fathom a
12:32PM 11 father preying on girls that are his children's age.
12:32PM 12 That's -- so I recommend the maximum. I mean it's --

12:33PM 13 Q. You think that it would be appropriate for this
12:33PM 14 defendant to be put on probation?

12:33PM 15 Mr. Fidel for some reason you're not coming
12:33PM 16 through. Do you think it would be in A [REDACTED] best
12:33PM 17 interest for this Defendant to be put on probation?

12:33PM 18 A. No I do not believe that it would be in his
12:33PM 19 best interest.

12:33PM 20 MS. BEILMAN: Pass the witness.

12:33PM 21 THE COURT: Mr. Eudy.

12:33PM 22 **CROSS EXAMINATION**

12:33PM 23 BY MR. EUDY:

12:33PM 24 Q. Mr. Fidel who picked up your daughter from San
12:34PM 25 Antonio?

12:34PM 1 A. My mother. My mother and I.

12:34PM 2 Q. Okay. And how did she act when you picked her
12:34PM 3 up?

12:34PM 4 A. Very distraught, just very out of it. Just
12:34PM 5 wanted to be home and crying.

12:34PM 6 Q. How long did she exhibit that behavior?

12:34PM 7 A. As soon as I saw her. And it was about 3:00 in
12:34PM 8 the morning when we picked her up. So on the way back
12:34PM 9 she slept. So's it was only -- she slept.

12:34PM 10 Q. She slept all the way there?

12:34PM 11 A. Yes.

12:35PM 12 Q. She was interviewed by a lady who said that
12:35PM 13 around the Fall of 2018 she began to seek older men on
12:35PM 14 the meet application and she identified her age as 18?

12:35PM 15 MS. BEILMAN: Objection.

12:35PM 16 Q. (By Mr. Eudy) She told the interviewer she was
12:35PM 17 looking for men --

12:35PM 18 MS. BEILMAN: Objection. Relevance.

12:35PM 19 THE COURT: Sustained.

12:35PM 20 Q. (By Mr. Eudy) Do you know anything about your
12:35PM 21 daughter being on a website called Meet Me?

12:35PM 22 A. At that time, no I did not. Prior to her
12:35PM 23 leaving I did not know about any of that.

12:35PM 24 Q. Okay. So she told the interviewer that she was
12:36PM 25 looking for older men?

12:36PM 1 MS. BEILMAN: Objection. Relevance. Calls
12:36PM 2 for speculation.

12:36PM 3 MR. EUDY: I believe she met older men for
12:36PM 4 sex before.

12:36PM 5 MS. BEILMAN: Objection relevance.

12:36PM 6 THE COURT: Before this incident?

12:36PM 7 MR. EUDY: Correct.

12:36PM 8 THE COURT: I'll sustain the objection.

12:36PM 9 Q. (By Mr. Eudy) Did you know anything about drug
12:36PM 10 addiction rather other than Marihuana before this
12:36PM 11 incident?

12:36PM 12 A. It's the only drug that I knew of. I drug
12:36PM 13 tested her so it was only Marihuana.

12:37PM 14 Q. You say you drug tested your daughter?

12:37PM 15 A. Yes.

12:37PM 16 MR. EUDY: No further questions.

12:37PM 17 MS. BEILMAN: No further questions from
12:37PM 18 this witness, Judge.

12:37PM 19 Your Honor, at this time State's going to
12:37PM 20 call Kalan Turner, who is upon the screen as well.

12:37PM 21 THE COURT: Kalan Turner. You're up there.
12:37PM 22 And can you tell me again the last name?

12:37PM 23 THE WITNESS: T-U-R-N-E-R.

12:37PM 24 THE COURT: Mr. Turner would you mind
12:37PM 25 raising your right-hand?

12:37PM

1

(Witness Sworn)

2

KALAN TURNER,

3

Having been duly sworn was called to the stand and

4

testified upon her oath as follows:

5

DIRECT EXAMINATION

6

BY MS. BEILMAN:

12:38PM

7

Q. Good afternoon. Can you please state your name

12:38PM

8

for the record?

12:38PM

9

A. Deputy Investigator Kalan Turner.

12:38PM

10

Q. And how are you currently employed?

12:38PM

11

A. I'm employed with the Harris County Sheriffs

12:38PM

12

Office.

12:38PM

13

Q. And what division?

12:38PM

14

A. I'm an investigator with the Special Victims

12:38PM

15

Unit or Child Abuse Unit.

12:38PM

16

Q. Okay. And what sort of investigations does that

12:38PM

17

entail?

12:38PM

18

A. We conduct criminal investigations into sexual

12:38PM

19

assault of a child and child injury and sometimes child

12:38PM

20

homicide.

12:38PM

21

Q. And what is your training and experience in

12:38PM

22

conducting these type of investigations or

12:38PM

23

investigating these type of cases?

12:38PM

24

A. I been at the Child Abuse Unit for about a year

12:38PM

25

and a half now, taking multiple courses, crime scene

12:38PM 1 investigations, child injury, sexual assault of family
12:38PM 2 violence, interview, investigation. Been a peace officer
12:38PM 3 since 2014.

12:39PM 4 Q. And in 2019 were you assigned a case to
12:39PM 5 investigate involving Complainant A [REDACTED] F [REDACTED]?

12:39PM 6 A. Yes, ma'am.

12:39PM 7 Q. Did you eventually get the individual Jason
12:39PM 8 Diaz?

12:39PM 9 A. Yes.

12:39PM 10 Q. Are you able to see Mr. Diaz in the courtroom
12:39PM 11 today?

12:39PM 12 A. Yes, ma'am.

12:39PM 13 Q. Can you identify him by an article of what he's
12:39PM 14 wearing?

12:39PM 15 A. Yes, ma'am.

12:39PM 16 Q. Can you state what it is for the record?

12:39PM 17 A. Oh, he's wearing a orange jumpsuit and black
12:39PM 18 mask.

12:39PM 19 MS. BEILMAN: May the record reflect this
12:39PM 20 witness has identified the Defendant?

12:39PM 21 THE COURT: It will.

12:39PM 22 Q. (By Ms. Beilman) So after the investigation in
12:39PM 23 August 2019 did you meet with Mr. Diaz and his attorney
12:39PM 24 for an interview?

12:39PM 25 A. Yes, ma'am.

12:39PM 1 Q. Where did that occur?

12:39PM 2 A. Occurred at the Children's Assessment Center in
12:39PM 3 Houston.

12:39PM 4 Q. And when Mr. Diaz was present was his attorney
12:40PM 5 also present for questioning?

12:40PM 6 A. Yes, ma'am.

12:40PM 7 Q. Throughout the course of the interview did you
12:40PM 8 come to learn how many times Mr. Diaz has had sex with
12:40PM 9 Ms. Fidel?

12:40PM 10 A. Approximate number? Yes, ma'am.

12:40PM 11 Q. Okay. And so from your recollection and your
12:40PM 12 offense report when did he say the first time was?

12:40PM 13 A. That he was unclear on the exact date but he
12:40PM 14 estimated early 2019. He stated in his interview
12:40PM 15 January, February or March.

12:40PM 16 Q. And did he say how he met Ms. Fidel?

12:40PM 17 A. Yes, ma'am. He stated -- may I refer to the
12:40PM 18 offense report as well to make sure I testify
12:40PM 19 accurately?

12:40PM 20 He stated he originally met the Complainant online
12:40PM 21 in the Kik application.

12:40PM 22 Q. And where is that? I want to make sure that
12:41PM 23 we're talking about --

12:41PM 24 Did you show a photo of the complainant to the
12:41PM 25 Defendant?

12:41PM 1 A. Yes, ma'am.

12:41PM 2 Q. And what name did he identify her as?

12:41PM 3 A. As A [REDACTED].

12:41PM 4 Q. And so eventually did you guys talk about this
12:41PM 5 first incident when it happened?

12:41PM 6 A. Can you repeat that?

12:41PM 7 Q. Eventually did you discuss with the Defendant
12:41PM 8 the first time he met her?

12:41PM 9 A. Yes, ma'am.

12:41PM 10 Q. Okay. And did he tell you where he picked her
12:41PM 11 up?

12:41PM 12 A. Yes, ma'am. He stated --

12:41PM 13 MS. EUDY: Sorry. Was there an objection?

12:41PM 14 MS. BEILMAN: No.

12:41PM 15 A. Okay. He stated he picked her up off of a
12:41PM 16 roadway, a residential roadway in Cypress near Highway
12:41PM 17 290.

12:41PM 18 Q. (By Mr. Eudy) So eventually he picked her up
12:41PM 19 away from home?

12:41PM 20 A. Correct.

12:42PM 21 Q. What did he say happened the first time they
12:42PM 22 were together?

12:42PM 23 A. He stated that he met with A [REDACTED] they got high
12:42PM 24 and had sex. He took her to his apartment to do that.

12:42PM 25 Q. And did he say what happened after they left

12:42PM 1 the apartment?

12:42PM 2 A. Yes, ma'am. He said they stayed in contact.

12:42PM 3 Q. Okay. And did he discuss a second time?

12:42PM 4 A. Yes, ma'am. He discussed that they met up
12:42PM 5 again in May of 2019.

12:42PM 6 Q. And did he tell you where he picked her up that
12:42PM 7 time?

12:42PM 8 A. Yes, ma'am. He said he picked her up at a
12:42PM 9 church off Highway 290.

12:42PM 10 Q. And so what did he say happened once she got
12:42PM 11 into the vehicle?

12:42PM 12 A. He said one thing in particular that alarmed
12:43PM 13 him is that the complainant had a cell phone that she
12:43PM 14 threw out the window because she didn't want to be
12:43PM 15 tracked.

12:43PM 16 Q. Okay. And so -- sorry. Can you repeat why she
12:43PM 17 threw it out the window?

12:43PM 18 A. Suspect told me in his interview that the
12:43PM 19 complainant told him that she was being tracked on her
12:43PM 20 phone.

12:43PM 21 Q. Okay. And did he tell you how that made him
12:43PM 22 feel?

12:43PM 23 A. He said he did not feel comfortable with what
12:43PM 24 was happening.

12:43PM 25 Q. Okay. What did he say happened after he picked

12:43PM 1 her up; where did they go?

12:43PM 2 A. He said that he thought about dropping her off
12:43PM 3 but didn't want to because he was afraid that she would
12:43PM 4 get into trouble and so he took her back to his
12:43PM 5 apartment.

12:43PM 6 Q. So he told you he was afraid she would get in
12:43PM 7 trouble?

12:43PM 8 A. Correct.

12:44PM 9 Q. And did that seem unusual to you?

12:44PM 10 A. Yes, ma'am. That seemed strange.

12:44PM 11 Q. Okay. Why?

12:44PM 12 A. If the complaint -- he believed the complainant
12:44PM 13 was in fact an adult, seemed strange that he would be
12:44PM 14 worried about her getting in trouble.

12:44PM 15 Q. Okay. And so does that line up with the --

12:44PM 16 A. Sorry. Can you repeat?

12:44PM 17 Q. Someone to get in trouble does that line-up
12:44PM 18 with someone being 18 in your opinion?

12:44PM 19 A. No, ma'am.

12:44PM 20 Q. And throughout the interview did he express to
12:44PM 21 you that he thought that she was 18 years old?

12:44PM 22 A. Yes, ma'am. He waffled on that a bit. He did
12:44PM 23 say that he believed that she was 18. He also said that
12:45PM 24 she may have lied about her age and thought she may be
12:45PM 25 off by a year or so claiming in the interview she was

12:45PM 1 perhaps 17. But he claimed 17 or 18 in the area.

12:45PM 2 Q. Now later on in the interview when you asked
12:45PM 3 the suspect about A ██████ being in school what did he
12:45PM 4 tell you?

12:45PM 5 A. He told me that it was his understanding that
12:45PM 6 she was still in school.

12:45PM 7 Q. Okay. What does that mean to you?

12:45PM 8 A. That she's a minor.

12:45PM 9 Q. And did he refer to her as anything that also
12:45PM 10 led you to believe that he knew she was a minor?

12:45PM 11 A. Yes. When I asked the suspect to describe Ana
12:45PM 12 to me he replied with a quote that "she was a troubled
12:45PM 13 child."

12:46PM 14 Q. And so what does someone being a "troubled
12:46PM 15 child" indicate to you?

12:46PM 16 MR. EUDY: Objection. Calls for
12:46PM 17 speculation.

12:46PM 18 THE COURT: Sustained.

12:46PM 19 Q. (By Ms. Beilman) When the defendant told you
12:46PM 20 that he thought the complainant was a "troubled child"
12:46PM 21 what did you think that meant?

12:46PM 22 A. That he knew that she was a minor.

12:46PM 23 Q. At some point did you guys discuss his
12:46PM 24 Instagram name?

12:46PM 25 A. Yes, ma'am.

12:46PM 1 Q. What was that?

12:46PM 2 A. He provided his Instagram name as J-Skill 220.
12:46PM 3 J-Skill 220.

12:46PM 4 Q. Did you ask him if this was an Instagram name?

12:46PM 5 A. Yes, ma'am.

12:46PM 6 Q. What did he reply to you?

12:46PM 7 A. He said it was.

12:46PM 8 Q. And during this interview did he ever indicate
12:47PM 9 to you that he knew she was being tracked via her cell
12:47PM 10 phone?

12:47PM 11 A. Yes, ma'am. He said that the complainant had
12:47PM 12 told him that.

12:47PM 13 Q. And did you ask him who he thought was tracking
12:47PM 14 her?

12:47PM 15 A. When I asked him who he thought may be tracking
12:47PM 16 her he thought maybe her parents.

12:47PM 17 Q. At some point did you subpoena the Defendant's
12:47PM 18 records from Instagram from the name we've spoken about?

12:47PM 19 A. Yes, ma'am. I obtained a search warrant for
12:48PM 20 his Instagram account. Yes, ma'am.

12:48PM 21 Q. Did you have a chance to review those records?

12:48PM 22 A. Yes, ma'am I did.

12:48PM 23 Q. And those records did you find any
12:48PM 24 conversations that you believe were between the
12:48PM 25 Defendant and the Complainant?

12:48PM 1 A. Yes, ma'am I did.

12:48PM 2 Q. And those records was this conversation prior
12:48PM 3 to or after this incident?

12:48PM 4 A. After the incident.

12:48PM 5 Q. In the conversation or -- what was the nature
12:48PM 6 of the conversation?

12:48PM 7 A. The conversation was from around August of 2019
12:48PM 8 between the complainant and the Defendant. They were
12:48PM 9 discussing -- well the defendant had asked the
12:48PM 10 complainant to sneak out of her home so that he could
12:48PM 11 see her and she discussed obtaining drugs from him.

12:49PM 12 Q. At some point did he ask the Complainant to
12:49PM 13 sneak out?

12:49PM 14 A. Yes he did.

12:49PM 15 Q. You know about how many times he asked her to
12:49PM 16 do that?

12:49PM 17 A. I don't recall exactly but it was at least
12:49PM 18 twice I would say.

12:49PM 19 Q. And at some point did the Complainant talk to
12:49PM 20 the Defendant about running away?

12:49PM 21 A. Yes he did.

12:49PM 22 Q. If someone -- if the Complainant was telling
12:49PM 23 the Defendant to run away in these messages who would
12:49PM 24 you assume she was running away from? (Sic)

12:49PM 25 A. Her parents.

12:49PM 1 Q. And based on the conversation did you believe
12:49PM 2 the Defendant had knowledge that she was a child?

12:49PM 3 A. Yes, ma'am.

12:49PM 4 MS. BEILMAN: Pass the witness.

12:49PM 5 **CROSS EXAMINATION**

12:49PM 6 BY MR. EUDY:

12:49PM 7 Q. In your original interview with Mr. Diaz he was
12:50PM 8 very honest about having sex with this girl wasn't he?

12:50PM 9 A. He certainly was.

12:50PM 10 Q. And do you think if he knew this girl wasn't of
12:50PM 11 age he would have been so forthcoming?

12:50PM 12 A. I can't answer that. I don't know what he
12:50PM 13 would do in that scenario.

12:50PM 14 Q. You also, in your report, said that she looked
12:50PM 15 no older than 14. Is that correct?

12:50PM 16 A. That's correct.

12:50PM 17 Q. And this picture here sir how old does this
12:50PM 18 girl look?

12:50PM 19 MS. BEILMAN: Objection discussing
12:50PM 20 something that's not in evidence.

12:50PM 21 THE COURT: Sustained.

12:51PM 22 MR. EUDY: Can I put this in evidence?
12:51PM 23 Your Honor, again the grandmother --

12:51PM 24 MS. BEILMAN: She did not know when these
12:51PM 25 photos were taken.

12:51PM 1 MR. EUDY: Didn't know when they were taken
12:51PM 2 but this absolutely hadn't been taken before the
12:51PM 3 incident or right after the incident.

12:51PM 4 THE COURT: I saw the pictures. This one
12:51PM 5 picture that the mother looked at, that looks like --

12:51PM 6 MR. EUDY: It's the photograph that she
12:51PM 7 positively identified as her granddaughter. These
12:51PM 8 others she said --

12:51PM 9 THE COURT: One second. For the purposes
12:51PM 10 of the record, which numbered photograph is that?

12:51PM 11 MR. EUDY: Number one.

12:51PM 12 THE COURT: Ms. Fidel did say -- she said
12:52PM 13 at any time after this I don't recall how specific the
12:52PM 14 time frame was that's -- if that's right after or
12:52PM 15 immediately after.

12:52PM 16 MR. EUDY: Right. Right.

12:52PM 17 THE COURT: I'll admit that one but there's
12:52PM 18 only one photograph that she narrowed it down to.
12:52PM 19 Defendant's Exhibit No. 1, the photograph.

12:52PM 20 Q. (By Mr. Eudy) Officer this picture can you see
12:52PM 21 it okay?

12:52PM 22 A. Yes, sir.

12:52PM 23 Q. Does this look like the girl that you saw when
12:52PM 24 you interviewed her?

12:53PM 25 A. Yes, sir.

12:53PM 1 Q. So you said that she couldn't be more than 14.
12:53PM 2 Does this picture show that she could be much older than
12:53PM 3 14?

12:53PM 4 A. No, sir.

12:53PM 5 Q. You're saying it doesn't?

12:53PM 6 A. That's correct.

12:53PM 7 Q. So it's your testimony that you don't know what
12:53PM 8 Jason would have done when asked about having sex with
12:53PM 9 this girl?

12:53PM 10 A. Yes, sir. That's correct.

12:53PM 11 Q. And what did he say about this girl's body?

12:54PM 12 MS. BEILMAN: I'm going to object to
12:54PM 13 relevance Judge and also to --

12:54PM 14 THE COURT: As to what the Defendant
12:54PM 15 himself said about the Complainant's body?

12:54PM 16 MR. EUDY: Right. During the interview --

12:54PM 17 MS. BEILMAN: The testimony that is --
12:54PM 18 that's sexual nature.

12:54PM 19 THE COURT: Question's about physical.
12:54PM 20 Physical appearance or --

12:54PM 21 MR. EUDY: Physical appearance and physical
12:54PM 22 attributes.

12:54PM 23 THE COURT: I'll allow that question to be
12:54PM 24 asked and answered but Mr. Turner if the answer gets
12:54PM 25 into what, if any, sexual behavior she may have had in

12:55PM 1 the past I won't permit any answer in that regard.

12:55PM 2 THE WITNESS: Sure.

12:55PM 3 MS. BEILMAN: Judge, I'm sorry but I just
12:55PM 4 wanted to clarify my objection as -- about the
12:55PM 5 propensity of this and how it's connected to this line
12:55PM 6 of questioning.

12:55PM 7 MR. EUDY: Your Honor, this goes to all
12:55PM 8 about what he perceived her age to be.

12:55PM 9 MS. BEILMAN: I object to that. He doesn't
12:55PM 10 know exactly what he's --

12:55PM 11 THE COURT: Why don't you approach and
12:55PM 12 describe what you think.

12:56PM 13 Are you referring to these two photographs?

12:56PM 14 MR. EUDY: No.

12:56PM 15 (Bench Conference; Off the Record)

12:56PM 16 THE COURT: We're -- (simultaneous
12:56PM 17 speaking)

12:56PM 18 MS. BEILMAN: I believe this is at the
12:56PM 19 bench and off the record.

12:57PM 20 THE COURT: It's not exculpatory but it
12:57PM 21 potentially could be perceived in certain circumstances
12:57PM 22 as mitigating.

12:57PM 23 I'll allow you to get into -- if you want
12:57PM 24 to ask the question about whether or not it's something
12:57PM 25 about physical maturity or her body development that led

12:57PM 1 your client to believe that she was at or above a
12:58PM 2 certain age. I'm okay with that. If it's going to get
12:58PM 3 the propensity for sexual activity no, or previous.

12:58PM 4 Mr. Turner, did you hear what I just said?

12:58PM 5 THE WITNESS: Yes, Your Honor.

12:58PM 6 THE COURT: If your answer can be confined
12:58PM 7 to that and what was said in that regard then I'm okay
12:58PM 8 with you answering it.

12:58PM 9 THE WITNESS: Yes, sir.

12:58PM 10 In this interview the Defendant stated that
12:58PM 11 as far as his observation of the physical
12:58PM 12 characteristics of the Complainant he found her to
12:58PM 13 appear to be a fully mature woman.

12:59PM 14 Q. (By Mr. Eudy) Can you repeat that last answer?
12:59PM 15 I didn't hear it. I'm sorry.

12:59PM 16 A. Yes, sir. In his interview the Defendant stated
12:59PM 17 in regards to the physical characteristics of the
12:59PM 18 complainant that he observed he found her to be a fully
12:59PM 19 mature woman.

12:59PM 20 Q. So is it your thought Mr. Diaz thought this
12:59PM 21 girl was 18 years old?

12:59PM 22 A. Yes, sir.

12:59PM 23 Q. Even though he laid everything out on the table
01:00PM 24 for you in that interview?

01:00PM 25 A. Yes, sir. We had people confess to things quite

01:00PM 1 often.

01:00PM 2 MR. EUDY: No further questions.

01:00PM 3 MS. BEILMAN: A couple more.

01:00PM 4 RE-DIRECT EXAMINATION

01:00PM 5 BY MS. BEILMAN:

01:00PM 6 Q. Detective Turner were there other interviews
01:00PM 7 throughout the interview that made you believe that Mr.
01:00PM 8 Diaz knew that Arlene was 14 years old?

01:00PM 9 A. Yes.

01:00PM 10 Q. So can you repeat -- what were those?

01:00PM 11 A. The fact that their immediate locations were
01:00PM 12 always somewhere unusual, like off the street or
01:00PM 13 absconded from a church, with the fact that he referred
01:01PM 14 to her as a child, that she threw out her phone, that
01:01PM 15 her phone may be tracking; that he didn't want her to
01:01PM 16 get in trouble and that she was still in school and
01:01PM 17 living with parents.

01:01PM 18 MS. BEILMAN: No further questions.

01:01PM 19 THE COURT: Let's take a quick break and go
01:01PM 20 off the record.

01:01PM 21 So Arlene we can go off the record.

01:01PM 22 (Off The Record)

01:01PM 23 MS. BEILMAN: State rest.

01:01PM 24 (State Rest)

01:02PM 25 THE COURT: We'll convene a little after

01:02PM 1 1:30.

01:40PM 2 (Short Recess Taken)

01:40PM 3 THE COURT: Is everybody ready to start
01:40PM 4 back up?

01:40PM 5 Does the State have anymore witnesses?

01:40PM 6 MS. OXFORD: No. At this time the State
01:40PM 7 rest, Judge.

01:40PM 8 THE COURT: You may proceed.

01:40PM 9 MR. EUDY: I'm sorry. I didn't hear you.

01:41PM 10 THE COURT: You can proceed.

01:41PM 11 MR. EUDY: Defense calls Holli Hill.

01:41PM 12 THE COURT: Raise your right-hand.

01:41PM 13 (Witness Sworn)

01:41PM 14 THE BAILIFF: Step over here.

15 **HOLLI HUNT,**

16 Having been duly sworn was called to the stand and
17 testified upon her oath as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. EUDY:**

01:41PM 20 Q. Holli, would you state your full name for the
01:41PM 21 Court, please?

01:41PM 22 A. Holli Marie Hunt.

01:41PM 23 Q. I'm sorry. Say again.

01:41PM 24 A. Holli Marie Hunt.

01:41PM 25 Q. Hunt?

01:41PM 1 A. Yes.

01:41PM 2 Q. What kind of relationship do you have with Mr.

01:42PM 3 Diaz?

01:42PM 4 A. We're friends.

01:42PM 5 Q. And how long have you known him?

01:42PM 6 A. About two years.

01:42PM 7 Q. And you think that Mr. Diaz would be fine if he

01:42PM 8 got the help for his drug addiction that he would be

01:42PM 9 okay?

01:42PM 10 A. Yes I do.

01:42PM 11 Q. Do you take care of his dog?

01:42PM 12 A. Yes. I have Daisy.

01:42PM 13 Q. And if Jason were to get out on probation

01:42PM 14 before he goes to New York would he be able to stay at

01:42PM 15 your home in Rosenberg?

01:42PM 16 A. Yes he would.

01:42PM 17 Q. And Mr. Diaz has been vilified.

01:43PM 18 Have you ever seen anything that make you think

01:43PM 19 that he was a villain or child molester?

01:43PM 20 A. No. Never.

01:43PM 21 Q. And how many children do you have?

01:43PM 22 A. Five.

01:43PM 23 Q. And do you feel they would be safe around Mr.

01:43PM 24 Diaz?

01:43PM 25 A. I do, yes.

01:43PM 1 MR. EUDY: No further questions.

01:43PM 2 **CROSS EXAMINATION**

01:43PM 3 BY MS. OXFORD:

01:43PM 4 Q. I'm sorry. What was your name again?

01:43PM 5 A. Holli Hunt.

01:43PM 6 Q. Okay. And how long have you been friends with

01:43PM 7 Mr. Diaz?

01:43PM 8 A. Two years.

01:43PM 9 Q. And so you were friends with him at the time

01:43PM 10 that this crime was occurring?

01:43PM 11 A. Turns out, yes.

01:43PM 12 Q. And did you have any idea that it was

01:43PM 13 occurring?

01:43PM 14 A. None.

01:43PM 15 Q. Have you ever met the Complainant in this case

01:43PM 16 Ms. Fidel?

01:44PM 17 A. No.

01:44PM 18 Q. And so you haven't been in any contact with her

01:44PM 19 after this happened either?

01:44PM 20 A. No.

01:44PM 21 Q. And so do you have any personal knowledge about

01:44PM 22 how this has affected her or her family?

01:44PM 23 A. None.

01:44PM 24 Q. Do you have any personal knowledge about the

01:44PM 25 trauma that she's experienced?

01:44PM 1 A. No.

01:44PM 2 Q. Since you've been friends with Mr. Diaz are you
01:44PM 3 aware of a number of criminal charges that he's been
01:44PM 4 charged with?

01:44PM 5 A. Yes. He's told me.

01:44PM 6 Q. Okay. So you are aware of all the cases that
01:44PM 7 he has?

01:44PM 8 A. Yes, I believe so.

01:44PM 9 Q. So you're aware that in 2018 he picked up
01:44PM 10 possession with intent to deliver a controlled
01:44PM 11 substance. Is that correct?

01:44PM 12 A. He's told me that he's had charges. I don't
01:44PM 13 know the dates or the times. No.

01:44PM 14 Q. So you're aware that he was dealing oxycodone,
01:45PM 15 right?

01:45PM 16 A. I know that he was involved in drugs but not
01:45PM 17 which drugs.

01:45PM 18 Q. But he told you that he pled guilty to
01:45PM 19 manufacturing and delivering controlled substance; is
01:45PM 20 that right, since you're friends?

01:45PM 21 A. We don't go into in-depth detail on what he's
01:45PM 22 pled or the time he's served or received.

01:45PM 23 Q. But he told you that he got another drug case
01:45PM 24 in 2019 involving meth. Are you aware of another case?

01:45PM 25 A. Yes. Another case.

01:45PM 1 Q. Okay. And were you aware that he had another
01:45PM 2 drug case where he was dealing meth in 2018?

01:45PM 3 A. Again, I don't know the times and the dates but
01:45PM 4 I know he's had several charges.

01:45PM 5 Q. But you guys have talked about the three
01:45PM 6 delivery of drug cases that he got. Which ones?

01:45PM 7 A. The ones you just mentioned, yes.

01:45PM 8 Q. Have you talked about all this?

01:45PM 9 A. Not in-depth, no. Just mentioned. I knew
01:45PM 10 about them but I don't know of the detail of them.

01:46PM 11 Q. Okay. And you guys talk about the car he stole
01:46PM 12 in 2018?

01:46PM 13 A. No.

01:46PM 14 Q. Were you aware in the stolen car he had a
01:46PM 15 second occupant that was a missing runaway juvenile as
01:46PM 16 well?

01:46PM 17 A. No.

01:46PM 18 Q. Were you aware that the Complainant was a
01:46PM 19 missing female juvenile?

01:46PM 20 A. No. Not missing.

01:46PM 21 Q. Did he tell you how many times he had sex with
01:46PM 22 the complainant in this case?

01:46PM 23 A. No. We don't talk about his prior
01:46PM 24 relationships.

01:46PM 25 Q. So you guys are friends and you don't want to

01:46PM 1 see anything bad happen to this defendant; is that
01:46PM 2 right?

01:46PM 3 A. Say again.

01:46PM 4 Q. Since you guys are friends you don't want to
01:46PM 5 see anything bad happen to him. Is that right?

01:46PM 6 A. Right.

01:46PM 7 MS. OXFORD: Pass the witness.

01:46PM 8 MR. EUDY: No further questions, Your
01:46PM 9 Honor.

01:46PM 10 THE COURT: You may step down. Thank you.
01:47PM 11 Call your next witness.

01:47PM 12 MR. EUDY: Todd Hunt.

01:47PM 13 (Witness Sworn)

01:47PM 14 **TODD ALLEN HUNT,**

01:47PM 15 Having been duly sworn was called to the stand and
01:47PM 16 testified upon his oath as follows:

01:47PM 17 **DIRECT EXAMINATION**

01:47PM 18 **BY MR. EUDY:**

01:47PM 19 Q. Would you state your full name for Court,
01:47PM 20 please?

01:47PM 21 A. Todd Allen Hunt.

01:47PM 22 Q. And how do you know Mr. Diaz?

01:47PM 23 A. Oh, we're friends.

01:47PM 24 Q. And Holli is your wife?

01:47PM 25 A. That is correct.

01:47PM 1 Q. Have you ever -- how many times has Jason
01:47PM 2 stayed over at your house?

01:48PM 3 A. Oh, gosh. I couldn't even -- I don't keep
01:48PM 4 track of that. I don't know. We have so many people.

01:48PM 5 Q. Have you ever seen him do drugs in your house?

01:48PM 6 A. No.

01:48PM 7 Q. Have you ever seen him sell drugs out of your
01:48PM 8 house?

01:48PM 9 A. Absolutely not.

01:48PM 10 Q. Your wife said that you would be happy to put
01:48PM 11 Jason up until he can go to New York. Is that correct?

01:48PM 12 A. That's correct.

01:48PM 13 Q. And what kind of dog are you taking care of for
01:48PM 14 him?

01:48PM 15 A. A Yorkie Terrier.

01:48PM 16 Q. Yorkie?

01:48PM 17 A. Yorkie, yeah.

01:48PM 18 Q. And are you scared to have Jason around your
01:49PM 19 kids?

01:49PM 20 A. Absolutely not.

01:49PM 21 Q. He get along well with your kids?

01:49PM 22 A. Yeah.

01:49PM 23 MR. EUDY: Pass the witness.

01:49PM 24

25

CROSS EXAMINATION

01:49PM 1

01:49PM 2 BY MS. OXFORD:

01:49PM 3 Q. I'm sorry. What's your relationship to --

01:49PM 4 A. Friends.

01:49PM 5 Q. Okay. And how long have you known each other?

01:49PM 6 A. About 2, 2 and a half years. Somewhere in

01:49PM 7 there.

01:49PM 8 Q. So this incident happened during the time you

01:49PM 9 were friends?

01:49PM 10 A. That's correct.

01:49PM 11 Q. Were you aware of the sexual assault?

01:49PM 12 A. Absolutely not.

01:49PM 13 Q. And do you also live in Rosenberg?

01:49PM 14 A. Correct.

01:49PM 15 Q. Were you aware that Mr. Diaz picked up two drug

01:49PM 16 cases in Rosenberg, Texas?

01:49PM 17 A. We're aware, yes.

01:49PM 18 Q. As a friend have you ever talked to him about

01:49PM 19 his criminal history?

01:49PM 20 A. I mean as my wife said not really in-depth

01:49PM 21 but --

01:49PM 22 Q. Were you aware that he's on probation for three

01:49PM 23 different dealing drugs offenses?

01:50PM 24 A. We are aware, yes.

01:50PM 25 Q. And were you aware that he's also on probation

01:50PM 1 for stealing someone's car?

01:50PM 2 A. That I didn't know, no.

01:50PM 3 Q. Would it surprise you to learn that a runaway
01:50PM 4 juvenile was with him in the car that he stole?

01:50PM 5 A. I didn't know anything about that.

01:50PM 6 Q. So you don't know that?

01:50PM 7 A. No.

01:50PM 8 Q. And you're good friends with the defendant
01:50PM 9 here. Is that correct?

01:50PM 10 A. Correct.

01:50PM 11 Q. And you don't want to see anything bad happen
01:50PM 12 to him?

01:50PM 13 A. Well, of course not and he needs help. I needed
01:50PM 14 help when I was 18 so --

01:50PM 15 Q. He's not 18 is he?

01:50PM 16 A. No. But I needed help too. I went in the
01:50PM 17 Marine Corp.

01:50PM 18 Q. How old is he now? How old are you?

01:50PM 19 A. 36, 37.

01:50PM 20 Q. So he's a 36, 37-year old man?

01:50PM 21 A. Yes.

01:50PM 22 Q. Are you aware that he's on four different
01:50PM 23 probations in this court?

01:50PM 24 A. I understand.

01:50PM 25 Q. Are you aware that he's not been able to abide

01:51PM 1 by the rules of this Court on four separate occasions?

01:51PM 2 A. I understand.

01:51PM 3 Q. Do you feel like he could have received help if
01:51PM 4 he availed himself of the services during these four
01:51PM 5 different probations?

01:51PM 6 A. I understand as well.

01:51PM 7 Q. Do you feel anything has changed?

01:51PM 8 A. Yes.

01:51PM 9 Q. What?

01:51PM 10 A. I think he has -- you have to hit a certain
01:51PM 11 point in your life and then you just say okay. I need to
01:51PM 12 do what I need to do.

01:51PM 13 Q. Do you find it normal for someone to have to be
01:51PM 14 arrested for four different first degree felonies in
01:51PM 15 order to say yeah, you know it's time to change?

01:51PM 16 A. I'm not able to speculate on that.

01:51PM 17 Q. And were you aware that he picked up this
01:51PM 18 aggravated sexual assault of a child while he was on
01:51PM 19 this Court's probation?

01:51PM 20 A. We didn't know anything about that.

01:51PM 21 Q. And from the testimony for today were you aware
01:51PM 22 that he was dealing drugs to the child that he sexually
01:52PM 23 assaulted?

01:52PM 24 A. We didn't know anything about that case ma'am
01:52PM 25 so I couldn't know anything about him dealing drugs too

01:52PM 1 okay.

01:52PM 2 Next.

01:52PM 3 MS. OXFORD: No further questions.

01:52PM 4 MR. EUDY: That's all for this witness.

01:52PM 5 Thank you.

01:52PM 6 THE COURT: Thanks for coming in.

01:52PM 7 THE WITNESS: Thank you sir.

01:52PM 8 THE COURT: Call your next.

01:52PM 9 MR. EUDY: Defense calls Edwin Diaz.

01:52PM 10 (Witness Sworn).

01:52PM 11 **EDWIN DIAZ,**

01:52PM 12 Having been duly sworn was called to the stand and

01:52PM 13 testified upon his oath as follows:

01:52PM 14 **DIRECT EXAMINATION**

01:52PM 15 **BY MR. EUDY:**

01:52PM 16 Q. Sir, will you state your full name for the
01:52PM 17 Court, please?

01:52PM 18 A. Edwin Elias Diaz.

01:52PM 19 Q. And where do you live?

01:52PM 20 A. Corona Queens, New York.

01:52PM 21 Q. And have you lived there all your life?

01:53PM 22 A. Pretty much, yes.

01:53PM 23 Q. And how do you know Jason?

01:53PM 24 A. He's my little brother.

01:53PM 25 Q. And when he lived in New York when he was

01:53PM 1 around his family unit and his friends did he get in
01:53PM 2 trouble?

01:53PM 3 A. Not as bad but yeah got into little troubles
01:53PM 4 here and there but nothing bad 'cause we were with him.

01:53PM 5 Q. You think if we got him in a drug treatment
01:53PM 6 program up there he would be fine?

01:53PM 7 A. Yes. I believe coming down to New York where he
01:53PM 8 has a strong family support system we can get him the
01:53PM 9 help that he needs and I feel that we'll definitely help
01:53PM 10 him.

01:53PM 11 Q. You talk a lot about your mother and you love
01:53PM 12 her a lot. She can't be here today but your mom really
01:54PM 13 misses Jason doesn't she?

01:54PM 14 A. Yes she does.

01:54PM 15 Q. And she would do everything in her power to see
01:54PM 16 that he gets the help that he needs; correct?

01:54PM 17 A. Yes.

01:54PM 18 Q. How close are you in age with Jason?

01:54PM 19 A. We're ten years apart.

01:54PM 20 Q. How many?

01:54PM 21 A. Ten years.

01:54PM 22 Q. Wow. You don't look that old.

01:54PM 23 A. Thank you.

01:54PM 24 Q. Anyway what do you do for a living?

01:54PM 25 A. I'm a medical manager of a imaging center.

01:54PM 1 Q. I'm sorry.

01:54PM 2 A. I run a center -- run X-rays, cat scans. It's

01:55PM 3 a imaging center.

01:55PM 4 Q. Okay. And are you married?

01:55PM 5 A. No.

01:55PM 6 Q. You have any kids?

01:55PM 7 A. Yes.

01:55PM 8 Q. How many kids you have?

01:55PM 9 A. I have one.

01:55PM 10 Q. And how old is your --

01:55PM 11 A. He's 20 now. Stationed here in Texas, Fort

01:55PM 12 Hood.

01:55PM 13 Q. How many kids does Jason have?

01:55PM 14 A. Five.

01:55PM 15 Q. And approximately what are their ages?

01:55PM 16 A. 18, 16, 15 and then the two little ones are 10

01:55PM 17 and 8.

01:55PM 18 Q. And the oldest one is in the United States

01:55PM 19 Army. Is that correct?

01:55PM 20 A. Correct. He's stationed at -- stationed in Up

01:55PM 21 State New York.

01:55PM 22 Q. He also has a cousin whose a Detective on the

01:55PM 23 New York City Police Department. Is that correct?

01:55PM 24 A. That's correct.

01:55PM 25 Q. And you know he wrote me a letter but he is

01:56PM 1 convinced that Jason would do fine with the help that he
01:56PM 2 got from his family unit and asking the Court for
01:56PM 3 leniency on Jason; a strong support system?

01:56PM 4 A. Well, we talked a very long time and we have a
01:56PM 5 family in New York that will all help him out. We had
01:56PM 6 the house -- we have the house. I think he can benefit
01:56PM 7 from getting the help he needs.

01:56PM 8 Q. You know we've talked about this before but
01:56PM 9 incarceration is not going to do Jason any good is it?

01:57PM 10 A. No. He needs a treatment program.

01:57PM 11 Q. But a drug treatment program is what he needs,
01:57PM 12 correct?

01:57PM 13 A. Correct.

01:57PM 14 Q. Thank you.

01:57PM 15 I'll pass the witness.

01:57PM 16 **CROSS EXAMINATION**

01:57PM 17 BY MS. OXFORD:

01:57PM 18 Q. What is your relationship to Mr. Diaz?

01:57PM 19 A. I'm his older brother.

01:57PM 20 Q. And are you aware that he's currently on four
01:57PM 21 different probations out of this court?

01:57PM 22 A. I'm aware.

01:57PM 23 Q. And are you aware that he's not followed the
01:57PM 24 rules on this probation?

01:57PM 25 A. Yes. I'm aware.

01:57PM 1 Q. Do you think it would have been a possibility
01:57PM 2 for him to get treatment the past four times he
01:57PM 3 committed --

01:57PM 4 A. Be honest not out here. He's by himself out
01:57PM 5 here. I mean -- I'm sorry --

01:57PM 6 Q. So you don't think he's capable of being on
01:57PM 7 probation in Texas?

01:57PM 8 A. Oh, no. Probation definitely.

01:57PM 9 Q. Okay. So you don't think he could have gotten
01:58PM 10 help the last four times he's on probation?

01:58PM 11 A. He probably could have gotten the help, yes.

01:58PM 12 Q. And he chose not to; is that right?

01:58PM 13 A. Not chose just -- how do I put it? Didn't ask
01:58PM 14 or made aware. If he would have come to us we
01:58PM 15 definitely would have took care of him.

01:58PM 16 Q. Do you know the complainant in this case at
01:58PM 17 all?

01:58PM 18 A. No.

01:58PM 19 Q. And are you aware exactly what happened to her
01:58PM 20 or not really?

01:58PM 21 A. No. I've heard the situation, yes.

01:58PM 22 Q. Okay. And do you have any personal knowledge
01:58PM 23 of how this has affected her and her family since it
01:58PM 24 happened?

01:58PM 25 A. No.

01:58PM 1 Q. And do you have any personal knowledge of any
01:58PM 2 sort of trauma she's experienced from this incident?

01:58PM 3 A. No.

01:58PM 4 MS. OXFORD: Pass the witness.

01:58PM 5 **RE-DIRECT EXAMINATION**

01:58PM 6 BY MR. EUDY:

01:58PM 7 Q. Are you aware that Jason was waiting to get
01:59PM 8 into a in-house drug treatment program?

01:59PM 9 A. Yes.

01:59PM 10 Q. In Cenikor?

01:59PM 11 A. Yes. I remember he was waiting to get into
01:59PM 12 that program when this one came up.

01:59PM 13 Q. So it wasn't -- that wasn't trying to get help?

01:59PM 14 A. Right.

01:59PM 15 Q. He wanted help and he had court ordered help?

01:59PM 16 A. Uh-huh. That's right. I remember he was
01:59PM 17 waiting.

01:59PM 18 Q. And they didn't have a bed for him?

01:59PM 19 A. Right.

01:59PM 20 MR. EUDY: Pass the witness.

01:59PM 21 **RE-CROSS EXAMINATION**

01:59PM 22 BY MS. OXFORD:

01:59PM 23 Q. And would it surprise you to learn that there
01:59PM 24 are some -- would it surprise you to learn that there
01:59PM 25 had already been some probation violations prior to him

01:59PM 1 being asked to attend that treatment program?

01:59PM 2 A. Yes. I've been aware.

01:59PM 3 Q. So you're aware of that?

01:59PM 4 A. Yes.

01:59PM 5 MS. OXFORD: No further questions.

02:00PM 6 MR. EUDY: No further questions, Your

02:00PM 7 Honor.

02:00PM 8 THE COURT: Thanks for coming down.

02:00PM 9 THE WITNESS: Thanks Doc. I'm sorry. I

02:00PM 10 work in medical.

02:00PM 11 MR. EUDY: Defense calls Luis Diaz, Sr.

02:00PM 12 Luis, Jr.

02:00PM 13 MS. BEILMAN: He needs a translator.

02:00PM 14 THE COURT: See if we need a translator.

02:00PM 15 Do you speak English?

02:00PM 16 Raise your right-hand.

02:00PM 17 (Witness Sworn)

02:00PM 18 THE COURT: Have a seat.

02:00PM 19 **LUIS DIAZ, JR.,**

02:00PM 20 Having been duly sworn was called to the stand and

02:00PM 21 testified upon his oath as follows:

02:00PM 22 DIRECT EXAMINATION

02:00PM 23 BY MR. EUDY:

02:00PM 24 Q. Sir, will you state your full name for the

02:01PM 25 Court, please?

02:01PM 1 A. Luis Diaz, Jr.

02:01PM 2 Q. And are you the oldest son?

02:01PM 3 A. Yes.

02:01PM 4 Q. And how much older are you than Jason?

02:01PM 5 A. I'm 52. He's 38, 39.

02:01PM 6 Q. So 14, 15 years?

02:01PM 7 A. Something like that, yeah.

02:01PM 8 Q. And were you around much when he was growing

02:01PM 9 up?

02:01PM 10 A. Yes.

02:01PM 11 Q. Was -- I was going to ask you was he a good

02:01PM 12 kid?

02:01PM 13 A. I seen him grow up, yes.

02:01PM 14 Q. All right. Did he get into any trouble with

02:01PM 15 the police when he was younger?

02:01PM 16 A. Might have. Smoking weed that's it what I know

02:01PM 17 from --

02:01PM 18 Q. Did he have a problem with drugs when he was in

02:01PM 19 New York?

02:01PM 20 A. No, not that I know about.

02:01PM 21 Q. And if he would have had problems with drugs

02:02PM 22 you probably would have known, right?

02:02PM 23 A. Oh, yes.

02:02PM 24 Q. Do you know his five kids?

02:02PM 25 A. Yes.

02:02PM 1 Q. And are they having a hard time adjusting
02:02PM 2 without their dad there?

02:02PM 3 A. They miss him a lot. They miss him.

02:02PM 4 Q. And his son that's in the Army, all the letters
02:02PM 5 have been wrote, are very appreciative of the way they
02:02PM 6 were raised by their father. They all want him back?

02:02PM 7 A. Yeah. They miss him.

02:02PM 8 Q. Is that correct?

02:02PM 9 A. Yes.

02:03PM 10 Q. We have one of his sons here today. And how
02:03PM 11 well do you know him?

02:03PM 12 A. Really well.

02:03PM 13 Q. How far do you live away from your parents?

02:03PM 14 A. I live in the same house with my parents.

02:03PM 15 Q. Your mother's name is Josefina, right?

02:03PM 16 A. Yes.

02:03PM 17 Q. And does she miss Jason?

02:03PM 18 A. Oh, yes.

02:03PM 19 Q. Does she talk about him everyday?

02:03PM 20 A. Yes. At work, at home. Everything.

02:03PM 21 Q. And the main focus of your family is to get him
02:03PM 22 back to New York; correct?

02:03PM 23 A. Yes.

02:03PM 24 Q. And to get him the help that he needs?

02:03PM 25 A. Oh, yes.

02:03PM 1 Q. Do you think him being incarcerated in the
02:04PM 2 State of Texas will do him any good?

02:04PM 3 A. No.

02:04PM 4 Q. The main theme of every letter on file from all
02:04PM 5 his friends and all his family is that they want him to
02:04PM 6 come home?

02:04PM 7 A. They want him to get the help that he needs.

02:04PM 8 Q. And they want him to be around his support
02:04PM 9 system that he has up there. Do you agree with that?

02:04PM 10 A. Yes, sir.

02:04PM 11 MR. EUDY: No further questions.

02:04PM 12 **CROSS EXAMINATION**

02:04PM 13 BY MS. OXFORD:

02:04PM 14 Q. So you're the Defendant's brother; is that
02:04PM 15 right?

02:04PM 16 A. The oldest.

02:04PM 17 Q. Okay. And how many kids did you say he has?

02:04PM 18 A. He has five.

02:04PM 19 Q. And they're 8, 10, 15, 16 and 18 is that right?

02:05PM 20 A. Yeah.

02:05PM 21 Q. Were you aware that the complainant in this
02:05PM 22 case was 13 years old?

02:05PM 23 A. I just found out when I got here in court.

02:05PM 24 Q. So you heard today she was 13 years old?

02:05PM 25 A. Yes.

02:05PM 1 Q. And isn't that around the age of some of his
02:05PM 2 kids?

02:05PM 3 A. Around, yeah.

02:05PM 4 Q. Does that make you a little worried?

02:05PM 5 A. Not really 'cause if he's on the drugs he
02:05PM 6 wasn't thinking right.

02:05PM 7 Q. Are you aware that he's on four different
02:05PM 8 probations for dealing -- three for dealing drugs and
02:05PM 9 one for stealing a car, in this court?

02:05PM 10 A. Yeah. I found out from my mother. She told me
02:05PM 11 the next day.

02:05PM 12 Q. Okay.

02:05PM 13 MS. OXFORD: No further questions from the
02:05PM 14 State, Judge.

02:05PM 15 MR. EUDY: No further questions, Your
02:05PM 16 Honor.

02:05PM 17 THE COURT: Thanks for coming in.

02:05PM 18 THE WITNESS: Yes, sir.

02:06PM 19 THE COURT: Mr. Eudy, do you need an
02:06PM 20 interpreter for any of the witnesses? I think we can
02:06PM 21 see if it's one available.

02:06PM 22 MR. EUDY: I think -- he doesn't.

02:06PM 23 THE COURT: Did you want to take a minute?

02:06PM 24 MS. OXFORD: Mr. Eudy, I saw that you gave
02:06PM 25 me the letters from the family. Did you want to provide

02:06PM 1 those to the Court?

02:06PM 2 MR. EUDY: You received them through an
02:06PM 3 E-mail that I sent you last month.

02:06PM 4 THE COURT: I'll check. Yes.

02:07PM 5 Mr. Eudy, I see a letter from Jeremiah
02:07PM 6 Diaz, David Diaz, from Craig Bacco and Perez, Christine
02:07PM 7 -- I see those five letters. Are those additional ones
02:07PM 8 or is that it?

02:07PM 9 MR. EUDY: I think I sent you two e-mails.
02:07PM 10 Two separate e-mails.

02:07PM 11 THE COURT: Let me check. Letters 2 and 3.

02:07PM 12 Yes, this one from Harvey Luft, from
02:07PM 13 Lordannia Marmolejos Maren Rubino, Josefina Diaz and
02:08PM 14 Dioni Diaz. Just want to make sure that I have
02:08PM 15 everything. Jeremiah Diaz. Right. So those are the
02:08PM 16 letters that I have. Does that sound about right?

02:08PM 17 Three E-mails or three groups of letters. I want to
02:08PM 18 make sure.

02:08PM 19 Did you want to take a minute to see if you
02:08PM 20 needed a Spanish speaking interpreter for any witnesses
02:08PM 21 or have you confirmed that? Do you want to take a
02:08PM 22 moment to see if we need a Spanish interpreter?

02:08PM 23 MR. EUDY: No we don't.

02:08PM 24 THE COURT: Okay. Somebody just said that
02:08PM 25 Jeremiah Diaz I'm guessing appears to be on the Zoom

02:08PM 1 feed as well. I didn't know if you could see from
02:09PM 2 there. But there appears to be somebody on Zoom. Just
02:09PM 3 want to bring to your attention if that's your next
02:09PM 4 witness or if you wanted to call him as a witness.

02:09PM 5 MR. EUDY: Yes. Can I call him now?

02:09PM 6 THE COURT: Sure. So you're going to be
02:09PM 7 calling Jeremiah Diaz on the Zoom screen; is that who
02:09PM 8 you're calling as your next witness? Is that who you're
02:09PM 9 calling as your next witness?

02:09PM 10 MR. EUDY: Right.

02:09PM 11 THE COURT: Mr. Jeremiah Diaz, is that you?

02:09PM 12 THE WITNESS: Yes it is.

02:09PM 13 THE COURT: You can hear me?

02:09PM 14 THE WITNESS: Yes, sir.

02:09PM 15 THE COURT: And you can hear us okay as
02:09PM 16 well?

02:09PM 17 THE WITNESS: Yes I can.

02:09PM 18 THE COURT: Great. Let me have you raise
02:09PM 19 your right-hand. I'm going to swear you in right quick.

02:09PM 20 (Witness Sworn)

02:09PM 21 THE COURT: You can proceed.

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02:09PM 1 **JEREMIAH DIAZ,**

02:09PM 2 Having been duly sworn was called as a witness and

02:09PM 3 testified upon his oath as follows:

02:09PM 4 **DIRECT EXAMINATION**

02:09PM 5 **BY MR. EUDY:**

02:09PM 6 Q. Sir, would you state your full name for the

02:10PM 7 Court, please?

02:10PM 8 A. My full name is Jeremiah Diaz.

02:10PM 9 Q. And I see that you're in the Armed Forces.

02:10PM 10 Where are you stationed?

02:10PM 11 A. I'm stationed in Fort Drum, New York.

02:10PM 12 Q. That's an Army base, correct?

02:10PM 13 A. Yes it is.

02:10PM 14 Q. How are you related to Jason Diaz?

02:10PM 15 A. Jason Diaz is my father. I'm his first child.

02:10PM 16 Q. First child. First of five; is that correct?

02:10PM 17 A. That is correct.

02:10PM 18 Q. And what are you requesting the Court to do

02:10PM 19 today? Are you requesting probation so he can go back

02:10PM 20 to New York and be close to his family and his

02:10PM 21 children?

02:10PM 22 A. That is what the hopes of what's going on and

02:10PM 23 the situation, I am aware of what happened. I do

02:10PM 24 believe him being on probation and being around family

02:11PM 25 --

02:11PM 1 Q. You cut off at the very end. Would you mind
02:11PM 2 repeating that?

02:11PM 3 A. I do believe with him being around family,
02:11PM 4 being on probation okay. I understand.

02:11PM 5 Q. Your brothers and sisters they miss him a lot
02:11PM 6 don't they?

02:11PM 7 A. I frequently talk to my siblings and it's
02:11PM 8 mainly about my father. My two youngest siblings
02:11PM 9 they're age 9 and 7 and that's all they talk about.
02:11PM 10 They know he's gone. They understand, not fully
02:11PM 11 understand the situation but they do understand that
02:11PM 12 they want their father back in their life.

02:11PM 13 Q. And your grandmother and grandfather are big
02:11PM 14 supporters of the rest of the family; is that correct?

02:11PM 15 A. Without a doubt.

02:11PM 16 Q. Without a doubt.

02:12PM 17 And your little brother David is here and is going
02:12PM 18 to testify after you. The common theme in all these
02:12PM 19 letters is they want him back in New York so he can be
02:12PM 20 back with his support group, with the people that will
02:12PM 21 help him, to where -- getting the help he needs for his
02:12PM 22 drug addiction.

02:12PM 23 Do you feel that same way?

02:12PM 24 A. Uh-huh. Yes.

02:12PM 25 Q. Thank you Jeremiah and thank you for your

02:12PM 1 service sir. And you're free to watch the rest of the
02:12PM 2 proceedings.

02:12PM 3 Is that right?

02:12PM 4 THE COURT: Do you have any questions?

02:12PM 5 MS. OXFORD: No questions from the State,
02:12PM 6 Judge.

02:12PM 7 THE COURT: He's free to stay on Zoom and
02:12PM 8 watch the rest.

02:12PM 9 MR. EUDY: David Diaz.

02:13PM 10 (Witness Sworn)

02:13PM 11 **DAVID DIAZ,**

02:13PM 12 Having been duly sworn was called to the stand and

02:13PM 13 testified upon his oath as follows:

02:13PM 14 DIRECT EXAMINATION

02:13PM 15 BY MR. EUDY:

02:13PM 16 Q. Would you state your full name for Court,
02:13PM 17 please?

02:13PM 18 A. David Anthony Diaz.

02:13PM 19 Q. And how old are you sir?

02:13PM 20 A. I'm 16.

02:13PM 21 Q. You're 15?

02:13PM 22 A. 16.

02:13PM 23 Q. 16?

02:13PM 24 A. Yes.

02:13PM 25 Q. When is your birthday?

02:13PM 1 A. April 28, 2004.

02:13PM 2 Q. So you just turned 16, correct?

02:13PM 3 A. Yes.

02:13PM 4 Q. Do you live with your other siblings other than
02:13PM 5 Jeremiah?

02:13PM 6 A. Yeah. I live with my sister.

02:13PM 7 Q. And how close are you to your dad?

02:13PM 8 A. Oh, we're very close. We talk everyday about
02:14PM 9 anything going on, what happened during the day,
02:14PM 10 anything; how our day is going. As much as we can we
02:14PM 11 communicate with each other.

02:14PM 12 Q. You're going to have to speak up a little bit.

02:14PM 13 A. Yes. We talk everyday just as much as we can
02:14PM 14 to communicate how each other is doing and catching in
02:14PM 15 on each other, making sure we're still good.

02:14PM 16 Q. You said in your letter you wanted your dad
02:14PM 17 there to watch you wrestle. Is that correct?

02:14PM 18 A. Yeah. I used to wrestle a little bit and I've
02:14PM 19 always wanted him to be at one of my games, matches and
02:14PM 20 I feel like -- like I don't have -- like none of my
02:14PM 21 siblings really come to my matches; like it happens
02:14PM 22 during the school year and I feel like I'd be very
02:14PM 23 supported if my dad was there.

02:15PM 24 Q. You also said in your letter he's your biggest
02:15PM 25 supporter. Is that correct?

02:15PM 1 A. Yes.

02:15PM 2 Q. And you also mentioned something about a music
02:15PM 3 career?

02:15PM 4 A. Yeah.

02:15PM 5 Q. What kind of music?

02:15PM 6 A. I just like -- I just like making music.

02:15PM 7 Making music, any type of music that comes to my mind to
02:15PM 8 express myself.

02:15PM 9 Q. So you want him at your first concert; is that
02:15PM 10 correct?

02:15PM 11 A. Yes.

02:15PM 12 Q. You think your dad would do good in a rehab
02:15PM 13 program out there?

02:15PM 14 A. Absolutely.

02:15PM 15 Q. And what about finding a job?

02:15PM 16 A. I feel like he can. He has that motivation
02:15PM 17 that he's really -- he's the type of person that can
02:15PM 18 find a job and stay with it, better himself in every way
02:16PM 19 possible.

02:16PM 20 Q. Jason has a lot of friends in New York. He
02:16PM 21 doesn't know quite as many people down here. The common
02:16PM 22 theme today is that everybody wants him back there?

02:16PM 23 A. Uh-huh.

02:16PM 24 Q. And you think your dad wants to go back to New
02:16PM 25 York?

02:16PM 1 A. Absolutely.

02:17PM 2 MR. EUDY: No further questions.

02:17PM 3 MS. OXFORD: No questions from the State,
02:17PM 4 Judge.

02:17PM 5 THE COURT: Thanks for coming in.

02:17PM 6 THE WITNESS: No problem.

02:17PM 7 MR. EUDY: Last witness is Jason Diaz.
02:17PM 8 That's you.

02:17PM 9 (Defendant Sworn)

10 **JASON DIAZ,**

11 Having been duly sworn was called to the stand and
12 testified upon his oath as follows:

13 DIRECT EXAMINATION

14 BY MR. EUDY:

02:17PM 15 Q. Would you state your full name for the Court,
02:17PM 16 please?

02:17PM 17 A. Jason Gabriel Diaz.

02:18PM 18 Q. And Mr. Diaz, how long have you lived in the
02:18PM 19 Houston area?

02:18PM 20 A. I moved to the Houston area back in March of
02:18PM 21 2017.

02:18PM 22 Q. And why did you move down here?

02:18PM 23 A. I came down here for a drug treatment program,
02:18PM 24 which I completed and then I stayed at a out-patient
02:18PM 25 program at a sober living home for three months and then

02:18PM 1 I didn't go back to New York because I had gotten a
02:18PM 2 really good job in Baytown working for a sub-contracting
02:18PM 3 company for Exxon Mobile.

02:18PM 4 Q. Why do you think you got back to doing drugs?

02:19PM 5 A. Back when Hurricane Harvey struck I was laid
02:19PM 6 off, lost my job, lost my fiance and she moved back to
02:19PM 7 New York and I needed to distance myself from her so I
02:19PM 8 stayed here and the depression sunk in really deep and
02:19PM 9 that caused me to fall into drugs again.

02:19PM 10 Q. When you were waiting for the in-house drug
02:19PM 11 treatment program were you off drugs at the time that
02:19PM 12 you were waiting?

02:19PM 13 A. Which moment, which time?

02:19PM 14 Q. The last time that you were going into the six
02:19PM 15 week program that was Court ordered?

02:19PM 16 A. I was waiting for a bed to open up. I got off
02:19PM 17 the drugs. I entered Harris County Jail August 27th and
02:20PM 18 I been off drugs for -- August 28th was my first day
02:20PM 19 clean and I been clean ever since. Coming up on ten
02:20PM 20 months.

02:20PM 21 Q. Okay. You really want to go back to New York
02:20PM 22 now, correct?

02:20PM 23 A. Absolutely. Yes, sir.

02:20PM 24 Q. And will you go to any program that the Court
02:20PM 25 orders you to go through in order to make that happen?

02:20PM 1 A. Yes. As long as the outcome is that I'm better
02:20PM 2 and I'm close to my family again. I will take any
02:20PM 3 program that's available to me.

02:20PM 4 Q. It's really got to hurt that -- especially the
02:20PM 5 youngest kids are always asking about Daddy. Where is
02:20PM 6 your Daddy?

02:20PM 7 A. It hurts tremendously.

02:21PM 8 Q. And your other kids look up to you so much that
02:21PM 9 you feel that you've let them down. Is that correct?

02:21PM 10 A. Yes I do feel that way.

02:21PM 11 Q. And hopefully you'll have the time to do that.
02:21PM 12 You're asking this Court to grant you probation and send
02:21PM 13 your probation up to New York where you can get in a 12
02:21PM 14 step program or whatever program that the Court deems
02:21PM 15 necessary?

02:21PM 16 A. That's what I been praying to God every day
02:21PM 17 since I been put these charges.

02:21PM 18 Q. How long you been in jail over here in Harris
02:21PM 19 County?

02:21PM 20 A. Coming up on ten months.

02:21PM 21 Q. And has there been any drugs available in the
02:21PM 22 jail?

02:21PM 23 A. There's been drugs available but I've stayed
02:22PM 24 away from them.

02:22PM 25 Q. Are you willing to be drug tested by the Court,

02:22PM 1 random drug test?

02:22PM 2 A. Absolutely. That's not a problem.

02:22PM 3 Q. And you pledge to this Court and your family
02:22PM 4 sitting back there that you're going to get your life
02:22PM 5 back in order; is that correct?

02:22PM 6 A. Absolutely. Yes I do.

02:22PM 7 Q. Now, this last aggravated sexual assault of a
02:22PM 8 child would you ever have had sex with this girl, if you
02:22PM 9 knew that she was 13?

02:22PM 10 A. I would never ever have sex with her if I knew
02:23PM 11 her correct age.

02:23PM 12 Q. But you know now that it doesn't matter whether
02:23PM 13 she told you she was 18 or not it matters that she was
02:23PM 14 still under age and that you had sex with her. Is that
02:23PM 15 correct?

02:23PM 16 A. I'm disgusted by it.

02:23PM 17 Q. And this girl came on to you, solicited you,
02:23PM 18 correct?

02:23PM 19 A. Yes.

02:23PM 20 Q. You never solicited her for sex, correct?

02:23PM 21 A. No.

02:23PM 22 Q. Do you feel it's the legal system's
02:23PM 23 responsibility to rehabilitate people instead of just
02:23PM 24 incarcerating them?

02:23PM 25 A. Yes, I do believe that would help a lot of

02:24PM 1 people in this jail. I've come across many people who I
02:24PM 2 feel like they belong in rehabilitation centers and
02:24PM 3 hospitals rather than here.

02:24PM 4 Q. Have you known anybody at the jail over here
02:24PM 5 that tested positive for COVID?

02:24PM 6 A. Yes.

02:24PM 7 Q. And have you been tested for COVID?

02:24PM 8 A. I've been tested and I came out negative but I
02:24PM 9 know several that came out positive and I never got to
02:24PM 10 see them again.

02:24PM 11 Q. So to make this clear you're asking this Court
02:24PM 12 to put you on probation and not send you to prison,
02:24PM 13 correct?

02:24PM 14 A. Yes. That is correct.

02:24PM 15 Q. And you would like your probation transferred
02:24PM 16 to the State of New York, correct?

02:24PM 17 A. By the Grace of God, yes I would.

02:25PM 18 Q. You got people that work for the City in New
02:25PM 19 York that are close friends, cousins; you have a cousin
02:25PM 20 whose a police detective on NYPD. You have the support
02:25PM 21 group to keep you on the straight and narrow. Is that
02:25PM 22 correct?

02:25PM 23 A. Yes I do.

02:25PM 24 MR. EUDY: No further questions.

02:25PM 25

CROSS EXAMINATION

02:25PM 1

02:25PM 2 BY MS. OXFORD:

02:25PM 3 Q. Good afternoon Mr. Diaz. How are you doing?

02:25PM 4 A. Good afternoon.

02:25PM 5 Q. So you're aware that this case was originally

02:25PM 6 charged as continuous sexual abuse of a child; is that

02:25PM 7 right?

02:25PM 8 A. I'm aware.

02:25PM 9 Q. Are you aware you received a plea deal to have

02:25PM 10 it reduced to sexual assault of a child?

02:25PM 11 A. I'm aware.

02:25PM 12 Q. But you did have sex with this complainant more

02:25PM 13 than once, correct?

02:25PM 14 A. Correct.

02:25PM 15 Q. That was in January of 2019; is that right?

02:25PM 16 A. I don't recall the exact date but around that

02:25PM 17 time, yes.

02:25PM 18 Q. Okay. And did you pick her up off the side of

02:26PM 19 the street and had sex with her?

02:26PM 20 A. Yeah.

02:26PM 21 Q. And then again in May of 2019 you also had sex

02:26PM 22 with her. Is that correct?

02:26PM 23 A. Yes.

02:26PM 24 Q. And you picked her up from a church. Is that

02:26PM 25 right?

02:26PM 1 A. Yes.

02:26PM 2 Q. Was she in contact with you during that time
02:26PM 3 period arranging a plot to run away? Yes or no.

02:26PM 4 A. Arranging a plot to run away? Yes.

02:26PM 5 Q. So she told you she was running away?

02:26PM 6 A. Yes.

02:26PM 7 Q. Who did you think she was running away from?

02:26PM 8 A. Family.

02:26PM 9 Q. Family. Specifically who? Did she tell you
02:26PM 10 that her phone was being tracked?

02:26PM 11 A. No. Yes, she did tell me her phone was being
02:26PM 12 tracked.

02:26PM 13 Q. Did she tell you by who it was being tracked?

02:26PM 14 A. No.

02:26PM 15 Q. So the lie you had previously stated that it
02:26PM 16 was being tracked by parents --

02:26PM 17 A. I don't recall her telling me that it was
02:26PM 18 tracked by the parents.

02:26PM 19 Q. But you knew that it was being tracked?

02:26PM 20 A. Yes. After I seen her toss the phone out the
02:27PM 21 window I asked her why would she throw a perfectly good
02:27PM 22 phone away and she told me that she was being tracked.

02:27PM 23 Q. Did you find that unusual?

02:27PM 24 A. Yes.

02:27PM 25 Q. Okay. And you still decided to go home with

02:27PM 1 her. Is that right?

02:27PM 2 A. Yes.

02:27PM 3 Q. Did you guys have conversations about her being
02:27PM 4 in school?

02:27PM 5 A. Yes.

02:27PM 6 Q. And did it seem unusual though she was still in
02:27PM 7 school?

02:27PM 8 A. No. She made it seem like she was in college.

02:27PM 9 Q. Okay. But you were worried about her getting
02:27PM 10 in trouble. Is that right?

02:27PM 11 A. Because I believed that she -- I came to the
02:27PM 12 assumption that she still lived with her family. My
02:27PM 13 understanding if you live under somebody else's roof you
02:27PM 14 can get in trouble with the owners of that roof so --

02:27PM 15 Q. So you knew that she was living with her
02:27PM 16 family; is that correct?

02:27PM 17 A. Yes.

02:27PM 18 Q. And do you remember referring to her as a
02:27PM 19 troubled kid?

02:28PM 20 A. I don't remember referring to that.

02:28PM 21 Q. If there was an interview with the police --

02:28PM 22 A. If that's what I said at the time of the
02:28PM 23 interview then I must have said it but it's been so long
02:28PM 24 that I don't recall the interview word for word.

02:28PM 25 Q. And the second time you met up with her in May

02:28PM 1 it's through -- you received 60 dollars from her having
02:28PM 2 sex with someone else; is that correct?

02:28PM 3 A. I didn't know how she got the money or what she
02:28PM 4 got the money for.

02:28PM 5 Q. Did you receive money from her?

02:28PM 6 A. I received money for the drugs she got from me.

02:28PM 7 Q. So this entire time you were providing her with
02:28PM 8 drugs?

02:28PM 9 A. That she purchased from me, yeah.

02:28PM 10 Q. What kind of drugs?

02:28PM 11 A. It was Zanex pills and Methamphetamine and
02:28PM 12 Marihuana.

02:28PM 13 Q. Was this just a one time provision or was it
02:28PM 14 continually over a time period ya'll were together?

02:28PM 15 A. The time that I picked her up from the church
02:28PM 16 was the only time that I seen her and the very next day
02:29PM 17 is when we parted ways and I never seen her again.

02:29PM 18 Q. Have you talked to her since then?

02:29PM 19 A. No.

02:29PM 20 Q. And so the first Instagram messages between the
02:29PM 21 two of ya'll communicating that would be a lie?

02:29PM 22 A. No. That would not be a lie. We must have
02:29PM 23 exchanged conversation after that. I don't recall it's
02:29PM 24 been so long.

02:29PM 25 Q. Does it seem right that you contacted her again

02:29PM 1 August of 2019?

02:29PM 2 A. Again, I don't recall. It's been so long.

02:29PM 3 Q. Do you recall asking her to sneak out of her
02:29PM 4 house?

02:29PM 5 A. I don't recall.

02:29PM 6 Q. Do you recall her telling you that she wanted
02:29PM 7 to run away?

02:29PM 8 A. That she was telling -- I don't recall.

02:29PM 9 Q. Do you recall you telling her that you were
02:29PM 10 going to provide her with a car to run away?

02:29PM 11 A. No. I definitely don't recall telling her
02:29PM 12 that.

02:29PM 13 Q. Do you recall her telling you that she was
02:29PM 14 sober in August of 2017?

02:29PM 15 A. No. I don't recall that.

02:29PM 16 Q. Do you recall offering her drugs again in
02:30PM 17 August of 2019?

02:30PM 18 A. I don't recall any of the conversations that we
02:30PM 19 had afterwards.

02:30PM 20 Q. So if I had Instagram messages that must be
02:30PM 21 true, right?

02:30PM 22 A. I believe so, yeah.

02:30PM 23 Q. And so the drugs you were providing for her
02:30PM 24 were what again?

02:30PM 25 A. Zanex, Marihuana and Meth.

02:30PM 1 Q. Okay. And did you force her to do the Meth?

02:30PM 2 Yes or no.

02:30PM 3 A. No.

02:30PM 4 Q. Okay. But you were the person that was

02:30PM 5 providing it; is that right?

02:30PM 6 A. Yes, I was the person she purchased from.

02:30PM 7 Q. So you were providing it?

02:30PM 8 A. Yes.

02:30PM 9 Q. And so since 2018 you have appeared in this

02:30PM 10 court a number of times; is that right?

02:30PM 11 A. Yes.

02:30PM 12 Q. And the first time that was for possession of

02:30PM 13 Meth; is that correct?

02:30PM 14 A. Yes.

02:30PM 15 Q. And do you remember how much Meth you had on

02:30PM 16 you that time?

02:30PM 17 A. No I don't.

02:30PM 18 Q. Would it seem correct that it was around four

02:31PM 19 grams of Meth and three grams of cocaine?

02:31PM 20 A. That would probably seem accurate, yeah.

02:31PM 21 Q. Okay. And were you dealing drugs at this time?

02:31PM 22 A. Yes.

02:31PM 23 Q. And so you pled guilty to that offense; is that

02:31PM 24 right?

02:31PM 25 A. Yes.

02:31PM 1 Q. Okay. And this Court granted you a five year
02:31PM 2 probation; is that correct?

02:31PM 3 A. Yes.

02:31PM 4 Q. And part of the conditions of the probation was
02:31PM 5 that you agreed to or were to not commit any new law
02:31PM 6 offenses in the State of Texas; is that right?

02:31PM 7 A. Uh-huh.

02:31PM 8 Q. Were part of the conditions that you agreed to
02:31PM 9 not do drugs?

02:31PM 10 A. I'm sorry.

02:31PM 11 Q. Parts of the conditions you agreed to for that
02:31PM 12 probation is not to do drugs?

02:31PM 13 A. Yes.

02:31PM 14 Q. But you continued to do drugs; is that right?

02:31PM 15 A. Yes, ma'am.

02:31PM 16 Q. And you continued to deal drugs; is that right?

02:31PM 17 A. Yes.

02:31PM 18 Q. Okay. So in 2018 you were pulled over in a
02:31PM 19 stolen vehicle; is that right?

02:31PM 20 A. I did not know the vehicle was stolen.

02:31PM 21 Q. But you pled guilty to that offense; is that
02:32PM 22 right?

02:32PM 23 A. I pled guilty to it but I did not know that
02:32PM 24 vehicle was stolen at the time.

02:32PM 25 Q. You pled guilty to driving someone else's

02:32PM 1 vehicle that was not yours because the vehicle was
02:32PM 2 stolen; is that correct?

02:32PM 3 A. I did not know the vehicle was stolen but yes.

02:32PM 4 Q. But you pled guilty to that offense, correct?

02:32PM 5 A. Yes.

02:32PM 6 Q. In that passenger side of the vehicle was a
02:32PM 7 runaway individual?

02:32PM 8 A. I wasn't aware that she was a runaway. She
02:32PM 9 lived with her grandmother.

02:32PM 10 Q. You knew she was a juvenile?

02:32PM 11 A. I did not know her age but again she told me
02:32PM 12 that she was over 18 and she looked the age as well.

02:32PM 13 Q. So you just assumed she was 18?

02:32PM 14 A. I didn't know she was a juvenile.

02:32PM 15 Q. Okay. Just like you didn't know this
02:32PM 16 complainant?

02:32PM 17 A. Just like I didn't know about Ana, correct.

02:32PM 18 Q. And so you pled guilty to stealing that
02:32PM 19 vehicle; is that correct?

02:32PM 20 A. Again, yes.

02:33PM 21 Q. And you were put on probation for that offense?

02:33PM 22 A. Yes.

02:33PM 23 Q. Okay. And you remember when that was?

02:33PM 24 A. 2018 November, I believe.

02:33PM 25 Q. Okay. And so while you were out on bond for

02:33PM 1 that case did you pick up another case?

02:33PM 2 A. Yes.

02:33PM 3 Q. And what type of case was that?

02:33PM 4 A. Another drug case.

02:33PM 5 Q. Okay. So wasn't just possession of drugs it's
02:33PM 6 'cause you were dealing; is that correct?

02:33PM 7 A. It was possession of drugs yes and I was
02:33PM 8 dealing at the time, yes.

02:33PM 9 Q. And what were you dealing at that time?

02:33PM 10 A. Meth.

02:33PM 11 Q. Okay. And oxycodone?

02:33PM 12 A. I was not dealing oxycodone. I was lured into
02:33PM 13 that scenario by the officer and I wasn't even aware
02:33PM 14 that was an officer until months later when he arrested
02:33PM 15 me for the meth charge.

02:33PM 16 Q. Okay. But you had five oxycodone pills that you
02:33PM 17 provided that officer; is that right?

02:34PM 18 A. Again, I wasn't aware that was an officer. I
02:34PM 19 wasn't arrested that day I provided it to him and this
02:34PM 20 was not any forte so that -- it was just a one time
02:34PM 21 thing.

02:34PM 22 Q. So you dealt oxycodone pills to that officer
02:34PM 23 that day. Is that correct?

02:34PM 24 A. In January, yes.

02:34PM 25 Q. And so you were arrested for two of the drug

02:34PM 1 charges simultaneously; is that correct?

02:34PM 2 A. Yes.

02:34PM 3 Q. Okay. And then in March 2019 did you pick up
02:34PM 4 another dealing case?

02:34PM 5 A. That's when I was arrested for the oxycodone
02:34PM 6 charge as well.

02:34PM 7 Q. Yes. That's correct.

02:34PM 8 And at that time what were you dealing?

02:34PM 9 A. Meth.

02:34PM 10 Q. Okay. So were you arrested with four grams of
02:34PM 11 Meth on that night?

02:34PM 12 A. Four grams? No.

02:34PM 13 Q. So if the offense says that it's probably a
02:34PM 14 mistake?

02:34PM 15 A. It was four.

02:34PM 16 Q. Okay. You also had Marihuana on you that night.
02:35PM 17 Is that right?

02:35PM 18 A. I don't recall.

02:35PM 19 Q. Okay. And so this case, aggravated sexual
02:35PM 20 assault of a child case was picked up while you were on
02:35PM 21 probation for all four of these, correct?

02:35PM 22 A. It was picked up while I was waiting for a bed
02:35PM 23 to open up for a drug program that I was court ordered
02:35PM 24 to go to.

02:35PM 25 Q. So you were put on probation for all four

02:35PM 1 cases?

02:35PM 2 A. Yes.

02:35PM 3 Q. In August of 2019; is that right?

02:35PM 4 A. Yes.

02:35PM 5 Q. Okay. And so the Court admonished you about
02:35PM 6 the probation that day; is that correct?

02:35PM 7 A. Yes.

02:35PM 8 Q. And part of this was to not commit any law
02:35PM 9 violations in the State of Texas; is that right?

02:35PM 10 A. That is correct.

02:35PM 11 Q. And part of those is not to use or deal drugs;
02:35PM 12 is that right?

02:35PM 13 A. That is correct.

02:35PM 14 Q. Okay. And so while you're waiting on a bed were
02:35PM 15 you still dealing drugs and committing crimes?

02:36PM 16 A. Absolutely not. I turned myself in the very
02:36PM 17 next day after that court date.

02:36PM 18 Q. Okay. So how did you get arrested for this
02:36PM 19 charge in January 2019, then, if you weren't dealing
02:36PM 20 drugs or out?

02:36PM 21 A. I'm sorry.

02:36PM 22 Q. You were put on probation in the Fall of 2018
02:36PM 23 for all four cases, right?

02:36PM 24 A. Yes. Of 2018?

02:36PM 25 Q. Yes.

02:36PM 1 A. Oh, okay. Yes.

02:36PM 2 Q. And what time of the year in 2019 did you meet

02:36PM 3 A [REDACTED]?

02:36PM 4 A. Between January and May.

02:36PM 5 Q. Okay. And so you were providing A [REDACTED] with

02:36PM 6 Meth; is that correct?

02:36PM 7 A. I sold it to her, yes.

02:36PM 8 Q. So you were dealing drugs to A [REDACTED], right?

02:36PM 9 A. Yes.

02:36PM 10 Q. In January of 2019?

02:36PM 11 A. Yes.

02:36PM 12 Q. While you're on probation for four different

02:36PM 13 dealing -- sorry or three different dealing and one

02:36PM 14 dealing; is that right?

02:36PM 15 A. The possession, unauthorized use, yes.

02:37PM 16 Q. And so you disregarded the rules of this Court

02:37PM 17 several times; is that right?

02:37PM 18 A. Yes.

02:37PM 19 Q. And you continued to deal drugs after you were

02:37PM 20 put on probation four different times? Yes or no.

02:37PM 21 A. I'm sorry. Can you repeat the question?

02:37PM 22 Q. Did you continue to deal drugs after you were

02:37PM 23 put on probation for four different cases?

02:37PM 24 A. After I was put on probation, yes I did.

02:37PM 25 Q. And while you were waiting on a bed did you

02:37PM 1 have sex with a 14-year old?

02:37PM 2 A. While I was waiting on a bed -- I'm sorry I was
02:37PM 3 waiting for a bed on August 26th that's when I was --
02:37PM 4 and in August 27th is when I was turned in to the court
02:37PM 5 into the jail.

02:37PM 6 Q. Okay. So my apologies. While you were on bond
02:37PM 7 for all the other cases you had sex with a 14-year old;
02:37PM 8 is that correct?

02:37PM 9 A. I didn't know her age.

02:37PM 10 Q. But there were several indicators that could
02:38PM 11 have told you her age; is that correct?

02:38PM 12 A. No.

02:38PM 13 Q. Do you remember telling the officer at some
02:38PM 14 point that you asked her her age two times?

02:38PM 15 A. Yes.

02:38PM 16 Q. Okay. So why did you have to ask?

02:38PM 17 A. Because I wanted to make sure so that I
02:38PM 18 wouldn't be in this situation where I am at now, given
02:38PM 19 the opportunity again I would have asked for a birth
02:38PM 20 certificate or I --

02:38PM 21 Q. So she told you she was in school?

02:38PM 22 A. She told me she was in school; acted like she
02:38PM 23 was in college.

02:38PM 24 Q. You picked her up on the side of the road
02:38PM 25 twice?

02:38PM 1 A. Again, yes.

02:38PM 2 Q. And she told you her parents were tracking her
02:38PM 3 phone; is that correct?

02:38PM 4 A. She told me her phone was being tracked.

02:38PM 5 Q. Do you remember telling the officer in a
02:38PM 6 interview that you gave him it's her parents tracking
02:38PM 7 her phone?

02:38PM 8 A. I don't recall what I told the officer in the
02:38PM 9 interview. It's been so long.

02:38PM 10 Q. And if that is what it says in the interview
02:39PM 11 that would be the best recollection; is that correct?

02:39PM 12 A. If that's what it says then that's what I said.

02:39PM 13 Q. Okay. You chose to have sex with her; is that
02:39PM 14 right?

02:39PM 15 A. I chose to, yes.

02:39PM 16 Q. Okay. And it was --

02:39PM 17 MR. EUDY: Your Honor, I object. She's
02:39PM 18 going over the same stuff over and over and over and
02:39PM 19 over again. This is all part of the record already and
02:39PM 20 I don't know why she has to brow beat my client. She
02:39PM 21 needs to finish and get on with it.

02:39PM 22 THE COURT: The specific question was
02:39PM 23 slightly different. She was asking whether or not it
02:39PM 24 was a choice that he made rather than did he do it. So,
02:39PM 25 I'll overrule as to that question.

02:40PM 1 Let's make sure we're plowing new ground.

02:40PM 2 Q. (By Ms. Oxford) Okay. Great.

02:40PM 3 Did you also pick up two new cases in Rosenberg
02:40PM 4 while you are -- were you on probation here?

02:40PM 5 A. In Rosenberg I picked up one new case.

02:40PM 6 Q. And then one of them was dismissed; is that
02:40PM 7 right?

02:40PM 8 A. I believe so.

02:40PM 9 Q. All right.

02:40PM 10 MS. OXFORD: No further questions from the
02:40PM 11 State.

02:40PM 12 MR. EUDY: No further questions, Your
02:40PM 13 Honor.

02:40PM 14 THE BAILIFF: Step down.

02:40PM 15 THE COURT: Any further witnesses?

02:40PM 16 MR. EUDY: No further witnesses Your Honor.

02:40PM 17 THE COURT: I want to make sure that I've
02:40PM 18 read each of these letters, three E-mails with three
02:41PM 19 attachments. So I'm going to take a moment to read
02:41PM 20 these right quick and then we can proceed with argument
02:41PM 21 afterwards.

02:41PM 22 Does either side need a few minutes to
02:41PM 23 draft arguments while I'm listening to this? It will
02:41PM 24 take me about ten minutes. All appear to be less than
02:41PM 25 one page. Does that work for both sides, ten minutes to

02:41PM 1 get ready for argument?

02:41PM 2 MS. OXFORD: Yes. I also have a victim
02:41PM 3 impact statement. So I don't know when you want to
02:41PM 4 address that so I want to make the Court aware.

02:41PM 5 THE COURT: Sure. Sure. Who would be
02:41PM 6 making that statement?

02:41PM 7 MS. OXFORD: The grandmother.

02:41PM 8 THE COURT: Katie Fidel.

02:41PM 9 THE COURT: Okay.

02:47PM 10 Okay. I've had an opportunity to review all
02:47PM 11 the letters. There appears to be duplicates from
02:48PM 12 E-mail.

02:48PM 13 How much time does each side want for
02:48PM 14 argument? Take whatever you need.

02:48PM 15 MS. OXFORD: I'm going to waive my right to
02:48PM 16 open and reserve the right to close.

02:48PM 17 MR. EUDY: What did he say?

02:48PM 18 MS. OXFORD: He was asking how much time
02:48PM 19 you needed for argument.

02:48PM 20 MR. EUDY: Oh, two days.

02:48PM 21 THE COURT: Take whatever time you need.
02:48PM 22 Mr. Eudy you may proceed with argument.

02:48PM 23 MR. EUDY: Your Honor, we've heard a lot of
02:48PM 24 things today about Jason and his transgressions and
02:48PM 25 needless to say any and all the things that he's done

02:48PM 1 wrong has been caused by drugs. He was selling them,
02:49PM 2 using them; mainly using them.

02:49PM 3 I've talked to Jason several times while he
02:49PM 4 was in jail, mostly on the phone, because with COVID but
02:49PM 5 he cries every time and says that he will do anything to
02:49PM 6 make this right. He wants to go to New York be with his
02:49PM 7 family, do any kind of drug treatment, do any amount of
02:49PM 8 probation and he swears that he's not going to screw up
02:49PM 9 this time.

02:49PM 10 I know you've heard that many times before
02:49PM 11 but I've also heard you and other judges say that we're
02:50PM 12 too quick to send people to prison, that we need to help
02:50PM 13 the world by helping to rehabilitate.

02:50PM 14 This would never have happened to Jason if
02:50PM 15 he would have stayed in New York. His family wouldn't
02:50PM 16 have let it happen. His cousins wouldn't have let it
02:50PM 17 happen. His friends wouldn't have let it happen. And
02:50PM 18 the thing that we need to do now is to send Jason back
02:50PM 19 to New York where getting the help and the support from
02:50PM 20 his friends, from his family, from the rehab center,
02:50PM 21 from his employer and then band him from ever coming
02:50PM 22 back to Houston.

02:51PM 23 I've come close to his brother Edwin. We
02:51PM 24 talk a lot. They all want him back. I mean they can't
02:51PM 25 see him spending time in the penitentiary. And I said,

02:51PM 1 Well, you know, Jason screwed up and he knew he screwed
02:51PM 2 up but he needs to pay the piper now and whether that's
02:51PM 3 doing probation, which is a pain in the rear or going to
02:51PM 4 prison. We're just hoping today that you do not send
02:51PM 5 Jason to prison, that you put him on probation. Any
02:51PM 6 court ordered drug treatment program you want to send
02:51PM 7 him to but preferably sending him to New York where he
02:52PM 8 has friends, family, sons, daughters, other people who
02:52PM 9 will help him stay clean and walk the straight and
02:52PM 10 narrow.

02:52PM 11 We're pleading with this Court to please
02:52PM 12 take mercy on Jason and put him on probation.

02:52PM 13 Thank you, Your Honor.

02:52PM 14 MS. OXFORD: Judge, this Defendant knew
02:52PM 15 exactly what he was doing. He's a 38 year old man. At
02:52PM 16 the time he was 37 and the complainant was 13 years old
02:52PM 17 and he lured her on social media. He groomed her on
02:52PM 18 social media and manipulated her with drawings and made
02:52PM 19 her have sex with him for drugs.

02:53PM 20 His drug dealing behavior is not that
02:53PM 21 unusual for him, as you've seen from the numerous times
02:53PM 22 he's been in front of you and there are only so many
02:53PM 23 times you can say I didn't know.

02:53PM 24 He didn't know it was a police officer. He
02:53PM 25 didn't know the juvenile in his car was a juvenile. He

02:53PM 1 didn't know that this Complainant was underage.

02:53PM 2 Frankly, it's time for him to take responsibility.

02:53PM 3 This is something that the Complainant,

02:53PM 4 A [REDACTED], and her family will have to deal with for the

02:53PM 5 rest of their lives, whether or not the Complainant

02:53PM 6 started using drugs before or after this incident the

02:53PM 7 reality is they were provided to her frequently

02:53PM 8 throughout him having her for a week and pimping her out

02:53PM 9 and she's going to have to deal with being addicted to

02:53PM 10 drugs until as long as she lives.

02:53PM 11 She's been in numerous treatment facilities

02:54PM 12 to overcome this and just recently she was able to get

02:54PM 13 into a specific sexual assault treatment facility in

02:54PM 14 order to deal with this trauma.

02:54PM 15 And, you've heard from both the

02:54PM 16 Complainant's grandmother and her father about the

02:54PM 17 emotional toll and the financial toll taken on by the

02:54PM 18 family.

02:54PM 19 And I understand he maintains several times

02:54PM 20 that he thought she was 18. I don't believe that. He

02:54PM 21 made several admissions in his statement, to police

02:54PM 22 officers, specifically about picking her up in unknown

02:54PM 23 locations, off the street and at a church event.

02:54PM 24 Knowing that her phone is being tracked by her parents

02:54PM 25 continually asking her her age, letting her stay with

02:55PM 1 him so that she doesn't get in trouble, being a troubled
02:55PM 2 kid and also her being in school. All of those are
02:55PM 3 calculators that he knew that she was underage and also,
02:55PM 4 that he knew he had a underaged juvenile in his car
02:55PM 5 previously during one of his offenses, that it says yes
02:55PM 6 we consider you for hanging out with underage and even
02:55PM 7 if the Court does believe that he thought she was over
02:55PM 8 18 frankly that's not a defense in this case.

02:55PM 9 He has pled guilty to having sex with a 13
02:55PM 10 year old while on bond for four other cases out of this
02:55PM 11 court. As you can see the PSI report, the first case he
02:55PM 12 was arrested for was dealing Meth, he also gave the
02:55PM 13 complainant in this case. He was put on probation for
02:55PM 14 that. We filed a MAJ. He picked up a new UUMV case for
02:56PM 15 driving a stolen car with a minor in it and he was put
02:56PM 16 on probation for both and the MAJ was dismissed and he
02:56PM 17 picked up two drugs cases; one for oxycodone and one for
02:56PM 18 dealing Meth, which he was providing to the Complainant
02:56PM 19 in this case and then he was given another opportunity
02:56PM 20 and put on probation for all four of those cases
02:56PM 21 simultaneously.

02:56PM 22 You heard him admit that while he was on
02:56PM 23 probation for all those four cases was the time that he
02:56PM 24 had the Complainant and continually also doing Meth,
02:56PM 25 providing her with Meth, which he didn't call dealing,

02:56PM 1 but I do.

02:56PM 2 I do not think this Defendant's a good
02:56PM 3 candidate for probation based on his evidence, behavior
02:56PM 4 and disrespecting this Court's orders. When he was
02:56PM 5 given the opportunity to give a statement to the
02:57PM 6 probation department about what happened immediately he
02:57PM 7 said the Complainant had deceived him and it was her
02:57PM 8 fault. I believe that this was a choice of his. He
02:57PM 9 didn't do it just once he did it once in January and
02:57PM 10 then chose to meet up with her again in May and have sex
02:57PM 11 with her multiple times again.

02:57PM 12 After the Complainant reports this case he
02:57PM 13 continues to have contact with her over Instagram and
02:57PM 14 encourages her to run away and sneak out. The question
02:57PM 15 is where is she running away from sneaking out from and
02:57PM 16 I think that's pretty obvious.

02:57PM 17 And, so, as you're aware Article 42-A-102
02:58PM 18 states that a Defendant, if he's placed on deferred for
02:58PM 19 this type of offense, if the Judge makes a finding in
02:58PM 20 open court that placing the Defendant on deferred is in
02:58PM 21 the best interest of the victim, and it is my opinion
02:58PM 22 that it's not in the best interest of this victim to
02:58PM 23 have this Defendant who abused her and also possibly
02:58PM 24 trafficked her out on the streets. I do not believe
02:58PM 25 it's in the best interest of the community for him to

02:58PM 1 get probation. The family in this case is very clear
02:58PM 2 that they would like for the Defendant to receive the
02:58PM 3 maximum sentence in prison. I'm requesting that the
02:58PM 4 Defendant be sentenced to at least 15 years in prison
02:58PM 5 based on him being on probation for a second degree
02:58PM 6 felony, two state felonies, a first degree felony and
02:58PM 7 then picking up another first degree felony that was
02:58PM 8 reduced as a part of a plea deal and request for that.

02:59PM 9 THE COURT: Did you say 15?

02:59PM 10 MS. OXFORD: Yes, sir.

02:59PM 11 THE COURT: Mr. Diaz, quite a few things to
02:59PM 12 go over with you.

02:59PM 13 I understand you have priors. I understand
02:59PM 14 that drugs played a large part in the role for your
02:59PM 15 criminal activity in the past. I'm fairly understanding
02:59PM 16 about addiction and what it does to people and I'm
02:59PM 17 fairly understanding in the way of getting treatment for
02:59PM 18 that addiction. I'll do everything I can to get somebody
02:59PM 19 treatment for that addiction, because while being an
02:59PM 20 addict obviously hurts the person whose addicted to
02:59PM 21 drugs it also hurts horrifically their family and
02:59PM 22 friends more so in a in-direct manner. People steal
03:00PM 23 from them or mistreat them otherwise. So I'm aware of
03:00PM 24 that.

03:00PM 25 The problem that happens is in this

03:00PM 1 specific case the way that the Complainant was impacted
03:00PM 2 was different than just how people are impacted so I
03:00PM 3 want to go over that with you. The Complainant in this
03:00PM 4 case was 13 years old. So I leave it up for
03:00PM 5 interpretation whether or not she looked 13, 14, 15, 16,
03:00PM 6 18 or whatever other age from the legal standpoint.
03:00PM 7 That's why it's a plea of guilty to this charge. And I
03:00PM 8 guess I can see under certain circumstances where it
03:01PM 9 might arguably at least be mitigating, if you truly and
03:01PM 10 honestly believe somebody to be 18 or older.

03:01PM 11 But in this case we have a couple things
03:01PM 12 that kind of show otherwise. I understand they can be
03:01PM 13 interpreted a number of different ways. I understand
03:01PM 14 that she talked about being in school and you believed
03:01PM 15 that to mean college. I understand that you believed
03:01PM 16 her that she was living with her family and her family
03:01PM 17 was tracking her phone and we believe that to be parents
03:01PM 18 perhaps.

03:01PM 19 The problem is she's going to carry the
03:01PM 20 scars from this, emotional scars and visible scars from
03:01PM 21 this the rest of her life. Her family has been impacted
03:01PM 22 financially and emotionally. Her father and grandmother
03:01PM 23 are effectively without the little girl they knew for
03:02PM 24 12, 13 before all this happened. And now they're left
03:02PM 25 having to try and pick up the pieces and help somebody

03:02PM 1 whose just been affected in a way that I could not
03:02PM 2 imagine.

03:02PM 3 Frankly when I read the PSI report and I
03:02PM 4 seen in a previous unauthorized use of a vehicle charge
03:02PM 5 you had a minor runaway in your car on that incident. I
03:02PM 6 don't know how many times it has to happen before
03:02PM 7 somebody says you know what maybe I need to stop hanging
03:02PM 8 out with this type of a crowd. So I'm not sure that it
03:02PM 9 was a mistake in this time. Maybe not. I would lean
03:02PM 10 toward you had some concept, some idea of her age.

03:02PM 11 I believe 42-A.102 of the Texas Code of
03:03PM 12 Criminal Procedure only permits me to grant deferred
03:03PM 13 adjudication probation in this type of offense if I were
03:03PM 14 willing to make a finding in open court on the record
03:03PM 15 that to do so would be in the best interest of the
03:03PM 16 Complainant specifically. I've heard evidence to the
03:03PM 17 contrary but I haven't heard anything that makes me
03:03PM 18 believe that it would be in her best interest in any
03:03PM 19 capacity for you to be placed on deferred adjudication.
03:03PM 20 If she hadn't been a part of this and you had gone on a
03:03PM 21 drug rampage, you know stealing from your family,
03:03PM 22 letting them down, whatever, I would be seriously
03:03PM 23 considering giving you an opportunity after opportunity
03:03PM 24 to try and dry out, give you treatment and this little
03:03PM 25 girl, is what she is, she's going to have to bear this

03:04PM 1 forever.

03:04PM 2 So, in this case I have to sentence you to
03:04PM 3 30 years in the Texas Department of Criminal Justice.
03:04PM 4 You'll be given credit for the time that you've served
03:04PM 5 up to this point.

03:04PM 6 Is there any reason that you can think of
03:04PM 7 that the sentence shouldn't be pronounced?

03:04PM 8 THE DEFENDANT: Your Honor, this is an
03:04PM 9 addiction and a mistake and this is something I can't --
03:04PM 10 Can't be away from -- Your Honor, I'm beyond belief of
03:04PM 11 words. I ask you, I humbly beg to you please, to please
03:04PM 12 provide me with this last opportunity to just be with my
03:04PM 13 family and allow me to -- to not be away from them for
03:04PM 14 so long. I cannot be away from my children's lives.
03:04PM 15 This is a mistake Your Honor. I humbly ask you to
03:05PM 16 please.

03:05PM 17 THE COURT: I hear what you're saying and
03:05PM 18 in reading your son's letters and hearing them testify
03:05PM 19 you got some fine young men that have been raised. I
03:05PM 20 don't know if it's by you or someone else and I feel for
03:05PM 21 them but this is more than just an addiction.

03:05PM 22 THE DEFENDANT: Your Honor, I beg to you
03:05PM 23 please give me the opportunity, this chance to make
03:05PM 24 everything right. To make it right. I humbly ask you to
03:05PM 25 please, let me be out with my family and allow me to be

03:05PM 1 a productive member of this society, to go back to the
03:05PM 2 work force and go back to just getting treatment and the
03:05PM 3 help that I need and just go back to --

03:05PM 4 THE COURT: I hear you but frankly I don't
03:05PM 5 think the law permits me to do it under 42-A.102. I
03:05PM 6 can't give you a probation unless I find it's in her
03:05PM 7 best interest. Frankly I just don't see how her
03:06PM 8 interests are advanced in any way of your being on the
03:06PM 9 street. I see yours and your family but not hers.

03:06PM 10 THE DEFENDANT: What's the least amount of
03:06PM 11 sentencing that I can possibly get on this charge?

03:06PM 12 THE COURT: I've just sentenced you to 30
03:06PM 13 years.

03:06PM 14 There are rehab programs in prison. If
03:06PM 15 you're serious about it do what you can do. See what
03:06PM 16 you can do. I don't know what parole eligibility will
03:06PM 17 be for you. There are those possibilities as well.

03:06PM 18 MS. OXFORD: I don't know if Katy Fidel
03:06PM 19 wanted to make a victim impact statement or not. There
03:06PM 20 was indication that she may have wanted to.

03:06PM 21 Ms. Fidel, are you going to make a victim
03:06PM 22 impact statement or waive that at this time? Would you
03:06PM 23 like to read your letter?

03:07PM 24 THE COURT: Ms. Fidel you're muted. I'm
03:07PM 25 not able to hear you.

03:07PM 1 MS. BEILMAN: We still can't hear you Ms.
03:07PM 2 Fidel. She says she does not want to read it.

03:07PM 3 THE COURT: Okay. Ms. Fidel if you do not
03:07PM 4 want to read your statement can you give me a thumb's up
03:07PM 5 that you do not wish to read the statement.

03:07PM 6 (Witness Complies)

03:07PM 7 THE COURT: He's all yours.

03:07PM 8 MR. EUDY: Your Honor, the prosecution
03:08PM 9 asked for 15 years why do you think it needs -- to bump
03:08PM 10 it up to 30?

03:08PM 11 THE COURT: They asked for no less than 15
03:08PM 12 and frankly I think if this were to go to a jury trial I
03:08PM 13 think life would have been a very realistic outcome
03:08PM 14 based on him being on probation, being on probation
03:08PM 15 numerous times and I don't think the jurors would
03:08PM 16 understand that and I think they would have given him
03:08PM 17 life. But I think the impact on the Complainant in this
03:08PM 18 case justifies giving her at least peace of mind for a
03:08PM 19 period of time until he's first eligible for parole in
03:08PM 20 15 years and her grow up without the fear of him being
03:08PM 21 on the street and coming back to her is what I was
03:08PM 22 thinking.

03:09PM 23 MS. OXFORD: You need anything else from us
03:09PM 24 Judge?

25 (Off the Record)

1 THE STATE OF TEXAS)(.
2

3 COUNTY OF HARRIS)(

4 I, Arlene F. Webb, Deputy Court Reporter
5 in and for the 232nd Criminal District Court of Harris
6 County, State of Texas, do hereby certify that the above
7 and foregoing contains a true and correct transcription
8 of proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of
11 which occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's
14 Record of the proceedings truly and correctly reflects
15 the exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for
17 the preparation of this Reporter's Record \$457.00 and
18 was/will be paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the 31st
20 day of August, 2020.

21 /s/ Arlene F. Webb
22 Texas Certification No. 928
23 Official Court Reporter
24 232nd Criminal District Court
25 1201 Franklin, 16th Fl.
Houston, Texas 77002
Expiration Date: 04/30/21

APPENDIX F

Affidavit of Dorian Cotlar

(Filed March 2, 2021)

AFFIDAVIT OF DORIAN C. COTLAR

THE STATE OF TEXAS §

§

COUNTY OF
HARRIS

§

My name is Dorian C. Cotlar. I have been licensed to practice law in the State of Texas since November of 2001. During that time, I have exclusively practiced criminal law. I began my career as a prosecutor for the Harris County District Attorney's Office. In 2006, I began practicing state and federal criminal defense. As a criminal defense attorney, I have represented thousands of clients in both State and Federal court throughout the State of Texas.

I am Board Certified in Criminal Law by the Texas Board of Legal Specialization. I am First Degree and Capital (Second Chair) Qualified to represent indigent clients in Harris County, Texas. I am on the Criminal Justice Act (CJA) Panel for both the Southern and Eastern Districts of Texas. I am providing this affidavit at the request of Mr. Diaz's Habeas Counsel, Chris Perri.

I have thoroughly reviewed the case file in *The State of Texas v. Jason Diaz*. That includes reviewing the offense report, recordings of phone calls of witnesses (including the Applicant), the Applicant's non-custodial interrogation, the Applicant's criminal history, the terms and conditions of the Applicant's community supervision on unrelated cases, the Pre-Sentence Investigation (PSI), retained trial counsel's Texas Bar information (including disciplinary actions taken against him), retained trial counsel's other cases in Harris and Galveston Counties, Habeas Counsel's notes from

communications with Applicant, and the pleadings in the case. I have also exchanged emails and had telephone communication with one of the ADAs that handled this case for the State (Danielle Oxford). The other ADA is no longer with the Harris County DA's Office.

I am very familiar with the *Strickland* standard to establish that counsel was deficient. Under both prongs of *Strickland*, Mr. Gary Eudy's (Eudy) errors in this case were so serious that there is a near certainty (not just "reasonable probability") that the result would have been different but for Eudy's errors. In nearly twenty years of criminal practice, Undersigned Counsel has never seen such a "perfect storm" of errors committed by one lawyer during the scope of one criminal representation.

Gary Eudy's Practice

Eudy was admitted to the Texas Bar in 2010. It appears that his primary places of practice are Harris and Galveston Counties. Prior to representing Applicant, he had only handled two sexual assault related clients at the trial court level in Harris County and one in Galveston County. Mr. Eudy was also retained on a post-conviction writ in Harris County. The writ application (Aggravated Sexual Assault of a Child) was dismissed because it did not comply with TRAP 73.1. In short, when Eudy began his representation of Applicant, he had very little experience in these kinds of cases.

Applicant's Criminal History/Procedural Posture & Non-Custodial Interrogation

In November of 2018, Applicant was placed on community supervision for felony possession of a controlled substance (PCS) and unauthorized use of a motor vehicle (UUMV). The allegations that form the basis for the Continuous Sexual Assault of a Child case are from May of 2019. In the interim, Applicant had been charged (and

pleaded guilty to) with two *additional* PCS cases. A Motion to Adjudicate Guilt had been filed based on the new felony law violations. It was in that posture that Eudy allowed Applicant to give a recorded, non-custodial interview to law enforcement.

Based on the content of that interrogation, Eudy deprived Applicant of even the most rudimentary representation. In the course of one interview, Eudy literally sat idly by Applicant while he:

1. Admitted to using illegal drugs while already on probation for several felonies;
2. Admitted to having sex with the thirteen-year-old Complainant several times; and
3. Admitted to what amounts to facilitating prostitution by the Complainant.

Based on Eudy's actions during the interrogation, it does not appear that Eudy understands that a suspect's *belief* that a child victim is eighteen years old (or seventeen, for that matter) is not a defense to a sexual assault offense against a child. It is also clear that Eudy does not believe that a probationer admitting to illicit drug use (while on community supervision for several PCS cases) could have any collateral consequences. To be clear, there is no conceivable strategic reason why a lawyer should allow a client to admit to both violating probation and having sexual intercourse with a thirteen-year-old child to a police officer.

There was no DNA evidence in this case against Applicant. While the State had some evidence of communications between Applicant and Complainant, allowing Applicant to admit to every element of this offense was the proverbial nail in what was to become a thirty-year prison coffin. Applicant's admissions – given with the implicit approval of his lawyer – also removed *any* leverage to negotiate a reasonable sentence in these cases.

Eudy's Representations to Applicant & Lack of Meaningful Plea Bargain

Conversations

According to Applicant, Eudy did not admonish him about the consequences of making admissions to law enforcement. Eudy never advised Applicant to invoke his right against self-incrimination. Eudy repeatedly told Applicant that he was “going to get probation”. In fact, Applicant was scheduled to turn himself in to the Harris County Jail the day *after* his interview with law enforcement. He was scheduled to go into custody to wait for a bed in a residential treatment program. Eudy told Applicant that he would get probation on the Aggravated Sexual Assault of a Child because he was already getting probation on the PCS cases. Applicant was told that he would “only be in jail about three weeks” waiting for a bed to open up.

The Applicant and Eudy made ten court appearances between September 26, 2019 and March 19, 2020. Applicant plead guilty on March 19, 2020 and the PSI Hearing was held on June 25, 2020. According to one of the ADAs handling the case, Eudy *never* discussed a plea bargain with the State. Typically, any plea bargain offers are written on the standard “Case Reset Form”. There are no notations of any offers on the reset forms in this case. Similarly, Eudy never asked Applicant if there was a prison sentence that Applicant would agree to. Rather, Eudy persisted in his representation that Applicant would get “probation”. Applicant has made clear that while he would not have agreed to a prison sentence of thirty years, he would certainly have agreed to something less.

At the PSI Hearing, the State asked Judge Josh Hill for a minimum sentence of fifteen years. (RR at 106.) In Harris County in general and with these prosecutors in particular, the sentence asked for at a PSI Hearing is *higher* than what they would have offered in the form of a plea bargain. Based on my review of this case, my familiarity

with both ADA Beilman and ADA Oxford, my knowledge of Judge Hill and the sheer volume of cases that Applicant had pending, not seeking a plea bargain offer in these cases was a clear violation of Applicant's right to the effective assistance of counsel. If the State asked for a minimum of fifteen years, it is a near certainty that they would have accepted a plea bargain in the ten to fifteen-year range. It is the practice of Harris County Assistant District Attorneys is to make plea bargain offers of less than what they would ask from either a judge or jury. From the minute that Applicant was charged with Continuous Sexual Abuse of a Child, he was denied the effective assistance of counsel by Eudy. (Eudy was already representing him on four other felony charges.) It is unfathomable that an attorney would allow a person suspected of sexual intercourse with a thirteen-year-old child to allow his client to admit to such conduct. It is similarly inexplicable to allow the same suspect to admit to the use of illicit drugs while on community supervision for multiple drug offenses.

Conclusion

Defense Counsel in this case failed to meet a reasonable professional standard of competency. There was no rational, strategic reason for Eudy to allow his client to admit to having sexual intercourse with a thirteen-year-old child, especially while using illicit drugs in violation of Applicant's terms of probation. Without opining on the reasonableness of a thirty-year sentence for this conduct, Applicant was entitled to have competent representation. He did not.

It is a certainty that had Applicant been provided competent, diligent representation, the outcome would have been far different. As discussed, no competent criminal defense attorney would have allowed Applicant to give a statement to law

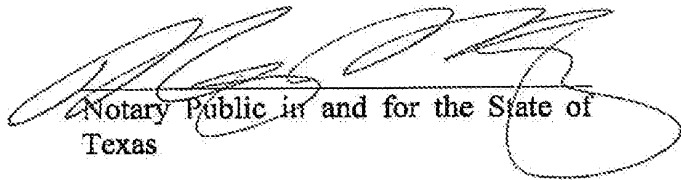
enforcement. But even after that grievous error, Eudy could have possibly salvaged his representation by seeking a reasonable plea bargain. Given the nature of the allegations and Applicant's repeated violation of existing probation terms, any competent criminal defense attorney would have sought a resolution to this case other than a jury trial or PSI. The record is clear that Eudy could have negotiated a sentence of fifteen years or less.



Dorian C. Cotlar
Attorney at Law

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this

2nd day of March 2021.



Notary Public in and for the State of
Texas

