

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA.

STATE OF FLORIDA,
Plaintiff,

CASE NO.: 052014CF015443AXXXXX

vs.

JOSEPH PALLANTE, III,
Defendant.

NOTICE OF INTENT TO PRESENT CHILD VICTIM HEARSAY

Comes Now the State of Florida, by and through the undersigned Assistant State Attorney, and hereby notifies the defendant of the State's intent to present hearsay statements of the child victim pursuant to section, 90.803(23) Florida Statute and advises the defendant as follows:

1. The Defendant is charged by Information with eight (8) counts of Sexual Battery (Victim less than 12 years of age) 794.011(2), nine (9) counts of Sexual Battery on a Child by a Person in Familial or Custodial Authority 794.011(8)(b), seven (7) counts of Lewd or Lascivious Molestation Against a Person Less than 12 Years of Age by Offender 18 Years of Age or Older 800.04(5)(b), four (4) counts of Lewd or Lascivious Molestation Against a person 12 Years of Age or Older but less than 16 years of Age by Offender 18 Years of Age or Older 800.04(5)(c)(2), two (2) counts of Lewd or Lascivious Exhibition 800.04(7)(a)(b), 23 counts of Possession of Material Depicting Sexual Conduct by a Child 827.071(5), two counts of Providing Obscene Material to Minor 847.0133 and Contributing to the Delinquency or Dependency of a Minor 827.04(1)(a)
2. The child victim, M.B. has a date of birth of [REDACTED] and is expected to testify at trial. The child victim was [REDACTED] years old at the time of the disclosures.
3. The child victim's oral statements to school officials, law enforcement officers & the child protection team, as well as a written statement, are the subjects of this notice.
4. The specific factual circumstances that give rise to the child's disclosures are listed below and have also been provided to the defense as part of the State's discovery obligation.
 - a. **Statements made by the child to math teacher Tammie Murphy**
 - i. On February 11th, 2014 the child victim came into the school courtyard and ran to her in tears.
 - ii. Ms. Murphy took the child victim to class and the victim told her that her [REDACTED] was being really nasty to her.
 - iii. The child victim told her they went to Walgreens and he [REDACTED] didn't like how she was acting in the store because she was acting as if she was embarrassed of him.
 - iv. The child victim told her he had been sending nasty text messages and showed her the text messages saying in substance "you act as if you are embarrassed of me, you're no good, you are only going to be trailer trash."

- v. Ms. Murphy said that we are going to guidance and told the victim that I'll have your back, I'll be with you."
- vi. While waiting, Ms. Murphy said "I want to ask you a question – I don't know how, but I'm gonna ask you anyway, does he touch you?"
- vii. The child victim responds that "he beats me"
- viii. Ms. Murphy responded "No, is he touching you in a sexual way?"
- ix. The victim denied at that point. Mr. Murphy told her "in order for anything to get solved, you need to tell the whole story, not part, not bits & pieces, the whole story."
- x. The victim said she understood and waited for guidance.

b. **Statements made by the child to Guidance Services Professional Jennifer**

Shockley

- i. On February 11th, 2014 the child victim was in the guidance office, talking to Ms. Murphy. The victim was crying and visibly upset.
- ii. This is the first day Ms. Shockley had met the child victim.
- iii. Guidance Counselor Heidi Babin was in a classroom doing a presentation, Ms. Murphy had to leave to get to class and the School Resource Officer Valiente was not on campus yet.
- iv. Ms. Shockley was the only school personnel available and could not send the child victim to class upset.
- v. Ms. Shockley told the child victim "tell me what's the matter, what can I help you with? You are obviously upset."
- vi. The child victim told her [REDACTED] sends me mean texts."
- vii. Ms. Shockley asked the child victim for her background, and the child victim told her she lives with [REDACTED] and goes back and forth with her [REDACTED]. The child victim stated that she had run into him [REDACTED] the night before at the drugstore and her [REDACTED] was sending nasty texts.
- viii. Ms. Shockley inquired as to what kind of texts and the victim showed her the text messages.
- ix. Ms. Shockley told the child victim that the texts were not appropriate and that he shouldn't be doing that and he has no right to say that.
- x. Ms. Shockley asked if the child victim's mother knows. The child victim responded that her "mom drinks an awful lot, so when I tell her stuff, she doesn't remember."
- xi. The child victim says [REDACTED] doesn't know about [REDACTED] and think's he is a good [REDACTED]
- xii. Ms. Shockley suggested that they bring in the parents, saying you don't have to be by yourself, we can talk about this together.
- xiii. The child victim said she was afraid & that [REDACTED] gets mad and sometimes when he gets mad he hurts her mother.
- xiv. Ms. Shockley asked if she meant hurts physically. The child victim responded that yes, he hits her mother, throws her against the wall. The child victim got quiet at this point.
- xv. Ms. Shockley asked victim ". . . and?"
- xvi. The child victim replied "me too, he had thrown me against the wall and hit me."

- xvii. Ms. Shockley told the child victim that “you know he can’t hit you or your mom.” Ms. Shockley followed that School Resource Officer (SRO) Valiente isn’t here, but we can call her at the Elementary School.
 - xviii. The victim was very upset at this point. The child victim was upset that her [REDACTED] was going to come and pick her up from school, he does that a lot and she didn’t want to go.
 - xix. Ms. Shockley reassured the child victim that even if he comes, he wouldn’t be able to take her, Ms. Shockley was calling Valiente in case he made a fuss, he doesn’t know you are in here and that she needed to find Valiente’s phone number.”
 - xx. The victim stated “he makes me give him blow jobs sometimes.”
- c. **Statements made by the child to Principal Claudia Shirley**
- i. Claudia Shirley was the principal of DeLaura Middle School on February 11th, 2014.
 - ii. On that date, Principal Shirley learned that a student needed a guidance counselor and that Jennifer Shockley was looking for Ms. Babin.
 - iii. Principal Shirley took the child victim to Ms. Babin’s office.
 - iv. During their time together, but prior to Guidance Counselor Babin’s arrival, the child victim told Principal Shirley in substance that she was sexually assaulted by [REDACTED] and that she can’t keep it in, that she needed to report.
 - v. At this point, the child victim was crying, upset & very emotional. No one else was present. Principal Shirley stopped the child victim at that point.
 - vi. When Guidance Counselor Babin arrived, Principal Shirley remained for one to two minutes and overheard oral sex on the defendant mentioned by the child victim.
- d. **Statements made by the child to School Resource officer Greta Valiente with Guidance Counselor Heidi Babin present intermittently**
- i. SRO Valiente was assigned to work at the Elementary School that day. However, she received a phone call from Guidance Counselor Babin requesting assistance.
 - ii. SRO Valiente asked the child victim what was going on. The child victim replied that [REDACTED] was sexually abusing her and also verbally & physically abusing.
 - iii. SRO Valiente asked the child victim who [REDACTED] was and the child victim responded “Joseph Pallante.”
 - iv. SRO Valiente asked the victim, “I know it is uncomfortable but do you want to talk with the guidance counselor present, or without, but I need you to be more specific as to the sexual abuse.” The child victim wanted the guidance counselor to stay.
 - v. SRO Valiente asked the victim to say what she meant by sexual abuse. The child victim said that” he made her perform blow jobs.”
 - vi. SRO Valiente asked when this started and the child victim said since she was [REDACTED] years old.
 - vii. SRO Valiente asked if there was anything else beside a blow job or anything that he tried to do to her. The child victim responded that he

tried and half succeeded in licking her private parts, but she kicked him off.

- viii. SRO Valiente asked the child victim what she considered her private parts and the victim pointed to her breast area (SRO confirmed breast because victim was shy in saying it). The child victim also pointed to her vagina (again the SRO confirmed with the word vagina).
 - ix. SRO Valiente asked when the last time she performed a blow job was and the victim responded a couple weeks prior to that date (February 11th) because her mom wasn't home.
 - x. SRO Valiente asked what happens if the child victim doesn't comply with what the [REDACTED] asks? The child victim responded that the [REDACTED] gets mad, picks her up and pulls her hair, throws her across the house.
 - xi. The child victim said that she was staying with [REDACTED] that weekend and she saw [REDACTED] (defendant) while with her stepmom at Walgreens.
 - xii. The child victim texted the Defendant and said "I saw you at Walgreens," with the Defendant replying back in substance: "I'm fucking tired of you being a trailer trash shit bag, you're a fucking [REDACTED] do enjoy all the happy, fake conversations . . . you got no guts, no desire, and no commitment, you want a happy conversation? Then stop fucking turning into a piece of shit. Stop falling, your done, you've fallen, you have done happy conversations over there with mom and [REDACTED] then fucking move over there. Fuck you. Don't come home. A fucking happy conversation? Wtf? You're failing again because you're a failure.." The child victim showed SRO Valiente her phone, that message was the response she got from the Defendant because she asked him to have a happy conversation.
- e. **Written Statement by child victim taken at DeLaura Middle School**
- i. **The State intends to introduce a copy of the statement written by the child victim.**
 - ii. The child victim states:
 1. The last time I had to give him a blow job was a couple weeks ago because my mom wasn't home. If I don't give him a blow job or what he wants then he gets mad at me and picks me up and pulls my hair then throws me across the house. The way he abuses my mom is by slamming her head into the wall, sitting on top of her hitting/punching her, and smothering her face into the ground. These are some of the texts he sent me "I'm fucking tired of you being a trailer trash shitbag, you're a fucking brewer do enjoy all the happy, fake conversations . . . you got no guts, no desire, and no commitment!" "You want a happy conversation? Then stop fucking turning into a piece of shit. Stop falling, your done, you've fallen, you have done happy conversations over there with mom and [REDACTED] then fucking move over there. Fuck you. Don't come home. A fucking happy conversation? Wtf? Your failing again because you're a failure." That's the response I got for asking for a happy conversation. Also to go along with the sexual abuse he

had tried and half succeeded in licking my private parts but I've kicked him off. He started the sexual abuse when I was about 10 years old.

f. **Statements made by the child to Det. Valerie Balloue**

- i. On February 11th, 2014 prior to the CPT interview with Ms. Amores, Det. Balloue met with the child victim and the child victim disclosed that her [REDACTED] Mr. Pallante, has forced her to perform "blow jobs" on him since she was about [REDACTED] years old, he has also "licked her private parts."
- ii. The child victim also reported that he has physically abused her and her [REDACTED]
- iii. The child victim reported that Mr. Pallante has been verbally abusive to her, in which he has cursed at her and called her degrading names. She also reported that her mother is an alcoholic, and at times she starts drinking alcohol before anyone else in the home wakes up in the morning.

g. **Statements made by the child to Shoshana Amores, Child Protection Team (as observed by Det. Valerie Balloue & CPI Joanna Tindall)**

- i. **The State intends to introduce the entire videotaped statement. Refer to said DVD for verbatim interview**
- ii. On February 11th, 2014 the child victim was interviewed by Shoshana Amores who works with the Child Protection Team.
- iii. The child victim appeared developmentally appropriate for her age based on her diction and interpersonal skills exhibited throughout the interview.
- iv. The child victim was asked qualifying / competency questions and was able to tell the difference between a truth and a lie and knew the importance of telling the truth.
- v. Det. Valerie Balloue entered the interview room whereupon the child victim was sworn. Det. Balloue then left to observe the interview.
- vi. Family Background questions:
 1. The child victim is in the eighth grade at DeLaura Middle School, she earns "good grades" and is in chorus and on the track team.
 2. Outside of school, the child victim plays on a travel softball team, she has played some form of softball since she was six years old.
 3. The child victim resides with [REDACTED] [REDACTED] [REDACTED] "Joe" Pallante and [REDACTED] in Satellite Beach.
 4. At the end of the child victim's sixth grade year they moved from Suntree, FL to their current Satellite Beach home
 5. The child victim's mother and Mr. Pallante met when she was [REDACTED] years old and [REDACTED]
 6. Mr. Pallante is an attorney and her mother now works at a local Starbucks and as an instructor at the Viera Studio,
 7. The child victim's father is [REDACTED] who is a firefighter.
 8. The child victim typically stays with her father every other four-day break that he has from work. The child victim used to visit him on alternating weekends until he became a firefighter, then stayed with him during every four-day break he had from work (he

works five days straight, and then is off for four days). However, the child victim felt that was too much changing for her so this year she began to visit her father every other four day break.

9. The child victim said that Mr. and [REDACTED] have previously told her that she can go live with her father “anytime” she wants, however whenever she has requested to move, Mr. Pallante has prohibited her from doing so.
- vii. The child victim describes the layout of her current residence.
- viii. The child victim states that her mother began drinking heavily about two to three years ago and she is now an “alcoholic.” The child victim states her mother drinks twelve to twenty small bottles of liquor, which she referred to as “shots” and that they are labeled “99s”
- ix. The child victim states that her mother usually starts drinking alcohol before anyone else wakes up in the morning and when under the influence she cannot “walk straight” and will fall over.
- x. The child victim goes into detail concerning her mother’s alcohol use and its effects.
- xi. The child victim says that [REDACTED] had previously talked to Mr. Pallante about going into inpatient treatment for her alcoholism, but Mr. Pallante did not want the mother to go because she would be gone for three months and the child victim would be in her father’s custody for that time.
- xii. The child victim describes in detail incidents where Mr. Pallante becomes mad at [REDACTED] and one incident where Mr. Pallante broke [REDACTED] nose.
- xiii. Mr. Pallante then blamed the child victim for that altercation. Later that night the child victim told Mr. Pallante she wanted to move in with her father and Mr. Pallante took her to her father’s house, but before she could get out of the vehicle told her “tonight wasn’t the night” for her to move and took her home.
- xiv. The child victim stated that Mr. Pallante became mad at her the prior evening because she did not want to go to a Varsity softball practice with him. Also Mr. Pallante had been mad at her that evening because he had seen her at Walgreens with her stepmother and her softball coach, in which she excused herself during the conversation to stand with her stepmom at the checkout.
- xv. The child victim stated that Mr. Pallante text messaged her that evening saying that she was “up her step-mom’s ass” and that she looked like “a little girl standing with her mom.” Additional text messages were cursing, calling her bad names including a shit-bag, failure and loser. He also told her that he did not want her to come home.
- xvi. The child victim discusses an incident where she forgot her cell phone at home and the Defendant brought it to her, but had written three really long messages in the memos section, calling her a “cunt, bitch, loser, lazy bitch that’s not going to get anywhere and a non-playing softball play”

- xvii. The child victim relayed comments Mr. Pallante had made during discussions of Mr. Pallante's coaching the Satellite Beach High School Junior Varsity softball team where he said the uniforms made the girls "butts look weird." The child victim thought it was strange that Mr. Pallante would be concerned with the buttocks of fourteen and fifteen year old girls.
- xviii. The child victim reported that Mr. Pallante has forced her to perform "blow jobs" on him and has hit her and "thrown" her when she refused.
- xix. The child victim reports that he has also "licked" her "private area".
- xx. The child victim explained that Mr. Pallante began sexually abusing her when she was about [REDACTED] years old and [REDACTED] at their previous home in Suntree, Florida.
- xxi. The child victim recalled the first incident occurred in the guest room at their Suntree home, when no one else was at home. The child victim reported that they were sitting on the bed and Mr. Pallante took her hand and placed it on his penis – which he referred to as "cock" (and victim referred to as "private" and "private area") and forced her to move her hand up and down on it by holding his hand over her hand.
- xxii. The child victim spontaneously demonstrated this to Ms. Amores. When Mr. Pallante took his hand off of the child victim's, he would tell her to "keep going."
- xxiii. Mr. Pallante threatened to hit, ground or hurt the child victim if she did not comply. The child victim reported that he forced her to do this until he was "done." The child victim could tell when he was "finished" because "white stuff sperm" came out of his penis. Afterwards, he gave her candy.
- xxiv. The child victim reported that Mr. Pallante forced her to rub his penis until he ejaculated on several other occasions following that initial incident. The victim stated that during those incidents his ejaculate would either get on her hand or on him. The child victim stated that if it got on her hand, she washed it off in the sink.
- xxv. The child victim reported that each incident occurred only when her mother was not home. After each incident, Mr. Pallante would give her candy or take her to a McDonald's restaurant and purchase a frappe for her.
- xxvi. The child victim reported as she got older, the sexual abuse progressed and Mr. Pallante's threats progressed. The child victim explained that when they were still living at their Suntree home, Mr. Pallante started having her use her mouth to "suck" his penis. Mr. Pallante initially instructed her to do this by saying "put it in like you would eat a corn dog – just don't bite." Then he had her use her hand to "finish him off."
- xxvii. The child victim reported that on other occasions, he had her first put his penis into her mouth, then he would have her take it out and then rub his penis with her hand, and then he would tell her when he was "about to cum" and have her put his penis back into her mouth and he would ejaculate.

- xxviii. The child victim reported that after they moved to their current Satellite Beach home, Mr. Pallante began making the child victim keep his penis in her mouth the entire time until “the sperm came out,” and then she would spit it out and onto his leg. Mr. Pallante has told her to “swallow” the ejaculate, but she has refused. The child victim reported that Mr. Pallante has hit her for not swallowing it and he has threatened to kill her and hit her with a belt if she did not perform these acts.
- xxix. The child victim report that Mr. Pallante has sexually abused her “a lot” and her mother has never been home during those incidents. The child victim reported the incidents have essentially occurred every time her mother was not at home, but did not occur if she had a sports practice or another extracurricular activity. If her [REDACTED] were home, Mr. Pallante had them go into another room to watch a movie or take a nap.
- xxx. The child victim reported that since moving to the Satellite Beach home, Mr. Pallante has forced her to perform the sex acts on him on the living room couch, in her bedroom, in the bedroom he shares with [REDACTED] and while he has sat in his home office chair and she sat on the floor.
- xxxi. The child victim reported that when Mr. Pallante had her perform those acts, his hands were “usually” on his head or chest.
- xxxii. The child victim reported that he indicated to her he wants her to perform those sex acts on him by saying “time for my present” or “it’s time for mouth.” The child victim has tried to put off doing those things by saying she has homework, needs to use the bathroom or take a shower in hopes that her mother would return home soon.
- xxxiii. The child victim said that it is a risk for her to say “no” and give excuses because Mr. Pallante then becomes mad at her. Her attempts to avoid him hardly ever works and she eventually has to do it anyways.
- xxxiv. The child victim noted that the incidents of sexual abuse had not been as frequent as it has in the past because the family only has one vehicle and a lot of time is spent driving everyone to work or extracurricular activities. However, the child victim noted that although not as frequent, the sexual abuse has been “more intense” and she referenced Mr. Pallante forcing her to keep his penis in her mouth until he ejaculated.
- xxxv. The child victim reported that the last incident occurred on February 6th, 2014, after school. Her [REDACTED] was with their mother at the Viera dance studio and her sister was upstairs. The child victim reported it occurred with Mr. Pallante on the living room couch and he forced her to “suck his penis” without taking it in the mouth. The victim explained she was getting ready to start her homework when Mr. Pallante sat down on the couch and he had no pants on. Mr. Pallante said “mouth but then take it out”. The child victim knew she had to “suck” his penis, but he did not force her to keep his penis in her mouth when he ejaculated. The child victim reported that when Mr. Pallante did ejaculate during that incident, some of the ejaculate ended up on her hand and the rest was on him. After that he “cleaned himself up” and he went to softball practice.

- xxxvi. The child victim reported that when she was [REDACTED] years old, Mr. Pallante had shown her one or two pornographic videos on a desktop computer in his home office from a website called “porn hub.” When he showed her those videos, it was to make her “do better at sucking his penis.” In those videos, she saw women “sucking” the penises of men. After watching the videos, Mr. Pallante then had her perform oral sex on him.
- xxxvii. The child victim reported that on several occasions, she has woken up to Mr. Pallante undressing her and on other occasions he has already undressed her and is “trying to get to” her vaginal area (which she referred to as “private area” and “private part”). She explained that this has occurred four to five times, and always in the morning when he would typically be going in to wake her for the day and her mother was already at work or the dance studio.
- xxxviii. The child victim reported that she is a “sound sleeper” so during some of those incidents, she has woken up to Mr. Pallante undressing her. During other incidents, she has woken up and he had already taken her clothing off and he was on the bottom of her bed, slowly trying to separate her legs. The child victim explains that she sleeps in a shirt and shorts, but during those incidents she had woken up to find that Mr. Pallante had taken off her shorts and underwear, and they were either next to her on the bed or on the floor.
- xxxix. The child victim reported that during those incidents Mr. Pallante was also not wearing any clothing or sometimes he was wearing only a shirt.
- xl. The child victim reported that twice when she was [REDACTED] years old, she had awoken to find that Mr. Pallante had undressed her and was licking her vaginal area. During each of these incidents the child victim “kicked him off” and Mr. Pallante left the room. During one incident she cried and threatened to call her mother and 911 and then he stopped and left the room.
- xli. The child victim denied that Mr. Pallante has ever touched her vaginal area with any other part of his body (besides his tongue), that the victim “is aware of”.
- xlii. The child victim commented that talking about the sexual abuse is the “hardest thing” for her to talk about. The child victim commented that she had cried every time she had talked about the sexual abuse to school staff and law enforcement earlier that day, but she believed that by the time of this interview, she was too tired to cry anymore.
- xliii. The child victim commented that her eyes “hurt” and “burned” at the time of the interview because she had cried so much earlier in the day.
- xliv. Ms. Amores noticed that through most of the discussion regarding the sexual abuse, the child victim kept her hands on her face and close to her mouth.
- xlv. The child victim reported that her mother was unaware of the sexual abuse and that she did not know how to tell her mother. The child victim commented that she had not disclosed the abuse to her mother previously

because she knew her mother would have confronted Mr. Pallante on it and she did not want to “deal with him” and his reaction.

- xlvi. The child victim reported more incidents of physical abuse by Mr. Pallante.
 - xlvii. The child victim reported that she told her mother of the physical abuse, which [REDACTED] was unaware. [REDACTED] told the child victim she wanted to wait until the end of the year to [REDACTED] Mr. Pallante because she wanted to “clear up” her credit card so that a family judge would see that she is not purchasing an excess of alcohol.
 - xlviii. The child victim reported that she did not want to “put up” with the abuse by Mr. Pallante for another year, so she chose to disclose it today.
 - xliv. The child victim reported that Mr. Pallante had intended to force her to perform a sexual act on him today. She explained that although she stayed the previous night at her father’s home, she had track practice this morning and in the past she typically returns to Pallante home after morning practice, eats breakfast and then returns to school. However, while she was at a practice on either 2/8/14 or 2/9/14 Mr. Pallante told her that he was going to take her home the morning of this interview and she was “going to suck his cock.” The child victim did not want to do that, so she lied and told him that she had choir practice and she would not be able to go to the Pallante home that morning.
 - l. The child victim indicated that she went to breakfast with some friends in the school cafeteria. While she was there, Mr. Pallante text messaged her and she became nervous that he was in the parking lot outside of the cafeteria, and that he could see her in there. The child victim eventually began to cry because she was “so scared” that Mr. Pallante was going to sign her out of school. Her friends then walked with her until she went to a teacher she trusted and disclosed the history of abuse.
- h. **Statements made by the child to Det. Robert Mench & Cpl. Greta Valiente**
- i. **The State intends to introduce the entire videotaped statement. Refer to said DVD for verbatim interview**
 - ii. On February 12th, 2014 Det. Mench interviewed the child victim at Satellite Beach Police Department. Cpl. Greta Valiente was also present.
 - iii. The child victim stated that Pallante showed her at least two videos that were sexual in nature. The videos were viewed in Pallante’s “office area” on a desktop computer. The area and desk where the computer is located is by the kitchen and is accessible to other members of the family. The child victim stated that the computer is not password protected during log on.
 - iv. The child victim stated that the first time Pallante showed her a video was in late November or early December of 2013. The child victim believed the video was on a website named pornhub.com (or similar). The child victim was in the kitchen and Pallante called her into the office area. Pallante was seated at the desk in front of the computer and the child victim stood next to him.

- v. The child victim reported that the website was up with the video visible. The child victim said that there were similar videos to the side of the screen that were titled “you may also like.” The victim described the video as a “girl sucking another guy’s penis.” A male actor with short, curly dirty blonde hair was seated on a white bed and a girl with medium length red hair was on the floor, both actors were naked. The child victim could not recall any other details of the video setting but was specific about the video’s ending.
- vi. The child victim was more detailed about the second video that Pallante forced her to watch. She remembered that it was soon after Christmas 2013 because on Christmas day Pallante told her that he had another video for her to watch.
- vii. The child victim reported that in that incident, the child victim was upstairs playing with [REDACTED] when Pallante called for her. The child victim thought she was being called for lunch. Pallante was seated at the same computer and on the same website. The volume was low because of [REDACTED] being home but the child victim was very descriptive about the actors and setting. Both actors were oriental and the child victim said the title of the video was similar to “guy and girl having sex before going to movie or dinner.” The male actor was watching television and the female entered the room.
- viii. The child victim reported that Pallante fast forwarded the video to a point that the child victim described as the “girl sucking the guy’s penis and then them having sex.” The child victim was able to describe the video’s setting, detailing the furniture, fabrics, and colors. She was also able to recall physical descriptors of the actors to include the female wearing a jean mini skirt and having long wavy brown hair. The male’s clothing was not described because initially the video was recorded in point of view (the male actor was filming).
- ix. The child victim reported that at different times during the video, the child victim’s [REDACTED] came downstairs. Pallante paused the video and minimized the screen. The child victim did not believe [REDACTED] observed the video.
- x. The child victim reported that both times that the videos were watched the website was already on the screen. The child victim said that she did not think that Pallante had to log on to gain access to the site.
- xi. The child victim reported that she received her cell phone on her [REDACTED] birthday. The child victim reported that Pallante had sent her something inappropriate – nothing specific, but the child victim knew what the messages meant. Pallante would send the word “surprise!” and the child victim knew it meant “what I have to give him,” i.e. fellatio / blow job. The word surprise ended with an exclamation point and was in capital letters with each letter repeated several times.

5. Indicia of Reliability

- a. Per State v. Townsend, 635 So.2d 949 (Fla. 1994) and its progeny, some factors the court may consider in the determination of the reliability of the child's statement may include, but are not limited to the following:
 - i. The mental and physical age of the victim at the time of the disclosures and offense was [REDACTED]. In the video(s) and per expected testimony, the victim seemed appropriately mature for her age.
 - ii. The statement(s) were elicited in response to questions from adults.
 - iii. There was no motive to fabricate the statement.
 - iv. The accusations were specific in nature and were not vague. The victim was very specific as to what was taking place and when certain events took place.
 - v. There were no contradictions in the accusations. The reports were consistent among the witnesses.
 - vi. There is no evidence that the child has been coached or conditioned as to what to say.

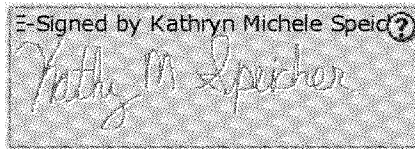
6. Ex Post Facto concerns

- a. The offenses in this case occurred on or between May 1, 2011 and February 14, 2014.
- b. On July 1, 2014 amended Fla. Stat. 90.803(23) became effective to allow the introduction of child victim hearsay statements from a child age sixteen or less.
- c. The State argues that this was a procedural change, not a substantive change, therefore the ex post facto clause is not violated. See Glendening v. State, 536 So.2d 212 (Fla. 1989).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **E-MAIL** to GREGORY W. EISENMENGER, ESQUIRE, Attorney for Defendant, at GREGEISENMENGER@EBPLAW.COM this 13th day of January, 2017.

PHIL ARCHER
STATE ATTORNEY



BY:

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