NAVARO
03/2021
David Schwendiman
May 25, 2021

REPORT AND RECOMMENDATION
03/2021

Date: **May 25, 2021**

From: Salt Lake County District Attorney's Conviction Integrity Panel
Justice Christine Durham
Judge Judith Atherton
D. Gilbert Athay
Michelle Love-Day
David Schwendiman

To: Sim Gill, Salt Lake County District Attorney

CC: Anna Rossi Anderson, Deputy Salt Lake County District Attorney, Conviction Integrity Unit Chief

Subj: **Marlon Lambur-Navarro aka Mario Navarro; Report and Recommendation**

Recommendation

Though no transcripts of the plea hearing or sentencing were available to review, the panel is satisfied it possesses sufficient information and adequate understanding of that information to allow it to determine by a preponderance of the evidence whether Mr. Navarro makes a valid claim of innocence or that his conviction or sentence lacks integrity.[1]

After careful consideration, it is the consensus of the Conviction Integrity Panel, based on a preponderance of the evidence it reviewed, that:

- **Mr. Navarro was born on August 17, 1992, making him 17 years old and a juvenile as defined by Utah law**[2] **at the time of the offense (*i.e.,* January 21, 2010), when the Information was filed (*i.e.,* January 25, 2010), and when the 3rd District Court took his plea of guilty and sentenced him (*i.e.,* February 2, 2010).**
- **The 3rd District Court relied on the mistaken fact that Mr. Navarro's date of birth, as it appeared on the Information, was June 17, 1991, which if accurate would have made him an adult (*i.e.,* 18 years of age) at the time of the offense, when it accepted Mr. Navarro's plea and when it imposed sentence.**

[1] Conviction Integrity Unit Policy and Procedure (approved and adopted September 15, 2020), ¶5
[2] *See* UCA 78A-6-103(1)(a)

- **As a consequence of the mistake, the 3rd District Court did not have subject matter jurisdiction to accept Mr. Navarro's plea of guilty or to sentence him and thus his conviction and sentence lack integrity.**

The panel therefore recommends that the conviction and sentence in Mr. Navarro's 2010 case, 3rd District Court Case No. 101900588, BE VACATED.

The immigration consequences implicated by this recommendation were not considered by the panel.

Application

1. On or about February 1, 2021, Mr. Benji McMurray, Federal Public Defender,[3] filed an application with the Conviction Integrity Unit, asking for review of Mr. Marlon Lambur-Navarro aka Mario Navarro's February 2, 2010, conviction (3rd District Court Case No. 101900588), for "drug distribution."[4]

2. Mr. Navarro's application was referred to the Conviction Integrity Panel for review and recommendation on or about February 18, 2021.

3. According to Mr. Navarro's application, on January 21, 2010, "he sold $20 worth of drugs to an undercover officer," presumably in Salt Lake City. He was arrested at the point of sale and charged with distribution. He does not contest the facts.

4. The application states that on February 3, 2010 [sic], Mr. Navarro pled guilty and was sentenced as an adult in the 3rd District Court, Case No. 101900588.

5. Mr. Navarro claims that contrary to the date of birth that appears on the court's docket, June 17, 1991, which would have made him nineteen (19) years old at the time of the offense, his actual birth date is August 17, 1992, which would have made him approximately seventeen (17) years and six (6) months old at the time of the offense and thus a juvenile under Utah law.

6. As part of the application, Mr. Navarro submitted a copy of a page from a passport issued to "MARLON JEOVANY LAMBUR NAVARRO" a Honduran citizen, by the Instituto Nacional de Migracion (#F873941) of Honduras, on "14 DIC/DEC 2018," as proof of his date of birth; "17 AGO/AUG "1992.

7. Mr. Navarro contends that the 3rd District Court lacked adult jurisdiction over him when it accepted his plea, found him guilty, and sentenced him.

[3] benji_mcmurray@fd.org; 801 608-5126
[4] Application, xxxxxxx.

8. Mr. Navarro claims the adult conviction has "triggered severe and permanent immigration consequences" which would not be the case if he had been treated as a juvenile in 2010.

Material Reviewed by the Panel

9. In addition to reviewing Mr. Navarro's 's application, including the copy of a page from a Honduran passport submitted with it, the members of the Conviction Integrity Panel individually reviewed the record in Mr. Navarro's case, in particular the following relevant items:

- Criminal Information, dated January 25, 2010, filed in the Third District Court, Salt Lake Department, District Court No. 101900588, The State of Utah v. Marlo Navarro, DOB 06/17/1991, signed by Deputy District Attorney Catherine Brown, charging the defendant with one count of Distribution of or Arranging to Distribute a Controlled Substance, in violation of UCA 58-37-8(1)(a)(ii), a first degree felony, based on information provided by Lynn Wright, State Crime Lab, Todd Mitchell, James Rosse, Carlos Valencia and Frank Werner, incorporating an Affidavit of Probable Cause attested to by Lynn Wright;
- Salt Lake City Police Department case file in Case No. 10-12449, including the Salt Lake City Police Department General Offense Hardcopy report, GO SL 2010-12449, prepared by Detective Lynn Wright, Salt Lake City Police Department, dated Friday, January 22, 2010, based on information provided by the officers who arrested Marlo Navarro as part of a Drugs Sting Operation conducted by the Salt Lake City Police Department Narcotics Squad in the area of 300 West 200 South in Salt Lake City during the night of January 21, 2010, listing Mr. Navarro's date of birth as "Jun-17-1991;"[5]
- A Utah Criminal History Record for Marlo Navarro, date of birth June 17,1991, dated January 28, 2010.

10. No transcripts of the plea hearing or sentencing were available for review.

Standard of Review

11. In making its recommendation to the District Attorney, the panel is bound to decide whether it is convinced by a preponderance of the evidence that an application states a valid claim of innocence or that the conviction or sentence lacks integrity.[6]

12. The panel must be satisfied that it has sufficient information and a sufficient understanding of the information to make that determination.[7]

[5] What did the arresting officers rely on for the date of birth that Detective Wright used in his report?
[6] Conviction Integrity Unit Policy and Procedure (approved and adopted September 15, 2020), ¶5
[7] Conviction Integrity Unit Policy and Procedure (approved and adopted September 15, 2020), ¶5

13. The panel is not restricted to the issues raised by an applicant if

- in its examination of the claims made in an application; or
- its review of the record; or
- considering the information provided in support of the application, whether or not it was known at the time a plea was being considered, whether or not it was presented at trial or in connection with sentencing, on appeal, or in any submission or proceeding for post-conviction relief; or
- under appropriate circumstances, based on its own initiative and investigation of an applicant's case

it becomes apparent, for any reason, that an applicant has a valid claim of innocence or that his or her conviction or sentence lacks integrity; that is,

- the plea, conviction or sentence was the result of a fundamental mistake in law or fact, known or unknown at the time of the plea, conviction or sentence that is more likely than not to have affected the outcome, resulting in a decision not to plead, dismissal, acquittal, or a lesser sentence; or
- there was misconduct on the part of any participant in the case that causes serious doubt about the decision to plead, the integrity of the trial, the conviction or the sentence; or
- new evidence, including reliable medical, psychiatric or psychological evidence and opinion, emerges which would more likely than not have affected the outcome if it had been available at the time of trial, or known when the plea was negotiated or taken, or when sentence was imposed, resulting in a decision not to plead, dismissal, acquittal or a lesser sentence;
- reliable evidence known to exist but not presented at trial or not considered in connection with a plea or in relation to a sentence, became relevant in a way that would more likely than not have affected the outcome, resulting in a decision not to plead, dismissal, acquittal or a lesser sentence; or
- the emergence or application of reliable science, or reliable technology or methodology which did not exist or was not available to be used at the time of trial or plea, if it had existed or been considered at trial, in connection with a plea, or in relation to a sentence, would more likely than not have affected the outcome, resulting in a decision not to plead, dismissal, acquittal or a lesser sentence.

Facts

14. On January 21, 2010, at 380 West 200 South, Salt Lake City, Utah, Mr. Navarro sold a "twist" of field-tested cocaine for $20 to Salt Lake City Police Narcotics Detective C. Valencia, who was acting in an undercover capacity.

15. At the conclusion of the transaction Mr. Navarro was arrested.

16. A screening packet, Agency Case No. 1012449, prepared by Detective Lynn Wright of the Salt Lake Police Department Narcotics Squad, was submitted to the District Attorney's Office on January 22, 2010, DAO #10002364; it identified Mr. Navarro as Mario Navarro, male, Caucasian/White, date of birth June 17, 1991.[8]

17. The matter was screened by Deputy District Attorney Catherine Brown.

18. On January 25, 2010, based on what was in the screening packet, Mr. Navarro was charged by Criminal Information with one count of distribution of or arranging to distribute a controlled substance, a violation of UCA 58-37-8(1)(a)(ii), a first-degree felony, supported by the written affidavit of Detective Lynn Wright.

19. The Criminal Information lists Mr. Navarro's date of birth as June 17, 1991.

20. The matter was assigned Criminal Case No. 101900588, by the 3rd District Court.

21. On February 2, 2010, Mr. Navarro entered a plea of guilty to the count in the information and was sentenced.

22. On "14 DIC/DEC 2018," the Instituto Nacional de Migracion of Honduras issued "MARLON JEOVANY LAMBUR NAVARRO," a Honduran citizen, a passport, F87394, with a date of birth of "17 AGO/AUG "1992.

23. The photograph affixed to the passport is a photograph of the applicant, Mr. Navarro.

Findings

24. In Utah, until one is eighteen (18), with very few exceptions,[9] none of which apply in this case, the state's juvenile courts have exclusive original subject matter jurisdiction for violations of Utah criminal law.[10]

[8] Salt Lake Police Department, General Offense Hardcopy, SLCPD case 10-12449, Friday, January 22, 2010. There is no indication where Detective Wright or Detective Valencia obtained the date of birth listed in the report.
[9] *See* UCA 78A-6-702
[10] *See* UCA 78A-6-103(1)(a):

25. The applicant does not deny he committed the offense charged in the information to which he pled guilty and was sentenced before a judge in the 3rd District Court on February 2, 2010.

26. The information packet submitted by Detective Lynn Wright for screening by the District Attorney lists Mr. Navarro's date of birth as June 17, 1991, which would have made Mr. Navarro nineteen (19) years of age at the time of the offense; an adult under Utah law subject to the jurisdiction of the 3rd District Court.

27. Deputy District Attorney Ms. Catherine Brown reasonably relied on the date in the information packet when she prepared and signed the Criminal Information in Mr. Navarro's case.

28. Likewise, the 3rd District Court reasonably relied on the date on the information when it assumed it had subject matter jurisdiction in Mr. Navarro's case.

29. Presumably, though the record is incomplete on this point, Mr. Navarro did not question the date of birth that appears on the complaint before he entered his plea and was sentenced.

30. There is no evidence to suggest that the passport issued to "MARLON JEOVANY LAMBUR NAVARRO" a Honduran citizen, by the Instituto Nacional de Migracion (#F873941) of Honduras, on "14 DIC/DEC 2018," copies of which were submitted by Mr. Navarro as proof of his date of birth; "17 AGO/AUG 1992," is not Mr. Navarro's lawful passport or that it was obtained fraudulently or that it contains false or inaccurate information, including his date of birth. It must be assumed that since the passport is an official document the information it contains is accurate.

31. Based on its review of the available information, the panel is convinced by a preponderance of the evidence that Mr. Navarro was a juvenile under Utah law when he appeared as an adult before the 3rd District Court on February 2, 2010, entered a plea and was sentenced.

---

(1) Except as otherwise provided by law, *the juvenile court has exclusive original jurisdiction* in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses:

(i) in Section 53G-8-211 until such time that the child is referred to the courts under Section 53G-8-211; and

(ii) in Subsection 78A-7-106(2)

(Emphasis added.)

32. That being so, under Utah law,[11] the 3rd District Court did not have subject matter jurisdiction in his case.

33. There is no evidence and no reason to think the officers, the Deputy District Attorney, or the court knew Mr. Navarro's date of birth was other than the one they used to create the information package, draft the complaint, or assume jurisdiction when he appeared before the 3rd District Court as an adult, entered his plea and was sentenced.

34. Neither is there any reason to believe they acted in bad faith.

35. Nonetheless, the Panel is convinced by a preponderance of the evidence that by relying on the date of birth in the package and on the complaint, notwithstanding Mr. Navarro's failure to contest the information at the time he entered his plea and was sentenced, the 3rd District Court made a fundamental mistake of fact.

37. Based on the above, the Panel concludes by a preponderance of the evidence that the conviction and sentence in Mr. Navarro's case lacks integrity; that is, Mr. Navarro's Honduran passport issued in 2018 supplies new evidence *(i.e.* a presumably reliable date of birth for Mr. Navarro) which had it been known when the plea was negotiated or taken, or when sentence was imposed, would have required dismissal of the information and referral of Mr. Navarro's case to the 3rd District Juvenile Court for disposition.

[11] *See* UCA 78A-6-103(1)(a)

BARRERA-LANDA
04/2021
David Schwendiman
May 25, 2021

REPORT AND RECOMMENDATION
04/2021

Date: May 25, 2021

From: Salt Lake County District Attorney's Conviction Integrity Panel
Justice Christine Durham
Judge Judith Atherton
D. Gilbert Athay
Michelle Love-Day
David Schwendiman

To: Sim Gill, Salt Lake County District Attorney

CC: Anna Rossi Anderson, Deputy Salt Lake County District Attorney, Conviction Integrity Unit Chief

RE: Barrera-Landa, Jose; Report and Recommendation

Recommendation

It is the consensus of the panel that though no transcripts of the plea hearing or sentencing were available to review in Mr. Barrera-Landa's case, it nonetheless possesses sufficient information and adequate understanding of that information to allow it to determine by a preponderance of the evidence whether Mr. Barrera-Landa makes a valid claim of innocence or that his conviction or sentence lacks integrity.[1] The Panel collectively believes that reviewing the transcripts of the hearings in Mr. Barrera-Landa's case is unnecessary since it finds that what went on in the hearings is not relevant to the singular issue whether Mr. Barrera-Landa's conviction and sentence lacked integrity because he was a juvenile within the meaning of Utah law[2] when his case was taken up by the 3rd District Court.

After careful consideration, it is the consensus of the Conviction Integrity Panel, based on a preponderance of the evidence it reviewed, that:

- **Mr. Barrera-Landa was a juvenile (*i.e.,* 17 years of age) as defined by Utah law[3] on September 1, 2008 when the offense with which he was charged was alleged to have been committed; on**

[1] Conviction Integrity Unit Policy and Procedure (approved and adopted September 15, 2020), ¶5
[2] *See* UCA 78A-6-103(1)(a)
[3] *See* UCA 78A-6-103(1)(a)

November 4, 2010 (*i.e.*, 19 years of age) when the original Criminal Information was filed; on February 14, 2011 (*i.e.,* 19 years of age) when the original information was amended and a judge of the 3rd took his plea of guilty; and on April 4, 2011 (*i.e.,* 19 years of age) when he was sentenced.

- **The 3rd District Court had to have known from what was on the face of the Criminal Information and the docket that Mr. Barrera-Landa was born on December 22, 1990, and, therefore, possessed facts sufficient for it to know he was a juvenile within the meaning of applicable Utah law and that the juvenile court had exclusive original jurisdiction in his case.**
- **The 3rd District Court simply failed, mistakenly, to apply relevant Utah law; that is, the 3rd District Court made a fundamental mistake of law when it accepted Mr. Barrera-Landa's plea and imposed sentence despite lacking jurisdiction to do so.**

Having determined that the outcome in Mr. Barrera-Landa's cases lacks integrity, the panel recommends that the conviction and sentence in his case, Case No. 101908253, State of Utah v. Jose Luis Barrera-Landa, BE VACATED.

Since Mr. Barrera-Landa waived preliminary hearing, no motions were brought that challenged the reliability of the officer who took a statement from him during the investigation of the allegations made by the complaining witness, and because there was no trial, the facts alleged in the Criminal Information were never tested. The panel is convinced that Mr. Barrera-Landa was a juvenile within the meaning of Utah law in all respects relevant to this application and considers that dispositive of his claim for relief. As a consequence, the panel takes no position regarding the merits of the allegations made in the November 2010 Criminal Information. Similarly, it reaches no conclusions about the truth of the witness accounts in the material it reviewed or of Mr. Barrera-Landa's denials and claims of innocence.

The immigration consequences implicated by this recommendation were not considered by the panel.

Application

1. On or about February 1, 2021, Mr. Benji McMurray, Federal Public Defender,[4] filed an application with the Conviction Integrity Unit, asking for review of Mr. Jose Luis Barrera-Landa's April 4, 2011, conviction for sexual battery.[5]

2. Mr. Barrera-Landa's application was referred to the Conviction Integrity Panel for review and recommendation on or about February 18, 2021.

[4] benji_mcmurray@fd.org; 801 608-5126
[5] Application, xxxxxxx.

3. According to Mr. Barrera-Landa's application, on April 4, 2011, he entered a plea of guilty to "misdemeanor sexual battery" before a judge in 3rd District Court.

4. Though he was apparently 19 years old when he was charged, entered his plea pursuant to an agreement written in English which he claims he did not understand (he doesn't read English), admitting he had sex with a minor, and was sentenced, he contends he was only 17 years old when the alleged offense occurred.

5. He also claims that though he persistently denied having sex with the alleged victim, he was promised by the officer who arrested him for the offense that if he admitted his guilt he would not be "charged with a crime because he was just a juvenile."

6. According to his application, Mr. Barrera-Landa was never advised on the possible "permanent and devastating immigration consequences he would face as a result of his conviction" if he entered a plea of guilty as proposed in the agreement.

7. He states he was kept in custody for a "few months," then convicted on his plea to a "misdemeanor sexual battery" and sentenced to 30 days in jail.

8. Mr. Barrera-Landa points to the docket which lists his date of birth as 12/22/90, and proffers an "Acta de Nacimento" (birth certificate) issued by the State of Guerrero, Mexico, on April 4, 1998, attesting to the birth of "Jose Luis Landa Barrera," on "22 de Decembre del ano de 1990" (December 22, 1990), in Las Vinata, Guerrero, Mexico, as further evidence that his true date of birth is December 22, 1990.

9. The application is accompanied by a copy of the 3rd District Court docket in Case No. 101908253, State of Utah v. Jose Luis Barrera-Landa,.

Material Reviewed by the Panel

10. In addition to reviewing the application, including the birth certificate for Mr. Barrera-Landa issued by the Mexican State of Guerrero, the 3rd District Court docket for his case, and a recording of an interview of Mr. Barrera-Landa conducted by Detective Anthony Martell, West Valley Police Department, on October 1, 2010, which were submitted as attachments to the application, the members of the Conviction Integrity Panel individually reviewed the record in Mr. Barrera-Landa's case, in particular the following relevant items:

- Criminal Information, dated November 4, 2010, filed in the Third District Court, Salt Lake Department, District Court No. Case No. 101908253, The State of Utah v. Jose Luis Barrera-Landa, DOB 12/22/1990, , signed by Deputy District Attorney Katherine Peters, charging the defendant with one count of Rape of a Child, in violation of UCA 76-5-402.1, a first degree

felony, committed on September 1, 2008, in West Valley City, Salt Lake County, that is, having sexual intercourse with a child under the age of 14 at the time of the offense, based on information provided by Blair Barfuss, Brad Hardinger, A.L. [the victim], and Anthony Martell, incorporating an Affidavit of Probable Cause attested to by J. Wright, including an averment that the "defendant admitted post-Miranda that he inserted his penis into A.L.'s vagina, but said he stopped because A.L. said it hurt;"

- Amended Criminal Information, dated February 14, 2011, filed in the Third District Court, Salt Lake Department, District Court No. 101908253, The State of Utah v. Jose Luis Barrera-Landa, DOB 12/22/1990, signed by Deputy District Attorney Katherine Peters, amending the charge in the original information to one count of Sexual Battery, in violation of UCA 76-9-702(3), a class A misdemeanor, committed on September 1, 2008, in West Valley City, Salt Lake County, that is, "under circumstances not amounting to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated sexual assault, or an attempt to commit any of these offenses, intentionally touch, whether or not through clothing, the anus, but tocks, or any part of the genitals of another person, or the breast of a female, and the defendant's conduct was under circumstances the defendant knew or should have known would likely cause affront or alarm to the person touched," based on information obtained from Blair Barfuss, Brad Hardinger, A.L. [the victim], and A.M., including an averment that the "defendant admitted post-Miranda that he inserted his penis into A.L.'s vagina, but said he stopped because A.L. said it hurt;"
- Statement of Defendant in Support of Guilty Plea and Certificate of Counsel, in English and Spanish, dated February 14, 2011;
- Presentence Report, dated March 30, 2011;
- West Valley City Police Department Detail Incident Report, 101000752;
- State of Utah Division of Child and Family Services, Child Abuse Neglect Report, dated January 4, 2010;
- Children's Justice Center Report, prepared by Katherine D. Koller, RNP, concerning a forensic interview and examination of A.L. conducted on February 2, 2010.

No transcripts of the plea hearing or sentencing were available for review.

Standard of Review

11. In making its recommendation to the District Attorney, the panel is bound to decide whether it is convinced by a preponderance of the evidence that an application states a valid claim of innocence or that the conviction or sentence lacks integrity.[6]

[6] Conviction Integrity Unit Policy and Procedure (approved and adopted September 15, 2020), ¶5

12. The Panel must be satisfied that it has sufficient information and a sufficient understanding of the information to make that determination.[7]

13. The Panel is not restricted to the issues raised by an applicant if

- in its examination of the claims made in an application; or
- its review of the record; or
- considering the information provided in support of the application, whether or not it was known at the time a plea was being considered, whether or not it was presented at trial or in connection with sentencing, on appeal, or in any submission or proceeding for post-conviction relief; or
- under appropriate circumstances, based on its own initiative and investigation of an applicant's case

it becomes apparent, for any reason, that an applicant has a valid claim of innocence or that his or her conviction or sentence lacks integrity; that is,

- the plea, conviction or sentence was the result of a fundamental mistake in law or fact, known or unknown at the time of the plea, conviction or sentence that is more likely than not to have affected the outcome, resulting in a decision not to plead, dismissal, acquittal, or a lesser sentence; or
- there was misconduct on the part of any participant in the case that causes serious doubt about the decision to plead, the integrity of the trial, the conviction or the sentence; or
- new evidence, including reliable medical, psychiatric or psychological evidence and opinion, emerges which would more likely than not have affected the outcome if it had been available at the time of trial, or known when the plea was negotiated or taken, or when sentence was imposed, resulting in a decision not to plead, dismissal, acquittal or a lesser sentence;
- reliable evidence known to exist but not presented at trial or not considered in connection with a plea or in relation to a sentence, became relevant in a way that would more likely than not have affected the outcome, resulting in a decision not to plead, dismissal, acquittal or a lesser sentence; or
- the emergence or application of reliable science, or reliable technology or methodology which did not exist or was not available to be used at the time of trial or plea, if it had existed or been considered at trial, in connection with a plea, or in relation to a sentence, would more likely than not have affected the outcome, resulting in a decision not to plead, dismissal, acquittal or a lesser sentence.

[7] Conviction Integrity Unit Policy and Procedure (approved and adopted September 15, 2020), ¶5

Facts

14. On January 4, 2010, according to a West Valley City Police Department Detail Incident Report, dated January 26, 2010,[8] Utah Division of Child and Family Services (DCFS), Provo Family Services Office, referred the case of A.L., a minor, who was believed to be age 13 at the time DCFS became involved, 12 years old at the time of the offense Mr. Barrera-Landa is accused of committing,[9] to the West Valley City Police Department for investigation of an incident that A.L. disclosed to a counsellor on December 21, 2009.

16. In December 2009, A.L. was living with a foster family in Provo, Utah.

17. On December 28, 2009, A.L. presented at the Utah County Children's Justice Center, Provo, Utah, accompanied by a foster parent, for "a physical examination and colposcopic examination for alleged sexual abuse."

18. A.L.'s foster mother provided "[S]ignificant history" as background for the examinations and evaluation A.L. underwent at the Children's Justice Center.

19. The foster mother indicated that A.L. was 12 years old when she had sex with "at least two different guys" and possibly a third. According to the foster mother, A.L. was placed with her family in September 2009. It was A.L.'s second placement.

20. In May 2009, according to the foster mother, "[A.L.] was in detention for not going to school, ran away, having sex with boys in her neighborhood and gang association with the boys."

21. On the day she presented, A.L. was interviewed by Katherine D. Koller, RNP, at the Children's Justice Center. A.L. told Nurse Koller she had unprotected sex with two male partners: with one, a 20 or 22 year old she referred to as Rene, in March or April 2009; the second, a 19 year old, she referred to as Luis, "at his house in Salt Lake City/West Valley" two or three weeks after she had been with the first partner.

22. On January 19, 2010, after the matter was referred to the West Valley City Police Department, Detective Brad Hardinger, conducted an interview of A.L. at the Utah County Children's Justice Center in Provo, Utah. According to Detective Hardinger's report, the

[8] Significantly, the West Valley City Police Department Detail Incident Report lists Mr. Barrera-Landa's date of birth as December 22, 1990. The Preliminary Information section of the report also lists December 22, 1990 as his date of birth.

[9] The West Valley City Police Department Detail Incident Report lists A.L.'s date of birth as June 4, 1996, as does the State of Utah Division of Child and Family Services, Child Abuse and Neglect Report, and the Children's Justice Center report. Her age is not disputed.

interview was conducted "in accordance with the National Institute of Children's Health and Development (NICHD) guidelines." An audio and video recording was made of the interview.[10]

23. Detective Hardinger reported that A.L. "appeared very uncomfortable and embarrassed throughout the interview."

24. A.L. told him that when she went to see her boyfriend who lived in an apartment in West Valley City, her boyfriend's brother, "Luis," got her into the apartment, refused to let her leave, and then, in her words as reported by Detective Hardinger, he "forced her to do it," which she clarified after additional questioning: "he forced her to have sexual intercourse and Luis did not wear a condom."

25. According to the detective, A.L. was not certain when this happened, but thought it was sometime a year before the interview, "a couple of months before she was taken into custody." Presumably, she meant when she was placed in foster care.

26. On October 1, 2010, "Jose Luis Landa Barrera" [sic], voluntarily appeared at the West Valley City Police Department to be interviewed about the incident. The interview was conducted by Detective Anthony Martell. It was recorded.

27. Detective Martell advised Mr. Barrera-Landa of his Miranda rights at around 1015. Mr. Barrera-Landa indicated he understood his rights and agreed to continue the interview without having an attorney present.

28. Mr. Barrera-Landa told him he met A.L. at his brother's apartment sometime in 2008. According to the detective's report, he admitted attempting to complete sexual intercourse with her, but said he stopped when she told him it hurt and after she said she'd never had sex before.

29. According to Detective Martell, Mr. Barrera-Landa told him he "thought [A.L.] was 12 years old" at the time.

30. Based on the two interviews, Detective Blair Barfuss decided to screen a case against Mr. Barerra-Landa for Rape of a Child with the Salt Lake County District Attorney's Office. The matter was sent to the District Attorney's Office on October 27, 2010.

31. On November 4, 2010, a Criminal Information, The State of Utah v. Jose Luis Barrera-Landa, DOB 12/22/1990, signed by Deputy District Attorney Katherine Peters, was filed in the Third District Court, Salt Lake Department, District Court, and assigned No. Case No. 101908253. It

[10] The panel deemed it unnecessary to review the recording of the interview Detective Hardinger conducted with A.L.

charged Mr. Barrera-Landa with one count of Rape of a Child, in violation of UCA 76-5-402.1, a first degree felony, committed on September 1, 2008, in West Valley City, Salt Lake County, based on information provided by Blair Barfuss, Brad Hardinger, A.L., and Anthony Martell, incorporating an Affidavit of Probable Cause attested to by J. Wright, including an averment that the "defendant admitted post-Miranda that he inserted his penis into A.L.'s vagina, but said he stopped because A.L. said it hurt."

32. The docket shows that a "Juvenile Notice for Case 101908253" was filed on November 8, 2010.

33. Another "Juvenile Notice for Case 101908253" was filed on November 10, 2010.

34. The docket is silent on whether there was any official follow-up on the juvenile notices.

35. The docket notes that on November 12, 2010, Mr. Barrera-Landa made an initial appearance on the original Criminal Information. The Legal Defender's Office was appointed counsel for Mr. Barrera-Landa.

36. A entry in the docket for January 6, 2011, indicates that during an appearance that day a 3rd District Court judge questioned whether Mr. Barrera-Landa "might be a juvenile," advising that "[T]he Court needs to verify if the def is a minor. Defendant does not have paperwork with him to prove his DOB." A continuance was granted for Mr. Barrera-Landa to secure documentation proving his date of birth was other than the date on the Criminal Information and the docket.

37. The docket reflects that on February 1, 2011, Mr. Barrera-Landa waived preliminary hearing and was bound over on the original Criminal Information. Arraignment was scheduled for February 14, 2011.

38. On February 14, 2011, Mr. Barrera-Landa appeared before a 3rd District Court judge and pled guilty to Count 1 of an Amended Information filed that day, dropping the original charge of Rape of a Child to a violation of UCA 76-9-203, Sexual Battery, a Class A Misdemeanor.

39. Mr. Barrera-Landa was sentenced on April 4, 2011. The docket notes that "[B]ased on the defendant's conviction of SEXUAL BATTERY a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s). The total time suspended for this charge is 335 day(s)." The docket also notes that Mr. Barrera-Landa "may be released early for deportation into the custody of Immigration and Customs Enforcement (ICE); or leave the country voluntarily within 10 days of release." He was warned "Do not re-enter the country illegally."

40. The docket shows Mr. Barrera-Landa was released to ICE for deportation on May 9, 2011.

Findings

41. In Utah, until one is eighteen (18), with very few exceptions,[11] the state's juvenile courts have exclusive original subject matter jurisdiction for violations of Utah criminal law.[12]

42. Mr. Barrera-Landa's certificate of birth establishes he was born in Las Vinata, Guerrero, Mexico, on December 22, 1990. December 22, 1990 appears as Mr. Barrera-Landa's date of birth on every document, including the docket in the case. It is uncontested.

43. The docket reflects that on January 6, 2011, a 3rd District Court judge questioned whether Mr. Barrera-Landa "might be a juvenile." The judge observed that the court needed to verify if he was a minor. Presumably, the judge meant a minor under Utah law for purposes of determining whether the court had jurisdiction in his case. Proceedings were continued to enable Mr. Barrera-Landa to obtain "paperwork" to prove he was a minor. The docket fails to indicate whether the court ever returned to the issue. Despite the inquiry, there is no record of any finding made by any judge that Mr. Barrera-Landa was an adult.

44. The panel reviewed Mr. Barrera-Landa's birth certificate and is persuaded by a preponderance of the evidence that he was born on December 22, 1990, which would make him 17 years and approximately 10 months of age on the date, September 1, 2008, when he allegedly committed the offense charged in the original Criminal Information. The panel is convinced by a preponderance of the evidence that Mr. Barrera-Landa was a juvenile at the time of the alleged offense.

45. When the original Criminal Information was filed on November 4, 2010, Mr. Barrera-Landa was 19 years and 11 months old. He was 20 years and approximately 3 months old on February 14, 2010, when the Amended Information was filed and when he pled guilty to the Class A Misdemeanor for which he was sentenced.

---

[11] *See* UCA 78A-6-702

[12] *See* UCA 78A-6-103(1)(a):

> (1) Except as otherwise provided by law, *the juvenile court has exclusive original jurisdiction* in proceedings concerning:
>
> (a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses:
>
> (i) in Section 53G-8-211 until such time that the child is referred to the courts under Section 53G-8-211; and
>
> (ii) in Subsection 78A-7-106(2)

(Emphasis added.)

46. As noted in an earlier footnote, Utah's juvenile courts have exclusive *original* jurisdiction in all cases, except under two special circumstances neither of which apply in this case, whenever a person younger than 18 years of age has violated any federal, state, or local law or municipal ordinance *or* a person younger than 21 years of age violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred.[13]

47. Among the exceptions to the state juvenile court's exclusive jurisdiction in criminal cases is aggravated sexual assault, a violation of UCA 76-5-405, once the juvenile court determines that the minor can be tried as an adult and refers the matter to the district court.[14]

48. The original Criminal Information, dated November 4, 2010, charged Mr. Barrera-Landa with violating UCA 76-5-402.1, not UCA 76-5-405. The Amended Information, dated February 14, 2011, reduced the charge to a violation of UCA 76-9-203, Sexual Battery, a Class A Misdemeanor. Neither the original Criminal Information nor the Amended Information charged Mr. Barrera-Landa with a crime that qualifies as an exception to the exclusive original jurisdiction of Utah's juvenile courts.

49. Even if the original Criminal Information had charged aggravated sexual assault, UCA 76-5-405, the juvenile court would have had to make the determination required under the procedure set out in UCA 78A-6-702 before the district court would have had jurisdiction to dispose of Mr. Barrera-Landa's case. That was not done in this case.

50. The panel is convinced by a preponderance that the district court made a fundamental mistake of law when it assumed jurisdiction in Mr. Barrera-Landa's case rather than referring it to juvenile court as required by UCA 78A-6-103.

51. Mr. Barrera-Landa maintains in his application that he did not commit the offense to which he pled guilty, but because the panel concludes his conviction and sentence lack integrity based on the 3rd District Court's failure to properly apply Utah law, it believes it is unnecessary to inquire further into the conduct of Detective Martell. Neither does it believe it necessary to review the underlying facts involved in the offense charged in the original Criminal Information or the Amended Information.

[13] UCA 78A-6-103(1)(a):
[14] UCA 78A-6-702