

BOARD OF MEDICAL LICENSING
BOARD OF INDIANA
CAUSE NUMBER: 2022 MLB 0024

IN THE MATTER OF THE LICENSE OF:

CAITLIN BERNARD, M.D.

LICENSE NO.: 01078719A

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FILED

DEC 27 2022

Indiana Professional
Licensing Agency

ANSWER

Respondent Dr. Caitlin Bernard ("Dr. Bernard"), by counsel and pursuant to Ind. Code § 4-21.5-3-17, for her Answer to the Administrative Complaint filed by Petitioner the State of Indiana, states the following in response to each numerical paragraph alleged in the Administrative Complaint:¹

INTRODUCTION

Dr. Bernard is employed by IUHP and has privileges to practice at Indiana University Health, Inc., the largest health system in Indiana ("IU Health"). In the summer of 2022, Dr. Bernard received a call from a child abuse doctor in [REDACTED] regarding a child who needed medical treatment [REDACTED]. [REDACTED] Dr. Bernard learned in that call that the child abuse had already been reported in [REDACTED], the police were investigating the crime, and child

¹ 45 C.F.R. §§ 164.506, 164.512 permits HIPAA-covered entities to disclose PHI without patient authorization for judicial and administrative proceedings among other reasons. Dr. Bernard states that this Answer falls within this provision of HIPAA.

services were involved. In fact, Dr. Bernard had another call with the doctor to discuss the child when the doctor was with [REDACTED] law enforcement. Dr. Bernard and other IU Health team members confirmed the abuse had been reported in [REDACTED] and assisted [REDACTED] law enforcement with their investigation. Following [REDACTED], Dr. Bernard and other IU Health team members provided [REDACTED] law enforcement with the [REDACTED] which allowed [REDACTED] law enforcement to identify the perpetrator, who now awaits trial [REDACTED]. By confirming the abuse was reported in [REDACTED] Dr. Bernard and other IU Health team members followed IU Health's Child Abuse and Neglect policy to immediately report the abuse in the state where it occurred. Exhibit 1, IU Health Child Abuse and Neglect policy. The policy's stated purpose is to ensure compliance with "Indiana Law I.C. 31-33-5-1 et. al." which is the very statute the Indiana Attorney General's Office (the "OAG") alleges Dr. Bernard violated. Dr. Bernard, with the help of other IU Health team members, complied with her statutory obligations to (1) immediately verify that local, [REDACTED] authorities were aware that the child was a victim of abuse, and/or report the abuse to an IU Health social worker, who was part of the hospital's designated team responsible for reporting child abuse to the proper authorities, (2) publicly file [REDACTED] following [REDACTED], and (3) submit [REDACTED] to DCS within the required [REDACTED] period.

Before the child traveled to Indiana, Dr. Bernard attended a rally regarding the constitutional right to an abortion—the biggest public health issue for obstetricians in fifty years. At the rally, Dr. Bernard and a physician colleague spoke about their concerns on the public health crisis. Dr. Bernard and her colleague discussed that women and children from neighboring states would need to travel to Indiana for care and Dr. Bernard shared during that conversation that [REDACTED] [REDACTED]. A reporter overheard this discussion and asked Dr. Bernard to confirm her statements; Dr. Bernard did so. Following public statements by Attorney General Rokita that Dr. Bernard's statements may have violated privacy laws such as the privacy regulations implementing the Health Insurance Portability and Accountability Act ("HIPAA"), IU Health conducted its own investigation. IU Health "found Dr. Bernard in compliance with privacy laws." Exhibit 2, Press Release, Indiana University Health, IU Health Statement on Privacy Review (July 15, 2022). IU Health's conclusion that Dr. Bernard did not violate any privacy laws was widely reported in the press. Yet the OAG continued to investigate Dr. Bernard on alleged privacy violations and other unjustified grounds based on six complaints filed by individuals who have never received medical care from Dr. Bernard, and who lack any personal knowledge of the care that Dr. Bernard provided to [REDACTED], or the steps Dr. Bernard took to comply with Indiana's child abuse and abortion reporting laws. None of the complainants, moreover, had personal knowledge of IU Health's procedures for

reporting suspected child abuse or the actions Dr. Bernard took in concert with [REDACTED] authorities to advance their investigation [REDACTED].

Dr. Bernard denies the OAG's allegations that the six consumer complaints pertained solely to the IndyStar's article, *Patients head to Indiana for abortion services as other states restrict care* (the "IndyStar article"); four of the six complaints alleged—despite facts available to the OAG proving the contrary—that Dr. Bernard had failed to report the abuse [REDACTED]. Indeed, one of the complainants asked the OAG to investigate Dr. Bernard because:

Dr [sic] Caitlin Bernard has made no mention of [REDACTED] her [REDACTED] patient...Nor did she tell the reporter the city where the alleged [REDACTED] occurred [REDACTED] making it difficult to track down such a report made to law enforcement. Dr [sic] Bernard has also refused to reveal to journalists the cit [REDACTED]

Exhibit B of the OAG's Administrative Complaint. Dr. Bernard admits that the OAG says that one of the complainants is a "Doctor of Osteopathic Medicine," but she denies that this has any bearing on the relevance or credibility of that individual's claims. None of the complainants had personal knowledge of the facts underlying their allegations.

Dr. Bernard denies that the OAG's investigation efforts and her own sworn testimony have provided the OAG with sufficient evidence, or any legitimate basis, to support an administrative complaint. Dr. Bernard denies that she violated HIPAA and

state privacy law, and further denies that she failed to immediately report suspected child abuse to the proper local authorities; Dr. Bernard knew the local [REDACTED] authorities were involved and other IU Health team members were working closely with them and, by statute, this complied with Dr. Bernard's reporting obligations. Indeed, IU Health found Dr. Bernard complied with all privacy laws, following its own internal investigation of her conduct (Exhibit 2), and its internal child abuse reporting policies show that Dr. Bernard complied with those reporting policies to the letter.

Dr. Bernard is being accused of knowingly violating the law despite providing excellent care to her patient, following IU Health's child abuse reporting policies, IU Health finding that she had not violated privacy laws, and working with the IU Health team to bring the perpetrator to justice. She denies all alleged wrongdoing.

ALLEGED FACTS

Background

1. Dr. Bernard admits that she is a Physician in the State of Indiana having obtained license number 01078719A, on June 7, 2017, by application and which is set to expire on October 31, 2023.
2. Dr. Bernard admits that her address on file with the Indiana Professional Licensing Agency (IPLA) is 550 North University Blvd., Indianapolis, Indiana 46202.
3. Dr. Bernard admits that she holds two active Controlled Substance Registrations (CSR), having been issued license numbers 01078719B and 01078719C.

4. Dr. Bernard admits her CSR with license number 01078719B was issued on June 9, 2017, by application for the location of Indiana University/Eskenazi Health, 550 University Blvd., Indianapolis, Indiana 46202.

5. Dr. Bernard admits her CSR with license number 01078719C was issued on May 14, 2018, by application for the location of Planned Parenthood of Indiana & Kentucky, 8590 Georgetown Road, Indianapolis, Indiana 46268.

6. Dr. Bernard admits that for all times relevant to this Complaint, she has been employed by IU Health Physicians as an OB/GYN and by the Indiana University School of Medicine as an Assistant Clinical Professor of Obstetrics & Gynecology.

7. Dr. Bernard admits that she is a "practitioner" as that term is defined by Ind. Code § 25-1-9-2.

8. Dr. Bernard admits that the OAG said it received six consumer complaints against her in July 2022, from individuals who were not and never have been her patients and who lacked personal knowledge of the facts underlying their allegations that Dr. Bernard had failed to report child abuse and that she violated privacy laws. These consumer complaints are the sole basis for the OAG's action against Dr. Bernard's licensure. Dr. Bernard denies that any of the complaints make allegations supported by the facts or law.

Alleged Facts Supporting Violations

9. Dr. Bernard admits that she attended a rally on Wednesday, June 29, 2022, along with over a hundred interested members of the public including many colleagues. That rally was in support of women's access to reproductive healthcare, including abortion care, that the medical community has long accepted as essential and potentially lifesaving for women of childbearing age. Dr. Bernard denies that the rally was "against abortion laws."

10. Dr. Bernard admits that during her testimony before Marion Superior Court No. 1, she indicated that while at the rally, she spoke privately to another physician colleague about how the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 124 S. Ct. 2228 (2022) could affect the care they would be able to provide their patients and the likelihood that patients would be harmed by legislation limiting their access to abortion care. Dr. Bernard admits that she told the other physician that a child abuse doctor [REDACTED] had reached out to her regarding [REDACTED]. Dr. Bernard admits a reporter told Dr. Bernard she had overheard the conversation. The reporter then asked Dr. Bernard to confirm some of the information she had overheard, and Dr. Bernard did so. Dr. Bernard denies that [REDACTED] was her patient at this time. Dr. Bernard denies the remaining allegations in Paragraph 10.

11. Dr. Bernard admits that the reporter informed her that she was writing a news story about the effects of abortion bans in nearby states after *Dobbs*.

12. Dr. Bernard admits she confirmed the following information: Dr. Bernard had that week received a phone call from a child abuse doctor [REDACTED]
[REDACTED]
[REDACTED] Dr. Bernard admits that she testified during the hearing held in Marion Superior Court that she could not recall additional details of what she told the reporter, including whether [REDACTED], and she was unable to recall some of the details included in the later published news story. Dr. Bernard denies that she told the reporter [REDACTED] because she does not remember doing so and denies all remaining allegations in Paragraph 12.

13. [REDACTED]
[REDACTED] Dr. Bernard denies the remaining allegations in Paragraph 13.

14. Dr. Bernard admits that the IndyStar article was published at 5:00 a.m. on Friday, July 1, 2022. Dr. Bernard denies the OAG's statement that the IndyStar article [REDACTED] The IndyStar article reported on women in need of abortion care travelling to Indiana to obtain treatment they were no longer able to receive in their home states due to heavily restrictive abortion bans going into law immediately following the Supreme Court's *Dobbs* decision. The article included the story of Dr. Bernard's receiving a call about a [REDACTED] as a single example of this larger consequence of *Dobbs*. Dr. Bernard

admits that the quoted excerpts from the IndyStar article in Paragraph 14 are accurate quotations from the article and states that these excerpts comprise the IndyStar article's total discussion of Dr. Bernard and [REDACTED]. Dr. Bernard denies the remaining allegations in Paragraph 14.

15. Dr. Bernard admits that various national media outlets, President Biden, and other prominent politicians—including Ohio Attorney General Dave Yost, and Indiana Attorney General Todd Rokita—commented on the IndyStar article and [REDACTED]

16. Dr. Bernard admits that [REDACTED]

[REDACTED] Dr. Bernard denies that a “media firestorm” existed on July 1, 2022. Dr. Bernard lacks sufficient information to confirm or deny whether an “intense media search” existed, and she denies that if such a search existed, the information she confirmed to the IndyStar reporter was the cause. Numerous politicians—many with national profiles—appeared to use the story of [REDACTED] for their own political ends during the heated, post-*Dobbs* climate. Many news articles discussing [REDACTED] written prior to July 14, 2022, express skepticism about the accuracy of the IndyStar article and [REDACTED] because members of the media *could not identify* [REDACTED] based on the information contained in the IndyStar article. See Wall Street Journal Editorial Board, An abortion story too good to confirm, Wall Street Journal, July 13, 2022 (“There’s no evidence the girl exists. PJ Media’s Megan

Fox was first to point this out, and so far no one has been able to identify the girl or where she lives.”).

17. Dr. Bernard admits that [REDACTED] [REDACTED] to the Indiana Department of Health. And on [REDACTED] to DCS, noting “ [REDACTED] [REDACTED] Dr. Bernard also identified the IU Health Social Worker who worked with [REDACTED] and [REDACTED] law enforcement and DCS. In confirming the [REDACTED] had been reported to the appropriate authorities in [REDACTED], Dr. Bernard and her team followed IU Health’s child abuse reporting policy. The policy states “When abuse or neglect of a child is suspected, Indiana state law mandates a report to the Indiana State Child Abuse and Neglect Hotline (1-800-800-5556). *If abuse allegations are related to a patient living in another state, the appropriate state hotline is contacted.*” Exhibit 1, at 1 (emphasis added). Dr. Bernard admits that [REDACTED] law enforcement traveled to [REDACTED] and that she and her team fully cooperated with those authorities. Dr. Bernard and other IU Health team members maintained the chain of custody for [REDACTED] and provided it to the [REDACTED] authorities— [REDACTED] allowed [REDACTED] detectives to obtain a warrant against [REDACTED] [REDACTED] and ultimately, arrest and charge him for [REDACTED].

18. Dr. Bernard states that the [REDACTED] courts held public proceedings on July 13, 2022 [REDACTED]

[REDACTED] Upon information and belief, the press attended that proceeding. Dr. Bernard does not know if, [REDACTED]
[REDACTED], and therefore, denies the allegation. Dr. Bernard states that the media reported on the details [REDACTED]

[REDACTED]. The July 13 arraignment made public [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] These facts were reported by the media. The public transcript [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Dr. Bernard also states that the [REDACTED] she filed — as required by Ind. Code § 16-34-2-5(a) — contained the following [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The

OAG is aware that [REDACTED] regarding [REDACTED] is publicly available, and has been since [REDACTED]. Dr. Bernard admits that she told 13WTHR that "It is important to tell our patients' stories as much as we can" due to her belief that sharing these anonymized case examples helps to protect all patients' access to essential reproductive care.

19. Dr. Bernard admits that she followed Indiana law and IU Health's Child Abuse and Neglect policy (*see* Exhibit 1) and, therefore, she and other IU Health team members confirmed the reporting [REDACTED] to local authorities in [REDACTED], who then worked with Dr. Bernard's team to collect [REDACTED] and maintain its chain of custody. She also reported the abuse to IU Health and worked with the IU Health team to cooperate with [REDACTED] law enforcement. Dr. Bernard followed the

separate statutory reporting obligation to [REDACTED] to DCS within 3 days, which is the only reporting obligation the State of Indiana includes on its TPR form. See Exhibit 5 [REDACTED]

20. Dr. Bernard admits that [REDACTED]
[REDACTED] Dr. Bernard lacks sufficient information to admit or deny whether [REDACTED] returned to [REDACTED] and, therefore, denies the allegation. [REDACTED]

[REDACTED]
[REDACTED] At the time [REDACTED]
[REDACTED] did not indicate to Dr. Bernard or other IU Health team members that the family home was not [REDACTED]

[REDACTED]
21. Dr. Bernard states that [REDACTED]
[REDACTED]
[REDACTED]

22. Dr. Bernard states that she has seen reporting that [REDACTED]
[REDACTED]
[REDACTED]

23. Dr. Bernard states she has seen reporting that [REDACTED]
[REDACTED]

24. Dr. Bernard admits that, [REDACTED]

[REDACTED]

25. Dr. Bernard denies that she has "repeatedly and regularly spoken to the press to perpetuate the coverage of her patient's private life." Since the IndyStar article's release on July 1, 2022, Dr. Bernard has spoken to the media about the harmful impact of laws restricting patients' access to reproductive and abortion care, as well as the danger that politicization of medical care poses to patients and doctors, including the publications and news programs identified in the Administrative Complaint. The articles listed in Paragraph 25 speak for themselves and underscore that Dr. Bernard has not discussed [REDACTED] in the media since the publication of the IndyStar article. Dr. Bernard denies the remaining allegations in Paragraph 25.

26. Dr. Bernard denies that she did not comply with her mandatory-reporting obligations. Dr. Bernard admits that she knew [REDACTED]

[REDACTED]

[REDACTED], when she spoke to the [REDACTED] physician. At the time Dr. Bernard learned of the abuse, the only local authorities to inform were those in [REDACTED], because those authorities were local to and had the jurisdiction to investigate the crime and cause charges to be brought. Further, Dr. Bernard admits that she knew that both [REDACTED] law enforcement and [REDACTED] equivalent of the Department of Child Services had already been informed of the abuse and were already actively involved at that time. Dr. Bernard

admits that she followed IU Health's child abuse reporting policy when she notified the social worker at IU Health about the suspected abuse, informed the social worker that the abuse had already been reported to the local authorities [REDACTED], and assisted other IU Health team members as they worked with the [REDACTED] authorities in their ongoing investigation of the abuse including maintaining the chain of custody of the [REDACTED], delivering [REDACTED] which aided the authorities in obtaining evidence to charge [REDACTED]. See Exhibit 1, at 1. Dr. Bernard also admits that she notified Indiana DCS on [REDACTED], of the [REDACTED] in compliance with the reporting obligation in Ind. Code § 16-34-2-5(b) and as noted on the [REDACTED] form when she sent DCS an email to which the [REDACTED] form was attached. Dr. Bernard admits that she testified that she was "not sure" whether the social-work team reported to Indiana authorities. Dr. Bernard does know that any such reporting would not be required by the IU Health Policy on Child Abuse and Neglect, and that she knew [REDACTED] authorities were already involved in and investigating [REDACTED]. Exhibit 1, at 1.

27. Dr. Bernard admits that she complied with IU Health's child abuse reporting policy when she confirmed the abuse had been reported in [REDACTED], and worked with the appropriate IU Health team members to assist [REDACTED] authorities and followed Indiana's child abuse reporting requirements as she reasonably understood them. Dr. Bernard admits that she did not personally report that [REDACTED]

[REDACTED] to an Indiana law enforcement agency because Indiana law did not require her to do so. Dr. Bernard states that Indiana law requires two separate reports when a doctor [REDACTED] for a victim of child abuse:

- a) First, there is an obligation to immediately report suspected child abuse to DCS or "the local law enforcement agency." Ind. Code § 31-33-5-4, or "[n]otify...the designated agent of the individual in charge of the hospital" that their patient was likely a victim of abuse so the hospital can ensure the abuse was properly reported. Ind. Code § 31-33-5-2.5; *see* Ind. Code § 31-33-5-1 ("an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this article."). However, a doctor does not need to report if the doctor knows that the child abuse was already reported. Ind. Code § 31-33-5-3.

- b) [REDACTED]
[REDACTED]

Dr. Bernard states that she fully complied with all applicable reporting requirements.

Dr. Bernard denies that the Indiana authorities were "the only authorities that would have been able to keep [REDACTED]

because at that time, [REDACTED]

to Dr. Bernard, other IU Health team members, or [REDACTED] authorities already

investigating the abuse. Dr. Bernard denies the remaining allegations in Paragraph 27.

ALLEGED RELEVANT AUTHORITY

28. Dr. Bernard, through counsel and pursuant to the statutory language, admits that HIPAA imposes a national standard to protect sensitive patient medical records and to provide guidelines on disclosure of health information and that health information includes "any information, including genetic information, whether oral or recorded in any form or medium" that is created or received by a health care provider. 42 U.S.C. § 1320d *et seq.*; 45 C.F.R. § 160.103. Dr. Bernard states through counsel that the specific health information protected under HIPAA is "protected health information ("PHI"), which is a subset of individually identifiable health information that relates to the "past, present, or future physical or mental health or condition of an individual and the provision of health care to an individual and the provision of health care to an individual." 45 C.F.R. § 160.103. Dr. Bernard admits, through counsel and pursuant to the statutory language, that to the extent individually identifiable health information that is received or created by a HIPAA covered entity includes certain information used to identify a patient or provide healthcare services or healthcare coverage, that information can be PHI. Dr. Bernard, through counsel and pursuant to the statutory language, admits that PHI "includes much more than a patient's name," insofar as certain identifiers other than a name may, when attached to health information, make that information PHI. Dr. Bernard, through counsel and pursuant to the statutory language, admits that for health care providers that are HIPAA covered entities, the

HIPAA “privacy rules strictly limit health care providers’ ability to release a patient’s medical records or discuss medical history, except as permitted under the rules.” 45 C.F.R. § 164.502(a). Dr. Bernard, through counsel, states that she is familiar with HIPAA’s requirements and has received regular training on them from IU Health and reiterates that IU Health’s review of her conduct found her “in compliance with privacy laws.” Exhibit 2, IUH Press Release. HIPAA provides a standard that allows doctors to discuss their patients’ cases to provide and promote patient care and public health without compromising patients’ privacy. Dr. Bernard denies the remaining allegations in Paragraph 28.

29. Dr. Bernard, through counsel and pursuant to the statutory language, admits that there are circumstances under which HIPAA does not allow HIPAA-covered healthcare providers to disclose PHI. Dr. Bernard lacks sufficient information to admit or deny whether this is the case in “most” circumstances. Dr. Bernard denies that she violated HIPAA because she did not share [REDACTED] individually identifiable health information. IU Health reached the same conclusion. Exhibit 2. Regarding the OAG’s citation to guidance from the Department of Health and Human Services that a doctor violates HIPAA by allowing a media team to film inside of a patient’s room, Dr. Bernard denies that this guidance has any relevance to her conduct because she did not—and the OAG has not alleged—that she allowed any member of the media to observe her patient in a hospital room or review any of her patients’

records. Dr. Bernard denies the remaining allegations in Paragraph 29

30. Dr. Bernard, through counsel and pursuant to the statutory language, admits that the HIPAA privacy regulations include a standard for de-identifying PHI, which is set forth in 45 C.F.R. § 164.514(b), and that the “safe harbor” method requiring removal of 18 specific types of identifiers is one of two methods that satisfy that standard. Dr. Bernard denies that she violated HIPAA and the allegations in Paragraph 30. Dr. Bernard states that she did not confirm for the IndyStar reporter any information that could have allowed the media to identify [REDACTED]

31. Dr. Bernard , through counsel and pursuant to the statutory language, that Indiana has patient privacy regulations, set forth in Ind. Code § 16-39-1-1 *et seq.*; 844 I.A.C. 5-2-2. Dr. Bernard denies that 844 I.A.C. 5-2-2 covers the information she confirmed for the IndyStar reporter because 844 I.A.C. 5-2-2 pertains only to “information...which the practitioner may learn or otherwise be informed *during the course of, or as a result of, the patient-practitioner relationship.*” *Id.* At the time that Dr. Bernard made that confirmation, her patient-practitioner relationship with [REDACTED] [REDACTED] had not yet begun and the information that Dr. Bernard knew came solely from the referring doctor. No Indiana court has yet applied or interpreted 844 I.A.C. 5-2-2 and, therefore, Dr. Bernard denies that the OAG’s cited case law and secondary material has any precedential or other value in applying 844 I.A.C. 5-2-2 to her conduct. Dr. Bernard complied with HIPAA, which is consistent with and far more specific than 844

I.A.C. 5-2-2. Given that HIPAA and the Indiana administrative regulation are harmonious, the compliance with the former (the more specific) indicates compliance with the latter. Finally, Dr. Bernard states that IU Health's investigation into her conduct "found Dr. Bernard in compliance with privacy laws." Exhibit 2. Dr. Bernard denies the remaining allegations in Paragraph 31.

32. Dr. Bernard, through counsel and pursuant to the statutory language, admits that Ind. Code § 16-39-1-4 regulates when a doctor may release their patients' medical records. Dr. Bernard denies the relevance of this regulation here, as she has never, and the OAG has not alleged, that she improperly released any patient records.

33. Dr. Bernard, through counsel and pursuant to the statutory language, admits that Ind. Code § 31-33-5-1 provides that "an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this article."

34. Dr. Bernard, through counsel and pursuant to the statutory language, admits that Ind. Code § 31-9-2-101 provides that "'Reason to believe,' for purposes of IC 31-33, means evidence that, if presented to individuals of similar background and training, would cause the individuals to believe that a child was abused or neglected."

35. Dr. Bernard, through counsel and pursuant to the statutory language, admits that Indiana law contains statutes governing child abuse reporting, including Ind. Code § 31-33-5-4, which provides that "A person who has a duty under this chapter

to report that a child may be a victim of child abuse or neglect shall immediately make an oral or written report to: (1) the department; or (2) the local law enforcement agency” and further states Ind. Code § 31-33-5-2.5 provides for reporting the hospital. Indiana law also provides that if a doctor knows that suspected child abuse has already been reported, then the doctor is not required to personally re-report the abuse. Ind. Code § 31-33-5-3. Dr. Bernard learned that [REDACTED] had already been reported to [REDACTED] authorities—the “local law enforcement” in [REDACTED]—at the same time that she learned that [REDACTED]. Dr. Bernard further states that reporting child abuse to the authorities local to the child is the practice that IU Health follows (see Exhibit 1, at 1), and is consistent with the Marion County Prosecutor’s practices.

36. Dr. Bernard, through counsel, admits that the OAG has cited to precedent from the Indiana Supreme Court, *C.S. v. State* on the timing of certain reporting obligations based on facts different from those here. Dr. Bernard complied with her reporting obligations—she knew that [REDACTED] authorities were already aware of and investigating the child’s abuse. *See* Ind. Code § 31-33-5-3.

37. Dr. Bernard is not sufficiently familiar with DCS’s practices or the law governing that agency to admit or deny the OAG’s statements in Paragraph 37. To the extent that Paragraph 37 contains legal or factual conclusions, Dr. Bernard denies them. Dr. Bernard denies that Ind. Code § 31-33-8-1, Ind. Code § 31-33-8-2, and Ind. Code § 31-

33-11-1 are relevant or applicable to the OAG's allegations against her because they do not govern physicians' obligation to report child abuse, nor did her or IU Health's conduct in reporting the [REDACTED] prevent DCS from acting appropriately under Indiana law.

38. Dr. Bernard, through counsel, states that the OAG's citation to *Matter of K.P.G.*, 99 N.E.3d 677 (Ind. Ct. App. 2018) is not relevant. That case did not discuss another jurisdiction's ongoing investigation into suspected child abuse and the mother of the child had waived her argument that the court lacked personal jurisdiction. *Id.* And unlike in *Matter of K.P.G.*, in this case, there was [REDACTED] [REDACTED] there was close communication with the authorities already investigating the abuse, and [REDACTED] To the extent that Paragraph 38 contains legal conclusions, Dr. Bernard denies them.

ALLEGED VIOLATIONS
**COUNTS I-IV: VIOLATING STATE STATUTE OR RULE OR FEDERAL
STATUTE OR REGULATION**

39. Dr. Bernard denies that her actions constitute a violation of Ind. Code § 25-1-9-4(a)(3) because she has not knowingly violated 45 C.F.R. § 164.502(a). Dr. Bernard denies that 45 C.F.R. § 164.502(a) required her to obtain a HIPAA-compliant waiver before speaking to the IndyStar reporter. Dr. Bernard states that she did not share individually identifiable health information with the IndyStar reporter or any other person not authorized to receive such information.

40. Dr. Bernard denies that her actions constitute a violation of Ind. Code § 25-1-9-4(a)(3) on the ground of a violation of 45 C.F.R. § 164.514. The de-identification standard set forth in 45 C.F.R. § 164.514(b) is not a prohibition or requirement; it provides a standard for confirming that health information is not PHI. To the extent the OAG is alleging that Dr. Bernard disclosed PHI in violation of HIPAA, Dr. Bernard denies that she knowingly violated HIPAA because on June 29, 2022, the information that she confirmed for the IndyStar reporter was not individually identifiable health information. Dr. Bernard states that she did not make any comments about [REDACTED] subsequent to the publication of the IndyStar article. Dr. Bernard further states that only after the transcripts of the criminal proceedings [REDACTED] became publicly available was the media able to identify [REDACTED]. Dr. Bernard denies that she violated Ind. Code § 25-1-9-4(a)(3) because she did not knowingly violate 844 I.A.C. 5-2-2. Dr. Bernard states that Indiana law required her to submit a publicly available [REDACTED] that contained information [REDACTED]. Dr. Bernard states that 844 I.A.C. 5-2-2 does not apply to the allegations in Paragraph 40 because, other than in the [REDACTED], she never discussed or confirmed information about [REDACTED] that she learned "during the course of, or as a result of, the patient-practitioner relationship."

41. Dr. Bernard denies that she violated Ind. Code § 25-1-9-4(a)(14) because she did not knowingly violate Ind. Code § 31-33-5-1. Dr. Bernard states that she

followed IU Health's policy on Child Abuse and Neglect and, therefore, she denies that she knowingly violated any law on reporting child abuse. Dr. Bernard also denies that Ind. Code § 31-33-5-1 required her to report [REDACTED] to Indianapolis law enforcement because she reported the abuse to IU Health and she knew the abuse had been reported and was being investigated by the authorities local to [REDACTED] were already investigating [REDACTED]

COUNT V: FAILURE TO KEEP ABREAST OF CURRENT PROFESSIONAL THEORY AND PRACTICE

42. Dr. Bernard denies that she has violated Ind. Code § 25-1-9-4(a)(4)(B) by failing to keep abreast of current professional theory or practice. Dr. Bernard denies that she failed to follow patient privacy laws and that she failed to follow mandatory reporting laws. IU Health has determined that her conduct complied with patient privacy laws. Dr. Bernard also complied with IU Health's child abuse reporting requirements. Dr. Bernard states that she is competent to practice as a physician in Indiana and the United States.

AFFIRMATIVE AND OTHER DEFENSES

1. Ind. Code § 31-33-5-1 is unconstitutional as applied by the OAG.
2. 844 I.A.C 5-2-2 is coextensive with HIPAA and the mores specific (i.e., the HIPAA privacy regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and E) governs over the more general statute.

3. Dr. Bernard cannot have committed a knowing violation of Indiana's child abuse reporting requirements because she confirmed reporting in [REDACTED] consistent with IU Health's Child Abuse and Neglect policy, which directs physicians that "If abuse allegations are related to a patient living in another state, the appropriate state hotline is contacted." Exhibit 1, at 1. The OAG has not alleged that Dr. Bernard failed to act in accordance with this policy.

4. Indiana law required Dr. Bernard to make publicly available reports, including [REDACTED], that contained the information about [REDACTED]
[REDACTED] Dr. Bernard cannot have violated Indiana law, including 844 I.A.C. 5-2-2, or incur sanctions on her license to practice medicine for confirming information that Indiana required her to publicly report.

5. "Local authorities" in Ind. Code § 31-33-5-1 do not refer to Indianapolis authorities, but to the authorities local to the individual child abuse victim.

6. The rule of lenity requires "[l]aws which are punitive in nature, and which would deprive an individual of the freedom to exercise the skills of his business or profession, should be construed against the denial of this freedom." *Cassidy v. Indiana State Board of Registration and Examination in Optometry*, 191 N.E.2d 492, 498 (Ind. 1963). The OAG's proposed interpretations of 844 I.A.C. 5-2-2 and § 31-33-5-1 violate the rule of lenity.

7. Attorney General Rokita has already been found to have "violated

Indiana law when discussing the confidential investigations [of Dr. Bernard] in the media” and that his statements cause Dr. Bernard “irreparable harm[.]” Marion County Order Denying Preliminary Injunction (December 2, 2022), at 32.

8. At the time that Dr. Bernard confirmed information for the IndyStar reporter, she did not know any information about [REDACTED] beyond the information the referring physician relayed to Dr. Bernard, and the physician-patient relationship between Dr. Bernard and [REDACTED] had not yet commenced, therefore, she could not have violated 844 I.A.C. 5-2-2.

9. Dr. Bernard fulfilled her obligation to immediately report suspected child abuse when she informed a social worker who IU Health had designated to handle child abuse reporting within the hospital (Ind. Code § 31-33-5-2.5) and also because she knew the abuse had already been reported in [REDACTED] Ind. Code § 31-33-5-3.

10. Under Ind. Code. § 4-21.5-3-27.5, the OAG must pay Dr. Bernard’s reasonable attorneys’ fees because its action against Dr. Bernard has been frivolous, groundless, and conducted in bad faith.

11. Dr. Bernard believed at all times that she was complying with all state and federal privacy laws and that she had fulfilled her obligation to report child abuse.

Respectfully submitted,

/s/Alice M. Morical

John David Hoover (7945-49)

Alice M. Morical (18418-49)

Clara P. Gutwein (36838-49)
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CERTIFICATE OF SERVICE


The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel, via First Class, United States Mail, postage prepaid, this 19 day of December 27, 2022:

Theodore E. Rokita
Mary L. Hutchison
Indiana Attorney General
Indiana Office of the Attorney General
302 W. Washington Street
Fifth Floor
Indianapolis, IN 46204-2770

/s/ Alice M. Morical

Alice M. Morical

1235914

 Indiana University Health	Original Creation Date: 06/28/2000	Publication Date: 05/31/2022
	Owner: Cheryl Ramey-Hunt (Director-Integrated Care Management)	Next Review: 05/31/2025
	Category: Nursing	
	Education: Level 2	
Approval Signatures: Megan Isley (Vice President-Chief Nursing Officer-Riley Hospital) (05/31/2022)		
<h2>Child Abuse and Neglect</h2>		

Printed copies are for reference only. Please refer to the electronic copy for the latest version.

I. PURPOSE

The purpose of this policy is to protect the health and welfare of children receiving healthcare services from the Indiana University Health Academic Health Center (AHC), and to ensure that IU Health AHC is in compliance with Indiana Law I.C. 31-33-5-1 et. al.

II. SCOPE

This policy applies to all IU Health AHC medical team members, residents, hospital team members, contracted team members and students caring for children less than 18 years of age in the inpatient and ambulatory settings.

III. EXCEPTIONS

None

IV. DEFINITIONS

Abused Child: child less than 18 years of age whose legal caretakers including parent, guardian or custodian inflict or allow infliction of non-accidental physical or emotional injury, sexual offense or neglect.

IN DCS: Indiana State Department of Child Services (<https://www.in.gov/dcs/>).

Neglected Child: the child's physical or mental condition is seriously impaired or endangered as a result of the inability, refusal or neglect of her/his legal caretaker to provide the child with necessary food, clothing, shelter, medical care (i.e. medical, mental health, dental), education or supervision.

Sexually Abused Child: involvement of children and adolescents in inappropriate sexual activity that they do not understand or to which they cannot give consent by virtue of their developmental level or chronologic age.

V. POLICY STATEMENTS

All cases of suspected child abuse or neglect will be reported to DCS.

VI. PROCEDURES

Reporting Suspected Abuse and Neglect

- When abuse or neglect of a child is suspected, Indiana state law mandates a report to the Indiana State Child Abuse and Neglect Hotline (1-800-800-5556). If abuse allegations are related to a patient living in another state, the appropriate state hotline is contacted.



- B. Initiating the Process to Report Suspected Abuse or Neglect:
1. Consult Social Work for all suspected cases of abuse or neglect.
 2. Notify the medical team of suspicions.
 3. Document details specific to suspected abuse or neglect.
- C. The social worker shall be consulted in all cases of suspected child abuse and neglect. After social work assessment and with the involvement of other members of the interdisciplinary care team and the IU Health Child Protection Program as needed, when appropriate the social worker or physician will make a verbal report to the Indiana State Child Abuse and Neglect Hotline (1-800-800-5556).
- D. The verbal report shall be followed by a written report using the Preliminary Report of Alleged Child Abuse or Neglect (310). The written report shall be processed by the social worker. If a child is believed to be in imminent danger of bodily harm or death, the social worker and medical team will work closely with IU Health Department of Public Safety, Law Enforcement and DCS to assure safety of the patient. Only Law Enforcement or DCS have the authority to detain a child. The social worker will work with IU Health Public Department of Safety to meet the immediate safety needs of the patient while an emergent report to the Indiana State Child Abuse and Neglect Hotline is made (1-800-800-5556).
- E. Child Abuse Order Set for Inpatients:
1. The Child Abuse Order Set will be used to indicate that a 310 has been filed and will include all consent, visitation and discharge information needed by the interdisciplinary team for treatment of patient.
 2. The Child Abuse Order Set will be initiated and maintained by the social worker.
- F. The hospital may not release the child until authorization from DCS or a copy of the court order is received. The social worker will facilitate and document the release process in the medical record.
- G. Detained Patients:
Involvement of DCS and/or Law Enforcement for protective custody is indicated when a child is believed to be in imminent danger of bodily harm or death, or the child is so gravely ill or injured that admission and continued treatment is required and the parents will not consent. The social worker will make an emergent report to the Indiana State Child Abuse and Neglect Hotline (1-800-800-5556) to report the emergent physical or medical needs of the patient.
- H. Child Abuse Order Set for Inpatients:
1. The Child Abuse Order Set will be used to communicate all Protective Custody/ Detention decisions made by DCS.
 2. Child Abuse Order Set information will include consent, visitation and discharge related information needed by the interdisciplinary team for treatment of patient.
 3. The Child Abuse Order Set will be initiated and maintained by the social worker.
- I. The first and last names and contact numbers of the DCS Family Case Managers and Law Enforcement officers involved will be documented in the patient's medical record. Updates will be recorded throughout hospitalization as appropriate by Social Work. DCS County and Law Enforcement jurisdiction will also be documented.
- J. Nurse Responsibilities:
1. Follow restrictions as outlined on the Child Abuse Order Set and detailed in the social work documentation.
 2. Contact Social Work when DCS or Law Enforcement arrive on the unit and when visitation, consent

or custody issues arise during the course of daily patient care.

3. Document concerns related to abuse or neglect witnessed during the course of daily patient care.
 4. Do not discharge the patient unless cleared by Social Work. The social worker will document receipt of release provided by DCS.
 5. When a child is released to a DCS identified caregiver, positively identify the caregiver via photo ID.
- K. Child Abuse and Neglect Manual:
The IU Health Child Abuse and Neglect Manual is attached to this Policy and available for more detailed information concerning clinical signs, symptoms, procedures, and treatments.

VII. CROSS REFERENCES

Consent for Photography and Recording

Infant Child Abduction

IU Health Child Abuse and Neglect Manual

No Information Status Patients

Patient Consent for Clinical Services

Patient Leaving Against Medical Advice (AMA)

VIII. REFERENCES/CITATIONS

Preliminary Report of Alleged Child Abuse or Neglect (310) (<https://www.in.gov/dcs/>)
<http://www.in.gov/dcs/forms>

IX. FORMS/APPENDICES

Detailed Observation Protocol

Detailed Observation Protocol Authorization Form

Detailed Observation Protocol Re-Authorization Form

IU Health Child Abuse and Neglect Manual

Medical Child Abuse Guidelines

State Form Preliminary Report of Alleged Child Abuse or Neglect (310)

Suspected Child Abuse/Child Neglect Order Set (CH-40444)

Suspected Medical Child Abuse Algorithm

XI. APPROVAL BODY, IF APPLICABLE

None

From: IU Health Public Relations
To: IU Health Public Relations
Subject: IU Health statement on privacy review
Date: Friday, July 15, 2022 9:02:53 AM

Good morning,

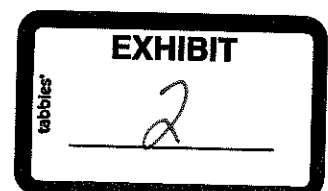
Please see below for a statement from Indiana University Health.

Thank you.

IU Health statement on privacy review

As part of IU Health's commitment to patient privacy and compliance with privacy laws, IU Health routinely initiates reviews, including the matters in the news concerning Dr. Caitlin Bernard. Pursuant to its policy, IU Health conducted an investigation with the full cooperation of Dr. Bernard and other IU Health team members. IU Health's investigation found Dr. Bernard in compliance with privacy laws.

Indiana University Health



1 IN THE FRANKLIN COUNTY MUNICIPAL COURT

2 COLUMBUS, OHIO

3 CRIMINAL DIVISION

4 - - -
5 State of Ohio, :

6 Plaintiff, :

7 -vs- :

Case No. 2022 CRA 010238

8 Gerson Fuentes, :

9 Defendant. :

10 - - -
11 TRANSCRIPT OF DIGITALLY-RECORDED ARRAIGNMENT

12 July 13, 2022

13 - - -
14 HONORABLE CYNTHIA L. EBNER,
Judge, presiding.

15 APPEARANCES:

16 G. GARY TYACK, Franklin County Prosecutor,
17 373 South High Street, 14th Floor, Columbus, Ohio,
By: Daniel Meyer, Asst. County Prosecutor,

18 On behalf of the State.

19 FRANKLIN COUNTY PUBLIC DEFENDER,
20 373 South High Street, Columbus, Ohio,
By: Clark Torbett, Attorney at Law,

21 On behalf of the Defendant.

22 - - -
23 ALSO PRESENT: Charles Goodburn, Spanish Interpreter

24 - - -
Marissa LaRue,
25 Official Court Reporter.
- - -

EXHIBIT

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I-N-D-E-X

WITNESSES ON BEHALF OF THE STATE

Jeffrey Huhn

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- - -

1 BE IT REMEMBERED THAT, on the 13th day of July,
2 2022, this cause came on for arraignment before the
3 Honorable Cynthia L. Ebner, Judge. And the parties
4 appearing in person and/or by counsel, as herein set forth,
5 the following proceedings were had:

6 - - -

7 THE COURT: All right. We need Gerson Fuentes.
8 All right. Okay. All right. The charge is rape, a felony
9 of the first degree, under 13 years old.

10 All right. Would the foreign language interpreter
11 please state their name for the record.

12 THE INTERPRETER: Charles Goodburn, Spanish
13 interpreter.

14 THE COURT: Thank you.

15 (Interpreter sworn.)

16 THE COURT: Let the record reflect that the
17 foreign language interpreter has sworn or affirmed, and
18 knows, understands, and will act according to the Code of
19 Professional Conduct for Court Interpreters and Translators.
20 All right. Thank you.

21 All right. Counsel, will you please enter your
22 appearances.

23 MR. MEYER: Dan Meyer on behalf of the
24 State of Ohio.

25 MR. TORBETT: Clark Torbett, 0095280, on behalf of

1 Mr. Fuentes, Your Honor.

2 THE COURT: All right. Thank you.

3 If there's a motion, the Court has not received
4 one.

5 MR. MEYER: Oh, may I approach?

6 THE COURT: Please.

7 All right. Mr. Torbett, did you enter?

8 MR. TORBETT: I entered.

9 THE COURT: Did you receive the motion from the
10 State?

11 MR. TORBETT: He's working on that right now, but,
12 yes, I have.

13 THE COURT: Okay. Have you had adequate time to
14 review the motion to hold the defendant without bail or
15 bond?

16 MR. TORBETT: Yes, Your Honor.

17 THE COURT: All right. Mr. Meyer, would you like
18 to proceed?

19 MR. MEYER: Yes, thank you, Your Honor.

20 The State is asking the Court to hold Mr. Fuentes
21 without bail or bond on this case. And I do have
22 Detective Huhn available for testimony.

23 THE COURT: All right. All right. Are you ready
24 to proceed then?

25 MR. MEYER: Yes.

1 THE COURT: All right.

2 - - -

3 Thereupon, the State, to maintain the issues on
4 its part to be maintained, offered and introduced in
5 evidence on its behalf the following testimony:

6 JEFFREY HUHN,

7 called as a witness on behalf of the State, being first duly
8 sworn, testified as follows:

9 THE COURT: All right. Mr. Meyer, you may
10 inquire.

11 MR. MEYER: Thank you, Your Honor.

12 - - -

13 DIRECT EXAMINATION

14 BY MR. MEYER:

15 Q. Detective, I'm going to ask you to start by
16 stating your name and agency for the record, please.

17 A. Jeffrey W. Huhn, H-U-H-N, Columbus Police.

18 Q. Detective, did you come to be involved in the
19 investigation of a Gerson Fuentes?

20 A. Yes.

21 Q. And how did you come to be involved in that
22 investigation?

23 A. I was assigned the case -- Oh, I'm sorry. I was
24 assigned the case on June 22nd.

25 Q. And how did the case start? I guess let's start

1 with that.

2 A. So an FCCS referral was made. A [REDACTED] police
3 report was generated due to mandated reporting. It was
4 assigned to me, and I initiated the investigation.

5 Q. And who did that initial report come from?

6 A. It came from the mother of the victim.

7 Q. And what did she indicate?

8 A. She indicated that her ten-year-old daughter was
9 pregnant.

10 Q. At the time, was the daughter still pregnant?

11 A. Yes.

12 Q. Is that daughter still pregnant today?

13 A. No.

14 Q. Why not?

15 A. The victim went to -- went out of state to have a
16 medical -- medically terminated abortion.

17 Q. Do you know approximately when she had that
18 abortion?

19 A. The -- The consultation was initiated on
20 June 29th. I believe the procedure was initiated on the
21 30th. And the products of conception were picked up on the
22 2nd of July of this year.

23 Q. Now, when you refer to the "products of
24 conception," do you -- is that the aborted fetus?

25 A. Yes.

1 Q. Is that product of conception, is that currently
2 available for DNA testing?

3 A. Yes. The products of conception were entered into
4 evidence in the [REDACTED] Police Property Room on the
5 2nd of July.

6 Q. And in what city and state did this abortion take
7 place?

8 A. [REDACTED] Indiana.

9 Q. Now, how did you proceed with your investigation
10 of the rape from there -- and I should clarify -- you or
11 other detectives with CPD?

12 A. On July 6th, Detective Lisa McKissick (phonetic),
13 Sergeant Timothy Grimm (phonetic), and Detective Scott --
14 (unintelligible) -- made contact with the family at the
15 residence and obtained DNA samples from the two brothers as
16 well as the victim. And during that -- during that contact,
17 the victim acknowledged that Gerson Fuentes was, indeed, the
18 father of the pregnancy, or the father of the child. On --
19 I'm sorry.

20 Q. Go ahead.

21 A. So on July 12th, we issued a search warrant,
22 served Gerson with a search warrant for his DNA, and
23 subsequently he consented or waived his right and spoke with
24 us and admitted to having vaginal intercourse with the
25 victim on no less than two occasions.

1 Q. To your knowledge, is Mr. Fuentes in this country
2 legally?

3 A. To my knowledge, no. I could not find any
4 indication that he was here with an -- a legal status.

5 Q. And, in fact, is there some confusion as to
6 Mr. Fuentes' real name?

7 A. Yes. I can't -- I can't verify anything because
8 we have no legal documents to ascertain who he -- who he may
9 actually be.

10 Q. Detective, I'm going to ask you to look up at that
11 screen there. Is that the individual that you spoke with
12 yesterday?

13 A. Yes.

14 Q. And just to be perfectly clear, that is the
15 individual who has been identified as Gerson Fuentes;
16 correct?

17 A. Yes.

18 Q. And that is the individual who confessed to having
19 sexual intercourse with a ten-year-old at least twice
20 yesterday; correct?

21 A. Yes.

22 Q. And that is the individual from whom you took a
23 DNA swab yesterday; correct?

24 A. Yes.

25 Q. And did this take place in [REDACTED] Ohio?

1 A. Yes.

2 MR. MEYER: I have no further questions. Thank
3 you.

4 THE COURT: All right. Thank you.

5 Mr. Torbett?

6 MR. TORBETT: Thank you.

7 - - -

8 CROSS-EXAMINATION

9 BY MR. TORBETT:

10 Q. Good morning, Detective.

11 A. Good morning.

12 Q. So I heard you mention that the aborted fetus was
13 confiscated, if that's the right word. I heard you say you
14 took the DNA of the prosecuting witness and her two
15 brothers. I heard you say you took the DNA of Mr. Fuentes;
16 correct?

17 A. Yes.

18 Q. I didn't hear you say that there was any
19 definitive match linking this baby to Mr. Fuentes at this
20 point; right?

21 A. Correct. That evidence is in process.

22 (Unintelligible) -- analysis is being completed as we speak.

23 THE COURT: What was the last part of that?

24 THE WITNESS: The DNA analysis -- I'm sorry. The
25 DNA analysis is being completed as we speak.

1 THE COURT: Okay.

2 BY MR. TORBETT:

3 Q. And it's established at this point that the
4 prosecuting witness does live with other males; right?

5 A. Correct. She has an older brother by a couple
6 years, I believe, and a younger brother.

7 Q. Detective, is it safe to say you're not fluent in
8 Spanish?

9 A. I am not fluent in Spanish; that's why we use an
10 interpreter.

11 Q. At this point, really all you know for certain is
12 that this ten-year-old was pregnant and was impregnated by
13 somebody; right?

14 A. Correct. That's all I know for certain, that she
15 is pregnant -- or was pregnant, and somebody impregnated
16 her, and that Mr. Fuentes admitted to that.

17 MR. TORBETT: I appreciate it. No further
18 questions.

19 THE COURT: All right. Thank you.
20 Anything further?

21 MR. MEYER: No, Your Honor.

22 THE COURT: Do you have any other witnesses or --

23 MR. MEYER: No.

24 THE COURT: -- anybody else you'd like to call?

25 MR. MEYER: No, Your Honor.

1 THE COURT: Okay. Any close?

2 MR. MEYER: Thank you, Your Honor.

3 The State is asking again that the Court hold
4 that -- Mr. Fuentes without bail.

5 This is an extremely serious case, and there are
6 serious concerns, first of all, regarding the victim of this
7 case, who is a vulnerable -- sorry -- regarding a vulnerable
8 child under the age of 13. It's my understanding she, in
9 fact, just turned 10 years old.

10 Mr. Fuentes is facing a potential life sentence in
11 prison. We do not know anything for certain about his
12 identification; therefore, we can't show -- we don't know
13 what his prior court contacts may even be at this point.

14 Based on those two things, I would submit that
15 Mr. Fuentes is to be considered a flight risk, and I do
16 still have concerns for the safety of the ten-year-old
17 child. So the State is asking that he be held without bail,
18 and if the Court is not inclined to grant that motion, I'd
19 ask the Court to set bail in excess of \$2 million.

20 THE COURT: All right.

21 MR. MEYER: Thank you.

22 THE COURT: Mr. Torbett?

23 MR. TORBETT: Your Honor, if it's okay with you in
24 addressing the State's motion, I'd also like to tie in the
25 ordinary bond --

1 THE COURT: Please.

2 MR. TORBETT: -- mitigation that I would provide.

3 Thank you. First and foremost, we have entered a
4 notice of appearance of counsel and declaration to -- of
5 Mr. Fuentes' intent to exercise his constitutional rights.
6 Mr. Fuentes does not wish to answer any questions or to talk
7 to anybody about this case or anything else without an
8 attorney there with him.

9 He's 27 years old. He's lived in the area for the
10 last 7 years. I have a good local address, separate and
11 apart from the prosecuting witness in this case, Your Honor.
12 He's gainfully employed in Dublin at a cafe.

13 These allegations are very serious and Mr. Fuentes
14 takes these allegations very seriously.

15 So, Your Honor, the State focuses much of their
16 argument on the strength of their case against Mr. Fuentes,
17 but this is their burden in not only proving that, but also
18 proving that he is a substantial risk to the community.

19 These factors can be broken down in Revised Code 2937.222,
20 Subsections (C)(1), (2), (3)(a), (3)(b), and (4).

21 Your Honor, they want you to make assumptions that
22 he might have a criminal record because they're not positive
23 who he is, when, as I've mentioned to you, he has ties to
24 this community. It is his mother's house here in Columbus
25 where he can stay, and as I mentioned, he's been here for 7

1 years now. There's no indication that he was accused of any
2 other crimes or on any active form of supervision. And
3 perhaps most importantly, Your Honor, in order to grant the
4 State's motion, the Court must also find that no-release
5 conditions will reasonably assure safety of the prosecuting
6 witness or the community. The Court has many less
7 restrictive means than holding this man in jail without a
8 bond.

9 Your Honor, I know the allegations are terrible,
10 and I know that your bond, if you set one, will be quite
11 high, but I do believe it's unconstitutional to hold him
12 without a bond. And I do believe he is entitled to one, and
13 I -- I think your review of the pertinent revised code will
14 lead you to the same conclusions. I'm asking you to deny
15 the State's motion for no bond and grant Mr. Fuentes a
16 monetary bond. Thank you.

17 THE COURT: Thank you.

18 All right. After hearing the testimony of -- the
19 Detective? --

20 MR. MEYER: Yes.

21 THE COURT: -- and the arguments of defense
22 counsel, I don't believe that this case rises to the level
23 of -- to warrant a no bond. There was nothing regarding the
24 criminal history of this defendant except that there is not
25 any known at this time. The DNA results are still pending,

1 so with that, I'm going to deny the motion; however, based
2 on the severity of the alleged offense and the potential
3 flight risk of the defendant and the concern for the safety
4 of the child, who is just ten years old, and the community
5 potentially, the Court is going to impose a -- it will be a
6 2 million cash or surety.

7 All right, sir. No future acts of violence,
8 threats of violence against anyone. You'll stay away from
9 the person with the initials of [REDACTED] that is the child in
10 this case. Stay away from her family.

11 Now, it indicates -- Was this offense at his
12 address? I have it on [REDACTED]. Does he live on [REDACTED]?

13 MR. TORBETT: No. That's -- I provided the Court
14 with a separate address from that address, Your Honor. I
15 believe that's where the family resides.

16 THE COURT: Okay. Because on the complaint, it
17 reads his address.

18 MR. TORBETT: Right.

19 THE COURT: All right.

20 MR. TORBETT: He will stay with his mom elsewhere.

21 THE COURT: Okay.

22 All right. Mr. Fuentes, you are to have no
23 contact with this child with the name -- with the initials
24 of [REDACTED] and her family. No contact by mail, by e-mail, by
25 telephone, text, in person, and third party. Do not have

1 anybody on your behalf contact her or her family.

2 All right. Thank you.

3 MR. TORBETT: Mr. Fuentes, head to the back and
4 we'll talk to you back there.

5 MR. MEYER: Thank you, Your Honor.

6 THE COURT: Thank you.

7 THE CLERK: Next prelim is July 22nd.

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C-E-R-T-I-F-I-C-A-T-E

I do hereby certify that the foregoing is a true, correct, and complete written transcript of the digitally-recorded proceedings in this matter, heard on the 13th day of July, 2022, reduced to stenographic notes as understood by me, and subsequently transcribed from those stenographic notes.



Marissa LaRue,
Official Court Reporter.

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

- - -

****COPY-NOT FOR FILING****

STATE OF OHIO, :
Plaintiff, :
vs. : Case No. 22CR-3226
GERSON FUENTES, :
Defendant. :

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

Before the Honorable Julie M. Lynch, Judge,
taken on Thursday, July 28, 2022.

- - -

APPEARANCES:

Messrs. Daniel L. Meyer and Daniel D. Lenert,
Assistant Prosecuting Attorneys,

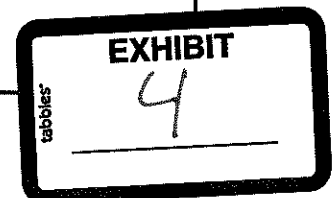
On behalf of the Plaintiff, State of Ohio.

Mr. Bryan M. Bowen,
Attorney at Law,

On behalf of the Defendant, Gerson
Fuentes, with an interpreter.

- - -

TAMMY L. LUCHINI, RPR
Assistant Official Court Reporter
Tammy_Luchini@fccourts.org (614) 525-3759



- - -
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CALLED BY THE STATE

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DETECTIVE JEFFREY HUHN

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Thursday Morning Session

July 28, 2022

9:16 a.m.

- - -

THE COURT: This is 22CR-3226, State of Ohio
versus Gerson Fuentes. Counsel, please enter.

MR. MEYER: Dan Meyer and Dan Lenert on
behalf of the State of Ohio.

MR. BOWEN: Your Honor, Bryan Bowen on behalf
of Mr. Fuentes.

THE COURT: Mr. Meyer.

MR. MEYER: Thank you, Your Honor. The State
has filed a motion to hold the defendant without
bond. Pursuant to Ohio Revised Code 2937.222, the
State commits that the proof is evident or the
presumption great that the defendant committed the
offenses charged, that he poses a substantial risk
of serious physical harm to any person or to the
community, and that no release conditions will
reasonably assure the safety of that person and the
community.

If it will please the Court, the State would
call a witness to testify as the motion.

THE COURT: Please call your first witness.

MR. MEYER: The State will call Detective

1 Jeffrey Huhn.

2 THE BAILIFF: Step all the way around to the
3 end, raise your right hand please.

4 (Witness placed under oath.)

5 THE WITNESS: I do.

6 THE BAILIFF: Please be seated and speak up
7 so that everyone can hear you.

8 THE WITNESS: Sure.

9 MR. MEYER: May we approach?

10 THE COURT: You may.

11 (Discussion held at the bench off the
12 record.)

13 THE COURT: You may inquire.

14 MR. MEYER: Thank you, Your Honor.

15 - - -

16 DETECTIVE JEFFREY HUHN,
17 Called as a witness on behalf of the Plaintiff,
18 State of Ohio, being first duly sworn, testified as
19 follows:

20 - - -

21 DIRECT EXAMINATION

22 BY MR. MEYER:

23 Q. Detective, let's start by stating and
24 spelling your full name for the record, please.

25 A. Jeffrey Huhn, J-E-F-F-R-E-Y, last name is

1 H-U-H-N.

2 Q. And who is your current employer?

3 A. City of [REDACTED] Division of Police.

4 Q. And what is your role with of City of

5 [REDACTED]

6 A. I am a detective with the special victim's
7 bureau, sexual assault unit.

8 Q. Did you come to be involved in June of this
9 year in the investigation of the Defendant, Gerson
10 Fuentes?

11 A. I did.

12 Q. Can you tell me how that investigation
13 began, please?

14 A. We received a referral from Children
15 Services -- or Children Services received -- a
16 referral was made to Children Services on the 22nd
17 of June. Forensic interview took place on the
18 23rd. I was assigned the case on the 24th of June.

19 Q. Okay. And what was the nature of that
20 referral?

21 A. A 10 year old was -- was reported to be
22 pregnant.

23 Q. All right. And for the purposes of this
24 hearing, we will refer to the 10 year old by the
25 initials [REDACTED]

1 Do you -- do you know her date of birth?

2 A. Not -- not offhand.

3 Q. Was it [REDACTED] 2012, does that sound
4 right?

5 A. That sounds right.

6 Q. Okay. And so she was seen at the CAC on
7 [REDACTED]?

8 A. Correct.

9 Q. And what happened next?

10 A. She did not make a disclosure of sexual
11 assault at that time.

12 Q. Okay. Did the child or her mother make a
13 determination as to how they wanted to proceed with
14 the pregnancy?

15 A. They did.

16 Q. And what did they determine?

17 A. So mom wanted to terminate the pregnancy, so
18 they -- I believe it was, like -- if I can look at
19 my notes for the date -- some -- sometime -- I
20 don't have the exact date in here. But sometime
21 between the forensic interview and the 29th they
22 went to a doctor here locally to determine the
23 gestational age of the pregnancy. They were going
24 to terminate it here locally and that wasn't
25 possible due to the gestational age.

1 Q. What was the gestational age at that time?

2 A. I believe [REDACTED]

3 Q. So based on that gestational age going
4 backwards, would the date of conception have been
5 on or about [REDACTED]?

6 A. Correct.

7 Q. So what happened next?

8 A. So the -- the mother -- well, so the CAC,
9 Nationwide Children's consulted with a hospital in
10 Indianapolis and the plan was to get her there so
11 that she could terminate the pregnancy.

12 Q. Okay. Do you know when they traveled to
13 Indianapolis?

14 A. On the [REDACTED] was her initial consultation
15 with the doctor in Indianapolis.

16 Q. And what happened after that?

17 A. The pregnancy was -- so after the
18 consultation, she had to wait 18 hours before they
19 started. They decided at the consultation to do a
20 medical procedure involving medicine versus the
21 typical procedure, and 18 hours later she took the
22 first pill and there was -- the products of
23 conception were past. I believe on the [REDACTED]
24 it was complete.

25 Q. Thank you. And then did you or someone else

1 with the [REDACTED] Police Department travel to
2 Indianapolis to receive that product of conception?

3 A. Correct.

4 Q. Would that have been [REDACTED]?

5 A. [REDACTED], correct.

6 Q. And what did they do with that product of
7 conception?

8 A. They brought it back and it was entered into
9 the [REDACTED] police property room as evidence, and
10 it was sent to our forensic crime lab.

11 Q. Okay. And what was the purpose of sending
12 it to the crime lab?

13 A. To analyze it against the potential DNA
14 samples to rule out suspects of -- and whatnot.

15 Q. And then did you or other detectives with
16 CPD make contact with Mr. Fuentes at his residence
17 at some point?

18 A. Correct.

19 Q. And did -- first of all, were you there
20 personally?

21 A. I was not there.

22 Q. Okay. But based on your conversations with
23 the other detectives who were there, were any --
24 did anyone speak with the child victim in this
25 case?

1 A. Yes.

2 Q. And what was the nature of the conversation
3 between that detective and the child?

4 A. I don't know the conversation specifically.
5 I do know that she acknowledged that Gerson Fuentes
6 was the -- was the person that sexually assaulted
7 her by -- by crying and nodding in her shoulder.

8 Q. Okay. And is that -- was that in response
9 to being asked that Mr. Fuentes did this to her?

10 A. Yes.

11 Q. Did you or someone else with CPD obtain a
12 search warrant for Mr. Fuentes's DNA standard?

13 A. Yes.

14 Q. Do you recall when that warrant was obtained
15 and executed?

16 A. The warrant was obtained on the 12th of July
17 and we executed it on the 12th of July, that
18 afternoon.

19 Q. Okay. So you obtained Mr. Fuentes's DNA
20 through a search warrant on July 12th, correct?

21 A. Correct.

22 Q. Did Mr. Fuentes make any statements during
23 that process?

24 A. Subsequent to the -- serving him with the
25 search warrant and obtaining his buccal swab, he

1 consented -- he waived his rights and consented to
2 an interview and he admitted to having vaginal
3 intercourse with the child victim no less than two
4 occasions.

5 Q. Okay. And to be clear, was there an
6 interpreter present for that conversation?

7 A. There was not -- not physically present. We
8 used ASIST over the phone, so there was an
9 interpreter used.

10 Q. Okay. So just to be clear, you -- was there
11 another detective with you?

12 A. Yes.

13 Q. So the two of you and Mr. Fuentes all were
14 physically present in the same room?

15 A. Yes. Yes.

16 Q. And --

17 A. And on my cell phone there was -- we used
18 ASIST, an interpreter, and it was right there on
19 speakerphone and we went through that interpreter.

20 Q. Okay. Thank you. And then was the standard
21 obtained from Mr. Fuentes tested against the DNA
22 from the product of conception?

23 A. Yes.

24 Q. And what were the results of that DNA
25 analysis?

1 A. 99.99 percent that he is the father of the
2 product of conception.

3 Q. Thank you. Detective, do you see
4 Mr. Fuentes in this room?

5 A. I do.

6 Q. Can you point him out to me?

7 A. He is sitting over there at the defendant's
8 table.

9 Q. Thank you.

10 MR. MEYER: I would reflect that he has
11 identified the defendant.

12 THE COURT: So entered.

13 BY MR. MEYER:

14 Q. Detective, did this take place in [REDACTED]
15 County, Ohio?

16 A. It did.

17 Q. And just to clarify for the record, what is
18 ASIST?

19 A. I'm sorry?

20 Q. What is ASIST?

21 A. It's a language interpretation line that we
22 use so that several -- there are multiple occasions
23 where we need to have an interpreter for either
24 Spanish or -- or other languages, and we will call
25 them and they interpret through a phone. They will

1 also show up in person, although if they kind of
2 arrange that down the road, but it's just an
3 interpretation service that we use.

4 Q. Okay. And one more thing --

5 THE COURT: Counsel, can you step up over
6 here for just a second, please?

7 (Discussion held at the bench off the
8 record.)

9 THE COURT: You may proceed.

10 BY MR. MEYER:

11 Q. Detective, through the course of your
12 investigation, were you able to learn anything
13 about Mr. Fuentes's resident status?

14 A. Yes. After I -- I attempted to look him up
15 using various databases that are accessible by law
16 enforcement, OHLEG, Accurint, LEADS. He had -- he
17 had no footprint or digital footprint or -- I could
18 not find him. I -- I did not -- he does not have
19 an Ohio driver's license or an Ohio ID card or one
20 in any other state in the United States that I
21 could locate.

22 Q. Okay. And then to the best of your
23 knowledge, is Mr. Fuentes here in the United States
24 legally?

25 A. To the best of my knowledge, no.

1 MR. MEYER: Okay. Nothing further. Thank
2 you.

3 THE COURT: Mr. Bowen, cross?

4 MR. BOWEN: Thank you, Your Honor.

5 - - -

6 CROSS-EXAMINATION

7 BY MR. BOWEN:

8 Q. Detective, couple questions for you. You
9 indicated that on [REDACTED] was when this referral
10 was made to [REDACTED] County Children Services; is
11 that correct?

12 A. That's correct.

13 Q. And that a forensic interview then happened
14 on June 23rd?

15 A. Correct.

16 Q. Where was that forensic interview?

17 A. The forensic interview was done at 655 East
18 Livingston Avenue at the Center for Family Safety
19 and Healing.

20 Q. Were you -- were you present for that
21 interview?

22 A. I was not.

23 Q. Do you know if any detectives were present
24 for this interview?

25 A. Sergeant Jeff Skinner, my supervisor, was at

1 that forensic interview.

2 Q. And you testified that at that interview
3 there was no disclosure made of any sort of sexual
4 assault or abuse --

5 A. Correct.

6 Q. -- by the alleged victim?

7 A. Yes.

8 Q. I believe you said that some time between
9 [REDACTED] and [REDACTED] that the alleged victim and
10 her mother visited a doctor or hospital in order to
11 determine the gestational age of the fetus?

12 A. Correct.

13 Q. Do you know where that was done?

14 A. It was here -- it was done here locally in
15 [REDACTED]

16 Q. Okay. I believe you testified that the --
17 the abortion procedure was complete by [REDACTED]; is
18 that right?

19 A. Yes.

20 Q. And that then you and, I believe, another
21 detective traveled to Indianapolis to obtain, what
22 I guess we call, the product of conception?

23 A. I did not travel. Sergeant Tim Grimm and
24 Detective David McGuire traveled to Indianapolis on
25 the 2nd and retrieved the evidence -- the product

1 of conception.

2 Q. Do you have knowledge of where that was kept
3 or how it was stored, or anything like that?

4 A. I do. So the -- they collected -- she --
5 she was admitted to the hospital. They collected
6 the product of conception, a SANE nurse collected
7 that, and it was -- the chain of custody was
8 maintained. They -- they stored it. Sergeant
9 Grimm and Detective McGuire had to sign for those
10 -- for the product of conception in order to
11 maintain the chain of custody, and there was a log
12 in the case file.

13 Q. Okay. Good. Thank you.

14 And I'm sorry, I missed what date you said
15 this happened. But you said at some point [REDACTED]
16 police officers went to the alleged victim's home
17 and made contact with her?

18 A. That -- that would have been July 6th.

19 Q. July 6th?

20 A. Yes.

21 Q. Thank you. And it's my understanding from
22 your testimony that the alleged victim did not
23 verbally name Mr. Fuentes but made some sort of
24 nonverbal indications that the officers took to
25 indicate that he was the person?

1 A. Yes.

2 Q. Okay. It's my understanding at that same
3 time, that same location, Mr. Fuentes was present
4 in the home; is that correct?

5 A. Yes.

6 Q. And that he was given an English language
7 consent to search form after which a DNA sample was
8 taken from him?

9 A. I believe the consent to search for the
10 first buccal from Mr. Fuentes was in Spanish, but
11 that is correct. He was presented a consent form,
12 he did sign that and a buccal was obtained on the
13 6th.

14 Q. And then later a -- and I believe you said
15 on the 11th a search warrant was written for a
16 buccal swab, and then a second DNA sample was
17 obtained pursuant to that warrant to Mr. Fuentes?

18 A. Correct.

19 Q. And you said -- I think that was on July
20 12th?

21 A. July 12th. We -- we wrote the warrant on
22 the 11th, had Judge Peeples sign it on the 12th and
23 we served it right after.

24 Q. On that same date you spoke with Mr. Fuentes
25 with a telephone-like language line kind of

1 interpreter?

2 A. Yes.

3 Q. Is that correct?

4 A. Yes.

5 Q. Do you speak Spanish?

6 A. I do not.

7 Q. And there was another detective present, is
8 that Detective Phillips?

9 A. Yes.

10 Q. Does he speak Spanish?

11 A. Not to my knowledge.

12 Q. Do you recall if you recorded anywhere the
13 name of the interpreter that you used?

14 A. Yes, we did. It was actually the ASIST, it
15 was actually their identification number. I don't
16 have their name, but that is also in the case file.

17 Q. Right. So -- but when they assign an
18 interpreter, they don't tell you that person's
19 name, that they assign that person a number?

20 A. Correct. We have that number. We have the
21 identifier.

22 Q. During this -- during the time of this
23 interview, Mr. Fuentes was in custody, correct?

24 A. He -- he was -- was he, yeah. So we would
25 consider that a custodial interview, yes.

1 Q. You said that you attempted to look
2 Mr. Fuentes up in various online law enforcement
3 access databases --

4 A. Correct.

5 Q. -- correct?

6 And that you did not find any -- any record
7 of him pretty much at all, correct?

8 A. I -- I did find various variations of his
9 name, but there was nothing that could positively
10 identify him with a picture or -- or anything else.

11 Q. Would that indicate to you that he does not
12 have a criminal record in the United States?

13 A. I -- I don't know if that would indicate he
14 has a criminal record. Like I said, there were
15 various spellings, various variations with -- with
16 very -- other names. I couldn't -- I couldn't tell
17 you if he had a criminal record or not.

18 Q. The prosecutor asked you whether to the best
19 of your knowledge he was in the United States --
20 and I don't remember if he was in the United States
21 legally or whether in the United States illegally,
22 but I think you answered to the best of your belief
23 that he was not here in the United States legally?

24 A. Correct.

25 Q. Is the basis for your determination his lack

1 of presence in these databases?

2 A. Correct.

3 Q. If someone were in the U.S. legally but had
4 not obtained a driver's license or committed any
5 criminal offense, would those people necessarily be
6 in those databases?

7 A. At some point I believe in today's day and
8 age it is really hard to move around as an adult
9 with -- without having some type of footprint,
10 whether you rent, have a cell phone, bought a car,
11 if you signed a lease, somewhere you are going --
12 your name is going to be somewhere, we will be able
13 to find you in one of those databases. So I
14 believe that, if you were here legally or were born
15 here, there would be some type of footprint.

16 Q. Okay. Did -- Do any of the databases that
17 you checked specifically track immigration
18 information?

19 A. I don't -- I don't know that.

20 Q. You met with him on that July 12th date at
21 his job --

22 A. Yes.

23 Q. -- is that correct?

24 And I assume by the fact you were not able
25 to find any identifiable information from him, you

1 were not able to find any identifiable information
2 tying him to any previous criminal activity?

3 A. Correct.

4 Q. Did at any point the alleged victim indicate
5 that she was given any sort of drugs or alcohol in
6 order to impair her ability to resist this?

7 A. So the purpose of the forensic interview is
8 so that a child only has to tell their story one
9 time so I had no contact with the -- with the child
10 victim after -- after the 6th of -- after the
11 forensic interview, so she has not made any
12 indication of drugs or anything like that to me or
13 to anyone else to my knowledge.

14 Q. Did you discuss with Mr. Fuentes, as part of
15 your interview with him, how long he had been in
16 the [REDACTED] area?

17 A. I -- that, I can't remember if it came up.
18 I want to say I remember him saying that he had
19 been here for seven years, but I'm not sure if that
20 is something that I learned afterwards or if it
21 came up during the interview.

22 Q. But you indicated -- you have learned that
23 he has been here about seven years?

24 A. That is something -- I am not sure if we
25 talked about that during the interview or not.

1 That is something that I believe I learned after,
2 you know, but I don't remember that conversation
3 during the interview.

4 Q. Regardless whether or not it was during the
5 interview, that is information you subsequently
6 obtained?

7 A. I believe so, yes.

8 Q. Were you able to determine whether he has
9 family in the area?

10 A. I believe his mother lives in the area.

11 MR. BOWEN: I have no further questions, Your
12 Honor. Thank you.

13 THE COURT: Mr. Meyer, any redirect?

14 MR. MEYER: Just very briefly, Your Honor.

15 - - -

16 REDIRECT EXAMINATION

17 BY MR. MEYER:

18 Q. Detective, you testified I think twice now
19 that the child victim went to the CAC for a
20 forensic interview on June 23rd; is that right?

21 A. Correct.

22 Q. And that she did not make any disclosures?

23 A. Correct.

24 Q. Was she still living under the same roof
25 with the defendant at that time?

1 A. She was.

2 Q. Was the -- do you recall who was present
3 with her -- or who took her to that interview?

4 A. I -- I know -- I know mom did. I am not
5 sure if Gerson was there or not.

6 MR. MEYER: Okay. Nothing further.

7 THE COURT: Mr. Bowen.

8 MR. BOWEN: Yes, Your Honor, just one
9 question based on that.

10 - - -

11 RECROSS-EXAMINATION

12 BY MR. BOWEN:

13 Q. No one else would be allowed actually in the
14 interview room with her, correct?

15 A. Correct.

16 Q. Just her and the interviewer?

17 A. Correct.

18 MR. BOWEN: Thank you. Sorry, that was two.

19 THE COURT: You may step down now.

20 THE WITNESS: Thank you.

21 THE COURT: Does the State have anymore
22 witnesses?

23 MR. MEYER: No, Your Honor.

24 THE COURT: Anything in kind of closing?

25 MR. MEYER: Yes. Thank you.

1 Your Honor, so in this hearing under
2 2937.222 it's the State's burden to show by clear
3 and convincing evidence that, one, that proof is
4 evident or the presumption great that the accused
5 committed the offense, in this case two counts of
6 rape under 2907.02; second, that the accused poses
7 a substantial risk of serious physical harm to any
8 person or to the community; and that three, that no
9 release condition will reasonably assure the safety
10 of that person and the community.

11 Your Honor, I would submit to the Court that
12 first prong, that the proof is evident or
13 presumption of great has been met. We have heard
14 that, first of all, the child victim in this case
15 made a nonverbal affirmation to one of the
16 detectives that Mr. Fuentes is the one who raped
17 her; second, Mr. Fuentes admitted to the detectives
18 to raping her; and third, that there -- based on
19 the preliminary DNA results, that there is a 99.99
20 percent probability that the defendant is the
21 biological father of the product of conception.

22 Regarding the second prong, the statute
23 further delineates certain factors, one, the nature
24 and circumstances of the offense charged including
25 whether an offense of violence, here it is rape;

1 the weight of the evidence accused; again,
2 confession and DNA results.

3 And then the history and character of the
4 accused, specifically length of residence in the
5 community and community ties, I would argue that
6 based on the fact that there is a -- at a minimum
7 some significant questions whether Mr. Fuentes is
8 here illegally. There is some concern that about
9 his community ties, how I would argue that he does
10 not have substantial community ties and that that
11 factor is met as well.

12 Finally, the Court may consider the nature
13 and seriousness to the danger to any person or the
14 community that would be posed by the person's
15 release. And in this case, Judge, this is a
16 10-year-old child who is at the center of this, who
17 didn't ask for any of this, who was raped by this
18 man who was providing for her and her mother and
19 the family. I would argue that there are serious
20 safety concerns for that 10-year-old child if
21 Mr. Fuentes were to be released.

22 Based on all of that, the State is once
23 again asking this Court to hold Mr. Fuentes without
24 bail or bond. If in the alternative the Court is
25 not inclined to grant that request, the State would

1 ask the Court to hold him of a minimum of \$2
2 million bail, and order to stay away from the
3 victim and the family. Thank you.

4 THE COURT: Mr. Bowen.

5 MR. BOWEN: Thank you, Your Honor. Your
6 Honor, based on the evidence that has been put forth
7 before the Court today, we would ask the Court to
8 deny the motion to hold Mr. Fuentes without bond and
9 to set an appropriate and reasonable bond for him.
10 The State does have to prove all of the following by
11 clear and convincing evidence that the proof is
12 evident that the presumption is greater than the
13 accused committed the offense, that the accused
14 poses the substantial risk of serious physical harm
15 to any person or to the community, and that no
16 release conditions will reasonably assure the safety
17 of that person and the community.

18 Certainly the Court has heard some testimony
19 about the evidence in this case, however, I think
20 for a couple of key points, obviously this
21 detective is limited in terms of what his personal
22 knowledge is of the facts. He was not present for
23 the forensic interview at which it appears that the
24 alleged victim did not identify Mr. Fuentes or, in
25 fact, indicate that any sort of sexual assault had

1 occurred at all. We know that one did based on
2 other evidence, however, she does not appear to
3 have mentioned that or said anything at that
4 initial interview. When the officers went to the
5 home to speak with the alleged victim here, she did
6 not verbally identify Mr. Fuentes, but instead made
7 some nonverbal indication that he was the person
8 who had done this. We have no evidence as to what
9 that nonverbal indication is or how strong it is,
10 or even who else was present, was it recorded.
11 This detective wasn't there.

12 When looking at the issue of posing a
13 substantial risk of serious physical harm to any
14 person or the community, Ohio Revised Code
15 2937.222(C) sets forth four factors, the nature and
16 circumstances of the offense charged, including
17 whether the offense is an offense of violence,
18 or -- I'm sorry, involves alcohol or drug abuse.
19 Rape by its very nature is considered a crime of
20 violence, obviously. However, we have not heard
21 that violence specifically towards the victim --
22 physical violence was a factor in this case. It
23 also does not appear that this involved any sort of
24 alcohol or drug abuse.

25 The Court is to consider the weight of the

1 evidence against the accused which we have already
2 discussed. It is also to determine the history and
3 characteristics of the accused, including, but not
4 limited to, both the character, physical and mental
5 condition, family ties, employment, financial
6 resources, length of residence in the community,
7 community ties, past conduct, history related to
8 drug and alcohol abuse, and criminal history.

9 We've had no testimony about Mr. Fuentes's
10 character, about his physical or mental condition.
11 We have heard that he has family ties in the
12 community, that he has employment in the community.
13 We don't know about his financial resources. His
14 length of residence in the county appears to be
15 several years. The community ties, past conduct,
16 no history related to drug or alcohol abuse, and no
17 identifiable criminal history.

18 The next factor is whether the time of the
19 alleged current offense the accused was on
20 probation, parole, post-release control or other
21 release pending trial. Appears that he has no
22 criminal history at all so he does not have any of
23 those things. He is not on probation, parole,
24 post-release control or pretrial release.

25 And finally, the Court is to consider the

1 nature and seriousness of the danger to any person
2 or the community that would be posed by the
3 person's release. We heard evidence about the
4 nature of the offense, but we have not heard any
5 evidence presented about any danger that
6 Mr. Fuentes would pose to any particular person or
7 to the community.

8 From the evidence presented, this is an
9 allegation of a specific crime with a specific
10 opportunity that would not apply in any sort of
11 general sense. It is the State's burden to present
12 all of this evidence by a clear and convincing
13 evidence, and we would argue based on the evidence
14 presented at this hearing, the State has not met
15 that burden. Thank you.

16 THE COURT: Ladies and gentlemen, let's first
17 start off with this is not a standard of the beyond
18 a reasonable doubt. This is a standard of clear and
19 convincing evidence which is a standard way less
20 than reasonable doubt. To go through some of these
21 factors, the nature and circumstances of the offense
22 is including whether the offense is an attempt of
23 violence, we can just stop there. It doesn't have
24 to be violence and drugs and alcohol. It is just
25 violence, and this Court finds rape of a violent

1 offense. Rape of a child is a seriously violent
2 offense.

3 The weight of the evidence against the
4 accused, I have done many no-bond hearings. I have
5 never once had a no-bond hearing in which there has
6 been physical DNA present from a victim in the form
7 of matter consistent with pregnancy. I have not
8 had where the defendant has agreed to have DNA
9 taken. I have not had a no-bond hearing in which
10 that DNA matches 99.99 percent. I have not had
11 ever in the case of a child, 10 years old, barely
12 beyond the age of reason.

13 The history and characteristics of the
14 accused, the character, physical, mental
15 conditions, family ties, employment, this Court
16 would assume if there were documentation proving
17 that this defendant was in this country legally,
18 that would have been presented by defense today.
19 As defense has not produced any evidence to the
20 contrary and through the channels in which research
21 is done to figure if somebody is in this country
22 legally or illegally, there could be no
23 determination of this defendant being in this
24 country legally.

25 And community ties, this man lived in the

1 home with this child. To allow him to return to
2 that home, the traumatic and psychological impact
3 would be undeserving to an alleged victim. And in
4 this case it does not appear to be unreasonable to
5 this Court that when a child who has gone through
6 the physical trauma of being raped, the physical
7 trauma of being 10 years old and being impregnated,
8 the physical and mental and emotional trauma of
9 having to drive to another state, have this whole
10 entire incident in this child's life become a
11 national hot point to the point to where the
12 President of the United States is referring to this
13 case, the Court finds that that trauma is enough to
14 never have that child be around the alleged
15 defendant.

16 And in this case, this defendant admitted
17 that at least on two occasions he had sexual
18 intercourse with this child. The DNA confirms by
19 99.99 percent that he had intercourse with this
20 child. The nature of the charges, if found guilty,
21 are life in prison without the possibility of
22 parole. That in itself makes this defendant a
23 flight risk. Not having any ties to this community
24 that can be proved legally make this a substantial
25 flight risk.

1 This Court does also not find it
2 unconscionable that a 10 year old, when confronted
3 with all of these issues after going through all of
4 that trauma would cry, would not -- would be
5 nonverbal, that she would nod, shake her head and
6 cry, that seems logical. This Court does not know
7 if there is a language barrier with this child, so
8 it could be very characteristic that in a community
9 we understand what nodding of the head means. This
10 is also life without payroll.

11 At this time the Court does give merit to
12 the motion by the State and Mr. Fuentes will be
13 held without bond. That will be all.

14 MR. MEYER: Thank you, Your Honor.

15 MR. BOWEN: Thank you, Your Honor.

16 MR. LENERT: Thank you, Your Honor.

17 - - -

18 Thereupon, at 10:00 a.m., the proceedings
19 were concluded.

20 - - -

1 CERTIFICATE

2 STATE OF OHIO :

3 COUNTY OF FRANKLIN :

4 I, Tammy L. Luchini, RPR, Official Court
5 Reporter in and for the Common Pleas Court of
6 Franklin County, Ohio, do hereby certify that the
7 foregoing is a true, correct, and complete
8 transcript of the proceedings taken by me in this
9 matter on Thursday, July 28, 2022, transcribed from
10 my original stenographic notes.

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12 ****COPY-NOT FOR FILING****

13 Tammy L. Luchini, RPR
14 Assistant Official
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TAMMY L. LUCHINI, RPR

Assistant Official Court Reporter

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TERMINATED PREGNANCY REPORTINDIANA DEPARTMENT OF HEALTH – VITAL RECORDS
Per IC 16-34-2

**** If the patient is less than sixteen (16) years of age** the physician performing the termination shall transmit this report to the Department of Child Services within **three (3) days** after the termination is performed via email at dcshollinreports@dcs.in.gov. Further, this **report shall also be submitted** to the Indiana Department of Health within three (3) days of the termination. (See IC 16-34-2-5(b))

Reports for all other patients shall be submitted to the Indiana Department of Health **no later than 30 days after each termination is performed**. Each failure to file this report on time as required is a Class B misdemeanor per IC 16-34-2-5(d).

Facility Name and Address IU Health University Hospital 550 University Boulevard		City or Town, of pregnancy termination Indianapolis	County of pregnancy termination Marion
Patient's age** [REDACTED]	Married <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input checked="" type="checkbox"/> Not Married	Date of pregnancy termination 06/30/2022	Education [REDACTED]
Sex of fetus if detectable <input type="checkbox"/> Male <input type="checkbox"/> Female <input checked="" type="checkbox"/> Unknown		Multifetal Pregnancies <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> Other	
Race <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian Indian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Native Hawaiian <input checked="" type="checkbox"/> White <input type="checkbox"/> Korean <input type="checkbox"/> Black or African American <input type="checkbox"/> Samoan <input type="checkbox"/> Other Asian <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Chinese <input type="checkbox"/> Other <input type="checkbox"/> Other Pacific Islander <input type="checkbox"/> Japanese <input type="checkbox"/> Unknown		Ethnicity <input checked="" type="checkbox"/> Yes, Mexican <input type="checkbox"/> Yes, Puerto Rican <input type="checkbox"/> No, not Hispanic <input type="checkbox"/> Yes, Cuban <input type="checkbox"/> Unknown if Hispanic <input type="checkbox"/> Yes, Other Hispanic Origin	
Previous Pregnancies			
Live Births:	Number now living None	Number now deceased None	
Other Terminations:	Number of spontaneous terminations None	Number of induced terminations None	
Years of terminations (Do not include this termination. If more than six (6), those most recent.) 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____			
Fetus delivered alive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, length of time fetus survived:		List any preexisting medical conditions of the patient that may complicate the abortion Did this termination of pregnancy result in a maternal death? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Fetus viable? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If viable, medical reason for termination:		
Pathological examination performed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, results:		
Type of Termination Procedures			
Procedure that Terminated Pregnancy <input checked="" type="checkbox"/> (Nonsurgical) Mifepristone <input type="checkbox"/> Intrauterine instillation (Saline or prostaglandin) <input checked="" type="checkbox"/> (Nonsurgical) Misoprostol <input type="checkbox"/> (Nonsurgical) Other (Specify) _____ For (Nonsurgical) procedures, answer the following question Check the box indicating the following items were completed <input checked="" type="checkbox"/> The manufacturer's instructions provided to the patient <input checked="" type="checkbox"/> The patient signed the patient agreement <input type="checkbox"/> (Surgical) Suction Curettage <input type="checkbox"/> Surgical Sharp Curettage (D & C) <input type="checkbox"/> (Surgical) Dilation and Evacuation (D & E) <input type="checkbox"/> (Surgical) Other (Specify) _____ <input type="checkbox"/> Hysterotomy/Hysterectomy		Additional Procedure that Terminated Pregnancy <input type="checkbox"/> (Nonsurgical) Mifepristone <input type="checkbox"/> Intrauterine instillation (Saline or prostaglandin) <input type="checkbox"/> (Nonsurgical) Misoprostol <input type="checkbox"/> (Nonsurgical) Other (Specify) _____ For (Nonsurgical) procedures, answer the following question Check the box indicating the following items were completed <input type="checkbox"/> The manufacturer's instructions provided to the patient <input type="checkbox"/> The patient signed the patient agreement <input type="checkbox"/> (Surgical) Suction Curettage <input type="checkbox"/> Surgical Sharp Curettage (D & C) <input type="checkbox"/> (Surgical) Dilation and Evacuation (D & E) <input type="checkbox"/> (Surgical) Other (Specify) _____ <input type="checkbox"/> Hysterotomy/Hysterectomy	
For Surgical procedures, answer the following question. Was the fetus viable or have a post fertilization age at least 20 weeks? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If the previous question was answered yes, complete the following questions. Was the fetus given the best opportunity to survive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No What was the basis for determination that the pregnant woman had a condition that required the procedure to avert death or serious impairment to the pregnant woman? List the name of the second doctor present, as required under IC 16-34-2-3(a)(3)		For Surgical procedures, answer the following question. Was the fetus viable or have a post fertilization age at least 20 weeks? <input type="checkbox"/> Yes <input type="checkbox"/> No If the previous question was answered yes, complete the following questions. Was the fetus given the best opportunity to survive? <input type="checkbox"/> Yes <input type="checkbox"/> No What was the basis for determination that the pregnant woman had a condition that required the procedure to avert death or serious impairment to the pregnant woman?	

Date last normal menses began 05/13/2022	Physician estimate of gestation (in weeks) 6	Post fertilization age of the fetus (in weeks) 4
How were the gestational age and post fertilization age determined? Ultrasound		
Was a waiver of consent obtained pursuant to IC 16-34-2-4? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Was a waiver of notification obtained pursuant to IC 16-34-2-4? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

EXHIBIT
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EXHIBIT

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Diagnostic		
Did patient have a prenatal diagnostic procedure that revealed a fetal abnormality? No		
Observed or suspected anomaly(ies) - Check all that apply:		
<input type="checkbox"/> Chromosomal Anomaly	<input type="checkbox"/> Heart Anomaly	<input type="checkbox"/> Down Syndrome
<input type="checkbox"/> Neural Tube Defect	<input type="checkbox"/> Ventral Wall Defect	<input type="checkbox"/> Other
Was diagnosis confirmed after termination by autopsy or other pathological examination?		
Procedure(s) Used:		
<input type="checkbox"/> Amniocentesis	<input type="checkbox"/> Chronic Villus Sampling	<input type="checkbox"/> Other
<input type="checkbox"/> Ultrasound	<input type="checkbox"/> Maternal Serum Alpha Fetoprotein	<input type="checkbox"/> Unknown
<input type="checkbox"/> Cordocentesis		
Is the patient seeking an abortion as a result of being any of the following?		
<input checked="" type="checkbox"/> Abused	<input type="checkbox"/> Coerced	<input type="checkbox"/> None
<input type="checkbox"/> Harassed	<input type="checkbox"/> Trafficked	<input type="checkbox"/> Unknown
Full name of physician performing termination		
Caitlin Bernard, M.D.		
Address of physician performing termination (number and street, city, state, and zip code)		
1701 N Senate Boulevard Indianapolis Indiana 46202		
Age of father	If age not known, approximate age	17
Date Reported to DCS, if Patient under 16 (month, day, year)		
07/02/2022		
Date Received by IDOH (month, day, year)		
07/02/2022		