State v. Christopher Michael Griffin
State v. David Esparza

Susan Elizabeth Reese

Case: ***State v. Christopher Michael Griffin***
Defense Counsel: Jack Bernstein
Defense Investigator: Tierra Valentine
Court: Washington County Circuit Court Judge Oscar Garcia
Prosecutor: Washington County DDA Allison Brown
Dates: December 10–17, with verdict on December 19, 2019
Charges: Sodomy in the first degree [eight counts]
Unlawful sexual penetration in the first degree [eight counts]
Sexual abuse in the first degree [eight counts]
Verdict: Not guilty after a trial to the court

Jack Bernstein, a member of the Clackamas County Indigent Defense Consortium, agreed to help his companion defenders with their overload of cases in Washington County, an hour commute each way. When he appeared at Chris Griffin's arraignment, however, he faced a daunting challenge: his client was indicted on 24 separate counts of Measure 11 offenses, 16 of them carrying 25-year mandatory minimum sentences under "Jessica's Law."

The CARES videotape was devastating. The eight-year-old complainant Amy (not her real name), was an adorable, articulate youngster who gave detailed, graphic accounts of abuse she claimed her music teacher, "Mr. Chris," inflicted upon her during private piano lessons. In early spring of 2019, she told her grandmother during their drive home that her teacher abused her at every lesson since the school had moved into a new location in Sherwood the prior summer. She said he would lock the door of the room, take some ointment out of "a tube" kept in a desk, and have her do a "stretch." She described this as getting into a position with all fours on the piano bench; when she assumed that posture, Chris would apply the ointment and then insert his finger and his penis into her anus. She diagrammed the room and drew what she said was her teacher's penis, complete with a triangular head and fourteen "dots" on it.

Faced with powerful evidence for the state, Mr. Bernstein began to chip away at details. Complicating his work, however, was that only a few hours after Chris had posted security funds for his release (through the generosity of a friend from out of state), a computer-generated "reminder" note from the music school/daycare facility was sent to parents who owed money for services. When Amy's mother received one, she contacted Sherwood police, who then claimed that Chris had violated the "no contact" condition of his release agreement. The prosecutor sought and received an order revoking Chris' release and returning him to jail. Months later, virtually on the eve of trial, the defense team successfully tracked down the computer-generated notice and secured enough documentation to show that Chris had personally been uninvolved in the note sent to parents.[1]

The prosecutor's office threw up roadblocks at every turn. Unlike the practice in many other counties, the state insisted that the defense secure–and pay for–CARES material: a copy for the court, a copy for the defense, and a copy for the state.[2] A 21-page exhibit was not attached to an affidavit it was to support; some documents had been sealed, and other items were not filed in a timely fashion. Mr. Bernstein made numerous demands for discovery and scheduled several motions to compel production. At the hearing on the first motion, the DDA provided a thumb drive but the material was incomplete. The second motion required two hearings; nevertheless, grand jury material was not provided until the day before trial.

Still, details in Amy's story began to break down. Amy had described a "desk" in the room, but photos taken by police–which the defense put together to show a 360-degree view of the room–had no such desk in which any "ointment" might be hidden. At trial, the "desk" became a table, and it was eventually revealed to be a TV tray which the defense brought into the courtroom.

Although the door to the practice room did have a lock, testimony established that the room was one in which forms were

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Michael Koch *is a forensic consultant.*

Member ***Robert Malaer*** *is Robert owner and lead nurse consultant of Malaer Legal Nurse Consulting in Salem.*

kept, and other teachers could–and did–come and go from that room at random. In addition, each doorway had keys above the door so that youngsters could be freed if inadvertently locked in a room.

Amy's grandmother, who took her to the lessons, acknowledged that Amy's four-year-old sister, who accompanied them, would often barge into the lessons. She also admitted that Amy's behavior never changed: she was not reluctant to attend a lesson, she was not distressed or upset after a lesson, and she expressed no fear of Chris or hesitation in going to the facility.

Officers served a search warrant on Chris' house and seized a couple of tubes of lubricant from his wife's bedside table. But tests of Amy's underwear–both at the crime lab and by the "trace" unit–revealed no sign of lubricant and none of Chris' DNA on her clothing. The affidavit supporting the search claimed that defendants in such cases "usually" have photographs or digital evidence consistent with sex crimes, but examinations of the seven electronic devices seized–including a Kindle, a phone, a camera and a tablet–revealed no such material.[3]

Amy's physical exam at CARES was completely normal. Grand jury notes provided to the defense on the eve of trial included testimony from the investigating officer that Amy had described "bumps" on Chris' penis during the CARES interview. When cross-examined about the difference between a "dot" and a "bump," the officer testified that eight-year-olds sometimes describe things that adults need to "interpret," and he interpreted a "dot" to mean a "bump."

Most significant, however, was the timing. Amy insisted that while she was being abused, she was also using an app on her tablet, "Piano Maestro," which required her to replay a song on the piano as fast as possible to get a score between one and three stars. The records from the school showed 32 lessons between July 2018 and February 2019, the dates of the indictment, but computer records showed the app recorded only five tests on Amy's tablet and two on the piano during this time. The charges alleged three counts each on eight occasions: anal abuse and touching buttocks, but no other touching or sexual conduct. On cross-examination, Amy said it was "difficult" to play the piano and use the app when her sister came in to interrupt the lessons. She testified that she needed to concentrate "very hard" to get the three stars she received for most of the tests: the app involved not only accuracy but also speed in completing the pieces.

The app included a feature which allowed a button to be pushed, creating an opportunity for a "selfie" or photographic image of the user which could be sent to an email address. Amy's mother testified that she had received photos by email from that app. No such photos, of course, reflected any assaultive behavior. In addition, internet records showed that the school wi-fi connection was not established at the Sherwood location until October 2018; as a result, Amy could not have been using the app before that time, at least three months after the first claimed incident of abuse.

After painstaking investigation, meticulous preparation and vigorous challenge to every piece of the state's case, Mr. Bernstein argued to the court that the numerous devastating allegations were simply impossible to believe. After taking the case under advisement for two days, Judge Garcia agreed and found Chris Griffin not guilty on all counts.

Endnotes

1 Mr. Bernstein filed a formal motion to have the funds returned. The DA ignored the motion, so the court set it for hearing. In the absence of any filing from the DDA, the court signed an order allowing the money to be returned. In spite of conscientious efforts by Judge Garcia's staff to notify him, Mr. Bernstein did not get word in time to avoid yet another trip to Hillsboro.

2 Obviously, the district attorney's office already had this material but refused to provide it to the defense. Mr. Bernstein paid $155.75 for these records.

3 Law enforcement also sent the phone to the Secret Service for analysis, but the examination showed no photographs of Amy or of any children on the device.

Case: State v. David Esparza

Defense Counsel: Jason Thompson
Defense Investigator: Ryan Husted
Defense DNA Expert: Michael Koch, Koch Independent Forensic Consultant
Defense Nurse Consultant: Robert Malaer, RN, MSN, SAFE
Court: Benton County Circuit Court Judge Joan Demarest
Prosecutor: Benton County Senior DDA Amie L. Matusko
Dates: March 9–13, 2020
Charges: Rape in the first degree [one count]
Sexual abuse in the second degree [one count]
Verdict: Not guilty on both counts after a trial to the court

In late April two years ago, 21 year old David Esparza accepted his friend Robert's invitation to come from his home in Salem to Corvallis for an evening of socializing. They met at the sorority house of another friend, Ginger Carlson. Ginger and her boyfriend, Jorge Torres-Gomez, hosted a party that included a number of young men and women. Later, David and Robert left the house,

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joining some of the others for drinks at a bar. After a little too much to drink, Robert–a bit of a loner–chose to sleep in his car. David opted for a couch in the living room back at the sorority house.

David recalled meeting 20-year-old Crystal[1] at the sorority house after he returned from the bar. Crystal had been drinking and also smoked some marijuana. The two sat together on the couch for a while and kissed. From that point, they have dramatically different memories of the night. David said he kissed Crystal and they "made out" for a few minutes. She asked who he was, and he gave her his name. She kissed him, but as he moved closer she said, "Stop." He recalled that he then "put my hands down by my side" as she began "fake crying." Uncomfortable, uncertain what was happening and still intoxicated himself, David picked up his cell phone, left the house, re-joined Robert in his car, and they went home.

Crystal, however, claimed she fell asleep on the couch and awoke at 3:00 a.m. with David engaged in sexual intercourse on top of her. Curiously, she said David asked her if he should stop; when she said yes and told him to get off of her, he did stop. She began "crying hysterically," and David ran from the house. Her descriptions of the alleged sexual assault were inconsistent: in one account, she said she had been on her side; in another, she said David had been on top of her. She had been wearing tight jeans, fishnet leggings and underwear. In one version, Crystal said her clothes were removed; in another, she said that when she awoke, her clothes were pushed down to her knees.

A few hours after the incident, one of Crystal's friends called in a report of the alleged rape. Sometime that morning, David learned about the report. Officers interviewed Crystal by phone, and she completed a SANE examination the next day.

Approximately a month later David gave an extensive recorded interview, with legal counsel[2] present, to law enforcement. He described what he believed had occurred, insisting he had simply "made out" and kissed Crystal but never had any sexual contact or abused her in any way. After investigators discovered male sperm in the crotch fabric of Crystal's underwear, they secured a warrant to seize a sample of David's DNA. Testing, however, excluded David as a contributor to that sperm.

The state moved forward with the case, indicting David six months after the incident. Defense counsel challenged the state's evidence at every opportunity. He filed pretrial motions to exclude the complainant's hearsay statements, to prevent the state from labeling her a "victim," or to use the word "disclosure" in describing her complaints. He objected to characterizations the investigating officer had made during his client's interview. He sought to introduce evidence of Crystal's sexual behavior with another man four days before this incident as well as new information she had learned—during the SANE examination—that she was pregnant. Some of these matters were excluded, some were not, but the pretrial arguments provided a useful preview of and challenge to the state's case.

The defense retained an expert in SANE evaluations, Robert Malaer,[3] and another expert to review the DNA reports, Michael Koch. The court granted permission for each expert to be present in court throughout the trial.

Mr. Esparza and his counsel eventually decided that the best strategy would be to waive jury and try the case to the court. The state called almost all the young people who were present during the party in Corvallis that night. Several detectives were witnesses. The medical providers and SANE examiner testified. A number of technicians from the OSP Crime Lab appeared. Crystal testified, even trying to explain, while lying on the floor, the positions she said she and Mr. Esparza had occupied on the couch that night.

Mr. Esparza presented his defense through powerful and effective cross-examination of the state's witnesses and vigorous challenges to each piece of evidence. When the chief detective, Bretton Roach, described his examination of the physical evidence, he admitted he had asked the crime lab to test only the crotch area of Crystal's underwear for DNA. When asked why other portions of her clothing, including the waistband of her jeans, had not been tested, he claimed that the lab would not analyze those items. The defense then asked the next state's witness, criminalist Traci Rose, whether the lab could have tested these items, particularly when looking for evidence of some type of "aggressive handling." She testified that, certainly, the lab would have and could have conducted such a test if law enforcement requested it.

At the end of the state's case, Mr. Esparza and his team decided that neither defense expert was needed to rebut the state's case. They decided to rest without calling a single witness, refusing to dignify the state's allegations with further litigation.

In the state's rebuttal closing argument, for the first time the deputy district attorney suggested that the court, in an alternative to a guilty verdict on the charged offenses, find Mr. Esparza guilty of an attempted rape and sexual abuse, a request Mr. Thompson vigorously resisted.

After deliberation, the court reviewed many of the instructions she would have given a jury, had she been instructing them in the case, including the "less satisfactory evidence" instruction. She noted that the mixture of drugs, alcohol, youth and sex was "a recipe for a bad outcome." She found that Crystal's description of the rape was not physically plausible. She acquitted David of both of the charged offenses and of the suggested lesser charges of attempted rape and attempted sexual abuse.

The judge went further. She admonished the prosecution for its shoddy investigation. She said there were "many questions" that Sgt. Roach simply did not bother asking. She said the state should investigate a case "beyond a reasonable doubt" before appearing in a courtroom trying to prove it to that standard. Although the state did not need to turn over "every stone," at least, she said, it should examine "the stones right there in your path you are about to trip on." By failing to investigate the physical evidence more thoroughly, the state did a disservice to women in Crystal's position who might have been victimized. The state also betrayed its obligation to the citizens of Oregon.

Endnotes

1 Not her real name.

2 Another attorney prior to Mr. Thompson, who did not enter the case until the following summer).

3 Malaer concluded that Crystal's description of events was a physical impossibility.