



OFFICE OF THE DISTRICT ATTORNEY
SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO

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October 18, 2018

Detective Jacob Wooten
Bernalillo County Sheriff's Office
400 Roma N.W.
Albuquerque, N.M. 87102

RE: DA# 2017-05386-1; BCSO # 17-699691

Dear Detective Wooten:

On August 30, 2017, you executed a Criminal Complaint in the above matter and arrested Adam Lowther for Criminal Sexual Penetration of a Minor and Criminal Sexual Contact of a Minor. After careful review of this matter, I do not believe that the admissible evidence in this case will be sufficient to support conviction beyond a reasonable doubt. Therefore, our Office must decline prosecution in this case. The most significant reasons for this decision are as follows:

1. The events surrounding the teacher's observations, her reactions to the Child's behaviors and conversations with the Child's parents may have had an impact on the Child's initial disclosures and disclosures made at the Safe House interview.
2. The Child's credibility will be impugned before the jury in several different ways.
 - a. The Child's disclosure to the teacher was different than what she told the Safe House Interviewer.

- b. The content of the Child's Interview at All Faiths Receiving Home was conflicting and contained information related to the events that could be interpreted as lapses into fantasy. The Child also provided inaccurate information to the Interviewer about the circumstances that had transpired at the school. The content of the disclosure could also be interpreted as a parent assisting a child in wiping after going to the toilet.
- c. The Interviewer at All Faiths provided the Child with inaccurate information and supplied the Child with information that the Child had not disclosed previously through the use of forced choice questions and leading questions.
- d. The Interview of the Child may have been tainted by observing her Father in a police vehicle and observing the police threaten to arrest her mother.
- e. The Child's report of encounters between the Child and her father at Church, when the Child was still in the custody of CYFD and a foster family, could not have happened. The CYFD worker who accompanied the Child to church on Sundays and was present with Child at all times was contacted and stated that she never saw Mr. Lowther anywhere near Child during Church services.
- f. Dr. Susan Cave has opined that the Child's statements during the Safe House Interview are characterized by a "flight of ideas, meaning she jumps from topic to topic to topic in a seemingly random and illogical manner."
- g. Dr. Susan Cave concluded that the Child is not competent to be a witness due to her young age and unformed cognitive development. "She does not know the difference between truth and lie. She likely does not understand the concept of a deliberate lie, she feels no compunction to tell the truth because she is not cognitively developed enough to comprehend the difference."

3. There is no electronic evidence (photos and/or videos) to corroborate the Child's disclosures regarding photography and video-taping.

4. There are plausible reasons, unrelated to sexual abuse, for the Child's injury to her anus. Both Gail Starr and Dr. Nienow both admit that there could have been other means by which the child could have sustained the fissure/skin tear. Dr. Nienow stated that this injury could have been due to a hard wipe of the area. A review of the scientific literature regarding the fissure/tear indicates that this type of injury can happen when a child passes a large stool; is constipated or has repeated diarrhea.

Mr. Lowther's attorneys have proffered that the Child did suffer from severe constipation prior to the disclosure.

The SANE photos taken on August 31, 2018 were too blurry for Dr. Nienow to interpret without making direct inquiry to Gail Starr regarding her recollection of the injury. Nurse Starr reported to Dr. Nienow that there was no bruising. Because there was no bruising, Dr. Nienow's testimony under oath at a Children's Court Hearing was that "the injury in and of itself doesn't have a lot of value."

5. The Child had a completely normal genital examination at Para Los Niños on September 1, 2017. This exam was one day after the SANE Examination.

6. The Child has been returned to the care and custody of the alleged perpetrator (father of Child) by CYFD. Although they are not part of the law enforcement team and ultimately it was a district court judge's decision to return the Child, we would have to "contest" why they found it acceptable to return the child into the care of the alleged perpetrator.

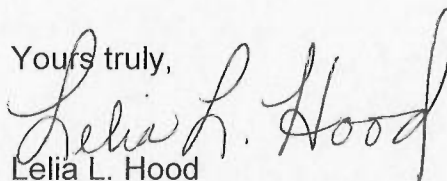
7. There is no corroborating DNA evidence.

8. The polygraph evidence in this case is favorable to the alleged perpetrator. The polygraph was prepared and administered by Sergeant Dudewicz of the Bernalillo County Sheriff's Department. Based on Sergeant Dudewicz's scoring, the defendant was deemed to be deceptive in his answers about the abuse. The District Attorney's Office had that polygraph reviewed by an independent expert polygrapher. The independent examiner opined that the conclusion of that polygraph should have been inconclusive.

The District Attorney's independent reviewer also opined that the polygraph that was administered to Mr. Lowther through his attorney was better; and, the results of that polygraph showed Mr. Lowther to be truthful when discussing the allegations against him.

Based on the foregoing, we are unable to prove this case beyond a reasonable doubt. Thank you for your work on this case and if you have any questions, please let me know.

Yours truly,



Lelia L. Hood

Cc: Mark M. Lowry, Esq.