

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN BARRAL,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 74288

RESPONDENT'S APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 19th day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. C269095

DEPT. VIII

Defendant.

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
MONDAY, MAY 22, 2017

**TRANSCRIPT OF PROCEEDINGS
STATE'S REQUEST ENTRY OF PLEA**

APPEARANCES:

MICHELLE Y. JOBE, ESQ.
Chief Deputy District Attorney
KELSEY EINHORN, ESQ.
Deputy District Attorney

MICHAEL V. CASTILLO, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

1 MONDAY, MAY 22, 2017 AT 8:13 A.M.

2
3 MR. CASTILLO: Good morning, Your Honor. Michael Castillo, 11531, for
4 Mr. Becker's office.

5 Can the State and I approach briefly, please?

6 THE COURT: Sure.

7 [Bench conference begins]

8 THE COURT: I thought you left Becker?

9 MR. CASTILLO: Huh?

10 THE COURT: I thought you left Becker?

11 MR. CASTILLO: I mean, [indiscernible], Your Honor.

12 THE COURT: Okay.

13 MR. CASTILLO: Old habits die hard.

14 To make a long story short, Your Honor, Michelle Jobe, I believe as we
15 speak, is making a couple of corrections to the GPA, and it's going to be an *Alford*
16 plea, with some representations put on the record. So I'm requesting to have it
17 trailed until the end of calendar, if the Court will so allow.

18 THE COURT: That's fine.

19 MR. CASTILLO: Thank you.

20 [Bench conference concludes]

21 THE COURT: Just have a seat for a minute. We'll get it done.

22 [Proceeding trailed at 8:14 a.m.]

23 [Proceeding recalled at 9:09 a.m.]

24 MR. CASTILLO: Michael Castillo, 11531, for Michael Becker's office. Thank
25 you for agreeing to trail this matter. This matter has been resolved.

1 May I approach your clerk for filing?

2 MS. JOBE: Good morning, Your Honor. Michelle Jobe, Bar No. 10575, for
3 the State.

4 MR. CASTILLO: Filing a Plea Agreement pursuant to *Alford* and also Second
5 Amended Information.

6 THE COURT: Would you recite the negotiations again so that Mr. Barral is
7 familiar?

8 MR. CASTILLO: Yes, Your Honor.

9 MS. JOBE: Pursuant to negotiations, Your Honor, the Defendant's going to
10 plead to Count 1, attempt sexual assault with a minor under 14 years of age, a
11 category B felony. He's going to also plead guilty to Count 2, child abuse, neglect,
12 or endangerment, also a category B Felony, pursuant to the Second Amended
13 Information, the to wit on the child abuse describes mental suffering and/or sexual
14 abuse. Defendant's pleading guilty to the *Alford* decision. At sentencing the State
15 will retain the right to argue, including for consecutive time between counts.

16 THE COURT: Is that your understanding of the negotiation, Mr. Barral?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: You accept those negotiations after discussing the matter fully
19 with your attorney?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You do read, write, and understand English?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: You read through your Second Amended Information, you
24 discussed it with your attorney, your attorney answered all your questions to your
25 satisfaction, you're satisfied with his services?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: You want me to accept this deal?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: The Second Information says that on or between July 10th,
5 2010 and July 12th, 2010, Clark County, Nevada, contrary to the form, force and
6 effect of statutes in such cases made and provided, against the peace and dignity of
7 the State of Nevada that Count 1, you did then and there willfully, unlawfully, and
8 feloniously attempt to sexually assault and subject, the initials, J.C., a child under 14
9 years of age, to sexual penetration, to wit: digital penetration, by attempting to insert
10 your fingers into the genital opening or anal opening of the said J.C., against his or
11 her will, or under conditions in which you knew, or should have known, that J.C. was
12 mentally or physically incapable of resisting or understanding the nature of the
13 conduct.

14 To that, through the *Alford* decision, how do you plead?

15 THE DEFENDANT: Guilty pursuant to the *Alford* decision.

16 THE COURT: And you've discussed the *Alford* decision with your attorney
17 and you understand what that means?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: We'll go through that a little bit more in a second.

20 THE DEFENDANT: Okay.

21 THE COURT: On Count 2, child abuse, neglect, or endangerment you did
22 willfully, unlawfully, feloniously cause a child under the age of 18 years, to wit: J.C.,
23 being approximately 5 years of age, to suffer unjustifiable pain or mental suffering as
24 a result of abuse or neglect, to wit: mental injury of a non-accidental nature, and/or
25 cause J.C. to be placed in a situation where she thought she might have suffered

1 unjustifiable physical pain or mental suffering and/or sexual abuse as a result of
2 abuse or neglect, to wit: mental injury of a non-accidental nature, by touching the
3 said J.C. in a manner which -- and means in which she did not want to be touched.

4 To that, how do you plead?

5 THE DEFENDANT: Guilty pursuant to *Alford*.

6 THE COURT: And you want me to accept this deal?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And then you understand -- your attorney gave you a copy of
9 the Guilty Plea Agreement I'm showing you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: You read through that?

12 THE DEFENDANT: Yes.

13 THE COURT: You discussed it with your attorney?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: He answered all your questions to your satisfaction?

16 THE DEFENDANT: Yes, he did.

17 THE COURT: And, again, you want me to accept it?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: You're pleading guilty by -- based upon the *Alford* plea
20 agreement as follows: the State retains the right to argue at sentencing including for
21 consecutive time between the counts.

22 Is that your understanding?

23 THE DEFENDANT: Yes, it is, Your Honor.

24 THE COURT: You agree to forfeit any and all electronic devices, computers,
25 and/or related equipment or weapons or any interest in electronic storage devices,

1 computers and/or related equipment and/or weapons seized or impounded in
2 connection with this case or any case being negotiated in whole or in part?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do we have an assessment, a risk assessment?

5 MR. CASTILLO: One that needs to be done for this case, Your Honor.

6 THE COURT: All right.

7 You understand and agree that -- when you say that, we have to do a
8 new one?

9 MS. JOBE: Yes. The State's understanding is a new one has to be done
10 because this is a --

11 THE COURT: All right.

12 If you fail to obtain an assessment of risk to reoffend before your
13 scheduled sentencing date, you fail to interview at the Department of Parole and
14 Probation, you fail to appear at any subsequent hearing in this case, or an
15 independent magistrate, by affidavit review, confirms probable cause against you for
16 new criminal charges, the State will have the unqualified right to argue for any legal
17 sentence or term of confinement allowable for the crimes which you're pleading
18 guilty.

19 Do you understand?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And you still want me to accept this deal?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: By pleading guilty pursuant to the *Alford* decision, it is your
24 desire to avoid the possibility of being convicted of more offenses or of a greater
25 offense if you were to proceed to trial on the original charges and also receiving a

1 greater penalty.

2 Is that right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: You understand that your decision to plead guilty by way of the
5 *Alford* decision does not require you to admit guilt but is based upon your belief the
6 State would present sufficient evidence at trial that a jury would return a verdict of
7 guilty of a greater offense or of more offenses than that to which you're pleading
8 guilty?

9 THE DEFENDANT: Yes, Your Honor.

10 THE DEFENDANT: You understand by -- that by pleading guilty pursuant to
11 the *Alford* decision you admit the State could have proven facts at trial which
12 support all of the elements of the offenses to which you're now pleading guilty
13 pursuant to the *Alford* decision as set forth in Exhibit 1?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And the State will now recite what they would prove at trial.

16 MS. JOBE: The State would have proven had we gone to trial that on or
17 between July 10th of 2010 and July 12th of 2010 subject minor J.C., who was
18 approximately 4 or 5 years old at the time, was the niece through marriage of the
19 Defendant. That at the time J.C. was and her sibling were staying the night at the
20 Defendant's -- sorry. J.C. was staying the night at the Defendant's residence with
21 the Defendant, his wife at the time, their children, as well as J.C. because J.C.'s
22 mother was at the hospital. Defendant's wife at the time was J.C.'s maternal aunt.
23 That while on one of the nights where J.C. was staying the night with the Defendant,
24 the Defendant went into the room where J.C. was staying, J.C. was staying in a
25 room that also was where the Defendant's child, who's approximately six to eight

1 months old, was also sleeping in a crib at the time. J.C. was staying on the futon in
2 that room as a bed. The Defendant went into that room where J.C. was trying to
3 sleep, that he took his fingers and he placed his fingers inside J.C.'s genital or
4 vaginal opening as well as her anal opening. That J.C. did not report this until she
5 saw her mother the following Tuesday, which was the very first opportunity J.C. had
6 contact with her mother after these events and the only person to whom J.C. felt
7 comfortable initially disclosing. That the criminal investigation was conducted based
8 on this disclosure and J.C.'s mother contacting law enforcement. That during the
9 course of the investigation by law enforcement, I believe it's now Lieutenant
10 Hatchett, he was a detective at the time, conducted a forensic interview with the
11 very young J.C., that during the course of the forensic interview of the very young
12 J.C. she was very descriptive in describing how the Defendant placed his fingers
13 inside her vaginal and anal opening. She used the words dig, digged, and dug
14 repeatedly throughout the course of her interview to describe how the Defendant's
15 fingers were and what they did inside her vaginal opening as well as her anal
16 opening.

17 That based on this, Your Honor, the State believes it would have
18 proved beyond a reasonable doubt that the Defendant committed these acts that
19 were for sexual purpose and included sexual penetration and were acts that J.C. did
20 not wish to happen, that these acts were done willfully, unlawfully, feloniously and
21 with the intent to commit these specific said acts.

22 THE COURT: Is that what the State would show if they went to trial?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You want me to accept this deal?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: As to Count 1 you understand that as a consequence of your
2 plea of guilty by way of the *Alford* decision the Court must sentence you to
3 imprisonment in Nevada Department of Corrections from 2 to 20 years, the
4 minimum term of imprisonment may not exceed 40 percent of the maximum term
5 and you may be required -- no, you will be required to pay an administrative
6 assessment fee?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: As to Count 2 you understand that as a consequence of your
9 plea through the *Alford* decision the Court must sentence you to imprisonment in the
10 Nevada Department of Corrections for 1 to 6 years, again, the minimum term can't
11 exceed 40 percent of the maximum term?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: You understand if appropriate you'll be ordered to make
14 restitution to the victim of the offense which you're pleading guilty and the victim of
15 any related offense which is being dismissed or not prosecuted pursuant to this
16 agreement?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: You understand that before you're eligible for parole a panel
19 consisting of the Administrator of Mental Health and Developmental Services of the
20 Department of Human Resources or their designee; and the Director of the
21 Department of Corrections or their designee; and a psychologist licensed to practice
22 in this state or a psychiatrist licensed to practice medicine in this state certifies that
23 you -- that at under observation while confined in the institution of the Department of
24 Corrections that you do not represent a high risk to reoffend based upon current
25 accepted standards?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: You understand that pursuant to NRS 176.0931, the Court
3 must include as part of your sentence, in addition to any other penalties provided by
4 law, a special sentence of lifetime supervision commencing after any period of
5 probation or term of imprisonment and period of release from parole?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You understand the Court will include as part of their sentence,
8 in addition to any other penalties provided by law, pursuant to NRS 179D.441 to
9 179D.550, inclusive, you must register as a sex offender within 48 hours of release
10 from custody on parole?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: As to Count 2, you understand you're not eligible for probation
13 pursuant to NRS 176A.110 unless the psychologist, the three people that we just
14 addressed in Count 1, evaluate that you're not a high risk to reoffend?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: If you haven't, you must submit to a blood and/or saliva test
17 under the direction of P&P to determine genetic marker or secretor status.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: You understand that the sentence which may be imposed by
20 the Court you are eligible to serve those sentences concurrently, the sentencing
21 judge has discretion to order them concurrent or consecutive?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: You understand that information regarding charges not filed,
24 dismissed charges, or charges to be dismissed pursuant to this agreement may be
25 considered by the Judge at sentencing?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Except for what we've talked about here in Court, no one's
3 promised you a sentence, have they?

4 THE DEFENDANT: No, they have not.

5 THE COURT: Are you a citizen of the United States?

6 THE DEFENDANT: Yes, I am.

7 THE COURT: Now P&P is going to prepare a report for the sentencing judge
8 prior to sentencing, the report will include matters that are hearsay and -- about your
9 criminal history and your background. If there are mistakes, you and your attorney
10 can clarify those mistakes, but in essence, the Court relies on hearsay information.

11 Do you understand?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: By enter of plea of guilty you understand you're waiving or
14 forever giving up the following rights, the constitutional privilege against self-
15 incrimination, including the right to refuse to testify at trial?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You're giving up the right to a speedy and a public trial by an
18 impartial jury free of excessive pretrial publicity prejudicial to the defense?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You're giving up the right to confront and cross-examine
21 witnesses who would testify against you, the right to subpoena witnesses to testify
22 on your behalf, the right to testify in your own defense, and the right to appeal your
23 conviction with the assistance of an attorney either appointed or retained.

24 Do you understand?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: And you still want me to accept this deal?

2 THE DEFENDANT: Yes, I do, Your Honor.

3 THE COURT: You've discussed the elements of the original charges against

4 you with your attorney and you understand what's going on today?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: The State would have to prove each element of the charge

7 against you beyond a reasonable doubt to convict you at trial.

8 You understand?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: You've discussed with your attorney any possible defenses,

11 defense strategies, and circumstances which might be in your favor?

12 THE DEFENDANT: Yes.

13 THE COURT: All the foregoing elements, consequences, rights, and waiver

14 of rights have been thoroughly explained to you by your attorney?

15 THE DEFENDANT: Yes.

16 THE COURT: You believe pleading guilty pursuant to the *Alford* decision and

17 accepting this plea bargain is in your best interest and that a trial would be contrary

18 to your best interest?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And you still want me to accept it?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Then you signed the Guilty Plea Agreement voluntarily after

23 consultation with your attorney, you weren't acting under duress or coercion by

24 virtues of promises of leniency expect for those set forth in this agreement?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: You're not under the influence of anything right now that would
2 impair your ability to understand what's going on today?

3 THE DEFENDANT: No, I am not under any influence.

4 THE COURT: And, again, your attorney has answered all your questions
5 regarding this Guilty Plea Agreement and its consequences to your satisfaction,
6 you're satisfied with his services?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You still want me to accept the deal?

9 THE DEFENDANT: Yes, I do.

10 MS. JOBE: Your Honor, if I may? You did inquire about lifetime supervision
11 generally, I would specifically ask the Court to ask the Defendant if he went over
12 what lifetime supervision requires with his attorney and that he's aware that there
13 may be additional criminal penalties or consequences if he fails to comply with
14 lifetime supervision.

15 THE COURT: You understand that?

16 THE DEFENDANT: I've read the statutes and gone over them with my
17 attorney so I know exactly what it's -- partakes of.

18 THE COURT: Thank you.

19 MR. CASTILLO: That's a correct statement, Your Honor.

20 THE CLERK: Do you want 90 days for the --

21 MR. CASTILLO: Based on other cases, it might take a little longer for the
22 evaluation so --

23 MS. JOBE: And I interrupted you, Your Honor. Did you find he gave his --

24 THE COURT: It was freely and voluntarily given.

25 MR. CASTILLO: I would ask for a date approximately four months out, if the

1 Court would so allow.

2 THE COURT: All right.

3 THE CLERK: That would be September 18th.


4 MR. CASTILLO: September 18th at 8 o'clock, Madam Clerk?

5 THE CLERK: Yes.

6 MR. CASTILLO: Thank you very much.

7 [Proceeding concluded at 9:25 a.m.]

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22 **ATTEST:** I hereby certify that I have truly and correctly transcribed the audio/visual
recording in the above-entitled case to the best of my ability.

23 

24 _____
Gina Villani
25 Court Recorder

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

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MAY 30 2013

BY: 
KATHERINE STREUBER, DEPUTY

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 DUSTIN JAMES BARRAL,)
13 #2755494)

14 Defendant.)

Case No: C269095
Dept No: VIII

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 STEVEN WOLFSON, District Attorney within and for the County of Clark, State of
18 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That DUSTIN JAMES BARRAL, the Defendant(s) above named, having committed
20 the crime of **SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF**
21 **AGE (Felony - NRS 200.364, 200.366)**, on or between the 10th day of July, 2010, and the
22 12th day of July, 2010, within the County of Clark, State of Nevada, contrary to the form,
23 force and effect of statutes in such cases made and provided, and against the peace and
24 dignity of the State of Nevada,

25 //

26 //

27 //

28 //

1 COUNT 1

2 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
3 JOCELYN COLEMAN, a female child under fourteen years of age, to sexual penetration,
4 to-wit: digital penetration, by inserting his finger(s) into the genital opening of the said
5 JOCELYN COLEMAN, against her will, or under conditions in which Defendant knew, or
6 should have known, that the said JOCELYN COLEMAN was mentally or physically
7 incapable of resisting or understanding the nature of Defendant's conduct.

8 COUNT 2

9 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
10 JOCELYN COLEMAN, a female child under fourteen years of age, to sexual penetration,
11 to-wit: digital penetration, by inserting his finger(s) into the anal opening of the said
12 JOCELYN COLEMAN, against her will, or under conditions in which Defendant knew, or
13 should have known, that the said JOCELYN COLEMAN was mentally or physically
14 incapable of resisting or understanding the nature of Defendant's conduct.

15 STEVEN WOLFSON
16 DISTRICT ATTORNEY
Nevada Bar #001565

17
18 BY 

19 MICHELLE Y. EDWARDS
20 Deputy District Attorney
Nevada Bar #0010575

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27 DA#10F14936X/sj/L-2
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(TK3)