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NATURE OF PROCEEDINGS

On March 23, 2021, Ismar H. Chun Castro (“Chun Castro”) was indicted by the Superior Court for Continuous Sexual Abuse of a Child, two counts of Rape Second Degree, two counts of Rape First Degree, eight counts of Unlawful Sexual Contact First Degree, and six counts of Sexual Abuse of Child By Person In Position of Trust, Authority, or Supervision First Degree. (Ex. A). On the same date, a Rule 9 summons was issued for Chun Castro. (A2 at D.I. 7).¹ On April 19, 2021, the Rule 9 summons was returned. (A2 at D.I. 9).

On March 17, 2022, defense counsel filed a motion for a psychological/psychiatric examination of Chun Castro. (A4 at D.I. 31). On February 21, 2022, the Superior Court granted the motion and ordered that Chun Castro be evaluated for competency to stand trial. (A4 at D.I. 30). Shortly thereafter on April 4, 2022, the Department of Homeland Security/ICE filed a notice of detainer for Chun Castro. (A4 at D.I. 32).

On September 29, 2022, Dr. Constance Mesiarik, Ph.D., J.D., conducted an examination of Chun Castro. (A5 at D.I. 41). Her report opined that Chun Castro was not competent to stand trial. (A33-37). On December 2, 2022, during a hearing on the issue of Chun Castro’s competency, defense counsel agreed that Chun Castro

¹ “D.I. ___” refers to the Superior Court docket item numbers in *State v. Ismar H. Chun-Castro*, ID No. 2012004476.

should be sent to the Delaware Psychiatric Center (“DPC”) in an attempt to restore his competency. (A4-5 at D.I. 34). On December 5, 2022, the Superior Court ordered that Chun Castro be transferred to the DPC and that he undergo the Competency Restoration Program. (A5 at D.I. 35). The court also directed the DPC to give the court an update within ninety days. (A5 at D.I. 34).

On April 5, 2023, Dr. Jonathan Tan, Psy.D. conducted an examination of Chun Castro and determined that he was competent to stand trial. (A5-6 at D.I. 37, 43). On April 26, 2023, a hearing was held to discuss the competency of Chun Castro. (A5 at D.I. 39). At that time, defense counsel expressed his concern about the opinion of Dr. Tan, and the court stated that Chun Castro could request another evaluation. (A60-61).

On July 18, 2023, the court ordered that Chun Castro be transferred back to the Department of Correction. (A6 at D.I. 47). On July 31, 2023, the court conducted a plea colloquy with Chun Castro, and Chun Castro confirmed that he wanted his case to go to trial. (A7 at D.I. 54).

On December 8, 2023, the State filed an amended indictment that charged Chun Castro with two counts of Rape First Degree, eight counts of Unlawful Sexual Contact First Degree, and six counts of Sexual Abuse of Child By Person In Position of Trust, Authority, or Supervision First Degree. (A13-19).

On December 11, 2023, Chun Castro's case went to trial. (A8 at D.I. 67). On December 13, 2023, Chun Castro orally moved to dismiss all charges (A8 at D.I. 68), and the Superior Court denied the motion. (A8-9 at D.I. 69). Then the State orally moved to amend the indictment for a second time, but the Superior Court denied the motion. (A9 at D.I. 70). The State subsequently amended the indictment to remove counts 7, 8, 11, 12, 15, and 16 and entered a *nolo prosequi* on those charges. (A9 at D.I. 79). Two days later the jury found Chun Castro guilty of two counts of Rape First Degree, two counts of Unlawful Sexual Contact First Degree, and six counts of Sexual Abuse of Child By Person in Position of Trust, Authority, or Supervision First Degree. (A8 at D.I. 67; A9 at D.I. 77).

On March 8, 2024, the Superior Court sentenced Chun Castro to 25 years at Level V for Rape First Degree with three years and six months of credit for time previously served; 25 years at Level V for Rape First Degree; 25 years for each of the six counts of Child Abuse; eight years at Level V for Unlawful Sexual Contact First Degree, suspended after one year at Level IV for decreasing levels of supervision; and eight years at Level V for Unlawful Sexual Conduct, suspended after one year at Level IV for decreasing levels of supervision. (Ex. B to Opening Br.).

On April 1, 2024, Chun Castro filed a timely notice of appeal followed by an opening brief. This is the State's answering brief.

SUMMARY OF ARGUMENT

I. The Appellant's argument is denied. Chun Castro has waived the argument that he was incompetent to stand trial because he abandoned it during the second hearing held on April 26, 2023. Even if Chun Castro has not waived this argument, the Superior Court did not violate his due process rights when it accepted Dr. Tan's well-reasoned psychological assessment that concluded, based on the evidence, that Chun Castro was competent to stand trial. Chun Castro had sufficient present ability to consult with his attorney rationally even though he did not accept his attorney's recommendation to accept a plea bargain. Chun Castro also had a rational as well as a factual understanding of the proceedings against him based on his recognition of the participants in his trial, was able to appreciate the charges and the extent of punishment he was facing, and was able to understand the court proceedings and to participate willingly in his own defense.

STATEMENT OF FACTS

Between May 1 and December 1, 2020, Chun Castro raped his stepdaughter, whom he had helped to raise from the age of three years. (A13-18, 128). His stepdaughter was twelve years old or younger at the time of the rapes. (A128). In December of 2020, when officers interviewed Chun Castro, he admitted that he had engaged in sexual intercourse with his stepdaughter on more than one occasion. (A21-22, 97-99, 128; State's Ex. 9).

During a hearing held on February 17, 2022, defense counsel expressed concern about Chun Castro's competency and requested a psychological evaluation to assess his competency to stand trial. (A21-26). Defense counsel stated that Chun Castro had confessed to enough of the acts alleged by the State to be subject to a minimum of 75 years of prison. (A21). Defense counsel also stated that he had discussed with Chun Castro a plea offer from the State and that he had advised Chun Castro that he believed that Chun Castro's confession was admissible evidence, and Chun Castro therefore had no viable defense. (A22). Defense counsel told Chun Castro that he had two choices: try to enter into a plea with the State so that he would have a chance of leaving prison or go to trial and never get out of prison. (A22). Chun Castro's response was, "You know, it's in God's hands." (A22).

Defense counsel expressed concern about Chun Castro's mental health. He believed that Chun Castro understood how the legal process worked, but he also

believed that Chun Castro was not able to engage in his own defense because there were no “back and forth” conversations. (A23). For example, Chun Castro told defense counsel that he had experienced a dream in which God said that He would get him out of prison. (A23). Defense counsel said that Chun Castro had been hopeful in the past that the victim would not show up for trial, but then in later conversations Chun Castro was staring off into space with a misplaced hope that a miracle would happen. (A24). Thus, defense counsel was worried about Chun Castro’s ability to make the right (legal) decisions for himself. (A24).

The court asked defense counsel if he wanted to continue the case so that Chun Castro could be assessed for competency, and defense counsel confirmed his desire. (A25-26). The State did not oppose the oral motion to have Chun Castro evaluated for competency. (A26). Thus, the court granted the request. (A27).

On November 18, 2022, Dr. Constance Mesiarik conducted a mental health evaluation of Chun Castro. (A33). Using the Fitness Interview Test - Revised to assess Chun Castro’s competence to stand trial (A35), Dr. Mesiarik found that Chun Castro had a factual understanding of the proceedings (A35-36) and had a rational understanding of the proceedings, although he refused to elaborate on the charges or to discuss his arrest. (A36). Chun Castro also told Dr. Mesiarik that God would do something great before the trial. (A36). Based on her assessment, Dr. Mesiarik believed that Chun Castro’s ability to assist his lawyer in the preparation of his case

was generally unimpaired. (A36). Nevertheless, she had concerns about Chun Castro's willingness to participate in his own defense because he insisted that he would be going home. (A36). Dr. Mesiarik worried about the pervasiveness of Chun Castro's belief and how much it impacted his ability to proceed. (A36). Therefore, she opined that Chun Castro was not competent to stand trial. (A37). However, she also believed that Chun Castro's competence could possibly be restored through counseling. (A37).

On December 2, 2022, the trial court held a hearing to discuss Dr. Mesiarik's competency report of Chun Castro. (A38-45). Based on the report, the parties agreed that Chun Castro should be sent to DPC to participate in a program to restore his competency. (A42). Thereafter, the court ordered that Chun Castro be transferred to DPC to participate in the Competency Restoration Program. (A42). That transfer occurred on January 11, 2023. (A48).

On April 4, 2023, Dr. Jonathan P. Tan, Psy.D., conducted a second mental health evaluation of Chun Castro. (A47-56). At that time, he used the "McGarry Questions" from *State v. Joseph A. Shields*² to assess Chun Castro's competency to stand trial. (A53). Based on his assessment, Dr. Tan opined that Chun Castro was competent to stand trial. (A53-56).

² 593 A.2d 986, 1012 (Del. Super. Ct. 1990).

In an April 26, 2023 hearing, defense counsel disagreed with Dr. Tan's conclusion that Chun Castro was competent to stand trial. (A58). Defense counsel based this conclusion on the opinion that if Chun Castro's case were to go to trial, Chun Castro still believed that the result would be in God's hands. (A58). Defense counsel also disagreed with Dr. Tan's conclusion that Chun Castro was not delusional—that he was just very religious. (A58). Defense counsel did not believe that Chun Castro was competent because his client was still ignoring the fact that all the evidence pointed against him and that he was going to lose and never get out of prison. (A58-59). Defense counsel stated that “going into a case where you're gonna get life in jail and saying God's gonna handle it still doesn't seem very rational to [defense counsel].” (A59). Underlying defense counsel's conclusion was Chun Castro's desire to plead guilty (A36, 50) and his refusal to accept a plea agreement. (A59).

The Superior Court judge asked what defense counsel wanted to do and advised him that he could get another evaluation for his client. (A59-60). The judge pointed out that defense counsel could not simultaneously argue that his client was competent enough to enter into a plea agreement yet incompetent to stand trial. (A60). The judge also noted that sometimes clients make poor decisions, decide to go to trial, and end up with much longer sentences, whereas some defendants disregard their attorney's advice, go to trial, and end up doing fairly well. (A60).

The judge expressed uncertainty as to what more could be done; if Chun Castro had strong faith that God was going to help him, there was no easy way to challenge that belief. (A60). The judge stated that defense counsel could seek another competency evaluation by a different doctor, but the judge did not believe that the State would pay for that. (A60-61). In response, the State said from its perspective, there was no reason for another expert and that it wanted dates to be set for Chun Castro's trial. (A61).

At that point, the judge again asked defense counsel what he wanted to do, specifically, whether he wanted time to talk with Chun Castro about the issue or whether he wanted to go ahead and schedule the trial. (A61). Defense counsel agreed to schedule the trial as long as he had enough time to talk with Chun Castro. (A61). Defense counsel disclosed that Chun Castro's family stopped paying his fees, so he did not believe that he could hire another expert for his client. (A61). Defense counsel stated that if he talked with Chun Castro later and had more concerns, then he would "have to figure out with conflict counsel if there's a way to hire an expert" to reassess the competency of Chun Castro. (A51-52). Defense counsel wanted a few months to talk to Chun Castro and "to figure out what to do." (A62). In the meantime, the judge gave available dates for Chun Castro's trial, and both Chun Castro and the State agreed to the week of August 14th (more than three months

out). (A62). The judge directed that if there were any other problems, defense counsel should bring them to the attention of the court. (A62).

On July 28, 2023, the court held a hearing to address a scheduling conflict between the trial dates set for Chun Castro and the trial dates set for another defendant. (A67). During that hearing, defense counsel explained that he had sent a letter to Chun Castro telling his client that he expected a “swift conviction on all charges,” re-explained the plea offer that the State had made to Chun Castro, and said that he did not expect Chun Castro’s position to change about not accepting the plea offer. (A73). At no point during that hearing did defense counsel raise the issue of Chun Castro’s competency.

Just before trial, Chun Castro continued to refuse to accept a plea bargain from the State even though the police officers who interviewed him had recorded his confession to the crimes of rape. (A73-74; A99; State’s Ex. 9). During trial, the State played for the jury a redacted version of the officers’ interview with Chun Castro and his confession. (A99; State’s Ex. 9). Based on the evidence, the jury convicted Chun Castro of two counts of Rape First Degree, two counts of Unlawful Sexual Contact First Degree, and six counts of Sexual Abuse of Child by Person in Position of Trust, Authority, or Supervision. (A8 at D.I. 67; A9 at D.I. 77; A13-19; Ex. B to Opening Br.).

ARGUMENT

I. CHUN CASTRO WAIVED HIS COMPETENCY ARGUMENT DURING THE APRIL 26, 2023 HEARING; TO THE EXTENT HE DID NOT WAIVE THIS ARGUMENT, THE SUPERIOR COURT DID NOT VIOLATE HIS DUE PROCESS RIGHTS WHEN IT ACCEPTED DR. TAN’S WELL-REASONED MENTAL HEALTH ASSESSMENT OF CHUN CASTRO’S COMPETENCY TO STAND TRIAL.

Question Presented

Whether Chun Castro waived his argument about his competency during the second hearing held on April 26, 2023. If Chun Castro has not waived his argument, whether the Superior Court violated his due process rights when it accepted Dr. Tan’s well-reasoned psychological assessment that concluded, based on the evidence, that Chun Castro was competent to stand trial. As explained below (p. 12-15, *infra*), defense counsel raised the issue of Chun Castro’s competency briefly at a hearing on April 26, 2023, and then abandoned the issue. The State addressed the brief argument made at the April 26, 2023 hearing at A61.

Standard and Scope of Review

“[A] competency determination involves both legal and factual components. [The Court] review[s] the legal standard applied by the trial court, *de novo*, but its factual findings, if supported by the record, are entitled to deference.”³

³ *Cooke v. State*, 2025 WL 16395, at *28 n.191 (Del. Jan. 2, 2025).

Merits of Argument

Chun Castro argues that the trial court did not adequately create a record and explain its legal rationale for denying Chun Castro's competency challenge. Opening Br. 14. He asserts that this alleged failure was an abuse of discretion. Opening Br. 14. Chun Castro also argues that he was not competent to stand trial. Opening Br. 15. He contends that he was significantly impaired in his factual understanding of the legal system and the process of adjudication. Opening Br. 17. He also maintains that he had an inability to consult rationally with his attorney. Opening Br. 16, 18. Finally, Chun Castro argues that his religious delusions made him mentally incapable of participating intelligently in his defense. Opening Br. 18. Chun Castro's claims fail.⁴

A. Waiver of his Competency Argument.

Chun Castro waived his disagreement with the second competency assessment by not pursuing his argument in the hearing held on April 26, 2023, and by not pressing the argument thereafter. "Evidentiary issues that are affirmatively

⁴ To the extent Chun Castro has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court. Supr. Ct. R. 14(b)(vi)(A)(3); *Harris v. State*, 840 A.2d 1242, 1243 (Del. 2004); *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (citing *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993)).

waived are not reviewable on appeal.”⁵ When defense counsel raised the competency issue during the April 26th hearing, the Superior Court offered Chun Castro the opportunity to have another doctor perform an assessment of Chun Castro’s competency, but defense counsel declined and stated that he needed more time to discuss the issue with his client. (A61-62). This constituted a waiver. Specifically, the following discussion ensued:

THE COURT: Well, [defense counsel], what do you want to do? Do you want to get another evaluation or does the State want to get an evaluation? I don’t think you can really have it both ways. You can’t say that he’s competent to plead guilty but not competent to go to trial and certainly we have many defendants who make poor decisions in going to trial and end up with much longer sentences than what they would have ended up with but then we also have some defendants who disregard their attorney’s advice and go to trial and do fairly well. So I’m not really sure what more we can do with this situation and if he has a strong faith in God that he’s going to help him, then I’m not sure we can—there’s an easy way to challenge that.

[DEFENSE COUNSEL]: Okay. I mean, I just want to put it out there. My same concern that I had before is still here.

THE COURT: Okay. I understand. You’re in a tough position and he’s obviously not maybe considering this logically but strange things sometimes happen after trial and I think you’ve done everything you can for him on his behalf. You were concerned about his competency, you got an evaluation and unless you want to order another competency evaluation by a different doctor, which you could do, I don’t know if he has the funds to do that or not, I don’t see the State wanting to get

⁵ *Stevenson v. State*, 149 A.3d 505, 509 (Del. 2016); *Pumphrey v. State*, 2019 WL 507672, at *3 (Del. Feb. 8, 2019); *Jones v. State*, 2015 WL 6941516, at *3 (Del. Nov. 9, 2015).

an evaluation and paying for it but I suppose they could but I'll hear from [the prosecutor] next. Any comments on this, [prosecutor]?

[PROSECUTOR]: Your Honor, I mean, Your Honor's correct. There really is no reason the State needs to get another expert in terms of on the State's side, otherwise, we would just ask for dates and ask that it be set for trial.

THE COURT: Okay. [Defense counsel], anything you want to do? Do you want to take some time and talk to your client about it or do you want us to go ahead? We've got case scheduling here. We can go ahead and give you dates now.

[DEFENSE COUNSEL]: Your Honor, I guess as long as we get far enough time out. I do think I should talk to my client. I will tell the Court that, you know, Mr. Chun-Castro was hired by his family a long ago and then they kind of learned more of the details and they've long since stopped paying me in this matter. So there's no way that, you know, we can hire an expert ourselves. If I talked to him and I have more concerns, then I may have to figure out with conflict counsel if there's a way to hire an expert to do it but I would think maybe since we're all here and maybe, you know, [the prosecutor] and I will be able to resolve this somehow, but maybe if we just get dates that aren't too soon, give me a couple months so I could talk to him and figure out what to do, then that would probably be a good idea.

THE COURT: Okay. Jodie, do you have some dates in mind?

THE CLERK: Per [the prosecutor's] availability, August. I was looking at August 9th for final and then the week after for trial, the 14th.

THE COURT: [Defense counsel], do you have a way to check your calendar?

MR. ABRAM: Yes, that's fine. That's fine with me.

THE COURT: So we will put it on for those dates and if there are any other problems, please bring them to my attention. . . .

(A59-62).

The record reveals that Chun Castro's counsel made a tactical decision when he agreed to go forward with scheduling trial dates and then never raised the competency issue again. Therefore, Chun Castro's competency claim is not reviewable on appeal. "[A] conscious decision to refrain from objecting at trial as a tactical matter is a waiver that will negate plain error appellate review."⁶ Here, Chun Castro's counsel agreed that the case should move forward to a trial when he agreed to the scheduling dates during the April 26, 2023 hearing. He requested, and was granted, time to have further discussions with this client and to raise any further competency issues. He did not raise any such issues. Thus, Chun Castro cannot now argue that he was incompetent to stand trial.

B. By Scheduling Trial, the Trial Court Implicitly Adopted Dr. Tan's Competency Conclusion.

Even if Chun Castro did not waive his competency argument, his claim still fails. The Superior Court implicitly adopted the competency conclusion of Dr. Tan when the court moved forward in scheduling the trial dates for Chun Castro. Dr. Tan's assessment was comprehensive and clearly delineated his reasoning and conclusions about why Chun Castro was competent to stand trial. Dr. Tan opined

⁶ *Wright v. State*, 980 A.2d 1020, 1023 (Del. 2009); *Czech v. State*, 945 A.2d 1088 (Del. 2008); *Tucker v. State*, 564 A.2d 1110 (Del. 1989); *Crawley v. State*, 2007 WL 1491448 (Del. May 23, 2007); *Baker v. State*, 1993 WL 557951 (Del. Dec. 30, 1993).

that based on the “McGarry Questions,” Chun Castro was competent to stand trial. (A53-56). Dr. Tan’s detailed reasons supporting his conclusion are discussed below. The Superior Court agreed with the conclusion that Chun Castro was competent to stand trial, so the court implicitly adopted the findings as its own and moved forward in the trial process.

When defense counsel raised the competency issue again during the April 26, 2023 hearing, the Superior Court offered Chun Castro the opportunity to have another doctor perform another mental health assessment of his competency. (A59-60). This again showed that the court had accepted Dr. Tan’s conclusion that Chun Castro was competent. Rather than pursue another competency hearing, defense counsel declined the court’s offer and stated that he would talk with his client. (A61-62).

Chun Castro asserts that the Superior Court must make more detailed findings on his competency, relying on *Davis v. State*⁷ and *Holden v. State*.⁸ However, those cases are distinguishable because neither *Davis* nor *Holden* involved a competency determination. *Davis* involved a constitutional challenge to a police search upon which the trial court did not rule.⁹ *Holden* involved denial of a motion to suppress

⁷ 2023 WL 7382873 (Del. Nov. 8, 2023).

⁸ 23 A.3d 843 (Del. 2011).

⁹ *Davis*, 2023 WL 7382873, at *4.

without the court making any factual findings or supplying a written or transcribed oral decision for review.¹⁰ In contrast, the bases for Dr. Tan's conclusion that Chun Castro' was competent to stand trial are set forth fully in Dr. Tan's report, which discusses in detail each of the "McGarry Questions" bearing on competency. The trial court found this report to be persuasive and relied on it in determining to proceed to trial.

Contrary to Chun Castro's suggestion, there is no requirement that the trial court set forth a detailed analysis of its reasons for determining that a defendant is competent to stand trial.¹¹ For example, in *Gibson v. State*, the trial court continued the defendant's trial date, ordered him to attend competency classes, heard from four experts, and reconfirmed that the defendant was competent within 48 hours of trial.¹² In *Bailey v. State*, the trial court noted that conflicts between the experts existed, but

¹⁰ *Holden*, 23 A.3d at 846-47.

¹¹ *See Harris v. Rivera*, 454 U.S. 339, 344 (1981) ("Although there are occasions when an explanation of the reasons for a decision may be required by the demands of due process, such occasions are the exception rather than the rule."). *See also Arizona v. Washington*, 434 U.S. 497, 517 (1978) (concluding that a court's findings and an explanation of the reasons for the decision were not constitutionally mandated in a case involving a mistrial where the basis for the trial judge's mistrial order was adequately disclosed by the record).

¹² 2008 WL 2428191, at *2 (Del. Super. Ct. Jun. 16, 2008), *aff'd*, 981 A.2d 554 (Del. 2009).

concluded in a single sentence that the defendant was competent to stand trial because he had no mental illness or mental defect.¹³

C. The Evidence Supports Chun Castro's Competency to Stand Trial.

Even if Chun Castro has not waived the issue of his competency, Chun Castro's argument is without merit because Dr. Tan's mental health assessment demonstrated that Chun Castro was competent to stand trial. Due process requires that a defendant be competent to stand trial, and the Delaware criminal code¹⁴ recognizes that the accused who is not competent should not stand trial.¹⁵ The test is "whether or not the defendant has sufficient present ability to consult with his lawyer rationally and whether he has a rational as well as a factual understanding of the proceedings against him."¹⁶ Dr. Tan's mental health evaluation discussed each

¹³ 490 A.2d 158, 166 (Del. 1983), supplemented, 503 A.2d 1210 (Del. 1984) ("There is (sic) obviously conflicts between experts that have testified today. In resolving the conflict, I find no mental illness or mental defect and I find the defendant legally competent to stand trial").

¹⁴ 11 *Del. C.* § 404(a) provides, in pertinent part, that "[w]henver the court is satisfied, after hearing, that an accused person, because of mental illness or serious mental disorder, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial."

¹⁵ *Cooke*, 2025 WL 16395, at *26; *Pate v. Robinson*, 383 U.S. 375, 378 (1966).

¹⁶ *Diaz v. State*, 508 A.2d 861, 863 (Del. 1986); *Williams v. State*, 378 A.2d 117, 119 (Del. 1977), *cert. denied*, 436 U.S. 908 (1978) (citing *Dusky v. United States*, 362 U.S. 402 (1960), *cert. denied*, 436 U.S. 908 (1978)).

of these factors and logically concluded that the evidence showed Chun Castro was competent to proceed to trial.

D. Competency Assessments.

(1) *First Mental Health Assessment by Dr. Constance Mesiarik.*

Dr. Constance Mesiarik conducted a mental health evaluation of Chun Castro on November 18, 2022. (A33). In her opinion Chun Castro was oriented to place, time, and person, but had limited concentration and attention. (A35). Dr. Mesiarik noted that Chun Castro struggled to repeat numbers given to him and was unable to do basic mathematical calculations in his head. (A35). She also noted that Chun Castro heard voices that he believed came from God. (A35).

Dr. Mesiarik used the Fitness Interview Test - Revised to assess Chun Castro's competence to stand trial. (A35). Using this test, Dr. Mesiarik found that for the first factor, Chun Castro had a factual understanding of the proceedings. (A35-36). Although Chun Castro believed that the judge would be the one to make the decision of whether he was guilty or not guilty (A36), Chun Castro knew that he had an attorney with whom he had discussed his case. (A35) In addition, Chun Castro was able to describe the trial participants and their basic respective roles in the proceeding with adequate detail, such as the roles of the prosecuting attorney and his defense attorney. (A35-36). Chun Castro was able to articulate the difference between guilty and not guilty, understood what taking an oath meant, and was

familiar with the sorts of things that could be used as evidence at a trial. (A36). But, Dr. Mesiarik stated that Chun Castro struggled to understand what “beyond a reasonable doubt” meant. (A36). Chun Castro denied a desire to speak with his attorney about possible consequences of pleading guilty. (A36). He told the doctor that he wanted to plead guilty and did not need to speak with his attorney about his plea. (A36). During the assessment Chun Castro told Dr. Mesiarik that he believed God would have the answer and that his attorney would be sent an angel to save him. (A36). Nevertheless Dr. Mesiarik concluded that Chun Castro still had a factual understanding of the proceedings. (A36).

For the second factor—rational understanding of the proceedings—Dr. Mesiarik stated that Chun Castro was aware that he had been charged with rape and that the charges were serious, including the possibility of spending 25 years in prison. (A36). However, he refused to elaborate on the charges or to discuss his arrest. (A36). When Dr. Mesiarik asked him about his best defense, Chun Castro indicated that he did not want to defend himself in court and that God would do something great before the trial. (A36). Chun Castro also told Dr. Mesiarik that he believed he was going home, although he recognized that he had to follow the judge’s decision. (A36).

For the third factor—capacity to assist counsel—Dr. Mesiarik stated that Chun Castro’s ability to assist his lawyer in the preparation of his case was generally

unimpaired. (A36). However, Dr. Mesiarik had concerns about Chun Castro's willingness to participate in his defense because he insisted that he would be going home. (A36). Chun Castro refused to provide an account of the alleged offense, but there was nothing to suggest that he did not recall what happened. (A36). Dr. Mesiarik stated that Chun Castro believed he had a good attorney who was trying to help him, and he was willing to communicate with his lawyer to notify him if he disagreed with him at any point. (A36). Additionally, Chun Castro was aware of the importance of maintaining respectful behavior in the courtroom. (A36).

In conclusion, Dr. Mesiarik stated she was primarily concerned with Chun Castro's unwillingness to try to defend himself in the case based on his beliefs. (A36). Chun Castro insisted that God would do something great that would result in him going home. (A36). Although Dr. Mesiarik thought that Chun Castro's religious beliefs did not rise to the level of delusional thinking, she worried about his unwillingness to consider that he was not going home without at least an attempt to defend himself. (A36). She noted that Chun Castro repeated multiple times that there was nothing for him to do to defend himself because God was going to do "something great" that would result in his release with no additional legal consequences for the alleged offense. (A36-37). Dr. Mesiarik worried about how pervasive Chun Castro's belief was and how much it impacted his ability to proceed. (A36). Therefore, she opined that Chun Castro was not competent to stand trial.

(A37). However, she believed that his competence could possibly be restored through counseling. (A37).

(2) *Second Mental Health Assessment by Dr. Jonathan P. Tan.*

On April 4, 2023, Dr. Jonathan P. Tan, Psy.D., conducted a second mental health evaluation of Chun Castro. (A47-56). Dr. Tan stated that Chun Castro exhibited strong religious beliefs and perceptual disturbances that could be consistent with cultural religiosity versus delusional disorder. (A50). Dr. Tan noted that Chun Castro's perceptual disturbances occurred exclusively "in the context of praying during a fast, in which he does not eat or drink for up to five days." (A50). Chun Castro described one instance that occurred two to three days after being initially incarcerated, at which point he was towards the end of a five day fast. (A50). At that time, Chun Castro reported that he heard the voice of a demon "outside" his head. (A50). The demon told him that he was not worth anything and told him to kill himself, but Chun Castro did not act on the voice. (A50).

Psychiatric notes on January 27, 2023, and February 15, 2025, opined that Chun Castro's perceptual disturbances were tied to either his religiosity or fasting and that these disturbances had been absent since his admission to DPC and since he agreed to decrease his fasting duration. (A51). At that time, his assessment was switched to a "history of religion or cultural beliefs affecting care" with a rule out for delusional disorder on January 27, 2023. (A51).

On February 15, 2023, Dr. Monata Song wrote that Chun Castro had good insight and could think logically through his legal situation separately from his religious beliefs. (A51). Dr. Song noted that Chun Castro had been very stable and had not exhibited any psychotic systems or behavioral problems. (A51).

On that same day Dr. Asya M. Leslie wrote that Chun Castro had no signs of psychosis, but he had “some evidence of preoccupation with God’s plan to impair Client’s insight and ability to participate meaningfully in court proceedings.” (A51). Dr. Leslie also wrote: “Continue to assess for delusional qualities with consideration of culturally appropriate beliefs.” (A51).

When Dr. Tan conducted his evaluation, Chun Castro was alert and fully oriented to person, place, time, and situation. (A52). Although Chun Castro said that he was fasting on the day of the interview, Dr. Tan stated that he appeared well-rested and was able to attend throughout the entire interview without becoming distracted or fatigued, even without taking a break or eating any food. (A52). Dr. Tan noted that Chun Castro did not appear to be tired or sleepy and did not yawn or appear disinterested. (A52). Instead, Chun Castro’s energy level and engagement were adequate. (A52). In addition, Chun Castro denied any hallucinations or perceptual disturbances (except as described below). (A52).

Chun Castro told Dr. Tan that on his first night in prison, he asked God for forgiveness and started fasting that day for an entire week. (A52). The third day of

that week he heard the voice of God telling him that everything was going to be okay. (A52). Chun Castro said that God showed him in a vision leaving the prison, although he did not know the date of when it would happen. (A52). Chun Castro told Dr. Tan that he recognized he was not going to be released immediately, but he would patiently wait for when he would eventually be released even if it would be several years away. (A52).

Chun Castro reported to Dr. Tan that he prayed and fasted regularly as a means of connecting with God and for getting strength and sometimes when he felt weak. (A52). Chun Castro said that fasting is “something we [Christians] do to sacrifice ourselves” and that when he fasts, he does not eat or drink anything. (A52). Chun Castro told Dr. Tan that he used to fast for up to five days at a time, but at the time of the second assessment, he did not fast for more than two days at a time in the same week because of advice that the healthcare staff at DPC had given to him. (A52).

At one point, Chun Castro told Dr. Tan that he had experienced a “vision” of a man in white telling him to obey God’s commandments, but then he woke up. (A53). Chun Castro explained that it meant God came to visit him in prison and that God was telling him that he could stay in prison for the rest of his life, but Chun Castro believed that he was free because of his faith. (A53). Chun Castro told Dr. Tan that he was looking forward to moving on to “the next step” of his legal process.

(A53). Dr. Tan stated that at no point during the interview did Chun Castro appear to actively hallucinate, behave strangely, or behave in response to unseen entities.

(A53). Chun Castro also did not make any bizarre or disorganized statements, and he did not appear to experience any obvious cognitive impairments. (A53). Chun Castro also denied any suicidal or homicidal ideations, and he did not show any hostility or aggression at all during the interview. (A53).

In Dr. Tan's opinion, Chun Castro is deeply religious, and his faith influences how he perceives his life, his future, and the world around him, "even interpreting dreams as visions from God." (A54). He opined that Chun Castro's experiences and his interpretations of experiences did not approach the level of delusion or cause such impairment in daily functioning to consider him to have a schizophrenia spectrum or other psychotic disorder at that time. (A53). Dr. Tan reported that since January 11, 2023, there was no record of Chun Castro exhibiting bizarre behaviors even though he has been fasting regularly. (A53). Dr. Tan opined that Chun Castro had no diagnosis or condition of a psychiatric nature at the time of his second assessment. (A53).

Dr. Tan administered the "McGarry Questions" from *State v. Shields*¹⁷ to assess Chun Castro's competency to stand trial. (A53). For ability to appreciate the

¹⁷ 593 A.2d 986, 1012 (Del. Super. Ct. 1990).

charges, Chun Castro knew that he had seventeen charges pending against him, but he declined to elaborate on them. (A53). Chun Castro knew that felonies were more serious charges and that his charges were felonies. (A53). For appreciation of range and nature of possible verdicts and penalties, Chun Castro recognized that he was facing several years of incarceration, possibly more than ten years, and he understood that probation meant reporting after his prison term had ended. (A53). For appraisal of evidence and likely outcome of a trial, Chun Castro stated that if he went to trial, “it’s everything in God’s hands,” meaning that whatever outcome occurred is up to God and that he would accept the verdict and sentence. (A53). Chun Castro considered his lawyer to be a good one. (A53). Chun Castro told Dr. Tan that his lawyer explained to him “very well” what the lawyer could do for him. (A53-54). For ability to appraise the roles of the various participants in courtroom proceedings, Chun Castro confused “defendant” with “defender,” but he understood that he was the defendant and that his lawyer was defending him against the prosecutor, whose job it was to present to the judge the charges and evidence against him. (A54). He also understood that the jury would decide if he was guilty or not guilty and whether he would stay in prison. (A54). Chun Castro knew that the judge’s role was to decide his sentence and that a witness is a person who had seen what happened. (A54).

For understanding the role of witnesses and ability to challenge witnesses, Chun Castro understood that the witnesses could be on either the side of the defense or the side of the prosecution, but he did not know if there were any witnesses in his case. (A54). Initially he thought that he himself could challenge witnesses, but then he acknowledged that the lawyers, including his own, were tasked with cross examining the witnesses. (A54). Chun Castro recognized that he could notify his lawyer if he thought that a witness was lying in court. (A54).

For capacity to testify relevantly, Chun Castro was aware that he could testify in court but needed to discuss that with his lawyer. (A54). He was also aware that he could not be forced to testify against his will. (A54). Chun Castro acknowledged that if he were to testify, both the prosecutor and the defense could question him, but his lawyer would prepare him for cross examination beforehand. (A54).

For understanding of court procedure, including plea bargains, Chun Castro understood guilty and not guilty pleas, but he did not understand that pleading no contest meant pleading guilty while maintaining his innocence. (A54). He agreed to discuss such a plea with his attorney. (A54). Chun Castro understood that a “plea deal” meant a deal brokered between his lawyer and the prosecutor, and that his lawyer would try to get him less time in prison. (A54). Chun Castro also understood that if he accepted a plea deal, he could not appeal and that he would be giving up the right to go to trial and the right to plead not guilty. (A54).

For capacity to relate to an attorney and disclose pertinent facts surrounding the offense, Chun Castro told Dr. Tan that his defense attorney was Mike Abram, that they last met in 2022, and that he believed his lawyer was a good one. (A54). Chun Castro maintained that he trusted only in God, but his lawyer was good. (A54). He told Dr. Tan that he would share with his attorney everything that he knew, and he understood what confidentiality meant. (A55). Chun Castro believed that his lawyer was working towards his best interests and acknowledged that if he disagreed with the lawyer, he could find someone else (although Chun Castro said that he did not disagree with his lawyer). (A55).

For ability to appraise legal defenses and plan legal strategy, Chun Castro initially said that he would show his certificates of religious courses he had completed to demonstrate how he was “commending his life to God.” (A55). When Dr. Tan clarified that he was asking how Chun Castro would defend himself in court, Chun Castro declined to offer his defense strategy, saying that he would discuss it with his lawyer. (A55). This demonstrated to Dr. Tan that Chun Castro had a rational understanding of the limits of confidentiality. (A55).

For ability to manage behavior and withstand stress during courtroom proceedings, Chun Castro shared with Dr. Tan that his lawyer had already instructed him to be cool, calm, and collected in court and that he could not talk in court except when it was his turn. (A55). He understood that disrupting the courtroom and

talking out of turn would get him into trouble. (A55). He also told Dr. Tan that he would tell his lawyer that he was not feeling good if he started to feel stressed. (A55).

For manifestations of self-defeating versus self-serving motivation, Dr. Tan stated that, although Chun Castro told Dr. Tan that he would accept the outcome of the case as the will of God, Chun Castro did not demonstrate any self-defeating motivation during the interview. (A55).

Based on his assessment of all of the competency factors, Dr. Tan opined that Chun Castro was competent to stand trial. (A55). His conclusion was supported by Chun Castro's active participation in the Competency Restoration Program at DPC from January 11, 2023, to April 4, 2023 (the date of Dr. Tan's assessment). (A55). Dr. Tan noted that Chun Castro had not been prescribed or found to require any psychotropic medications and appeared to have a rational and factual understanding of his charges, potential outcomes, legal options, and the roles of the participants in the courtroom. (A55). Dr. Tan thought that any barriers from language and the limits of Chun Castro's formal education could be overcome by Spanish language interpretation and engagement with his defense attorney. (A55). Although Chun Castro reported that he would accept whatever outcome as being the will of God, he said that he had confidence in his lawyer and that he would actively participate in his legal defense with his lawyer. (A55). Dr. Tan reported that Chun Castro did not

display any overt psychiatric symptoms, either during the interview or in Dr. Tan's review of Chun Castro's DPC chart, that would clearly impair his behavior or his ability to testify relevantly if his case went to trial at that time. (A55).

(3) *Chun Castro Met the Competency Test..*

Dr. Tan's assessment supports the conclusion that Chun Castro met the competency test. Chun Castro has possessed a factual understanding of the proceedings against him since the time when Dr. Mesiarik first assessed his mental health. Chun Castro understood that he has a good attorney who is defending him and that the prosecutor was building a case against him. (A35-36, 54). He was able to describe the participants in the trial (judge, jury, prosecutor, defense attorney, and jurors) and their roles. (A35-36, 54). And, he was able to distinguish between pleading guilty and not guilty. (A36, 54).

In addition, Chun Castro has possessed a rational understanding of the proceedings against him since the time when Dr. Mesiarik assessed his mental health. Chun Castro understood that he was charged with rape, was aware that the charges are serious, and was aware that he could spend 25 years to life in prison. (A36, 54). When discussing his case, he told Dr. Mesiarik that he did not want to defend himself in court, and there was nothing for him to do because God would do something great so that he could go home. Dr. Mesiarik concluded that Chun Castro was incompetent because (i) he was unwilling to believe that he would not be going

home without at least an attempt to defend himself, and (ii) he believed God was going to do something great that would result in him being released without any legal consequences. (A36-37).

By the time of Dr. Tan's examination, Chun Castro explicitly recognized that he might spend many years in prison. He cited biblical text indicating that: "[A]nyone who belongs to Christ has become a new person. The old life is gone, A new life has begun. So for me, the old person is dead right now and spiritually I'm a new creation." (A53). Chun Castro described a "vision" of a man in white telling him "Obey My commandments," which Chun Castro interpreted as a direction "to stay and focus on living, not dying in my sin." (A53). Chun Castro told Dr. Tan, "I know I can stay the rest of my life in prison, but I know that I am free because of [H]is belief." (A53). Importantly, Chun Castro said:

I can't lie. The Devil is the one who lies. . . I will have forgiveness if I say the truth. That's why Jesus died – for the truth.... If God means I must stay in jail for 10 years, that is right. If I lie, then God will not be able to help me... For what I did, I really turned my life to God. From [H]im, I am clean.

(A52). Chun Castro "recognized that he will not be released immediately, but will patiently wait for when he will eventually be released, even if it is several years from now." (A52). Chun Castro said, "When the date, I don't know, but God already showed me my freedom." (A52).

Additionally, Chun Castro has had sufficient present ability to consult with his lawyer rationally since at least the time when Dr. Tan assessed him. Key competency factors changed between the time of Dr. Mesiarik's assessment of Chun Castro and Dr. Tan's assessment of him. Dr. Tan's assessment revealed that Chun Castro's mental competency could have been impaired by his lengthy fasting (with no food or water for up to five days) when Dr. Mesiarik conducted her mental health assessment of him on November 18, 2022. (A50). At that time, Chun Castro was unwilling or unable to work with defense counsel to defend himself because he believed that God would do something great to enable him to go home with no additional effort of his own. (A36). In contrast, Chun Castro told Dr. Tan that if he went to trial, everything would be in God's hands, but he would actively participate in his own legal defense. (A53, 55).

Dr. Tan's findings distinguish this case from others in which competency was absent, or at least a closer call. None of the doctors at DPC diagnosed Chun Castro with any mental disorder or prescribed him any medications for his mental health. Chun Castro reported that he heard voices only after he had been fasting for up to five days without any food or water. (A50, 52). Nevertheless, Chun Castro always had a factual and rational understanding of the proceedings against him (A35-36, 53-54), had the ability to consult with defense counsel (A36, 54), and was able to otherwise assist in his own defense. (A36, 55).

(4) *The State's Plea Offer.*

Chun Castro argues that his religious beliefs impaired his ability to rationally weigh the advantages and disadvantages of a plea bargain. Opening Br. 18. In reality, Chun Castro disagreed with defense counsel's recommendation to accept a plea agreement with the State and presumably to pursue an *Alford* plea of no contest. (A54). Defense counsel could not understand the logic of why Chun Castro would insist on pleading guilty, but Chun Castro's religious beliefs provide the reasoning. According to Chun Castro, God would forgive him if he told the truth. "That's why Jesus died—for the truth. . . . If God means I must stay in jail for ten years, that is right. If I lie then God will not be able to help me. . . ." (A52). To tell the truth meant to plead guilty rather than not guilty, and to accept his punishment. Consistent with conventional Christian doctrine, Chun Castro believes that his ultimate salvation can come only by confession and repentance. (A52). Chun Castro clearly recognized that he might be incarcerated for an extended period of time. (A36, 52-53). Accepting his guilt and rejecting a plea bargain based on his religious beliefs did not make him mentally incapable of participating intelligently in his defense nor incompetent to stand trial. Rather, his beliefs make him strongly religious.

Chun Castro cites to *Sibug v. State*,¹⁸ to support his arguments, but that case is distinguishable. In *Sibug* the defendant held delusional beliefs, including that the judicial system and its agents were “of Satan” and that three of his children (who were witnesses) were “devils.”¹⁹ In contrast, Chun Castro did not see the court, the judge, or the attorneys as anything demonic. He recognized the role that each participant played in a trial (A54) and did not experience any delusions after he stopped fasting for extended periods of time. (A50). Thus, Chun Castro’s ability to appraise the roles of the trial participants sets his case apart from that of *Sibug*.

¹⁸ *Sibug v. State*, 126 A.3d 86 (Md. 2015).

¹⁹ *Id.* at 88.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Superior Court.

Respectfully submitted,

/s/ Julie M. Donoghue

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Date: March 7, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ISMAR CHUN CASTRO,	§	
	§	No. 135, 2024
Defendant Below,	§	
Appellant,	§	On appeal from the Superior Court
	§	of the State of Delaware
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENT AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 8,568 words, which were counted by Microsoft Word.

Date: March 7, 2025

/s/ Julie M. Donoghue
Julie (Jo) M. Donoghue (# 3724)
Deputy Attorney General

Becky PnH
(6)

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE : CR.A. #S21-01-0239 thru 0255
 : 21-03-1114, 1115
 v. :
 :
 ISMAR H. CHUN-CASTRO : INDICTMENT
 ID# 2012004476 : BY GRAND JURY

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The Grand Jury charges that ISMAR H. CHUN-CASTRO did commit the following offenses, to wit:

COUNT 1 - CONTINUOUS SEXUAL ABUSE OF A CHILD – S21-01-0247

ISMAR H. CHUN-CASTRO, on, about or between September 1, 2019 and May 1, 2020, in the County of Sussex, State of Delaware, while residing in the same home or having recurring access to the child, did intentionally engage in three or more acts of sexual conduct with V

(DOB: 2008), a child under the age of 18 years, over a period of time not less than three months in duration, in violation of Title 11, Section 778(a) of the Delaware Code.

COUNT 2 - RAPE IN THE SECOND DEGREE - S 21-03-1114

ISMAR H. CHUN-CASTRO, on, about or between September 1, 2019 and May 1, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual penetration with V (DOB: 2008), who had not yet reached her twelfth birthday and the defendant had reached his eighteenth birthday, in violation of Title 11, Section 772(a)(2)(g) of the Delaware Code.

COUNT 3 - RAPE IN THE SECOND DEGREE - S 21-03-1115

ISMAR H. CHUN-CASTRO, on, about or between September 1, 2019 and May 1, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual penetration with V (DOB: /2008), who had not yet reached her twelfth birthday and the defendant had reached his eighteenth birthday, in violation of Title 11, Section 772(a)(2)(g) of the Delaware Code.

COUNT 4 - RAPE IN THE FIRST DEGREE – S21-01-0240

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse (to wit: anal intercourse) with V (DOB: 2008), when she had not yet reached her twelfth birthday and the defendant had reached his eighteenth birthday, in violation of Title 11, Section 773(a)(5) of the Delaware Code.

COUNT 5 - RAPE IN THE FIRST DEGREE – S21-01-0239

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse (to wit: cunnilingus) with V (DOB: 2008), when she had not yet reached her twelfth birthday and the defendant had reached his eighteenth birthday, in violation of Title 11, Section 773(a)(5) of the Delaware Code.

COUNT 6 - UNLAWFUL SEXUAL CONTACT FIRST DEGREE – S21-01-0248

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally have sexual contact (to wit: touched her breasts) with V (DOB: 2008), who has not reached her thirteenth birthday, in violation of Title 11, Section 769(a)(3) of the Delaware Code.

COUNT 7 - UNLAWFUL SEXUAL CONTACT FIRST DEGREE – S21-01-0249

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally have sexual contact (to wit: touched her vagina) with V (DOB: 2008), who has not reached her thirteenth birthday, in violation of Title 11, Section 769(a)(3) of the Delaware Code.

**COUNT 8 - SEXUAL ABUSE OF CHILD BY PERSON IN POSITION OF TRUST,
AUTHORITY OR SUPERVISION FIRST DEGREE- S21-01-0241**

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and December 1, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse with V (DOB: /2008), who had not yet reached her 16th birthday, and the defendant stood in a position of trust, authority or supervision over the child or was an invitee or designee of a person who stood in a position of trust, authority or supervision over the child, in violation of Title 11, Section 778(1) of the Delaware Code.

**COUNT 9 - SEXUAL ABUSE OF CHILD BY PERSON IN POSITION OF TRUST,
AUTHORITY OR SUPERVISION FIRST DEGREE- S21-01-0242**

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and December 1, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse with V (DOB: 2008), who had not yet reached her 16th birthday, and the defendant stood in a position of trust, authority or supervision over the child or was an invitee or designee of a person who stood in a position of trust, authority or supervision over the child, in violation of Title 11, Section 778(1) of the Delaware Code.

COUNT 10 - UNLAWFUL SEXUAL CONTACT FIRST DEGREE – S21-01-0250

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally have sexual contact (to wit: touched her breasts) with V (DOB: /2008), who has not reached her thirteenth birthday, in violation of Title 11, Section 769(a)(3) of the Delaware Code.

COUNT 11 - UNLAWFUL SEXUAL CONTACT FIRST DEGREE – S21-01-0251

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally have sexual contact (to wit: touched her vagina) with V (DOB: 2008), who has not reached her thirteenth birthday, in violation of Title 11, Section 769(a)(3) of the Delaware Code.

**COUNT 12 - SEXUAL ABUSE OF CHILD BY PERSON IN POSITION OF TRUST,
AUTHORITY OR SUPERVISION FIRST DEGREE- S21-01-0243**

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and December 1, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse with V (DOB: 2008), who had not yet reached her 16th birthday, and the defendant stood in a position of trust, authority or supervision over the child or was an invitee or designee of a person who stood in a position of trust, authority or supervision over the child, in violation of Title 11, Section 778(1) of the Delaware Code.

**COUNT 13 - SEXUAL ABUSE OF CHILD BY PERSON IN POSITION OF TRUST,
AUTHORITY OR SUPERVISION FIRST DEGREE- S21-01-0244**

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and December 1, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse with V (DOB: /2008), who had not yet reached her 16th birthday, and the defendant stood in a position of trust, authority or supervision over the child or was an invitee or designee of a person who stood in a position of trust, authority or supervision over the child, in violation of Title 11, Section 778(1) of the Delaware Code.

COUNT 14 - UNLAWFUL SEXUAL CONTACT FIRST DEGREE – S21-01-0252

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally have sexual contact (to wit: touched her breasts) with V (DOB: '2008), who has not reached her thirteenth birthday, in violation of Title 11, Section 769(a)(3) of the Delaware Code.

COUNT 15 - UNLAWFUL SEXUAL CONTACT FIRST DEGREE – S21-01-0253

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally have sexual contact (to wit: touched her vagina) with V (DOB: '2008), who has not reached her thirteenth birthday, in violation of Title 11, Section 769(a)(3) of the Delaware Code.

**COUNT 16 - SEXUAL ABUSE OF CHILD BY PERSON IN POSITION OF TRUST,
AUTHORITY OR SUPERVISION FIRST DEGREE- S21-01-0245**

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and December 1, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse with V (DOB: 2008), who had not yet reached her 16th birthday, and the defendant stood in a position of trust, authority or supervision over the child or was an invitee or designee of a person who stood in a position of trust, authority or supervision over the child, in violation of Title 11, Section 778(1) of the Delaware Code.

**COUNT 17 - SEXUAL ABUSE OF CHILD BY PERSON IN POSITION OF TRUST,
AUTHORITY OR SUPERVISION FIRST DEGREE- S21-01-0246**

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and December 1, 2020, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse with V (DOB: '2008), who had not yet reached her 16th birthday, and the defendant stood in a position of trust, authority or supervision over the child or was an invitee or designee of a person who stood in a position of trust, authority or supervision over the child, in violation of Title 11, Section 778(1) of the Delaware Code.

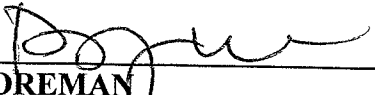
COUNT 18 - UNLAWFUL SEXUAL CONTACT FIRST DEGREE – S21-01-0254

ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally have sexual contact (to wit: touched her breasts) with V (DOB: 2008), who has not reached her thirteenth birthday, in violation of Title 11, Section 769(a)(3) of the Delaware Code.

COUNT 19 - UNLAWFUL SEXUAL CONTACT FIRST DEGREE – S21-01-0255


ISMAR H. CHUN-CASTRO, on, about or between May 1, 2020 and May 31, 2020, in the County of Sussex, State of Delaware, did intentionally have sexual contact (to wit: touched her vagina) with V (DOB: '2008), who has not reached her thirteenth birthday, in violation of Title 11, Section 769(a)(3) of the Delaware Code.

A TRUE BILL,


FOREMAN


SECRETARY

s/KATHLEEN JENNINGS
ATTORNEY GENERAL


DEPUTY ATTORNEY GENERAL

DATED: March 23, 2021

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