



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

Mark A. Peterson
DISTRICT ATTORNEY

FOR IMMEDIATE RELEASE

November 4, 2016

DISTRICT ATTORNEY MARK A. PETERSON DESCRIBES

HIS OFFICE'S ROLE IN THE "OAKLAND POLICE DEPARTMENT SEX SCANDAL"

The Contra Costa County District Attorney's Office has received many requests from the media for comments concerning the scandal involving police officers and sheriff's deputies from throughout the Bay Area. At the center of these allegations is a young woman who alleges she had had sexual encounters with up to 30 local law enforcement officers, and that some of these encounters occurred when she was 17 years of age.

It's the policy of this office not to reveal the identity of victims or witnesses in cases such as this. However, this individual has been interviewed extensively by the media on many occasions, and her accounts have also appeared in print numerous times. Additionally, her interviews have been broadcast on both television and radio. Her name has now entered the public domain with respect to this matter; and to our knowledge she had previously voiced no objection to the name Celeste Guap being used. However, as of September 14, 2016, her attorney at the time stated she would like to be referred to as Ms. Abuslin. Accordingly, we will do so.

The facts are the following:

May, 2016

This matter first came to the attention of our office in May of this year when investigators from the Oakland Police Department and the Alameda County District Attorney's Office met with members of our office to discuss the possibility of filing criminal charges against former Oakland Police Officer Terry Smith for his interactions with Ms. Abuslin in Contra Costa County during the fall of 2015, and early spring of 2016, when she was 18. The meeting with the investigators occurred on May 17, 2016.

Senior Deputy District Attorney Paul Graves has been a prosecutor for over 21 years, and supervises the Sexual Assault Unit in our office. He reviewed the facts of the alleged interactions with the Alameda County investigators. The standard used by every District Attorney's Office in determining whether to file a criminal case against anyone is whether there is enough evidence to convince twelve jurors beyond a reasonable doubt that a crime was committed by the person charged with that crime.

Ms. Abuslin told the Oakland Police Department investigators she had engaged in regular consensual sex with former Oakland Police Officer Smith in Contra Costa County in the fall of 2015, and early spring of 2016, when she was over 18. She specifically stated, however, that none of the sex was in exchange for money or anything else of value. Thus, the crime of prostitution simply didn't occur. Almost all of these encounters occurred in Contra Costa County in a parked car in an isolated area of a public parking lot in the late evening or early morning hours. Even though all of these sexual encounters occurred in a parked car in a public parking lot, there was no evidence that there was a member of the public present, or likely to be present, to be offended. Thus, according to Ms. Guap's own descriptions of these incidents, the crime of 647(a) (Lewd Conduct in Public/Soliciting Lewd Conduct in Public) simply didn't occur.

Our office also reviewed two specific allegations of possible wrongdoing involving Officer Smith that pertained to these sexual encounters. The first incident involved Officer Smith bringing a bag of Cheetos for Ms. Abuslin to one of the sexual encounters. The evidence is insufficient to establish that the Cheetos were a "quid pro quo" for sexual favors in light of the facts of the incident and the totality of their long term consensual sexual relationship. Thus, there was no crime of prostitution.

The second incident involved an allegation by Ms. Abuslin that an attempted forcible sexual act had occurred during an encounter with Officer Smith. This specific incident must be viewed in the context in which it occurred; the consensual acts that occurred before and after the alleged attempted forcible sexual act; and the overall characteristics of this long term relationship. Based on a review of all of the evidence, there was insufficient evidence to establish beyond a reasonable doubt that a crime had occurred.

Therefore, Mr. Graves determined there was insufficient evidence to file criminal charges against Officer Smith for any of his interactions with Ms. Abuslin that occurred within Contra Costa County. The Alameda District Attorney's Office was informed of our decision not to file charges against Officer Terry Smith on May 17, 2016.

June 2016

In June of 2016 our office was contacted by the Richmond Police Department, requesting the assistance of our Victim/Witness Unit to help Ms. Abuslin obtain treatment services as a result of being a victim of a crime which took place several years ago and involved no law enforcement officer.

The Victim Compensation Board (VCB) is a state agency that provides funds to victims of crimes for certain services, including travel expenses and medical services for victims to receive treatment. Our victim witness representative met with Ms. Abuslin's mother on June 30, 2016 at the Family Justice Center located in Richmond. We assisted her in filling out forms required by VCB to receive funds for Ms. Abuslin's treatment related to the earlier crime. The forms are required to be signed by the victim of the crime; therefore, they were given to Ms. Abuslin's mother for Ms. Abuslin to sign personally. The signed forms were returned and our office forwarded them on to the VCB.

July 2016

In July of 2016, Ms. Abuslin told an ABC 7 News reporter that she had been contacted by the Richmond Police Department about an opportunity to go to a rehabilitation center in the State of Florida for treatment, but she decided not to go. That information was broadcast on their July 6, 2016 news program and posted to their website.

<http://abc7news.com/news/i-team-exclusive-cops-want-to-send-witness-in-growing-sex-scandal-to-rehab-3000-miles-away/1416574/>

August 2016

On August 18, 2016, our victim witness staff was informed by the Richmond Police Department that Ms. Abuslin had changed her mind and had decided to receive treatment at the facility in the State of Florida. Our victim witness staff communicated that information to the VCB. VCB approved Ms. Abuslin's request to travel to and receive treatment at a rehabilitation facility in Florida.

On August 22, 2016 Ms. Abuslin texted a reporter from KRON Channel 4: **"I'm going to 'rehab.'" She wrote that she was going to rehabilitation for "substance abuse and after that...sex addiction."** She said she had rejected an earlier offer from the City of Richmond for out-of-state rehab, but now she had changed her mind and she wanted to take them up on their offer because **"I think it will me, help me getting away from this mess."** This information was broadcast on the Channel 4 six o'clock evening news program that day and posted to their website. <http://kron4.com/2016/08/22/oakland-police-sex-scandal-celeste-guap-decides-to-enter-rehab/>

On August 23, 2016, during the KRON Channel 4 six o'clock evening news broadcast, there was another story about Ms. Abuslin's travel to Florida. It was reported that Ms. Abuslin had texted their reporter, **"It's gonna be nice being in a new environment, being able to focus on myself."** <http://www.ktvu.com/news/195188522-story>. At that time no police officer nor any law enforcement agency, including the Alameda County

District Attorney's Office, ever lodged a protest with our office objecting to Ms. Abuslin's travel to Florida.

On August 26, 2016, Ms. Abuslin posted a picture on Instagram of her plane ticket to Florida. She flew there that day. She informed a Channel 2 TV news reporter that she was receiving treatment for "substance abuse and sex addiction." She also texted the reporter that the reason she was going to a facility so far away was **"it's to put you in a completely different place."**

To our knowledge, the VCB paid for Ms. Abuslin's travel expenses to Florida. The VCB has requested that all future inquiries concerning Ms. Abuslin's Florida travel be addressed to the VCB's Public Information Officer Janice Mackey at the following email address: publicaffairs@victims.ca.gov.

District Attorney Peterson stated: **"Due to Ms. Abuslin's ongoing privacy rights, we are limited as to what we can reveal concerning her travel to Florida, however, it's abundantly clear there was no scheme by any police agency nor by any other organization to secrete Ms. Abuslin out of California in order to hinder any local investigation or prosecution."**

September, 2016

Oakland Police Department Officers/Alameda County Sheriff's Officers

On September 9, 2016, the Alameda County District Attorney's Office held a press conference regarding potential criminal charges against police officers arising out of their interactions with Ms. Abuslin. Statements were made at the press conference that crimes were committed in Contra Costa County by two Oakland Police Department officers. One of the former officers mentioned was Terryl Smith, whose case our office had already evaluated. As mentioned above, we previously informed the Alameda District Attorney's Investigators on May 17, 2016, that it was our determination that there was insufficient evidence to file any criminal charges against Terryl Smith for his interactions with Ms. Abuslin in Contra Costa County. The other former Oakland Police Department officer mentioned at the press conference was Todd Utappa.

After the press conference, our office immediately contacted the Alameda County District Attorneys' Office and requested that they send us any information and documentation regarding any crimes that may have occurred within our jurisdiction, or which had been referenced at their press conference. On September 12, 2016 we received a short summary from the Alameda District Attorneys' Office regarding alleged sexual interactions between Ms. Abuslin and three Alameda County Sheriff's Office deputies, and between her and former Oakland Police Officer Todd Utappa.

The summary described consensual sex between Ms. Abuslin and the three Alameda County Sheriff's Officers at various times while in Contra Costa County when she was over 18. The report specifically stated that there was no exchange of sex for money or anything else of value in relation to these encounters. Thus, according to the summary we received, there were no crimes of prostitution. Additionally, while some of these acts allegedly occurred within vehicles parked on public streets, or in public areas, the alleged incidents don't rise to violations of Penal Code 647(a) (Lewd Conduct in Public/Soliciting Lewd Conduct in Public) because there was no evidence there were any other people present or likely to be present to be offended.

There are two ways in which a person can be found guilty of a violation of Penal Code 647(a). First, by engaging in a lewd conduct in public. However, in order to constitute a violation of that section in that manner, the law requires that (1) at the time the suspect engaged in the conduct, someone else who might have been offended **was present**; and (2) the suspect knew or reasonably should have known that another person who might have been offended by the conduct was present. As Contra Costa County's duly elected District Attorney, I am bound by the laws of this state. Our California Supreme Court has made it very clear that **"even if conduct occurs in a location that is technically a public place, a place open to the public, or one exposed to the public, the state has little interest in prohibiting that conduct if there are no persons present who may be offended."** The scope of [Penal Code] section 647, subdivision (a) should be limited accordingly." (*People v. Pryor* (1979) 25 Cal 3d 238, 256.). Attached is the Jury Instruction CalCrim 1161 (Lewd Conduct in Public) that defines this type of violation of Penal Code section 647(a).

Second, a person also commits a violation of 647(a) if they solicit someone to engage in a lewd act in public. However, in order to prove someone guilty of soliciting a lewd act in public, it must be established beyond a reasonable doubt that "the defendant knew or should have known that someone was **'likely to be present'** who could be offended by the requested conduct." Attached is the Jury Instruction Cal Crim 1162 that defines this type of violation of Penal Code section 647(a). (Solicitation of Lewd Conduct in Public). Thus, even if the sexual act occurs in a public place (such as a parked car on a public street), if it's not likely that anyone else will be present who could be offended, e.g. because it's very early in the morning, or very late at night, or in a secluded area, etc., when it's unlikely anyone will be present, the elements of the crime are not met.

Whether one agrees or disagrees with the state of the law in California, it is that law that I am ethically bound to follow.

Regarding former Officer Utappa, the summary we received from the Alameda County District Attorney's Office only stated the fact there were texts between former officer Utappa and Ms. Abuslin.

Thus, the information that we were provided from the Alameda County District Attorney's Office at that time, contained insufficient evidence to establish that any actual crimes occurred in our jurisdiction, and therefore, there was no basis to charge any of these officers with a crime related to that information.

However, in order to independently review Ms. Abuslin's allegations of illegal conduct that allegedly occurred within Contra Costa, we requested that the Alameda County District Attorney's Office provide us with a DVD of their interviews with Ms. Abuslin. We received that DVD of Ms. Abuslin's 14 hours of interviews on September 15, and have since reviewed it.

While Ms. Abuslin alleged in the interviews that she had sex with the three Alameda County Sheriff Deputies when she was over 18, in Contra Costa County, she specifically stated that none of the sex was in exchange for money or anything else of value. Thus, the crime of prostitution simply didn't occur. Although some of the sexual acts took place in parked cars on public streets, there was no evidence that anyone was present or likely to be present when the incidents occurred. Once again, according to Ms. Abuslin's own descriptions of these incidents, the crime of 647(a) (Lewd Conduct in Public/Soliciting Lewd Conduct in Public) simply didn't occur. During the Alameda County interviews Ms. Abuslin never alleged that she had sex with former Oakland Police Department Officer Todd Utappa. Thus, there was insufficient evidence to file any charges against Todd Utappa based on those interviews.

Richmond Police Department Officers

On September 12, 2016 the Richmond Police Department released their report regarding their investigation of 11 of their officers regarding their alleged encounters with Ms. Abuslin. That investigation was very extensive. It took 750 hours of work to complete, and the agency contacted 45 individuals. They also interviewed Ms. Abuslin five separate times, for a total of 6 hours, and their final investigative report is 275 pages long. Richmond Police Chief Allwyn Brown has declared that their investigation revealed no criminal conduct committed by any of the Richmond Police Department officers.

However, in order to independently review Ms. Abuslin's allegations regarding illegal conduct that allegedly occurred within Contra Costa, our office requested that the

Richmond Police Department provide us with a DVD of their interviews with Ms. Abuslin. We received Ms. Abuslin's 13 hours of RPD interviews on September 16, 2016 and have since reviewed it.

While Ms. Abuslin alleged in the interviews that she engaged in sexual activity with four Richmond Police Officers in Contra Costa County when she was over 18, she specifically stated that none of the sexual activity was in exchange for money or anything else of value. Thus, the crime of prostitution simply didn't occur. Although some of the sexual acts took place in parked cars in public areas, there was no evidence that any member of the public was present or likely to be present to be offended. Once again, according to Ms. Abuslin's own descriptions of those incidents, no crimes occurred.

(It should be noted that Ms. Abuslin also alleged that she had sex with two Richmond firefighters, however, she refused to identify the firefighters to the investigators).

Former Contra County Sheriff Deputy Ricardo Perez

The Contra Costa County Sheriff's Office interviewed Ms. Abuslin on June 28, 2016 regarding her interactions with former Sheriff's Deputy Ricardo Perez. We reviewed a DVD of that interview. Ms. Abuslin has also been interviewed several other times by other law enforcement agencies regarding her interactions with former Sheriff's Deputy Ricardo Perez. Ms. Abuslin stated that she and Deputy Perez had approximately 7 to 10 sexual encounters; however, only one of those encounters occurred in Contra Costa County. Her sexual relationship with former Deputy Perez bridged the time from shortly before she turned 18 until after she turned 18.

Based on a review of all of her interviews, it's impossible to determine if the one act that occurred in Contra Costa County occurred before, or after, she turned 18. In addition, whether or not she had turned 18, there is insufficient evidence to establish that Deputy Perez committed the crime of "sex with a minor" during his one sexual interaction with Ms. Abuslin in Contra Costa County.

In order to establish violations of Penal Code section 288a (Oral Copulation of a Person Under Age 18) and Penal Code 261.5 (Statutory Rape of a 17 Year Old) the prosecution must be able to prove beyond a reasonable doubt that the defendant did not reasonably believe that the victim was over 18 at the time of the offense. In fact, at trial a jury would be instructed: "A defendant is not guilty of this crime if he reasonably and actually believed that the other person was 18 years of age or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not

met this burden, [a jury] must find the defendant not guilty.” CalCrim 1082 (Oral Copulation of a Minor Under 18; CalCrim 1071 (Statutory Rape). In all of her interviews Ms. Abuslin insisted that she represented herself to Deputy Perez to be older than 18 throughout all of their interactions during this time period.

While one may disagree with the state of the law in California, it is the law that I am ethically bound to follow.

Last, with respect to former Deputy Perez, Ms. Abuslin specifically stated on numerous occasions that none of the sex was in exchange for money or anything else of value. Thus, the crime of prostitution did not occur. Although the sexual encounter that took place in Contra Costa County occurred in a parked car in an isolated area of a public parking lot, there was no evidence that there was any member of the public present, or likely to be present, to be offended. Once again, according to Ms. Abuslin’s own descriptions of those incidents, no crime occurred.

San Francisco Police Department Officers

In August of 2016, our office was contacted by San Francisco Police Department investigators who were investigating information that some of their officers may have had contact with Ms. Abuslin in Contra Costa County. The San Francisco Police Department interviewed Ms. Abuslin in June and July of 2016 and we have reviewed a DVD of those interviews.

While Ms. Abuslin alleged in the interviews that she had sex with two San Francisco Police Department officers in Contra Costa County when she was over 18, she specifically stated that none of the sex was in exchange for money or anything else of value. Thus, the crime of prostitution simply didn’t occur. Although some of the sexual acts took place in parked cars in public areas, there was no evidence that any member of the public was present or likely to be present, to be offended. Once again, according to Ms. Abuslin’s own descriptions of those incidents, no crimes occurred.

Our Additional Investigations:

Interview of Ms. Abuslin

The information that we previously received from Alameda County’s investigation failed to disclose any direct evidence that Ms. Abuslin and Officer Uttapa had engaged in any sexual activity, as it only disclosed that they had exchanged text messages with each other.

An Investigator and Deputy District Attorney from our office interviewed Ms. Abuslin in person with her attorney in attendance, on October 14, 2016. Ms. Abuslin refused to give a statement to our office unless she received a grant of "use immunity" regarding her statement. Our office granted her request. Ms. Abuslin was asked about any sexual interactions with Officer Uttapa.

At that time, she disclosed that they had met for one consensual encounter that involved sexual activity on January 14, 2016, when Ms. Abuslin was 18 years old. At the time they engaged in sexual activity it was in a parked vehicle late at night and, according to Ms. Abuslin, they were at a dark secluded area near a park and there were no other people around to be offended. In addition, there was no money or anything else of value exchanged for sex and no force was used. Thus, according to Ms. Abuslin's statement no crime was committed.

Inspectors from my office also investigated an allegation that Ms. Abuslin may have been paid to have sex with a retired Oakland Police Department Captain in the City of Richmond on February 3, 2016, when Ms. Abuslin was over 18. As part of the investigation, Inspectors reviewed all of the text messages and Facebook messages between the suspect and Ms. Abuslin; obtained evidence from the hotel; and interviewed witnesses. Ms. Abuslin stated that she had sex with a retired Oakland Police Department captain in exchange for money. Our office interviewed the retired police captain and he confirmed that he paid Ms. Abuslin for sex.

Therefore, we decided to file a misdemeanor complaint charging a violation of Penal Code section 647(b) (Soliciting a prostitute) against the former Oakland Police Department Captain, who retired in 1996.

During the interview, Ms. Abuslin also confirmed there were no other law enforcement individuals that she had sexual encounters with, other than the officers who had already been named. Additionally, she confirmed that her interactions with the named officers had occurred as she had previously described.

Access of Law Enforcement Data Banks:

Our investigation also included a review of state and local law enforcement data bank inquiries made by law enforcement officers in the county. Records from the California Department of Justice established that Ms. Abuslin's name and aliases were queried by three Richmond Police Department officers earlier this year. Based on our review of each inquiry, we do not believe that we can establish any of the inquiries by the officers violated either the relevant Penal Code or Vehicle Code sections pertaining to such inquiries.

To reiterate:

First, in all of the alleged interactions between Ms. Abuslin and law enforcement officers that allegedly took place within Contra Costa County that our office has been made aware of, Ms. Abuslin was over 18. (Other than the very non-specific allegation by Ms. Abuslin that one of her interactions with former Deputy Perez may have taken place when she was under 18).

Second, none of the information provided in the investigative summary from the Alameda County District Attorney's Office provided sufficient evidence to prove criminal conduct related to any police officer's conduct in Contra Costa County, beyond a reasonable doubt. We also reviewed Ms. Abuslin's interviews with the Alameda County DA Investigators. According to Ms. Abuslin's own statements in those interviews she didn't engage in prostitution with any of the officers and they didn't violate Penal Code 647(a) (Lewd Conduct in Public/Soliciting Lewd Act in Public).

Third, the Richmond Police Department conducted an extensive investigation regarding the conduct of 11 of their officers and their interactions with Ms. Abuslin in Contra Costa County. They have stated they found no evidence of criminal activity. We reviewed the 13 hours of RPD interviews of Ms. Abuslin. According to Ms. Abuslin's own statements in those interviews she didn't engage in prostitution with any of the officers and they didn't violate Penal Code 647(a) (Lewd Conduct in Public/Soliciting Lewd Conduct in Public).

Fourth, the San Francisco Police Department conducted an investigation regarding the conduct of their officers and their interactions with Ms. Abuslin in Contra Costa County. We reviewed the 2 hours of SFPD Interviews of Ms. Abuslin. According to Ms. Abuslin's own statements in those interviews she didn't engage in prostitution with any of the officers and they didn't violate Penal Code 647(a) (Lewd Conduct in Public/Soliciting Lewd Conduct in Public).

Fifth, the Contra Costa Sheriff's Office conducted an investigation regarding the conduct of their officer and his interactions with Ms. Abuslin in Contra Costa County. We reviewed that interview of Ms. Abuslin. According to Ms. Abuslin's own statements in that interview she didn't engage in prostitution with the officer and there was no violation of Penal Code 647(a) (Lewd Conduct in Public/Soliciting Lewd Conduct in Public).

Sixth, our office conducted our own interview with Ms. Abuslin on October 14, 2016. She detailed an act of prostitution with an 81 year old retired Oakland Police Department Captain. She confirmed that there were no other encounters with any other law enforcement officers, other than those already named. She also confirmed that her

descriptions of her sexual interactions with law enforcement officers in Contra Costa County were as she had previously described.

In summary, it's clear that several police officers had sexual relations with an admitted prostitute. Such actions are immoral and inappropriate, especially for someone in their profession. However, according to Ms. Abuslin's own statements made during 19 separate interviews; lasting 24 hours; to six different law enforcement agencies; over the span of seven months; all of her descriptions of her sexual interactions with law enforcement officers in Contra Costa County were not crimes. (With the exception of three incidents where Ms. Abuslin alleged possible crimes against former Officer Smith and former Deputy Perez. However, there's insufficient evidence to prove that any crimes occurred during those incidents).

Evidence of immoral or unethical conduct, or even evidence suggestive that criminal conduct might have occurred, by itself, does not rise to the level of criminal conduct or a provable crime. It's improper and unethical to file criminal charges against anyone, police officer or private citizen, unless there is sufficient evidence to prove that person guilty beyond a reasonable doubt.

Thus, regarding the interactions between Ms. Abuslin and others, including law enforcement officers in Contra Costa County, our office has filed charges where appropriate and warranted by the evidence, and declined to do so when not appropriate and not sufficiently supported by admissible credible evidence. My prosecutors and I are bound to make our charging decisions based upon admissible evidence that we can present in a court of law, and not based upon the uninformed and irresponsible assertions of various public figures who operate in ignorance of all the facts.

Finally, there was no attempt by anyone to secrete Ms. Abuslin to Florida in order to frustrate any investigation or to hinder any prosecution. She made that decision herself, in consultation with her family, in order to seek treatment. Additionally, her contemplation of travel to Florida for treatment was a matter of public record as early as July, 2016.

It goes without saying that our office will continue to always investigate any alleged sexually assault or human trafficking crimes that occur within our county, and we are committed to holding anyone who commits such crimes in Contra Costa County accountable for their actions.

In conclusion, although this scandal is clearly an embarrassment to law enforcement, I want to reiterate that it involves an extremely small number of Bay Area officers. It is

truly unfortunate that the conduct of a few can taint the outstanding work of the thousands of officers who do the right thing day after day.

Mark A. Peterson
District Attorney

CALCRIM 1161, Judicial Council Of California Criminal Jury
Instruction 1161

1161 Lewd Conduct in Public (Pen. Code, § 647(a))

The defendant is charged [in Count _____] with engaging in lewd conduct in public [in violation of [Penal Code section 647\(a\)](#)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant willfully engaged in the touching of ((his/her) own/ [or] another person's) genitals, buttocks, or female breast;
2. The defendant did so with the intent to sexually arouse or gratify (himself/herself) or another person, or to annoy or offend another person;
3. At the time the defendant engaged in the conduct, (he/she) was in (a public place/ [or] a place open to the public [or to public view]);
- 4. At the time the defendant engaged in the conduct, someone else who might have been offended was present;**

AND

5. The defendant knew or reasonably should have known that another person who might have been offended by (his/her) conduct was present.

Someone commits an act *willfully* when he or she does it willingly or on purpose.

[As used here, a *public place* is a place that is open and accessible to anyone who wishes to go there.]

CALCRIM 1162, Judicial Council Of California Criminal
Jury Instruction 1162

1162 Soliciting Lewd Conduct in Public (Pen. Code, § 647(a))

The defendant is charged [in Count _____] with soliciting another person to engage in lewd conduct in public [in violation of [Penal Code section 647\(a\)](#)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant requested [or _____ *<insert other synonyms for "solicit," as appropriate>*] that another person engage in the touching of ((his/her) own/ [or] another person's) genitals, buttocks, or female breast;
2. The defendant requested that the other person engage in the requested conduct in (a public place/ [or] a place open to the public [or in public view]);
3. When the defendant made the request, (he/she) was in (a public place/ [or] a place open to the public [or in public view]);
4. The defendant intended for the conduct to occur in (a public place/ [or] a place open to the public [or in public view]);
5. When the defendant made the request, (he/she) did so with the intent to sexually arouse or gratify (himself/herself) or another person, or to annoy or offend another person;

[AND]

6. The defendant knew or reasonably should have known that someone was likely to be present who could be offended by the requested conduct (;/.)

<Give element 7 when instructing that person solicited must receive message; see Bench Notes.>

[AND]

7. The other person received the communication containing the request.]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

[As used here, a *public place* is a place that is open and accessible to anyone who wishes to go there.]

CALCRIM 1082, Judicial Council Of California Criminal Jury Instruction
1082

1082 Oral Copulation With Person Under 18 (Pen. Code, § 288a(b)(1))

The defendant is charged [in Count _____] with oral copulation with a person who was under the age of 18 [in violation of [Penal Code section 288a\(b\)\(1\)](#)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant participated in an act of oral copulation with another person;

AND

2. The other person was under the age of 18 when the act was committed.

Oral copulation is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>

[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not met this burden, you must find the defendant not guilty of this crime.]

CALCRIM 1071, Judicial Council Of California Criminal Jury Instruction
1071

1071 Unlawful Sexual Intercourse: Minor More Than Three Years Younger
(Pen. Code, § 261.5(a) & (c))

The defendant is charged [in Count _____] with unlawful sexual intercourse with a minor who was more than three years younger than the defendant [in violation of Penal Code section 261.5(c)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant had sexual intercourse with another person;
2. The defendant and the other person were not married to each other at the time of the intercourse;

AND

3. At the time of the intercourse, the other person was under the age of 18 and more than three years younger than the defendant.

Sexual intercourse means any penetration, no matter how slight, of the vagina or genitalia by the penis. [Ejaculation is not required.]

[It is not a defense that the other person may have consented to the intercourse.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>

[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not met this burden, you must find the defendant not guilty of this crime.]