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# Jury acquits man who says he gave child tummy razzes

**By Kim Smith**

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At 30 years old, Kenneth Gagne is starting over. Over the last 10 months, he has lost his job, his home, his car and the woman he planned to marry.

Fighting charges of sexual conduct with his girlfriend's 5-year-old daughter left his reputation in ruins and his parents \$50,000 in debt.

All that, his attorney says, because of a few innocent belly kisses and an overprotective grandmother.

Prosecutors, however, say Gagne deserved far more punishment, specifically the two consecutive life sentences in prison he would have faced if he'd been convicted.

A Pima County Superior Court jury found Gagne not guilty of two counts of sexual conduct with a minor under 15 on Wednesday after deliberating less than two hours.

Jurors contacted after the trial said the verdict was more than just a case of prosecutors failing to prove their case "beyond a reasonable doubt." They believe Gagne is innocent.

Defense attorney Rick Lougee. says the Gagne case is a "terrifying example of prosecutors exercising their power without using their judgment."

But prosecutor Susan Eazer, who heads up the Pima County Attorney Office's sex crimes unit, says the evidence against Gagne justified the time and expense of taking him to trial.

The case against Gagne started with a conversation between the girl and her paternal grandmother.

According to court documents, the grandmother was curious why the little girl was constantly changing her panties.

The grandmother said the girl told her they didn't feel good and that "Ken" sometimes tickles and kisses her down there. Sometimes, she said, Ken pulled her panties down her thighs.

When interviewed by authorities, though, the girl gave conflicting stories about whether Ken had ever touched her. She also told one investigator she always asked Gagne to pick her up and tickle her and shake her belly with his head.

Gagne was arrested after a two-hour police interview in which he, too, gave conflicting answers.

After originally saying he'd never been left alone with the child, Gagne later said he had been. He also initially denied ever touching the girl inappropriately, then later said he could have accidentally touched her three or four times.

Gagne explained that there were times when he'd be blowing kisses on the girl's stomach and she'd squirm, and other times when she'd climb up on his shoulders. Once, he said, she was trying to be picked up and came down on

his hand.

Lougee said Gagne would never have been arrested if not for a "hyper-vigilant and overly suspicious" grandmother and two "amped-up" detectives.

He said Gagne was taken to the Police Department after two hours' sleep and chained to a table for an hour before the two-hour interview began.

"Toward the end of the interview, in an obvious effort to end the questioning, Mr. Gagne conceded he might have accidentally touched the child," Lougee wrote in court documents. "When the full tape of the interview is seen, it is apparent Mr. Gagne is describing the same innocent play the child reported and not confessing to a crime."

At worst, Gagne was guilty of inappropriate behavior for "blowing raspberries" on the girl's stomach, Lougee said, but is that type of behavior worth two life sentences?

Eazer, however, said she's convinced Gagne did far more than blow raspberries.

How, she wonders, can someone "accidentally" touch a child's vagina so many times?

Also troubling, Eazer said, was the fact the child was so specific about two incidents, despite her young age.

"My only regret is this guy wasn't convicted and we had to put this little girl on the stand," Eazer said. Videotaped interviews of child victims are inadmissible in court in Arizona.

Attempts to reach the girl's mother were unsuccessful. Her grandmother did not return a phone call seeking comment.

While Gagne declined to be interviewed, his mother, a teary-eyed Maria Gagne, 55, was eager to thank the jurors.

"I'm just so grateful for the jury. It was a miracle," Maria Gagne said. "It's one of the best Christmas presents I could've ever gotten."

Maria Gagne, a certified public accountant, was living in Lawton, Okla., when she found out her oldest son was being investigated.

Two months after her son's arrest — when it became clear prosecutors intended to pursue their case against him — Gagne said she and her husband of 33 years cashed in their retirement funds to bail him out and to hire Lougee. Her brother also took out a second mortgage on his home, Maria Gagne said.

For the past several months, she and her son have been living in a fifth-wheel mobile home.

"I hadn't planned on staying, but I didn't think he should be left alone emotionally," she said. "He was devastated by the loss of the relationship with a woman he planned to marry. He knew he was facing life in prison, and he'd lost everything he had worked for."

Her son was offered a plea deal but refused to admit to something he didn't do, she said.

Now that it's over, her son plans to return to Oklahoma to try to resume his life, she said. Right now, he is saying he will never date again.

"I'm just amazed that without any type of evidence it could go this far," she said. "This type of thing should never happen. ... If he didn't have us, he'd be in prison right now, and money shouldn't be the criterion for who should be free."

Jurors Vikki Garcia-Vargas, John Nowotny and Jane Raje said they have no doubt Gagne is innocent.

"If there was contact, I believe it was in the form of play," Raje said. "There was definitely not any sexual intent. Having had little children of my own, I know that that's just the way little girls play with their daddies."

Garcia-Vargas noted the child gave conflicting stories during the trial, too. "She seemed eager to please people; I think she was looking for the correct thing to say."

Garcia-Vargas and Nowotny said they attributed Gagne's "confession to sleep deprivation and police techniques.

"He just seemed really tired, and they just kept at him and at him and at him," Garcia-Vargas said.

When she heard what Gagne was accused of, Garcia-Vargas said she had to remind herself to remain fair. "When you hear those type of charges, you think 'Oh, there's got to be something there,' and you almost want to look for something that can convict them," she said.

By the end of the trial, though, Garcia-Vargas said there was only one possible verdict — not guilty.

"I feel bad for the defendant. I'm sure his life has been difficult, but I don't think anyone could've done anything differently," Nowotny said. "I don't think the prosecutors had any choice. Child molestation is a serious crime, and their job is to protect children."

• *Contact reporter Kim Smith at 573-4241 or [kimsmith@azstarnet.com](mailto:kimsmith@azstarnet.com).*

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