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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

S.C. SUPREME COURT

Appellate Case No. 2018-001745

The Honorable Letitia H. Verdin, Circuit Court Judge

The State of South CarolinaRespondent,

v.

William Lee Carpenter.....Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
State of South Carolina,	)	Case No(s) .: 2016GS2307341,
	)	2016GS2307342,
Plaintiff,	)	2017GS2301975,
	)	2017GS2301976,
-VS-	)	2017GS2301977,
	)	2017GS2301978,
William Lee Carpenter,	)	2017GS2301983,
	)	2017GS2309565A,
Defendant.	)	2017GS2309568A
)	
	)	TRANSCRIPT OF RECORD

September 6, 2018
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

A P P E A R A N C E S:

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NO.

DESCRIPTION

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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

(Proceedings begin on the 6th day of
September 2018, at approximately 10:07 a.m.)

THE COURT: Well, I'm glad this worked
out. Thank y'all so much for getting together.
All right. Well, it looks like you've got a
number of motions. One thing I want to tell you
is we did start watching the forensic
interviews, but have not completed that yet.
But I'd be happy to hear arguments on that
matter, if you'd like. And then -- but I'm just
going to leave it to y'all what order you want
to start.

MS. SUSTAKOVITCH: Yes. May it please the
Court, Your Honor, if I may.

THE COURT: Yes.

MS. SUSTAKOVITCH: I'll try to be brief.
The first two motions -- and this is the matter
of the State versus William Lee Carpenter, Jr.
Your Honor, just for the record, he is
scheduled for trial on Monday, September 10,
under five counts of criminal sexual conduct
with a minor in the first degree. The
indictment numbers are listed on the motions.
Your Honor, do you need a copy of those

1 motions?

2 **THE COURT:** I've got them on -- I've got
3 what you've sent me.

4 **MS. SUSTAKOVITCH:** Okay.

5 **THE COURT:** Oh, and I've got a hard copy.

6 **MS. SUSTAKOVITCH:** Okay. Thank you.

7 **THE COURT:** Okay.

8 **MS. SUSTAKOVITCH:** He is charged with two
9 counts of unlawful conduct, two counts of
10 exposing another to HIV, and two counts of
11 criminal sexual conduct on a minor in the third
12 degree. The first motion is just a standard
13 motion, Your Honor, that I file in criminal
14 sexual conduct cases. It's a motion in limine
15 for compliance with the rape shield statute.
16 Mr. Kendrick has given me no reason to believe
17 that he would be putting in any evidence -- I
18 just wanted to put it on the record, and if
19 there is anything that would come up, I would
20 ask that we talk about it now.

21 **THE COURT:** All right. Yes, sir.

22 **MR. KENDRICK:** Perhaps the best response
23 is to ask the question back to the state,
24 Your Honor. I don't have any information that
25 would lead me to put that in.

1 **THE COURT:** Sure.

2 **MR. KENDRICK:** But obviously, if I did, it
3 would be evidence of third-party guilt, not
4 Rape Shield evidence ---

5 **THE COURT:** Well ---

6 **MR. KENDRICK:** --- since the children are
7 under ago, so --

8 **THE COURT:** --- I -- I'll just say this:
9 If we get to -- if we get to any point in the
10 trial where you think anything that you want --
11 that you're looking to introduce or ask any
12 questions -- and I know the caliber of attorney
13 you are, you would -- you would definitely do
14 this. But if you would just at least request a
15 bench conference so we can discuss whether or
16 not that evidence would be admissible.

17 **MR. KENDRICK:** Fair enough, Your Honor. I
18 guess, just for the record, I will accept the
19 solicitor's representations that they don't
20 have knowledge of any other sexual conduct on
21 these children. That would be very relevant,
22 has not been disclosed. And my file in this
23 case, I can't imagine them not disclosing
24 something so big.

25 **THE COURT:** Well, it -- and it looks like

1 Ms. Sustakovitch is saying they do not have any
2 information along those lines.

3 **MS. SUSTAKOVITCH:** No, ma'am. And the only
4 thing I would say to that, I believe there's a
5 mention in one of the DSS reports that Brendan
6 pulled his pants down at school one time and
7 showed his -- exposed himself. I don't believe
8 that's Rape Shield. I'm just saying that would
9 -- and I'm sure Mr. Kendrick has seen that. But
10 as far as the regular issues that would come up
11 with Rape Shield, I just wanted to make sure we
12 covered that.

13 Next, Your Honor, is a motion related to
14 third-party guilt. Again, I don't have any
15 reason to believe, other than a brief
16 conversation I had with Mr. Smith -- and it was
17 just many, many months ago -- but there -- the
18 state's position is there is no third-party
19 guilt that would come into this case.

20 **THE COURT:** Uh-huh.

21 **MS. SUSTAKOVITCH:** I know, in talking to
22 Mr. Smith, and this probably was just back and
23 forth, but he had mentioned, you know, the
24 father would be somebody he would look at extra
25 hard. And I just wanted to bring out that there

1 is no allegation that the father has ever done
2 anything to these children. And we would ask --
3 and that could have been a tongue-and-cheek --
4 just conversation with us, honestly. But I
5 wanted to bring it up to make sure that that is
6 not going to be tried -- that the defense is
7 not going to try to go there.

8 Also, there is a prior conviction -- I do
9 anticipate the children's father testifying,
10 Your Honor. His name is William Lee Carpenter,
11 III.

12 **THE COURT:** Uh-huh.

13 **MS. SUSTAKOVITCH:** And this defendant is
14 William Lee Carpenter, Jr. There is a prior
15 conviction on his record from 2000, where, I
16 believe, he was 19 and he got charged with CSC
17 with a minor.

18 **THE COURT:** Uh-huh.

19 **MS. SUSTAKOVITCH:** It got pled down to an
20 assault and battery first. We can put this back
21 on the record right before he testifies, but
22 that is not an impeachable offense. And I would
23 ask that that not be brought in.

24 **THE COURT:** And you said it was from when?

25 **MS. SUSTAKOVITCH:** 2000.

1 **THE COURT:** Okay.

2 **MS. SUSTAKOVITCH:** He would have been, I
3 think, 19. I can double-check. And the girl was
4 14 or so. But it was just a much different
5 scenario, and the prosecutor there pled it to
6 an A&B first.

7 **THE COURT:** Yes, sir.

8 **MR. KENDRICK:** Same response, Your Honor.
9 I suspect that conversation was a reflection of
10 Mr. Smith being thorough in his pretrial
11 investigation. We have not uncovered any
12 evidence other than that prior conviction,
13 which I would agree, assuming he doesn't open
14 the door to it somehow, that we wouldn't be
15 able to just bring it up. I hadn't planned on
16 it. I don't have any information that
17 Mr. Carpenter, Jr. -- or the third, would have
18 been an alternate suspect.

19 **THE COURT:** Okay.

20 **MR. KENDRICK:** So as long as the solicitor
21 also doesn't have any information that I should
22 know about, I think we would ---

23 **THE COURT:** Absolutely.

24 **MR. KENDRICK:** --- agree with their
25 motion.

1 **THE COURT:** Absolutely. And I will just
2 tell you -- I will just say this: You know, I
3 think all three of us know each other pretty
4 well. If -- if, at any point, you feel like the
5 door has been opened, on either side, to any --
6 any question along those lines, I'd ask that
7 you please approach the bench first and let's
8 iron it out. Especially in a case that we think
9 it's going to take as long and as we think it's
10 going to take, we don't want to start over; so
11 all right.

12 **MS. SUSTAKOVITCH:** Thank you, Your Honor.
13 Just briefly to that point, Mr. Kendrick and I
14 did talk. We believe our cases will be shorter
15 than what we had relayed to Your Honor.

16 **THE COURT:** Oh. Okay. Great.

17 **MS. SUSTAKOVITCH:** We're trying to
18 streamline. Mr. Kendrick, I believe, said his
19 might be two and a half days, but he's thinking
20 it would be more like a day or so?

21 **MR. KENDRICK:** I think one. But, you know,
22 it would be hard -- it would be hard to take
23 two full days. I think we could probably do it
24 in one, which, I think, with the solicitor
25 having streamlined, I have arranged for some

1 witnesses to be here on Wednesday. So I would
2 just as if, for some reason, we get really
3 going, I probably can fill in, but I might need
4 a little bit of help.

5 **THE COURT:** We'll -- we'll -- we'll, I
6 mean, work that out. I understand witnesses
7 being here, and we'll work that out one way or
8 another for sure.

9 **MR. KENDRICK:** I assume if we're that
10 early, it would be a good thing.

11 **THE COURT:** Yeah. And I -- and it -- and
12 we'll do it in such a way that it doesn't
13 reflect badly on anyone, for sure -- or, maybe
14 me, but nobody else.

15 **MS. SUSTAKOVITCH:** Thank you, Your Honor.
16 And to the motion that is the main substance, I
17 think, of what we need to deal with today --

18 **THE COURT:** I'm going to have to see these
19 pictures.

20 **MS. SUSTAKOVITCH:** Yes, ma'am.

21 **THE COURT:** Yeah.

22 **MS. SUSTAKOVITCH:** I'm bringing up -- I've
23 shown defense counsel. We have whittled this
24 down to two photographs, Judge, that the state
25 will be seeking to introduce. Do I need to mark

1 them for Court's exhibits?

2 **THE COURT:** No, I don't think so, at this
3 point.

4 **MS. SUSTAKOVITCH:** Okay.

5 **THE COURT:** (Reviewing.)

6 **MS. SUSTAKOVITCH:** Judge, I did want to
7 put on the record -- because I think you have
8 to look at this case from a totality of the
9 evidence standpoint. And the reason I included
10 a summary, Judge, of the evidence that was
11 collected during the search warrant in this
12 case is: I want the Court to know that the
13 state is trying to be very conservative, trying
14 to be very intentional, and not trying to dill
15 the lily here with what we're trying to put
16 into evidence.

17 I would like, if Your Honor would be so
18 inclined -- from an appellate point of view, if
19 there is a conviction, I do think the record
20 needs to be complete. I would show you -- we'd
21 like to mark it, if we could. This would be an
22 exhibit of -- these are 135 photographs that
23 the state is not seeking to introduce of
24 general coprophiliac activity between just
25 random people. I don't know who those people

1 are. But those were found on the defendant's
2 laptop.

3 Also, Your Honor, when the -- when the
4 phone and the computer were searched by Jim
5 Perry, who is present in the court today, he
6 went to the sites that were visited by this
7 defendant. I'd also like to mark some of the
8 screenshots of the sites he visited. We're not
9 seeking to introduce that.

10 **MR. KENDRICK:** Just -- before we get into
11 that, Your Honor, just -- I'm curious if I have
12 objected to all of this evidence and the state
13 does not want to introduce all this evidence,
14 then why would we mark them? If there is a
15 conviction, then they should not go to the
16 appellate court because they don't have
17 anything to do with your ruling.

18 **THE COURT:** And I understand that you're
19 just proffering the evidence to make the point
20 that you've whittled this down to a ---

21 **MS. SUSTAKOVITCH:** Yes, ma'am.

22 **THE COURT:** --- few photographs.

23 **MS. SUSTAKOVITCH:** Yes, ma'am.

24 **THE COURT:** And I'm happy just to mark
25 them just for purposes of this hearing only. It

1 won't even be present at the trial.

2 **MS. SUSTAKOVITCH:** The last item that we
3 would like to have marked: Your Honor, Jim
4 Perry -- Investigator Jim Perry -- I want to
5 give him the right title -- Your Honor, when he
6 went through the computer, it's an exhaustive
7 process. I can call him as a witness if
8 Your Honor would like to put him on the record
9 and we could go through that. He prepared, and
10 this has been provided to defense counsel, I
11 believe it's like 89 pages of bookmarked sites.

12 We went to a relevance standpoint of when
13 you hear the evidence in this case, are those
14 sites that were visited related to enemas,
15 because the victim, Brendan, says that a douche
16 was inserted in his rectum, made him defecate,
17 and then feces put on him, and then anal sex
18 happened. So these would be bookmarks where --

19 **THE COURT:** But you're not seeking to
20 introduce these at trial?

21 **MS. SUSTAKOVITCH:** Not this document. But
22 what we did want to seek to introduce -- and
23 this would be the bookmarked sites, Judge,
24 where they're talking about -- they're talking
25 about enemas. And then Investigator Perry

1 looked up the word "urine" because the children
2 said they had to drink urine. He found one hit
3 for "urine" and around 500 for -- excuse me,
4 but the word "piss." So we don't plan to
5 introduce that, but we wanted to be able to
6 allow him to testify to some portion of that.
7 Beg the Court's indulgence one moment. (Pause.)

8 Judge, in this case, I -- the reason the
9 state is -- the state has read the cases
10 regarding inadmissible character evidence.

11 **THE COURT:** Uh-huh.

12 **MS. SUSTAKOVITCH:** And that is not what
13 we're trying to do in this case. In my motion,
14 I set forth the facts that are going to be
15 alleged at trial. You have Brendan's -- as I
16 stated, saying that there was an enema inserted
17 and that he defecated, and then poop was put on
18 his -- or feces was put on his back, and then
19 there was anal sex. Both say that feces were
20 put on their backs.

21 So the state is not offering to prove that
22 he some kind of deviant person, or character
23 evidence at all, Your Honor. The issue here is
24 that the intent behind this defendant's
25 actions, when he put feces on their back, is

1 not apparent. It's not like those cases where
2 you -- you know -- excuse the words, I guess,
3 garden-variety vaginal sex or anal sex or oral
4 sex. The intent behind that is apparent, so the
5 state doesn't have to really prove that. And
6 that's what the cases are saying. They're
7 saying you don't need to prove intent in that
8 scenario. But this one is just a different
9 animal. It's a different case.

10 Honestly, in all the years I've prosecuted,
11 I've never come across one. I can find no case
12 law related to coprophilia and how a court
13 would deal with it. It's just not a regular sex
14 act that you can draw the commonsense intent.
15 And what I would say is: It is outside of the
16 common knowledge of a jury that anybody would
17 be sexually aroused by rubbing feces on a
18 child's back. I just believe that.

19 The basis of the CSC third charge is that
20 that happened. And as we mentioned, the enema
21 in the rectum. Your Honor, unlike those
22 commonly understood sex acts, this type of
23 physical contact where you're incorporating
24 feces is outside the common knowledge that a
25 Greenville County juror would have to

1 understand that that act, in and of itself,
2 would ever bring ratification, which is one of
3 the elements of CSC third.

4 And, Your Honor, the jury has to go through
5 a two-step process when I've considered this
6 case over the last two years, first step one
7 is: People have to believe that this unique --
8 I'm not calling it deviant. I'm saying
9 unique-type of sexual activity even exists on
10 the planet. That's step one to me.

11 I can tell you, if you put 12 people in
12 that box and you, before this even started,
13 said, "Do you think this is something people
14 do?," half of them, at least, are going to say,
15 "Oh. There's no way." They're going to shut
16 down from step one; believing that it's not
17 something that exists in the world, in society.

18 So once you get past step one, then you
19 have to get to step two, and you have to
20 believe the children and the voracity of the
21 children. You have to believe that they
22 actually were sexually abused. It's a two-prong
23 process in the way that I'm looking at it. And
24 I do believe that the jury will shut down on
25 step one, if they're not educated in some form.

1 It almost sounds fantastical. If you have no
2 knowledge of this, you know, until you have one
3 look at a picture like that, it's hard to
4 describe.

5 **THE COURT:** Let me ask you this ---

6 **MS. SUSTAKOVITCH:** Yes, ma'am.

7 **THE COURT:** --- so let's just say that for
8 purposes of showing intent for CSC third, that
9 wouldn't -- at least one of these pictures is
10 admissible. And I believe in your motion you
11 said the defendant is recognizable somewhat in
12 one of these photographs, and it appears that
13 that's the case. I have not seen his ankles,
14 but it appears that that's the case here. What
15 would be the reason that I would need to allow
16 the research on the computer? Is that where
17 we're going with this? I mean, I assume you're
18 talking about both photographs and the
19 research. Am I understanding you right?

20 **MS. SUSTAKOVITCH:** Yes.

21 **THE COURT:** So if the photograph comes in
22 and we see that this particular individual
23 appears to be engaged in some sexual activity
24 related to coprophilia, then what would be the
25 reason that the jury would need to hear about

1 Internet searches?

2 **MS. SUSTAKOVITCH:** Well, and there's a
3 large amount of Internet searches related to
4 urine and enemas. And when you go back to this
5 very specific form of sexual activity, the
6 children -- Brendan is saying that they
7 inserted -- he calls it a "douche" in his
8 rectum. And he tries to describe it. He says
9 it's like shots are.

10 But I think the fact that there are so many
11 searches for enemas does educate the jury
12 related to this unique form of sexual activity.
13 I think, you know, a lot of people are not into
14 drinking urine. A lot of people are not into --
15 most people.

16 **THE COURT:** Yeah. I'd say that.

17 **MS. SUSTAKOVITCH:** And I'm just being
18 honest in trying to think through it. When you
19 have over 500 hits related to that and these
20 children are going to say that they had to
21 drink urine, I think it just goes to prove a
22 totality of the circumstances.

23 Judge, I'll give this analogy. I hope this
24 does not fall flat. But I've spent a long time
25 trying to think about this. And part of the

1 problem, I think, that people have: If you take
2 the emotion out of this, if you take the "it's
3 feces," "it's urine," if you take that out and
4 you just intellectually look at it and you're
5 intellectually honest about it, say you had a
6 case where you have a man and a woman and they
7 were engaged in sex and part of their sex acts
8 with each were to take tomatoes or fruit,
9 something like that, cut them in half and rub
10 them on their bodies, that arouse them; okay,
11 then they continue to have sex acts; and then,
12 long and behold, you have a grandchild that one
13 day discloses, "Granddad took a tomato and he
14 rubbed it on my back and he did this to me. And
15 after that, he sexually abused me," I submit to
16 this court, that every day of the week, that
17 testimony should and would come in.

18 So I think what we're having trouble with
19 and we should be having this argument is just
20 the concept of feces. But when you make the
21 step in the process go back from that analogy,
22 I think -- I believe that that testimony would
23 come in as highly probative. Judge, it is
24 prejudicial. But every piece of evidence is
25 prejudicial or it's not -- it's not relevant.

1 And so I don't believe that it's so
2 prejudicial that it should not come in. I
3 believe the converse, which is: If you sanitize
4 this case, if you make it be what it is not,
5 this case will never -- this jury can never
6 render a fair verdict. They just will not have
7 the tools at their disposal to do that. The
8 bottom line: If they don't understand that it's
9 possible to have consenting adults engage in
10 this in some way, they don't believe that that
11 exists and their world view is that it doesn't
12 exist, this case stops there.

13 **THE COURT:** But let me ask you: Let's just
14 say -- let's just stay with your fruit analogy.

15 **MS. SUSTAKOVITCH:** Yes, ma'am.

16 **THE COURT:** Okay. Let's just say that
17 there are photographs of somebody covered in
18 fruit and clearly engaging in, you know, sexual
19 something. I don't know. Anyway, would it be
20 necessary to prove that this is a thing? You
21 know that this is a thing out there that people
22 are into fruits? Because you've shown that the
23 particular defendant is into fruit.

24 **MS. SUSTAKOVITCH:** Right. I mean, if
25 Your Honor is inclined to allow those pictures,

1 I'll just -- I'm looking through Jim Perry and
2 what we intending to show in his line of
3 testimony. We were going to talk about the
4 phone; whatever pictures, if Your Honor allows
5 them, of the bathtub. The reason I think those
6 are important is also -- you know, it goes to
7 the date and time when those pictures were
8 made.

9 **THE COURT:** Okay.

10 **MS. SUSTAKOVITCH:** Because I do believe in
11 this case what you're going to hear, and I
12 can't predict the future, but this is how these
13 cases always go: "This defendant did not have
14 the opportunity to do this. He was never home.
15 He worked all the time." So these pictures were
16 taken on a Sunday. That's important. The
17 pictures were taken on a Sunday at 9:59 a.m. in
18 the bathroom at their house with all the people
19 there.

20 It just goes to show -- and you're going to
21 see, Your Honor, this happened -- this whole
22 situation is a mess. It is a cluster of a mess.
23 The parents were not being good parents during
24 this. Nobody was. Every party here is at fault.
25 And these children are caught up in it.

1 **THE COURT:** Uh-huh.

2 **MS. SUSTAKOVITCH:** I go back to the --
3 back to the pho -- back to Jim Perry. Judge,
4 there is a home video -- and I did not bring it
5 up there -- but, Judge, there's a video of what
6 we believe to be the co-defendant defecating on
7 herself, in some panties. There's like nine --
8 it stops and starts. It's about nine times. And
9 then you see what we believe is this defendant
10 with his hand, not to be too graphic, but
11 putting feces back in her rectum and she's
12 moaning and things like that. We're not seeking
13 to put that in, other than we want to be able
14 to say that there was a home video made,
15 because that home video -- and I'm going to
16 have to double-check, but I believe that one
17 was made on a Monday. It's just important to
18 the state to also prove what time some of this
19 activity was going on.

20 So going back to the urine and the, quote,
21 piss searches, we thought that, because you do
22 have this very unique specific form of sexual
23 expression that these children are describing,
24 which is way outside the normal knowledge of
25 the jury, that it is instructive to give the

1 jury the full picture that they know -- if you
2 look at the vast majority of evidence we are
3 not putting in, you know, it would be testimony
4 that -- I think I phrased it, he -- did you
5 search any key words relevant to the facts of
6 this case to see what came up? He got one
7 result for urine and multiple hits -- we don't
8 even have to say 500. We could say multiple
9 hits for, quote, piss. And then what about
10 enemas? And he would say that he did find
11 multiple sites where enemas were used in sexual
12 acts. That would be what the state is seeking
13 to elicit.

14 **THE COURT:** This video you're talking
15 about ---

16 **MS. SUSTAKOVITCH:** Yes, ma'am.

17 **THE COURT:** --- what's the -- what would
18 -- I'm just asking what the state would seek --
19 how the state would seek to describe that
20 video.

21 **MS. SUSTAKOVITCH:** However Your Honor --
22 honestly, Judge, whatever Your Honor wants us
23 to say. I -- I'm not -- I want to be able to
24 show that there's a video of the two of them
25 engaged in some form at this time being made at

1 this house; so no, he's not working at his shop
2 at that point.

3 **THE COURT:** So just for purposes of
4 setting a timeline, maybe a video including the
5 defendant of sexual activity.

6 **MS. SUSTAKOVITCH:** Yes, ma'am.

7 **THE COURT:** Okay.

8 **MS. SUSTAKOVITCH:** What we believe to be
9 the defendant. I see -- I hear voices. I know
10 the co-defendant's voice very well from
11 listening to hours of it. And there's moaning.
12 Then we see the hand inserting --

13 **THE COURT:** Is it --

14 **MS. SUSTAKOVITCH:** -- it's believed to be
15 his -- hand. It's on his phone. Yes, ma'am.
16 However you would want to characterize that. If
17 there's no objection to saying that, in fact,
18 is their video, home video of activity that --
19 sexual activity they were having, that's fine.
20 We don't have to go into she was doing this in
21 her panties and he was doing this. We don't
22 have to go into any of that. I just want to be
23 able to set a marker in time that he was --
24 there was a video being made -- a sexual video
25 being made in a house, again, where presumably

1 the children -- the mother was probably passed
2 out on drugs. I don't know. But it would have
3 been at the time that some of this activity was
4 happening.

5 **THE COURT:** Okay. Yes, sir.

6 **MR. KENDRICK:** Your Honor, it is simple.
7 The answer is right in the text of 404(b). The
8 solicitor, essentially, gave you an analogy to
9 tell you that the reason they want to put this
10 evidence in is because it will show on a later
11 particular occasion, the defendant acted in
12 conformity with that trait.

13 So that's admissible if I do certain
14 things; so for example -- I'll give you the
15 defense and I'll let the solicitor hear the
16 defense. The defense is: He didn't do it. Never
17 happened. That's our defense. If I were to put
18 him up there and he were to say, "I think it
19 happened. I didn't do it, though," -- or if I
20 called another witness who said that -- if he
21 were to say, "I did it, but it wasn't criminal.
22 I was doing it for some other purpose," like
23 the solicitor cites in her motion: medical,
24 disciplinary, whatever the case may be; "I did
25 it, but I did it on accident. It wasn't

1 criminal" — all of those things trigger 404(b)
2 and allow this evidence to become admissible.

3 , So I think 403 is sort of a -- we don't
4 need to get to 403. The solicitor wants to
5 introduce the evidence to show because this
6 sexual activity occurs, this later sexual
7 activity matches this prior act. And we call
8 404(b) a prior bad act, but, I mean, it is
9 prior acts. So essentially -- I mean, they've
10 made my argument for me. They want to put the
11 evidence in to show that he -- the kids must be
12 telling the truth because that's in conformity
13 with this prior act.

14 **THE COURT:** They say they want to -- they
15 want to put it in because they need to show --
16 they need to show intent.

17 **MR. KENDRICK:** But they don't need to
18 show --

19 **THE COURT:** They've got that burden.

20 **MR. KENDRICK:** But they don't need to show
21 intent unless we've somehow raised that in a
22 way that would make this evidence admissible.
23 In other words, if I argued accident, then they
24 can argue intent.

25 But under that -- under that theory,

1 Your Honor, you almost couldn't ever keep a bad
2 act out because, "I didn't commit this murder."
3 "Well, we're going show you about the prior
4 murder he committed because that means he did
5 commit it." Because they always have the burden
6 of intent. But in this particular case,
7 Your Honor, how do I argue that he had sexual
8 relations with a child unintentionally? It's
9 not -- it's not possible. So it doesn't --

10 **THE COURT:** I think we're -- we're off
11 track here. And I don't want to make their --
12 argument for the state, but they need to show
13 that there's some sexual gratification from
14 this; this touching includes some form of
15 sexual gratification.

16 The state's arguing that, you know, just --
17 you know, that the average juror, presumably,
18 would hear about -- you know, that this -- that
19 spreading fecal matter on a child gave the
20 defendant sexual gratification. And the jury
21 might not understand that that touching was
22 sexual -- would have been, if proved, sexually
23 gratifying. So they are -- they're saying they
24 have to prove that -- that he got some sexual
25 pleasure out of doing this in order to satisfy

1 the elements, the basic elements of CSC with a
2 minor third degree.

3 **MS. SUSTAKOVITCH:** Yes, ma'am. And that's
4 the --

5 **THE COURT:** The old lewd act --

6 **MS. SUSTAKOVITCH:** -- that's exactly --
7 and I must have inartfully didn't express it.
8 But that's the first basis, which is we have to
9 -- there's two bases we're arguing under: what
10 Your Honor just said, which is we have the
11 total burden of proof on CSC third to prove all
12 of what you just said; and then, a secondary
13 backup position to that was the 404(b). But the
14 main one is what Your Honor just stated, which
15 is we have to prove an element of CSC third,
16 which is the gratification and that somebody
17 would enjoy what you just said, the feces.

18 **THE COURT:** All right.

19 **MR. KENDRICK:** But we've flipped to
20 another problem ---

21 **THE COURT:** Okay.

22 **MR. KENDRICK:** --- that the state's
23 brought up. If a common jury isn't going to
24 understand any of that, then who's going to
25 explain it to them. I mean, you're not going to

1 be able to put up an officer to say, "Yeah. I
2 found this, so he had" -- so who's going to --
3 who's going to make that connection? Nothing
4 the state seeks to introduce makes that
5 connection. So we almost end up in a now
6 different problem, that you're going to put
7 evidence in that seems unexplained because
8 you've made the argument that it's not
9 understandable to the jury.

10 **THE COURT:** Well, I think you're crossing
11 into that they need some sort of expert witness
12 to explain a clearly sexual position with,
13 presumably, the defendant's ankle in the
14 picture. That -- I mean, I don't think a jury
15 needs some sort of explanation as to what's
16 going on there.

17 **MR. KENDRICK:** For the record though,
18 that's another portion of our argument is that
19 the state has essentially admitted that this
20 evidence is going to be outlandish to the jury
21 is almost what they said. But they're going to
22 put it in anyway with no one to explain it. And
23 we object to that, but also understand
24 Your Honor's ruling.

25 **THE COURT:** No, I understand. And I'm not

1 necessarily -- I haven't ruled on anything.

2 **MR. KENDRICK:** I understand your position.
3 I'm sorry.

4 **THE COURT:** I'm just wanting to foster --
5 I'm just wanting to foster the right
6 conversation between all three of us. That's
7 all.

8 **MR. KENDRICK:** My cohorts might say
9 sometimes that I will argue too often too long,
10 so I'm just telling you that I understand what
11 you're saying. I'm not going to try to keep
12 going and going to change your mind. But,
13 Your Honor, essentially, I think -- here's the
14 problem we have: I guess we have multiple
15 levels of evidence here. So we have computer
16 searches that raise foundation and authenticity
17 issues.

18 **THE COURT:** Okay.

19 **MR. KENDRICK:** They're going to be able to
20 say that it was on the computer. But I guess we
21 need some understanding from law enforcement as
22 to how they know who made the search and, you
23 know, dates, things like that. Obviously, we're
24 going to object to any evidence that comes in,
25 "Oh, yeah. I know that the defendant did this

1 because -- I just know." So we have that -- we
2 have that problem.

3 Then, we get into -- so I guess, I move to
4 exclude coprophilia, in general. And I think
5 I've made that argument.

6 **THE COURT:** You have. Right.

7 **MR. KENDRICK:** It's irrelevant,
8 Your Honor. It's not -- it's not relevant to
9 these charges. And there is one incident where
10 they talk about this. There are multiple other
11 incidents that do not involve coprophilia, so
12 it doesn't leave the state sort of not being
13 able to tell their story. So we -- that's our
14 first objection.

15 Our second objection is: If you let it in,
16 then what is the scope of how it comes in? In
17 other words, who is going to -- and maybe
18 that's a better way for me to phrase this. I'm
19 not necessarily -- I mean, I think an expert
20 fits the mold, but who is going to say this is
21 a sexual gratification situation? I guess
22 they're going to have to say, "I looked at the
23 websites myself and, I guess, people go on here
24 and maybe this gets them going." I don't know.
25 Who's going to?

1 **MS. SUSTAKOVITCH:** There are --

2 **MR. KENDRICK:** See, we keep running into a
3 problem with somebody's going to have to
4 testify to something they don't have personal
5 knowledge of.

6 **THE COURT:** Yeah.

7 **MS. SUSTAKOVITCH:** There are people who do
8 have personal knowledge. If I may, Your Honor,
9 the mother of the victim, who is going to
10 testify, would state that she is well aware
11 that this defendant is into coprophilia. If he
12 wants that kind of testimony, we certainly can
13 put that up. The father of these children also
14 know that this defendant has a very strong
15 interest in coprophilia, Your Honor..

16 **MR. KENDRICK:** So to answer that: What do
17 you mean if I want them to put that evidence
18 up?

19 **MS. SUSTAKOVITCH:** I'm saying --

20 **MR. KENDRICK:** I mean, they're going to
21 have put evidence up.

22 **MS. SUSTAKOVITCH:** What I'm saying is --

23 **MR. KENDRICK:** I'm not --

24 **MS. SUSTAKOVITCH:** What I'm saying is,
25 that we -- I considered bringing in an expert

1 judge to explain what you're looking at in that
2 picture, but I really think a picture is worth
3 a thousand words and you don't need an expert
4 to explain to you what is being shown in that
5 picture.

6 And when you look at her smiling -- there's
7 two things: You look at her smiling. You see
8 his ankle. You look at the other one where she
9 looks completely wasted, which I think the
10 evidence is going to show in this case that she
11 probably was. The co-defendant was into drugs.
12 She would take a lot of pills to even engage in
13 this.

14 So we just did not feel that you -- some
15 things don't need explanation in that respect,
16 I don't believe. But the mother of the children
17 and the father of the children would say they
18 have first-hand knowledge from this defendant
19 that he is into coprophilia, if that is an
20 issue.

21 **THE COURT:** I don't know that that's what
22 Mr. Kendrick's getting at.

23 **MR. KENDRICK:** No. I mean, I guess the --
24 right. Now, we're going down -- maybe further
25 down the hole. Obviously, they have hearsay

1 evidence maybe, I think. I mean, I don't know
2 what the evidence is. They're going to probably
3 have to proffer that if they want it in. I'm
4 not going to -- the other thing I'm not going
5 to do, Your Honor, is sort of lukewarm
6 cross-examination because I'm scared of all
7 these things they've told me may or may not be
8 here. I mean, I don't know what they're talking
9 about. I mean, yeah, I guess they have
10 knowledge of it. They'd have to get it from
11 somewhere.

12 So I don't -- I guess my concern though is:
13 When you say a picture is worth a thousand
14 words, to me, that's sort of not the way we
15 handle trial practice. Because pieces of
16 evidence don't stand on their own; they have to
17 have relevant -- I mean, they have to be
18 authentic; they have to have a foundation; they
19 have to then be relevant; and they have to be
20 probative; and the probativeness has to
21 outweigh the prejudice.

22 In this case, it sounds like what we're
23 going to do is say:

24 "Is this a picture?"

25 "Yeah."

1 "Is somebody covered in feces?"

2 "Yeah."

3 But where do they go from there? That's
4 maybe the concern I have that we kind of have
5 some evidence that I think is irrelevant. But
6 if it is relevant, nobody can explain why.

7 **THE COURT:** Well, the jury is the decider
8 of fact.

9 **MR. KENDRICK:** But who's going to say that
10 that picture reflects my client's sexual
11 gratification?

12 **THE COURT:** That's for the finder of fact
13 to do. All right. All right. I'm not entirely
14 sure -- I can tell you so far as the website
15 searches, I'm going to really, really limit
16 that. I'm not exactly sure where I'm going to
17 draw that line, but I'm going to draw the line
18 somewhere to summarily say something along the
19 lines of multiple searches for enemas or
20 something like that. And that's assuming that
21 we feel like we can tie the defendant to this
22 particular computer or that Investigator Perry
23 has some information along those lines. Okay.

24 So far as, you know, urine, again, another
25 -- if I allow it, it's going to probably be a

1 very cursory statement of "found multiple
2 searches for urine and, you know, drinking of
3 urine."

4 All right. This photograph of this lady
5 engaged -- this lady engaged in -- well, of the
6 defendant taking a picture of this lady engaged
7 in what appears to be some sexual act with what
8 the finder of fact may find -- may believe to
9 be fecal matter on her, I'm going to allow
10 that. I think -- I think its probative value as
11 a necessary element of CSC third degree
12 outweighs its prejudicial value. I'm happy to
13 give limiting instructions to the jury. I don't
14 know that I think the close-up of her face is
15 necessary.

16 **MS. SUSTAKOVITCH:** Yes, ma'am.

17 **THE COURT:** I don't know that it's
18 prejudicial in any way, but I don't know that
19 it's necessary. And then, this second closer-up
20 picture, I don't -- I think that's just
21 cumulative. And in fact, the defendant -- if
22 this -- and I'm assuming that y'all have got
23 some evidence that this is the defendant's foot
24 or ankle.

25 **MS. SUSTAKOVITCH:** Yes, ma'am. We are

1 calling a witness from the LEC that would show
2 on one of his booking photos that he has an
3 Aquarius band. We also have a photograph of him
4 standing with the kids -- I don't know if I'm
5 entering that -- with the Aquarius band.

6 **THE COURT:** Okay. I just find it's a
7 necessary element. I, you know, just quickly to
8 refresh myself, I pulled up CSC with a minor
9 third degree. "A person is guilty of criminal
10 sexual conduct with a minor in the third degree
11 if the actor is over 14 years old and the actor
12 willfully and lewdly commits or attempts to
13 commit a lewd act or a lascivious act upon or
14 with the body or its parts of a child under 16
15 years of age with the intent of arousing,
16 appealing or gratifying the lusts, passions, or
17 sexual desires of the actor of the child." I
18 think this is absolutely necessary and the
19 state has to be able to introduce that to prove
20 that element of CSC third degree.

21 And I do -- I have done a 404 analysis and
22 I have done a 403 analysis, and I do certainly
23 find that the probative value outweighs the
24 prejudicial value or the prejudicial effect of
25 that particular evidence. And I'm happy to mark

1 these other items just for purposes of this
2 hearing only as State's 1, 2 and 3, the three
3 folders, just to show the material that you did
4 not seek to introduce. And then, the other two
5 photographs, we can mark them as State's
6 Exhibit 4 and 5, the two photographs that I
7 excluded. And then I'll leave the one that I'm
8 going to allow you to introduce, assuming that
9 you can lay the proper foundation and then that
10 sort of thing. And I'm assuming that that's
11 what Investigator Perry is here for.

12 You know, we don't have to mark it, but we
13 can mark it as State's Exhibit Number 6, for
14 purposes of this hearing. But I know you're
15 going to introduce it in the trial itself.

16 **MS. SUSTAKOVITCH:** Yes, ma'am. Thank you,
17 Your Honor. One -- thing related to that,
18 laying the foundation: When this defendant was
19 interviewed, he handed -- that's actually from
20 his phone --

21 **THE COURT:** Okay.

22 **MS. SUSTAKOVITCH:** -- those pictures. He
23 handed them over to Tim Kelly with Travelers
24 Rest, and he stated that his bedroom was
25 locked, that he had this unusual sex life, but

1 the children would have no knowledge of it
2 because he kept his room locked and they
3 couldn't get in there. So that testimony is --
4 the state does plan on doing a short *Jackson v.*
5 *Denno* on Monday for that brief bit of testimony
6 related to that. I believe it's about a minute
7 and a half long where he is taking ownership of
8 those pictures that were on that phone.

9 **THE COURT:** All right. All right.
10 Mr. Kendrick?

11 **MR. KENDRICK:** The only thing I would say,
12 Your Honor, is just to be fair, if -- I guess,
13 the pictures are coming in through maybe
14 Investigator Perry at trial, since this is not
15 a final ruling, for the purpose of the record,
16 it may be cleaner for me to, just before he
17 gets called, give you a very concise summary of
18 our objections for the record and then leave it
19 at that.

20 **THE COURT:** Absolutely. And let me -- let
21 me be clear. I don't know that you and I have
22 had a trial. We've had lots of hearings and
23 lots of things like that.

24 **MR. KENDRICK:** That's right.

25 **THE COURT:** I don't know if we've ever had

1 a trial. I respect your need to put anything
2 you need to put on the record. I understand
3 that. I'm not going to push you along with
4 regard to that. I'm going to allow you to put
5 anything you want to on the record, for
6 purposes of -- you know, of appellate review.
7 And so do not feel as though I'm going to have
8 any pause about you doing anything like that.
9 We will make sure that the record is very, very
10 clear. And I -- and I know that at the time of
11 trial, you'll need to make these objections.
12 And probably if you don't, I'll probably look
13 at you.

14 **MR. KENDRICK:** I know.

15 **THE COURT:** Okay.

16 **MR. KENDRICK:** Thank you.

17 **THE COURT:** Okay. All right.

18 **MS. SUSTAKOVITCH:** Thank you, Your Honor.
19 The final motion for the state would be related
20 to the forensic interviews that have been
21 passed up. Normally, I would do voir dire on
22 Monday morning with the forensic interviewer. I
23 tried to get her here today, but she's in
24 California, Judge; and she flies back in
25 Sunday. I anticipate her voir dire to be just

1 the normal standard under State versus Whitner,
2 not qualifying her as an expert. She's just
3 going to be bare-bones getting those interviews
4 in, if Your Honor finds that they meet the
5 requirements of 17-23-175.

6 I would want to say that, as an officer of
7 the court, one of the videos was concerning to
8 me; and defense counsel and I talked about it.
9 I honestly have not had a case where I had two
10 victims and four forensics; so I'm trying to
11 feel my way through this as well.

12 The children were initially interviewed in
13 the summer of 2016 after Kaylen, this
14 defendant's granddaughter, had told her brother
15 that this -- that her granddad had abused her.
16 And during that interview, she said that there
17 were two incidents where she was abused.
18 Brendan was also interviewed, Your Honor. And
19 you have that video. He does not state that he
20 was abused in that interview. And as you watch
21 it, I think you're going to see what I see,
22 which is, I -- I am not certain -- and I do not
23 intend to try to tell this jury they need to
24 rely on Brendan seeing anything. You know, it's
25 Kaylen's testimony about what she says happened

1 to her. I'm not sure exactly which parts
2 Brendan actually saw or heard about. I don't
3 know. They go back and forth there.

4 And in his first forensic, I just wanted
5 Your Honor to know, he does not state he was
6 abused. He says that he saw part of the abuse
7 with Kaylen, but it vacillates back and forth,
8 to me, about, well, did you actually see that
9 or did you hear about that.

10 You know, and so however Your Honor wants
11 to handle that -- I asked Mr. Kendrick -- we're
12 not fighting to get that video in. We don't
13 want to violate the statute at all. If
14 Your Honor deems at all that it's not in
15 compliance with it, then it's -- I'm looking
16 for the word here. It's just escaping me -- but
17 it doesn't have enough internal coherence, we
18 would understand that.

19 The second factor there is, you know, I've
20 never put in a witness -- a statement of a
21 witness related to a forensic interview. It's
22 always been the victim. And when I look back at
23 the statute, it does say it can be the victim
24 or witness. But I just wanted to bring
25 Your Honor -- that first forensic to your

1 attention. What I didn't want to have happen is
2 that the jury feel like we're hiding something
3 from them. So I was asking Mr. Kendrick what
4 his thoughts were.

5 **THE COURT:** Okay. Yes, sir.

6 **MR. KENDRICK:** And I thought about it. And
7 they all got to come in, Your Honor, I think is
8 our position, if any of them are coming in. In
9 other words, if, for some reason, you found
10 three videos admissible, but this first one
11 we're talking about inadmissible under the
12 statute, then we would seek to introduce it
13 under another rule of evidence.

14 But, hopefully, I will not come to regret
15 this: We think that all four would have to be
16 moved into evidence. I don't disagree with what
17 the solicitor is saying, but that would not be
18 a reason for it to not come in. It may not
19 match the statute, but it would have to come
20 in, I guess -- it would have to come in as a
21 prior, maybe, inconsistent statement or -- I
22 don't know.

23 **MS. SUSTAKOVITCH:** We don't disagree with
24 that.

25 **THE COURT:** Okay. What's that?

1 **MS. SUSTAKOVITCH:** We don't disagree with
2 that. I just wanted to call it to Your Honor's
3 attention because it doesn't fall within --

4 **THE COURT:** Well, we -- as I said, we've
5 started watching some of the -- we had a little
6 technical difficulty. We started, but have not
7 completed that. But it sounds like everybody's
8 on the same page, that if these statements are
9 -- uh-oh.

10 **MR. KENDRICK:** No. We are. We are.

11 **THE COURT:** Yes, sir.

12 **MR. KENDRICK:** I just -- whenever the
13 government and I agree on something, I get very
14 hesitant to continue moving forward. But I
15 mean, obviously we would request compliance
16 with the statute, but I'm not going to argue
17 that the videos don't come in.

18 **THE COURT:** Okay. All right.

19 **MR. KENDRICK:** And that's to be fair to
20 Your Honor.

21 **THE COURT:** Well, I appreciate it.

22 **MR. KENDRICK:** If you say they're coming,
23 I'm not going to say, "Oh, no. What about this
24 or that?" I don't have an argument that they
25 don't come in. I would probably seek to admit

1 them --

2 **THE COURT:** Okay. But you're saying that,
3 if after reviewing them, even if one of them --
4 even if that one in question might not track
5 the statute completely, like, in other words,
6 the state couldn't necessarily admit it, you
7 wanted it admitted for completeness?

8 **MR. KENDRICK:** Correct.

9 **THE COURT:** And -- okay. All right. Okay.
10 And it sounds like the state doesn't oppose
11 that.

12 **MS. SUSTAKOVITCH:** No, ma'am.

13 **THE COURT:** All right. All right.

14 **MS. SUSTAKOVITCH:** The last thing, Judge,
15 the defense counsel and I briefly mentioned
16 this. Normally, we try to agree -- I try to
17 agree on redactions. So I guess we could take
18 that up Monday morning. I do think that there
19 are some things that need to be redacted from
20 each one of those interviews that should come
21 out --

22 **THE COURT:** Okay.

23 **MS. SUSTAKOVITCH:** --- in fairness to this
24 defendant. And if Your Honor sees some, just
25 let us know. But I know that there is a mention

1 of the children having this defendant making
2 them lick each other. We're not -- I think
3 that's a prior bad act that we're not trying to
4 prove and I think that should come out. There's
5 just multiple instances like that that would
6 need to come out. I guess we could talk Monday
7 about it.

8 **THE COURT:** Okay.

9 **MS. SUSTAKOVITCH:** Unless defense counsel
10 and I could agree on some.

11 **THE COURT:** Okay.

12 **MR. KENDRICK:** Because I think we would
13 lean towards not asking for those redactions;
14 and, in fact, again, arguing that if we're
15 going to put the tape in, the interview, then
16 everything needs to come in.

17 **MS. SUSTAKOVITCH:** There's some parts that
18 I --

19 **MR. KENDRICK:** Every piece of evidence
20 could be -- I guess my argument or my thought
21 is that it may very well be that we did not ask
22 for redactions.

23 **THE COURT:** Okay.

24 **MR. KENDRICK:** And if we do, I'm going to
25 put that on the record and I'm going to

1 understand that I have, you know, waived that
2 objection if it goes to a higher court.

3 **THE COURT:** Yeah.

4 **MR. KENDRICK:** If it's a mistake --

5 **THE COURT:** Yeah. We're going to have to
6 be real clear on the record if we let that in.

7 **MR. KENDRICK:** No. Your Honor, listen, I
8 don't think -- I don't think -- I may open
9 myself up to a proceeding down there, but I'm
10 not going to try to be tricky. We're -- we're
11 here for one result. You know, I understand the
12 danger of making certain decisions. So I would
13 ask that, maybe Monday morning, if we go
14 through the things the state doesn't think
15 should come in ---

16 **THE COURT:** Uh-huh.

17 **MR. KENDRICK:** --- maybe we'll agree by
18 then.

19 **THE COURT:** Okay.

20 **MR. KENDRICK:** But at this point, I do not
21 see anything that, you know --

22 **THE COURT:** Sounds like that would be a
23 good idea for y'all to have a conversation. And
24 if y'all want to talk about it with me
25 tomorrow, of course, I'm around tomorrow or

1 whatever you need to do.

2 All right. Yes, sir.

3 **MR. KENDRICK:** I think -- well, I have a
4 couple of things. First of all, housekeeping:
5 Your Honor, I don't know if we've talked about
6 this Mr. Smith, my law partner Chris Leonard
7 will be trying the case with me, and then the
8 defendant's present.

9 **THE COURT:** Yes, sir.

10 **MR. SMITH:** That means I won't be trying
11 the case with him, based on what he just said.

12 **THE COURT:** Okay.

13 **MR. SMITH:** I'm out of here.

14 **MR. KENDRICK:** Somebody will be here on
15 Monday morning.

16 **THE COURT:** I trust any of the three of
17 you or all of the three of you.

18 **MR. KENDRICK:** Your Honor, the motions
19 that we had made, it sounds like you've
20 resolved: the pictures and coprophilia. There
21 is a third motion related to 404(b) evidence
22 for a prior allegation that the solicitor tells
23 me they are not going to introduce in ---

24 **THE COURT:** Yeah.

25 **MR. KENDRICK:** --- their case in chief.

1 **THE COURT:** Okay.

2 **MR. KENDRICK:** My understanding is that it
3 will only come up if I, you know, somehow open
4 the door to it. But it's my understanding that
5 they're not going to have a witness slide it
6 in: "Oh. By the way, he did this one other
7 time."

8 **THE COURT:** That would have been my ruling
9 if ---

10 **MR. KENDRICK:** Okay.

11 **THE COURT:** --- it had not -- just for the
12 record, if it had not been agreed upon.

13 **MR. KENDRICK:** So the two other things I
14 have, Your Honor, that I didn't file a written
15 -- not written motions, they're probably more
16 like housekeeping.

17 **THE COURT:** Sure.

18 **MR. KENDRICK:** So I think we talked about
19 scheduling. It's possible that I will not be
20 able to start my defense until Wednesday, which
21 I think will line up with what we're doing.

22 **THE COURT:** That's fine.

23 **MR. KENDRICK:** The other thing,
24 Your Honor, and this is sort of a unique
25 situation for me. I'm aware that it happens in

1 Greenville County, even though I have not dealt
2 with it in other counties. But I know, a lot of
3 times, bond will be revoked on the first day of
4 trial. So I -- let me start with the practical
5 and then move to the other end.

6 But I have talked to Sentinel, who does the
7 monitoring. Corporal Neil says they do not send
8 -- I think it's Corporal Neil -- they do not
9 send letters anymore to lawyers to say
10 someone's in compliance, but that I can say on
11 the record that if my client hasn't been
12 brought to court on violation, he is in
13 compliance. I've also spoken with Catch 22, who
14 wrote the bond.

15 **THE COURT:** Okay.

16 **MR. KENDRICK:** There are two separate
17 bonds, both written by Catch 22, two separate
18 bondsmen. I don't know how bonding companies
19 work internally. But the first guy said he
20 doesn't really care, but he was going to talk
21 with the second guy who my client says he
22 actually deals with more ---

23 **THE COURT:** Uh-huh.

24 **MR. KENDRICK:** --- with reporting and
25 things. So if that's something you're going to

1 do, I need to probably keep going because I
2 think there is -- there is both a logistical
3 problem and a constitutional problem.

4 **THE COURT:** Well, you know what I've --
5 you know what I've done in cases like this
6 before: Sometimes I have -- I haven't revoked
7 their bond. It's just they don't have a bond,
8 once we swear the jury. But what I have done is
9 I've set a trial bond. And bonding companies,
10 especially if the defendant had some
11 relationship with them, have been, in my
12 experience, very willing to go on a trial bond,
13 you know, for a week or whatever. So you know,
14 I might end up doing something like that, but
15 probably something very low. But, you know, set
16 a trial bond of some kind, and then keep him on
17 the monitor.

18 **MR. KENDRICK:** Okay. So our position would
19 be to make arrangements with the bonding
20 company so that we could effect that.

21 **THE COURT:** Uh-huh.

22 **MR. KENDRICK:** And the reason, Your Honor,
23 is: I do think it -- it's always been my
24 position that bond ends upon resolution of the
25 case, and I think I've got a plain language

1 argument. I think there's an Eight Amendment
2 argument. But assuming you're not making me
3 argue that, then really it's just logistical. I
4 mean, I don't think the jail wants me and
5 Fletcher and Chris and whoever else down there
6 until midnight, which is not an unheard of
7 event in a trial of this nature where the --

8 **THE COURT:** I understand.

9 **MR. KENDRICK:** So if you'll consider that
10 trial bond, I will make arrangements with the
11 bonding company for that to be. Your Honor,
12 they may not -- I think they'll be perfectly
13 happy. They've written a lot of bonds related
14 to this case.

15 **THE COURT:** Yeah.

16 **MR. KENDRICK:** They've not had any trouble
17 with Mr. Carpenter at all.

18 **THE COURT:** Yeah. Yeah. You know, these
19 charges are serious enough that I probably just
20 can't quite overlook it altogether, but I
21 probably would set some sort of a trial bond so
22 that a bondman would have some interest in
23 going and finding him.

24 **MR. KENDRICK:** What we'll do, maybe, is
25 plan on having someone from Catch 22 here with

1 us Monday morning.

2 **THE COURT:** Great.

3 **MR. KENDRICK:** I assume that part of your
4 ruling would certainly turn on whether
5 Mr. Carpenter is there Monday morning. So that
6 will -- we know he's going to be here, but I'm
7 sure you want to wait until you see that to set
8 the trial bond. But I'll have Catch 22 here,
9 too, to do what we need to do, so we don't end
10 up kind of trying to figure out how to talk to
11 him during trial; so thank you.

12 **THE COURT:** Does the state have any
13 objection to my setting a trial bond in this
14 case?

15 **MS. SUSTAKOVITCH:** No, ma'am.

16 **THE COURT:** I mean, I know that's an old,
17 old-timey concept.

18 **MS. SUSTAKOVITCH:** No. I just would defer
19 to Your Honor -- what Your Honor would like to
20 do. Normally, they are taken into custody. But
21 we understand, Your Honor.

22 **THE COURT:** Okay.

23 **MR. KENDRICK:** I've actually only had that
24 happen in one case, and it was here. But I
25 tried many, many more and that's never been an

1 issue, which is why I bring it up because I got
2 caught by surprise. The last time I was in this
3 courthouse, it happened; so I just wanted to
4 address it before Monday because I had an irate
5 client.

6 **THE COURT:** You are smart and one of the
7 few attorneys that I've ever had address it
8 before trial starts.

9 **MR. KENDRICK:** It's too late once trial
10 starts ---

11 **THE COURT:** Yeah.

12 **MR. KENDRICK:** --- to bring things up.
13 Your Honor, I think -- and I've spoken to the
14 solicitor and I think I mentioned this to you
15 when we were last in court on this case. I
16 think that that resolves most of our pretrial
17 stuff. I can't commit that I won't have other
18 things ---

19 **THE COURT:** Sure.

20 **MR. KENDRICK:** --- but I think that we
21 will be set to pick a jury Monday and whatever
22 they said *Jackson v. Denno*, and things like
23 that.

24 **THE COURT:** Yeah. And so it sounds like
25 what we'll probably do is -- just for

1 scheduling purposes, is meet back up, see if
2 there's anything last minute we can take care
3 of before we do jury qualification. And then,
4 of course, I know y'all are going to want to be
5 there for jury qualification.

6 And then, maybe, select a jury. Don't swear
7 them, but let them go. And then bring them back
8 at some reasonable time in the afternoon, one
9 or two o'clock, and start then. Does the state
10 feel like that would work with what you are
11 planning on introducing --

12 **MS. SUSTAKOVITCH:** Yes, ma'am.

13 **THE COURT:** -- or witnesses you are
14 planning on calling?

15 **MS. SUSTAKOVITCH:** Yes, ma'am.

16 **THE COURT:** Okay. I've got an issue I want
17 to bring up.

18 Do you have something you wanted to...

19 **MS. SUSTAKOVITCH:** No, ma'am.

20 **THE COURT:** Oh, okay. I just didn't want
21 to jump the line. Okay. I've been thinking
22 about voir dire in this case -- or, I guess, if
23 I were in Charleston, "voir dire" -- but I've
24 been thinking about that in this case. I'll
25 just state, it's going to be tricky; a little

1 bit tricky, I think. And I think more than just
2 a passing thought ought to be given to voir
3 dire in this case.

4 Is this a case where you feel like written
5 voir dire is necessary? I have never done that.
6 But I do know that some judges have given
7 written questions to the entire jury pool and
8 then, you know, brought a panel up from there,
9 just to -- you know, just to put their juror
10 number on it and ask some questions, if there's
11 anything they need to disclose, and then we can
12 speak with them individually and somewhat
13 privately.

14 **MS. SUSTAKOVITCH:** Your Honor, I -- one
15 issue that I've been struggling with and was
16 going to bring up Monday related to voir dire:
17 Mr. Carpenter -- I don't know if Your Honor is
18 familiar with, but Carpenter Brothers Pharmacy.
19 That was on Main Street. His father and his
20 uncle owned that. And Mr. Fletcher Smith and I,
21 in our dealings back and forth, that has come
22 up a good bit. And I'm not quite certain if
23 that needs to be something brought up in voir
24 dire. I was going to ask, because there are
25 depositions in this case, there was commentary

1 about this defendant's dad being a Marine and
2 owning that store. And it just seemed to be --
3 I guess this is a motion in limine to exclude
4 that, but I don't know if we need to have a
5 voir dire question related to if they know that
6 family.

7 I'm not from Greenville. I'm from Newberry.
8 So I don't know how big that is, you know, if
9 that is such a landmark in Greenville that
10 there are going to be people that just
11 automatically know it.

12 **MR. SMITH:** Your Honor, it was a landmark
13 on Main Street for years. And I was -- well, I
14 was friends with his parents for years and all
15 the older guys, who kind of, like, brought me
16 through Greenville. But it might be relevant to
17 find out if anybody, you know, frequented the
18 store, were friends with the people, it might
19 be relevant from a voir dire standpoint.

20 **THE COURT:** Sure. And I have to say, I'm
21 from Seneca, so I'm not -- you know, I'm not
22 familiar with it, but I'm happy to ask a
23 question. If you -- either side wants it, I'd
24 just ask you to, you know, give me some written
25 -- written voir dire that I can voir dire.

1 **MS. SUSTAKOVITCH:** And I think my first
2 question would be that the motion in limine
3 would be to exclude that type of testimony.

4 **THE COURT:** Sure.

5 **MS. SUSTAKOVITCH:** It seems completely ---

6 **THE COURT:** Well, it would be your --

7 **MS. SUSTAKOVITCH:** --- irrelevant.

8 **THE COURT:** -- I don't see any relevance
9 of it ---

10 **MS. SUSTAKOVITCH:** Yes, ma'am.

11 **THE COURT:** --- in the case in chief. But
12 if you want to find out if anybody's gone to
13 the store and are familiar with it, yeah.

14 **MR. KENDRICK:** We get that. Your Honor,
15 I'm not going to ask about it.

16 **THE COURT:** Yeah.

17 **MR. KENDRICK:** I'm from here. I've lived
18 here all my life. I've never heard of Carpenter
19 Brothers. I don't know. I mean, maybe the --
20 I'm more interested in the first part of your
21 question. I think that it's a shame that we do
22 not --

23 **MS. SUSTAKOVITCH:** Judge, if that's going
24 to be kept out, then I don't need a voir dire.

25 **MR. KENDRICK:** Well, no. We should do

1 that. Mr. Smith reminds me, I guess, there may
2 -- there may be some relevance to -- I don't
3 know about his dad being a Marine and stuff,
4 but there may be some relevance to the family
5 relationship and it kind of depends on trial.
6 So maybe I shouldn't "blanket" agree.

7 **THE COURT:** Well, before you go into
8 anything like that --

9 **MR. KENDRICK:** Absolutely. What we would
10 do is: When we put Mr. Carpenter on the stand,
11 if we do, then we can address that. I mean, you
12 know, it might be done a lot sooner than that.
13 You never know. But as to your first question,
14 Your Honor, I think we should have regular voir
15 dire, like in a death penalty case, on every
16 trial, like many states do. So I am all for the
17 most voir dire you will allow us. And if it is
18 -- if you would allow written questions to the
19 panel, then I think that's great. I will get
20 them to you tomorrow by noon.

21 **THE COURT:** If y'all want to -- if y'all
22 want to propose it, like I said, I haven't done
23 it before, but if y'all want to -- if y'all
24 want to propose something like that, then I'm
25 happy to take a look at it. I'm pretty limited

1 in the voir dire that I do, but I also don't
2 want to humiliate anybody. I hate doing that on
3 cases like this where a juror comes in and
4 they're just, you know -- have to be
5 humiliated, is the only way I know to say it.

6 **MR. KENDRICK:** I think it goes to both
7 sides. I mean, there are sensitive issues that
8 work both for and against us.

9 **THE COURT:** Absolutely.

10 **MR. KENDRICK:** I would -- I usually send
11 -- or give the state some sort of written voir
12 dire I'm asking you to read. But would I would
13 be happy to do is, at least, write what I would
14 ask you to ask the jury. I'll send it to you in
15 a Word document. We can say no way to all of
16 it; yes to some of it; or whatever you want to
17 do. But my position is: I'll take whatever voir
18 dire the Court would give me.

19 **THE COURT:** Okay. All right.
20 Ms. Sustakovitch, do you have any position on
21 the -- anything else you want to say on that?

22 **MS. SUSTAKOVITCH:** No, ma'am, Your Honor.

23 **THE COURT:** All right. All right. And
24 then, finally, Mr. Carpenter ---

25 **THE DEFENDANT:** Yes, ma'am.

1 **THE COURT:** --- turning to you. You're
2 fine.

3 He's fine. I just want to say a word to him
4 on the record.

5 You've got outstanding lawyers. I know
6 they've been talking to you all throughout
7 preparing for trial about whether or not you're
8 going to testify. I just want to say to you
9 that we don't know how fast this trial is going
10 to go and that decision could come up sooner
11 than you think. So I just want to go ahead and
12 say to you, while I've got you here for a
13 moment, that needs to be a conversation you're
14 having with your attorneys all throughout. I
15 just don't want you to get caught flat-footed.
16 They're going to talk to you about this and
17 they've been talking to you about this, I know.
18 But I just want you to have that in mind. All
19 right?

20 **THE DEFENDANT:** Yes, ma'am.

21 **THE COURT:** Anything -- anything you use
22 for purpose of impeachment so far as criminal
23 convictions?

24 **MS. SUSTAKOVITCH:** No.

25 **THE COURT:** None?

1 **MS. SUSTAKOVITCH:** No, ma'am.

2 **THE COURT:** Okay. All right. So we've got
3 all our cards on the table. All right. Anything
4 else anybody wants to take up?

5 **MS. SUSTAKOVITCH:** No, ma'am. Thank you.

6 **THE COURT:** I guess there's just no -- the
7 chance of a plea in this case is -- I've never
8 -- I don't ever push on anybody. But I know
9 that this is definitely a case with a lot of
10 twists and turns and might be an adjustment for
11 the jury.

12 I'd just say: If anybody wants to talk
13 about plea -- any kind of plea or any kind of
14 situation like that, I -- I know
15 Ms. Sustakovitch -- and I'm happy to give you,
16 too -- has my cell number, my office number, my
17 whatever. I'm happy to talk to you, if it's
18 10 o'clock tonight, if it's 10 o'clock Sunday
19 night. I'm happy to talk to anybody and do a
20 conference call if we need to. All right.

21 So all right. That being said, I guess
22 we've taken up everything. We'll just plan to
23 get back together, let's say, nine o'clock ---

24 **MR. KENDRICK:** Thank you, Judge.

25 **THE COURT:** --- on Monday.

1 Josh, let me -- well, Fletcher's got my
2 cell number.

3 You got my cell number, don't you,
4 Fletcher?

5 **MR. SMITH:** Yes, ma'am.

6 **THE COURT:** I thought you did. I'm sure.

7 **MR. SMITH:** Thank you, Your Honor.

8 **THE COURT:** Okay. Good. So both sides have
9 got my cell number. Call me if you need me or
10 call my office or call my cell.

11 **MR. SMITH:** Or your law clerk.

12 **THE COURT:** Okay. All right.

13

14 (Proceedings conclude at approximately

15 11:05 a.m.)

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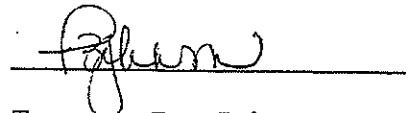
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CERTIFICATE

65

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 18th day of February 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson

Circuit Court Reporter