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**Apr 06 2026**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ONTARIO LAMAR STALEY,

APPELLANT

APPELLATE CASE NO. 2024-002003

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FINAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUES ON APPEAL**

1. Did the trial judge err in admitting documents from a website linking Appellant to an advertisement for sexual services when the State failed to properly authenticate the documents?
  
2. Did the trial judge err in admitting three additional sexually explicit photographs of two minor teenage girls with the adult female co-defendant without conducting a Rule 403 analysis when the probative value of the photographs was substantially outweighed by the needless presentation of cumulative evidence?

## STATEMENT OF THE CASE

In May of 2022, the Richland County Grand Jury indicted Appellant, Ontario Staley, for two counts of sexual exploitation of a minor first degree, indictments #2022-GS-40-03148, 3149, two counts of sexual exploitation of a minor second degree, indictments #2022-GS-40-03150, 3151, and two counts of trafficking in persons under eighteen years of age, indictments #2022-GS-40-03152, 3157. (R. p. 622-629). On November 18, 2024, Appellant proceeded to jury trial before the Honorable Jocelyn J. Newman. Scott Hayes represented Appellant at trial. Megan Raymer and Carolina Hughes prosecuted the case. The jury found Appellant guilty of the two sexual exploitation of a minor first degree charges and the two trafficking charges. The jury found Appellant not guilty of the two sexual exploitation of a minor second degree charges. Judge Newman sentenced Appellant to sixteen (16) and seventeen (17) years concurrent for the trafficking charges, and three (3) years consecutive for each of the exploitation charges resulting in an aggregate sentence of twenty-three (23) years. (R. p. 630-637). A timely notice of intent to appeal was filed on November 25, 2024. This appeal follows.

## ARGUMENTS

1. **The trial judge erred in admitting documents from a website when the State failed to properly authenticate the documents.**

### **Standard of Review**

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

### **Discussion**

According to the co-defendant and former girlfriend of Appellant, Naneka Perry, Appellant took sexually explicit photographs of Perry and two minor girls, aged sixteen and seventeen. (R. p. 186, lines 13 – p. 186, 187, lines 1-6; pp.178-179). Perry considered the girls her half-sisters. (R. p. 179, lines 24-25). Perry testified that Appellant used the photographs to create advertisements for sex on an adult website called Skip the Games. (R. p. 186, line 21 – p. 187, 188, lines 1-25). The advertisement was entered in evidence, over objection, as State’s exhibit #5. (R. p. 144, lines 1-7). According to Perry “Johns” would answer the advertisements and Appellant would drive the girls to different locations where a pre-arranged sex act would take place. (R. pp. 192-193).

Prior to trial the State made the judge aware of some purported business records the State planned to introduce in evidence. (R. p. 13, line 5 – pp. 14-19, lines 1-15). The prosecutor explained that a website for adult services called skipthegames.eu provided SLED agent Logan Fey with cellphone numbers and email addresses that were used to set up Skip the Games accounts

in question. (R. p. 14, lines 1-9). The State relied on S.C. Code Ann. § 19-5-520, Rule 902, SCRE, and Rule 803(6), SCRE for their admission. (R. p. 13, lines 6-11). Counsel for Appellant objected. (R. p. 15, lines 7-20, p. 16, lines 4-23). The judge ruled:

With this, though, skipthegames.eu, I've seen the certification, and I don't know that it satisfies this court, that it meets the requirements of Rule 803 and 902 of the South Carolina Rules of Evidence or South Carolina Code Section 195520. I mean, it –the statute does refer to a certification of the custodian or other qualified person, but I – I guess the difficulty I have is that I –I can't verify the authenticity of that document.

And I –I promise you this is not a slide against you, but – or a suggestion in any way whatsoever—but for all I know, you scribbled a signature on that in your office. You know, an affidavit where someone has notarized it, where there was a witness to it or something like that –a notary verifies the – the identity of the person making the signature and then attest that they saw that person sign the document, why it's just a better practice. That piece of paper doesn't tell me that.

And again, not suggesting that you've done that. You could have emailed some intern at Skip the Games who forgot to do their job and they scribbled something up and sent it to you. I only mention that not because those are necessarily what happened here, but to demonstrate the lack of veracity of the unsworn document. And so I'm not going to exclude that category of stuff per se at this point, but based only on what I know now, where there are contemporaneous objection, I would sustain the objection.

So maybe you can cure it or beef it up in some way, but you're not there yet as far as I'm concerned. So that can be revisited at the time it is presented.

(R. p. 20, line 4- p. 21, lines 1-7).

During the trial the State proffered the testimony of SLED Agent Logan Fey. (R. pp. 373-385). Agent Fey testified, "Having done this through training experience for as long as I've been working these cases at SLED, we have developed a partnership and, through my experience also with HSI, we know that the targeted point of contact for this particular company, Skip the Games, is an individual by the name of Samuel Hancock – he's a customer service manager who runs all the legal requests. He very quickly responds to a request." (R. p. 378, lines 11-19). Agent Fey verified that the official company name was skipthegames.eu. (R. p. 380, lines 7-10). The agent

testified, “Because their servers are actually held in overseas accounts. They do have an office here in the United States in Los Angeles, but the actual company is based outside the United States.” (R. p. 380, lines 10-13). The prosecutor asked, “So they are officially – you know, this isn’t usually used in a criminal sense but domiciled overseas?” (R. p. 380, lines 14-15). The agent answered, “That’s correct.” (R. p. 380, line 16).

Counsel for Appellant continued to object to the admission of the evidence, pointing out that the servers are maintained overseas. (R. pp. 386-387). The State argued the certificate met the requirements of the statute. (R. p. 388, lines 6-11). The judge overruled the objection stating, “Yeah, I think that any defect in the admissibility of the evidence was cured, or is cured by the proffer testimony of Agent Fey.” (R. p. 388, lines 12-14). When Agent Fey testified in front of the jury the certificate was admitted in evidence, over objection, as State’s exhibit #19. (R. p. 436, line 24 – p. 437, lines 1-25). State’s exhibits #20, #21, spreadsheets of the ads, and #22, response from Skip the Games, were admitted over objection. (R. p. 438, lines 3 -23). The judge erred in admitting the records from Skip the Games, State’s Exhibits #19, #20, #21, and #22 because the State failed to authenticate the records. The exhibits are foreign records used in a criminal case. Neither S.C. Code Ann. § 19-5-520, nor Rule 902, SCRE apply to foreign records in a criminal case. The certificate, State’s #19, cannot authenticate the foreign records, State’s #20, #21, #22.

S.C. Code Ann. § 19-5-520 (emphasis added) provides:

In addition to those matters provided by Rule 902, South Carolina Rules of Evidence, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(A) The original or a copy of a **domestic record** that meets the requirements of Rule 803(6), South Carolina Rules of Evidence, as shown by a certification of the custodian or another qualified person that complies with a state statute or a court rule. Before the trial or hearing, the proponent shall give an adverse party reasonable written notice of the intent to offer the record and shall make the record

and certification available for inspection so that the party has a fair opportunity to challenge the record.

(B) In a **civil case**, the original or a copy of a **foreign record** that is certified by the custodian or another qualified person and otherwise meets the requirements of subsection (A), modified as follows: the certification, rather than complying with a state statute or court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the jurisdiction where the certification is signed. The proponent also shall meet the notice requirements of subsection (A).

The records from Skip the Games, or skipthegames.eu, are foreign records, not domestic records. Agent Fey testified that the company was not based in the United States and domiciled overseas. (R. p. 380, lines 10-16). S.C. Code Ann. § 19-5-520 only applies to foreign records in civil cases. The statute does not apply in this criminal case. The certificate is not sufficient to authenticate the records from Skip the Games and the judge erred in admitting the unauthenticated documents.

Any reliance by the State on Rule 902(11), (12), of the Federal Rules of Evidence is misplaced because, like S.C. Code Ann. § 19-5-520, the rule does not apply to foreign records in a criminal case. Rule 902(11), (12), (emphasis added) FRE provide:

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

**(11) Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a **domestic record** that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record--and must make the record and certification available for inspection--so that the party has a fair opportunity to challenge them.

**(12) Certified Foreign Records of a Regularly Conducted Activity.** In a **civil case**, the original or a copy of a **foreign record** that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made,

would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

Rule 902(12), FRE, dealing with foreign records like the records in this case, only applies in civil cases. But see 18 U.S.C. § 3505. (Federal statute providing for the admission of foreign records in criminal cases). Again, the applicable state statute, S.C. Code Ann. § 19-5-520, only applies to foreign records in civil cases.

The South Carolina Rules of Evidence do not have a corresponding Rule 902(11) or (12), FRE. Rule 902, SCRE, provides:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

**(1) Domestic Public Documents Under Seal.** A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

**(2) Domestic Public Documents Not Under Seal.** A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in subsection (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

**(3) Foreign Public Documents.** A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

**(4) Certified Copies of Public Records.** A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (1), (2), or (3) of this rule or complying with any statute or rule promulgated by the Supreme Court.

**(5) Official Publications.** Books, pamphlets, or other publications purporting to be issued by public authority.

**(6) Newspapers and Periodicals.** Printed materials purporting to be newspapers or periodicals.

**(7) Trade Inscriptions and the Like.** Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

**(8) Acknowledged Documents.** Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

**(9) Commercial Paper and Related Documents.** Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

**(10) Presumptions Under Statutes.** Any signature, document or other matter declared by statute to be presumptively or prima facie genuine or authentic.

Rule 902(3), SCRE, does not apply because the records from Skip the Games are not foreign **public** documents.

The certificate, State's #19, was not sufficient to authenticate the foreign records from Skip the Games in this criminal trial under state law or the South Carolina Rules of Evidence. The judge erred in admitting the foreign records, State's #19, #20, #21, and #22. The error in admitting the documents was not harmless. The records were critical in connecting Appellant to the advertisements for sexual services containing photos of minors.

- 2. The trial judge erred in admitting three additional sexually explicit photographs of two minor teenage girls with the adult female co-defendant without conducting a Rule 403 analysis when the probative value of the photographs was substantially outweighed by the needless presentation of cumulative evidence.**

## Standard of Review

“Appellate courts apply the “discretion” standard to review decisions trial courts make on procedural questions such as the one at issue in this case, decisions to admit or exclude evidence, and other decisions.” Morris v. BB&T Corp., 438 S.C. 582, 586, 885 S.E.2d 394, 396 (2023). “The exercise of discretion is not to simply make a decision. The *exercise* of discretion requires first that the trial court recognize it has the responsibility of discretion.” Id. 587. “The exercise of discretion is then to follow a thought process that begins with the trial court’s clear understanding of the applicable law, continues with the court’s sound analysis of the situation before it in light of the law, and ends with the trial court’s ruling that follows the law and is supported by the facts and circumstances.” Id. “The trial court’s recognition of its responsibility to exercise discretion will be apparent when the record indicates the court followed such a thought process. Thus, when a trial court’s—or the commission’s—thought process of applying sound principles of law to the court’s view of the facts and circumstances is evident in the record of proceedings in a hearing, in a written order, or otherwise, the appellate court will defer to the trial court’s exercise of discretion, even when the judges on the appellate court might have made the decision differently.” Id.

## Discussion

The advertisement for sexual services posted on Skip the Games and entered over objection<sup>1</sup> as State's exhibit #5 included six photographs. (R. p. 144, lines 1-7). In addition to the six photos included in the advertisement, six additional photos were admitted, over objection<sup>2</sup> as, State exhibits #6, #7, #8, #9, #10, #11. (R. p. 150, lines 4-13). The additional six photos were not new photographs, but 8 x 10 color enlargements of the photos included in the advertisement. A captain with the Richland County Sheriff's office described to the jury who was depicted in the photos. (R. p. 150, line 21 – p. 151, lines 1-25). The captain testified that State's #6 was a photograph of the adult female co-defendant, Naneka Perry, with Minor #1, and Minor #2. (R. p. 150, lines 21-25). In closing argument the prosecutor told the jury that State's #6 qualified as sexually explicit nudity. (R. p. 539, lines 11-12). The captain testified that State's #7, #8, and #9 were photographs of Minor #1. (R. p. 151, lines 8-13). The captain testified that State's #10 was a photograph of Perry and Minor #1. (R. p. 151, lines 14-22). The captain did not identify the person in State's #11 but testified the photo was included in the advertisement. (R. p. 151, lines 23-25). Perry testified that she did not recognize the person in State's #11. (R. p. 188, lines 17-20).

In addition to the advertisement, State's #5, that included the photos and the six enlargements of the photos, State's #6, #7, #8, #9, #10, and #11, the State additionally moved to admit three more photos, State's exhibits #14, #15, and #16. (R. p. 190, lines 12-14). Counsel for

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<sup>1</sup> The objection pretrial to the advertisement appears to be based on lack of foundation or authentication. (R. pp. 104-107).

<sup>2</sup> The objection pretrial to the six additional photos appears to be chain of custody, foundation, and authentication. (R. pp. 108-110). Defense counsel did not object to the photos pursuant to Rule 403, SCRE.

Appellant objected stating, “Your Honor, we’d object on the accumulation pursuant to South Carolina rule of evidence 403.” (R. p. 190, lines 15-17). The judge admitted all three photos over objection without conducting a Rule 403 analysis. (R. p. 190, lines 18-19). The trial judge erred. See State v. Phillips, 430 S.C. 319, 343, 844 S.E.2d 651, 663 (2020). (In the context of Rule 702, SCRE, “trial court must conduct an on-the-record balancing of probative value against the applicable Rule 403 dangers. The trial court should make specific findings as to each contested element or issue.”); K.S. by & through Seeger v. Richland Sch. Dist. Two, 445 S.C. 111, 122, 912 S.E.2d 240, 246 (2025). (“The trial court did not conduct the Rule 403 balancing test on the record, as is required. State v. Phillips, 430 S.C. 319, 341, 844 S.E.2d 651, 662 (2020).”). Once the photographs were admitted in evidence the prosecutor then said, “The State is going to very briefly publish these to limit the exposure to the jury.” (R. p. 190, lines 22-23).

Perry identified herself, Minor #1, and Minor #2 in the three additional photos, State’s #14, #15, and #16. (R. p. 190, line 22 – p. 191, lines 1-12). When Minor #1 was asked by the State to identify who was pictured in State’s #14, the prosecutor stated, “And I covered up the sensitive areas of this exhibit.” (R. p. 246, lines 10-11). All three photos are sexually explicit photos of the adult female co-defendant and the two minor teenage girls, similar to State’s #6. Perry claimed the photos were uploaded to the ad. (R. p. 191, lines 16-24). Major Ricky Johnson with the Richland County Sheriff’s Department testified that he examined an electronic device attributed to Appellant and found the photos that were introduced in evidence as State’s #6, #7, #8, #9, #10 and #11, as well as State’s #14, #15, and #16. (R. p. 481, line 21 – p. 482, 483, lines 1-11).

Prior to closing arguments, the prosecutor told the judge, “Your Honor, perhaps now the State would think it’s probably best not to send the actual four of these photographs back with the jury, the ones that are extremely explicit. So the State would go ahead and ask they not be sent

back. And if they wish to review them, that they can come into the courtroom to review them as to steer clear of any --” (R. p. 528, lines 8-14). The judge asked for the exhibit numbers and the prosecutor said, “Your Honor, I think the ones that are extremely explicit, should not be sent back are State’s Exhibit 6, 14, 15, and 16.” (R. p. 528, lines 16-18). The trial judge erred in admitting the three additional sexually explicit photos of the minor teenage girls with the adult female co-defendant.

Rule 403, SCRE provides, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” “Under Rule 403, SCRE, relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Moreover, ‘[I]t is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial.’ State v. Jones, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023) (quoting State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986)).” State v. Nelson, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023). The sexually explicit photos of the two minor teenage girls and the adult female codefendant, State’s #14, #15, and #16, should have been excluded.

### **Lack of Probative Value**

The sexually explicit photos lacked probative value. In State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014), the South Carolina Court of Appeals wrote:

Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates. As our supreme court stated in State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010), “[p]hotographs

calculated to arouse the sympathy or prejudice of the jury should be excluded if they are ... not *necessary* to substantiate *material* facts or conditions.” 390 S.C. at 623, 703 S.E.2d at 228 (emphasis added). The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case. See State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct.App.2008) (“When [balancing the danger of unfair prejudice] against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” (citing State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007))).

The three additional sexually explicit photos were calculated to arouse the prejudice of the jury. The photographs were not necessary to substantiate a material fact because State’s #6 depicted an equally sexually explicit photo of the minors and the co-defendant and was also found on an electronic device attributed to Appellant. The additional photos were cumulative. As the Court wrote in K.S. by & through Seeger v. Richland Sch. Dist. Two, 445 S.C. 111, 123–24, 912 S.E.2d 240, 246–47 (2025):

An objection that evidence is needlessly cumulative under Rule 403 is a proper way to stop the unnecessary piling on of repetitive evidence proving the same specific point; it is not a way to keep admissible evidence as to other points from piling up. To paraphrase the late federal judge John F. Keenan, if the issue to be proved is whether Boston Red Sox catcher Carlton “Pudge” Fisk hit a game-winning home run over the Green Monster at Fenway Park in the bottom of the twelfth inning of game six of the World Series on October 21, 1975, it is not necessary to call as witnesses the players on both teams, the umpires, all 35,025 fans in attendance, and the millions who saw it on television. It could be proven with one or two witnesses. See State v. Funderburke, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968) (“Cumulative evidence has repeatedly been defined to be additional evidence of the same kind to the same point.”); see also United States v. Williams, 81 F.3d 1434, 1443 (7th Cir. 1996) (“Evidence is ‘cumulative’ when it adds very little to the probative force of the other evidence in the case, so that if it were admitted its contribution to the determination of truth would be outweighed by its contribution to the length of the trial ....”). Determining whether evidence is cumulative necessarily requires an exercise of discretion on the part of the trial court. Determining whether evidence is “needlessly” cumulative under Rule 403 requires the trial court to exercise another layer of discretion.


The objection under Rule 403 to the additional three photos was an attempt to stop the unnecessary piling on of repetitive sexually explicit photos. The additional photographs were cumulative and lacked probative value.

### **Needless Presentation of Cumulative Evidence**

The probative value of the three additional sexually explicit photos must be balanced against considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule 403, SCRE. The three additional photos were needlessly cumulative. The minimal probative value of the additional photos was substantially outweighed by the consideration of needless presentation of cumulative evidence. The photos were calculated to arouse the prejudice of the jury. The State's attempts to limit the jury's exposure to the photos did not cure the error in admitting the photos and publishing them to the jury. The trial judge erred by failing to conduct an on-the-record Rule 403 balancing test. State v. Phillips, 430 S.C. 319, 844 S.E.2d 651 (2020); K.S. by & through Seeger v. Richland Sch. Dist. Two, 445 S.C. 111, 912 S.E.2d 240 (2025). The error requires reversal or in the alternative, a remand. See State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013).

**CONCLUSION**

Based on the above arguments, this Court should reverse the convictions and remand for a new trial. Alternatively, based on argument number two, this Court should remand for a 403-balancing hearing.

  
Kathrine H. Hudgins  
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of April, 2026.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this final brief of appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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This 6th day of April, 2026.