

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
)
) WARRANT NO(S): 2021A2330210207-08
)
 Plaintiff,) 2023A2330208126-27
)
 vs.)
)
 ZACHARY HUGHES) **ZACHARY HUGHES' RESPONSE IN
 Defendant.) OPPOSITION TO THE STATE'S MOTION(S)
) IN LIMINE TO EXCLUDE CHILD
) PORNOGRAPHY EVIDENCE**

COMES NOW, the Defendant, Zachary Hughes, by and through undersigned counsel, both in response to the State's Motions in Limine to Exclude evidence that Christina Parcell and Brad Post produced, directed, participated in, and/or distributed child pornography and in preparation for the hearing the Court has set for the morning of December 23, 2024. The State, initially in a publicly filed motion and then in a second motion improperly filed under seal, asks this Court to categorically and completely exclude, erase, and/or ban from the jury's consideration all evidence of child pornography the Greenville County Sheriff's Office (GCSO) seized from Brad Post's devices in October of 2021. The State's request is premature and ill-advised: the State seeks to have this evidence excluded even though it has likely not even reviewed it, and there are countless scenarios at trial, both foreseeable and unforeseeable, that would render this evidence admissible. The Court simply does not have the capability to rule, at this point, on the admissibility of this evidence, and it should deny the State's request summarily and without a hearing.

FACTS

At 11:08 A.M. on October 13, 2021, a deputy with the Greenville County Sheriff's Office arrived at a home on Canebrake Drive in Greenville County, South Carolina, after Bradly Post called 911 for help. A deputy arrived and saw Post outside the home talking on his cell phone. The deputy approached Post to try to determine what was happening. When the deputy began to

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ask Post questions, Post instructed the deputy to wait as he continued to talk on his cell phone. According to the deputy, Post “was shaking a little but did not appear to be too upset.”¹

Post hung up the phone and told the deputy he decided to come to the residence after he attempted to call his fiancé, Christina Parcell, and she did not answer. According to Post, he entered the residence through the back door “as they always leave it unlocked.” and he found Parcell lifeless on the floor in the front living room. Police did a sweep of the residence and found no one else inside.

The deputy who responded walked outside the residence and reestablished contact with Post for the purpose of continuing the investigation.² During the deputy’s interview, “Post became nervous and asked if he needed to speak with his lawyer.” Despite the fact the deputy was just “asking basic questions about the incident at the time, Post asked for his lawyer.” Post then provided the deputy with the name of the person whom he believed killed his fiancé, a name that was not Zachary Hughes.

The police’s investigation quickly uncovered why, in part, Post was acting nervously when the deputy responded. At the time of Parcell’s death, Post and Parcell, working together, were producing and/or distributing child pornography involving multiple minor children. Post is currently incarcerated in the Greenville County Detention Center³ awaiting trial on nine separate

¹ Portions of this section in quotations come directly from police reports or other publicly available documents.

² Deputies also interviewed Post a few days after the incident. In this interview, Post refused to answer multiple questions and refused to provide the PIN number for Parcell’s phone until he could get advice from a lawyer.

³ See Greenville County Detention Center Inmate Search, visited on December 15, 2024. https://app.greenvillecounty.org/inmate_search.htm.

charges: seven counts of Sexual Exploitation of a Minor, one count of Criminal Sexual Conduct with a Minor, and one count of Buggery.

Despite Post's and Parcell's prolonged, calculated, and disgusting conspiracy to victimize and sexually abuse young children, the State has indicated, as recently as December 4, 2024, that Post "is a material fact witness" and is a potential prosecution witness.

**The State's Persistent and Determined Attempts
to Conceal this Evidence from Mr. Hughes and from the Public**

On at least five separate occasions over three years both in writing and orally, defense counsel requested access to the contents of eight devices owned by Bradly Post and seized by the GCSO in October of 2021. Although it already produced the contents of one of Post's cell phones in 2021, which contained child pornography, the State refused defense counsel access to any of the contents of the remaining devices until September of 2024.

Remarkably, the State also publicly filed its initial motion in limine on September 12, 2024, which sought to exclude child pornography evidence from Post's devices in the trial before it even provided defense counsel access to this material. The State so vehemently wished to excise this evidence from the case that it did not want Mr. Hughes to be able to respond to the motion: how could he respond when he had not even seen the evidence that was the subject of the motion?

Since filing the motion in limine, the State has begrudgingly granted defense counsel access to the child pornography evidence. Defense counsel has met with personnel from the GCSO to review the contents of these devices, and Mr. Hughes has retained an expert who has forensically analyzed the contents of these devices. This review has caused defense counsel to conclude that the contents of these devices are even more material to the preparation of Mr. Hughes' defense than they initially believed.

ARGUMENT

Christina Parcell and Brad Post worked together to victimize young children, whether the State likes it or not. In the more than three years it has prosecuted this case, the State's attempt to purge the case of this fact has caused it to pursue courses of action that are internally inconsistent and contrary to State and Federal law. In addition to initially providing contents of one of Post's devices in discovery and then denying access to the rest; and in addition to filing a motion in limine publicly and then filing an amended motion in limine on the same issue under seal, the State now invites this Court to speculate on what may or may not happen at a trial at least three weeks away and rule that all of the child pornography evidence is inadmissible. This Court must reject the invitation.

Soon, Mr. Hughes will address the misplaced arguments the State makes in support of its motions, but first he wishes to correct misstatements the State has made both in its written motions and orally before the Court.

Defense counsel stand by comments they made in Mr. Hughes' Motion for Bond.

In a companion motion to its motions in limine, the State's Motion for Gag Order, the State references language contained in Mr. Hughes' Motion for Bond, which was filed on October 30, 2024, and accuses defense counsel of making irresponsible and baseless allegations.

Defense counsel brazenly alleges that the victim of this murder, Parcell, "produced, directed, and participated...[in child pornography]. . . ." Not only is the allegation inadmissible, it cannot be proven by the defendant and is wholly unsubstantiated.

See Mot. for Gag Order at 2 (emphasis added). Further, the State's motion claims that should defense counsel continue to litigate discovery issues related to the child pornography, they "would be releasing unfounded, salacious, and ultimately criminal accusations toward the victim. . ." *Id.* (Emphasis added). Also in its Motion for a Gag Order, the State refers to language in Mr. Hughes' Motion for bond, that "Parcell 'produced, directed, and participated [in child pornography]" as

“conclusory allegations,” “wholly unsubstantiated,” “unfounded accusations,” and “unfounded allegations” no less than seven times.

In its Amended Motion in Limine, which the State improperly filed under seal on November 6, 2024, it continues to claim that defense counsel would be irresponsible if they were to allege publicly that Parcell and Post committed a crime. “Defense counsel would be releasing unfounded, salacious, and ultimately criminal accusations toward (Parcell).” Amend. Mot. Limine, at 13. (Emphasis added).

At Mr. Hughes’ bond hearing, the State doubled-down on its “unfounded allegations” rhetoric. “The State has serious concerns about (defense counsel) saying things that are not true, or alleged, or unsubstantiated about (Parcell) in public filings.” Bond hearing tr., at 22. (Emphasis added).

On September 25, 2024, defense counsel met with member(s) of the GCSO for the purpose of reviewing the contents of Post’s devices, to which the State had denied Mr. Hughes access for more than three years. During the review, defense counsel viewed the contents of a thumb drive law enforcement seized from Post and labeled “SEM1A.” The GCSO deputy opened a video file named “415.MOV,” which was contained on SEM1A. The video begins with a minor child on a bed in the nude. Parcell emerges from behind the camera, nude, and climbs on the bed with the minor. Both then engage in sexually explicit and coordinated poses. This video appeared on a device not capable of capturing the image and in the custody of another person, Brad Post. Under these circumstances, Parcell not only “produced, directed, and participated in child pornography,” she also distributed it. See 18 U.S.C. § 2256(3) (defining “producing” in the child pornography context as “producing, directing, manufacturing, issuing, publishing, or advertising.”) 18 U.S.C. § 2256(8) (defining “child pornography” as “any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by

electronic, mechanical, or other means, of sexually explicit conduct, where-- (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.”); See *United States v. Stitz*, 877 F.3d 533, 538 (4th Cir. 2017) (citing and quoting with approval the Tenth Circuit Court of Appeals’ decision in *United States v. Shaffer*, 472 F.3d 1219, 1223 (10th Cir. 2007)) (the defendant “distributed child pornography in the sense of having ‘delivered,’ ‘transferred,’ ‘dispersed,’ or ‘dispensed’ it to others.”).

If the State had taken the time to carefully review the contents of Post’s devices, it would have seen “415.MOV” and likely many other files that contain similar images, and realized defense counsel’s claims were well-grounded, supported in fact, and simply the truth. In determining how much weight to assign to the State’s arguments in these Motions, the Court should be mindful that the State apparently seeks to limit discussion of and introduction of evidence it has not even reviewed.

Ruling on, let alone granting, the State’s Motions would be premature and ill-advised.

Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. A pretrial ruling on the admissibility of evidence is preliminary and is subject to change based on developments at trial.

State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). As this Court knows, any ruling the Court promulgates in response to the State’s motions in limine, whether denying them or granting them, would be advisory only and be of little or no effect. This legal premise begs the question: why rule at all at this stage when the trial is more than three weeks away? See generally, *Looney Ricks Kiss Architects, Inc. v. Bryan*, 2010 WL 5393864, at *1 (W.D. La. 2010) (“Motions in limine

are frequently made in the abstract and in anticipation of some hypothetical circumstance that may not develop at trial.”) (citation and internal quotation marks omitted).

In its 27 pages of pleadings, both in its initial, publicly filed motion and then in its secret, hidden motion, the State refers to the evidence it seeks to exclude as “child pornography,” Mot. Limine, at 4. It provides no other description of the contents of Post’s devices, not even any generic, sanitized characterizations of what these images and videos contain. The State’s attempt to exclude an enormous universe of evidence (more than 15,000 images and videos of child pornography contained on nine electronic storage devices) instead of a few carefully selected and precisely described pieces of evidence also should prompt this Court to defer ruling on these motions until trial. “Evidentiary rulings, especially ones that encompass broad classes of evidence, should generally be deferred until trial to allow for the resolution of questions of foundation, relevancy, and potential prejudice in proper context.” *Leonard v. Stemtech Health Scis., Inc.*, 981 F. Supp. 2d 273, 276 (D. Del. 2013) (citations omitted). See also, *Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975) (“Orders in limine which exclude broad categories of evidence should rarely be employed. A better practice is to deal with questions of admissibility of evidence as they arise.”).

The State’s failure to describe with any specificity what it seeks to exclude also reinforces the conclusion that it may not have reviewed the contents of Post’s devices. Are there images and/or videos on these devices that arguably could be or could not be considered “child pornography?” Does the State seek to exclude these items that would be close calls? Does it even know if they exist? The State claims that defense counsel’s descriptions of the contents of Post’s devices are “wholly unsubstantiated,” see *supra*, at p.4, even though the contents plainly support the descriptions. Couple this fact with the State’s apparent inability to describe any images, even

in a non-offensive, sanitary fashion, genuinely calls into question whether the State really knows what evidence it seeks to exclude.

Further, “[e]vidence should not be excluded in limine unless it is clearly inadmissible on all potential grounds.” *Looney Ricks Kiss Architects, Inc. v. Bryan*, 2010 WL 5393864, at *1 (W.D. La. 2010) (emphasis added) (citations omitted). In its motions in limine, the State desperately attempts to eliminate “all potential grounds” for admissibility of this evidence by guessing as to how Mr. Hughes would seek to introduce this evidence and by hastily constructing false assumptions that are necessary to support its arguments.

For example, the State claims that using the child pornography evidence to impeach Post would be improper. Mot. Limine, at 9. In a strained and incoherent attempt to bolster this notion, the State writes “Post faces charges of that⁴ are being prosecuted by the Attorney General. Accordingly, he has been offered no deal in exchange for his testimony.” Mot. Limine, at 10. What does this mean? Does it mean that the Attorney General never makes deals? Defense counsel can attest that is not true! Does it mean that the Attorney General has not made Post a deal in his case in exchange for his testimony? Does it mean that somehow because the Attorney General is prosecuting Post instead of the Thirteenth Circuit Solicitor’s Office that Mr. Hughes cannot cross-examine Post on bias he has or reasons he would have to lie? Surely this is not the import of the State’s argument because it would render the State’s argument absurd: both the Thirteenth Circuit Solicitor’s Office and the Attorney General represent the same party, the State. Multiple scenarios likely would occur at trial that would render the child pornography evidence admissible, both in the context of Post’s cross-examination and in others.

⁴ This quote comes directly from the State’s pleading.

The starting point for the scenarios that follow are based on the State's own representations. The State, both in written pleadings and orally before the Court, has indicated that Post will testify. See Bond hearing tr., at 13 (the State telling the Court "Brad Post is an important character in this case."); Mot. in Limine, at 7 ("The State anticipates that, at the outset of the trial in opening statements, or in the course of Post's testimony . . .").

Scenario 1. Post testifies. Defense counsel will be able to cross-examine him on his pending charges (at least some of which are predicated on the contents of nine devices law enforcement seized from Post) and the possible penalties he faces if convicted of these charges. See *State v. Pradubsri*, 403 S.C. 270, 743 S.E.2d 98 (Ct. App. 2013) (finding that the trial court erred when it refused to allow defense counsel to cross-examine a State's witness on the potential sentences the witness faced as a result of the witness' pending charges.). Also, contrary to the State's assertion that the absence of a deal in Post's case makes him somehow unimpeachable, the absence of a deal in Post's case actually makes him more impeachable.

The fact the witness has yet to reach a plea bargain or been found guilty should not prevent the admission of such evidence. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.

Pradubsri, 403 S.C. at 278, 743 S.E.2d at 103 (internal quotation marks and citation omitted). The subject of child pornography will be put before the jury when Post testifies likely along with the horrible images Post and Parcell produced, participated in, and/or distributed that support these charges.

Scenario 2. Post testifies. During his direct examination, he will likely testify about the events that occurred on the morning of October 13, 2021, and his relationship with Christina Parcell. See Bond hearing tr., at 13 (the State telling the Court, "Brad Post is an important character in this case. He's the one who found Christina Parcell. He was the deceased's fiance at the time.").

If and when Post testifies about his relationship with Parcell, that testimony will expand the scope of relevance to include the nature of his relationship with Parcell. If Post testifies on direct examination as to the full nature of his relationship with Parcell, that they worked together to victimize young children in addition to being romantically involved, the State opens the door to more questioning and child pornography contained on Post's devices. If Post neglects to discuss that aspect of his relationship with Parcell on direct examination, defense counsel will be able to undermine his credibility on cross-examination by presenting evidence on the full nature of his relationship with Parcell, which Post would have deceitfully omitted during his direct examination. See generally, *A.M. L. & Co. v. Cleveland*, 172 S.C. 200, 173 S.E. 638, 640 (1934) ("[M]uch latitude is allowed on cross-examination of a witness. . . ."). See also, S.C.R.Evid. 611(b) ("A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.").

These two scenarios and many many more illustrate that neither the State nor anyone else can show that this evidence would be "inadmissible on all potential grounds." Therefore, the State's motion in limine should be denied at this time, more than three weeks before trial.

A Word on Sealing of Documents

In South Carolina, "[j]udicial proceedings ... are presumptively open to the public" *State v. Price*, 441 S.C. 423, 443, 895 S.E.2d 633, 643 (2023) (citation omitted). Until recently, the parties have observed this foundational and core principle of our criminal justice system: defense counsel filed publicly their Motions for Bond, Motion to Suppress Evidence, Motion for Ex Parte Review, and responses to the State's Motions. To its credit, the State also filed, by defense counsel's estimation, all of its Motions publicly, including its Motion in Limine to Exclude Child Pornography, through September 12, 2024.

However, starting in October 2024 with its request that defense counsel file Mr. Hughes' second motion for bond under seal, the State appears now to have a penchant for hiding the proceedings from the public. On November 6, 2024, the State filed under seal an Amended Motion in Limine to Exclude Child Pornography, a Motion which seeks to amend a Motion the State filed publicly almost a month earlier. Then, on December 2, 2024, the State filed its Motion for Gag Order under seal. None of these Motions contains any cognizable, legal basis that would warrant the sealing of these documents, and no court has authorized the sealing of these documents. See *Price*, 441 S.C. at 442, 895 S.E.2d at 643 ("[N]o South Carolina court—not this Court, the court of appeals, nor any trial court—may seal any portion of a court record from public view unless there is a specific provision of law permitting it.").

Mr. Hughes asks the Court to unseal all of the pleadings in this case. Further, defense counsel asks the State to follow the procedure defense counsel have used when they seek to file a document not on the public record: publicly file a pleading that explains the basis for the request to seal, wait for the court to rule, and then file the pleading under seal should the Court grant the motion and should the State wish to do so. See e.g., Def. Mot. for Ex Parte Relief. See also, *Price* 441 S.C. at 442, 895 S.E.2d at 643 (citation omitted) (stating that "lawful authority and specific findings of fact that justify the sealing," are required prior to the sealing of a document.).

CONCLUSION

The State asks the Court to exclude evidence more than three weeks from trial that it apparently has not carefully reviewed and which will likely will be admissible. Mr. Hughes asks the Court to deny the State's premature and ill-conceived motion summarily and without a hearing.

Respectfully submitted,

s/ Andrew B. Moorman

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December 19, 2024.



CERTIFICATE OF SERVICE

I certify that on this, the 19th day of December, 2024, Defendant Zachary Hughes' Response in Opposition to the State's Motion(s) in Limine to Exclude Child Pornography Evidence was served on the Thirteenth Circuit Solicitor's Office by hand delivery.



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