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

COMES NOW, the Defendant, Zachary Hughes, by and through undersigned counsel, in preparation for the hearing the Court has set for the morning of December 23, 2024, and in response to the State's Motion for a Gag Order, which seeks to decimate Mr. Hughes' First Amendment rights, defense counsel's First Amendment rights, the First Amendment rights of the Press, and the First Amendment rights of the people of the State of South Carolina. In an astonishingly unprecedented, improper, and clandestine manner, the State asks this Court not only to prohibit defense counsel's communications to third parties about this case, but the State also asks this Court to dictate to defense counsel what they can and cannot say both in written pleadings and in open court. See Mot. for Gag Order at 7 ("[D]efense should not be permitted to make mention of such evidence in any public filings or in any manner which would place such information in the public domain."). This Court should deny the motion summarily and without a hearing.

FACTS

At 11:08 A.M. on October 13, 2021, a deputy with the Greenville County Sheriff's Office (GCSO) 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

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 Center[3] awaiting trial on nine separate

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[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, Mr. Hughes 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 filed a 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?

Also in September, the State put this case on the trial docket for the October 28th term, despite Mr. Hughes' request that it not because of the pending discovery disputes over the child pornography evidence. Ultimately, the parties reached an agreement wherein the State would provide access to the contents of all of Post's devices, the State would remove the case from the October 28th trial docket, and defense counsel would, in good faith, prepare for the trial to occur in January of 2025.

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, and defense counsel took steps to provide Hughes with access to this material, a right to which he is entitled under South Carolina law. See S.C.Crim.P. R. 5(A)(1)(c) ("Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects. . . .") (Emphasis added).

On October 30, 2024, Mr. Hughes filed a Motion for Bond, predicated in large measure on the fact that he had a right to review the contents of Post's devices, and legal restrictions on the dissemination of child pornography prevented Mr. Hughes from viewing this material while he was in jail. Although the Court denied him bond, it said during the hearing, "So I've checked with the jail. They can make whatsoever accommodations y'all want." Bond hearing tr., at 22.

Defense counsel worked with members of the GCSO and the Greenville County Detention Center for the purpose of facilitating Mr. Hughes' viewing of this material. However, they were unable to have Mr. Hughes transported to view this material, and the State has notified defense counsel that it opposes Mr. Hughes' review of this material even though he is entitled to it.

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; in addition to filing a motion in limine publicly and then filing two additional motions under seal, the State now has filed a motion under

seal which seeks an order from the Court that would prevent defense counsel from talking about Parcell's and Post's conspiracy at all, either in written pleadings or orally in hearings before the Court. The State makes this request of the Court without any legal authority that remotely supports it. The idea that a Court could or should dictate to lawyers what they can and cannot say in the defense of their clients during court proceedings and outside the presence of a jury runs counter both to the letter and spirit of our laws.

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 made in its motions and orally before the Court.

Defense counsel stand by comments they made in their Motion for Bond.

In its 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.

At Mr. Hughes' bond hearing on November 21, 2024, the State doubled-down on its "unfounded allegations" rhetoric. The State told the Court that it had "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. The State would have 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 this Motion and in the Motion(s) in Limine to exclude child pornography, the Court should be mindful that the State apparently seeks to limit discussion of and introduction of evidence it has not even reviewed.

Gag orders are extremely disfavored and presumptively unconstitutional.

> Even among First Amendment claims, gag orders warrant a most rigorous form of review because they rest at the intersection of two disfavored forms of expressive limitations: prior restraints and content-based restrictions. Like all court orders that actually forbid speech activities, gag orders are prior restraints. Prior restraints bear a heavy presumption against [their] constitutional validity. Prior restraints upend core First Amendment principles because a free society prefers to punish the few who abuse rights of speech after they break the law [rather] than to throttle them and all others beforehand.

In re Murphy-Brown, LLC, 907 F.3d 788, 796–97 (4th Cir. 2018) (citations and internal quotation marks omitted).

Further,

> gag orders are presumptively unconstitutional because they are content based. Content-based restrictions target particular speech because of the topic discussed or the idea or message expressed. Gag orders inherently target speech relating to pending litigation, a topic right at the core of public and community life. But the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.

Id. (Citations and internal quotation marks omitted). See also, *State-Rec. Co. v. State*, 332 S.C. 346, 350, 504 S.E.2d 592, 594 (1998) (stating that a defendant whose privileged conversation with his lawyer was illegally recorded and released to the Press bore "an extremely heavy burden" in his efforts to limit the (Press') speech.").

The Absurdity of the State's Request

The easiest way to conclude that the State's Motion should be denied summarily is to fully comprehend what it seeks. The State seeks an order preventing defense counsel from

"mention(ing) (child pornography) evidence in any public filings or in any manner which would place such information in the public domain." See Mot. for Gag Order at 7. (emphasis added). Think about that.

The State wants the Court to order defense counsel not to "mention" the child pornography evidence orally or in writing in any context in which it "would be placed in the public domain." Therefore, defense counsel could not reference this evidence in any pleading submitted to the Court or in any hearing before the Court unless this Court were to close from the public every proceeding in this case and seal every pleading in this case.[4] Practically, the State asks this Court to prevent Mr. Hughes from even arguing that the child pornography is admissible. A few examples are instructive.

On September 12, 2024, the State moved in limine to exclude child pornography evidence from the trial. This is a publicly filed document. If the Court grants the State's Motion, defense counsel could be threatened with imprisonment or monetary penalties if they responded with a filed pleading disagreeing with the State's position on the child pornography: such a response could be republished by the Press, putting the response in the "public domain."

One more example. The trial has begun. A witness for the State testifies that he or she is certain that Christina Parcell never sexually abused children. If the courtroom were full with observers and the Press, the order would prevent defense counsel from cross-examining the witness on the existence of Parcell's production and distribution of and participation in child pornography to impeach the witness' credibility. However, if the courtroom were completely empty could defense counsel cross-examine the witness with the child pornography evidence

[4] Mr. Hughes' discusses sealing pleadings later in his response. See *infa*, at pp. 17-18.

because, under these circumstances, the possibility that the child pornography evidence "would be placed in the public domain" would be low?

Last example, defense counsel go to a restaurant for dinner after a long day of trial preparation. Staff at the restaurant seat defense counsel at a table in the center of the restaurant, and the restaurant is crowded. Defense counsel continue to discuss the case, and another patron hears the conversation and reports it to the Press. The contents of the conversation appear on a news channel website. Did defense counsel violate the order because they should have known that having a conversation about the case in a crowded restaurant would likely result in the child pornography entering "the public domain?" What if defense counsel are the only patrons in the restaurant, and a staff member of the restaurant reports the conversation to the Press? Are defense counsel still in trouble?

There are endless, ridiculous examples that illustrate the impropriety of the State's request: the State's Motion patently violates Mr. Hughes', defense counsel's and the Press' First Amendment Rights, and the citizens' of South Carolina right to know what its government does and what happens in *our* courtrooms.

The law does not support the State's request.
In fact, it violates the U.S. and S.C. Constitutions.

The State's request, that this Court conceal any mention of the child pornography evidence from the public (even though the State already has mentioned it in a public filing), is not supported by the South Carolina jurisprudence the State cites and neither violates the South Carolina Rules of Professional Conduct nor the Victim's Rights Act.

State-Record Co., Inc. v. State, 332 S.C. 346, 347, 504 S.E.2d 592, 593 (1998)

The only gag order case the State cites in its Motion is *State-Record Co.*, and this case provides no support for the State. In *State-Record*, the defendant, B.J. Quattlebaum, not the State,

moved for a gag order after the Press came into possession of a non-consensual recording of a privileged conversation Quattlebaum had with his lawyer. Quattlebaum asked the trial court to order the Press not to publish the recording. The defendant's request in no way sought an order from the trial court to limit the State's speech in any way. Ultimately, the trial court granted the request for a gag order, but the order was narrowly tailored.

> The circuit court's order specifically note(d) that it d(id) not "prohibit the reporting of the invasion of the attorney client privilege;" nor d(id) it "restrain or prohibit [publication of] the identity of the individuals involved or the nature of the charges in the case." It simply prohibit(ed) the "dissemination of the contents of the communication or the characterization of its contents."

State-Record. Co, Inc., 332 S.C. at 348, 504 S.E.2d at 593.

On appeal, the South Carolina Supreme Court affirmed the trial court's gag order. The *State-Record* court recognized the tension between a defendant's right to a fair trial and the Press' free speech rights, especially when the speech that is the subject of the gag order is privileged.

> This Court is faced with a profound dilemma: whether to uphold a prior restraint upon the media's First Amendment right of free speech, a task which carries with it an extremely heavy burden upon the party seeking to limit the speech; or whether to invalidate the prior restraint placing in jeopardy the fundamental right of a defendant to a fair trial pursuant to the Sixth Amendment. We are faced with the added quandary that the information sought to be disseminated by the media is a privileged communication between a criminal defendant and his attorney.

State-Record. Co, Inc., 332 S.C. at 350, 504 S.E.2d at 594 (citations omitted). The *State-Record* court then applied the three-prong test the U.S. Supreme Court articulated in *Nebraska Press*[5] to determine that the gag order was appropriate.

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[5] "*Nebraska Press* established a three-prong balancing test to determine whether a prior restraint is justified:
1. The nature and extent of pretrial publicity;
2. Whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity; and
3. How effectively a restraining order would operate to prevent the threatened danger."

State-Record. Co, Inc, 332 S.C. at 353, 504 S.E.2d at 595–96.

In affirming the trial court, the *State-Record* Court quoted *Nebraska Press* for the proposition that "[t]he precise terms of the restraining order are . . . important," *State-Record. Co, Inc.* 332 S.C. at 353, 504 S.E.2d at 596 (citation omitted), and concluded that "the egregious circumstances of this case (were) sufficient to warrant imposition of the extremely limited temporary restraining order imposed by the circuit court." *State-Record. Co, Inc*, 332 S.C. at 359, 504 S.E.2d at 599.

The State cites *State-Record* for the proposition that Courts have authority to enter "protective orders barring statements by trial participants." Mot. for Gag Order at 1. *State-Record* does not say one word about trial participants' statements nor did it bar trial participants from making statements. Instead, it prevented the Press from publishing a non-consensual recording of a privileged conversation Quattlebaum had with his lawyer in the jail.

Further, the State makes no attempt to apply to this case the three-pronged *Nebraska Press* test the *State-Record* court used, likely because the U.S. Supreme Court fashioned the test for the purpose of protecting a defendant's right to a fair trial, not the State's. See *Nebraska Press Ass'n v. Stuart,* 427 U.S. 539, 551 (1976) (discussing the tension "between the right of the accused to trial by an impartial jury and the rights guaranteed others by the First Amendment.") (Emphasis added).

In fact, the State fails to cite even one case wherein a court in this State or any other jurisdiction entered a gag order at the request of the prosecutor.

For some reason, the State thinks that the admissibility of evidence has an impact on whether a court should stifle free speech. The State cites *State v. Sobers* and *State v. Stokes*. *Sobers* and *Stokes* do not even have the words "First Amendment" or "speech" in them, and have nothing

to do with gag orders. The State fails to cite to any case wherein the possible admissibility or inadmissibility of evidence implicated a court's entry of a gag order.

Even if this court were to consider the admissibility of evidence that would be the subject of the gag order in determining whether to impose the gag order, this consideration would tip in favor of Mr. Hughes, not the State. The child pornography evidence is most probably and most likely admissible evidence which the jury will consider at the trial, and the State knows it. Otherwise, why is the State so desperately and capriciously trying to lock it down? Why did it move to exclude the child pornography four months before the January 13th trial date? Why is the State seeking an order that prevents defense counsel from even discussing it in a judicial proceeding? Why has the State concealed its motion for this gag order and its amended motion in limine by filing them under seal? If the State truly believed that the child pornography evidence was patently inadmissible, it would put the Court on notice the day the trial began of the evidence's inadmissibility, it would object at trial the first time it was mentioned, the Court would sustain its objection and this issue would be resolved. No, this evidence is coming in the trial, and the State knows it.

Rule 3.6 of the Rules of Professional Conduct has no relationship to the State's Motion.

Apparently, the State's Motion to Gag defense counsel is "rooted" in Rule 3.6 of the South Carolina Rules of Professional Conduct. Mot. for Gag Order, at 3. The State cites Rule 3.6 and states "a lawyer shall not make an extra-judicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." *Id.* (Emphasis added).

Rule 3.6 does not apply to the State's Motion: the State seeks to prevent defense counsel from making judicial statements, statements before the Court in written pleadings and orally in

hearings and trials before the Court, not extra-judicial statements. See generally, cf., *Pond Place Partners, Inc. v. Poole,* 351 S.C. 1, 22, 567 S.E.2d 881, 892 (Ct. App. 2002) (applying an absolute privilege in a slander of title context to statements made for the purpose of obtaining a lis pendens on property and stating that "[t]he [absolute] privilege covers anything that may be said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court.") (Citation omitted).

In fact, Rule 3.6 explicitly authorizes extra-judicial statements when they are required to rebut pretrial publicity if the lawyer reasonably believes the extra-judicial statements are required to protect the client's interests.

> Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

Rule 3.6 - Trial Publicity, S.C. App. Ct. R. 3.6(c).

Moreover, Rule 3.6 actually emphasizes the need the public has to be informed on judicial proceedings occurring in the courts of this State.

> [T]here are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

Rule 3.6 - Trial Publicity, S.C. App. Ct. R. 3.6 cmt. 1.

Finally, the State's assertion of Rule 3.6 in support of its Motion for Gag Order is yet another example of the hopelessly and internally inconsistent methods it has used to investigate and prosecute Mr. Hughes. The State claims it is concerned about pretrial publicity affecting a potential jury panel, yet, the State is the only party in this case whose agents have held a press

conference. At the press conference, these agent(s) characterized the crime as "very intentional," and "it was obvious that Mr. Hughes intended to kill (Parcell)," and characterized the crime scene as "very brutal."[6] The State is not concerned about all pretrial publicity. It is only concerned about pretrial publicity that will hurt its case.

Rule 3.6 has nothing to do with the State's Motion for a Gag Order.

The Victims' Rights Act hurts, not helps, the State's cause.

The State argues that "allowing the Defense to mention child pornography in conjunction with their unfounded assertions in public filings would directly violate the rights of the victim's."[7] Mot. for Gag Order, at 5 (emphasis added). The State goes on to say that "[a]llowing these unfounded assertions to be placed in filings available to the public violate the victim's right to be treated with fairness, respect, and dignity." *Id.* (Emphasis added). Finally, the State concludes its argument on this issue by stating "[d]efense counsel should be prohibited from putting in the public domain such material in the form of accusations and unfounded conclusions." Mot. for Gag Order, at 6.

The State's Victims' Rights Act (VRA) argument seems to be predicated on the notion that defense counsel's discussion of Parcell's criminal conduct amounts to "unfounded assertions," and, because these "assertions" are "unfounded," including them in pleadings and statements to the Court amounts to harassment of Parcell and her family. This argument has no merit.

First, the State has not and cannot cite to any authority for the proposition that the VRA can be used to stifle or restrain truthful speech of a lawyer contained in pleadings or in arguments orally made before the Court. Parcell produced, directed, participated in, and distributed child

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[6] https://www.wyff4.com/article/canebrake-murder-pianist-charged-trial/62921394. Visited on December 15, 2024.

[7] The quote directly comes from the State's Motion for Gag Order.

pornography, and the State should know it is true: the evidence that supports this statement comes directly from the evidence the State currently possesses and finally made available to defense counsel almost three years after it charged Mr. Hughes. See *supra*, at p. 6. Defense counsel is merely telling the truth, and any negative consequence that flows therefrom is not defense counsel's fault, however unfortunate or tragic it may be.

Further, are the lawyers in civil court who represent the beautiful, precious children who Parcell and Post sexually abused violating the VRA? One lawyer who represents one of the minor victims wrote in a publicly filed pleading,

> Upon information and belief, during the course of the law enforcement investigation of Christina Parcell's murder, law enforcement discovered numerous photographs and videos of various minor children, including minor Jane Doe,[8] in various stages of undress and in sexually explicit and nude positions, which had been taken over the course of several years. Upon information and belief, the videos and photographs of Jane Doe graphically depict her genitals and breasts. Further, Petitioner is informed and believes that the photographs and videos of Jane Doe were taken by, with, and/or in the presence of Defendant Post and Defendant Parcell. Upon information and belief, Defendant Post aided, abetted and conspired with Defendant Parcell to obtain the inappropriate photographs and videos of Jane Doe.[9]

Is this lawyer violating the VRA and engaging in "harassment" by vigorously and truthfully representing this child against Parcell and Post, the perpetrators of an awful crime? Obviously not.

Is the State even properly implementing the VRA in this case? The VRA defines "victim," in part, as "any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense, as defined in this section." S.C. Code Ann. § 16-3-1510(1). The statute defines "criminal offense," in part, as "an offense against the person of an individual when physical or psychological harm occurs. . . ."

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[8] "Jane Doe" is a common name assigned to minor victims of crime used to protect their privacy.

[9] See Complaint filed on August 15, 2022, Case Number 2022-CP-23-4382, at 3.

S.C. Code Ann. § 16-3-1510(3). As the State mentioned repeatedly in its Motion for Gag Order, "victims of a crime have the right to. . . be treated with fairness, respect, and dignity. . . ." Mot. for Gag Order, at 5. Does the State treat the beautiful children whom Parcell and Post abused with "fairness, respect, and dignity," when it tries to pretend they do not exist? Does it treat these children and their families with "fairness, respect, and dignity" when it seeks to prevent Mr. Hughes and his defense counsel from mentioning the tragedy these children have suffered and, by implication, accuses their own lawyers of violating the VRA?

This case is so tragic for so many people on so many levels. In the lead up to trial, Mr. Hughes and his defense counsel have diligently sought to minimize the harm to those involved in this case and their families. Defense counsel (1) have not held one press conference; (2) filed under seal (after initially filing publicly) its Motion for Bond in response to the State's request that they do so, in part, to protect the privacy of those involved (a request which now appears to be disingenuous on some levels); and (3) defense counsel have requested that the State's Motions for a Gag Order and to Exclude evidence be heard when the trial begins in January, in part, to spare those involved needless anguish by reducing the amount of opportunities the Press would have to report on this case. However, the State seems persistent and determined to engage in conduct that requires Mr. Hughes and defense counsel to respond. By (1) falsely characterizing defense counsel's truthful statements as "unfounded assertions," (2) by improvidently seeking from the Court an unprecedented order that would eviscerate the First Amendment Rights of Mr. Hughes and defense counsel without any legal authority that remotely supports the request; (3) by refusing to acknowledge the existence of Post's and Parcell's minor child victims; (4) by insisting that these issues be heard weeks before trial instead of at trial, when pretrial motions are most commonly heard, and (5) by engaging in numerous other actions that may require further response by defense

counsel, the State's actions have clumsily and prematurely brought the child pornography evidence to the fore.

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, the Motion to which this pleading responds. Neither 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 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

In the United States and the State of South Carolina, parties to litigation and their lawyers have a right to free speech, and lawyers have the right to use this speech to zealously advocate for their clients. The public and the Press have a right to access open proceedings that occur in the courtroom and/or in connection with the trials. The State seeks to infringe upon these basic and treasured rights Mr. Hughes, defense counsel, and the public hold dear because it does not like what defense counsel will say.

The State's displeasure with defense counsel's advocacy is exactly why our Founding Fathers saw fit to include these precious rights in the Constitution: these guarantees serve to check the tyranny of the Government. Mr. Hughes and defense counsel merely ask this Court to check the tyranny of the State by denying its unprecedented, improper, and clandestined attempt to violate the rights we all hold dear.

Respectfully submitted,

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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 to the State's Motion for Gag Order was served on the Thirteenth Circuit Solicitor's Office by hand delivery.

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December 19, 2024
Greenville, South Carolina