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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF GENERAL SESSIONS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
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The State,

) Indictment No. 2022GS2302194,
) 2024GS2305412-13; 2024GS2305425A
)

)
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) vs.
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) **MOTION FOR LIMITATION OF**
) **SCOPE OF CROSS-EXAMINATION OF**
) **BRADLEY POST**
)

) Zachary David Hughes
) Defendant.
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Now comes the State with notice to the Defendant, Zachary Hughes (hereinafter the “Defendant”) by and through defense counsel, Andy Moorman and Mark Moyer, that the State moves this Court for a limiting instruction with regard to the cross examination of State witness Bradley Post (hereinafter “Post”) as it relates to his potential impeachment.

I. Background

Christina Parcell (hereinafter “Parcell”) was murdered on the morning of October 13th, 2021 between 9:07 am and 9:28 am. This timeframe will be established by the State through video evidence of the victim’s arrival at her home, the perpetrator entering her home, and the same perpetrator fleeing the scene on a bicycle. Post arrived at the home shortly before 11:00 am (his vehicle is recorded driving toward the home at 10:57 am on the same street) and he called 911 to report the discovery of her body.

In June and July of 2021, several envelopes were mailed to Post, Post's neighbors, and Vanessa Kormylo¹ (Parcell's daughter's guardian ad litem). These envelopes contained sexually explicit pictures of Parcell, including a purported advertisement for prostitution on a website. The return addresses on several of these envelopes listed Post's name, including those mailed to Post's neighbors and Post himself. Post subsequently collected these envelopes, and along with Parcell, reported them to law enforcement. The mailing of these envelopes is the subject of the harassment charge against the Defendant.

On October 19th, as part of its investigation into the murder of Parcell, law enforcement uncovered child pornography on Post's electronic devices, leading to six (6) charges for sexual exploitation of a minor.² Post is not facing any charges related to this murder. To the contrary, he is a victim of the harassment charge against the Defendant having both received an envelope and in being labeled as the sender of several of those envelopes.

The State intends to call Bradley Post as a witness for the following, specific factual bases:

1. To explain the discovery of Parcell's body on the morning of October 13th, 2021.
2. To detail the receipt of the envelopes mailed to him, his neighbors, and associates in June and July of 2021 which he personally collected.
3. To explain the context of his relationship with Parcell to the extent of being romantically involved from June to October of 2021.

¹ Vanessa Kormylo is a State witnesses and will testify to receipt of these envelopes.

² Further factual background related to the charges against Post and the child pornography evidence is contained in State's Amended Motion to Exclude Reference to and Evidence of Child Pornography, also before this Court.

II. Impeachment Constraints on Witnesses with Pending Criminal Charges

As a general rule, a trial court's ruling on the proper scope of cross examination will not be disturbed absent manifest abuse of discretion, subject to the Sixth Amendment's guarantee of a defendant's right to meaningful cross examination. U.S. Const. Amend. 6. *See State v. Mitchell*, 330 S.C. 189 (1998). "The Confrontation Clause of the Sixth Amendment does not prevent a trial court from imposing any limits on the scope of defense counsel's cross-examination and presentation of evidence related to the impeachment of a key prosecution witness's credibility; on the contrary, trial judges retain wide latitude as far as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant." *US v. Freitekh*, 114 4th 292 (4th Cir. 2024); U.S. Const. Amend. 6.

The Supreme Court of South Carolina has addressed the standard of impeachment of a state witness with regard to pending criminal charges where the witness was an eyewitness to the crime itself and where the pending charges against the witness were separate and distinct from the charges being tried. *See State v. Smith*, 315 S.C. 547 (1994). In *Smith*, the Supreme Court found harmless error on the trial court failing to allow defense counsel more latitude in cross-examining an eye witness to a murder on his pending drug charges. *Id.* at 552. In the trial, the Court allowed defense counsel to elicit the fact that he had pending charges, but not what the specific charges were. *Id.* at 551. The Supreme Court noted this was the only "essential information which was excluded." *Id.* The court goes on to note that there was a great deal of corroborating evidence to his testimony. To wit, there

was a corroborating eye witness to the crime itself, and the testimony was further corroborated by the pathologist and officer who received the report. Id. at 552-553.

In State v. Mitchell, the Supreme Court cited Smith in a similar situation where an eyewitness with pending, unrelated, criminal charges testified to inculcate the defendant in a murder. 330 S.C. at 195. In this case, the witness originally failed to give a statement to law enforcement to inculcate the defendant but changed her statement the week before trial to identify him as the shooter. Id. The trial judge ruled the defendant could ask the witness if she had pending charges, but could not “go into those specific charges.” Id. The Supreme Court echoed the “wide latitude” trial judges are afforded with regard to limitations on cross examination and the Confrontation Clause. Id. at 196. In both Smith and Mitchell, the trial court judge barred subsequent questioning on the pending charges of inculpatory, eyewitness testimony after the fact that pending charges existed was elicited, but not what the specific charges were.

Whether error is harmless in prohibiting further questioning on pending charges in a particular case—most notably in cases of eyewitness, inculpatory testimony—depends on factors to include: (1) the importance of a witness’s testimony in the prosecutor’s case, (2) whether the testimony was cumulative, (3) the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, (4) the extent of cross-examination otherwise permitted, and the (5) overall strength of the prosecution’s case. Delaware v. Van Arsdall, 475 U.S. 673 (1986).

III. Application to the Present Case and Post’s Testimony

The present case distinguishes itself from the likes of Smith and Mitchell on the paramount fact that Post, unlike the witnesses in those cases, is not an eyewitness to the

crime, but rather found the body after the fact and reported the murder. Further, he is a victim of the harassment charge. Most critically, Post can provide no inculpatory testimony in the present case. There is no evidence in possession of the State that would go to show that Post even knew who the Defendant was at the time he came upon Parcell's body.

The fact that Post will not, and is in fact incapable of, providing inculpatory testimony in this case should restrict the extent of cross examination with regard to his pending charges. Indeed, in Mitchell, the Supreme Court confirmed the ability of the trial judge to tailor the scope of cross-examination depending on the facts of each case, providing that "Smith indicates a defendant *may* have a right to question a potentially biased witness on more than just whether there are pending charges against the witness." Reviewing Post's testimony under the factors put forth in Van Arsdall and utilized in South Carolina cases, the importance of the testimony lies solely in the discovery of Parcell's body and to provide that he received the harassment materials that the State intends to prove the Defendant sent. The context of his relationship to the victim is only relevant to the extent it explains why he went to the Canebrake home on the morning of October 13th, and why he would be receiving the envelopes in the months prior to the murder.

Post's testimony on the discovery of the body will be corroborated through the 911 phone call from the morning of the murder, testimony, and body camera footage from the responding officer, Chris Robinson. His arrival to the Canebrake house an hour after the murder itself is verified through a neighbor's door camera at 10:57 am. The receipt of the envelopes will be further corroborated by Vanessa Kormylo, Daniel Bevill of the Greenville County Sheriff's Office ("GCSO"), and Mike Nicholson of the US Postal Service.

The fact that Post is currently in Greenville County Detention Center (“GCDC”) and is facing pending charges will necessarily be elicited on direct examination. Moreover, he has been offered no deal or bargain in exchange for his testimony. Where Post’s testimony is limited to the three points the State has set forth, Defense counsel should be restrained from cross-examining him on the inflammatory substance of pending, unrelated charges. These charges provide no bearing on his credibility for overwhelmingly corroborated points of fact that in no way inculcate the Defendant.

IV. Response to Defense “Scenarios” of Impeachment

In its response to the State’s Amended Motion to Exclude Reference to and Evidence of Child Pornography, Defense counsel lists two scenarios of Post testifying where they deem impeachment through the alleged substance of his child pornography charges to be permissible.³ Conveniently, Defense counsel continues to fail to address the foundational arguments set forth in the State’s motion as it relates to relevance, third-party guilt, and Rule 403 of the SCRE. In attempting to present potential circumstances where such an impeachment would become permissible at trial, Defense counsel both misconstrues and misapplies the impeachment standard on two hypothetical instances of Post’s testimony.

Defense counsel cites State v. Pradubsri to reach for the sweeping conclusion that by virtue of Post testifying, the Defendant is entitled to cross-examine him on his pending charges. 403 S.C. 270 (Ct. App. 2013). Pradubsri involves the testimony of a witness who was initially charged with the same drug offenses as the defendant, stemming from the

³ It must be emphasized that the facts underlying the charges facing Post remain in dispute. To open the door to allow Defense counsel to interpret the facts as they see fit (in the worst possible light), on a separate, pending case is wholly improper.

same instance. Id. The Court of Appeals found the defendant's right of confrontation to be violated where the defendant was barred from cross-examining that witness on her potential legal exposure from her initial charges prior to accepting the State's plea offer. Id. at 274.

Pradubsri is inappropriately applied to the present case. Post obviously has not been charged with the murder of Parcell. To the contrary, he is a victim of the harassment charge against the Defendant. The fact that the devices that the alleged child pornography was found on were seized in the course of this investigation does not automatically make the contents of those devices relevant to the charges before the court and the questions of fact to be determined by the jury. Defense counsel would attempt to fashion factual inferences from the contents of those devices (and charges he faces) to make the characterization of the relationship between he and Parcell an issue in this case, where the facts and evidence before this Court do not provide a legitimate avenue for such a tangential departure.

More pointedly, Defense counsel offers the hypothetical of Post testifying about the events the morning of October 13th and of his relationship with Parcell. Of course, the State intends to produce such testimony to the effect of providing context as to why Post would show up at the home on the morning of the 13th and why he would be receiving the envelopes that are subject of the harassment charge. However, Defense counsel takes it several steps further and makes many assumptions about the extent to which he will testify about his relationship with Parcell and the doors that he will *potentially* open. To wit, the Defense poses two alternatives:

1. "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..."

2. “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.”

Defense counsel’s conclusory, unfounded, and irrelevant allegations towards the characterization of Parcell and Post’s relationship is an attempt to utilize a tenuous string of inferences as a legitimate impeachment on Post’s credibility. In reality, this is an attempt to circumvent the impeachment standard by way of attempting to introduce impermissible character evidence under the guise of impeachment.⁴ Moreover, it clearly amounts to unsubstantiated victim-shaming testimony that is categorically excluded in homicide cases. Where Post is to testify to the mere fact that he and Parcell were in a romantic relationship, and nothing more, it does not open the door to impeachment through speculative, collateral characterizations of that relationship.

Restating this point specifically to the Defendant’s second hypothetical, the Defendant fails to explain how this impeachment (going to the length of taking the contents as true), undermines his credibility as to the subject matter he will be testifying to. Where Post is not on trial for murder of Parcell or harassment, and where Defendant cannot establish the basis for introducing third-party guilt evidence, his credibility or bias cannot be challenged as to the material facts he is able to testify to. More specifically, do the Defendant’s overwhelmingly broad, and inflammatory assertions—that Post and Parcell allegedly victimized young children—make his testimony that he found her body and received envelopes less veracious? Such attempt at an “impeachment” of Post serves no other purpose but to get the subject of child pornography in this trial by one means or

⁴ South Carolina Courts have routinely noted improper instances where parties have attempted to show propensity by way of the open-door doctrine. See State v. Young, 364 S.C. 476 (Ct. App. 2005); State v. Heyward, 426 S.C. 630 (2019).

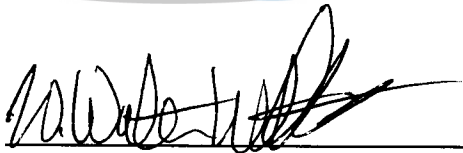
another. It serves no legitimate purpose, and has no legitimate avenue of entry into this trial should the testimony of Post be limited to the State's three factual bases.

V. The State's Request

The State and Defense agree that a pretrial ruling on Post's hypothetical testimony serves no purpose where the Court cannot account for what his testimony will ultimately be. However, due to the sensitive nature of the evidence at hand in light of maintaining the integrity of this trial, exemplified by several pretrial motions before this Court, the State seeks the following directives:

1. To exclude Defendant from cross-examining Post regarding the naming of his pending charges.
2. Should this Court allow Defendant to elicit the specific charges, to bar Defendant from delving into the substance of those charges.

Respectfully submitted,



Walt Wilkins
Solicitor, 13th Circuit



Jake Hofferth
Assistant Solicitor

January 9, 2024