COMMONWEALTH OF KENTUCKY
MCCRACKEN CIRCUIT COURT
CASE NO. 18-CR-221

COMMONWEALTH OF KENTUCKY — PLAINTIFF

v.

SKIP LEE HANSEN — DEFENDENT

**MOTION TO UNSEAL SEALED DOCUMENTS AND PROVIDE COPIES**

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Comes now the Defendant, Skip Lee Hansen (hereinafter Mr. Hansen), *Pro Se,* in good faith, and hereby moves this Honorable Court to unseal certain Sealed documents, provide copies thereof, and reseal the Sealed documents. Mr. Hansen has previously been found indigent by this Court and allowed to proceed *In Forma Pauperis*.

1. Mr. Hansen requests a copy of the Sealed Document Filed November 13, 2018.

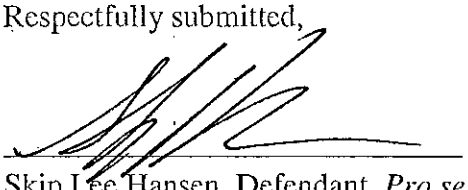
2. Mr. Hansen requests a copy of all Sealed Trial Exhibits Filed November 29, 2018, excluding only those which contain nudity.

3. Mr. Hansen requests a list of trial exhibits denoting which Exhibit relates to which Count.

4. Mr. Hansen requests a current copy of the case history report denoting page and volume numbers.

**WHEREFORE**, Mr. Hansen respectfully requests this Honorable Court issue an Order directing the Clerk to unseal the sealed documents, make copies of all requested documents and provide to him, and to reseal the sealed documents.

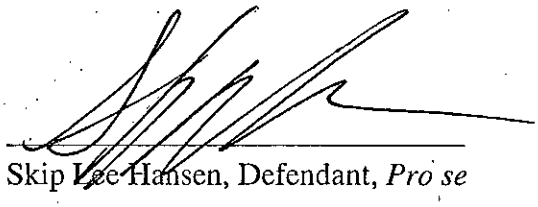
Respectfully submitted,



Skip Lee Hansen, Defendant, *Pro se*
Roederer Correctional Complex
P.O. Box 69
La Grange, KY 40031

**NOTICE**

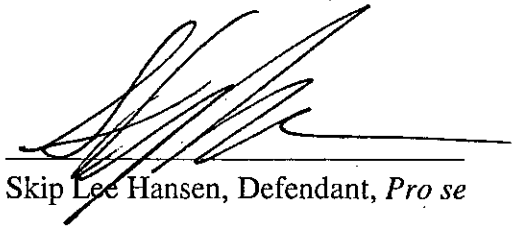
Please take notice that the foregoing was filed by mailing it via first-class mail to the Clerk of the McCracken Circuit Court, P.O. 1455 Paducah, KY 42002 on this 30th day of October, 2020.



Skip Lee Hansen, Defendant, *Pro se*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed via first-class mail to the Commonwealth Attorney, 301 S 6th Street Paducah, KY 42003 on this 30th day of October, 2020.



Skip Lee Hansen, Defendant, *Pro se*

COMMONWEALTH OF KENTUCKY
McCRACKEN CIRCUIT COURT
DIVISION NO. I
INDICTMENT NO. 18-CR-00221

COMMONWEALTH OF KENTUCKY, PLAINTIFF,

VS

**ORDER DENYING PROSE MOTION TO UNSEAL DOCUMENTS AND PROVIDE COPIES**

SKIP LEE HANSEN, DEFENDANT.

Defendant, pro se, filed a motion to unseal documents and provide copies; and, the Court now being otherwise sufficiently advised;

**IT IS HEREBY ORDERED the motion is DENIED.** The defendant does not have an RCr 11.42 motion pending before the court.

Further, the Department of Public Advocacy states they have copied all the file they have in their possession and have processed it for the mail.

**DATED** this 24 day of November, 2020.

T.C.

TIM KALTENBACH, JUDGE
McCRACKEN CIRCUIT COURT
DIVISION NO. I

**CLERK'S CERTIFICATE**

It is hereby certified that a copy of the foregoing Order was mailed to the following on this 25 day of September, 2020.

Commonwealth's Attorney,
Skip Lee Hansen, #304275 Roederer Correctional Complex, P. O. Box 69, La Grange, KY 40031
DPA
Probation and Parole

KIM CHANNELL, CLERK

APP. 3

McCRACKEN CIRCUIT CLERK

BY: Kim Meadows D.C.

MCCRACKEN CIRCUIT COURT

COMMONWEALTH OF KENTUCKY

VS.

SKIP L. HANSEN

INDICTMENT NO. 18-CR-00221

ASSIGNED DIVISION NO. 1

KRS No. 510.060 – Ct. 1
UOR: 11165
Third-Degree Rape
(Class D Felony)

KRS No. 510.110 – Ct. 2
UOR: 11220
First-Degree Sexual Abuse
(Class D Felony)

KRS No. 531.335 – Cts. 3-4
UOR: 37272
Possess/View Matter Portraying Sexual Performance by Minor
(Class D Felony)

ENTERED
MAR 09 2018
MCCRACKEN CIRCUIT COURT
PADUCAH, KENTUCKY

COUNT 1:

THE GRAND JURY CHARGES:

On or about December 23, 2017 in McCracken County, Kentucky, the above-named defendant, Skip L. Hansen, committed the offense of Third-Degree Rape when, being twenty-one (21) years of age or more, he engaged in sexual intercourse with A. C., a minor less than sixteen (16) years of age;

COUNT 2:

THE GRAND JURY CHARGES:

On or about December 23, 2017 in McCracken County, Kentucky, the above-named defendant, Skip L. Hansen, committed the offense of First-Degree Sexual Abuse when he subjected A. C., to sexual contact by forcible compulsion;

COUNT 3:

THE GRAND JURY CHARGES:

On or about July 13, 2016 in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor;

COUNT 4:

THE GRAND JURY CHARGES:

On or about January 16, 2018 in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor;

against the peace and dignity of the Commonwealth of Kentucky.

A TRUE BILL

FOREPERSON

MCCRACKEN CIRCUIT COURT

SUPERSEDING
INDICTMENT NO. 18-CR-00221

COMMONWEALTH OF KENTUCKY

VS.

SKIP L. HANSEN

KRS No. 510.060 – Cts. 1-2
UOR: 11165
Third-Degree Rape
(Class D Felony)

KRS No. 530.065– Ct.3
UOR: 38152
Second Degree Unlawful Transaction w/ a Minor
(Class D Felony)

KRS No. 510.090 – Ct.4
UOR: 11205
Third Degree Sodomy
(Class D Felony)

KRS No. 510.110 – Cts. 5-6
UOR: 11220
First-Degree Sexual Abuse
(Class D Felony)

KRS No. 531.335 – Cts. 7-9
UOR: 37272
Possess/View Matter Portraying Sexual Performance by Minor
(Class D Felony)

KRS No. 531.310 (2B)– Cts. 10-15
UOR: 37218
Use of a Minor (Under 16) In a Sexual Performance
(Class B Felony)

ENTERED
JUN 08 2018
MCCRACKEN CIRCUIT COURT
PADUCAH, KENTUCKY

COUNT 1:

THE GRAND JURY CHARGES:

On or about December 23, 2017 in McCracken County, Kentucky, the above-named defendant, Skip L. Hansen, committed the offense of Third-Degree Rape when, being twenty-one (21) years of age or more, he engaged in sexual intercourse with A. T., a minor less than sixteen (16) years of age;

COUNT 2:

THE GRAND JURY CHARGES:

Between the dates of August 1, 2017 and October 31, 2017, in McCracken County, Kentucky, the above-named defendant, Skip L. Hansen, committed the offense of Third-Degree Rape when, being twenty-one (21) years of age or more, he engaged in sexual intercourse with A. T., a minor less than sixteen (16) years of age;

COUNT 3:

THE GRAND JURY CHARGES:

Between the dates of August 1, 2017 and December 24, 2017, in McCracken County, Kentucky, the above-named defendant, Skip L. Hansen, committed the offense of Second-Degree Unlawful Transaction with a Minor when he knowingly induced, assisted, or caused, A.T., a minor, to engage in illegal controlled substances activity involving marijuana.

COUNT 4:

THE GRAND JURY CHARGES:

Between the dates of August 1, 2017 and December 24, 2017, in McCracken County, Kentucky, the above-named defendant, Skip L. Hansen, committed the offense of Third-Degree Sodomy when, being twenty-one (21) years of age or more, he engaged in deviate sexual intercourse with A. T., a minor less than sixteen (16) years of age;

COUNT 5:

THE GRAND JURY CHARGES:

On or about December 23, 2017 in McCracken County, Kentucky, the above-named defendant, Skip L. Hansen, committed the offense of First-Degree Sexual Abuse when, being twenty-one (21) years of age or more, he subjected A. T., a minor less than sixteen (16) years of age, to sexual contact.

COUNT 6:

THE GRAND JURY CHARGES:

Between the dates of August 1, 2017 and December 24, 2017, in McCracken County, Kentucky, the above-named defendant, Skip L. Hansen, committed the offense of First- Degree Sexual Abuse when, being twenty-one (21) years of age or more, he subjected A. T., a minor less than sixteen (16) years of age, to sexual contact.

COUNT 7:

THE GRAND JURY CHARGES:

On or about July 13, 2016 in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor;

COUNT 8:

THE GRAND JURY CHARGES:

On or about September 1, 2017, in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor;

COUNT 9:

THE GRAND JURY CHARGES:

On or about January 16, 2018, in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor;

COUNT 10:

THE GRAND JURY CHARGES:

On or about December 16, 2017, in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Use of a Minor (Under 16) in a Sexual Performance when, he employed, consented to, authorized or induced a minor, less than sixteen (16) years of age, to engage in a sexual performance;

COUNT 11:

THE GRAND JURY CHARGES:

On or about December 16, 2017, in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Use of a Minor (Under 16) in a Sexual Performance when, he employed, consented to, authorized or induced a minor, less than sixteen (16) years of age, to engage in a sexual performance;

COUNT 12:

THE GRAND JURY CHARGES:

On or about December 16, 2017, in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Use of a Minor (Under 16) in a Sexual Performance when, he employed, consented to, authorized or induced a minor, less than sixteen (16) years of age, to engage in a sexual performance;

COUNT 13:

THE GRAND JURY CHARGES:

On or about December 16, 2017, in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Use of a Minor (Under 16) in a Sexual Performance when he employed, consented to, authorized or induced a minor, less than sixteen (16) years of age, to engage in a sexual performance;

COUNT 14:

THE GRAND JURY CHARGES:

On or about December 16, 2017, in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Use of a Minor (Under 16) in a Sexual Performance when he employed, consented to, authorized or induced a minor, less than sixteen (16) years of age, to engage in a sexual performance;

COUNT 15:

THE GRAND JURY CHARGES:

On or about December 16, 2017, in McCracken County, Kentucky, the above-named defendant, Skip Lee Hansen, committed the offense of Use of a Minor (Under 16) in a Sexual Performance when he employed, consented to, authorized or induced a minor, less than sixteen (16) years of age, to engage in a sexual performance;

against the peace and dignity of the Commonwealth of Kentucky.

A TRUE BILL

FOREPERSON

COMMONWEALTH OF KENTUCKY
McCRACKEN CIRCUIT COURT
Division No. I
Indictment No. 18-CR-00221



COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS. MOTION IN LIMINE TO EXCLUDE EVIDENCE OF OTHER SEXUAL ACTS; PURSUANT TO KRE 412

SKIP HANSEN — DEFENDANT

Comes now the Commonwealth, by and through counsel and respectfully requests that this Court enter an Order prohibiting any evidence relating to any unrelated sexual activity of the victim and in support thereof states as follows:

Pursuant to KRE 412, evidence that the victim engaged in any other sexual behavior and evidence offered to prove the victim's sexual predisposition is not admissible in a criminal proceeding. Further, the Commonwealth is unaware of any applicable exceptions to the rule that would apply to the facts or evidence in this matter.

Wherefore, the Commonwealth asserts that any mention of the victim's sexual conduct is not admissible and requests that the defense be limited to the activity between the victim and defendant.

Respectfully submitted this 5 day of October, 2018.

JAMES A. HARRIS, JR.
Assistant Commonwealth's Attorney
Second Judicial Circuit of Kentucky
McCracken County Courthouse
Paducah, Kentucky 42003-1794

## NOTICE

Please take notice that the foregoing Motion will be brought before Division No. I of the McCracken Circuit Court on November 2, 2018 at 1:00 p.m.

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of 404(b) was served upon **Hon. John Straub,** 400 Park Avenue, Suite B, Paducah, Kentucky 42003; by mailing a true and correct copy on this 5 day of October, 2018.

JAMES A. HARRIS, JR.
Assistant Commonwealth's Attorney

COMMONWEALTH OF KENTUCKY
McCRACKEN CIRCUIT COURT
Division No. I
Indictment No. 18-CR-00221



**COMMONWEALTH OF KENTUCKY** **PLAINTIFF**

**VS** **ORDER EXCLUDING EVIDENCE OF OTHER SEXUAL ACTS; PURSUANT TO KRE 412**

**SKIP HANSEN** **DEFENDANT**

The Commonwealth having moved to exclude from evidence the victim's other sexual conduct and sexual predisposition, a hearing having been held with the defendant and his counsel and the Court being otherwise sufficiently advised;

**IT IS HEREBY ORDERED** that the parties shall not attempt to offer into evidence or comment on the victim's other sexual conduct or sexual predisposition unless and until further Order of this Court.

So Ordered this the 2 day of November, 2018.

T. Kalt

HON. TIM KALTENBACH, JUDGE
McCracken Circuit Court
Division No. I

## CLERK'S CERTIFICATE

I hereby certify that the foregoing Order was served upon the **Commonwealth's Attorney**, McCracken County Courthouse, Paducah, Kentucky 42003, **Hon. John Straub**, 400 Park Avenue, Suite B, Paducah, Kentucky 42003, attorney or defendant; by mailing a true and correct copy this the 2 day of November, 2018.

KIM CHANNELL
McCracken Circuit Court Clerk

By: S. Wilford D.C.

COMMONWEALTH OF KENTUCKY
McCRACKEN CIRCUIT COURT
DIVISION NO. I
INDICTMENT NO. 18-CR-00221



COMMONWEALTH OF KENTUCKY, PLAINTIFF,

VS FINAL JUDGMENT/SENTENCE OF IMPRISONMENT

SKIP LEE HANSEN, DEFENDANT.

The defendant, been found guilty by a McCracken County Jury at trial held on the 26th-28th day of November, 2018, of the crime(s) **2 Counts of Third Degree Rape, 1 Count of Second Degree Unlawful Transaction with a Minor-Marijuana, 1 Count of First Degree Sexual Abuse, 3 Counts of Possess/View Matter Portraying Sexual Performance by Minor and 6 Counts of Use of a Minor Under 16 in a Sexual Performance** and the Jury recommended a sentence of **five (5) years each on 2 Counts of Third Degree Rape under Instruction No. 2 and 3, five (5) years for Second Degree Unlawful Transaction with a Minor-Marijuana under Instruction No. 4, five (5) years for First Degree Sexual Abuse, victim under 16 years of age under Instruction No. 5, five (5) years each for 3 Counts of Possess/View Matter Portraying a Sexual Performance by a Minor, under Instructions 6, 7 and 8, eighteen (18) years each on 6 Counts of Use of a Minor in a Sexual Performance, victim under 16 years of age under Instructions No. 9, 10, 11, 12, 13 and 14. The jury also recommended that the punishment for Instructions No. 2-14 run concurrently(at the same time).**

On the 11th of January, 2019, the defendant appeared in open court with his attorney, John Straub, and the Court inquired of the defendant and counsel whether

they had any legal cause why judgment should not be pronounced and afforded the defendant and counsel an opportunity to make any statements in the defendant's behalf and to present any information in mitigation of punishment, and the Court having give due consideration to the written report of the pre-sentence investigation prepared by the Division of Probation and Parole, and to the nature and circumstances of the crime, and the history, character and condition of the defendant, and the Court having given the defendant and counsel an adequate opportunity and reasonable period of time within which to controvert the same, and the defendant and counsel having examined said report and made any objections, which were so noted, thereto, and the Court having considered probation or conditional discharge, is of the opinion that imprisonment of the defendant is necessary because:

a) The significant risk the defendant will commit another crime;

b) The serious and intentional nature of the offense;

c) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; and

d) A disposition under this Chapter (KRS 533) will unduly depreciate the seriousness of the defendant's crime.

IT IS ORDERED AND ADJUDGED that the defendant be remanded to the custody of the McCracken County Jail, there to await transportation by the McCracken County Sheriff to such institution designated by the Department of Corrections, to serve a sentence of **five (5) years each on 2 Counts of Third Degree Rape, five (5) years for Second Degree Unlawful Transaction with a Minor-Marijuana, five (5) years for First Degree Sexual Abuse, victim under 16 years of age, five (5) years each for 3**

**Counts of Possess/View Matter Portraying a Sexual Performance by a Minor, eighteen (18) years each on 6 Counts of Use of a Minor in a Sexual Performance, victim under 16 years of age. All Counts to run concurrent for a total sentence of eighteen (18) years.**

**Upon discharge a mandatory five (5) year conditional discharge is required for all sex offenders. The defendant shall be subject to the Supervision of Probation and Parole and pay a $30.00 supervision fee.**

**IT IS FURTHER ORDERED** pursuant to House Bill 463, which amended KRS 532.120 as follows: "Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the Department of Correction toward the service of the maximum term of imprisonment in cases involving a felony sentence..." All credit is computed and applied by Probation and Parole and Department of Corrections.

It is noted that the defendant's date of birth is 12/11/73.

The court costs and public advocate fee are ORDERED waived, in that the defendant is a poor person as defined by KRS 453.190(2), the defendant is unable to pay court costs and defendant will be unable to pay court costs in the foreseeable future.

**Any bond posted on behalf of the defendant may be released at this time.**

**The defendant, having been found guilty by a jury, the Court during the sentencing process, advised the defendant of his right to appeal the conviction, and further advised him of the various ways an appeal may be taken, including the filing of same by the Clerk, and the time period within which to file an appeal.**

**FURTHER IT IS ORDERED** that the Defendant, upon any release from the Department of Correction, the defendant **MUST IMMEDIATELY** register as a sex offender.

**ENTERED** from the bench on the 11th day of January, 2019, and **DATED** this 14 day of January, 2019.

TIM KALTENBACH, JUDGE
DIVISION I

**CLERK'S CERTIFICATE**

I hereby certify that the foregoing has been entered of record and copies of same served on the following, this 16 day of January, 2019:

Commonwealth Attorney
John Straub,
Probation & Parole
McCracken County Jailer
McCracken County Sheriff
Department of Corrections

KIM CHANNELL, CLERK
McCRACKEN CIRCUIT COURT
BY D. Clifford D.C.

RENDERED: JULY 31, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2019-CA-000132-MR

SKIP HANSEN — APPELLANT

v.

APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE TIMOTHY KALTENBACH, JUDGE
ACTION NO. 18-CR-00221

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CALDWELL, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Skip Hansen appeals from the McCracken Circuit Court's final judgment and sentence of imprisonment entered January 16, 2019. At trial, the jury convicted Hansen of a variety of offenses involving his former girlfriend's daughter, including multiple counts of third-degree rape and using a minor in a sexual performance. Hansen was thereafter sentenced to a concurrent term of eighteen years' imprisonment. After our review, we affirm.

## I. Background

Hansen and Alice[1] were involved in a relationship for approximately ten years. When Alice first met Hansen, she had a four-year-old daughter, Betty, from a previous relationship. At some point, Hansen, Alice, and Betty began living together. Over the next few years, Betty had a good relationship with Hansen, whom she viewed as a father figure. Later, Hansen and Alice had domestic difficulties. The couple ended their relationship and began living apart. Nonetheless, even though Hansen was not Betty's biological father, Alice permitted Hansen to have weekend visitations with Betty at his home in McCracken County.

On January 17, 2018, Alice and Hansen had been arguing all day. Betty, who was fifteen years old at the time, had recently returned from a visit with Hansen. Alice wanted to know if Hansen had been saying negative things about her to Betty, so she checked Betty's cell phone for text messages regarding their issues. Instead, she found nude photographs of Betty which had been sent to Hansen's cell phone number. Alice called Hansen, who denied knowing why Betty sent the nude photographs to him and claimed he did not request them. He also claimed Betty probably sent the photographs to him accidentally, stating she "sends nudes to everyone."

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[1] To preserve the anonymity of the minor victim, we have elected to use pseudonyms for the victim and her mother in this case.

Not satisfied with this explanation, Alice called the McCracken County Sheriff's Department, which began its investigation. The investigating detectives interviewed Alice and Betty and took possession of Betty's cell phone. Betty's cell phone contained a Snapchat account. One of the investigating detectives would later describe Snapchat as a "secretive" messaging application, because it automatically deletes texts and photographs after the recipient views them. However, upon logging into the Snapchat account from Betty's cell phone, investigators were able to recover text conversations between Betty and Hansen, as well as videos and photographs she had sent to him. One of the videos depicted Betty massaging her bare breast. The date stamp on the video file indicated Betty was thirteen years old at the time the video was taken. In one of their logged text conversations, Hansen sent Betty a one-word message: "NUDES!" Betty interpreted this as a request for nude photographs of herself.

Over the following week, with Alice's cooperation, the investigating detectives conducted and recorded two monitored telephone conversations to Hansen, referred to as "controlled calls." The first controlled call was between Alice and Hansen, and the second was between Betty and Hansen. In the first controlled call, Hansen denied wrongdoing, but admitted Betty would sleep next to him in his bed because it was "comfortable." In the second controlled call, Hansen urged Betty to say she had lied and invented the allegations against him.

According to Betty, the nature of her relationship with Hansen changed when she was eleven years old and Hansen still lived with Betty and her mother. Hansen began touching her vagina at night when she went to bed, which eventually progressed to digital penetration. Betty said she first had sexual intercourse with Hansen at some point between August and October 2017, while she was visiting him at his home in McCracken County. On December 16, 2017, Betty said she was asleep in Hansen's bed when she woke up to find him taking photographs of his penis against her buttocks. Betty denied sending the photograph to Hansen, stating Hansen sent the photograph to himself from her cell phone. A second incident of sexual intercourse between Betty and Hansen occurred on December 23, 2017.

Based on the interviews, controlled calls, and the examination of Betty's cell phone, investigators successfully sought an arrest warrant for Hansen and a search warrant for electronic devices and storage media in Hansen's home. After Hansen's arrest, the investigators recovered computers, cell phones, tablets, memory cards, and flash drives. After a forensic examination of these devices, the investigators found multiple photographs of Betty, some of which were identified as having been taken in Hansen's bedroom. One photograph shows Betty displaying her vagina to the camera. Another photograph shows a male's penis next to a female's buttocks. Betty would later testify she recognized herself in that

photograph due to a birthmark. Two photographs show Betty smoking marijuana in Hansen's living room.

The McCracken County grand jury thereafter indicted Hansen on one count of third-degree rape, one count of first-degree sexual abuse, and two counts of possession or viewing of matter portraying a sexual performance by a minor. After the investigating detectives recovered more forensic evidence from the electronic devices found at Hansen's home, the Commonwealth successfully sought a superseding indictment. The new indictment charged Hansen with two counts of third-degree rape, one count of second-degree unlawful transaction with a minor (marijuana), one count of third-degree sodomy, two counts of first-degree sexual abuse, three counts of possession or viewing matter portraying a sexual performance by a minor, and six counts of using a minor under age sixteen in a sexual performance.

At trial, the jury heard testimony consistent with the foregoing narrative from the investigating detectives, Alice, and Betty. The jury also viewed the texts, videos, and photographs recovered from Betty's cell phone and from the electronic devices seized at Hansen's residence. Hansen testified in his defense and admitted he gave Betty marijuana, though he denied ever sending nude photographs of Betty to himself. He also denied having sexual intercourse with Betty or touching her inappropriately.

Following deliberation, the jury found Hansen guilty of two counts of third-degree rape,[2] one count of second-degree unlawful transaction with a minor (marijuana),[3] one count of first-degree sexual abuse,[4] three counts of possession or viewing matter portraying a sexual performance by a minor,[5] and six counts of using a minor in a sexual performance.[6] The jury fixed Hansen's sentence at five years for each of the Class D felonies and eighteen years for each count of use of a minor in a sexual performance, which is a Class B felony. The jury recommended concurrent sentencing for the convictions, resulting in a term of eighteen years' imprisonment. The trial court entered its final judgment on January 16, 2019, sentencing Hansen in accordance with the jury's verdict. This appeal followed.

## II. Analysis

Hansen presents three arguments on appeal. First, he argues the trial court erroneously failed to grant a mistrial following testimony relating to his marijuana use which he contends was irrelevant and prejudicial. To explain this issue, some further background is required. In a pretrial motion, the prosecutor

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[2] Kentucky Revised Statutes (KRS) 510.060(1)(a), a Class D felony.

[3] KRS 530.065, a Class D felony.

[4] KRS 510.110(1)(c)1, a Class D felony.

[5] KRS 531.335, a Class D felony.

[6] KRS 531.310(2)(b), a Class B felony.

gave notice of its intent to introduce character evidence under KRE[7] 404(b), asserting Hansen provided marijuana to Betty in June 2015 and thereafter. In arguing the issue during a pretrial hearing, the prosecutor contended Hansen's marijuana use was how he was able to induce Betty to participate in sexual acts. The court took the matter under consideration.

On the morning of the trial, the trial court ordered both counsel to restrict testimony on Hansen's marijuana use to that which was relevant to the charged offense relating to the victim. The trial court then specifically ruled other references to Hansen's marijuana usage should be left out. Unfortunately, when Alice was testifying on direct examination regarding Hansen smoking marijuana with Betty, Alice stated, "Skip smoked pot almost daily." The trial court asked counsel to approach and questioned the prosecutor about the court's order relating to testimony about marijuana use. The prosecutor responded, stating he was only trying to ask about the subject of the indictment—Hansen's marijuana use with the victim during the time period. The trial court asked defense counsel if he wanted any kind of admonition. Defense counsel asked for an admonition to the jury to ignore Hansen's marijuana smoking, which the trial court granted. After the admonition was given, defense counsel again approached the bench and requested

[7] Kentucky Rules of Evidence.

a mistrial. The trial court denied the motion but urged the prosecutor again to confine himself to matters in the indictment.

Hansen now contends the trial court erroneously denied the motion for mistrial, arguing the statement about his marijuana use, which the trial court had deemed inadmissible, unfairly prejudiced the jury against him. "It is well established that the decision to grant a mistrial is within the trial court's discretion, and such a ruling will not be disturbed absent a showing of an abuse of that discretion." *Commonwealth v. Padgett*, 563 S.W.3d 639, 645 (Ky. 2018) (quoting *Woodard v. Commonwealth*, 147 S.W.3d 63, 68 (Ky. 2004)). "The test for an abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Id.* (citation omitted). "[A] mistrial is an extreme remedy and should be resorted to only when there is a *fundamental defect* in the proceedings and there is a '*manifest necessity* for such an action.'" *Id.* (quoting *Woodard*, 147 S.W.3d at 68).

The trial court stopped the prosecutor's questioning when Alice's response entered the area forbidden by the court's ruling. The trial court then admonished the jury to ignore her response. The Kentucky Supreme Court has held "[a] jury is presumed to follow an admonition to disregard evidence and the admonition thus cures any error." *Johnson v. Commonwealth*, 105 S.W.3d 430,

441 (Ky. 2003) (citations omitted). However, the Supreme Court went on to qualify this rule:

> There are only two circumstances in which the presumptive efficacy of an admonition falters: (1) when there is an overwhelming probability that the jury will be unable to follow the court's admonition *and* there is a strong likelihood that the effect of the inadmissible evidence would be devastating to the defendant; or (2) when the question was asked without a factual basis *and* was "inflammatory" or "highly prejudicial."

*Id.* (citations omitted).

Here, Hansen argues the first circumstance, asserting the jury would be unable to follow the court's admonition and the testimony was "devastating" to his defense. However, he provides no basis for claiming the jury could not follow the court's admonition, only a bare assertion. There is nothing in the record to support the view that this slip in the testimony swayed the jury. In his testimony, Hansen admitted he provided Betty with marijuana. Furthermore, the Commonwealth argues the slip in the testimony was brief, it was tied to a charged offense, and it was neither inflammatory nor devastating. We also note here that the trial court was vigilant in enforcing its order relating to the marijuana usage testimony, and thereby worked assiduously to protect Hansen's rights relating to this issue. We agree with the Commonwealth and hold the trial court's admonition cured any error. *Id.*

For his second issue on appeal, Hansen argues the trial court erroneously failed to allow testimony alleging Betty had sent nude photographs to others. Prior to trial, the prosecutor filed a motion *in limine* requesting the trial court enter an order prohibiting any evidence regarding unrelated sexual activity of the victim, pursuant to KRE 412, the rape shield rule. In a pretrial hearing on the KRE 412 motion, Hansen's counsel explicitly stated he had no intention of introducing the victim's unrelated sexual conduct. Hansen interrupted at this point, stating there was "stuff that needs to be heard" about "things she was doing." The trial court ruled Hansen's request was improper because he was not representing himself. Furthermore, after reciting the language of KRE 412, the trial court denied Hansen's request because he failed to follow the procedure in the rule for the admission of sexual conduct evidence. At this point, Hansen's counsel explained to him how they could introduce evidence of motive "without necessarily going into specific sexual acts." Hansen relented, and the trial court granted the prosecutor's motion *in limine*.

However, on the first day of Hansen's trial, Alice testified about her confrontation with Hansen about the nude photographs. She testified that, when confronted, Hansen said he did not know why Betty sent him the photographs, asserting, "She probably sent it to the wrong person. She sends nudes to everyone." At a bench conference, defense counsel argued the prosecutor had

"opened the door" when it broached the subject of Betty sending nude photographs. The prosecutor denied doing so, asserting those were Hansen's words. Later, at the end of the first day of trial, defense counsel returned to the bench to revisit the issue, stating the prosecution had opened the door to the subject, and Hansen had a constitutional right to defend himself based on the sexual conduct of the victim. The trial court denied the motion.

Hansen now argues he was denied the right to present a defense when the trial court prevented him from presenting evidence that Betty had sent nude photographs to other individuals. In so doing, he must overcome the protection to an alleged victim afforded by KRE 412.

> Any analysis of the admissibility of prior sexual conduct generally begins with the question of whether it is barred by KRE 412(a). This rule, commonly known as the "rape shield rule," begins by stating that such evidence is "generally inadmissible." In particular, such evidence may not be offered to prove that an alleged victim engaged in other sexual behavior or to prove a sexual predisposition. The purpose of the rule is essentially to avoid inferences of bad sexual character being used to cast doubt on an alleged victim's claim of sexual assault, which is improper impeachment.

*Perry v. Commonwealth*, 390 S.W.3d 122, 128-29 (Ky. 2012). KRE 412(b) provides exceptions to the general prohibition on such evidence, but anyone intending to provide evidence pursuant to KRE 412(b) must first comply with KRE 412(c):

> (1) A party intending to offer evidence under subdivision (b) must:
>
> > (A) file a written motion at least fourteen (14) days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and
> >
> > (B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.
>
> (2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

In short, "[a]ny person intending to introduce evidence pursuant to KRE 412(b) must provide written notice at least 14 days prior to trial. KRE 412(c)(1)(A). The rule also requires that the court conduct an *in camera* hearing prior to admitting such evidence. KRE 412(c)(2)." *Henderson v. Commonwealth*, 563 S.W.3d 651, 679-80 (Ky. 2018).

It is uncontroverted that Hansen failed to comply with KRE 412(c)(1)(A) when he failed to file a motion specifically describing the evidence he wished to submit to the jury. The trial court cited Hansen's lack of compliance with KRE 412's procedural requirements in the pretrial hearing upon this issue. When a defendant fails "to comply with the requirements of KRE 412(c)(1)(A), the

trial court [has] the discretion to rely upon the lack of notice alone to exclude testimony about the victim's sexual history[.]" *Mayo v. Commonwealth*, 322 S.W.3d 41, 49 (Ky. 2010). Furthermore, the evidence Hansen sought to introduce was "that an alleged victim engaged in other sexual behavior or to prove a sexual predisposition[,]" which is exactly the kind of evidence KRE 412 intends to exclude. *Perry*, 390 S.W.3d at 128-29. We discern no error in the trial court's decision to comply with the mandates of KRE 412.

For his third and final issue on appeal, Hansen contends the sentencing phase of his trial was tainted by incorrect information relating to his parole eligibility. This assertion of error is unpreserved, and Hansen requests review for palpable error under Kentucky Rule of Criminal Procedure (RCr) 10.26:

> Under Criminal Rule 10.26, an unpreserved error may only be corrected on appeal if the error is both palpable and affects the substantial rights of a party to such a degree that it can be determined manifest injustice resulted from the error. For error to be palpable, it must be easily perceptible, plain, obvious and readily noticeable. The rule's requirement of manifest injustice requires showing . . . [a] probability of a different result or error so fundamental as to threaten a defendant's entitlement to due process of law.

*Young v. Commonwealth*, 426 S.W.3d 577, 584 (Ky. 2014) (citations and internal quotation marks omitted). "For an error to be palpable, it must . . . involve prejudice more egregious than that occurring in reversible error[.]" *Brewer v. Commonwealth*, 206 S.W.3d 343, 349 (Ky. 2006) (citation and internal quotation

marks omitted). In addition, "[a]n error is palpable only if it is shocking or jurisprudentially intolerable." *Allen v. Commonwealth*, 286 S.W.3d 221, 226 (Ky. 2009) (citation and internal quotation marks omitted).

Hansen argues the prosecutor submitted misleading evidence relating to his parole eligibility. In closing argument during the sentencing phase, the prosecutor referenced how Hansen's Class D felony convictions were subject to parole eligibility after serving fifteen percent of the sentence. However, Hansen argues this was misleading because he was also convicted of six counts of using a minor in a sexual performance. These convictions were Class B felonies, requiring him to serve eighty-five percent of his sentence before parole eligibility. According to Hansen, KRS 439.340 limits fifteen-percent parole eligibility to those serving an aggregate sentence of five years or less, for which he was never going to be eligible because of his additional Class B felony convictions. Hansen claims the result was that the jury gave him the maximum sentence of five years each on his Class D convictions, which they would not have done if the prosecutor had given the jury accurate information. As support, Hansen cites *McGregor v. Commonwealth*, No. 2012-SC-000245-MR, 2013 WL 4680444 (Ky. Aug. 29, 2013), an unpublished case in which the Kentucky Supreme Court found palpable error resulting from incorrect testimony presented during the sentencing phase.

The Kentucky Supreme Court recently considered a similar issue, as well as the effect of *McGregor*, in *Helton v. Commonwealth*, 595 S.W.3d 128 (Ky. 2020). The *Helton* Court stated, "incorrect or false testimony violates due process if it is 'material,' which means there was a 'reasonable likelihood that the false testimony could have affected the judgment of the jury.'" *Id.* at 141 (quoting *Robinson v. Commonwealth*, 181 S.W.3d 30, 38 (Ky. 2005)). After analyzing the issue, the *Helton* Court declined to follow *McGregor* and find palpable error, stating it had "no reason to believe that the jury would have recommended a lesser sentence if it had been presented with the correct parole eligibility information." *Id.*

Turning to the case *sub judice*, our review of the record indicates the prosecutor gave the jury accurate information on the parole eligibility for Hansen's Class B felonies; *i.e.*, he would be required to serve eighty-five percent of the sentence. The jury thereafter fixed Hansen's sentence for these Class B convictions at eighteen years each. Furthermore, the jury recommended the six counts of each Class B felony to be served concurrently, rather than consecutively, and recommended that the Class D felonies be served concurrently as well, resulting in an aggregate sentence of eighteen years. Ultimately, the jury set the length of Hansen's sentence based on the Class B felony convictions, and this was unaffected by any misleading information the jury may have received regarding his

parole eligibility for the Class D felony convictions. Based on the reasoning our Supreme Court outlined in *Helton*, we discern no palpable error.

## III. Conclusion

For the foregoing reasons, we affirm the trial court's judgment and sentence of conviction entered January 16, 2019.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Aaron Reed Baker
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Daniel Cameron
Attorney General of Kentucky

Thomas A. Van De Rostyne
Assistant Attorney General
Frankfort, Kentucky

# Ky. RCr Rule 12.05

Current through amendments received through February 9, 2021

KY - Kentucky Local, State & Federal Court Rules RULES OF CRIMINAL PROCEDURE XII. APPEALS

## Rule 12.05. Petition for rehearing and discretionary review motion not required for exhaustion.

In all appeals from criminal convictions or post-conviction relief matters a litigant shall not be required to petition for rehearing or to file a motion for discretionary review to either the Kentucky Court of Appeals or Kentucky Supreme Court following an adverse decision of either the circuit court or Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when the claim has been presented to the appellate court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies available for that claim. If rehearing or discretionary review is sought on less than all of the claims of error presented on appeal, the litigant, nevertheless, shall be deemed to have exhausted all available state remedies respecting the claim(s) of error for which rehearing or discretionary review is not sought. Finality of the opinion for all claims of error is governed by CR 76.30(2).

## History

(Adopted October 29, 2004, effective January 1, 2005.)