

1 MS. LOWE: And this is all before the phone
2 call.

3 THE COURT: Okay. And the phone call occurs
4 what time?

5 MS. LOWE: At 2:18.

6 THE COURT: At 2:18, all right. All right,
7 and so then we have --

8 MS. LOWE: I'm sorry, 2:12 and then 2:18,
9 there's two calls.

10 THE COURT: All right. And so then we have a
11 message, "Check out app," which occurs sometime on Monday
12 before -- between 10:49 and 1:09. That's before the phone
13 call.

14 MS. LOWE: Yes.

15 THE COURT: And you believe that's a reference
16 to the picture, one of these pictures. One's sent on
17 Sunday, it's probably not the one sent on Monday.

18 MS. LOWE: Correct.

19 THE COURT: Because that came later.

20 MS. LOWE: I believe that is a reference to
21 the picture sent on Sunday.

22 THE COURT: All right, "Check out the app."
23 Okay. And it's the phone call that connects Alex VA to

1 Alex?

2 MS. LOWE: Yes, so they've been using the same
3 phone number and --

4 THE COURT: To text message.

5 MS. LOWE: To text message and on this phone
6 call.

7 THE COURT: Sure.

8 MS. LOWE: And after the phone call he again
9 says, "Go look at the picture I sent you. Tell me what
10 your opinion is on it." When they start texting again,
11 which is Monday at 2:25, this is on page 65 --

12 THE COURT: Yeah.

13 MS. LOWE: "What app am I checking out?
14 Grinder? What's your name there? I forgot."

15 And if you read this portion of the
16 conversation, it's essentially Alex VA saying 'I got
17 kicked off. I have a new account.' And you see in these
18 messages that they're basically trying to find each other
19 again --

20 THE COURT: Uh-huh.

21 MS. LOWE: -- on the Grinder account. And
22 that's the purpose of sending. And you see here, you'll
23 see in the Commonwealth's 1 the defendant is still trying

1 to figure out if he's seen the picture. Alex is saying,
2 "I want to change my picture after you find me." And then
3 they go back to talking on Grinder after 3 o'clock when
4 the picture gets sent.

5 THE COURT: Okay.

6 MS. LOWE: Your Honor, I'd point out in the
7 Grinder communications, after the photograph is sent,
8 there is mention of the aunt, there is mention of, "You
9 did good today," which the defendant said in his interview
10 was a reference to the phone call, that he had done well
11 talking on the phone.

12 I think that the defendant's interview
13 claiming that he didn't know what he was doing or got
14 confused is not very credible. And certainly, in the
15 light most favorable to the Commonwealth, I think, based
16 on the fact that the text message conversation remains
17 with the same phone number and that he, on their phone
18 call, they reference the Grinder app and then there's the
19 whole conversation about finding each other again, that
20 the link is certainly there that when the defendant finds
21 Alex's account again that he knows who it is.

22 When Detective Bauer says, "Hey, it's Alex,"
23 what does he say? "I changed my pic. You there?" The

1 defendant --

2 THE COURT: This is he says -- okay.

3 MS. LOWE: This is on page 24.

4 THE COURT: Of 4.

5 MS. LOWE: Yes.

6 THE COURT: No, of 2.

7 MS. LOWE: Of 2.

8 THE COURT: Right.

9 MS. LOWE: The defendant never says, "Oh, I'm
10 sorry, this wasn't for you. I was confused." He never
11 corrects, he never tries to say, "Oh, I messed up. I sent
12 the wrong picture to you."

13 And it's the defendant, throughout his
14 interview, he can't see what pictures are there, but this
15 is a picture of his phone. You can clearly see what
16 pictures you've sent and what is being said.

17 And I'd point out again that on page, I
18 believe it's 27, "Even the one of your dick, right?" That
19 conversation clearly shows, if you're reading the messages
20 before and after that, the "Yeah," is in reference to that
21 answer.

22 I think in his interview the defendant tries
23 to have an answer for everything that Detective Bauer

1 brings up, and the answers start to feed on each other
2 because they can't all be right, they don't all make
3 sense.

4 Your Honor, I think that the link between the
5 two Grinder accounts is clear based on the phone call in
6 the text messages and the fact that the defendant never
7 panics or says, "Oh, I'm sorry. I didn't mean to send
8 that to you," once he has sent it.

9 THE COURT: All right. Mr. Sheehy, anything
10 else in your motion?

11 MR. SHEEHY: Yes, Your Honor. If you look
12 above on Monday, July 16th, there are two audio clips.

13 THE COURT: Which exhibit?

14 MR. SHEEHY: This is Exhibit 2.

15 THE COURT: All right, Exhibit 2.

16 MR. SHEEHY: There are two audio clips.

17 THE COURT: Monday, July 16th?

18 MR. SHEEHY: Monday, July 16th, above the
19 pictures and it's --

20 THE COURT: Okay, hold on. Let me get there.
21 Okay, yes?

22 MR. SHEEHY: Somewhere in the testimony, Your
23 Honor, and I don't recall where, there was a comment, and

1 I think it was the interview, that these text messages
2 were saying, "Call me, call me." And then Saturday there
3 is a question mark; how that picture got there on Sunday
4 morning at 6:38 doesn't make any sense to me. There's no
5 text messaging in there.

6 In addition, Your Honor, there's no way that
7 Alex VA could ever receive these pictures simply because
8 he had been kicked off, his account was --

9 THE COURT: I'm not sure you have to -- I'm
10 not sure the statute requires receiving it.

11 MR. SHEEHY: Okay. And then in the text
12 message --

13 THE COURT: I mean, right? I mean, a fair
14 reading of it doesn't require it to be received, it
15 requires somebody to use a communication system --

16 MR. SHEEHY: To expose himself.

17 THE COURT: -- you know, for a certain purpose
18 knowing or has reason to believe you're dealing with a
19 child younger than 15. I'm not sure receipt is an issue.

20 MR. SHEEHY: Okay. And then nowhere in the
21 text messages does Alex VA direct Norman to the Alex site.
22 There's nothing in there. All he says is, "I changed my
23 pic," he doesn't say, "I had to get a new profile, and my

1 new profile is Alex." All he says is, "I have a new pic,"
2 which relates to the pic that --

3 THE COURT: Well, we have the statements
4 about, "I got kicked off."

5 MR. SHEEHY: Correct.

6 THE COURT: That's different than, "I have a
7 new pic." I mean, I realize --

8 MR. SHEEHY: Well, no, no. But the text
9 messages from Alex VA are saying, "I have a new pic," not
10 saying, "I have a new profile," or a new name or anything
11 of that nature. "I have a new pic." And how many Alex's
12 are there in the world?

13 THE COURT: All right. Anything else?

14 MR. SHEEHY: No, Your Honor.

15 THE COURT: All right. I think when I view
16 the evidence in the light most favorable to the
17 Commonwealth, a sufficient case has been made. So I
18 overrule the motion to strike.

19 MR. SHEEHY: All right.

20 THE COURT: How do you wish to proceed at this
21 point?

22 MR. SHEEHY: Your Honor, I don't think it's
23 necessary to make an opening argument in light of the fact

1 that I scheduled during that time frame. I don't know how
2 much time you all are going to need for closings.

3 MR. SHEEHY: I'm probably going to need five
4 minutes, Your Honor, since this is a bench trial.

5 THE COURT: Five minutes?

6 MR. SHEEHY: Five to ten minutes.

7 THE COURT: Okay, that's fine. Why don't I
8 give you ten minutes now to get your thoughts together and
9 then we'll move into closings.

10 MR. SHEEHY: Thank you.

11 THE COURT: Of course, I don't want to give
12 you the impression you have to be done by 1 o'clock. We
13 can come back, okay?

14 MR. SHEEHY: I appreciate it. I understood.

15 (Brief recess)

16 THE COURT: All right, the defendant is in the
17 courtroom with his counsel. The Commonwealth is also
18 present.

19 Counsel ready for closing?

20 MR. SHEEHY: Your Honor?

21 THE COURT: Yes, sir.

22 MR. SHEEHY: There is a motion to strike.

23 THE COURT: Okay. You want to renew your

1 motion to strike?

2 MR. SHEEHY: I did want to renew my motion to
3 strike and again, Your Honor, remind the Court that there
4 really is no evidence of his intent to send this young boy
5 a picture. His efforts throughout have been to help the
6 boy. And we've -- just renewing what I stated earlier.

7 THE COURT: All right. I overrule the motion
8 to strike.

9 Closing.

10 MS. LOWE: Thank you, Your Honor.

11 Yes, Your Honor, we're asking the Court to
12 find the defendant guilty. When we talk about intent in
13 an offense like this, the fact that this, you know -- the
14 defendant could have just offered to send a picture of his
15 penis or said, "I want to send you one," or, "Will you
16 send me one," and that would be a solicitation, this kind.
17 The fact that the defendant completes the act and sends
18 the picture is something we can consider when looking at
19 intent.

20 Additionally, I think we have to look at the
21 entirety of the conversations and the interaction between
22 these two people. The defendant claims that he realizes
23 he's talking to the wrong person on the 23rd at 5 o'clock.

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V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - -X
COMMONWEALTH OF VIRGINIA :
-vs- :
NORMAN MICHAEL ACHIN, :
Defendant. :
- - - - -X

CASE NO. FE-2018-1497

Circuit Courtroom 5F
Fairfax County Courthouse
Fairfax, Virginia

Friday, November 15, 2019

The above-entitled matter came on to be heard
before THE HONORABLE MICHAEL F. DEVINE, Judge, in and for
the Circuit Court of Fairfax County, in the Courthouse,
4110 Chain Bridge Road, Fairfax, Virginia, beginning at
12:22 o'clock P.m.

APPEARANCES:

On Behalf of the Commonwealth:

ELENA LOWE, ESQUIRE
Assistant Commonwealth's Attorney

On Behalf of the Defendant:

THOMAS WALSH, ESQUIRE

P R O C E E D I N G S

(The Court Reporter was previously sworn by the Clerk of the Court.)

THE COURT: I think we're ready to go on to Norman Achin.

(Whereupon, the Defendant, Mr. Achin, and Mr. Walsh approached counsel table.)

THE COURT: We're here in the case of Commonwealth of Virginia versus Norman Achin, Felony Case Number 2018-1497.

Mr. Achin is present in the courtroom with his counsel, Mr. Walsh. Ms. Lowe is here for the Commonwealth. This matter is before the Court for sentencing after a bench trial on the offense of computer solicitation.

Mr. Walsh, do you wish to address your -- you had some motions that you filed.

MR. WALSH: I would like to, Judge. Just briefly.

THE COURT: Do you want to address those first?

MR. WALSH: Yes, that would be perfect. Thank you, Your Honor.

1 So, I did file a motion with the Court to set
2 aside the Court's verdict, which is a little different on
3 a bench trial, under 3A:15, Judge.

4 And it was -- I brought two issues forth to
5 the Court. One was the one of entrapment, that was
6 mentioned by trial counsel, I believe at the motion to
7 strike the Commonwealth's case and then renewed at the end
8 of the case.

9 And I would submit to the Court, having
10 reviewed the transcripts now -- the Court is well aware
11 that I didn't try the case --

12 THE COURT: Yes.

13 MR. WALSH: -- and I've reviewed these
14 transcripts and the exhibits.

15 And they're very confusing. I mean, I went
16 through them over and over again, and when I read the
17 transcript I saw the Court's questions -- some of the
18 questions I had -- of where things really fell, who was
19 soliciting whom through the different personas.

20 THE COURT: I think there was some confusion
21 at the time these acts were going on with regard to Mr.
22 Achin as to exactly, at some times, who he was talking to.

23 MR. WALSH: That's correct. And I --

1 THE COURT: Because he was talking to so many
2 people in such a short time period. And just the nature
3 of the medium.

4 MR. WALSH: That's correct, the app Grindr.

5 And so I would submit to the Court that Mr.
6 Achin went on an adult site, and the first initial contact
7 was with Detective Bauer through Alex VA.

8 And at first there was -- when you contact
9 or you tap there's no age mentioned, but then afterwards,
10 in the beginning of the conversation, Detective Bauer
11 mentions he's fourteen.

12 Obviously, there's not a fourteen-year-old;
13 it's a fake, or a lie basically, or his persona. So,
14 there really is not a victim in this case.

15 And Mr. Achin communicates with him and then
16 realizes that he -- at some time he goes back and reads
17 through the messages and notices that Detective Bauer held
18 himself out as a fourteen-year-old and then changes and
19 says, you know, "You shouldn't be on this site." But
20 Detective Bauer had put out that he's a stressed, troubled
21 kid, basically abandoned by his parents, living with his
22 aunt. He was shifting in his age. And during that
23 communication there was no sexual connotations, there were

1 no pictures sent.

2 And that carries on through chats and through
3 the Grindr application, but then Mr. Achin proceeds to
4 contact Grindr and block Detective Bauer's account, so
5 Detective Bauer is not getting any further communication
6 through Grindr.

7 There are some text messages, but this is --
8 at that point in time there's no predisposition on Mr.
9 Achin's behalf to have sex with a minor.

10 What happens afterwards -- and I think this
11 tells a lot -- is Detective Bauer then sets up a second
12 profile and account and then proceeds to chase Mr. Achin
13 and begins the communication. He doesn't give up.

14 And so he has -- I would say Detective Bauer
15 has the criminal intent mind set, not Mr. Achin. So,
16 Detective Bauer comes back -- and I'm going to call it,
17 for lack of a better term, as Bathroom Alex.

18 Because I saw when I read the transcripts
19 between the -- they were calling it an emoji, but it
20 really wasn't an emoji. But we had Alex VA and then we
21 have Alex with the symbol of --

22 THE COURT: The stick figure.

23 MR. WALSH: Yeah, a male lavatory.

1 THE COURT: Generic.

2 MR. WALSH: And so I'm calling him Bathroom
3 Alex. And Bathroom Alex initiates contact, and there's a
4 communication for a period of time. No age is listed.

5 And then during that communication is when
6 Detective Bauer says, "My aunt," and that's when Mr. Achin
7 recognizes. But at that point in time the penis picture
8 had been sent to Detective Bauer. The penis picture --
9 when I went through this chronologically the penis picture
10 had been sent to Detective Bauer prior to Detective Bauer
11 mentioning "aunt."

12 And that's when immediately Mr. Achin says
13 "Call me," and the communications begin there. And that's
14 when he -- they talk on the phone, and then Mr. Achin goes
15 and meets.

16 And so, I would submit to the Court in the
17 brief -- the motion I supplied the Court that the concept
18 and planning of this crime was by Detective Bauer. The
19 procurement of the commission of the crime was not in Mr.
20 Achin's mind but for the trickery of Bauer.

21 THE COURT: Did Bauer ever ask for a picture
22 at that time?

23 MR. WALSH: No. So, Bauer doesn't ask for a

1 picture -- and it's confusing. He gets the picture --
2 this is Bathroom Alex. Bathroom Alex gets the picture but
3 doesn't -- hadn't asked for it. But he's at that stage an
4 adult.

5 THE COURT: Wouldn't it be a much stronger
6 entrapment defense, I suppose, if the Detective had asked
7 for it?

8 MR. WALSH: Sure. But he never held himself
9 out as a fourteen-year-old.

10 THE COURT: Well, it doesn't matter. I'm
11 still trying to understand -- if the crime is sending the
12 picture, where is the -- I'm not quite seeing it. If the
13 Detective didn't ask for it, how do you even get close to
14 an entrapment? I'm really -- I'm struggling with that
15 concept.

16 MR. WALSH: Okay. I would submit because
17 Detective Bauer was shut down as Alex VA, and then
18 Detective Bauer creates another persona and then chases
19 Mr. Achin.

20 THE COURT: Okay, so he makes contact. But
21 that's not -- you have to have the concept for the crime
22 formed in the mind of the police officer; and, you know,
23 he's not soliciting -- the police officer isn't asking for

1 the crime to be committed.

2 MR. WALSH: Then that would be -- that's a
3 fair analogy. Then he's not guilty because he sent a
4 picture to an adult. Because he is not on notice that
5 Bauer -- that Bathroom Alex was a minor.

6 THE COURT: Okay.

7 MR. WALSH: So, if he's not on notice that
8 Bathroom Alex was a minor --

9 THE COURT: Well, that's different than
10 entrapment. That's not an entrapment defense. That's
11 just "I had no reason to believe that I was dealing with
12 a minor." That's a different defense. That's not an
13 entrapment defense.

14 MR. WALSH: Well, yeah. I'm responding -- I
15 recognize that. I'm responding to the Court's question on
16 that. But the way I go through this, I believe that it
17 does rise to at least some elements of entrapment because
18 of Detective Bauer creating that Bathroom Alex and then
19 proceeding to make contact and proceeding to talk with him
20 for a period of time until he realizes that it's the same
21 persona when the message says "my aunt."

22 And then that s -- immediately then the
23 communication stops and he says, "Call me. Call me, I

1 want to talk to you."

2 So, the Court saying that basically on that,
3 because he did not ask for a picture -- because Detective
4 Bauer did not ask for a picture, then it's not rising to
5 the level of entrapment in the Court's mind.

6 Is that correct?

7 THE COURT: That was the thrust of my --

8 MR. WALSH: Yeah, and I understand --

9 THE COURT: -- argument.

10 MR. WALSH: -- the Court's position. But then
11 if that's the case and those are the facts, it wouldn't be
12 a crime at all because he sent a picture to an adult.
13 There's no evidence that he knew or had reason to believe
14 that Bathroom Alex was a minor.

15 THE COURT: Okay.

16 I'm going to have the Commonwealth respond on
17 this point before you move on to your next point.

18 MR. WALSH: Okay.

19 THE COURT: Do you wish to make a response,
20 Ms. Lowe?

21 MS. LOWE: Your Honor, as to entrapment, the
22 fact that -- I think that defense is ended since Detective
23 Bauer never specifically asks for a picture of his penis.

1 He never even really makes any specific request of any
2 sexual contact with the Defendant.

3 So, I don't think there's any -- it either
4 is entrapment or it isn't. I think there's certainly not
5 sufficient evidence or -- there was no entrapment in this
6 case.

7 THE COURT: So, can you remind me from your
8 perspective what linked for Mr. Achin or what should have
9 linked for Mr. Achin the two personas once the identity
10 changed?

11 MS. LOWE: Yes, Your Honor, and I will try to
12 be clear. Because I can see it in my head, and I will try
13 to express it.

14 So, there's the Alex VA and then there's the
15 Alex.

16 THE COURT: Right.

17 MS. LOWE: When he has to remake the account.
18 There is a not just messages on Grindr, but there are text
19 messages between them that are consistent throughout.
20 It's always the same person.

21 Yes, there is the period where he thinks he is
22 texting somebody else --

23 THE COURT: But that was a completely third

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person.

THE COURT: -- but that's a completely third person. And so the phone number -- the messages that are exchanged via text messages are always with a person who he had first met as Alex VA and then continues to talk to, including on the phone.

And so --

THE COURT: And that includes the offending image.

MS. LOWE: The offending images are sent on Grindr. They're not sent on text message.

THE COURT: Okay.

MS. LOWE: On the phone call that they have with -- and which is discussed clearly this person is a minor. They talk about school, and they talk about the aunt. On the phone call the Defendant asked, "Did you see my message?"

Now, we know --

THE COURT: "Did you check the app?"

MS. LOWE: "Did you check the app and see my message?"

THE COURT: Right.

MS. LOWE: We know that the Alex VA, the

1 original Grindr account, is shut down. But we can see on
2 the Defendant's phone the messages exchanged there --
3 because Detective Bauer can't access it anymore once it's
4 shut down. But we see from the Defendant's phone -- and
5 what is in evidence -- the picture of the penis has been
6 sent to Alex VA.

7 Now, when they're now talking on the Grindr
8 app -- Alex -- and he's saying "I didn't see it, I don't
9 know what you're talking about," it is sent again.

10 And so, there are connections throughout. The
11 phone call, the fact that the Detective says -- they're
12 talking on the Grindr app and he says, you know, "I'm
13 talking about the picture of your penis." I think he says
14 "dick" in the text messages -- or in the Grindr messages.

15 But there is acknowledgment of it, "Yeah."
16 There is never any subsequent, "I was talking to the wrong
17 person again, I can't believe I did this, this was a huge
18 mistake." Instead, he proceeds to arrange to meet up with
19 this person.

20 And so the link is the phone call, the ongoing
21 text messages away from the app and then the sending back
22 to the app to look at a message sent to Alex VA and then
23 sending it again to Alex after Alex says "I don't see any

1 message; what were you talking about?"

2 THE COURT: All right.

3 Mr. Walsh, did you have any other response to
4 that?

5 MR. WALSH: I would like to respond briefly.

6 The phone call that Ms. Lowe relies on happens
7 after all the pictures are sent. The phone call --

8 THE COURT: Yeah. I think by nature it would
9 have to because there was the communication about "Did you
10 check the app?"

11 Wasn't it -- was that the --

12 MS. LOWE: He sends it twice.

13 THE COURT: Yeah.

14 MS. LOWE: The phone call is after it had been
15 sent to Alex VA, and then they are resent shortly after
16 the phone call.

17 THE COURT: But the words -- I remember
18 hearing the words -- and I thought that was in the phone
19 call -- "Did you check the app?"

20 MS. LOWE: Because it had originally been sent
21 to Alex VA.

22 THE COURT: Right, right.

23 (Mr. Walsh conferred with the Defendant, off

1 the record.)

2 MR. WALSH: Mr. Achin's position is that the
3 pictures were only sent one time. The first communication
4 about a pic was basically messaged to get in contact
5 again. But Alex VA was terminated. He didn't know Alex -
6 - Bathroom Alex was Alex VA for the longest period of
7 time. And the pictures were sent then, before.

8 Then, when he figures out that Alex --
9 Bathroom Alex is Alex VA, he then proceeds to immediately
10 say, "Call me," and that's when the discussion was.

11 Then what he does, he goes to the scene, he
12 doesn't have any sex toys or, you know, condoms or
13 lubricants or anything like that, and that's when he's
14 arrested.

15 I believe the pictures -- based on my reading
16 and talking to my client, they're only sent one time.
17 They're sent when Alex VA's account was blocked and when
18 Alex -- Bathroom Alex was communicating to him before he
19 realized that they were the same persona.

20 THE COURT: Okay.

21 MR. WALSH: And this is the same time he's
22 sending a picture to Zack, who is an adult who he had a
23 relationship with, he had a physical meeting with.

1 So, the pictures are going out quickly and
2 everything else. So, he didn't -- and then when he finds
3 out Bathroom Alex is Alex VA, he immediately terminates
4 and says "no" and begins to want to talk to him. And when
5 he goes to meet him, he goes to meet him because he thinks
6 he's a troubled kid.

7 THE COURT: All right.

8 The second aspect of your motion deals with
9 response to a recent case decided, which I know you are
10 intimately familiar with.

11 MR. WALSH: I know it inside out.

12 THE COURT: And there's really -- I understand
13 you have to build a record on this.

14 MR. WALSH: That's correct, and I can tell the
15 Court -- I was going to tell the Court up front.

16 The petition was filed with the Supreme Court
17 -- I have it, as a matter of fact -- and they are going to
18 conference on the 6th of December, and then I think
19 they'll return a decision on that Monday whether they want
20 the government to respond.

21 They can automatically grant it, but that's
22 like hitting the lottery, right? And remand. You're not
23 going to get that.

1 Or, what I'm shooting for or hoping for is
2 that they're going to ask the government to respond, and
3 then we know they're interested in it.

4 THE COURT: But I'm not in a position to
5 decide that the Court --

6 MR. WALSH: I understand that.

7 THE COURT: -- that has decided is incorrect.

8 MR. WALSH: You're bound by Stoltz, my case --

9 THE COURT: Right.

10 MR. WALSH: -- yes.

11 THE COURT: Right.

12 MR. WALSH: And I understand -- you understand
13 I need to put it in here --

14 THE COURT: I totally understand.

15 MR. WALSH: -- so that if it goes on appeal
16 then he has it preserved.

17 THE COURT: Absolutely. All right. Thank you
18 for that.

19 MS. LOWE: Your Honor, just to be clear --
20 and it may be because of the confusion. The phone call
21 happens before the pictures are resent.

22 THE COURT: All right.

23 Well, I'm satisfied here that Mr. Achin is

1 properly convicted of the offense, and certainly there
 2 will be further review of the facts in detail. And if
 3 anybody wants to go into that, they certainly will have, I
 4 think, more than adequate record to do that. But I am
 5 satisfied beyond any reasonable doubt that Mr. Achin is
 6 guilty of the offense as charged.

7 Mr. Walsh, I received the presentence report
 8 in the case, I received materials that you had provided in
 9 the sentencing memorandum and letters in support of Mr.
 10 Achin. And are there any other additions -- and you
 11 included your corrections in with your sentencing
 12 memorandum --

13 MR. WALSH: That's right.

14 THE COURT: -- which I really appreciate.

15 MR. WALSH: There's typos, but the corrections
 16 I put in there do not affect the guidelines; that's the
 17 first thing. So, they're just factual corrections.

18 I don't know if the Court wants me to go
 19 through them or --

20 THE COURT: No, I think you made your record
 21 on that.

22 MR. WALSH: Okay. It's just mainly the ages
 23 and things of that nature, so --

1 THE COURT: Right.

2 MR. WALSH: -- yeah, that's correct.

3 So, those are the corrections, modifications
4 and deletions.

5 THE COURT: Did you have any other evidence
6 you wanted to offer?

7 MR. WALSH: I submitted to the Court a
8 sentencing memorandum and then Defendant's first set of
9 exhibits and then Defendant's second set of exhibits.

10 THE COURT: Yes.

11 MR. WALSH: And I think the Court addressed
12 those. That's all we'd present as evidence to the Court.

13 THE COURT: All right.

14 Does the Commonwealth have additions,
15 corrections or other evidence?

16 MS. LOWE: No, Your Honor.

17 THE COURT: Ms. Lowe, what is the
18 Commonwealth's position on sentencing?

19 MS. LOWE: Your Honor, I would ask the Court
20 to impose a period of incarceration. I know it's three to
21 six months. I would ask the Court to impose at least the
22 three months in this case.

23 I would do that based on the fact that the

1 THE COURT: All right.

2 Mr. Walsh, your client has an opportunity to
3 address the Court, if he would like to, but I understand
4 that in light of his position at trial and his anticipated
5 appeal, he may not wish to address the merits of the case.

6 But if there's anything he would like to say,
7 now would be his opportunity.

8 MR. WALSH: May I have a moment, please?

9 THE COURT: Of course.

10 (Whereupon, Mr. Walsh conferred with the
11 Defendant, off the record.)

12 MR. WALSH: Thank you, Your Honor.

13 Go ahead.

14 THE DEFENDANT: May I, sir?

15 THE COURT: Yes, sir. It's your opportunity
16 to speak anything you'd like.

17 THE DEFENDANT: It's difficult. I've never
18 found myself in this position before.

19 THE COURT: I know.

20 THE DEFENDANT: Much has been made about this
21 isn't normal behavior. It is normal behavior for me to
22 care. When I was a boy people cared about me, teachers,
23 when I was coming up in the world. And when I went

1 through difficult times they were there for me, if nothing
2 more than just, you know, a friendly word when I had a
3 difficult time. And I grew up very well overall.

4 But there's nothing in my life that would --
5 I agree with what Mr. Walsh wrote in there about me, and I
6 understand that the Court and the Commonwealth needs to
7 protect children. I wish I could communicate that I have
8 the exact same goal.

9 But it occurs to me, had I gone there --
10 because I tried everything else over a couple of weeks to
11 try to get information to bring to the police -- and had
12 there been a kid who might have been in danger, what might
13 I have done? I was shaking the whole time going there.

14 But there's one thing I would have done, and I
15 don't even know what it is but I would have done anything
16 to protect a vulnerable kid.

17 The preceding year, no one listened in the
18 school system. There was a boy who tried -- his whole
19 demeanor changed. If your whole demeanor changes, start
20 dressing differently and everything, then you start -- I
21 mean, a dark tone came on.

22 And I reported it, nobody listened for eight
23 months, finally I got somebody's attention. This boy

1 tried to commit suicide twice, but because I intervened --
2 and I don't want to give myself undue credit, I don't, but
3 it's hard to believe that this boy would not be alive had
4 I not done that.

5 And that's not the first time. Children
6 cutting themselves, children hurting themselves, and for
7 some reason that I can't explain they come to me --
8 without being bidden, without me giving any speech about
9 how "I'm there for you."

10 So, I just want you to know, I am the type of
11 person who would try to help people and not try to hurt
12 them. What makes it awful is that I was on a dating site
13 and it didn't occur to me going back and forth like that
14 that -- anyway, I don't want to get into the details, I
15 guess, because they've already been litigated. But I
16 would never do anything to harm anybody.

17 But I stand to lose everything, including my
18 little girl, who is very vulnerable as an autistic child.
19 Her mother is not well, and I'm very fearful of what might
20 happen if I'm not there for her.

21 That's all I have to say.

22 THE COURT: All right. Mr. Achin --

23 THE DEFENDANT: Yes, sir.

1 THE COURT: -- up until these events began,
2 it seems to me you lived a pretty decent life. And then
3 something really -- I don't know what changed in your
4 life, but it seems your whole life took a different turn.

5 And I don't care about your sexuality in the
6 slightest. But there seems to have been -- based on the
7 reports I have, there was -- you know, you went through an
8 awareness or a change or your interests started going to
9 areas where they hadn't been before.

10 And it seems to me you were -- for a guy who
11 is a pretty staid, you know, educator and teaching what
12 some people would consider a dry subject matter, you know,
13 you're not the type of person that you would expect would
14 be engaging in short-term, unromantic relationships
15 through social media.

16 And I think that wasn't something that you
17 typically did in your life until fairly recently to these
18 events, and I think that you're having difficulty
19 understanding how the person that you see yourself as --
20 and I believe everything you say that you believe about
21 yourself, that you care about people and you care about
22 your students, you care about your daughter, you care
23 about -- I believe you believe that.

1 And I think it's been true for most of your
2 life, but I don't think it's true with regard to this
3 persona of Alex. I don't believe it. Because the facts
4 looked at objectively aren't there.

5 And I understand how when somebody does
6 something that's totally out of character, which I think
7 is what these events were, it's difficult to reconcile how
8 a person who sees themselves and has organized their life
9 a certain way and has been this one person starts acting
10 in a way that is completely out of character.

11 But one thing I've learned from my position
12 standing right where Mr. Walsh is standing, where I stood
13 for many years, and sitting in this position, people do
14 all sorts of things that are out of character all the
15 time.

16 I think you did something here that was out of
17 character for the person as you see yourself. But there's
18 one thing -- and I know this isn't necessarily central to
19 the offense, but the reason I think that it supports the
20 notion that what you did was not to help this person and
21 that -- you know, I know you see yourself as maybe the
22 catcher in the rye, you're the one who's going to save
23 this child. But it's also people like Alex, who I realize

1 is not a real person -- but it's those vulnerable kids
2 that are the ones that get exploited for a reason.

3 And there was one thing that you said in a
4 phone call that was recorded right after the persona said,
5 you know, "I will be fifteen." And one of the responses
6 you said was, "I don't want you latching on to someone.
7 You know what I mean?" That was you.

8 That's not somebody who's caring about
9 somebody. That's just not what that is. And I just --
10 you know, I realize that's not central to the offense, but
11 I think it shows your mind set at the time and that at the
12 time you were looking for your own gratification at the
13 exploitation of somebody who was a minor and potentially
14 vulnerable.

15 I think you were reading more into the
16 vulnerability part of it than I ever did. I don't think
17 Alex necessarily presented as somebody who was vulnerable
18 and being risk of traffic and that his aunt was somehow,
19 you know, keeping him in some unusual situation that
20 needed to be -- where he needed to be rescued from.

21 I didn't see that. You say you saw it. I
22 don't believe that for a second. I think you were out to
23 take care of your own interests and needs, and those were

1 coming at the cost of this child.

2 So, the question is what do you do about it,
3 and a lot of what Mr. Walsh says I completely agree with.
4 You're going to pay a tremendous price. You've already
5 begun to pay it, and you will continue to pay it
6 regardless of any sentence of incarceration that I impose.
7 And that's just -- that's beyond my control once I find
8 you guilty. Those things are all put in place, and I have
9 no discretion over those.

10 But then I think of all the other people
11 that have come before me and stood exactly where you're
12 standing, charged with the same thing. And not all of
13 them have been as accomplished as you are or as
14 professional as you are or, you know, frankly able to
15 advocate on their own behalf as well as you are.

16 And one of the reasons that Virginia and other
17 jurisdictions have sentencing guidelines is to make sure
18 that people charged with similar offenses get prosecuted
19 and convicted and serve similar sentences, that I'm not
20 exchanging some actual or unrecognized bias that I might
21 have and treat you differently than I would treat somebody
22 who didn't have your advantages and doesn't have your
23 career and those kinds of things.

1 Because I'll tell you, if you look at my
2 sentencing history -- my personal sentencing history,
3 which I do -- I know what I've done in every one of these
4 cases. And even though some of those people didn't lose
5 their career the way you have, because they didn't have a
6 career, I'm not sure that that's a real reason to treat
7 you any differently than they did.

8 I think this kind of offense, you had plenty
9 of opportunity not to commit it and you didn't, and I
10 think that just calls for punishment. And I realize
11 you're being punished and you've lost your career, but
12 those are the risks you took. And you knew those risks.
13 You knew. You even talked about them in these recordings
14 about, you know, the risks you were taking, the trouble
15 you could get into.

16 Well, that's -- you know, you knew what you
17 were doing. That's part of this whole risky behavior that
18 I think you were involved in. I don't know why somebody
19 like you would take those risks. There's certainly no
20 reason to, regardless of what your interests are.

21 But I'm finding it difficult to say that
22 because you lost your career -- and you had a good one --
23 you shouldn't spend time in jail. I don't -- I think

1 people who commit the same offense, present the same risk,
2 the same type of demographic ought to be treated the same.
3 And that's what I intend to do.

4 I think the appropriate punishment in this
5 case is as follows:

6 I'm going to impose a sentence of three years
7 in the State Penitentiary. I'm going to suspend all but
8 seven months of that sentence. I will place you on active
9 supervised probation for a period of two years upon your
10 release.

11 You're obviously required to register and
12 re-register as a sex offender, and you would have to
13 complete a period of probation and follow whatever terms
14 of probation that the Probation Department puts on you.

15 Mr. Walsh, your client obviously has the right
16 to appeal, and I know you intend to do that. And if you
17 want to make a motion for an appeal bond, I would
18 entertain one.

19 MR. WALSH: I would, Your Honor. I would make
20 the motion. Mr. Achin has been present in court --

21 THE COURT: I don't doubt he -- I'll just cut
22 you short.

23 MR. WALSH: Thank you.

1 THE COURT: I know he's going to show up to
2 court.

3 MR. WALSH: Right.

4 THE COURT: I don't think he's going to run.

5 MR. WALSH: Right.

6 THE COURT: And I don't think he necessarily
7 is going to commit any new offenses.

8 MR. WALSH: And he can be maintained on
9 supervised release, I believe, Judge.

10 THE COURT: And he can remain on supervised
11 release.

12 MR. WALSH: So, I'd ask the Court to do that.

13 THE COURT: And the reason I would anticipate
14 this is because, you know, this is a factually dense case.

15 MR. WALSH: It is.

16 THE COURT: I'm satisfied to a moral certainty
17 for the sentence that I've imposed, but I understand that,
18 you know, he's got a right to appeal.

19 He's got a new lawyer, and I'm more than happy
20 to have the Court of Appeals review it. And if I'm wrong,
21 you know, I'm happy to admit it and then he can move on
22 from there.

23 MR. WALSH: Correct.

1 THE COURT: So, Ms. Lowe, I've kind of taken
2 the wind out of your sails, but you can try to talk me out
3 of it if you want.

4 MS. LOWE: Your Honor, I wouldn't oppose an
5 appeal bond.

6 THE COURT: I know you wouldn't, and you
7 should. But I think he's got -- I think as a risk, I
8 think he's a tolerable risk at this point and I think we
9 can keep tabs on him.

10 MS. LOWE: I understand.

11 THE COURT: So, Mr. Walsh, on your motion for
12 bond I'll set an appeal bond in the amount of -- you know,
13 can you do fifteen hundred dollars cash or corporate
14 surety?

15 MR. WALSH: That would be fine.

16 THE COURT: All right. And what I'd like to
17 do is I'm going to enter the final order in the case
18 fairly quickly unless you think there's some reason why
19 I shouldn't.

20 MR. WALSH: No.

21 THE COURT: It seems like you're prepared on
22 appeal.

23 MR. WALSH: Yes, that's correct.

1 THE COURT: We'll get this final order done,
2 and then you would have thirty days from then to note your
3 appeal.

4 MR. WALSH: That's right.

5 THE COURT: What I'd like to do is maybe set
6 this case down for -- just to make sure you get this
7 appeal process going -- for my next sentencing date --

8 Which is going to be when?

9 THE CLERK: December 20th.

10 THE COURT: On December 20th. I'm going to
11 set it down for review on December 20th.

12 Mr. Achin, I'm going to continue you on that
13 fifteen hundred bond and --

14 Well, he's already --

15 MR. WALSH: I was going to ask the Court --

16 THE COURT: Did he post a bond on this?

17 MR. WALSH: Yeah. And there's virtually a --
18 I'm going to have to ask him because I wasn't trial
19 counsel.

20 THE COURT: Yeah.

21 THE DEFENDANT (to Mr. Walsh): I posted a
22 \$10,000 bond.

23 THE COURT: He's already got a bond?

1 MR. WALSH: A \$10,000 bond.

2 THE COURT: I think we can continue him on
3 that.

4 MR. WALSH: I think you can, too.

5 THE COURT: All right. I'll continue him on
6 that bond. But I want to make sure your appeal gets
7 filed. I know it will, but I want to make sure.

8 So, I'm going to set it on December 20th.
9 Neither you, Mr. Walsh, nor Mr. Achin need to appear on
10 that date if the appeal -- if a notice of appeal is filed.

11 MR. WALSH: Thank you. Because I'm in a
12 murder trial then in Prince William.

13 THE COURT: Okay. And then I'm thinking we
14 ought to take another look at this in about six months,
15 given how long it might take something to move through the
16 Court of Appeals.

17 MR. WALSH: Yes. Yes, Your Honor.

18 THE COURT: That would put us in, say, May --
19 What's our May date?

20 THE CLERK: May 15th.

21 THE COURT: May 15th for review, just to see
22 if the appeal is on track and where it is.

23 MR. WALSH: That's fine. That's a Friday.

1 That's perfect.

2 MS. LOWE: And, Your Honor, the idea being
3 that if we got some update about this (inaudible) --

4 THE COURT: Bring it to my attention, then
5 we'll have to get him in here.

6 MR. WALSH: Yeah, okay.

7 THE COURT: May 15th, then. We'll set review
8 dates for December 20th and May 15th, and I want everybody
9 here on May 15th even if the case is still pending.

10 MR. WALSH: All right.

11 THE COURT: Just to touch base and see each
12 other.

13 MR. WALSH: Thank you, Your Honor.

14 MS. LOWE: Thank you, Judge.

15 THE COURT: All right. In the meantime he
16 doesn't have to report to Probation.

17 THE PROBATION OFFICER: I was just giving him
18 the paperwork.

19 THE COURT: Okay.

20 THE PROBATION OFFICER: Because if -- whatever
21 happens with the appeal process, if it's concluded or
22 anything, then probation will start.

23 THE COURT: Yeah, then you've got to contact

1 the Probation Office.

2 At this point he's -- and is he on supervised
3 release?

4 MR. WALSH: He is.

5 THE COURT: Continue on that. And I do --

6 Mr. Walsh, I do think I have to get the DNA
7 test done.

8 MR. WALSH: Yes.

9 THE COURT: So, what he needs to do right now
10 is have a seat in the back of the courtroom, and they'll
11 come get him and --

12 MR. WALSH: Okay.

13 THE COURT: -- take the DNA. If things
14 go your way, obviously that can be expunged. I'm going to
15 indicate "SRP continues while on bond pending appeal."

16 All right, anything else?

17 MR. WALSH: No, Judge.

18 MS. LOWE: Thank you, Judge.

19 THE COURT: All right, thank you.

20 * * *

21 (Whereupon, at approximately 1:03 o'clock
22 p.m., the hearing in the above-entitled matter was
23 concluded.)

* * * * *

CERTIFICATE OF REPORTER

I, KATHLEEN M. ELIAS, a Certified Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings which I thereafter reduced to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Kathleen M. Elias, CVR
Certified Verbatim Reporter

VIRGINIA:

In the Court of Appeals of Virginia on Monday the 22nd day of June, 2020.

Norman Michael Achin,

Appellant,

against

Record No. 1950-19-4

Circuit Court No. FE-2018-0001497

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Fairfax County

Before Chief Judge Decker, Judge Humphreys and Senior Judge Annunziata

For the reasons previously stated in the order entered by this Court on April 24, 2020, the petition for appeal in this case hereby is denied.

This order shall be certified to the trial court.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Kristen M. McKernie

Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 24th day of February, 2021.

Norman Michael Achin,

Appellant,

against

Record No. 200933

Court of Appeals No. 1950-19-4

Commonwealth of Virginia,

Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court refuses the petition for appeal.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:



Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 14th day of May, 2021.

Norman Michael Achin,

Appellant,

against

Record No. 200933

Court of Appeals No. 1950-19-4

Commonwealth of Virginia,

Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on February 24, 2021 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:



Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**