

1 MS. PAYNE: At this time I motion to bind over  
2 on all 12 counts.  
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4 On Count 1, Criminal Sexual Conduct Third  
5 Degree, Force or Coercion, that was with Brian H. ~~Redacted~~ on  
6 May 5th, 2011, in Bellevue, Barry County. Brian testified

7 that the Defendant gave him oral sex on that date, and the  
8 Defendant forcefully put his mouth on Brian's penis. Case  
9 law states that in Phillip Premo, docket number 175812,  
10 and this was a public--published case, 1995, that the act  
11 of pinching itself is an act of physical force because it  
12 requires a person to exert strength or power on  
13 another person. Accordingly, pinching is sufficient to  
14 constitute force under MCL 750.52--520.

15 In addition--In addition, coercion element was  
16 met because Brian was placed in Bath Services by court  
17 order. The Defendant had a position of authority over  
18 Brian in the fact that he ran the residential facility  
19 where Brian was placed. Case law, same case, states that  
20 Defendant's conduct in that case was not included in the  
21 enumerated examples of coercion. However, the legislature  
22 did not limit the definition of force or coercion to the  
23 enumerated examples in the statute.  
24 Furthermore, the existence of force or coercion  
25 is to be determined in light of all the circumstances. In  
this case, with the evidence that the court has heard

1 before it today, the fact that Defendant was in a  
2 position of authority, he ran the house, he was the one  
3 that made the decisions, and Brian was not free to go, he  
4 was placed there by court order. I'd argue that the force  
5 or coercion element was met.  
6 On Count 2, I would ask that that count be  
7 amended from attempted Criminal Sexual Conduct to Criminal  
8 Sexual Conduct Fourth Degree. Brian testified also that  
9 happened on May 5th, 2011. This was in the chicken coop.  
10 On that occasion he once again testified that the Defen-  
11 dant put his hand on Brian's penis. I'd make the same  
12 argument that I did before on the force or coercion  
13 element.

14 On Count 3, the Aggravated Indecent Exposure,  
15 that was on May 5th, 2011, also in the chicken coop.  
16 Brian testified that the Defendant, in fact, on that day  
17 did masturbate, exposing his penis.  
18 On Count 4, I would ask that that be amended  
19 from Criminal Sexual Conduct, Assault with Intent to  
20 Commit Sexual Penetration to an Attempt CGC Third. On  
21 that occasion, Brian testified that the Defendant at-  
22 tempted to give him oral sex. He was within one inch of  
23 the--of his penis. This occurred in the kennel house.  
24 Brian stated that he was able to prevent oral sex from  
25 actually happening by getting away from the Defendant.

1 Count 5 is Criminal Sexual Conduct Fourth  
2 Degree. Brian testified that in the kennel house on that  
3 day the Defendant put his hand on his penis. Once again  
4 I'd argue that the force or coercion was met by my earlier  
5 statements. Did not have permission to touch Brian.  
6 Count 6, once again, is on 5/10/2011 in the  
7 kennel house Brian testified that the Defendant on that  
8 day also masturbated. On Count 7--I'm sorry, your Honor.  
9 Count 6--There's a lotta counts in this case--Count 6 was  
10 in the pantry. Count 7--Earlier when I stated kennel  
11 house, Brian [redacted] was never actually in the kennel house.  
12 That was in the pantry in the kitchen, the house that was  
13 across the street.  
14 Count 7 is with Rodney [redacted]. Rodney [redacted]  
15 was placed at The House Next Door or Bath Services by  
16 court order. He testified that they had oral sex in the  
17 kennel house, and the Defendant put Rodney's penis in his  
18 mouth.  
19 Count 8 occurred on between July 10th, 2010, and  
20 April of 2011. Rodney testified that also occurred in the  
21 kennel house, and sexual contact, he had testified,  
22 occurred on that day as well.  
23 Count 9 is the Aggravated Indecent Exposure,  
24 which is also July 10th, 2010, to April 2011. Rodney  
25 testified on that date that occurred in the kennel house,

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1 and the Defendant made--masturbated on that occasion as  
2 well.  
3 Count 10 is Criminal Sexual Conduct Fourth  
4 Degree. That was sexual contact with Clayton [redacted].  
5 Clayton [redacted] was placed there through KPER. Defen-  
6 dant was in a position of authority over Clayton  
7 [redacted], and he forcefully and had coercion when he  
8 touched Keith--Clayton in the break room when he groped  
9 his penis. Clayton stated that the Defendant gave him a  
10 hand job.  
11 Count 11 is on November 2010, that was with  
12 Taylor [redacted]. He stated that on that date that the  
13 Defendant used force. Once again, force or coercion is  
14 met here. He was placed there and under the supervision  
15 of KPER at that time. He said he was looking at the house  
16 on Huff Road where the Defendant packed his penis without  
17 permission for a sexual purpose on that date.  
18 Count 12 is Criminal Sexual Conduct Second  
19 Degree. That is with Brandon [redacted]. Brandon [redacted],  
20 at that time, was fourteen to fifteen years old. He was  
21 ward of the state. He was a delinquent placed there by  
22 the Barry County court and under a court order. He stated  
23 that the Defendant rubbed his leg, and that he came in--  
24 within one inch of his penis, and he stated that this was  
25 done for a sexual purpose. Defendant had an authority

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position over Brandon [REDACTED].  
And in the alternative, Criminal Sexual Conduct  
Second Degree. This was a detained juvenile placed in the  
Defendant's facility by court order, while as a delin-  
quent. He was committed there, and the Defendant was a  
contractual employee of the Barry County court system,  
Your Honor.  
THE COURT: I wanna make sure I'm clear. There  
were two amendments that you made. One was to Count 2,  
amending that to a--instead of an attempt to a Criminal  
Sexual Conduct Fourth Degree; is that correct?  
MS. PAYNE: Yes, because Brian testified that in  
fact on the stand that the Defendant had placed his hand  
on his pen--pents in the chicken coop, Your Honor.  
THE COURT: Okay. Second amendment was to Count  
4, amending that from a Criminal Sexual Conduct Assault  
with intent to commit Sexual penetration, to an Attempted  
Criminal Sexual Conduct Third Degree; is that correct?  
MS. PAYNE: That is correct, and that's for the  
attempted oral sex in the pantry where he came in one inch  
of his--Brian's pants, where the Defendant had attempted  
to do oral sex on the Victim, Your Honor.  
THE COURT: Okay. Anything further from  
prosecution?  
MS. PAYNE: No, Your Honor.

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THE COURT: Defense?  
MR. SCHAEFER: Your Honor, I'll oppose the  
blind-over on all for a variety of reasons. The ones  
involving Brian [REDACTED] and Rodney [REDACTED] are--I think the  
Court can, as the trier of fact at this level, take into  
consideration the credibility of witnesses. Especially  
Rodney [REDACTED] who has testified that under oath he gave  
one statement. Now, under oath he gives another state-  
ment, and there's no particular reason to believe one more  
than the other. In relation to Brian, who has indicated  
that he has lied on numerous occasions--numerous occasions in  
relation to what he was going to testify to. I would ask  
the Court to take that into consideration in trying to  
ferret out what happened here.  
In relation to a number of these cases, Your--  
these counts, Your Honor, I wish to--indicate that the  
force and coercion issue I think is lacking in Counts 1  
and the other counts that allege force and coercion. I  
think the case law has indicated on published cases that  
the force has to be more than the normal force to commit  
the offense. It has to be something extra than that. If  
in fact the offense took place, or you're convinced  
there's probable cause that the--the--the penetration  
took place, there has to be force or coercion beyond that  
which is necessary to accomplish the act. And I suggest

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1 In relation to Count 5, again, the force and  
 2 coercion has to be something more than what which  
 3 accomplishes the act.  
 4 Count 6, again, not plead as to what event, what  
 5 victim in relation to an aggravated indecent exposure.  
 6 Count 7, again, the force and coercion element  
 7 there. And again, depending on which day that Rodney  
 8 Reames testifies under oath, I don't think it is credible  
 9 to believe him at this point in time.  
 10 Count 8, this is fourth degree, multiple  
 11 variables with Rodney. I don't believe that the prosecu-  
 12 tion has established the multiple variables--variables.  
 13 Again, this would be, if I follow the argument of the  
 14 prosecution, this is the--the slap that took place.  
 15 There's no indication that that was for a sexual purpose.  
 16 Nine, again, there's no specific indecent  
 17 exposure victim or ind--indication that is a--a flaw in  
 18 the pleadings.  
 19 Ten indicates that fourth degree of force and  
 20 coercion. Force and coercion, again, is the element that  
 21 I think is--is lacking. The sexual purpose, I think, is  
 22 lacking in this--in this matter.  
 23 The 11, Taylor, same argument in that  
 24 regard.  
 25 And 12, I think is a real stretch in relation to

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1 that on all of these that you don't have any other force  
 2 and coercion. If in fact, for instance on Count 1 with  
 3 Brian, who indicates that there was oral sex, the  
 4 oral sex itself, I don't believe, can be used to accom-  
 5 plish the force and coercion element that is necessary in  
 6 this particular matter.  
 7 In relation to--That's the same circumstance for  
 8 Count 2, your Honor, on the now, I guess, amended--request  
 9 for amendment of fourth degree force and coercion.  
 10 The aggravated indecent exposure Count 3 does  
 11 not plead a victim. Doesn't plead any specificity as to  
 12 what event it is referring to. I think it falls on lack  
 13 of proper pleading.  
 14 Count 4, in relation to the assault, and that is  
 15 one that has been amended downward to attempted. Again,  
 16 on the--the amendment of CSC Third--attempted CSC Third,  
 17 there is no indication that there was going to be an  
 18 accomplishment of the act, and the--and the statute reads  
 19 something to the effect that, but for an intervening  
 20 matter, then the act would've been accomplished. We don't  
 21 have that testimony here. We may have had--If you believe  
 22 what is testified, you may have had an offer, you may have  
 23 had inquiry, but you have no accomplishment of an act, and  
 24 no intervening matter that thwarted the act, and that is  
 25 what is necessary to--to accomplish the attempt statute.

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1 Brandon [REDACTED], [REDACTED] did not testify to any  
 2 sexual purpose evidence. [REDACTED] indicated that during  
 3 stress times that his leg was rubbed. There is no  
 4 indication that there was any statement made by the  
 5 defendant in that regard that would give an implication of  
 6 a sexual purpose. There was no other evidence other than  
 7 the rubbing of the leg which, in and of itself, I submit  
 8 is not a sexual act.  
 9 The same argument in relation to the alternative  
 10 of 12, that there was no act for a sexual purpose regard-  
 11 less of the authority issue that was--was argued, that  
 12 there has to be some testimony of that.  
 13 To address a little bit, the one count involving  
 14 the wrestling match where the testimony was that there was  
 15 a--a hand job while the boys were wrestling, or the--the  
 16 men were wrestling, is, I think, incredible at best. It--  
 17 I think it is more reasonable believe that if in fact  
 18 there was a wrestling match going on, that if he in fact  
 19 got groped by a administrator, it was for a disciplinary  
 20 problem to break up the fight rather than what is sug-  
 21 gested here.  
 22 Your Honor, I ask you respectfully to take into  
 23 consideration the credibility of the witnesses and whether  
 24 or not it rises to the level of that which is requested.  
 25 Thank you.

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1 THE COURT: Anything further from prosecution?  
 2 MS. PAYNE: Just that on count 4, which is the  
 3 attempt criminal sexual conduct third degree, the victim  
 4 Brian [REDACTED] testified the defendant's mouth was within one  
 5 inch of his penis, and the victim stated he was able to  
 6 prevent the defendant from giving him oral sex on that  
 7 occasion, your Honor.  
 8 On indecent exposure, the elements are first  
 9 that the defendant exposed, in this case, his penis;  
 10 second, that the defendant knew he was exposing his penis;  
 11 and third, the defendant was fondling, in this case, his  
 12 penis. That occurred, according to the testimony we heard  
 13 today. Fourth, the defendant did this in a place under  
 14 circumstances in which another person might reasonably  
 15 have been expected to observe it, and created a substan-  
 16 tial risk that someone might be offended or in a place  
 17 where such exposure is likely to be an offense against  
 18 your community's general--generally accepted standards  
 19 of decency and morality. Believe in this case we've met  
 20 those elements, your Honor.  
 21 THE COURT: Anything further from the defense?  
 22 MR. SCHAEFER: Nothing further, your Honor.  
 23 THE COURT: Thank you both for your  
 24 presentations today. Thank you both for your  
 25 arguments.

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1 I take all exams seriously, and I take this one  
2 certainly seriously, and particularly given, I guess, the  
3 nature of the thing, the case and the charges, maybe even  
4 more seriously than some.  
5 Although I think that there is a lot of issues  
6 here certainly for trial, while I think there are cer-  
7 tainly credibility issues in--in some of the  
8 witnesses, and significant credibility issues in--in a  
9 witness or two, given the totality of the testimony, given  
10 the testimony I did hear, and given the fact that this is  
11 a probable cause hearing, I am gonna bind over on all 12  
12 counts.  
13 on counts 1 through 3, where the--the alleged  
14 victim is Brian [REDACTED], I do find that there's testimony to  
15 establish that these crimes did occur, that the crime of  
16 Criminal Sexual Conduct Third Degree, which is Count 1,  
17 did occur, and probable cause to believe that the Defen-  
18 dant did commit that crime.  
19 find probable cause that, regarding Count 2 as  
20 it's amended to Criminal Sexual Conduct Fourth Degree, did  
21 occur, and probable cause to believe that the Defendant  
22 did commit that crime.  
23 Regarding Count 3, the prosecution is right.  
24 The--you don't have to have a named victim in an indecent  
25 exposure count. I am gonna find probable cause to believe

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1 that Aggravated Indecent Exposure did occur and that the  
2 Defendant did--did commit that crime.  
3 Regarding Count 4 through 6, which also involve  
4 Brian [REDACTED], I find that in Count 4, as amended to  
5 Attempted Criminal Sexual Conduct Third Degree, did occur  
6 and probable cause to believe that the Defendant did  
7 commit that crime.  
8 Regarding Count 5, Criminal Sexual Conduct  
9 Fourth Degree, do find probable cause that that crime did  
10 occur and that the Defendant did commit that crime.  
11 Regarding Count 6, again, do find that  
12 Aggravated Indecent Exposure was properly pled, that there  
13 is probable cause to believe that that crime occurred and  
14 the Defendant did commit that crime.  
15 So that I don't forget, regarding all 12 counts,  
16 I do find that venue is proper also. And so that I don't  
17 have to go through each particular count, there are  
18 numerous counts which do require on a bind-over that there  
19 is HIV and STD testing, that will be required under any of  
20 the multiple counts that it's required under.  
21 Count 7 through 9, 7, 8, and 9 are regarding a  
22 Rodney [REDACTED]. Again, as I did say, there are individu-  
23 als, and--and--and Mr. [REDACTED] is right at the top of that  
24 list, who have significant credibility issues. But given,  
25 again, the totality of the testimony of all the witnesses,

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1 I do find probable cause to believe that Criminal Sexual  
2 Conduct Third Degree as stated in Count 7 did occur and  
3 that the Defendant did commit that crime.  
4 I do find probable cause to believe that Count 8  
5 Criminal Sexual Conduct Fourth Degree did occur and the  
6 Defendant did commit that crime.  
7 And regarding Count 9, that the crime of  
8 Aggravated Indecent Exposure, probable cause to believe  
9 that that did occur and that the Defendant did commit that  
10 crime.  
11 Regarding Count 10, the complaining witness in  
12 that particular count is Clayton [REDACTED]. I do find  
13 probable cause to believe that--that that crime occurred  
14 and that the Defendant did commit that crime.  
15 Count 11 is regarding a Taylor [REDACTED]. I do find  
16 probable cause to believe that Criminal Sexual Conduct in  
17 the Fourth Degree as pled did occur and the Defendant did  
18 commit that crime.  
19 Regarding Count 12, this was in regards to a  
20 complaining witness Brandon [REDACTED]. Testimony was that  
21 during the time in question here, the Defendant was  
22 fourteen years old and did turn fifteen at some time  
23 during the time period as stated in the complaint, which  
24 is March of '09 through March of '10. Therefore, I do  
25 find that Count 12 is pled accurately. I do find probable

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1 cause to believe that Criminal Sexual Conduct in the  
2 Second Degree on Count 12 did occur and the Defendant--  
3 probable cause to believe that the Defendant did commit  
4 that crime, or in the alternative that Criminal Sexual  
5 Conduct Second Degree as pled in the alternative, probable  
6 cause to believe that that crime did occur and the  
7 Defendant did commit it.  
8 Again, I am ordering that HIV and STD  
9 testing be done. The Defendant is bound over on all  
10 twelve counts. We do have a circuit court arraign-  
11 ment/pretrial date of October 13th at 8:15.  
12 And the--the last issue would be an issue of  
13 bail. The bond--it's currently, I believe, set at  
14 \$300,000 cash/surety, is that correct?  
15 MR. SCHAEFFER: That is correct.  
16 THE COURT: And that has been posted, is that--  
17 MR. SCHAEFFER: That has been posted, and he has  
18 appeared whenever he was supposed to appear. I ask that  
19 it be continued.  
20 THE COURT: Anything from the prosecution?  
21 MS. RAYNE: No objection to bond. I do have one  
22 question. If I haven't made this motion already, I would  
23 ask that the Defendant have no contact with Taylor [REDACTED].  
24 I cannot remember if he was already on the list of people  
25 that the Defendant not have contact with.

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1 THE COURT: Okay. If he's not on the list, we  
2 can add him to the list as someone the Defendant should  
3 have no contact with. My co--My co--no contact it is not  
4 just personal contact, it's no phone calls, it's no text,  
5 it's no emails, it's no Facebooking, it's no contact  
6 through a third party. No contact in this court means no  
7 contact whatsoever, is that understood?  
8 THE DEFENDANT: Yes, sir.  
9 THE COURT: Okay. Anything further from the  
10 Prosecution?  
11 MS. FAXNE: No, your Honor.  
12 THE COURT: Anything further from the Defense?  
13 MR. SCHAEFFER: Yes. Your Honor made a prior  
14 ruling in relation to records. Your Honor--  
15 THE COURT: Which records? You're talk--Okay.  
16 The--The--The order regarding medical and health--  
17 MR. SCHAEFFER: Yes, that is correct.  
18 THE COURT: --mental health records. Correct.  
19 MR. SCHAEFFER: And--And in all due respect,  
20 your jurisdiction probably has been passed onto Circuit  
21 Court at this point in time, so I'm looking for direction  
22 as to where to present that. I'm willing, and will,  
23 comply with the order, but I don't think it makes a lot of  
24 sense for me to deliver it to you when you no longer have  
25 jurisdiction in this court. Do you want it delivered to

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1 the Circuit Judge, or what is your pleasure?  
2 THE COURT: Yeah. I mean, it doesn't really  
3 matter, but--but it does make sense. I mean, who knows,  
4 maybe I will because we have--we're a trial court so this  
5 court--this case could potentially come back to me if  
6 there's some reason that the Circuit Court Judge cannot  
7 handle this matter. But let's assume at this point with  
8 no conflicts that Judge McDowell will be able to handle  
9 this matter. So yes, why don't you provide within seven  
10 days all of those records to Judge McDowell's court. I  
11 will--  
12 MR. SCHAEFFER: Okay.  
13 THE COURT: --give her heads-up and let her know  
14 why they're there, and then you can address that issue  
15 with the Circuit Court.  
16 MR. SCHAEFFER: Okay. Very good. Just logistic  
17 wise, as indicated, I am going to be out of the jurisdic-  
18 tion from Friday onward, and I should be able to  
19 accomplish it prior to Friday if I have the Order to me  
20 within a reasonable period of time because the order, I  
21 think, was specific, and I want to comply with it, but I  
22 need the written Order in order to comply with it, and I--  
23 verbally it was indicated that it could be to me by  
24 tomorrow, and I guess I would wish to do that because come  
25 Friday I'm going to be elsewhere.

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1 MS. PAYNE: I'll prepare the order and have it  
2 to the court tomorrow morning. One question I would like  
3 to ask. Is it sufficient in this one time only that Mr.  
4 Schaeffer receive the order by email?  
5 MR. SCHAEFFER: Certainly by email. If it was  
6 gonna get entered, I think it should be else wise, but--  
7 MS. PAYNE: Or--or fax?  
8 MR. SCHAEFFER: Fax--fax is fine.  
9 MS. PAYNE: Okay.  
10 MR. SCHAEFFER: But I would like to have the  
11 order in--in a fashion so that I can peruse it to make  
12 sure that I agree that's what the judge ordered.  
13 MS. PAYNE: I'll present it to you tomorrow  
14 morning.  
15 MR. SCHAEFFER: And--and hopefully that you and  
16 I can--I'll approve it by email or fax, and then you can  
17 present it to the judge, and I'll get it completed with  
18 before Friday.  
19 THE COURT: I'll be here all day. I'll review  
20 it as soon as--make sure, Ms. Payne, because I've got a  
21 really, really busy day tomorrow, make sure that it gets  
22 to me, shay or somebody to--to put it in front of me to  
23 address it immediately, and I'll do that, if I have to  
24 take a recess from my crazy morning, I'll do--whatever it  
25 takes, I will get it done so that it's to you ASAP.

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1 MR. SCHAEFFER: Thank you. One other thing,  
2 your honor. Your honor indicated that there was an  
3 arraignment on October 15th at 8:15--  
4 THE COURT: Thirteenth. October 13th at 8:15.  
5 MR. SCHAEFFER: Was it thirteenth?  
6 UNKNOWN VOICE: Yes, sir.  
7 MR. SCHAEFFER: I guess I had--I was dyslexic,  
8 your honor.  
9 THE COURT: That's okay. Good to get it clear  
10 while you're here.  
11 MR. SCHAEFFER: All right. Thirteenth. Does  
12 Barry County have a written not guilty plea process for  
13 the arraignment in circuit court?  
14 MS. PAYNE: They combine the arraignments and  
15 pretrials.  
16 THE COURT: And pretrials together.  
17 MR. SCHAEFFER: Okay. Okay. Very good.  
18 THE COURT: That's what they were do--were  
19 doing. I'm assuming that Judge McDowell is doing the same  
20 thing right now?  
21 MS. PAYNE: Yes, your honor.  
22 THE COURT: Okay.  
23 MR. SCHAEFFER: Okay. Thank you.  
24 THE COURT: Anything further from anybody?  
25 MS. PAYNE: No, your honor.

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THE COURT: Okay. Court's in recess.  
(At 4:45 p.m., matter concluded)

STATE OF MICHIGAN )  
)  
COUNTY OF HARRY )

I certify that this transcript, consisting of 226 pages,  
is a complete, true, and correct record of the proceedings and  
testimony taken in this matter on September 12, 2011.

December 26, 2011

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