

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

**In Re: Melvin Fink**  
**PRB File No. 012-2019**

**DISCIPLINARY COUNSEL'S MOTION TO AMEND  
PETITION OF MISCONDUCT**

**EXHIBIT 7**

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IN THE VERMONT SUPERIOR COURT  
BENNINGTON COUNTY CRIMINAL DIVISION

STATE OF VERMONT, ) Case No. 124-1-19 Bncr  
Plaintiff, )  
 ) Bennington, Vermont  
-against- )  
 ) November 7, 2023  
MELVIN FINK, ) 8:35 AM  
Defendant. )  
\_\_\_\_\_ )

TRANSCRIPT OF JURY DRAW

BEFORE THE HONORABLE KERRY ANN MCDONALD-CADY,  
SUPERIOR COURT JUDGE

APPEARANCES (All present by video or telephone):

PAUL A. BARKUS, ESQ.  
DANA M. DISANO, ESQ.  
  
DAVID C. SLEIGH, ESQ.  
Attorney for the Defendant

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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.  
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 (Proceedings convened at 8:35 AM)

2 THE COURT: Good morning, everyone.

3 MR. DAVID SLEIGH: Morning.

4 THE COURT: So this is (indiscernible ) 7. It's  
5 docket 124-1-19 Bncr.

6 Mr. Barkus is here and Ms. DiSano for the Attorney  
7 General's Office.

8 MS. DANA DISANO: Good morning.

9 THE COURT: And Mr. Sleigh is here with Mr. Fink.  
10 Good morning.

11 MR. PAUL BARKUS: Good morning, Your Honor.

12 THE COURT: So Ms. (Indiscernible), you did indicate  
13 that you wanted to come down yesterday afternoon to go on the  
14 record. We had a contested sentencing hearing. And because  
15 the regional arraignments, we are fifty minutes late into that  
16 hearing, so we finished at 4:15. And I just did not want to  
17 keep stuff later than that. So there wasn't that extra room  
18 in the calendar just because of the way, so I didn't want to  
19 take a recess from that just for that contested sentencing  
20 hearing. So I don't know if there are updates about where we  
21 left off yesterday to today, but otherwise we have the 21st.

22 Just so that you're aware, this is the panel's second  
23 time. Orientation was for October, so this would be their  
24 second round. So they've already been oriented, both criminal  
25 and civil. And just also so that you're aware, we have two

1 courtrooms with all the jurors. So they're not all in the one  
2 courtroom where you're picking a jury. They will be watching.  
3 The overflow is in the next courtroom and they're watching by  
4 video. And so when you hear (indiscernible) box, so to speak,  
5 there may be a delay and you're wondering, where are these  
6 people coming from? They're coming from the second courtroom  
7 right next door. It's just so that we don't have everyone, so  
8 basically together, that's not (indiscernible) protocol, but  
9 we just continue to do that.

10 So if you're wondering where are these people  
11 magically coming from, they're watching from the next-door  
12 courtroom, so.

13 So the updates from where we were or --

14 MR. BARKUS: Yes. So I think we found a way to  
15 continue with the proposed resolution that doesn't run afoul  
16 of the statute. State will amend the charges for 2601a for  
17 prohibited conduct which makes a misdemeanor --

18 THE COURT: Um-hum.

19 MR. BARKUS: -- which then qualifies for the referral.  
20 We do have some, maybe, somewhat out of the ordinary  
21 agreements that pending the diversion referral, that would be  
22 essentially an on the record factual admission by Mr. Fink.

23 I think we filed that with the Court. You've seen  
24 that?

25 THE COURT: Yes.

1           MR. BARKUS: The putative victim would have a chance  
2 to make a victim's impact statement. That would be on the  
3 record.

4           Now, the amendment to 2601a, normally would be  
5 straightforward, is somewhat complicated because the statute  
6 of limitations has run on the misdemeanor. But under State v.  
7 Karen, it's clear that Mr. Fink can waive that statute of  
8 limitations. And we have executed a waiver and provided that  
9 to the Attorney General. So I suspect that what will happen  
10 is that they'll file the amendment, they will file the signed  
11 statute waiver, and we'll have this colloquy, so to speak,  
12 before the diversion referral.

13           We have also agreed that the factual statement that  
14 Mr. Fink has signed, which is on the portal now --

15           THE COURT: Um-hum.

16           MR. BARKUS: -- is a document that's available to the  
17 putative victim, and she can do with that as she wants going  
18 forward.

19           The last agreement is that we would stipulate that  
20 the diversion process would remain confidential, but the case  
21 would remain open until diversion was completed.

22           And then, I keep saying last, but there's also one  
23 more thing. The other thing is that we have agreed, in the  
24 waiver, that if Mr. Fink failed diversion and the case came  
25 back, that any time between now and return would not be

1 counted against the limitations period. And of course, the  
2 State could reamend to felony at that time.

3 THE COURT: So I would like to do this all this  
4 morning.

5 MR. BARKUS: Yeah, well -- right, we're ready to go.

6 THE COURT: So the other question I have is that --  
7 (Recess at 8:39 a.m., until 11:56 a.m.)

8 MR. SLEIGH: (Indiscernible)?

9 MR. BARKUS: Yeah.

10 THE COURT: So I'd like to take up Mr. Fink's case,  
11 and that probably is going to take us a little bit past the  
12 noon hour, which means that I've advised the jury panel to  
13 come back at 1:30.

14 So Ms. McManus, I would ask for your clients to be  
15 back at 1 o'clock. That includes Mr. Standard (ph.) and any  
16 other change of pleas, we can take up a 1 o'clock.

17 But I would probably want to start with Mr. Ritter's  
18 (ph.) case, Mr. Rambold (ph.) and Ms. McManus, because that  
19 was otherwise a case that we were going to draw today. And  
20 then to also try to address Mr. Standard's case before we  
21 start with the jury at 1:30, that way I know if it's a case  
22 that's resolved or a case that's not resolved. So I think  
23 that's the plan.

24 And we'll just take up Mr. Fink's case right now  
25 because that's really all that we'll have before that noon

1 recess. But otherwise, the jury is coming back at 1:30. And  
2 we do have one walk in that I'll take up at 1 o'clock as well.

3 So just to give the attorneys as well, Mr. Serra's  
4 (ph.) case, we can take up at 1 o'clock.

5 UNIDENTIFIED SPEAKER: Thank you, Honor.

6 THE COURT: So I just want to change over my file  
7 here. So Mr. Fink, Mr. Barkus, and Ms. DiSano, I just need a  
8 moment to change my computer screen.

9 (Pause)

10 THE COURT: Okay. So we're on the record. This is  
11 124-1-19 Bncr, State of Vermont v. Melvin Fink.

12 Mr. Fink is here in the courtroom. Good morning.  
13 Mr. Sleigh is here representing him. Mr. Barkus is here, and  
14 Ms. DiSano is here from the Attorney General's Office.

15 So this is set for a jury draw for today. It's for a  
16 date certain for November 21st, jury draw. And we had a  
17 status conference yesterday where the Court had raised some  
18 questions with regards to the proposal here yesterday of the  
19 referral of the felony case that remains to diversion. We had  
20 discussions about that it not being an eligible case for  
21 diversion, but also that the local CRJ here in Bennington did  
22 not have a memorandum of understanding of how to address these  
23 cases. That is required under the statute under Title 24,  
24 section 1967 and 1968.

25 When we met this morning, the State indicated that

1 they would be amending to a prohibited act under Title 13,  
2 section 2601a, little "A," and that again, it would be  
3 referral to diversion.

4 I don't know if the attorneys have reviewed, but  
5 State's Attorney Marthage indicated yesterday that she was  
6 opposed to the diversion referral and she had filed a motion  
7 here, including in the motion is that even if the case was  
8 amended to a prohibited act, that she would oppose that.

9 Which raises an interesting question. I think the  
10 first question of being able to work through is, number one,  
11 whether or not an amended case to prohibited act would be  
12 appropriate or could be eligible for a diversion referral.  
13 And at least the answer that the Court believes is yes, that  
14 it is a misdemeanor offense, misdemeanor offenses first and  
15 second -- misdemeanor offenses are those considered  
16 appropriate for diversion? It is not a felony. It's not a  
17 violent felony. It's not a violent misdemeanor.

18 There is a provision with regards to sealing and  
19 expunging that prohibited act is specifically maybe a  
20 misdemeanor offense, but it's not considered a qualifying  
21 offense that would be eligible for sealing and expunging under  
22 Title 13, section 7601(4). That's one of the exceptions.

23 Misdemeanors that are predicate offenses of violation  
24 of abuse prevention order specifically, but it also includes  
25 prohibited act in that statute, so it can't be sealed or

1 expunged on upon a motion. But I don't think that makes it  
2 ineligible for a diversion referral.

3           Although it raises the question of whether or not it  
4 could be sealed and expunged as part of diversion when it's  
5 not eligible for sealing and expunging under Title 13,  
6 separate issue, I don't think that really interferes with  
7 potentially moving this case going forward, but this  
8 potentially could be the issue.

9           The Attorney General's Office is prosecuting this  
10 case. This case started before I was here on the bench. And  
11 so the reason why the Attorney General's Office is prosecuting  
12 this case versus the State's Attorney's Office, I'm not quite  
13 certain. But nevertheless, it's the Attorney General's Office  
14 that's prosecuting the case.

15           In Title 3, the statute does refer to the State's  
16 Attorney's Office of the particular county has the ultimate  
17 discretion about what cases to refer to diversion and not to  
18 refer to diversion in consultation with the local CRJ, which  
19 would seem to end that there be protocols established to  
20 determine which cases are eligible, which are not eligible.

21           But it would raise the question here about even if  
22 the Attorney General's Office refers this case of an amended  
23 misdemeanor prohibited act, does the Bennington State's  
24 Attorney's Office ultimately have the ability to say that it  
25 should not go there for CRJ to decline accepting it, which

1 then would result in the case being returned back here, which  
2 this Court's ultimate concern is this is a four-year-old case.  
3 It took many, many months to get this trial ready for Mr.  
4 Sleigh's schedule and Mr. Barkus and Ms. DiSano's schedule,  
5 and Mr. Fink's schedule. This was actually ready for a trial  
6 anticipated in July 2022 that was continued based on the  
7 State's request.

8           When I first took the rotation here in September  
9 2022, this was going to be a trial for October 2022. There  
10 was litigation that we needed to work through, and so we did.  
11 And I think this was even anticipated a little bit earlier  
12 this year, but we weren't quite finished with the litigation,  
13 but we are now.

14           What the Court's concern is this, if this case gets  
15 referred to diversion and is declined, it means we're right  
16 back to where we are of a 2019 is unresolved. This is one of  
17 our oldest cases here and we need to resolve it.

18           So I'll let -- and I don't know, Mr. Sleigh and Mr.  
19 Barkus and Ms. DiSano, if you had the opportunity to even  
20 review State's Attorney Marthage's motion. I don't think that  
21 she necessarily has standing here to oppose the referral. But  
22 it's the question of ultimately, will she have the ability  
23 with CRJ to say this is not a case that should be accepted to  
24 diversion?

25           I believe that she does have that discretion under

1 the statute, which would raise the concern that I have of not  
2 being able to move this case going forward to a resolution,  
3 whatever that resolution is.

4 So I think the first question is, have you had even  
5 the ability to kind of think through that of the motion that  
6 was filed by State's Attorney Marthage yesterday?

7 MR. BARKUS: So first of all, I moved to strike  
8 State's Attorney Marthage's pleading from the record and to  
9 potentially move to recuse yourself for having read it. She's  
10 not a party to this case. It was entirely inappropriate,  
11 ultra vires for her to file a motion. She's made no  
12 appearance. She's done no depositions. She's participated in  
13 this no way whatsoever. My understanding is she's never had  
14 any communication with the putative victim.

15 So I don't think she has party status, and her  
16 pleading should be struck. That --

17 THE COURT: I didn't say that she had party status.  
18 That's clear. She doesn't.

19 MR. BARKUS: So I'm moving that her pleading be  
20 struck at this moment.

21 THE COURT: And so with regards to the -- any other  
22 concern about whether or not --

23 MR. BARKUS: So --

24 THE COURT: -- the case if it goes to diversion?

25 MR. BARKUS: If the Court had spontaneously come up

1 with this concern, I would have addressed it as follows. 3  
2 V.S.A section 152 provides general authority for the Attorney  
3 General --

4 THE COURT: Yes.

5 MR. BARKUS: -- to act as the State's Attorney. So in  
6 any referral situation, they're the operative State's  
7 Attorney, not Ms. Marthage. And they're not obligated to  
8 refer the diversion case to the Bennington Community Justice  
9 Center or the Bennington Diversion Program. They can refer it  
10 to any qualified diversion program within the State under the  
11 Attorney General's adult diversion --

12 THE COURT: Um-hum.

13 MR. BARKUS: -- program. So I don't see that that's  
14 an issue at all. In fact, what I understand is, that as part  
15 of this negotiation that the director of the Attorney  
16 General's adult diversion program has been consulted, that  
17 she's read (indiscernible) 601 and Title 164 --

18 THE COURT: Um-hum.

19 MR. BARKUS: -- and has determined that this case is  
20 eligible for diversion. That she's knowledgeable of the case,  
21 knowledgeable that the putative victim wants the case to  
22 resolve with diversion, will accept the case.

23 Now, does that mean Mr. Fink will complete the  
24 program? I don't know, but I think it alleviates all the  
25 untoward roadblocks that Ms. Marthage is, in my view,

1 inappropriately throwing up in this case that she has frankly  
2 no business in.

3 THE COURT: Is that Ms. Farrell, Mr. Sleigh, that  
4 you've been consulting with regarding the diversion referral?

5 MR. SLEIGH: Pardon me?

6 THE COURT: Is it Ms. Farrell, Willa Farrell, that  
7 you've been -- you've indicated that --

8 MR. BARKUS: Only I haven't myself, but with  
9 discussing resolution with the Attorney General's Office.

10 THE COURT: Okay.

11 MR. BARKUS: So there was another -- I don't  
12 necessarily want to point out what I think are egregious  
13 errors and conscious attempts to misrepresent the law by Ms.  
14 Marthage in her pleading, but if the Court strikes it, then I  
15 don't think that's necessary.

16 THE COURT: Thank you. So Mr. Barkus, Ms. DiSano,  
17 with regards to the plan here, I don't know if you've spoken  
18 separately to either Ms. Farrell or Ms. Cipriano (ph.)  
19 regarding the referral under the anticipated amendment to the  
20 misdemeanor prohibited act.

21 I see this as the -- it could be referred. There's  
22 nothing that would disqualify it under the statute. So that's  
23 not the concern. The concern is whether or not it would be  
24 accepted by diversion. Meaning the concern about this is our  
25 opportunity for drawing a jury to resolve the case. If it was

1 not going to be accepted by diversion, my concern is when is  
2 the ability that we'd be able to get back to this presumably,  
3 unless the State just dismissed it altogether, I don't know.  
4 But my concern is losing the opportunity for the jury draw to  
5 resolve the case. And that's a question actually that I  
6 raised yesterday, really, when it started at the posture of  
7 where it is still right now, felony case. If it was not  
8 accepted by diversion, the concern about losing the  
9 opportunity here for jury draw that we worked very hard for  
10 many months to get to. And although I didn't raise it as an  
11 anticipated amendment, it was the concern, Mr. Sleigh, that I  
12 raised yesterday of losing what we've worked to because that  
13 prejudice everyone and prejudice the State, the complainant,  
14 Mr. Fink, the attorneys working on this case to this point  
15 here.

16           So Mr. Barkus, Ms. DiSano, have you talked with Ms.  
17 Cypriano about the proposal of the amendment here and whether  
18 or not it would be accepted to the CRJ?

19           MR. SLEIGH: Your Honor, there has been discussions  
20 with Ms. Farrell, and Ms. Farrell has reviewed the  
21 information. We've been in discussion with her for quite some  
22 period of time. She has agreed to accept it through the  
23 Rutland Office, and it would be administered through there.  
24 But she has assured us that he will be accepted into the  
25 diversion program in Rutland.

1           THE COURT: And does Ms. -- my understanding of Ms.  
2 Farrell's position is that she has a larger -- I'm not sure if  
3 she's the executive director, apologize for her title, but has  
4 she conferred with the Rutland CRJ to make certain that they  
5 would accept it? Because I don't know if she runs the  
6 individual boards.

7           MR. SLEIGH: My understanding is that she has, Your  
8 Honor. And I think that their diversionary program is maybe  
9 run a little bit differently than in other counties in this  
10 state. And that may be why I wasn't close to that discussion,  
11 but that's my understanding that, yes, she has confirmed that  
12 through their program.

13           THE COURT: Okay. Okay. So I did not consider in  
14 the filing here, State's Attorney Marthage when she raised the  
15 objection, I indicated she can file a motion here. She's not  
16 a party to this. She is the State's Attorney for Bennington  
17 County.

18           The question that I raised about her ability to be  
19 able to object would be in the capacity of whether or not she  
20 has a kind of a say so, final say so if it was invented to  
21 county here in consultation with the local Community  
22 Restorative Justice program run by Ms. Cypriano as the  
23 director here. But certainly she's not the prosecutor that's  
24 assigned to this case here. So I'm not sure if striking, but  
25 the Court would not consider her party here. So I'm not going

1 to require either of the parties to respond and not  
2 independently going to rule on the motion here, so she doesn't  
3 have party status. I think where her involvement potentially  
4 could come in is whether or not if the case remained here in  
5 Bennington through the CRJ, whether or not through working  
6 with that CRJ program, she would have the ability to say this  
7 is a case that would not be accepted here for Bennington  
8 County.

9 If this is being supervised by Rutland County, that  
10 certainly would not be in -- State's Attorney Marthage would  
11 not have the ability to participate in that conversation with  
12 the CRJ.

13 So I haven't had much of an opportunity, if any, to  
14 look to see whether or not the amendment has been filed here.  
15 And I don't think it has unless I need to refile.

16 So Mr. Barkus, Ms. DiSano, have you filed the  
17 amended --

18 MR. BARKUS: I did file this morning and I thought it  
19 was out. I didn't get notice that it had been filed. I don't  
20 know if it's (indiscernible) slated or anyone else, but  
21 usually when we file something in Odyssey, shortly after we  
22 file it, we get a confirmation that it's been served. But I  
23 have a copy of it here if the Court would like it.

24 THE COURT: We'll make a copy of that. It could be  
25 that I need to refresh the computer here. The Rutland

1 director for the CRJ, is that someone that could join us at 1  
2 o'clock to confirm that this case would be accepted to CRJ?

3 MR. BARKUS: I don't know. But we'll find out.

4 THE COURT: Okay. I would like that person to join  
5 us remotely so that we can just confirm that to make certain  
6 that we're not working towards a resolution that would  
7 unravel, especially when we have a jury coming back for the  
8 afternoon here, so.

9 MR. BARKUS: When would you like the (indiscernible)?

10 THE COURT: We'll come back at 1 o'clock.

11 MR. BARKUS: Okay.

12 THE COURT: So what I'd like to do is this, give you  
13 a chance to have lunch, come back at 1 o'clock. I just want  
14 to be able to review the amendment here. I would like to hear  
15 from someone from the Rutland's CRJ to indicate that they're  
16 going to accept this case. And then from there, I want to  
17 review again what the, I suppose the agreement that the State  
18 and Mr. Fink had joined here with the complainant. So I just  
19 want to review that again.

20 But at least that's the plan. We're well into the  
21 lunch hour here, which I try not to do, but I didn't want to  
22 take this all up at 1 o'clock wondering what we're doing here,  
23 and I had some questions.

24 So I would like to hear from the Rutland, some member  
25 from the CRJ that has authority to affirmatively say whether

1 or not this case would be accepted. And then from there, we  
2 can proceed. Short of that, the jury is coming back at 1:30.  
3 Again, I didn't excuse them for the day because I wanted to  
4 make certain that if this case went forward to diversion, that  
5 it could happen, otherwise to keep the panel here so that we  
6 could draw the jury and potentially work through these issues  
7 if they needed to be worked through, because the trial  
8 wouldn't be until the 21st. So they're still coming back.

9 But let's come back at 1 o'clock so we can continue  
10 to work through this case and see if we can resolve it and  
11 that we then can excuse the jury. So I just want to make  
12 certain it's still in that posture of it's not quite resolved  
13 yet. So I just want to make certain that if something happens  
14 unexpected where this is a case that for some reason diversion  
15 says, no, we're not going to accept it, then the anticipation  
16 is we're drawing the jury, so. Because they'll be back.

17 MR. BARKUS: Your Honor, given that you're giving the  
18 State forty-five minutes to find this person who has no  
19 expectation of being found, would the Court accept Ms.  
20 Farrell's representation that --

21 THE COURT: Yes.

22 MR. BARKUS: Thank you.

23 THE COURT: Absolutely.

24 MR. BARKUS: All right.

25 THE COURT: I just want someone with authority to

1 say --

2 MR. BARKUS: I get it.

3 THE COURT: And the reason why is this, we're working  
4 towards a resolution. Equally important is the complainant  
5 being agreeable to this. But if it was something that no one  
6 had control over, that doesn't resolve, we are back to where  
7 we are and Mr. Sleigh and Mr. Barkus and Ms. DiSano, I'd  
8 imagine that if I told you we're going to have a jury trial  
9 next month, you would probably tell me, well, you're booked in  
10 multiple counties, including probably Mr. Fink. So it's not a  
11 matter of just saying we'll put you on for next month. It  
12 would require moving parts around.

13 MR. BARKUS: Hundred percent aware of the Court's  
14 concerns. I am on board. I was just hoping that we could  
15 have an alternative, either Ms. Farrell or the Representative  
16 Rutland to give you the assurance.

17 THE COURT: Yes, we can have that alternative.

18 MR. BARKUS: All right. Thank you.

19 THE COURT: And then finally, Mr. Sleigh, you  
20 indicated whether or not the Court should be disqualified. If  
21 you are asking for that, then we should make that clear so  
22 that I'm not --

23 MR. SLEIGH: I withdraw and (indiscernible) request  
24 at this point.

25 THE COURT: Okay. Because I wouldn't rule on then

1 and I need to get in touch with Judge Zonay about that, so.

2 MR. SLEIGH: That's fine. Thank you.

3 THE COURT: Okay. Okay. So we'll be back at 1  
4 o'clock. Thank you.

5 MR. BARKUS: Thank you, Your Honor.

6 (Recess at 12:16 p.m., until 1:02 p.m.)

7 THE COURT: Please be seated.

8 I just need a moment to reset here, everything  
9 electronic. So if you want to be seated, I'll just take me  
10 about two minutes.

11 (Pause)

12 Okay. So we're back on the record. This is docket  
13 124-1-9 from the (indiscernible). State of Vermont v. Melvin  
14 Fink. Mr. Fink is here with Mr. Sleigh. Ms. DiSano is here.  
15 Mr. Barkus is here.

16 So we're back on the record and the Court did see  
17 that the State has filed a second amended criminal  
18 information. The remaining Count -- Okay. So I see what you  
19 did. You've dismissed Count III, which was the remaining  
20 count of lewd and lascivious felony. You've added a Count IV  
21 of a misdemeanor prohibited conduct in violation of Title 13,  
22 Section 2601a(a) and then with regards to -- you have a too  
23 with, the original affidavit here was Sgt. or Det. Robeson's  
24 (ph.) affidavit. But you've also -- meaning the State, Mr.  
25 Barkus, signed by Mr. Sleigh and Mr. Fink have signed a notice

1 of resolution agreement with the stipulated factual basis for  
2 the diversion referral.

3 So let me start, Mr. Barkus, with you. I have the  
4 amendment here. You're adding count for dismissing Count III  
5 and the factual basis, you're not incorporating another  
6 affidavit, but you're including the stipulated facts for the  
7 diversion referral that was filed yesterday. Is that how  
8 you're proceeding?

9 MR. BARKUS: Yeah. We can do it that way, Your  
10 Honor.

11 THE COURT: I just wasn't certain. I pulled the  
12 original affidavit from --

13 MR. BARKUS: I assumed that the probable cause would  
14 be contained in the original affidavit, Your Honor.

15 THE COURT: And I pulled them, and I reviewed that  
16 again.

17 MR. BARKUS: And that's fine. And then, of course,  
18 the factual statement was part of the negotiated resolution  
19 for the diversion. So to the extent that we have to have an  
20 arraignment on Count IV, we've received it, we waive a  
21 reading, waive the twenty-four-hour rule and a recitation Rule  
22 5 rights. We enter a plea of not guilty for the purposes of  
23 today, understanding that the case will resolve according to  
24 the agreement.

25 THE COURT: Okay. And then, Mr. Sleigh, Mr. Barcus

1 and Ms. DiSano, I reviewed Det. Robeson's original affidavit  
2 that was filed in this case of the original three-count  
3 criminal information. It's an affidavit that was dated  
4 December 14th, 2018. I would find probable cause and will  
5 find probable cause for the Count IV now that's added of the  
6 misdemeanor.

7 I've printed that out, so I will likely redo that in  
8 Odyssey so that you can see that. But I did not want to sign  
9 anything before coming on the record here today. But I do  
10 find probable cause based on that original affidavit of Sgt.  
11 Robeson.

12 So the question, secondary part was about contact  
13 with Rutland to just confirm.

14 MR. SLEIGH: There's one step that we have to go  
15 through before that --

16 THE COURT: It's the waiver of the statute of  
17 limitations.

18 MR. SLEIGH: Statute of limitations.

19 THE COURT: Yes.

20 MR. SLEIGH: So the Court should have waiver of  
21 rights that was executed by myself, Mr. Barbiton (ph.), Mr.  
22 Fink. I didn't know if we wanted to have a brief colloquy  
23 with Mr. Fink to assure the Court that he understands that he  
24 doesn't have to waive the statute of limitations, that he's  
25 doing so freely and voluntarily.

1           THE COURT: I do. And Mr. Sleigh, I did have that.  
2 I did receive that and reviewed that over the lunch hour here,  
3 again, acknowledged by Mr. Fink, signed, as well as your  
4 signature here. But I do want to proceed with regard to that  
5 waiver by Mr. Fink here. I just want to pull that up.

6           Okay. So Mr. Fink, I do have a document that was  
7 filed earlier today, dated November 6th, and it's signed by  
8 you. It's signed by Mr. Sleigh. It's signed by Mr. Barkus.  
9 And what it's entitled is waiver of rights, indicating in this  
10 case now that there is a new count for misdemeanor prohibited  
11 act. It's a misdemeanor under Title 13, Section 4501. It's  
12 subsection E, the statute of limitations would have otherwise  
13 lapsed in this case, meaning that prosecutions for other  
14 felonies or for misdemeanors, which this would fall under,  
15 would have to be commenced within three years after the  
16 commission of the offense and not thereafter. So that statute  
17 of limitations has passed since this is conduct alleged from  
18 2019.

19           What this agreement says is that you are waiving that  
20 statute of limitations or the tolling of that statute of  
21 limitations, and you reviewed that with Mr. Sleigh. And as  
22 part of the agreement here, you are consenting to that, that  
23 the State can file this case and you're waiving that the  
24 lapsing of the statute of limitations, allowing them to file  
25 this case, allowing the Court to have this case continue. So

1 I just want to make certain that that is your signature on  
2 that waiver of rights.

3 THE DEFENDANT: I did sign the waiver of rights, Your  
4 Honor.

5 THE COURT: And I just want to make certain that you  
6 reviewed that and read that before you signed it.

7 THE DEFENDANT: I did, and I fully understand it.

8 THE COURT: Okay. And do you think that you've had  
9 enough opportunity to speak with Mr. Sleigh about this?

10 THE DEFENDANT: Ample, yes.

11 THE COURT: Okay. Do you need any additional time to  
12 speak with him about this?

13 THE DEFENDANT: No, thank you.

14 THE COURT: Okay. I know that this is part of an  
15 overall plea agreement, so there is a promise, if you will.  
16 But besides the diversion referral here, what the Attorney  
17 General's Office will be doing is besides that, are there any  
18 promises or has anyone forced or threatened you to come this  
19 decision to waive that tolling of the statute of limitations  
20 in the now Count IV misdemeanor prohibited act?

21 THE DEFENDANT: None.

22 THE COURT: Okay. And Mr. Fink, do you have any  
23 questions for the Court about anything that I've inquired  
24 about?

25 THE DEFENDANT: Thank you. No.

1 THE COURT: Okay. Very good. Thank you.

2 So I do find that Mr. Fink here has made a knowing  
3 and voluntary waiver of that tolling of the statute of  
4 limitations in the now Count IV added to the criminal  
5 information here. He's done that in writing with consultation  
6 of his attorney, Mr. Sleigh, but he's also done that knowing  
7 voluntarily here on the record.

8 So Mr. Barkus and Ms. DiSano, I wasn't certain. I  
9 know that it was very quick turnaround here. But it's kind of  
10 things that are happening in real time with a jury here.  
11 That's the reason for why I'm not saying, okay, well, we can  
12 come back next week or two days from now, but did you have an  
13 opportunity to either speak with Ms. Farrell or Ms. Farrell's  
14 representative or someone other, that would have -- or someone  
15 with the authority to speak on behalf of the Rutland program?

16 MR. BARKUS: Yes. With this short notice, we weren't  
17 able to get anyone other than Ms. Farrell, so I believe she's  
18 available, just waiting as a guest to be entered into the  
19 screen in Webex.

20 THE COURT: Okay.

21 THE COURT: I joined the --

22 THE CLERK: If she was given the regular recurring  
23 Webex, that would be different from this one.

24 THE COURT: Okay. That's the issue. We have a  
25 separate Webex just for the calling of the draw here. The

1 Webex that we use in the jury is only for the purpose of the  
2 second courtroom for them to see us, not for the public. So  
3 can we provide that to Ms --

4 THE CLERK: I'll be able to call into that other one  
5 or I can just -- if there's an email address, I can send an  
6 invite.

7 THE COURT: Whichever is quicker to be able to just  
8 reach Ms. Farrell is fine. Thanks.

9 THE CLERK: -- (Indiscernible) other one. Just get an  
10 email or a phone number so I can send an invite from  
11 (indiscernible) jury draw Webex. (Indiscernible) the other  
12 one.

13 THE COURT: W-I-L-L-A, dot, F-A-R-R-E-L-L  
14 @vermont.gov.

15 THE CLERK: Thank you.

16 (Pause)

17 THE CLERK: I'm so sorry, can I get that email  
18 (indiscernible)?

19 UNIDENTIFIED SPEAKER: Yeah. W-I-L-L-A, dot, F-A-R-  
20 R-E-L-L @vermont.gov. Thank you.

21 (Pause)

22 THE COURT: Ms. DiSano, we can also call Ms. Farrell  
23 directly, if that's easier. I know that technology works  
24 great as well, but whichever is --

25 MS. DISANO: She's been emailing with me. She said

1 that she's just waiting to receive --

2 THE COURT: Okay.

3 MS. DISANO: -- the email.

4 (Pause)

5 THE COURT: And Mr. Barkus and Ms. DiSano, while  
6 we're waiting for Ms. Farrell to join us, yesterday you had  
7 indicated that Ms. Howell was agreeable where the posture of  
8 the case where it was staying as a felony. We had that  
9 discussion. I just want to make certain that Ms. Howell is  
10 agreeable with regards to the amendments here to the  
11 prohibited act. I had not inquired about that before. We  
12 were working our way through other steps. But when we started  
13 this morning, you indicated that she was here. And so I just  
14 want to make certain that she also -- this is in agreement --

15 MR. BARKUS: I can confirm that she --

16 THE COURT: -- (indiscernible).

17 MR. BARKUS: -- is involved.

18 THE COURT: Okay. And she is here this afternoon  
19 still?

20 MR. BARKUS: She is just in the next --

21 THE COURT: Okay. Very good.

22 MR. BARKUS: -- conference room.

23 MR. SLEIGH: Ms. Farrell's online.

24 THE COURT: Okay. Very good. Thank you.

25 Ms. Farrell, good afternoon. This is Judge McDonald-

1 Cady. First of all, thank you for making yourself available  
2 very quickly here.

3 MS. WILLA FARRELL: Of course. Good afternoon, Your  
4 Honor.

5 THE COURT: Good afternoon. So we're here on the  
6 record in State of Vermont v. Melvin Fink. Docket 124-1-19.  
7 Mr. Sleigh is here, Mr. Fink is here, Mr. Barkus is here, and  
8 Ms. DiSano is here. It's jury draw.

9 We've talked about this case twice this morning. The  
10 posture is that the State has filed an amended criminal  
11 information of dismissing the Count III that remained of the  
12 felony lewd and lascivious conduct. They've added a  
13 misdemeanor prohibited act under Title 13, section 2601,  
14 little "A," subsection A. I did find probable cause.

15 My understanding is that the Attorney General's  
16 Office is referring the case to diversion. I found that this  
17 certainly would be a case that could be referred to diversion,  
18 meaning that it was not an offense that would disqualify it  
19 from diversion. It's a misdemeanor offense. It's a  
20 nonviolent misdemeanor offense. It certainly would fit those  
21 parameters under Title 3, 164.

22 The question that I had for the attorneys -- because  
23 we are here for jury draw, which took a long time to get to  
24 this point with the attorneys' schedules, and it is an older  
25 case, one of the oldest cases that we have here in Bennington

1 County. I just wanted to make certain that it would be  
2 accepted to diversion by a board rather than concern that this  
3 would be all well and good, but if it wasn't accepted, it  
4 would be right back to where we are.

5 But unfortunately, based on the schedules of the  
6 attorneys, it would not be so easy for me to say, okay, we'll  
7 draw the jury in December. That probably would push us out  
8 months and months from now, which is what I don't want to do.  
9 So I think it was the -- to make certain that this is  
10 something that not only that the attorneys agreed to that Ms.  
11 Howell, the complainant, was agreeable to, but also that it  
12 would be accepted by diversion, so. And that's where you came  
13 in.

14 Mr. Barkus indicated that he spoke to you and that  
15 your understanding is that Rutland County program diversion  
16 would be accepting this case and that they were prepared to do  
17 so. So it's not meaning to put you in the hot spot, but I do  
18 find that that is an important piece of information, just to  
19 make certain we're not losing the opportunity for all the  
20 parties to be able to resolve this case through jury draw.

21 MS. FARRELL: I understand. And yesterday, when I  
22 was asked about if prosecutors were to refer the case, could  
23 it go elsewhere. I spoke with the program director in Rutland  
24 County, the Rutland County Restorative Justice executive  
25 director, Maggie Ganguly, and she explained the context as I

1 understood it, the nature of the offense and the participant,  
2 the Defendant's willingness to participate and the victim's  
3 interest in the resolution to move in this direction. And she  
4 assured me that she herself would take the case and her  
5 organization would accept the referral.

6 THE COURT: Okay. And do you see at least any  
7 barriers that we weren't anticipating where this case could  
8 not be referred to the Rutland Diversion program for them to  
9 more formally accept this and to work with Mr. Fink and Ms.  
10 Howell and --

11 MS. FARRELL: I don't see any barriers, given what  
12 I've been told to date. No, I think it would move forward  
13 through the diversion process.

14 THE COURT: Okay.

15 Mr. Sleigh, let me start with you. If you had any  
16 follow-up questions with regards to Ms. Farrell, I'd certainly  
17 let you ask those.

18 MR. SLEIGH: I do not, Your Honor.

19 THE COURT: And Mr. Barkus and Ms. DiSano, if you had  
20 any follow-up questions?

21 MR. BARKUS: I do not. Thank you.

22 THE COURT: Okay.

23 MR. BARKUS: Thank you, Ms. Farrell.

24 THE COURT: Ms. Farrell, I appreciate you  
25 participating here. Again, the purpose was not to make this a

1 whirlwind, but we have a jury that's waiting. And I wanted to  
2 make certain if we were not going to use them, that there was  
3 a way of this case moving forward, so.

4 MS. FARRELL: No, I understand. I was happy to be  
5 available.

6 THE COURT: Okay. Very good. Thank you, Ms.  
7 Farrell.

8 MS. FARRELL: Thank you.

9 THE COURT: So Mr. Barkus and Mr. Sleigh and Ms.  
10 DiSano, were you anticipating that Mr. Fink would then -- it  
11 sounded like, based on the notice of resolution agreement from  
12 what was filed yesterday, that there would be a colloquy here  
13 or a statement under oath that Mr. Fink would be making, based  
14 on the bullet points one, two, three, four and five, at least  
15 what you were anticipating yesterday. I don't know, it sounds  
16 like that's still what you were anticipating today, right?

17 MR. SLEIGH: Right. In essence, we had agreed that  
18 Mr. Fink would be placed under oath and make the admissions  
19 orally on the record contained in the notice of resolution.

20 THE COURT: Okay. All right.

21 And then Mr. Barkus, Ms. Howell, is she joining us  
22 here in the courtroom now? I would imagine she would probably  
23 want to be part of this.

24 MR. BARKUS: No, she's been -- the witness  
25 coordinator is getting it right now.

1           THE COURT: Okay. Very good. Because before I have  
2 Mr. Fink have that colloquy on the record here under oath, I  
3 would want to inquire of her to make certain that she is  
4 agreeable to this as well.

5           MR. BARKUS: Your Honor, what I understand is, is how  
6 in part of the process of coming to this agreement. She would  
7 like to hear Attorney Fink go through the statements and then  
8 she could answer your question.

9           THE COURT: Yes. I want to make certain before I  
10 have Mr. Fink go through that, that she's agreeable to this  
11 process, because if for some reason she said that she wasn't,  
12 that certainly would make a difference because this is part of  
13 her agreement. So I don't want to make Mr. Fink to go through  
14 that unless there's a confirmation that, yes, she's --

15           MR. BARKUS: Very well.

16           THE COURT: -- in agreement to that.

17           MR. BARKUS: Ms. Howell is here now.

18           THE COURT: So if she wanted to approach your counsel  
19 table, we don't have extra chairs, but certainly we can make  
20 that --

21           (Pause)

22           THE COURT: Good afternoon. I'm Judge McDonald-Cady.  
23 So Ms. Howell, I want to make certain that I have not met you  
24 before. So you are, in fact, Jeanne Howell?

25           MS. JEANNE HOWELL: Yes.

1           THE COURT: Okay. Ms. Howell, we've had a number of  
2 conversations on the record starting yesterday afternoon and  
3 twice this morning about a resolution to this case. This was  
4 anticipated for a jury trial. We actually have a jury, the  
5 rest of the jury will be back at 1:30, and this case was  
6 planned for a jury draw, meaning selecting a jury and a trial  
7 date certain for November 21st. That was the plan here.

8           My understanding is that there is an agreement that  
9 you are consenting to as well and you've been privy to and  
10 part of that resolution process. And what my understanding is  
11 this, the State has filed an amended criminal information.  
12 They have dismissed the remaining felony count and they have  
13 added a misdemeanor count of prohibited act. I found probable  
14 cause, meaning that it's likely that Mr. Fink committed this  
15 offense based on the original affidavit of the investigator,  
16 the Det. Robeson, who filed the original affidavit to this  
17 case back in 2018.

18           As part of the agreement here, the State is referring  
19 the misdemeanor case to diversion. There was some question  
20 and working through that to determine whether or not this is a  
21 case that's appropriate for a diversion that can be referred.  
22 And I determine under Title 3, it can. But part of the  
23 resolution here is that you agree to that. That's what's been  
24 represented by Mr. Barkus and Ms. DiSano, that part of these  
25 agreements here of the amendment to the misdemeanor case and

1 the referral of this case to diversion, that you are in  
2 agreement to that. And that is an important part here.

3 We've also had a conversation with Ms. Farrell, who  
4 is one of the directors of the Community Restorative Justice  
5 programs, to indicate that Rutland County would be taking this  
6 case and Mr. Fink would be working with the Rutland Diversion  
7 Board.

8 I just want to make certain that, first of all, that  
9 you've been updated about all of these proceedings and the  
10 changes that have been made here.

11 MS. HOWELL: I have.

12 THE COURT: Okay. And have you had enough time to  
13 speak with either Ms. DiSano or Mr. Barkus or both about this?

14 MS. HOWELL: Yes.

15 THE COURT: Okay. And are you in agreement with the  
16 resolution here of the misdemeanor case and this being  
17 referred to diversion?

18 MS. HOWELL: I am.

19 THE COURT: Do you have any questions for me about  
20 anything that I've asked you so far? Okay.

21 MS. HOWELL: I don't.

22 THE COURT: And I think that's the only question that  
23 I have, those questions right now at least, so. Very good.

24 So Mr. Sleigh, I'm satisfied here. I just wanted to  
25 make certain before going through that, to make sure that Ms.

1 Howell was agreeable to the resolution.

2           So my understanding here, there hasn't been any  
3 changes. What I have is a one-page notice of resolution  
4 agreement, and that part of this agreement was that Mr. Fink  
5 would admit under oath to the stipulated facts of one, two,  
6 three, four and five in the bullet points. It was signed by  
7 both you, he, and Mr. Barkus. Actually it doesn't have the  
8 date of the signature, but it was filed on November 3rd, so it  
9 was filed on Friday afternoon.

10           I didn't see any changes to that. So I just want to  
11 make certain. Okay. So I'll administer the oath I don't  
12 require that -- I won't require you or Mr. Fink to stand. You  
13 can certainly remain seated here, so.

14           But Mr. Fink, I will put you under oath here.

15                           MELVIN FINK

16           having been duly sworn, testified as follows:

17           THE COURT: Okay. Very good.

18           THE DEFENDANT: So as indicated in the notice of  
19 resolution agreement, I signed a stipulated factual basis.  
20 And I affirm here today those bullet points and facts that I  
21 executed last Friday. And those are that I was a lawyer for  
22 John Howell (ph.), who is the adult son, until I withdrew of  
23 Jeanne Howell. I continued in an advisory role and responded  
24 to John's inquiries through his mother, Jeanne.

25           I acknowledge that both Jeanne and her son, John,

1 perceived their relationship as akin to a lawyer-client  
2 relationship and ethical norms regarding my conduct, while not  
3 strictly applicable, should have provided guidelines for going  
4 forward and my conduct in going forward.

5           While at the house that was owned, I believe by  
6 Jeanne, to review documents, I erroneously, excuse me,  
7 perceived that Ms. Howell harbored romantic feelings for me.  
8 And while there, and without invitation, instigation, consent,  
9 express or implied from Ms. Howell, I embraced her, putting my  
10 hands on her clothed buttocks and kissed her. I asked her if  
11 she wanted me to pleasure her. She did not invite or consent  
12 to my advance.

13           I understand that this conduct violated the norms  
14 that Ms. Howell would have expected to govern a professional  
15 meeting. I am truly sorry and apologize for any emotional  
16 distress that Ms. Howell has suffered as a result of my  
17 unwanted conduct, as I've described.

18           THE COURT: Mr. Fink, thank you.

19           And Mr. Barkus, that is the bullet points one, two,  
20 three, four, and five that were filed back on Friday, November  
21 3rd, that the State wanted Mr. Fink to agree to under oath,  
22 which he has. So I want to make certain that that satisfied  
23 here with the expectation of the State was.

24           MR. BARKUS: It has, Your Honor.

25           THE COURT: Okay. So part of the -- also the

1 agreement was to allow Ms. Howell to be able to make a  
2 statement. Now, that's not necessarily what we would normally  
3 do for a diversion referral here, but my understanding, both  
4 Mr. Sleigh and Mr. Barkus and Ms. DiSano said this was part of  
5 the agreement here. So unless that has changed, this would be  
6 the point certainly that the Court would hear from Ms. Howell.

7           And again, I didn't see any modifications to that  
8 agreement. So I think that this would be the appropriate  
9 point if Ms. Howell did want to make a statement that she's  
10 able to do so. And certainly CRJ, meaning diversion may  
11 certainly expand upon that, but this was part of your plea  
12 agreement here, so.

13           MR. SLEIGH: Ms. Howell?

14           MS. HOWELL: Yes?

15           MR. SLEIGH: Would you like to read your impact  
16 statement to the Court, please?

17           MS. HOWELL: I will. Thank you. And just move this  
18 out of the way would be good. Thanks. Okay.

19           Good afternoon. I stand here bewildered and  
20 perplexed. I have been living this nightmare, which Mr. Fink  
21 caused, for over six years now. Five of which were  
22 acknowledged by the State of Vermont. Why did this take so  
23 long? One can only guess.

24           From our first meeting, Mr. Fink systematically  
25 eliminated my ability to represent my son and granddaughter.

1 Under the guise of our Savior, he made sure every door was  
2 closed to us until the only one left open was the one that  
3 forced me to have sex with him against my will to save my  
4 family. Interesting, he recused himself from representing my  
5 son.

6 On June 6th, 2017, his motion was heard in Superior  
7 Court before my son's child support hearing. After his  
8 motion, Mr. Fink did not leave the court. He stayed until the  
9 end, watching my son represent himself. As we were leaving,  
10 Mr. Fink asked John and I to step into the court's back room.  
11 He turned to me and said, quote, "Look, I can't represent  
12 John. John should be able to successfully represent himself  
13 without the need of another attorney." And he would guide us  
14 through the court system to save us money and to help us  
15 succeed in court. That would be through me. From attorney  
16 Fink to me. Me to my son and my son to the Court. Does this  
17 sound right to anyone here in this Court?

18 Following his instructions, everything he had us do  
19 ended in failure. According to the Court, we did not file  
20 this or that right, which ended in motion denied, denied,  
21 denied. All this led to the meeting of July 17th of 2017.

22 Originally, our meeting was supposed to be at Mr.  
23 Fink's office. He called me and said, let me make it easy for  
24 you. You don't have to drive to my office. I can meet you at  
25 your home. He asked for my address, and we would have our

1 meeting there. I had eight files from Mr. Fink on my table at  
2 home, all to be addressed by him for court in order to help my  
3 son to file the necessary motions for custody of his daughter.  
4 Suddenly out of nowhere I found Mr. Fink standing in my house  
5 unannounced, told me the door was open, which it was not. Who  
6 walks through an unlocked door into a person's home without  
7 knocking, using a doorbell or speaking out? What was he was  
8 he really up to? I immediately walked past him into another  
9 room. Where my files were laid out on my kitchen table. One  
10 by one, I gave Mr. Fink the file and took notes. He told me  
11 to do.

12           After going through the last of the eight files, this  
13 narcissistic predator grabbed me, put me in a body lock,  
14 forced his tongue down my throat and proceeded to assault me  
15 from behind with his other hand. As I stood there horrified.  
16 I thought, am I going to be forced to do this? Is this the  
17 only way I could get my son's daughter back? Am I going to  
18 have to satisfy his centered needs to save my family?

19           Suddenly a wave came over me. I am not going to let  
20 him abuse me this way or anyone else. Then it hit me. I  
21 finally got free of that stranglehold while still holding  
22 tightly to my hands, he made every effort to threaten me into  
23 believing that if I did not succumb to what he wanted, I would  
24 pay for it one way or another. Surprise, surprise, from that  
25 moment on, he made our lives miserable.

1           Another attempt from Mr. Fink was an email he sent me  
2 one month after I declined him pleasuring me sexually for five  
3 hours. He sent me a confidential court custody case that  
4 involved an event the same as mine. Mr. Fink represented the  
5 defendant. It showed that his client won. That was to entice  
6 me that I could win if I did the same thing for my son and  
7 granddaughter.

8           As I look back on this, I did not see any of this  
9 coming. I always thought that there was a trust between a  
10 lawyer and who he is helping, that was my first mistake. My  
11 second mistake was believing that what happened to me was a  
12 first for Mr. Fink. He was too calculated, too controlling,  
13 too aggressive, very narcissistic. He was way too comfortable  
14 with his approach, as if he had done it before.

15           I can only wonder and hope, thinking because we are  
16 here today that this will never happen again. I would like to  
17 shine the light on the potential for repeat behavior of Mr.  
18 Fink. What is the Court's plan? Is trial your answer? If he  
19 is found guilty of an offense, will he be linked to diversion?  
20 I believe diversion is the right way. I believe it was the  
21 right answer. I don't want to drag my family through the  
22 trial after the traumatic life that we have lived for the last  
23 six years.

24           I am the victim. I should have a say in this. I was  
25 the one who was assaulted. The version is addressing his

1 wrongdoing, and I will be there to address him. The impact to  
2 my family and for the well-being of future victims prevent  
3 this from happening again.

4           As I stand before the Court and scoff at the lawyer's  
5 contrived apology, I ask you, where is the justice? Where is  
6 the justice for Mr. Fink's wife, who on the day of the  
7 assault, I tried to escape his hold on me. I asked him, are  
8 you married? He said, yes, but that does not matter. Where  
9 is the justice for my son and my granddaughter and me? For my  
10 son to see what he was going through to try and stay in his  
11 daughter's life broke my heart. For him to be separated from  
12 his daughter and now it has been -- I'm sorry. It has been  
13 catastrophes for my family, all because of Mr. Fink. My  
14 granddaughter who lost touch with her dad, who had no  
15 understanding why.

16           Justice for me to live with outrage over the theft of  
17 my ability to protect my family, it was stolen from me by Mr.  
18 Fink. I will again -- I will ask you again, where is the  
19 justice for my son, my granddaughter and me? Why should my  
20 family be exposed to a trial trauma? We deserve closure  
21 today. There has been no accountability until today. Year  
22 after year, I was reminded about this case because it was  
23 pending. It was torture for so long. Our lives were affected  
24 by this. His life was not affected. He was still practicing  
25 law and we lost everything. I want this public accountability

1 piece to give closure to myself so I can move forward and so  
2 that the public knows what he did. I do not want to go  
3 through a trial process.

4 I agree with the diversion resolution. If he is not  
5 sincere in his remorse and he does not successfully complete  
6 diversion, I will be ready to come back here for a trial on a  
7 felony. Thank you, Your Honor.

8 MR. SLEIGH: Thank you, (indiscernible).

9 THE COURT: No, thank you.

10 So I do you want you to understand, Ms. Howell, that  
11 the State, the Attorney General's Office, the State Attorney's  
12 Office, if they were prosecuting it, they have the ultimate  
13 discretion here to refer a case to diversion. The Court  
14 doesn't. It's one program by the statute that the Court can't  
15 refer cases to diversion. That's the ultimate discretion of  
16 the State that files the cases.

17 They have referred this case to diversion. I went  
18 through these proceedings here twofold. One, to make certain  
19 that this case would be eligible for a diversion referral and  
20 then, two, to make certain that they would accept it, because  
21 I likewise had the same concern of this case being very old  
22 and taking very long to get here and not losing the  
23 opportunity that we have. As I indicated, a jury is upstairs  
24 for us to pick for that trial that we had scheduled for the  
25 November 21st.

1           So thank you for sharing that with the Court. I do  
2 appreciate that. And diversion may give you that equal  
3 opportunity, if not, other additional opportunities about  
4 addressing this with Mr. Fink. I'm not certain that will be  
5 for the diversion program and the panel to figure out what  
6 makes sense here, how to restore you, the community. And so  
7 but that will be, again, a contract that Mr. Fink will have to  
8 come to in terms. But it sounds like you'll be prepared to be  
9 involved in that process. So I appreciate that. Thank you  
10 for being here.

11           MS. HOWELL: You're welcome. Thank you.

12           THE COURT: So Mr. Sleigh, all of the provisions, at  
13 least that were outlined of what you had filed Friday and what  
14 we had discussed so far, I believe, have been addressed here  
15 by the Court. And so I would see this now that Mr. Barkus and  
16 Ms. DiSano, the Attorney General's Office, would be making  
17 that referral to diversion.

18           So I looked, double checked, to make certain there  
19 wasn't anything outstanding. I don't see anything, but I just  
20 wanted to check in with you first.

21           MR. SLEIGH: No, Your Honor, I think that completes  
22 the entirety of our agreement.

23           THE COURT: Okay.

24           And then, Mr. Barkus?

25           MR. BARKUS: The only thing I'd just like to add is

1 just that the (indiscernible) agreed to keep open on the  
2 record during the period of conversion, in this case,  
3 (indiscernible) it was Attorney Sleigh said that when  
4 (indiscernible).

5 THE COURT: Meaning that you're agreeing that this  
6 would not be confidential while the case is pending and  
7 diversion?

8 MR. BARKUS: Would only become confidential if he  
9 successfully completes (indiscernible).

10 THE COURT: Okay. And the Court finds that that  
11 would be in the interest of justice here also based on the  
12 agreement of the parties.

13 The only last question I have is with regards to the  
14 time frame, and that's more for Rutland Diversion. What I  
15 would anticipate, and I'd imagine Mr. Sleigh and Mr. Barkus  
16 and Ms. DiSano, you would also support that, that the idea of  
17 that this should be something that is not a long-term process,  
18 meaning that I would hope that the diversion contract would be  
19 something that would be achievable to be successful for all  
20 parties. When we're talking about months rather than double-  
21 digit months. And I think that that would -- because again,  
22 the concern that if there wasn't a resolution, we will be back  
23 here where we left off with trying to figure out for a jury  
24 trial.

25 So I'm hoping that diversion would see this as a case

1 where -- and I think that they normally do something to try to  
2 address of how Mr. Fink would restore the community. Ms.  
3 Howell's participation in something that ideally would be able  
4 to be resolved in a matter of months and not multiple months.

5 MR. SLEIGH: Your Honor, every person involved in  
6 this case wants us to come to an end expeditiously. I can  
7 tell you that we'll do everything we can to not frustrate  
8 that.

9 THE COURT: Okay. And the intention is not to speed  
10 this unnecessarily, to make this process a meaningful process  
11 for everyone, including Mr. Fink. But I would be remiss if I  
12 did not include that, that the goal would be not to come back  
13 a year from now and say diversion didn't work. I think that  
14 that would just further prejudice, as Ms. Howell indicated, a  
15 long time to wait to be here and not to try to wait any  
16 further, so.

17 But I don't want to speed the process so that it's  
18 somehow not a thoughtful process. That's not the Court's  
19 intention as well, so.

20 MR. SLEIGH: Okay. Thank you.

21 MR. BARKUS: Thank you, Your Honor. Ms. Howell, I  
22 think would be comfortable if the Court would just affirm for  
23 her behalf that the statements of fact, that have been signed  
24 by the State and by Attorney Sleigh and Attorney Fink, are  
25 hers and she may do with them as she wishes.

1 THE COURT: I'm not sure I understood that.

2 MR. BARKUS: She has a copy of the pleading, the  
3 factual admission. We have no objection to her retaining that  
4 and using it at her leisure or her will.

5 THE COURT: Okay. So it's a record that's been filed  
6 here. It's not under seal. So it's a public record, so she'd  
7 be able to have access to that, so.

8 MR. BARKUS: Great.

9 THE COURT: Okay. All right. So that means that for  
10 the afternoon, this case is referred to diversion. And so we  
11 will not be drawing a jury.

12 And then, Mr. Barkus and Mr. Sleigh, I would  
13 anticipate receiving something from the Rutland CRJ to  
14 indicate when it's successfully completed to just have the  
15 case closed altogether.

16 MR. BARKUS: So sounds great.

17 THE COURT: Thank you very much for your patience,  
18 also for everyone today.

19 MR. SLEIGH: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Proceedings concluded at 1:46 PM)

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C E R T I F I C A T I O N

I, Skye Reynolds, the court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



December 28, 2023

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SKYE REYNOLDS

DATE