SIXTH JUDICIAL CIRCUIT

CARSON E. SAUNDERS, JR., JUDGE
GREENSVILLE COUNTY COURTHOUSE
337 SOUTH MAIN STREET
EMPORIA, VIRGINIA 23847
(434) 348-4222

COMMONWEALTH OF VIRGINIA

CIRCUIT COURT OF CITY OF HOPEWELL
CIRCUIT COURT OF BRUNSWICK COUNTY
CIRCUIT COURT OF GREENSVILLE COUNTY/CITY OF EMPORIA
CIRCUIT COURT OF PRINCE GEORGE COUNTY
CIRCUIT COURT OF SURRY COUNTY
CIRCUIT COURT OF SUSSEX COUNTY

March 10, 2026

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RE: *Commonwealth v. William A. Barnes, Jr.*
Circuit Court of Prince George
CR24-417

Dear Counsel:

This case arises out of the Defendant's alleged touching of the material directly covering B.S.S.'s intimate parts in 1985. The Commonwealth charges William A. Barnes, Jr., with sexual abuse, and now seeks to admit testimony concerning the Defendant's sexual conduct towards or against five other minors back in 1970 through 1985.

The Defendant responds that this testimony of prior bad acts may not be introduced simply to suggest that he committed the charged offense because he has a propensity to engage in such conduct. The Commonwealth replies that the general inadmissibility of bad acts does not apply to the instant case because it is not proposed as character evidence, and certain exceptions to the rule apply.

Because the Court finds the proposed testimony is either not probative or its probative value is substantially outweighed by the likelihood of confusing or misleading the trier of fact, or unfairly prejudicing the Defendant, the Court **DENIES** the motion in *limine*.

FACTUAL AND PROCEDURAL BACKGROUND[1]

The Defendant has worked in Prince George and Sussex Counties as a teacher, guidance counselor, and sports coach, and has served as a steward of refuge. Some of his students faced conflicts at home, and the Defendant offered them a place to stay in his own residence. Others were under his supervision overnight due to sports-related events.

In 1985, 14-year-old B.S.S. spent a single night at the Defendant's home for what was supposed to be an ordinary sleepover with his friend, who lived with the Defendant. Because the Defendant did not want the boys to stay up late, the Defendant offered his bed to B.S.S. and, at some point in the night, adopted a "spooning" position around him. B.S.S. felt the Defendant's legs crawling over his own, and the Defendant's hands running down his chest all the way down to his genitals, feeling the Defendant grab them from the outside of his pants. B.S.S. jerked around, and the Defendant got off him and left the bedroom.

That same year, a 15-year-old stayed at the Defendant's home for about a month after being displaced by family conflicts. As with B.S.S., the Defendant offered K.S. his bedroom. One night, the Defendant adopted a "spooning" position around K.S., began to reach around the front of his body, and "tried" to touch his genitalia. K.S. bolted upright, sprang from the bed, and hurried out of the bedroom.

Three other basketball players, coached by the Defendant, have since come forward, recounting that more than a decade before the acts alleged by B.S.S. and K.S., the Defendant hosted team sleepovers and used those nights as opportunities to prey on them. One night, while B.C. lay in a sleeping bag over at the Defendant's, the Defendant climbed into his bag in the morning, adopted a "spooning" position around him, and began to "fondle" him "in the neighborhood of his genitalia." On another day, the Defendant "rubbed himself" against J.P.'s sleeping bag and "tried" to make contact with his penis "four to five times." The Defendant "masturbated" him until he "orgasmed." J.P. further represented to the Court that the Defendant offered J.P. his bed, later climbed into bed with him, adopted a "spooning" position, and reached around to the front of J.P.'s body to manipulate his penis. On a different day, when K.C. was 15 years old, the Defendant came into the bedroom where he was sleeping, adopted a "spooning" position around him, then proceeded to either fondle his penis or manipulate it. K.C. resisted, acted as if he was asleep, and the Defendant left the bedroom.

Finally, during an overnight trip to a hockey game, the Defendant, an adult companion, and two students spent the night in a hotel room. When he was 15 years old, M.J.'s mother allowed him to attend the out-of-town hockey game with the Defendant. After the game, the two boys decided to watch television and unintentionally fell asleep, each in one of the beds in the room.

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[1] On April 25, 2025, the Court heard special prosecutor Tim Dustan argue a motion in *limine* for case numbers CR24-322 through -330. The Commonwealth's Attorney for Prince George County, Susan Fierro, filed her own motion in *limine* in case number CR24-417, which "incorporates the factual assertions and legal arguments" made by Mr. Dustan. *See* Motion for Pre-Trial Ruling (filed Apr. 24, 2025). This second motion in *limine* was heard on February 12, 2026. In February, the Commonwealth read into the record the statements made to police by the third-party victims about allegations that occurred more than 40 years ago, which are recited to the Court's best recollection.

M.J. woke up to find the Defendant was lying behind him, and had his finger inserted in his anus. M.J. jerked back, eyes wide, and faced the Defendant in shock, as the Defendant licked his finger. With a sudden jolt, M.J. sprang from the bed and hurried to the bathroom, locking the door behind him.

DISCUSSION

Evidence of bad acts, such as inappropriately touching or sexually abusing minors, is generally not admissible to suggest that if the person acted that way before, they must have acted that way this time.[2] But if such evidence "is relevant to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, accident, or … a common scheme or plan" and if "its probative value outweighs its incidental prejudice," a trier of fact may consider it.[3]

In the context of sexual crimes, evidence of sexual conduct towards or against a minor who is not the victim at issue may be admitted in limited circumstances. It is admissible to show a defendant's conduct or attitude toward the victim;[4] to refute a defendant's claim that the sexual touching of the victim was a mistake, accident, or misunderstanding;[5] and to establish intent in "crimes involving depraved sexual instinct."[6]

Admitting evidence of sexual conduct to show intent reflects the principle that "the more often a person commits a similar incident with similar results, the more likely it is that the result was intended."[7] When such *repeated* acts share "common features," the similarities between them may support an inference that, although "individual manifestations," the acts are naturally to be explained as caused by "a common scheme, design, or plan."[8] The common scheme or plan exception to the general inadmissibility of bad acts applies where the act tends "to show a system or uniform plan."[9]

In the instant case, before the Court addresses whether the proposed evidence is inadmissible character evidence or an exception applies, the Court chooses to determine first whether its probative value outweighs its incidental prejudice. The proposed evidence is, briefly, as follows. The Defendant tried to "get" K.S.'s penis, but "he never got to it." The Defendant "fondled" B.C. "in the neighborhood of his genitalia." The Defendant "rubbed himself" against J.P.'s sleeping bag and "tried" to make contact with his penis "four to five times." The Defendant "masturbated" him until he "orgasmed." J.P. further represented to the Court that the Defendant adopted a "spooning" position, reached around J.P.'s body to manipulate his penis. The Defendant "fondled" K.C.'s penis and testicles for five minutes, making contact with his genitals. But he

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[2] *Moore v. Commonwealth*, 222 Va. 72, 76 (1981). *See also* VA. SUP. CT. R. 2:404(a).
[3] *Brooks v. Commonwealth*, 73 Va. App. 133, 147 (2021) (emphasis added). *See also* VA. SUP. CT. R. 2:404(b).
[4] *Kenner v. Commonwealth*, 299 Va. 414, 426 (2021) (*holding* that a defendant's pornographic search history was relevant "to illustrate [the defendant's] inappropriate sexualized attitude toward children in general and toward [the victim at issue] in particular.").
[5] *Moore*, 222 Va. at 77.
[6] *Cherlpka v. Commonwealth*, 78 Va. App. 480, 496 (2023).
[7] *Id.*
[8] *Scates v. Commonwealth*, 262 Va. 757, 762 (2001).
[9] *Henderson v. Commonwealth*, 5 Va. App. 125, 128 (1987) (citing *Sutphin v. Commonwealth*, 1 Va. App. 241, 246 (1985)).

also stated that the Defendant reached around to the front of his body "to manipulate" his penis. The Defendant inserted his finger inside M.J.'s anus, then licked it.

Here, the testimony of K.S. and B.C. invites the Court and would, most concerningly, invite the trier of fact to speculate. To admit the fact that the Defendant "tried" to get K.S.'s penis would require the trier of fact to speculate as to whether the Defendant intended to touch K.S.[10] Additionally, B.C.'s testimony that the Defendant "fondled" him "in the neighborhood of his genitalia" suggests uncertainty about the contact. To fondle is to 'handle,' 'caress,' or 'touch.' 'Near' is not the same as 'on.' And 'in the neighborhood' raises more questions, like whether this act was a bad act. For this reason, the Court FINDS the statements made by K.S. and B.C. have no logical tendency to make any fact at issue more or less probable and are likely to mislead the trier of fact.

The testimony of J.P. and K.C. is self-contradictory and would confuse the trier of fact, as it did the Court. J.P. told police that the Defendant "rubbed himself" against his sleeping bag and tried to make contact with his penis "four to five times." He also reported that the Defendant "masturbated" him until he "orgasmed." These factual assertions have tremendous discrepancies when compared to the factual assertions the Commonwealth incorporated into its motion for pre-trial ruling. The assertion in said motion was that the Defendant adopted a "spooning" position and reached around J.P.'s body to manipulate his penis, implying that contact never happened. K.C. told police the Defendant "fondled" his penis and testicles for five minutes, K.C. resisted, and acted as if he was asleep. But the factual assertions the Commonwealth incorporated differ slightly, albeit importantly. On the night that K.C. resisted and acted asleep, the Defendant reached around to the front of his body "to manipulate" his penis, which, again, implies that contact was never made. There's an important distinction between fondling and attempting to manipulate.

Consequently, the Court FINDS that although they could be relevant evidence, any probative value the circumstances related to J.P. and K.C. could have is substantially outweighed by the likelihood of confusing the trier of fact. The Court finds that the discrepancies between the "factual assertions" incorporated into the Commonwealth's motion for pre-trial ruling and the factual assertions proffered in the February 2026 hearing are disturbing and confusing.

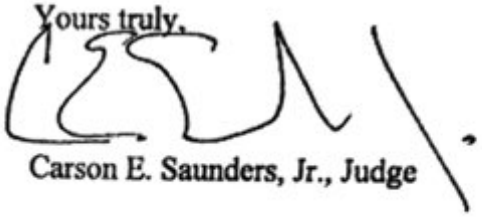
This leaves M.J.'s testimony, which, even assuming *arguendo* that the alleged sodomy has minimal probative value, carries significant emotional force. To admit M.J.'s testimony concerning the sodomy and subsequent licking would shift the focus from the charged conduct of sexual abuse to more inflammatory allegations, inviting a verdict driven by passion rather than proof. The alleged anal penetration by finger with M.J is not only different in degree of severity but also categorically different from the *touching* of B.S.S over his pants. Therefore, the Court FINDS that any probative value the testimony of M.J. might have is substantially outweighed by the danger of unfair prejudice.

CONCLUSION

[10] The Defendant is charged under Code § 18.2-67.3 with sexually abusing a child. Code § 18.2-67.10(6)(a) and (b) define sexual abuse as "an act committed with the *intent* to sexually molest, arouse, or gratify any person," where the "accused *intentionally* touches the complaining witness's intimate parts or material directly covering such intimate parts." (emphasis added).

The Court **DENIES** the motion in *limine*, finding that the probative value of the Commonwealth's proposed evidence is substantially outweighed by the risk of misleading, confusing, and unfairly prejudicing the Defendant. As such, the Court **ORDERS** Craig Cooley, counsel for the Defendant, to prepare an order reflecting the findings of the Court's opinion herein.

Yours truly,



Carson E. Saunders, Jr., Judge

CES, Jr./lr
cc: Deborah Edwards, Clerk of Prince George Circuit Court.