

SUPREME COURT PENDING CASE

The following appeal is fully briefed and eligible for assignment by the Supreme Court in the near future.

STATE *v.* MICHAEL R., SC 20523
Judicial District of Litchfield

Criminal; Sexual Assault; Sufficiency of the Evidence; Whether Trial Court Violated Defendant’s Constitutional Right to Present a Defense by Excluding Victim’s Two Forensic Interviews from Evidence; Whether General Statutes § 53a-196a, Which Prohibits Employing a Minor in an Obscene Performance, Is Unconstitutional. The defendant became romantically involved with R, the victim’s mother. He gave R financial support and started taking her nine year old daughter, G, on outings, buying her gifts, and having her stay overnight at his house. The defendant gave G a cell phone, and he instructed her to send him pictures of herself at various times during the day. In November, 2017, the defendant refused to return G to R. The police intervened, and thereafter R reported that G had a fresh bruise from the defendant striking her and, furthermore, that she had found inappropriate pictures on G’s phone. The defendant represented himself at trial, and the pictures extracted from G’s phone were exhibits. The victim testified that the defendant touched her inappropriately when she slept at his house and, on cross-examination, admitted that, on prior occasions, she had denied that the defendant had been inappropriate. She stated that she did not remember what she said during two forensic interviews, and the defendant attempted to use videos of those interviews to either refresh G’s recollection or, pursuant to § 6-10 of the Connecticut Code of Evidence, as substantive evidence of a prior inconsistent statement. In the first interview, G denied that the defendant touched her inappropriately, and the second interview, conducted six months after the first, was consistent with G’s testimony at trial. The videos were marked for identification, but the trial court sustained the state’s objection to entering them as full exhibits, noting that they also were not authenticated. The jury found the defendant guilty of, *inter alia*, sexual assault in the first degree and employing a minor in an obscene performance in violation of General Statutes § 53a-196a (a) (1). Pursuant to General Statutes § 51-199 (b) (3), the defendant appeals directly to the Supreme Court, claiming that the trial court erred by excluding the two videos from evidence and thereby violated his constitutional right to present a defense. He asserts that the videos were improperly excluded and argues that the state should have stipulated to the videos’ authenticity,

as they had been in the state's exclusive possession and the defendant viewed them by making arrangements with the state. The defendant also claims that § 53a-196a is unconstitutionally vague as applied and violates first amendment precepts, arguing that "performance" is statutorily defined as "an exhibition" and that the pictures extracted from G's phone are not an exhibition because G was not in motion. The defendant further claims that trial court erred in failing to sever the sexual assault charges from other charges that the defendant violated a protective order and stalked G by following her to school and, finally, that the evidence was insufficient to support his assault in the third degree, stalking, and violation of a the protective order convictions.

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

The summary appearing here is not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. This summary is prepared by the Staff Attorneys' Office for the convenience of the bar. It in no way indicates the Supreme Court's view of the factual or legal aspects of the appeal.

*Jessie Opinion
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