

NO. 88CR1051

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JEFFERSON CIR. COURT

JUL 29 10 47 AM '88

NINTH DIVISION

COMMONWEALTH OF KENTUCKY

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PLAINTIFF

VS.

COMMONWEALTH'S RESPONSE TO COURT'S
PRE-TRIAL DISCOVERY ORDER

REV. DAN C. CLARK

DEFENDANT

* * * *

Comes the Commonwealth of Kentucky, by counsel, Kelly A. Miller, Assistant Commonwealth's Attorney for the 30th Judicial District of Kentucky, and for its Response to the Court's Pre-Trial Discovery Order, states as follows:

1. RCr 7.24(1)(a) - A telephone conversation between the defendant and prosecuting witness, **Male Survivor 5**, was recorded on June 14, 1988. A copy of that recording is attached. No other written or recorded statements or confessions were made by the defendant.

RCr 7.24(1)(b) - There were no medical or physical examinations or tests conducted in conjunction with this case.

2. RCr 7.24(2) - The Commonwealth is not in possession of any books, papers, documents or tangible objects which are material to the preparation of the defense.

3. RCr 7.24(3) - The Commonwealth moves for reciprocal discovery in the form of any statements, scientific or medical reports, books, papers, documents or tangible objects which the defendant tends to produce at trial and are in his exclusive possession, custody or control.

4. RCr 7.26 - Statements pursuant to this rule will be made available in accordance with the Court's Pre-Trial Discovery Order.

5. RCr 6.22 - For its Bill of Particulars, the Commonwealth states that the sexual contact between the defendant and the prosecuting witnesses took place in Louisville, Jefferson County, Kentucky. Specifically, there are two prosecuting witnesses. **MS-5**, white male, date of birth: February 24, 1970, will state that he had sexual contact with the defendant on two occasions. The first occasion was approximately one week after September 26, 1981. On that particular date, the prosecuting witness's brother had been killed. **MS-5** will relate that approximately one week after his brother's death, he was called from his classroom at St. Rita's School, 8709 Preston Highway, Louisville, Kentucky. **MS-5** will state that Fr. Clark took him to the front room of the priests' house. At that time, the defendant put his hand under **MS-5**'s pants and proceeded to rub his penis. Fr. Clark called **MS-5** to the rectory presumably to counsel him for the death in his family. Additionally, **MS-5** will state that the defendant performed oral sodomy by placing his mouth on **MS-5**'s penis in the summer of 1982. This sexual contact took place on a camping trip where the other prosecuting witness, **Male Survivor 3**, was present. The location of this camping trip was St. Dominick's at Lake Patoka. A motion will be submitted by the Commonwealth to amend the indictment accordingly.

The second prosecuting witness is MS-3 [REDACTED], white male, date of birth: December 14, 1969. MS-3 [REDACTED] was also a student at St. Rita's School during the times alleged in the indictment. MS-3 [REDACTED] will state that between February 16 and August 31, 1982, the defendant performed oral sodomy on several occasions. MS-3 [REDACTED] is not sure of the exact number but would state that it would be approximately ten to twelve times that the defendant placed his mouth on MS-3 [REDACTED]'s penis. MS-3 [REDACTED] will state that he began to see Fr. Clark on February 16, 1982 due to a break up in his family. MS-3 [REDACTED]'s parents are going through a divorce and Fr. Clark was administering counseling for the divorce to MS-3 [REDACTED]. MS-3 [REDACTED] will state that Fr. Clark would ask if his stomach was upset and then he would begin to rub his stomach and work down to his penis where he masturbated him and then placed his mouth on his penis. Additionally, MS-3 [REDACTED] will state that one occasion of oral sodomy took place on a camping trip in the summer of 1982 at St. Dominick's at Lake Patoka. This is the same camping trip where MS-5 [REDACTED] was present and also sexually abused.

There were no eyewitnesses to the events other than those that have been listed.

6. Exculpatory Evidence - There is no known exculpatory evidence at this time.