

1 IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
2 ROCK ISLAND COUNTY, ILLINOIS
3

4 ROGER WITTEKIND, :

5 Plaintiff :

6 -vs- :

No. 90 SC 2806

7 BEVERLY RUSK, :

8 Defendant :

FILED IN THE CIRCUIT COURT
OF ROCK ISLAND COUNTY
GENERAL DIVISION

9 APR 16 1991

10 *Hennrich L. Kenney*
11 Clerk of the Circuit Court

12 REPORT OF PROCEEDINGS of the first portion
13 of the hearing before the HONORABLE JOHN M. TELLEEN, CIRCUIT
14 JUDGE, on the 14th day of January, A.D. 1991.

15 APPEARANCES:

16 Mr. Roger Wittekind, Plaintiff

17 Pro se

18 MR. DUANE THOMPSON, Attorney

19 For the Defendant

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21
22
23 Mary Thaxton, CSR,

24 Official Court Reporter
25

Page 6 Bottom Take judicial notice.
Page 7 Hearsay objection
Page 14 To Probable Cause
Page 22 Trying to prove lies
Page 21 Prejudice again
top can take
judicial notice
of it.



I N D E X

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Witness Direct Cross Re-Direct Re-Cross

Beverly Rusk 3

Ed Rusk 25

1 THE COURT: You're Mr. Wittekind and
2 you're appearing pro se?

3 MR. WITTEKIND: Yes.

4 THE COURT: And the defendant, Ms.
5 Rusk, is represented by Duane Thompson. Alright, you're both
6 ready to proceed?

7 MR. THOMPSON: Yes, Your Honor.

8 THE COURT: Okay, Mr. Wittekind, I
9 don't think an opening statement would be helpful. I've read
10 the file.

11 MR. WITTEKIND: I think it would be.

12 THE COURT: I'll hear the evidence and
13 we'll be limited to the evidence and not the opening
14 statement, so present your first witness.

15 MR. WITTEKIND: Okay, I'd like to call
16 Beverly Rusk to the stand.

17 THE COURT: Alright.

18 BEVERLY RUSK,
19 called as a witness by the plaintiff and being first duly
20 sworn on oath, testified in her own behalf as follows:

21 DIRECT EXAMINATION

22 By Mr. Wittekind

23 Q In making a complaint to the State's Attorney's
24 Office, I - were you under the impression you gave them all
25 the facts - you didn't hold anything back, right?

1 A Right.

2 Q And did you show them this letter? Did you ever
3 explain to them what my motives were - what I professed?

4 A I told them that you made a telephone call on
5 January 2nd to our home.

6 Q The declarations I'm concerned about - the, you
7 know, the declarations trying to say why I had made a phone
8 call - were not for the events and the trial - were for why
9 she says I would have made the phone call. In other words,
10 the declarations she made trying to convince the State why I
11 made the phone call.

12 A I would have no reason to make up any lie about
13 you making a phone call, sir.

14 Q The statement remains - the declarations you made
15 referring to why I would - why I would make a supposed phone
16 call --

17 A I don't know why you were calling our home.

18 Q Says here you made these declarations. I take it
19 those are declarations listed on the facts?

20 A I don't know - never seen them.

21 THE COURT: You want to mark that as
22 an exhibit, please?

23 MR. WITTEKIND: Sure.

24 THE COURT: The reporter will mark it.

25

1 for you. Are you going to have any other exhibits?

2 MR. WITTEKIND: Yes, I am. The copies of
3 the declarations she made referring to why I - the phone call
4 was supposedly made. Were you aware of --

5 THE COURT: The exhibit will speak for
6 itself.

7 MR. WITTEKIND: Okay.

8 THE COURT: Whenever it speaks.

9 MR. WITTEKIND: During the case at trial
10 we did prove those declarations as false. That's part of
11 malicious prosecution - that the declarations were proven
12 wrong. Now, this is a transcript of the trial. I know - I
13 know you don't want to go through the whole thing.
14 But the whole deal is based on - she's trying to say my
15 motives were selfish and they weren't. She's completely
16 altered them. Completely reversed things, trying to make me
17 look as bad as she possibly can and it's just the opposite.

18 THE COURT: Okay, are you --

19 MR. WITTEKIND: That's what this points
20 up.

21 THE COURT: What is your intention
22 with regard to the transcript other than saying that I don't
23 want to read it.

24 MR. WITTEKIND: The point being that,

1 again, to prove malicious prosecution, you have to point out
2 declarations were misproved and that's what this transcript
3 was for - that is, the declarations she made here were not
4 substantiated.

5 THE COURT: Okay, are you moving to
6 introduce the transcript in evidence?

7 MR. WITTEKIND: Yeah, I suppose so.

8 THE COURT: Do you have an objection,
9 Mr. Thompson?

10 MR. THOMPSON: If that's the transcript
11 from 90 CM 9, People of the State of Illinois versus Roger
12 Wittekind, no, I do not, because I assume that's what we're
13 here today for.

14 MR. WITTEKIND: Yes.

15 MR. THOMPSON: And I don't object.

16 THE COURT: Okay, I'll receive it in
17 evidence.

18 MR. WITTEKIND: A long time - well there,
19 you have to show that the case came out not guilty, so that's
20 part of it.

21 THE COURT: Alright, the Court will
22 take judicial notice of whatever the record shows in 90 --

23 MR. THOMPSON: I can give the Court the
24 Court file from that case.

25

1 THE COURT: Very well. Thank you, Mr.
2 Thompson.

3 MR. THOMPSON: We'll stipulate that it
4 was a misdemeanor charge, telephone harassment, brought
5 against Roger Wittekind and that he was found not guilty.

6 THE COURT: What about plaintiff's
7 exhibit 1, Mr. Thompson? Do you know what that is?

8 MR. WITTEKIND: You said you have the
9 case. You should recognize that then.

10 MR. THOMPSON: May I ask one question on
11 voir dire?

12 THE COURT: Yes.

13 MR. THOMPSON: Bev, is this your
14 handwriting?

15 A No, it's not.

16 MR. THOMPSON: Then I would object to the
17 admission of this exhibit as hearsay, or it's not
18 declarations by her which is what it's been submitted for.

19 THE COURT: Objection sustained.

20 MR. WITTEKIND: Okay. Alright.

21 THE COURT: Do you have any other
22 questions?

23 MR. WITTEKIND: I do. Were you aware of
24 how your daughter testified during the trial?

25

1 A I was in the hallway. I don't have any idea what
2 she said.

3 MR. WITTEKIND: There was a massive
4 contradiction between her daughter and her testimony.

5 THE COURT: Alright, the Court has
6 accepted the transcript of the trial and if you want to point
7 this out in final argument, why, you can.

8 MR. WITTEKIND: It was to - it was to show
9 her declarations were false.

10 THE COURT: You have no basis for it
11 then, because you haven't, as of now, you haven't proved that
12 the declarations are false. You haven't proved any
13 declarations, as a matter of fact.

14 MR. WITTEKIND: Okay then, there is the
15 word presumption. Presumption is, you know, brought up from
16 the earlier trial, and so happened because of an earlier
17 trial, and under --

18 THE COURT: Well now, okay, that's
19 part of argument. You may continue to ask questions of Mrs.
20 Rusk, if you wish, subject to any objection.

21 MR. WITTEKIND: Alright, under
22 presumption, is it necessary for me to prove that an earlier
23 conviction was brought about by fraudulent means and I would
24 like to point out something on this.

25

1 THE COURT: Was there an earlier
2 conviction?

3 MR. WITTEKIND: Yes, but I have to point
4 it out it was done by fraudulent means. Any of this look
5 familiar to you?

6 A I have never seen these documents before. Why
7 would they look familiar to me?

8 Q Does the episode look familiar?

9 A Does what look familiar?

10 MR. WITTEKIND: The episode. What I'd
11 like to get at is there were witnesses to the events in
12 question that were never brought in the Court room and I can
13 consider that an obstruction of justice because they would
14 have impeached the testimony of the complaining witness.

15 THE COURT: Do you know what we're
16 talking about, Mr. Thompson?

17 MR. THOMPSON: He was previously, in
18 1983, convicted of trespass on Mrs. Rusk's property.

19 MR. WITTEKIND: And my pointing out it was
20 brought about by fraudulent means. 2 attorneys were
21 involved, Richard Coppula and Joe Trujillo, and that says
22 plenty for it, if you know what happened to both of those.

23 THE COURT: One of them representing
24 you? Or both of them?

25

1 MR. WITTEKIND: Truffilio was supposed to
2 represent me, but he wasn't talking to me before the case, so
3 I ended up firing him. Did you ever talk to Joe Truffilio?

4 THE COURT: Okay --

5 A No.

6 THE COURT: Just a minute. Mr.
7 Thompson, on behalf of the defendant, has stipulated that at
8 an earlier trial the plaintiff herein, Roger Wittekind, was
9 convicted of trespass to the plaintiff's or to the
10 defendant's property.

11 MR. THOMPSON: That is correct.

12 THE COURT: What was the date of
13 that? What year?

14 MR. THOMPSON: I think it was '83.

15 THE COURT: Okay, therefore you proved
16 that point, that there was a prior conviction.

17 MR. WITTEKIND: Okay.

18 THE COURT: What are you going to do
19 with the document that Mrs. Rusk has just now testified - you
20 better call that plaintiff's exhibit 3, and for the record
21 we'll show the transcript was plaintiff's exhibit 2.

22 MR. THOMPSON: For the Court's
23 information I believe the prior conviction was under file
24 number 83 CM 20257.

25

1 MR. WITTEKIND: What I'd like you to use
2 this for is to point out that they kept witnesses out of the
3 Court room. How many people were there at the scene of the
4 alleged trespass? How many people were there?

5 A I don't know, Roger. I can't remember back that
6 far. My husband and I.

7 MR. WITTEKIND: I'll call your husband in
8 later.

9 A My husband and I and you and my son was there.

10 MR. WITTEKIND: I have a transcript of
11 that.

12 A My son was in the house and he knows what
13 happened.

14 MR. WITTEKIND: The thing here points out
15 there were 3 neighbors present at that event.

16 A Okay.

17 MR. WITTEKIND: And my point being is I
18 was never even given a chance to leave the property before
19 violence started, you know, that the whole point being they
20 kept witnesses out of the Court room that would prove that.

21 THE COURT: Who is "they?"

22 MR. WITTEKIND: Obviously, Mrs. Rusk can
23 only answer that question.

24 THE COURT: What do you want to do

1 with that, the first document there, plaintiff's exhibit 9?

2 MR. WITTEKIND: Okay, I could draw a
3 picture.

4 THE COURT: Do you want it introduced
5 in evidence?

6 MR. WITTEKIND: Yeah, I can do that.

7 MR. THOMPSON: Your Honor --

8 THE COURT: Just a minute, Mr.
9 Thompson.

10 MR. THOMPSON: Sounds like hearsay to me.

11 THE COURT: I'm not going to retry
12 that other case, Mr. Wittekind.

13 MR. THOMPSON: It looks to me to be a
14 compilation of police reports and other miscellaneous
15 documents that I don't see has any relevance. I would
16 object. It's hearsay.

17 THE COURT: Objection sustained and
18 admission is refused.

19 MR. WITTEKIND: Wait a second. I have a
20 letter here from the chief of police that says that's the
21 whole file.

22 THE COURT: Okay, that's hearsay.
23 Irrelevant - immaterial.

24 MR. THOMPSON: He's admitted to the

1 conviction.

2 MR. WITTEKIND: This is under the heading
3 presumptions. I have to prove that there was an error in
4 that earlier trial.

5 THE COURT: We don't want to retry
6 that trial.

7 MR. WITTEKIND: All I have to do is point
8 out that the witnesses who weren't there --

9 THE COURT: Let me see the case you're
10 talking about.

11 MR. WITTEKIND: Okay, right here.
12 Paragraph 2.

13 THE COURT: When they talk about the
14 prior litigation, they're talking about prior litigations in
15 90 CF 91. They're not talking about prior litigation in a
16 whole other case. Here, Mr. Wittekind, as I understand it,
17 you're claiming that Mrs. Rusk is guilty of malicious
18 prosecution for having prosecuted the case of 90 CM 91,
19 People versus Roger Wittekind, which has been admitted into
20 evidence here. The Court file has been introduced into
21 evidence. You were found not guilty in that case. So, you
22 have - that's been stipulated. So you have proved that there
23 was a satisfactory completion of that case in your favor. In
24 other words, that's the first thing you have to prove.

25

1 Now the next thing you have to prove is that there
2 was want of probable cause to bring this case in the first
3 place. And secondly, that Mrs. Rusk was motivated by
4 malice.

5 Now, the case of the trespass in '83 or whatever
6 it is, as such, has nothing to do with this. That is not
7 part of their probable cause.

8 MR. WITTEKIND: As long as there is no
9 relation between this case and that case, I can accept that,
10 Your Honor. But if they're trying to say because of this
11 conviction I was, you know, I'd be guilty of the next
12 conviction, I wanted to show that there was - that this was a
13 wrongful conviction. So it would have been easy to point
14 that out.

15 THE COURT: If they come up with that
16 defense, Mr. Wittekind, the Court may rethink the matter as
17 part of your rebuttal. You have to show there wasn't any
18 probable cause for the prosecution in 90 CM 91.

19 MR. WITTEKIND: Well, what I was trying to
20 show was she did not give complete statements.

21 THE COURT: Do you have any more
22 questions of Mrs. Rusk?

23 MR. WITTEKIND: Yes, I have to prove
24 malice yet.

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THE COURT: Move on.

MR. WITTEKIND: There was no probable cause. Okay, this is to prove malice. If this can't be entered as - until there was no probable cause - if this isn't probable cause, there was no probable cause. Now I have proved malice.

THE COURT: That doesn't necessarily follow, but go ahead with your next evidence.

MR. WITTEKIND: Have you ever said girls grow up faster than boys? Would that be reason for you to always look down at me because I was younger than your daughter?

A No, sir.

MR. WITTEKIND: If - have I ever been given a chance to talk? What have I ever said to deny your allegations?

A Can I? Deny what allegations?

MR. WITTEKIND: These allegations here. I called them declarations earlier.

THE COURT: Alright.

MR. WITTEKIND: Can you see those are proper allegations then?

THE COURT: Just a minute. The document that you are referring to was not made by Mrs. Rusk.

1 MR. WITTEKIND: Okay.

2 THE COURT: And therefore, it's not
3 admissible.

4 MR. WITTEKIND: I would like to use this
5 as an attempt of bars - I would like to use these allegations
6 then.

7 THE COURT: You can ask her questions.

8 MR. WITTEKIND: Okay. What were your -
9 what were your allegations concerning an alleged 4:00 A.M.
10 phone call? What were your allegations? What were you
11 saying?

12 MR. THOMPSON: May I ask who she's
13 talking to?

14 THE COURT: He's asking who she was
15 talking to.

16 MR. WITTEKIND: The State's Attorney.

17 THE COURT: So please lay a
18 foundation.

19 MR. WITTEKIND: Okay, who were you --

20 THE COURT: You can ask her about who
21 she was talking to when she was talking.

22 MR. WITTEKIND: When you went down to make
23 the charges for this 90 CM 9 case what - what allegations did
24 you make to them concerning why a phone call would be made?

1 You know, what the allegations you used?

2 A You want to know what I told the State's
3 Attorney's Office?

4 MR. WITTEKIND: Why I would simply make a
5 phone call, yes.

6 A I don't know why you'd been making phone calls.
7 You've been doing it for years.

8 MR. WITTEKIND: Does that look familiar at
9 all?

10 A I did not write any of that. I did not make any
11 of that statement.

12 MR. WITTEKIND: What about this?

13 A That's not even my handwriting.

14 MR. WITTEKIND: I've got it - some of her
15 allegations in the transcript. Better be some in here.
16 Yeah. Okay, would the two - you made one major allegation
17 against me. What words did you use?

18 A You want me to say word for word back from that
19 trial?

20 MR. WITTEKIND: Go ahead.

21 THE COURT: I'm interested in her
22 allegations. Alright, go ahead.

23 MR. WITTEKIND: You have been --

24 THE COURT: Don't tell me. Ask her a
25

1 question. And then Mr. Thompson, if he wishes to object, can
2 object, and if he doesn't object, then Mrs. Rusk will answer
3 your question, okay?

4 MR. WITTEKIND: This is still under the
5 heading of malice, okay?

6 THE COURT: Yes.

7 MR. WITTEKIND: Say what you remember?
8 What are the allegations you made during that trial?

9 A I have no malice against anyone. You have been
10 making calls to our family for over 16 years.

11 MR. WITTEKIND: What about - you used the
12 words - you used the words to say why I did make these phone
13 calls. What words did you use?

14 A I don't remember what I said back at the trial.

15 MR. WITTEKIND: Do these look familiar?

16 THE COURT: Well now, let me see.
17 He's showing the witness page 25 of the transcript. Are you
18 showing this to her for purposes of refreshing her
19 recollection?

20 MR. WITTEKIND: Yeah.

21 THE COURT: You can read it over and
22 see if that refreshes your recollection of what you testified
23 on that date. If it does refresh your recollection, then you
24 can say in your own words what it was you said.

25

1 A I told the Court that he is obsessed with my
2 daughter.

3 MR. WITTEKIND: What is - what is the
4 other words?

5 MR. THOMPSON: I'm going to object to the
6 question, Your Honor. The transcript speaks for itself.

7 THE COURT: Alright, it will be
8 admitted into evidence. Okay, Mr. Thompson has just
9 stipulated, Mr. Wittekind, that I can use anything that's in
10 the transcript, so you can just point it out to me what
11 special parts you want me to read.

12 MR. WITTEKIND: Okay, the allegations
13 we're trying to prove - her allegations were wrong because
14 she's - it takes malice to use defamation of character. You
15 don't put somebody down just if you - unless you don't like
16 them. And what - what is --

17 THE COURT: That's not necessarily
18 true, Mr. Wittekind. A person has the right to protect
19 himself and to seek justice. Whether they dislike or like
20 the person who is going to be a defendant, it's not necessary
21 that there be malice or dislike. But you do have to prove
22 that there was malice in her prosecution.

23 MR. WITTEKIND: Okay, I'm still working on
24 that. Do you remember about this? You should have seen that

25

1 before. This is a letter she wrote to one of my attorneys.

2 THE COURT: When?

3 MR. WITTEKIND: This was --

4 THE COURT: What is the date on that?

5 MR. WITTEKIND: '80 - April 27th, 1988.

6 Do these still hold true today? Are you still afraid of your
7 daughter having a set back?

8 A Yes, I am. That means I have no malice.

9 THE COURT: I don't know what's in
10 there. I haven't seen it.

11 MR. WITTEKIND: I should have entered
12 that.

13 THE COURT: Did you take an exhibit
14 out of the Court file now?

15 MR. WITTEKIND: No. Well, come to think
16 of it, it was entered as an exhibit during the case of the
17 trial, but it was handed back afterwards. So that was part
18 of the Court file.

19 THE COURT: Which Court file?

20 MR. WITTEKIND: 90 CM 9. This was exhibit
21 3 in that case.

22 THE COURT: Perhaps it was not
23 admitted into evidence.

24 MR. WITTEKIND: No, this was admitted.
25

1 MR. THOMPSON: I would object to the
2 admission of it under the best evidence rule. Hearsay.
3 There's been no testimony regarding any authenticity of the
4 document and if it's in the Court file, then the Court can
5 take judicial notice of it.

6 THE COURT: I think she said that was
7 her letter.

8 MR. WITTEKIND: She did. She wrote it.

9 A But there's no malice in that letter.

10 THE COURT: I'm going to admit the
11 letter. Let me look at it. It's very remote, but okay.

12 MR. WITTEKIND: The other word I wanted to
13 put down in opening remarks is a tragic misunderstanding.
14 True, they can say everything is based on fear and I want to
15 say that it was malice, but it really boils down to a tragic
16 misunderstanding. It's, you know, just fear. They had no
17 reason to ever write something like this. They had no fear
18 at all - no reason to fear any of my actions. And I call
19 that malice. They're trying to say it's just plain fear.

20 THE COURT: That's something I'll have
21 to decide. Proceed. Do you have any other questions? I'm
22 going to call this defendant's exhibit 3 your plaintiff's
23 exhibit 4.

24 MR. WITTEKIND: You didn't let - my 1 was

1 objected to. 3, you said this came back because you didn't
2 think the presumption is, you know, if it's okay, we're still
3 on this letter. You used the words set back. Would - what
4 is it? How could I - how could this happen?

5 A For my daughter to have a set back? Because my
6 daughter has been mentally ill for 10 years.

7 THE COURT: What is the date of that
8 letter to Mr. Thuline?

9 MR. WITTEKIND: April 27th, 1983.

10 THE COURT: Apparently, in response to
11 the letter attached to your complaint, Mr. Wittekind, which
12 was the letter from Mr. Thuline --

13 MR. WITTEKIND: Trujillo.

14 THE COURT: Okay, so that's how it
15 came about.

16 MR. WITTEKIND: Okay, are - you have in
17 that letter mentioned that I was well aware of your
18 daughter's illness. Have you ever let me state that? Have
19 you ever let me tell you that?

20 MR. THOMPSON: Objection. That's
21 irrelevant what she let him tell her.

22 THE COURT: Objection sustained.

23 MR. WITTEKIND: The point being is the
24 malice is so great, I was never given a chance to say

1 anything. Could never say anything in my defense. That's
2 what - how I want to prove malice.

3 THE COURT: That's immaterial and
4 irrelevant. Ruling stands. Proceed. Any more questions for
5 Mrs. Rusk?

6 MR. WITTEKIND: Have we ever carried on a
7 normal conversation?

8 MR. THOMPSON: Objection. Irrelevant.

9 MR. WITTEKIND: Your Honor, I'm trying to
10 get - she's got so big a grudge against me, I can't say one
11 word to her. Never been able to talk to her.

12 THE COURT: Objection sustained.

13 MR. WITTEKIND: Can I ask for a
14 continuance on this?

15 THE COURT: No, we'll proceed.

16 MR. WITTEKIND: I don't understand how to
17 prove malice without proving a conclusion on it. It would be
18 conclusive malice.

19 THE COURT: Motion to continue is
20 denied. Proceed.

21 MR. WITTEKIND: Let me see what else.

22 THE COURT: You want to withdraw this
23 witness?

24 MR. WITTEKIND: That I don't understand.

1 I'm sorry. I'm going to proceed. I want to prove an effect
2 of malice. I want to show there was an effect of this. Your
3 Honor, I can tell you're extremely prejudiced against me and
4 I don't know. I would like to ask for another Judge, if
5 that's possible.

6 THE COURT: That's refused also. You
7 can't ask for a change of Judge once the case has started.
8 You would have been entitled to a substitution before the
9 case started, but not after it started, Mr. Wittekind.

10 MR. WITTEKIND: Well, I didn't realize the
11 prejudice was so great until I tried getting this entered. I
12 was not aware of it until now.

13 THE COURT: That still makes no
14 difference. You may continue to ask new questions of Mrs.
15 Rusk, if you wish, or you can call another witness.

16 MR. WITTEKIND: I've got malice and burden
17 of proof. Consequently, if there is not probable cause -
18 there was no probable cause and malice, then I'll testify to
19 that myself then.

20 THE COURT: Alright, you wish to
21 withdraw this witness?

22 MR. WITTEKIND: Sure. I'd like to call,
23 if he's still out here --

24 THE COURT: You can step down, Mrs.
25 Rusk. You didn't want to ask any questions. I believe she

1 was called as an adverse witness.

2 MR. THOMPSON: I have no questions then.

3 (Witness is excused.)

4 * * * * *

5 MR. WITTEKIND: I want to call Ed Rusk to
6 the stand.

7 ED RUSK,

8 called as a witness by the plaintiff and being first duly
9 sworn on oath, testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Wittekind

12 MR. WITTEKIND: Somewhere in here you - do
13 you remember our last phone call - the last phone call I made
14 to your house and talked to you?

15 A Was after the 1st. You want to give some idea?
16 Was that on or before - on or after January 2nd, 1990?

17 MR. WITTEKIND: I think the date is
18 supposed to be December 12th or something. That's in one of
19 the letters they sent me.

20 THE COURT: That's A, this letter -
21 this phone call?

22 MR. WITTEKIND: Yeah, December 13th. Do
23 you remember the words you said to me?

24 A I probably told you to leave us the hell alone.
25

1 MR. WITTEKIND: Do you remember saying,
2 you're going to jail?

3 A I probably did.

4 MR. WITTEKIND: You wanted me to go to
5 jail?

6 A You've been bothering us for 13 years, Roger. I
7 want you to leave us alone.

8 MR. WITTEKIND: Have you - what
9 allegations does your mother make - your wife make?

10 MR. THOMPSON: Objection.

11 A When?

12 THE COURT: And where?

13 MR. THOMPSON: And who was present?

14 MR. WITTEKIND: To him. To you.

15 A When?

16 MR. WITTEKIND: Any times. What
17 allegations does your wife make concerning me? Why can't I
18 talk to --

19 A We both don't want nothing to do with you, Roger.

20 MR. WITTEKIND: What allegations does she
21 say?

22 A She doesn't have to make any allegations. We want
23 you to leave us alone, sport.

24 MR. WITTEKIND: Okay, criminal trespassing
25

1 charge, this is how quick he broke. That's how fast he
2 broke. I'm interested --

3 A I broke when you tried to hit my wife.

4 THE COURT: Just answer the questions.

5 MR. WITTEKIND: I'm interested in your
6 allegations, the allegations she makes why I cannot say
7 anything in my defense. What is she saying?

8 MR. THOMPSON: This is an argumentative
9 question.

10 THE COURT: You can ask him if she
11 makes any allegations about you.

12 MR. WITTEKIND: What - does she make any
13 allegations about me?

14 A No, she just don't want you to call us. She don't
15 want you around us. She wants you to leave us alone.

16 MR. WITTEKIND: Why?

17 A We don't need a reason.

18 MR. THOMPSON: Well, okay. No
19 objection.

20 A We don't need a reason. We just don't want you
21 around us.

22 MR. WITTEKIND: Do these look like
23 something she might have said, those 4 sentences?

24 MR. THOMPSON: I'm going to object to the
25

1 use of that exhibit unless he's laying a foundation for it.

2 THE COURT: I don't know what it is,
3 so I don't know.

4 MR. WITTEKIND: I'm trying to get to the
5 allegations.

6 THE COURT: Ask him and then if you
7 have something written that he wrote, then you can talk about
8 it. Either he can say what he said and if he doesn't say
9 what he said and you have something that he has written in
10 the past, you can use that to refresh his recollection or
11 otherwise prove it.

12 MR. WITTEKIND: What words do you call me
13 on the phone? What descriptive words do you use?

14 A I have called you a lot of things on the phone,
15 Roger. I've called him a lot of things on the phone.

16 MR. WITTEKIND: Faggot sound familiar?

17 A Right off the top of my head, yeah.

18 MR. WITTEKIND: Have you ever got to say
19 what I --

20 A We don't have to listen to you, Roger, anyway.

21 MR. THOMPSON: I'm going to object to the
22 line of questioning based on relevancy.

23 THE COURT: He's - this man is not on
24 trial and it's Mrs. Rusk. It has to be Mrs. Rusk - not Mr.

1 Rusk.

2 MR. WITTEKIND: Fine. Again, their
3 allegations were disproven here. That's part of malicious
4 prosecution, allegations they made prior to the lawsuit, you
5 know, are disproven.

6 THE COURT: It has to be your suit.
7 Your suit is only against defendant, Beverly Rusk, and it has
8 to be Beverly Rusk's malice, if there is any, that you have
9 to prove.

10 MR. THOMPSON: I would also note for the
11 record, that misdemeanor Court file, 90 CM 9, the complaint
12 was signed only by Beverly Rusk.

13 MR. WITTEKIND: The allegations can be
14 used to prove malice. The words she uses to describe it can
15 be used to prove malice.

16 THE COURT: You have to try to prove
17 what Mrs. Rusk might have said which shows malice - not what
18 Mr. Rusk said.

19 MR. WITTEKIND: I see what you mean. So
20 she didn't use descriptive words like you did?

21 A No.

22 MR. WITTEKIND: May I ask a question for
23 the record?

24 THE COURT: Since there's a court

1 reporter here, every question you ask is for the record, Mr.
2 Wittekind.

3 MR. WITTEKIND: Well, this might not be -
4 this is back to the missing evidence on this.

5 MR. THOMPSON: Pardon?

6 THE COURT: We'll recess and proceed
7 with your case. We're going to declare a recess in this case
8 because the court reporter is needed for a felony matter and
9 she's the only court reporter available. If you wish to
10 proceed, you can bring your own court reporter or until one
11 of our regular court reporters is available, Mr. Wittekind.

12 (At this time this Court reporter is
13 excused from the hearing.)

14 * * * * *

15
16
17 I, Mary Thaxton, Official Court Reporter of
18 the Circuit Court of Rock Island County, Illinois, do hereby
19 certify that the foregoing is a complete and accurate
20 transcript of the portion of the proceedings had in said
21 cause.

22 
23 court reporter.