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SUPREME COURT NO. 92796-1
COURT OF APPEALS NO. 72102-0-I

P314 replaced 3/2/16

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

ALAN J. SINCLAIR II,

Respondent.

PETITION FOR REVIEW

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JAMES M. WHISMAN
Senior Deputy Prosecuting Attorney
Attorneys for Petitioner

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

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A. IDENTITY OF PETITIONER

The State of Washington, Petitioner here and Respondent below, respectfully requests that this Court review the published decision of the court of appeals in State v. Sinclair II, No. 72102-0-I (Jan. 27, 2016), a copy of which is attached as Appendix A.

B. ISSUE PRESENTED FOR REVIEW

Does the court of appeals decision in this case undermine the Washington Legislature's authorization of costs on appeal, and conflict with this Court's decisions interpreting the appellate costs statute, and conflict with the relevant rules of appellate procedure, where the court denied appellate costs in its decision terminating review without facts in the record to determine whether the non-prevailing party could pay costs in the future, and where extra-record facts – which would be available to a trial court in a motion to remit costs, but were not available in the appellate record – plainly show that the defendant has significant assets?

C. STATEMENT OF THE CASE

1. CRIME, TRIAL AND APPEAL.

Alan Sinclair had sexual contact with his granddaughter beginning when she was 11 or 12 years old. His crimes came to light after he

inadvertently pocket-dialed the victim's mother when he was speaking to the victim, and the call was recorded on the mother's voicemail system. Police recovered incriminating photographs and video recordings of Sinclair with the victim. Br. of Resp. at 2-7.

At trial, Sinclair did not contest the fact that he had committed child molestation, child rape, or communication with a minor for immoral purposes; rather, he argued that he did not have sexual intercourse with his granddaughter until she was 14 years old, so he was guilty of a lesser degree of child rape. 11 RP 253. The trial court described the State's evidence as "overwhelming." 11 RP at 321. He was convicted by a jury of two counts of second degree rape of a child, two counts of third degree child molestation, and a count of communication with a minor for immoral purposes. CP 103-07.

On appeal, Sinclair did not challenge the sufficiency of the evidence to prove his guilt. Rather, he argued that the recording of his pocket-dialed telephone call should have been suppressed. The court of appeals affirmed Sinclair's convictions because suppression of the recording would not have changed the result of the case. The victim's testimony, the photographs, the video recordings, and Sinclair's admissions at trial were overwhelming evidence of guilt. Sinclair, at 3-4.

After the decision terminating review was filed, the State submitted a cost bill of $6,983.19, listing the usual categories of expense that may be ordered as costs on appeal. Sinclair filed a 17-page objection to that cost bill. He also filed that same day a motion for reconsideration of the decision terminating review, asking the court of appeals to "reconsider" the imposition of costs on appeal, even though neither he nor the State had addressed costs in the substantive briefing, and even though there was very little information in the appellate record regarding Sinclair's assets. The court of appeals directed the State to respond to the motion for reconsideration, but not the Objection to Cost Bill.[1] The primary issue raised in the motion for reconsideration was whether the appellate court should determine costs in its decision terminating review, or whether it should instead follow the procedure set forth in the rules on appeal that direct the court to consider such matters post-decision.

The State filed an answer to the motion for reconsideration on January 15, 2016. The State urged the court of appeals to follow precedent from this Court holding that a party's ability to pay need not be determined until efforts are made to punish a failure to pay. The State also

[1] The Objection to Cost Bill raised numerous arguments not contained in the Motion for Reconsideration. Because the Rules on Appeal do not authorize a reply to such an objection, see RAP 14.4 et seq., the State simply noted that those arguments were foreclosed by Washington State Supreme Court precedent, and offered to respond to those arguments if so directed. The court deferred ruling on the Objection to Cost Bill. Sinclair, at 6.

noted that Sinclair's ability to pay in the future was unknowable since the appellate record did not hold information about his assets or current financial situation. The State noted, however, that Sinclair likely had assets, as the presentence report filed by his lawyer showed as follows:

> In 1986, the family moved to Bellevue, Washington, when Mr. Sinclair was offered a job with Boeing. He worked as a project manager for communications projects, which involved designing and installing information technology infrastructure for Boeing properties. His job required extensive travel, as he managed projects around the United States, Asia, and Europe. Mr. Sinclair enjoyed his work, as it was constantly challenging and never stagnant.

CP 140. This information certainly suggests Sinclair had a decades-long career in a lucrative position for a leading employer in this state, and that he likely had a pension. The verbatim report of proceedings also shows that the defendant owned a recreational vehicle (RV) and a Dodge Ram Pickup truck. See, e.g., 8 RP 5/13/14 at 48 (RV), 84 (truck).[2] The record contains very few other details about the defendant's assets because, of course, his net worth was not an issue at trial.

On January 27, 2016, the court of appeals granted reconsideration and filed a new decision, published this time, forbidding the State from collecting appellate costs from Sinclair. Sinclair, at 6-14. The court of appeals presumed that because an order of indigency had been filed when

[2] The vehicles were relevant at trial because testimony established that Sinclair abused his victim in both of these vehicles.

the appeal was initiated, Sinclair would not be able to pay anything in the future to defray costs. Id. at 13-14. Moreover, the court refused to acknowledge that the presumption of indigency might be incorrect, arguing that the appellate record showed that Sinclair's financial position had not changed since sentencing, even though the appellate record necessarily does not include information gathered after sentencing. Id.

2. FACTS SHOWING SINCLAIR'S ABILITY TO PAY COSTS THAT WOULD BE AVAILABLE TO THE TRIAL COURT BUT THAT ARE NOT AVAILABLE TO THE APPELLATE COURT.

As noted above, the State urged the court of appeals to leave further inquiry about Sinclair's assets to the trial court, because that court can gather facts regarding a defendant's *present* ability to pay. The rules of appellate procedure limit the record on review to a report of proceedings, clerk's papers, and exhibits. RAP 9.1. Additional evidence may be taken only as to the "merits" of the case, and only under strictly circumscribed conditions. RAP 9.11. For these reasons, the State could not within the existing rules illustrate to the court of appeals that Sinclair likely had significant assets. And, although it was certainly a reasonable inference that a person employed in a significant position at a major

manufacturer for decades would retain assets and a pension, there was no information in the record on that subject.

Outside the appellate record, however, there is information suggesting that Sinclair could pay the $6,983.19 cost bill many times over.[3] Throughout these proceedings, Sinclair's address was: 4929 151st Avenue SE, Bellevue, Washington. Appendix B (Superform filed for probable cause / first appearance hearing). He appears to have purchased this house on August 22, 1986, for $115,500, and the house was sold about three months ago, on October 15, 2015, for $723,000. Appendix C.[4] When the property was listed for sale it was described on Redfin, a real estate marketing website, as follows:

> Spacious 5 bedroom, 2.5 bath home sits high on a beautifully landscaped 22,000 sq ft lot, located in an area of $1m+ homes. Gorgeous hardwoods in upstairs bedrooms and more waiting under LR, hall and DR carpet. Large family room plus 2 BD downstairs. 2 car garage, plus extra parking for your boat or RV off the tree lined circular drive. Enjoy the Mt. Baker view from the large wrap-a-round deck. Newport H. S., ranked #3 in the state. Lots of room inside and out.

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[3] The State is compelled at this point to submit evidence of Sinclair's net worth, even though that evidence is outside the appellate record, because otherwise there will be no opportunity to illustrate the error in the court of appeals' approach to the issue and in it's decision to refuse costs. RAP 1.2 provides that the rules on appeal "will be liberally interpreted to promote justice and facilitate the decision of cases on the merits." RAP 18.8(a) permits the appellate court to waive rules in order to serve the ends of justice. Under these unique circumstances, this Court should waive the requirements of RAP 9.1 in order to serve the ends of justice and permit a fact-based decision on the issue of whether Sinclair is able to pay appellate costs.

[4] See http://info.kingcounty.gov/Assessor/eRealProperty/Detail.aspx?ParcelNbr =3459900240 (last visited 1/27/16).

Appendix D. Photographs of the house show a power boat parked in the driveway. Appendix E.[5] It is not known at this point whether Sinclair has sold his recreational vehicle or his truck. Nor is it known what Sinclair did with the proceeds from the sale of his home. Sinclair has not updated his financial status as required by the Rules of Appellate Procedure.[6]

D. REASONS REVIEW SHOULD BE GRANTED

RAP 13.4(b) permits review by this Court where a decision of the court of appeals is in conflict with a decision of the court of appeals or the supreme court, raises a significant question of law under the Washington State or United States Constitutions, or deals with an issue of substantial public interest. Those criteria are met here.

This Court should grant review because the court of appeals decision conflicts with the appellate costs statute, with this Court's precedents, and with the rules on appeal, and the decision violates basic principles that ensure informed decision-making.

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[5] This document was found at: https://www.redfin.com/WA/Bellevue/4929-151st-Ave-SE-98006/home/235616 (last visited 1/27/16)). Enlargements of the photos show the boat more clearly. Appendix ___. Of course, it is not known without further inquiry whether the boat belongs to Sinclair.

[6] RAP 15.2(f) provides: "Continued Indigency Presumed. *A party and counsel for the party who has been granted an order of indigency must bring to the attention of the trial court any significant improvement during review in the financial condition of the party.* The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent." (italics added).

First, the decision *presumes* that appellate costs should be denied in a decision terminating review based primarily on the fact that a defendant was deemed indigent for purposes of appeal. This holding effectively nullifies a duly-enacted statute that seeks to defray some costs in criminal appeals. Second, the decision conflicts with this Court's decisions interpreting that statute. State v. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997); State v. Nolan, 141 Wn.2d 620, 627, 8 P.3d 300 (2000). Those decisions hold that appellate costs should be ordered, that an order of indigency should not foreclose costs, and that a meaningful inquiry into ability to pay is best reserved for the trial court after the State seeks to punish a failure to pay. Third, the decision conflicts with State v. Johnson, 179 Wn.2d 534, 315 P.3d 1090 (2014), cert. denied, 135 S. Ct. 139 (2014), to the extent it treats statutory indigency as equivalent to constitutional indigency.

The decision also inverts the presumption in the rules of appellate procedure that costs are to be determined *after* decision. Further, the decision creates a process that conflicts with a process apparently followed in Division Two of the court of appeals. Finally, the decision purports to exercise discretion to deny costs, but there is no factual basis upon which discretion could be properly exercised.

1. THE DECISION BELOW CONFLICTS WITH RCW 10.73.160 AND UNDERMINES THE PURPOSE OF THE STATUTE.

The authority to allow and recover court costs is a matter of legislative prerogative. State v. Nolan, 141 Wn.2d 620, 627, 8 P.3d 300 (2000). Attacks on the authority of courts to order costs on appeal have been repeatedly rejected by this Court. See, Nolan, 141 Wn.2d at 623. When this Court held in State v. Rogers, 127 Wn.2d 270, 281, 898 P.2d 294 (1995), that the State could not recoup attorneys' fees and costs incurred by the Appellate Indigent Defense Fund without express statutory authority, the Legislature responded swiftly by enacting a statute that provided such authority. That statute provides as follows:

> (1) The court of appeals, supreme court, and superior courts may require an adult offender convicted of an offense to pay appellate costs.
>
> (2) Appellate costs are limited to expenses specifically incurred by the state in prosecuting or defending an appeal or collateral attack from a criminal conviction. Appellate costs shall not include expenditures to maintain and operate government agencies that must be made irrespective of specific violations of the law. Expenses incurred for producing a verbatim report of proceedings and clerk's papers may be included in costs the court may require a convicted defendant to pay.
>
> (3) Costs, including recoupment of fees for court-appointed counsel, shall be requested in accordance with the procedures contained in Title 14 of the rules of appellate procedure and in Title 9 of the rules for appeal of decisions of courts of limited jurisdiction. An award of costs shall become part of the trial court judgment and sentence.

> (4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant or juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

RCW 10.73.160.

Numerous constitution-based challenges to the appellate costs statute were rejected in State v. Blank, where this Court held that an appellate court need not consider the defendant's *present* ability to pay before awarding costs, because the relevant inquiry is whether the defendant has the ability to pay when the State attempts to punish a failure to pay. 31 Wn.2d at 246-47. This Court in Blank explained a number of fundamental points relevant to ordering costs on appeal. It noted that the statute does not chill the right to counsel:

> ...the fact that an indigent who accepts state-appointed legal representation knows that he might someday be required to repay the costs of these services in no way affects his eligibility to obtain counsel.

Id. at 247 (quoting Fuller v. Oregon, 417 U.S. 40, 53, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974)). This Court also observed that the statute did not deprive indigents of an appeal:

> RCW 10.73.160 ... does not affect Blank's right of appeal, or his right to public funds to finance it, if he is indigent. He does not have, and never did have, a right to an appeal at public expense, if he can afford to pay for that appeal. The statute simply provides a mechanism for recouping the funds advanced to ensure his right to appeal.

Id., at 250. The reasoning in Blank struck a reasonable balance between the defendant's constitutional right to appeal and society's interest in defraying the costs created by the appeal. It achieved this balance by confirming that costs should be imposed absent compelling circumstances, while allowing for remission of costs in the trial court where indigency requires it. It also faithfully implemented the legislative directive.

The decision below fundamentally alters that balance in a way that effectively nullifies the legislative directive. The court of appeals has essentially presumed that costs should not be imposed if a criminal defendant appealed pursuant to an order of indigency, unless there is information in the record showing that he can pay.

Most criminal defendants appeal pursuant to an order of indigency. The language in Sinclair clearly presumes that the parties will be limited to the record on appeal as that term is defined in the rules. Sinclair, at 12 ("Both parties can be helpful to the appellate court's exercise of its discretion by developing fact-specific arguments from information that is available in the existing record."). However, in most cases the very

narrow record on appeal does not include information regarding a defendant's *present* ability to pay. This is true because in most cases a defendant's net worth is simply not an issue in the trial court, and because the appellate record is frozen in time approximately one or two years before a decision terminating review is typically filed. There will seldom be sufficient information in the stale record to overcome the newly-identified presumption from the order of indigency that a person cannot pay. This new approach thwarts the will of the legislature. Review is warranted for this reason alone.

2. THE DECISION BELOW CONFLICTS WITH STATE V. BLANK AND STATE V. NOLAN.

The decision below also plainly conflicts with State v. Blank and State v. Nolan. Blank recognized that an order of indigency did not necessarily mean that a defendant could *never* contribute *anything* towards appellate costs. This Court's opinion expressly noted that most criminal defendants qualified for indigent status for purposes of appointment of counsel, but stressed that "common sense dictates that a determination of ability to pay and an inquiry into defendant's finances is not required before a recoupment order may be entered against an indigent defendant as it is nearly impossible to predict ability to pay over a period of ten years

or longer." 131 Wn.2d at 242. In rejecting a request to exercise its discretion to deny costs, this Court dismissed many arguments similar to those advanced by Sinclair:

> [Appellant] reasons that given the order of indigency and his present incarceration, it is extremely unlikely he will ever be able to repay the costs the State seeks. He also says that he will undoubtedly face difficulties finding housing and steady employment, and the added pressure of a repayment obligation will impede his chances for a successful reentry into the community. He argues that the State has failed to show that sufficient funds can be recouped to justify the administrative expenditure to collect the costs, and has offered no reason to justify the imposition of costs in this case.
>
> If in the future repayment will impose a manifest hardship on defendant, or if he is unable, through no fault of his own, to repay, the statute allows for remission of the costs award. *There is no reason at this time to deny the State's cost request based upon speculation about future circumstances.* ...[As to the effectiveness of the statute], the court's task is not to weigh the effectiveness of the statute but its constitutionality, and 'whether returns under the statute justify the expense, time, and efforts of state officials is for the ongoing supervision of the legislative branch.'
>
> [Appellant] has failed to offer any compelling argument justifying denial of the State's costs request.

Id. at 252-53 (italics added). This Court confirmed this reasoning three years later in Nolan. 141 Wn.2d at 634-25.

The decision in Sinclair upends this approach. It presumes from the fact that Sinclair (somehow) managed to qualify for appointed counsel that he could never pay anything toward costs, despite indications in the

limited appellate record that he might have significant assets. Review should be granted to address this divergence from Blank and Nolan.

3. THE DECISION BELOW CONFLICTS WITH STATE V. JOHNSON; IT ERASES THE DISTINCTION BETWEEN STATUTORY AND CONSTITUTIONAL INDIGENCE.

As noted above, the decision in Sinclair presumes a defendant cannot pay costs because he was found indigent for purposes of obtaining counsel at public expense. This holding plainly conflicts with State v. Johnson, wherein this Court distinguished statutory from constitutional indigence in the context of standing to raise a constitutional challenge to a defendant's ability to pay a fine. 179 Wn.2d 553. This Court held that a party can be indigent for purposes of a statute without being indigent under the Constitution. Id. To decide that a person is constitutionally indigent requires a careful examination of his circumstances.

> No precise definition of "constitutional indigence exists." ... [C]onstitutional indigence cannot mean absolute destitution. ... At the same time, a constitutional distinction exists between poverty and indigence, and constitutional protection attaches only to indigence. ... [We must] examine the totality of the defendant's financial circumstances to determine whether he or she is constitutionally indigent in the face of a particular fine.
>
> * * *
>
> Ownership of, or equity in, property indicates that a defendant is not constitutionally indigent and that his or her failure to pay a fine is contumacious.

* * *

> ... During an exchange with the district court, Johnson acknowledged he owned both tangible and intangible property. ... He stated that he owned, among other things (such as his car), his home, free of any liens. He stated that he valued the property at $300,000. ... [H]is equity in his home would have allowed Johnson to "borrow or otherwise legally acquire resources" necessary to pay the $260 fine. ...
>
> Considering the totality of the circumstances, we hold that Johnson was not constitutionally indigent. While we do not question that the State may not punish an indigent defendant for the fact of his or her indigence, these constitutional considerations protect only the constitutionally indigent. Johnson had substantial assets in comparison to the $260 fine the district court ordered him to pay. Requiring payment of the fine may have imposed a hardship on him, but not such a hardship that the constitution forbids it. ... Johnson is not constitutionally indigent and lacks standing for his claim.

Johnson, at 553-55 (internal citations and quotations omitted).

The decision in Sinclair treats statutory indigence as equivalent to constitutional indigence, and prevents the State from having a court make an informed decision on Sinclair's ability to pay. Review is warranted to address this conflict.

4. THE DECISION BELOW CONFLICTS WITH THE PLAIN LANGUAGE OF THE RULES ON APPEAL.

The Rules on Appeal implement the statutory directives described above, including the presumption that a cost award will generally be

considered *after* the decision terminating review is filed. The rules provide that "[t]he appellate court determines costs in all cases ***after*** the filing of a decision terminating review [except when review is voluntarily withdrawn]." RAP 14.1(a) (emphasis added). A panel of judges deciding the case has discretion to refuse costs in the opinion or order. RAP 14.1(c) and 14.2. If the panel does not make such a determination, and costs are awarded by a clerk or commissioner, "the appellate court will award costs to the party that substantially prevails on review..." RAP 14.2. When costs are imposed by a commissioner or clerk, a party may object to the cost award by filing a motion to modify. RAP 14.6(b) and 17.7.

It makes sense that the appellate court would generally wait until after a decision is rendered to order costs, because costs bills are not yet filed, and because it would be burdensome and distracting to spend time and effort arguing an issue that is not supported by the record. Moreover, appellate courts have always applied the rules in this fashion. The broader decision regarding constitutional indigence is left to the trial court, where it belongs.

The Sinclair decision effectively amends these rules to say that in most criminal cases the court will decide – and likely deny – costs in its decision terminating review. Such a significant change in the rules and in practice should not be announced in an amended decision (following

reconsideration on an issue that was never fully briefed or argued); it should be implemented only after rulemaking procedures are followed. In this way, the Sinclair decision violates the fundamental principles of rule-making: notice and opportunity to be heard. In re Personal Restraint Petition of Carlstad, 150 Wn.2d 583, 592 n.4, 80 P.3d 587 (2003) ("We note that if a mailbox rule for pro se prisoners is desirable, the rule should be adopted through the normal rule making process. That process enables all interested and affected parties to participate in creating the rule. Foisting the rule upon courts and parties by judicial fiat could lead to unforeseen consequences.").

5. THE DIVISIONS OF THE COURT OF APPEALS CONFLICT OVER HOW COSTS ARE TO BE CONSIDERED AND IMPOSED.

The decision in Sinclair notes that Division Two of the Court of Appeals has remanded cases to the superior court for a determination on ability to pay based on State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). Sinclair, at 4. Although the Sinclair court rejects this approach, the fact that different divisions of the court of appeals are taking such different approaches shows the need for review by this Court.

6. AN "EXERCISE OF DISCRETION" IS MEANINGFUL ONLY WHEN PREMISED ON SUFFICIENT FACTS.

When appellate courts review a trial court ruling on costs, they require some explanation as to the trial court's reasoning. See, Mayer v. City of Seattle, 102 Wn. App. 66, 82-83, 10 P.3d 408 (2000). The court in Sinclair acknowledged this principle but then said it could make the requisite decision from facts already in the record. It said that "a great deal of information about any offender is typically revealed and documented during the trial and sentencing..." Sinclair, at 11. In fact, this case proves the opposite, and this case is typical, which is why this Court held in Blank that common sense counseled against attempting to make an "ability to pay" determination on appeal. The decision below virtually guarantees decision-making in a factual vacuum. To the extent the Sinclair court's proposed process undermines the public's right to reimbursement where possible, this case presents an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(4).

E. CONCLUSION

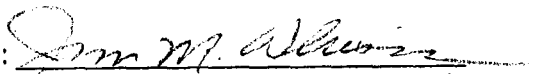
There is substantial evidence that Sinclair has the means to pay appellate costs. The procedure newly adopted by the court of appeals prevents a reasoned decision on a party's ability to pay based on relevant

facts, thwarts the intent of the legislature, conflicts with this Court's decisions and with the rules on appeal, and highlights the need for a court of appeals-wide approach to imposition of costs. For these reasons, the State respectfully asks this Court to grant review.

DATED this 22nd day of February, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
JAMES M. WHISMAN, WSBA #19109
Senior Deputy Prosecuting Attorney
Attorneys for Petitioner
Office WSBA #91002

APPENDIX A

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle

DIVISION I
One Union Square
600 University Street
98101-4170
(206) 464-7750
TDD: (206) 587-5505

January 27, 2016

Nielsen Broman Koch PLLC
Attorney at Law
1908 E Madison St
Seattle, WA 98122
Sloanej@nwattorney.net

Kevin Andrew March
Nielsen, Broman & Koch, PLLC
1908 E Madison St
Seattle, WA 98122-2842
MarchK@nwattorney.net

Kristin Ann Relyea
King County Prosecutor's Office
W554 King County Courthouse
516 3rd Ave
Seattle, WA 98104-2385
kristin.relyea@kingcounty.gov

James Morrissey Whisman
King County Prosecutor's Office
516 3rd Ave
W554 King County Courthouse
Seattle, WA 98104-2385
Jim.Whisman@kingcounty.gov

CASE #: 72102-0-I
State of Washington, Resp. vs. Alan J. Sinclair II, App.
King County, Cause No. 13-1-13050-1 SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

> "The motion for reconsideration is granted. The conviction is affirmed. Appellate costs will not be awarded. The pending cost bill and objection are stricken."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

CMR

Enclosure

c: The Honorable Jeffrey M. Ramsdell
Alan J. Sinclair

Jim Whisman
Kristin Relyea

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. ALAN JAMES SINCLAIR, II, Appellant.	No. 72102-0-I ORDER GRANTING MOTION FOR RECONSIDERATION, WITHDRAWING OPINION, AND SUBTITUTING PUBLISHED OPINION

Appellant, Alan Sinclair II, has moved for reconsideration of this court's opinion filed on December 7, 2015. Respondent, State of Washington, has filed an answer to appellant's motion for reconsideration.

The court has determined that appellant's motion for reconsideration should be granted, the opinion filed on December 7, 2015, should be withdrawn, and a published substitute opinion should be filed. Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is granted, the opinion filed on December 7, 2015, is withdrawn, and a published substitute opinion is filed and shall be printed in the Washington Appellate Reports.

DATED this 27th day of January 2016.

Baker, J.

Leach, J.

Dwyer, J.

Jim Whisman

Kristin Relyea

cc: Wynne Brame

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ALAN JAMES SINCLAIR, II, Appellant.	No. 72102-0-I DIVISION ONE PUBLISHED OPINION FILED: January 27, 2016

BECKER, J. — Appellant, convicted of sexually abusing his granddaughter, contends the trial court improperly admitted a recording of an incriminating communication obtained without the consent of the participants in the communication. The recording resulted from an inadvertent "pocket dial" from appellant's cell phone to the recipient's voice mail. Finding that any statutory violation was harmless, we affirm.

A jury found appellant Alan Sinclair guilty of two counts of second degree rape of a child, two counts of third degree child molestation, and one misdemeanor count of communication with a minor for immoral purposes. All charges arose from Sinclair's sexual abuse of his granddaughter. According to her testimony at trial, Sinclair began kissing her "tongue to tongue" when she was 11 or 12 years old and progressed to oral sex when she was 13 or 14.

The recording at issue occurred one afternoon when the granddaughter was home alone and Sinclair was visiting her. The granddaughter testified that

Sinclair kissed her "tongue to tongue" and then she and Sinclair went outside and continued a conversation. During the conversation, Sinclair unintentionally dialed the girl's mother with his cell phone. The mother did not answer. Her cell phone transferred the call to voice mail. The voice mail system recorded Sinclair saying, "I love that tongue. . . . I don't know if you love mine." The conversation continued with Sinclair making veiled threats that his dead ancestors would inflict physical injury on the girl for not being "nice." The mother later listened to the voice mail recording on her phone and heard the conversation. This led to the filing of the criminal charges against Sinclair.

Sinclair moved to suppress the voice mail under the Washington privacy act, chapter 9.73 RCW. The privacy act makes it unlawful for any "individual" to record any private conversation "without first obtaining the consent of all the persons engaged in the conversation." RCW 9.73.030(1)(b). There is an exception for conversations "which convey threats," which "may be recorded with the consent of one party to the conversation." RCW 9.73.030(2). Neither Sinclair nor his granddaughter consented to the recording.

Sinclair contends the lack of consent made the recording inadmissible at trial. The trial court considered a number of issues in connection with Sinclair's motion to suppress. Was the conversation private? Did an "individual" record it? Does an individual incur criminal liability for an inadvertent recording, or must someone be acting with a criminal mens rea to engage the prohibitions of the act? It was undisputed that the call was made inadvertently. The trial court

denied the motion to suppress, concluding the privacy act did not apply because of "the absence of any unlawful act by anybody."

The issues are interesting and novel. But we conclude it is unnecessary to resolve them in this case because any error was harmless. We refrain from attempting a "definitive construction" of the statute in a case involving somewhat "bizarre" facts. State v. Smith, 85 Wn.2d 840, 846, 540 P.2d 424 (1975).

Admission of evidence in violation of the privacy act is a statutory violation, not a constitutional one. An error is not prejudicial unless the erroneous admission of the evidence materially affected the outcome of the trial. State v. Courtney, 137 Wn. App. 376, 383-84, 153 P.3d 238 (2007), review denied, 163 Wn.2d 1010 (2008). Here, there is no reasonable probability that the outcome of Sinclair's trial would have been different if the recording of the pocket-dialed voice mail had been excluded.

The granddaughter's testimony at trial provided independent, unchallenged evidence of the contents of the inadvertently recorded conversation. Her account was corroborated by sexually explicit photographs and a video seized from Sinclair's cell phone and computer. During his closing, Sinclair admitted guilt as to the charges of child molestation in the third degree and communicating with a minor for immoral purposes. The only charges Sinclair disputed were the two counts of second degree child rape. He argued that the State presented insufficient evidence to prove that he engaged in sexual intercourse with the girl before her 14th birthday. He does not make this argument on appeal.

It is unlikely that the jury's verdict of guilt on the two disputed counts was affected by the admission of the recorded conversation. There was no allusion in that conversation either to sexual intercourse or to the age of the granddaughter. Assuming the recording to be inadmissible, we conclude Sinclair has not shown that the error materially affected the outcome at trial.

We now address Sinclair's motion for reconsideration regarding the issue of appellate costs. He asks this court to exercise discretion to amend the decision terminating review by determining that an award of appellate costs to the State is not warranted.

Neither the State nor Sinclair raised the issue of costs in their appellate briefs. Generally, to timely raise an issue for review, a party must present argument in the appellate briefs, with citation to supportive authority and information in the record. Nevertheless, we will consider Sinclair's motion for reconsideration because the issue of appellate costs is systemic in nature, it needs to be addressed, and both parties' positions are well briefed.

Under RCW 10.73.160(1), appellate courts "*may* require an adult offender convicted of an offense to pay appellate costs." (Emphasis added.) The statute provides that appellate costs "shall be requested in accordance with the procedures contained in Title 14 of the rules of appellate procedure." RCW 10.73.160(3). Under the Rules of Appellate Procedure, the State may simply present a cost bill as provided in RAP 14.4. State v. Blank, 131 Wn.2d 230, 251, 930 P.2d 1213 (1997). The State is not obliged to request an award of costs in

its appellate briefs, although it does not appear there is any rule preventing the State from doing so. See Blank, 131 Wn.2d at 251.

The commissioner or clerk "will" award costs to the State if the State is the substantially prevailing party on review, "*unless the appellate court directs otherwise in its decision terminating review.*" RAP 14.2 (emphasis added).[1] Consequently, it appears that a clerk or commissioner has no discretion under the rules to deny an award of costs when the State has substantially prevailed on review. See State v. Nolan, 141 Wn.2d 620, 626, 8 P.3d 300 (2000). The appellate court, however, may "direct otherwise in its decision." Nolan, 141 Wn.2d at 626.

An award of appellate costs becomes part of the judgment and sentence. RCW 10.73.160(3). A defendant may petition the sentencing court at any time for the remission of costs if the amount due "will impose manifest hardship on the defendant or the defendant's immediate family." RCW 10.73.160(4).

We filed our opinion affirming Sinclair's conviction on December 7, 2015. On December 9, 2015, the State filed a cost bill requesting an award of $6,983.19 in appellate costs. Of this amount, $6,923.21 would be paid to the Washington Office of Pubic Defense for recoupment of the cost of court appointed counsel ($2,917), preparation of the report of proceedings ($3,907), copies of clerk's papers ($90), and appellate court copying charges ($9.21). The remainder, $59.98, would be paid to the King County Prosecutor's Office.

[1] The definition of "a decision terminating review" is found in RAP 12.3(a).

On December 21, 2015, Sinclair filed both an objection to the cost bill and a motion for reconsideration of the opinion. Sinclair's objection to the cost bill characterized Division One's current system of handling appellate costs as "a blanket refusal to exercise discretion after a cost bill is filed" (Objection to Cost Bill, at 10). Sinclair cited the policy concerns identified in State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). He argued that notwithstanding Nolan, commissioners should exercise discretion to deny a cost bill even if the court has not so directed in the decision terminating review. Alternatively, he requested that we direct the trial court to hold a hearing regarding his ability to pay. A ruling on Sinclair's objection to the cost bill was deferred pending resolution of the motion for reconsideration.

In his motion for reconsideration, Sinclair again asserts that Division One's commissioners routinely decline to exercise discretion to deny costs and that the court routinely denies motions to modify. It is unclear, he says, what must happen for this court to exercise discretion. "Must a party raise anticipatory cost objections in his or her opening brief based on the assumption the party's substantive arguments will fail? Or will elected judges exercise appropriate discretion following an indigent party's motion to modify a commissioner's ruling awarding costs?" Motion for Reconsideration at 2. "To the extent that a challenge to appellate costs must be raised in the briefs so that the court can exercise discretion in the decision terminating review, Sinclair asks this court to reconsider and amend its decision terminating review so that it can exercise this discretion." Motion for Reconsideration at 3.

On January 15, 2016, at the court's request, the State answered the motion. The State takes the position that the appellate court should not consider a cost award until after the decision terminating review is filed. The State acknowledges that an appellate court's failure to exercise discretion in the decision terminating review, coupled with the commissioner's lack of discretion under RAP 14.2, generally results in the award of costs to the State as the prevailing party. In the State's view, this is because a motion to modify a nondiscretionary commissioner's ruling awarding costs "is likely to fail, unless the commissioner has overlooked a flaw in the cost bill, or unless the objecting party has correctly identified some discrepancy between the cost bill and the information available to counsel." Answer to Motion for Reconsideration at 10.

The State maintains that a virtually automatic award of appellate costs upon request by the State is preferable to this court's exercise of discretion in the decision terminating review. The State claims there is not enough information available to this court to facilitate an exercise of discretion. Without specifically mentioning Blazina, the State argues that a future trial court remission hearing under RCW 10.73.160(4) is the solution to the problem of indigent offenders who upon release from confinement face a substantial and compounded repayment obligation in addition to the difficulties of finding housing and employment. The State points out that in Blank, 131 Wn.2d at 246, the court rejected a due process challenge to RCW 10.73.160 in part because an offender always has the right to seek remission from an award of costs.

The problem with the State's argument is that it requires this court to refrain from exercising the discretion that we indisputably possess under RCW 10.73.160 and Nolan. Contrary to the State's suggestion, our Supreme Court has rejected the proposition that the broad discretion to grant or deny appellate costs under RCW 10.73.160(1) should be exercised only in "compelling circumstances." See Nolan, 141 Wn.2d at 628.

The future availability of a remission hearing in a trial court cannot displace this court's obligation to exercise discretion when properly requested to do so. The statute vests the appellate court with discretion to deny or approve a request for an award of costs. Under RAP 14.2, that discretion may be exercised in a decision terminating review.

In his objection to the cost bill, Sinclair proposed as an alternative that we remand the cost bill to the trial court to conduct an inquiry into his current and future ability to pay $6,983.19 in appellate costs. As a model for that alternative, Sinclair submitted a cost bill ruling from Division Two. The Division Two commissioner ruled that the State, as prevailing party, was entitled to its costs, but also ruled that an award of appellate costs is a discretionary legal financial obligation that can be imposed only as provided in Blazina. The commissioner ruled that under Blazina, the costs would be imposed only upon the trial court making an individualized finding that the defendant had "the current or likely future ability to pay his appellate costs." Sinclair's Objection to Cost Bill, Appendix C.

The problem with Sinclair's suggested remedy of a remand to the trial court is twofold. Not only would it delegate the issue of appellate costs away from the court that is assigned to exercise discretion, it would also potentially be expensive and time-consuming for courts and parties. We disagree with the Division Two commissioner's statement that an award of appellate costs is a discretionary legal financial obligation controlled by Blazina's decision to "remand the cases to the trial courts for new sentence hearings." Blazina, 182 Wn.2d at 839. The statute considered in Blazina, RCW 10.01.160, does not govern appellate costs. For costs that "may" be imposed upon a convicted defendant at the trial court level, it specifically sets forth parameters and limitations, prominently including the defendant's ability to pay and financial resources. RCW 10.01.160(3).

Our statute, RCW 10.73.160, does not set forth parameters for the exercise of discretion. Ability to pay is certainly an important factor that may be considered under RCW 10.73.160, but it is not necessarily the only relevant factor, nor is it necessarily an indispensable factor. Factors that may be relevant to an exercise of discretion by an appellate court under RCW 10.73.160 can be set forth and factually supported at least as efficiently in appellate briefs as in a trial court hearing.

To summarize, we are not persuaded that we should refrain from exercising our discretion on appellate costs. Nor are we attracted to the idea of delegating our discretion to a trial court. We conclude that it is appropriate for

this court to consider the issue of appellate costs in a criminal case during the course of appellate review when the issue is raised in an appellant's brief.[2]

We recognize that this approach is not without some practical inefficiencies. The State historically does not ask for an award of costs in every case. Appellate defense counsel may decide it is necessary to include a preemptive argument against costs in every case, only to find that the State does not intend to request costs. And as Sinclair points out, raising the potential issue of appellate costs in the brief of appellant puts appellate defense counsel in the position of assuming the client may not prevail on substantive claims.

A rule change requiring the State to include a request for costs in the brief of respondent would eliminate these problems, but even under the current system, it is feasible for the parties and the court to address costs in the course of appellate review. In the somewhat analogous situation created by RAP 18.1(b), a party who wishes to recover attorney fees under applicable law must "devote a section of its opening brief" to the request for fees or expenses.[3] Typically, a short paragraph or even a sentence is deemed compliant with the rule. Sinclair's motion for reconsideration devotes only half a page to outlining the reasons why this court should exercise its discretion not to impose costs, and

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[2] Sinclair's motion for reconsideration does not ask us to decide, and we do not decide, whether the appellate court has discretion to deny or substantially reduce an award of costs when asked to do so by a motion to modify a commissioner's award of costs under RAP 14.2.

[3] We say "somewhat" analogous because the costs the State is entitled to request are awardable under RAP Title 14, not under RAP 18.1. Under RAP Title 14, the State is not required to request costs in its appellate brief. Blank, 131 Wn.2d at 251. The State may simply present a cost bill as provided in RAP 14.4.

the State's response is similarly brief, so we are not concerned that this approach will lead to overlength briefs. We also point out that where the State knows at the time of receiving the notice of appeal that no cost bill will be filed, a letter so advising defense counsel would be courteous.

The State has the opportunity in the brief of respondent to make counterarguments to preserve the opportunity to submit a cost bill. The State complains that it lacks access to pertinent information at the stage of appellate briefing. This is not a persuasive assertion. The State merely needs to articulate the factors that influenced its own discretionary decision to request costs in the first place. Both parties should be well aware during the course of appellate review of circumstances relevant to an award of appellate costs. A great deal of information about any offender is typically revealed and documented during the trial and sentencing, including the defendant's age, family, education, employment history, criminal history, and the length of the current sentence. To the extent current ability to pay is deemed an important factor, appellate records in the future may also include trial court findings under Blazina. And the foregoing list of factors is not intended as an exhaustive or mandatory itemization of information that may support a decision one way or another.

As a general matter, the imposition of costs against indigent defendants raises problems that are well documented in Blazina—e.g., "increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration." Blazina, 182 Wn.2d at 835. It is entirely appropriate for an appellate court to be mindful of these concerns. Carrying an obligation to

pay a bill of $6,983.19 plus accumulated interest can be quite a millstone around the neck of an indigent offender. Still, exercising discretion means making an individualized inquiry. See Blazina, 182 Wn.2d at 838 ("the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry.") To decide that appellate costs should never be imposed as a matter of policy no more comports with a responsible exercise of discretion than to decide that they should always be imposed as a matter of policy.

When this court reviews a trial court's ruling on attorney fees in a civil case, we generally require the trial court to explain its reasoning based on the specific facts of the case, or the award will be remanded "to ensure that discretion is exercised on articulable grounds." Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632, 966 P.2d 305 (1998). Similarly, when this court decides the issue of appellate costs, it behooves us to explain the basis for the ruling. Both parties can be helpful to the appellate court's exercise of its discretion by developing fact-specific arguments from information that is available in the existing record.

In the present case, both parties focus on the factor of ability to pay. Sinclair makes the following argument:

> There are several reasons this court should exercise its discretion not to impose costs. Sinclair is currently 66 years old. CP 6. He was sentenced to a minimum term of incarceration of 280 months in June 2014. CP 142, 146. His sentence is indeterminate. CP 146. The trial court made no determination that Sinclair was able to pay any amount in trial court LFOs [legal financial obligations] and in fact waived all nonmandatory LFOs in the judgment and sentence. CP 144. The trial court appointed

> appellate counsel because Sinclair was "unable by reason of poverty to pay for any of the expenses of appellate review." See Appendix C (Indigency Order). Under the circumstances, there is no reason to believe Sinclair is or ever will be able to pay $6,983.19 in appellate costs (let alone any interest that compounds at an annual rate of 12 percent). This court should accordingly exercise discretion and deny appellate costs in the decision terminating review.

Motion for Reconsideration at 3. Attached to the motion for reconsideration is the trial court order authorizing Sinclair to appeal in forma pauperis and to have appointment of appellate counsel and preparation of the record at State expense. The order states that Sinclair "is unable by reason of poverty to pay for any of the expenses of appellate review" and "the defendant cannot contribute anything toward the costs of appellate review."

The State counters with a citation to the record at sentencing, where Sinclair's attorney stated that Sinclair was retired after 20 years of employment with a substantial local manufacturing company. Thus, the State argues it is "likely" that Sinclair is eligible for retirement income. The State also points out that the indigency order was submitted and signed ex parte, so that there is no independent check on the accuracy of the information on which the order was based.

The procedure for obtaining an order of indigency is set forth in RAP Title 15, and the determination is entrusted to the trial court judge, whose finding of indigency we will respect unless we are shown good cause not to do so. Here, the trial court made findings that support the order of indigency. Important to our determination, the Rules of Appellate Procedure establish a presumption of continued indigency throughout review:

> A party and counsel for the party who has been granted an order of indigency must bring to the attention of the trial court any significant improvement during review in the financial condition of the party. The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent.

RAP 15.2(f).

We have before us no trial court order finding that Sinclair's financial condition has improved or is likely to improve. No evidence supports the State's speculation that Sinclair has undisclosed retirement benefits. We therefore presume Sinclair remains indigent. Sinclair is a 66-year-old man serving a minimum term of more than 20 years. There is no realistic possibility that he will be released from prison in a position to find gainful employment that will allow him to pay appellate costs. Under these circumstances, we exercise our discretion to rule that an award to the State of appellate costs is not appropriate.

The motion for reconsideration is granted. The conviction is affirmed. Appellate costs will not be awarded. The pending cost bill and objection are stricken.

Becker, J.

WE CONCUR:

Leach, J.

Dwyer, J.

APPENDIX B

SUPERFORM

CCN/JCN NUMBER	B/A NUMBER	PCN NUMBER
		228741922

AGENCY: ☐ Unincorporated King County ☒ City of Bellevue

13 - 45777 CASE NUMBER ☐ FILE NUMBER

☒ FELONY ☐ MISDEMEANOR COURT King County Superior Court

SUSPECT DATA

DATE OF ARREST/TIME	BOOKING DATE/TIME	ARREST LOCATION
9-19-13/0948	9-19-13/	4929 151st Av. SE, Bellevue

NAME (LAST, FIRST, MIDDLE/JR., SR., 1ST, 2ND): Sinclair, Alan James

ALIAS, NICKNAMES:

IDENTITY IN DOUBT?	DOB	SEX	RACE	HGT	WGT	EYES	HAIR	SKIN TONE
YES ☐ NO ☒	5/8/49	M	W	5-8	220	Haz	Gry	

SCARS, MARKS, TATTOOS, DEFORMITIES:

ARMED/DANGEROUS: YES ☐ NO ☒

LAST KNOWN ADDRESS	CITY	STATE	ZIP	RESIDENCE PHONE	BUSINESS PHONE	CITIZENSHIP
4929 151st Av. SE	Bellevue	WA	98006	425-644-7741	425-891-5585	

OCCUPATION	EMPLOYER, SCHOOL (ADDRESS, SHOP/UNION NUMBER)	SOCIAL SECURITY NUMBER
Retired		[redacted]

DRIVER'S LICENSE #	STATE	AFIS #	FBI #	STATE ID #
SINCLAJ510KH	WA			

VEHICLE LICENSE #	STATE	YEAR	MAKE	MODEL	VEHICLE LOCATION	TOW COMPANY

PERSON TO BE CONTACTED IN CASE OF EMERGENCY	RELATIONSHIP	ADDRESS	CITY	STATE	PHONE

OFFENSE DATA

	RCW/ORD#	COURT/CAU#	CITATION #
1) OFFENSE ☒ DV Child Molestation 3	9A.44.089		
2) OFFENSE ☐ DV			
3) OFFENSE ☐ DV			
4) OFFENSE ☐ DV			

DATE & TIME OF VIOLATION	CRIMINAL TRAFFIC CITATION ATTACHED?	ACCOMPLICES
9-18-13/1720	YES ☐ NO ☐	

PROPERTY

LIST VALUABLE ITEMS OR PROPERTY LEFT FOR ARRESTEE AT JAIL:

LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE

YES ☒ NO ☐ (SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL #) IF YES DESCRIBE: Cell Phone

TOTAL CASH OF ARRESTEE	WAS CASH TAKEN INTO EVIDENCE?	SIGNATURE OF JAIL STAFF RECEIVING ITEMS/SERIAL #
$ 24.53	YES ☐ NO ☒ AMOUNT: $ Ø	524.53 JP 91508

OFFICER

ARRESTING OFFICER/SERIAL #	TRANSPORTING OFFICER/SERIAL #	SUPERVISOR SIGNATURE/SERIAL #
S. Hoover P-216		

SUPERFORM COMPLETED BY (SIGNATURE/SERIAL #)	CONTACT PERSON FOR ADDITIONAL INFORMATION (NAME/SERIAL #/PHONE)
S. Hoover P-216	Det. Hoover 425-452-7868

MISDEMEANOR BOOKINGS: Complete to this line. **FELONY BOOKINGS:** Complete both sides.
OBJECTION TO RELEASE (MISDEMEANOR OR FELONY) IS ON REVERSE SIDE.

COURT FILE

SUPERIOR COURT FILING INFO. ☐ IN CUSTODY ☐ AT LARGE ☐ OUT ON BOND

COURT CAUSE (STAMP OR WRITE):

COURT/DIST. CT.NO.	DIST. CT. BOND $	SUP. CT. DATE	WARRANT NUMBER

WARRANT INFO./EXTRADITE

WARRANT DATE	OFF CODE OFFENSE	AMOUNT OF BAIL $	FELONY ☐ MISD ☐	BENCH ☐ ARREST ☐

POLICE AGENCY ISSUING	COURT	WARRANT RELEASED TO: SERIAL UNIT DATE TIME

PERSON APPROVING EXTRADITION	SEAKING-LOCAL ONLY WACIC-STATE WIDE ☐	NCIC-WILL EXTRADITE FROM ID & OR ONLY ☐	NCIC-WILL EXTRADITE FROM OR,ID,MT,WY, CA, NV, UT, CO, AZ, NM, HI,AK ☐	NCIC-WILL EXTRADITE FROM ALL 50 STATES ☐

ENTRY: CCN#_____ DOE_____ WAC#_____ TOE_____ NIC#_____ OP#_____

CLEARANCE: DOC_____ TOC_____ OP#_____

REV. 06/98

(PERFORATION/DO NOT DUPLICATE BELOW THIS LINE)

INSTRUCTIONS FOR FELONY INVESTIGATION BOOKINGS

SET COPIER AT 8 ½ X 11 – COPY ABOVE THIS LINE / DO NOT COPY SECTION BELOW
MAKE & DELIVER – ORIGINAL (Include Victim Data Section) AND 3 COPIES TO JAIL
(Jail will distribute copies to DPA)
MAKE ADDITIONAL COPIES FOR POLICE FILE & DEPARTMENT DISTRIBUTION

13 - 45777

VICTIM DATA: Please include below data for the following types of arrests: any Domestic Violence or related offense, Assault, Harassment, Stalking and Sex Offenses. Information is used by jail staff for no contact orders and to make recommendations regarding release.

Victim's Name	Phone Number	Alternate Number		DOB
[redacted]	[redacted]	[redacted]		[redacted]
Address		**City**	**State**	**Zip**
[redacted]		Bellevue	WA	98006

CONFIDENTIAL ** FOR KING COUNTY JAIL USE ONLY **** CONFIDENTIAL**

SUSPECT NAME: Sinclair, Alan J. | 13 - 45777 | CASE NUMBER

STATEMENT OF PROBABLE CAUSE: NON-VUCSA

NON DRUG CRIME PROBABLE CAUSE

CONCISELY SET FORTH FACTS SHOWING PROBABLE CAUSE FOR EACH ELEMENT OF THE OFFENSE AND THAT THE SUSPECT COMMITTED THE OFFENSE. IF NOT PROVIDED, THE SUSPECT WILL BE AUTOMATICALLY RELEASED. INDICATE ANY WEAPON INVOLVED. (DRUG CRIME CERTIFICATE BELOW.)

15 year old (DOB 7/9/98) female victim IS stated that on 9/18/13 at about 1720 hrs. her grandfather (mother's father) Alan Sinclair stopped by her house at 14307 SE 49th St., Bellevue, King County, WA, while she was home alone. IS said that her grandfather grabbed her by her head, pulled her towards him, and kissed her with tongue. IS said that while Sinclair was kissing her he also groped her breasts over her clothes. IS said that her grandfather has been kissing her with his tongue since she was 13. IS said that almost every day after school this past year, Sinclair would pick her up and they would park and he would kiss her with his tongue. IS said that many of the times he would also grope her breasts over her clothes. She said she was 14 years old during this past school year. IS also said that when she was 14 Sinclair took photos of her when her breast were bare. She also said that Sinclair took her hand and attempted to put her hand on his penis but she pulled her hand away.

JS, IS's Mother, told me that she received a voice mail from her father Alan Sinclair on 9/18/13 at about 1723 hrs. that appeared to be a miss-dial. I listened to the voice message and heard rustling and one clear male voice and a voice that was in the background. The male voice said, "I love that tongue. I don't know if you love mine."

Sinclair was arrested and after waiving Miranda he said that on 9/18/13 at about 1700 hrs. he stopped by IS's house and IS gave him a hug and kiss. During the interview, Sinclair admitted that he has kissed IS with his tongue.

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.		REQUEST 72-HOUR RUSH FILE? YES ☒ NO ☐
DATE AND PLACE: 9/19/13 King County	SIGNATURE/AGENCY: S. Hoover P-216 Bellevue PD	ANTICIPATED FILING DATE: 9/23/13

DRUG CRIME CERTIFICATE

DRUG CRIME CERTIFICATE

Part I: On (date) the suspect (suspect's name) ☐ DELIVERED ☐ POSSESSED WITH INTENT TO DELIVER/MANUFACTURE ☐ POSSESSED what the undersigned officer (officer's name) based on training and experience, believes to be (approximate quantity and type of controlled substance). Approximate street value of the controlled substance is $(value of drugs).

Part II: FACTS INDICATING THE SUSPECT ☐ DELIVERED ☐ POSSESSED WITH INTENT TO DELIVER/MANUFACTURE or ☐ POSSESSED THE CONTROLLED SUBSTANCE:

ON (date)AT (time), WITHIN THE (city/unincorporated area of county), COUNTY OF KING, STATE OF WASHINGTON

My source of information about this crime (e.g., myself, other person with firsthand knowledge) :

☐Other Facts:

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATE AND PLACE: / SIGNATURE / AGENCY:

REQUEST 72-HOUR RUSH FILE? YES ☐ NO ☐	SODA ZONE YES ☐ NO ☐	DRUG FREE ZONE? Exact location is required: YES ☐ NO ☐
ANTICIPATED FILING DATE	LAB WORK REQUESTED? (Date/Type)	

OBJECT TO RELEASE

LAW ENFORCEMENT OBJECT TO RELEASE? YES ☒ NO ☐ IF YES, EXPLAIN WHY SAFETY OF INDIVIDUAL OR PUBLIC WILL BE THREATENED IF SUSPECT IS RELEASED ON BAIL OR RECOGNIZANCE (CONSIDER HISTORY OF VIOLENCE, MENTAL ILLNESS, DRUG DEPENDENCY, DRUG DEALING, DOCUMENTED GANG MEMBER, FAILURE TO APPEAR, LACK OF TIES TO COMMUNITY). INCLUDE FARR GUIDELINES. DESCRIBE TYPE OF WEAPON. BE SPECIFIC.

IS said that earlier in the year, Sinclair was angry with her because she didn't call him. IS said she went downstairs in Sinclairs house, at that time, to say she was sorry and Sinclair had a gun in his hand and said that he might kill himself if she wasn't sorry. IS's Mother said that Sinclair owns two guns.

TIES TO COMMUNITY (MARITAL STATUS, TIME IN COUNTY, ETC.)

CONVICTION RECORD: ____

☐ SUBJECT ARMED/DANGEROUS ☐ SUSPECT IDENTITY IN QUESTION ☐ WARRANT(S) FOR FTA

☐ HISTORY OF FTA'S (LIST) ____

DPA

PRELIMINARY APPEARANCE DATE	JUDGE	BAIL AMOUNT $		
RETURN DATE	CONDITIONS	P.R. Y☐ N☐	RETURNED Y☐ N☐	EXCUSED Y☐ N☐

DO NOT PUBLICATE BELOW THIS LINE

APPENDIX C

New Search | Property Tax Bill | Map This Property | Glossary of Terms | Area Report | Print Property Detail

PARCEL DATA

Parcel	3459900-0240
Name	[redacted]
Site Address	4929 151ST AVE SE 98006
Residential Area	031-008 (SE Appraisal District)
Property Name	

Jurisdiction	BELLEVUE
Levy Code	0330
Property Type	R
Plat Block / Building Number	3
Plat Lot / Unit Number	1
Quarter-Section-Township-Range	NW-23-24-5

Legal Description

HORIZON VIEW ADD DIV A LOT 2 OF KCSP NO 381003 REC NO 8302181045 SD PLAT DAF-ALL LOT 1 LESS POR WLY OF LN BEG AT NW COR OF LOT 1 SD SHORT PLAT TH S TAP ON SLY LN OF LOT 2 SD SHORT PLAT 20 FT SELY FR MOST WLY COR & TERM SD LN AKA LOT B KC LLA 385002
PLat Block: 3
Plat Lot: 1

LAND DATA

Highest & Best Use As If Vacant	SINGLE FAMILY
Highest & Best Use As Improved	PRESENT USE
Present Use	Single Family(Res Use/Zone)
Land SqFt	21,965
Acres	0.50

Percentage Unusable	0
Unbuildable	NO
Restrictive Size Shape	NO
Zoning	R-3.5
Water	WATER DISTRICT
Sewer/Septic	PUBLIC
Road Access	PUBLIC
Parking	
Street Surface	PAVED

Views

Rainier	
Territorial	
Olympics	
Cascades	
Seattle Skyline	
Puget Sound	
Lake Washington	
Lake Sammamish	
Lake/River/Creek	
Other View	

Waterfront

Waterfront Location	
Waterfront Footage	0
Lot Depth Factor	0
Waterfront Bank	
Tide/Shore	
Waterfront Restricted Access	
Waterfront Access Rights	NO
Poor Quality	NO
Proximity Influence	NO

Designations

Historic Site	
Current Use	(none)
Nbr Bldg Sites	
Adjacent to Golf Fairway	NO
Adjacent to Greenbelt	NO
Other Designation	NO
Deed Restrictions	NO
Development Rights Purchased	NO
Easements	NO
Native Growth Protection Easement	NO
DNR Lease	NO

Nuisances

Topography	
Traffic Noise	
Airport Noise	
Power Lines	NO
Other Nuisances	NO

Problems

Water Problems	NO
Transportation Concurrency	NO
Other Problems	NO

Environmental

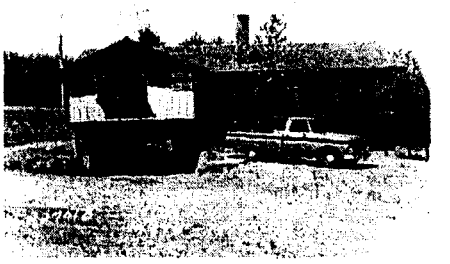
Environmental	NO

BUILDING

Building Number	1
Year Built	1966
Year Renovated	0
Stories	1
Living Units	1
Grade	9 Better
Grade Variant	0
Condition	Average
Basement Grade	8 Good
1st Floor	1,730
1/2 Floor	0
2nd Floor	0
Upper Floor	0

Click the camera to see more pictures.

Picture of Building 1



Reference Lin

- King County Ta Links
- Property Tax Advisor
- Washington Sta Department of Revenue (Exter link)
- Washington Sta Board of Tax Appeals (Extern link)
- Board of Appeals/Equali
- Districts Report
- iMap
- Recorder's Offi

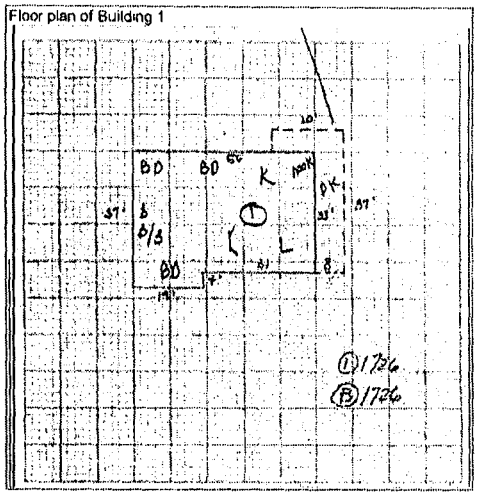
Scanned image surveys and ot map document

Scanned image plats

Notice mailing dat 08/27/2015

Finished Basement	1,030
Total Finished Area	2,760
Total Basement	1,730
Basement Garage	700
Unfinished 1/2	0
Unfinished Full	0
AGLA	1,730
Attached Garage	0
Bedrooms	5
Full Baths	1
3/4 Baths	2
1/2 Baths	0
Heat Source	Gas
Heat System	Forced Air
Deck Area SqFt	380
Open Porch SqFt	0
Enclosed Porch SqFt	0
Brick/Stone	0
Fireplace Single Story	0
Fireplace Multi Story	1
Fireplace Free Standing	0
Fireplace Additional	1
AddnlCost	0
Obsolescence	0
Net Condition	0
Percentage Complete	0
Daylight Basement	YES
View Utilization	

Floor plan of Building 1



TAX ROLL HISTORY

Account	Valued Year	Tax Year	Omit Year	Levy Code	Appraised Land Value ($)	Appraised Imps Value ($)	Appraised Total Value ($)	New Dollars ($)	Taxable Land Value ($)	Taxable Imps Value ($)	Taxable Total Value ($)	Tax Value Reason
3459900240	2015	2016		0330	404,000	284,000	688,000	0	404,000	284,000	688,000	
3459900240	2014	2015		0330	378,000	271,000	649,000	0	378,000	271,000	649,000	
3459900240	2013	2014		0330	336,000	240,000	576,000	0	336,000	240,000	576,000	
3459900240	2012	2013		0330	294,000	208,000	502,000	0	294,000	208,000	502,000	
3459900240	2011	2012		6140	312,000	223,000	535,000	0	312,000	223,000	535,000	
3459900240	2010	2011		6140	312,000	223,000	535,000	0	312,000	223,000	535,000	
3459900240	2009	2010		6140	312,000	235,000	547,000	0	312,000	235,000	547,000	
3459900240	2008	2009		6140	376,000	287,000	663,000	0	376,000	287,000	663,000	
3459900240	2007	2008		6235	333,000	251,000	584,000	0	333,000	251,000	584,000	
3459900240	2006	2007		6235	290,000	237,000	527,000	0	290,000	237,000	527,000	
3459900240	2005	2006		6235	209,000	261,000	470,000	0	209,000	261,000	470,000	
3459900240	2004	2005		6235	194,000	240,000	434,000	0	194,000	240,000	434,000	
3459900240	2003	2004		6235	191,000	231,000	422,000	0	191,000	231,000	422,000	
3459900240	2002	2003		6235	184,000	236,000	420,000	0	184,000	236,000	420,000	
3459900240	2001	2002		6235	170,000	218,000	388,000	0	170,000	218,000	388,000	
3459900240	2000	2001		6235	155,000	208,000	363,000	0	155,000	208,000	363,000	
3459900240	1999	2000		6235	89,000	190,000	279,000	0	89,000	190,000	279,000	
3459900240	1998	1999		6235	86,000	171,000	257,000	0	86,000	171,000	257,000	
3459900240	1997	1998		6235	0	0	0	0	75,000	156,000	231,000	
3459900240	1996	1997		6235	0	0	0	0	75,100	141,900	217,000	
3459900240	1994	1995		6235	0	0	0	0	75,100	141,900	217,000	
3459900240	1992	1993		6235	0	0	0	0	67,000	150,000	217,000	
3459900240	1990	1991		6235	0	0	0	0	64,400	144,200	208,600	
3459900240	1988	1989		6235	0	0	0	0	36,000	87,500	123,500	
3459900240	1986	1987		6235	0	0	0	0	37,800	84,400	122,200	
3459900240	1985	1986		6235	0	0	0	0	42,000	70,600	112,600	
3459900240	1984	1985		6235	0	0	0	0	46,000	70,600	116,600	
3459900240	1983	1984		6235	0	0	0	0	46,000	70,600	116,600	
3459900240	1982	1983		6235	0	0	0	0	33,300	70,600	103,900	

SALES HISTORY

Excise Number	Recording Number	Document Date	Sale Price	Seller Name	Buyer Name	Instrument	Sale Reason
2763157	20151023001245	10/5/2015	$723,000.00	SINCLAIR ALAN J+THERESA C	[redacted]	Statutory Warranty Deed	None
897930	198609120124	8/22/1986	$115,500.00	HUFF THOMAS G+MARY ANN	SINCLAIR ALAN J+THERESA C	Warranty Deed	None

REVIEW HISTORY

PERMIT HISTORY

HOME IMPROVEMENT EXEMPTION

New Search | Property Tax Bill | Map This Property | Glossary of Terms | Area Report | Print Property Detail

APPENDIX D

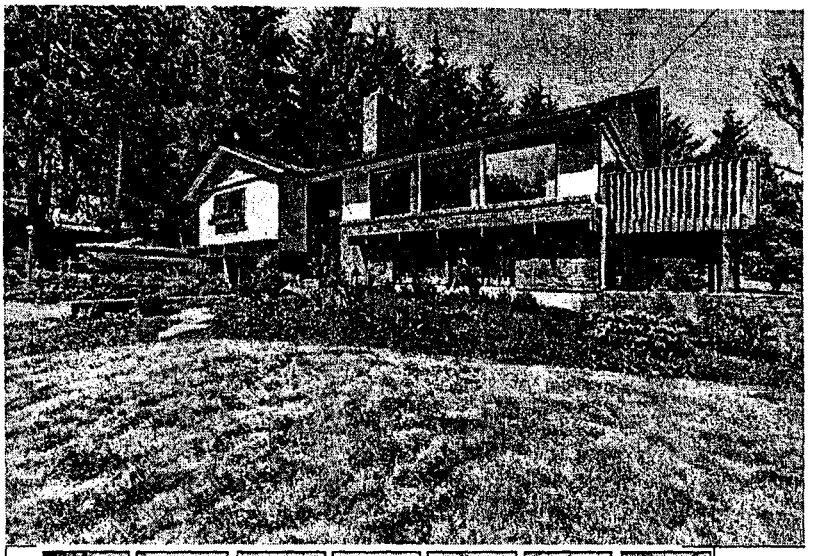
REDFIN

Buy & Sell Real Estate Agents Tools ▾

4929 151st Ave SE
Bellevue, WA 98006
Status: Sold

$819,147	$723,000	5	2.5	2,760 Sq. Ft.
Redfin Estimate	Sold Oct 23, 2015	Beds	Baths	$297 / Sq. Ft.

Built: 1965 Lot Size: 0.50 Acres



Street View

Spacious 5 bedroom, 2.5 bath home sits high on a beautifully landscaped 22,000sq ft lot, located in an area of $1m+ homes. Gorgeous hardwoods in upstairs bedrooms and more waiting under LR, hall and DR carpet. Large family room plus 2 BD downstairs. 2 car garage, plus extra parking for your boat or RV off the tree lined circular drive. Enjoy the Mt. Baker view from the large wrap-a-round deck. Newport H. S, ranked #3 in the state. Lots of room inside and out. Ready for you to make it your own!

Property Type	Residential	Style	Split-Entry
View(s)	Mountain(s), Territorial	Community	Eaglesmere
County	King	MLS#	812278

Listing provided courtesy of
Gayle Sammons, John L. Scott R.E. W. Seattle

Source
NWMLS

Buyer's Agent
Jennifer Dovey, Windermere RE South Sound, Inc

Redfin last checked: 22 minutes ago | **Last updated:** 3 months ago

Redfin has the best data. Why?

Map Nearby Homes Print This Listing

Problem?

Please add a private note about this home...

Kelli Howlson
REDFIN Real Estate Agent

Kelli recently closed 2 homes in Eastgate-Cougar Mountain

Talk to Kelli About Selling

Marina Pelzel
REDFIN Real Estate Agent

★★★★½
28 client reviews

Talk to Marina About Selling

Kahlil Mathews
REDFIN Real Estate Agent

Kahlil recently closed 23 homes in Bellevue

Talk to Kahlil About Buying

1 of 3 Redfin Agents in this area

(425) 728-7412
Questions? Call Kelli's Team

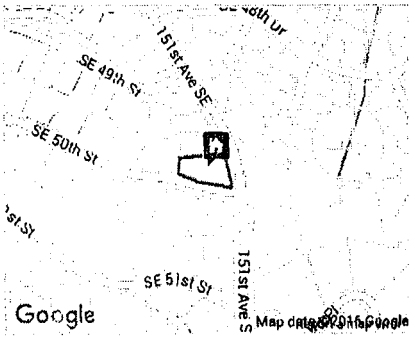
(425) 728-7559
Questions? Call Marina's Team

(425) 274-2687
Questions? Call Kahlil's Team

Monthly Home Report

Subscribe to This Home

Get a monthly email about sales activity near this home, and track its value on your personalized Home Dashboard.



Expand Map | Street View | Directions

Redfin Estimate for 4929 151st Ave SE

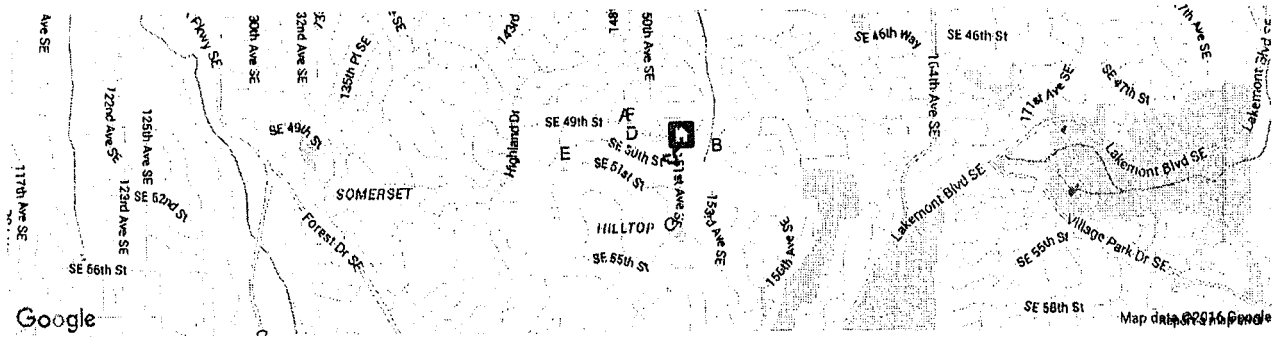
$819,147
Redfin Estimate

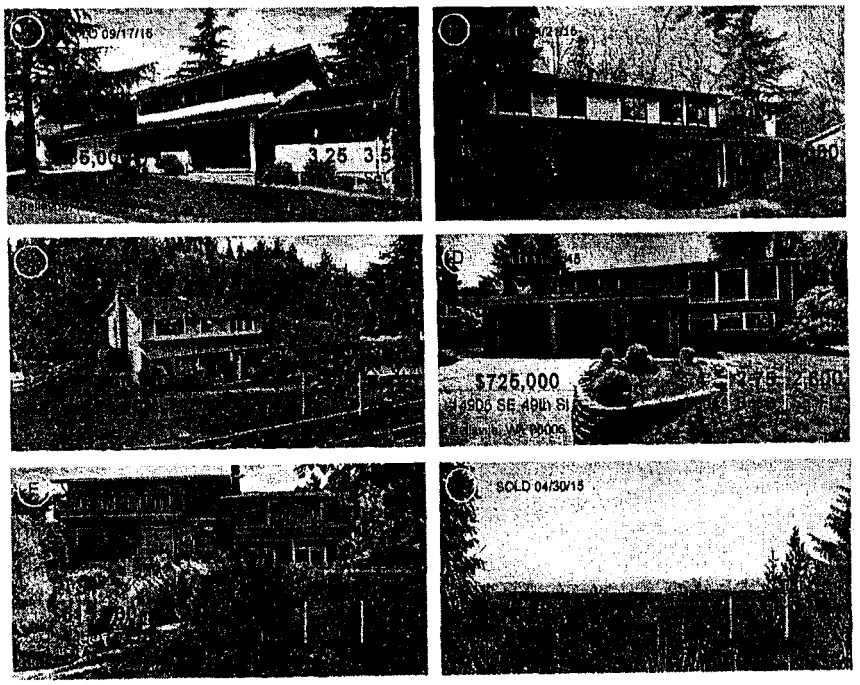
+$96,147
since last sold on 10/23/15

Subscribe to our free monthly Home Report on activity near this home.

Subscribe

The Redfin Estimate is based on the following comparable homes sold nearby in the last year.





Disagree with our estimate? Send Feedback

Want a Professional Estimate?

We're here to help! Kelli will contact you within four business hours.

First Name | Last Name

Email | (XXX) XXX-XXXX

I'd like a detailed market analysis for my home at 4929 151st Ave SE.

Kelli Howison

4.8 72 Reviews

Submit

You are creating a Redfin account and agree to our Terms of Service and Privacy Policy

Property Details for 4929 151st Avenue Southeast

Interior Features

Bedroom Information
- # of Bedrooms (Lower): 2
- # of Bedrooms (Upper): 3
- Master Bedroom on Upper Level

Bathroom Information
- # of Baths (Full): 1
- # of Baths (3/4): 2
- # of Upper Baths (Full): 1
- # of Lower Baths (3/4): 1
- # of Upper Baths (3/4): 1

Room Information
- Kitchen without Eating Space on Upper Level
- Dining Room on Upper Level
- Living Room on Upper Level
- Family Room on Lower Level
- Utility Room on Lower Level
- Daylight Basement, Fully Finished Basement

Interior Features
- Bath Off Master, Double Pane/Storm Windows, Dining Room, Security System

Fireplace Information
- # of Fireplaces: 2
- # of Fireplaces (Lower): 1
- # of Fireplaces (Upper): 1

Flooring Information
- Hardwood Floor, Laminate Floor, Vinyl Floor, Wall-to-Wall Carpet

Equipment
- Dishwasher, Double Oven, Dryer, Garbage Disposal, Range/Oven, Refrigerator, Washer

Heating & Cooling
- Forced Air Heat

Parking / Garage, Exterior Features, Multi-Unit Information, School / Neighborhood

Parking Information
- # of Covered Spaces: 2
- Attached Garage

Building Information
- Built On Site
- Brick Exterior, Wood Exterior
- Slab Foundation
- Composition Roof

Community Information
- CC&Rs

School Information
- Elementary School: Buyer To Verify
- Junior High School: Buyer To Verify
- Senior High School: Newport Snr High
- School District: Bellevue

Utilities, Financing, Location Details, Listing Information

Utility Information
- Energy Source: Natural Gas
- Public Water Source
- Sewer Connected
- Power Company: Puget Power
- Water Company: City of Bellevue
- Sewer Company: City of Bellevue

Financial Information
- No Senior Exemption

Location Information
- East Side (South of Interstate 90)
- Driving Directions: I-90 E Take Exit 11A toward Eastgate Wy. Keep R to take the 150th Ave SE ramp. turn R onto 150th Ave, it becomes 148th Pl SE. Turn L onto SE 45th Pl. Turn R onto 150th Ave which becomes 151st Ave SE

Listing Information
- Possession: Closing

Property / Lot Details

Property Features
- Deck, Natural Gas Available, RV Parking

Lot Information
- Corner Lot, Lot Is On Paved Street
- Fruit Trees, Sloped, Wooded

Property Information
- Sq. Ft. (Finished): 2,760
- Preliminary Title Ordered: Yes
- Tax ID #: 3459900240
- Plat/Subdivision: Horizon View

Details provided by NWMLS and may not match the public record. Learn More.

Redfin Tour Insights for 4929 151st Ave SE

No Tour Insights on This Home

We haven't left any insights about this home yet, but as soon as we do, we'll leave our thoughts here.

Property History for 4929 151st Avenue Southeast

Date	Event	Price
Oct 23, 2015	Sold (MLS) (Sold)	$723,000
Sep 23, 2015	Pending	—
Sep 15, 2015	Pending (Pending Inspection)	—
Sep 11, 2015	Price Changed	$720,000
Sep 11, 2015	Relisted (Active)	—
Jul 24, 2015	Pending	—
Jul 1, 2015	Listed (Active)	$699,888

For completeness, Redfin often displays two records for one sale: the MLS record and the public record. Learn More.

Public Records for 4929 151st Avenue Southeast

Taxable Value

Land	$378,000
Additions	$271,000
Total	$649,000
Taxes (2015)	**$5,781**

Basic Info

Beds	5
Baths	2.5
Floors	1
Year Built	1965
Year Renovated	—
Style	Single Family Residential
Finished Sq. Ft.	2,760
Unfinished Sq. Ft.	700
Total Sq. Ft.	3,460
Lot Size	21,965

County King County

APN 3459900240

County Data Refreshed Oct 6, 2015

Public records are from King County and may not match the MLS record. Information deemed reliable not guaranteed. Buyer to verify all information. Learn More

Activity

Views	Favorites	X-Outs	Redfin Tours
—	—	—	—

Schools for 4929 151st Ave SE

Serving This Home | Elementary | Middle | High

School Name & GreatSchools Rating	Distance
Eastgate Elementary School	3.8 mi
Tillicum Middle School	2.9 mi
Newport Senior High School	1.7 mi

School data provided by GreatSchools. School service boundaries are intended to be used as reference only. To verify enrollment eligibility for a property, contact the school directly.

Neighborhood Info for 4929 151st Ave SE

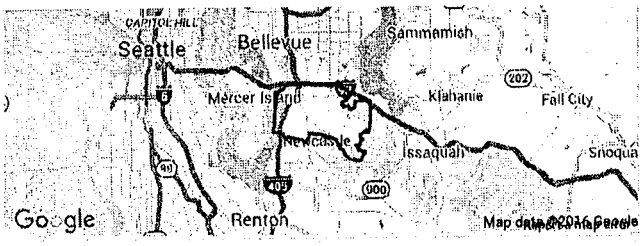
Area Overview for 98006

Transportation in 98006

Walk Score®	Transit Score®	Bike Score™
11	23	10

This area is car dependent — almost all errands require a car. Transit is barely an option, and almost all errands require a car. There is a minimal amount of infrastructure for biking.

98006 Real Estate Sales *(last 90 days)*



What Takes to Win an Offer near 98006 | Median Sale / List | # Sold Homes | # Offers | 4.1

Price	Beds	Baths	Sq. Ft.			
~$600K	3	2.25	~2,000	Median $ / Sq. Ft.	$307	Avg. Down Payment 21.6%

OFFER NOT ACCEPTED

114% Offer-to-list ratio
3 Days on market
6 Competing Offers
— Down payment

An all cash offer well over my clients offer was accepted. The seller and listing agent were concerned the property would not appraise for the high offer amount and thus, chose the all cash offer.

Debbie Barbara
Agent

Price	Beds	Baths	Sq. Ft.
~$550K	3	1.5	~1,250

OFFER NOT ACCEPTED

Listing agent said there were 7 offers total. He said 3 offers went way over the list price and was much higher than my client's offer of $25,050 over asking price.

Debbie Barbara
Agent

105% Offer-to-list ratio
7 Days on market
7 Competing Offers
< 20% Down payment

~$400K Price | 3 Beds | 1 Baths | ~1,250 Sq. Ft.

OFFER NOT ACCEPTED

We came in with a strong offer with an escalation clause, but lost out to a cash buyer. Buyers did everything right, but it is so hard to win when there is a cash offer in the mix.

Daria Kurkjy
Agent

96% Offer-to-list ratio
4 Days on market
2 Competing Offers
20% Down payment

~$800K Price | 4 Beds | 2.25 Baths | ~2,500 Sq. Ft.

WINNING OFFER

We conducted a pre-inspection to be prepared for the multiple offer scenario we anticipated. We were competitive on price and shortened all other contingencies, but what won this deal was the personal letters written by the buyers and their daughter. The letters work!!

Kathy Miller
Agent

103% Offer-to-list ratio
6 Days on market
— Competing Offers
— Down payment

~$550K Price | 3 Beds | 1.5 Baths | ~1,250 Sq. Ft.

OFFER NOT ACCEPTED

There were 7 offers and according to the listing agent it went well over asking price. My client offered asking with a $25K escalation clause and no inspection.

Debbie Barbara
Agent

100% Offer-to-list ratio
7 Days on market
— Competing Offers
20% Down payment

Median Real Estate Values

Location	List Price	$ / Sq. Ft.	Sale / List
Eastgate-Cougar Mountain	$1,613,145	$342	98.0%
Horizon View	$1,399,950	$359	—
98006	$864,950	$307	99.3%
Bellevue	$944,000	$483	100.1%
King County	$541,940	$244	100.6%

$/Sq. Ft. Houses in 98006

Similar Homes to 4929 151st Ave SE

Nearby Homes for Sale

			0.3 mi.				0.7 mi.				0.6 mi.	
$864,950	5	2.5	2,820	$1,250,000	4	2.25	4,090	$2,200,000	0	—	—	
4706 147th Place SE	Beds	Baths	Sq. Ft.	14014 SE 47th St	Beds	Baths	Sq. Ft.	4502 SE 145th Place	Beds	Baths	Sq. Ft.	
Bellevue, WA 98006				Bellevue, WA 98006				Bellevue, WA 98006				

Homes similar to 4929 151st Ave SE are listed between $865K to $2,200K at an average of $480 per square foot.

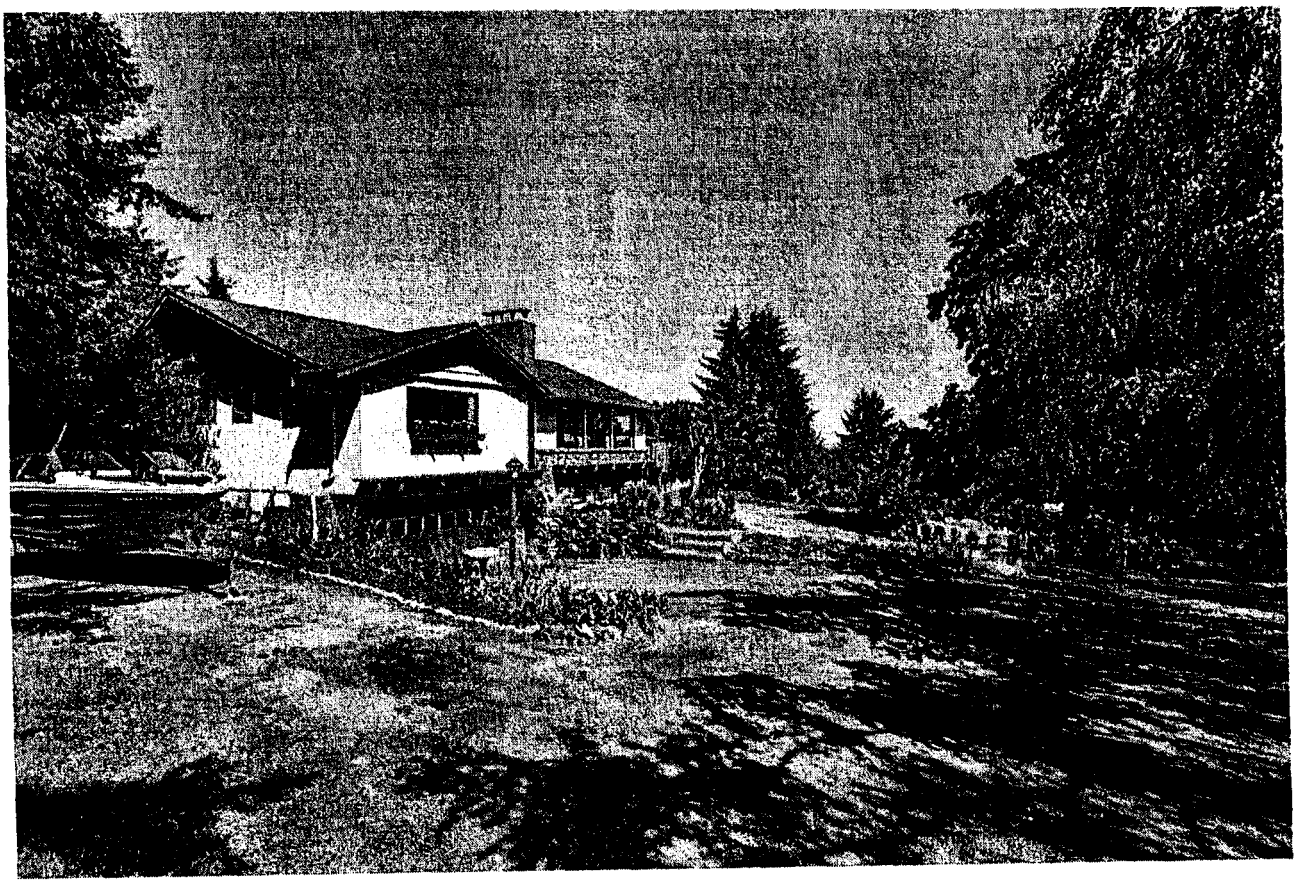
Nearby Recently Sold Homes

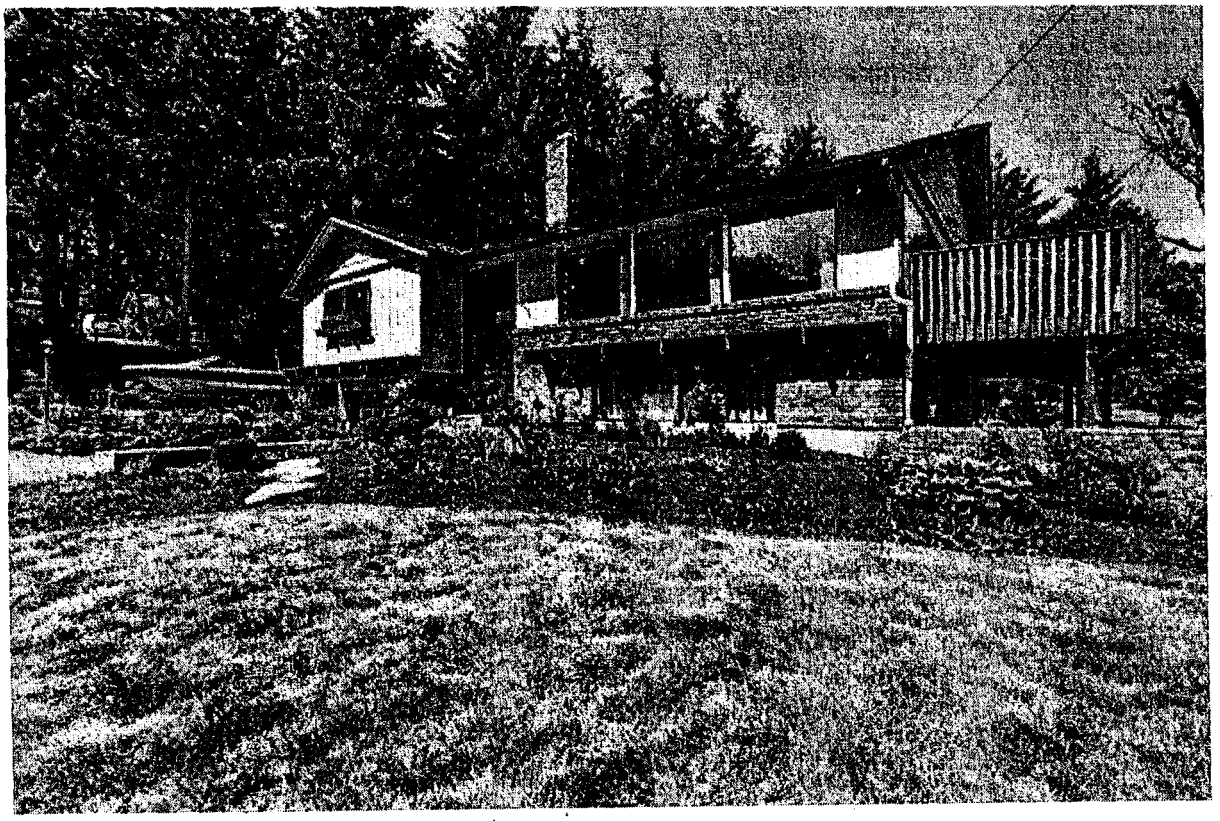
SOLD 09/03/15			0.7 mi.	SOLD 11/24/15			0.1 mi.	SOLD 10/22/15			0.6 mi.	
$830,000	5	2.5	3,050	$725,000	4	2.75	2,600	$690,000	4	2.5	2,960	
4432 156th Place SE	Beds	Baths	Sq. Ft.	14905 SE 49th St	Beds	Baths	Sq. Ft.	15208 SE 44th Place	Beds	Baths	Sq. Ft.	
Bellevue, WA 98006				Bellevue, WA 98006				Bellevue, WA 98006				
SOLD 11/13/15			0.5 mi.	SOLD 08/04/15			0.5 mi.	SOLD 09/04/15			1.6 mi.	
$862,500	4	3	3,293	$689,000	4	2.75	2,550	$760,000	3	2.5	2,610	
4517 152nd Lane SE	Beds	Baths	Sq. Ft.	4516 153rd Ave SE	Beds	Baths	Sq. Ft.	4012 133rd Ave SE	Beds	Baths	Sq. Ft.	
Bellevue, WA 98006				Bellevue, WA 98006				Bellevue, WA 98006				

Nearby homes similar to 4929 151st Ave SE have recently sold between $625K to $863K at an average of $265 per square foot.

4929 151st Ave SE is a house in Bellevue, WA 98006. This 2,760 square foot house sits on a 0.5 acre lot and features 5 bedrooms and 2.5 bathrooms. This property was built in 1965 and last sold on October 23, 2015 for $723,000. Nearby schools include Hillside Student Community, Somerset Elementary School and Cougar Mountain Montessori. The closest grocery stores are Market Force, Matthew's Thriftway and Town & Country Markets. Nearby coffee shops include Lakemont BigFoot Java, Starbucks and Mondo's. Nearby restaurants include Subway, Teriyaki House and Domino's Pizza. 4929 151st Ave SE is near Saddleback Park, Whispering Heights Open Space and Saddleback Open Space. There are minimal bike lanes and the terrain has very steep hills. 4929 151st Ave SE is somewhat bikeable, there is minimal bike infrastructure.

APPENDIX E





Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Kevin A March, the attorney for the respondent, at MarchK@nwattorney.net, containing a copy of the Petition for Review, in State v. Alan James Sinclair, II, Cause No. 72102-0, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 2nd day of February, 2016.

Name:
Done in Seattle, Washington

CERTIFICATE OF SERVICE BY EMAIL