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NO. 62279-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

In re Personal Restraint Petition of
BRADLEY PETERS,
Petitioner.

STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

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A. AUTHORITY FOR RESTRAINT OF PETITIONER

Bradley Peters is restrained pursuant to Judgment and Sentence in King County Superior Court No. 05-1-09393-1 KNT. Appendix A.

B. ISSUES PRESENTED

1. Whether this petition should be dismissed where Peters has failed to show that the videotaped deposition of Dr. Click, during which his attorney cross-examined the witness, violated his right to confrontation when it was introduced at trial.

2. Whether Peters has failed to show actual and substantial prejudice from any violation of his right to confrontation as a result of the videotaped deposition being played at his trial.

3. Whether Peters has failed to show actual and substantial prejudice arising out of his own absence from the deposition, where his attorney was present and cross-examined the witness.

4. Whether Peters has failed to show that trial counsel performed deficiently in choosing not to object to the videotaped deposition, where Dr. Click, who had just completed her medical residency at Harborview, was scheduled to begin an out-of-state

training program prior to the beginning of trial, and counsel had a full and fair opportunity to cross-examine the witness.

5. Whether Peters has failed to show prejudice arising out of the use of the videotaped deposition at trial, where Dr. Click's testimony was cumulative of the testimony of several other witnesses, including the victim herself.

6. Whether Peters has failed to show that appellate counsel was deficient in failing to raise the confrontation claim on direct appeal, where the evidence in the record on appeal was insufficient to rebut the conclusion that Peters waived this claim.

C. STATEMENT OF THE CASE

Petitioner Bradley Peters was charged by information with Rape of a Child in the Second Degree, Child Molestation in the Second Degree, and Rape of a Child in the Third Degree. The State alleged that, in 2004 and 2005, Peters repeatedly sexually abused his teenaged stepdaughter, J.P. Appendix B.

A jury convicted Peters as charged. Appendix C. Peters received a sentence within the standard range. Appendix A. The mandate on his direct appeal issued on June 13, 2008.

Appendix D. This petition was timely filed on June 12, 2009.

On August 22, 2008, the trial court denied a defense motion for a new trial. Appendix E. Peters appealed this decision under Court of Appeals No. 62279-0-I. This Court consolidated this petition with the pending appeal, under the same cause number.

The facts elicited at trial are set out in detail in the Brief of Respondent, filed in this Court on August 12, 2009. Additional facts will be included as needed within the relevant argument sections.

D. ARGUMENT

1. STANDARD OF REVIEW IN A PERSONAL RESTRAINT PETITION.

To obtain relief through a personal restraint petition, a petitioner must show that he was actually and substantially prejudiced either by a violation of his constitutional rights or by a fundamental error of law. In re Personal Restraint of Benn, 134 Wn.2d 868, 884-85, 952 P.2d 116 (1998). The petitioner must carry this burden by a preponderance of the evidence. In re Personal Restraint of Cook, 114 Wn.2d 802, 814, 792 P.2d 506 (1990).

A personal restraint petition is not a substitute for a direct appeal, and the availability of collateral relief is limited. In re

Personal Restraint of St. Pierre, 118 Wn.2d 321, 328-29, 823 P.2d 492 (1992). "Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders." In re Personal Restraint of Hagler, 97 Wn.2d 818, 824, 650 P.2d 1103 (1982).

2. INTRODUCTION AT TRIAL OF THE VIDEOTAPED DEPOSITION OF DR. CLICK DID NOT VIOLATE PETERS'S RIGHT TO CONFRONTATION, NOR CAN HE SHOW ACTUAL AND SUBSTANTIAL PREJUDICE THEREFROM.

Peters contends that the State failed to establish that Dr. Click was unavailable for trial. Thus, he argues, his right to confront the witnesses against him was violated when the videotaped deposition, which included the defense attorney's cross-examination of the witness, was played for the jury at his trial.

This argument fails for several reasons. First, by failing to object to the admission of the videotaped deposition, Peters waived any violation of his confrontation rights. Moreover, the fact that the State subpoenaed Dr. Click, and the fact of her impending travel to Texas to complete a training program that would prepare her for an imminent posting in Africa, sufficiently established her unavailability. In any event, because other professional witnesses

testified to the same statements of the victim (JP), and because JP herself testified at length and in detail about the abuse she suffered at the hands of Peters, Peters cannot show actual prejudice from any violation of his confrontation rights.

a. Dr. Click's Videotaped Deposition.

Prior to trial, the State subpoenaed Dr. Eleanor Click. Appendix F. When the parties appeared for the start of trial on June 29, 2006, the State promptly notified the court and counsel that Dr. Click was finishing her residency at Harborview Medical Center and would soon be leaving the state for work-related purposes. RP¹ 8-9. "[S]o I'm going to speak with Mr. Meryhew [defense counsel] about that. We may have to take her testimony by deposition on, I believe, Wednesday is her last potential day." RP 9. Defense counsel expressed no opposition to this plan.

Dr. Click's deposition was taken on July 6, 2006, and was recorded via videotape. Appendix G. Defense counsel Brad Meryhew was present. Id. at 2. Dr. Click explained that she had just completed her pediatrics residency, which included a rotation at

¹ The verbatim report of proceedings, which is consecutively numbered throughout, has been filed in the direct appeal.

Harborview. Id. at 5-6. Dr. Click's next job was taking her to Africa in mid-August to work with the Pediatric AIDS Corps; she was scheduled to leave at the end of the current week for a training program in Houston. Id. at 6-7.

Dr. Click testified that she had met with JP in the emergency room at Harborview on July 13, 2005 at 11:16 p.m. Id. at 7-8, 16-17. JP told Dr. Click that her stepfather (Peters) had initiated a talk with her earlier that day on the subject of anal sex. Id. at 18. During the course of the talk, he removed JP's clothing. Id. She cried and tried to turn away, but Peters turned her back to look at him. Id. He put a lubricant on her anus. Id. While checking to make sure that she had shaved her pubic hair properly, Peters accidentally inserted his fingers into her vagina. Id. He remained dressed, and there was no penile penetration or ejaculation. Id. at 18-19. Peters blew bubbles on JP's stomach with his mouth. Id. at 19.

JP described a two-year history of such talks with her stepfather, covering all aspects of sex. Id. She said they had made a deal approximately six months prior to this incident, agreeing that there would be only talk – no undressing or touching. Id. JP said that her stepfather had been checking to make sure

that her pubic hair was shaved ever since she first started to have pubic hair. Id. at 19-20. She denied any physical abuse. Id. at 20. While JP's eye contact during the visit was initially good, her eyes were downcast when she spoke of these events, and she had difficulty getting her words out. Id. at 21.

Dr. Click conducted a physical examination. Id. at 23. She noted a small, superficial linear fissure at the posterior portion of JP's vaginal opening. Id. JP said that she had cut herself while shaving. Id. at 24. Dr. Click took swabs from JP's mouth and vagina, and from the skin around her anus.² Id. at 25. Dr. Click did not note any signs of lubricant around JP's anus. Id. at 27-28.

Defense counsel Brad Meryhew cross-examined Dr. Click. Id. at 29-35. The entire videotaped deposition was later played at trial, with no objection from the defense. RP 531-59.

b. Peters Waived Any Objection To The Admission Of Dr. Click's Videotaped Deposition.

The constitutional right of confrontation may be waived by failure to object to admission of the evidence at issue.

² The "rape kit" was later inadvertently destroyed, and the swabs were never tested. RP 301-05, 505-09.

Melendez-Diaz v. Massachusetts, ___ U.S. ___, 129 S. Ct. 2527, 2534 n.3, 174 L. Ed. 2d 314 (2009) ("The right to confrontation may, of course, be waived, including by failure to object to the offending evidence . . ."). The defense did not object when the State suggested that it would be necessary to depose Dr. Click prior to trial. The defense raised no objection at the deposition itself. And the defense did not object when Dr. Click's videotaped deposition was played for the jury during trial. Peters has thus waived any claim that the introduction at trial of Dr. Click's videotaped testimony violated his right to confront witnesses.

c. The Use Of The Videotaped Deposition At Trial Did Not Violate Peters's Right To Confrontation.

Even if this Court considers the Confrontation Clause claim on its merits, the claim should be rejected. Dr. Click's videotaped deposition was properly admitted at trial.

The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right. . . to be confronted

with the witnesses against him. " U.S. Const. amend. VI.³ The Confrontation Clause generally bars the admission of statements of a witness who does not testify at trial, unless the witness was unavailable to testify and the defendant had a prior opportunity to cross-examine the witness.⁴ Crawford v. Washington, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

A witness is not "unavailable" unless the prosecution has made a good-faith effort to obtain her presence at trial. State v. Hacheny, 160 Wn.2d 503, 521, 158 P.3d 1152 (2007). The lengths to which the prosecution must go to procure the witness's presence is a question of reasonableness. Id.

In Hacheny, it became clear prior to trial that three witnesses whom the State had subpoenaed were planning to leave the country prior to trial. Id. at 520-21. At the State's request, the

³ To the extent that Peters also argues that the State did not fully comply with the notice requirements for taking a deposition (PRP at 12-13), he waived this claim by failing to object below. See State v. Robinson, 120 Wn. App. 294, 299-300, 85 P.3d 376, rev. denied, 152 Wn.2d 1031 (2004) ("Because Robinson did not object to notice at the modification hearing, he waived the notice requirements and we will not address the issue on appeal."). In any event, it is clear that Peters had actual notice of the deposition, which his attorney attended and participated in while Peters himself went to lunch. See Attachments A and B to PRP.

⁴ The prior opportunity to cross-examine the witness is not at issue here – Peters's counsel was able to cross-examine Dr. Click during the videotaped deposition. Appendix G at 29-35.

parties took videotaped depositions; Hacheney was present, and his attorney cross-examined each witness with the knowledge that the witnesses would be out of the country at the time of trial. Id. at 521. At trial, the State submitted letters confirming that the witnesses were indeed out of the country. Id.

Nevertheless, when the State sought to use the videotaped depositions in lieu of live testimony, the defense objected, arguing that the State had not shown that the witnesses were truly unavailable, and had done nothing to secure their presence at trial. Id. The trial court allowed the depositions to be shown, with appropriate redactions. Id.

On appeal, the court observed that the witnesses had made themselves available until they had to leave the country, and they had not been released from their subpoenas. The court pointed out that, because the depositions were videotaped, the jury was able to observe the witnesses' demeanor. Id. at 522. Referring to the testimony of witnesses who appeared at trial, the court found it significant that Hacheney's conviction "did not rest entirely on the testimony of any of the three deposed witnesses." Id. at 523. The court concluded that, "[i]n light of the hardship involved and the

testimony supplied by other witnesses, it was reasonable for the trial court to admit the videotaped depositions." Id.

This Court should reach a similar conclusion. As in Hachenedy, the State in this case subpoenaed the witness, and there is no evidence that the State ever released Dr. Click from her subpoena. See Appendix F. Dr. Click made herself available until she left for her training program in Texas. Peters's attorney cross-examined Dr. Click with the knowledge that she would be out of the state at the time of trial.⁵ The jury was able to observe Dr. Click's demeanor, as her testimony was presented via videotape.

Moreover, like Hachenedy's conviction, Peters's convictions did not rest entirely, or even primarily, on Dr. Click's testimony. Many of the statements that Dr. Click recounted from her conversation with JP were repeated during the testimony of Dr. Naomi Sugar, the medical director of the Harborview Center for Sexual Assault and Traumatic Stress and Dr. Click's supervisor at

⁵ While the hardship of returning for trial from a different state might not appear as extreme as in the case where a witness leaves the country, in Dr. Click's situation the hardship was nevertheless apparent. She was set to leave for Africa in a little over a month to work with an AIDS project; missing any part of the training program in Houston would thus negatively impact her preparation for this major next step in her career.

the time of this incident. RP 253, 259. Dr. Sugar met with JP on July 25, 2005. RP 262. JP told Sugar that Peters had talked to her about the "three variations" of sex; JP specifically named oral and anal sex. RP 271. JP said that Peters removed articles of her clothing, and that he touched her inside her vagina and her anus. Id. JP denied penile penetration or ejaculation. Id. at 272. JP said that Peters had put his finger into her vagina "on the day all this started." Id. JP confirmed that Peters had put Vaseline on her anus. Id. JP added that Peters made her shave his back and get into the shower with him. Id. at 273-74. JP said that this had started when she was in middle school, probably seventh grade.⁶ Id. at 274.

JP also recounted the incident to Lisa Power, a social worker at the Harborview emergency room. RP 477. JP told Power that her stepfather had taken her to his room and was teaching her about sex; he had removed her clothes and was starting to touch her when her mother came home and found them. RP 485.

⁶ JP (born 4-16-91) was 14 years old in July 2005. RP 334, 543-44.

JP's mother, Luz Peters, supported her daughter's account with her own testimony. RP 149-50. On the day in question, Luz⁷ returned home from an early-morning errand to find Peters with an erection. RP 167. She opened her bedroom door and found her daughter on the bed, naked and crying. RP 168. Luz told JP to get dressed, then gathered up both of her children⁸ and some of their things, and went to stay at a friend's house. Id. at 171. After speaking with her sister, a nurse, Luz took JP to Harborview that night. RP 200-04.

Most telling of all, JP herself testified in detail and at length about what had happened to her. RP 333-442. JP first met the defendant when she was about six years old. RP 340. She had thought of Peters as her dad since she was about eight. RP 344. On July 13, 2005, right after breakfast, Luz left the house to run an errand. RP 353-54. JP was upset about school, and Peters pulled her onto his lap, where she continued to cry. RP 354. Peters then picked JP up, "bridal style," and took her downstairs to the bedroom he shared with Luz. RP 354-55. He started quizzing JP on what

⁷ This witness shares the defendant's last name; to avoid confusion, Luz Peters will be referred to in this brief as "Luz." No disrespect is intended.

⁸ In addition to JP, Luz also had a son, Scott, three years younger than JP; Scott had cerebral palsy, and was confined to a wheelchair. RP 150-51.

was needed for anal sex ("[r]elax, lube, and insert"). RP 355-57. He removed her clothing, and stuck his finger into her vagina. RP 356-57. Then he rubbed some Vaseline on her anus. RP 357. When she started to cry, he pulled back; then he hugged her, told her it was all right, and put his mouth to her stomach and blew. RP 358. When they heard the front door open and close, Peters jumped up off the bed and threw the covers over JP; he left the bedroom, shutting the door behind him. RP 358-59. Luz came in and found JP like that and got very upset. RP 360.

JP testified about a history of this sort of thing with Peters, including sex talks, touching, and removal of her clothing, starting when she was 11 or 12. RP 361-65. Peters also had JP shave his back; he would undress her and then himself, and she would have to scrub him down in the shower, where he would touch her private area. RP 366-68, 397. He would check her pubic hair to see if it needed shaving. RP 368. Sometimes in the shower Peters had a partial erection. RP 399. At one point, they had reached an agreement that Peters would just talk to JP about sex, and would refrain from touching her or removing her clothes. RP 362-63, 393-95.

JP never told her mother while all this was going on. She explained:

My mom had it really rough after my dad left, and she worked a lot, and then she would always seem sad. And then when – after I saw her with Brad, I saw that she was happy, and I felt that, you know, seeing my mom happy, and my brother happy, and then all that – I just – I didn't feel like I wanted to tell her.

RP 404.

The trial judge, in finding that Peters was not prejudiced by the court's ruling prohibiting certain cross-examination of Luz Peters, commented on the centrality and credibility of JP's testimony: "It was the child who so credibly testified to the strange facts involving her relationship with the Defendant that was the center of the State's case." Appendix E at 6. Based on this, and on the other factors relied upon in Hacheney, this Court should find that Dr. Click was unavailable, and that it was reasonable to allow the jury to hear her videotaped deposition.

The cases cited by Peters do not require a different result. In Barber v. Page, 390 U.S. 719, 720, 88 S. Ct. 1318, 20 L. Ed. 2d 255 (1968), the defendant was tried in Oklahoma for armed robbery. The Court found a violation of the Confrontation Clause where "*the principal evidence* against [the defendant] consisted of

the reading of a transcript of the preliminary hearing testimony of a witness who at the time of trial was incarcerated in a federal prison in Texas." *Id.* (italics added). The Court observed that the State made "*no effort*" to use available means to secure the incarcerated witness's presence at trial. *Id.* at 724 (italics added).

In State v. Aaron, 49 Wn. App. 735, 736, 738, 741, 745 P.2d 1316 (1987), the record revealed *no effort* by the State to obtain the presence at trial of the *sole eyewitness* to the crime, who was in England at the time of trial. In United States v. Mann, 590 F.2d 361, 365-69 (1st Cir. 1978), the government read the deposition of its *principal witness*, an Australian national, at trial, having made *no effort* to secure her presence. In State v. Scott, 48 Wn. App. 561, 563, 739 P.2d 742 (1987), aff'd, 110 Wn.2d 682, 757 P.2d 492 (1988), the State *released* the *victim* of the burglary from his subpoena, and was allowed to use a deposition at trial in lieu of his testimony. In State v. Sanchez, 42 Wn. App. 225, 227-31, 711 P.2d 1029 (1985), rev. denied, 105 Wn.2d 1008 (1986), there was *no evidence* that the State had tried to subpoena the officer who handled the defendant's blood sample in a vehicular homicide case; the officer went on a planned vacation to Mexico, and her videotaped deposition was played at trial. In State v. Goddard,

38 Wn. App. 509, 511-13, 685 P.2d 674 (1984), the *only evidence* presented by the State at trial was the videotaped deposition of a witness whose presence at trial the State made *no effort* to obtain. In *all* of these cases, the defense objected to the use of the deposition at trial.

As far as the Confrontation Clause is concerned, this case bears far more resemblance to Hacheney than to any of the cases cited by Peters. This Court should find that Dr. Click was unavailable, and that the playing of her videotaped deposition at trial did not violate Peters's confrontation right.

d. Peters Cannot Show Prejudice From Any Error.

Even if Peters could show a violation of the Confrontation Clause, that would not end the inquiry in this collateral attack – he would still have to show actual prejudice.⁹ In re Benn, 134 Wn.2d at 884-85. As set out in detail above, the testimony provided to the jury through Dr. Click's videotaped testimony was available through

⁹ Peters mistakenly relies on Coy v. Iowa, 487 U.S. 1012, 1021, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988), in arguing that the State must show that any confrontation violation was harmless beyond a reasonable doubt. PRP at 17. But while that standard applied in Coy, a direct appeal, the burden is different in a collateral attack.

other witnesses, especially JP herself. Thus, even if the introduction of Dr. Click's videotaped deposition at trial was constitutional error, Peters cannot obtain relief in this petition.

Peters relies on two Oregon cases, State v. Norby, 218 Or. App. 609, 180 P.3d 752 (2008), and State v. Alne, 219 Or. App. 583, 184 P.3d 1164 (2008), rev. denied, 347 Or. 365 (2009). He points out that these cases emphasize the weight the jury would likely place on the testimony of a "neutral professional," and he argues that, for this reason, the admission of Dr. Click's videotaped testimony cannot be harmless error. PRP at 18-21.

These cases do not aid Peters. Both cases were direct appeals, and used the "harmless beyond a reasonable doubt" standard. Norby, 180 P.3d at 758-59; Alne, 184 P.3d at 1168-69. Moreover, unlike in this case, where JP herself testified at great length about Peters's actions, the child victims in Norby and Alne did not testify at trial. Norby, 180 P.3d at 756; Alne, 184 P.3d at 1166. The effect of a witness recounting a child's statements obviously has a far greater effect in a trial where the child does not testify. Finally, Dr. Sugar, a "neutral professional" of higher status than Dr. Click, whose testimony presumably carried even more weight with jurors, recounted many of the same statements from

Dr. Sugar's own interview with JP. Peters cannot show prejudice based on the admission of Dr. Click's videotaped testimony.¹⁰

3. PETERS CANNOT SHOW PREJUDICE ARISING OUT OF HIS OWN ABSENCE FROM THE DEPOSITION OF DR. CLICK.

Peters next argues that his right to be present at his trial, and his right to the assistance of counsel at trial, were violated because he was not present when Dr. Click gave her videotaped deposition. Because Peters had the opportunity to attend the deposition, but chose not to do so on the advice of counsel, his claim that his presence was necessary is properly brought as a claim of ineffective assistance of counsel. In any event, no matter how the issue is framed, Peters cannot prevail because he cannot show actual prejudice from his absence.

a. Ineffective Assistance Of Counsel.

To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient *and*

¹⁰ Indeed, the testimony of Dr. Click in some ways *helped* Peters. Dr. Click was unable to find any evidence of Vaseline near JP's anus. Appendix G at 27-28. In addition, Dr. Click testified that JP had described Peters's digital penetration of her vagina as accidental. *Id.* at 18, 30-31.

that the defendant suffered prejudice from the deficient performance. State v. Thomas, 109 Wn.2d 222, 225, 743 P.2d 816 (1987). Counsel's performance is deficient if it falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). There is a strong presumption that counsel performed effectively. Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). To show prejudice, the defendant must establish that there is a reasonable probability that the result of the proceeding would have been different but for counsel's deficient performance. State v. Lord, 117 Wn.2d 829, 883-84, 822 P.2d 177 (1991). If the reviewing court decides that either requirement has not been met, it need not address the other. State v. Garcia, 57 Wn. App. 927, 932, 791 P.2d 244, rev. denied, 115 Wn.2d 1010 (1990).

Even assuming that counsel was deficient in failing to inform Peters that Dr. Click's testimony would be presented at trial by playing the videotaped deposition before the jury, Peters cannot show the requisite prejudice. As set out above in § D.2., Dr. Click's testimony was cumulative of the testimony of other witnesses, including that of another "neutral professional," Dr. Sugar. More

importantly, it was cumulative of the testimony of the victim, JP, who testified in detail about the facts supporting the criminal allegations against Peters. Had the jury not heard from Dr. Click at all, there is no reasonable probability that the outcome of the trial would have been different.

Moreover, given the nature of Dr. Click's testimony, it is difficult to imagine what Peters could have added had he attended the deposition. Peters was not present during the events that Dr. Click described, i.e., her interview and physical examination of JP; thus, unlike cross-examination of JP herself, Peters could not likely have suggested useful questions for his attorney to ask of Dr. Click on cross-examination. And Dr. Click, as a "neutral professional" who had no particular stake in the outcome of the trial, was not likely to alter her testimony based on Peters's presence or absence during her examination.

b. Right To Be Present At Trial.

Peters would fare no better were this Court to address this as a violation of his constitutional right to be present at his trial. This right is rooted in the Confrontation Clause of the Sixth Amendment. United States v. Gagnon, 470 U.S. 522, 526,

105 S. Ct. 1482, 84 L. Ed. 2d 486 (1985). "The core of the constitutional right to be present is the right to be present when evidence is being presented." In re Personal Restraint of Lord, 123 Wn.2d 296, 306, 868 P.2d 835 (1994) (citing Gagnon, 470 U.S. at 526). Denial of the right to be present at trial is not structural error, and thus is subject to harmless error analysis. In re Benn, 134 Wn.2d at 921.

Of course, since this claim is raised in a collateral attack, Peters must show actual prejudice from any violation of his constitutional right to be present at Dr. Click's deposition. Again, based on all of the reasons set out in §§ D.2. and D.3.a., supra, Peters cannot meet this burden.

Again, the cases Peters cites do not aid him. In Christian v. Rhode, 41 F.3d 461, 464-65 (9th Cir. 1994), the defendant was *in custody*, and the State refused to transport him to the Cayman Islands for the depositions of several witnesses, one of whom was an alleged *associate* of the defendant and was prepared to testify that the defendant was the head of an allegedly fraudulent financial institution central to the State's case. While the appellate court found a violation of the defendant's constitutional rights, it nevertheless found no reversible error, and affirmed the denial of

the collateral attack. Id. at 467-68, 470. In State v. Collins, 265 Md. 70, 288 A.2d 163 (1972), the defendant received *no notice* of the deposition of the State's *principal witness* until after it had been taken. 288 A.2d at 164-66, 168. In State v. Basiliere, 353 So.2d 820 (Fla. 1977), neither the defendant *nor his attorney* was aware that a *discovery deposition* of the *victim of the crime* might ultimately be used at trial in lieu of testimony when the witness died unexpectedly prior to trial.

The problem with the "right to presence" claim is that, unlike the cases upon which he relies, Peters had notice of the deposition, and he was not prevented from attending. And unlike the cases Peters cites, Dr. Click was not central to the State's case.

c. Right To Assistance Of Counsel At Trial.

Finally, Peters cannot prevail by claiming that he was denied the assistance of counsel during a critical stage of his trial.¹¹ His attorney was present at the videotaped deposition and performed

¹¹ While this claim does not fit well with the facts of this case, perhaps Peters alleges the deprivation of counsel because he believes that a ruling in his favor would require reversal without any showing of prejudice. PRP at 22, 24. This is not necessarily the case when the claim is brought in a collateral attack. See In re Personal Restraint of St. Pierre, 118 Wn.2d 321, 328-29, 823 P.2d 492 (1992) (even where error is per se reversible on direct review, a higher standard applies in a collateral attack).

effectively in cross-examining Dr. Click. Moreover, no one prevented Peters from attending the deposition and conferring with his attorney during Dr. Click's testimony.

The cases Peters cites in support of this claim differ in important respects from the facts before this Court. In Riggins v. Nevada, 504 U.S. 127, 133, 137, 112 S. Ct. 1810, 118 L. Ed. 2d 479 (1992), the defendant was *compelled* to take an antipsychotic medication during trial, raising the "strong possibility" that his defense was impaired. Peters cites to United States v. Cronin, 466 U.S. 648, 659 n.25, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984), for the proposition that "[t]he Court has uniformly found constitutional error without any showing of prejudice when counsel was . . . *prevented* from assisting the accused during a critical stage of the proceeding." (italics added). In Geders v. United States, 425 U.S. 80, 82, 83 n.1, 96 S. Ct. 1330, 47 L. Ed. 2d 592 (1976), the trial court *forbade* the defendant from conferring with his attorney during an overnight break in the defendant's testimony. In United States v. Miguel, 111 F.3d 666, 669 (9th Cir. 1997), the trial court *prevented* the defendant from attending the deposition of the child victim in person, and *prevented* the defendant from communicating with counsel by telephone during the deposition.

Here, no one prevented Peters from having the assistance of counsel during the deposition. Rather, Peters himself chose not to attend, albeit under the mistaken impression that the deposition was akin to a witness interview. Peters was not deprived of the assistance of counsel at the deposition.

4. NEITHER TRIAL COUNSEL NOR APPELLATE COUNSEL WAS INEFFECTIVE WITH RESPECT TO DR. CLICK'S DEPOSITION.

Finally, Peters alleges ineffective assistance of both trial and appellate counsel with respect to the videotaped deposition.

However, even if counsel's performance was in some measure inadequate, Peters again fails to show a reasonable probability that the result of his trial would have been different but for his attorneys' alleged shortcomings. These claims should be rejected.

a. Trial Counsel Was Not Ineffective.

As detailed above, to prevail on a claim of ineffective assistance of trial counsel, Peters must show that his attorney's performance fell below an objective standard of reasonableness, and that he was prejudiced thereby. Thomas, 109 Wn.2d at 225. As argued above in § D.2.c., Peters's trial attorney did not act

unreasonably in acquiescing to the videotaped deposition of Dr. Click, as she was unavailable for trial and counsel had a full and fair opportunity to cross-examine the witness. Moreover, for all the reasons set out in § D.2, Peters cannot show actual prejudice from the introduction of the deposition at trial.

In addition, even assuming that his attorney performed deficiently in failing to fully inform Peters of the nature of the deposition, he cannot show actual prejudice. That is, he cannot show that, had he been present at the deposition while his attorney cross-examined Dr. Click, there is a reasonable probability that the jury would not have convicted him of these crimes.

b. Appellate Counsel Was Not Ineffective.

Nor can Peters show ineffective assistance of counsel on direct appeal. "[T]he exercise of independent judgment in deciding which issues may be the basis of a successful appeal is at the heart of the attorney's role in our legal process." In re Lord, 123 Wn.2d at 314. Thus, the failure to raise all possible nonfrivolous issues on appeal is not ineffective assistance. Id. In order to prevail on this claim, a defendant must show the merit of

the underlying legal issues that appellate counsel failed to raise, and then demonstrate actual prejudice. Id.

Peters can show neither. The State has already argued at length that Peters has not and cannot show actual prejudice. Nor can he show that the claim would not have been deemed waived on direct appeal. "The right to confrontation may, of course, be waived, including by failure to object to the offending evidence" Melendez-Diaz v. Massachusetts, 129 S. Ct. at 2534 n.3. The record on appeal indicates that Peters waived his presence at the deposition and his right to confront Dr. Click. Peters was represented by counsel at trial. Peters was in court on July 6, 2006, for jury selection. RP 95. He was not in custody during the trial. RP 3. The deposition took place over the noon hour on July 6th. Appendix G at 4. Peters never objected to the taking of the deposition, nor to its use at his trial. RP 8-9, 531-32; Appendix G at 4. Under these circumstances, an appellate court would likely find this claim waived for purposes of direct appeal.

The only way that Peters is now able to claim that he did not waive his presence or his confrontation rights with respect to Dr. Click's deposition is by submitting the declarations of both himself and his attorney. Attachment A to PRP (Declaration of Bradley Peters), Attachment B to PRP (Declaration of Trial Counsel Brad A. Meryhew). These declarations could not have been considered on direct appeal. See RAP 9.1 (record on direct review consists of verbatim report of proceedings, clerk's papers, exhibits, and a certified record of administrative adjudicative proceedings). Nor would the appellate court have reviewed this claim as manifest constitutional error under RAP 2.5(a). See McFarland, 127 Wn.2d at 333-34 (if facts necessary to adjudicate claimed error are not in record on appeal, error is not manifest and thus not reviewable on appeal). Any attempt to raise this claim on direct appeal would have been rejected.

E. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to dismiss this personal restraint petition.

DATED this 15th day of March, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: Deborah A. Dwyer
DEBORAH A. DWYER, WSBA #18887
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

PRESENTENCING STATEMENT & INFORMATION ATTACHED

CERTIFIED COPY TO COUNTY JAIL DEC 08 2006

FILED
05 DEC -8 PM 2:48
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

FAX HIV

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

BRADLEY M. PETERS

Defendant,

No. 05-1-09393-1 KNT

**JUDGMENT AND SENTENCE
FELONY**

* **CLERK'S ACTION REQUIRED**

I. HEARING

I.1 The defendant, the defendant's lawyer, BRAD MERYHEW, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 07/19/2006 by jury verdict of:

Count No.: I Crime: RAPE OF A CHILD IN THE SECOND DEGREE - DOMESTIC VIOLENCE
RCW 9A.44.076 Crime Code: 01067
Date of Crime: 08/01/2004 - 11/30/2004 Incident No. _____

Count No.: II Crime: CHILD MOLESTATION IN THE SECOND DEGREE - DOMESTIC VIOLENCE
RCW 9A.44.086 Crime Code: 01073
Date of Crime: 04/16/2003 - 11/30/2004 Incident No. _____

Count No.: III Crime: RAPE OF A CHILD IN THE THIRD DEGREE - DOMESTIC VIOLENCE
RCW 9A.44.079 Crime Code: 01069
Date of Crime: 07/13/2005 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

[] Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
- (b) While armed with a **deadly weapon other than a firearm** in count(s) _____ RCW 9.94A.510(4).
- (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
- (d) A **V.U.C.S.A offense committed in a protected zone** in count(s) _____ RCW 69.50.435.
- (e) **Vehicular homicide** Violent traffic offense DUI Reckless Disregard.
- (f) **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) **Non-parental kidnapping or unlawful imprisonment with a minor victim.** RCW 9A.44.130.
- (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses **encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in **Appendix B.**
- One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	6	XI			146 TO 194 MONTHS	LIFE AND/OR \$50,000
Count II	6	VII			57 TO 75 MONTHS	10 YRS AND/OR \$20,000
Count III	6	VI			46 TO 60 MONTHS	5 YRS AND/OR \$10,000
Count						

Additional current offense sentencing data is attached in **Appendix C.**

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D.** The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A.**

The Court **DISMISSES** Count(s) _____.

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs; Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived; (RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 The defendant, having been convicted of a FELONY SEX OFFENSE, is sentenced to the following:

(a) **DETERMINATE SENTENCE** : Defendant is sentenced to a term of confinement in the custody of the
[] King County Jail [] King County *Work/Education Release* (subject to conditions of conduct ordered
this date) Department of Corrections, as follows, commencing: immediately,
[] Date: _____ by _____ a.m. / p.m.

75 ~~months~~ days on count II; _____ months/days on count _____; _____ months/days on count _____;
60 ~~months~~ days on count III; _____ months/days on count _____; _____ months/days on count _____;
_____ months/days on count _____; _____ months/days on count _____; _____ months/days on count _____.

ALTERNATIVE CONVERSION - RCW 9.94A.680 (LESS THAN ONE YEAR ONLY):

_____ days of total confinement are hereby converted to:
[] _____ days of partial confinement to be served subject to the requirements of the King County Jail.
[] _____ days/hours community service under the supervision of the Department of Corrections to be
completed as follows: [] on a schedule established by the defendant's Community Corrections Officer;
[] _____
[] Alternative conversion was not used because: [] Defendant's criminal history, [] Defendant's
failure to appear, [] Other: _____

[] **CONFINEMENT LESS THAN ONE YEAR : COMMUNITY** [] **SUPERVISION**, for crimes
committed before 7-1-2000, [] **CUSTODY**, for crimes committed on or after 7-1-2000, is ordered
pursuant to RCW 9.94A.545 for a period of 12 months. The defendant shall report to the Department of
Corrections within 72 hours of this date or of his/her release if now in custody, shall comply with all the
rules, regulations and conditions of the Department for supervision of offenders (RCW 9.94A.720); shall
comply with all affirmative acts required to monitor compliance; and shall otherwise comply with terms set
forth in this sentence.

[] **APPENDIX _____** : Additional Conditions are attached and incorporated herein.

[] **COMMUNITY PLACEMENT / CONFINEMENT OVER ONE YEAR**: pursuant to RCW
9.94A.700, for **qualifying crimes committed before 6-6-1996**, is ordered for _____ months or for
the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months
for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12
months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against
person defined in RCW 9.94A.440 not otherwise described above.]

[] **APPENDIX H**: Community Placement conditions are attached and incorporated herein.

[] **COMMUNITY CUSTODY / CONFINEMENT OVER ONE YEAR**: pursuant to RCW 9.94A.710
for any **SEX OFFENSE** committed after 6-6-96 but before 7-1-2000, is ordered for a period of 36
months or for the period of earned early release awarded under RCW 9.94A.728 whichever is longer.

[] **APPENDIX H**: Community Custody conditions are attached and incorporated herein.

COMMUNITY CUSTODY / CONFINEMENT OVER ONE YEAR: pursuant to RCW 9.94A.715
for **qualifying crimes (non RCW 9.94A.712 offenses) committed after 6-30-2000** is ordered for the
following established range:

- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months **counts II+III**
- [] Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
- [] Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
- [] Crime Against Person, RCW 9.94A.411 - 9 to 18 months
- [] Felony Violation of RCW 69.50/52 - 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer.
Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant
to RCW 9.94A.737.

APPENDIX H: Community Custody conditions are attached and incorporated herein.

(b) **INDETERMINATE SENTENCE – QUALIFYING SEX OFFENSES** occurring after 9/1/01:
The Court having found that the defendant is subject to sentencing under RCW 9.94A.712, the defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; [] (Date): _____ by _____ m.

Count I : Minimum Term: 170 months days; Maximum Term: life years/life;

Count _____ : Minimum Term: _____ months/days; Maximum Term: _____ years/life;

Count _____ : Minimum Term: _____ months/days; Maximum Term: _____ years/life;

Count _____ : Minimum Term: _____ months/days; Maximum Term: _____ years/life.

COMMUNITY CUSTODY – pursuant to RCW 9.94A.712 for qualifying **SEX OFFENSES** committed on or after September 1, 2001, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence as set forth above. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.713, 9.94A.737.

APPENDIX H: Community Custody conditions are attached and incorporated herein.

4.5 ADDITIONAL CONDITIONS OF SENTENCE

The above terms for counts I, II, III are consecutive concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

[] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special **WEAPON** finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98.)

[] The enhancement term(s) for any special **WEAPON** findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The **TOTAL** of all terms imposed in this cause is 170 months.

Credit is given for [] _____ days served days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6). [] Jail term is satisfied – defendant shall be released under this cause.

4.4 4.6 **NO CONTACT:** For the maximum term of life years, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties with: J.P. (4/16/91)

Any minors without supervision of a responsible adult who has knowledge of this conviction. by a person approved by the Community Corrections officer.

*4.7 DNA TESTING: The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

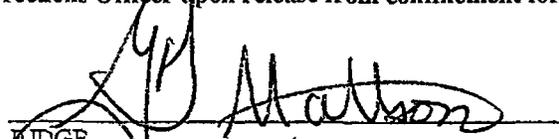
HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

*4.8 SEX OFFENDER REGISTRATION:
The defendant shall register as a sex offender as ordered in APPENDIX J.

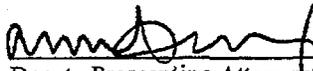
4.9 ARMED CRIME COMPLIANCE, RCW 9.94A.475,.480. The State's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

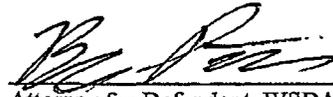
Date: 12/8/06


JUDGE
Print Name:

Presented by:

 32068
Deputy Prosecuting Attorney, WSBA#
Print Name: Amy Montgomery

Approved as to form:


Attorney for Defendant, WSBA# 26169
Print Name: Cathy Goenly

FINGERPRINTS

BEST IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: _____
DEFENDANT'S ADDRESS: DOC

BRADLEY M PETERS

DATED: 4-12-06

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

[Signature]
JUDGE, KING COUNTY SUPERIOR COURT

BY: [Signature]
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

S.I.D. NO.
DOB: AUGUST 1, 1972
SEX: M
RACE: W

CLERK

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 BRADLEY M. PETERS)
)
 Defendant,)
)

No. 05-1-09393-1 KNT
APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 12/6/06



JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, v. PETERS, Bradley, Defendant, No. 05-1-09393-1 KNT APPENDIX H COMMUNITY CUSTODY

The Court having found the defendant guilty of offense(s) qualifying for community custody, it is further ordered as set forth below.

4.5 Community Custody: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after 1 July 1990 to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community custody.

Community Custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

(a) Defendant shall comply with the following conditions during the term of community custody:

- (1) Report to and be available for contact with the assigned community corrections officer as directed;
(2) Work at Department of Corrections-approved education, employment, and/or community service;
(3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
(4) While in community custody not unlawfully possess controlled substances;
(5) Pay community custody fees as determined by the Department of Corrections;
(6) Receive prior approval for living arrangements and residence location; and
(7) Do not own, use or possess firearms or ammunitions.

The following conditions listed under 4.5(a) are hereby waived by the court:

(b) Defendant shall comply with the following other conditions during the term of community custody:

- (8) Do not have direct or indirect contact with Jeanine Patterson.
(9) Within 30 days of being placed on supervision, enter into and make reasonable progress in sexual deviancy therapy with a therapist approved by your Community Corrections Officer, which therapy may include the treatment tools of polygraph and plethysmograph testing. see # 28
(10) Do not initiate or prolong physical contact with children for any reason.
(11) Do not enter areas/places where minors are known to congregate without the specific permission of the Community Corrections Officer or sexual deviancy provider if in treatment.
(12) Inform the Community Corrections Officer of any romantic relationships to verify there are no victim-age children involved, and that the adult is aware of your conviction history and conditions of supervision.
(13) Have no contact with the victim or any minor-age children without the approval of your Community Corrections Officer and mental health treatment counselor.
(14) Hold no position of authority or trust involving children.
(15) Do not possess or peruse sexually explicit materials unless given prior approval by your sexual deviancy treatment specialist and/or Community Corrections Officer, if defendant is in sexual deviancy treatment. condition does not apply if defendant is not in treatment.

- (16) Do not attend X-rated movies, peep shows, or adult book stores without the approval of the ~~sexual deviancy treatment specialist~~ or Community Corrections Officer ~~or sexual deviancy treatment provider if in treatment~~ (JH)
- (17) ~~If directed by your sexual deviancy treatment specialist or Community Corrections Officer,~~ Obtain a mental health evaluation from a qualified provider and complete all treatment recommendations.
- (18) If directed by your sexual deviancy treatment specialist or Community Corrections Officer, under an evaluation regarding substance abuse at your expense and follow any recommended treatment as a result of that evaluation.
- (19) Do not use or possess illegal or controlled substances without the written prescription of a licensed physician, and to verify compliance, submit to testing and reasonable searches of your person, residence, and vehicle.
- (20) Do not purchase, possess or use alcohol (beverage or medicinal) and submit to testing and reasonable searches of your person, residence, property, and vehicle by the Community Corrections Officer to monitor compliance.
- (21) Do not change residence without the approval of your Community Corrections Officer.
- (22) Obey all laws.
- (23) Maintain Community Corrections Officer-approved employment and notify your employer regarding your history of sexual deviancy and rules and regulations regarding children and legal status.
- (24) Pay for counseling costs for victims and their families.
- (25) Within 30 days of sentencing, submit to DNA and HIV testing as required by law.
- (26) Do not change therapist without prior approval of your Community Corrections Officer.
- (27) Do not access the Internet without the prior approval of your supervising Community Corrections Officer and sex offender treatment provider ~~if in treatment~~. No prohibition on internet access except as related to crimes that were committed. A may be subject to polygraphs on this issue.

(R) If in treatment

~~(28) Abide by any additional conditions imposed by the Washington State Department of Corrections.~~

28) Upon ^{30 days to} release, defendant shall obtain a sexual deviancy evaluation. If recommended ~~for~~ the evaluation, defendant shall participate in sexual deviancy treatment by a provider approved by DOC. This decision about the requirement of treatment is a reviewable condition. ^{To extend} Maintenance of innocence remaining ~~disqualifying~~ factor for treatment, treatment should not be ordered.

Date: 12/8/06

[Signature]
JUDGE, KING COUNTY SUPERIOR COURT

APPENDIX H- COMMUNITY CUSTODY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

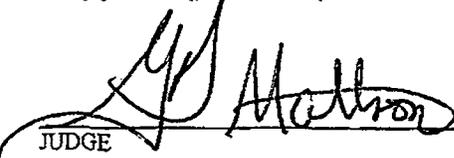
STATE OF WASHINGTON,)	
	)	No. 05-1-09393-1 KWT
Plaintiff,)	
	)	APPENDIX J
vs.	)	JUDGMENT AND SENTENCE
Bradley Peters	)	SEX/ KIDNAPPING OFFENDER NOTICE OF
Defendant,	)	REGISTRATION REQUIREMENTS

SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. You are required to register your complete residential address with the sheriff of the county where you reside, because you have been convicted of one of the following sex or kidnapping offenses: *Rape 1, 2, or 3; Rape of a Child 1, 2, or 3; Child Molestation 1, 2 or 3; Sexual Misconduct With A Minor 1 or 2; Indecent Liberties; Incest 1 or 2; Voyeurism; Kidnapping 1 or 2 (if victim is a minor and offender is not the minor's parent); Unlawful Imprisonment (if victim is a minor and offender is not the minor's parent); Sexual Exploitation of a Minor; Custodial Sexual Misconduct 1; Criminal Trespass against Children; Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct; Sending, Bringing Into State Depictions of a Minor Engaged in Sexually Explicit Conduct; Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct; Communication with a Minor for Immoral Purposes; Patronizing a Juvenile Prostitute; Failure to Register as a Sex Offender; any gross misdemeanor that is under RCW 9A.28, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or RCW 9A.44.130 or a kidnapping offense under 9A.44.130; or any felony with a finding of sexual motivation (RCW 9.94A.835 or RCW 13.40.135).*

- If you are out of custody,** you must register immediately upon being sentenced.
 - If you are in custody,** you must register within 24 hours of your release.
 - If you change your residence within a county,** you must send signed written notice of your change of residence to the county sheriff within 72 hours of moving.
 - If you change your residence to a new county within this state,** you must send signed written notice of your change of residence to the sheriff of the county of your new residence at least 14 days before moving and register with the county sheriff of your new residence within 24 hours of moving. In addition, you must give signed written notice of your change of address to the sheriff of the county where you last registered within 10 days of moving.
 - If you plan to attend a public or private school or institution of higher education in Washington,** you are required to notify the county sheriff for the county of your residence within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you are currently attending a public or private school or institution of higher education in Washington, you must notify the county sheriff, for the county where the school is located, immediately.
 - If you lack a fixed residence,** you are required to register as homeless. You must also report in person to the sheriff of the county where you registered on a weekly basis. If you are under DOC supervision and lack a fixed residence, you must register in the county where you are being supervised. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county within 24 hours.
 - If you leave the state following your sentencing or release from custody but later move back to Washington,** you must register within 3 business days after returning to this state or within 24 hours if you are under the jurisdiction of the state department of corrections, the indeterminate sentence review board or the department of social and health services.
 - If you move to a new state,** you must register with the new state within 10 days after establishing residence. You must also send written notice, within 10 days of moving to the new state, to the county sheriff with whom you last registered in Washington State.
 - If you are not a resident of Washington,** but attend school, are employed, or carry on a vocation in the State of Washington, you must register with the county sheriff for the county where your school, place of employment, or vocation is located.
 - If you are ranked as a Level II or Level III offender (even if you have a fixed residence),** you must report, in person, every ninety days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours.
- The King County Sheriff's Office sex offender registration desk is located on the first floor of the King County Courthouse- 516 3rd Avenue, Seattle, WA. **Failure to comply with registration requirements is a criminal offense.**

Copy Received:

 Defendant _____ Date _____


 JUDGE _____

APPENDIX J Rev. 8/06
 Distribution:
 Original/White - Clerk
 Yellow - Defendant
 Pink - King County Jail

1 FILED

2 05 JUL 18 PM 3:29

3 KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

4 WARRANT ISSUED
5 CHARGE COUNTY \$110.00

6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7	THE STATE OF WASHINGTON,)	
)	
8	v.	)	No. 05-1-09393-1 KNT
)	
9	BRADLEY MARSHALL PETERS	)	INFORMATION
)	
10)	
)	
11	Defendant.)	

12 COUNT I

13 I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority
14 of the State of Washington, do accuse BRADLEY MARSHALL PETERS of the crime of **Rape
of a Child in the Second Degree - Domestic Violence**, committed as follows:

15 That the defendant BRADLEY MARSHALL PETERS in King County, Washington
16 during a period of time intervening between August 1, 2004 through November 30, 2004, being
17 at least 36 months older than J.P. (DOB 4/16/91), had sexual intercourse with J.P. (DOB
4/16/91), who was 13 years old and was not married to the defendant;

18 Contrary to RCW 9A.44.076, and against the peace and dignity of the State of
19 Washington.

19 COUNT II

20 And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse BRADLEY
21 MARSHALL PETERS of the crime of **Child Molestation in the Second Degree - Domestic
22 Violence**, a crime of the same or similar character and based on the same conduct as another
23 crime charged herein, which crimes were part of a common scheme or plan and which crimes
were so closely connected in respect to time, place and occasion that it would be difficult to
separate proof of one charge from proof of the other, committed as follows:

INFORMATION - 1

Norm Maleng,
Prosecuting Attorney
Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

1 That the defendant BRADLEY MARSHALL PETERS in King County, Washington
2 during a period of time intervening between April 16, 2003 through November 30, 2004, being at
3 least 36 months older than J.P. (DOB 4/16/91), had sexual contact for the purpose of sexual
4 gratification with J.P. (DOB 4/16/91), who was 12 and 13 years old and was not married to the
5 defendant;

6 Contrary to RCW 9A.44.086, and against the peace and dignity of the State of
7 Washington.

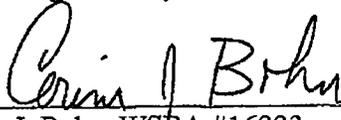
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COUNT III

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse BRADLEY
MARSHALL PETERS of the crime of **Rape of a Child in the Third Degree - Domestic
Violence**, a crime of the same or similar character and based on the same conduct as another
crime charged herein, which crimes were part of a common scheme or plan and which crimes
were so closely connected in respect to time, place and occasion that it would be difficult to
separate proof of one charge from proof of the other, committed as follows:

That the defendant BRADLEY MARSHALL PETERS in King County, Washington on or
about July 13, 2005, being at least 48 months older than J.P. (DOB 4/16/91), had sexual
intercourse with J.P. (DOB 4/16/91), who was 15 years old and was not married to the defendant;

Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
Washington.

NORM MALENG
Prosecuting Attorney

By: 
Corinn J. Bohn, WSBA #16223
Deputy Prosecuting Attorney

05-1-09393-1KNT

1 CAUSE NO:

2 CERTIFICATION FOR THE DETERMINATION OF PROBABLE CAUSE

3
4 That Tanya Gardanar is a(n) Detective with the Renton Police
5 Department and has reviewed the investigation conducted in
6 Renton Police Department Case Number 05-8073;

7
8 There is probable Cause to believe that Bradley M. Peters,
9 DOB/08-01-72 committed the crime(s) of Rape of a Child II - 2
10 counts and Child Molestation II. This belief is predicated on
11 the following facts and circumstances:

12
13
14 On 07-14-05 at 0120 hours Renton Police Officer J. Renggli
15 received a call from a social worker at Harborview Medical
16 Center reporting they had a fourteen-year-old patient there
17 who had been raped in Renton. Officer Renggli went to
18 Harborview and spoke to Luz Peters, the mother of the victim.
19 Luz Peters stated that she returned to her home at 2517
20 Ferndale Ave NE, Renton, WA, County of King, on 7-13-05 at
21 1845 hours and was met at the door by her husband Bradley M.
22 Peters. It was unusual for him to greet her at the door as he
23 only does this when something is wrong. He gave her a hug and
24 she noticed that he had an erection under his pants. She
25 immediately became concerned because a year ago she had talked
26 to Bradley about her daughter (13 at that time) sitting on his
27 lap all the time. She went to look for her daughter, J.P. -
28 DOB/4-16-91, and found her in her (Luz and Bradley's) bedroom,
29 under the blanket and crying. J.P. told her mom she had been
30 talking to her dad (step-dad) about sexual things and anal

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1 stuff. When Luz Peters pulled the blanket back she noticed
2 that her daughter was naked. Luz Peters grabbed her younger
3 son and her daughter and they left the house immediately.
4 Bradley was sitting in the living room and told her he wanted
5 to explain, but she left with the kids.

6
7
8 Officer Renggli spoke to Dr. Elanor Click who had examined and
9 talked to J.P. J.P. told the doctor that this stuff has been
10 going on for about two years, but most of the time they were
11 just talking. J.P. stated that her dad does regular pubic
12 hair checks on her and even tells her how to shave her pubic
13 area. During past pubic checks he has accidentally penetrated
14 her.

15
16
17 Officer Renggli spoke briefly to J.P. about what happened.
18 She said that she was upset and her dad (Bradley) carried her
19 down to his bedroom and laid her on the bed. He began to talk
20 to her about anal sex and removed her pants. She told him no
21 because they had an agreement from November of 2004 that he
22 would not take her clothes off any more when they were talking
23 about sex. On 7-13-05, after carrying her to his bedroom he
24 asked her, "What are the three things you need to know about
25 anal sex?" She tried to ignore him. He kept asking her and
26 finally told her the three things are, to relax, to lubricate
27 and to insert. He then removed her shirt and bra and put his
28 mouth on her belly and blew bubbles. Bradley then grabbed a
29 jar of petroleum jelly and rubbed it on her anus. He then

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JUL 18 2005

RJC

RPD300

7/9/05

ORIGINAL

Page 2 of 4

B-4

1 heard a noise and left the room. J.P.'s mother came in the
2 room a few minutes later.

3
4
5 On 07-14-05 at 0425 hours I spoke with J.P. in an interview
6 room. She was afraid that she had torn the family apart. She
7 told me that her dad (Bradley) first started having her get in
8 the shower with him and shave his back when she was about
9 twelve-years-old, a 7th grader. This would have been in 2003.
10 After shaving his back he would check her pubic hair area and
11 sometimes he would shave her. He would also rub her chest,
12 buttocks and vagina while they were in the shower. When she
13 was thirteen-years-old, in August of 2004, he started taking
14 her into the bedroom and during sex talks with her, removing
15 her pants and putting his thumb into her vagina. He did this
16 in his bedroom about five times and on two occasions he put
17 his thumb into her anus. He did this from August of 2004
18 until November of 2004 when she made an agreement with him not
19 to do that with her any longer, however, she would still
20 shower with him and shave his back and him shave her. J.P.
21 said that on 7-13-05 he broke his agreement when he took her
22 to his bedroom, removed her clothes and put his thumb into her
23 vagina and began talking to her about anal sex. He took some
24 vaseline and rubbed it on her anus and when he heard her
25 mother come home he jumped up, covered her up and ran out of
26 the room.

27
28
29 Based on the information provided in this case there is
30 probable cause to believe that Bradley M. Peters committed the

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JUL 18 2005

RJC

RPD300 7/9/05

ORIGINAL

Page 3 of 4

B-5

1 crimes of Rape of a Child II (multiple counts) both vaginally
2 and anally, and Child Molestation II, beginning some time in
3 2003 at the residence of 2517 Ferndale Ave NE, Renton, WA
4 98056, County of King.

5
6 Under penalty of perjury under the laws of the State of
7 Washington, I certify that the forgoing is true and correct.
8 Signed and dated by me this 14th day of July 2005, at Renton,
9 Washington.

10
11 J. Gardand #0096
12 Signature/ID Renton Police
13

ORIGINAL

RPD300 7/9/98

LODI
JUL 18 2005
RJC

Page 4 of 4

B-6

1
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6
7 CAUSE NO. 05-1-09393-1 KNT

8 PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
9 CONDITIONS OF RELEASE

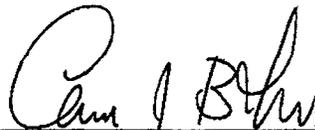
10 The State incorporates by reference the Certification for Determination of Probable
11 Cause written and signed by Detective Tanya Gardaner of the Renton Police Department dated
12 July 14, 2005 pertaining to incident #05-8073.

13 According to the police reports, the victim J.P. is not married to the defendant.

14 REQUEST FOR BAIL

15 The State requests bail in the amount of \$100,000, which is the amount set at First
16 Appearance. Although the defendant has no criminal history, the abuse of this victim occurred
17 over a two year period and was extremely manipulative. The defendant represents a danger to
18 the victim and the community.

19 The State requests an order prohibiting the defendant from having contact with victim
20 J.P. and her mother Luz Peters. Additionally, the State requests no unsupervised contact with
21 minors.
22
23



Corinn J. Bohn, WSBA #16223

FILED
KING COUNTY WASHINGTON

JUL 19 2006

SUPERIOR COURT CLERK.
BY NANCY L. SLYE
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
) No. 05-1-09393-1 KNT
Plaintiff,)
)
vs.) VERDICT FORM A
)
BRADLEY MARSHALL PETERS)
)
Defendant.)

We, the jury, find the defendant BRADLEY MARSHALL PETERS
guilty (write in "not guilty" or "guilty") of the
crime of Rape of a Child in the Second Degree as charged in Count
I.

7/19/06
Date

Mark S. Gering
Presiding Juror

FILED
KING COUNTY WASHINGTON

JUL 19 2006

SUPERIOR COURT CLERK
BY NANCY L. SLYE
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,) No. 05-1-09393-1 KNT
)
 vs.) VERDICT FORM B
)
 BRADLEY MARSHALL PETERS)
)
 Defendant.)

We, the jury, find the defendant BRADLEY MARSHALL PETERS
guilty (write in "not guilty" or "guilty") of the
crime of Child Molestation in the Second Degree as charged in
Count II.

7/19/06
Date

Mark S. Seixas
Presiding Juror

FILED
KING COUNTY WASHINGTON

JUL 19 2006

SUPERIOR COURT CLERK
BY NANCY L. SLYE
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
) No. 05-1-09393-1 KNT
Plaintiff,)
)
vs.) VERDICT FORM C
)
BRADLEY MARSHALL PETERS)
)
Defendant.)

We, the jury, find the defendant BRADLEY MARSHALL PETERS
guilty (write in "not guilty" or "guilty") of the
crime of Rape of a Child in the Third Degree as charged in Count
III.

7/19/06
Date

Nash S. Seixas
Presiding Juror

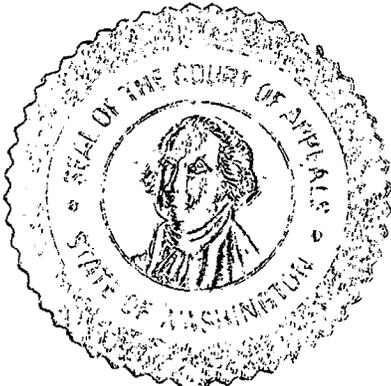
**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,)		
	)	No. 59296-3-1	FILED
Respondent,	)		KING COUNTY, WASHINGTON
	)		JUN 23 2008
v.	)	MANDATE	SUPERIOR COURT CLERK
BRADLEY MARSHALL PETERS,	)	King County	
)		
Appellant.	)	Superior Court No. 05-1-09393-1.SEA	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on March 10, 2008, became the decision terminating review of this court in the above entitled case on June 13, 2008. An order denying a motion for reconsideration was entered on April 11, 2008. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

c: Horton Smith
Lee Davis Yates - kcpa
Indeterminate Sentencing Review Bioard
Honorable George Mattson



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 13th day of June, 2008.

[Handwritten Signature]
RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

FILED

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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

15 **STATE OF WASHINGTON,**)
16)
17 Plaintiff,)
18)
19 v.)
20)
21 **BRADELY M. PETERS,**)
22)
23 Defendant.)
24)

**NO. 05-1-09393-1 KNT
MEMORANDUM OF
DECISION REGARDING
DEFENDANT'S MOTION
NEW TRIAL**

27 The Defense has brought a Second Motion for a New Trial in the above-
28 entitled matter. The first such motion was brought by extension granted by the
29 Court on the date of the sentencing of the Defendant. It was denied. The current
30 motion has raised the question of whether the Court's denial of the Defendant's
31 trial motion to allow the mother of the alleged victim to be cross examined
32 regarding a My Space site that the mother had created for herself during a time
33 relevant to the events giving rise to the charge in this case.¹ The relevant
34 information on the My Space site pertained to an informational portion of the site
35 in which there were places to provide information about certain aspects of a
36 person's life situation or preferences. The information at issue that was found on
37 the site at the time of the trial was that the mother was single and did not want
38 children.

40 The general theory of the Defense at trial to which such information
41 allegedly was relevant was that the alleged victim had lied about what happened

¹ The Defendant's motion initially raised an additional issue concerning alleged new evidence. The Defendant has withdrawn that aspect of his motion.

ORIGINAL

APPENDIX E

E-1

1 and that her mother had also lied. The goal of these lies was apparently to give
2 the child's mother the justification to end her marriage to the Defendant in a way
3 that would prevent him from seeking custody of the children—his step children—
4 which he had threatened to fight for if a divorce ever occurred.

5
6 The relevant facts asserted by the State through the testimony of the
7 mother and the 13 year old child were as follows: On July 13, 2005, the child
8 was naked under the covers of the bed in the bedroom of her mother and the
9 Defendant. The Defendant was in the room allegedly "teaching" the young
10 teenager about sex—specifically anal sex. In the course of this discussion,
11 which was apparently a replay of aprior session covering this specific topic, the
12 child was asked to recite the three important aspects of such a sexual act, to-wit:
13 "relax, lubricate and insert." He then allegedly rubbed Vaseline on the child's
14 anal area and inserted his thumb in her anus. Thereafter, the child's mother
15 returned from a brief absence to help someone move a bed. As she entered the
16 home she encountered the Defendant outside the bedroom at which point they
17 hugged, and, the mother testified, she could feel that the Defendant had an
18 erection. She immediately asked where the child was and went into the bedroom
19 and found the child, naked, under the bed clothes. Thereafter, she collected the
20 child and her sibling, gathered some clothes, and permanently left the home with
21 the children.

22
23 The mother testified in court (out of the jury's presence so as to give the
24 Court a context upon which to judge the Defendant's motion to cross examine
25 her on the content of the MySpace site) that she had to create a MySpace web
26 site in order to monitor her daughter's use of MySpace. The site the mother
27 created did not provide a picture of the mother. The information contained on the
28 site as of the time the issue was raised in trial stated that she was female, 37
29 years old, located in Renton, with a marital status of "single", that she had a
30 Zodiac sign of Taurus, that she neither smoked nor drank, and, as to the
31 category "children," were the words: "I don't want kids." The sections "About
32 me" or "Who I'd like to meet" were not filled out. The mother further testified, out
33 of the presence of the jury, that she only put in her name, her birth date and that
34 she lived in Renton. She testified that everyone knew she was 37 years old.
35 She denied putting in her status as single or that she did not want children.

36
37 Counsel for the Defendant argued that since the mother testified, outside
38 the presence of the jury, that she had opened a My Space account that such
39 testimony was enough to authenticate, or provide a good faith basis to at least
40 cross examine the mother about the MySpace site in the mother's name
41 including the information about being single and not wanting kids. The word
42 "authenticate" was used in the colloquy on this subject, but the issue was really
43 whether there was a "good faith basis" to inquire. If the mother denied certain
44 portions of the site were placed by her, the Defense argued, she could so testify.

1 The Court ruled that it did not know enough about such computer sites to know if
2 they were capable of being manipulated easily by others and ruled the Defense
3 could not inquire as to this site on cross examination in the absence of such
4 information and in light of the mother's testimony. The Defense argued that this
5 information supported the Defense theory that the marriage was deteriorating
6 and that the mother was seeking other social contacts, which would support the
7 theory that she wanted to end the marriage and avoid the Defendant's promise to
8 fight for custody of the children. Both the mother and the Defendant have
9 confirmed that there was a conversation about divorce in a general sense and
10 the Defendant stated that if it ever happened to them he would fight for custody
11 of the children.
12

13 The Court ruled that because it was not well advised about how
14 information can be placed on someone's My Space site in the face of the
15 mother's testimony that she had not placed it there, that the Court could not
16 eliminate the possibility of third party access to the site with the ability to make
17 changes by said third parties. The Court then denied the Defendant the right to
18 cross-examine on that subject.
19

20 The Defendant argued that the Court's decision should not have been to
21 rule the information inadmissible as not shown to be authentic, but rather that the
22 unanswered questions about the authorship of the information contained on the
23 site went to the issue of weight, in light of the fact that the site itself was
24 acknowledged by the mother to be a site she initially created. The Defense
25 further argued that the information on the MySpace site supported the Defense
26 theory that the mother wanted out of the marriage. In rejecting the evidence, the
27 Defense currently argues, the Court violated the Defendant's Constitutional right
28 to cross-examination on matters central to the Defense.
29

30 The Court, after the oral argument on the motion, asked the parties to brief
31 the issue of whether the matter of the failure to allow the cross examination in the
32 context of CrR 7.5 (which provides that motions for a new trial must be brought
33 within 10 days of the verdict or decision, which the Court may extend on its own
34 or upon the application of the Defendant) was untimely. CrR 7.8(b)(2) provides
35 for a Motions for Relief from Judgment on the grounds that there is newly
36 discovered evidence which, by due diligence, could not have been discovered in
37 the 10 day time limit to move for a new trial under rule 7.5 on grounds of an error
38 of law.
39

40 The Defendant initially included in his Motion for a new trial under CrR 7.8
41 the argument that some of the evidence supporting the motions was not
42 discoverable within the 10 day period, to-wit: the apparent positive test for
43 pregnancy. Thus the Court was inclined to also allow the additional grounds
44 such as the cross examination on the MySpace account of the mother. From the

1 beginning the Court never requested any response or further briefing on the
2 issue, also raised by Defense, concerning the mother's reputation within her
3 family because, on its face, that was an insufficiently neutral community from
4 which to base such reputation testimony.
5

6 When the Defense withdrew the issue of the "new" pregnancy evidence
7 there was really no basis to entertain, under CrR 7.8, an argument pertaining to
8 an error of law which is only appropriately brought if filed in a motion under CrR
9 7.5 within 10 days of the verdict or decision. It is true that before the Defendant
10 withdrew his claim about the pregnancy test that this Court had asked for more
11 information from both the State and the Defense concerning the use to which the
12 pregnancy test could be put and what response the State would offer to such
13 evidence. The Court did so to evaluate the question, in the event it ruled that its
14 original ruling was in error, of whether, if the cross-examination had been
15 allowed, would it have led to a different result. The Court also had in mind the
16 opportunity to determine if its original ruling, based on potential manipulation of
17 the information on the MySpace account would, with additional investigation,
18 prove to be inaccurate. However, once the Defense withdrew the claim relating
19 to the pregnancy test there really was no ground under CrR 7.8 that justified
20 further inquiry, the remaining grounds having not been brought within the 10 day
21 CrR 7.5 requirement. Specifically, the issue of the failure of the Court to allow
22 the MySpace internet account cross examination had been raised in trial and
23 also in the Defendant's appeal which had been already decided.
24

25 Nothing that was actually produced by the Defendant to factually elaborate
26 on the Court's expressed concern during the trial about the ability to manipulate
27 the site is information that could not have been provided with the 10 day deadline
28 of CrR 7.5, since the Defendant was clearly aware of its claim that the Court had
29 erred in not allowing the cross examination of the mother about the MySpace
30 account contents. To the extent that the Defense has argued that it didn't have
31 time to obtain an adequate audio record of proceedings at the time of the hearing
32 on the Defendant's Motion for a New Trial under CrR 7.5, there was nothing that
33 stopped the Defendant, in advance of the lapse of the already extended deadline
34 from requesting a further extension in order to perfect the record necessary to
35 bring the motion. In fact, the audio record was eventually acknowledged by the
36 Defendant to have been sufficiently accurate to rule on the cross examination
37 issue.
38

39 Furthermore, it was not until the Defendant responded to this Court's
40 inquiry about timeliness that the Defense provided the Court with a copy of the
41 Defendant's brief to the Court of Appeals. At this time the Court discovered that
42 the issue had already been raised in the initial appeal of this case.
43

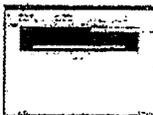
1 Having considered the written and oral submissions of the Defendant and
2 the State, and upon reflection, the Court is convinced that it probably was in error
3 in refusing to allow the desired cross examination regarding the My Space site of
4 the mother, based on an authentication or good-faith-basis-to ask theory. The
5 mother did acknowledge she had her own MySpace account. The fact that, at
6 the time of the trial, it reflected information that she denied putting there was
7 probably not a basis to deny cross examination. The Defense has provided
8 some evidence relating to the difficulty of manipulating information on a MySpace
9 account.² However, this very issue was raised in the appellant's brief to the
10 Court of Appeals, as it should have been, although other than listing the failure to
11 allow the cross examination there was no analytical discussion of the issue in the
12 brief.
13

14 As demonstrated in footnote 2 the ease with which a MySpace account
15 could be altered is clearly apparent. Thus, even acknowledging that prohibiting
16 the cross examination may have been error, the likelihood of the cross
17 examination being given much weight is not significant and does not give the
18 Court reason to be concerned that the cross-examination would have led to a
19 different result or that the absence of such cross-examination undermines the
20 Court's confidence in the ultimate verdict.
21

² The Defense provided a short declaration of one Vanessa Martin, the nature of which could easily have been provided to the Court within the extended time that the Defendant was given to argue his initial Motion for a New Trial under CrR 7.5. The critical assertion contained in that statement is as follows :

No one can enter into another person's MySpace account and change information in the fields unless they know the person's password or they use a computer where the registered user recently logged into their MySpace account and failed to log out.

This Court elected to Google the word "MySpace" and "hacking" and was provided with 3,970,000 hits within 0.18 seconds. The fourth entry is a 3.15 minute video on YouTube that directs a person how to hack into another person's MySpace account. Within that 3.15 minute video an actual hacking of a MySpace account was demonstrated. The third and fourth entry titles on Google, both of which are videos describe how to hack a MySpace account, are provided below:

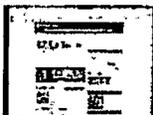


YouTube - Myspace Hack v2.1 Program

This nifty tools gets the email and the password for a ...

3 min 15 sec -

www.youtube.com/watch?v=ktWt13HAZCSs



YouTube - How to Hack Myspace

Myspace Account Hacking Myspace Hacking Brought to you by

These resources tend to make the Court find the Martin declaration difficult to credit.

State v. Peters
KC No. 05-1-09292-1 KNT
Memorandum Decision Denying
Defense Motion for New Trial
Page 5 of 7

1 Even if the Court disregarded the apparent ease of manipulation of the
2 MySpace account information by a third party, the Court rules that the excluded
3 evidence obtained was essentially cumulative. There was considerable evidence
4 and argument made by Defense counsel, Mr. Merryhew, from Opening
5 Statement (when he did not even know about the MySpace account), through the
6 trial and into the closing arguments, about the dissatisfaction of the child's
7 mother with the marriage. This included her not being home, coming home late,
8 bar bills, etc.—all of which amply presented the theory about the mother's
9 potential motive to damage the Defendant.

10
11 What the Defendant fails to acknowledge, however, is the unlikely ability
12 to tie the testimony of the child to this alleged motive of the mother. This child
13 credibly testified to the bond she had to the Defendant, who became a
14 replacement for the father who directly rejected the child over the phone telling
15 her he did not want to see her anymore because he had new family. It is also
16 evident that the child bonded with the Defendant's mother, testifying that the
17 Defendant's mother listened when she had conversations with her. The child
18 described the Defendant's mother as being very sweet, and that she took the
19 child shopping and to plays in Seattle and that she went swimming with the
20 Defendant's mother almost every day of the week. The Defendant's mother
21 testified that both children were "adorable." She also testified that sometimes the
22 child would help her cook dinner. She also testified that the child and her brother
23 adored the Defendant. The child had stability in this home provided by the
24 Defendant's parents who also seemed bonded to the child. Positing that the
25 child would lie about the Defendant in the context of this living environment
26 because the child's mother wanted out of the marriage is quite an unlikely
27 proposition.

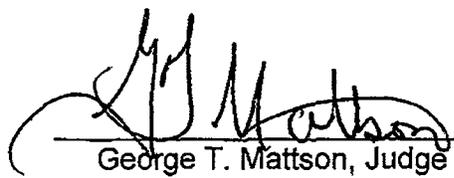
28
29 Furthermore, the nature and quality of this child's testimony makes it
30 difficult for this Court to feel that the prohibited cross-examination would have
31 any effect on the outcome of the trial. The focus of the State's trial evidence did
32 not center on the credibility of the mother's testimony. It was the child who so
33 credibly testified to the strange facts involving her relationship with the Defendant
34 that was the center of the State's case.

35
36 In summary, the Court feels the prohibited evidence was essentially
37 cumulative, and subject to even further weakening by reason of the available
38 information concerning the ease of manipulation of the personal information on a
39 person's MySpace account by a third party. Had the evidence been admitted
40 there is no reasonable likelihood that the outcome of the trial would have been
41 different.

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For the foregoing reasons the Defendant's 7.8 Motion for a New Trial is denied.

DATED this 21 day of August, 2008.


George T. Mattson, Judge

FILED

2005 DEC 29 AM 10: 37

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON)
)
) Plaintiff,)
 vs.)
 Bradley Peters)
)
) Defendant.)

SUBPOENA

No: 05-1-09393-1 KNT

Charge: Rape of Child 2°

TO:
Eleanor Click, MD

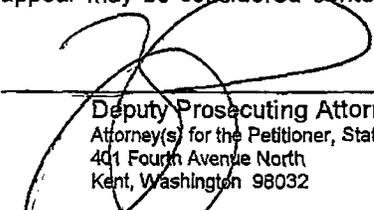
**NOTICE: Upon Receipt of this
Subpoena, Immediately Call
206-205-7424 Or 206-205-7464**

Paralegal: Holly Gilmore
Deputy Prosecutor: Zachary C.
Wagnild

Police #: 05-8073
Crime Lab #:
Tox. Lab #:
MEDICAL
Patient: Jeanine Patterson
Patient #: H-2469004
Treatment Date: 7/25/05

You are hereby commanded to be and appear at the Superior Court of the State of Washington in and for King County on the 11th day of January, 2006, or as directed by the Prosecutor's Office, in 401 Fourth Avenue North, Kent, Washington, where you will be directed to a courtroom of the Superior Court to give evidence on behalf of the Plaintiff in the above entitled cause and to remain in attendance at said Court until discharged. Your failure to appear may be considered contempt of court and may result in your arrest.

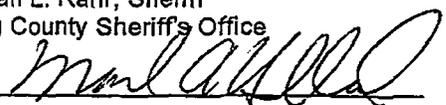
Dated: December 20, 2005


Deputy Prosecuting Attorney, # 91002
Attorney(s) for the Petitioner, State of Washington
401 Fourth Avenue North
Kent, Washington 98032

SHERIFF'S RETURN

I HEREBY CERTIFY that I personally served the above subpoena on each person whose name is encircled hereon by (giving him/her a true copy hereof) (leaving a true copy hereof at the place of his/her abode with HMC SAC) in King County, Washington on the 27 day of DEC, 2005.

SHERIFF'S FEE:
Service \$ 25
Travel \$ 3.04
Total \$ 28.04

Susan L. Rahr, Sheriff
King County Sheriff's Office
By 

FILED
2006 MAY 10 AM 10:31
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON)

) Plaintiff,)

vs.)

Bradley Peters)

) Defendant.)

SUBPOENA

No: 05-1-09393-1 KNT

Charge: Rape of Child 2°

TO:

Eleanor Click, MD

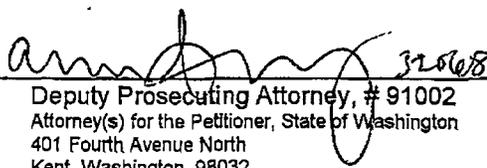
**NOTICE: Upon Receipt of this
Subpoena, Immediately Call
206-205-7424 Or 206-205-7428**

Paralegal: Holly Gilmore
Deputy Prosecutor: Amy
Montgomery

Police #: 05-8073
Crime Lab #:
Tox. Lab #:
MEDICAL
Patient: Jeanine Patterson
Patient #: H-2469004
Treatment Date: 7/25/05

You are hereby commanded to be and appear at the Superior Court of the State of Washington in and for King County on the 31st day of May, 2006, or as directed by the Prosecutor's Office, in 401 Fourth Avenue North, Kent, Washington, where you will be directed to a courtroom of the Superior Court to give evidence on behalf of the Plaintiff in the above entitled cause and to remain in attendance at said Court until discharged. Your failure to appear may be considered contempt of court and may result in your arrest.

Dated: April 24, 2006


Deputy Prosecuting Attorney, # 91002
Attorney(s) for the Petitioner, State of Washington
401 Fourth Avenue North
Kent, Washington 98032

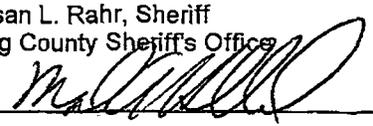
SHERIFF'S RETURN

I HEREBY CERTIFY that I personally served the above subpoena on each person whose name is encircled hereon by (giving him/her a true copy hereof) (leaving a true copy hereof at the place of his/her abode with HMC SAR) in King County, Washington on the 4 day of MAY, 2006.

SHERIFF'S FEE:

Service \$ 25
Travel \$ 3.04
Total \$ 28.04

Susan L. Rahr, Sheriff
King County Sheriff's Office

By 

1 APPEARANCES:

2 For the Plaintiff: AMY MONTGOMERY
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 5 amy.montgomery@metrokc.gov

6
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 Suite B
 9 Kent, WA 98032
 253 852 6600
 10 brad@jimnewtonlaw.com

11
 12 The Videographer: LINDSAY FULMER
 Prolumina
 13 601 Union Street
 Suite 1420
 14 Seattle, WA 98101

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E X A M I N A T I O N

1		
2	EXAMINATION BY:	PAGE
3	MS. MONTGOMERY	4
4	MR. MERYHEW	29

* * *

E X H I B I T S

9	NO. DESCRIPTION	PAGE
10	1 - HSA Emergency Report re. Jeanine Patterson, date 7-13-05.	16

* * *

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KENT, WASHINGTON; THURSDAY, JULY 6, 2006

12:13 P.M.

-oOo-

THE VIDEOGRAPHER: We are on the record. This is the beginning of the deposition of Dr. Ellie Click of the State of Washington versus Bradley Peters. The time is approximately 12:13.

Counsel, please identify yourselves for the record, and then the witness may be sworn in.

MS. MONTGOMERY: Amy Montgomery, Deputy Prosecuting Attorney.

MR. MERYHEW: Brad Meryhew, defense attorney for Mr. Peters.

ELEANOR CLICK, M.D., Witness herein, having been duly sworn by the Notary, testified as follows:

E X A M I N A T I O N

MS. MONTGOMERY:

Q. Good afternoon.

Please start out by stating your full name, spelling both your first and your last.

A. My name is Eleanor Click. It's E-L-E-A-N-O-R. Last name is Click, C-L-I-C-K.

Q. Can you please provide us with a business mailing address?

1 A. Yes. I'll refer to my notes here.
2 House Staff Office, Children's Hospital and
3 Regional Medical Center, 4800 Sand Point Way Northeast,
4 Seattle, Washington 98105.

5 Q. What is your profession?

6 A. I'm a pediatrician.

7 Q. How long have you been a pediatrician?

8 A. I just completed my pediatrics residency.

9 Q. Can you, please, go through for us the steps
10 you take in order to become a pediatrician?

11 A. One completes medical school and then at the
12 completion of medical school chooses a specialty. I
13 chose pediatrics, and that is then a three-year
14 residency program, and that is what I've just
15 completed.

16 Q. So where and when did you finish medical
17 school?

18 A. I completed medical school in 2003 at Stanford
19 University in California.

20 Q. Can you describe for us what your residency was
21 about?

22 A. Residency is in general pediatrics. It's
23 preparation for becoming a general pediatrician, and it
24 involves a number of usually one- to two-month
25 rotations in different fields of medicine including

1 hospital wards, intensive care units, outpatient
2 clinics, and includes Harborview Trauma Center.

3 Q. When you talk about the different things that
4 make up a residency, approximately how much time do you
5 spend at each one of those different rotations, if you
6 will?

7 A. It really depends on the type of rotation we
8 do. Probably six months of intensive care. We do
9 outpatient pediatrics. We have a continuity clinic
10 that spans all three years; so we do that throughout.
11 And then do maybe about three or four months of
12 inpatient wards. We do two months in a more rural
13 setting of outpatient and inpatient pediatrics.

14 Q. And you said that you just finished your
15 residency.

16 What is next for you?

17 A. I'm taking a job with the Pediatric AIDS Corp
18 in Africa as a pediatrician.

19 Q. And you realize that you're here giving a
20 deposition regarding a criminal trial; is that right?

21 A. Yes.

22 Q. Can you describe when you are leaving for your
23 work in Africa?

24 A. I'm leaving the middle of August.

25 Q. Okay.

1 Are you going anywhere other than Seattle prior
2 to leaving for Africa?

3 A. Yes. I'm leaving at the end of this week for
4 Houston for a training program.

5 Q. All right.

6 Can you describe a little about your work that
7 you did specifically when you were -- during your
8 rotation at Harborview?

9 A. One year ago I did a two-month rotation which
10 is a rotation all pediatric residents in our program
11 complete at Harborview, and it involves work in the
12 emergency room, seeing trauma patients, also seeing
13 sexual assault victims, outpatient clinics and the
14 inpatient wards, both the surgical-medical wards that
15 includes burn patients and trauma patients as well as
16 the intensive care units that includes burn and trauma
17 patients.

18 Q. You spoke a minute ago about seeing sexual
19 assault patients in the emergency room.

20 Can you describe about how many people you saw
21 regarding concerns of sexual abuse?

22 A. I would estimate about five to ten.

23 Q. All right.

24 And during your work at Harborview, did you
25 have contact with a young woman named Jeanine

1 Patterson?

2 A. Yes.

3 Q. What I'd like you to do if you can is describe
4 the steps that happen when a person comes in with
5 concerns of sexual abuse?

6 A. When a person comes in with concerns of sexual
7 abuse, the on-call resident is contacted to be informed
8 that a patient is going to be presenting or has
9 presented to the emergency room.

10 The first step of intake is meeting with the
11 patient and/or family, depending on who is present,
12 with the social worker for initial intake and obtaining
13 an initial history. And after that, that history is
14 then reviewed with the resident, and the resident then
15 meets with the patient, family to obtain further
16 history and then to do a physical examination, any
17 evidence collection that may be indicated.

18 Q. Where do you meet with the patient and her
19 family?

20 A. Meet with the patient and family in the
21 emergency room.

22 Q. Can you describe the room for us?

23 A. Generally the rooms -- The room that is used or
24 rooms are standard examination rooms, include an
25 examination table that can be extended to include, you

1 know, a gynecologic examination. It has stirrups if
2 needed. There is a light, intensive light that is
3 available for examination if needed, and then there are
4 standard, the standard equipment of an emergency room
5 examination, such as tongue depressors and cotton swabs
6 and a sink, gloves.

7 Q. Who is present typically when the resident, or
8 you, begin taking a history from the patient?

9 A. Generally, my practice is to first meet the
10 patient with the family and depending on the age of the
11 patient, in this case a teenager, is to first meet the
12 family and sort of give them a very general overview of
13 what the process in the emergency room is, namely
14 obtaining a history, doing a physical examination and
15 obtaining any evidence that may be indicated, reviewing
16 that with the patient and family and then meeting with
17 the patient alone if it is a teenage patient.

18 Q. Why would you meet with that patient alone?

19 A. It provides confidentiality, and it provides a
20 private setting for discussion.

21 Q. So is it your practice, then, that a patient
22 would know that a physical exam is coming before you
23 actually begin speaking with the patient about why he
24 or she's there?

25 A. Yes.

1 Q. And, typically, what is a patient wearing at
2 this point while you're meeting with him or her?

3 A. Often a patient is already wearing a hospital
4 gown.

5 Q. Okay.

6 Now, you said that you meet with the patient
7 privately in the case of a teenager, and I'll reference
8 the patient as a she because that's what we're talking
9 about in this case.

10 After you speak with the patient, what happens
11 next?

12 A. After I speak with a patient, I again review
13 what the examination will entail and what evidence
14 collection may entail including photographs. If
15 there's any concerning findings on physical
16 examination, I review that before starting an
17 examination, and then for the examination we generally
18 have a nurse present as well, a nurse or more, one or
19 more nurses.

20 Q. And why would you have one or more nurses
21 present during the physical examination?

22 A. Largely, you know, to obtain specimens for
23 evidence collection. It involves a protocol. It
24 involves having a trained nurse present for that
25 portion of the examination so that evidence can be

1 collected and processed and stored properly and
2 submitted afterwards.

3 Q. Okay.

4 And are you or the nurse or both trained in
5 taking those evidence specimens?

6 A. We are both trained.

7 Q. Do you describe what the physical examination
8 is going to entail with the patient?

9 A. I give a general overview that it will be --
10 Depending on what history I obtain about the -- the --
11 the history, I generally explain that it will involve,
12 you know, an examination, external examination, that it
13 may involve photographs if there are any findings at
14 the time of the examination that are concerning, and
15 then I give an overview of what evidence collection
16 involves in terms of obtaining swabs from various body
17 sites.

18 Q. And I want to take each of those things that
19 you just mentioned one at a time.

20 A. Um-hmm.

21 Q. When you're saying taking external -- doing an
22 external examination, what do you mean?

23 A. I mean specifically for sexual assault concerns
24 it often involves focusing on an external genital
25 examination, and that involves an external view of the

1 in the case of a female patient, you know, vaginal
2 area, rectal area, and with -- using gloves, just
3 looking at the external opening to the vagina. It does
4 not -- specifically does not involve a speculum exam.

5 Q. So what is the patient doing when you are
6 conducting this external exam of the genital area?

7 A. The patient -- In a teenage patient -- it
8 depends on the age as well. But in a teenage patient,
9 generally have a patient supine on her back with her
10 arms in stirrups and legs open so that there can be a
11 complete external physical exam completed.

12 Q. Okay.

13 And, again, you said that you and one or more
14 nurses are present for that examination?

15 A. Yes, generally so.

16 Q. Okay.

17 Are family members present during that
18 examination?

19 A. Generally not, though it's an option of the
20 patient what they would prefer.

21 Q. Okay.

22 You talk next about photographs being taken.

23 Where specifically are you talking about
24 photographing?

25 A. Photographs can involve any body site if there

1 is concern for traumatic injury or specifically sexual
2 traumatic injury.

3 Q. Okay.

4 A. In the genital area.

5 Q. Do you keep a written record of meeting with
6 each patient?

7 A. Yes.

8 Q. And when do you make that record?

9 A. Generally I take notes through the history
10 taking and then complete, finish the paperwork and
11 complete it at the finish of the -- the completion of
12 the history and physical exam. After I've seen the
13 patient, then I finish paperwork and submit it at that
14 time.

15 Q. So usually about how close in time from
16 finishing the examination do you complete your
17 paperwork?

18 A. I do it immediately afterwards. So depending
19 on, you know, how long it takes to complete it, I would
20 say within a half an hour or an hour.

21 Q. Is generally your memory fresh at that time?

22 A. Yes.

23 Q. All right.

24 Do you remember meeting with Jeanine Patterson?

25 A. Yes.

1 Q. Do you remember when specifically you met with
2 her?

3 A. I do not remember the specific date.

4 Q. Okay.

5 Do you remember all of the specifics about your
6 actual meeting with her?

7 A. I don't remember all of the specifics, but
8 many.

9 Q. Okay.

10 Did you keep a written record of your meeting
11 with Jeanine Patterson?

12 A. Yes, I did.

13 Q. And during your meeting with her, did you have
14 a discussion?

15 A. Yes.

16 Q. Do you remember all of the details of that
17 specific discussion?

18 A. No.

19 Q. Did you keep a written record of this -- of
20 your meeting with Jeanine Patterson?

21 A. Yes.

22 Q. And was your memory fresh when you kept a
23 record or made a record?

24 A. Yes.

25 Q. Did you keep, to your knowledge, accurate notes

1 of your meeting with a Jeanine Patterson?

2 A. Yes.

3 Q. And how did you do that?

4 A. I took notes -- When I obtained her history I
5 took notes, jotted down notes and did note some
6 specific quotations and also some, sort of, paraphrased
7 thoughts that she provided in her history. And after I
8 saw her and examined her, I then compiled that
9 information into a summary statement in my history.

10 Q. Okay.

11 And Dr. Click, I have before me State's
12 Exhibit 1, and have you had an opportunity to look at
13 State's Exhibit 1?

14 A. Yes.

15 Q. And do you know what State's Exhibit 1 is?

16 A. My understanding is that that is my medical
17 record from seeing her.

18 Q. Do you have a copy of that with you?

19 A. Yes.

20 Q. And would reviewing the medical record help
21 refresh your memory as to some of the details of your
22 meeting with Ms. Patterson?

23 A. Yes.

24 Q. All right. I'm going to approach and hand you
25 State's Exhibit 1.

(State's Exhibit No. 1 was marked
for identification.)

Q. Dr. Click, do you recognize State's Exhibit 1?

A. Yes.

Q. And what is it?

A. It is the compiled medical record including the
history and physical examination by myself and with
nurses present of Jeanine Patterson, as well as the
initial social work intake form and history compiled by
a social worker.

Q. I'd like to focus on the records that you kept.

Can you tell me, did you take care to keep an
accurate record of what you and Jeanine Patterson
talked about?

A. Yes.

How did you specifically make sure that your
conversation was accurately recorded?

A. I jotted notes as we spoke. I indicated direct
quotes in quotations and as well in compiling my
notes noted those direct quotes by double quotations.
I also included some paraphrased thoughts in single
quotes.

Q. Okay.

Now, after looking at the medical record, do
you remember when you met with Jeanine Patterson?

1 I don't remember, but I can look at my notes,
2 that was on July 13th of 2005.

3 Q. What time did you meet with her?

4 A. The initial intake time is 11:16 p.m.

5 Q. And who was present when you met with Jeanine
6 Patterson?

7 A. I initially met with Jeanine and her mother, is
8 my recollection.

9 Q. And you've described an emergency room setting,
10 a specific examination room.

11 Q. Did you meet with Jeanine Patterson in a
12 specific examination room?

13 A. I did.

14 Q. And what did -- What did she tell you?

15 A. Can I refer to my notes?

16 Q. You can.

17 A. Okay. I will then read from my history.

18 Q. Thank you.

19 A. And, again, I will say quotes when I'm giving a
20 direct quotation and single quotes for paraphrased
21 thoughts.

22 Q. All right.

23 A. (Reading): 14-year-old female --

24 MR. MERYHEW: Excuse me, Dr. Click. I'm going
25 to object if you're going to read the report. You may

1 use that to refresh your recollection, but I don't
2 think it's appropriate for you simply to read your
3 report into the record.

4 MS. MONTGOMERY: I believe it's a prior
5 recollection recorded at this point.

6 MR. MERYHEW: I'll note my objection for the
7 record.

8 MS. MONTGOMERY: All right.

9 A. Okay.

10 (Reading): 14-year-old female reports was at
11 home today. Stepfather was comforting her regarding
12 stress around house move and honors classes; then took
13 her to his room and started, quote, going into one of
14 our talks, end quote. Asked what was needed for anal
15 sex. Removed patient's clothing. She cried and tried
16 to turn away but he turned her back, single quote, to
17 look at him, end single quote. Answered his own
18 question, that lubrication, relaxation and penetration
19 were needed. Applied lubricant to her anus. No
20 digital anal penetration. Did a typical, quote, hair
21 check, unquote, to make sure she had shaved her pubic
22 hair well and as had happened in the past, quote,
23 accidentally, end quote, inserted his fingers in the
24 vagina. Father, then stepfather, remained dress. No
25 penile penetration of anus or vagina or mouth. No

1 ejaculation. Quote, blew bubbles, end quote, with
2 mouth on her stomach. No other contact with his mouth
3 on her body.

4 Reports bleeding from vaginal area from, single
5 quote, cut, end single quote, sustained a few months
6 ago while shaving, (from raising leg too high) that
7 reopened today when went to the bathroom in ED. That's
8 emergency department.

9 Denies vaginal itching, pain, abnormal
10 discharge, lesions.

11 Father, that is stepfather, left room when
12 mother came home. Mother came into room and found
13 patient getting dressed under blankets. Brought
14 patient to emergency department with two aunts.

15 Patient describes two-year history of talks --
16 of, quote, talks, end quote, about sex, including about
17 oral, vaginal, anal sex, masturbation where he
18 describes, quote, story problems, end quote, with
19 questions regarding what is needed for blank, and that
20 is, quote, what is needed for blank, end single quote.

21 States they made a, quote, deal, end quote,
22 approximately six months ago according to which would
23 only talk, no undressing or touching.

24 Stepfather has been doing hair checks to make
25 sure pubic hair shaved since first started to have

1 pubic hair. Denies physical abuse. Claims sometimes
2 intimidated by stepfather because bigger than patient.

3 No previous mention to mother of events.

4 Q. When you were reading through your report, was
5 that all based on your conversation with Jeanine
6 Patterson?

7 A. Yes.

8 Q. When she describes a person asking what was
9 needed for anal sex, who was she describing?

10 A. Her stepfather.

11 Q. And throughout your discussion with her about
12 prior conversations with sex, who was she talking
13 about?

14 A. Her stepfather.

15 Q. Can you describe if anyone -- Or, tell me if
16 anyone else was in the room as you were just speaking
17 with Jeanine about this?

18 A. My recollection is that I spoke with Jeanine
19 alone, and I can refer to my notes as well.

20 Q. Okay.

21 A. In my notes I noted that the two nurses were
22 present for the exam. I noted the patient was
23 interviewed and examined with these two nurses in
24 attendance for the exam.

25 My recollection is that I spoke with Jeanine

1 alone.

2 Q. All right.

3 During your discussion with her, can you
4 describe what her demeanor was like?

5 A. I recall that her demeanor as she was relaying
6 the history of the events that brought her to the
7 emergency room was that she did have sort of downcast
8 eyes, made poor eye contact, and did have difficulty
9 speaking, getting her words out.

10 Q. Is that -- Was her demeanor like that
11 throughout?

12 A. Initially when I met her, she made good eye
13 contact and we were able to have, you know, made
14 initial introductions with good eye contact. But as we
15 focused on the story of what had happened that day, she
16 had increasingly poor eye contact and more halting
17 speech.

18 Q. Okay.

19 Looking through Exhibit 1, your records, do
20 they appear to accurately reflect what you wrote on
21 that date?

22 A. Yes.

23 Q. And how are those records stored?

24 A. These records are submitted at the end of a
25 physical examination and -- history and physical

1 examination, are submitted per protocol in the
2 emergency room. The nurse who helps to collect
3 evidence takes this information, and the social worker
4 as well, take this information, and it's processed per
5 protocol.

6 Q. Does your record appear to be changed or
7 altered in any way from when you made it?

8 A. No.

9 Q. Did Jeanine tell you when that -- the most
10 recent sexual assault had occurred?

11 A. According to my notes, which I can refer to,
12 the assault was six hours prior to our meeting.

13 Q. And you had indicated that Jeanine described
14 lubricant being applied to her anus during the
15 discussion of anal sex.

16 Did she say who had applied the lubricant?

17 A. Her stepfather.

18 Q. And was it her stepfather that she was talking
19 about when Jeanine said that he had -- someone had
20 accidentally inserted his fingers into her vagina?

21 A. Yes.

22 Q. All right.

23 You said a minute ago that two nurses were
24 present for the physical examination?

25 A. Yes.

1 Q. Can you describe what Jeanine's physical
2 examination entailed?

3 A. Her examination entailed first a general
4 physical examination, head and neck, chest, heart,
5 abdomen, extremities, neurologic exam, and then focused
6 on a genital examination, external genital examination.
7 Involved external viewing of the vaginal and rectal
8 area and looking at the introitus, or the opening of
9 the vagina, but did not involve a speculum exam or
10 internal genital exam.

11 Q. Did you note anything as a result of the
12 physical examination?

13 A. I did, and I can refer to my notes.

14 I did note what I marked as a three-by-one
15 millimeter very superficial fissure, linear fissure at
16 the posterior portion of the introitus to the vagina --

17 Q. Can you --

18 A. -- the opening.

19 Q. I'm sorry.

20 Can you describe what you mean when you say the
21 post interior (sic) introitus to the vagina?

22 A. So posterior means -- Anterior would be the
23 anterior side of the vagina or vaginal opening would be
24 the side that is towards the abdomen, and the posterior
25 side of that opening would be the side that is towards

1 the back or towards the rectum.

2 Q. Had Jeanine described to you any cuts or
3 injuries that she had received?

4 A. I'll have to refer to my notes. What she did
5 note to me was that she had had some bleeding that she
6 noted in the emergency room bathroom, and she described
7 this as coming from, and I did note single quotations,
8 cut, end single quotation, that she felt was sustained
9 from -- a few months ago from shaving, was the bleeding
10 that she noted. She did not note to me that I recorded
11 a specific cut or injury.

12 Q. Were photographs taken after the external
13 examination?

14 A. Yes.

15 Q. And were other -- Were swabs taken of Jeanine?

16 A. Yes.

17 Q. And can you describe what taking a swab of
18 something really means?

19 A. Taking a swab means that a Q tip, and often
20 this is done in duplicate, a Q tip, and often it
21 depending on the site may involve a dry Q tip or a wet
22 Q tip is applied to specific sites of the body, and
23 that's per protocol. And in the physical examination
24 evidence collection in a sexual assault case, Q tips
25 are applied to the specific body parts as indicated and

1 then are given to the nurse in attendance for further
2 processing and submission.

3 Q. Why are those swabs taken?

4 A. Those swabs are taken to determine whether
5 there's any evidence, it's an evidence collection tool,
6 any evidence of material present on the patient's body
7 that is different from patient.

8 Q. So do you mean looking for things like semen
9 or --

10 A. So that could involve semen. That could
11 involve other body substances. That could involve
12 hair.

13 Q. All right.

14 And where on Jeanine Patterson were these swabs
15 taken?

16 A. I would have to refer to my notes.

17 Swabs were taken of the mouth, vagina, and I
18 did note specifically from the introitus, or that's the
19 opening, and the perineum, and that's the skin around
20 the opening, the rectum and skin.

21 Q. And what happened then with these swabs?

22 A. Those swabs are then submitted to the nurse in
23 attendance for further processing and submission, per
24 protocol.

25 Q. Okay.

1 Now, do you ask any questions about what a
2 patient does after, kind of between the time of the
3 sexual assault and the time of the examination?

4 A. Yes.

5 Q. What kind of questions do you ask?

6 A. We ask questions about whether they may have
7 showered or douched, for example.

8 Q. Why would you ask a question like that?

9 A. That could have an impact on any evidence that
10 may be collected, may be washed away, for example, if a
11 patient has showered.

12 Q. Okay.

13 Did you ask these questions of Jeanine?

14 A. My recollection is yes, and I can refer to my
15 notes specifically.

16 Q. Yes.

17 A. So I noted specifically that she had not bathed
18 or showered, had not douched, had not rinsed her mouth
19 or brushed her teeth, had not changed her clothes, had
20 not stooled or defecated, that she had urinated in the
21 emergency room, that she had eaten, had had something
22 to drink.

23 Q. Okay.

24 And so when you had marked that she had
25 urinated, you mean that she had urinated before this

1 physical exam?

2 A. Yes, before I began my history taking.

3 Q. All right.

4 When Jeanine was describing lubricant being
5 applied to her anus, did she describe what that
6 lubricant was.

7 A. I could refer to my notes?

8 Q. Sure.

9 A. What I noted in my notes was lubricant.

10 Q. Okay.

11 When you were giving a visual or external
12 examination of Jeanine, did you look at her anus area?

13 A. Yes.

14 Q. Did you visually see any lubricant?

15 A. I'll refer to my notes.

16 I did not note any substances of note on that
17 examination.

18 Q. Okay.

19 Did you ask Jeanine how much lubricant was
20 used?

21 A. No, not to my recollection.

22 Q. Okay.

23 And if you had seen some lubricant, is that
24 something that you would have noted?

25 A. Generally what I do in my examination is note

1 any abnormal discharge or fluid of any sort.

2 Q. Okay.

3 Do you know if you would have been able to see
4 lubricant after six hours?

5 A. I don't know.

6 Q. Did you note anything with respect to Jeanine's
7 pubic hair?

8 A. I would have to refer to my notes on that as
9 well.

10 I note on the vulva, and that's the external
11 area around the vagina, that there is shaved pubic
12 hair.

13 Q. How long did this examination take?

14 A. I don't know exactly.

15 Q. Do you know about what time you wrote this
16 report?

17 A. I can see what time I signed the report.

18 I signed it at 3 a.m.

19 Q. In general, how long do these physical
20 examinations regarding sexual assault last?

21 A. Often the entire history and physical
22 examination may last around one hour. Physical
23 examination itself, maybe 20 minutes to half an hour,
24 depending on how much evidence is collected, whether
25 photographs are required; be an approximate estimate.

1 Q. And during that time of the physical
2 examination, is the patient in a gown?

3 A. Yes.

4 Q. Okay.

5 And during the time that Jeanine was going
6 through this examination, did she ever take back what
7 she had told you previously about the abuse?

8 A. No.

9 MS. MONTGOMERY: Doctor, I don't have any
10 further questions, but Mr. Meryhew might.

11 MR. MERYHEW: Thank you, Dr. Click.

12 THE WITNESS: Um-hmm.

13 E X A M I N A T I O N

14 BY MR. MERYHEW:

15 Q. Let me ask you first of all, when you meet
16 initially with the social worker prior to meeting with
17 the patient, the social worker relates to you what
18 history has just been given to her, right?

19 A. Um-hmm, right.

20 Q. So in this case, going into the discussion with
21 Jeanine you knew essentially the gist of what she had
22 already told the social worker?

23 A. I do generally touch base with the social
24 worker beforehand and get a briefing of what has been
25 -- information has been obtained.

1 Q. In this case, do you remember that
2 conversation?

3 A. I do not recall that conversation specifically.

4 Q. So that's your usual practice, and in this case
5 you assume you knew going in there?

6 A. That's my usual practice.

7 Q. You described a protocol that you follow, and
8 just to be clear, that's a protocol developed with law
9 enforcement so that Harborview can assist law
10 enforcement in gathering evidence?

11 A. That's a protocol that is developed in the
12 emergency room for history taking and physical
13 examination, evidence collection.

14 Q. And so each step of the process that you
15 described today in court is governed by that protocol
16 for how this material should be collected and handled
17 after it's collected?

18 A. Yes.

19 Q. Okay.

20 Now, I'm a little curious.

21 You indicated that Jeanine told you that there
22 had been accidental penetration of her vagina.

23 Did you ask what was meant by that?

24 A. You know, my -- My notes indicate accidental
25 digital, that would be finger, penetration during a

1 check, is what my understanding was from that
2 conversation.

3 Q. But did you ask her how it is that somebody
4 could accidentally penetrate her vagina?

5 A. I don't recall if I asked that, specific
6 follow-up questions to that one.

7 Q. But Jeanine was clear that it wasn't
8 intentional?

9 A. That was the wording that she used that I noted
10 in my report.

11 Q. Okay.

12 Now, you knew during the history that she had
13 -- that she indicated that lubricant had been applied
14 to her anus and to her -- to the anal area at least,
15 correct?

16 A. Yes.

17 Q. And did you inquire about what kind of
18 lubricant that was?

19 A. I don't recall if I did.

20 Q. Would it make a difference if it were a
21 water-based lubricant as opposed to a petroleum-based,
22 for example, in how long it would be present in her
23 skin?

24 A. I don't know.

25 Q. You don't know?

1 A. (Shakes head side to side.)

2 Q. And if she had told you that it was Vaseline
3 that had been applied, would you have any knowledge of
4 whether or not that would still be there six hours
5 later?

6 A. I don't know that.

7 Q. Now, you took swabs from both, among other
8 places, from the anus and from the perineum, correct?

9 A. Yes.

10 Q. And that's the area between the vagina and the
11 anus?

12 A. Yes.

13 Q. If lubricant had been applied, those are two
14 areas that may have actually shown some trace evidence
15 of that?

16 A. I don't know if it would have at that time or
17 not.

18 Q. But those are the two areas that would have
19 been suspect if you were looking for lubrication of the
20 anus, correct?

21 A. Certainly her history indicated that the anus
22 was an area that may have had contact with lubricant.

23 Q. What is the protocol for taking a swab from the
24 anal area and from the perineum? You indicated
25 sometimes it's a dry Q tip, sometimes it's wet.

1 If you could just be a little more specific
2 about those two areas, please.

3 A. I don't recall whether the protocol is dry or
4 wet in those areas specifically, but generally in terms
5 of obtaining a swab specimen it involves, in the rectal
6 area would involve touching the swab to the area around
7 the anal opening as well as just inside the anal
8 opening.

9 Q. And you indicated that you often take two swabs
10 of an area?

11 A. That is often the case, though I don't recall
12 in this protocol whether one or two swabs are taken
13 from these areas specifically.

14 Q. But it sounds like Jeanine hadn't engaged in
15 any of the activities that sometimes can pollute the
16 trace evidence. She hadn't bathed, showered,
17 defecated.

18 Were there any indications she had done
19 anything which might have led to the diminishment of
20 any trace evidence?

21 A. I can refer to my notes. She did specifically
22 indicate that she had urinated.

23 Q. And so that would have affected potentially any
24 vaginal swabs, but wouldn't have had an effect on other
25 parts of the body?

1 A. I don't know to what degree that would have an
2 effect on other parts of the body.

3 Q. Do you believe that urination could diminish
4 trace evidence on the anus?

5 A. I don't know in what way after she urinated she
6 would have, for instance, used toilet paper afterwards.
7 I don't know.

8 Q. Okay.

9 You indicated that Ms. Patterson showed signs
10 of having had her hair -- pubic hair shaved.

11 A. Yes.

12 Q. Did she indicate to you whether she had done
13 the shaving?

14 A. You know, I can refer to my notes. I did not
15 specifically note that the pubic hair at that time -- I
16 don't have any notes in my record whether the
17 just-shaved hair was done by herself or someone else.

18 We did have the discussion, as I relayed
19 earlier, about shaving of her pubic hair over time
20 since she had begun having pubic hair. It was
21 monitored by her stepfather.

22 Q. Dr. Click, I notice in the report that you're
23 looking at that it begins on page 3 of 6, 4 of 6, 5 of
24 6, 6 of 6.

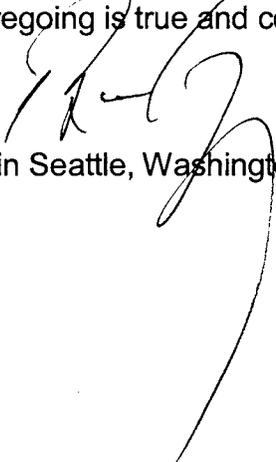
25 Do you know what pages 1 and 2 would normally

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Cathleen Gormley**, the attorney for the petitioner, at 600 First Avenue, Suite 106, Seattle, WA 98103, containing a copy of the **STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION** in IN RE PERSONAL RESTRAINT PETITION OF BRADLEY M. PETERS, Cause No. **62279-0-1**, in the Court of Appeals for the State of Washington, Division I.

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

Name



Done in Seattle, Washington

Date

03/15/10

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