

NO. 125932

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

In Re Personal Restraint Petition of:

Calvin Eagle,

Petitioner.

**PERSONAL RESTRAINT PETITION
AND OPENING BRIEF**

Whatcom County Superior Court No. 08-1-00814-5

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ORIGINAL

1 **I. STATUS OF PETITIONER**

2 A Whatcom County jury convicted petitioner Calvin Eagle of one count of
3 rape of a child in the first degree and two counts of rape of a child in the second
4 degree. On March 15, 2010, the trial court sentenced Eagle to an indeterminate
5 sentence of 216 months to life. *See Exhibit A, Judgment and Sentence.*
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8 Eagle appealed the judgment and sentence, and on May 31, 2011 this Court
9 affirmed the judgment in an unpublished opinion. *See State v. Eagle, 2011 WL*
10 *2179261 (2011).* The Washington Supreme Court denied Eagle’s petition for
11 review on November 21, 2011. *See State v. Eagle, 173 Wash.2d 1002, 271 P.3d*
12 *248 (2011).* The mandate was issued on December 14, 2012. There have been no
13 previous requests for post-conviction relief in this case.
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17 Eagle is currently in Department of Corrections custody pursuant to the
18 judgment entered in this case. He now seeks relief from this Court in the form of
19 vacation of the judgment and remand to the King County Superior Court for a new
20 trial.
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23 **II. GROUNDS FOR RELIEF**

24 Mr. Eagle’s continued restraint is unlawful because his judgment violates the
25 Constitutions of the United States and the State of Washington and the laws of the
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1 State of Washington. RAP 16.4(c)(2). Specifically, Eagle raises the following
2 legal claims:

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4 Claim No. 1:

5 Eagle's federal and state constitutional rights to an open and public trial
6 were violated when the trial court twice conducted closed proceedings in
7 chambers after the trial had begun without first conducting a hearing as
8 required by *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995), and
9 its progeny.

10 Claim No. 2:

11 Appellate counsel was constitutionally ineffective in failing to raise the issue
12 set forth in Claim No. 1 on direct appeal.

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14 Claim No. 3:

15 Eagle's federal and state constitutional rights to an open and public trial
16 were violated when the trial court conducted voir dire of individual jurors in
17 chambers and sealed juror questionnaires without first conducting a hearing
18 as required by *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995), and
19 its progeny.

20 Claim No. 4:

21 Appellate counsel was constitutionally ineffective in failing to raise the issue
22 set forth in Claim No. 3 on direct appeal.

23 **III. STATEMENT OF FACTS RELEVANT TO CLAIMS**

24
25 The first closed hearing

26 Immediately prior to the commencement of voir dire, the trial court
27 arraigned Eagle on an amended information. Since prospective jurors were already
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1 going to be in the courtroom, the trial court elected as a matter of convenience to
2
3 conduct the arraignment in a closed hearing in chambers.

4 The Court: We'll have the panel sitting out here ready to go so I want you to—
5 maybe we'll meet in chambers with the court reporter and I can do the
6 arraignment in chambers.

7 Mr. Richey: Thank you, Your Honor.

8
9 (Recess taken.)

10 (The following proceedings were had in chambers:)

11
12 The Court: Mr. Eagle, I'm holding what's called a Second Amended Information
13 in your case; have you seen a copy of that?

14 The Defendant: Yes.

15
16 The Court: You are charged in Count I of the Second Amended Information with
17 the crime of rape of a child in the first degree; in Count II with the
18 crime of rape of a child in the first degree; in Count III with the crime
19 of rape of a child in the second degree; and in count IV with the crime
20 of rape of a child in the second degree with the crime of rape of a
21 child in the second degree. Do you want me to read this to you?

22 Mr. Lustick: It's not necessary, Your Honor.

23 The Court: To those charges how do you plead?

24 The Defendant: Not guilty.

25 The Court: Not guilty pleas are entered.

26
27 *See Exhibit B, Excerpt of Report of Proceedings, RP 39-40.*
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1 The trial court did not hold a hearing prior to conducting the in-chambers
2 arraignment.
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4 The second closed hearing

5 During the testimony of victim S.M., the trial court interrupted the
6 proceedings to hold another closed hearing in chambers. The hearing concerned a
7 text message and photo which were sent to Mr. Eagle's cell phone while S.M. was
8 testifying. The trial court did not hold a hearing prior to conducting the in-
9 chambers conference. See Exhibit C, *Excerpt of Report of Proceedings*, RP 81-84.
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11 Voir dire in chambers and juror questionnaires

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15 Voir dire was not transcribed for Eagle's direct appeal. Undersigned
16 counsel is in the process of obtaining a transcript of voir dire to determine if any
17 jurors were questioned in closed proceedings in chambers. If this did occur,
18 counsel will file the voir dire transcript as a supplemental exhibit to the PRP. If no
19 in-chambers voir dire occurred, Eagle will withdraw this portion of his public trial
20 claim.
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23
24 The trial court docket does not indicate that any juror questionnaires were
25 filed, under seal or otherwise. The existing trial transcripts are silent on the issue,
26 but as noted above, voir dire was not transcribed. Undersigned counsel has spoken
27 with trial counsel Jeffrey Lustick about this case. Mr. Lustick does not specifically
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1 recall whether there was a juror questionnaire used in this case, but stated that this
2 is the type of case where he normally would propose one. Mr. Lustick will be
3 checking his files to determine whether a juror questionnaire was in fact used at
4 trial. If so, counsel will submit the questionnaire as a supplemental exhibit to the
5 PRP. If no in-chambers voir dire occurred, Eagle will withdraw this portion of his
6 public trial claim.
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10 **IV. ARGUMENT**

11 Claims No. 1 & 3:

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13 Eagle's federal and state constitutional rights to an open and public trial
14 were violated when the trial court twice conducted closed proceedings in
15 chambers after the trial had begun without first conducting a hearing as
16 required by *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995), and
17 its progeny.

18 Eagle's federal and state constitutional rights to an open and public trial
19 were violated when the trial court conducted voir dire of individual jurors in
20 chambers and sealed juror questionnaires without first conducting a hearing
21 as required by *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995), and
22 its progeny.

23 The Washington Supreme Court recently issued four decisions which
24 explained and clarified its public trial jurisprudence: *State v. Wise*, 2012 WL
25 5870396 (Nov. 21, 2012); *State v. Paumier*, 2012 WL 5870479 (Nov. 21, 2012);
26 *State v. Sublett*, 2012 WL 5870484; and *In Re PRP of Morris*, 2012 WL 5870496
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1 (Nov. 21, 2012). From these four cases one can glean a number of principles
2 which apply in the analysis of a public trial claim:
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4 Both the state and federal constitutions guarantee the right to a public trial.
5 Wash. Const. art I, § 22; U.S. Const. amend. VI; Wash. Const. art I, § 10; U.S
6 Const. amend. I.
7

8 In balancing the public trial right with other rights and interests, the
9 Washington Supreme Court has adopted five criteria which the trial court must
10 consider on the record *prior* to closing trial proceedings to the public. *Wise*, at ¶¶
11 11, 16, citing *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995); *Paumier*,
12 at ¶ 8.
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16 Voir dire of individual jurors in chambers is a closure of the courtroom
17 which requires consideration of the *Bone-Club* factors. *Wise*, at ¶¶ 14-17;
18 *Paumier*, at ¶ 9.
19

20 Failure to consider the *Bone-Club* factors prior to the closure constitutes a
21 violation of the right to a public trial. This constitutes a structural error for which
22 prejudice is presumed on direct appeal. The remedy is a new trial. *Wise*, at ¶¶ 18-
23 21, 24-32; *Morris*, at ¶ 15.
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26 Appellate counsel's failure to raise a meritorious public trial claim on direct
27 appeal constitutes ineffective assistance of counsel. *Morris*, at ¶¶ 16-20.
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1 However, “not every interaction between the court, counsel, and defendants
2 will implicate the right to a public trial, or constitute a closure if closed to the
3 public.” *Sublett*, at ¶ 13. In deciding whether a particular proceeding implicates
4 the right to a public trial, Washington has adopted the “experience and logic” test.
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7 The first part of the test, the experience prong, asks whether the place and
8 process have historically been open to the press and general public. The
9 logic prong asks whether public access plays a significant positive role in the
10 functioning of the particular process in question. If the answer to both is yes,
11 the public trial right attaches and the *Waller* or *Bone-Club* factors must be
12 considered before the proceeding may be closed to the public.

13 *Sublett*, at ¶ 16 (citations, quotations and footnotes omitted). Though the
14 “experience and logic” test is a “useful tool,” (*Sublett*, at ¶ 16) ultimately the
15 question is “whether openness will enhance both the basic fairness of the criminal
16 trial and the appearance of fairness so essential to public confidence in the
17 system.” *Sublett*, at ¶ 16. In *Sublett*, the Court concluded that proceedings
18 regarding jury instructions and jury questions do not implicate the right to a public
19 trial because they have not historically been routinely conducted in an open
20 courtroom. *Sublett*, at ¶¶ 18-20.

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23 The two closed proceedings which are evident from the existing record

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26 The first closed proceeding in Eagle’s trial occurred when the trial court
27 arraigned Eagle on the second amended information. Arraignments have
28 historically been open to the public. An arraignment is a critical stage of the
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1 criminal trial process, a proceeding at which the defendant is informed of the
2 charges against him and decides whether to plead “not guilty” or “guilty.” It is
3 beyond serious debate that Eagle’s in-chambers arraignment satisfies the
4 “experience” prong of the “experience and logic” test.
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7 The in-chambers arraignment also satisfies the “logic” prong. Washington
8 does not utilize grand juries in making charging decisions. Instead, the power to
9 charge by information is vested in the prosecutor’s office. Public access to
10 arraignments can play a “significant positive role” in encouraging prosecutors to
11 exercise this power judiciously and with restraint.
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14 In short, an arraignment that is open to the public enhances both the “basic
15 fairness” of the criminal trial process and “the appearance of fairness so essential
16 to public confidence in the system.”
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19 The closed arraignment implicated Eagle’s right to a public trial.
20 Accordingly, the trial court had the duty to consider the *Bone-Club* factors prior to
21 conducting the arraignment in chambers. It is indisputable that this did not occur.
22 This constitutes a structural error, and Eagle is entitled to a new trial.
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25 Similarly, the closed hearing at which the parties and the trial court
26 discussed the bizarre text message which Eagle received on his cell phone occurred
27 during trial, in the middle of victim S.M.’s testimony. Certainly anything that
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1 occurs during a witness's testimony—and that directly relates to that testimony—
2 satisfies the “experience and logic” test. Again, it is indisputable that no *Bone-*
3 *Club* hearing took place prior to the closed proceeding. This Court should order a
4 new trial.
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7 Individual voir dire in chambers

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9 If Eagle's supplemental exhibit(s) reveal that (a) individual voir dire took
10 place in chambers; and (b) no *Bone-Club* hearing preceded the in-chambers voir
11 dire, then *Morris, Paumier* and *Morris* mandate that this Court grant a new trial.
12

13 Juror questionnaires

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15 Whether the sealing of juror questionnaires implicates a defendant's right to
16 a public trial is an open question which is currently before the Washington
17 Supreme Court in *State v. Tarhan*, No. 85737-7 (argued Feb. 16, 2012). If Eagle's
18 supplemental exhibit(s) reveal that (a) a juror questionnaire was used at trial; (b)
19 the questionnaire was sealed or otherwise kept from the public; and (c) no *Bone-*
20 *Club* hearing preceded the sealing, then this Court should stay Eagle's petition
21 pending the outcome of *Tarhan*.
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1 Claims No. 2 & 4:

2 Appellate counsel was constitutionally ineffective in failing to raise the issue
3 set forth in Claim No. 1 on direct appeal.

4 Appellate counsel was constitutionally ineffective in failing to raise the issue
5 set forth in Claim No. 3 on direct appeal.

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7 If the Court finds that Eagle’s public trial right was violated as described in
8 Claims Nos. 1 and 3, the Court need not reach the issue left unresolved in
9
10 *Morris*—whether prejudice is presumed if the public trial violation is raised for the
11 first time in a PRP. *Morris*, at ¶ 15. Rather, the Court can decide the PRP based
12 on Eagle’s claims of ineffective assistance of appellate counsel. *Morris*, at ¶ 15.

13
14 In order to show ineffective assistance of appellate counsel, Eagle must
15 show deficient performance and prejudice. *Morris*, at ¶ 16. If Eagle’s right to a
16 public trial were violated, and if appellate counsel had raised the issue on direct
17 appeal, then Eagle would have been granted a new trial. “No clearer prejudice
18 could be established.” *Morris*, at ¶ 16. As for deficient performance, Eagle’s
19 “appellate counsel had but to look at [the Washington Supreme Court’s] public
20 trial jurisprudence to recognize the significance of closing a courtroom without
21 first conducting a Bone-Club analysis.” *Morris*, at ¶ 20. Accordingly, if the Court
22 finds a violation Eagle’s public trial right, then the Court should grant relief on
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28 Claims Nos. 2 and 4.

1 V. CONCLUSION

2 This Court should grant Mr. Eagle's petition, vacate the judgment, and
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4 remand this case to the Whatcom County Superior Court for a new trial.

5 DATED this 14th day of December, 2012.

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8
9 _____
10 Steven Witchley, WSBA #20106
11 Attorney for Calvin Eagle

VERIFICATION ON BEHALF OF PETITIONER

I, Steven Witchley, declare under penalty of perjury that I have discussed this personal restraint petition (PRP) with petitioner Calvin Eagle, and that he has consented to the petition being filed on his behalf.

I have mailed a verification form to Mr. Eagle, along with a copy of this PRP, and will file his signed verification with the Court under separate cover.

Dated this 14th day of December, 2012.



Steven Witchley

EXHIBIT A:
Judgment and Sentence

SCANNED 13

FILED IN OPEN COURT
03-15 2010
WHATCOM COUNTY CLERK

By [Signature]
Deputy

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

JDSWC

STATE OF WASHINGTON, Plaintiff,

No. 08-1-00814-5

vs.

JUDGMENT AND SENTENCE (JS)

CALVIN ARTIE EAGLE, Defendant.

PRISON

[XX] RCW 9.94A.712 - PRISON CONFINEMENT

DOB: April 29, 1970

[XX] CLERK'S ACTION REQUIRED-para 4.1 (LFO'S),
4.3 (NCO)

I. HEARING

1.1 The court conducted a sentencing hearing March 15, 2010 and the defendant, Calvin Artie Eagle, the defendant's lawyer, Jeffrey A Lustick, and the Deputy Prosecuting Attorney, Eric J. Richey, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced in accordance with the proceedings in this case, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant is guilty of the following offenses based upon a JURY -
VERDICT:

COUNT	CRIME	TYPE OF DRUG	RCW	DATE OF CRIME
II	RAPE OF A CHILD IN THE FIRST DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.073	October 14, 2003
III	RAPE OF A CHILD IN THE 2ND DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.076	September 13, 2007
IV	RAPE OF A CHILD IN THE SECOND DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.076	October 14, 2005

as charged in the Amended Information.

The jury returned a special verdict or the court made a special finding with regard to the following: [XX] The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.[XX] The victim was under 15 years of age at the time of the offense in Count II RCW 9.94A.837. [XX] The crime(s) charged in involve domestic violence.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

Judgment and Sentence (JS) (Felony)
(RCW 9.94A.500, .505) WPF CR 84.0400 (6/2002)
CALVIN ARTIE EAGLE

JIS/mw
cc: weso/BPD
cc: Jail

az

BB

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	A or J	TYPE OF CRIME
NO KNOWN FELONY HISTORY				

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525
- The following prior offense require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements *	TOTAL STANDARD RANGE (standard range including enhancements)	MAXIMUM TERM
II	6	XII	162 to 216 Months		162 to 216 Months	Life/\$50,000
III	6	XI	146 to 194 Months		146 to 194 Months	Life/\$50,000
IV	6	XI	146 to 194 Months		146 to 194 Months	Life/\$50,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW.94A.533(9).

- Additional current offense sentencing data is attached in Appendix 2.3.
- 2.4 EXCEPTIONAL SENTENCE. The court finds substantial and compelling reasons that justify an exceptional sentence:
- 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753
- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

- 2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are as follows:

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 The defendant is found NOT GUILTY of Count 1.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$ _____		Restitution to:	
<i>(Name and Address--address may be withheld and provided confidentially to Clerk's Office).</i>			
PCV	<u>\$500.00</u>	Victim Assessment	RCW 7.68.035
	<u>\$100.00</u>	Domestic Violence Assessment	RCW 10.99.080
CRC	<u>\$450.00</u>	Court costs, including:	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee	<u>\$200.00</u> FRC
		Witness costs	\$ WFR
		Sheriff service fees	\$ SFR/SFS/SFW/WRF
		Jury demand fee	<u>\$250.00</u> JFR
PUB		Fees for court appointed attorney	RCW 9.94A.760
WFR	\$	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM	\$	Fine	RCW 9A.20.021
LDI	\$	VUCSA Fine	<input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430
MTH	\$	Meth Lab Cleanup	<input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.401
CDF/LDI/ FCD/NTF/ SAD/SDI	\$	Drug enforcement fund	RCW 9.94A.760
CLF	\$	Crime lab fee	<input type="checkbox"/> Suspended due to indigency RCW 43.43.690
DN2	<u>\$100.00</u>	Felony DNA Collection Fee	<input type="checkbox"/> Not imposed due to hardship
RTN/RJN	\$	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	TOTAL	RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
 shall be set by the prosecutor
 is scheduled for _____

All payments shall be made in accordance with the policies, procedures and schedules of the Whatcom County Clerk as supervision of legal financial obligations has been assumed by the Court. RCW 9.94A.760

PAYMENT IN FULL: Defendant agrees and is hereby ordered to make payment in full within _____ days after the imposition of sentence to the Whatcom County Clerk for the amount due and owing for legal financial obligations and restitution.

MONTHLY PAYMENT PLAN: The defendant agrees and is hereby ordered to enter into a monthly payment plan, with the Whatcom County Clerk for the amounts due and owing for legal financial obligations and restitution, immediately after sentencing. The Court hereby sets the defendant's monthly payment amount at \$100.00, which will remain in effect until such time as the defendant executes a payment plan negotiated

with the Collections Deputy. The first payment of \$100.00 is due immediately after imposition of sentence or release from confinement, whichever occurs last.

During the period of repayment, the Whatcom County Clerk's Collections Deputy may require the defendant to appear for financial review hearings regarding the appropriateness of the collection schedule. The defendant will respond truthfully and honestly to all questions concerning earning capabilities, the location and nature of all property or financial assets and provide all written documentation requested by the Collections Deputy in order to facilitate review of the payment schedule. RCW 9.94A. The defendant shall keep current all personal information provided on the financial statement provided to the Collections Deputy. Specifically, the defendant shall notify the Whatcom County Superior Court Clerk's Collection Deputy, or any subsequent designee, of any material change in circumstance, previously provided in the financial statement, i.e. address, telephone or employment within 48 hours of change.

[XX] DEFENDANT MUST MEET WITH COLLECTIONS DEPUTY PRIOR TO RELEASE FROM CUSTODY.

[XX] The defendant shall pay the cost of services to collect unpaid legal financial obligations, which include monitoring fees for a monthly time payment plan and/or collection agency fees if the account becomes delinquent. (RCW 36.18.190)

[] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: _____ . (JLR) RCW 9.94A.760

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

[XX] The defendant is ordered to reimburse _____ at _____ for the cost of pretrial electronic monitoring in the amount of \$.

4.2 [XX] **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. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

[XX] **HIV TESTING.** The defendant shall submit to HIV testing. RCW 70.24.340

4.3 **NO CONTACT ORDER/ORDER PROHIBITING CONTACT**

[XX] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence. **SEE ATTACHED APPENDIX F.**

[] **NO POST-CONVICTION ORDER PROHIBITING CONTACT IS BEING ENTERED OR EXTENDED. ANY PRIOR ORDER ENTERED, HAVING THIS CAUSE NUMBER, TERMINATES ON THE DATE THIS JUDGMENT IS SIGNED**

4.4 **OTHER:**

[] Defendant is to be released immediately to set up jail alternatives.

[] **DEPORTATION.** If the defendant is found to be a criminal alien eligible for release to and deportation by the United States Immigration and Naturalization Service, subject to arrest and reincarceration in accordance with law, then the undersigned Judge or Prosecutor consent to such release and deportation prior to the expiration of the sentence. RCW 9.94A.280

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

See (b) below for terms of confinement pursuant to RCW 9.94A.712.

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data above)

OTHER: _____

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA, in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above in section 2.3, and except for the following which shall be served CONSECUTIVELY:

The sentence herein shall run consecutively with the sentence in _____ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence IMMEDIATELY unless otherwise set forth here: _____ (should be a Monday if possible) between 1:00 p.m. and 4:00 p.m.

(b) CONFINEMENT. RCW 9.94A.712: The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count II: minimum term 216 months maximum term Life; Count III: minimum term 194 months maximum term Life; Count IV: minimum term 194 months maximum term Life

(c) The defendant shall receive credit for time served prior to sentencing, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.6 SUPERVISION: [XX]COMMUNITY CUSTODY for 36 to 48 months for counts II, III & IV, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence; or the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. [Use paragraph 4.7 to impose community custody following work ethic camp.]

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or a felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(1)(a).

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent Offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Defendant shall report to Department of Corrections, 1522 Cornwall Avenue, Bellingham, WA 98225, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence. The defendant shall:

The defendant shall not consume any alcohol.

Defendant shall comply with the No Contact provisions stated above.

Defendant shall remain of a specified geographical boundary, to wit

The defendant shall undergo an evaluation for treatment for the concern noted below AND FULLY COMPLY with all recommended treatment.

Domestic Violence

Substance Abuse

Mental Health

Anger Management

The defendant shall participate in the following crime related treatment or counseling services:

Defendant shall complete an alcohol and drug evaluation and comply with recommendations.

The defendant shall comply with the following crime-related prohibitions:

Defendant shall not use any alcohol or drugs (except as prescribed by his physician).

Other conditions may be imposed by the court or Department during community custody, or are set forth here:

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to

vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional ten years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5)

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606

5.4 **RESTITUTION HEARING.**

[XX] Defendant waives any right to be present at any restitution hearing (sign initials): _____

_____ Defendant refuses to waive any right to be present at any restitution hearing.

5.5 **COMMUNITY CUSTODY VIOLATION.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200**

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.
2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Correction.
3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed written notice of your change of residence to the 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 your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county

where last registered within 10 days of moving. If you move out of Washington state, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

4. **Additional Requirements Upon Moving to Another State:** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.
5. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of High Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.
6. **Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours, excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.
7. **Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 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. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.
8. **Application for a name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.8 || The court finds that Count(s) is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately mark the person's Washington State Driver's license or permit to drive, in any manner authorized by the department. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER:

DONE in Open Court and in the presence of the defendant this date: **March 15, 2010.**


DEFENDANT
Print name: CALVIN ARTIE EAGLE


JUDGE


Deputy Prosecuting Attorney
WSBA # 22860
Print name: ERIC J. RICHEY


Attorney for Defendant
WSBA # 27072
Print name: JEFFREY A LUSTICK

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 9A.84.660.

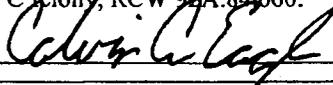
Defendant's signature: 

EXHIBIT B:

Excerpt from Report of Proceedings, RP 39 - 40

1 THE COURT: We are talking about interviews.

2 MR. RICHEY: Yes, Your Honor.

3 THE COURT: Anybody can have a court reporter with
4 them if they wish. The court reporter's rendition of
5 what was said is nothing more than counsel's notes.

6 MR. RICHEY: Right.

7 THE COURT: And counsel is not permitted to
8 address it as if it's a deposition transcript. It's
9 just counsel's notes.

10 MR. RICHEY: I understand. Thank you.

11 THE COURT: In that regard I think counsel is not
12 going to be permitted to hand a transcript to the
13 witness and say read that, isn't that what you said.
14 Just like counsel wouldn't hand their own notes to the
15 witness and say are my notes correct. You can ask a
16 question isn't it true on such and such a day you said
17 such and such, and if they said no, I didn't, you can
18 impeach them any other proper way. But using a
19 transcript is not appropriate impeachment. But if you
20 bring in a court reporter and they say I was there and
21 I listened and did she say such and such, yes, she did.

22 MR. RICHEY: Your Honor, we need about 15 minutes
23 to get the Information prepared.

24 THE COURT: We'll have the panel sitting out here
25 ready to go so I want you to -- maybe we'll meet in

1 chambers with the court reporter and I can do the
2 arraignment in chambers.

3 MR. RICHEY: Thank you, Your Honor.

4 (Recess taken.)

5 (The following proceedings
6 were had in chambers:)

7 THE COURT: Mr. Eagle, I'm holding what's called a
8 Second Amended Information in your case; have you seen
9 a copy of that?

10 THE DEFENDANT: Yes.

11 THE COURT: You are charged in Count I of the
12 Second Amended Information with the crime of rape of a
13 child in the first degree; in Count II with the crime
14 of rape of a child in the first degree; in Count III
15 with the crime of rape of a child in the second degree;
16 and in Count IV with the crime of rape of a child in
17 the second degree. Do you want me to read this to you?

18 MR. LUSTICK: It's not necessary, Your Honor.

19 THE COURT: To those charges how do you plead?

20 THE DEFENDANT: Not guilty.

21 THE COURT: Not guilty pleas are entered.

22 * * * *

23 (The following proceedings
24 were had outside the hearing
and presence of the jury:)

25 MR. RICHEY: I want to pose this to you and see

EXHIBIT C:

Excerpt from Report of Proceedings, RP 81 - 84

1 A I did. I felt that way.

2 MR. LUSTICK: Excuse me, Your Honor. May we have
3 a recess with you in chambers?

4 THE COURT: Why don't you come to side bar first.

5 (Off-the-record discussion
6 between court and counsel.)

7 THE COURT: Why don't we take about a twenty
8 minute recess and we'll meet in chambers and we'll give
9 everybody a break.

10 (The following proceedings
11 were had in chambers:)

12 MR. LUSTICK: Your Honor, during the testimony of
13 the alleged victim in this case I heard my client's
14 phone vibrate and that is an indication that some sort
15 of communication to the phone was being made. And I
16 saw him grab his phone and he flipped it open and I
17 looked at what was on there. And during the victim's
18 testimony he received a picture of the victim with a
19 caption Love you and miss you. I have never had that
20 happen before. I think that's weird. I wanted to put
21 that on the record. I don't know what it means. I
22 really don't know what it means.

23 THE COURT: Does the phone indicate the source of
24 that?

25 MR. LUSTICK: Let me look.

1 THE COURT: There should be a phone number where
2 it was sent from.

3 MR. LUSTICK: This is a LG phone, I don't know how
4 to use it. I don't know how to work this phone, Your
5 Honor. Let me go ask my client to have it displayed
6 for you, if I may.

7 THE COURT: Have him come in.

8 MR. LUSTICK: Can you display the phone number
9 where it came from?

10 THE DEFENDANT: There's the phone number right
11 there.

12 THE COURT: Does this give a list of all the phone
13 calls received?

14 THE DEFENDANT: I had just cleared it so that's
15 the only one.

16 THE COURT: You just cleared it?

17 THE DEFENDANT: I had cleared it earlier today,
18 all of my messages. So that's something that's recent.

19 THE COURT: That's the only thing registered in
20 your in box?

21 THE DEFENDANT: Yes.

22 MR. RICHEY: Are you going to call the number,
23 Your Honor?

24 THE COURT: Does this show the time that this was?

25 THE DEFENDANT: I was trying to figure out how to

1 do that, what time it was.

2 MR. LUSTICK: Did anyone else see when he first
3 grabbed for his phone?

4 THE DEFENDANT: I've got it.

5 THE COURT: That would show the time when that was
6 sent. Do you recognize that phone number? Again, you
7 don't have to answer my questions if you don't want to.

8 THE DEFENDANT: No.

9 THE COURT: You don't recognize who that phone
10 number is from?

11 THE DEFENDANT: I haven't seen that number. I had
12 no communication with none of the family for quite
13 sometime.

14 MR. LUSTICK: Well, again, I'm nervous about him
15 saying anything at this point.

16 THE COURT: Yes.

17 MR. LUSTICK: I just wanted to bring it to your
18 attention.

19 THE COURT: First of all, I want all cell phones
20 off in the courtroom. And, secondly, if you want to
21 look into the issue and bring it up later you can do
22 that. But I won't ask any further questions.

23 MR. LUSTICK: I figured I would just bring it to
24 your attention and Mr. Richey's because it's weird when
25 something like this happens. It's unusual. I think

1 it's important to let the trial judge know about it.

2 THE COURT: Well, I don't see any issue that we
3 have to address right now as far as the trial is
4 concerned. Certainly the witness couldn't have been
5 sending a photograph that was taken with a phone
6 because she was on the stand. Where it's coming from
7 or who's sending it, who knows. But if you want to
8 bring the issue up at a later time you can do that.
9 We'll go ahead and recess for 15 minutes.

10 (Recess taken.)

11 THE COURT: Let's bring the jury in.

12 MR. RICHEY: Your Honor, we have one issue. I
13 understand the defendant's brother is present and I
14 have a concern that he is speaking with other people
15 that will be testifying, him talking about what's going
16 on in the courtroom now. I know the court ordered
17 earlier that people in the courtroom aren't suppose to
18 do that and I will ask you to direct the defendant's
19 brother not to do that.

20 THE COURT: You're Mr. Eagle's brother?

21 MR. EAGLE: Yes.

22 THE COURT: Have you discussed the testimony of
23 this witness with anyone else?

24 MR. EAGLE: No, other than the fact that we were
25 on a break.

NO. 69593-2-I

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

In Re Personal Restraint Petition of:

Calvin Eagle,

Petitioner.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2013 JAN - 8 AM 11:18

VERIFICATION BY PETITIONER

Whatcom County Superior Court No. 08-1-00814-5

Steven Witchley
Law Offices of Holmes & Witchley,
PLLC
705 Second Avenue, Suite 401
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(206) 262-0300
(206) 262-0335 (fax)
steve@ehwlawyers.com

ORIGINAL

VERIFICATION BY PETITIONER

I, Calvin Eagle, declare under penalty of perjury that I have received a copy of the personal restraint petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this 21 day of December, 2012.



Calvin Eagle