

70139-8

701398

NO. 70139-8

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

STATE OF WASHINGTON,

Respondent,

v.

ERIK HANSON,

Appellant.

BRIEF OF RESPONDENT

ROBERT W. FERGUSON
Attorney General

MALCOLM ROSS
Senior Counsel
WSBA #22883
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-6430

NOV 11 1:02
COURT OF APPEALS, DIVISION I

ORIGINAL.

TABLE OF CONTENTS

I.	ISSUES PRESENTED	1
	A. Whether the trial court had tenable reasons for denying Hanson’s motion for mistrial, where testimony by the State’s expert about the sexually violent crimes Hanson likely would commit if released was helpful to the fact-finder and properly admitted.....	1
	B. Whether the trial court had tenable reasons for excluding expert testimony, where the expert was disclosed on the first day of trial, the substance of his opinions was not disclosed until the day of his testimony and the witness was permitted to offer lay testimony about his observations of Hanson.....	1
	C. Whether the trial court correctly denied Hanson’s motion for a <i>Frye</i> hearing on his rape disorder, where settled law holds that no such hearing is required.....	1
	D. Whether the trial court had tenable reasons for minimally limiting voir dire by prohibiting “golden rule” questions.....	1
II.	STATEMENT OF THE CASE	1
III.	ARGUMENT	10
	A. The Trial Court Did Not Abuse Its Discretion By Denying Hanson’s Motion for Mistrial Because Hanson’s Likelihood of Committing Future Sexually Violent Offenses Was a Proper Subject of Expert Opinion Testimony	10
	B. The Trial Court Did Not Abuse Its Discretion By Excluding Expert Testimony Due To A Discovery Violation Because Hanson’s Unreasonable Identification Of An Expert Witness On The First Day Of Trial Prejudiced The State And No Lesser Sanction Would Have Served The Interests Of Justice	17

C. The Trial Court Correctly Denied Hanson’s Request For A <i>Frye</i> Hearing	23
D. The Trial Court Did Not Abuse Its Discretion By Limiting The Extent Of Voir Dire	24
IV. CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Adkins v. Aluminum Co. of America</i> , 110 Wn.2d 128, 750 P.2d 1257 (1988) (citing J. Stein, <i>Closing Argument</i> § 60, at 159 (1985)).....	25
<i>Burnet v. Spokane Ambulance</i> , 131 Wn.2d 484, 933 P.2d 1036 (1997).....	18
<i>City of Cheney v. Grunewald</i> , 55 Wn. App. 807, 780 P.2d 1332 (1989).....	26
<i>In re Detention of Bedker</i> , 134 Wn. App. 775, 146 P.3d 442 (2006).....	16
<i>Frye v. United States</i> , 293 F. 1013 (D.C.Cir. 1923).....	23
<i>In re Detention of Berry</i> , 160 Wn. App. 374, 248 P.3d 592 (2011).....	23
<i>In re Detention of Broten</i> , 130 Wn. App. 326, 122 P.3d 942 (2005).....	11, 12
<i>In re Detention of Post</i> , 145 Wn. App. 728, 187 P.3d 803 (2008).....	12
<i>In re Detention of Ross</i> , 114 Wn. App. 113, 56 P.3d 602 (2002).....	11
<i>In re Pers. Restraint of Young</i> , 122 Wn.2d 1, 857 P.2d 989 (1993).....	23
<i>In re Young</i> , 122 Wn.2d 1, 857 P.2d 989 (1993).....	15
<i>Law v. State</i> , 98 P.3d 181, 194 (Wyo. 2004).....	25

<i>Philippides v. Bernard</i> , 151 Wn.2d 376, 88 P.3d 939 (2004).....	13
<i>State v. Borboa</i> , 157 Wn.2d 108, 135 P.3d 469 (2006).....	24
<i>State v. Greiff</i> , 141 Wn.2d 910, 10 P.3d 390 (2000).....	12
<i>State v. Johnson</i> , 124 Wn.2d 57, 873 P.2d 514 (1994).....	11
<i>State v. Russell</i> , 125 Wn.2d 24, 882 P.2d 747 (1994), <i>cert. denied</i> , 514 U.S. 1129, 115 S. Ct. 2004, 131 L. Ed. 2d 1005 (1995)	13
<i>State v. Turnipseed</i> , 162 Wn. App. 60, 255 P.3d 843 (2011).....	18
<i>State v. Yates</i> , 161 Wn.2d 714, 168 P.3d 359 (2007).....	24, 26
<i>United States v. Waters</i> , 627 F.3d 345 (9th Cir. 2010)	18, 19

Statutes

RCW 71.09.090(17).....	12, 13, 16
RCW 71.09.090(18).....	12

Other Authorities

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV).....	8
---	---

Rules

ER 702.....	13
-------------	----

I. ISSUES PRESENTED

- A. **Whether the trial court had tenable reasons for denying Hanson's motion for mistrial, where testimony by the State's expert about the sexually violent crimes Hanson likely would commit if released was helpful to the fact-finder and properly admitted.**
- B. **Whether the trial court had tenable reasons for excluding expert testimony, where the expert was disclosed on the first day of trial, the substance of his opinions was not disclosed until the day of his testimony and the witness was permitted to offer lay testimony about his observations of Hanson.**
- C. **Whether the trial court correctly denied Hanson's motion for a *Frye* hearing on his rape disorder, where settled law holds that no such hearing is required.**
- D. **Whether the trial court had tenable reasons for minimally limiting voir dire by prohibiting "golden rule" questions.**

II. STATEMENT OF THE CASE

Hanson strangled M.B.W. into unconsciousness on January 21, 1999, a few blocks from the mission near downtown Everett, Washington. RP 272-91. He had been struggling with rape fantasies and told police he attacked M.B.W. because of those fantasies. CP at ____ (App. 1 at 56, 63)¹ M.B.W. was a charity coordinator for her church and met Hanson only that day when he came to her for help. RP 272-73.

¹ Appendix 1 is selected pages from the transcript of Hanson's February 20, 2013 videotaped deposition that correspond to the video played to the jury at trial. The full document is filed under Snohomish Superior Court Cause No. 09-2-02096-3 as Sub. No. 131. The document has been designated as clerk's papers by the State but the CP numbers are not yet available. Because the document is 134 pages only the cited pages are attached hereto.

M.B.W.'s heart went out to him because he was twenty-three years old and reminded her of her son. RP 275. She thought he needed a lot of help, so she invited him to her home for dinner with her family, after receiving assurances about him from senior church staff. RP 276-77.

Hanson spent time before dinner playing guitar with M.B.W.'s son and talking about his favorite Christian bands. RP 279. During dinner he was very charming, personable, engaging, witty, bright and sincere. RP 279. He disclosed that his family had rejected him; one difficulty was that he was Christian and they were not. RP 279. After dinner Hanson watched "Veggie Tales" with M.B.W.'s three youngest children and M.B.W.'s daughter developed a crush on him because she found him cute and sweet. RP 281.

Around eight o'clock or so that night, Hanson said he was tired and asked to be taken to the mission. RP 281. M.B.W. drove him in her van, which had captain seats in the front and two rows of bench seats in the passenger compartment. RP 282-83. On the way they stopped at QFC and M.B.W. bought him groceries. RP 283-84. As they neared the mission Hanson asked to be dropped off a few blocks away. RP 284. He said he didn't want M.B.W. to see him going into the mission and think of him as being like the others there. RP 284.

Hanson hesitated getting out of the van and said it was hard for him to go back to the mission. RP 286. He and M.B.W. talked for about 30 minutes and she prayed with him. RP 286. Hanson thanked her for her kindness and said it made him know there was a God in heaven. RP 286. He then slipped between the captain seats to get his groceries from the bench seat behind her. RP 286.

From the five o'clock position behind her, Hanson slipped some kind of strap over M.B.W.'s head and began strangling her. RP 286-87. M.B.W. struggled to get her fingers under it but couldn't. RP 287. It was excruciatingly painful and she heard herself making gurgling, inhuman sounds. RP 287. Hanson usually had charming eyes but now they looked "monstrous" and it seemed as though he were a different person. RP 290. Hanson took her keys from the ignition and M.B.W. struggled and flailed with him, somehow managing to get them back and into the ignition switch. RP 287-88. As Hanson continued to strangle her she lost consciousness. RP 288-89.

Hanson had strangled M.B.W. with some flannel. CP ___ (App. 1 at 107). He planned to use it to tie her up in the back of her van and rape her. *Id.*

When M.B.W. came to she was lying on the bench seat in the passenger compartment; Hanson was lying on her with his face close to

hers. RP 290. He had regained his charming, kind persona and apologized to her. RP 290-91. She yelled at him and he left, hunched over. RP 291.

M.B.W.'s entire face and eyes had broken blood vessels and she looked sunburned. RP 292. Her neck was bruised and she had trouble swallowing. RP 292. The injuries faded over the next two weeks but it was a couple of years before her singing voice fully returned. RP 293. Hanson pled guilty to and was convicted of attempted rape second degree with forcible compulsion. Exs. 44, 45.

Hanson testified that his sexual offending began when he was about nine years old. CP ___ (App. 1 at 33). From ages nine to twelve he committed incest and indecent liberties against his two sisters. CP ___ (App. 1 at 33-34). They were two and three years younger than he was. CP ___ (App. 1 at 33). He offended against them through mutual oral sex and by rubbing himself on the girls. CP ___ (App. 1 at 34-35). This occurred more times than he could estimate. *Id.* For these crimes he was found guilty of indecent liberties and incest in the first degree. CP ___ (App. 1 at 38); Ex. 21.

Also when he was eight or nine Hanson rubbed his penis on his brother's penis; his brother was four years younger. CP ___ (App. 1 at 36). When Hanson was thirteen years old he molested his five-year-old

female cousin; he played “doctor” on her with sticks and rubbed his crotch on her buttocks. CP ____ (App. 1 at 37-38). In his guilty plea he admitted rubbing her vagina against her will. Ex. 24. He was found guilty of child molestation first degree. Ex. 25.

Hanson’s documented juvenile history includes an allegation that at age ten or eleven he raped a guinea pig with a pencil. CP ____ (App. 1 at 75-76). He testified in his SVP deposition that he faked the rape and when the guinea pig died four days later his brother reported the allegation to his stepmother. *Id.* He admitted that at age nine he rubbed his penis on a dog and a cat. CP ____ (App. 1 at 76). He admitted telling a counselor he had killed animals but testified his admissions were false. CP ____ (App. 1 at 77). He denied a number of other documented admissions involving extensive sexual contact, torture and mutilation of animals. CP ____ (App. 1 at 78-85).

In January 1990 Hanson was fourteen years old and confined at Echo Glen Children’s Center. CP ____ (App. 1 at 41, 48). On or around January 29, 1990, he was mopping up near a pool in the presence of an adult female staff member. CP ____ (App. 1 at 41-42). Hanson had known her no more than one week, but had decided before that day to isolate and rape her. CP ____ (App. 1 at 42, 45-46). He testified that his history of rape fantasies began around this time and he had been having them for a

couple of weeks. CP ___ (App. 1 at 53, 88). On this day he asked the staff person to unlock the girls' locker room for him and she did. CP ___ (App. 1 at 42). When they were in that room alone, Hanson came up behind her and, as he testified, "I put my hands on [her] shoulders, I shook her a couple times, and I stopped." CP ___ (App. 1 at 42, 47). Hanson initially denied his documented statements to police that he had grabbed her by the neck and choked her, but eventually admitted he must have said that. CP ___ (App. 1 at 108-10). He was found guilty of assault fourth degree for this offense. Ex. 28.

At Echo Glen Hanson disclosed disturbing details about his crimes during his sex offender group treatment. CP at ___ (App. 2 at 14).² His offense against his five-year-old female cousin when he was thirteen was planned for several days during which Hanson had sexual fantasies. CP at ___ (App. 2 at 15). He had posted his sister as a look-out so he would not be caught. *Id.* He poked the victim with a stick to make her feel pain and did not stop even though she asked him to. *Id.* He threatened, physically abused and anally raped his five-year-old brother; his sexual abuse of the boy occurred nightly for two years. CP at ___

² Appendix 2 is selected pages from the transcript of the February 11, 2013 videotaped deposition of Echo Glen counselor Gaylen Gold that correspond to the video played to the jury at trial. The full document is filed under Snohomish Superior Court Cause No. 09-2-02096-3 as Sub. No. 132. The document has been designated as clerk's papers by the State but the CP numbers are not yet available. Because the document is 38 pages only the cited pages are attached hereto.

(App. 2 at 17). He physically abused his sisters to gain compliance with oral, anal, and vaginal sex. CP at ___ (App. 2 at 18-19). These offenses occurred every other weekend, several times daily for three years. *Id.* He disclosed sexual contact with various pets and to killing the guinea pig by inserting a pencil into its vagina. CP at ___ (App. 2 at 19). He physically assaulted and had planned to sexually assault a female teacher after two weeks of deviant fantasies. CP at ___ (App. 2 at 20). He had also planned to physically assault a female janitor but thought a co-worker would intervene. CP at ___ (App. 2 at 22).

In November of 1990, Hanson and three others escaped from the Toutle River Boys Ranch and burglarized a trailer and a house. CP ___ (App. 1 at 48-49). He was convicted of those crimes and was sentenced to 130 weeks confinement. CP ___ (App. 1 at 51). Hanson committed another residential burglary in February 1996, when he was twenty years old. *Id.* He needed money to buy drugs. CP ___ (App. 1 at 52).

Eight months before attacking M.B.W., Hanson was arrested for indecent exposure. CP ___ (App. 1 at 67-68). He was twenty-two years old and exposed himself to a fifteen-year-old girl. CP ___ (App. 1 at 68). Hanson knew the family's schedule and knew the victim would be home alone, so at 5:30 a.m. he stood in front of her living room window and masturbated. CP ___ (App. 1 at 68-69). Hanson has exposed himself

more times than he can remember, estimating “between a hundred and two hundred times[.]” CP ____ (App. 1 at 70-71). He would expose himself spontaneously “all over the place” for sexual gratification. CP ____ (App. 1 at 72-73).

Christopher North, Ph.D. testified for the State as a forensic expert. RP 324-474, 477-633, 661-758. He has been a licensed psychologist since 1987 and his area of expertise is the assessment of sex offenders. RP 325-26. He has performed sexually violent predator (SVP) evaluations for the State of California since 1995, for Washington State since 2003, and for the federal government since 2010. RP 327. Over an eleven year period he completed between 600 to 800 juvenile sex offender evaluations for San Louis Obispo County in California. RP 327-28. All told, he estimated he had evaluated close to 2000 sex offenders in his career. RP 328.

Asked to evaluate Hanson under RCW 71.09, Dr. North considered a broad array of information, including numerous records covering most of Hanson’s lifetime. RP 331-32. He interviewed Hanson twice, in 2005 and again in 2012. RP 332. Dr. North diagnosed Hanson’s mental state using the criteria of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV). RP 334-35. He

diagnosed two paraphilias. RP 341-42. Paraphilias are defined generally as:

recurrent, intense, sexually arousing fantasies, sexual urges or behaviors generally involved in, one, nonhuman objects, two, the suffering or humiliation of one's self or one's partner, or three, children or other nonconsenting persons. These fantasies, urges and behaviors occur over a period of at least six months, and they cause clinically significant distress or impairment in social, occupational or other important areas of functioning.

RP 336. Hanson suffers from Exhibitionism and Paraphilia, Not Otherwise Specified (NOS). RP 341-42. Exhibitionism involves the exposure of a person's genitals to an unsuspecting stranger. RP 342. Hanson has a long history of exposing himself, has been convicted of it and reported that he struggled with urges to expose in 2004. RP 343-44.

Hanson's Paraphilia NOS diagnosis is based in part on his recurring, intense fantasies and urges to rape. RP 345. These have occurred episodically during his life and have caused him distress and impairment resulting in lengthy confinement. RP 346. Dr. North relied on evidence of Hanson's recurrent rape fantasies in the written record and from his interview of Hanson. RP 347. They began very early on. At age eleven Hanson told an evaluator that "the appealing part of rape was the sex part, the power thing." RP 370. At Echo Glen Hanson fantasized about raping his sisters. RP 372. Dr. North opined that rape fantasies

were behind Hanson's attacks on the woman at Echo Glen when he was fourteen, and on M.B.W. RP 371. Hanson told North in 2005 "that coercion, force and a sense of domination over a woman are eroticizing to him." RP 371. In treatment he became secretive, refusing to turn in his arousal logs, then claimed he had "reprogrammed himself through a lot of hard work that he's done on his own" and no longer had rape fantasies. RP 372. Dr. North noted that the fantasies would become so compelling Hanson would eventually act them out, then feel terrible about what he had done and apologize to his victims. RP 373. He opined that stress and anger would cause the fantasies to recur and Hanson would likely rape again. RP 373.

On January 20, 2009, the State petitioned to civilly commit Hanson as a sexually violent predator. CP 409-11. The Snohomish County Superior Court held a jury trial from March 12, 2013 to March 21, 2013. RP 222-1118. On March 22, 2013, the jury returned a verdict finding that the State had proved, beyond a reasonable doubt, that Hanson is a sexually violent predator. CP 5.

III. ARGUMENT

- A. **The Trial Court Did Not Abuse Its Discretion By Denying Hanson's Motion for Mistrial Because Hanson's Likelihood of Committing Future Sexually Violent Offenses Was a Proper Subject of Expert Opinion Testimony**

Hanson argues that the trial court abused its discretion by denying his motion for mistrial. Brief of Appellant at 8. He asserts that opinion testimony by the State's expert about which sexually violent offenses Hanson likely would commit if released was "unfounded," "inflammatory and prejudicial." *Id.* at 9. The testimony, however, was properly admitted and supported by Hanson's history of sexual violence, which included two crimes where he attacked women and choked them, after struggling with his rape fantasies. Because those rape fantasies drove Hanson to strangle M.B.W. into unconsciousness, the expert's opinion that Hanson would likely commit a sadistic sexual assault or sexually motivated murder if released was proper expert opinion testimony and the trial court did not abuse its discretion admitting it.

Hanson has a constitutional right to a fair trial. *In re Detention of Ross*, 114 Wn. App. 113, 121-22, 56 P.3d 602 (2002). A mistrial would have been appropriate only if a trial irregularity so prejudiced him that nothing short of a new trial would have ensured him a fair trial. *State v. Johnson*, 124 Wn.2d 57, 76, 873 P.2d 514 (1994). "Whether to grant a motion for mistrial is a matter addressed to the sound discretion of the trial court and is reviewed for an abuse of discretion." *In re Detention of Broten*, 130 Wn. App. 326, 336, 122 P.3d 942 (2005). A trial court abuses its discretion when its decision is based on untenable grounds or is

manifestly unreasonable. *Id.* In determining whether the effect of an irregular occurrence at trial affected the trial's outcome, this Court examines: (1) the seriousness of the irregularity; (2) whether it involved cumulative evidence; and (3) whether the trial court properly instructed the jury to disregard it. *State v. Greiff*, 141 Wn.2d 910, 921, 10 P.3d 390 (2000).

The State was required to prove beyond a reasonable doubt that Hanson is a sexually violent predator, as defined in RCW 71.09.090(18).³ That burden required the State to prove Hanson's mental disorders make him likely to commit "predatory acts of sexual violence." *Id.*; *In re Detention of Post*, 145 Wn. App. 728, 759, 187 P.3d 803 (2008) (key question for the jury is whether person is likely to engage in predatory acts of sexual violence if not confined). The relevant sexual offenses are identified in the statute. "Sexually violent offense" is defined at RCW 71.09.090(17) and includes, among other crimes, rape in the first degree, rape in the second degree by forcible compulsion and murder in the first and second degree when sexually motivated. Therefore, proof that Hanson is likely to commit any of those crimes or others defined in

³ "Sexually violent predator" is defined by RCW 71.09.090(18) as "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility."

RCW 71.09.090(17) is relevant and properly the subject of expert testimony.

Dr. North's expert opinion that Hanson would likely commit a sadistic rape or sexually motivated murder if released helped the jury determine whether Hanson is a sexually violent predator. RP 490-91. Expert testimony is admissible under ER 702 if the witness qualifies as an expert and the testimony is helpful to the trier of fact. *State v. Russell*, 125 Wn.2d 24, 69, 882 P.2d 747 (1994), *cert. denied*, 514 U.S. 1129, 115 S. Ct. 2004, 131 L. Ed. 2d 1005 (1995). This Court broadly construes "helpfulness to the trier of fact." *Philippides v. Bernard*, 151 Wn.2d 376, 393, 88 P.3d 939 (2004). And the trial court possesses "broad discretion" to decide admissibility. *Id.* The trial court here properly concluded that Dr. North's opinion was admissible and his testimony did not require a mistrial.

Hanson argues that Dr. North's opinion "lacked foundation." Brief of Appellant at 11. He claims that while he "admitted to repeated 'flashing' incidents and precocious consensual sexual activity with his siblings, he denied other sexual deviance and had in fact never actually committed a sexual assault." Brief of Appellant at 10. Hanson's argument is decidedly contrary to the record.

The information relied upon by Dr. North paints a far grimmer picture than Hanson admits, and well supports Dr. North's opinion. When Hanson was thirteen he planned an offense against his five-year-old female cousin for several days, during which he fantasized about it. CP at ___ (App. 2 at 15). He posted his sister as a look-out so he would not be caught. *Id.* He poked the victim with a stick to make her feel pain and did not stop even though she asked him to. *Id.* He threatened, physically abused, and anally raped his five-year-old brother; his sexual abuse of the boy occurred nightly for two years. CP at ___ (App. 2 at 17). He physically abused his sisters to gain compliance with oral, anal and vaginal sex. CP at ___ (App. 2 at 18-19). These offenses occurred every other weekend, several times daily for three years. *Id.* He disclosed sexual contact with various pets and to killing a guinea pig by inserting a pencil into its vagina. CP at ___ (App. 2 at 19). He physically assaulted and had planned to sexually assault a female teacher after two weeks of deviant fantasies. CP at ___ (App. 2 at 20). He grabbed her by the neck and choked her, and was found guilty of assault fourth degree. CP ___ (App. 1 at 108-10); Ex. 28. After he met M.B.W. and fantasized about raping her, he strangled her in a rape attempt that could easily have killed her. RP 292.

Hanson's sexual history supported Dr. North's opinion that he is likely to commit a sadistic rape or sexually motivated murder if released. "In assessing whether an individual is a sexually violent predator, prior sexual history is highly probative of his or her propensity for future violence." *In re Young*, 122 Wn.2d 1, 54, 857 P.2d 989 (1993). The trial court clearly recognized this. Hanson argued to the trial court that "it's clear from the medical evidence that M.B.W., that her trachea, her throat, while she had bruising on her face, her throat wasn't damaged in a way that was somebody who was really trying to destroy her neck." RP 495. But that wasn't true. M.B.W.'s face and eyes had broken blood vessels and she looked sunburned. RP 292. Her neck was bruised and she had trouble swallowing. RP 292. It was years before her singing voice fully returned. RP 293. The trial court properly responded:

Counsel, I think a reasonable person could interpret the actions that he took towards [M.B.W.] as a potential attempted murder, even though he was only charged with second degree attempted rape. I mean, it's not a far leap to make when he was choking her until she passed out.

RP 495.

Attempting to show an abuse of discretion, Hanson makes other arguments unsupported by the record. He cites his trial counsel's representation to the trial court that Dr. North's opinion about the crimes Hanson was likely to commit was "outside the scope of anything

Dr. North had stated in depositions or his professional reports[.]” Brief of Appellant at 8-9; *see* RP 498. But the record establishes that Hanson’s counsel never asked Dr. North whether he had an opinion about which RCW 71.09.090(17) sexually violent offenses Hanson was likely to commit:

THE COURT: Ms. Sanders, it sounds like -- I think you probably would have told me a moment ago, did you ever ask him directly whether you were worried about him doing in in the future or words to that effect?

MS. SANDERS: So I didn't find anything about that, but you would never ask an expert that because that's pure speculation. That's not proper testimony for Dr. North to describe in detail the type of inflammatory sexually violent offense. . . .

RP 506. Contrary to Hanson’s argument, expert testimony in sexually violent predator cases that “is not a direct comment on the defendant's guilt or on the veracity of a witness, is otherwise helpful to the jury, and is based on inferences from the evidence is not improper opinion testimony.” *In re Detention of Bedker*, 134 Wn. App. 775, 779, 146 P.3d 442 (2006).

Hanson’s assertion that he “in fact never actually committed a sexual assault” is preposterous. Brief of Appellant at 10. He has been found guilty of indecent liberties and incest in the first degree. CP ___ (App. 1 at 38); Ex. 21. He was found guilty of child molestation first degree. Ex. 25. He pled guilty to and was convicted of attempted rape

second degree with forcible compulsion. Exs. 44, 45. His conviction for assault fourth degree was based on his choking another victim after fantasizing about raping her. CP ___ (App. 1 at 108-10); CP ___ (App. 2 at 20). Ex. 28.

Hanson claims that Dr. North “unexpectedly stated that Hanson exhibited signs of clinical psychopathy.” Brief of Appellant at 8 (citing RP 489). The cited page contains no such testimony. RP 489. However, Dr. North did testify extensively elsewhere about measuring Hanson’s psychopathic traits, which were high. RP 398-99, 404-409. There is nothing indicating that the testimony was unexpected and in fact, it was not.

The court considered the evidence and arguments of counsel and ultimately denied the motion for a mistrial. RP 499-500. The record and the law support the trial court’s decision. Having properly admitted the testimony, there was no trial irregularity and the trial court did not abuse its discretion by denying the motion for mistrial.

B. The Trial Court Did Not Abuse Its Discretion By Excluding Expert Testimony Due To A Discovery Violation Because Hanson’s Unreasonable Identification Of An Expert Witness On The First Day Of Trial Prejudiced The State And No Lesser Sanction Would Have Served The Interests Of Justice

Hanson argues that the trial court violated his due process right to present a complete defense by excluding expert opinion testimony from

John Rockwell, whom Hanson identified as an expert on the first day of trial. Hanson argues the wrong standard. A trial court has broad discretion to impose sanctions for discovery violations. Here, the trial court did not abuse its discretion because, under the relevant factors to consider, there was no good reason for the late identification, admitting the testimony would have prejudiced the State and no lesser sanction was viable. The trial court's decision to allow the lay testimony of Rockwell but not permit him to testify as an expert was a reasoned and fair decision.

Trial courts have "broad discretion as to the choice of sanctions for violation of a discovery order." *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997). Those decisions are not disturbed unless there is a clear showing the court abused its discretion. *Id.* Hanson attempts to portray the issue as a violation of his right to due process. Brief of Appellant at 12-15. His attempt should be rejected as consistent with a "trend that is troublesome—the 'constitutionalization' of most assignments of error in criminal cases." *State v. Turnipseed*, 162 Wn. App. 60, 72, 255 P.3d 843 (2011) (Sweeney, J., concurring). Hanson's argument is similar to one rejected in *United States v. Waters*, 627 F.3d 345 (9th Cir. 2010). In *Waters*, the 9th Circuit rejected an argument that a discretionary decision excluding evidence implicated a due process right to present a defense. *Id.* at 353-54 ("Given that the

district court's evidentiary ruling was well within its discretion, we reject Waters' attempts to "constitutionalize" her claims."). *Waters* is directly on point. The decision at issue here fell squarely within the trial court's discretionary authority.

Hanson identified Rockwell as a potential expert witness on the first day of trial, but did not identify his precise expertise or what he would testify about. RP 634-35. Then, the day before Rockwell testified, the trial court attempted to ascertain the precise subject of his expertise and testimony. Hanson told the trial court that Rockwell would testify as an expert on treatment and Hanson's response to it:

MS. SANDERS: He's a sex offender treatment provider. He's been a sex offender treatment provider since 1989. He's treated thousands of sex offenders. He has an opinion about Erik Hanson, using principles in a productive way at the SCC. That's what I would get into.

THE COURT: Using principles in a productive way at the SCC sounds like he's going to testify about treatment.

MS. SANDERS: The treatment that he got at SOTP.

THE COURT: Prior to going to SCC?

MS. SANDERS: Yeah. The testimony is that he successfully completed the treatment program. There's no dispute about that. He completed the treatment program.

THE COURT: Are you intending to ask him whether he's internalized that and is showing that in his daily living at the SCC?

MS. SANDERS: He offered that in his deposition without me asking. I think it's true that I didn't -- I gave Mr. Bartels, as soon as I kind of wrapped my brain around it. I think you knew this. The question is going to be whether or not I can qualify him as an expert, whether or not you are going to let it in. Of course, it was outside of the time I should have notified him. I think you know all that.

THE COURT: Sure. We brought all that up during motions in limine. The question counsel is asking and I'm curious about is specifically what opinion will he offer. What is the subject going to be about it? Is it his amenability to treatment? Is it he's cured? He's no more dangerous.

MS. SANDERS: No, he cannot testify about dangerousness. I would not attempt to qualify him as that expert. He's not going to testify about diagnoses. He's going to testify that Erik Hanson has -- that he knows Erik Hanson completed the SOTP treatment, and that Erik Hanson often speaks with him, and that he uses the principles that he learned in SOTP in his daily life. He clearly is reinforcing the principles that he learned in the Cognitive Behavioral Treatment Center at SOTP. It depends on whether Dr. North doesn't give him any credit for treatment, of course.

The following day, Hanson expanded the focus of Rockwell's intended expert testimony, which now included various observations of Hanson's conduct, self-serving statements Hanson had made and other things about which Rockwell had no personal knowledge. *See* RP 645-58. Hanson argued that he wouldn't have Rockwell testify about the Hare Psychopathy Checklist – Revised (PCL-R), but would have him testify about observations relevant to that instrument. RP 651-52.

The trial court excluded Rockwell's proposed expert opinion testimony but allowed him to testify about his observations of Hanson. RP 658-59. The court found there was no good reason for the late disclosure; that the State would be prejudiced; and that no lesser sanction was viable. RP 659-60. The court's decision was well-supported and not an abuse of discretion.

Hanson appears to argue that the late notice was justified because he was surprised by Dr. North's testimony about Hanson's high psychopathy and sought to rebut it:

During examination by the State, Dr. North unexpectedly stated that Hanson exhibited signs of clinical psychopathy.

Brief of Appellant at 8 (citing RP 489).

After Dr. North testified that Hanson exhibited psychopathic traits and the court denied the motion for a mistrial, Hanson's defense attempted to rebut that prejudicial testimony as best it could. John Rockwell, a psychologist at the SCC, was already slated to testify as a fact witness. Given his professional training and his personal interactions with Hanson, the defense sought to qualify Rockwell as an expert witness to provide opinion testimony refuting North's, but the court denied the request on the basis of untimely disclosure.

Brief of Appellant at 12.

Hanson's argument is confused. First, his motion for mistrial was based on his argument that Dr. North's testimony about crimes Hanson was likely to commit if released was undisclosed, unfounded and

prejudicial. RP 491-92. Rockwell's testimony, even in Hanson's greatly expanded representation of what it would encompass, would not have addressed that issue. RP 645-58. Second, Hanson's new representation on appeal that he was surprised by testimony about his high psychopathy is not supported by the record. Dr. North's evaluation of Hanson included an assessment of his psychopathic traits and there was no surprise or objection when he testified about that issue at trial. RP 398-99, 404-409. Hanson's own expert was aware that Dr. North had measured Hanson's psychopathic traits but declined to consider that information when he evaluated Hanson. RP 850-51.

Hanson fails to establish an abuse of discretion. His disclosure of an expert witness on the first day of trial was a discovery violation for which no sanction other than exclusion of opinion testimony would have been effective. The fact that Hanson failed to even identify the expertise or the topics of the proposed expert testimony until the day of testimony compounded the violation. There was no justifiable reason, the State would have been prejudiced, and the trial court imposed an appropriately measured sanction by excluding the opinion testimony but allowing Rockwell to testify about his observations.

C. The Trial Court Correctly Denied Hanson’s Request For A *Frye* Hearing⁴

Hanson argues that the trial court erred by denying his request for a *Frye* hearing to address his diagnosis of Paraphilia NOS. There was no error because settled law holds that the diagnosis is generally accepted and not subject to a *Frye* analysis.

A trial court’s decision whether or not to conduct a *Frye* hearing is subject to *de novo* review. *In re Detention of Berry*, 160 Wn. App. 374, 378, 248 P.3d 592 (2011). In *Berry*, the appellant had requested a *Frye* hearing for the same diagnosis assigned to Hanson – Paraphilia NOS. 160 Wn. App. at 377; RP 341-42. The trial court denied the request, concluding that *Frye* was not appropriate in the context of mental health diagnoses. *Id.* at 378 n.8. This Court affirmed, holding that *Frye* did not apply to the science of “standard psychological analysis.” *Id.* at 379. In doing so this Court cited *In re Pers. Restraint of Young*, 122 Wn.2d 1, 28, 857 P.2d 989 (1993). *Id.* at 380-81. *Young* also rejected a challenge to the diagnosis.

Berry is directly on point and this Court should reject Hanson’s request to reconsider that decision. Brief of Appellant at 20.

⁴ *Frye v. United States*, 293 F. 1013 (D.C.Cir. 1923).

D. The Trial Court Did Not Abuse Its Discretion By Limiting The Extent Of Voir Dire

Hanson argues that the trial court erred by ruling that jurors could not be asked to consider whether their own personal liberty was at stake. Brief of Appellant at 20. The State has not been able to find the quotations or ruling cited to by Hanson at pages 20-21 of the Brief of Appellant. Hanson cites to RP 62-63 and 158, but those pages do not concern this issue or the court's ruling on it. Nor does the VRP appear to include the question at issue, which was apparently addressed to juror No. 31. *See* RP 241-42. In any event, the trial court did grant the State's objection to questions that asked potential jurors to place themselves in Hanson's shoes, and that ruling was not an abuse of discretion, nor did it substantially prejudice Hanson's rights. RP 244, 253.

"The scope of voir dire is within the trial court's sound discretion." *State v. Yates*, 161 Wn.2d 714, 747, 168 P.3d 359 (2007). The trial court's ruling is not disturbed on appeal unless (1) the court has abused its discretion and (2) the ruling substantially prejudiced the person's rights. *Id.* Arguments by counsel that ask jurors to place themselves in the position of one of the parties to the litigation are improper "golden rule" arguments. *State v. Borboa*, 157 Wn.2d 108, 124 n.4, 135 P.3d 469 (2006).

Hanson's counsel apparently asked a potential juror a "golden rule" question during voir dire. RP 241-42. The State objected to questions that asked the venire to "put themselves in the shoes of the accused." RP 242. The trial court indicated that the questioning was not problematic until counsel had said, "Put yourself in his shoes." RP 244. Following extended argument by the parties, the court ruled that jurors could not be asked to place themselves in Hanson's shoes. The court noted that the information sought could be obtained through other questions:

I'm going to grant the objection. I'm going to instruct counsel not to ask the jurors to put themselves in the defendant's shoes. However, you can ask about bias. You can ask, you know, whether they can be fair and impartial. You can say that your client's liberty is as at risk and can they judge them fairly. There's a lot of ways to get at the kind of bias you are wanting to expose. I think it's fair to do that, but I think that that particular question is a hot button, and I'm going to instruct you to avoid it.

RP 253.

The court did not abuse its discretion. Allusions to the golden rule of "do unto others as you would have them do unto you" by asking jurors to place themselves into the shoes of a party to the litigation are improper. *Adkins v. Aluminum Co. of America*, 110 Wn.2d 128, 139, 750 P.2d 1257 (1988) (citing J. Stein, *Closing Argument* § 60, at 159 (1985)). Circumvention of this prohibition should not be allowed merely because

the violation occurs during voir dire, rather than in closing argument. See RP 249 (trial court: “[I]n closing arguments you are not allowed to say, ‘Put yourself in the shoes’ so you can’t do it then, why would you be able to do it now?”); *Law v. State*, 98 P.3d 181, 194 (Wyo. 2004) (State erred by using voir dire to impermissibly invite jury to emotionally sympathize with victim).

Hanson’s reliance on *City of Cheney v. Grunewald*, 55 Wn. App. 807, 780 P.2d 1332 (1989) is misplaced. In *Grunewald*, a conviction was reversed because a juror had said the defendant could not receive a fair trial if the jury consisted of six jurors like himself. 55 Wn. App. 810-11. However, the question asked was not objected to and was not at issue on appeal. *Id.* Here, the trial court recognized this very point. RP 249 (“They didn’t object on the ground that it was an improper question. That’s where I say I think your [sic] stretching the decision to – I don’t think it says that.”). *Grunewald* is inapposite.

Assuming the trial court erred, Hanson fails to show that the ruling substantially prejudiced his rights. *Yates*, 161 Wn.2d at 747. As the trial court noted, the parties were free to: (1) ask about bias; (2) ask whether a juror could be fair and impartial; and (3) state that Hanson’s liberty was at risk and ask if the juror could judge him fairly. RP 253. The court correctly recognized that, “There’s a lot of ways to get at the kind of bias

you are wanting to expose.” RP 253. The court was correct, and Hanson fails to show any substantial violation of his rights.

IV. CONCLUSION

For the foregoing reasons, the State requests that this Court affirm Hanson’s commitment as a sexually violent predator.

RESPECTFULLY SUBMITTED this 14th day of April, 2014.

ROBERT W. FERGUSON
Attorney General



MALCOLM ROSS, WSBA #22883
Senior Counsel
Attorneys for Respondent

NO. 70139-8

WASHINGTON STATE COURT OF APPEALS, DIVISION I

In re the Detention of:

ERIK HANSON,

Appellant.

DECLARATION OF
SERVICE

I, Joslyn Wallenborn, declare as follows:

On April 14, 2014, I sent via electronic mail and United States mail true and correct cop(ies) of Brief of Respondent and Declaration of Service, postage affixed, addressed as follows:

Eric Nielsen
1908 East Madison Street
Seattle, WA 98122-2842
nielsene@nwattorney.net

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

DATED this 14th day of April, 2014, at Seattle, Washington.


JOSLYN WALLENBORN

2014 APR 14 PM 1:02
STATE OF WASHINGTON
COURT OF APPEALS DIV I
VIA SERVICE

ORIGINAL

APPENDIX 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

On behalf of Petitioner:

CHRISTINE SANDERS
RACHEL FORDE
Snohomish Public Defender
Association
1721 Hewitt Avenue, Suite 200
Everett, WA 98201

On behalf of Respondent:

JEREMY BARTELS
Office of the Attorney General:
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

Also present:

SUMMER BOZICK

1 Q So just more than one and certainly less than ten; right?

2 A Yes.

3 Q Okay. So -- and how old were you, approximately, when you
4 had these flings?

5 A In between 17 and 23.

6 ■ [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 ■ [REDACTED]

13 ■ [REDACTED]

14 [REDACTED]

15 ■ [REDACTED]

16 Q Okay. So we're going to change gears a little bit to your
17 criminal history.

18 A Okay.

19 Q So what's the first crime that you can remember committing?

20 A The indecent liberties and incest with my two sisters, Amy
21 and Lela.

22 Q Okay. So how old were you at the time?

23 A It started when I was nine, it ended when I was twelve.

24 Q And so you said your two sisters, Amy and Lela. We're just
25 going talk about each sibling by themselves and then -- so I

1 want to talk about Amy first.

2 A Okay.

3 Q So what kinds of things did you do to Amy over those -- in
4 general over the three-year period that led to the indecent
5 liberties and the incest convictions?

6 A Oral sex that I performed on her, she the same to me, and
7 rubbing myself on her.

8 Q Okay. When you did that kinds of things, were you, again,
9 clothed or not clothed?

10 A Sometimes clothed, sometimes not.

11 Q So when you rubbed each other, sometimes you had clothes on,
12 sometimes you did not?

13 A Yes.

14 Q About how many instances of these molestations happened in
15 the three years?

16 A I couldn't give you a number. I have no idea. It happened
17 when I was nine to twelve years old, it was a long time ago,
18 and -- I mean, even if it wasn't all that long ago, that's
19 just -- I mean, to give you a number would be almost
20 impossible to do.

21 Q Okay. Well, let's talk about it in terms of generalities
22 then. Was it just a handful of times or was it a lot?

23 A It was often.

24 Q Okay. More than once a month on average?

25 A My mom got custody of us every -- I want to say every other

1 weekend, and it happened generally every time we went over
2 to my mom's.

3 Q Okay. If that was true with Amy, was that also true of
4 Lela?

5 A The same exact thing.

6 Q Okay. So you'd do the same things with Lela?

7 A Exactly the same.

8 Q And did you ever attempt vaginal intercourse with them?

9 A With Lela.

10 Q Lela? Were you successful?

11 A No.

12 Q Why not?

13 A One, I didn't know what I was doing. Two -- and it was one
14 time I tried it, but, like I said, I had no idea what I was
15 doing. And even if I had, my stepmother had caught us
16 because this one incident happened at my dad's place in the
17 backyard in Lynnwood and she saw us and stopped it.

18 Q So when you were twelve, how old were Lela -- how old was
19 Amy when you were twelve?

20 A Amy was -- she was ten or just about to turn eleven, and
21 Lela was a year younger than that, so I think Lela was nine.

22 Q She was nine when you were twelve, and Amy was ten almost
23 eleven when you were twelve?

24 A Yes.

25 Q So when you were nine -- sorry, I already forgot. Who was

1 older, Amy or Lela?

2 A Amy's the oldest.

3 Q So when you were nine, Amy -- sorry, Lela was six and Amy
4 was either seven or eight?

5 A Yes.

6 Q Okay. How about Joshua, did you ever molest Joshua?

7 A One time, yes.

8 Q How old was he when you molested him?

9 A He was -- well, I was eight or nine, so he was either four
10 or five.

11 Q You molested him when you were eight or nine?

12 A Yes.

13 Q What did you do to Joshua?

14 A I got down off my bed and I rubbed my penis on his.

15 Q That's all that happened?

16 A That's it.

17 Q Anything else that -- well, my date that I have for when all
18 this came to a head in court was around October of 1986. So
19 are there any other crimes that you may have committed prior
20 to 1986?

21 A What do you mean?

22 Q So I have October 8, 1986 as the charging date -- sorry, of
23 the start of the charging dates when you were charged with
24 indecent liberties and incest in the first degree, so I am
25 just trying to get a sense of some calendar dates that I'm

1 going to draw lines at.

2 So the first time that I think that you were in court
3 was for an allegation that you did things on October 8,
4 1986. I think was the date that you were caught by your
5 mom.

6 A Yes.

7 Q Okay. So drawing a line at that date, was there anything
8 else that you haven't already talked about that you may have
9 done before that date?

10 A No.

11 Q Okay. So after that what was your next crime that you
12 committed?

13 A I molested my cousin.

14 Q What's her name?

15 A Kristin.

16 Q Is that Kristin Wilson?

17 A Yes.

18 Q And what did you do to Kristin?

19 A I had her come into my room. I played doctor with her. I
20 used some pick-up sticks that were in my room to -- I don't
21 know, I pretended like I was operating on her, and then I
22 rubbed myself on her.

23 Q When you say you rubbed yourself on her, describe what you
24 did.

25 A I rubbed my crotch on her butt.

- 1 Q Okay.
- 2 A Clothes on.
- 3 Q Did you do anything else?
- 4 A No.
- 5 Q You never touched her on her vagina over her clothes?
- 6 A I guess it's possible. I don't -- I don't really --
- 7 Q You don't remember what you did to Kristin exactly?
- 8 A Aside from what I just mentioned, I -- I don't. I mean, I
- 9 don't. I don't.
- 10 Q Okay. So you were thirteen at that time?
- 11 A Yes.
- 12 Q How old was she?
- 13 A Five.
- 14 Q So when you were thirteen you had already gotten in trouble
- 15 for the things you did to your sisters and brother; right?
- 16 A I'd gotten in trouble for the things I'd done to my sisters.
- 17 Q You didn't get in trouble for what you did to Joshua?
- 18 A No, I did not.
- 19 Q So how long after you had been -- so I'll just say I have a
- 20 pleading guilty date on the original indecent liberties and
- 21 incest in the first degree of January 21 of 1988.
- 22 A Uh-huh.
- 23 Q Does that sound about right?
- 24 A Yeah.
- 25 Q Okay. So about how long -- how much time had passed between

1 Now, if that is what the record says, then that's, I'm going
2 to assume, what happened. I'm just telling you that I don't
3 remember the exact action. I don't remember doing it.

4 Q Okay.

5 A There's a lot of things in my life I don't remember doing,
6 but I can't say that, you know, I didn't do them.

7 Q Does this jog your memory at all, reading this?

8 A No. I don't -- I'm telling you thinking back on that day I
9 do not remember rubbing her vagina. I don't remember it. I
10 can't -- it doesn't come to mind when I -- even after
11 reading that. But what I'm saying is that just because
12 that's true right now, doesn't mean that that's not true.

13 Q So what's the next crime that you remember committing?

14 A The assault on Pam Morton at Echo Glen.

15 Q Okay. And so that was around January 29 of 1990. Does that
16 sound about right?

17 A Yeah, probably somewhere around there.

18 Q And she was a staff member there, but I think her role was a
19 teacher; is that right?

20 A I have no idea. I just know she was a staff.

21 Q Okay. She was about 43 at the time?

22 A I have no idea what her age was.

23 Q Did she look like she was about 43 at the time to you?

24 A I don't remember what she looked like.

25 Q What do you remember about her?

1 A Details, anything specific? Not a whole lot, other than she
2 was a woman and she was a staff member at Echo Glen.

3 Q Okay. Before you assaulted her, how long had you known of
4 her?

5 A Maybe a week, a couple days.

6 Q So describe what you did to assault her.

7 A On that day I had been mopping around the pool and I had
8 asked her to unlock the girls locker room so that I could
9 get access to her alone, and she unlocked the locker room.
10 When we got in there, I put my hands on my shoulders, I
11 shook her a couple times, and I stopped.

12 Q You said you put your hands on your shoulders?

13 A On her shoulders.

14 Q And you didn't grab her around the neck?

15 A No, I did not.

16 Q And so why did you put your hands on her shoulders and shake
17 her a couple times?

18 A I don't know. I mean, let me say this. There was a lot
19 going on at that time. I mean a lot. A lot. I -- my
20 thoughts at that time were to rape her. That's what I had
21 intended on doing. I was unsure of -- I didn't even know
22 what I really wanted to do. I was mad at the time, there
23 was a whole lot going on, and when that opportunity came, I
24 didn't know what to do, and so that's what I did. That's
25 why I did it, I would assume. I didn't know what else to

1 do.

2 Q So your objective was to get her somewhere where you could
3 rape her; is that right?

4 A Yes.

5 Q Why did you want to rape her?

6 A At that particular period of time I guess I was horny, I
7 was, like I said, angry, didn't care, didn't care about her,
8 didn't care about me, didn't care about anybody, wasn't
9 thinking into the future, I didn't care about the
10 consequences, and that's just what I thought I wanted to do
11 at the time.

12 Q You said you were angry. Were you angry with her?

13 A No.

14 Q So you had met her sometime -- well, knew of her sometime
15 before the incident. Had she done anything to upset you?

16 A No.

17 Q So why did you target her in particular?

18 A I mean, at this point I would have to say that it had
19 something to do with my stepmother.

20 Q Did she remind you of your stepmother?

21 A Yes, in some ways.

22 Q In what ways?

23 A Physical appearance.

24 Q Didn't you just testify that you didn't remember what she
25 looked like?

1 A I remember what her haircut looked like. I don't remember
2 what her face looked like.

3 Q Okay. So it was her hair that reminded you of your
4 stepmother?

5 A It was short, yeah, shorter.

6 Q What color was it?

7 A If I had to guess, I would say it was dirty blonde or red or
8 maybe a mixture of both.

9 Q And it's true that you had planned to assault this lady at
10 Echo Glen for some time before you actually assaulted her;
11 right?

12 A I would say I entertained the thought for a week or two.

13 Q But you had actually planned out how you were going to do
14 it; right?

15 A No.

16 Q You didn't?

17 A Planned out how? I was going to -- I mean, if you can call
18 that plan, sure, then I guess that's what I did. I was a
19 stupid-ass 14-year-old kid who didn't know what he wanted,
20 what he was doing, didn't know how to feel about myself or
21 anything else, I was angry. And sure, if you would like to
22 call that a plan, then I'm going to leave that up to you to
23 call it a plan.

24 Q These aren't my words. We'll put it this way. Haven't you
25 seen a number of treatment providers over the course of your

1 life to deal with the issues --

2 A Briefly. Briefly.

3 Q So you saw a doctor named Les or Leslie Rawlings at some
4 point?

5 A Yes.

6 Q You saw a doctor named Dr. Olson; is that right?

7 A Yeah.

8 Q You saw a doctor named Dr. Lee?

9 A Yeah.

10 Q A guy named Andrei Dandescu?

11 A No.

12 Q You never had a sex offender treatment provider in prison?

13 A In prison, sure.

14 Q Yeah. And wasn't his name Andrei?

15 A Yeah. Oh, I thought you were talking about prior to this
16 incident.

17 Q I'm just talking about in your whole life.

18 A Sure. Yes, Andrei.

19 Q And isn't it fair to say that you've told just about every
20 single person that you've had treatment with that you had
21 been planning to rape and assault this woman, and you had
22 planned out how you were going to do it?

23 A Again I don't -- I don't know. I don't know if that's what
24 I said or not. I don't know if I told -- I'm sure I used
25 the word plan, but at this point I'm not going to call -- I

1 mean, I can't say that's what it was. For sake of a better
2 term or word, we can call it a plan. But it's -- I mean,
3 it's just -- it's not much of a plan.

4 Q Okay. We'll put it this way. You wanted to assault her?

5 A Yes, I did.

6 Q And you had decided ahead of time that it was going to be
7 this person as opposed to somebody else; right?

8 A Yeah. Yeah.

9 Q Okay. So then you were -- your plan was to wait until some
10 time that you would guys could be alone together; right?

11 A Yeah.

12 Q Okay. And then you also planned on having her get into a
13 room where you could be alone. In addition to just being
14 just the two of you in a bigger room, you planned on the
15 whole, I'm going to have a ruse of her to unlock the girls
16 locker room; right?

17 A I don't remember that being a part of a plan. I remember
18 that the broom thing was opportunistic deal. She was
19 walking through. She never walked through that pool room.
20 She'd never once walked through that pool room prior to that
21 time. Another woman did, and I do not remember her name,
22 but Pam Morton I do not once remember her ever walking
23 through that pool room prior to that day. Now, it was a
24 while ago. Maybe she did. I don't think she did. But that
25 day she came through, I saw an opportunity, and that is when

- 1 I asked her to open the door.
- 2 Q Okay. So other than planning on assaulting her at some
3 point, you didn't have any set plan on how you were going to
4 do it?
- 5 A No.
- 6 Q So what happened when you grabbed her and shook her?
- 7 A She told me to stop. I did.
- 8 Q How did she tell you to stop? Did she yell it or just say
9 it calmly?
- 10 A I don't remember. No, I don't think it was calm. I'm not
11 exactly sure how it was done. I just know that she said
12 stop and I stopped.
- 13 Q Did she fight?
- 14 A No.
- 15 Q Did she physically struggle with you or just say stop?
- 16 A She may have shrugged me off, but that was about as much as
17 I would think it was, and then she said whatever she said,
18 and I stopped, and that was the end of it.
- 19 Q What did you say back?
- 20 A I think I said I was sorry. I'm not exactly sure.
- 21 Q So when you grabbed her by her shoulders, did she have her
22 back to you or was she --
- 23 A She had her back to me.
- 24 Q So did she go into the room first?
- 25 A Yes, she did. She either did or, if I went in first, she

1 was leaving out another door, and at that point turned her
2 back to me. I can't remember exactly which one it was.

3 Q So it's your memory that she didn't, other than shrugging
4 you off, didn't try to physically resist you at any point?

5 A No, there was no altercation, no physical altercation, other
6 than maybe she shrugged me off.

7 Q So did you ever try to overpower her at some point?

8 A That was my attempt to overpower her was grabbing her
9 shoulders.

10 Q And you were 14; right?

11 A Yes.

12 Q Was she bigger or smaller than you?

13 A I don't remember. If I had to guess, I would say we were
14 maybe the same size. I don't know. I don't know if I was
15 taller or shorter or what.

16 Q So what's the -- well, the next crime that I have that you
17 were involved in happened that same year, but at the end of
18 the year, and these were some burglaries. They were October
19 and November of 1990, respectively. Does that sound about
20 right?

21 A Yeah.

22 Q And this was when you and three other kids escaped from the
23 -- and I'm going to mispronounce it, but is it the Toutle
24 River?

25 A Yes.

1 Q Toutle River Boys Ranch? Okay. What were you doing at the
2 Toutle River Boys Ranch?

3 A I had gotten out of Echo Glen and I could not go home
4 because my sisters were there, so I was placed there.

5 Q So this is another basically State-run facility; is that
6 fair to say?

7 A Yes.

8 Q Okay. And you weren't allowed to leave?

9 A No.

10 Q So when you left, that was against the rules?

11 A Yes, it was.

12 Q Okay. Who were the other kids that were with you when you
13 left?

14 A I don't remember their names.

15 Q So you got charged with two burglaries. One was from a
16 trailer and the other one was from an actual house; is that
17 fair to say?

18 A Yes.

19 Q So on one of the burglaries, I believe it was a trailer or a
20 shack or something, and you stole a hatchet and a couple of
21 knives; is that right?

22 A Yes.

23 Q Why did you steal a hatchet and a couple of knives?

24 A Because it was there.

25 Q Why did you think you needed them?

1 A Because we were staying outside.

2 Q What else did you steal?

3 A From that particular place?

4 Q From that first one, yeah.

5 A I don't know what else we stole. I just remember that and I
6 remember the survival knife, I remember the hatchet, and I
7 don't remember anything else.

8 Q Okay. And then you also broke into somebody's residence;
9 right?

10 A Yes, we did.

11 Q Okay. And what did you steal from there?

12 A Food and jewelry.

13 Q So why were you -- why were you breaking into people's
14 things when you escaped from the boys ranch?

15 A Because we were dumb kids and that's what we felt like
16 doing.

17 Q What was your plan?

18 A To stay not caught, to stay out as long as we possibly
19 could.

20 Q And then how did you end up getting caught?

21 A We were walking down the freeway together and the cop pulled
22 over and knew that four kids from the Toutle River Boys
23 Ranch had escaped and he assumed that we were the ones and
24 he picked us up.

25 Q Was anybody at home or at the property when you committed

1 either of these burglaries?

2 A As far as the house goes, no. The trailer, the people that
3 owned the trailer, because it was parked on the side of the
4 house, somebody could have been home. I have no idea.

5 Q And do you remember what your sentence was?

6 A I just remember I did slightly over two years.

7 Q So I believe that your sentence was 130 weeks. Does that
8 sound about right?

9 A Sure.

10 Q And isn't it true that you received a sentence that's
11 referred to as a manifest injustice sentence?

12 A I have no idea.

13 Q Do you have an understanding that you received a sentence
14 that's higher than what is the standard amount for those
15 crimes?

16 A That makes sense.

17 Q Okay. So, let's see, you were there for just over two
18 years, and then the next crime that I have was February 16
19 of 1996, another residential burglary when you were 20; is
20 that fair?

21 A Yes.

22 Q So nothing in between those two?

23 A No.

24 Q And in that one you obtained keys to the victim's house from
25 your mom's house. Your mom was house sitting somebody's

1 house?

2 A It was actually my youngest sister was house sitting for the
3 woman, but either way, I got the keys from my folks' home,
4 yes.

5 Q Okay. And then the lady was away on vacation or something?

6 A Yes.

7 Q Okay. And you broke into her house using the key?

8 A Yes.

9 Q And I have that you stole a computer, a briefcase, a VCR,
10 but you only pawned the VCR; is that --

11 A That's true.

12 Q -- your memory?

13 A Yeah.

14 Q Did you steal anything else?

15 A No.

16 Q And why did you steal stuff from this person's house?

17 A I stole stuff from that person's house to sell to buy drugs.

18 Q Didn't you have a job at the time?

19 A No.

20 Q When were you working at that store in --

21 A Prior to that. I had quit before.

22 Q Why did you quit your job at Lake Goodwin store?

23 A To go to school.

24 Q Were you going to school when you broke into this person's
25 house?

1 A No, I was not.

2 Q Okay. So what were you doing with your life?

3 A Not much of anything.

4 Q And I know that the lady that owned the house was gone on
5 vacation, but was anybody else home?

6 A No.

7 Q So we're going to backtrack a little bit. And prior to the
8 assault in 1990 at Echo Glen, you had been having what you
9 had described as rape fantasies for a couple of weeks before
10 that assault; is that right?

11 A That's correct.

12 Q Can you describe to me what you mean by rape fantasies?

13 Let me couch that a little bit.

14 Can you describe to me what you meant by rape fantasies
15 back then?

16 A For me, because I don't know what else to call them, I -- I
17 mean, I guess that's what they're just going to be called is
18 a rape fantasy. It is a situation where I come on strongly
19 to an unexpected person, a woman, and they are slightly
20 resistant at first, and then they come around to like it and
21 we have sex.

22 Q Okay. So what do you mean "come on strongly"?

23 A Well, all right. I don't know how to explain it. I just
24 come on to the woman. I start kissing them, put my arms
25 around them, grabbing them, whatever, and they eventually

1 like it, and we, like I say, have sex.

2 Q Okay. So your rape fantasy is that you go up to a stranger
3 and start passionately kissing them and, although they
4 resist at first, they get into it before you do anything
5 else; is that --

6 A That's what it is.

7 Q That's your fantasy?

8 A That has been my fantasy in the past.

9 Q Okay. You no longer have fantasies like that?

10 A I do not think like that, no.

11 Q Okay. When you -- I'll just say in these thousands of pages
12 that I have you have been quoted as describing your fantasy
13 as a rape fantasy. Has that always been what you meant when
14 you said rape fantasy?

15 A That has always been my fantasy is exactly what I just
16 described to you. And whenever I've said the word "rape
17 fantasy" in any of my stuff, that is exactly what I meant.

18 Q So as you sit here today -- actually, when's the last time
19 that you described having a rape fantasy, do you remember?

20 A If I had to guess again, I would say the last time I said
21 that I did was during my first interview with Christopher
22 North.

23 Q Okay. Were you having rape fantasies?

24 A No, I was not.

25 Q When's the last time you had a rape fantasy?

1 A I don't know. It's been a long time.

2 Q So when you were, and we'll get to this crime in a minute,
3 but when you were put in prison for your most recent crime,
4 the one in Snohomish County when you were 23 or 24 --

5 A Uh-huh.

6 Q -- you described to the police that you were having rape
7 fantasies prior to that offense as well; is that right?

8 A Yes, I did.

9 Q Okay. So when you describe to the police your rape fantasy,
10 was it the same thing we just went through about the
11 passionate kissing and they come to enjoy it?

12 A Yes.

13 Q And that's the fantasy you were having before you -- before
14 you assaulted and attempted to rape Ms. Woll; is that her
15 name?

16 A Yes.

17 Q So when you were 24, was it your understanding that kissing
18 somebody against their will was a rape?

19 A No, it was not my understanding that kissing somebody
20 against their will is rape.

21 Q Okay. So if your fantasy was kissing somebody against their
22 will, why would you tell the police that you thought that
23 was a rape fantasy?

24 A Because of what it led to in real life would have been rape.

25 Q Your fantasy is that you kiss them and then they get into

1 it. And before you do anything else, before you have sex,
2 they're consenting at that point. So how is that rape?

3 A Well, according to people in my past, experts and therapists
4 and all that, that's what they called it. Back during the
5 Pam Morton thing it was explained to me that that was rape.

6 Q But by the time that you were 23 or 24 years old you knew
7 better than that; right? You knew that just kissing
8 somebody is not rape?

9 A Yes, I did know that.

10 Q So, like I'm saying, when you're 23 or 24 and you assaulted
11 Mary Beth Woll in her car in Snohomish County in Everett,
12 shortly thereafter you described to the police that you had
13 been having rape fantasies and that's why you did what you
14 did to Ms. Woll.

15 A Yes.

16 Q And like we just went over, when you were 23 or 24, you knew
17 that just kissing somebody was not rape. So what I'm trying
18 to get at is if your fantasy was a consensual sex fantasy
19 that started out with an unconsensual kissing, why did you
20 tell the police that it was a rape fantasy?

21 A There's nothing consensual about my fantasy. I mean, it's
22 -- it's -- it's not rape, but it's not consensual at the
23 same time. I mean, it's not an okay fantasy. And I had no
24 idea what else to label it as other than a rape fantasy, so
25 that is what I've called it.

1 Q How long had you been thinking that about her?

2 A About her? I would say almost from the time I met her.

3 Q So this whole time she's taking you home and taking care of
4 you this thought is going through your head?

5 A Yes. it is.

6 Q How long had you been struggling with rape fantasies before
7 meeting her that day?

8 A Between two weeks to a month.

9 Q And so when you parked with her a block away from where you
10 were staying at the mission, did you try to assault her
11 right away?

12 A Not right away, no.

13 Q What did you guys do in the car?

14 A For a moment we talked, and then she asked if she could pray
15 for me.

16 Q Okay. And did you guys pray together there?

17 A Yes.

18 Q The record I have shows that you guys were stopped there
19 talking about stuff and also praying, that mixture of time
20 was about half hour to 45 minutes. Does that sound about
21 right or does that sound too long?

22 A That sounds too long.

23 Q About how long do think you guys were there?

24 A Maybe 15 minutes.

25 Q So after she prayed for you what happened?

1 A That's basically when I attacked her. I told her I was
2 going to get out through the back door, or I don't know
3 exactly what I told her, it was something like that. I got
4 into the back seat. I'd had my flannel shirt out and I
5 choked her until she was unconscious.

6 Q Okay. So what kind of car was she in?

7 A She was in a minivan.

8 Q So does it have one of those sliding doors in the back?

9 A Yes, it does.

10 Q So what was in the back seat? What was your excuse to get
11 back --

12 A My backpack was in the back there.

13 Q And the groceries she'd bought you; right?

14 A And the groceries, yes.

15 Q And so when you attacked her, she had her back to you;
16 right?

17 A Yes, she did.

18 Q And she wasn't looking at you anymore?

19 A Not full on. She might have been cocked to the side a
20 little bit, but she wasn't looking directly back at me, no.

21 Q Okay. And so you said you used your flannel shirt to choke
22 her?

23 A Yes.

24 Q So how did you do it?

25 A I put the shirt sleeve around her neck and I choked her.

1 Q And was there a headrest or something that her head was
2 against?

3 A I don't remember.

4 Q So how are you choking her? Did you pull her back with your
5 both of your hands or did you cross your hands over and make
6 like a knot with the sleeve?

7 A I think I just pulled it back and I used one hand, because
8 with the other one I turned off the minivan.

9 Q Okay. Why did you turn off the minivan?

10 A So that it wouldn't draw attention.

11 Q Was it also so she couldn't step on the gas to try to get
12 away?

13 A I did it in my mind so that it wouldn't draw attention.
14 That didn't cross my mind that she would step on the gas.
15 It was in park.

16 Q How long did you choke her?

17 A I couldn't tell you in seconds or minutes. I don't know.
18 Until she was unconscious.

19 Q And then she slumped over after you were done choking her;
20 is that right?

21 A Yes.

22 Q So why didn't you rape her?

23 A Because I have no interest in forcing somebody to have sex
24 with me. None. It was absolutely un -- the whole thing was
25 at that point disgusting. I mean, I don't know how to

1 explain it, man. I don't. I mean, I understand what my
2 fantasies are like, and then to think, you know, to be
3 driven by them that far and then to have to attack somebody
4 like that to have sex, it just -- the arousal is completely
5 gone. It was gone.

6 Q So when's the last time you'd had sex before you tried to
7 rape her?

8 A Probably a month before that.

9 Q And that was with Jennifer?

10 A Yes.

11 Q So were you ever worried when she lost consciousness that
12 maybe you had killed her?

13 A The thought had crossed my mind, yes.

14 Q Is that what kind of made your arousal go away, is that you
15 thought you might have killed her?

16 A No. No, that's not what made my arousal go away. Because,
17 see, that thought occurred to me later on. That thought did
18 not occur to me right after it happened. After I choked her
19 out, I thought she was still alive and I did not want to
20 rape her and did rape her, and I had every opportunity to
21 rape her. The whole thought of killing her was brought up
22 by somebody else, which made me think -- you know, it just
23 scared me, like it could have happened.

24 Q Was raping her the only objective that you had when you were
25 strangling her?

1 A It was the primary motive, but after that I had intended on
2 taking her van, her cell phone, her checkbook, all of that.

3 Q But what were you going to do with her?

4 A Carry her out of the van and set her down on the street and
5 leave.

6 Q You didn't have any plans on taking her with you?

7 A No.

8 Q So why didn't you take her stuff even if you didn't rape
9 her?

10 A After the initial assault, everything just pretty much went
11 out the window. I felt like a piece of shit. I didn't know
12 what else to do, so I just left and I had no desire to take
13 anything else from her.

14 Q But you could have. She was unconscious; right?

15 A Sure. I could have done a lot of things.

16 Q I mean, you could picked her up and set her on the side of
17 the ground --

18 A Could have, yeah.

19 Q -- and drove away with all of her stuff; right?

20 A But didn't.

21 Q And it wasn't because you freaked out because you thought
22 you killed her?

23 A No.

24 Q So we skipped over a little bit of criminal history. In
25 between that residential burglary of your neighbor's house

1 when she was on vacation and this crime, you were arrested
2 and charged with indecent exposure on April 22 of 1998?

3 A Yes, I was.

4 Q Eight months before the attempted rape of Mary Beth Woll; is
5 that right?

6 A Yes.

7 Q And you were 22 at the time?

8 A Yes, I was.

9 Q So in that instance you had decided to expose yourself to a
10 girl in your neighborhood; is that right?

11 A Yes.

12 Q And she was about 15 at the time?

13 A Somewhere around there.

14 Q And you were 22? Is that a yes?

15 A That's a yes.

16 Q So how did you do it?

17 A I tied a shirt over my head, I went to her living room
18 window, I think that's what window it was to her house, and
19 I stood there and I masturbated, and she looked out the
20 window, and she went and called the cops, and I left.

21 Q Okay. Other than a shirt on your head, which you used to
22 cover your face --

23 A Yes.

24 Q -- how else were you dressed?

25 A I was wearing a T-shirt jeans, shoes.

1 Q Okay. So the only part of you that exposed was your penis
2 when you were masturbating?

3 A Yes.

4 Q Why did you pick her?

5 A I knew that she was home alone at that point in time, I knew
6 that every morning she was home alone on school days, I knew
7 that -- I mean, that was just it. That's why I picked her.
8 She was a female, she was cute, and she was going to be home
9 by herself.

10 Q Is that why you went over there at 5:30 in the morning?

11 A Yeah, because -- well, that and I didn't figure too many
12 people would be up.

13 Q How did you know that she was home alone on school days?

14 A Because I knew -- I lived in that neighborhood for a while.
15 I knew the schedules of most of the people. I just knew
16 that her dad went to work and I knew that she was home by
17 herself.

18 Q So had you been watching her house for a while?

19 A Not in that sense, no. I mean, had I been stalking her
20 house? No. I just knew -- just like I knew the schedule of
21 most of my other neighbors without overly watching them for
22 any particular reason. I knew that she was home by herself
23 on the week. My sister knew her, I knew her, the rest of my
24 family knew who she was, I knew that her dad left to go to
25 work Monday through Friday, and I knew she would be home

1 alone.

2 Q Was it important to you that she be alone?

3 A It was important to me that she was home alone, it was
4 important to me that it was early in the morning so no other
5 neighbors would probably be up and around so that,
6 hopefully, I could get away with it, yeah, it was important.

7 Q Well, what was your goal?

8 A Indecent exposure.

9 Q That's all you wanted to do?

10 A That's it.

11 Q You didn't hope that she would be attracted to you and
12 invite you?

13 A Well, sure, I guess that goes along with the exposure thing,
14 too, but it didn't happen.

15 Q Okay. Were you surprised that she didn't invite you in?

16 A Oh, no. No.

17 Q So is it fair to say your main goal was just to expose
18 yourself to her and then get out of there?

19 A Yeah.

20 Q How many times have you exposed yourself to people while
21 masturbating?

22 A I don't know. I don't know.

23 Q You know that you told Dr. North, at least in his report,
24 that in the period of time between when you finally got out
25 of juvenile detention to when you were put in prison, the

1 most recent time was about 200 times?

2 A It was a lot, yeah.

3 Q Does that seem fair to you?

4 A I think I told him between a hundred and two hundred times,
5 but yes, it was a lot.

6 Q So was it always to people in your neighborhood or was this
7 the only time or what?

8 A No. I think that -- no, it was not always people in my
9 neighborhood. I don't think that was the only time it was
10 to somebody in my neighborhood. In that particular
11 neighborhood, yes, that was the one incidence that happened
12 there, but other places that I lived, I don't think that it
13 was -- it usually happened to somebody in my neighborhood,
14 no.

15 Q When you exposed yourself to people, did you always do it in
16 the way that it was described with this 15-year-old girl?

17 A No, no, not usually. That was the only I ever put something
18 over my face to disguise myself.

19 Q Okay. Did you usually leave your home wherever were staying
20 to do it?

21 A I would say more times than not I was not at home.

22 Q So you'd go outside somebody else's home and do this?

23 A Yes.

24 Q But other than this one time you never covered your face?

25 A Never.

1 Q Was it always women?
2 A Yes.
3 Q Were they always home alone?
4 A That was the only time I ever actually walked up to a house
5 and did it. Usually it was just out in public.
6 Q Like how? Like in the street?
7 A No. Like grocery store parking lot, stuff like that.
8 Q What grocery store parking lot?
9 A I couldn't tell you. Don't know.
10 Q Was this in Everett?
11 A It was all over the place.
12 Q Did you sometimes travel long distances to get to where you
13 were going to do stuff like this?
14 A I wouldn't say that long, no.
15 Q Did you ever do more than one instance in a day?
16 A No, I think that it was usually -- if I did it during the
17 day, it was just the one time.
18 Q Did you plan them out, kind of like you planned this one
19 out?
20 A No.
21 Q So how far in advance would you decide that you were going
22 to do this before you actually exposed yourself to somebody?
23 A It would generally be that day. I would just think about it
24 and I'd go do it.
25 Q So would you think about where you wanted to or would you

1 just start walking down the street whenever the mood struck
2 you?

3 A No. I generally thought about -- I mean, I had no
4 particular location picked out, but I would always try to do
5 it at like a -- some type of big store.

6 Q Why?

7 A Because there's more people around, more people to choose
8 from, and more people to kind of get in the way of the whole
9 thing so that it would be harder to get me.

10 Q So what was your goal when you were exposing yourself to
11 people? What did you want to get out of it?

12 A I mean, as ridiculous as it sounds, that's what it was. It
13 was the whole excitement of maybe -- maybe this person's
14 going to like what they see. It never happened, but, you
15 know, that's what my mindset was at the time and that's what
16 I had hoped for.

17 Q So you did this, that was the goal you were hoping for or
18 was there another goal?

19 A Well, no, I mean, the ultimate goal for me was my own sexual
20 gratification/satisfaction. I mean, that was something that
21 I had -- at the time in my mind I'd hoped for, I'd thought
22 about it, it kind of drove the incident even further. I
23 mean, it kind of powered the whole thing.

24 Q Okay. So from the record I read when we were talking about
25 the 15-year-old neighbor girl of yours that you exposed

1 criminal history, and I was going to go through some other
2 things that I got from the records that I have that aren't
3 necessarily convictions for any crimes, so they are things
4 that I've gleaned from all of the records that I've been
5 reviewing.

6 A Okay.

7 Q So that's where these are coming from.

8 So there are some items in your treatment records where
9 you disclosed that you had sexual contact with animals. Do
10 you remember disclosing that to treatment providers?

11 A Yeah, I remember that.

12 Q Okay. So I'm just going to go through some of the things
13 that were disclosed. So there is a guinea pig incident that
14 comes up over and over again.

15 A Yes, there was.

16 Q So can you describe what the incident was, at least as --

17 A I can.

18 Q What happened?

19 A When I was probably ten or eleven years old I had guinea
20 pigs. One night I took one out of the cage. Me and my
21 brother's rooms were right next to each other and we had a
22 furnace -- or not a furnace, but like a vent that ran
23 through, so we talked to each other at night.

24 I took the guinea pig over to the vent. I asked him if
25 he could hear. I was rubbing the guinea pig so that it was

1 doing its little squealing noise, it would make this little
2 squeaky noise. He said yes. I said, Do you know what I am
3 doing? He said, No, what are you doing? I said, I'm
4 sticking a pencil in the guinea pig's butt.

5 Was not sticking anything in the guinea pig whatsoever.

6 That thing died four days later. My brother told my
7 stepmother. My stepmother told somebody, I don't know who,
8 and it has never left my file since, and I raped a guinea
9 pig until it was dead. It never happened. That absolutely
10 did not happen.

11 Q Okay. So how about any other sexual contact with animals,
12 did you ever have any?

13 A Yes, I did.

14 Q So go ahead and start. So what animal?

15 A When I was nine there was one incident with a dog where I
16 rubbed my penis on the dog's fur.

17 Q So you did this one time?

18 A Yes.

19 Q Okay. Any other sexual contact with animals?

20 A The same thing with a cat.

21 Q How old were you?

22 A About the same age, nine, ten.

23 Q Did you ejaculate when you did these things?

24 A Not that I remember.

25 Q Any other sexual contact with animals?

- 1 A No.
- 2 Q Did you ever stick any items into any animals?
- 3 A No.
- 4 Q Did you ever tell people that you did?
- 5 A I don't remember ever saying that I stuck anything in any
6 animal. I remember telling Russ Funk at the Toutle River
7 Boys Ranch that I was violent towards animals, that I think
8 I killed some or something, but even that was just made up
9 to try to impress him and get, you know, to have somebody be
10 afraid of me and...
- 11 Q Who did you tell this to?
- 12 A It was a man named Russ Funk.
- 13 Q Who is Russ Funk?
- 14 A He was a counselor at Toutle River Boys Ranch.
- 15 Q And you told him that you did things to animals?
- 16 A I told him that I -- I think that's what I did. I think
17 that with him I told him that I killed animals.
- 18 Q But that wasn't true?
- 19 A That is not true.
- 20 Q Did you tell him anything else that was not true?
- 21 A I don't know what else. It was a long time ago. I just
22 remember that in particular.
- 23 Q Did you tell anybody else that you did things to animals
24 that you can recall?
- 25 A No.

1 (Exhibit 11 marked for identification.)

2 Q So I'm handing you what's been marked as Exhibit 11. This
3 is sections from a person's report whose name is Dr. Olson.
4 Do you remember seeing Dr. Olson at least at some point?

5 A Yeah, I remember him.

6 Q So his full name, in case you want to reference it, is on
7 the very last page, it's Bruce Olson, Ph.D. That's E.Hanson
8 000756.

9 So I want to draw your attention to -- it'll be the
10 third page in what you're looking at, and it's E.Hanson
11 000748. So if you look about two-thirds of the way down
12 this big paragraph, the word at the end of line is
13 "confrontation", and then it says "Erik admitted to". So do
14 you see that line?

15 A Yeah, I see it.

16 Q Okay: So that sentence actually starts two words prior to
17 that. It say, "After further confrontation"?

18 MR. BARTELS: So it's right here. It says, "After
19 further confrontation", on 748. Have you got it?

20 MS. SANDERS: Yeah.

21 Q So can you just read, well, we'll say most of the rest of
22 that page, but you can end with the sentence that ends with,
23 "Therefore hid it from Dr. Lee."

24 A Do you want me read this out loud?

25 Q No, just read it to yourself and just look at me when you're

1 done.

2 A Yeah, absolutely none of that is true. None.

3 Q Okay. So before you put it down, just so long as we're both
4 looking at the same area, it indicates that he told you
5 several things. Are you saying that -- I know you're saying
6 it's not true that they happened, but do you dispute that
7 you said things to Dr. Olson?

8 A I did not say that to Dr. Olson. I did not say that. I've
9 never -- I've never -- I couldn't have said it because I've
10 never done it. There was nothing to admit. I mean --

11 Q So --

12 A -- the stuff that I've talked about in the past, I mean,
13 what I just admitted to you was what happened. I mean, this
14 here is crazy. This did not happen.

15 Q I'm not asking you if it happened or not. I'm just asking
16 you if you admit that you said these thing to Dr. Olson back
17 in like 1990.

18 A No. No, I -- I don't remember saying any of that stuff to
19 him.

20 Q So you didn't tell Dr. Olson, you didn't admit to him that
21 you had extensive sexual torture and mutilation of animals?

22 A No.

23 Q And you didn't tell him that initially you would begin by
24 rubbing dog and cat's genitals?

25 A No.

1 Q And you didn't tell him that you would take them in the
2 shed?

3 A No.

4 Q And you didn't tell him that your sexual molestation of
5 animals led to you wanting to insert objects into their
6 rectums?

7 A No.

8 Q So you didn't admit to him that the cause of your guinea
9 pig's death was --

10 A No.

11 Q -- stabbing a pencil up its rectum and causing extensive
12 internal bleeding?

13 A No.

14 Q And you didn't tell him that you also did this to rabbits?

15 A Nope.

16 Q Did you have rabbits at your house?

17 A Oh, we did. We had a whole bunch.

18 Q Okay. And you didn't tell him that you couldn't explain why
19 you were doing this other than you were fascinated by it?

20 A No, absolutely not.

21 Q And you didn't tell him that you had been treating with a
22 counselor prior to that named Dr. Lee?

23 A I have no idea. I mean, he obviously would have known I was
24 with Dr. Lee prior to him. So as far as me mentioning that,
25 I don't know, but all this stuff with these animals did not

1 A That sounds familiar, yeah.

2 Q So I want you to turn to page E.Hanson 000760, and there is
3 the third full paragraph starting with the word "inquiry".
4 Could you read that paragraph, please, to yourself and then
5 look up at me when you're done?

6 A Okay.

7 Q So in this paragraph Dr. Rawlings is describing an inquiry
8 made of you regarding these animal incidents.

9 A Uh-huh.

10 Q And it says here that you told him that the only thing that
11 had occurred was you attempting to stick your penis in a
12 dog's anus a couple of times. Did you tell him that?

13 A No, I did not.

14 Q Did that ever happen?

15 A No, it did not.

16 Q Okay. He also said that you told him that you had the dog
17 lick your penis on occasions while masturbating to the point
18 of ejaculation. Did you tell him that?

19 A No.

20 Q And did that happen?

21 A No, it did not.

22 Q And then he says that he brought to your attention that you
23 at least had been accused of torturing a variety of animals
24 sexually, and he said that when he did that, you
25 acknowledged that you had inserted a pencil into a guinea

1 pig's anus. Did you tell him that?

2 A No.

3 Q Okay. And that never happened?

4 A It did not happen.

5 Q And he said that while the guinea pig died a month later,

6 you told him it wasn't because of your actions?

7 A It wasn't because of my actions.

8 Q Did you tell him that?

9 A I have no idea.

10 Q So you may have told him that?

11 A If he asked me about the guinea pig, I definitely told him

12 it wasn't because of me.

13 Q Okay. He said that he asked you about some things in Dr.

14 Olson's report, specifically sticking things or injuring or

15 torturing a rabbit in Dr. Olson's report, he said that you

16 told him that you didn't actually do that. Did you have

17 that conversation with Dr. Rawlings?

18 A I couldn't tell you. I don't remember it.

19 Q Okay. But if he asked you about those things we just went

20 over in Dr. Olson's report, you would have told him the same

21 thing you told me?

22 A If he asked me about any of that, I would have said that

23 none of that happened.

24 Q Okay. Then he says that you did say that you would rub your

25 penis against cats because you liked the feeling of their

1 fur. Did you tell him that?

2 A That I'm sure I told him.

3 Q Okay. But he also said that you don't think that you ever
4 hurt the cats. Do you think you told him that?

5 A I don't know.

6 Q Do you think you ever hurt the cats?

7 A I do not.

8 Q So based on the things we just read, it appears, at least
9 from the record, that you have three different doctors, Dr.
10 Lee, Dr. Olson and Dr. Rawlings, all stating that you told
11 them things you did with animals --

12 A Uh-huh.

13 Q -- that you're now saying that you never -- not only that
14 you never did, but you never told them those things. Why do
15 you think that they all wrote it down that way?

16 A I couldn't tell you. There's a lot of things in my file
17 that I did not do and did not say that are there anyway. A
18 lot.

19 Q So did you ever tell anybody that you did things to animals?

20 A Yes.

21 Q Did you -- so other than this Russ Funk, can you think of
22 anybody else who was in a counselor or treatment provider
23 type of position --

24 A Oh, I told Rawlings, I told Dr. Lee, I told Bruce Olson, I
25 told all three of them that something happened with a cat

1 and with a dog, but I never said that I tried to anally rape
2 a dog, I never said that I let a dog lick my penis, I never
3 said that I did anything to a rabbit, I never said anything
4 more than what I'm telling you today, that I rubbed myself
5 on a cat and I rubbed myself on a dog when I was nine years
6 old. That is exactly what I said. Now, how things got this
7 far out of control, I don't know. I really don't care. But
8 I'm telling you the truth.

9 Q Okay. So when you were talking to Dr. Olson, do you
10 remember at least vaguely talking to him at some point in
11 1990?

12 A I remember it vaguely, yes.

13 Q Okay. Was it a contentious discussion or were you guys
14 getting along?

15 A I did not like the man at all.

16 Q Okay. Well, did you -- when you were talking with him,
17 though, was it tense or were you getting along kind of like
18 we're getting along?

19 A I would say it's tense.

20 Q Tenser than this deposition so far?

21 A Absolutely.

22 Q Okay. How about with Dr. Rawlings?

23 A I don't remember Dr. Rawlings. I don't really remember him.

24 Q Okay. How about this? Any of these treatment providers
25 that we're talking about, which is all around 1989 and 1990

1 when you were -- so you would have been about 15, 16 years
2 old? How old were you in 1990?

3 A I would have been about -- I was -- 1990? Yeah, I was about
4 15.

5 Q Okay. So any of these treatment providers that you had, do
6 you remember having contentious interviews with them when
7 were you treating with them or did you get along with them
8 when you were interviewing with them?

9 A I would say the only one that I remember really getting
10 along with was Dr. Lee.

11 Q Okay. So we took deposition testimony from another person
12 at Echo Glen and his name was Gaylen Gold. Do you remember
13 Gaylen Gold?

14 A I do.

15 Q And he testified that you told him that you sexually fondled
16 various pets in your home, including killing a guinea pig by
17 sticking a pencil up its vagina. Did you ever say that to
18 him?

19 A I would have to say no.

20 Q Okay. So I know that you're denying that those things ever
21 happened, obviously, but I'm just asking you if he says that
22 he remembers or has reviewed his report and thinks that you
23 said those words to him.

24 A I did not.

25 Q Okay.

1 MS. SANDERS: I would just object to a
2 mischaracterization of the testimony.

3 MR. BARTELS: Sure. I'll make it a little bit
4 clearer.

5 Q He reviewed his report and he indicated that you admitted to
6 him sexually fondling various pets in your home and that you
7 killed a pet guinea pig by sticking a pencil up in the
8 animal's vagina and --

9 A No.

10 Q You don't think you ever told him that?

11 A No. Gaylen Gold was not -- I mean, at Echo Glen, if I
12 remember correctly, he was not a sex offender treatment
13 specialist, and I don't even know if he was, period. But he
14 was a person on the cottage who I happened to be on his
15 caseload, and that was the extent of my involvement is him
16 -- or with him was just general conversations on the unit.
17 Outside of that, if I told anybody anything, it wouldn't
18 have been him. He had nothing to do with me as far as sex
19 offender treatment goes, which I was briefly in while I was
20 at Echo Glen. He was not one of the people in the group.
21 He wasn't. I don't think he was. I'm pretty sure I'm
22 remembering that correctly. And, like I said, I mean, that
23 stuff never happened, so I couldn't have told him that
24 happened.

25 Q But you told some other people things that didn't actually

1 detective asks you, How many times have you thought about
2 raping somebody? And the answer is, I haven't, I don't
3 know. Then he asks you, More than 50? The answer is no.
4 More than 20? Probably about that. The detective says,
5 About 20? How long have, how long have you been having
6 those thoughts been occurring? And you said, Well, about a
7 year ago it happened like three or four times that I thought
8 about it, but then it, it just went away, and it -- I never
9 really thought about it much, and then like a week and a
10 half ago, just started happening again, only it was a lot
11 worse than before.

12 So do you think that's a fair characterization of your
13 conversation with the police?

14 A Yeah.

15 Q Okay. Do you still stand by that, that you were having
16 these thoughts about raping somebody about 20 times in a
17 year period like is described here?

18 A Yeah, I was telling them the truth, so I'm sure that that's
19 what it was.

20 Q Okay. Then if you go, and this is on 345, if you go about
21 halfway down that page, the word okay is scratched out, and
22 it says -- the first half -- the first half of the statement
23 is, So you still have to register for those. And then is
24 says 'Kay. You say you've never committed a rape against
25 anyone? And then you answer, No, I haven't. And the

1 question is, Okay. Have there been any other instances
2 where you've had this sudden urge like you did with Mary to
3 strangle someone? And you said no. And the question is, So
4 Mary and the woman that worked as Echo Glen are the only two
5 women you've ever strangled? And you said, Yes, they are.

6 Is that a fair characterization of your conversation
7 with the police?

8 A Yes.

9 Q Okay. So it appears here that you are saying that you
10 strangled Pam Morton.

11 A I said that they are similar.

12 Q So Mary and the woman that worked at Echo Glen are the only
13 two women you have ever strangled? And you say, Yes, they
14 are.

15 A Okay, well, that -- for whatever -- for whatever reason it
16 says that, I did not strangle Pam Morton. I did not
17 strangle her. I put my hands on her shoulders and I shook
18 her. I did not put my hands around her neck and choke her.

19 Q So why do you think you told the police that you strangled
20 her?

21 A I couldn't tell you. Don't know.

22 Q Are there any other -- thinking back on it, were there ever
23 any allegations that you put your hands around her neck when
24 you did it?

25 A I have no idea.

1 Q If there are allegations back there that -- back then that
2 you put your hands around her neck, do you think they would
3 be true or untrue?

4 A I think that they would be untrue.

5 Q So you weren't trying to choke her from behind?

6 A No.

7 Q So if you keep on reading on that same page 345, you tell
8 the police, How were you planning on, if you choked her out,
9 committing a rape?

10 And then you answer, I was going to tie her up with the
11 flannel I was using while I was choking her. After I was
12 done choking her, I was going to use the same flannel that I
13 used to choke her and I was going to tie her up with it.

14 You were going to tie her up in the back of the van?

15 Yes.

16 So at some point you were thinking of tying her up in
17 the back of the van; is that fair to say?

18 A Yes.

19 Q And was that for the purposes of committing the rape or was
20 that for the purposes of driving off with her in the van?

21 A That was for purposes of committing the rape.

22 Q So if you go back to page 343, on the bottom it says under
23 detective, it's the second time from the bottom that the
24 word detective comes up, Did anything bring those thoughts
25 on --

1 Sorry. We'll go back one more step. The one we read
2 before, When did you first thinking about doing something
3 like that?

4 And they're talking about raping somebody; right? Is
5 that right?

6 A Yes.

7 Q Okay. And you say, About a week ago. Did anything bring
8 those thoughts on, anything in your life that caused you to
9 start thinking that way? Any traumatic events in your life
10 or...? You answer yes.

11 Detective: What exactly is that?

12 You state: Um... when I was, um... thirteen years old I

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 at the pool in Echo Glen, and one of the staff members came
17 through, Pamela Morton, and I asked her to unlock a door to
18 another room that I had to mop, and she did. And as soon as
19 she passed through the door, I walked in right after her,
20 and I grabbed her by her neck and I started choking her and
21 I slammed her up against the wall, and then I came to. I
22 blacked out through the whole entire thing. The only thing
23 I remember is reaching for her neck and the only thing I
24 remember after that is... like pretty much waking up and
25 sitting on the floor shaking and crying and apologizing to

1 her.

2 So is that a fair characterization of what you said to
3 the police?

4 A No. I don't -- I -- I don't know why I would tell the cops
5 that because I didn't -- none of that's -- most of that is
6 not true. I didn't grab her by the neck, I didn't choke
7 her, I didn't black out and wake up shaking and crying on
8 the floor. That didn't happen.

9 Q Okay. So I know you're saying that that didn't happen. I'm
10 asking you if you think that this was transcribed
11 incorrectly?

12 A I don't remember the conversation in detail with these two
13 detectives. I remember there were two detectives, I
14 remember one was a man and one was a woman, but I don't
15 remember saying that. I can't say that I did or didn't say
16 it. Alls I can say is that that's not what happened.

17 Q Okay. So we've gone over a number of different exchanges
18 and you think that those are fair exchanges and you've
19 testified that they are.

20 A Yes.

21 Q So what about this exchange, other than the fact that it's
22 not true, makes you think that this was somehow incorrectly
23 transcribed from that conversation?

24 A I can't say that it was. Alls I'm saying is that that's not
25 true.

1 Q So given that this purports to be a direct transcription of
2 your conversation with them, would you admit that you at
3 least said those things to the police?

4 A I guess I must have.

5 Q So I know that you're saying they're not true. Why would
6 you tell them that you tried to strangle her or choke her?

7 A I don't know.

8 Q What was going on with you when you were being interviewed
9 by the police that maybe would have caused you to have said
10 that, even though you believe those things aren't true?

11 A I couldn't tell you. I don't know.

12 ■ [REDACTED]

13 ■ [REDACTED]

14 ■ [REDACTED]

15 Q Did you want to prove to him that you could hurt somebody
16 back then?

17 A Yes, I did.

18 ■ [REDACTED]

19 ■ [REDACTED]

20 ■ [REDACTED]

21 ■ [REDACTED]

22 ■ [REDACTED]

23 ■ [REDACTED]

24 ■ [REDACTED]

25 ■ [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q Would maybe hurting an animal be consistent with what you
18 were thinking of when you were a kid about having to -- or
19 wanting to prove yourself to him?

20 A The, like, sacrificing animals, sure. And I think that's
21 one of the things that I told the guy at Toutle River Boys
22 Ranch. I remember that conversation. I remember telling --
23 lying to him and telling him that I had killed an animal

24 [REDACTED]

25 Q But you never did that?

C E R T I F I C A T E

1
2 STATE OF WASHINGTON)
3) ss.
4 COUNTY OF KING)

5 I, Elaine K. Rippen, a certified court reporter in and for
6 the State of Washington, do hereby certify:

7 That the foregoing deposition was taken before me at the time
8 and place therein set forth;

9 That the witness was by me first duly sworn or affirmed to
10 testify to the truth, the whole truth, and nothing but the truth;
11 and that the testimony of the witness and all objections made at
12 the time of the examination were recorded stenographically by me
13 and thereafter transcribed under my direction;

14 That the foregoing transcript is a true record of the
15 testimony given by the witness and of all objections made at the
16 time of the examination, to the best of my ability.

17 I further certify that I am in no way related to any party to
18 this matter nor to any counsel, nor do I have any interest in this
19 matter.

20 Witness my hand this 25th day of February, 2013.

21
22 ELAINE K. RIPPEN, CCR
23 CCR License #2742
24 Certified Court Reporter in and
25 for the State of Washington,
residing at Burien.

APPENDIX 2

1 offering that at this point. I understand that --

2 MS. FORDE: I'm reserving.

3 MR. BARTELS: -- there is going to be a reservation
4 of objections.

5 Q So the next thing I'm going to ask you is to read directly
6 from the paragraph that started -- that starts, Erik's
7 disclosures occurred while he attended the cottage sex
8 offender group. So if you could read that out loud into the
9 record, that paragraph first?

10 A Erik's disclosures occurred while he attended the cottage
11 sex offender group. In addition to taking responsibility
12 for his committing offense, he described in detail the
13 process he used to commit other offenses. These methods
14 were far more aggressive than was originally known.

15 Q Okay. And what follows is that numbered list of items we
16 that were discussing before; is that right?

17 A That's correct.

18 Q Okay. So, now, before you read them, this list of numbered
19 items, were these things that Mr. Hanson said to you
20 directly or did they come from another source?

21 A They originated from the sex offender group where he made
22 these disclosures, and later I discussed these individual
23 items with him.

24 Q Okay. So how do you know that you discussed these
25 individual items with him?

1 A It would have been as part of the counseling and treatment
2 process, it would be important that these disclosures would
3 be part of the counseling issues that I would deal with him
4 directly.

5 Q So are you certain that you would have discussed these
6 individual issues with him?

7 A I am.

8 Q So please read into the record number one.

9 A Number one, I planned and had sexual fantasies several days
10 prior to assaulting his five-year-old cousin Christen. He
11 poked her with a pick-up stick to make her feel pain. He
12 posted his sister as a look-out to prevent detection. The
13 victim asked him to stop, but he did not.

14 Q So when you discussed this issue with Mr. Hanson, what would
15 be the setting that you discussed it with him?

16 A It would be in private, just he and I located away from the
17 cottage group.

18 Q Would you tell him where you got the fact that somebody said
19 that he admitted to doing this?

20 A Yes. I would state that he had disclosed this information
21 at sex offender group here at Echo Glen.

22 Q Okay. And then what would you do after that with him?

23 A Then I would be discussing his current treatment program,
24 the items that I am going to have him work on to resolve
25 these issues and for prevention.

1 Q Okay. Would you inquire about the truthfulness of that
2 statement?

3 A I would.

4 Q How would you do that?

5 A I would ask him, Did this occur?

6 Q Okay. And was that your normal practice?

7 A It would be, yes. It would be direct and easier for him to
8 respond to.

9 Q And did you do that with every single client that you had
10 when things like this would come up?

11 A Yes, I did.

12 Q Always?

13 A Always.

14 Q Okay. And so after you asked him if this was true, if he
15 denied it were true what would you do?

16 A I would have contacted the staff that was currently leading
17 sex offender group as well as the director to make them
18 aware of his denial, and, perhaps, Erik and I would go to
19 the sex offender counselor that leads the group and discuss
20 that with him.

21 Q Okay. How can you tell the difference in number one if he
22 admitted or denied that that statement was true when you
23 confronted him with it?

24 A Can you repeat that?

25 Q Sure. You discussed -- you testified that you discussed

1 what's contained in number one --

2 A Uh-huh.

3 Q -- with him and you asked him whether or not it was true
4 that he said that?

5 A Uh-huh.

6 Q If he denied that, how would you know based on reading this
7 report if he had denied that that was true?

8 A I would make a note. That would be part of my report that
9 he had made an admission to an offense and later denied that
10 and continued to enter as to what resolution was made
11 regarding that particular incident.

12 Q Okay. So do you see any indication you put in your report
13 that he denied that number one was true after you confronted
14 him with it?

15 A No.

16 Q Okay. So can you please read number two into the record?

17 A Two, he anally raped his five-year-old brother, Joshua, and
18 sexually abused him every night for approximately two years.
19 In addition to threatening, Erik physically abused Joshua.

20 Q Okay. Did you confront Mr. Hanson about the fact that
21 somebody said that he said this in group?

22 A Yes, I did.

23 Q Okay. And did he deny that he said this in group?

24 A No, he didn't.

25 Q How do you know?

1 A Because there's, as I stated, no statement in this report
2 saying that he had made these denials.

3 Q Okay. Please read number three into the record.

4 A Three, He rubbed his penis against the buttocks and vaginas
5 of his eight-year-old cousins, Jessica and Becky, when he
6 was nine years old. Erik had them perform oral sex on him.

7 Q And did you confront Erik face-to-face like you described
8 before about what was contained in number three?

9 A Yes, I did.

10 Q And did he deny that he said what was contained in number
11 three?

12 A No, he did not.

13 Q Would you read number four into the record, please?

14 ■ [REDACTED]
15 [REDACTED] ■
16 [REDACTED]
17 [REDACTED] ■
18 [REDACTED]
19 [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED]
21 [REDACTED] [REDACTED]

22 ■ [REDACTED]
23 [REDACTED]

24 A He physically abused his sisters, Lela and Amy, to gain
25 compliance for oral, anal, and vaginal sex. The offenses

1 occurred several times daily every other weekend when the
2 girls visited their biological mother. This went on for a
3 three-year period.

4 Q And did you confront Erik at some point during your
5 counseling face-to-face regarding this statement?

6 A Yes.

7 Q And did he ever deny that that statement was true?

8 A No, he did not.

9 Q And do you know that for the same reasons that you stated
10 for one through three?

11 A Yes.

12 Q Okay. So is there any indication that this was denied at
13 any time in your reports?

14 A No.

15 Q Okay. Could you please read number five into the record?

16 A Number five, He admits sexually fondling various pets in
17 their home. He killed a pet guinea pig by sticking a pencil
18 in the animal's vagina.

19 Q Did you confront Erik regarding this statement?

20 A Yes, I did.

21 Q And did he give you indication -- any indication that this
22 statement was not true or that he did not say it?

23 A No, he did not.

24 Q And how do you know that he did not deny this statement?

25 A I would have made an entry stating that he had denied that

1 disclosure.

2 Q Does any denial entry exist here?

3 A No.

4 Q Okay. Would you please read number six into the record?

5 A He physically assaulted and planned to sexually assault a
6 female teacher following two weeks of deviant fantasizing.

7 Q And did you confront Erik about this statement?

8 A Yes, I did.

9 Q And did he ever deny that this statement was true when you
10 spoke with him?

11 A No, he did not.

12 Q And so do you know that because there's no denial just like
13 the other five?

14 A Correct.

15 ■ [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

Q So that's not really what I'm asking. What I'm asking you is on number one through six, is it -- you have testified that you believe that he agreed that he made these statements to group; is that correct?

A Yes.

Q And that's true for all six of them?

A Right.

Q And that's based on the fact that if he had denied them, you would have written it down; is that fair to say?

A Correct.

Q Okay. My question is: He could have done a third option, which is just not respond to you when you confronted him with it.

A He could have.

Q Okay. So if he didn't respond to you, would you have written that down?

A Yes.

Q Did you write down at any point that he failed to respond to

1 your question?

2 A I did not. There was an additional.

3 Q There was one more. Could you read number seven into the
4 record?

5 A Number seven, Erik planned to physically assault --

6 Q Actually, hold on. Let me stop you there. We're no longer
7 on the same page. What page are we on now that you're
8 reading number seven off of?

9 A Seventy-four, five seventy-four.

10 Q Okay. Thank you. Please read number seven into the record.

11 A Erik planned to physically assault an adult female janitor
12 because she angered him. He was discouraged from his plan
13 for fear of possible intervention by a co-worker.

14 Q And did you confront Erik about that statement?

15 A Yes, I did.

16 Q And at any point did he deny that statement to be true?

17 A No, he didn't.

18 Q In your memory did he -- well, did he admit that that
19 statement was true to you?

20 A Yes, he did.

21 Q So how do you know that he admitted it was true?

22 A As I said before, it would have been noted that he had
23 denied it, and that issue would have been confronted with
24 the director and myself and Erik.

25 Q And would there have been evidence in your report that that

1 happened?

2 A Yes, there would have been.

3 Q And for all items number one through seven, is there any
4 evidence in your report that that ever happened?

5 A No, no.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]