

NO. 72685-4-1

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

In re the Personal Restraint Petition of:

BRANDON EARL,

Petitioner

FILED
Jun 10, 2015
Court of Appeals
Division I
State of Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Thomas J. Wynne, Judge

PETITIONER'S OPENING BRIEF

JENNIFER J. SWEIGERT
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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A. INTRODUCTION

Petitioner Brandon Earl was accused of first-degree rape of child based on three main categories of evidence: a three-year old's hearsay statement that he "licked my pee-pee;" Earl's own confused attempt to explain that, while blowing "raspberries" on the children's bellies, his mouth may have accidentally come into contact with the child's genital area for 30 seconds; and DNA evidence purporting to establish that saliva found on the inside of the child's underwear matched Earl with only a one in several thousand chance of finding that profile at random.

After trial, counsel learned the DNA analyst had a history of failing to abide by procedures designed to prevent cross-contamination and was disciplined because his testimony in Earl's case demonstrated insufficient knowledge of DNA testing. This evidence of the analyst's incompetence would have undermined the foundation for admitting the DNA evidence and, if the evidence were admitted, would have seriously undermined the credibility of the analyst's conclusions. Given the known power of DNA evidence and the paucity of other evidence, this newly discovered evidence requires reversal of Earl's conviction.

B. ASSIGNMENTS OF ERROR

1. Petitioner is unlawfully restrained because newly discovered evidence undermines confidence in the justice of his conviction.

2. Petitioner is unlawfully restrained because the State violated his constitutional due process right to full disclosure of exculpatory and impeaching evidence under Brady v. Maryland.¹

Issues Pertaining to Assignments of Error

1. Petitioner was convicted of first-degree rape of a child based in large part on DNA evidence purporting to show his saliva was found inside the child's underwear. Is a new trial warranted when new evidence shows (1) the DNA analyst had a history of failing to follow procedures to prevent cross contamination; (2) his testimony in this case showed such a lack of proficiency that he was removed from casework and (3) the analyst ultimately resigned rather than address his failings?

2. Some evidence of the analyst's incompetence existed before trial or came into existence during trial. Did the State violate petitioner's constitutional due process rights under Brady by failing to disclose these documents?

¹ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

C. STATEMENT OF THE CASE

1. Procedural Facts

Earl was convicted of first-degree rape of a child, M.F. RP² 1050. His conviction was affirmed on direct appeal. State v. Earl, 182 Wn. App. 1021, unpublished (no. 70144-4-I, filed July 14, 2014), attached as Appendix 1. While his appeal was pending, Earl filed a motion for a new trial. Rather than ruling on the merits, the trial court transferred that motion to this Court for consideration as a personal restraint petition pursuant to CrR 7.8(c)(2).³

2. Substantive Facts

a. Factual Background

Earl was married to M.F.'s mother's cousin. RP 252-53. At a family gathering on Christmas Eve 2010, M.F.'s mother, A.M., walked into an upstairs bedroom and found three-year-old M.F. and Earl alone. RP 252-53, 255-56. Even before she went upstairs, M.F.'s mother testified she did not like the idea of her daughter being alone with Earl. RP 274-75. She "knew" something was wrong even before entering the room. RP 325. As a child,

² RP refers to the Verbatim Report of Proceedings from Earl's 2013 trial unless otherwise specified. A motion to transfer the Verbatim Report of Proceedings from Earl's direct appeal to this case is being filed contemporaneously with this brief.

³ See also State v. Smith, 144 Wash. App. 860, 863, 184 P.3d 666 (2008) ("The superior court may only rule on the merits of the motion when the motion is timely filed and either (a) the defendant makes a substantial showing that he is entitled to relief or (b) the motion cannot be resolved without a factual hearing.")

A.M. had been sexually abused. RP 183, 186. The abuse ended when A.M.'s mother walked in as it was occurring. RP 186.

A.M. testified that when she opened the bedroom door quickly, there was a "commotion," and Earl was readjusting himself on the other side of the bed from M.F. RP 279. Both Earl and M.F. were partially under the covers and fully clothed. RP 279-80.

Feeling very uneasy, M.F.'s mother testified she said nothing except, "Let's go." RP 283-84. She picked up M.F., who had big eyes like a deer in the headlights, and left the bedroom. RP 283-84. On her way downstairs, she testified, M.F. said to her, "Brandon told me not to tell." RP 284.

A.M. took her daughter into the bathroom to talk privately, but M.F. did not reveal additional information. RP 284-85. A.M. helped her daughter undress and use the toilet and noticed nothing out of the ordinary in M.F.'s clothing or demeanor. RP 327-28. A.M. then put her daughter on a stool in the kitchen with her grandmother, A.M.'s mother, and told her not to move. RP 286. The grandmother testified she knew something was wrong right away because of the look on A.M.'s face, so she asked the child what happened. RP 359. At first, M.F. said she was playing or watching TV. RP 360. Upon further questioning, M.F. said, "He licked my pee-pee." RP 360. When the grandmother asked who, she answered, "Brandon." RP 360, 362.

When A.M. confronted Earl, he told her he was merely blowing “raspberries” on the children’s stomachs. RP 292.

According to A.M., later that evening, M.F. said he “made a mess down there.” RP 296. A.M. threw M.F.’s clothing into the dirty laundry hamper. RP 296-97. Four days later, A.M. retrieved the tights M.F. wore that night and two pairs of underwear, both turned inside out, because she could not remember which M.F. had worn on the night in question.

A.M. also brought M.F. to the hospital for examination by the forensic nurse examiner. RP 303-04, 394. After talking to M.F., the nurse examiner was not clear what, if anything had happened. RP 396-97. M.F. did not know why she was there and had no “owies.” RP 397. M.F. did not say what, if anything, had happened involving Earl.⁴ RP 397.

Several months later, A.M. again tried to talk to her daughter about what happened, and video-recorded the conversation. RP 38-39. The State sought to admit the recording into evidence but the judge found A.M.’s questions so leading and M.F.’s memory so faulty that he excluded the recording as unreliable child hearsay. RP 169-70.

Shortly after this incident, Earl called 911 to give his side of the story. RP 534. His interview with the detective was played for the jury. RP

⁴ This Court’s unpublished opinion on direct appeal was mistaken in this respect.

545-46, 551; Earl Interview, Attached as Appendix 2.⁵ In the interview, Earl repeatedly asserted he was merely blowing raspberries on M.F.'s belly. App. 2 at CP 209, 221, 222-23, 225-26, 236. He admitted his mouth may have come into contact with her vagina for 30 seconds. App. 2 at CP 222-23, 228-332. However, he explained this would have been outside of her clothing, not in contact with her skin.⁶ App. 2 at CP 226-27. He said he did not see her underwear and there was no reason his DNA would be found there. App. 2 at CP 248-49. He volunteered to submit a DNA sample. App. 2 at CP 255.

b. Forensic Testing

M.F.'s tights and underwear were sent to the crime lab. RP 661. Scientist Kristina Hoffman tested for amylase, an enzyme found in high amounts in saliva and in lesser amounts in breast milk, fecal matter, and urine. RP 667. The exterior crotch area of both the tights and the underwear in exhibit 8 were negative for amylase, but the interior of the underwear in exhibit 8 tested positive for amylase. RP 672, 677-79. The underwear in exhibit 8 also smelled distinctly of urine with a fairly dark stain. RP 729.

⁵ The interview was admitted at trial as exhibit 40. For ease of reference, this brief cites to the transcript, which was attached to Earl's trial brief at CP 205-263, and is attached as Appendix 2 to this brief.

⁶ This Court's unpublished opinion on direct appeal mistakenly describes Earl's statements on this issue as "conflicting."

Hoffman found the DNA of at least four people on the tights, and the mixed profile led to her conclusion that one in 29 people, including Earl and M.F., were possible contributors. RP 725-26. The quantities were small, consistent with touch contact rather than body fluid deposits. RP 750.

Hoffman found male DNA on both the interior and exterior crotch areas of exhibit 8. RP 682-83. Because there was also a large amount of female DNA, conventional DNA testing was not possible. RP 682-83. Hoffman, therefore, sent the interior sample for Y-STR DNA testing, which isolates male DNA by focusing solely on the Y-chromosome.⁷ RP 683, 768-69.

Michael Lin was responsible for the Y-STR DNA testing at the Cheney lab. RP 765-67, 773-77. On January 30, 2013, the first day of testimony, defense counsel learned the Y-STR database had been updated and Lin would now opine that the chance of a match being found at random was one in 4,400, rather than the one in 2,800 that had been previously disclosed. RP 244. Counsel argued for exclusion of the Y-STR testimony on the grounds that the wild fluctuation in the probability statistic showed it was unreliable. RP 246-47.

On February 1, the fifth day of trial when Lin was due to testify, counsel moved again to exclude his testimony. RP 590-91. Earl argued Lin

⁷ She did not send the exterior sample because there was a greater quantity of male DNA on the interior. RP 683.

did not adequately understand the basis for the probability statistics. RP 782-85. Voir dire of Lin on this issue continued on Monday, February 4. That day, Lin's supervisor, Lorraine Heath was present in the courtroom for his testimony. RP 867-68. Lin explained he had studied this area more and consulted with Heath over the weekend. RP 805, 821-22. He also revealed the database had been updated yet again over the weekend, and thus the probability statistic had likely changed again. RP 808-09. Earl again argued Lin's testimony was not helpful to the jury because the statistic was too changeable and the database was not representative of the United States population. RP 828-29. Lin was permitted to testify. RP 831.

He explained that, because the Y-chromosome is passed along intact from father to son, Y-STR testing cannot identify an individual; all members of the male line in a family have the same profile. RP 769-70, 851. Since Hoffman had already extracted the DNA and assessed the quantity, Lin started with the amplification process. RP 856. He testified the profile from the interior of exhibit 8 matched Earl's reference sample and the probability of that profile being found at random in the male population of the United States was no more than one in 2,800. RP 845. He explained this was a conservative calculation because of the limited size of the Y-STR database, and that, as samples were added to the database, the profile could actually be found to be far rarer. RP 842, 845-46. He explained that anything rarer than

one in 2,800 (i.e., one in any number larger than 2,800) would be within the 95 percent confidence interval that applied to his calculation. RP 845-46.

He explained recent additions to the database now showed the chance of finding the profile at random was one in 4,400. RP 847-48. Initially, he did not re-calculate the statistic after the weekend because there was no time for peer review. RP 849.

On cross-examination, Lin testified he usually processes incoming evidence before any reference sample to prevent the risk of the reference sample contaminating the evidence. RP 855-56. He could not, however, specifically recall whether he did so in this case. RP 855-56. As far as amplification, he testified he prepared the evidence sample first, and then the reference sample because that is the order in which the items appear on his list. RP 856. However, he admitted he ran the evidence and the reference sample in the same amplification batch in separate tubes, which was permitted by Washington State Patrol policy. RP 865.

Lin admitted that, if profiles similar to Earl's were added to the database in future updates, his profile could be found to be more common. RP 875. Because Lin's supervisor was present, he re-ran the statistics and had her review them over the lunch break. RP 896-902. Over Earl's objection, the court permitted Lin to testify the newest updates to the database showed the frequency was not more than one in 5,200. RP 896-

902. On re-cross, Lin again admitted that, if new profiles matching Earl's were added to the database, the profile could be found to be more common.

RP 903. Lin also testified the 7 nanograms of male DNA found on the interior of exhibit 8 was inconsistent with mere touch contact. RP 890.

Donald Riley, the defense expert, opined touch contact could account for the amount of DNA found on exhibit 8. RP 938-39, 943. He also disagreed that the amylase test indicated saliva; he believed urine was the obvious source since the underwear were stained with it. RP 943.

He also expressed concern that the evidence and reference samples were handled in ways that failed to minimize the risk of contamination. RP 929. For example, the evidence and reference sample were mailed in separate sealed tubes but in the same package and were processed in the same amplification batch. RP 929. Amplifying the two samples together was particularly troubling because any contamination would have been amplified as well. RP 930. While he could not point to any specific contamination that had occurred, he was concerned that the processes failed to account for the risk. RP 950, 956. He explained that contamination by a reference sample is far harder to check for than contamination by the analyst's own DNA. RP 933.

In closing argument, the State relied on M.F.'s hearsay statements, Earl's interview, and the DNA testimony. RP 970-72, 995-96. Specifically,

the prosecutor noted that the frequency of the profile shared by Earl and exhibit 8 was diminished with each new update of the database and encouraged the jury to speculate what the frequency might be in five or ten years when even more profiles are added to the database. RP 996-97.

The defense offered numerous explanations of how the DNA results could have come about, including cross-contamination at the crime lab, in the hamper, from spending time that evening on Earl's bed, or from urine on the toilet M.F. used that night. RP 1001, 1011, 1013, 1027, 1030-32. The defense argued Earl consistently asserted he was only "blowing raspberries" on M.F.'s stomach and might have accidentally come into contact with her clothed genital area. RP 1008. Finally, the defense argued A.M. and the grandmother jumped to unwarranted conclusions due to their own experience of A.M. being molested as a child, which colored their perception or memory of what M.F. said to them. RP 1011-12, 1032, 1034-36. The jury convicted Earl as charged.

c. Motion for New Trial

While Earl's direct appeal was pending, trial counsel learned Lin was put on disciplinary restriction as a result of his testimony in Earl's case. 8/6/14RP 4-5. A public disclosure request revealed documents showing Lin's consistently poor performance as a forensic scientist that continued in the face of correction. Id. Earl moved for a new trial under CrR 7.5 or 7.8

based on newly discovered evidence (Attachments A-L)⁸ and argued the documents that existed before and during trial (Attachments A-F) should have been disclosed as exculpatory or materially impeaching evidence under Brady.⁹ It is that motion and attachments that were transferred to this Court as the current personal restraint petition.

Attachment A to the new trial motion is a Job Performance Documentation Record from June 2009. Lin was still in “trial service” at the time and was corrected for using too many receptacles and having contaminated lids in the laboratory. He was also corrected for failing to meet deadlines, mixing sperm cell pellets with his pipette, and continuing to do so after being advised this was inappropriate.

Attachment B is a September 2009 Interoffice Communication noting concerns about Lin’s “casework quality,” “time management skills,” and “inappropriate attitude.” The memo informs Lin, “You have struggled with basic serology screening techniques, DNA case approach, and following directions.” It further informs Lin that, despite having more than twice the number of “co-sign” cases as is typical, he still had not been signed off for independent analysis: “At this time you do not possess the requisite

⁸ Rather than attach additional appendices, this brief cites to the Attachments to the original Motion for New Trial, which was transferred to this Court on September 16, 2014.

⁹ Brady, 373 U.S. 83.

skills to function as an independent DNA analyst.” A job performance plan was put in place, to be reviewed in December 2009.

Attachment C is a December 2009 Interoffice Communication regarding the job performance improvement plan. This document shows Lin fulfilled the requirements of the plan and improved.

Attachment D is a Job Performance Documentation Record from April 2010. It criticizes Lin for placing “a known saliva sample within close proximity of evidence,” and for screening both samples at the same time. The record states, “You showed a high level of disregard to the preservation and integrity of the evidence.” The record states that another analyst confronted him about this, and corrected him. Then, when Lin’s supervisor asked about his practice, he was evasive and described the corrected practice, instead of what he had actually been doing until he was corrected by his co-worker. It was also noted that he had been previously warned not to leave known samples lying on his bench, but he had continued to do so. The memo notes the importance of minimizing contamination events and states, “These practices are of great concern.” The record concludes by noting the efforts made to help Lin improve and declaring,

You have not progressed. No improvement has been demonstrated. Breaches of the quality control procedures and poor case approach can have a detrimental effect on criminal casework, and therefore cannot be tolerated. Further

quality control or case approach lapses will result in you being removed from casework and you will be retrained.

Attachment E is another Job Performance Documentation Record from May 2010 noting Lin failed to complete the case approach work sheet that was being used to monitor his performance. It was also noted he was using too many reagent blanks, as “just another example where you do not execute proper case work procedures.”

Attachment F is a Corrective Action Plan dated February 3, 2013. This was during Earl’s trial. Lin was “rated poorly” during the defense interview and his testimony on Y-STR analysis. The report explains, “His supervisor, Lorraine Heath, traveled on-site to provide instructional assistance in person when she learned of Michael’s earlier testimony difficulties.” Lin was removed from casework and Heath was assigned to draft a Job Performance Improvement Plan for him.

Attachment G is the Court Testimony Performance Evaluation pertaining to Earl’s case, dated February 4, 2013. It notes Lin “made technically incorrect statements” during his testimony. These incorrect statements included “comments on the effect of ethnicity on the United States Y-STR database and the inclusion of suspects in the database as well as failure to mention vaginal secretions as the likely source of the DNA in the crotch of the victim’s underwear.” The evaluation also notes Lin “often

failed to appropriately qualify statements” such as the “probability of contamination, likely effect of database size on frequency of suspect’s profile, and the probable/possible sources of DNA on item.” The report criticizes Lin for giving the appearance of being unfamiliar with “his case file, SOPs, and various areas of QA/QC.” The report states Lin’s equivocation on how he performed the work gave the impression that contamination was more likely than it was. It also notes Lin “failed to properly prepare himself with knowledge in those areas despite more than ample time to do so.”

Attachment H is the Job Performance Documentation Record pertaining to the Earl trial. It states, “This past weekend, for the second time in less than 6 months you demonstrated an inability to follow the directions of a supervisor.” The record then details Lin’s inappropriate use of a hotel room, paid for by the state, during the Earl trial and his inappropriate public criticism of a supervisor regarding use of a mop in October 2012.

Attachment I is an e-mail from February 19, 2013 prohibiting Lin from resuming regular casework until after successful completion of the Job Performance Improvement Plan.

Attachment J is a letter to the director of the Laboratory Accreditation Board notifying them of “nonconformance on the part of a DNA analyst in our Spokane Crime Laboratory.” It notes the unsatisfactory

nature of Lin's testimony, the improvement plan being implemented, and Lin's removal from new casework in the interim.

Attachment K is the Job Performance Improvement Plan dated April 1, 2013. It Lin that, based on his testimony in Earl's case, "it is evidence that you do not currently have the ability to provide expert testimony of the high quality needed to function as a Forensic Scientist 3." It further states that, during Earl's trial, Lin's testimony "included technically incorrect statements; inappropriately qualified or unqualified statements; equivocation where none was warranted; the appearance you were unprepared, untrained, and unforthcoming." Although the Earl case involved Y-STR testing, Lin "demonstrated deficient testimony not only on Y-STR analysis but also screening/serological examinations, as well as on general procedures that would apply to all types of DNA casework." The document then describes the steps that will be taken to improve Lin's performance. Until that time, he was to "cease performing casework and peer review."

Attachment L is an Interoffice Communication dated October 28, 2013 noting Lin had resigned.

Attachment M is the defense's supplemental discovery request from May 2012, roughly seven months before Earl's trial, requesting, in part, "all contamination and discrepancy entries or logs in the laboratory's possession," "complete laboratory files for external proficiency tests taken

by the analysts in the instant case,” and “all written correspondence, scientific reports, memos, email messages, notes, and telephone logs related to the instant case.”

In support of its motion to transfer Earl’s motion to this Court, the State attached a declaration from Lorraine Heath, Lin’s supervisor. Heath Declaration, attached as Appendix 3. Heath declared that, throughout Lin’s tenure, there were procedures in place at the crime lab to prevent contamination and there was no evidence of actual contamination in this case. Id. She declared that Lin’s notes show that, in this case, he followed procedures to prevent contamination. Id. She declared contamination was unlikely in this case because Hoffman detected male DNA before the evidence was sent to Lin. Id. Therefore, she reasoned, if Lin had contaminated it with Earl’s sample, he would have found two male profiles. Id. She declared Lin’s testimony in Earl’s case was deficient largely because it understated the significance of the lab results, not because of any defect in his lab work. Id. The lab work errors from 2009 and 2010 were during his training phase when he was not performing independent casework. Id.

D. ARGUMENT

1. NEW EVIDENCE OF INCOMPETENCE BY THE DNA ANALYST REQUIRES REVERSAL.

a. The Standard for a New Trial Motion Based on Newly Discovered Evidence Applies to this Case.

As a preliminary matter, Earl's personal restraint petition is timely under RCW 10.73.090 because it was filed before the conviction became final on appeal. 9/12/14RP 3, 5. The issues could not have been raised in the direct appeal because they are based on new evidence discovered since the appeal was filed. Because the trial court transferred his new trial motion to this Court as a personal restraint petition, no other adequate remedy is available, as required by RAP 16.4(d).

When there has been no prior opportunity for review, a personal restraint petition is reviewed by examining only the requirements of RAP 16.4. State v. Roche, 114 Wn. App. 424, 440-41, 59 P.3d 682 (2002) (citing In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994)). Relief is granted when the petitioner is restrained as defined in RAP 16.4(b)¹⁰ and that restraint is unlawful for one of the reasons listed in RAP 16.4(c). Roche, 114 Wn. App. at 441. Newly discovered evidence is one of the listed reasons: "Restraint is unlawful where material facts exist

¹⁰ Earl is restrained under RAP 16.4(b) because he is confined pursuant to a criminal proceeding.

which have not been previously presented and heard, which, in the interest of justice, require vacation of the conviction.” Id. (citing RAP 16.4(c)(3)).

When raised in a personal restraint petition, newly discovered evidence is subject to the same standards applied to a new trial motion. In re Pers. Restraint of Copland, 176 Wn. App. 432, 450, 309 P.3d 626 (2013) (citing In re Pers. Restraint of Benn, 134 Wn.2d 868, 886, 952 P.2d 116 (1998)); Roche, 114 Wn. App. at 444. This standard was applied to a personal restraint petition in Roche. Like this case, the consolidated appeals in Roche involved malfeasance by a forensic scientist at the crime lab. Like Earl’s case, the Sweeney appeal, consolidated with Roche, arrived at the court as a transferred personal restraint petition. 114 Wn. App. at 440-41. This Court held Sweeney need only meet the standard of review for relief under RAP 16.4 rather than the stricter standard under In re Cook, 114 Wn.2d 802, 811-11, 792 P.2d 506 (1990), which would require either a constitutional error causing “actual and substantial prejudice,” or nonconstitutional error constituting a “fundamental defect which inherently results in a complete miscarriage of justice.”

The Roche standard applies here. Since trial, Earl has learned that the analyst who testified about the Y-STR DNA linking him to the offense had a history of failing to follow procedures to prevent cross-contamination and, based on his performance at Earl’s trial, was deemed

not qualified to be a DNA analyst. Attachments D, K. Because this information was revealed after trial, Earl had no prior opportunity for judicial review. This Court should, therefore, apply the same standard as in a motion for new trial. Roche, 114 Wn. App. at 444. Earl should be granted a new trial because the new evidence: (1) would probably change the result of any new trial; (2) was discovered after trial; (3) could not have been discovered before trial with due diligence; (4) was material; and (5) was not merely cumulative or impeaching. Id.

- b. Evidence of Lin's Inadequacy Would Change the Result of Earl's Trial by Undermining the Foundation for Admitting the DNA Evidence and Devastating Lin's Credibility.

The newly discovered evidence of Lin's incompetence would have changed the outcome of this case for three main reasons. First, the evidence of Lin's failure to follow proper procedures and reluctance to admit these failings would have strongly called into question the chain of custody for the DNA evidence. There is a reasonable probability the trial judge would have found the foundation wanting and excluded the evidence. Second, the evidence shows Lin was unqualified in ways specifically relating to the performance of Y-STR DNA testing, DNA testing in general, and testifying in court as an expert witness. Under these circumstances, the trial court could reasonably have concluded his testimony was not admissible under ER

702. Finally, even if Lin's testimony were admitted, the jury would have been likely to disregard it because the newly discovered evidence devastates his credibility. Had the DNA testimony been excluded or its reliability seriously questioned, it is reasonably probable the jury would have found reasonable doubt as to Earl's guilt.

i. Lin's Incompetence Breaks the Chain of Custody for the Crucial DNA Evidence.

In Roche, this Court dealt with a chemist at the crime lab who had been ingesting the heroin that was sent to him for testing. 114 Wn. App. at 428. The chemist stole heroin from the lab, used heroin while working, and had sloppy work habits. Id. at 438. His co-workers suspected he was reporting results without performing the tests. Id. This Court held the chemist's malfeasance broke the chain of custody. Id. at 428.

Although the defendants in the consolidated cases were charged with methamphetamine, not heroin, offenses, and there was no evidence of actual tampering in either case, this Court reversed both convictions. Id. at 433-34, 437. The court reasoned that, if the chemist's misconduct had been revealed, the admissibility of the alleged methamphetamine would have been "vigorously challenged" and "probably the exhibits would not have been admitted into evidence at all." Id. at 438.

The same is true in this case. Like illegal narcotics, DNA molecules are physical evidence not readily identifiable or unique to the untrained eye. As such, more stringent authentication is required before admission. Id. at 436. A chain of custody must be established that renders it “improbable” that the original item has been tampered with or contaminated. Id.

The evidence of Lin’s incompetence breaks the chain of custody by making it far more probable that the evidence was contaminated. Lin’s testimony showed deficient knowledge of Y-STR DNA procedures, screening/serological examinations, and procedures applicable to all DNA testing. Attachment K. In the past, he had failed to observe procedures pertaining to the risk of contamination. Attachments A, B, C, D. These failings continued after corrective action by his supervisor. Id. He was also noted to not be forthcoming regarding past failures to follow proper procedures and when questioned by his supervisor about Earl’s case. Attachments D, H.

Earl’s trial counsel vigorously challenged admission of the DNA evidence with all the tools at her disposal at the time. See, e.g., RP 246-47, 590-91. There is no doubt that, had this evidence been available, she would have added it to her arsenal. And based on this evidence, as in Roche, the judge would likely have excluded the Y-STR DNA evidence entirely.

Earl anticipates the State will argue there was no evidence of contamination or failure to follow procedures in this case. But that was also true in Roche. 114 Wn. App. at 433-34, 437. The chemist's theft, dishonesty, substance abuse, and likely falsification of testing in other cases broke the chain of custody in Roche and Sweeney's cases, even though their cases involved substances other than the heroin the chemist was ingesting, and even though there was no sign of falsification specific to their cases. Id. at 437-38. Lin's lack of knowledge of correct procedures and his history of failing to correct practices that risked contamination makes it probable the trial court would have rejected the chain of custody in this case as well.

ii. Lin's Incompetence Also Undermines the Foundation for the Admission of His Expert Scientific Testimony.

The new evidence would also have resulted in a different outcome because it would likely have led to Lin being found unqualified to testify as an expert witness. When scientific testimony is so unreliable as to be unhelpful to the trier of fact, it is inadmissible under ER 702.¹¹ In cases of DNA testing, the necessary reliability depends on adherence to correct procedures to avoid contamination. State v. Russell, 125 Wn.2d 24, 53, 882

¹¹ ER 702 provides, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

P.2d 747 (1994). Because the risk of contamination can be minimized by strict adherence to sterile technique, “[a]dherence to proper laboratory procedure is essential” in assessing admissibility of DNA testing under ER 702. Russell, 125 Wn.2d at 53. Additionally, a witness giving scientific opinion testimony must be qualified to do so. ER 702.

The new evidence in this case shows Lin was not qualified and casts strong doubt on whether he followed correct procedures in any given case. His employment history shows repeated failures to follow correct procedures even after correction. Attachments B, D, F. The evaluation after Earl’s trial specifically declares Lin unqualified to give expert DNA testimony. Attachment K. If counsel had been able to present this evidence pre-trial, it is probable the court would have excluded Lin’s testimony under ER 702.

Heath’s declaration that Lin’s notes show he followed correct procedure in this case does not alter that probability. App. 3. First, the evidence also shows Lin’s history of being less than forthcoming about the procedures he used. Attachment D. And Heath’s declaration cannot entirely erase the stain of her own assessment of his deficient testimony regarding “general procedures applying to all DNA casework.” Attachment K. If the trial court had heard the new evidence, it is probable it would have found Lin’s analysis so unreliable as to be unhelpful to the jury.

iii. The Newly Discovered Evidence Would Devastate Lin's Credibility and Undermine his Qualifications in the Eyes of the Jury.

Even if the DNA evidence were admitted, Earl's ability to cross-examine Lin about these issues would likely result in the jury discounting the DNA testimony. Without good reason to do otherwise, juries are likely to trust and rely on DNA evidence. See Joel D. Lieberman, et al., Gold Versus Platinum: Do Jurors Recognize the Superiority and Limitations of DNA Evidence Compared to Other Types of Forensic Evidence?, 14 Psychol. Pub. Pol'y & L. 27, 32 (2008) (noting a Gallup poll found 85 percent of those questioned believed DNA evidence to be "completely" or "very" reliable). The authors of one series of studies concluded, "a mystical aura of definitiveness often surrounds the value of DNA evidence to exonerate the innocent and convict the guilty." Id. at 27. The studies showed public confidence in DNA testing "was reduced only when the qualifications of the expert were brought into question, not when the quality of evidence was attacked." Id. at 53.

The newly discovered evidence would have permitted defense counsel to attack Lin's qualifications. She could have questioned Lin about his own supervisor's opinion that, "you do not currently have the ability to provide expert testimony of the high quality needed to function as a Forensic Scientist 3." Attachment K. The jury could have heard that some of his

sworn testimony contained “technically incorrect statements,” according to his supervisor. Attachment K. Not only did the jury not hear such information casting doubt on Lin’s qualifications, but, according to the new evidence, the prosecutor and judge stepped in to assist Lin, making his testimony appear more reliable than it was. Attachment G (“There were numerous instances where the prosecutor and/or the judge saved him from appearing even more incompetent.”).

Without this evidence, jurors had no reason to question the accuracy of the DNA, and they were unlikely to do so. Lieberman, et al., supra. The new evidence casts Lin’s testimony in an entirely different light. It shows he lacked necessary knowledge about the scientific basis of his work and, at the time of Earl’s trial, he was nearing the end of a trajectory that led him to resign rather than make necessary improvements. Attachments K, L.

iv. Excluding or Casting Serious Doubt on the DNA Testimony Would Likely Have Altered the Outcome.

Aside from the DNA, the only evidence tending to show Earl’s guilt was (1) child hearsay interpreted by family members primed to suspect this type of abuse and (2) Earl’s consistent statements that he was merely blowing raspberries on her belly. This other evidence is underwhelming, at best, and the State relied heavily on Lin’s testimony to establish essential

elements of the crime. If Lin's testimony had been excluded or seriously called into question, the jury would likely have found reasonable doubt.

As stated, DNA evidence is powerful for a jury. "DNA is a powerful evidentiary tool and its importance in the courtroom cannot be overstated." Whack v. State, 433 Md. 728, 732, 73 A.3d 186, 188 (2013) (citing Maryland v. King, ___ U.S. ___, 133 S. Ct. 1958, 1966, 186 L. Ed. 2d 1 (2013)). Since the advent of DNA testing, "No longer is a witness's recollection or even a confession the most reliable evidence of guilt. Instead, physical evidence has taken on central importance." Brandon L. Garrett, Claiming Innocence, 92 Minn. L. Rev. 1629, 1631 (2008). DNA technology is "one of the most significant scientific advancements of our era" and its usefulness in the criminal justice system is "undisputed." King, ___ U.S. at ___, 133 S. Ct. at 1966. Therefore, "jurors place a great deal of trust in the accuracy and reliability of DNA evidence." Whack, 433 Md. at 732. The presence of DNA evidence in this case made conviction far more likely because of jurors' trust in DNA evidence in general.

Lin's testimony purported to establish two important facts in the case: first, male DNA matching Earl was found on the interior of M.F.'s underwear and, second, the quantity was so large as to be inconsistent with the mere touch contact that was the defense theory of the case. RP 845, 890, 1011, 1027, 1030, 1031-32. Undercutting Lin's credibility as to either of

these conclusions would likely have led to an acquittal because of the weakness of the other evidence in the case.

Apparently, the State felt the DNA evidence was crucial because it declined to even charge Earl until the results of the testing were completed. Response to Motion to Compel, sub no. 62, attached as Appendix 4. In response to Earl's motion to compel discovery of the decline notice, the State explained: "When the State obtained additional evidence in the form of DNA from the crotch of the victim's underpants which could be linked to the defendant, the deputy prosecutor charged the case." Id. at 2.

The prosecutor's initial decision not to prosecute is understandable. M.F.'s statements were hearsay from a small child, viewed only through the skewed lens of adults who were primed to expect the worst due to their experience of A.M.'s own childhood sexual abuse. RP 186, 274-75, 325. Both A.M. and her mother indicated they "knew" something was wrong even before M.F. said anything. RP 325, 359. Earl's statement could reasonably be interpreted as an attempt to make sense of the accusations that were being made against him, not an admission of guilt. App. 2 at CP 209-55; RP 1024.

The State also felt the DNA evidence was important enough to focus on it in closing argument. Near the beginning and the end of closing argument, the prosecutor referred to the seven nanograms of male DNA

found on the underwear. RP 972, 993. He ended by suggesting to the jury that further additions to the database would only make the profile rarer and the DNA more probative of Earl's guilt. RP 995-97.

The State will likely argue the evidence of Lin's incompetence would be inadmissible under ER 608, which prohibits extrinsic evidence of conduct designed solely to impeach a witness' credibility, or ER 404, which bans character evidence. Any such argument should be rejected because the State opened the door to evidence of Lin's qualifications and experience.

The open door doctrine is designed to prevent the unfairness that would result if one party can bring up a topic, create a false impression, and then preclude the other party from refuting it. State v. Berg, 147 Wn. App. 923, 938-40, 198 P.3d 529 (2008). Even such bulwarks as a defendant's constitutional right to confront witnesses can fall before the open door doctrine. State v. Hartzell, 153 Wn. App. 137, 154, 221 P.3d 928 (2009) review granted, remanded on other grounds, 168 Wn.2d 1027, 230 P.3d 1054 (2010). "[O]nce a party has raised a material issue, the opposing party is permitted to explain, clarify, or contradict the evidence." Berg, 147 Wn. App. at 939. This is so even if the evidence would otherwise be irrelevant or inadmissible. See id. at 939-40 (admitting police officer's testimony about mother of victim's failure to report to police in unrelated case).

Thus, even if this Court concludes the new evidence would otherwise be inadmissible under the evidence rules, the open door doctrine would allow the evidence because the State brought up Lin's qualifications and training and the lab's accreditation and procedures. RP 765-68. Lin testified he was a specialist in DNA analysis employed at the crime lab for nearly five years. RP 766-67. He testified about participating in proficiency testing twice a year and ongoing education. RP 768. The open door doctrine would permit Earl to contradict this false impression of Lin's competence.

Without the DNA evidence, this was a "he-said/she-said" case. And even with the DNA, it appears the jury was focused on corroboration because it asked the court why there was no evidence from the other children about Earl blowing raspberries. Jury Inquiry, CP 91, attached as Appendix 5. The jury deliberated for an entire day, from 9:14 a.m. until 4:05 p.m. Trial minutes, sub no. 75, attached as Appendix 6. This indicates the jury was giving careful consideration to Earl's account of events. Without the DNA that purported to find Earl's saliva on the inside of M.F.'s panties, thereby showing unclothed contact, the jury would likely have found it reasonable to doubt whether anything other than playful roughhousing and accidental contact had occurred.

- c. The New Evidence Was Discovered After Trial and Could Not Have Been Discovered Earlier by Due Diligence.

The second and third criteria for newly discovered evidence require that it be actually newly discovered after the trial and that it could not, by exercise of due diligence, have been discovered in time for use at trial. Roche, 114 Wn. App. at 444. Both of these requirements are met in this case.

Trial counsel filed a supplemental discovery request in May 2012, more than six months before trial, requesting “contamination and discrepancy entries or logs” relating to the DNA evidence. Attachment M. She also requested “complete laboratory files for external proficiency tests taken by the analysts in the instant case,” and “all written correspondence, scientific reports, memos, email messages, notes, and telephone logs related to the instant case.” Id. Despite these diligent requests for information in the State’s possession, none of the documents in Attachments A through F were provided to the defense before or during trial. The remaining documents in Attachments G through L could not have been discovered before trial because they did not exist before or during trial.

The earlier documents show Lin’s history of disregarding procedures designed to prevent contamination and failure to follow corrective instructions or be forthcoming about events. Attachments A-E. But it appears it was Lin’s testimony in this case that revealed to his superiors the true extent of his continuing incompetence. Attachments F-L. This overall

picture of Lin's inability to correctly do his job could not have been discovered by counsel before trial.

The State may argue there was no specific request for employment records. Any such argument should be rejected. Because this material was impeaching of a crucial State witness, trial counsel reasonably relied on the assumption that the prosecutor would have provided it under Brady. See Amado v. Gonzalez, 758 F.3d 1119, 1136 (9th Cir. 2014) (defense counsel entitled to rely on that prosecutor's obligation to produce Brady material).

d. Evidence of Lin's Incompetence Was Material and Not Cumulative or Merely Impeaching.

The fourth and fifth criteria for newly discovered evidence require that it be material and not merely cumulative or impeaching. Roche, 114 Wn. App. at 444. Black's law dictionary defines "material" as "having some logical connection with the consequential facts" or "of such a nature that knowledge of the item would affect a person's decision-making process; significant; essential." Black's Law Dictionary, 441 (2nd pocket ed. 2001). For purposes of a new trial motion, evidence is material when there is a reasonable probability it would alter the fact-finder's decision. State v. Smith, 80 Wn. App. 462, 471, 909 P.2d 1335 (1996), reversed on other grounds, 131 Wn.2d 258 (1997) (citing State v. D.T.M., 78 Wn. App. 216, 896 P.2d 108 (1995)).

The new evidence of Lin's incompetence is logically relevant to the jury's decision in Earl's trial because it directly impacts what weight the jury should give to the scientific DNA profile evidence. It is also logically relevant to the trial judge's gatekeeping function in determining whether Lin's testimony would be helpful to the jury and whether the DNA evidence was sufficiently reliable to be admissible at trial. For the reasons discussed in subsection D.1.b., supra, this evidence is material. The relevance and admissibility of DNA evidence depends on the analyst's being qualified and following correct procedures to prevent contamination. ER 702; Russell, 125 Wn.2d at 53.

Evidence of Lin's incompetence was neither cumulative nor merely impeaching. "Cumulative evidence is additional evidence of the same kind to the same point." In re Pers. Restraint Brown, 143 Wn.2d 431, 454, 21 P.3d 687 (2001) (quoting State v. Williams, 96 Wn.2d 215, 223-24, 634 P.2d 868 (1981)). The new evidence in this case is not of the same kind as any evidence presented to the jury at Earl's trial. Counsel valiantly tried to undercut the significance of Lin's conclusions during cross-examination but, as Lin's supervisor pointed out afterwards, the prosecutor and the judge stepped in to prevent Lin from looking incompetent. Attachment G. Moreover, counsel is not a scientist, nor do her questions on cross-examination amount to testimony. The new evidence from qualified

scientists undermining Lin's qualifications is of an entirely different caliber than mere cross-examination.

“Impeachment is evidence, usually prior inconsistent statements, offered *solely* to show the witness is not truthful.” State v. Burke, 163 Wn.2d 204, 219, 181 P.3d 1 (2008) (emphasis added) (citing State v. Thorne, 43 Wn.2d 47, 53, 260 P.2d 331 (1953)). The new evidence in this case does not consist of prior inconsistent statements that can only be used to show Lin was not truthful. As discussed above, the evidence goes directly to the two primary foundational requirements – qualification as an expert and chain of custody – for admitting the testimony at all. To the extent it could be used to impeach Lin's testimony at trial, this evidence meets the exception described in Roche for evidence that devastates the credibility of uncorroborated testimony establishing an element of the offense. 114 Wn. App. at 437-38.

The new evidence presented in this case parallels that in Roche. There was no evidence the chemist in Roche had ever stolen or used methamphetamine and there was no evidence he had falsified test results in the cases at hand. 114 Wn. App. at 437. Thus, the State argued the evidence of his misconduct discovered after trial was merely impeaching. Id. This Court disagreed. Id. at 437-38.

This Court concluded that impeaching evidence warrants a new trial when it devastates the credibility of uncorroborated evidence establishing an element of the offense. Roche, 114 Wn. App. at 438 (citing State v. Savaria, 82 Wn. App. 832, 838, 919 P.2d 1263 (1996)). The scientist's malfeasance in Roche so undermined his credibility that the court could not be confident that the substance at issue was indeed methamphetamine. Roche, 114 Wn. App. at 437-38.

The new evidence here has the same effect on Lin's credibility: It completely destroys his credibility as a forensic scientist. Based on his testimony *in this case*, Lin was told, "You do not currently have the ability to provide expert testimony of the high quality needed to function as a Forensic Scientist 3." Attachment K. His testimony was determined to contain "technically incorrect statements" and was deficient "not only on Y-STR analysis but also serological/screening examinations, as well as on general procedures that would apply to all types of DNA casework." Attachment K.

Moreover, Lin's testimony about the matching DNA profiles was the only evidence establishing the essential element of sexual intercourse. Sexual intercourse was defined for the jury as contact between the mouth and the "unclothed sex organs" of another person. Jury Instruction 4, CP 83, attached as Appendix 7. The only evidence of the "unclothed" aspect of this definition was Lin's conclusion that the DNA profile of the saliva found on

the interior of M.F.'s underwear matched Earl. No witness saw what happened, and neither M.F.'s hearsay nor Earl's interview specifically described any unclothed or skin contact.

Turning first to Earl's statement, he repeatedly and consistently insisted any contact with M.F.'s genital area was both accidental and over her clothes. This Court's unpublished opinion erroneously refers to Earl's statement as giving conflicting statements on whether he had contact with M.F.'s unclothed genital area. App. 1. at 4. This is simply incorrect. In his interview, Earl said there was no reason his DNA would be on her skin. App. 2 at CP 221. He said there could have been accidental contact while he was "blowing on her tummy." App. 2 at CP 223. He said it happened just once, and it was an accident. App. 2 at CP 225. The detective asked, "What about when you were . . . put your mouth down there, on the private?" App. 2 at CP 227. Earl replied, "No. No. No." App. 2 at CP 227. When the detective asked specifically whether it was on the skin, Earl answered, "No." App. 2 at CP 227. He confirmed it was on the outside of the clothes. App. 2 at CP 227. He explained he was only blowing raspberries on her tummy, but, "her tummy's only this big, so I'm . . . you know, my face might of came in contact with . . . down there." App. 2 at CP 232. He said he was confused by the accusations made by M.F.'s mother because "I didn't touch her. I blew raspberries." App. 2 at CP 236. He acknowledged he should

apologize because “I might’ve accidentally come in contact with your privates.” App. 2 at CP 237. He said that when she pulled her dress up, he did not see her underwear and reiterated there was no reason his DNA would be on them. App. 2 at CP 248-49. Detective Ferreira asked, “[T]his was totally an accident, correct?” App. 2 at CP 249. Earl answered, “Yeah.” Id.

Nor do M.F.’s hearsay statements corroborate any contact with her unclothed sex organs. Her mother testified she said, “Brandon told me not to tell.” RP 284. M.F. did not tell her mother what, if anything, had happened. M.F.’s grandmother testified M.F. said, “he licked my pee-pee” and when she asked who he was, the child said, “Brandon.” RP 360, 362. She did not indicate whether the licking was over or under her clothes. Finally, she told her mother, “he made a mess down there.” RP 296. This was yet another ambiguous statement that does not corroborate the idea of direct mouth to genital contact. Lin’s testimony that DNA inside M.F.’s underwear matched Earl’s was the only evidence of unclothed contact.

If Lin’s incompetence had been revealed, there is a strong probability that the trial court would have rejected Lin’s testimony either on the grounds that he was unqualified to act as expert witness or that there was too much doubt about the potential for contamination of the DNA evidence. Even if the DNA evidence were admitted, the new evidence would have destroyed Lin’s credibility.

Because the DNA evidence was the only evidence of unclothed contact, this new evidence undermines confidence in the verdict and requires a new trial.¹²

2. BY FAILING TO TURN OVER EVIDENCE OF LIN'S INCOMPETENCE, THE STATE VIOLATED THE DUE PROCESS DISCLOSURE REQUIREMENTS OF BRADY V. MARYLAND.

Relief is also warranted on this personal restraint petition under RAP 16.4(c)(2). Under that provision, a personal restraint petition should be granted when the conviction was obtained in violation of the constitution. RAP 16.4(c)(2). Here, the newly discovered evidence also demonstrates the State violated Earl's constitutional due process rights under Brady by failing to disclose the available evidence of Lin's incompetence before or during trial.

Under Brady, prosecutors are constitutionally obligated to disclose "evidence favorable to an accused . . . [that] is material either to guilt or to punishment." 373 U.S. at 87. This duty is grounded in Fourteenth Amendment due process and is designed to ensure that trials are fair. Id. at 86-87; U.S. Const. amend. XIV. The prosecution must turn over

¹² As an alternative, this Court could remand for a reference hearing so live testimony could be taken. RAP 16.11(b); In re Stenson, 174 Wn.2d 474, 483, 276 P.3d 286 (2012). For example, defense counsel could be questioned about the impact this evidence would have on her trial strategy, and Heath could be cross-examined about her declaration. That was part of the relief requested by counsel below before the case was transferred to this Court. 8/6/14RP 7.

evidence to the defense because its interest “is not that it shall win a case, but that justice shall be done.” Strickler v. Greene, 527 U.S. 263, 281, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) (quoting Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935)). Thus, the duty to disclose exists regardless of any defense request. The State is required to provide material, favorable information even when the defendant does not make a Brady request. Amado, 758 F.3d at 1136-37 (requiring defendant to exercise due diligence in requesting Brady material was contrary to established federal law).

The duty to divulge relevant information is “broad.” Strickler, 527 U.S. at 281. It includes all evidence that is both favorable to the defendant and material to the case. United States v. Bagley, 473 U.S. 667, 675, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). And it is not limited to evidence tending to prove innocence; it includes “that which impeaches a prosecution witness.” Amado, 758 F.3d at 1133-34.

A Brady violation has three components: (1) the evidence at issue is favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) the evidence was suppressed by the State, either willfully or inadvertently; and (3) prejudice ensued. Stenson, 174 Wn.2d at 486-87. All three components are satisfied in this case. The evidence of Lin’s incompetence found in Attachments A through F is favorable to Earl by

impeaching Lin's testimony; the evidence was not disclosed pre-trial; and prejudice ensued because it is reasonably probable that effective impeachment of Lin would have led to an acquittal.

a. The Evidence of Lin's Persistent Incompetence Would Have Been Favorable to Earl's Defense.

Attachments A through E show a pattern during 2009 and 2010 of Lin failing to comply with correct procedures, including specifically procedures designed to minimize the risk of contamination of evidence samples. Attachment F, written during Earl's trial, showed Lin's incompetence had not abated. This was favorable to Earl because it would have led the jury to seriously question Lin's conclusions about the DNA evidence for two different reasons. First, the documents illustrate the risk that Earl's profile was found due to contamination in the lab rather than as a result of his actual guilt. Second, they illustrate that Lin's own supervisor found his testimony was rife with scientific inaccuracies and showed a lack of understanding of the science underlying his conclusions.

Furthermore, as discussed above, if these documents had been disclosed to defense counsel, she could have used them to challenge the foundation for admitting the DNA evidence, both on the grounds of authentication of the DNA itself and Lin's qualifications as an expert witness. See argument section D.1.b., supra.

b. The Evidence of Lin's Incompetence Was Suppressed by the State.

The State's duty to reveal favorable, material information extends to information that is not in the possession of the individual prosecutor trying the case. Kyles v. Whitley, 514 U.S. 419, 437-38, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). Prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Id. at 437. The Ninth Circuit has observed that "[b]ecause the prosecution is in a unique position to obtain information known to other agents of the government, it may not be excused from disclosing what it does not know but could have learned." Carriger v. Stewart, 132 F.3d 463, 480 (9th Cir. 1997) (en banc).

The prosecutor in this case knew or could certainly have learned about Lin's unfavorable employment records. At the latest, when Lin's supervisor appeared suddenly during the trial to assist him, a red flag should have been raised in this regard. RP 822. Whether or not trial counsel's supplemental discovery request specifically asked for this information is immaterial. Kyles, 514 U.S. at 433. At the hearing below, the State admitted that Brady applies to information in the possession of the State Patrol Crime Lab, regardless of whether the prosecutor on the case knew about it at the time. 8/6/14RP 13. Information that directly

impeached Lin's qualifications and credibility as an expert witness should have been disclosed to the defense.

c. If Earl Had Been Able to Cast Substantial Doubt on the Reliability of the DNA Evidence, It Is Reasonably Probable the Outcome Would Have Been Different.

The terms "material" and "prejudicial" are interchangeable in the context of the third Brady factor. Stenson, 174 Wn.2d at 487. Evidence is material and prejudicial whenever there is a reasonable probability that, had the evidence been disclosed, the outcome of the trial would have been different. Id. (quoting Kyles, 514 U.S. at 433-34). When the undisclosed evidence is material, the Brady violation is established and no further harmless analysis is warranted. Kyles, 514 US at 435. The question is whether the suppressed evidence, when considered collectively, would have put the entire case in a different light. Stenson, 174 Wn.2d at 487.

"The United States Supreme Court has recognized the potential value in cross-examining forensic analysts." Id. at 489 (citing Melendez-Diaz v. Massachusetts, 557 U.S. 305, 319-20, 129 S. Ct. 2527, 2537, 174 L. Ed. 2d 314 (2009)). The Melendez-Diaz court specifically referenced the importance of showing "an analyst's lack of proper training or deficiency in judgment." 557 U.S. at 319.

The failure to disclose the evidence here was prejudicial because Earl was deprived of the opportunity to make this crucial showing. Attachments

A through F demonstrate Lin's deficiency in judgment. His training was apparently ineffective in ensuring that he followed correct procedures. Attachments B, D, E. Had the DNA evidence been excluded or effectively impeached, there was at least a reasonable probability the jury would have believed Earl's innocent explanation, and the outcome of the trial would have been different.

The overall strength of the State's case plays a significant role in the prejudice analysis. See Stenson, 174 Wn.2d at 478, 491-92 (noting the forensic evidence was the only evidence directly linking Stenson to the murders, so suppressed evidence showing callous handling of that evidence undermined confidence in the outcome). Unfortunately, this Court's opinion in the direct appeal was mistaken as to certain facts and, as a result, greatly overstated the strength of the State's case. For example, the Court of Appeals opinion states that M.F. made similar disclosures to the forensic child interviewer and that Earl's statements about whether he had contact with her unclothed genital area were conflicting. App. 1 at 3. Both of these assertions are false. The testimony of the interviewer indicates M.F. made no disclosures whatsoever and in Earl's interview, he consistently denied any contact underneath M.F.'s clothes.¹³ RP 397, App. 2 at CP 221, 227,

¹³ At the hearings below, the State and trial court agreed with trial counsel that this Court's recitation of the facts in the unpublished opinion was incorrect in several respects. 8/6/14RP 10-11; 9/12/14RP 3.

236, 248-49. As discussed above, the DNA evidence was material because it provided corroboration for a case that otherwise would rest solely on M.F.'s unreliable hearsay. It also was the only evidence establishing the essential element of unclothed contact.

The evidence casting grave doubt on the DNA evidence puts the entire case in a different light. Given the central role that DNA plays in the minds of jurors, and the central role it played in corroborating M.F.'s hearsay and establishing the unclothed contact that formed the crux of this case, evidence impeaching the DNA analyst's credibility was likely to make all the difference.¹⁴ Earl was prejudiced by the failure to disclose this evidence in time to use it to undermine the DNA evidence at trial.

¹⁴ But see State v. Davila, 183 Wn. App. 154, 171-73, 333 P.3d 459 (2014) review granted in part, 182 Wn.2d 1002 (2015) (holding evidence of DNA analyst's incompetence could have been used for impeachment, but was not material due to the lack of evidence of actual contamination and suppression did not violate Brady.)

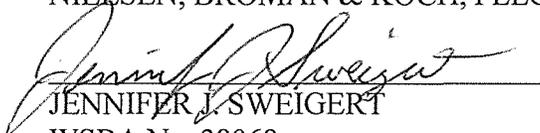
E. CONCLUSION

It is reasonably probable the outcome of this case would have been different if the DNA evidence been had excluded or if the jury had heard about Lin's incompetence. This newly discovered evidence, much of which should have been disclosed pre-trial under Brady, requires reversal of Earl's conviction. Alternatively, this Court should remand for a reference hearing.

DATED this 10th day of June, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER J. SWEIGERT

WSBA No. 38068

Office ID No. 91051

Attorney for Appellant

Appendix 1

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington
Seattle*

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

July 14, 2014

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

Jennifer J Sweigert
1908 E Madison St
Seattle, WA, 98122-2842
SweigertJ@nwattorney.net

Prosecuting Attorney Snohomish
Snohomish County Prosecuting Atty
3000 Rockefeller Ave M/S 504
Everett, WA, 98201

Seth Aaron Fine
Attorney at Law
Snohomish Co Pros Ofc
3000 Rockefeller Ave
Everett, WA, 98201-4060
sfine@snoco.org

CASE #: 70144-4-1

State of Washington, Respondent v. Brandon J. Earl, Appellant

Snohomish County, Cause No. 12-1-00034-9

Counsel:

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

"Affirmed."

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

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

Enclosure

c: The Honorable Thomas Wynne
Brandon Joseph Earl

2014 JUL 14 AM 9:57

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

STATE OF WASHINGTON,)	No. 70144-4-I
)	
Respondent,)	
)	
v.)	
)	
BRANDON JOSEPH EARL,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 14, 2014
_____)	

VERELLEN, A.C.J. — The right to present a defense does not entitle a criminal defendant to present minimally relevant evidence if the State has a compelling interest that outweighs the defendant’s need for such information, especially where the trial court admits ample evidence pertinent to the defense theory.

Brandon Earl was convicted of rape of a child. His defense theory was that the reporting witnesses, the victim’s mother and grandmother, were predisposed to assume the worst after he was found alone with the child and the child told her mother that Earl “told me not to tell” and told her grandmother that Earl “licked my pee-pee.”¹ Earl presented evidence that the child’s mother was molested as a child and argued that this biased the mother and grandmother. The trial court admitted the evidence that the mother was abused 20 years ago, but excluded evidence that the mother’s abuser, a relative, was present at the same family gathering where Earl allegedly raped her

¹ Report of Proceedings (RP) (Jan. 30, 2013) at 284, 360.

daughter. Earl failed to present a foundation linking the identity and presence of the mother's abuser to his defense theory. The State's interest in excluding the potentially confusing and speculative evidence was compelling and outweighed Earl's minimal need to present the excluded evidence. The parties dispute whether an appellate court applies a de novo or abuse of discretion standard of review. Under either standard, we affirm. Earl was not denied his right to present a defense, and the ruling was within the trial court's discretion.

Earl also argues that the prosecutor's "we know" references in closing argument were misconduct. But he failed to object to the arguments, the arguments were not flagrant or ill intentioned, and a curative instruction would have negated any resulting prejudice.

We reject Earl's argument that cumulative error deprived him of a fair trial. His statement of additional grounds for review also lacks merit.

We affirm his judgment and sentence.

FACTS

On December 24, 2010, Earl returned home from work to a family Christmas party. He went upstairs to his bedroom to rest. Several children, including Earl's son, were in his bedroom watching cartoons. Earl contends that he gave the children "raspberries," i.e., blew on their stomachs, and sent them downstairs. He later told officers that M.F., the three-year-old daughter of his wife's cousin, returned to the room.

M.F.'s mother testified that she became concerned when she saw most of the children downstairs, but not M.F. She decided to look for M.F. When she got to Earl's bedroom door and found it closed, she opened it quickly. She testified that Earl and

M.F. were in close proximity on Earl's bed, but they separated quickly when she opened the door:

When I opened it, I could hear a bunch of commotion. I look around, and I can see Brandon coming from the left side of the bed, kind of readjusting, sitting up to the right side of the bed. The covers were over his bottom half, fully dressed. [M.F.] is more towards the foot of the bed on the left side.^[2]

She carried M.F. out of the room. The mother testified that as she did so, M.F. said that Earl "told me not to tell."³

The mother took M.F. downstairs and tried to get M.F. to tell her what happened, but she would not. She took M.F. to M.F.'s grandmother. The mother found Earl's wife. The two conversed in a parked car.

While the grandmother was watching M.F., M.F. stated, "He licked my pee-pee."⁴ The grandmother asked who did, and M.F. answered, "Brandon."⁵

That night, M.F. went straight to bed and slept in the clothes she had worn that day. M.F. told her mother as she was getting ready for bed that "[h]e made a mess down there."⁶

Two days later, December 26, 2010, the mother took M.F. to a sexual assault examination in Everett. M.F. made allegations consistent with her report to her grandmother that Earl had orally raped her. Evidence was collected, including a

² Id. at 279.

³ Id. at 284.

⁴ Id. at 360. The mother testified that there may have been confusion about M.F.'s exact words, whether she said "pee-pee," or "peep," or "pee." She explained that "Pee" or "peep" was the word that she and M.F. used to refer to a vagina. Id. at 294.

⁵ Id. at 362.

⁶ Id. at 296.

physical examination, DNA⁷ swabs of M.F.'s body, and the clothes M.F. wore the night before. Police were given two pairs of underwear that M.F. had been wearing around that time. Male DNA was found on one of the pairs in an amount "more consistent with a body fluid deposit compared to a brief contact touch."⁸ The DNA analysis disclosed a profile identical with Earl's, found in less than 1 in 5,200 males. Amylase, an enzyme found in saliva and other body fluids, was found on the inside of the crotch area of the same pair of M.F.'s underwear.

Earl admitted to police that he was alone with M.F. on his bed, that he placed his mouth on her exposed lower torso when "blowing raspberries," and emphasized that his face likely touched her vaginal area for "thirty seconds."⁹ He gave conflicting statements about whether the contact with her vaginal area was over or under M.F.'s clothing.

Earl was charged with first degree rape of a child and tried by jury. M.F. was not competent to testify. Her mother, grandmother, and Earl's then ex-wife all testified at trial, along with forensic scientists and police officers. Earl's statement to police was admitted.

The jury convicted Earl as charged. The court imposed an indeterminate sentence with a standard range minimum of 113 months and a maximum term of life.

Earl appeals.

⁷ Deoxyribonucleic acid.

⁸ RP (Feb. 1, 2013) at 696.

⁹ Exhibit 58 at 27.

DISCUSSION

Right to Present a Defense

Earl argues that the trial court violated his right to present a defense by excluding evidence potentially relevant to the jury's assessment of the reliability of the perceptions of M.F.'s mother and grandmother.

"The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations."¹⁰ Defendants have the right to present relevant evidence; however, defendants have no constitutional right to present irrelevant evidence.¹¹ Relevance depends on "the circumstances of each case and the relationship of the facts to the ultimate issue."¹² Evidence of high probative value cannot be restricted, regardless of how compelling the State's interest may be, if doing so deprives a defendant of the ability to testify to their version of the incident.¹³

Evidence of "minimal relevance . . . 'may be excluded if the State's interest . . . is compelling in nature."¹⁴ Such evidence "may be deemed inadmissible if the State can

¹⁰ Chambers v. Mississippi, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).

¹¹ State v. Gregory, 158 Wn.2d 759, 786 n.6, 147 P.3d 1201 (2006). Testimony must be relevant to be admissible. ER 402. Evidence is relevant if it tends to prove or disprove the existence of a fact and that fact is of consequence to the outcome of the case. ER 401; Davidson v. Municipality of Metro. Seattle, 43 Wn. App. 569, 573, 719 P.2d 569 (1986).

¹² State v. Rice, 48 Wn. App. 7, 12, 737 P.2d 726 (1987). Evidence offered to impeach a witness is relevant if it tends to cast doubt on the credibility of the person being impeached and the credibility of the person being impeached is a fact of consequence to the action. State v. Allen S., 98 Wn. App. 452, 459-60, 989 P.2d 1222 (1999).

¹³ State v. Jones, 168 Wn.2d 713, 720-21, 230 P.3d 576 (2010).

¹⁴ Id. at 723 (quoting State v. Hudlow, 99 Wn.2d 1, 16, 659 P.2d 514 (1983)).

show a compelling interest to exclude prejudicial or inflammatory evidence.”¹⁵ The State’s interest “is to preclude evidence that may interfere with the fairness of the trial.”¹⁶ “The State’s interest in excluding prejudicial evidence must also ‘be balanced against the defendant’s need for the information sought,’ and relevant information can be withheld only ‘if the State’s interest outweighs the defendant’s need.’”¹⁷

Earl argues the court should review his claim de novo, citing State v. Jones.¹⁸ The State argues that the trial court’s decision whether to admit evidence, even when a constitutional challenge is raised, is reviewed for an abuse of discretion, citing our Supreme Court’s decisions in State v. Darden¹⁹ and State v. Hudlow.²⁰ Under either standard, we affirm.²¹

The trial court permitted Earl to elicit evidence that M.F.’s mother was molested as a child, but precluded questioning concerning the fact that her molester was a

¹⁵ State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002) (citing State v. Hudlow, 99 Wn.2d 1, 16, 659 P.2d 514 (1983) (“We believe the ‘compelling state interest’ requirement is the proper method of balancing the defendant’s right to produce relevant evidence versus the state’s interest in limiting the prejudicial effects of that evidence.”)).

¹⁶ Id.

¹⁷ Jones, 168 Wn.2d at 720 (quoting id.).

¹⁸ 168 Wn.2d 713, 230 P.3d 576 (2010).

¹⁹ 145 Wn.2d 612, 41 P.3d 1189 (2002).

²⁰ 99 Wn.2d 1, 659 P.2d 514 (1983).

²¹ Recently, in State v. Franklin, ___ Wn.2d ___, 325 P.3d 159, 162 n.2 (2014), our Supreme Court stated that an appellate court reviews a trial court’s decision to exclude evidence for abuse of discretion, even though that case considered an evidentiary ruling implicating constitutional rights to present a defense. The court noted the presumption of prejudice if an evidentiary ruling denies a constitutional right, and makes no reference to the de novo standard of review.

relative who was at the same party where Earl allegedly raped M.F.²² Earl contends that this evidence “would have corroborated the defense theory that the mother’s accusation was the result of overreaction based on her own experience,” and that the trial court violated his constitutional right to present a defense by excluding it.²³

The State argued to the trial court that the evidence was minimally relevant and invited speculation:

Basically, the argument here is that there is very little probative value and the prejudicial value is very high. Jurors have a hard time accepting or understanding that sexual abuse like this occurs at all. For evidence to come in that 20 years ago [the mother] was sexually abused by someone who ultimately pleaded guilty and served time, and after serving time in community custody was welcomed back into the family, I really don’t see how that is very probative in anything but a speculative way to the relevant factors of this case.

... I think it's an invitation for the jury to engage in improper speculation and to inject their inherently conflicted feelings about sexual abuse and sexual abuse victims into a case where they should really be concentrating on what happened between Brandon Earl and [M.F.] in that bedroom.^[24]

Earl’s counsel argued that the evidence was probative to the mother’s state of mind:

[The mother] even said it was something more likely to make her be hypervigilant and more sensitive to these issues. It goes to her state of mind and can help the jury understand that kind of behavior.^[25]

The trial court and Earl’s counsel engaged in the following colloquy:

²² It is not disputed that the relative who abused M.F.’s mother was present at the Christmas Eve gathering. After having served his sentence, the uncle was forgiven by the family and welcomed at family gatherings.

²³ Appellant’s Br. at 1.

²⁴ RP (Jan. 28, 2013) at 183-84.

²⁵ Id. at 185.

COURT: Well, I will agree with you part way. I think it is probative that [the mother] was sexually abused as a child. I don't see who the defendant was at that time has any probative value.

COUNSEL: He was present that night with children in the house.

COURT: So what? There is no evidence that he was a suspect or likely a perpetrator of sexual abuse on [M.F.].

COUNSEL: I would never suggest that. I insist it goes to [the mother's] emotionality that night and her paranoia.

COURT: That's speculation. There is nothing to support that. The fact that she was a victim of sexual abuse I think explains her hypervigilance on the part of [M.F.]. I think you are entitled to let the jury know that. I think it has no probative value that [the mother's abuser] was the perpetrator of that sexual abuse and that he was present that night.^[26]

The trial court granted the State's motion in part, limiting Earl's cross-examination of the mother to the fact of her own prior sexual abuse, but excluding details, including that the mother's abuser was present at the Christmas party where Earl allegedly abused M.F.:

COURT: I'm not going to go down that road. The fact that [the mother] was sexually abused previously has probative value. Beyond that, I'm not going to allow the defense to get into that area. I just don't see the probative value. It invites the jury to speculate.^[27]

Earl's counsel renewed the argument the following day, proposing limits on the cross-examination, agreeing not to use the evidence as other suspect evidence, and suggesting a limiting instruction to ensure against jury confusion.

The court declined to revisit its earlier ruling to exclude the evidence, explaining:

COURT: I think the defense can adequately argue its facts and theory to the jury in that the Court is allowing the defense to bring

²⁶ Id. at 185-86.

²⁷ Id. at 187.

out that [the mother] was sexually molested as a child. You can bring out the age that she was at that time.

.....

. . . But beyond that, getting into the facts of it . . . does invite the jury to speculate. . . . It further leads the jury to start confusing the evidence, the facts in this case with facts in the case years ago with [the mother].^[28]

The critical inquiry is whether Earl's need for the information outweighed the State's interest in excluding the evidence. We conclude it did not.

The evidence Earl sought to admit was, at most, minimally relevant. Earl contends that the excluded evidence was relevant to his theory that the mother and grandmother were predisposed to believe the worst and jump to conclusions because of the abuse the mother suffered as a child and the grandmother's discovery of that abuse. But Earl did not offer expert opinion testimony or other evidence that the presence of the mother's abuser influenced the mother's or grandmother's perceptions at the time of Earl's offense. The impact of the presence of the mother's abuser on the mother's or grandmother's perception is not obvious. The abuse happened 20 years earlier. The mother long ago forgave the abuser, who is now a welcomed member of the family. Earl failed to persuasively link the identity and presence of the mother's abuser to his defense.

Earl's need for this evidence was minimal. Unlike Jones, the trial court here did not exclude all evidence related to the defense theory. The trial court admitted evidence that the mother was sexually abused 20 years earlier. The mother admitted that the prior abuse made her hypervigilant about her daughter and that she was

²⁸ RP (Jan. 29, 2013) at 206-07.

potentially overly paranoid about Earl being alone with her daughter on a previous occasion. These facts allowed Earl to argue his defense that the mother and grandmother were biased by the mother's earlier abuse trauma. Especially where the defense offers no foundation establishing the significance of the excluded evidence, the need for such minimally relevant evidence is marginal.

Evidence of minimal relevance "may be excluded if the State's interest . . . is compelling in nature."²⁹ The State's interest in excluding the evidence was based on concerns that the admission of the evidence would invite the jurors to speculate and would lead them to confuse the evidence. These are valid considerations regarding the fairness of the fact-finding process. In the circumstances here, the reasons for exclusion outweigh Earl's minimal need for the evidence regarding the mother's past abuser.

Under either the de novo standard of review or the abuse of discretion standard, we conclude that there was no denial of the constitutional right to present a defense and that the evidence was properly excluded.

Prosecutorial Misconduct

Earl contends that the prosecutor committed misconduct in closing argument by "improperly aligning himself with the jury, placing the prestige of his office in the balance, and expressing a personal opinion on the complainant's credibility and Earl's guilt."³⁰ Particularly, Earl argues the prosecutor used "we" statements to suggest either

²⁹ Jones, 168 Wn.2d at 723 (quoting Hudlow, 99 Wn.2d at 16).

³⁰ Appellant's Br. at 22.

that the prosecutor and his office had determined certain facts to be established, or that the prosecutor and the jurors were on the same “side,” with Earl on the other. Although he did not object at trial, he argues that reversal is required because the misconduct was incurable by instruction and substantially likely to affect the verdict.

To prevail on a claim of prosecutorial misconduct, a defendant is required to show that the prosecutor’s conduct was both improper and prejudicial.³¹ To establish prejudice, the defendant must show a substantial likelihood that the misconduct affected the verdict.³² Where the defendant fails to object at trial, any errors are waived unless the misconduct was so flagrant and ill intentioned that an instruction would not have cured the prejudice.³³ We consider the prosecutor’s alleged improper conduct in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions.³⁴

Earl challenges the following statements by the prosecutor:

I know it’s hard to wrap your mind around the fact that how could someone be so bold and so stupid to do this during a Christmas party. That does boggle the mind, but so does the fact that these crimes happened at all. We know it did. It happened to [M.F.]^[35]

He said he had never been alone with [M.F.] ever before this incident. It’s on the tape. You can hear it for yourself. We know that’s not true because of what we learned about that birthday party in the garage that happened a few weeks before all this in which we have multiple witnesses saying that [Earl] was alone with [M.F.] during that time.^[36]

³¹ *In re Glasmann*, 175 Wn.2d 696, 717, 286 P.3d 673 (2012).

³² *Id.*

³³ *Id.*

³⁴ *State v. Anderson*, 153 Wn. App. 417, 430, 220 P.3d 1273 (2009).

³⁵ RP (Feb. 4, 2013) at 976-77.

³⁶ *Id.* at 981.

The defendant said that there were jeans or slacks on that child. We know that's not the case.^[37]

The defendant said that there would be no reason—no reason—for his saliva, for his DNA, to be on the inside of that little girl's underwear. What have we just found out through a meticulous, rigorous course of testimony over the past week? We found out that, in fact, the defendant was wrong about that.^[38]

Nothing in the prosecutor's arguments was sufficiently inflammatory as to be beyond reach of an appropriate curative instruction. Courts have discouraged the frequent use of the phrase "we know" and related formulations during jury arguments because the identity of the referenced group "we" may be ambiguous.³⁹ But the use of such phrases is generally improper only "when it suggests that the government has special knowledge of evidence not presented to the jury, carries an implied guarantee of truthfulness, or expresses a personal opinion about credibility."⁴⁰ Here, the prosecutor did not offer personal assurances about the credibility of the State's witnesses or imply the existence of corroborative evidence not admitted.⁴¹ A prompt objection and curative instruction could have negated any potential prejudice. No objection was interposed

³⁷ Id. at 989.

³⁸ Id. at 992.

³⁹ United States v. Younger, 398 F.3d 1179, 1191 (2005).

⁴⁰ United States v. Bentley, 561 F.3d 803, 812 (8th Cir. 2009).

⁴¹ See Younger, 398 F.3d at 1191 (no misconduct where prosecutors used the phrase "we know" to "marshal evidence actually admitted at trial and reasonable inferences from that evidence, not to vouch for witness veracity or suggest that evidence not produced would support a witness's statements"; Bentley, 561 F.3d at 812 (prosecutor's frequent use of "we know" during closing argument was proper reference to evidence presented to the jury and reasonable inferences that could be drawn from the evidence); United States v. Ruiz, 710 F.3d 1077, 1086 (9th Cir. 2013) (prosecutor's use of "we know" properly summarized evidence admitted at trial and reasonable inferences and did not suggest that evidence not admitted would support a witness's statement).

and no curative instruction was requested. Accordingly, the issue was waived by Earl's failure to object in the trial court.

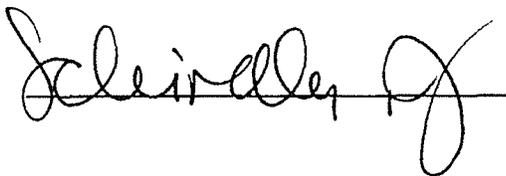
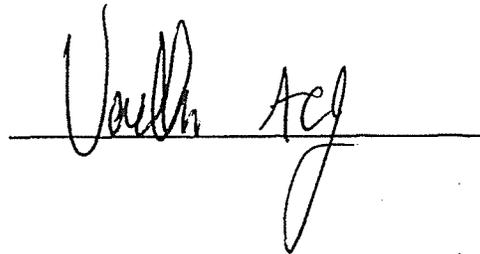
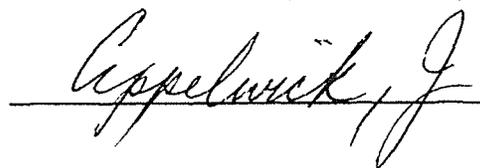
Other Issues

Because we determine there was no error in the exclusion of evidence and the issue of prosecutorial misconduct is waived, there was no cumulative error.

In his statement of additional grounds, Earl contends that M.F.'s mother and his ex-wife smoked marijuana the night of the alleged rape and that this was relevant to their ability to perceive events. But the record on appeal does not contain any of these alleged facts. On this record, no relief is warranted.

Affirmed.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Schneider", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Vaughn A. J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Appelwick, J.", written over a horizontal line.

Appendix 2

Child Molest 1°

SO10-24133

Earl, Brandon J. 06/07/78

Det. Tyler Quick

- 1 Det. Quick: This is the statement of Brandon Earl. The date is January 7, 2011 and the
- 2 time is now 1:16 PM. I am Det. Quick of the Snohomish County Sheriff's
- 3 Office. This statement is being recorded at the Snohomish County
- 4 Courthouse in Everett. There are three persons present in the room. For
- 5 purposes of voice identification, would each person present, besides
- 6 Brandon, the person who is giving this statement, please state your name
- 7 and occupation one at a time.
- 8 Det. Ferreira: Detective Ferreira, sheriff's office.
- 9 Det. Quick: Brandon, do you understand that this statement is being recorded?
- 10 **Brandon Earl:** Yes.
- 11 Det. Quick: Okay. What's your full name and spell it please?
- 12 **Brandon Earl:** Brandon Joseph Earl: B-R-A-N-D-O-N, J-O-S-E-P-H, E-A-R-L.
- 13 Det. Quick: And what's your address?
- 14 **Brandon Earl:** 3002 Robe Menzel Road, Granite Falls, Washington, 98252.
- 15 Det. Quick: And what's your home telephone number?
- 16 **Brandon Earl:** 425-418-0279.
- 17 Det. Quick: And what's your date of birth?
- 18 **Brandon Earl:** 06/07/78.
- 19 Det. Quick: Okay. Cool. So, before I turned the tape on as we were walking in, I kind of
- 20 explained to you that you're not under arrest, that um I showed that key card.
- 21 You know I had to use that to get in here but you don't have use that to get
- 22 out if go. Whenever you want, that door's not locked. No one's going to stop
- 23 you from leaving, okay?
- 24 **Brandon Earl:** Okay.
- 25 Det. Quick: Make sure that y-you understand that. Um, so you're not under arrest, you
- 26 understand?
- 27 **Brandon Earl:** Yes.

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Child Molest 1°

SO10-24133

Earl, Brandon J. 06/07/78

Det. Tyler Quick

- 28 Det. Quick: Okay. And you can leave anytime. Do you understand that?
- 29 **Brandon Earl:** Yes.
- 30 Det. Quick: Okay. Are you able to understand and answer questions?
- 31 **Brandon Earl:** Yes.
- 32 Det. Quick: Okay. I'll talk about what that means in just a minute. Are you currently under
33 a doctor's care?
- 34 **Brandon Earl:** Uh, no.
- 35 Det. Quick: Okay. Currently taking any medications?
- 36 **Brandon Earl:** No.
- 37 Det. Quick: So this question here, are you able to understand and answer questions?
38 Sometimes, people, when they come to talk to the police, you know, that's
39 not something you do every day and some people get kind of nervous and
40 so..
- 41 **Brandon Earl:** Sure.
- 42 Det. Quick: .. we found that sometimes people will, um, drink a little bit or-or take
43 something before they come in here to kind of calm your nerves a little bit.
44 And we're not the alcohol police or the drug police and that's not what I'm
45 concerned about. I just want to make sure you're able to, you know,
46 understand and answer some questions today.
- 47 **Brandon Earl:** Right, yeah.
- 48 Det. Quick: Okay.
- 49 **Brandon Earl:** [unintelligible]
- 50 Det. Quick: Are you employed right now..
- 51 **Brandon Earl:** Yeah.
- 52 Det. Quick: ...Brandon? Where do you work?
- 53 **Brandon Earl:** Uh, Tiz Door.
- 54 Det. Quick: What's that?

Det. Tyler Quick #1456
Det. Christopher Ferreira #1443

01/07/11

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Child Molest 1°

SO10-24133

Earl, Brandon J. 06/07/78

Det. Tyler Quick

55 **Brandon Earl:** Tiz Door.
56 **Det. Quick:** What's that?
57 **Brandon Earl:** T-l-Z.
58 **Det. Quick:** D-O-R-E?
59 **Brandon Earl:** D, oors. Yeah. Oh. No, uh O.
60 **Det. Quick:** D-O-O-R?
61 **Brandon Earl:** Like door.
62 **Det. Quick:** Ah, okay. Where's that at?
63 **Brandon Earl:** It's, uh, over on, uh, forty.. by 41st.
64 **Det. Quick:** Oh, okay. What do you do there?
65 **Brandon Earl:** Uh, trim work.
66 **Det. Quick:** Cool. So if all these things are true, um, let me fill out your name first. So, if
67 all these things are true like we talked about, um I'll just have your signature
68 right there. Thanks.
69
70 So I kind of talked to you a little bit about, on the phone, and I know that
71 you're kind of aware of what's... what's going on..
72 **Brandon Earl:** Yeah.
73 **Det. Quick:** .. because you called. Um, correct me if I'm wrong, I think it was the 29th or
74 something? You called to make sure that you were able to come in and tell
75 your side of the..
76 **Brandon Earl:** Yeah.
77 **Det. Quick:** .. allegations, that you know there's been a complaint about, um, something
78 that happened on Christmas Eve. Right?
79 **Brandon Earl:** Right.
80 **Det. Quick:** So that's kinda what we're talking about. Um, I like to kinda, you know, offer
81 people the opportunity to come in here and.. and tell me what happened..

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

82 **Brandon Earl:** Yeah.

83 **Det. Quick:** .. from their side of the perspective. 'Cause I know that there's two..

84 **Brandon Earl:** Two sides.

85 **Det. Quick:** .. sides to every story. And um.. So that's basically why we're here. Um, so

86 why don't you tell me the what.. what you came to me to talk to me about in

87 the first place.

88 **Brandon Earl:** Well, the thing is, is um this Christmas Eve and we're-we're having our gifts,

89 opening our gifts up and doing our games and stuff. And I had worked that

90 day, so I was extremely tired and I was.. I was uh.. alright guys, I'm going to

91 bed.

92 **Det. Quick:** So you worked before then, before that then?

93 **Brandon Earl:** Yeah. Yeah. So I ...

94 **Det. Quick:** They make you work Christmas Eve?

95 **Brandon Earl:** Yeah.

96 **Det. Quick:** Nice.

97 **Brandon Earl:** I work like fifty hours a week almost.

98 **Det. Quick:** So what time did you get off?

99 **Brandon Earl:** Um, it was like, uh, two.

100 **Det. Quick:** Okay. So you.. go ahead.

101 **Brandon Earl:** So I..

102 **Det. Quick:** after work?

103 **Brandon Earl:** Yeah. So then I uh.. so, well I'm gonna go to bed. So I went upstairs.

104 **Det. Quick:** Mm hm.

105 **Brandon Earl:** And I.. uh my son and my nephew and Mia were up there.

106 **Det. Quick:** Where were.. you're at uh, your house, right?

107 **Brandon Earl:** Yeah.

108 **Det. Quick:** Okay.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

109 **Brandon Earl:** Yeah. Which is my in-laws', we live at our in-laws', so...

110 **Det. Quick:** Okay.

111 **Brandon Earl:** So, uh, they had made a mess all over the room. So I'm like, okay kids, we

112 gotta clean up the room. So they started cleaning up the room and my son

113 started wrestling around with me. So I started wrestling around with him and I

114 started giving, blowing raspberries on his tummy.

115 **Det. Quick:** What's-what's your son's name?

116 **Brandon Earl:** Uh, Blake.

117 **Det. Quick:** Blake. Okay.

118 **Brandon Earl:** Yeah.

119 **Det. Quick:** How old's he?

120 **Brandon Earl:** uh, two.

121 **Det. Quick:** Cool. Do you have any other kids?

122 **Brandon Earl:** No. We just have the one. And, uh so I'm blowing raspberries on him and

123 then Mia's like, oh, blow raspberries on me, me me. So then I started blowing

124 raspberries on her. And then I'm like, oh, you know you guys have to go

125 downstairs..

126 **Det. Quick:** Okay.

127 **Brandon Earl:** .. cause I gotta go to bed. So I made sure they all got downstairs. So I went to

128 bed. Well uh, at one point, April came in and flung the door open and woke

129 me up and looked over and.. I looked back over and Mia was laying over on

130 the other side of the bed.

131 **Det. Quick:** Mm-hm.

132 **Brandon Earl:** And she's like okay, come with me. And I'm like, thanks, I have to go to bed.

133 So, I went back.. so I went back to sleep. And then a little while later, the door

134 flies open again.

135 **Det. Quick:** Hm.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

136 **Brandon Earl:** And it's April again.

137 **Det. Quick:** Hm.

138 **Brandon Earl:** And uh Mia's laying over there again.

139 **Det. Quick:** Hm.

140 **Brandon Earl:** And.. and I was like, can you get.. you... take care of your kids so I can get

141 some sleep?

142 **Det. Quick:** Yeah.

143 **Brandon Earl:** And then.. so I get back to sleep. Later on, uh they were down there drinking

144 and stuff. Later on, I uh.. my wife comes up and goes what's going on?

145 **Det. Quick:** Mm hm.

146 **Brandon Earl:** And I'm like, what are you talking about what's going on? I've been up here

147 sleeping. And she's like, well, April's down there accusing you this and that

148 and this and that and, and I'm like, what are you talking about? So I go down

149 there and I confronted her. I'm like, April, what are you talking about? And

150 she's like, what were you doing to my daughter? I'm like, I wasn't.. I was up

151 there sleeping. And she was like, oh. And she was like very intoxicated that

152 night.

153 **Det. Quick:** Yeah.

154 **Brandon Earl:** And I was like, calm down April. Calm down, you know and, then she's like,

155 oh, okay, well. And then she just went back and continued to drink. I was like,

156 oh, okay. So I went back up and went to.. went to bed.

157 **Det. Quick:** Hm.

158 **Brandon Earl:** And then three days later, she's filing a report on it.

159 **Det. Quick:** Okay.

160 **Brandon Earl:** So.

161 **Det. Quick:** Um, what kind of event were you, was this just you guys and-and their family

162 or what?

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

163 **Brandon Earl:** Uh it's my wife's, yeah, my wife's side of the family.

164 **Det. Quick:** What were you guys all do.. what was everybody doing there?

165 **Brandon Earl:** Uh just.. y-you know, having drinks and uh unwrapping presents and ...

166 **Det. Quick:** You guys celebrate Christmas, your family?

167 **Brandon Earl:** Yeah. Oh yeah.

168 **Det. Quick:** Okay. Is that uh what was going on, you guys were having your...

169 **Brandon Earl:** Christmas party.

170 **Det. Quick:** Christmas.

171 **Brandon Earl:** Yeah. Yeah.

172 **Det. Quick:** How many people were there?

173 **Brandon Earl:** Mm, uh, probably twelve, fourteen maybe?

174 **Det. Quick:** All relatives of yours or was..

175 **Brandon Earl:** Yeah. Uh, my wife's relatives.

176 **Det. Quick:** Oh, okay. Do you have any family that lives in this area or just her?

177 **Brandon Earl:** I, uh, mainly in Everett, yes.

178 **Det. Quick:** Oh, okay. But this was like her side of the family deal?

179 **Brandon Earl:** Yes. Yeah.

180 **Det. Quick:** So, do you know, um, April and Mia at all?

181 **Brandon Earl:** Oh yeah. I've known April since she was seven years old.

182 **Det. Quick:** How did you know her?

183 **Brandon Earl:** Uh, through a friend, uh, family. My-my family was friends with her family.

184 **Det. Quick:** Okay. But you guys aren't related? You're just her..

185 **Brandon Earl:** No.

186 **Det. Quick:** .. just a couple friends growing up?

187 **Brandon Earl:** Yeah, really young.

188 **Det. Quick:** Did you guys stay friends after you grew up or did you..?

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

189. **Brandon Earl:** Oh yeah. Yeah. That's what's.. I can't believe it cause, I mean, I've known her
190 since she was seven years old and I mean, we've been pretty close, I mean, I
191 didn't really...
- 192 **Det. Quick:** Yeah.
- 193 **Brandon Earl:** ... hang out with her but we knew each other as kids.
- 194 **Det. Quick:** Mm hm. Uh what about... uh how many kids... does she have just one kid?
- 195 **Brandon Earl:** She has two.
- 196 **Det. Quick:** So how well do you know them?
- 197 **Brandon Earl:** Um, I'm.. you know, I barely see them. I've seen them probably maybe m-
198 month, a month and a half, every month and a half.
- 199 **Det. Quick:** Oh, every month and a half?
- 200 **Brandon Earl:** Yeah..
- 201 **Det. Quick:** What kind of ...
- 202 **Brandon Earl:** .. I don't, I work so much, so I don't..
- 203 **Det. Quick:** What do you do at your work?
- 204 **Brandon Earl:** Uh, trim.
- 205 **Det. Quick:** What is that? I'm-I'm.. what does that mean?
- 206 **Brandon Earl:** Uh, we like, you know, make the trim...
- 207 **Det. Quick:** You make the trim.
- 208 **Brandon Earl:** ... for the doors.
- 209 **Det. Quick:** Yeah.
- 210 **Brandon Earl:** Yeah. We... we cut it to size and put it together and.
- 211 **Det. Quick:** You do like, um, just standard stuff or do you do custom stuff or what?
- 212 **Brandon Earl:** We-we do like custom, like mantles and...
- 213 **Det. Quick:** Mm.
- 214 **Brandon Earl:** .. uh ra.. chair railings and...
- 215 **Det. Quick:** How long...

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

216 **Brandon Earl:** .. stair parts.
217 **Det. Quick:** How long you been doing that?
218 **Brandon Earl:** Three years.
219 **Det. Quick:** Do you like it?
220 **Brandon Earl:** Yeah. It's alright.
221 **Det. Quick:** It keeps you busy at least.
222 **Brandon Earl:** And long hours.
223 **Det. Quick:** Quite nice to have at least some kind of work today.
224 **Brandon Earl:** Yeah, yeah, it is. So I always complain about how much I work but everybody
225 else is like, why are you complaining? I haven't worked in months.
226 **Det. Quick:** Yeah. So uh what kind of a kid is Mia, from what you've seen of her or
227 probably know of her.
228 **Brandon Earl:** She's.. she's a nice kid. I mean, she gets shuffled around a lot. I mean, April
229 has her wa.. uh being watched by this person, that person, all the time.
230 **Det. Quick:** What do you mean?
231 **Brandon Earl:** I mean, it seems like she has her friends always watching her or this person
232 watching her, or gr.. or her grandparents watching her and. Sh-shuffled
233 around a lot.
234 **Det. Quick:** What kind of a person is she, like Mia, as far as you know?
235 **Brandon Earl:** Mia?
236 **Det. Quick:** Yeah.
237 **Brandon Earl:** Oh, she's a good kid, great kid.
238 **Det. Quick:** Was it uh.. was it just the two of them that were there? Her.. you.. I mean,
239 meaning her and Blake or where there other kids there?
240 **Brandon Earl:** No, uh my nephew Nathan was there too.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

241 Det. Quick: Oh, okay. So what happened then after you said, uh, she came up and... to
242 your room a couple times, when you were sleeping and... and then she came
243 up and um kinda c.. at one point, you said she confronted you?

244 Brandon Earl: Oh, April?

245 Det. Quick: Yeah.

246 Brandon Earl: Yeah, at the very end, yeah, after the second time.

247 Det. Quick: Where was that at?

248 Brandon Earl: That was downstairs. My wife had come up and got me outta bed and I'd
249 gone downstairs.

250 Det. Quick: What did she say? What was she saying?

251 Brandon Earl: She was saying that April was accusing me of touching, uh, Mia.

252 Det. Quick: Did she say what that meant?

253 Brandon Earl: Like what?

254 Det. Quick: Like, what did she mean when you said she.. I mean, she said you touched
255 her. Was she telling you what that meant?

256 Brandon Earl: No, uh my wife was saying that to me.

257 Det. Quick: Yeah. So she didn't go into any detail?

258 Brandon Earl: No, no. She was hysterical.

259 Det. Quick: She was pretty mad.

260 Brandon Earl: Yeah. She was hysterical and, uh...

261 Det. Quick: And what happened after that?

262 Brandon Earl: Um, April was there. I was like, April, I would never touch any kid and.. or her,
263 any kid.

264 Det. Quick: Mm hm.

265 Brandon Earl: And uh, you know, and the whole thing, like I've-I've known them for a long
266 time and everything and then it was just, okay then. And then she just went
267 back to drinking and she was pretty intoxicated that night, and...

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

268 Det. Quick: Was there a lot of drinking going on at the party?

269 **Brandon Earl:** Uh not.. not as much as any of us but April was very intoxicated.

270 Det. Quick: Hm. Who else was there besides you and April and your wife?

271 **Brandon Earl:** Uh her-her mom, her dad, her brother, uh April's..

272 Det. Quick: April's brother..

273 **Brandon Earl:** Yeah and..

274 Det. Quick: .. and your wife.

275 **Brandon Earl:** And my wife.

276 Det. Quick: Okay.

277 **Brandon Earl:** And, uh, um, my brother-in-law's kids: Maven and Jasmine and all them and,

278 uh, just a bunch of people, really, I mean, quite a bit.

279 Det. Quick: Okay. And as far as you know, from what she was telling you, what she was

280 upset about...

281 **Brandon Earl:** Yeah.

282 Det. Quick: ... um, you didn't... you... she didn't give you details or tell you what the...

283 **Brandon Earl:** No.

284 Det. Quick: ... the whole issue was?

285 **Brandon Earl:** Uh uh [no].

286 Det. Quick: Did you ever find out why she was so upset?

287 **Brandon Earl:** Yeah, eventually, yeah.

288 Det. Quick: Where'd you.. who'd you find out?

289 **Brandon Earl:** Uh, from them, actually, they..

290 Det. Quick: Oh, okay.

291 **Brandon Earl:** .. contacted my wife ...

292 Det. Quick: Did you guys talk about it later?

293 **Brandon Earl:** Well, we didn't, me and her.

294 Det. Quick: Okay.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

295 **Brandon Earl:** My wife and her, at the time..

296 **Det. Quick:** So you haven't resolved the.. there's n..there's no, like, peace there.

297 **Brandon Earl:** No.

298 **Det. Quick:** Not yet.

299 **Brandon Earl:** No, no.

300 **Det. Quick:** Okay. Well, I'm sure you know, I mean.. maybe you don't, but, uh, these are

301 the only kinda cases that we get, um, in our unit. And our unit specializes in

302 these kind of accusations and these kind of cases and, uh, we do hundreds

303 of cases a year. And, uh, we go to hundreds of hours of training in how to

304 investigate these kind of cases. And um, you know, we see.. we see the

305 whole range, you know. I see from the false accusation all the way to the

306 absolute worst pedophiles that you have ever heard of, you know, you see on

307 the news...

308 **Brandon Earl:** Yeah.

309 **Det. Quick:** ...the guys that are out there stalking people and kidnapping kids. We see all

310 those kind... and-and everything between.

311 **Brandon Earl:** Right.

312 **Det. Quick:** And those are the only kind of cases that we do and, um.. you know, we.. I

313 brought you in to talk to you today because, um, I don't think you're that kind

314 of person that's at the far end of the spectrum. You're not the kind of guy.. I

315 know you're not the kind of guy..

316 **Brandon Earl:** No.

317 **Det. Quick:** .. that's out there kidnapping kids and hurting them and things like that. So, if

318 we thought that was the situation here and what was going on, then all.. all

319 you woulda heard was a knock knock on the door and we'd be hauling your

320 butt ...

321 **Brandon Earl:** Yeah.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

322 Det. Quick: .. to jail. So..

323 **Brandon Earl:** Yeah.

324 Det. Quick: Um, but at the same time, we realize that other things do happen and.. and,

325 you know, everyth.. like I said, everything between can happen. So, um, one

326 of those things that we find in our cases is that.. and there's been a lot of

327 study about, is, um, kids the age of Mia, about three or four and, uh, even all

328 the way up to.. even older than that, um, when they, when.. when they tell

329 something to one person and then they tell something to another person and

330 then to another person..

331 **Brandon Earl:** Telephone game.

332 Det. Quick: Yeah, you heard of the telephone game?

333 **Brandon Earl:** Yup.

334 Det. Quick: Um, and so you would assume that.. you know, you know, when you play the

335 telephone game, you start at one end and by the time if it's at one end it's a

336 green banana, it's.. the other end it's a, you know, purple elephant or

337 something that's totally different.

338 **Brandon Earl:** Right.

339 Det. Quick: So, it's.. it's remarkably hard to keep something the same from one all the

340 way to the next.

341 **Brandon Earl:** Yeah.

342 Det. Quick: I'm sure you understand that.

343 **Brandon Earl:** Yeah.

344 Det. Quick: Um, but at the same time, um, events that are significant like, um, what will

345 stay in someone's memory and they can repeat that event again and again in

346 detail. So if I were to ask you something like, you know, where were you um

347 on 2001 on September 11th, would you remember where you were at?

348 **Brandon Earl:** Yeah. I..

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

349 Det. Quick: Yeah.

350 **Brandon Earl:** .. was painting a house.

351 Det. Quick: Yeah, because..

352 **Brandon Earl:** [unintelligible]

353 Det. Quick: .. that was a significant event to you..

354 **Brandon Earl:** Uh-huh.

355 Det. Quick: .. and it remains in your memory and you could tell that story to someone

356 again and again and again and get it the same.

357 **Brandon Earl:** Right.

358 Det. Quick: But if I asked you where you were on uh September 2nd that same year,..

359 **Brandon Earl:** Uh-huh.

360 Det. Quick: .. you probably don't remember and..

361 **Brandon Earl:** Probably working.

362 Det. Quick: .. if you tried to explain it to somebody here and there and there, it-it might not

363 be the same every time.

364 **Brandon Earl:** Yeah.

365 Det. Quick: And, uh, you know, in this case, Mia's made some pretty consistent

366 statements to one person, to another person, to another person, and that's

367 pretty compelling. That-that's what we find in most of our cases. Um, I'm sure

368 you also know about, um, DNA evidence.

369 **Brandon Earl:** Right

370 Det. Quick: Have you heard of that at least?

371 **Brandon Earl:** Yeah.

372 Det. Quick: Do you know-do you know anything about that?

373 **Brandon Earl:** Oh yeah, yeah. CSI.

374 Det. Quick: Yeah. Well, so it's not always like you see on CSI, but uh the basic principles

375 are there. The um.. when two people touch or when there's contact between,

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

376 you know, one part of one person's body and another part of another
377 person's body, then there's some transfer of-of uh body fluids sometimes.
378 **Brandon Earl:** Sure.
379 **Det. Quick:** You know, saliva, semen, blood, basically everything..
380 **Brandon Earl:** Yeah.
381 **Det. Quick:** .. leaves DNA. And that can stay on someone's body. It can stay on clothes
382 that they were wearing at the time, um, for a long period of time and then that
383 can be matched, you know, individually to a specific person, without.. without
384 a doubt.
385 **Brandon Earl:** Okay.
386 **Det. Quick:** You've heard of that, right?
387 **Brandon Earl:** Right.
388 **Det. Quick:** So, and in this case, you know, I'm sure you know that in all cases like this
389 we take, um.. we take samples of DNA or-or s.. you know, what could-could
390 possibly be DNA.
391 **Brandon Earl:** Okay.
392 **Det. Quick:** From the people involved and collect clothes, uh and then they're tested for,
393 um, saliva and such like that. We do all that stuff. We talk to everybody
394 involved. And our-our role is not to make a judgment about why somebody
395 did something or what kind of a person that person is. But um, we're-we're
396 gathering the facts, you know.
397 **Brandon Earl:** Right.
398 **Det. Quick:** We're gathering the evidence.
399 **Brandon Earl:** Yeah.
400 **Det. Quick:** And, a-as far as I can tell in this case, uh I-I don't have any doubts in my mind
401 about what happened. Um, Mia's come out and said pretty clearly, that you
402 uh put.. you put your mouth on her.. on her privates and um she said that to a

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Det. Tyler Quick

403 couple different people. And, you know, we've gathered the evidence. We've
404 gathered the clothes. Um, you know, it's in the process of testing, things like
405 that.

406 **Brandon Earl:** Uh-huh.

407 **Det. Quick:** .. And I'm, you know, I may not know, you know, why this happened but I'm
408 pretty confident about what happened. So that's why I bring you here today is
409 cause I know that these kind of things can happen for a whole variety of
410 reasons. Um, and whether a person is.. a lot of times you find people who do
411 these kind of things, um maybe had something like that done to them when
412 they were kids. And, you know, they.. a product of their upbringing is
413 something that they're more susceptible to. Um, we find that sometimes
414 people, when they've been drinking a little bit, maybe would do some things
415 that they wouldn't do normally. And so I'm here to get from you why
416 something like this would happen because, um, I don't get the impression
417 from you that you're the kind of guy that's out there to hurt her or that you
418 were.. you went into this with the intention of, um, scarring her for life or
419 abusing her. I don't get that impression at all. Like I said, if I did, you would be
420 in the jail right now. You wouldn't be..

421 **Brandon Earl:** Uh.

422 **Det. Quick:** .. here given a chance to talk to me. And it's important for me to know. It's
423 important for everyone involved in this.. these kind of cases to know why
424 something happened. Because there's a whole variety of reasons. Um these
425 things can be accidental. These things can be something that happens just..
426 you know, you get curious or something like that. I don't know. I don't know
427 why this happened for you. But, um, that's what I wanna know. A-and I don't
428 also.. I also don't get the impression that you.. this is something that's, um,
429 gone on and on for a long time. I'm sure you know we checked your record...

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Det. Tyler Quick

430 **Brandon Earl:** Right.

431 **Det. Quick:** ... and everything like that. And, you know, it's-it's not like you've been out
432 there doing this kind of thing for multiple times. In fact, this-this may have
433 very well been the first time. And that's what we wanna know. Is this
434 something that happened.. is what happened with Mia the-the first time that
435 this happened or was this something that you have done several times before
436 that?

437 **Brandon Earl:** Uh no, I haven't done anything.

438 **Det. Quick:** What do you mean?

439 **Brandon Earl:** I... I haven't done anything, actually.

440 **Det. Quick:** Nothing at all?

441 **Brandon Earl:** No.

442 **Det. Quick:** Well, like I said, we're gonna test her clothes..

443 **Brandon Earl:** Alright.

444 **Det. Quick:** .. and we're gonna test her skin for your saliva. And you do realize that that
445 will leave DNA there.

446 **Brandon Earl:** Yeah.

447 **Det. Quick:** Is there any reason that we would find that there?

448 **Brandon Earl:** No.

449 **Det. Quick:** None at all?

450 **Brandon Earl:** No.

451 **Det. Quick:** Why do think she's saying what she said?

452 **Brandon Earl:** I don't know. All I, I figured cause I was blowing raspberries on her stomach.

453 **Det. Quick:** Okay. What is that? What is the raspberry?

454 **Brandon Earl:** Like phew, you know, I..

455 **Det. Quick:** Blowing with your mouth?

456 **Brandon Earl:** Yeah.

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Det. Tyler Quick

457 Det. Quick: Okay. So, y-you're blowing raspberries on her stomach. I can understand
458 how something may happen from there cause your stomach is pretty close, at
459 least where you would be blowing raspberries..

460 **Brandon Earl:** Yeah.

461 Det. Quick: .. I would guess, is not up here by her..

462 **Brandon Earl:** No.

463 Det. Quick: .. chest,..

464 **Brandon Earl:** No.

465 Det. Quick: .. but lower on her stomach.

466 **Brandon Earl:** Right.

467 Det. Quick: So, was it something that was accidental then? You accidentally blew on her
468 vagina or her private area.

469 **Brandon Earl:** I...

470 Det. Quick: ... or close to that or...?

471 **Brandon Earl:** I might've. I don't. you know. That was just all I was doing, is blowing
472 raspberries on the kids's bellies.

473 Det. Quick: Okay.

474 **Brandon Earl:** And then...

475 Det. Quick: Do you.. you mean to say y-you might have? Do you not remember or is it
476 something that you think that happened and you just...

477 **Brandon Earl:** Could've been accidentally, yeah.

478 Det. Quick: Okay. Well.. and that would be something that would be important for us to
479 know.

480 **Brandon Earl:** Yeah.

481 Det. Quick: If it was an accidental thing....

482 **Brandon Earl:** It, it...

483 Det. Quick: .. then that's what we wanna know..

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Det. Tyler Quick

484 **Brandon Earl:** Right.

485 **Det. Quick:** .. because um if you accidentally blew on her private area..

486 **Brandon Earl:** Yeah.

487 **Det. Quick:** .. um, that's-that's one thing.

488 **Brandon Earl:** Yeah.

489 **Det. Quick:** You know, a-and that's... an entirely different thing then if you lured her up to
490 the room and planned this all out so that you could do that.

491 **Brandon Earl:** No. No.

492 **Det. Quick:** So it was an accidental thing then?

493 **Brandon Earl:** It-it coulda been, yeah, an accidental, just pfffft blowing on her tummy.

494 **Det. Quick:** Okay. Well, she's not saying that may have happened, she's saying that it
495 happened.

496 **Brandon Earl:** Right.

497 **Det. Quick:** And, you know, what I would hate to have happen, is you to put something..
498 say.. come in here and say "Well, I don't know," you know. If-if I blew on
499 somebody's, you know, private parts, even if it's accidentally, I would
500 remember that. And uh I can remember every time that I've ever done that,
501 which is.. I haven't done that yet, you know. I'm not saying that it.. something
502 like that could never happen because I know that sometimes you find yourself
503 in a situation like that.

504 **Brandon Earl:** Yeah.

505 **Det. Quick:** But it'd be important for us to know that, that that happened and why it
506 happened because later on down the line, people are gonna look at what you
507 came in here and said today. And if you came in here and you said whatever,
508 I don't know. I don't know. Or if you came in here and you said, you know.. if
509 you came clean and said this is what happened; this was the circumstances
510 and I'm sorry, you know. It's important for us to know that.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

511 **Brandon Earl:** Yeah.

512 **Det. Quick:** So I know.. I-I understand why you would say it could happen. But that's not
513 what the allegation is, is that, you know, something may have happened. She
514 was pretty specific..

515 **Brandon Earl:** Yeah. It.

516 **Det. Quick:** .. to a number of people. And um.. so are you just saying that it could happen
517 because.. because I can see it on your face. It's tearing you up inside.

518 **Brandon Earl:** Oh, it is. I know.

519 **Det. Quick:** I know it's tearing you up inside.

520 **Brandon Earl:** Yeah.

521 **Det. Quick:** And I know that you want to come clean about it.

522 **Brandon Earl:** Yeah.

523 **Det. Quick:** If I was in your circumstance, I would wanna come clean as well. And I would
524 want people to know the circumstances and everything that surrounds it.
525 Because uh I would want people to think of me or think of what happened
526 differently. And I can see on your face that you.. there's something inside of
527 you that wants to come clean about this, but you're a little bit afraid. And I can
528 understand that.

529 **Brandon Earl:** Yeah.

530 **Det. Quick:** But it's gonna be really important for me, for the families, for-for Mia as she
531 grows up, and for everybody involved to know why this happened.

532 **Brandon Earl:** Yeah.

533 **Det. Quick:** Yeah?

534 **Brandon Earl:** Yeah.

535 **Det. Quick:** So was this something that was just an accident when you put [?] mouth..
536 your mouth on her vagina or her private parts or whatever? Was it an
537 accident?

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

538 **Brandon Earl:** Yeah.

539 **Det. Quick:** It was?

540 **Brandon Earl:** It was an accident, yeah.

541 **Det. Quick:** Did it happen one time or more than one time?

542 **Brandon Earl:** No, just once.

543 **Det. Quick:** Okay. So I, I.. I'll tell you what. It takes a lotta guts to come in and admit
544 something so that people will know that it wasn't.. you weren't out to hurt her.
545 You...

546 **Brandon Earl:** No.

547 **Det. Quick:** ... you didn't lure her up to the room?

548 **Brandon Earl:** No.

549 **Det. Quick:** So tell me everything that happened then. Tell me what happened and
550 what... how it came about. So, you said you were blowing raspberries..

551 **Brandon Earl:** Yeah, I was blowing raspberries on her, yeah.

552 **Det. Quick:** Now, was it on her shirt or was it on her skin?

553 **Brandon Earl:** No, it was on her belly, yeah.

554 **Det. Quick:** Okay. And.. and so then what... what.. did you s-... tell me what happened
555 from there?

556 **Brandon Earl:** I'd.. I had.. I had them go downstairs, so I can go to bed.

557 **Det. Quick:** You had her go downstairs?

558 **Brandon Earl:** All of em.

559 **Det. Quick:** Okay.

560 **Brandon Earl:** And so I went to sleep. And then April came in. And then she was back laying
561 on bed on the other side.

562 **Det. Quick:** Okay. What, at what point, where, where in there.. cause I'm missing.. I'm
563 missing something. You said you accidentally put your mouth on her privates.
564 Where.. when was that? Was that..

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Det. Christopher Ferreira #1443

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

565 **Brandon Earl:** That was.

566 **Det. Quick:** .. while you were blowing raspberries?

567 **Brandon Earl:** Yeah, with all the other kids.

568 **Det. Quick:** With all the other kids in the room?

569 **Brandon Earl:** Yeah.

570 **Det. Quick:** Okay. Um, what, wh-what room are we talking about?

571 **Brandon Earl:** My bedroom upstairs and, me and my wife's.

572 **Det. Quick:** Okay. Um, I'm sure you know that we talked to people that are at the party.

573 **Brandon Earl:** Yeah.

574 **Det. Quick:** And, um, I get the same story from-from everybody at the party and I

575 appreciate you coming clean about what happened.

576 **Brandon Earl:** Yes.

577 **Det. Quick:** Um, but it's not going to be as meaningful if you don't come clean about the

578 whole truth. I know you've already told me part of it, but I want to know the

579 whole thing. And I've talked to, you know, the people that are at the party.

580 And they've consistently all say that, the ones that I talked to, that they

581 remember the kids being upstairs, like you said, um, you know, playing or

582 doing things, you know, cleaning up or something.

583 **Brandon Earl:** Yeah.

584 **Det. Quick:** And that at some point, um, um most of the kids came downstairs, um all of

585 'em but Mia and then you were still up there. So there was a period of time

586 that I know that it was just the two of you up there. Was that when this

587 happened?

588 **Brandon Earl:** No, it's when.. when it happened was when all the kids were up there when I

589 was playing with em and blowing raspberries on 'em.

590 **Det. Quick:** Okay. And so what-what part of her did... did you accidentally put your mouth

591 on when-when you were blowing the raspberries?

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

592 **Brandon Earl:** When all the kids were there ...

593 **Det. Quick:** Yeah.

594 **Brandon Earl:** .. when my son was there and Nathan was there and Mia was there..

595 **Det. Quick:** I mean, was it.. was it on the outside of her clothes or underneath her clothes

596 or..?

597 **Brandon Earl:** No, it was on her tummy. And.. like, you know, right here.

598 **Det. Quick:** Yeah, I underst.. I understand what makes up a raspberry. I get it. And.. but

599 you.. you just told me that you accidentally put your mouth on her privates.

600 And I assume that you mean like the genital area like private. I don't assume

601 that the tummy is a private area.

602 **Brandon Earl:** Right.

603 **Det. Quick:** Is that what you mean?

604 **Brandon Earl:** Yeah.

605 **Det. Quick:** Okay. So, when-when you were giving raspberries on the stomach, it was on

606 her skin. What about when you were.. put-put your mouth down there, on the

607 private?

608 **Brandon Earl:** No. No. No.

609 **Det. Quick:** It wasn't on the skin?

610 **Brandon Earl:** No.

611 **Det. Quick:** So it was on the outside of the clothes?

612 **Brandon Earl:** Yeah.

613 **Det. Quick:** Do you.. okay. Do you remember what she was wearing?

614 **Brandon Earl:** Um... no.

615 **Det. Quick:** Okay.

616 **Brandon Earl:** Uh-huh.

617 **Det. Quick:** Was she wearing pants or was it she didn't have.. she have anything on her

618 legs or was it..?

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

619 **Brandon Earl:** I think it mighta been jeans or slack.
620 **Det. Quick:** Jeans or something? Um, do you know, um, what.. was she wearing a shirt
621 or..?
622 **Brandon Earl:** Um, yeah, like a dress thing.
623 **Det. Quick:** Okay. Um, like a dress thing, like a.. I mean cause it's women's clothes, you
624 know.
625 **Brandon Earl:** Yeah.
626 **Det. Quick:** Um, everything in between. So, was it like a..a longer dress or a shorter
627 dress?
628 **Brandon Earl:** It's like a shorter dress but then like jeans underneath.
629 **Det. Quick:** So like pants or something.
630 **Brandon Earl:** Yeah.
631 **Det. Quick:** Okay. So how long from the time that you started to accidentally put your
632 mouth on her privates so that that time it finished or from the time it stopped, I
633 guess, how long did that last?
634 **Brandon Earl:** Probably five minutes.
635 **Det. Quick:** Five minutes?
636 **Brandon Earl:** Yeah.
637 **Det. Quick:** Okay.
638 **Brandon Earl:** Cause all the kids uh..
639 **Det. Quick:** Okay.
640 **Brandon Earl:** .. got raspberries.
641 **Det. Quick:** Now, I mean.. I mean.. I know that a whole.. the whole thing, probably five
642 minutes.
643 **Brandon Earl:** Yeah.
644 **Det. Quick:** Makes sense, you know, you guys were playing and stuff. I mean, specifically
645 whenever it happened, that you.. you moved from her stomach to her

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

646 privates and the whole time you were accidentally or putting your mouth on
647 her privates, how long did that part of it.. how long did that last?
648 **Brandon Earl:** About thirty seconds.
649 Det. Quick: Thirty seconds.
650 **Brandon Earl:** Yeah.
651 Det. Quick: Um, and then she like.. she didn't say that it was hurting her or anything. Did
652 she say..
653 **Brandon Earl:** No.
654 Det. Quick: .. anything? Was she laughing or was it..
655 **Brandon Earl:** Yeah. Laughing and giggling.
656 Det. Quick: Yeah. It's probably just like tickling or something.
657 **Brandon Earl:** Yeah.
658 Det. Quick: Okay. Um, so what I understand you're saying, is that um you were all up
659 there together, you and Mia and Blake and.. I don't.. I don't know the names
660 of the other kids. But there was some other..
661 **Brandon Earl:** Nathan was there.
662 Det. Quick: Nathan was there?
663 **Brandon Earl:** Yeah.
664 Det. Quick: And who's Nathan?
665 **Brandon Earl:** Uh my nephew, uh my wife's brother's kid.
666 Det. Quick: Okay. Uh were there any other kids at this point besides the three of them?
667 **Brandon Earl:** No.
668 Det. Quick: Mia, uh Nathan and Blake and you were up there in um the room. And
669 where.. where in your room were you guys at?
670 **Brandon Earl:** Uh playing on the bed.
671 Det. Quick: Playing on the bed. Okay. And were all the kids playing in the bed..
672 **Brandon Earl:** Yeah.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

673 Det. Quick: ... or just some of the kids?

674 **Brandon Earl:** All of em.

675 Det. Quick: Okay. So was there like a movie or something you guys were watching?

676 **Brandon Earl:** Yeah.

677 Det. Quick: What were you guys..

678 **Brandon Earl:** Uh..

679 Det. Quick: .. watching?

680 **Brandon Earl:** .. cartoons, like, Nick Junior.

681 Det. Quick: Oh, on television?

682 **Brandon Earl:** Yeah.

683 Det. Quick: Okay. So, you can correct me if I'm wrong..

684 **Brandon Earl:** But they made a mess, so we were... I was getting em all to clean up the

685 mess.

686 Det. Quick: Mm, okay. They made a big mess in the room.

687 **Brandon Earl:** Yeah.

688 Det. Quick: Um, now, I just wanted to make sure I got this right. So, correct me if I'm

689 wrong. You guys were all up there playing. You being you, Nathan, Blake?

690 **Brandon Earl:** Yeah.

691 Det. Quick: .. and Mia. And you guys were blowing raspberries or you were blowing

692 raspberries, tickling, you know. The kids..

693 **Brandon Earl:** Mm hm.

694 Det. Quick: .. are having a good time. Um and were you blowing the raspberries on just

695 Blake and Mia or Nathan.. Nathan's as well?

696 **Brandon Earl:** Just, uh, Blake and Mia.

697 Det. Quick: Okay. And so what was Nathan doing? Was he just running...

698 **Brandon Earl:** [unintelligible]

699 Det. Quick: .. around, making more of a mess?

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

700 **Brandon Earl:** Yeah, jumping on the bed...

701 **Det. Quick:** Making more of a mess?

702 **Brandon Earl:** Jumping on the bed; messing up my bed.

703 **Det. Quick:** So you guys were doing that and, um, you were blowing raspberries on Mia,

704 on her stomach, so, um, and you said you were blowing them on her.. on her

705 skin, so..

706 **Brandon Earl:** Yeah.

707 **Det. Quick:** Um, what did.. did you take her dress off or did she just lift it up or did you lift

708 it up or what?

709 **Brandon Earl:** No, she'd just lift it up and go....

710 **Det. Quick:** Oh.

711 **Brandon Earl:** ..Do me! Do me!

712 **Det. Quick:** You know, cause you were..

713 **Brandon Earl:** Do me next...

714 **Det. Quick:** .. you were doing like..

715 **Brandon Earl:** Yeah.

716 **Det. Quick:** Okay. So, she said do me next and you lifted up her, um, you know, dress so

717 you could blow a raspberry on her top.

718 **Brandon Earl:** No, she did. She...

719 **Det. Quick:** I'm sorry.

720 **Brandon Earl:** ... she lifted it up, yeah.

721 **Det. Quick:** Thanks for correcting me. So, she lifted it up and you were blowing

722 raspberries on her tummy...

723 **Brandon Earl:** Yeah.

724 **Det. Quick:** .. and then um, uh you accidentally put your mouth and... did you blow a

725 raspberry on her privates or just is your...

726 **Brandon Earl:** No.

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Det. Tyler Quick

727 Det. Quick: ... mouth on it.

728 **Brandon Earl:** I just kinda like buried my face like pffh, like that...

729 Det. Quick: Okay.

730 **Brandon Earl:** ... on her tummy.

731 Det. Quick: And... on her tummy or her privates? Cause you said privates and then you

732 keep saying that it was her tummy. Cause I know everybody calls things

733 different, so I just wanna make sure that...

734 **Brandon Earl:** No, I ...

735 Det. Quick: ... cause I hear that all the time.

736 **Brandon Earl:** No, it was on her tummy. But, I mean, her tummy's only this big, so I'm... you

737 know, my face might of came in contact with... down there.

738 Det. Quick: Okay. And that whole time that your-your face or your mouth was on private

739 area, uh accidentally, was like thirty seconds?

740 **Brandon Earl:** Yeah.

741 Det. Quick: Okay. Was it more than thirty seconds?

742 **Brandon Earl:** No.

743 Det. Quick: Okay. Was it less than thirty seconds?

744 **Brandon Earl:** No.

745 Det. Quick: Okay. So it was thirty seconds.

746 **Brandon Earl:** Yeah.

747 Det. Quick: And she was laughing and..

748 **Brandon Earl:** Yeah.

749 Det. Quick: .. and she wasn't hurting or anything.

750 **Brandon Earl:** No.

751 Det. Quick: She wasn't complaining.

752 **Brandon Earl:** No.

753 Det. Quick: Okay. Um, did she say anything to you after that?

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

754 **Brandon Earl:** I don't know.

755 **Det. Quick:** Okay.

756 **Brandon Earl:** Well, I went to the.. I went to sleep after that, so I told all the kids to get.. eh

757 go down.. head downstairs, cause I'm tired.

758 **Det. Quick:** Okay.

759 **Brandon Earl:** I need to go to bed.

760 **Det. Quick:** So, all the kids were downstairs and then, um, you-you fell asleep?

761 **Brandon Earl:** Yeah.

762 **Det. Quick:** Um, like do you know how long you might've been sleeping.

763 **Brandon Earl:** Duhhhhh, I...

764 **Det. Quick:** Do you have a clock or anything where you.. [unintelligible]?

765 **Brandon Earl:** Uh actually I don't in our room. I don't have a clock.

766 **Det. Quick:** So, at some... obviously it wasn't all night?

767 **Brandon Earl:** No. Yeah.

768 **Det. Quick:** .. cause they were still there. Um, you fell asleep and then.. and then what

769 happened. You said April opened the door.

770 **Brandon Earl:** April opened the door again and said Mia, you need to come downstairs. And

771 I woke up and looked over and she's laying over there.

772 **Det. Quick:** Next to you? What was she doing?

773 **Brandon Earl:** No. She was laying over like cross on the bed.

774 **Det. Quick:** Okay.

775 **Brandon Earl:** Yeah.

776 **Det. Quick:** Like at the foot of the bed or...

777 **Brandon Earl:** No.

778 **Det. Quick:** .. the side of the bed?

779 **Brandon Earl:** The side of the bed.

780 **Det. Quick:** Okay.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

781 **Brandon Earl:** Yeah. And I was laying on this side.
782 **Det. Quick:** Okay.
783 **Brandon Earl:** And that..
784 **Det. Quick:** So, she's sleeping..
785 **Brandon Earl:** Yeah.
786 **Det. Quick:** .. on the other side of the bed.
787 **Brandon Earl:** Yeah.
788 **Det. Quick:** Was she sleeping? Or was she...
789 **Brandon Earl:** No, she was laying there watching cartoons.
790 **Det. Quick:** Watching cartoons.
791 **Brandon Earl:** Yeah.
792 **Det. Quick:** Okay. And did she leave then?
793 **Brandon Earl:** Yeah,....
794 **Det. Quick:** Okay.
795 **Brandon Earl:** ... cause her mom grabbed her and took her out of there. I'm like thank you,
796 you know. I need to get some sleep.
797 **Det. Quick:** Okay. And then what happened after that? And then you said you went to
798 sleep again?
799 **Brandon Earl:** Yeah.
800 **Det. Quick:** So, then what... and then the... this happened a second time where she... you
801 woke up, excuse me, cause April was up there and Mia was laying on the
802 bed...
803 **Brandon Earl:** Yeah.
804 **Det. Quick:** .. again?
805 **Brandon Earl:** Yeah.
806 **Det. Quick:** What was she doing the second time? Was she watching cartoons?
807 **Brandon Earl:** Same thing, yeah.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

808 Det. Quick: Did April say anything to you, like.. accusatory that..

809 **Brandon Earl:** No.

810 Det. Quick: .. at that time? Or the first time?

811 **Brandon Earl:** Nothing, I'm, no.

812 Det. Quick: And so, they left the second time and then you're saying after that, you fell

813 asleep again.

814 **Brandon Earl:** Yeah.

815 Det. Quick: And then this whole thing blew up.

816 **Brandon Earl:** Yeah. Yeah.

817 Det. Quick: What did um.. what's your wife's name again?

818 **Brandon Earl:** Stephanie.

819 Det. Quick: And uh, at some point she comes up to talk to you.

820 **Brandon Earl:** Yeah.

821 Det. Quick: And what did she say?

822 **Brandon Earl:** It's hysterical like. Uh what-what-what's going on up here, you know, just all

823 hysterical. And I was like, what are you.. what-what are you talking about?

824 Unk; [coughing]

825 Det. Quick: Yeah.

826 **Brandon Earl:** And she was just like, Oh, April's down here accusing you of this and that and

827 this and that. And I'm like, what are guys talking about? So I..

828 Det. Quick: Was that what she said, of this and that?

829 **Brandon Earl:** Well, no. It was accusing me of touching her and..

830 Det. Quick: Okay.

831 **Brandon Earl:** And..

832 Det. Quick: What did you say?

833 **Brandon Earl:** I said no, no.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

834 Det. Quick: So did you just not tell her cause you were.. why didn't you tell her then, what
835 had happened?

836 **Brandon Earl:** Oh, I did. We went downstairs into the garage and we..

837 Det. Quick: Did you tell them that you accidentally put your mouth on her privates?

838 **Brandon Earl:** No, that I was blowing raspberries.

839 Det. Quick: But you didn't tell them the whole truth.

840 **Brandon Earl:** That...

841 Det. Quick: You put your mouth on... your mouth. on her privates. You didn't tell them that
842 part.

843 **Brandon Earl:** That I might have came in contact, yeah. Like, you know..

844 Det. Quick: So you didn't tell..

845 **Brandon Earl:** No.

846 Det. Quick: .. em that part?

847 **Brandon Earl:** No.

848 Det. Quick: And that's what you're saying?

849 **Brandon Earl:** No, I didn't tell 'em that p-p-part.

850 Det. Quick: Yeah. Well, I can understand that.

851 **Brandon Earl:** Yeah.

852 Det. Quick: I probably wouldn't have either. I would've been probably terrified.

853 **Brandon Earl:** Yeah, yeah.

854 Det. Quick: So, did you just.. were you just scared?

855 **Brandon Earl:** Well, I was actually confused why they were accusing me, you know.

856 Det. Quick: Cause they were saying you said that-that she.. that you touched her. That's
857 what you told me.

858 **Brandon Earl:** That I blew raspberries on her. I didn't touch her. I blew raspberries.

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Det. Tyler Quick

859 Det. Quick: I.. I know you didn't and you've told me that.. that that didn't happen. But you
860 were probably confused cause you said Stephanie came up and we.. she
861 said that they were accusing you of touching her.

862 **Brandon Earl:** Right.

863 Det. Quick: And you knew that that didn't happen.

864 **Brandon Earl:** Yeah.

865 Det. Quick: You knew that all you had done was blow raspberries and then accidentally
866 put your mouth on her privates, accidentally.

867 **Brandon Earl:** Right.

868 Det. Quick: So, is it, that's probably.. okay, I'm just.. cause I'm just trying to understand
869 that.. you know, the whole situation of what happened afterwards cause I
870 knew.. I knew that you had said some things to some people afterwards um,
871 you know, that-that nothing happened, that you were just blowing raspberries.

872 **Brandon Earl:** Yeah.

873 Det. Quick: Okay. So that makes sense to me. I mean, you just uh... you were kinda
874 scared probably because of what they were saying. They were confused and
875 you decided not to tell them about the part that you just told me about.

876 **Brandon Earl:** Right.

877 Det. Quick: Okay. Um, what would you say to them now? Like, what would you say to.. to
878 Mia?

879 **Brandon Earl:** Uh, you mean...

880 Det. Quick: Like would you say you were sorry or th-th-that-that happened?

881 **Brandon Earl:** Sorry that I might've accidentally came in contact with your privates? Yeah, I
882 would, cause I-I care about all my kids. I take...

883 Det. Quick: Yeah.

884 **Brandon Earl:** .. care of all my kids. I take care of my nephews, my nieces. I care for 'em. I
885 wouldn't ever hurt 'em.

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Det. Tyler Quick

886 Det. Quick: Yeah.

887 **Brandon Earl:** I wouldn't let anybody ever hurt em.

888 Det. Quick: Cause I don't.. I think, you know uh, I understand. I'm not gonna go and play

889 this tape for Mia or even to tell her.

890 **Brandon Earl:** Right.

891 Det. Quick: What do you say? She's three years old.

892 **Brandon Earl:** Right.

893 Det. Quick: You know, she's a little bit young...

894 **Brandon Earl:** Mm hm.

895 Det. Quick: ... for anything like that to take place. But, I um think maybe, at some point,

896 as she's growing up, she may not, you know, know exactly why everything

897 happened. At some point, I think that would be significant..

898 **Brandon Earl:** Yeah.

899 Det. Quick: .. for her to know that.

900 **Brandon Earl:** Oh yeah.

901 Det. Quick: That um you didn't do this on purpose.

902 **Brandon Earl:** Right.

903 Det. Quick: Um, do you have anything else that you think I should know about what

904 happened?

905 **Brandon Earl:** No, I think you've pretty much covered it all.

906 Det. Quick: What do you think should, um, should happen in this case?

907 **Brandon Earl:** Uh, I'd like to either apologize to April. I can't, like you said, apologize to Mia,

908 for..

909 Det. Quick: Yeah,.

910 **Brandon Earl:** .. all that, you know. Sorry and I won't put myself in that situation ever again..

911 Det. Quick: Yeah.

912 **Brandon Earl:** .. to be accused.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

913 Det. Quick: Um, and you told me everything that happened, the whole truth?

914 **Brandon Earl:** Yeah.

915 Det. Quick: Um, do you know what a lie detector or a polygraph is?

916 **Brandon Earl:** Yeah.

917 Det. Quick: Um, you know how it measures your body response to questions and stuff.

918 **Brandon Earl:** Right.

919 Det. Quick: And um would you be willing to take something like that? Take a lie detector
920 test about this situation?

921 **Brandon Earl:** Mm uh, I'd have to talk to my lawyer or something like that.

922 Det. Quick: Okay. Um, what would.. what are you thinking? What are you..?

923 **Brandon Earl:** Well, I don't know if I'd get misconstrued or whatever, you know.

924 Det. Quick: Yeah. So you.. what do you think it would say? Like if they asked you on that
925 test, um, you know, did you put your mouth on her privates and you said, it
926 was an accident.

927 **Brandon Earl:** Yeah ...

928 Det. Quick: And.. and what do you.. you know, it can read from totally true..

929 **Brandon Earl:** Yeah, I know that it can just say yes or no.

930 Det. Quick: .. to totally lie.

931 **Brandon Earl:** Right.

932 Det. Quick: And it could read somewhere in the middle, where do you think it would read,
933 if you.. they'd ask you that.

934 **Brandon Earl:** It.. probably in the middle because it was an accident..

935 Det. Quick: Yeah.

936 **Brandon Earl:** .. and it was playing and wrestling around, you know.

937 Det. Quick: Mm hm. But you're not at this point? You said you're not comfortable with
938 taking one right now.

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Det. Tyler Quick

939 **Brandon Earl:** Uh, I don't know. I mean, yeah, sure, but that's what I'm saying, that it's yes
940 or no.

941 **Det. Quick:** I mean it's up to you, I mean...

942 **Brandon Earl:** ... Yes or no...

943 **Det. Quick:** ...nobody's gonna make you do anything.

944 **Brandon Earl:** Right.

945 **Det. Quick:** So, um this is something that we do sometimes, you know, in these...

946 **Brandon Earl:** Yeah.

947 **Det. Quick:** .. cases where um, we want to help, somebody like in your situation, help
948 people understand what happened.

949 **Brandon Earl:** Right.

950 **Det. Quick:** So, you may be open to that?

951 **Brandon Earl:** Yeah.

952 **Det. Quick:** .. You just don't know?

953 **Brandon Earl:** I just don't know yet, yeah.

954 **Det. Quick:** Okay. Um, what you got going there?

955 **Det. Ferreira:** A little drawing.

956 **Det. Quick:** Is that a doodle or do you want to ask him something?

957 **Det. Ferreira:** I want to ask him something. I didn't know if you were done asking questions.

958 **Det. Quick:** Right.

959 **Det. Ferreira:** Brandon, you said you needed to talk to your attorney. Do you have an
960 attorney?

961 **Brandon Earl:** Yeah, I do actually.

962 **Det. Ferreira:** Do you have an attorney right now?

963 **Brandon Earl:** I would to get uh one set up.

964 **Det. Ferreira:** So, you don't have..

965 **Brandon Earl:** Uh, I have a prepaid legal.

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Det. Tyler Quick

966 Det. Quick: Oh.

967 **Brandon Earl:** So.

968 Det. Ferreira: I don't understand what that means.

969 **Brandon Earl:** It's something that you would have to call ahead and then set up a case and
970 stuff.

971 Det. Ferreira: Okay. So, you're not currently represented on this case?

972 **Brandon Earl:** No.

973 Det. Ferreira: Okay. I just wanted to be..

974 **Brandon Earl:** Yeah.

975 Det. Ferreira: .. sure. So, I'm a little confused about something, so I'm gonna slide in here,
976 alright?

977 **Brandon Earl:** Sure.

978 Det. Ferreira: So, you can.. you can clear this up, okay.

979 **Brandon Earl:** Okay.

980 Det. Ferreira: So, this is.. this is not state of the art. This is not..

981 **Brandon Earl:** Uh-huh.

982 Det. Ferreira: .. you can tell, this is..

983 Det. Quick: He's a detective, not an artist.

984 **Brandon Earl:** Ha ha.

985 Det. Ferreira: Okay, let's just say.. was.. when this was going on.. when these raspberries
986 were going on,..

987 **Brandon Earl:** Yeah.

988 Det. Ferreira: .. was Mia standing, sitting, laying or something else?

989 **Brandon Earl:** Laying.

990 Det. Ferreira: On the bed?

991 **Brandon Earl:** Yeah.

992 Det. Ferreira: Okay. And if.. let's say this is the bed.

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993 **Brandon Earl:** Right.

994 **Det. Ferreira:** Okay? Actually I could have done that, couldn't I have? Let's say this is the

995 top.

996 **Brandon Earl:** Okay.

997 **Det. Ferreira:** And this is the bottom. Where was her head?

998 **Brandon Earl:** Up at the top here.

999 **Det. Ferreira:** So, her head's up at the top.

1000 **Brandon Earl:** Yeah.

1001 **Det. Ferreira:** Okay. So, let's.. let's for the sake of argument, say that's the bed.

1002 **Brandon Earl:** Okay.

1003 **Det. Ferreira:** Obviously this is a headless model.

1004 **Brandon Earl:** Yeah.

1005 **Det. Ferreira:** Okay. She's laying down.

1006 **Brandon Earl:** Right.

1007 **Det. Ferreira:** Are you.. when you're doing the raspberries, where are you?

1008 **Brandon Earl:** I'm over here on this side.

1009 **Det. Ferreira:** You're on this side?

1010 **Brandon Earl:** Uh, this side.

1011 **Det. Ferreira:** This side.

1012 **Brandon Earl:** Yeah.

1013 **Det. Ferreira:** So, when you're looking.. if you're.. if you were right now.. so imagine yourself

1014 in that room and you're looking at the bed. Which side of the bed would you

1015 be on?

1016 **Brandon Earl:** I'm looking towards the top?

1017 **Det. Ferreira:** Mm hm [yes].

1018 **Brandon Earl:** I'm here.

1019 **Det. Ferreira:** You're on the left,...

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1020 **Brandon Earl:** Yeah.

1021 **Det. Ferreira:** .. right here? Okay. So I'm just gonna put top. I'm gonna put bottom there.

1022 **Det. Ferreira:** Okay. You're over here.

1023 **Brandon Earl:** Yeah.

1024 **Det. Ferreira:** Are you standing, kneeling, sitting, laying.. what..

1025 **Brandon Earl:** Uh..

1026 **Det. Ferreira:** .. how-how was your body?

1027 **Brandon Earl:** Like sitting, like on the side of the bed.

1028 **Det. Ferreira:** Okay. So, you're over here somewhere?

1029 **Brandon Earl:** Yeah.

1030 **Det. Ferreira:** Okay. And then.. so this is her belly button.

1031 **Brandon Earl:** Okay.

1032 **Det. Ferreira:** Okay? Where was your head?

1033 **Brandon Earl:** Right...

1034 **Det. Ferreira:** If this is her belly button, where was your head blowing a raspberry?

1035 **Brandon Earl:** Like right here.

1036 **Det. Ferreira:** Like right on the belly button?

1037 **Brandon Earl:** Like right, yeah.

1038 **Det. Ferreira:** Okay. Right dead center on the belly button, above it, below it or something

1039 **Det. Ferreira:** else?

1040 **Brandon Earl:** Uh, kind of, sort of to.. dead center of it like to the side, like phhhh.

1041 **Det. Ferreira:** Okay. So, like right in here?

1042 **Brandon Earl:** Uh, more like right here, like right below the belly button [?].

1043 **Det. Ferreira:** Right here?

1044 **Brandon Earl:** Yeah.

1045 **Det. Ferreira:** Okay. And you're sitting here, so you're kind of ass backwards, as they say?

1046 **Brandon Earl:** Right.

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Det. Tyler Quick

1047 Det. Ferreira: Okay. Where's the top of your head?

1048 **Brandon Earl:** Uh, basically, planted to the side, about like...

1049 Det. Ferreira: So the top of your head's like over here somewhere?

1050 **Brandon Earl:** Yeah, in.. sideways.

1051 Det. Ferreira: Okay.

1052 **Brandon Earl:** Yeah.

1053 Det. Ferreira: So your mouth, theoretically, it's not to scale, obviously.

1054 **Brandon Earl:** Right.

1055 Det. Ferreira: Would be like right in here somewhere?

1056 **Brandon Earl:** Uh, right [?].

1057 Det. Ferreira: Okay. And you don't remember what she was wearing that day, but you

1058 remember it was some kind of dress and maybe some jeans?

1059 **Brandon Earl:** Yeah.

1060 Det. Ferreira: Okay. If I told you she wasn't wearing pants under the dress, what would you

1061 say to that?

1062 **Brandon Earl:** Uh, I guess they're wrong cause.

1063 Det. Ferreira: Okay. What if I told you I'm not wrong cause that's what her mom said she

1064 was wearing?

1065 **Brandon Earl:** Uh, it was jeans. I'm pretty sure it was jeans.

1066 Det. Ferreira: Okay. For the sake of argument, um...

1067 Det. Quick: It was tights.

1068 Det. Ferreira: Let's say it was tights. Okay. That works.. let's say it was tights. Okay?

1069 **Brandon Earl:** Okay.

1070 Det. Ferreira: You said she pulled her dress up?

1071 **Brandon Earl:** Yeah.

1072 Det. Ferreira: And was she laying down when she pulled her dress up?

1073 **Brandon Earl:** Yeah.

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1074 Det. Ferreira: So, did she.. how did she.. how'd she pull it up cause she's actually sitting on
1075 it, right? She's actually laying on it..

1076 **Brandon Earl:** Hmm.

1077 Det. Ferreira: .. when she's laying there.

1078 **Brandon Earl:** Like.. just like...

1079 Det. Ferreira: So, how far up would you say she pulled it up?

1080 **Brandon Earl:** Probably like right here.

1081 Det. Ferreira: So, right above her belly button?

1082 **Brandon Earl:** Yeah.

1083 Det. Ferreira: Was the bottom of the dress.. that's where the bottom of the dress ended?

1084 **Brandon Earl:** Yeah.

1085 Det. Ferreira: So, she's picking up.. the bottom's down here, she's picking it up.

1086 **Brandon Earl:** Yeah.

1087 Det. Ferreira: Now that's the bottom. Right?

1088 **Brandon Earl:** Right.

1089 Det. Ferreira: Okay. And.. and so you're doing raspberries and then.. so this is about.. this
1090 is the private area, right? So I'm confused cause sometimes you say private
1091 area, sometimes you said tummy. So are we talking about private area or we
1092 talking about tummy?

1093 **Brandon Earl:** Tummy.

1094 Det. Ferreira: Okay. And when you said you.. you accidentally had put your mouth on her
1095 private area, are we talking about this, the genital area or are we talking
1096 about the tummy?

1097 **Brandon Earl:** Uh, actually probably her genital area.

1098 Det. Ferreira: Okay. And you said it lasted thirty seconds.

1099 **Brandon Earl:** Yeah.

1100 Det. Ferreira: Okay. And you just stopped, right?

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- 1101 **Brandon Earl:** Yeah.
- 1102 **Det. Ferreira:** You didn't hold her down, did you?
- 1103 **Brandon Earl:** No.
- 1104 **Det. Ferreira:** Did you threaten her to stay laid down?
- 1105 **Brandon Earl:** No.
- 1106 **Det. Ferreira:** Did she cry, scream, yell?
- 1107 **Brandon Earl:** No.
- 1108 **Det. Ferreira:** Nothing, right?
- 1109 **Brandon Earl:** No.
- 1110 **Det. Ferreira:** She was probably giggling, I think you said?
- 1111 **Brandon Earl:** The other kids were over here. My son was here and Nathan was right here.
- 1112 **Det. Ferreira:** On another bed or on the right side of the bed?
- 1113 **Brandon Earl:** No, on this side of the bed, on our bed.
- 1114 **Det. Ferreira:** So, right here.
- 1115 **Brandon Earl:** Yeah.
- 1116 **Det. Ferreira:** Okay.
- 1117 **Brandon Earl:** No, not on.. like this or the bed or here?
- 1118 **Det. Ferreira:** Yup.
- 1119 **Brandon Earl:** She's here?
- 1120 **Det. Ferreira:** Yup.
- 1121 **Brandon Earl:** Nathan's here?
- 1122 **Det. Ferreira:** Yup.
- 1123 **Brandon Earl:** Nathan's here and Blake's here.
- 1124 **Det. Ferreira:** On the bed?
- 1125 **Brandon Earl:** On the bed.
- 1126 **Det. Ferreira:** Okay.
- 1127 **Det. Quick:** So that.. what size bed is that?

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1128 **Brandon Earl:** It's a queen.
1129 **Det. Quick:** Queen. Okay. So, it's pretty big.
1130 **Brandon Earl:** Yeah.
1131 **Det. Ferreira:** And she didn't say no. She didn't say stop. She didn't say that hurts. She
1132 didn't say...
1133 **Brandon Earl:** No.
1134 **Det. Ferreira:** She didn't start bawling, crying. She didn't yell for her mom. None of that
1135 stuff.
1136 **Brandon Earl:** No.
1137 **Det. Ferreira:** How much time total, approximate guess, do you think you think you've spent
1138 with Mia?
1139 **Brandon Earl:** Like all together?
1140 **Det. Ferreira:** All together, all together.
1141 **Brandon Earl:** Her whole life?
1142 **Det. Ferreira:** Yep.
1143 **Brandon Earl:** Probably, ten times.
1144 **Det. Ferreira:** Ten total times?
1145 **Brandon Earl:** Yeah. I don't.. like I said, I don't hardly ever see 'em.
1146 **Det. Ferreira:** Okay. How much time do you think you've spent alone with Mia? I know there
1147 was two other kids in the room. But I mean, just you, the adult and Mia, the
1148 kid.
1149 **Brandon Earl:** Uh ...
1150 **Det. Ferreira:** When there was no other adults.
1151 **Brandon Earl:** Never.
1152 **Det. Ferreira:** This is the only time?
1153 **Brandon Earl:** The only time, yeah.
1154 **Det. Ferreira:** Okay. So, it's all kinda making sense to me then.

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1155 **Brandon Earl:** Yeah.

1156 **Det. Ferreira:** Okay. And, uh, so thirty seconds and then what do you do?

1157 **Brandon Earl:** I send 'em off cause I'm going to go to bed.

1158 **Det. Ferreira:** Okay. You send her off too?

1159 **Brandon Earl:** Yeah.

1160 **Det. Ferreira:** And did she leave?

1161 **Brandon Earl:** Yeah.

1162 **Det. Ferreira:** Okay. Um, I think my partner talked to you a little about DNA and what that is.

1163 **Brandon Earl:** Mm hm.

1164 **Det. Ferreira:** Do you understand what that is?

1165 **Brandon Earl:** Yeah.

1166 **Det. Ferreira:** Okay. Do you understand kind of how it's collected and stuff like that?

1167 **Brandon Earl:** Right.

1168 **Det. Ferreira:** Okay. And you understand that when things like this happen, you know, we

1169 almost just assume the worst and we always do kits and testing and that

1170 stuff.

1171 **Brandon Earl:** Right.

1172 **Det. Ferreira:** Okay. Um, and so basically what you're telling me, I don't think it would be

1173 totally crazy to assume that your saliva is probably gonna be on her clothes.

1174 **Brandon Earl:** Right.

1175 **Det. Ferreira:** Um, do you remember when she pulled her dress up, did you see her

1176 underwear?

1177 **Brandon Earl:** No.

1178 **Det. Ferreira:** Okay. Um, you thought that she was wearing pants,...

1179 **Brandon Earl:** Yeah.

1180 **Det. Ferreira:** ... is that right?

1181 **Brandon Earl:** Yeah.

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1182 Det. Ferreira: Okay. Um, but if she's wearing pants, my question to you would be: would
1183 there be any reason then that your DNA, that your saliva would be on her
1184 underwear?
1185 **Brandon Earl:** I don't think so, no.
1186 Det. Ferreira: You don't think so or..?
1187 **Brandon Earl:** No, no. No, no.
1188 Det. Ferreira: Do you understand how they're different Brandon?
1189 **Brandon Earl:** No, I know.
1190 Det. Ferreira: Okay.
1191 **Brandon Earl:** Yeah.
1192 Det. Ferreira: Um, and so this is.. this was totally an accident, correct?
1193 **Brandon Earl:** Yeah.
1194 Det. Ferreira: Okay.
1195 **Brandon Earl:** Yeah.
1196 Det. Ferreira: There was never any time in your mind where it shifted from an accident to
1197 curiosity?
1198 **Brandon Earl:** No.
1199 Det. Ferreira: There was never a curiosity thing at any time?
1200 **Brandon Earl:** No.
1201 Det. Ferreira: It started off simply as a raspberry adventure and it turned into an accidental
1202 adventure?
1203 **Brandon Earl:** No.
1204 Det. Ferreira: No.
1205 **Brandon Earl:** No, it wasn't an..
1206 Det. Ferreira: Never like that.
1207 **Brandon Earl:** And it wasn't ever like that, no.
1208 Det. Ferreira: Okay. Totally an accident all the way around.

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- 1209 **Brandon Earl:** Yes.
- 1210 **Det. Ferreira:** Unplanned.
- 1211 **Brandon Earl:** No.
- 1212 **Det. Ferreira:** No, it was not unplanned or yes it was.
- 1213 **Brandon Earl:** It was.. yes, it was..
- 1214 **Det. Ferreira:** Unplanned.
- 1215 **Brandon Earl:** .. unplanned, like-like I was saying. Playing on the...
- 1216 **Det. Ferreira:** Okay. Um, and being as it was an accident.. you're saying it was an accident
- 1217 and..
- 1218 **Brandon Earl:** Yeah.
- 1219 **Det. Ferreira:** .. we're on tape right here, so we didn't hit you on top of the head with a
- 1220 phone book, did we?
- 1221 **Brandon Earl:** No.
- 1222 **Det. Ferreira:** Did we turn a big bright light on?
- 1223 **Brandon Earl:** No.
- 1224 **Det. Ferreira:** Did we make you poo and pee your pants right here?
- 1225 **Brandon Earl:** No.
- 1226 **Det. Ferreira:** Did we keep you in here for forty-eight hours and make you say stuff?
- 1227 **Brandon Earl:** No.
- 1228 **Det. Ferreira:** Is there somebody behind you right now with a pistol pointed at your head?
- 1229 **Brandon Earl:** No.
- 1230 **Det. Ferreira:** And he told you before you came in, this is totally voluntary, right?
- 1231 **Brandon Earl:** That's right.
- 1232 **Det. Ferreira:** And you actually wanted to come in. Before he even got assigned the case,
- 1233 you were saying you wanted to come in and clear this up. Alright?
- 1234 **Brandon Earl:** That's right.
- 1235 **Det. Ferreira:** So, you were never forced, coerced, threatened or in any way, shape or form.

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1236 **Brandon Earl:** No.

1237 **Det. Ferreira:** Did he make you any promises? Did he tell you what's your favorite car brand
1238 and it's a Corvette. I'm, gonna get you a Corvette? Did he ever say that?

1239 **Brandon Earl:** No.

1240 **Det. Ferreira:** None of that happened.

1241 **Brandon Earl:** No.

1242 **Det. Ferreira:** Okay. So, this is gonna be a tough question, Brandon and I apologize, okay?

1243 **Brandon Earl:** Yeah,.

1244 **Det. Ferreira:** I don't mean to be a jerk about it. Um, one of the most important things for us
1245 is, we're talking about a three year old kid.

1246 **Brandon Earl:** Yeah.

1247 **Det. Ferreira:** Right?

1248 **Brandon Earl:** Right.

1249 **Det. Ferreira:** Who's been very consistent, who's told the same story. Uh, have you had any
1250 issues with her mom? Are you guys fighting? Before this?

1251 **Brandon Earl:** N.. no. No. No.

1252 **Det. Ferreira:** Nothing like that? You guys ever been in a relationship that ended badly?

1253 **Brandon Earl:** No.

1254 **Det. Ferreira:** Uh, does she get along with your wife?

1255 **Brandon Earl:** I.. uh as far as I know, yeah.

1256 **Det. Ferreira:** Okay. Well, she was in your house, right?

1257 **Brandon Earl:** Yeah. [laugh]

1258 **Det. Ferreira:** Okay. Uh, so there's never been any problem like that?

1259 **Brandon Earl:** No.

1260 **Det. Ferreira:** Were there any problems between the kids that day?

1261 **Brandon Earl:** No.

1262 **Det. Ferreira:** Do you have any issues with any other adults in the house that day?

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Det. Tyler Quick

- 1263 **Brandon Earl:** No.
- 1264 **Det. Ferreira:** Okay.
- 1265 **Brandon Earl:** Not that I...
- 1266 **Det. Ferreira:** How about before? How about before that?
- 1267 **Brandon Earl:** Uh, no.
- 1268 **Det. Ferreira:** Where somebody would wanna get back at ya. Anything that you can think
- 1269 of.
- 1270 **Brandon Earl:** No.
- 1271 **Det. Ferreira:** Of the people that were at your house that day.
- 1272 **Brandon Earl:** No.
- 1273 **Det. Ferreira:** No.
- 1274 **Brandon Earl:** No. They all love and care for me and I love and care for them.
- 1275 **Det. Ferreira:** Okay. And so you know, I mean, uh it's not like Mia has decided that, uh,
- 1276 Brandon now has to be uh, voted off the island.
- 1277 **Brandon Earl:** Right.
- 1278 **Det. Ferreira:** And she has no idea really what any of these means. All she knows is that,
- 1279 you know, accidentally on purpose, whatever, your mouth ended up on her
- 1280 genital area. That's all she knows.
- 1281 **Brandon Earl:** Okay.
- 1282 **Det. Ferreira:** Okay?
- 1283 **Brandon Earl:** Yeah.
- 1284 **Det. Ferreira:** She doesn't have any idea what the heck that means, right? Nor should she.
- 1285 **Brandon Earl:** No, yeah.
- 1286 **Det. Ferreira:** Should she have any idea what that means?
- 1287 **Brandon Earl:** No.
- 1288 **Det. Ferreira:** No.
- 1289 **Brandon Earl:** No.

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Det. Tyler Quick

- 1290 Det. Ferreira: And this only happened one time?
- 1291 **Brandon Earl:** Right.
- 1292 Det. Ferreira: Has this ever happened with any other kids?
- 1293 **Brandon Earl:** No.
- 1294 Det. Ferreira: Um, so here's the tough question. You're like wh-what's the tough question
- 1295 gonna be? Here's the tough question. Has this ever happened to you before?
- 1296 **Brandon Earl:** No.
- 1297 Det. Ferreira: Has an adult ever done anything like this to you before when you were a kid?
- 1298 **Brandon Earl:** No.
- 1299 Det. Ferreira: Has anyone ever made you do anything of a sexual nature to them or done
- 1300 anything to you of a sexual nature that you didn't want?
- 1301 **Brandon Earl:** No.
- 1302 Det. Ferreira: So, none of it.. nothing like that ever happened before?
- 1303 **Brandon Earl:** No.
- 1304 Det. Ferreira: Do you know why people would tell us that you were a victim of abuse at
- 1305 some point?
- 1306 **Brandon Earl:** No.
- 1307 Det. Ferreira: You have no idea.
- 1308 **Brandon Earl:** [no audible response]
- 1309 Det. Ferreira: If you were, would you tell us today?
- 1310 **Brandon Earl:** Uh yeah. I would.
- 1311 Det. Ferreira: You would?
- 1312 **Brandon Earl:** Yeah.
- 1313 Det. Ferreira: Okay. Cause you know, sometimes.. they've done studies about it, you
- 1314 know.. people who were abused, it kinda becomes almost like it's okay. Do
- 1315 you know what I mean?
- 1316 **Brandon Earl:** Yeah.

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1317 Det. Ferreira: Cause a kid doesn't know any better.

1318 **Brandon Earl:** Right.

1319 Det. Ferreira: You know, we've had kids.. kids come in for interviews and they.. they

1320 actually say I didn't think anything was wrong with it. I thought everybody

1321 does this with their.. with their dad or their uncle or their brother or whatever,

1322 you know. So nothing like that's ever happened.

1323 **Brandon Earl:** No.

1324 Det. Ferreira: Okay. So, here's a mi.. here's a, another tough, tough question I gotta ask

1325 you. Um, bearing everything in mind, everything you've told us today, all the

1326 questions we've asked you, all the information we've given you, I know it's

1327 been a lot. Uh, what is your reluctance to take a polygraph? And here's why..

1328 here's why I ask you. I'm not forcing you to do it. I'm not trying to make you

1329 do it. I'm not trying to talk you into it.

1330 **Brandon Earl:** Right.

1331 Det. Ferreira: Okay? But I think.. but.. i-it sounds to me like the way you were asking that

1332 question, that you're a little confused as to how it works. The question

1333 wouldn't be, Brandon, did you touch Mia's private area? Right?

1334 **Brandon Earl:** Right.

1335 Det. Ferreira: Because that's kinda like we're taking a pile of poo and we're throwing it on to

1336 the wall and we're trying to see what sticks.

1337 **Brandon Earl:** Right.

1338 Det. Ferreira: Right? We're a professional organization. We don't do that kinda garbage,

1339 right?

1340 **Brandon Earl:** Uh-huh.

1341 Det. Ferreira: In "Halabama" that probably happens all the time. This is not "Halabama."

1342 **Brandon Earl:** Yeah.

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Det. Tyler Quick

1343 Det. Ferreira: Okay? The way the question on the polygraph would be is, Brandon, did you
1344 touch Mia's genital area, private are, whatev, vagina, whatever you wanna
1345 call it.
1346 **Brandon Earl:** Yeah.
1347 Det. Ferreira: Accidentally. That would be the question.
1348 **Brandon Earl:** Oh, okay.
1349 Det. Ferreira: Okay.
1350 **Brandon Earl:** Yeah.
1351 Det. Ferreira: So, if that was the question, what would your answer be?
1352 **Brandon Earl:** Yes.
1353 Det. Ferreira: Yes, it was accidental?
1354 **Brandon Earl:** Yes.
1355 Det. Ferreira: And if.. if one is totally truthful and ten, it was an outright cotton pickin lie,
1356 where would you be on the scale?
1357 **Brandon Earl:** I'd be one.
1358 Det. Ferreira: You'd be a one.
1359 **Brandon Earl:** Yeah.
1360 Det. Ferreira: Okay. Uh, would you be willing to.. to give us a sample of your DNA?
1361 **Brandon Earl:** Sure.
1362 Det. Ferreira: You'd be willing to do that?
1363 **Brandon Earl:** Yeah.
1364 Det. Ferreira: Okay. And do you uh.. do you have a kit with you?
1365 Det. Quick: Yeah.
1366 Det. Ferreira: And do you understand why we would want that?
1367 **Brandon Earl:** Yeah.
1368 Det. Ferreira: Okay. And you understand that uh you do not have to give that?
1369 **Brandon Earl:** Yeah, I do.

Det. Tyler Quick #1456
Det. Christopher Ferreira #1443

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Det. Tyler Quick

- 1370 Det. Ferreira: Do you understand wh.. you do understand why we would want it?
- 1371 **Brandon Earl:** Yes.
- 1372 Det. Ferreira: Why-why do you think we would want it?
- 1373 **Brandon Earl:** So you can-can do your investigation. I don't wanna uh interfere in your
- 1374 investigation at all.
- 1375 Det. Ferreira: Okay, you wouldn't be, you wouldn't be interfering at all.
- 1376 **Brandon Earl:** [breath]
- 1377 Det. Ferreira: You did.. he already said and I'm gonna say it again.
- 1378 **Brandon Earl:** Yeah.
- 1379 Det. Ferreira: You came in and talked to.. to two guys you've never met before.
- 1380 **Brandon Earl:** Right.
- 1381 Det. Ferreira: You came to the big, bad police station and you could've sat there and lied to
- 1382 us like a lotta people do the whole day..
- 1383 **Brandon Earl:** Yeah.
- 1384 Det. Ferreira: .. and say I don't know what you're talking about. You know what we get a
- 1385 lot? I was never alone with her.
- 1386 **Brandon Earl:** Yeah.
- 1387 Det. Ferreira: Didn't happen, Don't know what you're talking about.
- 1388 **Brandon Earl:** Yeah.
- 1389 Det. Ferreira: You didn't do that. You came in and you said, it happened, but it happened
- 1390 during the raspberries and it was an accident.
- 1391 **Brandon Earl:** Exactly.
- 1392 Det. Ferreira: It was only.. it only thirty seconds.
- 1393 **Brandon Earl:** Yeah.
- 1394 Det. Ferreira: Right?
- 1395 **Brandon Earl:** Yup.
- 1396 Det. Ferreira: It wasn't ten minutes?

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Det. Christopher Ferreira #1443

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Det. Tyler Quick

1397 **Brandon Earl:** No.

1398 **Det. Ferreira:** And it wasn't one second.

1399 **Brandon Earl:** No.

1400 **Det. Ferreira:** But it was thirty seconds.

1401 **Brandon Earl:** Yeah.

1402 **Det. Ferreira:** You coulda lied and said I don't know what you're talking about.

1403 **Brandon Earl:** It's, um... I um... [unintelligible]

1404 **Det. Ferreira:** And your okay with giving a sample.

1405 **Brandon Earl:** Yeah.

1406 **Det. Ferreira:** And you're okay.. and you understand that we are gonna test the sample.

1407 **Brandon Earl:** Sure.

1408 **Det. Ferreira:** And we're gonna test it against her underwear.

1409 **Brandon Earl:** Sure.

1410 **Det. Ferreira:** You're-you're totally okay with that?

1411 **Brandon Earl:** I'm fine.

1412 **Det. Ferreira:** Okay.

1413 **Det. Quick:** Cool.

1414 **Brandon Earl:** I like your accent.

1415 **Det. Ferreira:** Yeah, I'm Massachusetts.

1416 **Brandon Earl:** [laugh]

1417 **Det. Quick:** He gets that a lot.

1418 **Brandon Earl:** [laugh]

1419 **Det. Quick:** "J," Joseph is your middle name? Is that uh.. anyone in your family have that

1420 name or just..?

1421 **Brandon Earl:** Yeah, it's a middle.. everybody's pretty much got it.

1422 **Det. Ferreira:** Oh really? That's kinda cool.

1423 **Brandon Earl:** Yeah, it's kinda difficult.

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Det. Christopher Ferreira #1443

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Det. Tyler Quick

1424 Det. Quick: My family's,..

1425 Det. Ferreira: That's...

1426 Det. Quick: .. got the same kind of a deal. It's not like everybody, but..

1427 **Brandon Earl:** My son has it too.

1428 Det. Quick: Cool.

1429 Det. Ferreira: What size bed did you say this was, sorry?

1430 **Brandon Earl:** It's a queen,.

1431 Det. Ferreira: It's a queen. Is it the only bed in the room?

1432 **Brandon Earl:** Yeah.

1433 Det. Ferreira: And you said you about right here.

1434 **Brandon Earl:** Yeah, with my.. like sitting like this.

1435 Det. Ferreira: Your back to her.

1436 **Brandon Earl:** Yeah.

1437 Det. Ferreira: Correct?

1438 **Brandon Earl:** Like.. kinda like, you know, turned,

1439 Det. Ferreira: Sure. [?] kind of at an angle?

1440 **Brandon Earl:** Yeah.

1441 Det. Ferreira: Okay. I'm gonna go over this with you Brandon, okay?

1442 **Brandon Earl:** [no audible response]

1443 Det. Ferreira: And.. what I want you to do is.. is I want you to read this right here to me..

1444 **Brandon Earl:** Mm.

1445 Det. Ferreira: .. all the way down to this period out loud.

1446 **Brandon Earl:** I, Brandon Joseph Earl, understand my constitutional rights not to have a

1447 search made of my person without a search warrant or without my consent. I

1448 understand my right to refuse to such a search and hereby authorize the

1449 Snohomish County Sheriff's Office or its representatives to take or cause a

1450 case to be taken a sample of.. of a uh..

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Det. Tyler Quick

- 1451 Det. Ferreira: Buccal
- 1452 **Brandon Earl:** .. buccal swab for the purpose of scientific testing.
- 1453 Det. Ferreira: Any question whatsoever about anything you just read?
- 1454 **Brandon Earl:** No. It's cut and dry.
- 1455 Det. Ferreira: Okay. Read this to me out loud please.
- 1456 **Brandon Earl:** I understand that I may refuse to consent to search.
- 1457 Det. Ferreira: Do you understand that?
- 1458 **Brandon Earl:** Yes.
- 1459 Det. Ferreira: Do you have any questions about that?
- 1460 **Brandon Earl:** No.
- 1461 Det. Ferreira: Could you initial next to the one for me please? Next to the one.
- 1462 **Brandon Earl:** Oh.
- 1463 Det. Ferreira: Okay.
- 1464 **Brandon Earl:** [laugh]
- 1465 Det. Ferreira: Can you read the second one for me?
- 1466 **Brandon Earl:** I understand that if I consent to the search, I may withdraw or revoke that
- 1467 consent at any time.
- 1468 Det. Ferreira: Do you have any questions about that?
- 1469 **Brandon Earl:** No.
- 1470 Det. Ferreira: Do you understand what that means?
- 1471 **Brandon Earl:** I do.
- 1472 Det. Ferreira: Okay. Can you sign next.. uh initial next to the two? Sorry. Can you read
- 1473 number three for me?
- 1474 **Brandon Earl:** I understand that evidence found during the search may be used in court
- 1475 against me or against any other person.
- 1476 Det. Ferreira: Do you understand that?
- 1477 **Brandon Earl:** Yeah.

Det. Tyler Quick #1456
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Det. Tyler Quick

- 1478 Det. Ferreira: Do you have any questions about it?
- 1479 **Brandon Earl:** No.
- 1480 Det. Ferreira: Can you initial next to the three? Okay. Now I need you to do the same thing
- 1481 from the i to the period. Read that out loud to me?
- 1482 **Brandon Earl:** Okay. I have read and understand the above the, and this written permission
- 1483 is be given.. being given by.. er.. be gi.. the.. is being given by me to
- 1484 Detective Quick voluntarily and without uh threats or promises of any kind, by
- 1485 any police agency, with the knowledge that information derived from the
- 1486 biological sample may be used as evidence against me or other courts. The
- 1487 granting of this permission is a free and voluntary act.
- 1488 Det. Ferreira: Do you have any questions about any of that?
- 1489 **Brandon Earl:** No.
- 1490 Det. Ferreira: None at all?
- 1491 **Brandon Earl:** No.
- 1492 Det. Ferreira: Do you need me to explain anything at all, from here to here. So, in other
- 1493 words, everything you just read out loud, do you need an explanation about
- 1494 any of that?
- 1495 **Brandon Earl:** No.
- 1496 Det. Ferreira: Okay. You sure?
- 1497 **Brandon Earl:** Oh, I'm sure.
- 1498 Det. Ferreira: Okay. Can you put your initial next to the i right there? Can you sign right
- 1499 here where it says signature? Have you ever given a sample before with the..
- 1500 the Q-Tips.
- 1501 **Brandon Earl:** No.
- 1502 Det. Ferreira: Okay. We're gonna give you.. do you have ...
- 1503 Det. Quick: Gloves?
- 1504 Det. Ferreira: ...prophylactics?

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Det. Tyler Quick

1505 Det. Quick: ... You probably don't need five.

1506 Det. Ferreira: Two will do. What uh.. what I'm gonna do is I'm gonna open this package
1507 right in front of you. It's sealed right now. It's gonna have big Q-Tips in it
1508 basically.

1509 **Brandon Earl:** Okay.

1510 Det. Ferreira: Okay? Do you have anything in your mouth right now?

1511 **Brandon Earl:** Yeah.

1512 Det. Ferreira: Can you open your mouth for me? Can you lift your tongue? [?]? Alright.
1513 Okay. We'll open this right in front of you so you see it.

1514 **Brandon Earl:** Yeah.

1515 Det. Ferreira: You see that it's sealed. Correct?

1516 **Brandon Earl:** [no audible response]

1517 Det. Ferreira: Okay. I want you to take one.. one of those sticks right there, whichever one
1518 you want. And on the right side of your mouth between your cheek and gum, I
1519 want you to just roll it like this and I'll tell you when to stop. Okay?

1520 **Brandon Earl:** Okay.

1521 Det. Ferreira: Whenever you're ready. It's easier if you close your mouth. Okay. And you
1522 take the second one, I want you to do the other side of your mouth, same
1523 technique. Right side? Okay. [unintelligible]

1524 Det. Quick: Yes it is.

1525 Det. Ferreira: Do you want to label it?

1526 Det. Quick: I can label it after you put it in there.

1527 Det. Ferreira: Okay, uh, do you have any questions about anything we've told you or any
1528 information that we've given you or.. or anything like that?

1529 **Brandon Earl:** No.

1530 Det. Ferreira: No?

1531 **Brandon Earl:** No, I'm good.

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Det. Christopher Ferreira #1443

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Det. Tyler Quick

1532 Det. Ferreira: Okay. Uh, so just so.. just for.. for my clarification, okay. Based on what
1533 you're telling me, if.. i-if she's wearing pants, and what you.. where you told
1534 me your head was and all that stuff?

1535 **Brandon Earl:** Yeah.

1536 Det. Ferreira: I don't.. I can't see how saliva would get in her underwear.

1537 **Brandon Earl:** Okay.

1538 Det. Ferreira: Do you agree or disagree?

1539 **Brandon Earl:** Uh, no. I agree.

1540 Det. Ferreira: Okay. So, what do you think should happen if we do and it's yours? Because
1541 then do you know what that means Brandon? That means we were really uh
1542 open and honest with you today.

1543 **Brandon Earl:** Yeah.

1544 Det. Ferreira: We didn't pull any punches with you. We didn't lie.

1545 **Brandon Earl:** Right.

1546 Det. Ferreira: You were open and honest, I thought. Uh, I mean, for Pete's sake, y-you
1547 wanted to come in before we even had the case.

1548 **Brandon Earl:** Right.

1549 Det. Ferreira: Uh, y.. i-it's a difficult thing to come in and talk to people you don't know.

1550 **Brandon Earl:** No, I...

1551 Det. Ferreira: Especially people you don't know who happen to be the police...

1552 **Brandon Earl:** Yeah.

1553 Det. Ferreira: .. about something like this. Uh, and be able to admit that something, did, in
1554 fact, did happen.

1555 **Brandon Earl:** Yeah.

1556 Det. Ferreira: But what I don't wanna see happen is, is I don't want there to be more to the
1557 story.

1558 **Brandon Earl:** Right.

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Det. Christopher Ferreira #1443

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Det. Tyler Quick

1559 Det. Ferreira: And we all leave and we get this tested and then we find your saliva in her
1560 underwear because I don't see how that coulda happened, based on wh-what
1561 are you telling me..

1562 **Brandon Earl:** Okay.

1563 Det. Ferreira: .. has happened. Okay?

1564 **Brandon Earl:** Okay.

1565 Det. Ferreira: Does that make sense?

1566 **Brandon Earl:** Yeah.

1567 Det. Ferreira: Okay. Is there any reason why we're gonna find your saliva on her
1568 underwear?

1569 **Brandon Earl:** No.

1570 Det. Ferreira: Do-do you want a second to think about? I know this has been a lotta stuff
1571 thrown out there. Do you wanna kinda think about that day? Just kinda run it
1572 over in your mind again a-and think of maybe a situation where that would
1573 happen?

1574 **Brandon Earl:** No. No.

1575 Det. Ferreira: So, you're positive that there's not gonna be.. your saliva's not gonna be in
1576 her underwear.

1577 **Brandon Earl:** No. Y.. uh, yes, sorry.

1578 Det. Ferreira: Okay. That's all I have. I appreciate your being honest with me Brandon.

1579 **Brandon Earl:** Okay.

1580 Det. Quick: No que-, no more questions for us or anything?

1581 **Brandon Earl:** Uh, no, [unintelligible]

1582 Det. Quick: Appreciate you coming in like he said, it takes, it takes a lot of guts and
1583 everything. I've got a couple more things I want to read to you.

1584 **[Multiple People talking, unintelligible]**

1585 **Brandon Earl:** Okay.

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

1586 Det. Quick: I read these things to you earlier. I just am going to read the questions on the
1587 bottom. Uh, do you have anything else you'd like to add to this statement?
1588 **Brandon Earl:** No.
1589 Det. Quick: Okay. At any time during this statement have you asked the questioning or-or
1590 taping stopped?
1591 **Brandon Earl:** No.
1592 Det. Quick: Is it true that the facts stated on this tape are true and correct to the best of
1593 your knowledge and that your statement's been freely, voluntarily and without
1594 threats or promises of any kind?
1595 **Brandon Earl:** Uh, yes.
1596 Det. Ferreira: That's.. that's a big one. There's a lot of words in there.
1597 **Brandon Earl:** Yeah. [laugh]
1598 Det. Quick: Yeah. Want me to read it again?
1599 Det. Ferreira: I would break it up.
1600 Det. Quick: I'll break it up for you.
1601 **Brandon Earl:** Yeah. [laugh]
1602 Det. Quick: Okay. Is it true that the facts stated on this tape are true and correct to the
1603 best of your knowledge?
1604 **Brandon Earl:** Yes.
1605 Det. Quick: Okay. And uh your statement has been made freely, voluntarily and without
1606 threats or promises of any kind?
1607 **Brandon Earl:** Yeah.
1608 Det. Quick: The stuff that we talked about earlier, we didn't.. weren't threatening you or
1609 promising anything to you.
1610 **Brandon Earl:** Right.
1611 Det. Quick: We told you this was a voluntary thing that you've done.
1612 **Brandon Earl:** Yeah.

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Det. Christopher Ferreira #1443

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Earl, Brandon J. 06/07/78

Det. Tyler Quick

1613 Det. Quick: Okay. Do you certify or declare, under penalty of perjury, under the laws of
1614 the State of Washington, that this statement is true and correct?
1615 **Brandon Earl:** Uh, yeah.
1616 Det. Quick: Okay. Do you know what perjury is?
1617 **Brandon Earl:** Right.
1618 Det. Quick: What is.. what do you understand it to be?
1619 **Brandon Earl:** It's uh like lying in court? Yeah.
1620 Det. Ferreira: Or today. Or today.
1621 **Brandon Earl:** Yeah.
1622 Det. Ferreira: Lying in an official statement basically.
1623 **Brandon Earl:** Oh, okay.
1624 Det. Quick: And you haven't done any of that.
1625 **Brandon Earl:** No.
1626 Det. Quick: Would you please sign right there on this line, subject signature?
1627 **Brandon Earl:** Okay.
1628 Det. Ferreira: Look at that for service my friend.
1629 **Brandon Earl:** Thank you.
1630 Det. Ferreira: [unintelligible] a pen for ya.
1631 **Brandon Earl:** [laugh]
1632 Det. Ferreira: Don't forget that.
1633 **Brandon Earl:** Okay.
1634 Det. Ferreira: You'd be surprised how often that happens.
1635 **Brandon Earl:** [laugh] Okay.
1636 Det. Ferreira: We don't work in this building, so.
1637 **Brandon Earl:** Oh no. Yeah.
1638 Det. Quick: Alright. The time is now 2:19 PM and this concludes this statement.
1639 *Transcribed by C. Hansen, secretary 4163*

Det. Tyler Quick #1456
Det. Christopher Ferreira #1443

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Appendix 3

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

EARL, Brandon J.,

Defendant.

No. 12-1-00034-9

DECLARATION OF
LORRAINE HEATH

Lorraine Heath states the following

1. I am a Supervising Forensic Scientist in the DNA Section of the Washington State Patrol Spokane Crime Lab. As such, I perform body fluid screening and DNA analysis on criminal cases submitted to the lab as well as supervising other scientists in the section. I have 15 years of experience in forensic DNA analysis in laboratories in the United States, Canada, and the United Kingdom. I have a B.S. degree in Forensic Science and Biology from the University of Toronto as well as a M.Phil. (Masters of Philosophy) degree from John Moores University in Liverpool, U.K. My Masters degree was awarded for my research and thesis regarding the use of DNA analysis for forensic soil comparisons. A copy of my Curriculum Vitae is attached.

2. I was the supervisor of Dr. Michael Lin. I personally observed his testimony in this case. I have also reviewed the following documents: (a) Dr. Lin's lab notes relating

DECLARATION OF LORRAINE HEATH-1

to his testing in this case; (b) Dr. Lin's personnel file; (c) the Motion for New Trial on the Basis of Newly Discovered Evidence. This declaration is based on my personal knowledge, my review of the sources listed above, and my training and experience.

3. Dr. Lin was hired by the Washington State Patrol Crime Lab in February, 2008. He was in training status until December, 2009. He began performing independent case work in January, 2010. On March 1, 2013, he was removed from active case work pending completion of a work improvement plan. He resigned from the Crime Lab in June, 2013.

4. This lab uses a wide variety of procedures to prevent and detect contamination. Specifically for detection of contamination, reagent blanks or negative controls are used throughout all processes. This means that a blank sample is run with all casework samples to ensure the detection of any contamination of reagents/chemicals or the consumable plasticware in which we perform our chemical reactions. In addition, the DNA profiles from all scientists are on file. Part of the analysis of the data produced during DNA typing of casework involves the comparison of any unknown evidence profiles to the staff profile database to detect any contamination from them. Cross contamination is prevented via rigorous adherence to proper protocols regarding sample handling and evidence examination. Unknown evidence profiles are also compared to other samples processed in the same batch to detect cross contamination. Reference samples are processed separately from evidence samples to ensure no cross contamination occurs from the reference sample to the evidence. We also use the actual DNA profile, along with the biological screening results, to determine if cross contamination has occurred.

5. All of these procedures were in use throughout the time that Dr. Lin worked at this Lab. In no instance has there been any indication that his work involved either cross contamination between evidence samples, cross contamination between evidence samples and reference samples, or contamination with his own DNA.

6. With regard to the testing in this case, Dr. Lin's lab notes indicated that he properly followed Crime Lab procedures. There are only two possible explanations for the profile matching Brandon Earl: (a) Mr. Earl (or someone with an identical Y-STR profile) was the source of the male DNA on the underwear; or (b) the sample was contaminated before it came into Dr. Lin's possession. Male DNA was detected on the underwear by Forensic Scientist Kristina Hoffman before the sample came into Dr. Lin's possession. If Dr. Lin had contaminated the sample with the reference sample from Mr. Earl, we would expect another male profile to have also been detected to account for the male DNA detected in the sample during the earlier testing. Since no such profile was detected, it is not reasonable to conclude that the profile matching Mr. Earl was the result of contamination during Dr. Lin's processing of the samples.

7. Attachments A, B, and C to the Motion for New Trial relate to counseling that occurred while Dr. Lin was doing supervised casework after having just completed his training program. It is not uncommon for new scientists to have shortcomings while putting their training into practice. The purpose of the additional training with co-signed cases is to catch these errors and rectify them. Dr. Lin was not permitted to complete independent casework until the issues were rectified and therefore, no cases were jeopardized.

8. Attachment D refers to the use of an analyst's own saliva as a positive control to check that the reagent being used, in this case phadebas paper, was working correctly. Although the way Dr. Lin was checking his reagent is clearly not best practice as he risked contaminating evidence with his own DNA, it is something that would be easily detected via downstream quality controls. While the other issue documented in this written counselling is also not best practice, the primary result of his unnecessary screening was a waste of time and money rather than compromising the case or its results.

9. Attachment E documents a minor infraction that presented another opportunity for improvement in efficiency by critiquing his use of more reagent blank controls than needed for a proficiency test. Dr. Lin's failure to use the case approach worksheet was a failure to follow the directions of his supervisor monitoring his work rather than an action that could result in any case he was working being compromised.

10. Attachment H refers to another instance of Dr. Lin's failure to follow his supervisor's instructions. This in no way impacted the quality of his case work.

11. Attachments F and G refer to weaknesses in Dr. Lin's answer to questions during a defense interview and trial in this case. The effect of these answers was to significantly understate the significance of the lab results. Areas of weakness included the following:

a. Dr. Lin was vague about how he avoided contamination, especially with regards to questions on the proximity of samples to each other. Many of the questions that he was asked could have been answered by reference to his lab notes. For example, he stated that he didn't know what order he rehydrated samples. This

information was in his notes. He used a multichannel pipette to load samples but stated he didn't know which samples were loaded together. Again, this information was in his notes.

b. There were a wide range of questions regarding the Y-STR statistical database. Dr. Lin performed poorly on most of them. Specifically, he incorrectly stated that ethnicity was more important in Y-STR testing. He did a poor job of explaining why we don't report a single ethnicity statistic (the database size, and specifically the small number of samples from certain ethnic groups, has a disproportional effect on the reported frequency). He didn't know the criteria for acceptance of samples into the database or that it is checked for duplicates. He incorrectly answered a question regarding the probability being more frequent if a similar profile was added to the database – the addition of a similar profile would not have that effect on the frequency of the profile that he reported. He was unclear on the composition of the Y-STR statistical database. He performed similarly poorly during the same line of questioning during his pre-trial defense interview.

c. There was some questions regarding touch DNA. Dr. Lin failed to qualify most of the statements made by distinguishing between which statements/hypotheticals were more or less likely than others. He was questioned regarding his familiarity with the amount of DNA obtained from touch samples as reported in published literature. He responded that he had no familiarity with this information. He should have explained that he was familiar with the general amount of DNA expected from touch samples, even though he was not familiar with specific numbers from specific articles. He also failed to discuss his own experience with touch DNA samples. Correct testimony would

have been clear that the amount of male DNA present in this sample was not consistent with a touch DNA source.

d. There were a variety of questions regarding the possibility that the Y-STR profile was from urine. He incorrectly claimed that he was never trained in urine analysis. In the interview he was very unclear regarding which body fluids had more DNA than others. He couldn't correctly answer whether sterile urine would have DNA - it doesn't, the only DNA present in urine is from skin cells. He stated that he "assumed" urine had less DNA in it than blood, semen, or saliva - this is not an assumption, but a fact. Again, correct testimony would have been clear that the amount of male DNA present in this sample was not consistent with the source being urine.

12. Dr. Lin was not removed from casework because of any concerns about the quality of his work within the laboratory. He was removed because his understating of the evidence could have jeopardized the result of this case. The Job Performance Improvement Plan was intended only to rectify his problems with courtroom testimony, as there were no concerns regarding his laboratory casework.

Signed at Cheney Washington this 30th day of July, 2014.


LORRAINE HEATH

Appendix 4

FILED

2013 JAN 22 AM 11:38

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL15997113

IN SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON,

Plaintiff,

v.

EARL, BRANDON JOSEPH

Defendant.

No. 12-1-00034-9

STATE'S RESPONSE TO MOTION
TO COMPEL DECLINE NOTICE

The Court should deny the defendant's Motion to Compel a copy of the State's Decline Notice. The defendant's motion cites no legal authority for the motion, and seeks a document that is not subject to criminal discovery rules, and which is the State's work product.

I. The Work Product Doctrine

CrR 4.7(f)(1) defines work product in criminal cases. A document is protected under this rule "to the extent that they contain the opinions, theories or conclusions of the investigating or prosecuting agencies." Koenig v. Pierce County, 151 Wn.App. 221, 230 (2009) (quoting CrR 4.7(f)(1)). The work product doctrine "shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case. United States v. Nobles, 422 U.S. 225, 238 (1975), cited by

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State v. Pawlyk, 115 Wn.2d 457, 476 (1990). In Pappas v. Holloway, 114 Wn.2d 198 (1990), the court reiterated the rationale behind the work product doctrine:

Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and the interests of the clients and the cause of justice would be poorly served.

Pappas, 114 Wn.2d at 209-10 (quoting Hickman v. Taylor, 329 U.S. 495, 511 (1947)).

In this case, a deputy prosecutor reviewed the reports submitted by police, met with the victim and her mother, and declined the case. He prepared a decline memorandum to police which contained his opinion of the case, and his thought processes in arriving at that opinion. That memorandum was sent to the referring police agency. When the State obtained additional evidence in the form of DNA from the the crotch of the victim's underpants which could be linked to the defendant, the deputy prosecutor charged the case. He prepared a lengthy memorandum, which was included in discovery, detailing the statements made by the victim and her mother when they met with the deputy prosecutor prior to the decline. All information which formed the basis for the initial decline of the case was provided to the defense in discovery when the case was charged.

The defendant without basis states "The Decline Notice, including facts like the date it was completed, reasons cited for decline, etc., likely has information that goes to the state of mind of the investigating officers as well as the motivation of the state witnesses and is vital for the defense to have prior to trial next week." This claim is speculation, and incorrect speculation at that. The decline notice contains only the deputy prosecutor's opinion about his review of the discovery (which was provided to

the defense when the case was ultimately charged). That opinion changed when DNA evidence was obtained.

II. Pursuant to CrR 4.7(a), the State is Not Required to Provide a Copy of the Decline Notice to the Defense.

The prosecuting attorney's obligations are specifically outlined in CrR 4.7(a). Under that rule, the State is required to provide, inter alia, names and addresses of witnesses, statements, reports, other evidence to be used at trial, and any records of criminal convictions known to the State for the defendant and witnesses. CrR 4.7(a)(i)-(vi). The State must also disclose electronic surveillance, experts and their reports, information relating to entrapment, and any evidence that tends to negate guilt. CrR 4.7(2)-(3). None of the obligations outlined in this rule mention, reference, or even remotely relate to the Decline Notice at issue here.

III. The Defendant has Failed to Demonstrate that the Decline Notice is Material To the Preparation of his Defense

Although the prosecuting attorney is not obligated to provide discovery beyond the items mentioned in CrR 4.7(a), the defendant may seek disclosure of information that is material to the preparation of his defense. State v. Blackwell, 120 Wn.2d 822 (1993). CrR 4.7(e) gives the court discretion to order disclosure of relevant material and information not otherwise covered by the discovery rules upon a showing of materiality to preparation of the defense. The mere possibility that the evidence might help the defense or might affect the outcome of the trial is not sufficient to establish materiality. Blackwell, at 828. "Evidence is material only if there is a reasonable probability that it would impact the outcome of the trial." State v. Gregory, 158 Wn.2d 759, 791 (2006). The Affidavit of Counsel attached to the defense motion state that the decline notice is

"vital for the defense to have prior to trial next week" but does not explain how or why it is vital. The bare assertion that the document is "vital" is insufficient.

IV. The Work Product Doctrine has not been Waived by Sending the Decline Notice to Law Enforcement.

The defendant states that the defense "often gets copies of Decline Notices through public disclosure requests to the applicable law enforcement agency."¹ While not plainly stated, it appears the defense is claiming that the State has waived work product protection by sending its decline memorandums to agencies. Defense cites no legal authority to support this, and there does not appear to be any Washington law which specifically addresses this issue. However, the relationship between law enforcement and the prosecuting attorney may provide some guidance in determining whether the exemption has been waived.

The prosecuting attorney must rely upon law enforcement agencies to investigate crimes before making a decision to prosecute. RCW 9.94A.411(b)(i). If the investigation is not complete, the prosecuting attorney should specify the necessary additional investigation needed and insist that such investigation be completed prior to making a charging decision. Id. In addition, the prosecuting attorney must rely upon law enforcement to make arrests and enforce the laws of this State. RCW 10.31.100, 10.93.070, 35.23.161, 43.43.030. However, it is the prosecuting attorney and not law enforcement who prosecutes violations of the State's criminal laws. RCW 36.27.020. Thus, each party is dependent upon the other to carry out its duties and must essentially be treated as one.

¹ As indicated in the attached Affidavit, the Sheriff's Office may release decline memorandums pursuant to a public disclosure request, but redact the deputy prosecutor's work product.

The concept of treating law enforcement and the prosecuting attorney as one entity in the context of criminal prosecutions is not novel. In State v. Day, 36 Wn.App. 882 (1987) and State v. Carpenter, 94 Wn.2d 690 (1980), the court imputed knowledge of the police as to the defendant's whereabouts to the prosecutor because they were working on the same case. State v. Hanson, 52 Wn.App. 368, 375 (1988); but see Seattle Times co. v. Serko, 170 Wn.2d 581 (2010) (prosecutor and law enforcement are not indistinguishable agencies in context of a public disclosure request). Therefore, if law enforcement's knowledge is imputed to the prosecuting attorney just because they are working on the same case, then the prosecuting attorney's Decline Notice should not be treated any differently.

Waiver normally occurs when a party discloses documents to another "with the intention that an adversary can see the documents...." Ladenburg v. Linstrom, 110 Wn.App. 133, 145 (2002) citing In Re Doe, 662 F.2d 1073, 1079 (4th Cir. 1981). Defense cannot show any such intention here. The prosecuting attorney's decision to decline a case is to notify law enforcement of the case's disposition, and it is not sent so that opposing counsel has the opportunity to review it.

V. The Decline Notice is Nonconviction Data as Defined by RCW 10.97.030(2) and not Subject to Release Pursuant to RCW 10.97.050.

RCW 10.97.050(1) provides that records relating to convictions may be disseminated without restriction. However, the statute restricts the release of nonconviction data to very specific circumstances. RCW 10.97.050(2)-(6). "Nonconviction data" is defined as "criminal history record information" that has not resulted in a conviction or "other disposition adverse to the subject." RCW

10.97.030(2). "Criminal record history information" includes records collected by criminal justice agencies "consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom...." RCW 10.97.030(1).

In the present case, the Decline Notice is nonconviction data, and the defense does not fall under any of the provisions under the statute for release of such information. The only possible provision that may apply is the provision allowing for release to implement a court rule pursuant to RCW 10.97.050(4). However, as previously discussed, defense is not entitled to release pursuant to CrR 4.7. Therefore, release is not permitted.

VI. Conclusion

The prosecuting attorney is not required under CrR 4.7 to provide the Decline Notice to the defense, and the defense has failed to demonstrate that the document is material to the preparation of the defense in this case. Since the document contains the theories, opinions, and conclusions of the deputy prosecutor who reviewed the case, it is work product, and the State did not waive that exemption by sending it to law enforcement. In addition, the document constitutes nonconviction data, and there is not specific provision pursuant to RCW 10.97.050 that permits the release of the Decline Notice to defense. Therefore, the Court should deny the defendant's motion.

DATED this 16th day of January, 2013.

RESPECTFULLY SUBMITTED,



LISA D. PAUL, WSBA #16064
Deputy Prosecuting Attorney

AFFIDAVIT BY CERTIFICATION:

I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity.

1. I am filing this response to the defendant's Motion to Compel because Andrew Alsdorf, the Deputy Prosecuting Attorney assigned to this case, is in trial this week and unable to prepare a timely response.

2. This case was initially handled by Edirin Okoloko, another deputy prosecuting attorney in our office. He reviewed and declined the case. Subsequent to the decline of this case, DNA results in the form of YSTR from the crotch of the victim's panties, which matched the defendant's YSTR DNA, came back from the laboratory.

3. The case was re-opened by Mr. Okoloko and charged. It is set for trial January 18, 2013. All the police reports which were provided in the initial case, as well as the follow-up DNA results, were provided to the defense in discovery once the case was charged. Mr. Okoloko went on a one-year leave of absence from the office, and Andrew Alsdorf took over the case for trial.

4. Mr. Okoloko had met with the victim and her mother prior to the decline, and when the case was charged, the defense was provided with a three page, single spaced recounting of the statements made by both of these people to Mr. Okoloko.

5. Discovery in this case totals 339 pages. Since the case has been charged, the assigned deputy prosecutor has continued to provide discovery to the defense,

including summaries of statements the victim made during trial preparation in early January, 2013.

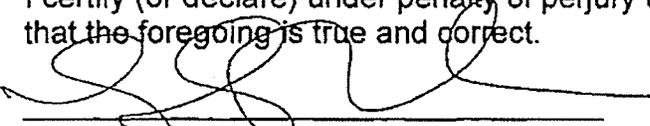
6. A decline memorandum is a document prepared by the deputy prosecutor who reviews a file. It contains the attorney's mental processes and opinion about the case.

7. I have reviewed the decline memorandum authored by Edirin Okoloko, which I also reviewed and approved when it was submitted. The memorandum contains Mr. Okoloko's opinion regarding charging the case, based upon his review of the police reports and witness statements submitted by the police. These reports and statements were included in the discovery sent to the public defenders' office when this case was charged. There are no factual statements from any witness contained in the Decline Memo which were not provided to the defense as discovery.

8. The decline memorandum is work product, and contains the mental impressions, and opinions, of the deputy prosecutor who reviewed the case initially. Our office does not provide decline memorandums to defense counsel as part of discovery because of their work product nature.

9. I spoke with the person at the Sheriff's Office who handles public disclosure requests. She told me that although the agency may release decline memos when they get a public disclosure request, they may also redact any "work product" of the prosecutor which means their thought processes in reaching the decline.

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


Deputy Prosecuting Attorney
DATED this 16th day of January, 2013

Appendix 5

Filed in Open Court

2-5, 20 13

SONYA KRASKI
COUNTY CLERK

By Debbie J. Horum
Deputy Clerk



CL15599529

**SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY**

STATE OF WASHINGTON
Petitioner/Plaintiff(s)

VS.
Brandon J. Earl
Respondent/Defendant(s)

NO. 12-1-00034-9

INQUIRY FROM THE JURY AND
COURT'S RESPONSE

JURY INQUIRY: *Is there a legal reason why
the children over 4 did not give
testimony about the raspberries? Can
we know why there was no testimony from
Nathan about the raspberries?*

Elvis [Signature]
PRESIDING JUROR'S SIGNATURE

DATE/TIME 2/5/13 11:07

DATE AND TIME RECEIVED BY THE COURT: 2/5/13 11:10

COURT'S RESPONSE: ~~*The jury shall continue deliberations
and decide only the evidence submitted in the
court room and the court's instructions on the law.*~~

JUDGE

DATE & TIME RETURNED TO JURY: _____

SAVE - MUST BE FILED

ORIGINAL

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Appendix 6

Filed in Open Court

Jan 28, 2013

SONYA KRASKI
COUNTY CLERK

By *[Signature]*
Deputy Clerk



CL15599514

SUPERIOR COURT OF
WASHINGTON
FOR SNOHOMISH COUNTY

STATE OF WASHINGTON

vs.

BRANDON J. EARL
(DEFENDANT)

CAUSE NO. 12-1-00034-9
JUDGE: THOMAS J. WYNNE
REPORTER: KAREN AVERY
CLERK: S. BEBA
DATE: 1/28/13 AT 9:40 A.M.

THIS MATTER CAME ON FOR: CHILD COMPETENCY/CAPACITY HEARING - HEARSAY HEARING

CONTINUED/CODE:

DEPARTMENT/TIME:

HEARING STRICKEN/CODE:

STATE REPRESENTED BY: ANDREW ALSDORF

DEFENDANT APPEARED: YES IN CUSTODY: NO REPRESENTED BY: SONJA HARDENBROOK

FAILED TO APPEAR: WARRANT AUTHORIZED: ISSUED: BAIL AMOUNT:

REQUESTED COUNSEL: REFERRED TO OFFICE OF PUBLIC DEFENSE:

DEFENDANT ANSWERS TO TRUE NAME AS CHARGED:

SERVED WITH TRUE COPY OF INFORMATION: READ IN OPEN COURT: READING WAIVED:

MOTION FOR RELEASE: RELEASED ON PERSONAL RECOGNIZANCE:

ADVISED OF BASIC CIVIL AND CONSTITUTIONAL RIGHTS:

DEFENDANT ADVISED OF LOSS OF RIGHT TO BEAR FIREARMS:

HEARINGS SET/TRIAL CONTINUANCE:	SENTENCING DATE:
OMNIBUS HEARING (10:30):	SENTENCING DATE:
TRIAL DATE (1:00):	DEPT. NO./JUDGE:
SPEEDY TRIAL DATE:	PRESENTENCE REPORT REQUESTED:
OMNIBUS/PLEA CALENDAR:	RETURN DATE:
PLEA (3:00):	DOSA RISK ASSESSMENT/CHEMICAL DEPENDENCY
3.5 HEARING:	SCREENING REPORT REQUESTED:
ARRAIGNMENT ON AMENDED INFO:	RETURN DATE:
MOTION HEARING:	40 DAY RULE WAIVED:
VIOLATION HEARING:	

OTHER: COLLOQUY OF COURT AND COUNSEL.

9:43 M.F. CALLED BY THE STATE, SWORN AND TESTIFIED.
9:58 WITNESS IS ABSENT WHILE THE STATE SETS UP THE "ELMO".
10:00 COURT IN RECESS.

10:15 COURT RESUMES AS HERETOFORE, DEFENDANT PRESENT, OUT OF CUSTODY, AND ALL PARTIES PRESENT.

EXHIBIT NO. 1 OFFERED BY STATE: ADMITTED 1/28/2013 W/D 1/29/13
EXHIBIT NO. 2 OFFERED BY STATE: ADMITTED 1/28/2013 W/D 1/29/13

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STATE OF WASHINGTON VS. BRANDON J. EARL
12-1-00034-9

EXHIBIT NO. 3 OFFERED BY STATE: ADMITTED 1/28/2013 W/D 1/29/13
EXHIBIT NO. 4 OFFERED BY STATE: ADMITTED 1/28/2013 W/D 1/29/13
EXHIBIT NO. 5 OFFERED BY STATE: ADMITTED 1/28/2013 W/D 1/29/13
EXHIBIT NO. 6 OFFERED BY STATE: ADMITTED 1/28/2013 W/D 1/29/13

CONTINUATION OF TESTIMONY OF M.F. ON DIRECT EXAMINATION BY THE STATE.

10:25 CROSS EXAMINATION OF M.F. BY THE DEFENDANT.
10:32 REDIRECT EXAMINATION OF M.F. BY THE STATE.
10:37 DEFENDANT MAKES CLOSING ARGUMENT.
10:38 STATE MAKES CLOSING ARGUMENT.
10:42 DEFENDANT MAKES FINAL ARGUMENT.

10:44 THE COURT OBSERVES M.F. IS A YOUNG FIVE YEAR OLD. THE COURT FINDS M.F. DOES NOT HAVE THE MEMORY OR THE CAPACITY TO REMEMBER AND TESTIFY IN THIS PROCEEDING.

10:47 ARGUMENT OF COUNSEL REGARDING THE NINE STATE V. RYAN FACTORS, THE FIVE STATE V. ALLEN FACTORS AND STATE V. CRAWFORD.

11:07 IN RESPONSE TO ARGUMENT OF THE PARTIES, THE COURT BELIEVES THE MOTHER AND GRANDMOTHER ARE TRYING TO FIND OUT WHAT HAPPENED. THE FIRST 3 STATEMENTS MADE ON THE 24TH ARE NON-TESTIMONIAL.

11:09 FURTHER ARGUMENT OF COUNSEL REGARDING TESTIMONIAL STATEMENTS.

11:11 STATE'S EXHIBIT #5 IS A DVD AND IS PLAYED FOR THE COURT.

11:20 THE COURT WILL ALLOW THE PARTIES TO PROCEED WITH ARGUMENT REGARDING THE NINE RYAN FACTORS.

11:24 **SHERRY MATHIS**, CALLED BY THE STATE, SWORN AND TESTIFIED.
11:42 CROSS EXAMINATION OF SHERRY MATHIS BY THE DEFENDANT.

12:00 COURT IN RECESS.

1:23 COURT RESUMES AS HERETOFORE, DEFENDANT PRESENT, OUT OF CUSTODY, AND ALL PARTIES PRESENT.
CONTINUATION OF TESTIMONY OF SHERRY MATHIS ON CROSS EXAMINATION BY THE DEFENDANT.

STATE'S EXHIBIT #6 IS A DVD AND IS PLAYED FOR THE COURT.

1:35 REDIRECT EXAMINATION OF SHERRY MATHIS BY THE STATE.
1:38 RECROSS EXAMINATION OF SHERRY MATHIS BY THE DEFENDANT.

STATE OF WASHINGTON VS. BRANDON J. EARL
12-1-00034-9

1:39 COURT IN RECESS.

1:44 COURT RESUMES AS HERETOFORE, DEFENDANT PRESENT, OUT OF CUSTODY, AND ALL PARTIES PRESENT.

STATE'S MOTION FOR FULL DISCOVERY FROM DEFENSE, SPECIFICALLY THE TRANSCRIPTS OF THE INTERVIEWS: IF ANY OF THE TRANSCRIPTS ARE USED FOR IMPEACHMENT PURPOSES, THEN IT NEEDS TO BE SHARED WITH THE STATE. THE DEFENSE IS NOT INTENDING TO USE IT FOR IMPEACHMENT PURPOSES.

1:51 **APRIL MATHIS**, CALLED BY THE STATE, SWORN AND TESTIFIED.
2:27 CROSS EXAMINATION OF APRIL MATHIS BY THE DEFENDANT.
2:50 REDIRECT EXAMINATION OF APRIL MATHIS BY THE STATE.
2:56 RECROSS EXAMINATION OF APRIL MATHIS BY THE DEFENDANT.
2:58 FURTHER REDIRECT EXAMINATION OF APRIL MATHIS BY THE STATE.
COURT IN RECESS.

3:15 COURT RESUMES AS HERETOFORE, DEFENDANT PRESENT, OUT OF CUSTODY, AND ALL PARTIES PRESENT.
COLLOQUY OF COURT AND COUNSEL.

3:18 COURT IN RECESS.

3:26 COURT RESUMES AS HERETOFORE, DEFENDANT PRESENT, OUT OF CUSTODY, AND ALL PARTIES PRESENT.
STATE OPENS ARGUMENT AS TO STATE V. CRAWFORD.

3:32 DEFENDANT MAKES ARGUMENT.
3:33 THE COURT'S DECISION RE STATE V. CRAWFORD.
THE RECORDING WAS MADE AFTER M.F. MADE A SPONTANEOUS STATEMENT.
THE COURT INDICATES THE SCHAEFER STANDARD APPLIES AND THE STATEMENT IS NON TESTIMONIAL.

3:37 STATE OPENS ARGUMENT AS TO THE 9 FACTORS REGARDING STATE V. RYAN.
3:49 DEFENDANT MAKES ARGUMENT.
4:04 STATE MAKES FINAL ARGUMENT.
4:08 DEFENDANT MAKES FURTHER ARGUMENT.
4:11 THE COURT NEEDS TO LOOK AT ALL THE RYAN FACTORS AND THE STATEMENTS MADE TO THE MOTHER ON THE 24TH BEFORE THE MOTHER WENT INTO THE BATHROOM WITH THE CHILD. AT THE TIME THE CHILD WAS 3.5 YEARS OF AGE, WITHOUT BEHAVIORAL ISSUES. THE COURT INDICATES THERE IS NO REASON FOR THE CHILD TO LIE. THE STATEMENTS MADE BY THE CHILD WERE VERY CLOSE IN TIME, WITHIN MINUTES OF EACH OTHER.
THE COURT FINDS BOTH STATEMENTS MEET THE REQUIREMENTS OF THE HEARSAY STATUTE. AS TO THE RYAN FACTORS, THE STATEMENTS WERE MADE RELATIVELY SPONTANEOUSLY; THERE WERE NO PRIOR LEADING QUESTIONS TO

STATE OF WASHINGTON VS. BRANDON J. EARL
12-1-00034-9

THESE STATEMENTS; THE WITNESSES AND THE DECLARANT HAD A CLOSE RELATIONSHIP; THE MEMORY ISSUE IS WHAT CAUSED M.F. TO BE NOT COMPETENT; AND THERE IS NO REASON TO BELIEVE THE DECLARANT MISREPRESENTED THE DEFENDANT.

THE STATE HAS INDICATED THERE IS OTHER EVIDENCE. THE COURT FINDS THE FIRST TWO STATEMENTS SHOULD BE ADMITTED UNDER THE CHILD HEARSAY STATUTE. THE STATEMENTS MADE AT HOME WERE CONSISTENT WITH THE EVENTS. THE ELAPSE OF TIME DOES NOT MAKE THE STATEMENTS LESS RELIABLE AND THE STATEMENTS ARE STILL FAIRLY CLOSE IN TIME.

AS TO THE VIDEO TAPE: THE CHILD HAS DIFFICULTY WITH MEMORY, THE STATEMENTS WERE RECORDED AND THE STATEMENTS WERE MADE IN RESPONSE TO THE MOTHER'S LEADING QUESTIONS. THE COURT DOES NOT FIND THE VIDEO IS RELIABLE AND IT WILL NOT BE ADMISSIBLE AT TIME OF TRIAL.

ARGUMENT OF COUNSEL REGARDING THE STATEMENT BY M.F. INDICATING THE CHILD SAID SHE DIDN'T WANT THIS TO HAPPEN TO BRODIE. THE STATE WILL WITHDRAW THE STATEMENT AND THE COURT WILL NOT MAKE A RULING.

4:23

COURT ADJOURNED.

January 28 20 13

Sonya Kraski
County Clerk



CL15599546

By: S. Beba
Deputy Clerk

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

State of Washington
(PLAINTIFF)

VS.

Brandon Joseph Earl
(DEFENDANT)

CAUSE NO.: 12-1-00034-9
JUDGE: Thomas J. Wynne
DATE OF TRIAL: January 28, 2013
REPORTER: Karen Avery
CLERK: S. Beba
Heidi Percy
Debbie J. Horner
LeAnne White

ATTORNEY FOR PLAINTIFF:
Andrew Alsdorf

ATTORNEY FOR DEFENDANT:
Sonja Hardenbrook

Days: FINAL DISPOSITION - VERDICT

Date trial ended: 2-5-13

Defendant is Guilty of the crime of Rape of a Child in the First Degree.

Sentencing is set for Wednesday, March 27, 2013, at 1:00 p.m. in Department 9 before Judge Thomas J. Wynne (JC).

9:38 This matter came on regularly for 12-person jury trial. State of Washington represented through Assistant Prosecuting Attorney Andrew Alsdorf. Defendant present, out of custody, represented by counsel Sonja Hardenbrook. State's managing witness, Detective Tyler Quick, seated at counsel table. Prospective Jurors not present. Colloquy of Court and counsel.

Defendant's Supplemental Motions in Limine; State's Memorandum on Child Hearsay and Child Competency; Plaintiff's Proposed Jury Instructions; and State's Trial Memorandum, filed in open court.

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State of Washington vs. Brandon J. Earl

Cause No. 12-1-00034-9

Child Competency/Capacity Hearing - Child Hearsay Hearing: SEE
COURT FILE FOR RECORD OF MINUTES.

Exhibit no. 1 offered by State: Admitted 1/30/2013
Exhibit no. 2 offered by State: Admitted 1/30/2013
Exhibit no. 3 offered by State: Admitted 1/30/2013
Exhibit no. 4 offered by State: Admitted 1/30/2013
Exhibit no. 5 offered by State: Admitted 1/30/2013
Exhibit no. 6 offered by State: Admitted 1/31/2013
Exhibit no. 7 offered by State: Admitted 1/30/2013
Exhibit no. 8 offered by State: Admitted 1/31/2013
Exhibit no. 9 offered by State: Admitted 1/30/2013
Exhibit no. 10 offered by State: Admitted 1/30/2013
Exhibit no. 11 offered by State: Admitted 1/31/2013
Exhibit no. 12 offered by State: Admitted 1/31/2013
Exhibit no. 13 offered by State: Admitted 1/31/2013
Exhibit no. 14 offered by State: Not offered
Exhibit no. 15 offered by State: Not offered
Exhibit no. 16 offered by State: Admitted 1/31/2013
Exhibit no. 17 offered by State: Admitted 1/31/2013
Exhibit no. 18 offered by State: Not offered
Exhibit no. 19 offered by State: Admitted 1/30/2013
Exhibit no. 20 offered by State: Admitted 1/30/2013
Exhibit no. 21 offered by State: Admitted 1/30/2013
Exhibit no. 22 offered by State: Admitted 1/30/2013
Exhibit no. 23 offered by State: Admitted 1/30/2013
Exhibit no. 24 offered by State: Admitted 2/1/2013
Exhibit no. 25 offered by Defendant: Not offered
Exhibit no. 26 offered by State: Not offered
Exhibit no. 27 offered by State: Not offered
Exhibit no. 28 offered by Defendant: Not offered
Exhibit no. 29 offered by Defendant: Not offered
Exhibit no. 30 offered by Defendant: Not offered
Exhibit no. 31 offered by Defendant: Not offered
Exhibit no. 32 offered by Defendant: Not offered
Exhibit no. 33 offered by Defendant: Not offered
Exhibit no. 34 offered by Defendant: Not offered
Exhibit no. 35 offered by Defendant: Not offered
Exhibit no. 36 offered by Defendant: Not offered
Exhibit no. 37 offered by Defendant: Not offered

12:00 Court in recess.

State of Washington vs. Brandon J. Earl
Cause No. 12-1-00034-9

1:23 Court resumes as heretofore, defendant present, out of custody, and all parties present.
Prospective jurors not present.
Colloquy of Court and counsel regarding the prospective jurors.

The Court will release the prospective jurors until tomorrow morning.
Child Hearsay Hearing resumes.

4:25 State's motion in limine to prohibit any mention that M.F.'s father was in a Federal immigration facility: Granted.

State's motion in limine to exclude testimony that at the time the Father was being detained, the Mother was on State's assistance: Granted.

State's motion to prohibit the Defense expert witness Don Riley, regarding the twelve possible contaminants: Reserved.

4:35 Clerk: Heidi Percy

State's motion to exclude evidence that April Mathis was sexually abused by her uncle: Granted in part. The Court finds there is probative value to testimony relating to April Mathis being sexually abused as a child. However there is no probative value that Donald Mathis was perpetrator.

State's motion to exclude evidence that April Mathis was arrested for a DUI a few days before the incident: Granted unless the door has been opened.

State's motion to exclude testimony that April Mathis had a professional relationship with a Deputy Prosecuting Attorney at the Snohomish County Prosecutor's Office: Granted. If the door is opened, the matter can be brought back up outside the presence of the jury.

State's motion to exclude evidence that the Snohomish County Prosecutor's Office initially declined to file charges in this case: Granted, unless defense counsel can show the probative value outweighs the prejudicial value.

State of Washington vs. Brandon J. Earl
Cause No. 12-1-00034-9

Defendant's motion for access to the decline memorandum: Not ruled on.

Colloquy of Court and counsel regarding special questions being asked of the jurors. The Court will not have the jurors fill out a supplemental juror questionnaire, but will ask questions in open court on the record.

4:56 Court in recess until Tuesday, January 29, 2013 @ 9:00 a.m.

TUESDAY, January 29, 2013

Clerk: S. Beba

Reporter: Karen Avery

Court opened at 9:15 a.m., Thomas J. Wynne, Judge.

The following proceedings were had to wit:

This matter continued from previous day.

State of Washington represented through Assistant Prosecuting Attorney Andrew Alsdorf.

Defendant present, out of custody, represented by counsel Sonja Hardenbrook.

State's managing witness, Detective Tyler Quick, seated at counsel table.

Prospective Jurors not present.

Colloquy of Court and counsel.

Defendant's Supplemental Motions in Limine; and Memorandum RE: Motion to Compel Transcripts, filed in open court.

Defendant reopens the motion regarding the prior molestation of April Mathis by her uncle, Donald Mathis, and April's behavior at the event with him present: The Court will stand by its previous ruling.

Defendant's motion in limine to prohibit witness April Mathis from referring to the Defendant as a "sicko": Granted. The State will instruct the witness.

Defendant's motion for access to the decline memorandum: The Court will do an "In Camera Review" of the Decline Notice. The Court finds the one page document is a work product of the prosecutor's office.

State of Washington vs. Brandon J. Earl
Cause No. 12-1-00034-9

Defense Motions in Limine numbers one and two have already been dealt with.

Defense motion in limine to disallow any admission of defendant statements until corpus delicti has been satisfied by other evidence: Reserved.

Defense motion in limine to prohibit the detectives from summarizing the contents of the recorded interview: Should the Defense have a specific objection to a question, the Court will deal with it at that time.

Defense motion in limine #5: The State has no objection to the exclusion of parts A., B., or C. The Court makes no ruling as the parties have handled it.

Defense motion in limine to prohibit the forensic scientists from testifying to conclusions drawn as to their work: The Court will have to hear the testimony and will make a ruling as objections are made.

Defense motion in limine to exclude witnesses: Granted, previously defined.

Defense motion in limine to prohibit testimony regarding the Defendant maintaining silence: The State witnesses may not comment.

Defense motion in limine for the State to inform witnesses of rulings of the Court: Agreed.

In response to the Defendant's Supplemental Motions in Limine, specifically the proposed Juror Questionnaire, the Court will provide its own questions of prospective jurors.

Defendant's motion in limine to exclude testimony regarding all prior crimes, bad acts, and any allegations of misconduct: As to testimony regarding Mr. Earl being allegedly "kicked out" of his house - The Court grants the motion in part and denies in part. The Court finds the timing of the separation is relevant and that he is no longer married to the same woman.

State of Washington vs. Brandon J. Earl
Cause No. 12-1-00034-9

Defendant's motion in limine to exclude testimony that Brandon Earl began dating Stefanie Earl when he was 19 and she was 15 years old: Agreed.

Defendant's motion in limine to exclude testimony that Mr. Earl was depressed and suicidal: Granted.

Defendant's motion in limine to exclude testimony that Mr. Earl was "uncooperative" after an attempt for a second interview: Granted/Agreed.

Defendant's motion in limine to specified redactions from Mr. Earl's interview: Granted/Agreed.

Defendant's motion in limine to exclude testimony of M.F.'s acting out in the lingerie store: Granted.

Argument of counsel regarding the reading of the Amended Information and the First Amended Information: The Court will read the information in its entirety and will provide an instruction as usual.

Defense motion to have two alternate jurors: Granted.

10:00 Colloquy of Court and counsel.

10:07 Court in recess.

10:25 Court resumes as heretofore, defendant present, out of custody, And all parties present.
Prospective jurors present.

The following persons were selected to qualify as jurors on this cause and seated in the jury box:

- | | |
|----------------------------|-----------------------------|
| 1. Lynn A. Chupka (Cramer) | 7. Tracy J. Benham |
| 2. Ryan Philip Igama | 8. Margaret L. Snip |
| 3. Catherine N. Broulette | 9. Troy Ben Little |
| 4. Christy Lee Dunn | 10. Kenneth A. Snyder |
| 5. Matt H. Gubbels | 11. Elvis Sire |
| 6. Patrick David Campbell | 12. Jeffrey Eugene Pedersen |

And seated sequentially on the courtroom seats:

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13. Ryan T. Jacobson (not present)
14. John W. Nethercot (in box)
15. Susan Dennis Harness (in box)
16. Christina M. Price
17. Christine Louise Lyon
18. Barbara J. Hansen
19. Casi L. Poor
20. Katie Mae Parsons
21. Dorothy B. Workman
22. Nora Dong Aso
23. Pamela K. Willoughby
24. Shubang Gan
25. Eric Frank Kujath
26. Kyle Lanier Gray
27. Denis Keith Brannan
28. Anne E. Olsen
29. Mary Kaye Eckmann
30. Danny Glenn Adams
31. Matthew G. Skews
32. Robinette Lou Backstrom
33. John R. Rowley
34. Steven Sukul
35. Christian P. Davis
36. Andrea Pulido
37. Arpy S. Ohanian (with court reporter Diane Mills)
38. Geraldine Palas Apuya
39. Phyllis G. Prather
40. Julia Ann Wyrochuowski
41. Steven M. Clough
42. Roger Dale Clark
43. Edward Manzano Bautista
44. Nina Angeline Montenegro
45. Douglas Eugene Bates

10:27 All prospective jurors sworn: Oath of Voir Dire.
The Court directs general questions to all prospective jurors.

Juror #27, Denis Keith Brannan, excused for cause.

10:52 The Court excuses all prospective jurors for lunch except
prospective jurors numbered 7, 16, 17, 19, 20, 23, 29, 31, 34, 36, and
41. Those prospective jurors not excused have proceeded to the

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Jury room and will be called individually for questions by the Court and Counsel.

- 10:55 Prospective juror #7, Tracy J. Benham, present and responding to questions by the Court and Defense.
- 10:58 Prospective juror #7, not present.
Prospective juror #16, Christina M. Price, present and responding to questions by the Court, the State, and Defense.
Prospective juror #16, not present.
- 11:02 Prospective juror #17, Christine Louise Lyon, present and responding to questions by the Court, the State, and Defense.
- 11:09 Argument of counsel.
- 11:10 Prospective juror #17, Christine Louise Lyon excused for cause and not present.
- 11:11 Prospective juror #19, Casi L. Poor, present and responding to questions by the Court and the State.
- 11:12 Prospective juror #19, Casi L. Poor excused for cause and not present.
- 11:13 Prospective juror #20, Katie Mae Parsons, present and responding to questions by the Court, the State, and Defense.
- 11:21 Prospective juror #20, Katie Mae Parsons excused for cause and not present.
Prospective juror #23, Pamela K. Willoughby, present and responding to questions by the Court, the State, and Defense.
- 11:27 Prospective juror #23, Pamela K. Willoughby, excused for cause and not present.
- 11:28 Prospective juror #29, Mary Kaye Eckmann, present and responding to questions by the Court.
- 11:29 Prospective juror #29, Mary Kaye Eckmann, excused for cause and not present.
- 11:30 Prospective juror #31, Matthew G. Skews, present and responding to questions by the Court, the State, and Defense.
- 11:35 Prospective juror #31, Matthew G. Skews not present.
- 11:36 Prospective juror #34, Steven Sukul, present and responding to questions by the Court and the State.
- 11:44 Prospective juror #34, Steven Sukul, excused for cause and not present.
- 11:45 Prospective juror #36, Andrea Pulido, present and responding to questions by the Court, the State, and Defense.
- 11:53 Prospective juror #36, Andrea Pulido, excused for cause and not present.
- 11:54 Prospective juror #41, Steven Clough, present and responding to

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questions by the Court, the State, and Defense.

11:04 Prospective juror #41, Steven Clough, not present.
Court in recess.

2:10 Court resumes as heretofore, defendant present, out of custody,
and all parties present.
Prospective Jurors not present.
State indicates witnesses Sheri Morrow and Stephanie Waugh are
present and would like the Court to instruct the witnesses to
appear.
Defense indicates an issue needs to be brought before the Court.
The Court asks the witnesses to leave the Courtroom.
The Defense requests the State be admonished.
Witnesses are present.

2:16 The Court directs the witnesses to contact the Deputy
Prosecutor's Office as to when they are to appear.

2:19 Court in recess.

2:28 Court resumes as heretofore, defendant present, out of custody
and all parties present.
Prospective jurors present.
The Court directs general questions to all prospective jurors.
Prospective juror #25, Eric Frank Kujath, excused for hardship.
The Prospective jurors respond individually to the Court's
questions.

2:47 State initial voir dire of entire prospective jury panel.

3:08 Defendant initial voir dire of entire prospective jury panel.

3:19 State's individual voir dire of prospective Juror #4.

3:20 Defendant resumes initial voir dire of entire prospective jury
panel.

3:40 State's concluding voir dire of entire prospective jury panel.

3:55 Defendant's concluding voir dire of entire prospective jury
panel.

4:12 State's first peremptory challenge: Matt Gubbels.
Christina Price picked to qualify as juror #5.
Defendant's first peremptory challenge: Christy Dunn.
Barbara Hansen picked to qualify as juror #4.

State's second peremptory challenge: Ryan Igama.
Dorothy Workman picked to qualify as juror #2.

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Defendant's second peremptory challenge: Catherine Broulette.
Nora Aso picked to qualify as juror #3.

State's third peremptory challenge: Susan Harness.
Shubang Gan picked to qualify as juror #14.
Defendant's third peremptory challenge: Christina Price.
Kyle Gray picked to qualify as juror #5.

State's fourth peremptory challenge: Nora Aso.
Anne Olsen picked to qualify as juror #3.
Defendant's fourth peremptory challenge: Shubang Gan.
Danny Adams picked to qualify as juror #14.

State's fifth peremptory challenge: Danny Adams.
Matthew Skews picked to qualify as juror #14.
Defendant's fifth peremptory challenge: Margaret Snip.
Robinette Backstrom picked to qualify as juror #8.

State's sixth peremptory challenge: Robinette Backstrom.
John Rowley picked to qualify as juror #8.
Defendant's sixth peremptory challenge: Accepts panel.

State's seventh peremptory challenge: John Rowley.
Christian Davis picked to qualify as juror #8.
Defendant's limited peremptory challenge: Christian Davis.
Arpy Ohanian picked to qualify as juror #8.

State's eighth peremptory challenge: Arpy Ohanian.
Geraldine Apuya picked to qualify as juror #8.
Defendant's limited peremptory challenge: Geraldine Apuya.
Julia Wyruchowski picked to qualify as juror #8.

State's ninth peremptory challenge: Jeffrey Pedersen.
Phyllis Prather picked to qualify as juror #12.

4:24 The following 14 persons were sworn to try the cause,
alternates to be designated prior to deliberations:

- | | |
|-----------------------------|--------------------------|
| 1. Lynn A. Chiupka (Cramer) | 7. Tracy J. Benham |
| 2. Dorothy B. Workman | 8. Julia Ann Wyruchowski |
| 3. Anne E. Olsen | 9. Troy Ben Little |
| 4. Barbara J. Hansen | 10. Kenneth A. Snyder |
| 5. Kyle Lanier Gray | 11. Elvis Sire |

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- | | |
|---------------------------|------------------------|
| 6. Patrick David Campbell | 12. Phyllis G. Prather |
| | 13. John Nethercot |
| | 14. Matthew Skews |

The remaining jurors excused.

- 4:28 The Court directs general instructions to the Jury.
4:33 Court in recess until 9 a.m. on January 30, 2013.

WEDNESDAY, JANUARY 30, 2013 Clerk: Debbie J. Horner
Reporter: Karen Avery

Court opened at 9:37 a.m., Thomas J. Wynne, Judge.

The following proceedings were had to wit:

This matter continued from the previous day.

State of Washington represented through Assistant Prosecuting Attorney Andrew Alsdorf.

Defendant present, out of custody, represented by counsel Sonja Hardenbrook.

State's managing witness, Detective Tyler Quick, seated at counsel table.

Jury not present.

Colloquy of Court and counsel.

Plaintiff's motion in limine to exclude testimony that M.F. is incompetent to testify: Granted/stipulated.

9:45 Jury present.

State makes opening statement.

10:11 Defendant makes opening statement.

10:26 Court in recess.

10:46 Court resumes as heretofore, defendant present, out of custody, and all parties present.

Jury present.

APRIL MATHIS, called by the State, sworn and testified.

11:27 Jury not present.

Argument of counsel.

11:31 Jury present.

Continuation of testimony of April Mathis on direct examination by the State.

11:46 Jury not present.

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- Colloquy of Court and counsel.
- 11:49 Jury present.
Continuation of testimony of April Mathis on direct examination by the State.
- 12:01 Court in recess until 1:30 p.m.
- 1:35 Court resumes as heretofore, defendant present, out of custody, and all parties present.
Jury not present.
Colloquy of Court and counsel.
- 1:37 Juror #14 present.
The Court inquires of Juror #14.
- 1:39 Jury present.
Continuation of testimony of April Mathis on direct examination by the State.
- 1:46 Cross examination of April Mathis by Defendant.

Exhibit no. 38 offered by Defendant: Not offered

- 2:18 Jury not present.
Colloquy of Court and counsel.
- 2:21 Jury present.
Continuation of testimony of April Mathis on cross examination by Defendant.
- 2:35 Redirect examination of April Mathis by the State.
- 2:39 Defendant waives recross examination of April Mathis but reserves the right to recall the witness.
- 2:40 **SHERRY MATHIS**, called by the State, sworn and testified.
- 3:01 Court in recess.
- 3:18 Court resumes as heretofore, defendant present, out of custody, and all parties present.
Jury not present.
Colloquy of Court and counsel.
- 3:19 Jury present.
Continuation of testimony of Sherry Mathis on direct examination by the State.
- 3:30 Cross examination of Sherry Mathis by Defendant.
- 3:50 Redirect examination of Sherry Mathis by the State.
- 3:51 **DALE FUKURA**, called by the State, sworn and testified.

Exhibit no. 39 offered by the State: Not offered

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4:26 Court in recess until Thursday, January 31, 2013, at 9:00 a.m.

THURSDAY, JANUARY 31, 2013

Clerk: Debbie J. Horner

Reporter: Karen Avery

Court opened at 9:06 a.m., Thomas J. Wynne, Judge.

The following proceedings were had to wit:

This matter continued from the previous day.

State of Washington represented through Assistant Prosecuting Attorney Andrew Alsdorf.

Defendant present, out of custody, represented by counsel Sonja Hardenbrook.

State's managing witness, Detective Tyler Quick, seated at counsel table.

Jury not present.

Colloquy of Court and counsel.

Exhibit no. 40 offered by the State: **Admitted 1/31/2013**

Exhibit no. 41 offered by the State: Not offered

Exhibit no. 42 offered by the State: Not offered

Exhibit no. 43 offered by the State: Not offered

Exhibit no. 44 offered by the State: Not offered

Exhibit no. 45 offered by the State: Not offered

Exhibit no. 46 offered by the State: **Admitted 1/31/2013**

Exhibit no. 47 offered by the State: Not offered

Exhibit no. 48 offered by the State: Not offered

Exhibit no. 49 offered by the State: Not offered

Exhibit no. 50 offered by the State: Not offered

9:09 Jury present.

The Court directs general instructions to the Jury.

Cross examination of Dale Fukura by Defendant.

9:18 Jury not present.

Argument of counsel.

9:20 Jury present.

Continuation of testimony of Dale Fukura on cross examination by Defendant.

9:22 Redirect examination of Dale Fukura by the State.

9:23 Recross examination of Dale Fukura by Defendant.

9:24 **MICHELLE DESOTO**, called by the State, sworn and testified.

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9:30 Cross examination of Michelle Desoto by Defendant.
9:33 **DEPUTY THOMAS KOZIOL**, called by the State, sworn and testified.

Exhibit no. 51 offered by the State: Not offered

9:40 Jury not present.
Argument of counsel.
9:45 Jury present.
Continuation of testimony of Deputy Thomas Koziol on direct examination by the State.
9:48 Cross examination of Deputy Thomas Koziol by Defendant.
STEFANIE WAUGH, called by the State, sworn and testified.

Exhibit no. 52 offered by the State: Not offered

9:58 Jury not present.
Argument of counsel.
10:02 Jury present.
Continuation of testimony of Stefanie Waugh on direct examination by the State.
10:21 Cross examination of Stefanie Waugh by Defendant.
10:24 Jury not present.
Argument of counsel.
10:27 Jury present.
Continuation of testimony of Stefanie Waugh on cross examination by Defendant.
10:36 Court in recess.
10:55 Court resumes as heretofore, defendant present, out of custody, and all parties present.
Jury present.

Exhibit no. 53 offered by the State: Not offered

Continuation of testimony of Stefanie Waugh on cross examination by Defendant.
11:07 Redirect examination of Stefanie Waugh by the State.
11:11 Recross examination of Stefanie Waugh by Defendant.
11:12 Further redirect examination of Stefanie Waugh by the State.
Further recross examination of Stefanie Waugh by Defendant.
11:14 **SHERI MORROW**, called by the State, sworn and testified.
11:33 Cross examination of Sheri Morrow by Defendant.

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FRIDAY, February 1, 2013

Clerk: S. Beba

Reporter: Karen Avery

Court opened at 9:03 a.m., Thomas J. Wynne, Judge.

The following proceedings were had to wit:

This matter continued from previous day.

State of Washington represented through Assistant Prosecuting Attorney Andrew Alsdorf.

Defendant present, out of custody, represented by counsel Sonja Hardenbrook.

State's managing witness, Detective Tyler Quick, seated at counsel table.

Jury not present.

Defense motion for review of the State's e-mail communication with forensic scientist, Michael Lin or in the alternative the Court perform an in-camera review of that e-mail: After an in-camera review of the e-mail, the Court will not disclose the content to the Defense.

In Camera Review Exhibit B filed.

9:10 Jury Present.

Detective Tyler Quick resumes testimony on cross examination by the Defendant.

9:26 Redirect examination of Detective Tyler Quick by the State.

9:34 Recross examination of Detective Tyler Quick by the Defendant.

9:35 Redirect examination of Detective Tyler Quick by the State.

9:37 **DETECTIVE CHRISTOPHER FERREIRA**, called by the State, sworn and testified.

Exhibit no. 59 offered by State: Not offered

Exhibit no. 60 offered by State: Not offered

9:58 Jury not present.

Argument of counsel.

10:02 Jury present.

Continuation of testimony of Detective Christopher Ferreira on direct examination by the State.

10:05 Cross examination of Detective Christopher Ferreira by the Defendant.

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- 10:14 Redirect examination of Detective Christopher Ferreira by the State.
- 10:15 Recross examination of Detective Christopher Ferreira by the Defendant.
Court in recess.
- 10:33 Court resumes as heretofore, defendant present, out of custody, and all parties present.
Jury present.
CHRISTINA HOFFMAN, called by the State, sworn and testified.
- 11:48 Jury not present.
Argument of counsel.
State makes an offer of proof with Exhibit 54.
The Court overrules the Defendant's objection.
- 11:52 Jury present.
- 11:54 Continuation of testimony of Christina Hoffman on direct examination by the State.

Exhibit no. 61 offered by State: Not offered
- 12:00 Court in recess.
- 1:38 Court resumes as heretofore, defendant present, out of custody, and all parties present.
Jury not present.

Defense objects to the proposed alternative charge of Child Molestation in the First Degree charge to the Rape of a Child in the First Degree: Reserved.
- 1:45 Jury present.
Continuation of testimony of Christina Hoffman on direct examination by the State.
- 1:55 Jury not present.

Defense objects to testimony regarding the fees of the experts witnesses: Sustained.
- 1:58 Jury present.
Continuation of testimony of Christina Hoffman on direct examination by the State.

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- 2:01 Cross examination of Christina Hoffman by the Defendant.
Exhibit no. 62 offered by Defendant: **Admitted 2/1/2013**
Exhibit no. 63 offered by Defendant: **Rejected 2/1/2013**
- 2:37 Jury not present.
State's objection to Exhibit 63: Sustained.
Exhibit no. 64 offered by Defendant: Not offered
- 2:45 Court in recess.
- 3:03 Court resumes as heretofore, defendant present, out of custody,
and all parties present.
Continuation of testimony of Christina Hoffman on cross
examination by the Defendant.
- 3:05 Voir dire of witness Christina Hoffman by the State regarding
Exhibit 63.
- 3:07 Voir dire of witness Christina Hoffman by the Defendant
regarding Exhibit 63.
- 3:09 Voir dire of witness Christina Hoffman by the State regarding
Exhibit 63.
- 3:10 The Court finds exhibit 63 more confusing than helpful and will
stay with the original ruling.
- 3:11 Jury present.
Continuation of testimony of Christina Hoffman on cross
examination by the Defendant.
- 3:25 Redirect examination of Christina Hoffman by the State.
- 3:28 Recross examination of Christina Hoffman by the Defendant.
- 3:32 Jury not present.
State's foundation objection to the manufacturer's validation
study: The Court believes testimony has been finished regarding
the foundation study.
- 3:37 Jury present.
- 3:38 Continuation of testimony of Christina Hoffman on recross
examination by the Defendant.
Further redirect examination of Christina Hoffman by the State.
- 3:39 **MICHAEL LIN**, called by the State, sworn and testified.

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Exhibit no. 65 offered by State: Not offered

4:02 Jury not present.

Defendant objects to testimony of witness Michael Lin:

4:12 Jury present. The Court excuses the jury for the remainder of the day.

4:14 Jury not present.

4:15 Continuation of testimony of Michael Lin on direct examination by the State.

4:28 Court in recess until 9:00 am on February 4, 2013.

MONDAY, FEBRUARY 4, 2013

Clerk: Debbie J. Horner

Reporter: Karen Avery

Court opened at 9:10 a.m., Thomas J. Wynne, Judge.

The following proceedings were had to wit:

This matter continued from Friday, February 1, 2013.

State of Washington represented through Assistant Prosecuting Attorney Andrew Alsdorf.

Defendant present, out of custody, represented by counsel Sonja Hardenbrook.

State's managing witness, Detective Tyler Quick, seated at counsel table.

Jury not present.

Exhibit no. 66 offered by the State: Not offered

Exhibit no. 67 offered by the State: Not offered

Exhibit no. 68 offered by the State: Not offered

*****EXHIBIT NO. 69 NOT USED*****

Exhibit no. 70 offered by the State: Not offered

Exhibit no. 71 offered by Defendant: Not offered

Argument of counsel.

Continuation of testimony of Michael Lin on direct examination by the State as an offer of proof regarding the U.S. YSTR profile data base.

9:18 Cross examination of Michael Lin by Defendant.

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Exhibit no. 72 offered by Defendant: Not offered
Exhibit no. 73 offered by Defendant: Not offered
Exhibit no. 74 offered by Defendant: Not offered

9:50 Argument of counsel.
9:55 The Court will not exclude the testimony of Michael Lin regarding statistical probabilities and scientific methodology.
10:00 Juror #14 present.
Colloquy of Court and Juror #14.
Juror #14, Matthew Skews, excused for hardship.
10:02 Court in recess.

10:18 Court resumes as heretofore, defendant present, out of custody, and all parties present.
Jury not present.
Argument of counsel.
10:22 Jury present.
Continuation of testimony of Michael Lin on direct examination by the State.
10:38 Cross examination of Michael Lin by Defendant.
11:23 Redirect examination of Michael Lin by the State.
11:34 Jury not present.
Argument of counsel.
11:45 Jury present.
11:45 Court in recess until 1:00 p.m.

1:03 Court resumes as heretofore, defendant present, out of custody, and all parties present.
Jury not present.
Argument of counsel.

Exhibit no. 75 offered by the State: Not offered

1:06 Jury present.
Continuation of testimony of Michael Lin on redirect examination by the State.
1:07 Recross examination of Michael Lin by Defendant.
1:12 Further redirect examination of Michael Lin by the State.
1:14 State rests.
Jury not present.

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Defendant's motion to dismiss under State vs. Green: Denied.

1:17 Jury present.

ANNETTE TUPPER, called by Defendant, sworn and testified.

Exhibit no. 76 offered by Defendant: Not offered

Exhibit no. 77 offered by Defendant: Not offered

1:21 Jury not present.

Argument of counsel.

1:23 Jury present.

Cross examination of Annette Tupper by the State.

1:25 **DOCTOR DONALD RILEY**, called by Defendant, sworn and testified.

Exhibit no. 78 offered by Defendant: Not offered

1:56 Jury not present.

Argument of counsel.

1:59 Jury present.

Exhibit no. 79 offered by Defendant: Not offered

2:11 Cross examination of Doctor Donald Riley by the State.

Exhibit no. 80 offered by the State: Not offered

2:30 Redirect examination of Doctor Donald Riley by Defendant.

2:36 **Detective Tyler Quick**, called by Defendant, previously sworn, testified.

2:41 The State waives cross examination of Detective Tyler Quick.
Defense rests.

2:42 Jury not present.

The Court takes exceptions and objections to instructions.

The State gives an objection to the Court's instructions.

Defendant gives an exception and objection to the Court's instructions.

2:49 Court in recess.

3:03 Court resumes as heretofore, defendant present, out of custody,
and all parties present.

Jury present.

Not reported.

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The Court instructs the Jury.

3:14 Reported.

State opens closing arguments.

4:02 Defendant makes closing argument.

5:07 State makes final argument.

5:16 The Court designates Juror #10, Kenneth Snyder, as the alternate juror and excuses said alternate juror.

5:18 Jury not present.

5:19 Court in recess until Tuesday, February 5, 2013, at 9:00 a.m.

TUESDAY, FEBRUARY 5, 2013

9:14 Jury present and deliberating.

Clerk: Debbie J. Horner

Reporter: Karen Avery

Court opened at 11:26 a.m., Thomas J. Wynne, Judge.

The following proceedings were had to wit:

This matter continued from the previous day.

State of Washington represented through Assistant Prosecuting Attorney Andrew Alsdorf.

Defendant present, out of custody, represented by counsel Sonja Hardenbrook.

At 11:11 a.m., the Jury submits a written inquiry re: "Is there a legal reason why the children over 4 did not give testimony about the raspberry's? Can we know why there was no testimony from Nathan about the raspberry's?"

At 11:35 a.m., the Court responds in writing: "The Jury shall continue deliberating and consider only the evidence or lack of evidence submitted in the courtroom and the Court's instructions on the law. The Jury may not speculate on reasons why other evidence was not submitted."

Inquiry from the Jury and Court's Response filed in open court.

11:37 Court in recess.

4:05 The jury returns to open court with their verdict.

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State of Washington represented through Deputy Prosecuting Attorney Andrew Alsdorf.

Defendant present, out of custody, represented by counsel Sonja Hardenbrook.

Verdict read in open court finding the Defendant Guilty of the crime of Rape of a Child in the First Degree.

Jurors polled: verdict unanimous.

Verdict is received and filed.

Court's Instructions filed in open court.

4:08 The Jury is discharged.

Sentencing is set for Wednesday, March 27, 2013, at 1:00 p.m. in Department 9 before Judge Thomas J. Wynne (JC).

Order Setting Sentencing Date; Order for Presentence Investigation Report and Setting Sentencing Date; Order on Release/Detention of Defendant, filed in open court.

4:16 Court adjourned.

Appendix 7

Instruction No. 24

Sexual intercourse means any act of sexual contact between persons involving the unclothed sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

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

In re the Personal Restraint Petition of:)	
)	
BRANDON EARL,)	
)	
Petitioner.)	COA NO. 72685-4-I
)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 10TH DAY OF JUNE, 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITIONER'S OPENING BRIEF** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] BRANDON EARL
 DOC NO. 364220
 STAFFORD CREEK CORRECTIONS CENTER
 191 CONSTANTINE WAY
 ABERDEEN, WA 98520

SIGNED IN SEATTLE WASHINGTON, THIS 10TH DAY OF JUNE, 2015.

X *Patrick Mayovsky*