

FILED
Oct 21, 2016
Court of Appeals
Division I
State of Washington

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

In re the Personal Restraint of,

KYLE C. BUCKINGHAM,

Petitioner

No. 74697-9-I

RESPONSE TO PERSONAL RESTRAINT PETITION

I. AUTHORITY FOR RESTRAINT

The petitioner, Kyle C. Buckingham, is restrained pursuant to a judgment and sentence entered in Snohomish County cause number 07-1-01892-6 after the court revoked his SSOSA sentence for First Degree Rape of a Child. Ex. 1 and 2.

II. STATEMENT OF FACTS

On July 1, 2007, the then-21-year old petitioner raped 4-year old S.S. On December 24, 2007, he agreed to a bench trial on stipulated documentary evidence. Ex.3. The documents established that on July 1, 2007, the petitioner kissed S.S. on her mouth and vagina, and put his finger inside her. The petitioner was questioned by police that night and admitted to kissing and digitally raping S.S. He said he had a

fetish for children and that even seeing small children holding hands stimulated him. Ex. 3.

On March 17, 2008, the court found the petitioner guilty. Ex. 1. At sentencing, the court considered a pre-sentence investigation that included a deviancy assessment by Dr. Norman Glassman. Ex. 4. The petitioner told Dr. Glassman he was drunk when he raped S.S., had smoked marijuana both before and after the rape, and that drugs and drinking were part of his offense. He badly wanted drug treatment. Id.

The petitioner said he viewed pictures of children in bathing suits on the internet, looked at child porn, viewed pornography almost daily, and was addicted to it. Dr. Glassman recommended 14 treatment conditions that included alcohol and drug treatment, no contact with children, and plethysmograph testing. Id. The court granted the petitioner a SSOSA that included those recommendations as part of 29 community custody conditions. Ex. 1.

By March 2009, the petitioner had violated his SSOSA by taking drugs prescribed to someone else, viewing pornography, failing to abide by a CCO curfew, and failing to comply with sex offender treatment. Ex. 5. The court revoked his SSOSA and reimposed the original sentence and all community custody conditions. Ex. 2.

The petitioner challenged virtually every sentence condition: those that used the words "minor children" (Conditions 4, 5, 6, 10 and 11) as overbroad and/or violating his freedom of association; those that referred to alcohol, marijuana, drug paraphernalia, and drug treatment (Conditions 14, 15, 16, 25) as not crime related; those that prohibited pornography and sexual stimulus materials (Conditions 7 and 8) as not crime-related and/or overbroad; one requiring supervision should he become employed

(Condition 13) as not permitting him to be self-employed; one requiring plethysmograph testing (Condition 26) as unconstitutional; one forbidding items that would lure children (Condition 9) as unconstitutionally vague; and those prohibiting computer use (Conditions 18 and 22) as violating his right to communicate.

The Superior Court granted the State's Motion to Transfer on January 29, 2016. On March 21, 2016, this court appointed counsel and referred the case to a panel of judges. Appointed counsel filed a supplemental brief that addressed five of the conditions.

III. ISSUES

1. The petition includes challenges to statutorily authorized and crime-related community custody conditions that are not unconstitutionally vague or overbroad. Should the court dismiss those challenges as time-barred?
2. The petition includes challenges to crime-related community custody conditions that are unconstitutionally vague or overbroad. Should the court consider those challenges when they are not time-barred?
3. If a community custody condition is unconstitutionally vague or overbroad, should the case be remanded to the sentencing court for correction?

IV. ARGUMENT

A. THE COURT SHOULD DISMISS CHALLENGES TO FACIALLY VALID COMMUNITY CUSTODY CONDITIONS AND CONSIDER ONLY THOSE THAT ARE FACIALLY INVALID.

A collateral attack must be filed within one year after the judgment and sentence becomes final. RCW 10.73.090(1); In re Coats, 173 Wn.2d 123, 131, 267 P.3d 324 (2011). The one-year time-bar does not apply to a judgment that is "invalid on its face."

Id. A judgment and sentence is invalid on its face if the trial court judge imposed a sentence that actually exceeded its statutory authority. Coats, 173 Wn.2d at 135-36.

When determining whether a judgment and sentence is invalid on its face, the reviewing court is not limited to the four corners of the document. Id. at 138. It may look at some, but not all documents that reveal a fact that shows the judgment is invalid because of a legal error. Those include charging documents, verdicts, and plea statements. They do not include jury instructions, motions, or other documents. Id. at 138-39.

A petitioner can avoid the time-bar of RCW 10.73.090 if he files a petition or motion is "based solely" on one of six grounds enumerated in RCW 10.73.100. If even one of the claims is not based on one of the enumerated six grounds, the petition is a mixed petition and must be dismissed in its entirety. In re Hankerson, 149 Wn.2d 695, 702-03, 72 P.3d 703 (2003).

In the present case, the petition is not based on any of the exceptions of RCW 10.73.100. Rather, every challenge is one of facial invalidity. The petitioner claims that each of the challenged conditions is either unconstitutional or not crime related. Thus, this is not a mixed petition.

The petitioner may raise those challenges that are facially invalid and thus survive the time-bar of RCW 10.73.090. That is, he may raise claims to portions of the judgment and sentence that are invalid on their face. If the petition includes grounds that are permissible under RCW 10.73.090, and other grounds that do not fall within either statute, only the grounds that are not time-barred by RCW 10.73.090 will be

considered. The remaining grounds will be dismissed. In re Stoudmire, 141 Wn.2d 342, 348-50, 5 P.3d 1240 (2000).

In the present case, the petitioner did not appeal so the judgment became final the day it was filed, March 7, 2008. RCW 10.73.090(3)(a). This collateral attack comes eight years later.

B. A CHALLENGE TO ANY CONDITION THAT IS FACIALLY VALID IS TIME-BARRLED AND MUST BE DISMISSED.

1. Conditions Relating To Alcohol And Drug Possession, Use, And Treatment (Conditions 14-16 And 25) Were Statutorily Authorized, Crime-Related And Are Time-Barred.

The trial court imposed both prohibitive and affirmative conditions regarding on drugs and alcohol:

14. Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.
15. Do not possess or consume controlled substances unless you have a legally issued prescription.
16. Do no [sic] possess drug paraphernalia...
25. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.

The trial court had the authority to impose affirmative conditions regarding alcohol and drugs. A trial court may order an offender convicted of first degree rape of a child (among other crimes) to engage in affirmative and rehabilitative programs "related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community..." and to impose conditions listed in RCW 9.94A.700.¹ RCW 9.94A.712 (6)(a)(i). Affirmative conditions carry out the purposes of the SRA, which include offering an offender an opportunity to improve himself, protecting the public, and

¹ All references to are to the SRA in effect at the time of the crime, July 7, 2007.

reducing the risk of re-offense. RCW 9.94A.010; State v. Riles, 135 Wn.2d 326, 340-41, 957 P.2d (1998), abrogated on other grounds, State v. Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010); State v. Johnson, 184 Wn. App. 777, 780, 340 P.3d 230 (2014).

The trial court had authority to impose crime-related prohibitions directly related to the circumstances of the crime. RCW 9.94A.030(13). For sex offenders, that included a mandatory prohibition on the use and consumption of controlled substances and a discretionary prohibition on the use of alcohol. RCW 9.94A.700(4)(c) and (5)(d).

The judgment and sentence is bare of any of the facts underlying the conviction and bare of any information from the petitioner's pre-sentence interviews. Thus, it is impossible to say from the four corners of the document that these conditions were not proper. Even if invalid, the petitioner has not demonstrated facial invalidity and the issues should not be addressed.

However, if the court does look at facts underlying the conviction, such as those contained in the stipulated trial documents and the pre-sentence evaluation, the record shows that the petitioner believed he had a drug and alcohol problem that contributed to his crime and for which he needed help. He admitted to using drugs before the crime and had those drugs in his pocket. The sentencing court could have concluded, and likely did conclude, that the petitioner needed the prohibitions and affirmative conditions to maintain sobriety, something that was "reasonably related to ... the offender's risk of reoffending [and] the safety of the community."

Whether a sentence condition is crime-related is subject to review for an abuse of discretion. State v. Irwin, 191 Wn. App. 644, 364 P.3d 830 (2015). An abuse occurs if the court's decision is manifestly unreasonable. Id. A condition must be stricken

when it unsupported by any evidence that it is related to the circumstances of the crime. Id. at 656-57.

As to the condition regarding drug paraphernalia, this case is different from State v. Land, 172 Wn. App. 593, 605, 295 P.3d 782, review denied, 177 Wn.2d 1016 (2013). (2013). There, a prohibition on drug paraphernalia was found to be improper because there was no evidence or argument that drug use was part of the offense. Id. Here, the defendant was found after the rape with marijuana in his pocket. He admitted he has used it just prior to the offense. He said he believed that drug use contributed to his criminal behavior.

As to the affirmative condition of substance abuse treatment, that, is not only crime-related but also related to the risk of re-offense and safety of the community as authorized by RCW 9.94A.703(3)(d). As discussed above, the petitioner admitted to substance abuse problems. Ordering him to attend treatment for his addiction was reasonably related to the goals of RCW 9.94A.703(d)(d).

The petitioner has failed to show facial invalidity. The court had authority to impose these conditions. Thus, the conditions are valid on their face and a challenge to them is time-barred.

2. Conditions That Limited The Petitioner's Contact With "Minor Children" (Conditions 4, 5, 10, And 11) Were Crime-Related And Were Not Rendered Facially Invalid.

The trial court imposes several conditions intended to protect minor children from the petitioner:

4. Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer.

5. Do not seek employment or volunteer positions which place you in contact with or control over minor children.

10. Do not date women nor form relationships with families who have minor children...

11. Do not remain overnight in a residence where minor children live or are spending the night.

Condition 6, which also used the phrase, is addressed later.

A sentencing court may prohibit contact between a sex offender and “a minor victim or a child of similar age or circumstances...” RCW 9.94A.700(6). The statute does not differentiate between minor girls or minor boys.

It is not unreasonable to prohibit a sex offender from having contact with a class of individuals when the prohibition is related to the crime. State v. Moultrie, 143 Wn. App. 387, 399, 177 P.3d 776, review denied, 164 Wn.2d 1035 (2008). The prohibition must be “reasonably necessary to accomplish the essential needs of the state and public order.” Id. Moultrie was convicted of raping an adult woman with Down syndrome. Id. at 391-92. He then complained that the prohibition on his contacting ill, vulnerable, or disabled adults was constitutionally overbroad. Division I disagreed. Those three terms accurately described the class of people victimized by Moultrie. Id. at 399.

Based on the four corners of the document, the petitioner has not shown invalidity. But even if the court were to consider other documents, the court should reach the same conclusion. S.S. was a member of a class of people, a minor child who was raped by the petitioner. The term “minor children” accurately identified the targets of the defendant’s self-described fetish and his self-described sexual stimulation. He admitted that even the sight of children (not specifically boys or girls) holding hands

stimulate him. He told police and his treatment provider that he was aroused by children (not specifically boys or girls).

The petitioner's argument that the prohibitions are overbroad should fail. Including all minor children within the prohibitions was reasonably related to the crime. Limitations on fundamental rights during community custody that help prevent further criminal conduct are constitutional as long as they are reasonably necessary to accomplish the needs of the State. State v. Riley, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993); State v. Letourneau, 100 Wn. App. 424, 438, 997 P.2d 436 (2000). Prohibiting contact with women and families with minor children is a reasonable limitation, particularly in light of the fact that the victim in this case was available to the petitioner because he was dating her mother's adult roommate.

Children socialize with other children at school, at playgrounds, on the street, at home. If the petitioner were permitted to form relationships with young boys, to work where he would come into contact with young boys, to form relationships with women with young boys, or to spend the night in a house where young boys were spending the night, the chance of unsupervised, and perhaps even unintended, contact with young girls would be exponentially increased. Additionally, it is not always altogether clear whether a minor child *is* a boy or a girl. Their clothing, manners, haircuts, toys, are often identical. The prohibitions on contact with minor children takes the determination out of the petitioner's hands. The term is not unconstitutionally overbroad. It simply and clearly describes the class of victims upon whom he preys.

A similar challenge was made in State v. Kinzle, 181 Wn. App. 774, 786, 326 P.3d 870 (2014). There, the court upheld as crime-related a community custody

condition that prohibited Kinzle from dating women with minor children although he had molested the children of a man with whom he had a platonic relationship. Id. The reviewing court found there was “some basis for the connection.” Id.

The same reasoning applies here. The conditions are crime-related and constitutional. The challenge to them is time-barred.

3. A Requirement That He Be Supervised Should He “Hold Employment” (Condition 13) Was A Crime-Related Monitoring Condition.

The court imposed Condition 13 which directed the defendant, should he “hold employment”, be in a position where he received direct supervision. He claims that this condition prevents him from being self-employed. But the condition only applies when the defendant holds employment, not to times when the defendant is unemployed or self-employed.

Insofar as the petitioner complains that the condition is not crime-related, he is incorrect. Courts also have authority to impose conditions that ensure compliance with other conditions of community custody. See State v. Vant, 145 Wn. App. 592, 604, 186 P.3d 1149 (2008); State v. Riles, 135 Wn.2d 326, 342-43, 351-52, 957 P.2d 655 (1988), abrogated on other grounds by State v. Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010); RCW 9.94A.030(10) (“[A]ffirmative acts necessary to monitor compliance with the order of a court may be required by the department.”). This condition is preceded by Condition 12 which required the petitioner to notify any employer of his conviction. Condition 13 is a permissible exercise of the court’s authority because it provides a means of other monitoring conditions. See State v. Bill, No. 73653-1-I, WL 5724414 (2016 (unpublished case)). Looking at the face of the document, the court’s authority is clear. The petitioner has not shown invalidity, even less facial invalidity.

4. A Prohibition On "Sexual Stimulus" Materials For A Particular Deviancy As Determined By Both A CCO And A Therapist (Condition 8) Is Not Vague Or Facially Invalid.

Condition 8, the prohibited the defendant from "possess[ing] or control[ing] sexual stimulus material for your particular deviancy as defined by the supervising Community Corrections Officer and therapist except as provided for therapeutic purposes." The Supreme Court has found that a prohibition on "pornography" is unconstitutionally vague. State v. Bahl, 164 Wn.2d 739, 758, 164 P.3d 678 (2008). However, use of the words "sexually explicit material" as defined in RCW 9.68.130(1) is not. Id. at 760.

This court later accepted a concession from the State that a virtually identical condition was unconstitutionally vague. State v. Land, 172 Wn. App. 593, 605-06, 295 P.3d 782, review denied, 177 Wn.2d 1016 (2013). The court agreed with the State that the condition was unconstitutionally vague under the reasoning of Bahl. Id.

In Bahl, the court found that the words "sexually explicit" were not unconstitutionally vague when used in the context of prohibiting visits to establishments whose primary business was "sexually explicit" material. 164 Wn.2d at 760. Here, the term "sexual stimulus materials" refers to materials that are particular to the defendant's deviancy. In that context, the phrase is not unconstitutionally vague and certainly the prohibition will be part of the petitioner's treatment. Moreover, the CCO cannot alone determine what those materials are. The condition specifically requires that the CCO and therapist make that determination.

The petitioner has not shown that the condition was unlawful or in excess of the court's authority. It is certainly a crime-related prohibition seeking to prevent the

recurrence of the same crime. The condition is not facially invalid and the petition on this issue should be dismissed.

5. The Prohibitions On Computer Use And Possession In Conditions 18 And 22 Are Crime-Related, Not Facially Invalid, And Not Unconstitutionally Overbroad.

Conditions 18 and 22 do not ban the petitioner's use of a computer. Condition 18 requires the petitioner to obtain prior approval before using a computer in any location. Condition 22 requires the petitioner to obtain authorization before possessing or maintaining a computer. Neither is a complete ban on computer or internet usage.

Again, the four corners of the judgment and sentence do not demonstrate any invalidity. There simply is no information on whether a computer was used in the crime or associated with it in any way. The court should dismiss the challenge from its consideration.

But if it does not dismiss the issue, a similar condition was addressed in State v. O'Cain, 144 Wn. App. 772, 184 P.3d 1262 (2008). There, the reviewing court found error in a prohibition on internet usage where there was no connection between internet access and the crime. Id. While a sentencing court may order "affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community", it may impose prohibitions only if they are crime related. Id. at 775; RCW 9.94A.712(6)(a) and RCW 9.94A.700(5).

A contrary result was reached in Irwin where the defendant had used his computer to take and store images of some of the girls he molested. 191 Wn. App. at 656. The court said there did not need to be a causal link between the prohibited

conduct and the crime as long as the condition relates to the circumstances of the crime. Id.

In the present case, there is evidence that the petitioner's use of a computer contributed to his crime. The petitioner admitted that he used the computer to look at images of children, that he masturbated to those images, and that he was addicted to pornography. The prohibition is crime-related.

Nor do the conditions impermissibly infringe on the petitioner's First Amendment rights. A court may impose a sentence condition that limits a fundamental right but must impose it sensitively. Bahl, 164 Wn.2d 739, 757. A First Amendment right may be reasonably restricted to meet the State's essential needs and public order. Id. The overbreadth doctrine addresses the concern that a law may chill constitutionally protected speech. State v. Immelt, 173 Wn.2d 1, 8, 257 P.3d 305 (2011).

The restrictions imposed on computer use in the present case do not impermissibly infringe on the petitioner's constitutional rights. Condition 18 does not prohibit the defendant from using a computer at any location. It simply requires him to first notify his CCO. Condition 22 does not prohibit him from owning a computer. It simply requires that he obtain prior authorization from his CCO.

The petitioner claims that this is an unconstitutional restriction on his First Amendment rights because he will no longer be able to use the internet or computers. That is not correct and ignores the language and purpose of the conditions.

Conditions 18 does prevent the petitioner from using any computer. Rather, it requires him to let his CCO know which computer he intends to use and to obtain approval for the access. This is a legitimate monitoring tool, as the second sentence

makes clear: "Any computer to which you have access is subject to search." Without knowing what computers the defendant intends to use and where they are located, the CCO cannot monitor compliance with other validly imposed conditions.

Condition 22 likewise does not restrict the petitioner's computer use. It simply requires authorization from the CCO before any computer is kept or accessed. Again, this is a monitoring tool.

6. The Court Must Dismiss Challenges To Conditions That Are Not Facially Invalid.

All of the issues discussed above, were raised by the petitioner in his pro se brief. They are all crime-related or statutorily authorized. They must be dismissed as time-barred because they are facially valid. The court can address only issues that escape the time bar because they are facially invalid. It must dismiss all others. See Snively, 180 Wn.2d at 132; In re Adams, 178 Wn.2d 424-25, 309 P.3d 451 (2011). Therefore, the court must dismiss the challenge to Conditions 4, 5, 8, 10, 11, 13, 14, 15, 16, 18, 22, and 25.

C. A CHALLENGE TO ANY CONDITION THAT IS FACIALLY INVALID IS NOT TIME-BARRED.

1. A Prohibition On Possession Of Items Designed To Lure Children (Condition 9) Is Unconstitutionally Vague.

The petitioner was ordered not to possess any item that could be used to attract or lure children. A virtually identical condition was found unconstitutional in Land, 172 Wn. App. at 604-05. The court accepted that the State "correctly conceded" that it was unconstitutional because there was nothing in the record that showed that the defendant had used any particular item to attract children, leaving the condition with no

notice of what would violate it. Id. Similarly, in the present case, there is no evidence that the petitioner used any item to attract his victim. The condition should be stricken.

In his supplemental brief, counsel discussed five sentence conditions. They are:

6. Do not frequent areas where minor children are known to congregate as defined by the supervising Community Corrections Officer.
7. Do not possess or access pornographic materials, as directed by the supervising Community Corrections Officer. Do not frequent establishments whose primary business pertains to sexually explicit or erotic material.
26. Participate in... plethysmograph... examinations as directed by the supervising Community Corrections Officer.

Similar conditions have been found to be, at least in part, unconstitutional.

To the extent each of these conditions is unconstitutional, the challenge to it is properly before this court. The proper remedy is to remand the case to the sentencing court to correct the vagueness error. Snively, 182 Wn. App. at 389-90.

2. Condition 6, Prohibiting Visits To Areas Where Minors Congregate, Is Unconstitutionally Vague And Should Be Remanded For Correction.

A law is unconstitutionally vague if it does not (1) provide ordinary people fair warning of proscribed conduct and (2) does not have standards to avoid arbitrary enforcement. State v. Irwin, 191 Wn. App. 644, 652-53, 364 P.3d 830 (2015). The same applies to sentence conditions. Id. Community custody conditions are not presumed to be constitutional. Id. at 655.

In Irwin, the defendant pleaded guilty to three counts of second degree child molestation and one count of second degree possessing depictions of minors. The court imposed a community custody condition virtually identical to the one in the present

case. It ordered that the defendant not “frequent[] areas where minor children are known to congregate, as defined by the supervising [CCO]”. Id. at 548-50.

The court found that the prohibition on frequenting areas where minors congregated would not give an ordinary person sufficient notice of what was prohibited. Permitting the CCO to determine what those places were not only highlighted its vagueness but also made the condition susceptible to arbitrary enforcement. Thus, the condition was void for vagueness. Id. at 655.

Irwin applies here. The condition is unconstitutionally vague and thus facially invalid. The case should be remanded to the trial court so it can be more carefully drawn.

3. The Words “Pornographic Materials” In Condition 7 Are Unconstitutionally Vague And Should Be Further Defined On Remand.

The first sentence of Condition 7 prohibits the defendant from “possess[ing] or access[ing] pornographic materials, as directed by the supervising Community Corrections Officer.” The Supreme Court has found that a virtually identical prohibition was unconstitutionally vague. State v. Bahl, 164 Wn.2d 739, 758, 164 P.3d 678 (2008). Because the condition is unconstitutionally vague, it is facially invalid. The court should remand to allow the sentencing court to correct the error.

The second sentence of Condition 7 prohibits the defendant from “frequenting establishments whose primary business pertains to sexually explicit or erotic material.” That condition is not unconstitutionally vague. Bahl at 759-60. Because the condition is not facially invalid, any challenge to it is time-barred.

4. The Court Acted Within Its Authority When It Ordered Plethysmograph Testing (Condition 26) But Not As A Monitoring Tool At The Discretion Of A CCO.

Plethysmograph testing does not serve a monitoring purpose. Riles, 135 Wn.2d at 345. However, it does serve a treatment purpose. The court may order plethysmograph testing when it orders crime-related deviancy treatment because the testing is useful within the context of a comprehensive evaluation or treatment. Id.

In the present case, the sentencing court ordered deviancy treatment and thus had the authority to order plethysmograph testing. But the court left the testing strictly to the discretion of the CCO. A condition of community custody that restricts a defendant's fundamental rights is constitutional only if "reasonably necessary to accomplish the essential needs of the state and the public order." State v. Land, 172 Wn. App. 593, 605-06, 295 P.3d 782, review denied, 177 Wn.2d 1016 (2013). Plethysmograph testing not done in conjunction with a sexual deviancy therapist unreasonably interferes with an offender's right to be free from bodily intrusion. Id.

As written, the condition is facially invalid. The sentencing court should be given an opportunity to correct the error by having the deviancy therapist the authority to order plethysmograph testing as part of the petitioner's deviancy treatment.

C. CONCLUSION

Based on the foregoing, the court should consider dismiss challenges to any conditions that are not facially. It should remand those conditions that are facially invalid for clarification.

Respectfully submitted on October 21, 2016.


JANICE ALBERT 19865
Deputy Prosecuting Attorney
Attorney for Respondent

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

In re Personal Restraint Petition of

No. 74697-9-1

KYLE CHRISTOPHER
BUCKINGHAM,

DECLARATION OF DOCUMENT
FILING AND E-SERVICE

Petitioner.

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 21st day of October, 2016, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

RESPONSE TO PERSONAL RESTRAINT PETITION

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and to Washington Appellate Project, tom@washapp.org; wapofficemail@washapp.org

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

Dated this 21st day of October, 2016, at the Snohomish County Office.



DIANE K. KREMENICH
Legal Assistant/Appeals Unit



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SONYA KRASKI
COUNTY CLERK
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INELIGIBLE TO CARRY FIREARMS

3/19/08 F.O. SCSO

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

No. 07-1-01892-8

Plaintiff,
v.

JUDGMENT AND SENTENCE

BUCKINGHAM, KYLE CHRISTOPHER

- Jail One Year or Less
- Special Sexual Offender Sentencing Alternative
- Clerk's Action Required, restraining order entered para. 4.3
- Clerk's action required firearms rights revoked, para. 4.3 and 5.6
- Clerk's action required, para 5.4 Restitution Hearing set.

Defendant.

SID: WA22503972
If no SID, use DOB: 12/09/1985

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on December 24, 2007 by stipulated bench trial of:

COUNT	CRIME	RCW	INCIDENT #	DATE OF CRIME
I	Rape of a Child in the First Degree	9A.44.073	LYN, 0708323	7/1/07
II				

as charged in the Information.

Additional current offenses are attached in Appendix 2.1.

A special verdict/finding for use of a deadly weapon which was a firearm was returned on Court(s) RCW 9.94A.602, 9.41.010, 9.94A.533

EXHIBIT 1

AB
35

Date 3/19/08
CC RA 2
CC SCSO 2
CC Jail 1
DPA Stmt Y N

- A special verdict/finding for use of deadly weapon which was not a firearm was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533
- A special verdict/finding of sexual motivation was returned on Count(s) _____ RCW 9.94A.837
- A special verdict/finding that the offense was predatory was returned on count(s) _____ RCW .94A.____ (laws of 2006 ch. 122 section 1(2), effective 3-20-06)
- A special verdict/finding that the victim was under 15 years of age at the time of the offense was returned on count(s) _____ RCW 9.94A.____ (laws of 2006, ch 122 section (2), effective 3-20-06)
- A special verdict/finding that the victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense was returned on count(s) _____. RCW 9.94A.010, 9.94A.____ (laws of 2006, ch. 122, section 3, effective 3-20-06)
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public transit stop shelter.; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____ RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030(45)
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The court finds that the offender has a chemical dependency which contributed to the offense and imposes as a condition of sentence that defendant shall participate in the rehabilitative program/affirmative conduct:

RCW 9.94A.607.
- The crime charged in Count(s) _____ involve(s) domestic violence.
- The offense in Count(s) _____ was committed in a county jail or state correctional facility. RCW 9.94A.533(5)
- The court finds that in Count _____ a motor vehicle was used in the commission of this felony. The Department of Licensing shall revoke the defendant's driver's license. RCW 48.20.285.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

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

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 None					
2					
3					
4					
5					

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

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	0	XII	93-123 months		93-123 months	Life

*Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile Present

- Additional current offense sentencing data is attached in Appendix 2.3.
- 2.4 EXCEPTIONAL SENTENCE [For Determinate Sentence]. Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) _____ . Findings of fact and conclusions of law are attached in Appendix 2.4. The prosecuting attorney did did not recommend a similar sentence.

EXCEPTIONAL MINIMUM TERM [For Maximum and Minimum Term Sentence] Substantial and compelling reasons exist which justify an exceptional minimum term above within below the standard range for Count(s) _____ .

The defendant and state stipulate that justice is best served by imposition of an exceptional sentence above the standard range and the court finds that exceptional sentence furthers an is consistent with the interest of justice and the purposes of the sentence reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory. Findings of fact and conclusions of law are attached in Appendix 2.4. The jury's Interrogatory is attached. The prosecuting attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 The Court DISMISSES Counts _____
- 3.3 The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RMA	<u>\$15/\$25/\$50</u>	Restitution Monitoring Fee	SCC 4.94.010
		The Clerk shall collect this fee before collecting restitution or any other assessed legal financial obligations.	RCW 9.94A.760
PCV	<u>\$500</u>	Victim assessment	RCW 7.68.035
CRC	\$ _____	Court costs, including	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee \$ _____	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/SRF
		Jury demand fee \$ _____	JFR
		Other \$ _____	
PUB	<u>\$962</u>	Fees for court appointed attorney	RCW 9.94A.030
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.030
FCM	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LOV	\$ _____	Drug enforcement fund of _____	RCW 9.94A.030
FCD/NTF/SAD/SDI	\$ _____		
CLF	\$ _____	Crime lab fee <input type="checkbox"/> deferred due to indigency	RCW 43.43.690
EXT	\$ _____	Extradition costs	RCW 9.94A.505
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	<u>\$100</u>	Biological Sample Fee (for offenses committed after 7-1-2002)	RCW 43.43.7541
	\$ _____	Domestic Violence Penalty (for offenses committed after 6-4-2004, \$100 maximum)	RCW 10.99.080
	RCW 10.99.080		
	\$ _____	Other costs for: _____	

\$ 500.00 TOTAL (plus restitution if any) RCW 9.94A.760

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

RESTITUTION. Schedule attached, Appendix 4.1.

Restitution ordered above shall be paid jointly and severally with:

<u>NAME of other defendant</u>	<u>CAUSE NUMBER</u>	<u>(Victim name)</u>	<u>(Amount-\$)</u>
--------------------------------	---------------------	----------------------	--------------------

RJN

The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, 9.94A.760(9)

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than

\$ 25 per month commencing immediately
RCW 9.94A.760

All payments shall be made within _____ months of: release of confinement;
 entry of judgment; Other _____.

In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at \$50.00 per day unless another rate is specified here _____ RCW 9.94A.760(2)

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 206, Everett, WA 98201 within one (1) hour of this order to arrange for the test. RCW 70.24.340

DNA TESTING. The defendant shall have a biological sample (offenses committed 7-1-2002 and after), blood sample (offenses committed before 7-1-2002) drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 The defendant shall not have contact with S.S. (DOB: 8/6/02), including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence). EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.

(Check for any domestic violence crime as defined by RCW 10.99.020(3), Anti-harassment no contact order, or Sexual Assault Protection Order): VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST. ANY ASSAULT, DRIVE-BY SHOOTING, OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY. RCW 10.99.050.

(Check for any harassment crime as defined by RCW 9A.46.060): VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 9A.46 AND WILL SUBJECT A VIOLATOR TO ARREST. RCW 9A.46.080.

(For Domestic Violence orders only:) The clerk of the court shall forward a copy of this order on or before the next judicial day to the _____ County Sheriff's Office or _____ Police Department (where the protected person above-named lives), which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring, in the amount of \$ _____.

4.4 OTHER: _____

4.5 SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.670. The court finds that the defendant is a sex offender who is eligible for the special sentencing alternative and the court has determined that the special sex offender sentencing alternative is appropriate. The defendant is sentenced to a term of confinement as follows:

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

_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

CONFINEMENT [Maximum Term and Minimum Term]. RCW 9.94A.712. Defendant is sentenced to total confinement as follows. The maximum and minimum terms of confinement shall be served in a facility or institution operated, or utilized under contract, by the State of Washington.

Count I: maximum term of Life years AND minimum term of 93 months

Count _____: maximum term of _____ years AND minimum term of _____ months

Count _____: maximum term of _____ years AND minimum term of _____ months

Count _____: maximum term of _____ years AND minimum term of _____ months

Actual number of months of total confinement ordered is: 12 months; 81 months suspended

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively with the sentence in cause number(s)

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

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

(c) SUSPENSION OF SENTENCE. The execution of this sentence is suspended and the defendant is placed on community custody under the charge of the Department of Corrections for the length of the suspended sentence, the length of the maximum term sentenced under RCW 9.94A.712, or three years, whichever is greater, and shall comply with all rules, regulations and requirements of the Department. Community custody for offenses not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. (RCW 9.94A.715(5)) The defendant shall report as directed to a community corrections officer, pay all legal financial obligations, perform any court ordered community restitution work submit to electronic monitoring if imposed by the Department and be subject to the following terms and conditions:

Undergo and successfully complete an outpatient [] inpatient sex offender treatment program with

for a period of 24 Months 2 yrs

Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change.

Serve 12 days/months of total confinement. Work Crew and Electronic Home Detention are not authorized. RCW 9.94A.725, 734

Obtain and maintain employment.

Work release is authorized, if eligible and approved. RCW 9.94A.731

Defendant shall perform _____ hours of community restitution as approved by defendant's community corrections officer to be completed:

as follows: _____

on a schedule established by the defendant's community corrections officer. RCW 9.94A.

Additional conditions:

Defendant shall not reside in a community protection zone (within 880 feet of the facilities and grounds of a public or private school). (RCW 9.94A.030(8)).

Other Conditions: Attached as Appendix A and Incorporated herein by Reference

The conditions of community custody shall begin immediately unless otherwise set forth here: _____

4.6 REVOCATION OF SUSPENDED SENTENCE. The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence, with credit for confinement served during the period of community custody, if the defendant violates the conditions of the suspended sentence, or the court finds that the defendant is failing to make satisfactory progress in treatment. RCW 9.94A.670(10)

4.7 TERMINATION HEARING. A treatment termination hearing is scheduled for 1/15/2009 and Review hrg: January 13, 2009 (three months prior to anticipated date for completion of treatment) RCW 9.94A.670

See additional page for other conditions of sentence

4.8 Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

4.9 FURTHER PROVISIONS APPLICABLE TO ALL SENTENCES:

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505(6). The time served shall be computed by the jail unless the credit for

time served prior to sentencing is specifically set forth by the court:

4.10 [] COMMUNITY CUSTODY RANGE [For Determinate Sentences] is ordered as follows:

Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before 7-1-2002. Community custody follows a term for a sex offense not sentenced under RCW 9.94A.712 and violent offenses committed on or after 7-1-2000. -- RCW 9.94A.715 Use paragraph 4.7 to impose community custody following work ethic camp.]

COMMUNITY CUSTODY [For Maximum And Minimum Term Sentences]: For each count, the defendant is sentenced to community custody under the supervision of the Department of Corrections (DOC) and the authority of the Indeterminate Sentence Review Board for any period of time that the defendant is released from total confinement before expiration of the maximum sentence. In addition to other conditions, the defendant shall comply with any conditions imposed by the Indeterminate Sentence Review Board. RCW 9.94A.713

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

The defendant shall not consume any alcohol.

Defendant shall have no contact with: S.S. C.O.B. 8/6/02

[] Defendant shall remain [] within [] outside of a specific geographical boundary, to wit: _____

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

The defendant shall undergo an evaluation for treatment for

sexual deviancy

[] domestic violence

substance abuse

[] mental health

[] anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: Attached as Appendix A and Incorporated herein by Reference.

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

Attached as Appendix A and incorporated herein by reference

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

4.12 Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.753(4), RCW 9.94A.760 and RCW 9.94A.505(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7802. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 5.4 **RESTITUTION HEARING.** - *if any*
 Defendant waives any right to be present at any restitution hearing (sign initials): KB
 Defendant waives any right to a restitution hearing within 6 months RCW 9.94A.750.
 A restitution hearing shall be set for _____
The Prosecutor shall provide a copy of the proposed restitution order and supporting affidavit(s) of victim(s) 21 judicial days prior to the date set for said restitution hearing. The defendant's presence at said restitution hearing may be excused only if a copy of the proposed restitution order is signed by both defendant and defense counsel and returned to the Court and Prosecutor no later than 10 judicial days prior to said hearing.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634

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

If this is a crime enumerated in RCW 9.41.040 which makes you ineligible to possess a firearm, you must surrender any concealed pistol license at this time, if you have not already done so.

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court. The Clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the department of licensing along with the date of conviction).

The defendant is ordered to forfeit any firearm he/she owns or possesses no later than _____ to _____ (name of law enforcement agency). RCW 9.41.098

Cross off if not applicable

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 3 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this State's Department of Corrections.

If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level. If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days. If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

Cross off if not applicable:

5.8 RIGHT TO APPEAL. If you plead not guilty, you have a right to appeal this conviction. If the sentence imposed was outside of the standard sentencing range, you also have a right to appeal the sentence.

This right must be exercised by filing a notice of appeal with the clerk of this court within 30 days from today. If a notice of appeal is not filed within this time, the right to appeal is IRREVOCABLY WAIVED.

If you are without counsel, the clerk will supply you with an appeal form on your request, and will file the form when you complete it.

If you are unable to pay the costs of the appeal, the court will appoint counsel to represent you, and the portions of the record necessary for the appeal will be prepared at public expense.

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

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 3/17/08

Laura E. Twitchell
LAURA E. TWITCHELL, #28697
Deputy Prosecuting Attorney

Donald J. Wackerman
DONALD J. WACKERMAN,
#15042
Attorney for Defendant

JUDGE
Print name: _____
[Signature]
* *KB* *[Signature]*
KYLE CHRISTOPHER
BUCKINGHAM
Defendant

Interpreter signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 07-1-01892-6

I, Pam L. Daniels, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA22503972
(If no SID take fingerprint card for State Patrol)

Date of Birth: 12/09/1985

FBI No. 626597FC9

Local ID No.

PCN No. _____

DOC _____

Alias name, SSN, DOB: _____

Race: White

Ethnicity:

Sex: M

Hispanic

Non-Hispanic

Height: 6'0

Weight: 157

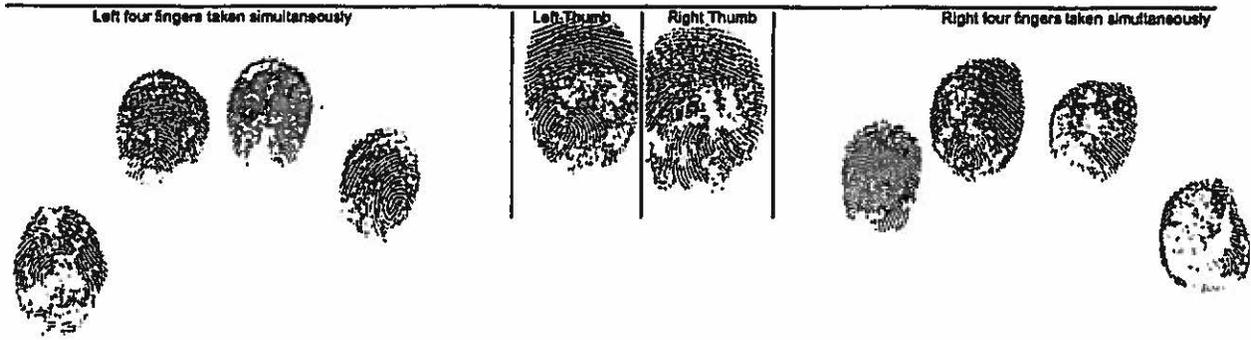
Hair: Brown

Eyes: Brown

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto. Clerk of the Court: *Paul Jones* Deputy Clerk.
Dated: 3-17-08

DEFENDANT'S SIGNATURE: *[Signature]*

ADDRESS: * 7701 Hardesh Rd #12 Everett, WA 98203



FILED

2008 MAR 19 AM 10:58

ORDER OF COMMITMENT

SONYA KRASKI
COUNTY CLERK
SNOHOMISH COUNTY, WASHINGTON

THE STATE OF WASHINGTON to the Department of Corrections of the County of Snohomish, State of Washington:

WHEREAS, KYLE CHRISTOPHER BUCKINGHAM, has been duly convicted of the crime(s) of Count 1 Rape of a Child in the First Degree, as charged in the Information and judgment has been pronounced against the defendant that punishment be by imprisonment in the Snohomish County Department of Corrections for a period of time as specified in the attached certified copy of the Judgment and Sentence. Now, Therefore,

THIS IS TO COMMAND YOU, the Snohomish County Department of Corrections, to detain the defendant pursuant to the terms of the Judgment and Sentence.

FURTHER, this is to command you that should the Judgment and Sentence authorize release of the defendant to a Work/ Training Release Facility or Program, or to any other program or for some specific purpose, this Order of Commitment shall constitute authority for you to release the defendant for that program or purpose, subject to any additional requirements of that program or purpose.

WITNESS the Honorable RONALD L. CASTLERERRY, Judge of the Snohomish County Superior Court and the seal thereof, this 17 day of March, 2008.

Pam L. Daniels
CLERK OF THE SUPERIOR COURT

By: *Pam Daniels*
Deputy Clerk

FILED

A3

3-19-2008
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

BUCKINGHAM, KYLE CHRISTOPHER

Defendant.

No. 07-1-01892-6

APPENDIX A
ADDITIONAL CONDITIONS
OF COMMUNITY CUSTODY

ADDITIONAL CONDITIONS OF COMMUNITY CUSTODY:

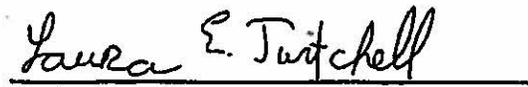
1. Have no direct or indirect contact with S.S.
2. Pay the costs of crime-related counseling and medical treatment required by the court.
3. Have no new law violations.
4. Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer.
5. Do not seek employment or volunteer positions which place you in contact with or control over minor children.
6. Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer.
7. Do not possess or access pornographic materials, as directed by the supervising Community Corrections Officer. Do not frequent establishments whose primary business pertains to sexually explicit or erotic material.
8. Do not possess or control sexual stimulus material for your particular deviancy as defined by the supervising Community Corrections Officer and therapist except as provided for therapeutic purposes.
9. Do not possess or control any item designated or used to entertain, attract or lure children.
10. Do not date women nor form relationships with families who have minor children, as directed by the supervising Community Corrections Officer.
11. Do not remain overnight in a residence where minor children live or are spending the night.
12. Do not hold employment without first notifying your employer of this conviction.
13. Hold employment only in a position where you always receive direct supervision.

14. Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.
15. Do not possess or consume controlled substances unless you have a legally issued prescription.
16. Do not possess drug paraphernalia.
17. Find and maintain full time employment and or a combination of employment and full time educational program during the period of supervision, as directed by the supervising Community Corrections Officer. *or demonstrate efforts to comply with this condition*
18. Do not access the Internet on any computer in any location, unless such access is approved in advance by the supervising Community Corrections Officer and your treatment provider. Any computer to which you have access is subject to search.
19. Do not use computer chat rooms.
20. Do not use a false identity at any time on a computer.
21. You must subject to searches or inspections of any computer equipment to which you have regular access.
22. You may not possess or maintain access to a computer, unless specifically authorized by your supervising Community Corrections Officer. You may not possess any computer parts or peripherals, including but not limited to hard drives, storage devices, digital cameras, web cams, wireless video devices or receivers, CD/DVD burners, or any device to store to reproduce digital media or storage.
23. Participate and make progress in sexual deviancy treatment. Follow all conditions outlined in your treatment contract. Do not change therapists without advanced permission of the sentencing Court.
24. Participate in offense related counseling programs, to include Department of Corrections sponsored offender groups, as directed by the supervising Community Corrections Officer.
25. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.
26. Participate in urinalysis, breathalyzer, plethysmograph and polygraph examinations as directed by the supervising Community Corrections Officer.
27. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
28. You must consent to DOC home visits to monitor your compliance with supervision. Home visits include access for purposes of visual inspection of all areas of the residence in which you live or have exclusive or joint control and/or access.
29. Register as a sex offender with the county of your residence for the period provided by law.

Dated this 17th day of March, 2008.



JUDGE RONALD L. CASTLEBERRY


LAURA E. TWITCHELL, #28697
Deputy Prosecuting Attorney


DONALD J. WACKERMAN, #15042
Attorney for Defendant


KYLE CHRISTOPHER BUCKINGHAM
Defendant

FILED

2009 MAY -5 AM 11:44

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

6086696170



SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

BUCKINGHAM, KYLE CHRISTOPHER
DOC# 314244

Defendant.

No. 07-1-01892-6

ORDER MODIFYING SENTENCE/
REVOKING SENTENCE/ORDER OF
CONFINEMENT/ORDER OF COMMITMENT

[] CLERK'S ACTION REQUIRED

I. HEARING

- 1.1 The court received a petition for an order modifying sentence for the above defendant.
- 1.2 This matter was heard on the 30th day of April, 2009 and the court having considered a violation report dated April 21, 2009, and/or
 - () Affidavit(s) from: _____
 - () Testimony of _____
 - () The defendant's stipulation to the violation of the requirements or conditions of sentence alleged in the petition as violation(s) number(s) _____
 - () Other: _____
 and the argument of counsel;

II. FINDINGS

- 2.1 The defendant has failed to comply with the requirements or conditions of sentence as follows:
 1. USING CONTROLLED SUBSTANCE, VICODIN, WITHOUT A PRESCRIPTION BETWEEN 3/8/09 AND 4/16/09.
 2. LEAVING THE COUNTY WITHOUT PERMISSION BETWEEN 3/8/09 AND 4/16/09.
 3. ACCESSING A COMPUTER BETWEEN 3/8/09 AND 4/16/09.
 4. ACCESSING THE INTERNET BETWEEN 3/8/09 AND 4/16/09.
 5. HAVING AN UNAPPROVED DEVICE THAT STORES DIGITAL MEDIA, A CELL PHONE, BETWEEN 3/8/09 AND 4/16/09.
 6. VIEWING PORNOGRAPHY AT HIS CLEAN AND SOBER RESIDENCE BETWEEN 3/8/09 AND 4/16/09.
 7. VIEWING PORNOGRAPHY ON A DVD AT HIS PARENT'S RESIDENCE BETWEEN 3/8/09 AND 4/16/09.

Order Modifying Sentence
St. v. BUCKINGHAM, KYLE CHRISTOPHER
PA#07F03118P1

Snohomish County Prosecuting Attorney
S:\felony\forms\prob\specstoc.pkg
SAU/LET/pmg

EXHIBIT 2

2
57

8. STAYING OVERNIGHT AT AN UNAPPROVED ADDRESS BETWEEN 3/8/09 AND 4/16/09.
9. FAILURE TO ABIDE WITH CCO INSTRUCTIONS BY VIOLATING CURFEW BETWEEN 3/8/09 AND 4/16/09.
10. FAILURE TO COMPLY WITH SEX OFFENDER TREATMENT CONTRACT BY FAILING TO NOTIFY HIS TREATMENT PROVIDER OF A ROMANTIC RELATIONSHIP WITH A WOMAN (MISTY) BETWEEN 3/8/09 AND 4/16/09.
11. FAILURE TO COMPLY WITH SEX OFFENDER TREATMENT CONTRACT BY HAVING UNAPPROVED SEXUAL CONTACT BETWEEN 3/8/09 AND 4/16/09.
12. FAILURE TO COMPLY WITH SEX OFFENDER TREATMENT CONTRACT BY ACCESSING PHONE SEX LINES BETWEEN 3/8/09 AND 4/16/09.
13. FAILURE TO COMPLY WITH SEX OFFENDER TREATMENT CONTRACT BY ENGAGING IN SEXUAL TEXTING ON CELL PHONE BETWEEN 3/8/09 AND 4/16/09.
14. FAILURE TO COMPLY WITH SEX OFFENDER TREATMENT CONTRACT BY FAILING TO NOTIFY HIS TREATMENT PROVIDER OF A ROMANTIC RELATIONSHIP WITH A WOMAN (RACHEL) BETWEEN 3/8/09 AND 4/16/09.
15. BEING SUSPENDED FROM SEX OFFENDER TREATMENT 4/21/09.

and the failure to comply
 was wilful on Violation(s) 1-15
 was not wilful on Violation(s) _____

III. ORDER

It is ORDERED that the sentence previously entered in the above entitled matter, including any previous modifications, is still in effect, but modified in the following manner:

- Defendant shall report to Community Corrections Officer on the first working day after release from confinement.
- Community Supervision is terminated.
 - Immediately Upon release from confinement
- Confinement is IMPOSED:
 - _____ days for violations.
 - _____ days for LFC's, except restitution, converted to jail time;
 - _____ days for _____ hours of community restitution converted to jail.
- TOTAL: _____ days of confinement the defendant shall serve.
- CONCURRENT CONSECUTIVE to any other confinement imposed.
- Snohomish County Jail Other _____
- Confinement to begin Immediately No later than _____
- Confinement may be served as:
 - WORK RELEASE HOME DETENTION if eligible.
 - DOC WORK CREW [...] DAYS OF DAILY REPORTING TO DOC

III. ORDER

IT IS ORDERED that:

3.1

The sentence previously entered in the above entitled matter, including any previous modifications, is still in effect but MODIFIED in the following manner:

Confinement is IMPOSED. The defendant shall serve _____ days of (total) (partial) confinement in the _____ County Jail.

The remaining term of _____ days of partial confinement is converted to total confinement.

Credit is given for (time) (_____ days) served.

3.2

The special sexual offender alternative sentence is VACATED. The order suspending the execution of the sentence previously issued is REVOKED and SENTENCE EXECUTED.

Confinement is imposed. The defendant shall serve:

CONFINEMENT [Determinate Sentences]. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

CONFINEMENT [Maximum Term and Minimum Term]. Defendant is sentenced to total confinement as follows. The maximum and minimum terms of confinement shall be served in a facility or institution operated, or utilized under contract, by the State of Washington.

Count I: maximum term of Life years AND minimum term of 93 months

Count _____: maximum term of _____ years AND minimum term of _____ months

Count _____: maximum term of _____ years AND minimum term of _____ months

Count _____: maximum term of _____ years AND minimum term of _____ months

total confinement in the custody of the Department of Corrections.

(total) (partial) confinement in the custody of the _____ County Jail

Credit is given for (time) (all time days) served.

COMMUNITY PLACEMENT [For Determinate Sentences] is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months.

COMMUNITY CUSTODY RANGE [For Determinate Sentences] is ordered as follows:

Count 1/1 for a range from Life to Life months;

Count _____ for a range from _____ to _____ months;

Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding. Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

COMMUNITY CUSTODY [For Maximum And Minimum Term Sentences]: For each count, the defendant is sentenced to community custody under the supervision of the Department of Corrections (DOC) and the authority of the Indeterminate Sentence Review Board for any period of time that the defendant is released from total confinement before expiration of the maximum sentence. In addition to other conditions, the defendant shall comply with any conditions imposed by the Indeterminate Sentence Review Board under RCW 9.94A.713; 9.95.420, .425, .430, .435.

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

The defendant shall not consume any alcohol.

Defendant shall have no contact with: S.S. d.o.b 8/6/02

Defendant shall have no contact with minor children.

Defendant shall remain [] within [] outside of a specific geographical boundary, to wit:

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

The defendant shall undergo an evaluation for treatment for

domestic violence

substance abuse (unless already completed in Snohomish County Jail)

mental health

anger management and fully comply with all recommended treatment.

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

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: Attached to original J+S as Appendix A

+ incorporated herein by reference

Community Supervision (when confinement imposed is 12 months or less, and crime was committed before 08/06/98). Defendant shall serve _____ months (up to 24 months) in community supervision. Defendant shall report to the Department of Corrections, 8825 Evergreen Way, Suite 100, Everett, Washington 98204, not later than 72 hours after release from custody and the defendant shall comply with the instructions, rules and regulations of the Department for the conduct of the defendant during the period of community supervision, including reporting as directed to a community corrections officer, notifying the community corrections officer of any change in the defendant's address or employment, paying as directed the supervision fee assessment and other special service fees, remaining within prescribed geographic boundaries, and shall obey all laws. In addition, the defendant shall comply with the following crime-related prohibitions:

Defendant shall not possess or consume any alcohol or any controlled substances, unless legally prescribed.

Defendant shall have no contact with minor children.

Defendant to appear at a review hearing on this date _____ at _____ AM/PM,
 Dept. # _____, Judge _____
 Room #304.

Defendant shall pay \$ _____ by _____.

Defendant shall pay \$50 \$ _____ each month on Legal Financial Obligations in this cause commencing on _____.

Defendant shall report to the Snohomish County Clerk's Office and set up a payment plan immediately, or in custody, within 24 hours of release from custody.

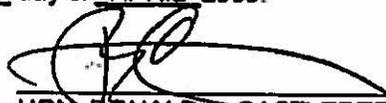
BAIL MONIES:

[] The clerk is ordered to apply bail posted on _____ in the amount of _____ to defendant's legal financial obligations.

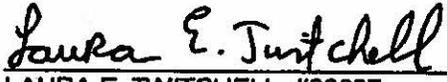
[] Bail posted on _____ in the amount of _____ is hereby exonerated. The clerk is ordered to release monies posted for an appearance bond or cash bail to the appropriate person or persons.

[] The court finds the restitution order in this cause to have been untimely filed and, therefore, void. This order is prospective from today and does not affect any amounts previously paid.

DONE IN OPEN COURT this 30th day of APRIL, 2009.

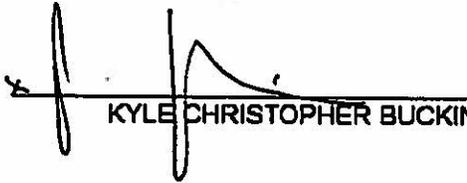

HON. RONALD L. GASTLEBERRY, JUDGE

Presented by:


LAURA E. TWITCHELL, #28697
Deputy Prosecuting Attorney

Copy received by:


DONALD J. WACKERMAN, #15042
Defendant
Defendant's Attorney


KYLE CHRISTOPHER BUCKINGHAM,

ORDER OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of the county of Snohomish, state of Washington, and to the Secretary of the Department of Correction, and the Superintendent of the Washington Corrections Center of the state of Washington, GREETINGS:

WHEREAS KYLE CHRISTOPHER BUCKINGHAM has been duly convicted of the crime(s) of as charged in the _____ information filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him that he be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term of _____ months, all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

THIS IS TO COMMAND YOU, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification, and placement in such corrections facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable RONALD L. CASTLEBERRY, Judge of the said Superior Court and the seal thereof, this 30 day of APRIL, 2009.

CLERK OF THE SUPERIOR COURT

By: B MacJougall
Deputy Clerk

FILED
JUN 24 4:45
PAUL DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH



CL12945941

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

BUCKINGHAM, KYLE CHRISTOPHER

Defendant.

No. 07-1-01892-6

STIPULATION FOR BENCH
TRIAL ON AGREED
DOCUMENTARY EVIDENCE

The defendant is charged with the crime(s) of Count 1 Rape of a Child in the First Degree. The defendant, defense counsel, and the deputy prosecuting attorney appeared in open court for trial. The parties desired to proceed by stipulated bench trial on agreed documentary evidence.

I. ADVISEMENT AND WAIVER OF RIGHTS

1.1 The defendant has the following rights: (a) trial by jury; (b) at trial to confront and listen to the testimony of the witnesses against defendant and to cross-examine witnesses; (c) at trial to call witnesses for the defense at no expense to the defendant; (d) for the defendant to testify in his/her own defense at trial, and (e) the right to appeal a finding of guilt.

1.2 The rights listed in section 1.1, (a) through (e), above will be lost by agreement to a bench trial on agreed documentary evidence. A bench trial is a trial in which the judge (instead of a jury) decides the case. The use of agreed documentary evidence means that no

COPY

EXHIBIT 3

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live witnesses will be called to testify. Since only the agreed documentary evidence will be introduced at trial, the defense will not call live witnesses and the defendant will not testify. The judge will consider the agreed documentary evidence to decide the case.

1.3 The defendant wants to proceed with a bench trial on agreed documentary evidence. No promises or threats have been made to the defendant (or to other persons) to cause defendant to give up the rights listed in section 1.1 (a) through (e), or to cause the defendant to agree to a bench trial on agreed documentary evidence. Defendant acknowledges that he/~~she~~ knowingly, freely, and voluntarily waives (gives up) the rights in section 1.1, (a) through (e), and agrees to a bench trial on agreed documentary evidence.

1.4 The defendant understands that he/~~she~~ is charged with the crime of Count 1 Rape of a Child in the First Degree, which has a maximum sentence of Life and a standard sentence range of 93-123 months.

II. STIPULATION

The defendant and the State of Washington agree and stipulate as follows:

2.1 There will be a bench trial where a judge (instead of a jury) will function as the sole trier of fact and decide this case.

2.2 The evidence to be considered at this bench trial shall consist only of the agreed documentary evidence which is (a) the affidavit(s) of probable cause on file in this cause plus (b) the reports, statements, lab tests, photos, diagrams, and other documents contained in "Appendix E" to this stipulation.

2.3 The person present in court is the defendant charged in this cause. Further, the defendant is the same person named and referred to in the agreed documentary evidence.

2.4 The offense(s) occurred in Snohomish County, Washington. Venue is properly in Snohomish County, Washington.

2.5 **Persistent Offender – "Three Strikes"**: The crime of Rape of a Child 1^o is a most serious offense or strike as defined by RCW 9.94A.030. If I have at least two prior convictions for most serious offenses, the crime carries a mandatory sentence of life imprisonment without the possibility of parole.

2.6 **Persistent Offender – "Two Strikes"**. The crime of Rape of a Child 1^o is a "two strikes" offense as defined by RCW 9.94A.030. If I have a prior conviction for a "two

strikes" offense, the crime carries a mandatory sentence of life imprisonment without the possibility of parole.

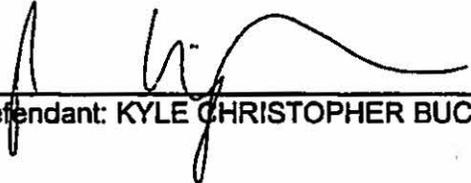
III. SIGNATURES

I have read this statement or my lawyer has read it to me. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have no further questions to ask the judge.

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

12/24/07
Date

12/24/07
Date

x 
Defendant: KYLE CHRISTOPHER BUCKINGHAM


DONALD J. WACKERMAN, #15042
Attorney for Defendant

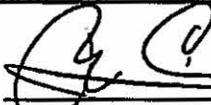
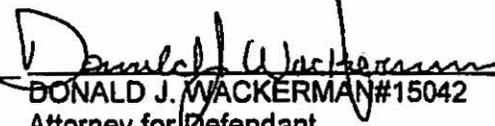
IV. FINDINGS

4.1 Understanding of Waiver

The court finds that the defendant's waiver of rights and agreement to a bench trial on agreed documentary evidence was knowingly, intelligently, and voluntarily made.

DATED this 24th day of December, 2007.

x 
KYLE CHRISTOPHER BUCKINGHAM
Defendant:


Judge

DONALD J. WACKERMAN #15042
Attorney for Defendant

**AGREEMENT UPON STIPULATION
(SENTENCING REFORM ACT)**

Defendant:BUCKINGHAM, KYLE CHRISTOPHER CAUSE NO.: 07-1-01892-6
[X] AS CHARGED - []

Special Finding/Verdict of possession of deadly weapon on Count(s) _____
(RCW 9.94A.125).

The State of Washington and the defendant enter into this AGREEMENT which is accepted only by entering a stipulation for bench trial upon agreed evidence. This agreement may be withdrawn at any time prior to entry of the stipulation. The AGREEMENT is indicated above and as follows:

1. [] DISMISS: Upon disposition of Count(s) _____, the State moves to dismiss Count(s) _____.

2A. [] REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:

[] as set forth in the affidavit(s) of probable cause filed herein

[] as set forth in attached Appendix C.

2B. [X] SENTENCING FACTS: Facts to be considered for imposing a standard range sentence are as set forth in the affidavits(s) of probable cause filed herein.

3. [X] RESTITUTION: Pursuant to statute, the defendant agrees to pay restitution as follows:

[X] in full to victim(s) on charged counts

[X] as set forth in attached Appendix C.

4. [] OTHER:

[] The defendant agrees to undergo an evaluation by Treatment Alternatives to Street Crime and allow the results of that evaluation to be submitted to the court and the Prosecuting Attorney, prior to sentencing.

5. [X] SENTENCE RECOMMENDATION:

[X] The defendant agrees to the foregoing Agreement and that the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix A), and the attached Sentencing Guidelines scoring form(s) (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). Any challenge by the defendant to the criminal history or scoring will constitute a breach of this agreement. The State makes the sentencing recommendation set forth in State's Sentence Recommendation. The sentencing recommendation may increase in severity if any additional convictions are discovered.

[] The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regard to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Mandatory Minimum Term (RCW 9.94A.120(4) only):

[] Mandatory license revocation RCW 46.20.285.

Ten years jurisdiction and supervision for monetary payments.
RCW 9.94A.120(9).

6. **AGREEMENT NOT TO CHALLENGE CONVICTION:** The defendant agrees not to challenge the conviction for this crime, whether by moving to withdraw the stipulation, appealing the conviction, filing a personal restraint petition, or in any other way. If an exceptional sentence is imposed, the defendant may appeal the sentence without violating this agreement.

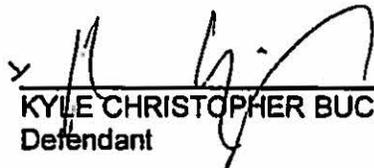
7. **NON-COMPLIANCE WITH AGREEMENT:** If the defendant fails to appear for sentencing, or if prior to sentencing the defendant commits any new offense or violates any condition of release, the State may recommend a more severe sentence.

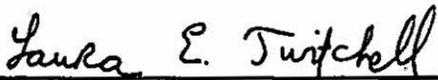
If the defendant violates any other provision of this agreement, the State may either recommend a more severe sentence, file additional or greater charges, or re-file charges that were dismissed. The defendant waives any objection to the filing of additional or greater charges based on pre-charging or pre-trial delay, statutes of limitations, mandatory joinder requirements, or double jeopardy.

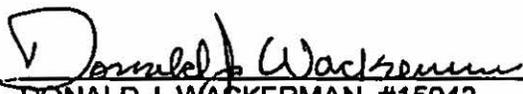
In any event, the defendant will remain bound by the agreement and will not be allowed to withdraw the stipulation. If the defendant's violation of the agreement constitutes a crime, the defendant may be charged with that crime.

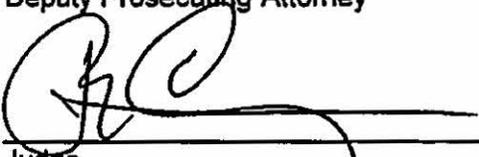
8. **AGREEMENT NOT TO FILE ADDITIONAL CHARGES**

This agreement is limited to cause numbers or crimes specifically referred to in this plea agreement and identified by crime, victim, and police incident number immediately following this paragraph and does not apply to any other matters which may be under investigation, pending, or being handled by any other DPA or agency.

x 
KYLE CHRISTOPHER BUCKINGHAM
Defendant


LAURA E. TWITCHELL, #28697
Deputy Prosecuting Attorney


DONALD J. WACKERMAN, #15042
Attorney for Defendant


Judge

**APPENDIX A TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

DATE: December 20, 2007 (dhw/gp)
DEFENDANT: BUCKINGHAM, Kyle Christopher
DOB: 12/9/85 M/W
SID: WA22503972 FBI: 626597FC9 DOC:

<u>CRIME</u>	<u>DATE OF CONVICTION</u>	<u>PLACE OF CONVICTION</u>	<u>Incarceration/Probation DISPOSITION</u>
--------------	---------------------------	----------------------------	--

ADULT FELONIES:

None

ADULT MISDEMEANORS:

First Degree Criminal Trespass	10/28/04	Snohomish County	
--------------------------------	----------	------------------	--

JUVENILE FELONIES:

None

JUVENILE MISDEMEANORS:

None

OTHER (NOT COUNTED AS CRIMINAL HISTORY):

12/21/07
Date

Laura E. Twitchell
Deputy Prosecuting Attorney WSBA# 28697

12/20/07 (bel)
~~7/05/07 (ahw)~~

RAPE OF A CHILD OR ATTEMPTED RAPE OF A CHILD, FIRST DEGREE

(RCW 9A.44.073)

BUCKINGHAM, Kyle Christopher

**CLASS A FELONY
 VIOLENT SEX**

I. OFFENDER SCORING (RCW 9.94A.525(16))

ADULT HISTORY:

Enter number of sex offense convictions x 3 =

Enter number of other serious violent and violent felony convictions x 2 =

Enter number of other nonviolent felony convictions x 1 =

JUVENILE HISTORY:

Enter number of sex offense dispositions x 3 =

Enter number of other serious violent and violent felony dispositions x 2 =

Enter number of other nonviolent felony dispositions x 1/2 =

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions x 3 =

Enter number of other serious violent and violent felony convictions x 2 =

Enter number of other nonviolent felony convictions x 1 =

STATUS:

Was the offender on community placement on the date the current offense committed? (if yes), + 1 =

Total the last column To get the Offender Score (Round down To the nearest whole number)

II. SENTENCING RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL XII)	93 - 123 months	102 - 136 months	111 - 147 months	120 - 160 months	129 - 171 months	138 - 184 months	162 - 216 months	178 - 236 months	209 - 277 months	240 - 318 months

- B. The range for an attempt is 75% of the range for the completed crime (RCW 9.94A.595).
- C. If the offender is not a persistent offender, then the minimum term for this offense* is the standard sentence range, and the maximum term is the statutory maximum for the offense. See (RCW 9.94A.712).
- D. When a court sentences a non-persistent offender to this offense, the court shall also sentence the offender to Community Custody under the supervision of the Dept. of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See (RCW 9.94A.712).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-6 or III-7 to calculate the enhanced sentence.
 - * The offense must have been committed on or after September 1, 2001.

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eleven years: see Special Sex Offender Sentencing Alternative (RCW 9.94A.670).

* The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

APPENDIX C TO PLEA AGREEMENT
SENTENCING MEMORANDUM (REAL FACTS/RESTITUTION)
(SENTENCING REFORM ACT)

Date: _____
Defendant: KYLE CHRISTOPHER BUCKINGHAM Cause No.:07-1-01892-6

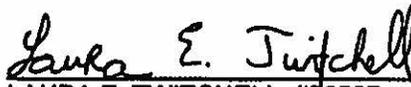
A. [] REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:

B. SENTENCING FACTS: Facts to be considered for imposing a standard range sentence are as set forth in the affidavit(s) of probable cause filed herein:

C. RESTITUTION-CHARGED COUNTS (Indicate count, police department, police number and victim's name) is as follows:

D. [] RESTITUTION-UNCHARGED CRIMES, RCW 9.94A.140(2) (indicated police department, police number and victim's name) is as follows:

As conditions of any plea agreement, the defendant must agree to allow the court to consider the above-stated REAL FACTS at sentencing and/or agree to make the above-stated RESTITUTION on uncharged crimes.



LAURA E. TWITCHELL, #28697

APPENDIX D TO PLEA AGREEMENT

NOTIFICATION OF REGISTRATION REQUIREMENT - RCW 9A.44.130, -.140

If I am convicted of any "sex offense" or "kidnapping offense" as defined by RCW 9A.44.130, I have been informed and fully understand that I must register as follows:

1. I will be required to register with the County Sheriff in the Washington county of my residence. If I am not a resident of Washington, then I must register with the County Sheriff of the Washington county where I attend school, work or carry on a vocation. Additionally, if I am admitted to a public or private institution of higher education, within 10 days of enrolling or the first business day after arriving at the institution, whichever is sooner, I must notify the County Sheriff of the county of my residence of my intent to attend the institution.
2. If not in custody, I must report to register immediately after sentencing. If I am in custody, I must register at the time of my release with the person designated by the agency that has me in custody, and also I must register again within 24 hours of release with the County Sheriff as specified in section 1.
3. If I am not a Washington resident but I become one, I must register within 24 hours of moving to Washington if I am under the supervision of the State Department of Corrections, or within 30 days of moving to Washington if I am not under the supervision of the State Department of Corrections.
4. When registering, I must provide the County Sheriff with the following information: (a) Name; (b) Address; (c) Date and place of birth; (d) Place of employment; (e) Crime for which convicted; (f) Date and place of conviction; (g) Aliases used; (h) Social Security number; (i) photograph; (j) fingerprints; and, (k) if I have no fixed address, where I plan to stay.
5. If I change my residence address within the same county, I must send written notice of the change of address to the County Sheriff within 72 hours of moving. If I move to a new county, at least 14 days before moving, I must send written notice to the County Sheriff of the new county and I must register with the County Sheriff in the new county within 24 hours of moving. Additionally, I must also send written notice within ten days of the change of address to the County Sheriff with whom I last registered.
6. If I move to another state or a foreign country, within 10 days of moving I must send written notice of the move to the County Sheriff with whom I last registered in Washington. If I move to another state, or work, carry on a vocation, or attend school in another state, I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence or beginning to work, carry on a vocation or attend school.
7. If I lack a fixed residence, I am required to register. If I lack a fixed residence and I am under the supervision of the Department of Corrections, I must register in the county where I am supervised. Registration must occur within 24 hours of release from custody. If I was registered at a fixed residence, but then ceased to have a fixed residence, I must provide written notice to the County Sheriff of the county where I last registered within 48 hours, excluding weekends and holidays, after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I must register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be made during normal business hours on a day specified by the county sheriff's office. I may be required to list the locations where I have stayed during the last 7 days. The lack of a fixed residence is

a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large.

8. If I apply for a name change, I must submit a copy of the application to the county sheriff of the county of my residence and to the state patrol at least five days before the entry of the order granting the name change. Upon receipt of an order changing my name, I must submit a copy of the order to the county sheriff of the county of my residence and to the state patrol no more than five days after entry of the order.
9. If I am required to register pursuant to the above obligations and if I knowingly fail to do so, or if I change my name without notifying the county sheriff and the state patrol, I may be charged and convicted of a crime.
10. The crime(s) to which I am pleading guilty defined as "sex offense" or "kidnapping offense" by RCW 9A.44.130 is(are) :

COUNT #

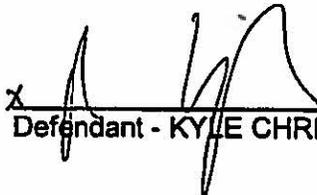
() a. Class A felony. My obligation to register continues until I am specifically relieved of it by court order.

() b. Class B felony. My obligation to register continues for 15 years after the last date of release from confinement, if any (including full-time residential treatment), pursuant to the conviction or entry of the judgment and sentence, if I have spent fifteen consecutive years in the community without being convicted of any new offenses; except that if I have a prior conviction for any sex offense or kidnapping offense or my current conviction is for an offense listed in RCW 9A.44.140(5), then my duty to register continues until specifically ended by court order.

() c. Class C felony, a violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to commit a Class C felony. My obligation to register continues for 10 years after the last date of release from confinement, if any (including full-time residential treatment), pursuant to the conviction, or entry of the judgment and sentence, if I have spent ten consecutive years in the community without being convicted of any new offenses; except that if I have a prior conviction for any sex offense or kidnapping offense or my current conviction is for an offense listed in RCW 9A.44.140(5), then my duty to register continues until specifically ended by court order.

Dated this 24th day of December, 2007.

Cause No. 07-1-01892-6


x _____
Defendant - KYLE CHRISTOPHER BUCKINGHAM

STATE'S SENTENCE RECOMMENDATION (CONFINEMENT OF OVER ONE YEAR)
(SENTENCING REFORM ACT)

DATE: _____
DEFENDANT: KYLE CHRISTOPHER BUCKINGHAM CAUSE NO.: 07-1-01892-6

State recommends that the sentence of this defendant be as follows:

TOTAL CONFINEMENT: State recommends that the defendant be sentenced to a term of total confinement in the custody of the Department of Corrections as follows:

Count I 93 months - Life months/years Count IV _____ months/years
Count II _____ months/years Count V _____ months/years
Count III _____ months/years Count VI _____ months/years

Terms on each count to run concurrently/consecutively.

MONETARY PAYMENTS: The defendant shall make the following monetary payments under the supervision of the Secretary of the Department within 10 years:

- Restitution as set forth on attached page entitled "Plea Agreement" and Appendix C.
- Mandatory Victim Penalty Assessment \$100.00 prior to June 6, 1996; \$500.00 on or after June 6, 1996.
- Pay a fine of \$ _____
- Pay probationer assessment pursuant to RCW 9.94A.270.
- Pay costs of extradition.
- Pay court costs and costs of appointed counsel.
- Pay mandatory \$100 state crime lab fee.
- Pay \$100 DNA fee.

^{Custody} COMMUNITY PLACEMENT: The defendant shall serve a Life -year term of community placement subject to the conditions set forth in RCW 9.94A.120(8)(b) and the following conditions. The defendant shall:

- Have no direct contact with S.S.(d.o.b. 8/6/02)
- Not consume alcohol.
- Participate in crime-related treatment and counseling.
- Shall remain (within)(outside of) the following geographical area: _____

Shall comply with the following crime-related prohibitions: As directed by DOC

CHEMICAL DEPENDENCY SCREENING REPORT: If there is a finding a chemical dependency has contributed to the defendant's offense, the state will recommend a chemical dependency screening report be prepared and reserves the right to recommend any affirmative conduct allowed by law.

PROBATION REVOCATION/MODIFICATION: State recommends revocation/modification of probation or community supervision on Snohomish County Cause Number(s) _____ and recommends that terms be run concurrently/consecutively.

EXCEPTIONAL SENTENCE: This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form.

OTHER: _____

Laura E. Twitchell
LAURA E. TWITCHELL, #28697
Deputy Prosecuting Attorney

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

BUCKINGHAM, KYLE CHRISTOPHER

Defendant.

No. 07-1-01892-6

APPENDIX E TO STIPULATION TO
DOCUMENTARY EVIDENCE

FILED

JUL - 5 2007

FAM L. DANIELS
SNOHOMISH COUNTY CLERK
EX - OFFICIO CLERK OF COURT

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

BUCKINGHAM, KYLE CHRISTOPHER

Defendant.

No. 07-1-01892-6

AFFIDAVIT OF PROBABLE CAUSE

Aliases: »

Other co-defendants in this case:

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity, that criminal charges have been filed against the above-named defendant(s) in this cause, and that I believe probable cause exists for the arrest of the defendant(s) on the charges because of the following facts and circumstances:

The following information was obtained through police reports and witness statements submitted by the Snohomish County Sheriff's Office. The undersigned has no personal knowledge of these events.

Lora Hollifield lives at 18303 52nd Ave. W. #127, Lynnwood, Washington with Richard Sims and his girlfriend Rochelle Osborn. Mr. Sims' daughter S.S. (d.o.b. 8/6/02) also lives at the residence.

On the morning of July 1, 2007, Ms. Hollifield was at her home with her boyfriend, the defendant (d.o.b. 12/9/85). S.S. was at home as well. At around 6:45 a.m., Ms. Hollifield awoke to find that the defendant was no longer in bed with her. Ms. Hollifield got up and noticed that the door to S.S.'s room was closed. She opened the door to find the defendant inside S.S.'s room. Ms. Hollifield could see S.S. in her room, sitting on her bed pulling up her pants. Ms. Hollifield also observed that the defendant, who was wearing only boxer shorts, had an erection as he exited S.S.'s room.

Ms. Hollifield asked S.S. to come outside to the porch with her where she asked S.S. why she had been pulling up her pants. S.S. responded that the defendant had kissed her, pointing to her lips and to her vaginal area. S.S. also indicated that the defendant had told her to pull her pants down and had licked

her in her vaginal area. Ms. Hollifield asked S.S., "Do you want me to kick his ass?" to which S.S. replied, "No, call the cops on that dummy head."

Ms. Hollifield called 911 and Lynnwood Police Officer Malloy was dispatched to her residence. S.S. repeated to Officer Malloy that the defendant had "kissed me here" while pointing to her lips and to her vagina.

Later in the day, S.S. told her father that the defendant had put his finger inside her.

After initially denying that he did anything to S.S., the defendant admitted to Detectives Post and Jamison that he had kissed S.S. on the mouth, stomach, and vagina. He also admitted that he inserted his left pinky finger into S.S.'s vagina.

Although not expressly stated in the reports, it is obvious that the defendant was not married to S.S.

The defendant's criminal history consists of the following adult misdemeanor:

Criminal Trespass

10/28/04

Snohomish County

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

Laura E. Twitchell
LAURA E. TWITCHELL, #28697
Deputy Prosecuting Attorney

DATED this 5th day of July, 2007 at the Snohomish County Prosecutor's Office.

On 7-1-07 at about 0708 hours, Lynnwood units were dispatched to

for a child molestation that had just occurred. Dispatch advised that the caller was reporting that her niece was just molested by a subject named Kyle Buckingham (A-1). They advised that he wasn't aware that the police were called. As I arrived, dispatch advised that Kyle had just left the area on foot. I saw the caller out in the parking lot. I asked her which way he went, and they said that he went northbound through the complex. He was described as wearing all black.

I went back out onto 52nd Ave and observed a subject matching the description walking northbound on 52nd approaching Hwy 99. I stopped him and asked him what his name was. He said that his name was Kyle. I then placed him into custody without incident. I recovered identification from him that identified him as Kyle Buckingham. I advised him of his Miranda rights, which he said that he understood. Officer Reorda arrived, and I had him stay with Kyle while I went and made contact with the caller.

I responded back to the apartment and contacted Lora Hollifield (W-1), who was in the parking lot with S (V-1). Rochelle Osborn (O-1) was also present. I asked them what happened. S said, "He kissed me here (pointing at her lips) and here (pointing at her vagina)." I then had her step away so that I could talk to Lora. I asked Lora what she saw. She said that Kyle is her (now ex) boyfriend, and stays with her at the apartment every once in a while. He sleeps with her in the living room. She got up to go to the bathroom and noticed that Kyle wasn't there. After going to the bathroom, she noticed that S's door was closed. She opened the door and saw Kyle in the room with only his boxers on. S was sitting on the bed with her pants down. She was pulling her pants up. Kyle quickly left, and Lora took S outside while she smoked. She asked S why she was pulling her pants up. She told Lora that Kyle had kissed her on the lips and on her private area. She said that he used his tongue on her private area. Lora said that she asked S if she wanted her to "kick his ass." S said, "No, call the cops on that dummy head." Lora then called 911.

I responded back to Officer Reorda's location. I asked Kyle if he understood his rights, and he said yes. I then asked him if he would talk to me about what happened, and he said that he would. I asked him what happened. He said that S had a nightmare, so he went to calm her down. Kyle was talking very quickly, and it was difficult to understand him. He said something about he and Lora having an argument earlier. He then said that Lora thought that something happened between him and S. He said that that he just went into her room to comfort her after having a nightmare. I then searched Kyle incident to arrest. I asked him if he had anything on him, and he said that he had a little bit of marijuana in his pocket. He was wearing a pair of jeans with a pair of sweats under the jeans. He said that the marijuana was in the right pocket of the sweats. I searched that pocket and found a small plastic bag with what appeared to be a bud of marijuana. I collected it for evidence. I then put Kyle in Officer Reorda's vehicle. Officer Reorda then transported him to the station.

I contacted Sergeant Demetruk and informed him of the situation. He advised that he would be calling in detectives, and not to talk to S any further about what

Rape of a Child 1st Degree

07-06323

happened. I responded back to the residence. I sealed S's bedroom door with evidence tape. We also advised them not to clean S in any way, and to have her keep the same clothes on. I had Lora complete a written statement. I asked her who S's biological parents were. She said that Richard Sims is her father, and that Rochelle is Richard's girlfriend. Lora didn't have information on her biological mother. They informed me that Richard worked at Franz Bakery in Seattle.

Dispatch was able to locate a phone number for the bakery. I called and spoke to Richard. I explained the situation, and that we would need him to respond in order to give consent for examinations on S. He advised that he would respond as soon as possible. There is a no-contact order that restricts Rochelle from having contact with Richard. At one point, S accidentally opened her bedroom door and broke the tape. I replaced the evidence tape.

When Richard arrived, I had him wait in his vehicle. I had Rochelle complete a statement. She said that she was asleep, and was awoken by Lora and S. Lora told her that S had told her that Kyle had kissed her on her private area. Rochelle then confronted Kyle. She told him that S has never made anything up like this, and he needed to get out of the house. He told her that nothing happened, and that it was "bullshit." I had Rochelle leave the scene after she completed her statement.

Richard took custody of S. Detective Post arrived and made contact with Richard and S. Richard and S then responded to Providence Hospital. I remained on scene while Detective Post responded back to the station.

Detective Post responded back to the scene. Once Detective Jamison advised that he had the warrant signed, we re-entered the apartment. I photographed the door before breaking the seal. I then photographed the interior of the bedroom. I assisted Detective Post in collecting the comforter, and other items, off of the bed. We then looked over the mattress. I located two hairs on the mattress. I collected them and handed them over to Detective Post. Detective Post took custody of the evidence from the room.

I responded to the station and entered the photos into the evidence system. I also weighed the suspected marijuana bud, and entered it into evidence.

D. P. Molloy #743

14



INCIDENT STATEMENT FORM

Case # 07-06323

Name Hollifield Lora E
Last, First MI

Date of Birth 07-21-87

Address
Number/Street _____ City/State/Zip _____

Res. Phone (425) 775-2360 Work Phone () SS # _____

The following is my voluntary statement regarding this police report:

This morning of July 1, 2007 at 6:45am Kyle and I were in the bedroom when I woke up and when I went into the bedroom I was pulling up her pants. I went out for a smoke with S and asked her why she was pulling up her pants and she said Kyle was kissing her lips and her privates with his tongue. Then I woke Rochelle up and told her what happened. Everything happened in S room. I asked S what she wanted me to do I asked her do you want me to kick his ass she said "no call the cops on that dummy head" so that's when I called the cops.

Little Girls:
male: Kyle Christopher Buckingham

Kyle was in his boxers and the door was closed, he acted a little suspicious. He said that he was just fucking her back into bed. I saw he had an erection, he still had his penis in his boxers. He came back into the living room and laid back down, then Rochelle told Kyle to get the fuck out of my house. He packed his stuff and left.

- any other say anything.*
- For Burglaries, Theft, Vehicle Theft and Runaway/Missing Persons reports:
- I did not give anyone permission to enter my premises and/or take/remove my property/vehicle.
 - I do do not accept liability for towing and storage of my vehicle. (Note: Some circumstances may require impound).
 - The named juvenile is presently a runaway. The named person is presently missing.

MIRANDA
Time: _____

Making false or misleading statements to a public servant:
A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. A material statement means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties. RCW 9A.76.175. This statement is likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

I have read each page of this statement consisting of 2 page(s). Each page bears my signature, and all corrections, if any, bear my initials. I certify (or declare) under penalty of perjury, under the laws of the State of Washington, the above statement is true and correct.

Lora E Hollifield
Signature _____ #743
Witnessed By _____

July 1, 2007 WA #54
Date _____
Lynnwood P.D.
Location Signed _____



INCIDENT STATEMENT FORM

Case # 07-06323

Name Hollifield Lora E
Last, First, M.I.

Date of Birth 07/21/87

Address _____
Number/Street City/State/Zip

Dr. Lic. _____

Res. Phone () _____ Work Phone () _____ SS # _____

The following is my voluntary statement regarding this police report:

When I went into S _____'s Room she was pulling up her pants, she had told me that Kyle had told her to pull them down. He said (Kyle) that she had a night mere and he was just tucking her back into bed, I said she can get up now and shortly after that that's when she told me what had happened.

For Burglaries, Thefts, Vehicle Thefts and Runaway/Missing Persons reports:

- I did not give anyone permission to enter my premises and/or take/remove my property/vehicle.
- I do do not accept liability for towing and storage of my vehicle. (Note: Some circumstances may require impound).
- The named juvenile is presently a runaway. The named person is presently missing.

MIRANDA
Time: _____

Making false or misleading statements to a public servant:

A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. A material statement means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties. RCW 9A.75.175. This statement is likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

I have read each page of this statement consisting of 2 page(s). Each page bears my signature, and all corrections, if any, bear my initials. I certify (or declare) under penalty of perjury, under the laws of the State of Washington, the above statement is true and correct.

Signature Lora E Hollifield
743

Date July 1, 2007
Lynnwood, WA

Witnessed By _____

Location Signed _____



No Property

Case #07-06323

Incident Classification – Rape of a Child 1st Degree

Follow-up Narrative
Detective Greg Jamison

07-01-07

I was contacted by Sgt. Demetruk who requested I respond to Lynnwood Police Department reference this case. Sgt. Demetruk briefed me on the case explaining that there was one subject in custody. Sgt. Demetruk told me that the five-year-old victim was still at the location where the assault occurred, and that efforts to contact her father were being undertaken so the victim could be taken for a sexual assault examination. Detective Post was also called in on this case.

I responded to Lynnwood Police Department where I spoke with Sgt. Demetruk. Sgt. Demetruk provided a more complete explanation of the incident. I also obtained a copy of the CAD listing. I found that on this date at 0708 hours Lynnwood Police were dispatched to 18303 52nd Ave West #127 Lynnwood WA, located in Snohomish County, to the report of a sexual assault.

According to the CAD printout the reporting party, **Lora Hollifield**, told dispatchers that her five-year-old niece had just been molested. As she was on the phone with dispatchers Lora identified the suspect as **Kyle Buckingham**, and told dispatchers he was leaving the residence on foot.

Lynnwood units arrived after which the victim's bedroom was secured. Kyle was contacted approximately five minutes after the call was dispatched after which he was taken into custody and transported to Lynnwood Jail.

Sgt. Demetruk spoke with Lora after which he relayed to me the following. Lora told Sgt. Demetruk that she lives in apartment #127 with **Richard Sims** and **Rochelle Osborn**. Richard is the biological father of victim **S** and Rochelle is Richard's girlfriend. I note that I was initially told that Richard and Rochelle were not at home when this incident occurred. Lora told Sgt. Demetruk that she awoke at approximately 0700 hours and found that her boyfriend, suspect Kyle Buckingham, was not in bed with her. Lora said that she got up and walked out of the bedroom. Lora said she noticed that the door to five-year-old **S**'s bedroom was closed, and that she thought that odd. Lora said she walked to the door and was about to open it when it popped open. Lora said that Kyle opened the door and walked out of **S**'s room, leaving the door partially open. Lora said that Kyle looked noticeably nervous, and that she could see **S** inside the room pulling her "pants" up.

Lora said that after seeing this she asked **S** to accompany her to the apartment porch. On the porch Lora said she asked **Si** what had



No Property

Case #07-06323

Incident Classification – Rape of a Child 1st Degree

Follow-up Narrative
Detective Greg Jamison

happened. Lora said that S told her that Kyle had kissed her, and that she pointed to her lips and her crotch, indicating that Kyle had kissed on both locations. S also pointed to her crotch and indicated that Kyle had "licked" her. Lora said she asked S if she (S) wanted her (Lora) to go "kick his ass". Lora said that S said, "No", and then said that she wanted Lora to call 911. Lora then called 911.

After speaking with Sgt. Demetruk I began drafting a search warrant for S's bedroom and the person of Kyle Buckingham. While I was preparing the warrant Detective Post responded to apartment #127 to speak with Lora and Officer Molloy. While she was on-scene Detective Post spoke with Lora and relayed to me that Lora had noticed Kyle had an erection when he walked out of S's bedroom. Lora told Detective Post that Kyle was wearing boxer shorts

Detective Post also spoke with Officer Molloy, the primary officer conducting the initial investigation. Detective Post reported that Officer Molloy asked S what had happened. Officer Molloy indicated that S told him that Kyle had "kissed her", after which S pointed to her lips and crotch, indicating that Kyle had kissed her in both locations.

S's father Richard was contacted at work and responded to the apartment to take S for a sexual assault examination. While Richard was driving S to the examination he contacted Detective Post and reported that S disclosed that Kyle had put his finger inside her. Richard indicated that he did not ask S about the incident, and said that S chose to disclose the information.

I obtained approval for the warrant from DPA Tweten, and then from Judge Goodwin. After obtaining approval for the warrant I responded to apartment #127 and met Detective Post and Officer Molloy. Detective Post had collected several items of evidence from the bedroom by the time I arrived. Please see her follow up narrative.

I spoke with Lora and Rochelle while I was at the apartment. Lora provided an explanation of events that closely matched that provided to Sgt. Demetruk. I note that Lora told me that after she went and used the apartment bathroom. Lora said she saw that S's bedroom door was shut, and that after she went to the bathroom she opened the door. Lora said that when she opened the



No Property

Case #07-06323

Incident Classification – Rape of a Child 1st Degree

Follow-up Narrative
Detective Greg Jamison

door she found Kyle inside S. 's bedroom, and that he appeared to be startled and surprised that she had opened the door. S described Kyle as looking like he had "just stood up", and that she could see S. on the bed pulling up her pants. Lora said that Kyle was wearing boxer shorts, and that she could see that he had an erection. Lora said that Kyle told her that S had a bad dream and that he was just putting her back to bed. Lora said she thought that was odd because it was time for S to be getting up. Lora also told me that Kyle had been displaying unusual behavior around S that made her (Lora) uncomfortable. Lora said that Kyle had been alone with S in her room several times, and that he was very friendly with S. Lora said that S was also friendly with Kyle. Lora explained that Kyle had been staying with the family since approximately 06/28/07, and that he had access to her since that time.

Rochelle then came into the apartment and was present for part of my discussion with Lora. Lora explained that she had gone onto the porch area of the apartment and asked S what had been going on. Lora said that S then told her that Kyle had kissed her and then pointed to her lips and vaginal area. Lora said she got really angry and was balling her fists up, and that she asked S if she wanted her (Lora) to kick Kyle's butt. Lora said that S said, "no", and that she wanted Lora to call the police. Lora said she then went into Rochelle's room with S and told Rochelle what had happened. Lora said that Rochelle then told Kyle to "get the hell out of the house", and that Kyle had left shortly thereafter. Lora also indicated that she had called police.

As we discussed the incident Rochelle volunteered that S had indicated that Kyle had told S to pull her pants down. Lora then said that she remembered S saying that as well, but had forgotten until reminded by Rochelle. Rochelle also said that she asked S what had happened and that S told her that Kyle had kissed her on the mouth with his tongue, and then kissed her between the legs. Rochelle said that she asked S if Kyle had pulled her pants down. Rochelle said that S said that she had pulled them down, but then appeared confused saying that she had pulled them down but that Kyle had also pulled them down. I asked Officer Molloy to obtain further information from Rochelle and Lora and have them update their written statements.



No Property

Case #07-06323

Incident Classification – Rape of a Child 1st Degree

Follow-up Narrative
Detective Greg Jamison

After the completion of the warrant service Detective Post and I returned to Lynnwood Police Department. Detective Post handled the entry of evidence for the items collected from apartment #127. Detective Post and I then contacted Kyle in the jail, and spoke with him in the jail interview room.

In the interview room Detective Post introduced herself to Kyle, also introducing me, and identifying us as detectives that worked for Lynnwood Police Department. I then went over Miranda with Kyle, reading his rights verbatim from a rights/waiver form. After I went over the warnings with Kyle he indicated he understood his rights and did not have questions regarding them. Kyle then signed to rights portion of the form indicating that he understood his rights. I then read the waiver verbatim and explained to Kyle that we needed his permission to speak with him and asked him if that was "Ok". Kyle said he was willing to speak with us, and signed the waiver portion of the form. At no time did Kyle indicate that he was unwilling to speak with us, and at no time did Kyle indicate that he wanted to speak with an attorney.

About this time Detective Post stepped out of the room to take a phone call. Detective Post was out of the room for approximately five minutes during which time I continued to speak with Kyle. Detective Post rejoined the interview once she was completed with her phone call. While Detective Post was out of the room, I left the door ajar, so Detective Post could easily re-enter the room. I note that I could occasionally overhear Detective Post and custody staff outside the interview room during this time.

I asked Kyle to explain to Detective Post and I why he thought we were speaking with him. Kyle said that it was because of some things that Lora had said that were not true. I asked Kyle what those things were. Kyle said they had something to do with touching S , but said they were not true and said that kind of stuff would be "gross". Kyle said that he and S. had been fighting, arguing over an ex-boyfriend of hers. Kyle said that Lora might not remember arguing with him, because she had been half asleep while they were talking. Kyle said that he was awakened by S. and that she was she had come out of her room wearing only her underwear. Kyle said he got up and took S back into her room to put her back to bed. Kyle said that he was inside S 's room when Lora opened the door at which time she "thought she saw something" that she didn't. I asked Kyle if he had touched S in anyway that she might have misunderstood. Kyle said he had not. I asked Kyle if he had kissed S . Kyle said that he had only kissed Si on the



No Property

Case #07-06323

Incident Classification – Rape of a Child 1st Degree

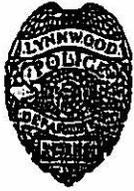
Follow-up Narrative
Detective Greg Jamison

forehead, and that he had picked her up by placing his hands on her sides as he put her back into bed. Kyle denied touching S in any way that was inappropriate.

Detective Post and I both explained that it was important that Kyle told the truth, and that we felt there was more to this story than he was telling us. Kyle insisted that nothing had happened, and over ten minutes insisted he was telling the truth. I asked Kyle what kind of person S was. Kyle described S as an intelligent child with a good heart. I asked Kyle if S was the kind of kid who was out to get people, to which he replied, "no". I asked Kyle what kind of person Lora was. Kyle described Lora as a nice person. I asked Kyle if Lora was out to get him to which he replied, "no". Kyle said, "yes", when I asked him if Lora was a good person for being able to "put up with him for six years." Detective Post and I both explained that there would likely be physical evidence in a case like this, and that it would be clear he was lying if the physical evidence came back showing that he had kissed or touched S in a place that he was denying having done so. Kyle again told us that he was being honest with us, and over the first course of the interview told us that what we were talking about was "gross".

I note that although Kyle was denying any inappropriate touching of S he was not denying it convincingly. When I asked him directly if he had touched S's vagina, or performed oral sex on her, he would say he had not. When I told him I thought he was lying and that he had, Kyle would just look away, and would not defend himself or disagree with me other than to once again assert that he had not done anything.

I determined to ruse Kyle. I stood and indicated that I was receiving a call from "the lab", and told Detective Post I was going to step out of the room. I stepped out of the room, stepping away from the door and out of Kyle's sight and hearing. After approximately two minutes I returned to the room and sat down. I explained to Kyle that I had just gotten off the phone with "the lab", and that I knew he was not telling us the truth. I explained to Kyle that tests conducted on S had revealed that he had been kissing her on other parts of her body than her forehead, and that it was time that he told us the truth about what had happened. Detective Post then said, "Oh are you talking about the saliva evidence?" I said, "Yes", and again asked Kyle to tell me the truth about what had happened between he and S. Kyle then said, "Well, I did kiss her on the mouth." Detective Post asked Kyle to explain what else he had done.



No Property

Case #07-06323

Incident Classification – Rape of a Child 1st Degree

Follow-up Narrative
Detective Greg Jamison

Kyle went on to tell us that he had kissed S on the mouth, neck, and stomach. I explained to Kyle that there was more evidence indicating he had kissed S between her legs. Kyle then admitted that he had "kissed" S between her legs for "four or five seconds". Kyle denied "licking" S's vagina. Kyle explained that S had asked him to do these things, and that she had told him to kiss her and had pulled down her underwear and told him to do the other things. Kyle said he didn't want to say "no" because he didn't want S to think that he wasn't there as her friend. Kyle said that he knew what he had done was wrong, and said that he wanted to get counseling for what he had done.

I explained to Kyle that S had been very open with both Lora and Police regarding what had happened. Additionally Detective Post also told Kyle that S had spoken with police about this incident. I told Kyle that it was important to tell the complete truth about what had happened, and asked him if he had put his finger inside S's vagina. Kyle initially indicated that he had not. I explained to Kyle that I wasn't implying that he had hurt S, and asked him how far he had put his finger inside S. Kyle then told us that he had put his finger inside S's vagina between one and two inches. Kyle held up his thumb and index finger indicating how far he had penetrated S's vagina. Kyle said that he asked S if that felt good. Kyle said that S told him it felt good.

I asked Kyle if S had touched him. Kyle said that S had briefly touched his penis, causing him to become erect. Kyle said that S had wondered what it was, but that he had only let her touch his through his boxer shorts. I asked Kyle if he had placed his penis near, or touched S's vagina with his penis. Kyle said that he had not. I asked Kyle if S had kissed his penis, or if he had put his penis in her mouth. Kyle said she had not.

During the interview Kyle also said that he had a "fetish" for children. Kyle explained that he has been aware of this fetish for the last five or six years. Kyle said that he has been out and seen children, and that he is sexually stimulated when watching them. As an example Kyle said that he is aroused when he sees small children walking and holding hands. Kyle said that he has never acted on any of these impulses, and said that he reminds himself that what he is feeling is wrong when these impulses arise.



No Property

Case #07-06323

Incident Classification – Rape of a Child 1st Degree

Follow-up Narrative
Detective Greg Jamison

Through his explanation Kyle indicated that S[redacted] had initiated this contact, and that he had not really wanted to take part in it. Kyle explained several times that although he knew he should not do these things, he didn't want S[redacted] to think that he wasn't "there for her as a friend".

Detective Post asked Kyle if he would be willing to provide a statement. Kyle agreed, and agreed to provide a recorded statement. Detective Post and I then obtained a recorded statement from Kyle. Kyle provided a recorded statement that reflected his version of events previously described. Kyle admitted to kissing S[redacted] on the mouth, neck, stomach, and vagina. Kyle also admitted to digitally penetrating S[redacted] vagina with his left hand pinky finger. A copy of the interview was sent for transcription and will be added to this case when it becomes available.

I spoke with the SANE Nurse that was present for S[redacted]'s examination. The nurse explained that S[redacted] showed signs that there had been slight penetration in the area of her vaginal opening. The nurse explained that S[redacted] disclosed that Kyle had put his "pinky" inside her, and that this had happened on more than one occasion. The nurse also disclosed that S[redacted] was currently suffering from a yeast infection.

07-02-07

I spoke with DPA Matheson about this case and advised him of my interview with Kyle. DPA Matheson indicated he was going to be filing the case into Superior Court this date.

07-03-07

Detective Post arranged for S[redacted] to be interviewed on 07/05/07 at Dawson Place.

I received a copy of the interview transcript. The transcriptionist indicated that there were a number of inaudible portions of the interview. I went over the transcript and audio recording of the statement and found it accurate. I note there are several inaudible words on the recording, but the meaning and content of Kyle's statements is not affected.

I completed a preliminary copy of this case and forwarded it to DPA Matheson for charging purposes. I also included two copies of the interview that were recorded to CD. I placed a copy of the interview CD into evidence. (1/1)

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STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

PRESENTENCE INVESTIGATION

TO: The Honorable Ronald L. Castleberry
Snohomish County Superior Court
NAME: BUCKINGHAM, Kyle C.
ALIAS(ES): None
DOB: 12/09/1985
CRIME(S): Rape of a Child First Degree
ADDRESS: 7701 Hardeson Rd, #12
Everett, WA 98203
PHONE #: (425) 290-6423

DATE OF SENTENCE: 03/17/08
DATE OF REPORT: 02/27/08
DOC NUMBER: 314244
SS NUMBER: 531-21-4400
COUNTY: Snohomish
CAUSE NUMBER: 07-1-01892-6
DATE OF OFFENSE: 07/01/07

I. OFFICIAL VERSION OF OFFENSE:

Probable cause indicates that on 07/01/07, the victim's niece, Ms. Hollifield was at her home with her boyfriend, Buckingham (DOB 12/9/85). The victim S.S. (DOB 8/6/02) was home as well. Hollifield got up and noticed that S.S.'s bedroom door was closed. She opened the door to find Buckingham inside S.S.'s room. She could see S.S. in her room, sitting on her bed pulling up her pants. Hollifield also observed that Buckingham, who was only wearing boxer shorts, had an erection as he exited S.S.'s room.

Ms. Hollifield then asked her niece to come out on the porch and asked her why she was pulling up her pants. S.S. responded that Buckingham had "kissed her", as she pointed to her lips and to her vaginal area. S.S. also indicated that Buckingham had told her to pull her pants down and licked her in her vaginal area. Ms. Hollifield asked S.S. "Do you want me to kick his ass [sic]?" to which S.S. replied, "No. Call the cops on that dummy head."

BUCKINGHAM, Kyle
DOC# 314244

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EXHIBIT 4

AB
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Ms. Hollifield called 911 and Lynwood Police Officer Malloy was dispatched to her residence. S.S. told the officer that Buckingham had "kissed me here" while pointing to her lips and to her vagina. Later that day, S.S. told her father that Buckingham had put his finger inside her.

II. VICTIM CONCERNS:

On 2/27/08, I left a voice mail message on the last known contact number of the victim's father. A woman returned my call noting that no one resided their by that name. Unfortunately, to this date, no victim statement could be retrieved.

III. DEFENDANT'S STATEMENT REGARDING OFFENSE:

On 7/1/07, Buckingham stated to Lynwood Police; "And after that when (S.S) came in...she said she had a nightmare. And when I went with her back into her room...actually what she really wanted...she said she wanted a kiss so I told her no because I didn't want to seem like a bad person. But at the same time I didn't want her to like... you know act like I'm pushing her away so I did kiss her on her lips."

On 1/15/08, Buckingham had wrote the following statement on the pre-sentence contact information sheet, "On July 1, 2007, I, Kyle Buckingham, was drunk and was smoking marijuana that night. I then went to sleep in the living room also, and then S.S. came into the living room saying she had a bad dream. I went to her room with her that night. After that I layed her down to bed then I kissed her on the lips. She then asked if I could kiss her neck. I then replied "yea, sure" I kissed her neck then she panted pointed to her stomach. I then I licked her stomach. She then pointed to her privates and I put my pinky in her like 1" or less. She then saw me get an erection. She then grabbed my penis. When she pulled her pants up, my ex Laura Hollifield then opened the door and told her parents then the police were called.

IV. CRIMINAL HISTORY:

SOURCES:

1. National Crime Information Center (NCIC)
2. Washington Crime Information Center (WACIC)
3. District and Municipal Court Information Systems (DISCIS)
4. Snohomish County Juvenile Court
5. Superior Court Operating Management Information System (SCOMIS)
6. Offender Based Tracking System (OBTS)
7. Comprehensive Sexual Deviancy Evaluation, dated 11/30/07, conducted by Norman Glassman, M.A., J.D.

Misdemeanor(s):	
Date of Offense:	10/28/04
Crime:	Criminal Trespass
County/Case No.:	Snohomish County District Court Case # 59090A04F
Date of Sentence/Disposition:	01/05/05
Release Date:	Unknown
	Score/Wash 0

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V. SCORING:		
SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE
Count I XII	0	From 93 to 123 Months

VI. COMMUNITY CUSTODY:

Regardless of the sentencing option chosen, is required to serve Community Custody under the authority of the Indeterminate Sentence Review Board (ISRB) for any period he is released from total confinement, up to the maximum expiration date of his sentence, which is Life.

VII. RISK/NEEDS ASSESSMENT:

I interviewed Buckingham in my office on 01/22/08. The following information has implications for potential risk, supervision and interventions. Unless otherwise noted, it was provided by Buckingham and has not been verified. On 01/28/08, I received a comprehensive Sexual Deviancy Evaluation completed by Dr. Norman Glassman, M.A., J.D.

Criminal History (Includes Pending Charges): The current offense is the first felony conviction in Buckingham's life time. He has one gross misdemeanor conviction for Criminal Trespass. He noted he and his friends were on top of the Kamiak High School roof when his friend cut the cable on a surveillance camera. He denied that their intentions were to commit a robbery. According to available records he has no juvenile conviction history. Buckingham has no probation history with the Department of Corrections.

Education/Employment: Buckingham graduated with his class from Mariner High School; "I was a second year senior". He attended private school to earn the extra credits to graduate. Buckingham was diagnosed with Attention Deficit and Hyperactivity Disorder and attended special education classes. In addition, he noted having difficulty with his school work. He admitted to being suspended once for three days for threatening a girl. "A girl was going to fight a girl friend of mine. She claimed she seen me with a gun."

Buckingham participated in the ROTC for one year. When he was diagnosed with bipolar he was told he would have to stop taking his medication to be considered for the military. "Until that point, I thought I was going to the military. I wanted to join the marines and fight for my country".

The longest term of employment Buckingham held was his last employment while working for Prospector Liquidators as a Pricer for eight months, earning \$9.00 per hour.

Financial: Buckingham is unemployed and is supported financially by his parents. He owes \$326 for a T-Mobile cell phone bill.

Family/Marital: Buckingham was born in Bellevue, Washington to Bruce and Linda Buckingham. His father works as a Manager and his mother is a "stay at home" mom. His older brother Derek, age 26, works at Boeing and his younger sister, 19, works as a dental secretary.

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According to information obtained through Dr. Norman Glassman's report, Buckingham's account of his early years *"indicates he felt he could not please his father and was told he was no good. In school he was teased and picked on. He was a slow learner, was held back in school and got failing grades. Educational information indicates he has obtained a high school diploma. He reports having difficulty keeping a job."*

"When in preschool, Mr. Buckingham was diagnosed with a learning disability. In the Mukilteo school system, he was always in special education. He began talking late, and by 5th grade was placed on Ritalin (probably on Adderall) by the family physician at the school's suggestion. He quit taking the drug in his junior year of high school when he was told that he would have to go off the medication to be able to go into the military. At the time, he was in ROTC."

Buckingham has never been married, and has no children. His current girl friend is Laura Lakey who is 18 years old and who has no children. She is aware of the current offense and is supportive.

Accommodation: Upon his release, Buckingham plans to reside with his parents at; 7701 Hardeson Road, #12, Everett, Washington 98203; Phone (425) 290-6423. Both a public school and parks are within one mile proximity.

Leisure/Recreation/Companions: Buckingham likes to spend time with friends, sleeping, watching television and finding a job. He has no hobbies. Buckingham, *"I try to help people do their yards agricultural stuff. I am a community type person."*

Regarding his peer relationships, he notes his friends are usually sixteen years or older. He noted the majority are established relationships with younger peers in his neighborhood.

Alcohol/Drug Use: At the age of 16 he first consumed alcohol. He stated, *"I got light headed. I had dizziness and couldn't remember things"*. The last time he drank was a week before this interview. He consumed three "reserve" beers. At the age of 15, he first used marijuana, and apparently has been smoking it ever since. He alleged the last time he used was 3-4 weeks prior to this interview. Buckingham denied the use of any other drugs.

Buckingham claimed he drank three to four Corona Beers and smoked marijuana one hour prior to the commission of the current offense, and after the offense. He has never participated in a substance abuse treatment. Marijuana is his "drug of choice".

Emotional/Personal: Buckingham self reported that he was diagnosed with Attention Deficit Disorder and was prescribed Ritalin. He also noted being diagnosed with Bipolar, and was prescribed Concerta and Adheral. Having a mental illness prevented him from joining the Marines as he planned.

Buckingham reported that his mother thought he was sexually molested by an adult male baby sitter who attended their church. According to Buckingham he has no recollection of the events.

Information received from Dr. Glassman's report noted, *"Mr. Buckingham was cooperative throughout the evaluation process. He has a sincere and respectful manner. He is depressed and seemed to not be functioning well. He likes to please and has difficulty saying 'no' or standing up for himself. He has a history of being angry, although no anger was apparent throughout my interviews with him. His difficulties with life's demands, including family demands, may devolve into emotional/angry outbursts and defiance. He has difficulty learning and staying focused and on task."*

"His father said that when he would lecture Kyle and confront him, Kyle would be argumentative. Although sometimes he would come to accept that his father was right, his usual response was to 'stomp off'. His father said he has anger management problems, which he described as rage. Kyle agrees he has a problem with anger: "I've been doing it for so long it's hard to not yell." He says that he has learned to just walk away, although he knows that annoys people, but at least he does not get angry. Regarding how he has been able to change how he deals with anger, he said: "I got tired getting mad all the time. That's when I decided to ignore the person and walk away and do my own thing."

Attitude/Orientation: Buckingham stated, *"People need help. They should get something to live for. I never had a chance. I lost it because I did something really stupid. I want to fix it...I really feel bad. She doesn't deserve this. I hope she is doing better. I hope I get help and get treatment. That would be better for me. I want to get a job, get a car; I am ready for the real world."*

Buckingham wrote on the pre-sentence contact information sheet, *"I feel like what I did was wrong I really want badly drug treatment and sex treatment I don't want to have this life at all I want kids to have a good future and careers. Like for me also. I want to focus on business, life and family. I'm (1-15-08) fully ready for all treatments. I also want to dedicate my life to all the treatments too. I feel so bad also for what I did."*

According to Dr. Glassman's evaluation, *"He says he knew being sexual with S.S. was wrong and that he should have done something to stop it. 'I couldn't believe I was actually doing it. I was shocked. I'm not like that at all. It's like you put candy in front of a kid and they're going to want it. It was hard for me to control. I wasn't thinking about it at the time. I wasn't focused'."*

Sex Offender Considerations: Buckingham reported he first viewed pornography while looking at a Play Boy magazine between the ages of 11 and 12. By 16 to 17 years old he had watched his first pornographic movie. In addition he said he would go on the internet and look at child modeling pictures of children in their bathing suits.

His first sexual relationship was between the ages of 10 to 11 years old. *"She would tell me to slow it down. I wanted to have sex a lot"*. Buckingham stated that he would masturbate three times a day, and he would have casual straight (heterosexual) sex three times a week with his girl friend.

He alleged that he spent only \$20 on one pornographic movie. According to Dr. Glassman, he received a different account. Buckingham has rented pornographic material between sixty and a hundred times. He owns approximately ten pornographic DVD's and looked at them almost daily. He estimated looking at child pornography at least five to eight times. The girls ranged from four to five year old girls.

During the comprehensive Sexual Deviancy Evaluation, dated 11/30/07, Dr. Norman Glassman, M.A., J.D., notes, *"In our sessions, he talked about how age-appropriate girls/women always like him and that he frequently has a girlfriend, as he did at the time of this evaluation. However, on the MSI he endorsed items suggesting a low sexual interest in adult females. It is not clear at this early stage if this is about gender preference or about his discomfort about himself when engaged with adult women. This evaluator thinks it more likely to be about the latter. Because of these issues, his interest is more likely to be to minor females who are not likely to humiliate or judge him, as adult females may."*

Buckingham stated to Dr. Glassman, *"I basically did things with a little girl. I had bad judgment. My ex-girlfriend called the police. I don't plan to do it anymore. I know it's really wrong and stupid. I should have known. It's really nasty. I know. Knowing it was sexual and it was a little girl -especially knowing it came from me, that made it even worse."* According to Dr. Glassman, *"He thinks part of the reason he did it was that on the night of the offense he was drinking and smoking marijuana. He says he definitely hurt her."*

"He says he has rented or purchased pornographic material between sixty and a hundred times. He currently owns approximately ten pornographic DVD's and looks at them almost daily. He reported that he once made a video of himself masturbating, but only showed it to his girlfriend. He estimates looking at child pornography approximately five to eight times. He says the images were of 4 to 5 year-old girls."

"He did admit to finding child pornography on the internet while masturbating to adult material. Later, he masturbated to recollections of the child pornography he had seen. He did this as recently as a few months ago. He does have a MySpace account. He says he masturbates to adult pornographic material several times a week, and sometimes four or five times in a day."

"He does admit to being aroused sexually to 4-5 year old girls and to 14-16 year-old girls. He has engaged in telephone chatting on The Donut, which he says is an 18 or older chat line. However, he said that sometimes people as young as 13 years old participated. He said he has text messaged someone he didn't know for a sexual reason."

"At the end of our interviews in which he was confronted about his thinking, Kyle finally said he did want to be sexual with his victim and was turned on by it. "I did like it. I didn't want to like it, but I did."

VIII. SENTENCE OPTIONS:

Confinement within the Standard Range
Special Sex Offender Sentencing Alternative (SSOSA)

IX. CONCLUSIONS:

Under the option of a standard range sentence, the Court may order Buckingham to serve a sentence range of 93 to 123 months. Following his release from incarceration he will be required to serve a Life term of community custody.

This case meets the criteria for sentencing under RCW 9.94A.712. This legislation causes the standard range sentence to function as a minimum term and the maximum term becomes the statutory maximum for the offense, (5 years/10 years/Life.) The Indeterminate Sentence Review Board (ISRB) is authorized to determine release dates for all offenders sentenced to indeterminate terms. DOC will supervise Buckingham under the authority of the ISRB for any period of time he is released from total confinement before his maximum sentence expires.

The Court may also elect to impose a SSOSA. Under this option, the Court may order him to serve up to 123 months confinement and then suspend that term, requiring him to concurrently participate in community based sexual deviancy treatment and community custody. The suspended sentence may include a jail term of up to 12 months, all or a portion of which may be converted to partial confinement. Buckingham would be required to remain on community custody for three years and could be required to remain in sexual deviancy treatment for up to five years.

Dr. Glassman's recommendations, "I am recommending SSOSA, but there are specific conditions under which I believe this must occur. He should spend at least one year in the county jail where he can get the treatment for substance abuse that he needs. He must successfully complete that program and consistently attend all meetings and groups recommended. If he is not able to tolerate the stress and requirements of these programs while incarcerated, I believe he will be unlikely to follow the rules and requirements of community-based treatment. Unless his father can help provide a job, it may be difficult for him to qualify for work release. He does not seem to have marketable skills at this time. Being able to maintain a steady job would help him financially. But even more important, it would provide structure for him and help him develop the skills necessary to follow rules of the court and community-based treatment. If he qualifies for work release, then he could begin sex offender treatment and not have to wait until released. This would help insure that while external controls are in place he has the time to begin addressing his treatment issues, including developing his own internal controls: "

X. RECOMMENDATIONS:

Buckingham is a 22 year old male facing his first felony conviction for a sex offense. It is evident that if the victim's aunt had not interrupted the current offense, Buckingham could have caused greater even harm to the victim. There has been no contact with, or from the victim's family up to this point. As a consequence, their recommendations are not here for consideration in this report.

Buckingham is attracted to pre-pubescent female children. At this point, due to his attraction to young children, his sexual pre-occupation and his impulsive nature, subsequently, this poses him a serious risk to the community. Since he uses the internet to chat and to view child pornography, one of his conditions must be to have no access to a computer.

I must also consider Buckingham's fragile mental state. Since he has noted suicidal ideations to Dr. Glassman, a long term of incarceration may be detrimental to his health in that regard.

I concur with the recommendation of Dr. Norman Glassman. I recommend Buckingham receive a year of incarceration to address community safety. This form of incarceration would allow him the opportunity to stabilize and to participate in substance abuse treatment. Upon his release, he will receive sexual deviancy treatment, along with a high level of community supervision.

Sentence Type/Option: SSOSA sentence, in concurrence with Dr. Norman Glassman's professional opinion.

Confinement: 93 months bottom of the range, 81 months suspended, 12 months confinement invoked.

Length of Community Custody: Life

Conditions of Supervision: In addition to the standard conditions, I recommend the following special conditions:

1. Have no direct or indirect contact with victim. S.S.
2. Pay the costs of crime-related counseling and medical treatment required by the court.
3. Have no new law violations.
4. Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer.
5. Do not seek employment or volunteer positions, which place you in contact with or control over minor children.
6. Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer.
7. Do not possess or access pornographic materials, as directed by the supervising Community Corrections Officer. Do not frequent establishments whose primary business pertains to sexually explicit or erotic material.

BUCKINGHAM, Kyle
DOC# 314244

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8. Do not possess or control sexual stimulus material for your particular deviancy as defined by the supervising Community Corrections Officer and therapist except as provided for therapeutic purposes.
9. Do not possess or control any item designated or used to entertain, attract or lure children.
10. Do not date women or form relationships with families who have minor children, as directed by the supervising Community Corrections Officer.
11. Do not remain overnight in a residence where minor children live or are spending the night.
12. Do not hold employment without first notifying your employer of this conviction.
13. Hold employment only in a position where you always receive direct supervision.
14. Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.
15. Do not possess or consume controlled substances unless you have a legally issued prescription.
16. Do not possess drug paraphernalia.
17. Find and maintain fulltime employment and or a combination of employment and fulltime educational program during the period of supervision, as directed by the supervising Community Corrections Officer.
18. Do not access the Internet on any computer in any location, unless such access is approved in advance by the supervising Community Corrections Officer and your treatment provider. Any computer to which you have access is subject to search.
19. Do not use computer chat rooms.
20. Do not use a false identity at any time on a computer.
21. You must subject to searches or inspections of any computer equipment to which you have regular access.
22. You may not possess or maintain access to a computer, unless specifically authorized by your supervising Community Corrections Officer. You may not possess any computer parts or peripherals, including but not limited to hard drives, storage devices, digital cameras, web cams, wireless video devices or receivers, CD/DVD burners, or any device to store or reproduce digital media or images.
23. Participate and make progress in sexual deviancy treatment. Follow all conditions outlined in your treatment contract. Do not change therapists without advanced permission of the sentencing Court.
24. Participate in offense related counseling programs, to include Department of Corrections sponsored offender groups, as directed by the supervising Community Corrections Officer.
25. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.

26. Participate in urinalysis, Breathalyzer, polygraph and plethysmograph examinations as directed by the supervising Community Corrections Officer.
27. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
28. You must consent to DOC home visits to monitor your compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of the residence in which you live or have exclusive/joint control/access.

XI. MONETARY OBLIGATIONS:

Restitution: TBD	Court Costs: TBD	Other: TBD
Victim Penalty: \$500.00	Attorney Fees: TBD	
Drug Fund: TBD	Fine: TBD	

Submitted by:

Shelly Larkin
 Shelly Larkin

Community Corrections Officer 2
 Everett Office; Intake/PSI Unit; MS TB-27
 8625 Evergreen Way, Suite 100
 Everett, Washington 98208
 425-513-5242

Approved by:

Tyler Muise

Tyler Muise
 Community Corrections Officer 3

SL/sl

3/3/08

Original: Court- Snohomish County Superior
 copy: Prosecuting Attorney - Laura E. Twitchell
 copy: Defense Attorney - Donald J. Wackerman
 copy: WCC - Carol Valley, Clerical Supervisor
 copy: SOTP/TRU
 copy: Det. Coleman/SCSO
 copy: SOTP provider
 copy: Snohomish County W/R
 copy: File

NORMAN G. GLASSMAN, M.A., J.D.
6405 218th Street S.W., Suite 301
Mountlake Terrace, Washington 98043
206-527-0374 / 206-523-2067 (Fax)
ngglassman@comcast.net

Comprehensive Sexual Deviancy Evaluation
Date of Report: November 30, 2007

Client Name: Kyle C. Buckingham

Address/Phone: 7701 Hardeson Road, #6
Everett, WA 98203
425-290-6423 (Parents phone)
Lives with parents.

Date of Birth (Age): 12/09/1985 (21)

Sex, Race: Male, Caucasian

Occupation: Unemployed

Marital Status: Never married

Attorney: Donald Wackerman

Evaluator: Norman G. Glassman, M.A., J.D.
Certified Sex Offender Treatment Provider

Evaluation Dates: This evaluation consisted of 2 clinical interviews lasting a total of 4 hours. There were additional hours for testing.

Testing Procedures Utilized and Discovery Material Reviewed:

Clinical Interviews; Records Reviews - Police Reports; Millon Clinical Multiaxial Inventory (MCMII-III); Multiphasic Sex Inventory II (MSI-2); Polygraph Examination. Collateral interview with his parents: Linda and Bruce Buckingham.

Background and Referral Information: Mr. Buckingham was referred to this office for a SSOSA evaluation by his attorney, Donald Wackerman, who provided discovery material. He has been charged with one count of Rape of a Child in the First Degree. The offense is alleged to have occurred in July of 2007.

The alleged victim is Shambree Sims (DOB: 08/06/02), who was 4 years of age at the time of the alleged offense. The allegations are that the offense occurred on or about 7/1/07.

Charges and/or Allegations of Sexual Abuse: Shambree Sims is the daughter of Richard Sims. She was 4 years old at the time of the offense. Lora Hollifield was the accused's girlfriend, and she lives with Mr. Sims and his girlfriend, Rochelle Osborn, and with Mr. Sims' daughter, Shambree. Mr. Buckingham was spending the night with his girlfriend, Ms. Hollifield. She woke up in the middle of the night finding that Mr. Buckingham was not in bed with her. When she got up she noticed the door to Shambree's room was closed. When she opened the door, she found the accused inside the room sitting on Shambree's bed, and she was pulling up her pants. She also noticed that he was wearing boxer shorts and had an erection.

Ms. Hollifield asked Shambree why she was pulling up her pants and she told her that the accused had kissed her, pointing to her lips and genital area. Shambree said he had told her to pull her pants down and had then licked her vaginal area. She then called the Lynnwood Police. Later that day Shambree told her father that he had inserted his finger inside her. The accused admitted to kissing her on the mouth, stomach and vagina, but denies his tongue touched her genitals. He also disclosed putting his "pinky" into her vagina at least an inch. After putting his finger in her, he asked her if she liked it and she said she did. He indicated that he was somewhat aroused and then she touched his penis and he became erect. He says she grabbed his penis and squeezed it. His girlfriend told the girl's parents and they called the police.

Mr. Buckingham told the Lynnwood Police:

And after that when Shambree came in...she said she had a nightmare. And when I went with her back into her room...actually what she really wanted...she said she wanted a kiss so I told her no because I didn't want to seem like a bad person. But at the same time I didn't want her to like... you know act like I'm pushing her away so I did kiss her on her lips.

He told police he thought kiss meant a good night kiss but that she told him she wanted more than that and "I didn't want to push her away but I didn't want her thinking I'm a bad person either." He did not want her to think he would not be her friend. He also told police that she told him to put his finger in her.

Client's Responses to Allegations During Present Evaluation: In Mr. Buckingham's self-report he says the offense was committed on 7/1/07 against Shambree who was 4 years of age. His girlfriend was Alex (Lora) Hollifield (they broke up after the allegations). She shares a house with Richard Sims and his daughter Shambree. Mr. Sims' girlfriend also lives with them. At the time of the alleged offense he was living at his parents' home, as he is now. One month before the offense, he had spent

the night at his girlfriend's home. The night of the offense, 06/30/2007, he was staying at her home again sleeping next to his girlfriend on the living room floor.

When Mr. Buckingham came to see me, he told me he thought the detectives had tried to trick him to say something he did not want to say. So even though he admitted to the police that he had digitally penetrated Shambree, he told this evaluator that he only admitted to it because he thought that was what they wanted to hear. He never admitted to the police that he had licked her vagina.

Later in our interview, however, he made the following admissions, including that he had digitally penetrated Shambree and licked her vagina:

Mr. Buckingham says that early on the morning of 07/01/2007 at 3-4 a.m., Shambree came out into the living room and woke him up, telling him she had had a nightmare. Shambree wanted him to go into her room with her. He went back into the room with her, told her to go to bed and she got back into bed. He was standing up trying to get her to lie back down and then picked her up, put her in bed, and covered her with a blanket. "I wanted to make sure she was going to go to bed. I was turning around to walk out the door but she told me she wanted me to do things with her. She wanted me to lick her neck and kiss her neck and I did that. She then wanted me to kiss her on the lips and I did that. Then she wanted me to kiss her on the stomach." He kissed her on her stomach after she lifted her shirt. After that "She asked me to put my finger in her. I did that and told her I couldn't do anymore. I did what she mentioned because I didn't want to get into trouble. I didn't want her to feel like I was pushing her away and be mean to her and not want to be her friend. I was afraid she would tell on me if I didn't do what she wanted. Even though it is a bad thing. I do things for friends because I don't want them to think I'm not going to be their friend. I wouldn't want them to stop hanging out with me. It's really important for my friends to like me." He says she poked at his penis and when she did he turned his penis toward her and she grabbed it. He also says she wanted him to lick her vagina and that at first he refused but then he did it.

He claims she was not asleep as she says, "I knew she wasn't asleep because she's the one who woke me up." She also says he forced her to touch his penis. "I admit she did do that but I refused and she still touched it anyway. That's when my ex came into the room and saw me supposedly hard with an erection and stuff and facing Shambree. That's when she called the cops."

He says that Alex, his girlfriend, was drinking and smoking marijuana. He says he is a "lightweight" and had one beer. He thinks he smoked a "bowl" of marijuana and then went on to say it was very strong marijuana so that when he took two puffs he "was gone." Later he says he used marijuana before the offense and following it.

"I basically did things with a little girl. I had bad judgment. My ex-girlfriend called the police. I don't plan to do it anymore. I know it's really wrong and stupid. I should have known. It's really nasty. I know. Knowing it was sexual and it was a little girl - especially knowing it came from me, that made it even worse." He thinks part of the reason he did it was that on the night of the offense he was drinking and smoking marijuana. He says he definitely hurt her.

Social History: Mr. Buckingham grew up in an intact family. His mother is Linda Buckingham and she is a stay-at-home mother who is now feeling the "empty nest syndrome" and is considering going

back to school. His father is Bruce Buckingham, who works as a purchasing manager. He considers his father to be an alcoholic.

He is the middle child of the three children from his parents' union. He says he has a good relationship with his siblings Derek and Brianna. Derek is four years older than Kyle, and Brianna is three years younger than Kyle. He says that Derek was a bully when Kyle was growing up, but that is no longer the case. "Sometimes when people bully me I just let them do it." His father has other children from a previous marriage.

His report of his early years indicates he felt he could not please his father and was told he was no good. In school he was teased and picked on. He was a slow learner, was held back in school and got failing grades. Educational information indicates he has obtained a high school diploma. He reports having difficulty keeping a job.

When in preschool, Mr. Buckingham was diagnosed with a learning disability. In the Mulkitoo school system, he was always in special education. He began talking late, and by 5th grade was placed on Ritalin (probably on Adderall) by the family physician at the school's suggestion. He quit taking the drug in his junior year of high school when he was told that he would have to go off the medication to be able to go into the military. At the time, he was in ROTC.

In a session I had with Bruce and Linda Buckingham, Kyle's parents, they told me their son has always been 'delayed' and has trouble staying on task. They describe him as a happy child who was well liked by his teachers. His mother believes she was overly protective of Kyle because of his hyperactivity disorder and because he thinks differently than the other children. When I asked Kyle's father about his experience of his son not listening to him, he said that Kyle just does not understand because he processes information differently. "If he is interested in something, he will do it, but if he is not, he won't do it." His father says he is scared of failing so he won't even try if he is not certain he can do it.

His father said that when he would lecture Kyle and confront him, Kyle would be argumentative. Although sometimes he would come to accept that his father was right, his usual response was to 'stomp off'. His father said he has anger management problems, which he described as rage. Kyle agrees he has a problem with anger: "I've been doing it for so long it's hard to not yell." He says that he has learned to just walk away, although he knows that annoys people, but at least he does not get angry. Regarding how he has been able to change how he deals with anger, he said: "I got tired getting mad all the time. That's when I decided to ignore the person and walk away and do my own thing." He says later he would come back and be friends again. His mother said he does that with her, i.e. come back and apologize - as will she, although he usually apologizes first. His mother said she can also be irrational and will lash out when she's angry.

Mr. Buckingham says he was liked by other kids and always had friends. He now has two very close friends and says he would have more, but many have moved away.

Health Issues: As a baby his body was not absorbing nutrients and he was not gaining weight. This was finally diagnosed correctly and, with treatment, he began gaining weight. At six months he weighed just twelve pounds. Later as an older child he was diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD) and placed on Ritalin.

Sexual and Relationship History: When he was about 5 years of age, he recalls playing a show and tell game with a peer-aged neighbor girl. She would touch his penis and ask what it was for, and he looked at her genitals but claims he never touched her. This occurred approximately two times. He also indicates that his mother believes he was molested by a babysitter when he was a young child. The babysitter was an adult man who his mother says is a registered sex offender. He has no memory of this. Mr. Buckingham first engaged in sexual touching at the age of 15 with an 18 year-old female friend who wanted to have intercourse with him. They engaged in sexual intercourse on two occasions.

He says he has had many girlfriends and says that girls like him because he shows his feelings. He has had physical sexual contact with seven adult females. His current girlfriend is Laura, and he said that she recently told him she was pregnant. He says she is 18 years old.

Pornography. He said he first saw sexually explicit material at the age of 12 on a DVD that he and a friend found. He has also purchased pornographic DVD's. He says he has rented or purchased pornographic material between sixty and a hundred times. He currently owns approximately ten pornographic DVD's and looks at them almost daily. He reported that he once made a video of himself masturbating, but only showed it to his girlfriend. He estimates looking at child pornography approximately five to eight times. He says the images were of 4 to 5 year-old girls.

He did admit to finding child pornography on the internet while masturbating to adult material. Later, he masturbated to recollections of the child pornography he had seen. He did this as recently as a few months ago. He does have a MySpace account. He says he masturbates to adult pornographic material several times a week, and sometimes four or five times in a day.

Involvement with minors as an adult. Mr. Buckingham said he has thought about having sexual contact with children, but the only child he had actual contact with has been Shambree. He does admit to being aroused sexually to 4-5 year old girls and to 14-16 year-old girls.

Masturbation. Mr. Buckingham began masturbating sometime between the ages of 11 and 13. On one occasion, he masturbated in a mall bathroom. He also masturbated in a parked car (with tinted windows) on one occasion while waiting for his ex-girlfriend. He currently masturbates approximately four times a week.

Chat lines. He has engaged in telephone chatting on The Donut, which he says is an 18 or older chat line. However, he said that sometimes people as young as 13 years old participated.

He said he has text messaged someone he didn't know for a sexual reason.

Regarding non-sexual threatening phone calls, he reported that he once had a friend who had a problem with another person, and Kyle called a fax line and set it up to call the problematic person twenty times a minute.

Additional specific sexual behaviors. With respect to specific sexual behaviors, Mr. Buckingham denied that he had ever engaged in any of the following behaviors: sex with any member of his family including parents and sibling; exhibitionism (exposing); voyeurism (peeping); frotteurism; been with a prostitute; cross dressing; sex with an animal; use of force or violence to gain sex; picking up a

hitchhiker for sexual purposes; engaging in the development, sale, or publishing of any form of child or adult pornography.

Mr. Buckingham has admitted to the following: going to a strip bar on one occasion; being interested in female underwear; and engaging in sex with two females at the same time on two occasions.

Educational History: Mr. Buckingham graduated from Mariner High School in Everett, WA in 2004. He has Attention Deficit and Hyperactivity Disorder and was in special education classes. School was difficult as he had problems with focus. He says he was not a 'bad' kid but that it was hard for him to understand the teachers' lectures and instructions. Because of that, he had difficulty doing his homework. Mostly in school he was interested in his friends.

Vocational History: He worked concessions at a movie theater for six months and also worked with his father at a warehouse stocking goods. He is now looking for a job.

Military History: He was in ROTC for a year, but never served in the U.S. Army.

Criminal History: He has a conviction for Criminal Trespass in October 2004 in Snohomish County. He was 18 at the time and with two of his friends when he was arrested. He claims he did not do the crime but was charged with trespassing because he was present. The boys were on the roof of a friend's high school when his friend cut the cable on a surveillance camera. He denies they were attempting a robbery. He received a fine and completed two years of probation. He reports no violations while on probation.

Drug and Alcohol History: Mr. Buckingham had his first drink at the age of 17 or 18, which is when he first got drunk. He says he sometimes has "an attitude" when he drinks and says that he was drinking the night of the offense.

He first began using marijuana at the age of 16 and uses it frequently. He says that he had used marijuana before his offense and following it. He used it the day his polygraph was originally scheduled, and that polygraph was cancelled by the polygrapher. See polygraph section following. Marijuana is his drug of choice.

Religious History: He was brought up Lutheran. He says that he and his family now go to church for major holidays.

Psychological Testing: Mr. Buckingham completed the following tests:

- **Millon Clinical Multiaxial Inventory (MCMI-III).** The test is considered to be highly valid test of long-term personality development and measure dynamics related to anxiety, depression, rage and hostility, anti-social tendencies, psychotic behaviors and cognitions, sexual and relationship dynamics, withdrawal tendencies. The test includes complex validity scales that allow the clinician to determine whether the client paid too little attention to the questions or attempted to portray himself in an overly positive or overly negative light. Consequently, these scales allow some determination as to whether the results obtained on the actual clinical scales can be accepted as valid.

The test was computer-scored and interpreted using a system developed by the National Computer Services and licensed by the University of Minnesota. The scoring allows for comparison with previously diagnosed populations of people who provide test responses similar to the client's. The advantage of a computer scored and interpreted test is that it decreases scoring errors and avoids evaluator bias in the interpretation of the profiles.

- **Multiphasic Sex Inventory II (MSI-2):** It is designed to measure the sexual characteristics of sex offenders or alleged sex offenders. There are measures for reliability/validity and for psychosexual, behavioral and accountability issues.

It was scored as a blind assessment to get an objective opinion from a person who has never evaluated this offender face to face. Although this report is objective and may serve as a useful aid to diagnostic impressions and treatment goals, the results cannot stand alone and must always be incorporated into the larger (forensic) clinical evaluation. Several reliability and validity measures have been developed to specifically help assess tendencies to randomize, omit, respond in the "all false" direction or to dissemble the results. The test was scored and interpreted by Nichols & Molinder.

The relevant portions of these test results will be included in the Discussion and Summary portion of this evaluation. The reader should examine the test interpretation for general trends and put only limited weight on any one specific statement. All tests should be read in the context of a larger forensic evaluation.

Polygraph Examination: On 10/12/07, Mr. Littlejohn began a polygraph evaluation on Mr. Buckingham that was aborted. The polygrapher wrote:

During the pretest interview, Mr. Buckingham indicated that he had smoked marijuana yesterday during the day, including late last night. He had also consumed alcohol last night. He also admitted to smoking marijuana today, with the last time, so recent that he said he felt "high" on the way to the examination. While preparing for the examination I observed that the cardio responses were extremely erratic. After extended observations I determined that I would be unable to test this subject at this time.

The polygraph was rescheduled and administered for 11/20/07. In addition to the Polygraph Sexual History Disclosure Questionnaire, just before the examination Mr. Buckingham gave the following new information, not previously revealed:

- Mr. Buckingham said if he sees a "hot girl, 14, 15, 16, 17 years old, I think about having sex with them, but I don't." When asked, he did say that he has masturbated to thoughts of having sex with those same girls.
- He also said that he wants to look at pornography a lot, but is able to avoid it most of the time.
- He also now admits that he did have pornography saved on his cellphone, but has removed it.

The following relevant issue questions were asked. Mr. Buckingham was found to be truthful when he answered "No" to the following questions.

- R5 – Did you, yourself, physically move Shambree's hand to your penis? No
- R7 – Have you ever searched for or viewed any child pornography you deliberately haven't told me about? No
- R9 – Except what you told me about, have you ever masturbated to thoughts of having sex with a minor? No
- R11 – Have you had any kind of sexual contact with a minor that you've intentionally hidden from me? No

Discussion and Summary: Mr. Buckingham was cooperative throughout the evaluation process. He has a sincere and respectful manner. He is depressed and seemed to not be functioning well. He likes to please and has difficulty saying 'no' or standing up for himself. He has a history of being angry, although no anger was apparent throughout my interviews with him. His difficulties with life's demands, including family demands, may devolve into emotional/angry outbursts and defiance. He has difficulty learning and staying focused and on task.

In an interview with Mr. Buckingham, his mother Linda and his father, Linda Buckingham said she is terrified about his legal problems and is shocked by what he did. "This isn't the way he was raised. He went to church. It's not like he was brought up without any morals." This is a terrible struggle for his father. Regarding pedophiles, Bruce Buckingham said, "I think they ought to be put away forever. It's a struggle for me. I'm a hard ass when it comes to that." He also indicated he would shoot them and save the state the money for incarceration. Kyle started crying when his father said these things. Kyle said he wouldn't wish that (being put away forever or shot) on his child.

The client has not developed adequate coping skills and strategies that would allow him to deal more effectively with life's difficulties and with ordinary life tasks. The MCMI found:

He has probably had a checkered history of disappointments in his personal and family relationships. Deficits in his social attainments may also be notable as well as a tendency to precipitate self-defeating vicious circles. Earlier aspirations may have resulted in frustrating setbacks and efforts to achieve a consistent niche in life may have failed. Although he is usually able to function on a satisfactory basis, he may experience periods of marked emotional, cognitive, or behavioral dysfunction.

The following from the MCMI best captures how he functions:

The MCMI-III profile of this man appears to reflect an intense conflict between his desire to withdraw from personal relationships, his fear of independence, and a growing sense of unworthiness and despondency. He would very much like to depend on friends and family, but he has learned to anticipate disillusionment and discouragement in these relationships. His deflated sense of self-worth and his expectation of personal failure and social

humiliation limit any efforts he might make to become autonomous or to overcome his dispirited feelings. Moreover, he believes that others have either deprecated or disapproved of his occasional attempts at confidence building or self-assertion. He sees no alternative but to give up hopelessly or to give in to his gloomy and sorrowful state. This restriction of choice stirs deep resentments within him. As a consequence, he may experience anxiety and dejection, interspersed occasionally with petulant, erratic, passive-aggressive acts, and periodic criticism of others for their lack of support.

Testing found him to be preoccupied with concerns over his social adequacy and personal worthiness. He is saddled with pervasive self-doubts and feelings of guilt. This fits with interviews and with the MSI test findings.

On the MSI the client attempted to present himself in an overly positive light and in a guarded and defensive manner. His responses on the test also indicate that he was holding back information, suppressing some of his responses. This fits with his denial throughout most of our interviews. It was not until our last session (several weeks after taking the MSI) that he admitted to being interested in and aroused by his victim.

This client has little power and control over his own life. In fact, he is floundering. It is not clear what his relationships with age appropriate women are like. However, it is clear that he would have experienced power and control over his victim as a means of compensating for the lack of power and control he experiences in the life he has lived. The following paragraph from the MSI captures these elements in his personality:

The results suggest he is inclined to experience apprehension and anxiety when in the company of adult females. It appears that at the core of his social tension is the fear of being embarrassed and being seen as socially inadequate. The results indicate he is self-critical of his looks and views himself as physically unattractive to others. His marked elevation on the Emotional Neediness scale suggests he is driven by deep seated feelings of loneliness and needs for affection and that his sexual urges and behavior are driven in part by his state of "emotional neediness." His marked elevation on the Cognitive Distortions/Immaturity scale suggests he is very emotionally immature and feels a deep sense of being victimized and unjustly treated throughout his life.

The MSI found that he does not have adequate information about sexual anatomy and physiology. Testing and interview show him to confuse his sexual feelings with his loving feelings. This is consistent with the above paragraph from the MSI and consistent with his presentation of how the offense happened: the victim initiated it, she wanted it, she directed him in what to do, she grabbed his penis. He claims he engaged in sexual behavior with Shambree because he wanted her to like him and know he cared about her. It is likely that this sentiment is a projection and that his own neediness was motivating his behavior.

The MSI noted that he indicates he has always known it is wrong to either force someone to have sex or to engage a minor in sex. He took the MSI before he admitted his sexual interest and arousal to his

victim. The test found him to seriously minimize ever having deviant thoughts and interests in minors. The level of minimization at the end of the interview process was reduced because of his admission. However, the impaired thinking and rationalizing that supported his molestation will have to be worked through in treatment. It will take significant work for him to understand the level of deviant interest and arousal and take responsibility for his behavior.

He sees himself as being addicted to pornography and obsessed about sex. This seems true to this evaluator, and he is also compulsively sexually drawn to minor females, 4 year olds and teenagers. He recognizes that he needs help to control these behaviors. He seems sincere in his desire to get such treatment. He is ashamed of what he did and feels guilty for hurting Shambree. While it is likely that in the foreseeable future he will revert to defensiveness and the use of justifications and excuses regarding his offense, he has clearly indicated to this evaluator that he has the capacity to change these ways of thinking. It will be difficult for him to stop feeling like a victim and take greater responsibility for how he brings about the results in his life that lead to his feeling victimized. He does not yet understand his sex offense cycle and the dynamics involved in his offense behavior. He does not yet understand how he manipulated his victim and shifts responsibility to her. Staying focused and maintaining responsible behavior will be a challenge for him.

To some extent he blames drugs for his offense, suggesting that *the drugs made me do it*. This too is a shift of responsibility, although it is true that drugs reduce inhibitions and impair thinking and judgment. All the same, the drugs did not make him do it. What made him do it was his deviant arousal. There is also a question of alcohol abuse. Since the drugs (marijuana) and alcohol were part of his offense cycle, it is critical that he undergo a substance abuse evaluation and follow all treatment recommendations. He should undergo substance abuse treatment. Sex offender treatment alone will not suffice.

In our sessions, he talked about how age-appropriate girls/women always like him and that he frequently has a girlfriend, as he did at the time of this evaluation. However, on the MSI he endorsed items suggesting a low sexual interest in adult females. It is not clear at this early stage if this is about gender preference or about his discomfort about himself when engaged with adult women. This evaluator thinks it more likely to be about the latter. Because of these issues, his interest is more likely to be to minor females who are not likely to humiliate or judge him, as adult females may. A plethysmograph may shed more light on his arousal once he is in treatment. Treatment will allow him to address his feelings of sexual inadequacy and embarrassment around adult women.

The MSI found him to have attributes, behaviors and sexual attitudes markedly similar to those of a comparison group of known sex offenders.

He says he knew being sexual with Shambree was wrong and that he should have done something to stop it. "I couldn't believe I was actually doing it. I was shocked. I'm not like that at all. It's like you put candy in front of a kid and they're going to want it. It was hard for me to control. I wasn't thinking about it at the time. I wasn't focused."

At the end of our interviews in which he was confronted about his thinking, Kyle finally said he did want to be sexual with his victim and was turned on by it. "I did like it. I didn't want to like it, but I did." He also admitted this arousal at a later date to the polygrapher. This is the beginning of his working through his denial of responsibility. "I did something dumb I would like to make things better

for her. I've got to do something for her. If I could say I'm sorry, I would - but they're not going to let me. If I could, I'd throw the biggest birthday party for her."

He fully admits and discloses having molested Shambree. In treatment he can resolve the underlying issues he has of shifting responsibility to his victim. He says he has a fetish. "Little kids doing things to me." He was talking about children Shambree's age (4) and also children 11-13. He told this evaluator that "These are things I want to get rid of - what I did to Shambree." He says that he has been attracted to children for six or seven years and experiences some arousal to them. He admits to looking at child pornography. These are issues he will have to address in treatment. He was found to be truthful on his polygraph, which corroborates his claim that he has no other minor victims. He is an opportunistic offender and there are no indications that he is out searching for another victim.

Mr. Buckingham is depressed and the MSI found suicidal ideation. He should have a psychiatric evaluation as soon as possible to determine if medication is indicated. He should also have a substance abuse evaluation. Treatment will fail if his substance abuse issues are not addressed. At the same time whether to reinstate treatment for his ADHD (Ritalin or other medication) should be assessed.

I am recommending SSOSA, but there are specific conditions under which I believe this must occur. He should spend at least one year in the county jail where he can get the treatment for substance abuse that he needs. He must successfully complete that program and consistently attend all meetings and groups recommended. If he is not able to tolerate the stress and requirements of these programs while incarcerated, I believe he will be unlikely to follow the rules and requirements of community-based treatment. Unless his father can help provide a job, it may be difficult for him to qualify for work release. He does not seem to have marketable skills at this time. Being able to maintain a steady job would help him financially. But even more important, it would provide structure for him and help him develop the skills necessary to follow rules of the court and community-based treatment. If he qualifies for work release, then he could begin sex offender treatment and not have to wait until released. This would help insure that while external controls are in place he has the time to begin addressing his treatment issues, including developing his own internal controls.

Specific Treatment Recommendations:

The following are the specific treatment and SSOSA rules which Mr. Buckingham is required to follow.

Any violation of these guidelines will be grounds for reporting a treatment or probation violation to the sentencing judge and Community Corrections Officer. Should any changes be made in terms of these rules by the therapist, such changes will be discussed with the client, the client's Community Corrections Officer (CCO), and the sentencing judge if required.

The overriding requirement of treatment is **HONESTY**. Anything less is a violation of treatment rules and may result in sanctions or in the termination of treatment.

The rule which should hold for all clients is that if the client is uncertain as to whether or not a rule is in effect, the client should assume that it is until verification can be made with the client's therapist/CCO. When in doubt, the client should always pick the most restrictive rule. To do otherwise would risk a probation violation.

1. The client will enter and complete a three-year weekly comprehensive sexual deviancy treatment program that includes both monthly individual sessions and weekly group therapy. The sexual deviancy issues will include: cognitive restructuring aimed at changing impaired or confused thinking; gaining awareness of victim empathy issues; mastering behavioral techniques aimed at interfering with deviant arousal patterns; and learning the specific sexual cycle that has led the client to past sexual acting out behaviors.
2. The client will attend all assigned individual and group therapy assignments. The client is not allowed to simply cancel sessions at their discretion. Failure to come to an appointment without permission will result in immediate contact with the client's CCO for potential legal action against the client.
3. A treatment summary report will be completed for all clients every 90 days.
4. The client will complete a polygraph evaluation every three months during the first two years of treatment, and every four months the third year of treatment. At the discretion of the treatment provider, the client may be required to complete a periodic penile plethysmograph evaluation. Any reduction of these requirements will be noted in the client's treatment contract, and the CCO will be notified of such reduction.
5. The client will remain financially responsible for any and all victim treatment costs and will remain responsible for his own treatment costs.
6. The client will not use any alcohol or illegal drugs during the entire treatment period. Random urinalysis tests will be required at the DOC and at the discretion of the CCO.
7. The client will have no unsupervised contacts with any male or female minors during the treatment period or until allowed by the client's therapist and CCO.
8. The client will not buy or have in his possession any pornographic materials during the probation period. This includes computer and/or internet generated pornography, to include viewing and/or downloading any form of pornography.
9. The client will not enter or use computer chat rooms.
10. The client may have internet access *only* with permission of his CCO and therapist.
11. The client will be required to avoid certain sections of the community where he has acted out previously and which consequently represents a *high-risk setting*. The client will avoid child-oriented places.
12. The client will not attend any topless bars, peep shows, or frequent any prostitutes, or areas known for prostitution or drug related activities during the entire treatment period.
13. The client will advise any adult partner of his past sexual offense, regardless of whether or not he intends to have sex with them once the relationship has moved from casual dating to romantic

interest. The client's therapist will interview this partner, prior to any sexual involvement, to assure that this condition has been met.

14. Client will not date women who have minor children or form relationships with families who have minor children. This rule applies unless client is already involved in an intimate relationship with a partner who has children at the time of sentencing, and then only with approval of his CCO and treatment provider.

Report Respectfully Submitted By:

Norman G. Glassman, M.A., J.D.
Certified Sexual Offender Treatment Provider

FILED

2009 APR 30 PM 4:38

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL13326612



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

COURT-NOTICE OF VIOLATION

REPORT TO: The Honorable Ronald Castleberry
Snohomish County Superior Court
OFFENDER NAME: BUCKINGHAM, Kyle C.
AKA:
CRIME: Rape of a Child 1
SENTENCE: 7 years 9 months Sex Offender
Community Custody
LAST KNOWN ADDRESS: 2106 Fulton Ave
Everett, WA 98201
MAILING ADDRESS: 2106 Fulton Ave
Everett, WA 98201

DATE: 4/20/09
DOC NUMBER: 314244
DOB: 12/9/85
COUNTY CAUSE #: 07-1-01892-6(AA)
DATE OF SENTENCE: 3/17/2008
TERMINATION DATE: 12/16/15
STATUS: Field
CLASSIFICATION: MOD

PREVIOUS ACTION:
None

VIOLATION(S) SPECIFIED:

ALLEGATION #1
Using a controlled substance, Vicodin, without a prescription between 3/8/09 and 4/16/09.

ALLEGATION #2
Leaving the county without permission between 3/8/09 and 4/16/09.

ALLEGATION #3
Accessing a computer between 3/8/09 and 4/16/09.

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ALLEGATION #4

Accessing the Internet between 3/8/09 and 4/16/09.

ALLEGATION #5

Having an unapproved device that stores digital media, a cell phone, between 3/8/09 and 4/16/09.

ALLEGATION #6

Viewing pornography at his clean and sober residence between 3/8/09 and 4/16/09.

ALLEGATION #7

Viewing pornography on a DVD at his parent's residence between 3/8/09 and 4/16/09.

ALLEGATION #8

Staying overnight at an unapproved address between 3/8/09 and 4/16/09.

ALLEGATION #9

Failing to abide by CCO instructions by violating curfew between 3/8/09 and 4/16/09.

ALLEGATION #10

Failing to comply with his sex offender treatment contract by failing to notify his treatment provider of a romantic relationship with a woman (Misty) between 3/8/09 and 4/16/09.

ALLEGATION #11

Failing to comply with his sex offender treatment contract by having unapproved sexual contact between 3/8/09 and 4/16/09.

ALLEGATION #12

Failing to comply with his sex offender treatment contract by accessing phone sex lines between 3/8/09 and 4/16/09.

ALLEGATION #13

Failing to comply with his sex offender treatment contract by engaging in sexual "texting" on cell phone between 3/8/09 and 4/16/09.

ALLEGATION #14

Failing to comply with his sex offender treatment contract by failing to notify his treatment provider of a romantic relationship with a woman (Rachel) between 3/8/09 and 4/16/09.

ALLEGATION #15

Being suspended from sex offender treatment 4/21/09.

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WITNESS:

A Department of Corrections Community Corrections Officer will testify

SUPPORTING EVIDENCE:

On 3/17/2008 Kyle Buckingham was sentenced by the Snohomish County Superior Court under the Special Sex Offender Sentencing Alternative (SSOSA). Mr. Buckingham was ordered to serve community custody for the length of the suspended sentence, or three years, whichever is greater, under the supervision of the Department of Corrections. Mr. Buckingham was court ordered to: not use, possess, or consume controlled substances without a valid prescription; not possess or access a computer in any location; not access the Internet; not to possess a device that stores digital media; and not possess or access pornographic images.

A copy of the Judgment and Sentence was provided to Mr. Buckingham on 5/23/2008. Per the Judgment and Sentence, Mr. Buckingham was ordered to comply with all rules, regulations, and requirements of the Department. Mr. Buckingham signed the Department's Standard Conditions, Requirements and Instructions form on 5/23/09 acknowledging his conditions of supervision and his agreement to abide by those conditions. Additionally, Mr. Buckingham signed the Department's Drug/Alcohol Testing Instructions on 5/23/2008. Standard DOC conditions include: abide by written and verbal instructions of CCO; obtain permission from CCO before leaving the county in which he resides; and obtain permission before staying overnight at a residence other than his registered residence.

On 3/13/09 Mr. Buckingham entered into sex offender treatment with Mr. Norman Nelson of Sno-King Counseling. Mr. Buckingham agreed to comply with the sex offender treatment contract which included the following requirements: notify his therapist of any dating or new relationship; prior to sexual relations the partner must meet with and receive approval by therapist; no use of any non-prescribed drugs; no pornography or erotic material to include x-rated movies and videos, sexually suggestive or explicit telephone services; and no access to the Internet.

On 4/16/09 Mr. Buckingham participated in a polygraph examination with Robert Littlejohn. During the pre-polygraph interview, Mr. Buckingham disclosed the following information regarding allegations 1-13.

ALLEGATION #1

In polygraph question #12 under Parole/Probation Issues, Mr. Littlejohn asked, "Have you used anyone else's prescription medication for any reason or let someone else use your prescription medication?" Mr. Buckingham said, "I took a couple of my mom's Vicodin because I was worried I would run out."

ALLEGATION #2

In polygraph question #21 under Parole/Probation Issues, Mr. Littlejohn asked, "Have you gone on any unauthorized trips outside the County without written permission even by accident or

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mistake?" Mr. Buckingham said, "I went to Oak Harbor about a week ago to see a friend. I don't know if that's out of County." Oak Harbor is in Island County, WA.

ALLEGATION #3 and ALLEGATION #4 combined for brevity and clarity.

In polygraph question #2 under Treatment Issues, Mr. Littlejohn asked, "Do you have access to the Internet?" Mr. Buckingham said, "Yes, at my girlfriend's house." Mr. Littlejohn asked, "Have you, yourself, gone on the internet or been present when someone else has?" Mr. Buckingham responded, "Yes, one time at my girlfriend's house. I went to eBay.com to buy some things for Misty. Amazon for buying something that I didn't find on eBay. Then to YouTube to see home videos of girls fighting (I didn't masturbate to memories of those scenes). I haven't gone on MySpace, but right after release I was talking to my therapist and he said he was going to see if he could find a way to delete my MySpace account." Mr. Littlejohn asked, "Have you viewed any pornographic sites on the Internet, even by accident, mistake, pop-up or while someone was watching them?" Mr. Buckingham said, "Yes, there was a pop-up for a dating service and a sex site. I did not go into the sites, I just deleted them." Mr. Littlejohn asked, "Do you presently have an active email address or online identity?" Mr. Buckingham said, "Yes, email: Kyleb1985@aol.com." This CCO asked Mr. Buckingham for the password to view what was on that email account. Mr. Buckingham said the password was "mangames." This CCO attempted to get into the account, but the password was incorrect.

ALLEGATION #5

At the time of Mr. Buckingham's intake he was told he could have a cell phone that does not have the ability to take pictures, text or access the Internet. In polygraph question #2 under Parole/Probation Issues, Mr. Littlejohn asked, "Have you lied on any report to the DOC either verbally or in writing?" Mr. Buckingham said, "Also, my cell phone has texting and I'm not suppose to have web or texting. I am going to get a plain phone as soon as I can."

In polygraph question #2 under Treatment Issues, Mr. Littlejohn asked, "Have you sent or received any text messages containing sexual pictures, comments or information including jokes and cartoons?" Mr. Buckingham said, "Yes, no pictures, but Misty and I have had sexual conversations while texting." Mr. Buckingham's cell phone was confiscated during a search after Mr. Buckingham was arrested on these violations. There were text messages sent and received and the phone had access to the Internet.

ALLEGATION #6 and ALLEGATION #7 combined for brevity and clarity.

In polygraph question #2 under Treatment Issues, Mr. Littlejohn asked, "Have you viewed any pornographic sites on the Internet, even by mistake, pop-up or while someone else was watching?" Mr. Buckingham said, "Also, one of the guys at the Clean & Sober House was looking at pornography on a television. I did watch it for a few minutes. I did not masturbate to memories of those scenes."

In polygraph question #3 under Treatment Issues, Mr. Littlejohn asked, "Have you viewed or possessed any sexually explicit material of any kind?" Mr. Buckingham said, "What I saw on the television at the Clean & Sober House and also I have some music magazines and they have adult ads in the back. I read a few of them, but I didn't call any and didn't masturbate to thoughts of them." Under the same question Mr. Littlejohn asked, "Have you possessed or

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viewed any sexually explicit videotape, BlueRay or DVD?" Mr. Buckingham said, "At my parent's house I looked at one of my old DVD's for about 5 minutes and then threw it away. I masturbated while I watched it."

ALLEGATION #8

At his intake Mr. Buckingham was told that his CCO needs to approve any overnight stays at any residence other than his registered address to verify that there are no minors in the residence and that it does not place Mr. Buckingham in violation of his conditions for other reasons. To date, Mr. Buckingham has not made a request to stay at a residence other than his own. In polygraph question #22 under Parole/Probation Issues, Mr. Littlejohn asked, "Have you spent the night or most of a night anywhere other than your official place of residence?" Mr. Buckingham said, "At my girlfriend's house the night we had sex."

ALLEGATION #9

Given Mr. Buckingham's history of drug use, this CCO imposed a curfew directing Mr. Buckingham to be at his registered residence between the hours of 8:00 PM and 4:00 AM. Mr. Buckingham has been reporting compliance with that directive. In polygraph question #2 under Parole/Probation Issues, Mr. Littlejohn asked, "Have you lied on any report to the DOC either verbally or in writing?" Mr. Buckingham said, "Yes, I go to NA at night and he doesn't want me to be out after curfew. I still do that, even though he told me not to, but I feel like I need to go out after work or I'll have problem."

ALLEGATION #10 to ALLEGATION #13 combined for brevity and clarity. The following allegations are all violations of Mr. Buckingham's treatment contract.

In polygraph question #1 under Parole/Probation Issues, Mr. Littlejohn asked, "Since your release from custody, have you committed any violation that you know you should tell me about now?" Mr. Buckingham responded, "I had sex with my girlfriend one time. My therapist told me not to do it again." In a voicemail, Mr. Norman Nelson reported that Mr. Buckingham brought his girlfriend, Misty to his last session and that they both admitted to having unapproved sexual contact with each other.

In polygraph question #1, under Treatment Issues Mr. Littlejohn asked, "With whom have you had ANY sexual contact or relationship of any kind?" Mr. Buckingham said, "My girlfriend Misty" Under question #2 in the same section, Mr. Littlejohn asked, "Are you romantically involved with anyone at this time?" Mr. Buckingham said, "Just Misty."

In polygraph question #3 under Treatment Issues, Mr. Littlejohn asked, "Have you called any sex numbers?" Mr. Buckingham said, "One time about 4 days ago. I did masturbate during that conversation." In the same section Mr. Littlejohn asked, "Have you sent or received any text messages containing sexual pictures, comments or information including jokes and cartoons?" Mr. Buckingham said, "Yes, no pictures, but Misty and I have had sexual conversations while texting."

ALLEGATION #14

On 4/20/09 after Mr. Buckingham was arrested a cell phone was found on his person. A search of the cell phone uncovered a relationship that Mr. Buckingham did not tell Norm Nelson or his

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CCO about. There are 49 text messages from a woman named Rachel. The messages make it obvious that Rachel and Mr. Buckingham are starting a romantic relationship. Here is a sample of 3 text messages from Rachel sent 4/20/09.

Message #39 11:13 AM Why? Why do you love me? How do you know?

Message #41 11:39 AM But you barely know me. How do you have these feelings?

Message #42 12:12 PM Yeah but how do you know it's real or you really feel that for me?

This CCO called Misty, Mr. Buckingham's girlfriend and she stated that she is no longer dating Mr. Buckingham. She said he broke up with her when she didn't show up for a meeting three or four days ago. Attempts to contact Rachel prior to this report being sent to the court were unsuccessful. This CCO will continue attempts to obtain information regarding her age and whether or not she has children.

ALLEGATION #15

On 4/21/09, this CCO received a fax from Mr. Norman Nelson suspending Mr. Buckingham from sex offender treatment because of the violations of his treatment contract.

ADJUSTMENT:

Mr. Buckingham was released from jail on 3/8/09. He moved into his residence, a Clean and Sober House, at 2106 Fulton St. Everett WA. He enrolled in sex offender treatment with Norman Nelson on 3/13/09. This CCO directed Mr. Buckingham to participate in the Job Hunter program on 3/19 and 3/20/09 and he said he would comply. The following week Mr. Buckingham reported that he did not attend Job Hunter. When asked what he was doing instead of Job Hunter he said he was "hanging with friends". On 3/31/09 Mr. Buckingham started part-time employment at Jiffy Lube in Marysville, WA. Mr. Buckingham has had 2 urinalysis tests, both of which were negative for controlled substances. On 4/1/09 Mr. Buckingham referred to attend an assessment for chemical dependency treatment with Civigenics (DOC treatment provider). He was subsequently referred to Evergreen Manor for chemical dependency treatment.

Given his chemical dependency and sex offense history, Mr. Buckingham has placed himself in some high risk situations as revealed by his statements prior to and during his polygraph on 4/16/09. According to these statements he has attended AA/NA where children were present. This is completely inappropriate and avoidable as there are AA/NA meetings that occur all over the Everett area at all times of the day. Mr. Buckingham should be attending AA/NA when schools are in session or where there are adults only. Mr. Buckingham admitted that he was in the presence of people using and selling illegal drugs and that he has been in the company of people who were consuming alcohol.

According to Mr. Norman Nelson, Mr. Buckingham was aware of his treatment rules regarding relationships and sexual contact. According to Mr. Buckingham's statements on the polygraph, there is a lot of information regarding his sexual behavior that he is withholding from his treatment provider and this CCO. He appears to be minimizing his sexual preoccupation and still withholding information about possible sexual partners. He broke up with Misty three or four days ago and he is already telling another person that he loves her.

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Mr. Buckingham appears to be a sexually preoccupied, immature offender who is not making any sincere effort to comply with the rules of his SSOSA.

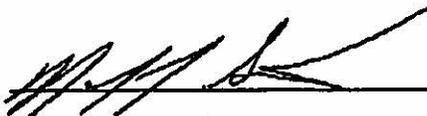
RECOMMENDATION:

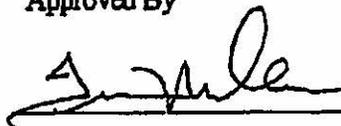
I recommend the Court schedule a noncompliance hearing and summons for Mr. Buckingham to appear. If found guilty of the violations specified, I recommend that the Court impose 10 days of confinement per violation for a total of 150 days. I recommend Mr. Buckingham be placed on DOC enhanced supervision via GPS electronic monitoring for a period of 60 days upon his release from confinement. I recommend Mr. Buckingham reenter sex offender treatment and chemical dependency treatment within 1 week of release.

I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.

Submitted By:

Approved By


Date 4/21/09


Date 4/22/09

Manuel Santos
Community Corrections Officer
NWEVRI
MS TE-10 8625 Evergreen Way, Ste 108
Everett WA 98208-2620
Telephone (425) 267-3093

Miller Tina
COMM CORR SUPV.

MNS/MNS/4/2009

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