

COURT OF APPEALS

07/18/21 PM 1:00

STATE OF WASHINGTON
BY *sw*

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

STATE OF WASHINGTON,

Respondent,

vs.

STANLEY SCOTT SADLER,

Appellant,

No. 35021-1-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

The Appellant, Stanley Scott Sadler, acknowledges having received and reviewed the opening brief prepared by his appellate attorney, Ms. Rita J. Griffith.

The Appellant respectfully submits his "Statement of Additional Grounds for Review" for consideration before the Honorable Judges of the Div. II Court of Appeals.

- TABLE OF CONTENTS -

ASSIGNMENT OF ERROR #1 pg. 3

ASSIGNMENT OF ERROR #2 pg. 4

STATEMENT OF FACTS pg. 5

STATEMENT OF FACTS (CLERK'S PAPERS) pg. 11
(see S.A.G. - ADDENDUM)

ADDITIONAL GROUND #1 - ARGUMENT pg. 16

ADDITIONAL GROUND #2 - ARGUMENT pg. 28

- - - - -

ADDENDUM - "A" through "K" pg. 50

-per "Supplemental Req for Clerk's Papers-
(public records this case #04-1-04384-2)

ADDITIONAL GROUND #1

ASSIGNMENT OF ERROR

The Appellant (Stanley Scott Sadler) assigns error to the statute (RCW 9.68A.110 (3)) as being unconstitutionally vague in its application to his conduct and defense, and therefore he was deprived of his U.S. Constitutional/Fourteenth Amendment right to due process and a fair trial.

STATUTORY REFERENCE

RCW 9.68A.110 Certain defenses barred, permitted - states:

(3) In a prosecution under RCW 9.68A.040 or 9.68A.090, it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor (emphasis added)

NOTE: The only section of the statute (9.68A.110 (3)) contested at trial and being argued here as unconstitutionally vague in its application to the appellant's conduct and defense, is the phrase "requiring production".

ADDITIONAL GROUND #2

ASSIGNMENT OF ERROR

The Appellant (Stanley Scott Sadler) assigns error to the Washington State Superior Court Judge/Commissioner for manifest abuse of discretion in releasing the key trial witness (the alleged victim - K.T.) from material witness detention, and in doing so deprived the Appellant of his State and Federal Constitutional rights to Due Process, Compulsory Process, and the right to present a defense.

Note: The error is assigned to the "Judge/Commissioner" due to the signature line on the "Order Establishing Conditions of Release for Trial" (Addendum "G") being signed under such a designation. The Appellant uses "Judge" synonymously in his argument.

STATEMENT OF FACTS

(1) The alleged victim's age portrayal as 19:

(a) Although K.T. (the alleged victim) portrayed herself as 19 years old, she was actually 14 years old at the time. RP 1739, 1916, 1919, 1954-1957

(b) The appellant testified that K.T. stated she was 19 years old. RP 1916, 1919, 1956-1958

(c) The appellant and K.T. met via a number of Adult Only (18+) websites on the internet, where K.T. advertised herself publicly as 19 years old. RP 1228, 1339, 1850-1851, 1861-1862, 1907-1912, 1954-1957, 2038

(d) These websites are legal Adult dating services with bondage, discipline, and sexual themes, where the members using them must certify that they are over 18 years of age. RP 1861-1862, 2039, 2446

(e) The individual's profiles and pictures on these dating services must go through a screening process for approval, and in order to communicate on the websites (ie: SexyAds.net/Exh. 146) a premium/pay by credit card account is required. RP 1850-1851, 1915, 2094

(f) Exh. 146 and Exh. 132 were identified as the main (front) webpages of two of K.T.'s Adult dating service accounts, each with a publicly

advertised age of over 18. RP 1850-1851,
1909-1912, 1950-1951, 1954-1957

(g) A Clark County Sheriff's Office computer technology specialist (Thomas) testified he had identified K.T.'s SexyAds.net profile (Exh. 146) on K.T.'s computer, and that K.T. had been actively communicating via this account at the time she met the defendant. RP 1850-1852

(h) State's witness Rachel Haughenberry testified that she had seen K.T.'s profile on the Adult only BDSM website "CollarMe.com" (Exh. 132).
RP 1228, 1339

(2) The production of a birth certificate and ID as 19 years of age:

(a) State's witness Rachel Haughenberry testified that K.T. said that she was going to get her ID so that she could get into a local Adult only BDSM club which required ID (18+ only). RP 1259-1260

(b) The appellant testified that just prior to agreeing to meet K.T. in Camas in August of 2004, she showed him both a Michigan State birth certificate and Washington State picture ID via her online webcam. The appellant verified the name on the documents as K.T.'s, and that both listed K.T.'s birthdate as July 6, 1985. This matches K.T.'s stated and advertised age of 19 years old. He also identified K.T.'s birth certificate as

plain, not ornate. RP 1917-1918, 2179, 2186-2193,
2431

(c) K.T.'s mother, Debra Farnam, confirmed that K.T. had a webcam during the time the appellant testified that K.T. had showed him her birth certificate and ID. RP 2001-2003

(d) Ms. Farnam also testified that K.T.'s birth certificate was missing from the lock box in which it was kept. She also stated that Clark County Sheriff's Detective McCollum was there when the birth certificate was discovered missing. Additionally, Ms. Farnam verified that K.T.'s birth certificate was from Michigan, and plain not ornate. RP 1997-1999

Additional background:

Due to repeated failures to respond or appear, a material witness warrant was issued for K.T., and she was held in detention pending this trial. As trial approached K.T. was released from material witness detention by the state, and it is reported that she ran away and disappeared completely. RP 155, 1348, 2525-2532;(Addendum A-J)

While being held in detention, reports surfaced that K.T. had confessed to forging her birth certificate to make it appear she was 19, and then showed it to the appellant as proof of age. The defense motion to admit this information was denied. RP 306-310; (Addendum D)

The court also denied a defense motion to admit an online (IM) conversation between K.T. and another man (David Hogue in TN) where she told him she was 19, and would send him a copy of her birth certificate to prove it. RP 925-930, 2424-2431; Exh. #~~A~~ 153

K.T. did not appear for trial, did not testify, and was not available to be interviewed or cross-examined by the defense. RP 7, 46, 72, 1348; (Addendum H)

The state proceeded with trial even though the alleged victim (K.T.) was missing, and entered over 30 motions in limine regarding all evidence of K.T.'s portrayal as 19 years of age. This effectively left the appellant stripped of all viable defense other than his testimony. RP 97-315

(3) Prosecutor's arbitrary/improper definition:

In closing rebuttal argument, after the defense had no further opportunity to address the jury, the state argued that presenting the birth certificate over a webcam could not meet the definition of "requiring production" in Instruction No. 27:

"Instruction No. 27 requires production of the identification, not a request to see it on a webcam. When someone goes to buy alcohol or cigarettes or something like that, the store clerk doesn't say, can you give me a copy of your driver's license. They need to see the actual license, the actual document, production of the document. Not show it to me; prove it to me."

Additionally, the prosecutor stated:

"...even if you believe the defendant when he says I asked her for a copy, or she showed me her birth certificate on the webcam, according to law, that is not enough. The law requires production, not seeing it over a fuzzy webcam, production of the document." RP 2670-2671

(4) Jury question on definition:

During the course of deliberations, the jurors sent out a note saying, "We need the definition of the words 'requiring production' as they are written in the Instructions #27." CP 394-395; RP 2686

(5) Defense counsel's proposed definition denied:

Michael Schwartz, the defense attorney, was not able to come to the hearing on how to respond to the jury's question, and another attorney covered the hearing. When the court presented the prosecution's suggested response of "no additional instructions or definitions will be provided" to the substitute counsel, he agreed while stating "...I am not familiar with whether in the defense instructions he proposed a definition for the phrase 'requiring production' of documents in the defense proposed." CP 394-395; RP 2687-2688

When Mr. Schwartz learned of the question, and before the jurors announced that they had reached a verdict, he e-mailed to the court a proposed supplemental instruction based on the question. RP 2689-2690 The instruction - "the

term production means the act of producing or to offer to view or notice" - from Webster's Dictionary (2006 edition). RP 2689 Counsel further proposed that the instruction be given along with a further instruction that they begin deliberating at the point where they had raised the question about the term production. RP 2695-2696 The court denied the request. RP 2696

(6) Jury's verdict:

The jury found the appellant NOT GUILTY of Kidnap 1, Child Rape 3 (3 counts), Dealing in Depictions of a Minor (3 counts), and Possession of Depictions of a Minor (23 counts). RP 2698-2708

In order to find the appellant NOT GUILTY of these charges, the jury had to believe that the appellant had proved the affirmative defenses of: (9A.44.030 (2)(c)) - that he reasonably believed that K.T. was (over 16) the 19 years of age she declared, and (9.68A.110 (2)) - that he was not in possession of any facts on the basis of which he should reasonably have known that the person depicted was a minor.

The only charge the appellant was convicted of was Sexual Exploitation of a Minor (8 counts). RP 2698-2708

STATEMENT OF FACTS - CLERK'S PAPERS

-per "Supplemental Request for Clerk's Papers-
(see S.A.G. Addendum)

NOTE: The Appellant is under a time constraint, and has no way of knowing how the Clerk will number the "Supplemental Court Papers" he has requested. In order to reference these key documents in support of the following argument/s, correct and true copies of the papers are organized chronologically (by date signed) in a series of "Addendums" located at the end of this "S.A.G."

On Sept. 15, 2005, K.L.T. (the alleged victim and key witness to this trial) was placed in detention in Clark County for violating the terms of her probation. These violations included leaving the court approved residence where she was placed and running away. (Addendum "A" - pg.2/ln.8-12)

Since January of 2004, K.L.T. has run away from court approved residences eight separate times, and twice she was found only after the issuance of a bench warrant that was served on her. (Addendum "A" - pg.2/ln.21-23)

While being held in detention, K.L.T. clearly informed state officials that she would run away and disappear again, including the statements: "If I can't go home, I'll be gone" and "I will wait until placed and then run away". When State officials tried to talk to K.L.T. about her promises to disappear/runaway, she was not

receptive and did not participate further.
(Addendum "A" - pg.2/ln.13-20)

K.L.T. was scheduled to be released from violation related detention on October 8, 2005.
(Addendum "A" - pg.3/ln.1-2)

On October 7, 2005, the State obtained a material witness warrant to ensure K.L.T. was extradited from Clark County and held in Pierce County pending trial. (Addendum "A", Addendum "B")

At this time, the Appellant/Defendant had been incarcerated for over a full year waiting for trial, and had repeatedly expressed his right to prove his innocence at trial. Trial was currently set for November 28, 2005, with a status conference set for October 20, 2005. (Addendum "A" - pg.3/ln.3-6)

On October 12, 2005, K.L.T. was transported to Pierce County and an "Order Detaining Material Witness K.L.T." was presented to the court. (Addendum "C")

A hearing was scheduled to determine whether K.L.T. should be detained or released was scheduled for October 13, 2005; however K.L.T. agreed to remain detained at Remann Hall pending the current trial date of November 28, 2005, provided a review hearing was scheduled and held no later than October 23, 2005. It was ordered

that K.L.T. be detained at Remann Hall, not subject to release, pending a hearing to be held October 17, 2005 to address whether K.L.T. should remain detained pending trial or should be released. (Addendum "C" - pg.1-2)

On October 12, 2005, Det. McCollum and Sgt. Trimble of the Clark County Sherriff's Office (CCSO) took an incident report (call) from K.L.T.'s mother, Debra Farnam. Farnam told detectives that a warrant had been issued for her daughter, and she was currently being held in detention in Tacoma. Farnam stated that K.T. confessed to the following while in detention:

"... Kylie has told her that she forged her own birth certificate to make it appear as though she was 19 years old. Kylie said that she had shown this to Stanley Sadler to prove to him that she was at the age of consent.

Kylie also told her mother that she had gone with Sadler on her own and was not forced to go with him. She went on to say that she had also stayed with Sadler on her own. She said she had been afraid to call or come home because she thought she would be placed in detention.

Kylie said that she had asked Sadler at one point about going home, but he then asked her if she would come to Tacoma with him, and she agreed to this. Kylie told her mother that she was 'role playing' in the video tapes and that it was just an act." (Addendum "D" - 3rd page - part of "MOTION TO ADMIT EVIDENCE"/Addendum "K")

On October 16, 2005, while K.L.T was being held in detention, there were reports of suspicious phone calls and disrespectful/problem behavior. (Addendum "E")

On October 17, 2005, an additional order

detaining K.L.T. pending a hearing on October 19, 2005 was entered. The next hearing was to address the status of a deposition (potentially set for October 24, 2005) and release options/placement. (Addendum "F")

On October 19, 2005, an "Order Establishing Condition of Release for Trial" was entered. It simply reads:

"IT IS HEREBY ORDERED THAT THE ABOVE-NAMED JUVENILE (MATERIAL WITNESS-K.L.T.) SHALL BE RELEASED FROM CUSTODY PENDING NEXT COURT HEARING ON PERSONAL RECOGNIZANCE, SUBJECT TO THE FOLLOWING CONDITIONS:(ORECRP)

Submit to the supervision of Clark County - DSHS employee - Respondent to be 'secure CRC' (Port Orchard) for up to 72 hours - Pierce County Sheriff to transport.

Additional conditions of release: Maintain weekly contact with attorney - F. Macnamara - Jardine (253) 383-4532"

No parent/supervising adult signed with K.L.T. (Addendum "G")

On November 3, 2005, the State issued a "Supplemental Discovery Distribution" to Appellant's trial counsel at the time. This contained the CCSO report of K.L.T.'s confession called in by her mother, 3 weeks prior while K.L.T. was still held in detention. (Addendum "D")

On November 16, 2005 (12 days before trial), the State issued another "Motion and Declaration Authorizing Issuance of Bench Warrant for Material Witness K.L.T.", and the warrant was issued as "nationwide". The State cites that K.L.T. has

"failed to comply with conditions of release dated 10-19-05, as K.L.T. has runaway from her approved residence. Her whereabouts are unknown. (Addendum "H")

On November 18, 2005, the State faxed letters found in K.L.T.'s "journal in bedroom at foster home she just ran from". The unfinished letters are addressed to "Scott", the Appellant, and apologize for "the lie that is the reason for this letter". (Addendum "I" - part of "MOTION TO ADMIT EVIDENCE"/Addendum "K")

* K.L.T. did not appear at trial. - On July 21, 2006, the State revoked the bench warrant on K.L.T., leaving the Appellant without recourse in obtaining this key witness. (Addendum "J")

ADDITIONAL GROUND #1

ARGUMENT

The appellant respectfully argues that RCW 9.68A.110 (3) is unconstitutionally vague in its application to his conduct and defense, and he was therefore deprived of his Fourteenth Amendment - U.S. Constitutional right to due process and a fair trial.

More specifically, the only section of RCW 9.68A.110 (3) contested at trial, and being argued here as unconstitutionally vague, is the ambiguity of the phrase "requiring production".

NOTE: At trial, the embodiment of RCW 9.68A.110 (3) was contained in Instruction No. 27, which was worded (in relevant part) as:

It is, however, a defense to the charge of sexual exploitation of a minor that at the time of the offense the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(emphasis added)

The appellant summarizes the key issues (refer to "STATEMENT OF FACTS" section as well) of his argument as follows:

(1) The alleged victim (K.T.) represented herself as 19 years of age through her oral declarations, and public/online advertisements.

(see STATEMENT OF FACTS (1)a-h)

(2) The appellant made a reasonable good faith attempt to ascertain the true age of K.T. by viewing her birth certificate and ID via her online webcam, verifying K.T.'s name and birthdate of July 6, 1985 on the documents, and thus confirming her true age as 19 years old. He did not rely solely on K.T.'s oral allegations, public advertisements, or apparent age. (see STATEMENT OF FACTS (2)a-d)

(3) Due to the ambiguity of the statute, the appellant was subject to an arbitrary and erroneous definition of the key statutory phrase "requiring production". In closing rebuttal argument, the prosecutor improperly stated a definition for "requiring production" which had no basis in authority, law, or common language reference, and arbitrarily argued that the statutory phrase "requiring production" could not be satisfied by seeing a birth certificate or ID over a webcam. (see STATEMENT OF FACTS (3))

(4) The jury (12 people of ordinary intelligence) was unable to define the statutory phrase "requiring production" with sufficient definiteness that would enable them to understand what conduct was proscribed by RCW 9.68A.110 (3) /Instruction No. 27. The fact that the jury requested a definition for the statutory phrase "requiring production", during deliberations, clearly demonstrates their unwillingness to accept

the prosecutor's arbitrary definition, as well as their inability to sufficiently resolve the ambiguous wording on their own. (see STATEMENT OF FACTS (4))

(5) Before verdict, appellant's trial counsel proposed a clarifying supplemental instruction based on a common definition from Webster's dictionary, "the term production means the act of production or to offer to view or notice", which was clearly applicable to the term "production" in the statutory context. Instead of allowing the clarifying instruction proposed by defense counsel, and requested by the jury, the court further entrenched the ambiguity of the statute and the impact of the prosecutor's arbitrary definition by denying the appellant's proposed instruction. This denial subjected the appellant to an additional arbitrary and discriminatory enforcement, which was to the benefit of the state. (see STATEMENT OF FACTS (5))

(6) The jury found the appellant NOT GUILTY of all (30) charges except the SEOM charge (8 counts). The convictions are all directly tied to the ambiguity of the statutory phrase "requiring production", the arbitrary and improper definition given by the prosecutor during closing rebuttal, the jury's request for a clarifying definition left unsatisfied, and the court's arbitrary denial

of defense counsel's common language (Webster's) definition/supplemental instruction. (see STATEMENT OF FACTS (6))

STATUTORY VAGUENESS TEST -

In analysis of the unconstitutional vagueness of RCW 9.68A.110 (3), the appellant relies heavily on Washington v. Wissing, 66 Wash. App. 745, 833 P.2d 424, review denied, 120 Wash. 2d 1017, 844 P.2d 436 (1992) due to similarities in the vagueness challenge and definition issues.

The 2-pronged test for the vagueness challenge is:

"A statute is unconstitutionally vague if

(1) ...the [statute] does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or

(2) ...the [statute] does not provide ascertainable standards of guilt to protect against arbitrary enforcement. Douglass, 115 Wash.2d at 178

If either requirement is not satisfied, the statute is unconstitutionally vague. Douglass, 115 Wash.2d at 178" Wissing, 66 Wash. App. at 749

(1) The appellant's burden of proof under the first prong of the test is clearly satisfied by the jury's request for the definition of "requiring production" while in deliberations. CP 394-395; RP 2686

The jury consisted of 12 people, of common intelligence, who were unable to understand the statutory wording and intent in context to the defendant's conduct. In the absence of a

clarifying definition, they were left to guess at the statute's meaning. RP 2687- 2696. Or even more prejudicial to the appellant, forced to rely on the prosecutor's arbitrary, improper, and baseless definition. RP 2670-2671

(2) The appellant's burden of proof under the second prong of the test is satisfied by 2 arbitrary actions:

(a) The ambiguity of the statutory phrase "requiring production" caused the appellant to be subjected to an arbitrary definition improperly given by the prosecutor. RP 2670-2671

The appellant can find no authority that supports the prosecutor's argument that holding up a birth certificate or ID for viewing via a webcam doesn't satisfy the statutory requirement of "requiring production". There is no reference to the phrase in question within "RCW 9.68A.011 - Definitions". Nor does any common definition in Webster's dictionary support the prosecutor's arbitrary statement. Under Article IV, sections 16, "Judges shall...declare the law." The prosecutor cannot usurp this role and misstate the law during closing argument. State v. Fleming, 83 Wn. App. 209, 921 P.2d 1076 (1996), review denied, 131 Wn.2d 1018 (1997).

(b) The ambiguity of the statute also subjected the appellant to the court's arbitrary

denial of the common language definition and clarifying instruction, which was both requested by the jury, and proposed by the appellant's trial counsel. RP 2689-2696; 2686. Defendant's are entitled to instructions which correctly state the law and permit them to argue their theory of the case. State v. MacMaster, 113 Wn.2d 226, 233, 778 P.2d 1037 (1989); State v. Mark, 94 Wn.2d 520, 526, 618 P.2d 73 (1980).

"[7] In addition to the requirement of fair notice, the due process clause requires that penal statute provide adequate standards to protect against arbitrary, erratic, and discriminatory enforcement (The United States Supreme Court has determined this is the more important aspect of the vagueness doctrine. Kolender v. Lawson, 461 U.S. 352, 358, 75 L.Ed.2d 903, 103 S. Ct. 1855 (1983)

See American Dog Owners Ass'n, 113 Wn.2d at 216. In this respect, the due process clause forbids criminal statutes that contain no standards and allow police officers, judges, and jury to subjectively decide what conduct will comply with a statute in any given case. Maciolek, 101 Wn.2d at 267" Spokane v. Douglass, 115 Wash. 2d 171, 179, 795 P.2d 693 (1990)

The appellant respectfully submits that even though only one prong is necessary to establish ambiguity, he has satisfied both prongs of the vagueness test beyond a reasonable doubt. And that in doing so, has established that the statutory vagueness of RCW 9.68A.110 (3) deprived the appellant of his Fourteenth Ammendment right to due process and a fair trial.

FUNDAMENTAL FAIRNESS -

The appellant would further argue that in the

interest of fundamental fairness, the statutory defense must be applied to the online/internet environment. Both crimes covered by the statutory defense of RCW 9.68A.110 (3) - (Sexual Exploitation of a Minor/9.68A.040, and Communication with a Minor for Immoral Purposes/9.68A.090) - can be perpetrated and charged solely through online/internet communication. The appellant therefore asserts that the statutory defense, as written, MUST also be applicable to this aspect of the crime's potential commission (ie: a bona fide attempt to ascertain the true age of the minor by requiring production of an ID or birth certificate - via online/internet communications/display).

Specific to the SEOM charge addressed in this case, the criminal statute states:

RCW 9.68A.040 Sexual Exploitation of a minor --
Elements of crime -- Penalty

(1) A person is guilty of sexual exploitation of a minor if the person:

(b) Aids, invites, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance

The appellant points to State v. Stellman, No. 24134-0-II (Wash App. Div. 2 05/18/2001) 2001 Wash. App. Lexis 1081, 106 Wash. App. 283, 22 P.3d 1287 (2001) to demonstrate this point.

In the Stellman case, a detective, under a fictitious internet identity, posed as a 14 yr.

old male named "Kevin". Stellman, 22 P.3d at 1288

"In the emails, Stellman indicated on several occasions that he would like to photograph him and Kevin having sexual contact." Stellman, 22 P.3d at 1288

"Here, the state charged Stellman with violating RCW 9.68A.040 (1)(b), attempting to exploit a minor;..." Stellman, 22 P.3d at 1289

Stellman made no good faith attempt to ascertain the true age of the minor, and based on his online invitation regarding photographing, he was convicted under the exact same statute as the appellant (RCW 9.68A.040 (1)(b)/SEOM) Stellman, 22 P.3d at 1287..

If the crime can be committed and charged based solely on online contact, the only way a citizen could fairly be expected to assert the requirements of the statutory defense, would be through "online production" of the required documents. The appellant himself, had he not required production online via K.T.'s webcam, could have been similarly charged and convicted just on the basis of discussing legal/adult sexual activities involving photographing, even though K.T. was clearly misrepresenting herself as 19. Under the statute, it is not a defense that you relied solely on oral allegations or apparent age.

Therefore, through the uniform application of the law, and fundamental fairness, the appellant asserts that his conduct was in compliance with the legislature's statutory intent. Had the

legislature intended a narrower interpretation of the statute in protecting unsuspecting citizens from being intentionally deceived and unjustly prosecuted, they would have chosen more restrictive terminology to do so. As the statute is worded, they wisely did not.

COMMON LANGUAGE DEFINITION -

The appellant's argument is also supported when referring to the common language definitions available to the ordinary person. While the ambiguity of the phrase "requiring production" presents the need for a cascade of definitions, they all support the appellant's argument:

PRODUCTION: (6) the act of presenting for display; presentation; exhibition

DISPLAY: (1) to show or exhibit; make visible
(6) computers - to output on a CRT or screen

PRESENT: (8) to show or exhibit

EXHIBIT: (1) to offer or expose to view

SHOW: (1) to cause or allow to be seen

EXPOSE: (4) to present to view

VIEW: (1) an instance of seeing or beholding; visual inspection

(Random House Webster's Unabridged Dictionary - 2001 2nd edition)

Here, the appellant again references Wissing, 66

Wash. App. 745, 833 P.2d 424 (1992):

"[5] In determining which dictionary meaning applies to a term within a statute, we must consider the context of the statute in which the term applies" State v. Rhodes, 58 Wash. App. 913, 795 P.2d 724 (1990). In addition, "fundamental

fairness requires that a penal statute be literally and strictly construed in favor of the accused although a possible but strained interpretation in favor of the state might be found." State v. Wilbur, 110 Wash.2d 16, 19, 749 P.2d 1295 (1988) (quoting State v. Hornaday, 105 Wash.2d 120, 127, 713 P.2d 71 (1986)). Wissing, 66 Wash. App. at 753

Interestingly, within Wissing, the state asserted that the term "to exhibit" means "to present to view", citing Webster's New Collegiate Dictionary (1977). Wissing, 66 Wash. App. at 753. While the state improperly applied that definition to the context of the statute in question within Wissing, it would be accurate in application to the context of RCW 9.68A.110 (3), as "exhibition" is a primary definition of "production". This also parallels the clarifying definition proposed by the appellant's trial counsel - "the term production means the act of producing or to offer to view or notice" - from Webster's Dictionary (2006 edition). RP 2689

The appellant would further submit that that the common language definition most applicable to his conduct and defense is:

PRODUCTION: the act of presenting for display where (PRESENT: to show) -- (SHOW: to cause or allow to be seen) and (DISPLAY: to show - to output on a CRT or screen).

STATUTORY CONTEXT -

The appellant addresses the context of RCW 9.68A.110 (3) in relation to the phrase "requiring

production". Here the pertinent statutory context states, "...the defendant made a reasonable bonafide attempt to ascertain the true age of the minor by requiring production" of a driver's license... birth certificate... or other governmental or educational card or paper and did not rely solely on the oral allegations or apparent age of the minor." (emphasis and omissions added)

The appellant was clearly being intentionally deceived by the alleged victim (K.T.) as to her age being 19. (see STATEMENT OF FACTS (1) a-h).

However, the appellant did not rely solely on the oral allegation or even the Adult only dating service/advertisements where he should have had an environment free of such deception. The appellant, before meeting K.T., and during their online interactions, made a reasonable good faith attempt to verify K.T.'s true age by viewing both a Michigan State birth certificate and WA state picture ID via K.T.'s online webcam. (see STATEMENT OF FACTS (2) a-d).

K.T.'s birth certificate and ID were checked at the time the invitation to engage in adult sexual activity and photography was being made through their online contact. The statute does not specify the defendant must check more than once.

In closing, the appellant refers to the "rule of lenity":

The rule of lenity requires ambiguity in the language of a criminal statute be resolved to favor the defendant.

United States v. R.L.C., 503 U.S. 291, 305, 112 S.Ct. 1329, 117 L.Ed.2d 559 (1992); id. at 307-08 (Scalia, J. concurring); United States v. Bass, 404 U.S. 336, 348, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971); States v. Radan, 143 Wn.2d 323, 329-30, 21 P.ed 255 (2001); In re Pers. Restraint of Hopkins, 137 Wn.2d 897, 901, 976 P.2d 616 (1999); In re Pers. Restraint of Charles, 135 Wn.2d 239, 252, 955 P.2d 798 (1998)

Note: The appellant completely supports that our children MUST be protected, and this is of paramount importance. The appellant merely asks for fairness, common sense, and justice in applying the statutory defense to his conduct.

REMEDY SOUGHT

As remedy, the appellant respectfully requests that the honorable Appellate Court finds that the statute RCW 9.68A.110 (3) is unconstitutionally vague in its application to his conduct and defense, and he was therefore deprived of his U.S. Constitutional Fourteenth Amendment right to due process and a fair trial. He asks for reversal of his convictions.

The appellant would also respectfully ask for any other remedy the Honorable Court deems necessary.

ADDITIONAL GROUND #2

ARGUMENT

The Appellant respectfully argues that the Washington State Superior Court Judge/Commissioner erred in releasing the key trial witness (K.T. - the alleged victim) from material witness detention pending trial. The Appellant asserts that this was a manifest abuse of discretion which materially prejudiced his defense and deprived him of his State and Federal Constitutional rights to Due Process, Compulsory Process, and the right to present a defense.

In Overview, the fundamental factors within this argument are:

(1) There was a manifest abuse of discretion.

(2) This abuse of discretion prejudiced the Appellant by depriving him of crucial testimony and evidence which was both material and favorable to his defense, and adversely affected the outcome of his trial.

(1) ABUSE OF DISCRETION -

THE JUDGE/COMMISSIONER HAD THE FOLLOWING FACTS WITH WHICH TO BASE HIS DECISION:

* A criminal defendant is innocent until proven guilty.

* The charges against the defendant were extremely serious, and he potentially faced life in prison if convicted.

* K.L.T. (the alleged victim) was a key and necessary witness to the Appellant's trial. (Addendum "A" - pg.3)

* The Appellant had been incarcerated for over a full year, and had expressed his intention to prove his innocence at trial. (Addendum "A" - pg.3/ln.2-4)

* The current trial date was set for November 28, 2005, aprox. one month away. (Addendum "A" - pg.3/ln.5)

* The witness (K.L.T) was already being detained in Clark County for leaving the court approved residence where she was placed and running away. She did this in violation of the terms of her probation. (Addendum "A" - pg.2/ln.8-12)

* The witness (K.L.T) had an established history of running away and disappearing (including during the Appellant's incarceration pending trial). This includes running away from court approved residences 8 separate times since January of 2004, and twice she was only found after the issuance of a bench warrant. (Addendum "A" - pg.2/ln.21-23)

* While being held in detention, the witness

(K.L.T) blatantly informed State officials that she would run away and disappear again. Her specific statements included "If I can't go home, I'll be gone", and "I will wait until placed and then run away". (Addendum "A" - pg.2/ln.13-20)

* The State, knowing that K.L.T. had just run from trial and been caught/detained, obtained a material witness warrant (3rd overall since January 2004) and order to detain K.L.T. pending trial. The State went to the expense of having K.L.T. extradited from Clark County and brought to Pierce County for hold. (Addendum "A" & "B")

* During material witness detainment in Pierce County, the witness (K.L.T.) waived her right to appear for a hearing to determine whether she should be detained or released, and agreed to remain detained at Remann Hall pending the current trial date of November 28, 2005. (Addendum "C" - pg.1&2)

* While the witness was in detainment, there were documented reports of suspicious phone calls and problem/disrespectful behavior. (Addendum "E")

* No deposition had yet been taken from K.L.T. (nor had the defense interviewed her). (Addendum "F" - pg.2)

JUDGE'S DECISION:

On October 19, 2004, aprox. 1 month prior to trial, the Judge released K.L.T. from material

witness detention. No reason is cited in the court papers/available record. K.L.T. was released on her own "personal recognizance" on the condition she submit to the supervision of a Clark County DSHS employee and maintain weekly contact with her attorney.

Absolutely no other conditions or precautions were taken to ensure this crucial witness would be available for trial. No "Secure Detention", No "Alternative Detention Services", No "House Arrest w/supervising adult", No "Curfew", No "Travel restrictions", No "Maintain contact w/Probation officer", No "required attendance at school", not even a designation to "obey rules" or "no violation of laws" condition. (Addendum "G").

The Judge, in direct contradiction to the facts before him, released K.L.T. into the exact situation (State placement) where she had before, and without doubt would again, runaway and disappear.

K.L.T. specifically guaranteed this with her own statements: "If I can't go home, I'm gone", and "I will wait to be placed and then runaway". Her past history of 8 previous runaways/disappearances from state approved homes (placement) further confirms the obvious. (Addendum "A" - pgs.2/ln.13-23).

RESULT OF THE JUDGE'S DECISION:

As trial approached, K.L.T. ran away from her court approved residence and disappeared completely. Debra Farnam, K.L.T.'s mother, testified that K.L.T. disappeared on Nov. 3, 2005 (ONLY 14 DAYS AFTER HER RELEASE) - and had been served with a subpoena to testify in the State of Washington v. Stanley Scott Sadler (RP 1348/ln.7-25).

On November 16, 2005 (12 days before the scheduled trial date), another material witness warrant (4th since January 2004) was issued. The reason listed was the K.L.T. had "failed to comply with conditions of release dated 10-19-05, as K.L.T. has runaway from her approved residence. Her whereabouts are unknown." (Addendum "H").
K.L.T. DID NOT APPEAR AT TRIAL. RP 46,72,102-3,223-4,226,229,232,2527-35,2631

- - - - -

The (indigent) Appellant requested every court paper he possibly could relating to the arrest, detention, and release of the material witness (K.L.T.). Every document in that record supports that there were clear, concise, and compelling facts that would lead any reasonable person or fact trier to only one possible conclusion:

If this most critical witness was not held in

material witness detention, but was instead released under personal recognizance and placed with the State, she would runaway and again disappear.

The Appellant could not find a single tenable fact to justify the judge's decision to release the key witness (K.L.T.). Based on the already listed facts from the record, the Judge's decision could at best be described as arbitrary, unreasonable, or based simply on emotion; and was clearly against all logical, reasonable, and probable deductions that could be drawn from the facts disclosed.

The Appellant believes the only way the Judge could have reached the decision to release K.L.T. would be through the improper perception that detaining K.L.T. was in some way "re-victimizing the victim". However, any weighing of the facts while defining K.L.T. as "the victim" bypasses the entire trial process and presumes the defendant's guilt without due process. The fundamental unfairness of this scenario is immediately exposed in the present case, where the Appellant was found NOT GUILTY of 30 felonies based on K.L.T.'s age misrepresentations, with the remaining tenuous convictions directly tied to the prejudice incurred by K.L.T.'s lack of appearance/testimony at trial.

Also important to consider is the fact that not only did the witness's release severely prejudice the Appellant's (a presumably innocent man's) defense, but it also put K.L.T. at a severe and known risk from herself. As of July 16, 2006, when the State quashed the bench warrant on K.L.T. and left the Appellant without recourse in finding her, K.L.T. still had not been found. Releasing the witness (K.L.T.) was most certainly not in the best interest of justice, nor was it in the best interest of K.L.T. herself who was sure to runaway and disappear again - for the 9th time.

In order to demonstrate that the trial court abused its discretion, the appellant must make a "clear showing" that the decision by the trial court is "manifestly unreasonable, or exercised on untenable grounds or for untenable reasons". State ex. rel Carol v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)

The Appellant respectfully submits that he has shown a manifest abuse of discretion by the Superior Court Judge in releasing K.L.T. from material witness detention pending trial.

Should the Honorable Judges of the Appellate Court require additional facts, such as the transcripts of the hearings where the witness was released, the Appellant would ask the Court to obtain it under RAP rule 9.11(a) - Additional Evidence on Review. However, the Appellant submits the facts are concise, clear, and irrefutable as

they stand submitted.

The Appellant also respectfully asks the Honorable Appellate Court to carefully consider the actual prejudice to the Appellant's trial defense, as well as the advantage gained by the State, when considering the comparative and compelling interests of those affected by the Judge's decision to release K.L.T., and when considering the comparative weight of the reasons for and against the decision one way or another.

(2) PREJUDICE CAUSED TO THE APPELLANT'S DEFENSE -
STATE'S MOTIONS IN LIMINE - SUMMARY:

Due to K.L.T.'s release, disappearance, and subsequent absence from trial the State entered 35 specific "Motions in Limine" regarding the State's case in chief. While 10 were stipulated, 25 were contested, with the end result being ALL were granted to the State (RP 97-253).

These motions excluded the defense from questioning ALL potential witnesses, including investigating law enforcement, about K.L.T.'s habit, history, and methods of portraying herself as 19 years of age. The defense was categorically denied any ability to expose the true facts relating to the critical statutory defense issues during the State's case (RP 97-253).

The State then entered 5 additional general "Motions in Limine", of which 4 were contested, and all were again granted to the State (RP

223-238). These general motions extended the restrictions on questioning ALL witnesses about K.L.T.'s habit, history, and methods of portraying herself as 19 to the entire trial, including the defense's case in general (RP 224, 934-938).

DEPRIVED OF RIGHT TO PRESENT A DEFENSE:

The Appellant submits that he was deprived of evidence and testimony which was both material and favorable to his defense. His defense was most prejudiced regarding the SEOM charges, where only the missing witness (K.L.T.) could definitively confirm the truth outside his own testimony. He therefore focuses his references on prejudice where he was deprived of evidence and testimony which was both material and favorable to the SEOM statutory defense, and that supports his testimony that he checked K.L.T.'s ID and birth certificate.

THE STATE'S "MOTIONS IN LIMINE" (MIL) - SPECIFIC:

* MIL #19 - Exclude: Defendant's conversation with Ms. Haughenberry (State's primary witness), where she asked him if he had identified K.L.T., gotten identification on her, and the Defendant assured her that K.L.T. was in fact 19, and that he had checked. (RP 148-151)

* MIL #20 & 21 - Exclude: "... Haughenberry testifying that the Defendant talked to both of them about going to The Wet Spot, and Kylee getting all excited and saying she needed to have

her ID sent to her"(RP 246/ln.9-12, 243-251)

Note: The "WetSpot" is an 18+/ID required BDSM club in Seattle.

* MIL #23 - Exclude: "... questions of any witness designed to elicit statements of Kylee as to her representations about her age" (RP 172-184).

Especially relevant is that during conversations with Rachel Haughenberry (the State's primary witness) while the Defendant was present, Kylee said that she was 19, and that she had left her ID at home and had to go get it (RP 181/ln.1-6). However, this also had the effect of excluding ALL witness testimony on the critical ID/birth certificate issues other than the Appellant's (RP 224).

* MIL #24 - Exclude: "... the specific incidence of Kylee's contact and conduct with Jeffrey Bachmeier, the adult male from Seattle" (RP 184-191).

Specifically "... because during their conversations Kylee showed him identification which said that she was 19 years old" (RP 186).

* MIL #31 - Exclude: letters that were found in Kylie's journal, addressed to the Appellant, where she apologizes for lying (RP 197-206; see also Addendum "I" - part of Addendum "K").

The Appellant submits this is material to the

SEOM defense as a support element. K.L.T. lied about her age in a number of ways, as with fake ID.

* MIL #32 - Exclude: "... questions of any witness that elicits the fact of an investigation into any other adult male individuals and their contacts with this victim". (RP 206-207)

Note: Law enforcement identified 6 other cases where K.L.T. had portrayed herself as 19 to adult men (none charged), and in 2 cases, an ID or birth certificate was offered/used as proof of being 19 years of age. (Bachmeier - saw ID - RP 187, David Hogue - offered a birth certificate - RP 925-929, 2422-2431; exh. #153)

* MIL #34 - Exclude: "... questions of any State's witness that Kylie represented herself as an adult" - post charging time period (RP 220-221)

Note: Same issues as #32 and ID/birth certificate offered as 19.

* MIL - general #1,2,3,5 - "asks that the Court extend the State's motions in limine on these subject matters which involve her sexual activity and behaviors, her statements to other individuals, and her age related statements to people who aren't the Defendant, and her behaviors themselves, which include running away and having other discipline problems be excluded from this trial in its entirety unless and until the defense establishes an admissable basis for that" (RP 223-238).

Defense counsel's response was, "Your Honor, your ruling leaves the Defendant defenseless, so I would ask for a recess so that I can go to the Court of Appeals" (RP 237)

* NOTE: The prosecution was later granted even more restrictive wording to "Motions in Limine", to include: "it is further ordered that the evidence excluded during the State's case in chief also apply in the defense -- it is further ordered that the rulings excluding evidence during the State's case in chief also apply in the defense case, unless, slash, until, the Defendant requests the Court change its rulings based on the evidence produced at trial to that point" (RP 934-938)(emphasis added).

DEFENSE MOTIONS DENIED:

The Defense motioned to admit several pieces of evidence relating to the key SEOM statutory defense issues (9.68a.110 (3)). These included:

* Letters found in K.L.T.'s journal right after she ran away, addressed to "Scott" - the Appellant, where she apologized for lying and causing suffering to the Appellant and his daughter. (RP 285-297, 925-924; Addendum "I" - part of Addendum "K")

* Print-outs of 2 of K.L.T.'s Adult only (certified as 18+) website profiles and advertisements as 19 years of age. One found

printed-out at the Appellants home, and the other found on K.L.T.'s home computer by law enforcement. Both declaring K.L.T. as over 18, and listing detailed BDSM/sexual interests, as well as referring to the "Adult Nightlife" (BDSM and Dungeon clubs) she attended (again 18+ ID required), and references to enjoying nude photography/sharing her nude pics (RP 1935-38, 1946, 1949-51; exh. 146A/146 & 132A/132).

* An internet chat with another man, David Hogue, where K.L.T. tells him she is 19, and can send him a copy of her birth certificate (RP 925-934, 2422-31; exh. #153).

* K.L.T.'s full confession called into the Clark County Sheriff's Office by her mother, Debra Farnam. This specifically detailed how K.L.T. admitted "she had forged her own birth certificate to make it appear as though she was 19 years old", "she had shown this to Stanley Sadler to prove to him that she was of the age of legal consent", and "that she had gone with Sadler on her own and was not forced to go with him". (RP 285-297, 306-310; Addendum "D" - part of Addendum "K")

The Court denied all of the defense motions. Even after the Appellant took the stand and testified to K.L.T.'s verbal declarations, public advertisements, use of a birth certificate and ID, and other issues related to his belief that she was 19 years of age, the defense was denied all

confirming evidence and testimony.

PRIMARY PREJUDICE - THE ABSENCE OF K.T. HERSELF:

This case is unique in many ways. It is a statutory defense case, where the burden of proof was shifted upon the Appellant. It is the rare instance where there was voluminous evidence of the alleged victim's misrepresentations of age as 19, including the use of a forged birth certificate and ID (See STATEMENT OF FACTS - (1)a-h, (2)a-d).

There was evidence of other incidents involving K.T.'s offering and use of these same forged documents as 19 years of age (RP 187, 925-929, 2422-2431, exh. #153). And perhaps most importantly, there was evidence of K.T.'s confession to forging her birth certificate and showing it to the Appellant as proof of being 19, even as she was being held in material witness detention pending this trial. (RP 285-297, 306-310, Addendum "D").

This evidence is not speculative. It is directly and materially related to the Appellant's statutory defense (9.68A.110 (3)). It supports and exactly matches his testimony that he verified K.T.'s birthdate as July 6, 1985 through the viewing of her birth certificate and ID (RP 1917-1918, 2186-2193, 2431). And this is precisely why K.T.'s absence from trial and the loss of her

testimony was so irreparably prejudicial.

K.T.'s appearance at trial was the key to all other supporting evidence and testimony being allowed in. And K.T. was the ONLY source of direct confirmation of the Appellant's testimony. Without K.T. at trial, the Appellant was stripped of his entire ability to present a defense and support his own testimony (RP 97-253, 934-938).

K.T's presence at trial was not just important to the Appellant's statutory defense to the SEOM charges, it was the core and irreplaceable element. The Judge's abuse of discretion in releasing K.T. deprived him of this.

In demonstrating actual prejudice, the defendant's burden is a heavy one: the proof must be definite and not speculative, and the defendant must demonstrate how the loss of a witness and/or evidence is prejudicial to his case. United States v. Talbot, 51 F.3d 183, 185 (9th cir. 1977). The mere assertion that a missing witness might have been useful does not establish actual prejudice. United States v. Mays, 549 F.2d 670, 677 (9th cir. 1977). The defendant must also show that the missing evidence is not available from other sources. United States v. Horowitz, 756 F.2d 1400, 1405 (9th cir.), cert. denied, 474 U.S. 822, 88 L.Ed.2d 60, 106 S.Ct 74 (1985).

The Appellant respectfully submits he has clearly demonstrated the overwhelming prejudice caused by the Judge's abuse of discretion in releasing K.L.T. from material witness detention.

In searching for direct authority to support his argument, the Appellant could find no case in which such a crucial witness was arrested, held under such compelling evidence, and then released

to such certain disappearance. Nor could he find a case that precisely paralleled the extreme and clear levels of prejudice the defendant suffered at trial due to K.L.T.'s release and disappearance. Washington State seems to be particularly devoid of usable direct authority, while the closest cases appear to fall under the 9th circuit involving the deportation and release of illegal aliens. The Appellant's case is clearly distinguishable. (see: United States v. Carrillo-Frausto, 500 F.2d 234 (9th cir. 1974))

ADVANTAGE GAINED BY THE STATE:

The State knew from the onset of this case that K.L.T. successfully portrayed herself as 19 years of age (LRP 110). They knew the Appellant believed that K.L.T. was 19 years of age (LRP 19, 80). The State therefore knew immediately that this would be an affirmative/statutory defense case, and was fully aware that the burden of proof would be shifted upon the Appellant (RCW 9.68a.110 (3)). In effect, the Appellant suffers under the implication of "guilty until proven innocent".

In this uncommon scenario, the less exculpatory evidence the defense has, translates directly to greater advantage for the State. The Appellant points out that the State's potential motivation for K.L.T. to be unavailable at trial was high. The advantage gained through K.L.T.'s disappearance and the State's "Motions in Limine"

is one example. Another would be in examining K.L.T.'s confession while in material witness detention, and called in by her mother to law enforcement on October 13, 2005, 6 days PRIOR to her release (Addendum "D"). The "Supplemental Discovery Distribution Receipt" from the State to the defense (also in Addendum "D") shows a legal messenger delivery date of Nov. 3, 2005, 3 weeks after it was reported, and the very same day K.L.T. was reported as having disappeared again (RP 1348/ln.7-25).

The defense was never given the opportunity to interview K.L.T. about the crucial confession, partly due to the Judge's release of K.L.T. in the first place, and partly because of the State's delay in notifying them. The Appellant would respectfully point out that in effect to the prejudice he suffered, whether Judge or the Prosecutor, separately or combined, both are the STATE.

The State gained the benefit of using K.L.T. as the basis for a warrantless entry into the Appellant's home. Even though the police arrived knowing she was portraying herself as 19 years of age, and the State later stipulated to the medical exam of K.L.T. as showing "No signs of injury or physical trauma" (LRP 110; RP 1846). K.L.T. was NOT kidnapped, restrained, harmed, or in danger,

contrary to what the State tried to portray. Again, as K.L.T. did not appear at trial, they were able to imply any and all emergency exception, exigent circumstance, or community custodial features they wished without subjecting it to the scrutiny of Due Process through K.L.T.'s testimony or cross-examination.

The State also used K.L.T.'s statement as the basis for their search warrant (LRP 90, RP 1602, 1656, 1658-9). There was nothing illegal in plain view at the Appellant's home. In fact, had K.L.T. been 19 as she was known to be portraying herself, and as the Appellant believed she was, there was absolutely nothing illegal at all. But this also unfairly escaped Due Process examination through K.L.T.'s testimony at trial.

And even though K.L.T. never appeared, the State was able to present her as "the victim" throughout the entire trial by the categorical suppression of all testimony and evidence relating to K.L.T.'s misrepresentations of age. (RP 97-253, 934-938). Additionally, the State was allowed to introduce virtually every piece of evidence they wished, regardless of K.L.T.'s absence, while the defendant was forced to take the stand and testify in the blind hope that the court might allow some small shred of supporting evidence and testimony to be admitted afterward.

He was deprived of voluminous exculpatory testimony and evidence, and his Constitutional right to present his side of the facts to the jury. A simple look at the exhibit listing will demonstrate the Appellant's assertion that fundamental fairness was completely abandoned, and his trial became "more spectacle or trial by ordeal than a disciplined contest". United States v. Augenblick, 393 U.S. 348, 356 (1969).

The Appellant points to this because he anticipates that the State would say that they were at as much a disadvantage as the defense due to K.L.T.'s release and disappearance. This is patently untrue. The Appellant went to trial wondering why there were even charges when the evidence supporting the truth and his innocence was so clear, only to find he had been completely deprived of his entire defense without warning. He respectfully submits his references and the record speaks for themselves.

CONSTITUTIONAL AUTHORITY REFERENCE:

In analogy to the Constitutional issues, the Appellant cites:

"Both the Sixth Amendment of the Federal Constitution and art. I, 22 (amend. 10) of the Washington Constitution guarantee an accused the right to compulsory process to compel the attendance of witnesses. State v. Hudlow, 99 Wash.2d 1, 14-15, 659 P.2d 514 (1983). See also RCW 10.52.040; CrR 6.12. The right guaranteed by the Sixth Amendment was recognized and applied to the states in Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967)". Washington v. Maupin, 128 Wash.2d 918, 924, 913 P.2d 808 (1996)

"The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies... this right is a fundamental element of due process of law. Washington v. Texas, 388 U.S. 14, 19, 18 L.Ed.2d 1019, 87 S.Ct. 1920 (1967); see United States v. Nixon, 418 U.S. 683, 709, 41 L.Ed.2d 1039, 94 S.Ct. 3090 (1974). The guaranty of compulsory process is "a fundamental right and one 'which the courts should safeguard with meticulous care'." Ferguer v. United States, 302 F.2d 214, 241 (8th cir. 1962). It may be violated by the actions of the prosecutor as well as the judge. Ingle v. Fitzharris, 375 F.2d 398, 400 (9th cir. 1967); see United States v. Mendez-Rodriguez, 450 F.2d 1 (9th cir. 1971); Bray v. Peyton, 429 F.2d 500 (4th cir. 1970); State v. Kearney, 11 Wash.App 394, 523 P.2d 443 (1974). Moreover, as stated in State v. Papa, 32 R.I. 453, 459, 80 A. 12 (1911), the defendant's right to compulsory process includes the right to interview a witness in advance of trial." Washington v. Burri, 87 Wash.2d 175, 180, 550 P.2d 507 (1976).

"The right to compulsory process includes the right to present a defense" State v. Roberts, 80 Wash.App 342, 350, 908 P.2d 892 (1996).

Due process guarantees that a criminal defendant will be treated with "that fundamental fairness essential to the very concept of Justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial." Lisenba v. California, 314 U.S. 219, 236 (1941).

CLOSING:

The Appellant asserts that he has shown the Judge/commissioner erred in releasing K.L.T. from material witness detention. He has shown this was a manifest abuse of discretion, which prejudiced his Constitutional rights and ability to have a fair trial. He also asserts that due to K.L.T.'s

complete disappearance, the prejudice is irreparable.

REMEDY SOUGHT

As remedy, the Appellant respectfully requests one of three options:

(1) Dismissal, with prejudice, due to a manifest abuse of discretion that caused irreparable prejudice to his rights.

or

(2) Reversal, with the instruction that the State locate/provide K.L.T. within a short but reasonable time (to be determined by the Appellate Court) for appearance at a new trial, or dismiss the remaining charges with prejudice.

or

(3) The Appellant would also respectfully ask for any other remedy the Honorable Court deems necessary.

This "Statement of Additional Grounds for Review"
is respectfully submitted by the Appellant:

August 17, 2007
DATE

Stanley S. Sadler
STANLEY SCOTT SADLER
APPELLANT

- ADDENDUM -

"A" - "K"

Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"

(public records this case #04-1-04384-2)

Addendum "A"

MOTION, DECLARATION AND ORDER FOR K.L.T.,
A MATERIAL WITNESS

(signed: October 7, 2005)

- 4 pages -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"



04-1-04384-2 23846096 MTFBW 10-07-05

FILED
IN COUNTY CLERK'S OFFICE

A.M. OCT 7 2005 P.M.

PIERCE COUNTY WASHINGTON
KEVIN STOCK COUNTY CLERK
BY [Signature] DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04384-2

vs.

STANLEY SCOTT SADLER,

MOTION, DECLARATION AND
ORDER FOR K.L.T., A MATERIAL
WITNESS

Defendant.

COMES NOW, JOHN M. NEEB, Deputy Prosecuting Attorney for Pierce County,
Washington, and pursuant to RCW 10.52.040 moves the court for an order to hold K.L.T. as a
material witness in the above entitled cause, to be released after the said K.L.T. has personally
appeared before the undersigned Judge of the above entitled court and bail has been fixed or such
other conditions of release established as ordered by the court.

GERALD A. HORNE
Pierce County Prosecuting Attorney

By: [Signature]
JOHN M. NEEB
Deputy Prosecuting Attorney
WSB# 21322

jmn

DECLARATION

1 JOHN M. NEEB, declares under penalty of perjury:

2 I am a Deputy Prosecuting Attorney and am generally familiar with this case. The
3 assigned deputy, Rosalie Martinelli, is currently on vacation and unavailable.
4

5 On October 7, 2005, I spoke with Rita Gaylor, a Probation Manager in Clark County,
6 Washington, and Alan Delmundo, Care Coordinator with the Connections Unit in Clark County
7 Juvenile Detention. They related the following factual information to me:

8 K.L.T., who is the victim in this case, is currently in detention in Clark County. K.L.T.
9 was placed into detention on September 15, 2005, for violating the terms of her probation in
10 Clark County Cause No. 05-8-00492-6. Her violations included leaving the court approved
11 residence where she was placed and running away. K.L.T. was gone only one day but was
12 turned in by an adult male with whom K.L.T. was supposed to have no contact.

13 K.L.T. has a "wrap around team" in Clark County that consists of a probation counselor,
14 a probation associate, a mental health therapist, and a family specialist. During a meeting of that
15 team with K.L.T., the team was talking about where K.L.T. would be placed when she was
16 released from detention. During meetings, K.L.T. has made statements about running away and
17 disappearing again, including statements: "If I can't go home, I'll be gone" and "I will wait until
18 placed and then run away." When the team tries to talk to K.L.T. about this she is not receptive
19 and does not participate further.
20

21 Since January of 2004, K.L.T. has run away from court approved residences eight
22 separate times, and twice she was found only after the issuance of a bench warrant that was
23 served on her.
24
25

1 K.L.T. is scheduled to be released from detention on the morning of Saturday, October 8,
2 2005.

3 This case is over one year old. The defendant is in custody and has previously expressed
4 his interest in trial. The case has not gone to trial in part because of a change in defense
5 attorneys. Trial is currently set for November 28, 2005, with a status conference set for October
6 20, 2005. The State intends for this case to go to trial on that date.

7 K.L.T. is a necessary witness to the prosecution of this case. To ensure her availability
8 on the current trial date, I believe the issuance of a bench warrant authorizing K.L.T.'s arrest and
9 detention is necessary to the proper prosecution of this matter.

10 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
11 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

12 DATED: October 7, 2005.
13 PLACE: TACOMA, WASHINGTON

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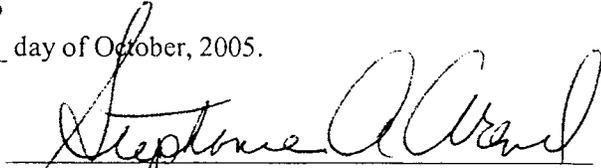
15 JOHN M. NEEB
16 WSB# 21322

ORDER

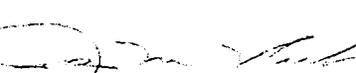
1 THIS MATTER coming on regularly before the above entitled court on the motion of
 2 JOHN M. NEEB, Deputy Prosecuting Attorney for Pierce County, Washington, moving that an
 3 order be entered authorizing the detention and holding of K.L.T. as a material witness in the
 4 above entitled cause and that the said K.L.T. not be released until she appears before the
 5 undersigned Judge and appropriate arrangements for bail or conditional release be executed by
 6 the court. The court being fully advised in the premises, Now, Therefore, it is
 7

8 ORDERED, ADJUDGED and DECREED that a bench warrant be issued for the
 9 detention of the said witness, K.L.T. and that K.L.T. be held as a material witness, to be released
 10 from the Pierce County Jail only after personally appearing in court and having the court set bail
 11 and/or fix other appropriate conditions for her release.

12 DONE IN OPEN COURT this 7th day of October, 2005.

13 
 14 _____
 15 JUDGE STEPHANIE A. AREND

16 Presented by:

17 
 18 _____
 19 JOHN M. NEEB
 20 Deputy Prosecuting Attorney
 21 WSB# 21322
 22
 23
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 25

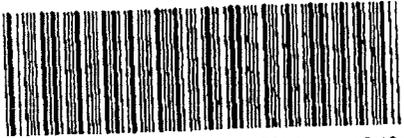
Addendum "B"

BENCH WARRANT - MATERIAL WITNESS K.L.T.

(signed: October 7, 2005)

- 1 page -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"



04-1-04384-2 23876449 SHRTBW 10-13-05

RECEIVED/ENTERED
OCT 11 2005

FILED
IN COUNTY CLERK'S OFFICE
A.M. OCT - 7 2005 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTY

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Quashed/Cleared
Date 10-12-05

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04384-2

FILED
IN COUNTY CLERK'S OFFICE

vs.

STANLEY SCOTT SADLER,

BENCH WARRANT - MATERIAL WITNESS
K.L.T. (dob 07/06/90)

A.M. OCT 12 2005 P.M.

Defendant.

(Kylie L Taylor)

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

WITNESS ADDRESS: Clark County Juvenile Detention

TO ALL PEACE OFFICERS IN THE STATE OF WASHINGTON, GREETINGS:

WHEREAS, an order of court has been entered directing the Clerk of the above entitled court to issue a warrant for the arrest of the above named Material Witness K.L.T. (dob 07/06/90)

SEX F; RACE W; EYES Hazel; WEIGHT 120; HEIGHT 5'3"; DATE OF BIRTH 07/06/90; POLICE AGENCY FIRCREST POLICE DEPARTMENT; DATE OF VIOLATION 09/12/04; POLICE AGENCY CASE NO0400610;

You are hereby commanded to forthwith arrest the said K.L.T. (dob 07/06/90) to be held has a material witness as ordered by the court and bring said material witness into court to be dealt with according to law. BAIL IS TO BE SET IN OPEN COURT.

WITNESS THE HONORABLE STEPHANIE AREND
Judge of the said court and seal thereof affixed
This 7 day of October, 2005.

KEVIN STOCK
Clerk of the Superior Court

By _____

Deputy

This is to certify that I received the within bench warrant on the 12 day of Oct 2005 and by virtue thereof on the 12 day of Oct 2005 I arrested the within named witness, _____ and now have said material witness in full custody.

Brian Coburn # 88026
PEACE OFFICER

Extradition: Shuttle States Only Nationwide Warrant Service Fee \$15/Return Fee \$5/Mileage \$ _____ /TOTAL \$ _____

BENCH WARRANT/MATERIAL WITNESS - 1
witmbw

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

Addendum "C"

ORDER DETAINING MATERIAL WITNESS K.L.T.

(October 12, 2005)

- 2 pages -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

STANLEY SCOTT SADLER,

Defendant.

CAUSE NO. 04-1-04384-2

Kiley Taylor

ORDER DETAINING MATERIAL
WITNESS K.L.T.

On Friday, October 7, 2005, a material witness warrant was issued for K.L.T., who is a material witness necessary to the prosecution of this case. The warrant was served on K.L.T. on that same date, while K.L.T. was in juvenile detention in Clark County, Washington.

On Wednesday, October 12, 2005, K.L.T. was transported to Pierce County by members of the Pierce County Sheriff's Department and booked into Remann Hall. A hearing to determine whether K.L.T. should be detained or released was scheduled for Thursday, October 13 2005, at 10:30 a.m. An attorney, F. McNamara Jardine, was appointed to represent K.L.T. at that hearing.

During K.L.T.'s transport to Pierce County, she was allowed to speak with Ms. Jardine on a cellular phone. Ms. Jardine has informed the State that as a result of that conversation, K.L.T. has waived her right to appear in court for a hearing to determine whether she should be detained or released. Further, Ms. Jardine represented to the State that K.L.T. agrees to remain detained at

ORDER DETAINING MATERIAL WITNESS
WITNESS K.L.T. - 1

 ORIGINAL

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946

Remann Hall pending the current trial date of November 28, 2005, provided a review hearing is scheduled and held not later than Wednesday, October 26, 2005.

Based on the above information, and pursuant to the agreement of the parties, the court hereby enters the following orders:

IT IS HEREBY ORDERED that K.L.T. be detained at Remann Hall, not subject to release, pending a hearing that will be held at Remann Hall on ~~Tuesday~~ ^{Monday}, October ~~25~~ ¹⁷, 2005, at ~~9:00~~ ^{9:30} a.m. to address whether K.L.T. should remain detained pending the trial or other proceeding or should be released subject to conditions ordered by the court on that date.

This order was presented to the court as an agreed order of the parties this 12th day of October, 2005.

Th P L
THOMAS P. LARKIN, JUDGE

Presented by:

Approved as to form and content:
Signature on fax copy, attached:
Appearance waived at presentment:

[Signature]
JOHN M. NEEB
Deputy Prosecuting Attorney
WSB # 21322

F. McNAMARA JARDINE
Attorney for Defendant
WSB # 21677

Addendum "D"

SUPPLEMENTAL DISCOVERY DISTRIBUTION RECEIPT

(transmitted from Prosecutor Nov. 3, 2005)

Contains: CCSO Incident Report

(Dated: October 13, 2005)

Note: All originally part of Addendum "K"

- 3 pages -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"

PLN
NRN

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NRN

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04384-2

v.

STANLEY SCOTT SADDLER,

Defendant

SUPPLEMENTAL DISCOVERY
DISTRIBUTION RECEIPT

NRN
NRN

13

A request was made for discovery in this case and the following is attached hereto:

Pages copied: 1562 through 1563

And/or/including: supplemental incident report

Date request processed: NOVEMBER 03, 2005

Defense Attorney: RAYMOND H. THOENIG

Prosecuting Attorney: ROSIE MARTINELLI

This discovery was distributed as follows:

RECEIPT BY DEFENSE COUNSEL DATED: _____

I hereby acknowledge, on behalf of the defendant above-named, that I have received discovery from the State. I have filed a Notice of Appearance in this case. Pursuant to CrR 4.7(b)(3), these materials must remain in the exclusive custody of the defense attorney.

or _____

DECLARATION FOR DISTRIBUTION OF DISCOVERY

Under the laws of the State of Washington, under penalty of perjury, I certify that the following is true and correct. That on this date, I deposited in [] a United States of America Post Office receptacle [] Legal Messenger [X] Pierce County Routing, a properly addressed routing and/or postage stamped envelope containing the above referenced discovery directed to:

RAYMOND H. THOENIG, DAC

SIGNED AND DATED in Tacoma Washington: _____

11/3/05

sds

NRN
NRN

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DISCOVERY DISTRIBUTION
RECEIPT . 1

Clark County Sheriffs Office

707 W 13TH Street
Vancouver, WA 98660

(360) 397-2211
(360) 397-6074 (FAX)

Case No.
04-12261

Report ID
10/13/2005 15:30 3588

Supplemental Incident Report

Records Center

707 W 13TH Street
Vancouver, WA 98660

(360) 397-2211
(360) 397-6074 (FAX)

DOR
10/13/2005

Officer Assaulted Non Disclosure

Distribution: *no print*

Offense: *Rossie Martinelli*

Distribution Other: **PIERCE COUNTY PROSECUTOR**

Initials: *lyg* pDis: *10/13/05* sDis: *10/13/05* dEnt: *10/13/05* M.C. *10/13/05*

Concl: Case: F/U: Ret: Let:

Status: IRO A AR

04-2005

Administrative Information

Location: **4608 NE ST JAMES RD** City: **VANCOUVER** State: **WA** Zip Code: **98663**

Local Geo: **V CENT** State Geo: **V CENT** Precinct: **V CENT** Geo: **V CENT**

Rep Date: **10/13/2005** Rep Time: **08:15** From Date: **10/13/2005** From Time: **08:15** To Date: **10/13/2005** To Time: **08:15** Category: **INFO** Class: **RPT** Premise: **APT/CONDO**

Dom Viol: DV Card: Child Abuse: Arson: Homicide: Gang: Weapons: Alcohol: Drugs: Computer:

Offense Information

Off # **1** Offense **INFO.RPT** Offense Category **INFO** Offense Translation **General Info Report - put details in remarks**

Attempted or Completed **C** Location Type **APT/CONDO**

Individual

Role **I** Seq **1** Type **I** Last Name **TAYLOR** First Name **KYLIE** Middle Name **L** Sex **F** Race **W**

Birthdate **07/06/1990** Eth

Age Low **502** Age High **130** Hgt **RED** Wgt **BLU** Hair **P** Eyes **P** Residence **P** Employment/Occupation

Driver's License Number Driver's License Issuer Social Security No. State ID No. FBI No. PCN

Custody Status Gang Affiliation Tribe Affiliation Identifiers

Comments

Type **O** Location **4608 NE ST JAMES RD** City **VANCOUVER** State **WA** Zip Code **98663**

Individual

Role **C** Seq **2** Type **I** Last Name **FARNAM** First Name **DEBRA** Middle Name **K** Sex **F** Race **W**

Birthdate **02/05/1958** Eth

Age Low **500** Age High **120** Hgt **BRO** Wgt **GRN** Hair **F** Eyes **F** Residence **F** Employment/Occupation

Driver's License Number Driver's License Issuer Social Security No. State ID No. FBI No. PCN

Custody Status Gang Affiliation Tribe Affiliation Identifiers

Comments

Type **H** Location **4608 ST JOHNS RD** City **VANCOUVER** State **WA** Zip Code **98663**

Type **H** Phone No. **(360) 694-9471**

Reporting Officer
McCullom, Craig

Approving Officer
Trimble, David L

PSN
3588

PSN
3085

Agency/Case Number
CCSO 04012261

Report ID
10/13/2005

Rel Case Number
15:30 3588

1562

Clark County Sheriffs Office

Case No.
04-12261

Individual

Role I	Seq 3	Type I	Last Name SADLER	First Name STANLEY	Middle Name	Sex M	Race W
Birthdate		Eth					
Age Low 48	Age High	Hgt	Wgt	Hair	Eyes F	Residence	Employment/Occupation
Driver's License Number		Driver's License Issuer	Social Security No.	State ID No.	FBI No.	PCN	
Custody Status		Gang Affiliation	Tribe Affiliation	Identifiers			
Comments							
Type H	Location 4331 67TH AV WEST #B			City UNIVERSITY PLACE		State WA	Zip Code 98466
Type H	Phone No. (253) 297-3548						

Narrative

It should be noted that this information is regarding case #S04-12261.

On October 13th, 2005 at 0815 hours, I received a telephone call from Debbie Farnam.

Farnam told me that a warrant had recently been issued for her daughter, Kylie Taylor and that she was currently in detention in Tacoma at Benton Hall and that she was being held there pending the upcoming trial. Farnam said that these conversations with Kylie had taken place while Kylie was in detention and started a week ago Saturday (October 1st, 2005).

She told me that while Kylie Taylor has been in detention, Kylie has told her that she had forged her own birth certificate to make it appear as though she was 19 years old. Kylie said that she had shown this to Stanley Sadler to prove to him that she was at the age of legal consent.

Kylie also told her mother that she had gone with Sadler on her own and was not forced to go with him. She went on to say that she had also stayed with Sadler on her own. She said that she had been afraid to call or come home because she thought she would be placed into detention.

Kylie said that she had asked Sadler at one point about going home, but he then asked her if she would come to Tacoma with him, and she had agreed to this. Kylie told her mother that she was "role playing" in the video tapes and that it was just an act.

End of report.

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)

Reporting Officer McCullom, Craig	PSN 3588	Agency/Case Number CCSO 04012261
Approving Officer Trimble, David L	PSN 3085	
Report printed by: 3085		Report ID 10/13/2005
		Ref Case Number 15:30 3588

1563

Addendum "E"

PCJD INCIDENT REPORT

(Signed: October 16, 2005)

- 1 page -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"

PCJD INCIDENT REPORT

PRIMARY ISSUE (Check One) :

- | | |
|---|--|
| <input type="checkbox"/> Fighting | <input type="checkbox"/> Escape (attempt) |
| <input type="checkbox"/> Property Damage | <input type="checkbox"/> Physical Assault (staff, peer) |
| <input type="checkbox"/> Contraband (drugs, weapon) | <input type="checkbox"/> Sexual Assault |
| <input type="checkbox"/> Suicide (attempt) | <input type="checkbox"/> Theft |
| <input checked="" type="checkbox"/> Other (Specify): <u>Suspicious phone call</u> | |

Reported to Law Enforcement or Prosecutor?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Physical Intervention Used?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Restraints (T=Transport, C=Combative, R=Room 20)?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Medical Treatment Required?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

RE: <u>Taylor, Kylie</u>	Unit <u>c</u>	P.O. <u>MGR</u>

Date: 10-16-05 **Time:** 1655 **Location:** Charlie Day room

Incident:

Youth Kylie Taylor was on the pay phone in Charlie pod. Her conversation was obviously between her and 2 other people. She would say things like "Tell him I said..." or "Tell him to hide it above the door frame" and then she would wait for a reply. It sounded like she had called one person and that person called another on a cell phone and was being the go between for this conversation. This to me was considered a 3 way call which we do not allow. I told her to hang up as we don't allow those kind of calls and she said it wasn't a 3 way. I said you are telling someone to tell someone else things and then giving you the 3rd persons answers, that is a 3 way as far as I am concerned. She argued the point and would not hang up so I turned that phone off.

Kylie is here as a material witness. I do not know who she was talking to or what it was about. I did not want to take a chance that she was speaking with someone she was not supposed to and the way the call was made seemed suspicious to me. Because she is a material witness and I have no way of knowing who she can and cannot contact she is being placed on phone restriction until her P. O. can clarify the situation and lift the restriction if appropriate.

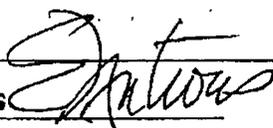
She is also losing points for her behavior -3 and for being disrespectful to staff calling me names -3. This will place her on Limited status for 10-17-05.

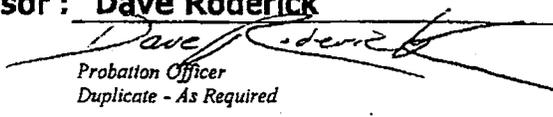
Witnesses: _____

Disposition: Phone restriction/ LTD status tomorrow 10-17-05

Separation To B - Unit (_____ hrs) Review Hearing

Comment : _____

JDO : Elaine Nations 

Supervisor : Dave Roderick 

Distribution: Child's File Unit Log Supervisor's Log Probation Officer
 Detention Manager Director Duplicate - As Required

10/16/05, 6:18 PM

Addendum "F"

ORDER DETAINING MATERIAL WITNESS K.L.T.

(signed: October 17, 2005)

- 2 pages -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
JUVENILE COURT

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04384-2

vs.

STANLEY SCOTT SADLER
D.O.B.: 07/26/57

ORDER DETAINING MATERIAL
WITNESS K.L.T. (DOB 07/06/90)

Respondent.

Bench Warrant - Material witness

On 10/7/05, a material witness warrant was issued & served upon K.L.T. in Clark County, Washington. On 10/13/05, K.L.T. was transported to Pierce County & booked into Peltmann Hall. On 10/13/05, a hearing was held to determine whether K.L.T. should be detained at Peltmann Hall pending trial (11/28/05) provided a review hearing was to be held no later than 10/25/05. On 10/13/05, the court ordered that a review hearing be held Monday 10/17/05 @ 9:30 AM to address whether K.L.T. is to be detained or released subject to conditions.

Office of the Prosecuting Attorney
Juvenile Division
5501 Sixth Avenue
Tacoma, Washington 98406-2697
Telephone: (253) 798-3400

on October 19, 2005, at 9AM, a review hearing will be held to determine the status of a deposition (potentially set for 10/24/05) & release options/ placement for K.L.T. The witness is to be held at Pecan Hill until 10/19/05.

ORDERED that

DONE IN OPEN COURT this 17 day of October, 2005.

Th.P.L.
JUDGE

Presented by:

Heather Demaine
HEATHER DEMAINE
Deputy Prosecuting Attorney
WSB # 28216

Approved as to Form:

F. Jardine
F. JARDINE
Attorney for Respondent
WSB # 21677

Respondent
Respondent

FILED
JCD 2
IN OPEN COURT
OCT 17 2005
PIERCE COUNTY, Clerk
By [Signature]
DEPUTY

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Addendum "G"

ORDER ESTABLISHING CONDITIONS OF RELEASE FOR TRIAL
RE: MATERIAL WITNESS K.L.T.

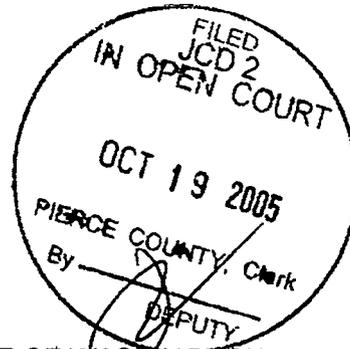
(signed: October 19, 2005)

- 2 pages -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"



04-1-04384-2 23811100 ORECRP 10-19-05



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
JUVENILE COURT

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04384-2

vs.

ORDER ESTABLISHING
CONDITIONS OF RELEASE FOR
ARRAIGNMENT/
TRIAL/DISPOSITION/RESTITUTION

Stanley S Sadler

D.O.B. _____

Re: Material witness
K.L.T. (DOB: 7.6.90)

JUVIS No. _____ R _____

Respondent.

IT IS HEREBY ORDERED THAT THE ABOVE-NAMED JUVENILE SHALL BE DETAINED.
(ORDT)

- Secure Detention.
- Alternative Detention Services.

IT IS HEREBY ORDERED THAT THE ABOVE-NAMED JUVENILE SHALL BE RELEASED FROM
CUSTODY PENDING NEXT COURT HEARING ON PERSONAL RECOGNIZANCE, SUBJECT TO
THE FOLLOWING CONDITIONS: (ORECRP)

CONDITIONS OF RELEASE:

- Submit to administrative booking immediately following this hearing. (Felony charges only.)
- Submit to the supervision of: Clark County - DNS employee (Port Orchard)
Responsible to be settled at C.R.C. for up to
72 hours. - Pierce County Sheriff to transport
- Reside only at: _____
- House Arrest: Remain at residence at all times in the company of supervising adult, exceptions as follows: _____

State v. Stanley Sadler

Re: material witness

JUVENILE JUVENILE - K.L.T.

04-1-04384-2
CAUSE NUMBER

(DOB: 7-6-90)

- Curfew as set by Probation Officer or supervising adult: _____
- Obey rules of parent or supervising adult.
- Travel restricted to Pierce, King, Kitsap and Thurston Counties.
- Maintain contact with Probation Officer, Telephone No. (253) 798-7900 and Defense Attorney.
- No association or contact with: _____ as set by Probation Officer or supervising adult.
- No personal contact with the complaining witness or witnesses.
- No violation of the criminal laws of this State, any political subdivision of this State or any other State, or the United States, during the period of release.
- Attendance at school or place of employment without absences and maintain best effort.
- No guns, firearms, ammunition or other weapons.

~~4/1/04~~

Additional conditions of release: maintain weekly contact with attorney - F. Madanama-Judson, (253) 383-4532

The Respondent will submit to such drug and/or alcohol evaluations as the Probation Officer deems appropriate.

FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE IS AN INDEPENDENT OFFENSE.

FILED
CD 2
IN OPEN COURT
OCT 19 2005
PIERCE COUNTY, WA
By: _____
JUDGE/COURT COMMISSIONER

DATED: Oct. 19, 2005.

Am. Justice Attorney for K. Sadler
21672

PARENT/SUPERVISING ADULT AND JUVENILE - PLEASE READ

I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest and may result in my detention until trial or other resolution of this matter. I further agree and promise to appear before this Court or any other place as this Court may order upon notice to me at my address stated below or upon notice to my attorney.

PARENT/SUPERVISING ADULT AND JUVENILE -- PLEASE SIGN

PARENT/SUPERVISING ADULT

Stanley Sadler

JUVENILE

Address Juvenile Will Reside at: _____
ZIP _____ Telephone: _____

Addendum "H"

MOTION AND DECLARATION AUTHORIZING ISSUANCE OF
OF BENCH WARRANT FOR MATERIAL WITNESS K.L.T.

(signed: November 16, 2005)

Includes: BENCH WARRANT - MATERIAL WITNESS K.L.T.

- 2 pages -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"



04-1-04384-2 24083063 MTFBW 11-16-05

FILED
IN COUNTY CLERK'S OFFICE

A.M. NOV 16 2005 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON

Plaintiff,

vs.

Stanley Scott Sadler

Defendant.

NO. 04-1-04384-2

MOTION AND DECLARATION
AUTHORIZING ISSUANCE OF BENCH
WARRANT for material witness
K.L.T. (DOB 7-6-90)

I. MOTION

The undersigned (deputy) prosecuting attorney, moves ^(mat. witness) the court for the issuance of an order authorizing the clerk of this court to issue a bench warrant for the arrest of the ~~defendant~~ above named for the reason that the defendant has

failed to comply with conditions of release
dated 10-19-05, as K.L.T. has runaway
from her approved residence. Her whereabouts are unknown.

This motion is based upon the case record to date and upon the following declaration.

DATED: 11-16-05

Rosalie V. Martinelli
DEPUTY PROSECUTING ATTORNEY 25078

II. DECLARATION

The undersigned states:

2.1 I am a (deputy) prosecuting attorney and am acquainted with the court file of this case.

2.2 A bench warrant should issue for the following reasons:

On _____ the court ordered the defendant to appear on today's date and defendant has failed to appear as ordered; or

K.L.T. has failed to abide by conditions of
release. whereabouts unknown.

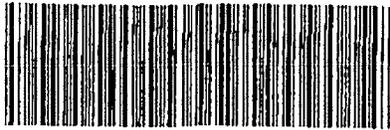
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: 11-16-05
PLACE: TACOMA, WASHINGTON

Rosalie V. Martinelli
DECLARANT

MOTION AND DECLARATION AUTHORIZING
ISSUANCE OF BENCH WARRANT (4/01)

ORIGINAL



04-1-04384-2 25859536 SHRTBW 07-28-06

ORIGINAL
NOV 1 2005

FILED
IN COUNTY CLERK'S OFFICE
A.M. JUL 24 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Quashed/Cleared
Date _____

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04384-2

vs.

STANLEY SCOTT SADLER,

Defendant.

BENCH WARRANT - MATERIAL WITNESS

K.L.T. (DOB: 07/06/90)

(Kylie L. Taylor)

WITNESS ADDRESS: 3109 NE 165TH PLACE, VANCOUVER WA 98682

TO ALL PEACE OFFICERS IN THE STATE OF WASHINGTON, GREETINGS:

WHEREAS, an order of court has been entered directing the Clerk of the above entitled court to issue a warrant for the arrest of the above named Material Witness K.L.T. (DOB: 07/06/90)

(Kylie L. Taylor)

SEX F; RACE W; EYES HAZ; WEIGHT 120; HEIGHT 5'3; DATE OF BIRTH 07/06/1990; POLICE AGENCY FIRCREST POLICE DEPARTMENT; DATE OF VIOLATION 11/16/05; POLICE AGENCY CASE NO0400610;

(Kylie L. Taylor)

You are hereby commanded to forthwith arrest the said K.L.T. (DOB: 07/06/90), to be held has a material witness as ordered by the court and bring said material witness into court to be dealt with according to law. BAIL IS TO BE SET IN OPEN COURT.

WITNESS THE HONORABLE THOMAS P. LARKIN

Judge of the said court and seal thereof affixed

This 16 day of November, 2005.

KEVIN STOCK
Clerk of the Superior Court

By *[Signature]*
Deputy

This is to certify that I received the within bench warrant on the _____ day of _____, _____, and by virtue thereof on the _____ day of _____, _____, I arrested the within named witness, _____ and now have said material witness in full custody.

PEACE OFFICER

Extradition: Shuttle States Only Nationwide Warrant Service Fee \$15/Return Fee \$5/Mileage \$_____/TOTAL \$_____
caf

Addendum "I"

K.L.T.'S JOURNAL LETTERS

(faxed from Prosecutor on Nov. 18, 2005)

Note: All originally part of Addendum "K"

- 5 pages -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"

11/18/2005 09:26 FAX 2537983601

PIERCE COUNTY PROS

• DAC

001/005



Pierce County
Office of the Prosecuting Attorney
930 Tacoma, Ave S. Room 946
Tacoma, WA 98402
Phone Number (253) 798-7400
Fax Number (253) 798-6636

GERALD A. HORNE
Prosecuting Attorney

Fax

DATE: 11-18-05

TO:

Ray Thoenig

ATTN:

FAX #:

FROM:

Lossem

TITLE:

REPLY TO:

(253) x161025 FAX: (253) 798-3601

NUMBER OF PAGES:

5 INCLUDING COVER SHEET

RE:

Sadler

SPECIAL INSTRUCTIONS:

these were found in V's journal
in bedroom at foster home
she just ran from.

The information in this FAX message is privileged and confidential. If you are not the person or entity for whom, it is intended, or a representative thereof, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error. Please notify us by telephone immediately, and return the original message to us at the above address via U.S. Postal Service. We will be happy to reimburse you for any costs. Thank you

11/18/2005 09:28 FAX 2537983601 PIERCE COUNTY PROS • DAC 002/005
NOV-17-2005 18:27 FROM: CLARK CNTY SHERIFF 3603976159 TO: 2537983601 P. 002/005

POOR QUALITY ORIGINAL

Dear Scott,

Do you hate me? This very question plagues me. I want the answer so very badly to be no. But I understand the answer must be yes. I hate myself. I look in the mirror each morning and see a monster gazing back at me. When will I understand that the monster is not you, but in fact is me? Not a day goes by that you are not in my thoughts. My heart is heavy, for I have heard news of your daughter. She is such a beautiful talented young woman, she should never have had to go through this. So many things run through my mind. I assume you want to know why I told the lie that is reason for this letter. It is a simple answer. It is merely because I wanted to keep out of trouble. I was terrified of what everyone would think of me. I never dreamed that this would happen.

11/18/2005 09:28 FAX 2537983601

PIERCE COUNTY PROS

+ DAC

003/005

NOV-17-2005 18:27 FROM: CLARK CNTY SHERIFF

3603976159

TO: 2537983601

P.003/005

POOR QUALITY
ORIGINAL

Dear Scott,

I do not know how to begin. Do you
hate me, +

11/18/2005 09:28 FAX 2537983601

PIERCE COUNTY PROS

+ DAC

004/005

NOV-17-2005 18:27 FROM: CLARK CNTY SHERIFF

3603976159

TO: 2537983601

P.004/005

POOR QUALITY ORIGINAL

Dear Scott,

You don't know me. I

11/18/2005 09:26 FAX 2537983601

PIERCE COUNTY PRDS

+ DAC

005/005

NDU-17-2005 18:27 FROM: CLARK CNTY SHERIFF

3603976159

TO: 2537983601

P.005/005

POOR QUALITY ORIGINAL

Dear Scott,

Figuring out what to call you was
one of the hardest parts of this
letter. I feel almost guilty calling you
anything for even.

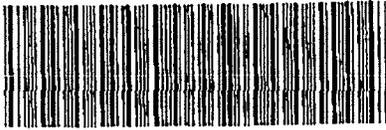
Addendum "J"

ORDER REVOKING ORDER FOR BENCH WARRANT AND
QUASHING THE BENCH WARRANT THEREUNDER FOR MATERIAL
WITNESS K.L.T.

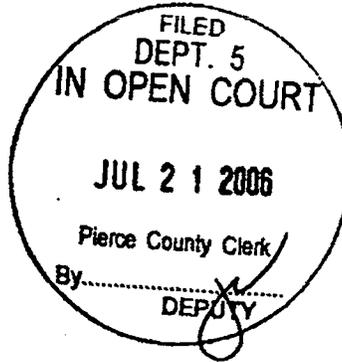
(signed: July 21, 2006)

- 1 page -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"



04-1-04384-2 25841089 ORQBW 07-24-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04384-2

vs

ORDER REVOKING ORDER FOR BENCH WARRANT AND QUASHING THE BENCH WARRANT THEREUNDER FOR MATERIAL WITNESS

STANLEY SCOTT SADLER,

Defendant.

K.L.T.
DOB: 07/06/90

INCIDENT #: 0400610

JUL 24 2006

THIS MATTER having come on for hearing before this court upon the motion of the Prosecuting Attorney and good cause having been shown why the bench warrant issued on November 16, 2005 for the arrest of K.L.T. should be revoked, NOW, THEREFORE, IT IS HEREBY

ORDERED that the order for bench warrant issued as noted above, be and hereby is, revoked, and it is finally

ORDERED that the bench warrant issued under said Cause on November 16, 2005, be and the same is hereby quashed.

DONE IN OPEN COURT this 21 day of July, 2006.

Vicki L. Hogan
JUDGE

VICKI L. HOGAN

Presented by:

Rosanne Martineck

Deputy Prosecuting Attorney
WSB # 25038

bs

Addendum "K"

MOTION TO ADMIT EVIDENCE

(signed: November 22, 2006)

- 5 pages -

* Clerk's papers or Exhibits part of/designated in Appellant's
"Supplemental Request for Clerk's Papers"

1 reasonable means." ER 804(5). In the instant case a material witness warrant has
2 issued to obtain the witness's presence. The warrant is outstanding. Clearly, the
3 witness is "unavailable".
4

5 Specifically, ER 804 (b)(3) provides:

6 A statement which was at the time of its making so far contrary
7 to the declarant's pecuniary or proprietary interest, or so far
8 tended to subject the declarant to civil or criminal liability, or
9 to render invalid a claim by declarant against another, that a
10 reasonable person in his position would not have made the
11 statement unless he believed it to be true. A statement tending
12 to expose declarant to criminal liability and offered to exculpate the
accused is not admissible unless corroborating circumstances clearly
indicate the trustworthiness of the statement.

13 In the instant case the statements made by Kylie Taylor to her mother, Debbie
14 Farnam, were against her pecuniary interest. This is so because at the time the
15 statements were made Kylie Taylor and her mother, Debbie Farnam, were
16 pursuing a civil suit against Clark County based on the allegations that form the
17 basis for the instant prosecution.
18

19 The statements by Kylie Taylor also subject Ms. Taylor to civil and criminal
20 liability. Her allegations of rape, kidnapping, assault and exploitation are, if
21 false, clearly actionable as being libelous and slanderous. Further, if false, as
22 indicated by her declarations, they subject her to possible criminal liability for
23 falsely reporting a crime. Finally, it is clear that Kylie Taylor's statements render
24 invalid her allegation of kidnapping, rape and sexual misconduct against Mr.
25
26
27
28

stipulation

1 Sadler. Clearly, a reasonable person in Ms. Taylor's position would not have
2 declared that her previous allegation were false unless they were in fact false.

3
4 Statements against penal interest include any statements that subject the
5 declarant to criminal liability. The test is an objective one -- would a reasonable
6 person in the declaran't position have made the statement unless she believed it
7 to be true? The declarant's subjective belief about whether the statement is
8 against her penal or pecuniary interest may be a factor to be considered, but it is
9 not controlling. United States v. Scopo, 861 F.2d 339 (2nd Cir. 1988).

10
11 The trustworthiness is determined by reference to the guidelines used to
12 determine trustworthiness under the Sixth Amendment. State v. Whelchel, 115
13 Wn.2d 708, 801 P.2d 948 (1990). They are as follows:

14
15 1. Whether the declarant had an apparent motive to lie. It is hard to conceive of
16 a motive for a person to say that they were not raped and kidnapped when they
17 have made such allegations. Absent evidence of threats it must be assumed that
18 there was no motive to lie. Moreover, declarant in this case was, at the time of
19 the statements pursuing civil litigation arising out of the allegations of rape and
20 kidnapping. Where, as here, if repeating declarant's statements in court would
21 be against the declarant's interest then there is no "apparent motive" to lie and
22 the statements are sufficiently reliable to be admitted. State v. Parris, 98 Wn.2d
23 140, 654 P.2d 77 (1982).

24
25
26
27
28 stipulation

1 2. Whether the general character of the declarant suggest
2 trustworthiness. The declarant is a 14 year old child who has run away from a
3 foster home.
4

5 3. Whether the statements were made spontaneously. Both the
6 statements to her mother and her writing were made spontaneously without
7 coxing or threats.
8

9 4. Whether the timing of the statement and the relationship between the
10 declarant and the witness suggest trustworthiness. The statement were made to
11 declarant's mother and in a an entry found in declarant's personal journal in her
12 bedroom just before she ran away. It is hard to imagine more trustworthy
13 circumstances.
14

15 5. Whether the statements contain express assertions of past facts. They
16 do.
17

18 6. Whether cross-examination could not help to show the declarant's
19 lack of knowledge. Not a factor in this case.
20

21 7. Whether the possibility of the declarant's recollection being faulty is
22 remote. Clearly it is in this case.
23

24 8. Whether more than one person heard the statements. Unknown..

25 9. Whether the circumstances surrounding the statement give no reason
26 to suppose that the declarant misrepresented the defendant's involvement. The
27

28 Stipulation

1 fact that we are dealing with two separate and distinct statements that corroborate
2 each other there can be no doubt that the declarant is not being misrepresented or
3 misunderstood.
4

5 The Court in State v. Jordan, 106 Wn. App. 291, 23 P.2d 1100 (2001), holds
6 that when the various factor are evenly balanced, the statement should be
7 admitted. In the same case, a concurring judge, states that when the statement is
8 being offered by a defendant in a criminal case, the statement is presumed to be
9 sufficiently reliable. State v. Jordan, supra (prosecution for kidnapping and
10 murder where defendant would have been allowed to introduce a statement by X
11 to a fellow gang member, bragging that he (X) had killed the victim).
12
13

14 Where, as here, declarant's statements would have probative value in trial
15 against declarant (false reporting of a crime, etc.) they are properly admitted as
16 statements against interest. State v. Parris, supra.
17

18 Finally, defendant submits that the aforementioned declarations are also
19 admissible under ER 803(a)(3).
20

21 DATED this 22nd day of November, 2005.
22

23 Respectfully submitted,
24

25 
26 RAYMOND H. THOENIG, WSBA# 6510
27 Attorney for Defendant
28

stipulation

COURT OF APPEALS
DIVISION II

07 AUG 23 PM 1:00

STATE OF WASHINGTON
BY _____
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

vs.

STANLEY SCOTT SADLER,

Appellant,

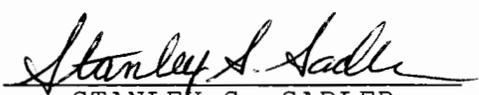
No. 35021-1-II

NOTICE OF SERVICE
VIA 1ST CLASS MAIL
(APPELLANT'S "STATEMENT
OF ADDITIONAL GROUNDS
FOR REVIEW)

The Appellant, Stanley Scott Sadler, respectfully submits for the record a "Certificate of Service" in regards to the parties whom he has served (via first class mail) with his "Statement of Additional Grounds for Review". Attached is the signed certificate.

The Appellant's counsel, Respondent's counsel, and the Honorable Division II Court of Appeals have been provided with the above referenced document.

August 21, 2007
DATED


STANLEY S. SADLER

CERTIFICATE OF SERVICE

I certify that on the 20TH day of AUGUST 2007, I caused a true and correct copy of the Appellant's "STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW" to be served on the following via first class mail. These are legal mailings from the Washington Corrections Center in Shelton, and are logged and mailed via the institutions staff as well:

Counsel for the Respondent:
Kathleen Proctor
Pierce County Prosecutor's Office
930 Tacoma Avenue S. Rm 946
Tacoma, WA 98402-2171

Counsel for Appellant
Rita J. Griffith, PLLC
4616 25th Avenue NE
PMB 453
Seattle, WA 98105

Additionally, I certify that on the 19TH day of AUGUST 2007, I caused a true and correct copy of the Appellant's "STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW" to be served on the following via first class certified mail/return receipt requested. This was also a legal mailing from the Washington Corrections Center in Shelton, and was logged and mailed via the institutions staff as well:

WASHINGTON STATE COURT OF APPEALS - DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

August 21, 2007
DATED

Stanley S. Sadler
STANLEY S. SADLER

DEPUTY
BY
STATE OF WASHINGTON
AUG 23 PM 1:00
DIVISION II
COURT OF APPEALS