

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

36846-3-II

STATE OF WASHINGTON
RESPONDENT,

VS.

RICHARD ROY SCOTT
APPELLANT.

FILED
COURT OF APPEALS
DIVISION II
OCT 29 AM 11:45
STATE OF WASHINGTON
BY cm
RECEIVED

BRIEF OF RESPONDENT

DAVID J. BURKE
PROSECUTOR
WSBA #16163

David J. Burke

OFFICE ADDRESS:
P. O. Box 45
South Bend, WA 98586
(360) 875-9361

pm 10/28/08

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii,iii
A. STATE’S RESPONSE TO APPELLANT’S ASSIGNMENTS OF ERROR.....	1
B. STATE’S RESPONSE TO APPELLANT’S ISSUE PERTAINING TO ASSIGNMENTS OF ERROR.....	1
C. STATEMENT OF THE CASE.....	2-19
D. ARGUMENT.....	19-36
E. CONCLUSION.....	36-37

TABLE OF AUTHORITIES

Page

Federal Cases

<u>North Carolina v. Alford,</u> 400 U.S. 25, 91 S. Ct. 160 26 L.Ed. 2d 162 (1970).....	2,11 19
---	------------

State Cases

<u>State v. D.T.M.,</u> 78 Wash. App. 216 896 P.2d 108 (1995).....	32,33
<u>State v. Macon,</u> 128 Wash. 2d 784 911 P.2d 1004 (1996).....	27,29 30
<u>State v. Majors,</u> 94 Wash. 2d 354 616 P.2d 1237 (1980).....	25
<u>State v. Rolex,</u> 84 Wash. 2d 836 529 P.2d 1078 (1974).....	32,33
<u>State v. Wynn,</u> 178 Wash. 287 34 P.2d 900 (1934).....	30

Other Rules & Regulations

CrR 7.8.....	14,17 21
CrR 7.8(b).....	29
CrR 7.8(c)(2).....	13
CrR 7.8(5).....	14
RCW	
10.73.090.....	14,17 22
10.73.100.....	17,22 29
10.73.100(1).....	23
10.73.110.....	14
10.73.130.....	22
10.73.140.....	22

A.

STATE'S RESPONSE TO APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court did not err in denying Appellant's motion to vacate his conviction.

2. The trial court did not err in ruling that the Appellant's newly discovered evidence did not justify vitiating his 2001 plea agreement.

3. The trial court did not err in ruling that the Appellant's motion to vacate was not timely.

B.

**STATE'S RESPONSE TO APPELLANT'S ISSUE PERTAINING TO
ASSIGNMENTS OF ERROR**

The trial court did not err in denying Appellant's motion to vacate his conviction without holding an evidentiary hearing to determine the reliability of newly discovered evidence.

C.

STATEMENT OF THE CASE

1. Prior Proceedings.

Appellant Richard Scott was charged in Pacific County Superior Court with one count of Rape of a Child in the Third Degree on May 15, 2001, in violation of RCW 9A.44.079.¹ The Information alleged that Mr. Scott engaged in sexual intercourse with D.H., who was born on April 12, 1985, between February 1, 2001 and March 31, 2001. CP at 1.

a. Change of plea.

Mr. Scott entered an Alford² plea to one count of Rape of a Child in the Third Degree on May 25, 2001. Report of Proceedings [RP] (05/25/2001) at 2-5. In the plea

¹ Pacific County Superior Court Cause No. 01-1-00082-7.

² North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 26 L.Ed. 2d 162 (1970).

agreement, the prosecutor agreed to recommend the top of the standard range, which the State and the defense believed was 15 to 20 months. CP at 2–8. The State agreed that it would stop any ongoing investigations and that it would not file any additional charges regarding Mr. Scott. CP at 3.

b. First sentencing.

The matter came on for sentencing on July 6, 2001 before Judge Joel Penoyar. RP (7/6/2001) at 2–9. A presentence investigation report was prepared by a Community Corrections Officer [CCO], who asserted that Mr. Scott’s standard range was 26 to 34 months, not 15 to 20 months. CP at 18–25. See Appendix “A”. Judge Penoyar asked what attempts the CCO had made to contact D.H. RP (7/6/2001) at 5. The CCO responded:

I mailed the letter to the last known address. I didn’t have a phone number.

The phone number was not working. The letter was returned to my office. I spoke with a couple individuals, or at least one of the individuals (inaudible) in this matter, and she indicated that she hadn't had any contact with the victim. I said, "Do you know where's at?"

"No. I see him periodically but I haven't seen him for the last three weeks."

RP (7/6/2001) at 5.

Judge Penoyar accepted that Mr. Scott's standard range was 26 to 34 months and sentenced him to 34 months in prison. RP (7/6/2001) at 8-9. CP at 29-41.

c. Personal Restraint Petition

Mr. Scott subsequently filed a Personal Restraint Petition (PRP), alleging that the sentence imposed on July 6, 2001 exceeded the terms of his plea agreement with the State. RP (5/11/2007) at 3. SCP at 174. The PRP was dismissed by the Court of Appeals because he failed to

submit copies of the relevant documents to support his claims. SCP at 174, 256. Mr. Scott filed a motion for discretionary review. CP at 42. The Washington State Supreme Court granted the PRP on April 1, 2003. The Supreme Court remanded the case to the superior court and directed that the court “should grant Mr. Scott his choice of remedy (withdrawal of the guilty plea or specific performance of the plea agreement) unless the court finds, after an evidentiary hearing, that there are compelling reasons not to allow the chosen remedy.” CP at 42.

d. Resentencing.

The matter came on for resentencing on May 16, 2003, before Judge David Foscue. The State, at that time, did not know the whereabouts of D.H. [D.H. was subsequently found by an investigator in 2006 pursuant to a petition to commit

Mr. Scott as a sexually violent predator. SCP at 180, 309–313.] Mr. Scott opted for specific performance of his plea agreement, i.e., Mr. Scott chose to be resentenced within the 15 to 20 month range, as previously agreed by the parties. RP (5/11/2007) at 29. The sentencing court imposed 20 months, followed by 36 to 48 months of community custody, but not to exceed a total of sixty months of incarceration and community service. CP at 44–57.

Mr. Scott was subsequently transferred in May 2003 to the Special Commitment Center at McNeil Island pursuant to a petition being filed for commitment of Mr. Scott as a sexually violent predator (SVP) under Chapter 71.09 RCW. RP (5/11/2007) at 4.

2. **Motion to vacate Mr. Scott's conviction.**

On October 7, 2005, Mr. Scott filed a motion to vacate the conviction. CP at 59–62. Mr. Scott filed this motion pro se because his initial attorney, Michael Turner, was allowed to withdraw from the case. RP (10/7/2005) at 3. Mr. Scott hired a private investigator who interviewed D.H. and his mother in Ontario, Oregon. RP (6/9/2006) at 4. D.H. unequivocally asserted that he had no sexual contact with Mr. Scott whatsoever. See Appendix “B”. Mr. Scott filed a renewed motion to vacate his plea on April 10, 2006, and asked that an attorney be appointed. CP at 67–69.

Mr. Scott’s pro se motion came before Judge Michael Sullivan, who appointed attorney Harold Karlsvik to represent Mr. Scott. This appointment occurred in July 2006. RP (7/21/2006) at 2. Mr. Karlsvik was able to obtain the services of a private investigator. RP (12/8/2006) at 4. An

investigator was also assigned to Mr. Scott pursuant to the State's SVP petition.

In addition to the new statements provided by the victim, D.H., another juvenile named J.F.³ changed his position regarding Mr. Scott's conduct. Initially, J.F. confirmed that Mr. Scott had sex with D.H. See Appendix "C". But when Chuck Pardee, a King County investigator, located J.F., he backpeddled on the statements first given to the police. Regarding the statements J.F. made in 2001. J.F. stated:

Well I think what happened was that everybody told me what happened and (unintelligible) just said what everybody else was sayin' and like went in there essentially said the same thing so.

SCP at 338.

³ Date of birth: 12/29/1987. SCP at 144

This new information called into question the veracity of statements made in 2001 that Mr. Scott was having sex with juveniles and that he had propositioned J.F.

In a similar vein, a King County investigator interviewed Connie Dufour on March 18, 2007. SCP at 371-97. Initially, in 2001 Ms. Dufour told the police that she observed Mr. Scott having sexual relations with D.H. during February or March. Contrary to the statements she made to police in 2001, Ms. Dufour told the investigator that she walked into Mr. Scott's house alone in 2001, without J.F.⁴ Ms. Dufour stated that police talked to her and took a taped statement and "he was arrested just like instantly it seemed

⁴ Connie Dufour's written statement in May 2001 makes no mention that J.F. was with her when she saw Mr. Scott and D.H. engaged in sexual activity at his house. SCP at 300-302. However, the law enforcement affidavit of probable cause indicates that J.F. was with Ms. Dufour. See Appendix "D".

like.” CP at 382. [Mr. Scott was arrested in May 2001, after the victim, D.H., had turned age 16.]

The Appellant’s motion to vacate his conviction was heard by Judge Michael J. Sullivan on May 11, 2007. RP (5/11/2007) at 1–40. Mr. Scott’s counsel, Harold Karlsvik, filed a Memorandum in Support of Defendant’s Motion to Vacate⁵ and two supplemental briefs.⁶ Mr. Karlsvik articulated examples of newly discovered evidence and argued that Mr. Scott exercised due diligence, because no one could have discovered the new evidence in time to move expeditiously for a new trial.

⁵ SCP at 171.

⁶ Supplemental Memorandum of Defendant’s Motion to Vacate Judgment and Sentence, SCP at 147; and Second Supplemental Memorandum in Support of Defendant’s Motion to Vacate Judgment and Sentence, SCP at 368.

Mr. Karlsvik's overall position was that Mr. Scott was factually innocent of the charges that resulted in the Alford plea, and that the conviction for third degree rape of a child should be vacated. RP (5/11/2007) at 6. Defense counsel requested that the court vacate the conviction and dismiss the charge, or in the alternative hold an evidentiary hearing. RP (5/11/08) at 26-28.

Counsel for the State argued that Mr. Scott had an opportunity in 2003 to withdraw his plea pursuant to the Court's ruling regarding his PRP, and that he chose instead to be resentenced within the 15 to 20 month range originally contemplated by the parties. RP (5/11/2007) at 29. The prosecutor also argued that Mr. Scott got the benefit of his bargain due to the State's agreement to not conduct further investigation regarding other alleged offenses. RP

(5/11/2007) at 31. CP at 3. The State also noted that there were statements from Mr. Scott that “indicate that he had sex at least on three occasions [with D.H.]” and that “the victims’ recantations aren’t consistent with what Mr. Scott previously stated so there is some doubt with regard to whether . . . [the court] should trust the recantations.” RP (5/11/2007) at 33. See also Appendix “A” and Appendix “E”, which contains an excerpt of Mr. Scott’s deposition in the State’s SVP case. Lastly, the prosecutor argued that Mr. Scott had waited too long to bring his motion and that his petition should be dismissed. RP (5/11/2007) at 35.

After hearing argument, Judge Sullivan denied the motion to vacate the conviction in a Memorandum Opinion. The lower court entered the following opinion on June 6, 2007:

The Court heard oral argument on May 11, 2007. Mr. Scott was present via telephone and had waived his right to be present in person. The Court decided to hear Mr. Scott's petition to vacate his judgment under CrR 7.8(c)(2) contrary to the State's recommendation that the Court transfer Mr. Scott's motion to the Court of Appeals for consideration as a personal restraint petition.

Mr. Scott has requested that the Court set aside his prior judgment under the above case number. Mr. Scott has presented information that certain key witnesses, including the named victim, have basically recanted their earlier version of the facts or altered their earlier version substantially such that the only just remedy should be to vacate his May 16, 2003 re-sentence [Mr. Scott entered his Alford plea on May 25, 2001 and was initially sentenced on July 6, 2001]. Mr. Scott also argued that the State failed to provide the defense with a complete police report prior to his plea and, therefore, Mr. Scott's entry of his Alford plea might not have been made if he had been given the opportunity to review a complete police report.

The State's position is that Mr. Scott struck a deal with the prosecutor's office to plead to the Rape 3 charge with the promise from the State that no further investigations or charges would be forthcoming on numerous other sexual crimes that the State believed Mr. Scott had probably also committed. The State contends that to give Mr. Scott his requested relief would be unfair to the State who had stood by their agreement all these years. Further, the State contends that Mr. Scott's motion to vacate his judgment is untimely and contrary to CrR 4.2, 7.8 and RCW 10.73.090 - 10.73.110, and that CrR 7.8(5) should not apply in Mr. Scott's case.

Holding: The Court denies Mr. Scott's motion to vacate judgment.

Analysis: Both the State and defendant filed briefs and supporting documentation. The Court's holding, above, in no manner reflects upon the quality of Defense Counsel's legal arguments and supporting documentation and Defendant's oral argument at the May 11, 2007 hearing. The Court finds the Defense Counsel's organization and presentation very thorough. However, the Court adopts the arguments set forth in the State's

supplemental briefs as the more persuasive. The facts presented to the Court regarding key witnesses changing or recanting their testimony is not sufficient to overcome the Defendant's intelligent, knowing and voluntary Alford plea. The Defendant was represented by counsel each step of the legal process. The Defendant presented no evidence that he did not understand that he was making "a deal" with the prosecutor. That deal, paraphrased, was "plead now to Rape in the Third Degree and you will eliminate any possibility of prosecution for numerous other sexual crimes [in Pacific County]". Mr. Scott chose to take the deal and entered his Alford plea. He was sentenced. As the State correctly pointed out, the Court of Appeals gave Mr. Scott the opportunity to withdraw his plea in 2003 or agree to the original 20 months. Mr. Scott chose to be resentenced and was given 20 months. The Defendant has failed to provide the Court with any facts that the complete police report was somehow intentionally withheld by the State or police in order to lever the plea agreement. The State is also entitled to their benefit of a bargain struck in good faith. In this case, that benefit is (1) finality of their plea bargain and (2) laying the outstanding

investigations regarding Mr. Scott to rest forever.

The fact that evidence surfaces later that might cast doubt on the credibility of complaining witnesses will not automatically vacate an underlying sentence based upon a plea agreement that was entered which promised the Defendant unqualified immunity for what the State termed (and the Defendant did not contest) “numerous other allegations of sexual crimes [in Pacific County]”. The Defendant, after consulting with his attorney, made the decision to accept the prosecutor’s offer. The defendant received the benefit of his bargain.

The newly discovered evidence enumerated in Defendant’s briefs is not unique or compelling to justify vacation of his sentence. Often, complaining witnesses change their testimony at a later date for a variety of reasons. The Defendant has failed to demonstrate that the complaining witnesses’ statements at the time they were made were untrue. Instead, the Defendant chose not to proceed to a jury trial to flesh out all the various witnesses’ testimonies in 2001.

The Court further agrees with the State that Mr. Scott's motion to vacate is untimely under CrR 7.8 and RCW 10.73.090 and RCW 10.73.100. Mr. Scott has failed to adequately demonstrate why he waited so long to move to vacate his May 16, 2003 judgment, or, for that matter, his 2001 judgment. Therefore, the Court finds Mr. Scott's motion was not made within a reasonable time.

CP at 95-98.

3. Motion to reconsider.

Following the motion hearing on May 11, 2007, on June 22, 2007, Mr. Scott filed a motion to reconsider the court's ruling denying the motion to vacate his conviction. CP at 99-107. Defense counsel filed a Reply to State's Response to Motion for Reconsideration on August 22, 2007, arguing that it is incorrect to characterize any subsequent statement by D.H. as a witness "recantation" because D.H.

“has made it clear that he never said what the State claims that he said back in 2001.” CP at 122. The defense also filed with its reply a second interview with D.H., conducted August 15, 2007. In the interview, D.H. stated that he and his family moved to Weiser, Idaho in February or March, 2001, that he remained in Idaho for two to three months, and that he was sixteen years old at the time he returned to the Long Beach, Washington area. CP at 127.

The lower court denied the motion for reconsideration on August 29, 2007. CP at 134.

Mr. Scott then filed a Notice of Appeal regarding the denial of the motion to vacate and denial of motion for reconsideration on October 10, 2007. CP at 139-140.

D.

ARGUMENT

THE COURT OF APPEALS SHOULD NOT REMAND THIS CASE FOR AN EVIDENTIARY HEARING TO DETERMINE WHETHER NEW RECANTATION TESTIMONY OF WITNESSES IS RELIABLE.

1. Introduction.

Richard Roy Scott pled guilty via an Alford plea on May 25, 2001, to one count of rape in the third degree. As part of the plea bargain, the State agreed that it would stop any ongoing investigations pertaining to Mr. Scott and would not file any additional charges. At the time the plea bargain was reached, there were allegations that Mr. Scott had committed dozens of acts of child rape/child molestation. See Appendix “D” which contains the initial statement of probable cause. Presumably, Mr. Scott pled guilty to one count of rape in the

third degree to limit his potential exposure. If Mr. Scott had chosen to initially proceed to trial, the State likely would have relied on the testimony of Connie Dufour and the juvenile, J.F., in addition to the testimony of the victim, D.H.

Although the Appellant is correct in asserting that these individuals have recanted their testimony in different ways, Appellant's brief at 17-18, these changed statements are not sufficient to merit an evidentiary hearing. The Appellant asserts that he should be allowed to have his day in court. Appellant's Brief at 18. The State would note that the Appellant already had had multiple days in court on this case and any further hearing is unwarranted. This assertion is based upon the time delay in bringing this latest motion and the unreliability of the "recantations" by various witnesses.

2. **CrR 7.8 and the statutory provisions under Chapter 10.73 RCW prevent Mr. Scott from litigating the issues that he now brings before the Court of Appeals.**

The relevant portions of CrR 7.8 read as follows:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could have not been discovered in time to move for a new trial under rule 7.5;

...

(5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order, or proceeding was entered or taken,

and is further subject to RCW
10.73.090,.100,.130, and .140.

Most of Mr. Scott's argument rests on his claim of newly discovered evidence. At first blush, any motion under CrR 7.8(b)(2) must be made within one year after a judgment is entered. Mr. Scott does not meet this requirement. However, this language is subject to the limitations contained in RCW 10.73.090 and RCR 10.73.100. Specifically, no collateral attack on a judgment can be made more than one year after a judgment becomes final unless one of the exceptions in RCW 10.73.100 is satisfied. Mr. Scott asserts that his motions can be heard by the Court of Appeals because an argument based on "newly discovered evidence" supersedes the "one-year" rule.

In this instance, it is important to look at the precise language of RCW 10.73.100(1). This exception allows a motion or petition based on newly discovered evidence to be heard “if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion” [emphasis added]. Mr. Scott was initially sentenced on July 6, 2001. He filed a PRP based on his offender score. This PRP was granted by the Washington Supreme Court in April 2003. Mr. Scott was resentenced on May 16, 2003. Mr. Scott’s latest court actions were not filed until October 7, 2005, nearly two and one-half years after the resentencing and more than four years after the original sentencing.

In order to proceed, Mr. Scott must show that he acted with reasonable diligence in discovering the evidence and in filing his motion. The State submits that the time periods

listed above definitely demonstrate that the defendant did not act with reasonable diligence in discovering new evidence or in filing a motion.

Moreover, it should be noted that nothing prevented Mr. Scott from having a trial when the Washington Supreme Court granted his PRP in April 2003. Mr. Scott was given the option at that time of withdrawing his guilty plea or seeking specific performance of his original plea bargain. Mr. Scott chose specific performance as his remedy. To allow Mr. Scott to go forward at this juncture would eviscerate the very reason why Chapter 10.73 RCW exists -- to prevent endless appeals which are not timely.

Mr. Scott's latest motion should be viewed as his attempt to get "a third bite of the apple." As eloquently noted in State v. Majors:

The orderly administration of criminal justice demands that a defendant who is dissatisfied with the form or substance of an indictment or information filed against him shall make that known to the trial court at or before the time when sentence is imposed, . . . It would create an intolerable situation if defendants, after conviction, could defer their attacks upon indictments or informations until witnesses had disappeared, statutes of limitations had run, and those charged with the duty of prosecution had died, had been replaced, or had lost interest in the cases.

94 Wash. 2d 354, 358-359, 616 P.2d 1237 (1980).

In short, the principles of equitable estoppel and finality of judgments should not be abandoned lightly. As mentioned previously, Mr. Scott's plea bargain prevented the State from conducting further investigations and filing

additional charges. The State, in good faith, entered into a plea bargain and gave up the right to investigate additional charges. At this point, the trail obviously has gone cold, and the State would not be able to pursue additional charges if Mr. Scott were returned to the status quo ante. Fundamental fairness dictates that the State receives the benefit of its bargain.

This assertion is especially salient when many years have passed since Mr. Scott was resentenced in May 2003. The investigation that Mr. Karlsvik, the Appellant's attorney, conducted on behalf of Mr. Scott during 2006–2007 could have been conducted years earlier.

While the State agrees with the Appellant that “[r]ecantation may be generally considered ‘newly discovered

evidence,” State v. Macon, 128 Wash. 2d 784, 799, 911 P.2d 1004 (1996), the latest investigative efforts on behalf of Mr. Scott do not comport with timely due diligence. The Appellant chides the State on the one hand for arguing in 2003 that it would be difficult to proceed with a trial if Mr. Scott were allowed to withdraw his guilty plea because of witness unavailability, and then on the other hand for later arguing that Mr. Scott did not exercise due diligence in not tracking down unavailable witnesses. Appellant’s Brief at 28.

This alleged claim of disingenuousness is specious. The State in 2003 did not know the whereabouts of key witnesses and likely would have had trouble tracking them down. No effort was made to find these witnesses in 2003 because Mr. Scott elected not to withdraw his guilty plea. The State readily acknowledges that Mr. Scott on his own

would have had a very difficult time conducting an investigation because he was incarcerated. However, the State's contention is that Mr. Scott could have made a timelier request to have a new lawyer appointed to investigate any the possibility of witness "recantations."

In fact, that is precisely what happened when Mr. Karlsvik was appointed to represent Mr. Scott. The bulk of the information pertaining to the "recantations" came to light because Mr. Karlsvik was able to employ a private investigator to do necessary "digging". It is the State's position that Mr. Scott's actions were dilatory. It is true that the superior court allowed Mr. Michael Turner, the attorney who originally represented Mr. Scott, to withdraw in October 2005. But Mr. Scott did not file a motion to appoint another attorney until April 2006. CP 67-69. While Mr. Scott should

not be held responsible for the subsequent delay in appointing an attorney [Mr. Karlsvik was appointed in July 2006], almost three years elapsed from May 2003 when Mr. Scott chose not to withdraw his guilty plea and instead elected to be resentenced. Under these circumstances, the State asserts that Mr. Scott did not exercise due diligence in pursuing newly discovered evidence or in his filing appropriate motions.

3. **Even if the Appellant's latest claim is not time barred under CrR 7.8(b) and RCW 10.73.100, the superior court did not abuse its discretion in failing to grant Mr. Scott an evidentiary hearing.**

When a defendant's conviction is being challenged based upon the fact that a witness recanted, the trial court does not abuse its discretion if it determines that the recantation is unreliable. As stated in Macon:

Recantation testimony is inherently questionable. “Recantation by an important witness of [that witness’s] testimony at the trial does not necessarily, or as a matter of law, entitle the defendant to a new trial. The determination of such matters rests in the sound discretion of the trial court, and its action will not be set aside except for clear and manifest abuse. . . . When the trial court, after careful consideration, has rejected such testimony, or has determined . . . it is of doubtful or insignificant value, its action will not lightly be set aside by an appellate court.”

128 Wash. 2d at 801, 802, quoting State v. Wynn, 178 Wash. 287, 288–289, 34 P.2d 900 (1934).

The Appellant argues that the superior court judge “made no reliability determination regarding the recantation testimony of three key witnesses.” Appellant’s Brief at 20. The Appellant also asserts that the superior court could not deny Mr. Scott’s motion for a new trial based on newly

discovered evidence without holding an evidentiary hearing to determine its credibility. Appellant's Brief at 20-21.

The State would point out that the superior court judge did more than hold that Mr. Scott's new evidence was insufficient to overturn the plea bargain that was struck in 2001. Judge Michael Sullivan, in his Memorandum Opinion dated June 6, 2007, stated:

The newly discovered evidence enumerated in Defendant's briefs is not unique or compelling to justify vacation of his sentence. Often, complaining witnesses change their testimony at a later date for a variety of reasons. The Defendant has failed to demonstrate that the complaining witness statements at the time they were made were untrue.

infra, at 16.

This passage indicates that the superior court judge did make a reliability determination with regard to whether

the “recantation” statements were credible. The judge found that they were not reliable. This conclusion is not surprising since Mr. Scott himself indicated that he had sex with the victim, D.H. See Appendix “A” and Appendix “E”. This assertion is especially telling because the recantation statement of D.H. asserts that he never had sex with Mr. Scott. See Appendix “B”. Mr. Scott’s own words undercut the recantation statement of the victim, D.H. Under such circumstances it cannot be said the superior court judge abused his discretion in ruling against Mr. Scott.

The Appellant inter alia cites to State v. Rolex, 84 Wash. 2d 836, 529 P.2d 1078 (1974) and State v. D.T.M., 78 Wash. App. 216, 896 P.2d 108 (1995) for the proposition that an evidentiary hearing is necessary to determine the credibility of recanting witnesses. But a close reading of

these cases does not indicate that an evidentiary hearing is always necessary. In both Rolex and D.T.M., the appellate court was not sure whether the recanted testimony was credible. However, the present case is distinguishable because the recantation of the victim, D.H., is incredibly suspect. D.H.'s statement that no sexual contact of any kind occurred between him and Mr. Scott at any time totally contradicts Mr. Scott's assertion that he did have sexual relations with D.H., on three occasions. See Appendix "B" and Appendix "E".

This contradiction a priori obviates the need for an evidentiary hearing. A reasonable judge easily could find that the recantation of D.H. lacks credibility. Without a doubt, the superior court judge committed no abuse of discretion. The record before the superior court judge was

sufficiently clear to allow him to make a reliability determination without an evidentiary hearing. The superior court judge had every reason not to believe D.H.'s recantation when Mr. Scott's own words constitute a polar opposite. Aristotelian logic dictates that "A" and "not A" cannot both be true. Assuming that D.H.'s recantation is true inexorably leads to the conclusion that Mr. Scott's statements about having sex with D.H. are false. But why would Mr. Scott make statements against the penal interest if they were not true? There is no rational basis for making these statements unless they were true. Hence, the superior court judge acted properly in denying Mr. Scott's motion.

Parenthetically, the statements by J.F. and Connie Defour do not add much to the legal equation. The latest

statement of J.F.⁷ is somewhat equivocal. Much of the transcript at key points is unintelligible and J.F.'s memory appears to be cloudy. It is unclear whether J.F.'s statement was made under penalty of perjury.

Similarly, the inconsistency in the statements by Connie Dufour does not constitute a "homerun" for Mr. Scott. While the issue in question is when Ms. Dufour observed Mr. Scott having sex with D.H., Ms. Dufour's latest statement in March 2007 was made many years after the incident took place. Consequently, there is no reason to assume that her memory was better years after the event.

⁷ See Appendix "F", which contains selected portions of an interview conducted with J.F. This material is part of the Memorandum in Support of Defendant's Motion to Vacate Judgment and Sentence which was filed by Mr. Scott's attorney, Harold Karlsvik. CP at 171-367.

Of course, although the inconsistency might be resolved through an evidentiary hearing, the process of clarifying the statements of Ms. Dufour, and J.F. for that matter, would not solve the fundamental conundrum facing Mr. Scott. Regardless of the inconsistent statements of Ms. Dufour and J.F., there is no way for Mr. Scott to resolve the intractable conflict between his statements and those of the victim, D.H. Consequently, the inconsistent statements of Ms. Dufour and J.F. do not tip the balance in favor of granting an evidentiary hearing.

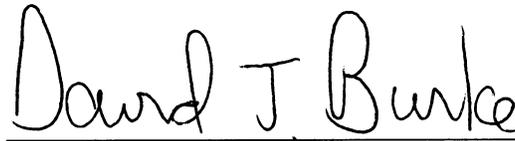
In sum, the decision of superior court judge Michael Sullivan should not be disturbed. Judge Sullivan properly considered the new “recantation” evidence and appropriately decided to deny the Appellant’s motion. No abuse of discretion occurred.

E.

CONCLUSION

The latest decision of the superior court (see infra at 13-16) crisply lays out the issues that the court considered. This decision, although brief, correctly analyzes the factual and legal contentions that both sides asserted. Because of the Appellant's delay in bringing his latest concerns in front of the superior court, the principles of equitable estoppel and finality of judgments trump the arguments of Mr. Scott. Moreover, Judge Michael Sullivan did not abuse his discretion in ruling against the Appellant. For the reasons elucidated above, the Appellant's request for an evidentiary hearing should be denied.

Respectfully Submitted:

A handwritten signature in black ink that reads "David J. Burke". The signature is written in a cursive style with a large initial "D".

DAVID J. BURKE - WSBA #16163
PROSECUTING ATTORNEY



**SEX OFFENDER / MENTALLY ILL OFFENDER
PRE-SENTENCE INVESTIGATION**

TO: The Honorable Joel Penoyar
NAME: SCOTT, Richard R.
CRIME(S): Rape of a Child third Degree
DATE OF OFFENSE: Between February 1, 2001 and
March 31, 2001
ADDRESS: Currently in the Pacific County Jail.

DATE OF REPORT: 06-21-01
DOC NUMBER: 9029938
COUNTY: Pacific
CAUSE NO.: 01-1-00082-7
SENTENCING DATE: July 6, 2001

I. OFFICIAL VERSION OF OFFENSE

I obtained the following information from file material provided by the Pacific County Prosecutor's Office.

The Victim (dob 04-12-85) provided the following information to Child Protective Services with Officer S.W. Harman of the Long Beach Police Department on 05-10-01.

The Victim reported that from approximately April 2000 until recently, Richard Scott had been having anal, oral, and digital sex with him. (Richard Scott will turn fifty-four years old on June 11, 2001.) The Victim said that in the past five to six months he and Scott had engaged in sexual activities approximately 100 times. The Victim said that this sexual activity started shortly after the Victim's birthday in April of 2000, and stopped only during the time that he was in another state.

The Victim said that he worked for Scott and had stayed the night at his residence on a couple of occasions. The Victim also said that he has observed Scott watching homosexual pornographic pictures on Scott's internet connection. The Victim said that these pictures appeared to be of underage boys engaging in sex. The Victim said he had seen Scott putting the victim's name and other juveniles' names into chat rooms for other pedophiles.

The Victim told the CPS interviewer that Richard Scott had "made me fuck him and hack him off." The Victim said this happened every time he spent the night at Scott's house and that he spent the night there about one night out of every three nights. The Victim stated the acts included oral sex and anal sex, including Scott performing anal sex on the Victim. The Victim said that Scott would threaten him "every once in a while."

Ms. Connie Dufour reported that at the end of February or the beginning of March, 2001, she and a juvenile entered Richard Scott's residence and observed him engaging in anal sex with the Victim. The Victim was 14 years old at the time. Ms. Dufour states that she observed the Victim wearing only a T-shirt, as he was bent over a bed. Scott was standing behind the Victim. Scott was wearing only a robe, and the robe was open. Ms. Dufour observed that Scott was wearing no clothes under the robe, and saw Scott's penis between the Victim's bottom checks. When Scott observed that Ms. Dufour and the juvenile were in the residence, he yelled at them to "get the hell out." Ms. Dufour reported the incident to a counselor at Ilwaco High School who in turn reported the incident to the Ilwaco High School vice-principal. Ilwaco School administration reported the incident to the Long Beach Police on 05-07-01.

II. VICTIM IMPACT STATEMENT:

Repeated efforts have been made to contact the victim, but to date no contact has been established. A letter and an information form were sent to the victim requesting information in this case, but the letter was returned to the Department of Corrections as not deliverable.

III. DEFENDANT'S VERSION OF OFFENSE:

The following information was obtained through interviewing the defendant, Richard Scott, in the Pacific County Jail on 06-15-01.

Scott indicated that the Victim had repeatedly informed him that he was 18 years old and that the victim's parents had vowed that he was 18 years old several times. Scott stated that he had hired the Victim from time to times to help him out in his lawn care business, but "didn't have him work that much because he wasn't that good of a worker." Scott indicated that he would rent out his upstairs bedroom for \$10.00 a night and the Victim would stay there from time to time. Scott stated that the Victim came to him on at least one occasion and asked him if he wanted to have "gay sex." Scott reported on the date in question, the Victim came to his house to stay the night and again asked if he wanted to have "gay sex," and they engaged sexual relations. Scott reported that in the morning, Ms. Dufour and another juvenile male came into his residence, observed them dressing, and reported the incident to the police.

At the conclusion of my interview Scott stated "he (the victim) wasn't that good anyway." Scott laughed excessively regarding this comment.

IV. CRIMINAL HISTORY:

Sources: NCIC, State of Washington Department of Corrections, Federal Bureau of Investigation, Washington State Identification Section.

<u>DATE OF OFFENSE</u>	<u>CRIME, COUNTY, AND CAUSE NUMBER</u>	<u>DATE OF SENTENCE</u>	<u>DISPOSITION</u>	<u>SCORE / WASH</u>
Felony				
Juvenile: None discovered				
Adult:				
05-24-84	Indecent Liberties (5 Counts); King County, Cause 84-1-01467-5	10-22-84	Guilty, Scott was sentenced to 10 years confinement on each count (5 counts). Time to run concurrent on each count. Scott was held for the entire 10-year period; therefore, had no community supervision/parole/probation upon release. Date released from prison, 07/30/94	Score as 1
Misdemeanor				
03-04-97	Failure to Register (Sex Offender); Pacific County, Cause 7313	03-05-97	Guilty, Scott was sentenced to 365 days confinement with 335 days suspended and probation for a period of 2 years.	Not scored.

V. SCORING

Rape of a Child Third Degree

Seriousness Level

VI

Offender Score

III

Standard Range

From 26 to 34 Months

VI. RISK / NEEDS ASSESSMENT

A risk/needs assessment interview was completed with Scott which elicited information regarding Criminal History, Education/Employment, Financial, Relationship/Family, Accommodation, Leisure/Recreation, Companions, Alcohol/Drug Use, Emotional/Personal and Attitude/Orientation.

The following risk or needs areas were identified as having implications for potential risk, supervision, and interventions.

Criminal History

Scott's criminal history consists of 5 counts of Indecent Liberties (1984 King County), and Failing to Register as a Sex Offender (1997 Pacific County). Scott reported the ages of the victims to be 12 to 14 in the Indecent Liberties case. Scott was very specific about the age of his current victim indicating he was 15 years and 11 months at the time of the incident. Scott reported that he knew the victims in the Indecent Liberties case through "casual contact as they were neighborhood kids." Scott reported that his current victim worked for him from time to time as a helper and was paid for the work that he did, "but didn't work that much because he wasn't that good of a worker."

Education / Employment

Scott dropped out of school shortly after the 10th grade and entered the job market. After leaving school Scott earned his GED and has continued to work various jobs, mainly unskilled labor jobs. Scott stated that he has been

continuously employed for many years and has most recently been self-employed. Prior to starting his own business, Scott was a caretaker for a RV park and knows a great deal about running a business and making it successful. Scott indicated that he runs a lawn care business and works as an internet affiliate. (Name of the business is "West Coast Maintenance and Personal Services.") Scott stated that he does lawn care at various vacation homes on the Long Beach Peninsula, and sells books and other material over the internet during the evening hours. Scott indicated that things that would put him at risk to re-offend would be "having workers that are not 18 years old working for him." Scott also indicated that he "would have to make sure and check ID's of all of these workers."

Financial

Scott indicated that he is currently financially stable and managing his debts with very few problems. On the other hand, Scott also indicated that since his incarceration he has lost most if not all of his personal property and business supplies due to break ins at his house.

Accommodation

Scott reported that there is a great deal of crime in the area surround his residence. He indicated that his house is one block off the main street, two blocks from the Long Beach Police Department, approximately 4 blocks from a grade school and park. Scott indicated that there are very few children in the area that would put him at risk to re-offend or violate any condition of no contact with minor children. **Note—Scott's house is less the 15 feet from his neighbor's house that is occupied by two minor children, ages 9 and 10.

Family / Marital

Scott reported that his father is dead and his mother currently lives in the Seattle area. Scott has two sisters, one in the Seattle area, and one in the San Juan Islands. Scott indicated that his mother and one sister are working on keeping his business going for him while he's confined, but "can't help much due to age and distance." Scott indicated that his families aware of his past and present law violations and are "supportive," but also "disappointed" in him for what he's done. Scott reported no sexual contact with family members or sexual abuse as a child/juvenile. Scott further indicated that none of his family has ever been in trouble with the law. Scott reported that he has never been married or been involved in a long-term relationship.

Leisure / Recreation

Scott reported no leisure time and or involvement in any form of leisure activities. Scott further stated that he is a "workaholic," and spends most of his days doing yard work, and his evenings working on his internet business. Scott also reported no involvement in pro-social groups or organizations.

Companions

Scott reported that he has never been married or been involved in a long-term relationship. On the other hand, Scott indicated he has 5 or more sexual relationships with 18-20 year old males in the last 2 years. Scott further indicated that each of these individuals who worked for him and lived with him as "roommate's." Scott further defined this stating "they were casual relationship involving sex, and all of partners had girlfriends at the time." Scott continued to elaborate on this issue stating; "all of my partners had some sort of problem like, being homeless, no food, drug or alcohol problem, family problem or out of work, and I would rent them the upstairs room for \$10.00 per night and many times we would have sex." Scott reported his first sexual contact at age 10, but was unable to identify whom the sexual contact was with. Scott denied ever paying for sexual contact or purchasing/owning any form of pornography. When questioned as to the number of sexual partners he has had, Scott indicated that he wouldn't be able to even guess. When questioned further he indicated not less then 10 and not more then 20, (including victims). Scott reported never having a sexual relationship with a female, "it never went beyond kissing with females."

Alcohol / Drug Use

Scott reported that he has never had a drug or alcohol problem, as he is "admittedly opposed to drugs, and hasn't drank since 1981." Scott reported that his father passed away from liver failure and he realized how damaging drinking can be.

Emotional / Personal

Scott reported that he has been "frustrated about his sex life" and when questioned as to how he deals with this he indicated, "I don't deal with it." Scott became very defensive and agitated regarding this questioning and especially about his response to his stress or frustrations. Scott totally denied that he was ever frustrated sexually and

requested that I "strike" that he had made this statement. Scott repeatedly stated, "I don't have stress." Moments later, Scott reported that he "used to have a lot of anxiety, and took medication for anxiety and depression about 15 years ago." Scott has never had any form of chemical dependency, anger management, or formal sexual offender treatment. Scott did indicate that prior to going to prison in 1984 for Indecent Liberty, he participated in "Sex Offender classes as part of the pre-trial release conditions." When questioned as to if he thought it was beneficial, Scott indicated that he felt it was beneficial and "kept him out of trouble for 17 years." Scott denied any Sex Offender treatment in prison and never sought treatment upon release.

Attitude / Orientation

Scott was cooperative in providing information obtained in this report. Scott appears to understand that he violated the law, but continued to focus on the fact that the victim was mature, and no force was used. Scott indicated that he feels in today's society "kids are more mature and able to make choices about consent and should be able to consent at 16 rather than 18, due to maturity level." At the conclusion of this interview, Scott stated "he (the victim) wasn't that good anyway." (Scott laughed excessively regarding this comment.) Scott appears to rationalize, minimize, and justify his behaviors with little remorse for the victim or the impact his actions have had on the victim, the victim's family, or the community.

VII. SEX OFFENDER / MENTAL HEALTH CONSIDERATIONS

A risk assessment was completed during the Pre-sentence Interview. It was determined that Richard Scott presents medium risk for recidivism, 48.1% risk to re-offend. However, the Department of Corrections, as a matter of policy, supervises sex offenders and violent offenders at a higher level. Scott presented information that indicates the need for possible mental health care and sexual offender treatment.

VIII. SENTENCE OPTIONS

Confinement within the Standard Range—Scott mentioned nothing that would prevent him from completing a sentence within the standard range.

Exceptional Sentence-- RCW 9.94A. 120(2) states that the court "may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are compelling reasons justifying an exceptional sentence." Listed under "Aggravating Circumstances for Exceptional Sentences" in the Sentencing Guidelines Manual are the following: The offense included a finding of sexual motivation. The offense was a part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years, manifested by multiple incidents over a prolonged period of time. The defendant's prior unscored misdemeanor criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of the Sentencing Reform Act. And finally, the offense resulted in the pregnancy of a child rape victim.

This incident involved an ongoing pattern of sexual abuse of the same victim under the age of 18. As the reports from Child Protective Services indicated, Scott groomed the victim by bringing him into his home under false pretences, and abused his position of authority to manipulate and abuse the victim sexually. Scott admits to taking persons into his house that he considered vulnerable due to homelessness, addiction to drugs/alcohol, had no food, or were out of work and ultimately engaging in sexual acts with them. He also admitted to engaging in sexual acts with his hired help/workers. Furthermore, the standard range in the matter fails to take into account Scott's prior criminal history with accuracy. Scott was sentenced on 5 counts/multiple victims of Indecent Liberties which are scored as one point, resulting in a presumptive sentence that is clearly too lenient.

Special Sex Offender Sentencing Alternative (SSOSA)—This option is not available due to Scott's previous conviction in 1984 for Indecent Liberties, King County cause #84-1-01467-5 SEA.

IX. RECOMMENDATIONS

Sentence Type: Exceptional Sentence.

Confinement: 60 months.

Conversions: None

Supervision Type & Duration: Community Custody, 36 to 48 months

Conditions of Supervision:

See attached Appendix F

Monetary Obligations:

Restitution	\$TBD	Court Costs	\$110.00	Other	\$n/a
Victim Penalty	\$500.00	Attorney Fees	\$250.00		
Drug Fund	\$n/a	Fine	\$TBD		

Payment Schedule to be determined by the Department of Corrections

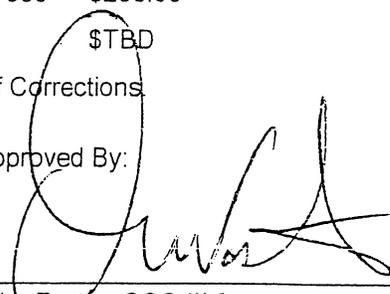
Submitted By:



Robert Bromps, CCO II
Raymond Field Office
301 Ocean Avenue, Suite C
Raymond, WA 98577
Telephone (360) 942 - 4817

06/27/01
DATE

Approved By:



Mike Foster, CCO III for
Steve Johnson, CCS I
219 Pioneer E
Montesano, WA 98563
Telephone (360) 249 - 5080

6/27/01
DATE

Distribution: ORIGINAL - Court COPY - Prosecuting Attorney, Defense Attorney, File, WCC/RC (Prison),

0001

1

2

3

4

5

6

Statement Via Videotape of
DUSTIN W. HAYNES

8

9

10

11

12

13

14

15

16

17

18

19

May 11, 2006
735 Fortner Street, Apt. 2
Ontario, Oregon

20

21

22

23

24

25 TRANSCRIBED BY: Keri A. Aspelund, RPR, CCR No. 2661

0002

1

APPEARANCES:

2

ALWIN FARR

3

A.L. Farr & Associates

4

2442 NW Market Street, Suite 238

5

Seattle, WA 98107

6

206-361-1498

7

8

9

10

11

12

13

14

15

16

17

18

19
20
21
22
23
24
25
0003

1 Ontario, Oregon; Thursday, May 11, 2006

2 -----
3 MR. FARR: Okay, let the record show today's
4 date is Thursday, May the 11th. 2006, my name is Al
5 Farr. I'm a private investigator out of Seattle,
6 Washington. The name of my company is A.L. Farr &
7 Associates, Inc. At this time I am at 735 Fortner
8 Street, that's F-O-R-T-N-E-R, Apartment No. 2, in the
9 City of Ontario, Oregon.

10 And at this time I'm speaking with a young
11 man by the name of Dustin Haynes. Is that your true
12 name, sir?

13 MR. HAYNES: Yes.

14 MR. FARR: And Dustin, what's your middle
15 name?

16 MR. HAYNES: Wayne.

17 MR. FARR: And could I have your date of
18 birth, please?

19 MR. HAYNES: 4-12-85.

20 MR. FARR: Okay. And do you live here at
21 735 Fortner Street?

22 MR. HAYNES: No, I don't.

23 MR. FARR: Where do you live now?

24 MR. HAYNES: 64 Northeast Third Street.

25 MR. FARR: In Ontario?

0004

1 MR. HAYNES: Yes.

2 MR. FARR: Okay. Is there a phone there?

3 MR. HAYNES: No.

4 MR. FARR: Okay. If I had to reach you by
5 phone, could I normally reach you through your mom or
6 something at the number I spoke with her at a couple
7 days ago?

8 MR. HAYNES: Yes.

9 MR. FARR: Okay. You're aware that the
10 conversation we're having is being audio and video
11 recorded?

12 MR. HAYNES: Yes, I do.
13 MR. FARR: At the same time?
14 MR. HAYNES: Yes.
15 MR. FARR: And I have -- do I have your
16 permission to do that?
17 MR. HAYNES: Yes.
18 MR. FARR: Okay. I call your attention to a
19 fellow by the name of Richard R. Scott; do you know
20 him?
21 MR. HAYNES: Yes.
22 MR. FARR: And how do you know him?
23 MR. HAYNES: I did some work for him.
24 MR. FARR: What kind of work did you do?
25 MR. HAYNES: Landscaping.

0005

1 MR. FARR: Okay. Lawn mowing?
2 MR. HAYNES: Yeah, lawn mowing, weed-eating.
3 MR. FARR: A little shovel work?
4 MR. HAYNES: Yeah.
5 MR. FARR: Weed-eating, trimming, and --
6 MR. HAYNES: Yeah, trimming, all of it.
7 MR. FARR: Spring cleaning of yards, and
8 that kind of stuff?
9 MR. HAYNES: Yes.
10 MR. FARR: Okay. And about how long did you
11 work for Mr. Scott?
12 MR. HAYNES: It was about five, six months.
13 MR. FARR: Okay. Was this over a period of
14 several years off and on that you worked for him?
15 MR. HAYNES: No, it was actually all at
16 once.
17 MR. FARR: Okay. Five or six months?
18 MR. HAYNES: (Nods head.)
19 MR. FARR: Where would that have been?
20 MR. HAYNES: In Long Beach, Washington.
21 MR. FARR: Okay. And do you remember where
22 Mr. Scott was living at that time?
23 MR. HAYNES: I do, but I don't remember the
24 street.
25 MR. FARR: Okay. Was he running his

0006

1 business out of his house at that time?
2 MR. HAYNES: Yes.
3 MR. FARR: Okay. And where were you living
4 at that time?

5 MR. HAYNES: I lived a couple blocks down
6 the street.

7 MR. FARR: Away from Mr. Scott?

8 MR. HAYNES: Yes.

9 MR. FARR: Okay. And I'm going to ask you
10 straight up a question here, and you can answer it yes
11 or no, or you can elaborate on it, whatever you'd like
12 to do, but was there ever, ever, in all the time that
13 you've known Mr. Scott, and that's been several years
14 or so, is that correct, that you've known him?

15 MR. HAYNES: Yes.

16 MR. FARR: Okay. Did you -- when did you
17 first meet Mr. Scott, I should ask you that?

18 MR. HAYNES: It was about '99, 2000.

19 MR. FARR: Okay. How did you meet him?

20 MR. HAYNES: Through a friend.

21 MR. FARR: Okay. And you ended up working
22 for Mr. Scott?

23 MR. HAYNES: Yes.

24 MR. FARR: How did that happen?

25 MR. HAYNES: He had a lawn mower business,
0007

1 and there was actually me and a couple other people
2 that worked for him.

3 MR. FARR: Okay. Did you apply for the job,
4 or did he recruit you; how did you go to work there?

5 MR. HAYNES: I actually inquired him about
6 it.

7 MR. FARR: Okay. Okay. So, that was at
8 least several years ago, correct?

9 MR. HAYNES: Yes.

10 MR. FARR: All right. At any point in time,
11 during the entire period you've known Mr. Scott, did
12 Mr. Scott ever make any sexual moves on you, or try to
13 intimidate you sexually in any way, shape, or form?

14 MR. HAYNES: No, he didn't, because I --
15 before I even started with him, I made it very clear
16 that if anything went like that, there would be
17 problems.

18 MR. FARR: Okay. And what did he say when
19 you told him that?

20 MR. HAYNES: He had no problem with it.

21 MR. FARR: Okay. And is it correct that he
22 never made any moves towards you sexually in any way,
23 shape, or form?

24 MR. HAYNES: Correct.
25 MR. FARR: Okay. Did he ever say anything
0008

1 of a sexual nature that made you uncomfortable at all?

2 MR. HAYNES: No.

3 MR. FARR: Okay.

4 MR. HAYNES: He was actually pretty quiet
5 around me.

6 MR. FARR: Okay. Did you ever see -- were
7 you in and out of his home, his home business there a
8 lot?

9 MR. HAYNES: No, I only -- every morning
10 when it was time to go to work, I just met them over
11 there.

12 MR. FARR: Okay. Were you ever in his
13 house?

14 MR. HAYNES: No, I wasn't.

15 MR. FARR: Okay. So, did you ever hear of
16 him saying anything to your brothers or your mom or
17 anything like that of a sexual nature at all?

18 MR. HAYNES: No. My brothers would have did
19 the same thing.

20 MR. FARR: The same thing you did?

21 MR. HAYNES: Yeah.

22 MR. FARR: Okay. Okay, Dustin, I want to
23 thank you very, very much for your time and
24 cooperation with this. It saves me a lot of time.

25 The time right now, by the way, is 4:32

0009

1 p.m., Ontario, Oregon, time.

2 And you're aware that the conversation
3 you've had has been tape recorded?

4 MR. HAYNES: Yes.

5 MR. FARR: And it's been with your
6 permission?

7 MR. HAYNES: Yes.

8 MR. FARR: Both the audiotape and the
9 videotape?

10 MR. HAYNES: Yes.

11 MR. FARR: Okay. Again, I want to thank you
12 very much, and I'm going to shut the recorder off now.

13 (Statement concluded.)

14

15

16

Telephone Statement Via Audio Tape of

DUSTIN W. HAYNES

August 15, 2007

Conducted by Doug Merino

TRANSCRIBED BY: Keri A. Aspelund, RPR, CCR No. 2661

Page 2

1 August 15, 2007
 2 9:14 a.m.
 3 -----
 4 MR. MERINO: This is Doug Merino, M-E-R-I-N-O.
 5 I'm a private investigator with the Washington State
 6 Private Investigators out of Olympia, Washington. And
 7 today's date is August the 15th, and the time is 9:14
 8 a.m. And this morning I'm interviewing Dustin Wayne
 9 Haynes, H-A-Y-N-E-S.
 10 And Dustin, your location is at the North
 11 Idaho Cottonwood Correctional Facility, is that correct?
 12 Did you hear me, Dustin?
 13 MR. HAYNES: Yes.
 14 MR. MERINO: Your location right now, you're
 15 at the North Idaho Cottonwood Correctional Facility?
 16 MR. HAYNES: Yes, it is.
 17 MR. MERINO: And how long have you been there?
 18 MR. HAYNES: About two weeks.
 19 MR. MERINO: Okay. And can you give me your
 20 date of birth and Social Security number?
 21 MR. HAYNES: 4-12-85, and it's 541-13-7513.
 22 MR. MERINO: Okay. And is there anyone else
 23 present in the room with you today?
 24 MR. HAYNES: Yes.
 25 MR. MERINO: And that would be?

Page 3

1 MR. HAYNES: My counselor.
 2 MR. MERINO: And her name is?
 3 MR. HAYNES: Is Verna.
 4 MR. MERINO: Okay. And you have -- she has
 5 your permission to be in the room while you are being
 6 interviewed, correct?
 7 MR. HAYNES: Yes.
 8 MR. MERINO: Okay. And my location is at my
 9 office in Olympia, Washington, and this is a telephone
 10 interview.
 11 Okay. What we're trying to find out is do you
 12 remember this incident with Richard Scott way back in I
 13 believe it was 2001?
 14 MR. HAYNES: Right.
 15 MR. MERINO: Okay. Back in 2001 -- just a
 16 second. What did you say your date of birth was?
 17 MR. HAYNES: 4-12-85.
 18 MR. MERINO: 4-12-85, okay.
 19 Back in early 2001, you went back to Weiser,
 20 Idaho; can you tell me why?
 21 MR. HAYNES: I moved out there with my family.
 22 MR. MERINO: Okay. And do you know the date
 23 or approximate time of the year that was?
 24 MR. HAYNES: No, I don't.
 25 MR. MERINO: Okay. Our records kind of show

Page 4

1 that it was sometime around February 2001 or March 2001.
 2 MR. HAYNES: That sounds about right.
 3 MR. MERINO: And do you know when you returned
 4 from Weiser, Idaho?
 5 MR. HAYNES: No, I don't.
 6 MR. MERINO: Okay. How long were you in
 7 Weiser before you returned back to Long Beach, Pacific
 8 County area?
 9 MR. HAYNES: I don't know, about two, three
 10 months. I don't know.
 11 MR. MERINO: Okay. So, is it fair to say that
 12 you might have gone back in February of 2001 from Long
 13 Beach area and then returned sometime in March of 2001?
 14 MR. HAYNES: Yeah, I guess. That's about
 15 right.
 16 MR. MERINO: Okay. And you were 15 at the
 17 time, is that correct?
 18 MR. HAYNES: Yeah -- yes, 15.
 19 MR. MERINO: Yeah.
 20 MR. HAYNES: Yes.
 21 MR. MERINO: When -- when you went back to
 22 Idaho, do you know how old you were when you returned?
 23 MR. HAYNES: When I returned?
 24 MR. MERINO: Yeah, were you 16 then?
 25 MR. HAYNES: Yes, I was.

Page 5

1 MR. MERINO: So, you were 16 when you returned
 2 back from Idaho?
 3 MR. HAYNES: Yes.
 4 MR. MERINO: Okay. Do you know why your
 5 family came back after they'd moved?
 6 MR. HAYNES: My mother and them still lived in
 7 Long Beach when I moved out.
 8 MR. MERINO: Okay. But when you say you moved
 9 back to Idaho with your family --
 10 MR. HAYNES: Yeah, my grandparents.
 11 MR. MERINO: Okay. So, your mom and dad and
 12 you all went back to Idaho and moved in -- or moved
 13 closer to your grandparents, is that correct, in Idaho?
 14 MR. HAYNES: No, I moved up with my
 15 grandparents. They stayed in Long Beach.
 16 MR. MERINO: Oh, I see. Your grandparents --
 17 okay.
 18 But when you went to Weiser, right --
 19 MR. HAYNES: Right.
 20 MR. MERINO: -- your grandparents never lived
 21 there, they lived in Pacific County?
 22 MR. HAYNES: No, they lived in Washington
 23 County.
 24 MR. MERINO: In Washington state or Washington
 25 County?

Page 6

1 MR. HAYNES: My grandparents lived in
 2 Washington County, Idaho.
 3 MR. MERINO: Okay, I'm sorry.
 4 All right, so you went back there, but when
 5 you came back, did they come with you?
 6 MR. HAYNES: No.
 7 MR. MERINO: They stayed in Idaho?
 8 MR. HAYNES: Yes.
 9 MR. MERINO: And so when you came back, you
 10 were 16 years old, you came back, and you stayed with
 11 your mom and dad, is that correct?
 12 MR. HAYNES: Yes.
 13 MR. MERINO: All right, now I have it.
 14 So, when you stayed with your mom and dad,
 15 what kind of business were they involved in?
 16 MR. HAYNES: They did a lot of work for
 17 Richard Scott.
 18 MR. MERINO: Okay. And that would be lawn
 19 services to homes and things like that?
 20 MR. HAYNES: Correct.
 21 MR. MERINO: All right. And did you ever move
 22 out of your family home and move into Richard Scott's
 23 residence?
 24 MR. HAYNES: No.
 25 MR. MERINO: Not for a short time at all?

Page 7

1 MR. HAYNES: None.
 2 MR. MERINO: Okay. So, when this whole event
 3 that transpired around Mr. Scott, did -- were you -- you
 4 know, our records indicate that after Mr. Scott was
 5 arrested -- do you remember when that happened?
 6 MR. HAYNES: Yes, I believe so.
 7 MR. MERINO: Okay. And when that happened,
 8 our records indicate that, that his equipment and his
 9 business, if you will, overall, is that your mom and dad
 10 took possession of that, is that correct?
 11 MR. HAYNES: After everybody went around and
 12 started getting stuff, my parents -- still the lawn
 13 mowers and stuff was sitting outside my parents' house
 14 over there.
 15 MR. MERINO: Okay. And that -- and where were
 16 your parents living at the time?
 17 MR. HAYNES: In Seaview.
 18 MR. MERINO: Seaview, okay.
 19 So, your parents, because they worked for
 20 Richard, had equipment with them most of the time as
 21 well, so it was more of a convenience thing while they
 22 went to work?
 23 MR. HAYNES: No, actually the equipment was
 24 still on the trailer at one of the houses they were
 25 doing the landscaping work at.

Page 8

1 MR. MERINO: I see. Okay. So, then your
 2 parents went over and got that and brought it home to
 3 their Seaview house, correct?
 4 MR. HAYNES: It was so that Richard wouldn't
 5 lose it.
 6 MR. MERINO: Okay. So, then what happened
 7 after that? What happened to his equipment? Do you
 8 remember anything about that?
 9 MR. HAYNES: Yeah, Tony showed up. I'm not
 10 sure of his last name.
 11 MR. MERINO: And how do you know Tony?
 12 MR. HAYNES: I just knew him through -- I went
 13 to school with his little brother.
 14 MR. MERINO: Okay. And so Tony shows up --
 15 MR. HAYNES: And says that Richard Scott owes
 16 him money, and that he's there to get the equipment.
 17 MR. MERINO: Okay. His last name's not
 18 Brisbee, is it?
 19 MR. HAYNES: It is.
 20 MR. MERINO: Okay. So, Tony Brisbee, okay.
 21 And how old is Tony compared to your age?
 22 MR. HAYNES: Right now, I would probably he's
 23 probably in his early 30s.
 24 MR. MERINO: All right. And so you were there
 25 when Tony Brisbee came to the house and said Richard

Page 9

1 Scott owed him some money so he was going to take the
 2 equipment, correct?
 3 MR. HAYNES: Correct.
 4 MR. MERINO: And you were actually there?
 5 MR. HAYNES: Yes.
 6 MR. MERINO: And what -- any comments from
 7 your mother or dad or yourself?
 8 MR. HAYNES: No, they just handed over the
 9 equipment and said they didn't want nothing to do with
 10 it.
 11 MR. MERINO: Okay. So, then, then Brisbees
 12 ended up with that equipment, right?
 13 MR. HAYNES: Correct.
 14 MR. MERINO: And then do you remember what the
 15 Brisbees did once they got the equipment?
 16 MR. HAYNES: Nothing I -- I remember he kept
 17 up doing the business.
 18 MR. MERINO: Okay. So, when you say he, was
 19 it the dad or was it Tony?
 20 MR. HAYNES: It was Tony.
 21 MR. MERINO: So, Tony Brisbee with Richard
 22 Scott's equipment --
 23 MR. HAYNES: Or not Tony but Kevin.
 24 MR. MERINO: Kevin Brisbee?
 25 MR. HAYNES: Yes.

Page 10

1 MR. MERINO: So, that's his dad, isn't it?
 2 MR. HAYNES: No, they're brothers.
 3 MR. MERINO: Oh, I see. So, Kevin Brisbee's a
 4 brother of Tony?
 5 MR. HAYNES: Yes.
 6 MR. MERINO: Got into the business that Scotty
 7 was into?
 8 MR. HAYNES: Correct.
 9 MR. MERINO: And our records indicate that
 10 they ended up with a lot of Scotty's accounts; does that
 11 make sense to you?
 12 MR. HAYNES: Yes.
 13 MR. MERINO: Do you know how they got those
 14 accounts?
 15 MR. HAYNES: They were also handed over as
 16 well as the equipment.
 17 MR. MERINO: So, your parents handed over all
 18 of Scott's accounts to Mr. Brisbee, Tony Brisbee?
 19 MR. HAYNES: Yes.
 20 MR. MERINO: Did he demand those?
 21 MR. HAYNES: He said that he had helped start
 22 the business, and that Scotty owes him money, and all
 23 the equipment was his.
 24 MR. MERINO: Okay. And he knew that Richard
 25 Scott was in jail by then, right?

Page 11

1 MR. HAYNES: Yes.
 2 MR. MERINO: Did he -- now, how much time had
 3 transpired from the time that Richard Scott was arrested
 4 that this happened?
 5 MR. HAYNES: About a week later.
 6 MR. MERINO: Okay. And so at that time Scotty
 7 would have been in -- or Richard Scott, he would have
 8 been in the Pacific County Jail, correct?
 9 MR. HAYNES: I believe so.
 10 MR. MERINO: Okay. Do you know -- do you
 11 know -- did you ever see him since then?
 12 MR. HAYNES: No, I haven't.
 13 MR. MERINO: Okay. So, back to the equipment.
 14 After Brisbees got the equipment, were your parents
 15 involved with working with the Brisbees at all as far as
 16 the lawn care service?
 17 MR. HAYNES: No.
 18 MR. MERINO: And so they had no further
 19 contact, there was -- was there any kind of a plan that
 20 you overheard between either your parents and the
 21 Brisbees about taking over Scott's business?
 22 MR. HAYNES: Nope, none.
 23 MR. MERINO: So, the only plan that you knew
 24 of is that what Tony had said, and --
 25 MR. HAYNES: Kevin.

Page 12

1 MR. MERINO: Excuse me, Kevin Brisbee said,
 2 and who did he say that to?
 3 MR. HAYNES: A couple of my friends.
 4 MR. MERINO: Okay, can you give me the names
 5 of the friends?
 6 MR. HAYNES: He was still working with Johann.
 7 MR. MERINO: Johann?
 8 MR. HAYNES: I don't know his last name.
 9 MR. MERINO: Klotz (phonetic)?
 10 MR. HAYNES: What's that?
 11 MR. MERINO: Oh, Johann, Johann, strike the
 12 last name, that's a different person.
 13 And who was the other individual?
 14 MR. HAYNES: That's -- it was just Johann.
 15 MR. MERINO: Just Johann.
 16 And so you had conversations with Johann, and
 17 Johann told you that Kevin Brisbee was taking over all
 18 of Scott's accounts?
 19 MR. HAYNES: Right, taking them over and
 20 starting to do his own.
 21 MR. MERINO: And did he have a name of this
 22 business?
 23 MR. HAYNES: No, he didn't.
 24 MR. MERINO: Okay. And how long was that
 25 going on before something happened?

Page 13

1 MR. HAYNES: Before something happened?
 2 MR. MERINO: Yeah, well, as far as, to my
 3 understanding that eventually law enforcement got
 4 involved and they went to collect that -- collect the
 5 equipment from Kevin, is that correct?
 6 MR. HAYNES: That I have no idea. I'm not
 7 sure about that. All I know is he ended up with the
 8 equipment, and he was planned on taking over.
 9 MR. MERINO: Now, again, your parents didn't
 10 have anything to do with that? You're saying that your
 11 parents basically picked up the equipment, so just to
 12 hold onto it for Scott?
 13 MR. HAYNES: Correct.
 14 MR. MERINO: And then a week later, Kevin --
 15 or yeah, Kevin Brisbee stopped by, saying he owes --
 16 Scott owes him money; did he say how much money?
 17 MR. HAYNES: No, he didn't.
 18 MR. MERINO: Okay. And when you guys had the
 19 equipment, did you have any intention of continuing to
 20 work?
 21 MR. HAYNES: No, the equipment sat outside in
 22 front of the garage.
 23 MR. MERINO: Okay. But your parents did work
 24 for Scott at the time, did they not?
 25 MR. HAYNES: Before he had went to jail.

Page 14

1 MR. MERINO: Okay. So, what did they do when
 2 Scott went to jail? I mean, how did they complete being
 3 employed?
 4 MR. HAYNES: My little brother and them were
 5 on Social Security, and my dad.
 6 MR. MERINO: So, your little brother and your
 7 dad were on Social Security?
 8 MR. HAYNES: Yes.
 9 I was also on Social Security then, too.
 10 MR. MERINO: Okay. I see. And then --
 11 MR. HAYNES: Extra money on the side.
 12 MR. MERINO: Okay. So, can you tell me why
 13 you're on Social Security or you were?
 14 MR. HAYNES: I work now, I'm not on Social
 15 Security. I got it taken away.
 16 MR. MERINO: I see, okay. But when you --
 17 when you had Social Security, was it because it was some
 18 kind of an ailment or something or --
 19 MR. HAYNES: It was called Sugalis (phonetic)
 20 fever.
 21 MR. MERINO: Sugalis fever?
 22 MR. HAYNES: Yes.
 23 MR. MERINO: And your brother and your dad had
 24 it as well?
 25 MR. HAYNES: No, my dad's got -- my brother's

Page 15

1 got, my brother, Marcus, he's got Social Security
 2 because he's deaf.
 3 MR. MERINO: I see.
 4 MR. HAYNES: And my dad's got it because he
 5 fell from -- they were swinging on a tree, and he fell
 6 and hit the pavement --
 7 MR. MERINO: Uh-huh.
 8 MR. HAYNES: -- and broke a couple of the
 9 vertebraes in his back.
 10 MR. MERINO: I see. And this was a while back
 11 then before this incident?
 12 MR. HAYNES: Yes.
 13 MR. MERINO: Okay. Do you though what your
 14 mom and dad are doing now?
 15 MR. HAYNES: I believe they live in Ontario.
 16 MR. MERINO: Okay. Do you know if either one
 17 of them's employed at all?
 18 MR. HAYNES: No, they both -- my mom just got
 19 her Social Security, so they both have Social Security.
 20 MR. MERINO: Okay. And when you say Ontario,
 21 you're talking about Ontario --
 22 MR. HAYNES: Oregon.
 23 MR. MERINO: -- Oregon, okay.
 24 And so when you went, just to reiterate, when
 25 you went back to Idaho for a couple, two or three

Page 16

1 months, you went there because -- again, for what
 2 reason?
 3 MR. HAYNES: I went up there to live with my
 4 grandparents for a little while.
 5 MR. MERINO: Okay. And were you in any kind
 6 of situation that made you want to leave Pacific County?
 7 MR. HAYNES: No, none.
 8 MR. MERINO: So, it was just you were there
 9 for a while, and you decided you want to go live with
 10 your parents -- grandparents, I mean?
 11 MR. HAYNES: Yes, I went back up with my Uncle
 12 Mark.
 13 MR. MERINO: And what's Mark's last name?
 14 MR. HAYNES: Jones.
 15 MR. MERINO: Mark?
 16 MR. HAYNES: Jones.
 17 MR. MERINO: J-O-N-E-S?
 18 MR. HAYNES: Yes.
 19 MR. MERINO: And where does Mark Jones live?
 20 MR. HAYNES: I believe Ontario, Oregon.
 21 MR. MERINO: Okay. Do you have a telephone
 22 number for him at all?
 23 MR. HAYNES: No, I don't.
 24 MR. MERINO: Any contact information?
 25 MR. HAYNES: No, I haven't talked to any of my

Page 17

1 family, my mom, since I've been here.
 2 MR. MERINO: In North -- in Cottonwood, or
 3 just institutionalized?
 4 MR. HAYNES: Just institutionalized.
 5 MR. MERINO: So, you haven't spoken with them
 6 for quite a while then?
 7 MR. HAYNES: The last time I spoke to my
 8 parents was the last time I spoke to you.
 9 MR. MERINO: Okay, that's been a few months
 10 then. Okay.
 11 And did you tell them that you and I had
 12 talked over the telephone?
 13 MR. HAYNES: Yes, I did.
 14 MR. MERINO: And was there any comment from
 15 them about that?
 16 MR. HAYNES: No, it isn't.
 17 MR. MERINO: Okay. Were they concerned at all
 18 that they thought there might be a problem?
 19 MR. HAYNES: No, they were just concerned why
 20 prosecutors -- or not prosecutors but -- or --
 21 MR. MERINO: Private investigators or --
 22 MR. HAYNES: Investigators were calling to
 23 talk to me all the time.
 24 MR. MERINO: Yeah, well, I can understand
 25 that, they're your parents, and you know, they -- this

1 supposed incident that Connie DeFour gave to Mark
 2 Harmon, the police officer in Long Beach, you're
 3 familiar with that?
 4 MR. HAYNES: I'm familiar with Connie, but I'm
 5 not familiar with the cops.
 6 MR. MERINO: Are you familiar or do you know
 7 what Connie DeFour had said to the police officer?
 8 MR. HAYNES: No, I don't.
 9 MR. MERINO: Okay. So, you never read her
 10 statement, is that correct?
 11 MR. HAYNES: I've never seen any of the
 12 reports or any statements.
 13 MR. MERINO: And no one in your family or
 14 anybody else has said anything to you, or any attorney,
 15 or other private investigator's given you any
 16 information regarding that?
 17 MR. HAYNES: No.
 18 MR. MERINO: Okay. All right. So, and in our
 19 previous conversation a few months ago, you denied any
 20 wrongdoing between yourself and Richard Scott, isn't
 21 that correct?
 22 MR. HAYNES: Correct.
 23 MR. MERINO: And that -- you felt that that
 24 information that was given to law enforcement was a lie?
 25 MR. HAYNES: Yes.

1 think she played in all of this with the Brisbees? Do
 2 you think there's a connection there?
 3 MR. HAYNES: I believe so. I know that they
 4 were friends, too, and Connie has -- her boyfriend,
 5 which was Ralph Landeros --
 6 MR. MERINO: Yeah.
 7 MR. HAYNES: -- was -- they were friends of my
 8 parents.
 9 MR. MERINO: Okay.
 10 MR. HAYNES: And also all of us had worked for
 11 Scotty.
 12 MR. MERINO: Okay.
 13 MR. HAYNES: Including Kevin, so --
 14 MR. MERINO: Okay. Do you think that -- since
 15 you know -- you know Richard Scott's in prison, correct?
 16 MR. HAYNES: Correct.
 17 MR. MERINO: And that he's in prison because
 18 of these accusations by Connie DeFour?
 19 MR. HAYNES: Correct.
 20 MR. MERINO: And -- and you know, I -- the
 21 only blunt way I can put this is they said you had a
 22 sexual encounter with him on a couple -- that she had
 23 witnessed. Number one is, you're saying that -- are you
 24 saying that it is a lie, correct?
 25 MR. HAYNES: Yes, I am saying that.

1 MR. MERINO: And that lie was provided to law
 2 enforcement by who, do you know?
 3 MR. HAYNES: As far as I know, I was told it
 4 was by Connie.
 5 MR. MERINO: Okay, and when you say it was
 6 told by Connie, did you know who it was that told you
 7 that?
 8 MR. HAYNES: No.
 9 MR. MERINO: Okay. But did you have kind of
 10 the gist of what Connie DeFour was saying?
 11 MR. HAYNES: No, I didn't.
 12 MR. MERINO: So, you weren't -- you weren't
 13 aware that she was trying to accuse you and Scott of
 14 having some personal relationship?
 15 MR. HAYNES: Correct. I don't know anything
 16 about that. I haven't seen no paperwork. I don't even
 17 know what she was accusing him of.
 18 MR. MERINO: Yeah. So, if I were to tell you
 19 that -- if I were reading her file, that she said that
 20 you had a sexual encounter with Mr. Scott, would you
 21 confirm or deny that?
 22 MR. HAYNES: I would deny that.
 23 MR. MERINO: Okay. And you've said that in
 24 the past, I'm just reiterating that.
 25 So, do you think Connie DeFour -- what do you

1 MR. MERINO: And at no time have you ever seen
 2 Connie DeFour in Richard Scott's home when this -- when
 3 she's saying that this happened? See what I'm getting
 4 at is that she's saying that you were with Richard Scott
 5 on a certain time, and you were having this
 6 relationship, and that she walked in on you, did that
 7 ever happen?
 8 MR. HAYNES: The only other time I've ever
 9 seen copy is when she was with Ralph over at our house.
 10 MR. MERINO: Over at your house in Seaview?
 11 MR. HAYNES: Yes.
 12 MR. MERINO: Okay. So, you've only seen her
 13 twice then at any residence either between -- did you
 14 see her at Richard Scott's house at any time?
 15 MR. HAYNES: No.
 16 MR. MERINO: Okay. So, the only time you've
 17 seen her is at the Seaview house where your parents
 18 lived?
 19 MR. HAYNES: Right, she always came over to
 20 visit with her boyfriend, Ralph, and with my parents.
 21 MR. MERINO: Okay. And did you work with her
 22 out in the field as far as doing lawn service?
 23 MR. HAYNES: No.
 24 MR. MERINO: What did she do? You know, when
 25 she was part of this working for Richard Scott, do you

Page 22

1 know what her job was, or not?
 2 MR. HAYNES: No, I don't.
 3 MR. MERINO: Did you have any conversations
 4 with her when she was over there visiting your parents?
 5 MR. HAYNES: No, I didn't.
 6 MR. MERINO: Okay. You didn't hear her
 7 have -- overhear any conversation where she wanted to
 8 see Richard Scott go away?
 9 MR. HAYNES: I didn't.
 10 MR. MERINO: Okay. Did she mention that she
 11 owed Richard Scott any money?
 12 MR. HAYNES: No, she didn't.
 13 MR. MERINO: Okay. So, when she came over, is
 14 it fair to say that you kind of were out -- you didn't
 15 really hang around them because these are elderly people
 16 and you just weren't there?
 17 MR. HAYNES: Correct. (Inaudible.)
 18 MR. MERINO: Say that again.
 19 MR. HAYNES: I'd be out playing with
 20 (inaudible).
 21 MR. MERINO: Yeah, I'm losing you. You're
 22 breaking up.
 23 You'd be out playing with what?
 24 MR. HAYNES: With friends.
 25 MR. MERINO: Okay. All right. And then after

Page 23

1 Richard Scott was arrested, were you interviewed by
 2 Officer Harmon?
 3 MR. HAYNES: No, I was interviewed
 4 (inaudible).
 5 MR. MERINO: Okay, try that again. You were
 6 what?
 7 MR. HAYNES: I was interviewed by a cop, but
 8 I'm not sure what his name was.
 9 MR. MERINO: Okay. Well, just for the record,
 10 we're going to say it's Mark -- not Mark but it's Mr.
 11 Harmon, Officer Harmon, okay?
 12 MR. HAYNES: Yes.
 13 MR. MERINO: So, when he was interviewing you,
 14 do you know what questions, off the top of your head,
 15 came up that he asked if you'd had a sexual encounter
 16 with Richard Scott?
 17 MR. HAYNES: Yes, he did.
 18 MR. MERINO: And do you remember what your
 19 response was?
 20 MR. HAYNES: (Inaudible.)
 21 MR. MERINO: Pardon?
 22 MR. HAYNES: No.
 23 MR. MERINO: No, that you did not have a --
 24 MR. HAYNES: (Inaudible.)
 25 MR. MERINO: Okay. Just help me out here a

Page 24

1 little bit, Dustin, because you're on a speaker phone,
 2 it's kind of delaying your answer so I'm only getting
 3 half of it, okay? So, when you say no, I'm just getting
 4 the O part of it. So, if I sound redundant, that's why.
 5 So, did he ask you what your working
 6 relationship was with the Brisbees or with Connie DeFour
 7 or Ralph Landeros?
 8 MR. HAYNES: No. No, he didn't.
 9 MR. MERINO: Okay, did he get into that? What
 10 did he get into that sticks in the back of your mind? I
 11 mean, he must have focused on more about you and Scott,
 12 is that correct?
 13 MR. HAYNES: Correct.
 14 MR. MERINO: And was he asking questions in a
 15 way that he was open question, or was he putting the
 16 answers and asking you yes and no? You know, like did
 17 you have -- isn't it true you had a sexual relationship
 18 with Richard Scott? And then you would say yes or no.
 19 Or did he ask you, hey, tell me what your relationship
 20 was with Richard Scott, just kind of open. How did he
 21 go about it?
 22 MR. HAYNES: That one there.
 23 MR. MERINO: So, he was pretty loose and
 24 informal?
 25 MR. HAYNES: Yes.

Page 25

1 MR. MERINO: Okay. And can you remember what
 2 you said your relationship was with Richard Scott as far
 3 as was it working, was it a --
 4 MR. HAYNES: It just worked with him.
 5 MR. MERINO: You just worked with him?
 6 MR. HAYNES: Yes.
 7 MR. MERINO: Okay. And but he must have
 8 brought up that what -- that there was accusations from
 9 individuals out there saying that they eyewitnessed some
 10 sexual encounter with you and Richard Scott, is that
 11 correct?
 12 MR. HAYNES: No, that part never came --
 13 MR. MERINO: So, he never asked you anything
 14 about any sexual activity with Richard Scott?
 15 MR. HAYNES: No, he just asked me (inaudible).
 16 MR. MERINO: Try it again.
 17 MR. HAYNES: He asked me if I had sexual
 18 activity with --
 19 MR. MERINO: He asked if you had sexual
 20 activity with Richard Scott?
 21 MR. HAYNES: Right.
 22 MR. MERINO: And you answered?
 23 MR. HAYNES: No.
 24 MR. MERINO: And then he tried to -- so, how
 25 many times do you think he asked you that question?

1 MR. HAYNES: Two.
 2 MR. MERINO: How long was your interview?
 3 MR. HAYNES: (Inaudible.)
 4 MR. MERINO: Go ahead, try it again.
 5 MR. HAYNES: Like 20 minutes to a half hour.
 6 MR. MERINO: Okay. Did he ask you anything
 7 about Brisbees taking over the business?
 8 MR. HAYNES: No, he didn't.
 9 MR. MERINO: No, he did not, is that correct?
 10 MR. HAYNES: No, he did not.
 11 MR. MERINO: Okay. So, for 20 to 30 minutes
 12 he must have basically just talked to you about when you
 13 came from Idaho, and your relationship, with other
 14 people, is that correct?
 15 Again?
 16 MR. HAYNES: Correct.
 17 MR. MERINO: Okay. So, when you left that
 18 interview, did you feel that -- that it was pretty clear
 19 in your mind, as it should have been for the officers,
 20 that you were saying that you did not have a sexual
 21 relationship with Scott?
 22 MR. HAYNES: Correct.
 23 MR. MERINO: And that you did not have a
 24 sexual relationship with him when you were 15?
 25 MR. HAYNES: Correct.

1 MR. HAYNES: Which would have made me
 2 (inaudible) April (inaudible) 12th.
 3 MR. MERINO: Yeah. Well, you turned -- okay,
 4 but you came back in April, correct?
 5 MR. HAYNES: Correct.
 6 MR. MERINO: And your birthday is April 12th,
 7 correct? Isn't that correct?
 8 MR. HAYNES: Yes.
 9 MR. MERINO: So, when -- do you know what day
 10 you came back on? Were you 16 or were you 15?
 11 MR. HAYNES: (Inaudible.)
 12 MR. MERINO: Huh?
 13 MR. HAYNES: I don't remember what day I came
 14 back.
 15 MR. MERINO: Okay. So, what do you -- what do
 16 you believe the age to be?
 17 MR. HAYNES: (Inaudible.)
 18 MR. MERINO: You believe you were 16 at the
 19 time?
 20 MR. HAYNES: Yes.
 21 MR. MERINO: Okay. So, when all of this
 22 supposedly happened between you and Scott, you were 16
 23 years of age, if they -- I'm not saying it happened, but
 24 during the time element that these people around you and
 25 law enforcement was contacting you about this supposed

1 MR. MERINO: Okay. And that time in question
 2 that they were asking you this, you were 16 years of
 3 age, isn't that correct?
 4 MR. HAYNES: Correct.
 5 MR. MERINO: So --
 6 MR. HAYNES: Actually, (inaudible) 15 by April
 7 12th.
 8 MR. MERINO: Pardon?
 9 MR. HAYNES: That was back in March. I still
 10 would have been 15 on April (inaudible).
 11 MR. MERINO: You still would have been 15 on
 12 April 12th?
 13 MR. HAYNES: (Inaudible.)
 14 MR. MERINO: Yeah. Again, this phone, you're
 15 breaking up.
 16 Is this a portable phone that you're on?
 17 MR. HAYNES: No, it isn't.
 18 MR. MERINO: Okay. But when the officer
 19 interviewed you, were you 15 or 16 at the time?
 20 MR. HAYNES: (Inaudible.)
 21 MR. MERINO: You were 15 at the time.
 22 Okay, but I thought earlier you said when you
 23 came back from Idaho, you were 16?
 24 MR. HAYNES: I came back in March.
 25 MR. MERINO: Yeah.

1 incident, you would have been 16 had it been true,
 2 correct?
 3 MR. HAYNES: Yes.
 4 MR. MERINO: But it wasn't true, the only
 5 thing that was true is that you were 16 years of age,
 6 you came back from Idaho, and you had no sexual
 7 encounter with Richard Scott?
 8 MR. HAYNES: Correct.
 9 MR. MERINO: Okay. And did anybody try to
 10 tell you what to say or coach you for that interview
 11 prior to you being interviewed?
 12 MR. HAYNES: No.
 13 MR. MERINO: Didn't have any discussion with
 14 your mom or dad or Ralph Landeros or Connie DeFour?
 15 MR. HAYNES: None of them.
 16 MR. MERINO: Okay. All right. Let's see, I
 17 think we're getting pretty close to wrapping this up.
 18 Let's see, when you were being interviewed by
 19 Mr. -- by the law enforcement officer, was your mom
 20 present at the time?
 21 MR. HAYNES: No.
 22 MR. MERINO: So, it was just you and the
 23 officer?
 24 MR. HAYNES: Correct.
 25 MR. MERINO: Okay. Do you know, are you

1 familiar with Bailey's Saw Shop?
 2 MR. HAYNES: Yes, I am.
 3 MR. MERINO: And do you know anything about
 4 them as far as any involvement with Richard Scott's
 5 equipment?
 6 MR. HAYNES: I know Bailey's Saw (inaudible)
 7 equipment (inaudible) take them there to get them fixed
 8 and sharpened.
 9 MR. MERINO: Okay. So, you're breaking up.
 10 So, you're saying Scotty used him as a
 11 maintenance shop, and he had -- they'd sharpen his tools
 12 and whatever?
 13 MR. HAYNES: Correct.
 14 MR. MERINO: Okay. Were the Brisbees friends
 15 of -- excuse me, were the Baileys friends with Richard
 16 Scott, or is it just more of a business thing?
 17 MR. HAYNES: Business.
 18 MR. MERINO: Okay.
 19 MR. HAYNES: (Inaudible) equipment there
 20 (inaudible) pretty good (inaudible).
 21 MR. MERINO: Okay. Keep talking, because
 22 you're breaking up again.
 23 MR. HAYNES: He took (inaudible) there so
 24 often, they became (inaudible) first name.
 25 MR. MERINO: Okay. He was there so often,

1 MR. HAYNES: Correct.
 2 MR. MERINO: Okay. And did Brisbees ever
 3 contact you and try to use you as -- by trying to say
 4 that you were a 15 year old and that you were -- I mean,
 5 did anybody do anything to influence you at all to be
 6 part of this?
 7 MR. HAYNES: No.
 8 MR. MERINO: Okay. And so you emphatically
 9 deny that you were part of any of this, and your parents
 10 were any part of it, but you do know that some of these
 11 things did happen to Richard Scott after he was
 12 arrested?
 13 MR. HAYNES: Correct.
 14 MR. MERINO: Okay. And do you feel that
 15 Richard Scott is guilty of anything regarding you?
 16 MR. HAYNES: No, I don't think he is.
 17 MR. MERINO: And why do you think he's still
 18 incarcerated?
 19 MR. HAYNES: I have no idea.
 20 MR. MERINO: Okay. So, if Richard Scott were
 21 set free today, that would not be a problem with you?
 22 MR. HAYNES: No.
 23 MR. MERINO: Okay. Was he -- did he treat you
 24 pretty well? Were you guys friends?
 25 MR. HAYNES: Yeah, he treated me pretty well.

1 they knew each other by first name, correct, is that
 2 what you're saying?
 3 MR. HAYNES: Yes.
 4 MR. MERINO: Yeah. Again, I apologize, for
 5 some reason you're breaking up.
 6 Let's see, give me a second here.
 7 So, your parents had nothing to do with your
 8 interview with Mr. Harmon, no one influenced you during
 9 your conversation with Mr. Harmon, it was a one on one,
 10 correct?
 11 MR. HAYNES: Yes.
 12 MR. MERINO: Okay. And did you know of any
 13 kind of a plot or a plan for anyone, other than your --
 14 you know, anyone, including your parents, to make up
 15 allegations against Richard Scott in order to get him
 16 arrested so they could get his business?
 17 MR. HAYNES: No.
 18 MR. MERINO: Okay. No one ever told you that?
 19 MR. HAYNES: No.
 20 MR. MERINO: All right. And but it seems a
 21 little ironic that as soon as he was arrested, people
 22 started scrambling for his equipment, don't you think?
 23 MR. HAYNES: Yes.
 24 MR. MERINO: So, that would have been the
 25 Brisbees?

1 As long as I did the work that he had set out for me, he
 2 treated me pretty good.
 3 MR. MERINO: Okay. So, again, you don't feel
 4 that by him being released, that it would be any kind of
 5 an injustice?
 6 MR. HAYNES: No.
 7 MR. MERINO: And would you be comfortable with
 8 working with him again if that ever came up?
 9 MR. HAYNES: Yes, I would.
 10 MR. MERINO: Okay. And all right. Well, I
 11 think that's it, Dustin. I can't think of anything else
 12 to ask you, and I want to thank you for allowing me to
 13 do it again. I apologize to be a pain in your tail end,
 14 but this case with Mr. Scott is going to continue until
 15 we get all the facts, and sometimes the facts get a
 16 little convoluted. So, people that we think that are
 17 key witnesses, such as yourself, we find out new
 18 information, and then we have to come back and ask you
 19 and see if you know anything about that. And that's
 20 what this is about, so --
 21 MR. HAYNES: All right.
 22 MR. MERINO: Okay. Well, thank you very much.
 23 And the time now is 9:44, and that will end
 24 this tape recorded statement. Thank you.
 25 (Interview concluded.)

Supplemental for Case # 01-0146

I, Kimberly P. Figlar-Barnes, office clerk at the Long Beach Police Dept., was asked to transcribe the following taped-recorded interview for Officer Shaun Harman on May 26, 2001 at 0815. The recorded interview occurred on May 11, 2001 at 1227. The interview was with Johan Fernlund concerning Richard Scott (Scottie). Also present was Jim Miller representing CPS.

[Side A of tape]

Officer Harman: "Johan what do have to tell us about what you know about Richard Scott and Dustin Haynes?"

Johan Fernlund: "Scottie told me that him and Dustin were butt buddies."

Officer Harman: "What do you mean by butt buddies?"

Johan Fernlund: "They have sex five times a day."

Officer Harman: "What do you mean by sex?"

Johan Fernlund: "I know that Dustin sucked his dick and they had sex and all this other stuff. They were doing sixty-nines and stuff. They would switch the other way and then they both sucked each other's dicks."

Officer Harman: "Was that at about the same time ? Or one does it then the other does it?"

Johan Fernlund: "Yea. At the same time." *Tape recording malfunctioned after this statement and a portion of the recording could not be clearly understood.* "I assumed Scottie were on top of each other."

Officer Harman: "He was on top of Dustin?"

Johan Fernlund: "I don't know who was on top. I just knew two people were on top of each other."

Officer Harman: "Were they wearing clothes?"

Johan Fernlund: "No. They didn't have clothes on. I walked in and I seen um."

Officer Harman: "They had the covers on or they didn't?"

Johan Fernlund: "They didn't. And then the next morning I came over at seven o'clock in the morning to go to work and I seen um."

[Side B of tape]

Officer Harman: "This trip to Seattle you said about Dustin and his sex guy. About how long ago was that?"

Johan Fernlund: "I think it was about last month or the month before that."

Officer Harman: "How long were they gone?"

Johan Fernlund: "Just one day, two days I think. I don't know how long they were gone. I just heard that... *Voice becomes muffled and trails off.*" "Scottie asked me to go up there. And Scottie told me that... what happened and why he bought Dustin the cell phone."

Officer Harman: "Why did he buy the cell phone?"

Johan Fernlund: "Because Dustin had sex with Scottie and he sucked his dick and shit. Stuff like that."

Officer Harman: "Did Scottie say if he did that to Dustin?"

Johan Fernlund: "Scottie said Dustin did that to him."

Officer Harman: "Did he say how many times this went on or anything else about the trip?"

Johan Fernlund: "He just told me that they had sex a couple of times."

Officer Harman: "On the trip or at home?"

Johan Fernlund: "On the trip. And Scottie told me that they've had sex about forty times. And that Dustin wants to have sex with him like five times a day or something like that."

Officer Harman: "What does Scottie mean when he says they have sex?"

Johan Fernlund: "Butt fuck each other."

Officer Harman: "Does he say anything else? Say anything else about any other sex?"

Johan Fernlund: "Told me that Homer let Scottie jack him off."

Officer Harman: "Does he ever say if he does anything to Homer?"

Johan Fernlund: "Never told me."

Officer Harman: "He ever talk about oral sex or hand jobs with Dustin?"

Johan Fernlund: "Dustin gives him ...jacks him off." *Johan's voice is too low to clearly make out the next two phrases.*

Officer Harman: "Scottie talk about this pretty often with you?"

Johan Fernlund: "No, he's only talked about it a couple of times. Told him to shut up most of the time. Cause I didn't want to hear it. Wanted to ask him what was Dustin like cause I wanted to find out more about Dustin. Cause I didn't want to go visiting him, hang out with him and do anything to me. Scottie told me that him and Dustin did all this and I said alright."

Officer Harman: "That the first time he told you that he was having sex with Dustin?"

Johan Fernlund: "That's like the fifth time uhmm that was the last time he told me anything."

Officer Harman: "What does Scottie say when all this happened with Dustin?"

Johan Fernlund: "What was that again?"

Officer Harman: "When Scottie would talk to you about Dustin, how would he say it would happen or where?"

Johan Fernlund: "He just tellin' me they had that fucking all happened at his house and that he'd spend the night and shit."

Officer Harman: "Dustin spent the night?"

Johan Fernlund: "Dustin used to live there with him. Brought all his clothes over there and put his computer upstairs and stuff. That's why I say Dustin's gay."

Officer Harman: "Was that last year or this year Dustin was living with him?"

Johan Fernlund: "This year."

Officer Harman: "This year."

Johan Fernlund: "Just a while back."

Officer Harman: "Can you think of anything else about Dustin or Homer or anyone else?"

Johan Fernlund: "Never told me about anybody except for Dustin and Homer. I don't know."

Officer Harman: "Do you agree to this tape recording Johan?"

Johan Fernlund: "Umhum...yes."

Officer Harman: "It's 1238."

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

Clerk: K. Figlar-Barnes. Date: 05-26-01. Place: Long Beach Police Station, Long Beach, WA.

Clerk Signature:  _____

Long Beach Arrestee Information and Probable Cause Sheet

Case Number: 01-0146 Felony (x) Misd. () Citation Issued: Yes () No ()
Offense Date: 4/00 - 4/12/01 Time of Arrest 1825 Time of Booking: _____

Arrestee Identification

Name: Scott, Richard Roy DOB: 6/11/47
AKA: Scotty SSN#: 537-44-3644
Address: 804 S. Oregon Phone #: 360-642-7201
Long Beach, WA 98631

Charges

1. Rape 1st Degree / RCW 9A.44.040
2. Rape of a Child 3rd Degree / RCW 9A.44.079
- 3.

Location of Incident

804 S. Oregon Street
Long Beach, WA 98631

PACIFIC COUNTY PROSECUTOR
RECEIVED
01 MAY 22 AM 8:19

Probable Cause Statement

Dustin Haynes states that since approx 4/00 until recently, Richard Scott has been having anal, oral, and digital sex with him. Dustin Haynes turned 16 years old on 4/12/01. Scott is a 54-year-old male. Scott is also a Level 2 registered sex offender. Dustin stated that one time, Scott pointed to a rifle and demanded sex from Dustin. The rifle was not pointed at Dustin but he felt that if he didn't perform sex with Scott, he would be shot. Dustin stated that in the past 5-6 months, he has engaged in sexual activity approx 100 times.

Connie Dufour states that at the end of 2/01 or the beginning of 3/01, she and Johan Fernlund entered Richard Scott's residence and observed him engaging in anal sex with Dustin Haynes. At the time of the observation, Haynes was 14 years of age. Haynes birthday is April 12th. Dufour states that she observed Haynes wearing only a T-shirt. Haynes was bent over a bed. Scott was standing behind Haynes. Scott was wearing only a robe. The robe was open and Dufour observed that Scott was wearing no clothes under the robe. Dufour saw that Scott's penis was between Haynes' bottom cheeks. When Scott observed that Dufour and Fernlund were in the residence, he yelled at them to "get the hell out".

Dufour told Susan Brisby about the incident on an unk date. Susan Brisby reported the incident to the Ilwaco High School vice-principal, Todd Carper, on 5/7/01 at an unk time. Brisby initially stated that the juvenile male Dufour saw with Scott was Daniel Haynes. On 5/8/01 at approx 0815 hrs, Carper advised the school counselor, Carolyn Yellowhawk, of the report from Brisby. Yellowhawk contacted Brisby and was advised that Dufour had told her about the incident. Yellowhawk contacted Dufour. Dufour told Yellowhawk that she had observed Scott sodomizing Daniel Haynes. Yellowhawk asked Dufour if she had seen if Scott was penetrating Daniel's rectum and Dufour said that she had.

Yellowhawk advised the LBPB at approx 1320 hrs on 5/8/01. Yellowhawk came to the LBPB station and spoke with Sgt Wright and myself at approx 1500 hrs.

A signed statement was taken from Yellowhawk. Sgt Wright contacted Dufour and made arrangements for Dufour to come to the LBPB station on 5/9/01 for an interview.

On 5/9/01 in the morning hours, Dufour came to the LBPB station. Sgt Wright interviewed her and she agreed to write a statement concerning what she had observed at Scott's residence. As Dufour was writing her statement, I asked her if the juvenile she had seen with Scott was Daniel or Dustin Haynes. I have observed Dustin with Scott on numerous occasions. I described both Daniel and Dustin to Dufour and she stated that it was Dustin that she saw with Scott.

In a signed statement, Dufour says that near the end of February 2001 or the beginning of March 2001, she and Johan Fernlund went to Scott's residence. They went in the residence without knocking. Fernlund has stayed with Scott on various occasions and has worked for him. They went to the small room to the west of the front room. Dufour observed Scott standing near the bed with no pants on and his penis was visible inside of Dustin Haynes' rectum. Dustin was lying on a bed with his face toward the window, away from Scott. Dufour also stated that she has been told by Fernlund that Scott has asked for Dustin and himself to drive with him to a hot tub to swim and have sex.

I asked Dufour why she hadn't informed law enforcement about the incident prior. Dufour stated that she told her father about the incident and he told her to not become involved. Dufour left the area shortly thereafter for approx nine (9) weeks for medical treatment.

On 5/10/01 at approx 1300 hrs, Sgt Wright went to the Haynes residence in Seaview. Sgt Wright asked Dustin to come with him and Dustin complied. Sgt Wright drove Dustin to the CPS office in Long Beach. I had previously scheduled for an interview between Dustin and James Miller, CPS, at 1300 hrs.

At approx 1318 hrs, Dustin was brought into an interview room at the CPS facility. The room has a 2-way mirror and a microphone in it. I was in the adjoining room watching the interview and listening to the interview. The interview was begun at 1319 hrs. Miller conducted the interview.

During the course of the interview, Miller asked Dustin about his relationship with Scott. Dustin stated that he works for Scott and has stayed at Scott's house for the night on a couple of occasions. Dustin told Miller that he has observed Scott watching homosexual pornographic pictures on Scott's Internet connection. Dustin also stated that Scott had "tried putting the moves on me" in Scott's truck. Dustin explained that he would ride in Scott's truck with him to job sites for Scott's landscape business. Scott would place his hand next to Dustin and would begin to move over on the bench seat closer to Dustin. Dustin stated that Scott almost drove off the road a few times trying to touch him. Dustin also stated that he had stayed at Scott's house a couple of times in the upstairs bedroom. He then stated that once he slept on the couch and "I think he played with me". Miller asked Dustin to elaborate. Dustin stated that while he was sleeping, he felt something moving up his leg. When he woke up, he saw Scott rapidly going back to his bedroom. Miller told Dustin that a witness had come forth about seeing Dustin engaged in a sexual act with Scott and asked whom that person could be. Dustin hesitated and the said his brother, Daniel. Dustin further stated that Scott had grabbed him between the legs. Miller asked him to elaborate and Dustin stated that Scott had grabbed his "nuts and stuff". Dustin also stated that Scott had tried to offer him money. Miller asked him what Scott said and he replied that Scott said "I'll give you 40 if you get down and suck my dick." Miller asked about Dustin earning money working for Scott and asked if he had received money for sex from Scott. Dustin replied by saying "most of the money I make is from mowing yards". Dustin later stated that Scott walks around his residence in a robe, after work. He does not close robe when Dustin comes over to the house. Miller asked Dustin if he saw Scott's penis and genitals at these times and Dustin stated that he did. Miller asked Dustin if he thought that not closing the robe was an accident and Dustin stated that he didn't think so. Dustin said that almost every time he goes to Scott's house, Scott is wearing the open robe with no clothes underneath and exposing his genitals. Miller asked about any pictures in Scott's residence about juvenile boys engaged in sexual acts. Dustin stated that Scott receives pictures over the Internet displaying juvenile boys engaged in sex acts. Dustin said that there are a lot of pictures and they are small. Scott opens the small pictures and enlarges them for viewing. Miller asked Dustin what the pictures showed. Dustin said that the pictures were of boys engaging in sex with

men and with other boys. Dustin also told Miller that he had observed Scott putting his name and other juvenile males names into chat rooms for other pedophiles. Miller said to Dustin, "It sounds like he is pimping you out" and Dustin responded by saying "I think so". Dustin continued the conversation about Scott receiving pornographic pictures through e-mail and responding to persons in Internet chat rooms about pornography. Miller asked about pictures taken of him by Scott and Dustin said that Scott didn't have a camera. Dustin further stated that Scott "did stuff with us". Miller asked about weapons being used to force him into sex. Dustin stated that Scott had an old war rifle in a corner of his residence. Dustin stated that Scott had never used a weapon to force Dustin to have sex with him. Dustin stated that Scott had once held him down and was "trying to fuck me". Miller asked him to elaborate and Dustin stated that Scott held him down and pulled his pants down. Dustin wouldn't elaborate further. Dustin did state that he thought that Scott had done "stuff with him" while he was sleeping. Dustin stated that at times while sleeping, he would feel parts moving. Miller had earlier told Dustin that it was going to take a juvenile with a lot of courage to come forth and tell what was happening with Scott. Miller re-stated this and told Dustin that he thought that Dustin had a lot of courage. Dustin visibly relaxed in his chair and stated "yes, he made me have sex with him." Miller asked what he meant and Dustin stated that Scott had Dustin "suck his dick" and that Scott "made me fuck him and jack him off". Dustin also stated that Scott tries to have sex with him while he is sleeping upstairs. Miller asked Dustin how many times he had had sex with Scott. Dustin stated "every time" he stayed the night. Miller asked how long this has been occurring and Dustin stated since he came back from Montana approx 5-6 months ago. Miller asked him how often he spent the night at Scott's house and he stated that he stayed at Scott's house approx every 1 day out of three. Miller asked Dustin what happened when he went to Scott's house. Dustin said that he would go to Scott's house in the evening. When he got to Scott's residence, Scott was on the computer. Dustin would go upstairs. He would take a bowl of cereal with him. Scott would eventually come upstairs. Scott would sit near Dustin and reach over to him. Scott would begin to fondle him. Dustin stated that he did not tell his mother because he was scared. Dustin was asked how many times over the past 5-6 months he had had sex with Scott. Dustin stated that if you added all the days up it would come to about 100 or such days that he had sex with Scott. Miller asked Dustin if the same thing happened each time. Dustin said that it was the same each time. Miller asked Dustin if he had performed anal sex upon Scott and Dustin replied "Uh, huh". Miller asked if Scott had performed anal sex upon him and Dustin replied "Uh, huh". Miller asked if Scott had forced him to have sex. Dustin stated that Scott would grab him and hold him down every once in a while. Dustin stated that there was an assault rifle in the corner and he would look at it. Miller asked if Scott used weapons and Dustin stated that Scott would threaten him "every once in a while". Dustin said that Scott had once threatened him with a tire iron. Dustin said that Scott, at times, had vegetables, such as a cucumber, small soap, and knife handles. Scott would show these items to Dustin and say, "You know what this would be good for". Miller asked if Scott had ever given him money for sex and Dustin stated that he hadn't. Dustin further stated that Scott had, at an unk time, grabbed a stick and said to Dustin "I'll stick it up your ass". Miller asked Dustin if he felt better about talking about the incidents with Scott and Dustin replied that he was glad he got it out and that he felt a little better now. This portion of the interview was concluded at approx 1429 hrs.

Miller spoke with me briefly in the hall. I asked him to ask Dustin if he would be willing to talk with the prosecutor's office and cooperate with prosecuting Scott. We also discussed bringing me into the room to talk with Dustin.

Miller re-contacted Dustin at approx 1433 hrs. Miller asked Dustin if he would be willing to meet with the prosecutors and he stated that he would. A few minutes later, Miller excused himself and then brought me into the room.

During my conversation with Dustin, he stated that the sexual contact between him and Scott has been ongoing since approx April of 2000. Dustin said that it started an unk time shortly after his 15th birthday. The sexual contact stopped only during a period when Dustin was out of the area in Oregon and Montana. The sexual contact resumed when Dustin and his family moved back to the Long Beach area approx 5-6 months ago. I asked Dustin about weapons being used against him to force him into having sex. I was told about the assault rifle. Dustin did not say that the rifle was pointed at him. I asked about the first times that Dustin had sexual contact with Scott. Dustin said that Scott pointed at the rifle and said that if he didn't have sex with him and left the comment open. I asked Dustin if he had felt that if hadn't had sex with Scott at that time, then Scott would have used the rifle on him and shoot him. Dustin said yes.

At approx 1520 hrs, the interview was ended. At 1525 hrs, I began transporting Dustin to his residence in Seaview. We arrived at 1532 hrs. As I was leaving Marsha Haynes, Dustin's mother, arrived. Dustin and myself advised her of the interview and the revelations.

On 5/10/01 at 1717 hrs, Scott was located at his residence. I asked him if would be willing to come to the LBPD station to talk with me. Scott stated that he was willing. At 1718 hrs, I transported him to the LBPD station. He was brought into the station and into the interview room. At 1725 hrs, I began to advise him of his Miranda Warnings. After each individual warning, I asked Scott if he understood the warning and he stated that he did after each warning. At 1728 hrs, Scott signed the waiver of rights and agreed to an interview.

During the interview, I asked Scott why a person would be attracted to young boys for sexual activity. Scott replied that a lot of people have an attraction to young persons but most don't act upon it. Scott stated that kids are sexual creatures and are very curious. He also stated that a person might have had a childhood sexual experience and they are trying to repeat it. I asked Scott if he had thought about having sex with a juvenile, whether or not he had actually gone through with it. Scott stated that he was not sexual anymore. He said that he did not have sexual thoughts because of a bad prior experience. I asked him what type of punishment he would give to a person convicted of being a pedophile and he stated "therapy in a controlled environment". Scott stated that therapy was the only way to stop a person from engaging in pedophile activity. He said that confinement doesn't work for most people. He further stated that he was the only sex offender that he knew of that had never re-offended after a conviction. Earlier I had asked Scott about his business and the juvenile boys being around him. Scott stated that he had his landscape maintenance company and that he employed the juvenile boys because he liked children and he wanted to make them better persons. I asked how he made children into better persons. Scott stated that he would reward or punish the children depending upon their behavior. Scott also stated that he tried to set a good example for the kids he was with by not smoking, drinking alcoholic beverages, doing drugs and by listening to them.

Scott was asked about engaging in sexual activity with juveniles and he refused to respond. When I confronted him about the investigation showed that he was engaging in sexual activity with juveniles, Scott listened to me nodding his head indicating a positive response. I asked Scott if he wanted to talk with me why he had begun to engage in these activities, he paused and asked what activity. I told him that I wanted to discuss why he was having sex with the juveniles. Scott leaned back and stated that he wasn't doing such things.

Scott was advised that he was under arrest at approx 1825 hrs. He was transported to Pacific County Jail in South Bend by Ofc Ostrander. Prior to the transport, I asked Scott if he needed his house locked while he was in jail. Scott replied that he needed his glasses from his house. I told him that we would get them on the way to jail. At 1833 hrs, Ofc Ostrander, Scott, and myself stopped at Scott's house. Scott showed me the key for the front door lock. I went into the residence and retrieved his eyeglasses from next to the WebTV monitor. The door was locked when I left and the glasses and keys were returned to Scott's property.

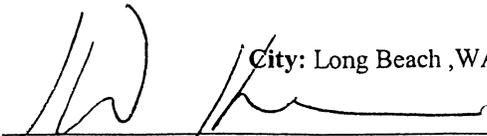
Scott was booked and incarcerated on the listed charges.

The facts of the alleged criminal activity took place in Pacific County, WA.

I certify under penalty of perjury under the Laws of the State of Washington that the foregoing statement(s) of Probable Cause are true and correct.

Date: 5/10/01

City: Long Beach, WA

Arresting Officer Signature: 

Officer Printed Name: S.W. Harman

Number: 303

Agency: Long Beach Police Department

1 held their hand. But I won't say they never said thank
2 you with a hug, you know. I mean, I can't -- I might
3 go like this, but.

4 I was my opinion that even touching, for them in
5 my house, couldn't say that I -- touching was even --
6 I just really got, I got all paranoid about going back
7 to prison.

8 Q. What if they initiated the touching, if they reached
9 over and grabbed your hand?

10 A. I'd probably move away. I had, I was scared to death
11 to go back to prison. It was like the biggest fear on
12 my life to have that happen.

13 Q. Now, you eventually certainly had -- you acknowledge
14 you had sexual contact with Dustin?

15 A. Dustin, when he rented the room he was 18. And I won't
16 say I had sex with Dustin. No, I will not admit that.

17 Q. Did you have sex with Dustin?

18 A. Ask if Dustin had sex with me, because I didn't have
19 sex. I didn't have an orgasm.

20 Q. Did Dustin have sex with you?

21 A. Yeah, three times.

22 Q. Did he have anal sex with you?

23 A. No.

24 Q. Did you -- what type of sex did he have with you?

25 A. His sex was his sex. I mean, he, I would say -- how do

1 I put this? We're all adults here.

2 Q. Uh-huh.

3 MR. McDONALD: This is being recorded.

4 A. This is being recorded, but we're all adults. So it's
5 embarrassing even to -- I have never been comfortable
6 talking about sex. But I'll say I laid on the bed and
7 I had an erection, and he sat on top of me. And that
8 was, let's say in a woman's fashion. Okay.

9 So he had sex. And he probably had a hell of a
10 good time, but I didn't get a thing out of at. I mean,
11 literally.

12 I think I made the comment, and you have it, I
13 said he was no good. What I meant was, you know,
14 Dustin wanted to have his sex. It wasn't about me
15 feeling good.

16 Q. Where did you place your penis?

17 A. In his butt.

18 Q. Okay.

19 A. Yeah. He sat on it. I said that.

20 Q. When that woman walked in --

21 A. That never happened, sir.

22 Q. That never happened where she walked in?

23 A. Never happened, sir. In fact, the cops didn't even ask
24 Yohann about it. Because she said that Yohann, Yohann
25 was with her. And they never asked her because it just

1 PARDEE: 'Kay and how was he to work for; was he . . . was he fair?
2 FERNLUND: Yeah he was cool, he never . . . he never jewed you on money. He always
3 actually gave yeah extra if you needed or something you know if you
4 needed money you'd go ask him he'd give it to yeah. You know and like I
5 think we took advantage of him cause . . . I don't know, we just . . . all of
6 us guys thought that it would be cool. We'd always steal from him and
7 shit (unintelligible).
8 PARDEE: Uh, huh.
9 FERNLUND: Just fuck with him cause after we found out he was . . . he liked boys,
10 we're like what the fuck you know and then we just hated him and ripped
11 him off and . . .
12 PARDEE: How did you find out he liked boys?
13 FERNLUND: Uh from the cops. They told . . .
14 PARDEE: 'Kay.
15 FERNLUND: us. I . . . I . . .
16 PARDEE: Did you have an id . . .
17 FERNLUND: My Mom told me that one of the cops told her that he's a chimo so . . .
18 PARDEE: Chimo?
19 FERNLUND: Yeah.
20 PARDEE: You have to explain.
21 FERNLUND: Child molester.
22 PARDEE: Okay.
23 FERNLUND: Yeah like . . . so I don't know.

TRANSCRIPT OF JOHAN FERNLUND
INTERVIEW - 5
0609-073

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

RRS008941

APPENDIX 'F'

1 PARDEE: Uh cause we talked some with Mom uh a couple days ago and
2 (unintelligible) kind a hard to understand you on the cell phone obviously
3 (unintelligible).
4 FERNLUND: Yeah.
5 PARDEE: I mean cell phones are cell phones, um I was tryin' to understand from you
6 if what you were telling me was the information you told the police was a
7 lie or you don't remember the incident and I don't . . . I need to understand
8 that a little bit better from yeah.
9 FERNLUND: Well I think what happened was that everybody told me what happened
10 and (unintelligible) just said what everybody else was sayin' and like went
11 in there essentially said the same thing so.
12 PARDEE: 'Kay so you went ahead and just repeated things that you had heard?
13 FERNLUND: Pretty much.
14 PARDEE: 'Kay. Did you ever walk in or at any time see Scotty with any kids?
15 FERNLUND: No.
16 PARDEE: 'Kay.
17 FERNLUND: (Unintelligible) . . . we'd be in there, but he never . . . no.
18 PARDEE: You don't remember any sexual . . .
19 FERNLUND: Uh, uh.
20 PARDEE: activity between them, any kind of conversations about encounters
21 (unintelligible) . . .
22 FERNLUND: Well Scotty . . . Scotty would always talk queer you know he'd like . . .
23 PARDEE: What do you mean by that?

1 FERNLUND: We just all . . .

2 PARDEE: Would it . . .

3 FERNLUND: were like, we'll fuckin' . . .

4 PARDEE: would it surprise you if Mister Scott has confessed to having sexual
5 encounters with some of the boys that you're talking about? Would that
6 surprise you?

7 FERNLUND: I don't know, (unintelligible) yeah. I mean . . . I don't know either . . .

8 PARDEE: I mean . . .

9 FERNLUND: that or . . .

10 PARDEE: you were the one that . . .

11 FERNLUND: (unintelligible) yeah.

12 PARDEE: you were there Johan, I mean you were there and you were hearing the
13 stories that were going around and stuff when you were talking about you
14 were repeating just the things that you had heard.

15 FERNLUND: Uh, huh.

16 PARDEE: 'Kay. What things were going around; what were people talkin'? Other
17 than he was a . . .

18 FERNLUND: They was just . . .

19 PARDEE: (unintelligible)?

20 FERNLUND: they were just talkin' that . . . well at first everybody was sayin' that him
21 and Dustin were doing things and like have sex and shit, I was like no
22 dude I don't believe it . . . I don't believe it. And then everybody said that
23 Scotty'd (sic) make him so, everybody was like just go with it you know.

TRANSCRIPT OF JOHAN FERNLUND
INTERVIEW - 11
0609-073

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

RRS008947

1 PARDEE: Uh, huh.

2 FERNLUND: Like all of us were like all right since he's a queer you know, do whatever.

3 So I guess we all just like . . . I don't know kind a put together to get him

4 locked up.

5 PARDEE: 'Kay.

6 FERNLUND: Maybe.

7 PARDEE: Cause . . . I mean and obviously Dustin was a little kid.

8 FERNLUND: Yeah Dustin was like seventeen probably or . . .

9 PARDEE: That probably . . .

10 FERNLUND: sixteen.

11 PARDEE: would've embarrassed him.

12 FERNLUND: Yeah probably, but . . .

13 PARDEE: He was actually younger than that.

14 FERNLUND: if he . . . well he was the oldest out of us all.

15 PARDEE: Okay.

16 FERNLUND: He was the oldest one so um I don't know. I just . . .

17 PARDEE: 'Kay. Um so other than the rumors that were going around about him and

18 Dustin, were there any rumors about him and any other kids?

19 FERNLUND: Well of course there was rumors, but none of it was true you know.

20 Everybody was like, no dude, it didn't . . .

21 PARDEE: Well that . . .

22 FERNLUND: happen.

23 PARDEE: you know it wasn't true.

TRANSCRIPT OF JOHAN FERNLUND
INTERVIEW - 12
0609-073

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

RRS008948

1 FERNLUND: you know when he was young and he just . . . all kinds of like
2 (unintelligible).
3 PARDEE: Did he ever make any comments about wanting to see you naked or uh
4 comments about your body parts (unintelligible) . . .
5 FERNLUND: No.
6 PARDEE: something like that?
7 FERNLUND: No.
8 PARDEE: 'Kay. Did he ever touch you (unintelligible)?
9 FERNLUND: (Unintelligible).
10 PARDEE: (Unintelligible).
11 FERNLUND: Yeah probably.
12 PARDEE: 'Kay.
13 FERNLUND: I don't really remember, but . . . probably, but never sexual like . . . never
14 smacked somebody's butt . . .
15 PARDEE: But . . .
16 FERNLUND: or nothing like that . . .
17 PARDEE: (unintelligible).
18 FERNLUND: you know.
19 PARDEE: Not sexual though just . . .
20 FERNLUND: Not groping you, but yeah it wasn't sexual to me, you know just a pat on a
21 shoulder or somethin', but . . .
22 PARDEE: Okay. Um . . . all right let's talk about your statement that you gave to
23 Long Beach Police (unintelligible) . . . document I have here. I'm gonna

TRANSCRIPT OF JOHAN FERNLUND
INTERVIEW - 21
0609-073

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

RRS008957

1 (unintelligible) while you take a look at it. You told me the other day you
2 didn't recall giving this statement. Do you remember talkin' to the officer?
3 It was on May eleventh, two thousand and one, looks like about twelve-
4 thirty in the afternoon?
5 FERNLUND: I don't really uh (unintelligible) . . .
6 PARDEE: And Jim Miller a representative from Child Protective Services were
7 there?
8 FERNLUND: I think I remember bein' there like just a couple of flashbacks, but I don't
9 remember . . .
10 PARDEE: You don't remember your statement?
11 FERNLUND: I don't remember nothin' I said or nothin'.
12 PARDEE: Okay.
13 FERNLUND: (Unintelligible).
14 PARDEE: To the best of your recollection, uh what you told him that day was just
15 rumors that you had heard?
16 FERNLUND: Pretty much.
17 PARDEE: Okay . . . okay. All right and this is Mister Farr's statement, um the
18 investigator for Mister Scott. And in here there's a couple of quotes that
19 he gives, reference you um that took place during a phone conversation.
20 You said, he left Long Beach and he received a message from you and
21 then you guys talked on Sunday June twenty-fifth, at ten-thirty.
22 FERNLUND: Uh, huh.
23

1 PARDEE: He stated you worked . . . you said you worked for Scotty for nearly a year
2 and thought he'd stopped working for him like two weeks or so prior to
3 Scotty's arrest, do you remember this conversation with Mister Farr?
4 FERNLUND: A little bit, yeah. I just . . . had . . . out partyin' that day so.
5 PARDEE: 'Kay. Asked him what his reaction to Scotty's arrest was, he stated that
6 you were . . . you said you were surprised. I mean I knew the guy was
7 gay, but I (unintelligible) surprised at him being arrested. Do you
8 remember that statement to him?
9 FERNLUND: Yeah.
10 PARDEE: 'Kay. Uh you asked . . . he asked you uh, (unintelligible) about giving
11 your statement to Shawn Harmon the officer, and you said you did; said
12 you remembered it. Asked him if it was . . . what he said during the taped
13 session was true, and you said no it was not. I fuckin' said what the . . .
14 that stuff because all the other kids were sayin' it. He says he asked you,
15 in other words, you did not ever see Scotty engaged in sex with Dustin
16 Haynes. No. He asked if you'd ever observed Scotty engaged in any kind
17 a sex act with anyone during the period (unintelligible) and you again said
18 no. Do you remember having that conversation with him and saying those
19 things? Cause he's quoting you as exactly . . .
20 FERNLUND: Yeah.
21 PARDEE: that's exactly what he said. Is that what you told him?
22 FERNLUND: Probably. Well . . .
23 PARDEE: Probably . . .

TRANSCRIPT OF JOHAN FERNLUND
INTERVIEW - 23
0609-073

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

RRS008959

1 FERNLUND: that's what . . . it looks like it.
2 PARDEE: That's what he said . . .
3 FERNLUND: I mean yeah that's . . .
4 PARDEE: (unintelligible) . . .
5 FERNLUND: Yeah, I . . .
6 PARDEE: 'Kay.
7 FERNLUND: said it.
8 PARDEE: Do you know . . . know a Connie (Unintelligible)?
9 FERNLUND: Yeah I mean I could, but I don't remember that. I don't remember that.
10 PARDEE: You don't remember her?
11 FERNLUND: Uh, uh. I think . . . not really.
12 PARDEE: (Unintelligible) . . .
13 FERNLUND: I just can't picture if I seen a picture of her face, I'd remember cause
14 (unintelligible) . . .
15 PARDEE: Uh, huh.
16 FERNLUND: But . . .
17 PARDEE: Well I don't have a picture of her.
18 FERNLUND: I'm not good with names at all.
19 PARDEE: (Unintelligible).
20 FERNLUND: It sounds like it would. Bonnie.
21 PARDEE: Connie.
22 FERNLUND: Connie.
23

1 PARDEE: Connie (Unintelligible) her statement here too. See cause she talked to the
2 police and said that you . . . you guys are all . . . it sounds like you guys
3 were all talkin' to the police together or relatively same . . . close in time
4 you know . . . same period of time. Let's see here, it says end of February
5 or March two thousand one, she walked into Scotty's house on Wash
6 Avenue . . .
7 FERNLUND: Washington.
8 PARDEE: Maybe it's abbreviated from Washington.
9 FERNLUND: Yeah.
10 PARDEE: Front door, right into his living room, bedroom so Scotty standing near a
11 bed with no pants on underpant . . . no . . . or underpants, penis of Scotty
12 was inside Dustin. Which . . . well he was lying on the bed towards the
13 window. Dustin was only wearing a t-shirt, Scotty was wearing a
14 housecoat, no underclothes. She confronted Dustin's Mother about it.
15 FERNLUND: (Unintelligible).
16 PARDEE: So you don't remember walking in and seeing that?
17 FERNLUND: (Unintelligible) walk in and see that.
18 PARDEE: Johan has also said Scotty (unintelligible) swim with him and have sex.
19 FERNLUND: I don't even remember that.
20 PARDEE: You don't remember it or it didn't happen? See those are different things.
21 FERNLUND: (Unintelligible).
22 PARDEE: All right. It's kind of important what you think. I mean I know it's a long
23 time ago and I mean I know a lot of things that you know have transpired

08 OCT 29 AM 11:45

STATE OF WASHINGTON
BY cm
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

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

STATE OF WASHINGTON,)
)
 Respondent.)
)
 vs.)
)
 RICHARD ROY SCOTT,)
)
 Petitioner.)
 _____)

NO 36846-3-II
AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
) ss.
COUNTY OF PACIFIC)

DAVID J. BURKE, being first duly sworn on oath, deposes and says:

I am the Prosecuting Attorney for Pacific County, Washington.

That on 10/28, 2008, I mailed two copies of the State's Brief of Respondent to DANA M. LIND, Attorney for Appellant at the following address:

Dana M. Lind
Nielsen, Broman & Koch, PLLC
1908 East Madison
Seattle, WA 98122

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

David J. Burke
DAVID J. BURKE

SUBSCRIBED & SWORN to before me this 28th day of
October, 2008.

Jackie Tompkins
NOTARY PUBLIC in and for the State
of Washington, residing at:
Raymond

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362