

No. **37229-1**

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

IN RE THE MATTER OF THE
PERSONAL RESTRAINT OF CLYDE RAY SPENCER

Appeal from the Superior Court of the State of Washington
for Clark County
Clark Co. Superior Court Cause No. 85-1-00007-2

PERSONAL RESTRAINT PETITION
and
OPENING BRIEF

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I. Status of Petitioner

The petitioner, Clyde Ray Spencer, is under Department of Correction's supervision pursuant to an order of conditional commutation of Clyde Ray Spencer entered by the Honorable State Governor Gary Locke on December 23, 2004. Petitioner remains under the supervision of Department of Corrections with numerous conditions he is required to follow. In addition, he is required to register as convicted sex offender.

Petitioner was convicted in Clark County Superior Court to seven counts of statutory rape in the first degree and four counts of complicity to statutory rape in the first degree. He was sentenced by the Honorable Clark County Superior Court Judge Lodge to a term of two life sentences to run consecutively plus a consecutive 170 month term of imprisonment. Following an appeal, his sentence was restructured to a term of life imprisonment to be followed by a consecutive 170 month term of imprisonment. Ex. 1

II. Grounds for Relief

1) Petitioner should have his conviction vacated because newly discovered evidence based upon the sworn statements of two of the alleged victims undermines the validity of his Alford guilty plea.

2) Petitioner should have his conviction vacated because the state withheld exculpatory evidence of physical examinations that had been

conducted on the alleged victims which were inconsistent with the allegations which formed the basis of the charges against him.

A) Procedural Background

On May 16, 1985, Clyde Ray Spencer, who was at the time a City of Vancouver policeman, entered Alford pleas of guilty before the Clark County Superior Court to seven counts of statutory rape in the first degree and four counts of complicity to statutory rape in the first degree. Ex. 2 The alleged victims included Mr. Spencer's son, Matt, his daughter, Kathryn, and his step-son, Matt Hanson. On May 23, 1985, Mr. Spencer was sentenced to two life terms to run consecutively, plus a consecutive 170 month term of imprisonment.

Following sentencing, Mr. Spencer retained new counsel and moved for the trial court to vacate his guilty pleas raising several issues concerning the validity of his guilty pleas, including his claim that his plea was coerced by a police detective, that he was incompetent to enter a guilty plea as a result of prescription medication and that the state withheld Brady evidence thereby making his plea unknowing. The motion to vacate the guilty pleas was denied. Mr. Spencer then filed a personal restraint petition in the Washington State Court of Appeals and petitioned for review of the Washington State Supreme Court, both of which were denied. Subsequently, Mr. Spencer filed

a petition for writ of habeas corpus in the United States District Court for the Western District of Washington after being denied in the district court the Ninth Circuit remanded for a hearing. Ex. 12 An evidentiary hearing was held and his petition was denied. Mr. Spencer then filed an appeal with the United States Court of Appeals for the Ninth Circuit. Denial of his habeas petition was upheld.

Subsequently, on December 23, 2004, after having served over nearly 20 years in prison, the Honorable Gary Locke, the Governor of the State of Washington, issued a conditional commutation of Mr. Spencer's sentence, ordering his immediate release and placing him on three years of supervision.

Since release from prison, new evidence has been discovered not previously known or available demonstrating Mr. Spencer's innocence.

B. Facts Underlying the Criminal Charges

The defendant, Clyde Ray Spencer, was divorced from his former wife, Deanne Spencer, who was the mother of Mr. Spencer's children, Kathryn Spencer and Matthew Spencer. Deanne Spencer resided with Kathryn and Matthew in Sacramento. Clyde Ray Spencer resided in Vancouver, Washington and worked as a City of Vancouver police officer.

During the summer of 1984, Kathryn Spencer visited her father for six weeks. During the visitation, while Mr. Spencer was out of town at a police conference, his daughter, Kathryn, displayed inappropriate sexual behavior toward his current wife, Shirley Spencer. When questioned about her actions, Kathryn named several people with whom she claimed to have engaged in sexual activities. She named her mother, Deanne, her brother, Matt, a friend, Karen Stone, and the defendant. Upon Mr. Spencer's return, his wife Shirley told him about Kathryn's statements. Mr. Spencer immediately reported the incident to Child Protective Services in Vancouver, Washington and to Child Protective Services in Sacramento, California where the children had returned to their mother, as well as to the Clark County Sheriff, and his employer, the Vancouver Police Department.

Mr. Spencer was later contacted by Detective Flood of the Sacramento Police Department and cooperated with the investigation and related his suspicions concerning possible abuse to his daughter. The Sacramento Police then interviewed his daughter, Kathryn, and son, Matt, in Sacramento. Matthew Spencer denied any inappropriate behavior on the part of his mother or father. Kathryn, on the other hand, admitted to Detective Flood that she told Shirley Spencer the story about sexual

contact. However, her answers to Detective Flood's specific questions regarding sexual incidents with her mother or father were inconclusive. She simply said that her mother had touched her and then said it was only to apply medication. She also said her father had touched her, then said that only her mother had done so in applying medication.

During October of 1984, the Clark County Sheriff's Office commenced an investigation against Mr. Spencer. Detective Sharon Krause, the sex crime specialist from the Sheriff's Office, traveled to Sacramento to interview both Kathryn Spencer and Matt Spencer. No one else was present during these interviews. Detective Krause interviewed Kathryn Spencer on three consecutive days. After spending several hours with Kathryn Spencer over the course of these three days, Detective Krause focused her investigation specifically and exclusively upon Mr. Spencer. She also questioned Matthew Spencer for several hours.

Upon her return to the State of Washington, in order to avoid any perceived conflict of interest in Clark County, Detective Krause submitted the case reports to Rebecca Roe, Senior Deputy Prosecuting Attorney for King County who, at that time, supervised the Special Assault Unit of the King County Prosecutor's Office, for an independent review regarding the

sufficiency of the evidence. Upon reviewing Detective Krause's reports, Ms. Roe concluded that the case was legally insufficient. Ex. 3 One reason Ms. Roe gave was because of Kathryn Spencer's inconsistent statements. For one, Kathryn Spencer could not be sure whether these incidents occurred on one occasion or more than one occasion. In addition, Ms. Roe noted that the initial naming of multiple suspects was "very disturbing." Ms. Roe found that Kathryn Spencer's explanation that she didn't want to hurt her stepmother's (Shirley) feelings was, in Ms. Roe's opinion, inadequate. Finally, Ms. Roe was concerned about Kathryn Spencer's claim that she and Deanne had engaged in sexual contact which in Ms. Roe's mind raised serious doubts about Kathryn Spencer's ability to distinguish fact from fantasy.

After Mr. Spencer realized he had become the focus of the Clark County investigation for child abuse, he became extremely depressed and withdrawn. His mental state reached a low point when, contemplating suicide, he was admitted at his own request to the Oregon Health Science Center in Portland on November 15, 1984 to remain under psychiatric care at the Oregon Health Sciences Center for over three weeks until December

7, 1984. He was placed on a regimen of antidepressants on which he would remain for the next five months.

Despite the recommendation of King County Senior Deputy Prosecuting Attorney Roe that the evidence against Mr. Spencer was insufficient to warrant the charges being filed, the Clark County Prosecutor's Office charged Mr. Spencer with the statutory rape in the first degree of his daughter, Kathryn Spencer, on January 2, 1985.

As a result of the filing of charges, Mr. Spencer lost his job in the Vancouver Police Department, separated from his wife, Shirley, and soon returned to the Oregon Health Science Center for psychiatric care. Upon his release, he moved into a motel in Vancouver.

During the course of the pending charges and investigation against Mr. Spencer, Sgt. Michael Davidson of the Clark County Sheriff's Office, who was investigating Detective Sharon Krause's supervisor, began having a romantic affair with Mr. Spencer's wife, Shirley Spencer. Ex. 4

On one occasion, while Mr. Spencer was residing in a motel, his estranged wife, Shirley Spencer, dropped her son, Matt Hanson, at the motel to spend the night with his stepfather. Immediately thereafter, Shirley Spencer alleged that Mr. Spencer had sexually abused Matthew

Hanson at the motel. On February 28, 1985, Mr. Spencer was subsequently charged with three additional counts of statutory rape in the first degree based upon allegations made by Shirley concerning her son, Matt Hanson.

Mr. Spencer was then arrested and held in the Clark County jail for the remainder of the case.

He was appointed counsel, James Rulli, of Vancouver. Mr. Spencer continued to deny committing any of the offenses or having any knowledge of the offenses with which he was charged. Mr. Rulli arranged for Mr. Spencer to be seen by Dr. Henry Dixon who performed numerous tests including sodium Amytal and deep hypnosis to determine whether Mr. Spencer had any knowledge of the crimes with which he was charged. Mr. Spencer under hypnosis did not reveal any knowledge of having sexually abused his children. Mr. Spencer also consented to two polygraph examinations conducted by Stanley Abrams, a clinical psychologist who specialized in polygraph exams. Those tests were deemed to be inconclusive.

While being held in the Clark County jail, Mr. Spencer's psychiatric condition deteriorated. He continued to receive psychiatric medications including Sinequan, Xanax, Darvocet and Elavil.

On May 16, 1985, Mr. Spencer attended a hearing to change his plea. At the time, he was receiving Xanax, Elavil and two days before had received an injection of sodium Amytal. He had also been diagnosed with major depression for which he had been suffering for several months.

Before the change of plea, while being held in jail, Mr. Spencer was visited frequently by Sgt. Michael Davidson of the Clark County Sheriff's Office despite the fact that he was represented by counsel. Davidson was Detective Sharon Krause's immediate supervisor. Davidson seemed to take special interest in Mr. Spencer's case. He tried repeatedly to convince Mr. Spencer to confess and to plead guilty. Despite Mr. Spencer's refusal to talk to Davidson, Davidson would constantly return to the jail. Davidson tried to convince Spencer to plead guilty, constantly telling him of the traumatic event a public trial would have on the children. Davidson told Spencer that his children will be put through a humiliating and mentally trying experience in having to testify against their father. As the date of the trial neared, Davidson's visits became more

frequent and confrontational. On the final visit, Davidson had to be ordered to leave the jail by Clark County jail personnel.

On May 16, 1985, Mr. Spencer entered an Alford plea despite the fact that he denied committing the offenses and had absolutely no recollection of any of the events with which he was charged.

On May 23, 1985, Judge Thomas Lodge sentenced Mr. Spencer to two life terms to run consecutively to each other, plus a consecutive term of 170 months in prison.

C) Previously Undisclosed Evidence

In addition to the new evidence based on the recent statements from two of the alleged victims to be discussed below, there was additional previously undisclosed evidence that was revealed after trial and during the pendency of Mr. Spencer's appeals.

Prior to the entry of Mr. Spencer's guilty pleas in the case, the Clark County Prosecuting Attorney failed to disclose that physical examinations had been conducted on two of the alleged victims, Mr. Spencer's daughter, Kathryn, and his step-son, Matthew Hanson. The Clark County Prosecutor further failed to disclose that the results of each of these examinations was that no physical evidence was found during the

examinations to support the allegations that either of the children was the victim of anal or vaginal penetration as had been alleged to have repeatedly occurred.

Mr. Spencer first presented this issue in a personal restraint petition failed with the Washington State Court of Appeals. In a carefully worded response, the Clark County Prosecuting Attorney did not deny that a medical examination of the children had been done or had not been disclosed to the defense. The Clark County Prosecutor wrote:

“Petitioner presents no evidence herein which relates to this allegation other than unsubstantiated hearsay. In addition, the allegation does not refer to any particular physical examination, does not name a particular doctor that may have examined the victim, and quite frankly, it is difficult if not impossible to respond to this allegation without further substantiation on the part of the petitioner. It should be further noted, however, that the allegation regarding statutory rape of the victim’s daughter legally did not require the state to prove actual penetration as opposed to ‘sexual contact’ as that term is defined in the law. Therefore, even if such an evaluation or physical examination existed, which is by no means agreed, then any results which would have showed a lack of substantiation to the allegations would have been inconclusive at best.”

As Mr. Spencer’s post-conviction appeals progressed, an investigator learned through an interview with Mr. Spencer’s former wife, Shirley Spencer, that his step-son Matthew Hanson had been examined

and that the findings indicated no evidence of anal penetration which was the specific charge as to Matt Hanson. Mr. Spencer also learned that his daughter, Kathryn Spencer, had received a physical examination, the report of which was never turned over to the defense. When Mr. Spencer's appellate attorney, Howard Goodfriend, inquired of the Clark County Prosecuting Attorney in a letter dated June 10, 1992, the prosecutor attorney, Arthur Curtis, stated in a letter of July 1, 1992 that "No such medical records exist in our file. Consequently, if such medical records do exist, they apparently were never provided to us." Ex. 5

Subsequently, as a part of discovery being conducted in the federal habeas case, it was revealed that a medical examination report from the University of California Davis dated August 30, 1994 existed regarding an examination conducted on Kathryn Spencer. Ex. 6 The report had been forwarded to Clark County Detective Sharon Krause. As a part of the federal habeas proceedings, Mr. Spencer's counsel was able to receive copies of the medical reports of examinations conducted on both Kathryn Spencer and Matt Hanson. When the matter went before the Ninth Circuit Court of Appeals in its memorandum decision in case number 95-35113 dated November 30, 1995, the court stated:

“There is a great deal of evidence that medical reports regarding the children did exist and that they showed no evidence of sexual abuse. If they did exist, we see little excuse for the prosecutor’s failure to make them available to Spencer’s attorney. Those reports may well have influenced the decision to plead. The children asserted that Spencer had molested them but he said he had no memory of having done so. Perhaps that was merely pseudo amnesia, but as Dr. Dixon and Dr. Halprin have indicated, it might also have meant that the incidents did not happen. Reports that indicated that there were no residual signs of the claimed abuse could have tipped the scales. In fact, the lack of that information together with Spencer’s mental state might have had a synergistic effect which led to the plea by an innocent man. We do not say that it, nor do we say that the reports exist, nor do we say that they will turn out to be material if they do exist. We do say that Spencer is entitled to have an evidentiary hearing on the matter.”

As a result of the Ninth Circuit order, the prosecutors were directed to turn over any reports. One of those reports was the August 30, 1984 report from the University of California Davis Medical Center of Kathryn Spencer. That report showed absolutely no physical signs of her having been sexually abused. The second report pertained to the examination of Matthew Hanson. Ex. 7 This report indicated that on March 6, 1985, Matt Hanson was examined at the Kaiser-Permanente Hospital by Dr. Manuel Galaviz. The specific purpose of the examination was to look for signs of sexual abuse. No physical signs of sexual abuse were observed.

D) Recently Discovered Evidence

On December 23, 2005, the former Washington State Governor Gary Locke commuted Mr. Spencer's sentence and ordered him released from prison. Following his release from prison, Mr. Spencer continued to pursue his claim of innocence. To that end, for the first time since 1984, contact was made with his daughter, Kathryn Spencer Tetz, and his son, Matthew Spencer. In the years preceding Mr. Spencer's conviction, neither of these individuals were willing to speak with defense counsel or defense investigators.

Matthew Spencer has now provided a sworn declaration wherein he indicates that the statements attributed to him alleging that he had been sexually abused by his father were in fact completely false. Matthew Spencer's declaration states as follows:

Ex.8

"I, Matthew A. Spencer, declare under penalty of perjury under the laws of the state of Washington and the United States that the following facts are true and correct to the best of my knowledge.

1. I am the son of Clyde Ray Spencer who was convicted in 1985 in Clark County, Washington of having sexually abused me, my sister, Kathryn, and my step-brother, Matt Hanson.
2. I currently reside in California and work as an automotive technician. I have had two years of college.
3. In 1985, I was 9 years old. My date of birth is November 28, 1975.

4. I am now 30 years old and I am making this declaration out of my own free will without any threat, promise or inducement or pressure put upon me.
5. In 1985, I lived with my mother and sister in California. My father lived in the state of Washington. My sister and I came to visit during the summer.
6. I have had no contact with my father, Clyde Ray Spencer, or his attorney or his investigator since 1984, although I am aware of the fact that over the years, the attorney working for my father has attempted to contact me and that my father wrote letters and sent Christmas gifts.
7. I am aware that over the years, my mother objected to my being interviewed by my father's attorney or investigator and told them not to contact me.
8. In 2005, I learned that my father had been released from prison after serving over 20 years.
9. The first contact I have had with my father was through a newspaper reporter, Ken Olsen, from the Vancouver Columbian who told me that he was writing an article about my father's case and wanted to interview me. At the time that the reporter contacted me in about September of 2005, I told the reporter that I wanted to come to Seattle to meet with my father.
10. In late 2005, my father sent me an e-mail and we exchanged e-mails that led to my visiting him in Seattle for the first time in late February 2006.
11. This visit was the first time I have seen my father since 1984 and the first time I have ever talked to him about the criminal charges.
12. I understand that my father was accused of sexually molesting me and my sister and my step-brother. I also know that he pleaded guilty to those criminal charges and received a life sentence.
13. I can state unequivocally that I was never molested in any manner at any time by my father.
14. I recall that in 1985, I was interviewed by a detective at my home. He asked me if my father touched me

improperly. I remember I told the detective that I had not been touched by my father in any inappropriate way.

15. I know that I was interviewed by a female detective. I remember Detective Krause by name. She was investigating the allegations in 1984 or 1985 and came down to California to interview me and my sister. She drove me and my sister around and took us to her motel. She repeatedly asked me if my father had molested me. She told me that my sister and little Matt had admitted that he had molested them.

16. I kept telling her that he didn't do anything. She would not accept my denials and kept suggesting that he had molested me and that I wasn't being truthful.

17. Finally, I figured that if my father had molested my sister and little Matt, then maybe had molested me as well, so I told her that he had. I made up specific details of what my father did based on what the detective asked me. None of this was true.

18. I have had the opportunity to review the report written by Detective Krause concerning her March 24, 1985 interview with me. While I believe that I did tell her the things written in the report attributed to me about my father sexually abusing me, none of it is true.

19. Later, I was flown up to Washington for another interview. I recall I made up stories of other police officers along with my father being involved in abusing me, little Matt and Kathryn and someone driving a red Porsche. None of this was true.

20. I never observed my father have any sexual contact with my sister or step-brother, Matt Hansen. Nor did either of them ever tell me that he did so.

21. Over the years, I have talked with my sister, Kathryn. She has told me that she must have blocked out the abuse by my father because she has no memory of having been abused by him.

22. Over the years, I have always wanted to come forward and make clear that my father had not sexually abused me,

but I have not known how to go about setting the record straight.

23. On February 27, 2006, I met with my father's lawyer, Peter A. Camiel, in Seattle and told him all of the above facts.

24. I have carefully reviewed every line of this declaration for accuracy. It is all true to the best of my knowledge and I am willing to go to court and swear to these facts before a judge.

DATED this 27th day of February, 2006 at Seattle, Washington.

/s/ Matthew Ray Spencer”

Clyde Ray Spencer's daughter, Kathryn, has also now come forward and given a sworn declaration. In that declaration, she indicates:

Ex. 9

“I, Kathryn E. Spencer Tetz, hereby state under penalty of perjury that the following is true and correct:

1. I am the natural daughter of Clyde Ray Spencer. I was born January 13, 1979 and am now 28 years old, married, and have a new born child. I presently reside in Roseville, California. I am employed as a medical recruiter.

2. I understand that my father was convicted of crimes involving sexual molestation of me, my brother, Matt Spencer, and my step-brother, Matt Hansen.

3. Up until August of 2007, I have not had any contact with my father since the summer of 1984. I initiated the contact with my father to try and reestablish communication with me. I am aware of the fact he was convicted in Clark County of sexually abusing me, my brother, Matt Spencer, and my step-brother, Matt Hansen, and I am aware that he was sentenced to serve the rest of his life in prison. I am also aware of the fact that he was granted a commutation of his sentence by the Governor of the State of Washington and is currently free.

4. Beginning in August of 2007, I first had contact with my father. I began asking my father questions about the charges. My father put me in touch with his attorney, Peter A. Camiel.
5. My father's attorney, Peter Camiel, questioned me regarding my memory of whether or not I had ever been sexually abused by my father. The attorney also provided me with copies of an investigative summary prepared by Clark County Sheriff's Detective Sharon Krause regarding Detective Krause's interviews with me in October of 1984. I have also reviewed a medical examination report conducted at the University of California Medical Center Davis, Sacramento on August 30, 1984.
6. I have absolutely memory of my father ever having sexually abused me or inappropriately touching me in any way whatsoever. I believe that if my father had in fact engaged in the type of sexual abuse described in the detective's reports and in the charges brought against my father, I would remember such actions.
7. I also have absolutely no memory of ever having observed my father engage in any sexual misconduct of any kind with either my brother, Matt Spencer, or my step-brother, Matt Hansen. I also have absolutely no memory of either my brother, Matt Spencer, or my step-brother, Matt Hansen, engaging in any sexual misconduct with me.
8. I do have a vague recollection of having been questioned by Detective Sharon Krause. I don't recall the details of the questioning and don't recall the responses that I gave at the time even after reading the detective's reports.
9. It is my belief that if I had been sexually abused in the manner described in the police reports alleged against my father, I would have a memory of this having occurred. I have no such memory. Because I have no memory whatsoever of having been sexually abused by my father, I am concerned that I was never abused and that my father was wrongfully convicted.

10. I have reviewed this declaration carefully and made changes to it so that I am comfortable that it is completely truthful to the best of my knowledge.

DATED this 14th day of September, 2007

/s/ Kathryn Spencer Tetz”

III. Argument

A) Petitioner is Under Restraint.

RAP 16.4 sets forth the grounds for remedy for the filing of a personal restraint petition. RAP 16.4(B) defines restraint.

“A petitioner is under a ‘restraint’ if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.”

In this case, petitioner Clyde Ray Spencer, is under restraint. He is no longer in custody although he has served in excess of 20 years in prison. He is, under restraint, as a result of a number of conditions that restrict his liberty. Generally, the restrictions include Department of Corrections supervision as well as the requirement that he register as a convicted sex offender. Specifically, the restraint conditions include those 15 conditions set forth by former Washington State Governor Gary Locke in the conditional commutation of Clyde Ray Spencer. Ex. 10 Among the restraining conditions are that he be restricted in his travel, be required to notify the Department of Corrections of any changes of address or

employment, not patronize or frequent businesses or other areas where the sale of intoxicating beverages is the main source of funding, not have any contact with minors unless approved by his community corrections officer, participate in sex offender evaluation and follow any recommended treatment, submit to regular and random polygraph testing, participate in electronic monitoring, participate in a mental health evaluation and any follow up treatment recommended and comply with all other conditions or recommendations or instructions of community placement as directed by his community corrections officer. In short, nearly every aspect of Clyde Ray Spencer's life is under restriction to some degree as a result of the unlawful conviction.

B) Unlawful Nature of Restraint.

RAP 16.4(c) provides that in personal restraint petition, the petitioner must allege that the restraint is unlawful for one or more of the specified reasons. In this case, the restraint against Clyde Ray Spencer is unlawful because "the conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the

constitution of the United States or the constitution or laws of the state of Washington.” RAP 16.4(c)(2).

The restraint against petitioner is also unlawful because “material facts exist which have not been previously presented and heard, which in the interests of justice require vacation of the conviction, sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government.” RAP 16.4(c)(3).

A defendant who pleads guilty and who subsequently seeks relief from personal restraint on the basis of newly discovered evidence must show that his plea was coerced or obtained in violation of due process. In re Personal Restraint of Crabtree, 141 Wn.2d 577, 588, 9 P.3d 814 (2000). In other words, a defendant must show a manifest injustice warranting withdrawal of his plea. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). In the context of an Alford plea, such as that entered by Clyde Ray Spencer, a manifest injustice exists if the newly discovered evidence, when viewed in balance with the record, changes the factual basis for the plea. State v. Dixon, 38 Wn.App. 74, 77, 683 P.2d 1144 (1984). A defendant who enters an Alford plea does not admit guilt; rather, he

concedes that the state's evidence would likely result in a conviction. North Carolina v. Alford, 400 U.S. 25, 37, 91 S.Ct. 160 (1970).

Several courts have stated that newly discovered evidence in the form of a victim's recanted testimony, may constitute a manifest injustice warranting withdrawal of a guilty plea where the recanted testimony is the sole evidence supporting the conviction. In re Personal Restraint of Clements, 125 Wn.App. 634, 641, 106 P.3d 244, *rev. denied* 154 Wn.2d 1020, *cert. denied* 546 U.S. 1039 (2005); State v. Arnold, 81 Wn.App. 379, 386-387, 914 P.2d 762 (1996).

Superior Court Criminal Rule 4.2(f) governs when a court must permit withdrawal of a guilty plea. Under Criminal Rule 4.2(f), a court must permit withdrawal of a guilty plea whenever necessary to correct a "manifest injustice." This is a demanding standard and the defendant bears the burden of establishing that he has suffered "an injustice that is obvious, directly observable, overt, not obscure." State v. Branch, 129 Wn.2d 635, 641, 919 P.2d 1228 (1996). A recantation in some circumstances may be grounds for finding a manifest injustice. The courts have held that much depends on whether the recanted evidence was the sole basis for

conviction. If so, it is an abuse of discretion to deny a new trial. State v. Rolax, 84 Wn.2d 836, 838, 529 P.2d 1078 (1974).

In State v. D.T.M., 78 Wn.App. 216, 896 P.2d 108 (1995), the defendant entered an Alford plea to first degree child molestation. He sought to withdraw his plea after the victim told defense counsel she had fabricated the allegations. The trial court denied the motion. On appeal, the court noted the unique circumstances that attended an evaluation of the factual basis of an Alford plea:

“A defendant considering an Alford plea undertakes a risk benefit analysis. After considering the quantity and quality of the evidence against him, and acknowledging the likelihood of conviction if he goes to trial, he agrees to plead guilty despite his protestation of innocence to take advantage of plea bargaining. Because the defendant professes innocence, the court must be particularly careful to establish a factual basis for the plea. Ordinarily, when a defendant pleads guilty, the factual basis for the offenses provided at least in part by the defendant’s own admissions. With an Alford plea, however, the court must establish an entirely independent factual basis for the guilty plea, a basis which substitutes for an admission of guilt.” D.T.M., 78 Wn.App. at 220.

In the case of D.T.M., the child’s statements constituted the sole evidence establishing a factual basis for the plea. The court observed that under the rule governing motions for a new trial and the holding of Rolax, where a defendant had been convicted on the basis of the testimony of a

later recanting witness, “it is an abuse of discretion not to grant a new trial.” D.T.M., 78 Wn.App. at 220. The court concluded that the victim’s recantation, if true, met the criteria for a new trial, and would have justified withdrawal of the Alford plea.

In State v. Arnold, 81 Wn.App. 379, 914 P.2d 762 (1996), the defendant was charged with two counts of child rape. He pleaded guilty to two counts of 4th degree assault. Prior to sentencing, one of the alleged victims provided an affidavit indicating that her statement to police had been untrue. Arnold moved to withdraw his plea alleging a manifest injustice. The trial court denied the motion. The court of appeals affirmed distinguishing the case of D.T.M. on two grounds: 1) the defendant in Arnold had entered a straight guilty plea, not an Alford plea; and 2) additional evidence (including Arnold’s own statement) provided independent factual support for the plea.

In Clyde Ray Spencer’s statement of defendant on plea of guilty which was an Alford plea, the plea statement itself is blank in the section which provides “The court has asked me to state briefly in my own words what I did that resulted in my being charged with a crime in the information. Ex. 2 This is my statement: _____(blank). The

court was provided with the statement of the deputy prosecuting attorney James Peters as a factual basis for the plea. In the change of plea colloquy transcript, the judge discussed each of the charges and the elements of the charges to which Mr. Spencer would be pleading guilty. The court then had the following discussion with Mr. Spencer: Ex. 11

The Court: Now, as I understand it, you do not admit that you committed any of these offenses, is that correct?

Mr. Spencer: That's correct.

The Court: But you have reviewed the state's evidence with Mr. Rulli on each count, is that correct?

Mr. Spencer: Yes sir.

The Court: And you do feel that if the state's evidence were presented to the jury and you presented whatever defense you might have, that the jury would find you guilty to each count beyond a reasonable doubt?

Mr. Spencer: That's correct.

The Court: Do you have any question in your mind about that?

Mr. Spencer: No sir.

The Court: Have you considered in entering this type of plea, that is a plea without admitting guilt, that the fact that the prosecutor has in effect dropped five of the sixteen counts?

Mr. Spencer: Yes sir.

The Court: Has that been some inducement for you to enter your plea?

Mr. Spencer: Yes sir.

The Court: Okay. Why are you entering a plea without admitting guilt?

Mr. Spencer: Because I don't remember the crimes.

The Court: You don't remember the crimes?

Mr. Spencer: That's correct.

The Court: You think you're blocking them out now or do you know?

Mr. Spencer: Well, I've taken every test they've got and they can't find anything if I'm suppressing deep down. [plea transcript 18-20].

The court then had the prosecuting attorney describe the evidence that the prosecutor indicated could be presented at trial. Counts 1 and 2 involved indecent liberties that occurred to Kathryn Spencer and Matthew Spencer. The evidence that would have been presented would have come specifically from those witnesses. The court asked Mr. Spencer after a description of the evidence, "Do you have any basis to refute the testimony of the kids relevant to counts 1 and 2?" Mr. Spencer replied, "No sir." Count 3 also involved Kathryn Spencer and the evidence of that count would have come specifically from Kathryn Spencer. The court again asked Mr. Spencer after the prosecutor described Ms. Spencer's anticipated testimony:

The Court: "Do you have basis to refute the prosecutor's case with respect to count 3?"

Mr. Spencer: No sir."

Count number 7 involved Matthew Ray Spencer. He was 9 years old at the time.

As the prosecutor went through each of the counts giving a description of the evidence the prosecutor would present, coming

exclusively from statements from the alleged victims. The court asked Mr. Spencer each time, "Do you have basis to refute the evidence by the state?" Each time Mr. Spencer answered no sir.

At one point, the prosecutor alleged that there were allegations that photographs were taken during the course of the abuse. The court asked the prosecutor if any of those were recovered to corroborate the charges and the prosecutor indicated that no photographs had ever been recovered.

The only corroborative evidence that the prosecutor suggested was Mr. Spencer's work record showing times when he would have been home and his wife's work record showing times when he would have been alone with the children.

In a number of the charges, it was alleged that Mr. Spencer was complicit by directing his son, Matt Spencer, to engage in sexual contact with the other alleged victims, Matt Hansen and Kathryn Spencer.

C) Strength of the State's Case

The state's case against Mr. Spencer was riddled with problems. In addition to the lack of medical evidence to support the allegations, the state would have to rely almost exclusively on the testimony from three

children. All three children had given at times bizarre and significantly inconsistent statements that included allegations of abuse by their own mother, their father's girlfriend, and several other policemen. The lead investigator, Detective Sharon Krause, recalled that she was notified by Deputy Prosecutor Peters about a "big problem" in the case because Matt and Kathryn Spencer began claiming to have been abused not only by Mr. Spencer, but also simultaneously by several policemen¹. In addition, the Clark County prosecuting attorney had referred the case to King County Senior Prosecuting Attorney Rebecca Roe for review. Prosecutor Roe reviewed the case as to Kathryn Spencer and found Kathryn Spencer's inconsistencies so significant that Roe concluded the case was legally insufficient and should not be filed absent additional corroborating evidence.

The interview techniques used by Detective Krause under today's standards would be found to be woefully lacking. Detective Krause interviewed the children primarily on her own without any recording to

¹ Detective Krause testified in a deposition taken May 22, 1996 as part of a federal habeas proceeding that she learned following the prosecutor's interview with Matthew and Kathryn Spencer that the children were now claiming that multiple men, some of whom had "guns on their ankles" had sexually abused them.

memorialize the interview. Detective Krause conducted the interviews at times in her own motel room. Detective Krause conducted the interviews without any other witnesses present. At one point, Detective Krause even threatened young Matthew Spencer with submitting to a polygraph examination indicating that she didn't believe him. Matthew was only 8 years old at the time.

Finally, unbeknownst to the petitioner at the time he entered his guilty plea, the objectiveness of the investigation itself is in serious doubt. Lead investigator Detective Sharon Krause's supervisor, Michael Davidson, began having an affair with Mr. Spencer's wife while the case was pending². This was one of facts that Governor Locke found so compelling as to grant an extraordinary commutation of Mr. Spencer's sentence. As Governor Locke wrote:

“Whereas there were a number of troubling aspects of the investigation. Clark County authorities withheld the fact that, despite the allegation of severe, repeated sexual abuse of the children, medical reports showed no sign of physical abuse. While the children recounted that Mr. Spencer had taken photographs of the abuse, no photos were ever found. Because Mr. Spencer was a City of Vancouver police

² Detective Krause testified (Question) “Did you become aware that your supervisor, Mike Davidson, began having a romantic relationship with Shirley Spencer?” (Answer) “I was aware of it, yes, so was everybody else.”

officer, the Clark County prosecutor submitted the case to King County Senior Deputy Prosecuting Attorney, Rebecca Roe, a renown specialist in child sexual abuse cases. Ms. Roe noted significant problems with the case, including the interview techniques used with Mr. Spencer's daughter and resulting inconsistencies in her testimony. Ms. Roe found it 'disturbing that she's inconsistent on whether it happened more than once.' While denying for eight months that anything had happened, Mr. Spencer's 9 year old son began to say that his father abused him after being threatened with a polygraph; and whereas, another troubling fact in this case is that one of the lead detectives investigating Mr. Spencer's case began having an affair with his wife, Shirley Spencer, during the investigation. After Mr. Spencer's conviction, the detective left his own wife and moved in with Mr. Spencer's wife. The detective was also the supervisor of the primary detective involved in interviewing the children."

D) Summary Regarding the State's Evidence

The state's evidence against Mr. Spencer was based exclusively upon statements allegedly made by the three alleged victims, Matthew Spencer who was at the time, age 9; Kathryn Spencer, age 5; and Matthew Hansen, age 5. The state had no medical evidence to corroborate the allegations of repeated, severe abuse that included anal and vaginal penetration nor any other physical evidence to corroborate the allegations. There were no other witnesses who maintained they had seen anything to corroborate the allegations. The interviews with the three alleged victim children were not recorded in any manner. The interviewing techniques

were highly suspect. Finally, the allegations eventually included claims that several police officers had sexually abused these children.

It is in this context that the recantations of Kathryn Spencer and Matthew Spencer, who are now adults, are significant. These statements completely undermine the state's case against petitioner.

To set aside a criminal conviction by means of a personal restraint petition, the petitioner must establish either (1) actual and substantial prejudice arising from constitutional error, or (2) non-constitutional error that inherently results in a "complete miscarriage of justice." In re Personal Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

Under CrR 4.2(f), a guilty plea may be withdrawn "whenever it appears that the withdrawal is necessary to correct a manifest injustice." A defendant bears the burden of proving that a manifest injustice has occurred. State v. Hurt, 107 Wn.App. 816, 829, 27 P.3d 1276 (2001). A "manifest injustice" is one that is "obvious, directly observable, overt, not obscure." State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). All of the facts and circumstances described above require that petitioner's guilty plea be withdrawn to correct a manifest injustice.

There must be a factual basis for an Alford plea. State v. D.T.M., 78 Wn.App. 216, 219, 896 P.2d 108 (1995). There is a factual basis if the evidence is sufficient for a jury to conclude the defendant is guilty. Where newly discovered evidence undercuts the factual basis for an Alford plea, the court must allow the defendant to withdraw his guilty plea. State v. D.T.M., 78 Wn.App. at 220-221.

IV. Timeliness of this Petition

Under RCW 10.73.090(1)(2), a collateral attack of a judgment, including a motion to withdraw a guilty plea, must be filed within one year after the judgment becomes final. The one year time limit does not apply if the petition is based solely on one or more of the exceptions found in RCW 10.73.100: (1) Newly Discovered Evidence. A defendant who seeks relief from judgment based on newly discovered evidence must provide affidavits showing that the evidence from material, not merely cumulative or impeaching, will probably change the outcome, and could not have been discovered earlier by exercise of due diligence. State v. Williams, 96 Wn. 2nd 215, 222-223, 634 P.70 68 (1981).

Generally a petitioner who pleaded guilty and who subsequently seeks relief from personal restraint on the basis of newly discovered

evidence must show that his plea was coerced or obtained in violation of due process. In re: Personal Restraint of Crabtree 141 Wn. 2d 577, 588, 9 P3814 (2000). However, in the context of an Alford plea, a manifest injustice exists if the newly discovered evidence, when viewed in balance with a record, changes the factual basis for the plea. State v. Dixon 38 Wn.App. 74,77, 683 P. 2nd 1144 (1984), State v. Ice _____ Wn.App _____ (Wn. App Division 2 May 22, 2007).

In this case there is no independent evidence apart from the three alleged victims to support petitioner's guilt. The declarations submitted by Mathew Spencer and Kathryn Spencer completely undermine the factual basis for the guilty plea in this case. That new evidence coupled with the prior failure to disclose medical examination evidence, the extremely unreliable interview techniques originally used with the alleged victims, the fact that the petitioner was only marginally competent at the time of the plea due to both mental illness and the interaction of medications, and the extremely troublesome fact that the supervising detective was having an affair with petitioner's wife all constitute a manifest injustice require the granting of this petition.

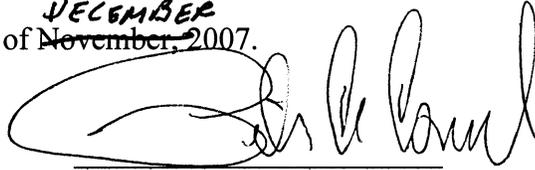
V. Statement of Finances

Petitioner has paid the filing fee with the filing of this petition.

VI. Request for Relief

For the foregoing reasons, this personal restraint petition should be granted and petitioner's convictions should be vacated. Alternatively, the matter should be remanded to the Superior Court for a reference hearing on the facts contained in this petition.

DATED this 4 day of ~~November~~ ^{DECEMBER}, 2007.

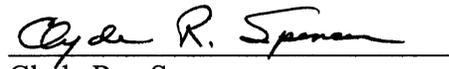


Peter A. Camiel
Attorney for Clyde Ray Spencer

Verification

I, Clyde Ray Spencer, declare that I have received a copy of this petition prepared by my attorney and that I believe the facts contained herein are true and I consent to this petition being filed on my behalf.

DATED this 4 day of ~~November~~ ^{DECEMBER}, 2007.



Clyde Ray Spencer,
Petitioner

In The Court of Appeals for the State of Washington
Division II

IN RE THE MATTER OF THE PERSONAL RESTRAINT)
OF CLYDE RAYMOND SPENCER,)
Petitioner.)

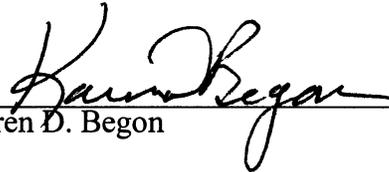
Case No. 37229-1-II

Certificate of Mailing

I, Karen D. Begon, being employed by the law firm of Mair & Camiel, certify that on
December 4, 2007, I mailed a postage paid envelope containing petitioner's Personal Restraint
Petition and Opening Brief to the following individual:

Arthur Curtis
Clark County Prosecutor
P.O. Box 5000
Vancouver, WA 98666

Dated this 4th day of December, 2007.



Karen D. Begon

CLERK OF COURT
BY
STATE OF WASHINGTON
JAN 11 2008

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF CLARK

3 STATE OF WASHINGTON,)

4 Plaintiff,)

No. 85-1-00007-2

5 vs.)

6 CLYDE RAY SPENCER,)

7 Defendant.)

JUDGMENT AND SENTENCE

8
9 THIS MATTER having come on regularly for hearing
10 this 23rd day of May, 1985, the defendant being present
11 in person and represented by his undersigned attorney, the
12 State being represented by the undersigned deputy prosecuting
13 attorney, the defendant having previously entered valid pleas
14 of guilty to:

15 Count I - Statutory Rape I - RCW 9A.44.070 (1)
16 committed on an unknown date during the summer of 1983; and

17 Count II - Statutory Rape I - RCW 9A.44.070 (1)
18 committed on an unknown date during the summer of 1983,
19 the court having afforded each counsel the right to speak,
20 having asked the defendant if he wished to

21 make a statement in mitigation of punishment, and having
22 heard and considered both counsel, and the defendant, now,
23 therefore, the court ORDERS, ADJUDGES AND DECREES:

24 1. The defendant is guilty of the above crimes.

25 2. The defendant is hereby sentenced to confine-
26 ment at hard labor in a penal institution under the juris-
27 diction of the State of Washington, Department of Corrections,
28 for maximum terms of:

29 Life on Count I and Life on Count II, said
30 maximum terms to run consecutive.

31 3. Defendant is hereby remanded to the custody
32

Left Thumb
BY: *[Signature]*
(SEAL)
Deputy
I attest that I saw the same defendant who appeared
in court on this document affix his thumb prints thereto.
CLERK OF THE SUPERIOR COURT OF CLARK COUNTY.

Right Thumb
[Signature]

FILED

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
Plaintiff,) No. 85-1-00007-2
vs.)
CLYDE RAY SPENCER,)
Defendant.) JUDGMENT AND SENTENCE

THIS MATTER having come on regularly for hearing this 23rd day of May, 1985, the defendant being present in person and represented by his undersigned attorney, the State being represented by the undersigned deputy prosecuting attorney, the defendant having previously entered valid pleas of guilty to:

Count I - Statutory Rape I - RCW 9A.44.070 (1) committed on an unknown date during the summer of 1983; and

Count II - Statutory Rape I - RCW 9A.44.070 (1) committed on an unknown date during the summer of 1983, the court having afforded each counsel the right to speak, having asked the defendant if he wished to make a statement in mitigation of punishment, and having heard and considered both counsel, and the defendant, now, therefore, the court ORDERS, ADJUDGES AND DECREES:

- 1. The defendant is guilty of the above crimes.
- 2. The defendant is hereby sentenced to confinement at hard labor in a penal institution under the jurisdiction of the State of Washington, Department of Corrections, for maximum terms of:
Life on Count I and Life on Count II, said maximum terms to run consecutive.
- 3. Defendant is hereby remanded to the custody

Judgment and Sentence -

FILED
MAY 23 1985

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P. O. BOX 3000
VANCOUVER, WASHINGTON 98661
(206) 639-2261

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BY: *[Signature]*
(SEAL)
Deputy
I allege that I saw the same defendant who appeared in court on this document affix his thumb prints hereto.
CLERK OF THE SUPERIOR COURT OF CLARK COUNTY.

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[Signature]

[Handwritten marks]
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Rpt

I attest that I saw the same defendant who appeared
in court on this document affix his thumb prints thereto.
BY: James E. Rulli
CLERK OF THE SUPERIOR COURT OF CLARK COUNTY
Deputy

(SEAL)

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Rpt

1 of the Clark County Sheriff for detention until delivered
2 into the custody of officers of the State of Washington
3 Department of Corrections, for transportation to a
4 correctional facility designated by the Department.

5 DONE in Open Court and in the presence of the
6 defendant this 23 day of May, 1985.

Tom Lodge
JUDGE OF THE SUPERIOR COURT

9 APPROVED AS TO FORM:

10 James H. Peters
11 Deputy Prosecuting Attorney

12 James E. Rulli
13 Defense Attorney

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CLERK OF THE SUPERIOR COURT
BY: *[Signature]*
(SEAL) Deputy

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF CLARK

3
4 STATE OF WASHINGTON,)
5 Plaintiff,) No. 85-1-00007-2
6 vs.)
7 CLYDE RAY SPENCER,) WARRANT OF COMMITMENT
8 Defendant.) TO STATE OF WASHINGTON
9) DEPARTMENT OF CORRECTIONS
10 STATE OF WASHINGTON)
11) : ss
12 COUNTY OF CLARK)

13 THE STATE OF WASHINGTON, to the Sheriff of Clark
14 County, Washington, and the State of Washington, Department
15 of Corrections, and Officers in charge of correctional
16 facilities of the State of Washington:

17 G R E E T I N G:

18
19 WHEREAS, Clyde Ray Spencer has been duly convicted
20 in the Superior Court of the State of Washington of the
21 County of Clark of the crimes of Count I - Statutory Rape in
22 the First Degree - RCW 9A.44.070 (1) and Count II - Statutory
23 Rape in the First Degree - RCW 9A.44.070 (1) and judgment
24 has been pronounced against him that he has been sentenced
25 to a term of imprisonment in such correctional institution
26 under the supervision of the State of Washington, Department
27 of Corrections as shall be designated by the State of
28 Washington, Department of Corrections pursuant to RCW 72.13
29 and a minimum term to be fixed by the Board of Prison Terms
30 and Paroles. All of which appears to us of record; a
31 certified copy of said judgment being endorsed hereon
32 and made a part hereof.

BY: *[Signature]*
(SEAL) Deputy

1 NOW, THIS IS TO COMMAND YOU, the said Sheriff, to
2 detain the said Clyde Ray Spencer until called for by the
3 transportation officers of the State of Washington, Depart-
4 ment of Corrections, authorized to conduct him to the
5 appropriate facility, and this is to command you, the said
6 Superintendent of the appropriate facility to receive of and
7 from the said officer or officers the said Clyde Ray Spencer
8 for confinement, classification and placement in such
9 correctional facilities under the supervision of the
10 State of Washington, Department of Corrections, as shall
11 be designated by the State of Washington, Department of
12 Corrections for maximum terms of confinement of not more
13 than life on Count I and life on Count II, said terms to run
14 consecutive and a minimum term to be fixed by the Board of
15 Prison Terms and Paroles.

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

18 WITNESS THE HONORABLE THOMAS L. LODGE, JUDGE OF
19 THE SUPERIOR COURT AND THE SEAL THEREOF THIS 23rd day of
20 May, 1985.

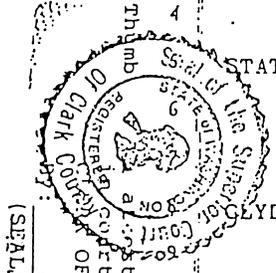
22 GEORGE J. MILLER
23 Clerk of the Clark County
24 Superior Court



25 By: *[Signature]*
26 Deputy

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF CLARK

BY (SEAL) V



(SEAL) Deputy

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I attest that I saw the same defendant who appeared
in court on this document affix his thumbprints thereto.
OF THE SUPERIOR COURT OF CLARK COUNTY:

3 STATE OF WASHINGTON,)
4 Plaintiff,) No. 85-1-00007-2
5 vs.)
6 GYLDE RAY SPENCER,)
7 Defendant.) FINDINGS OF FACT,
8) CONCLUSIONS OF LAW AND
9) JUDGMENT AND SENTENCE
10) (PRISON)

MAY 23 1985

George J. Miller, Clerk, Clark Co.

11 THIS MATTER having come on regularly for sentencing
12 on the 23rd day of May, 1985, the defendant being present
13 and represented by his undersigned attorney, with the State
14 being represented by the undersigned deputy prosecuting
15 attorney, and the defendant having previously entered valid
16 pleas of guilty to:

- 17 Count III - Statutory Rape I - RCW 9A.44.070 (1);
- 18 Count VII - Statutory Rape I - RCW 9A.44.070 (1);
- 19 Count IX - Complicity to Statutory Rape I - RCW
20 9A.44.070 (1), RCW 9A.08.020 (1),
21 (2) and (a) and RCW 9A.08.020 (1),
22 (2), (c), (3), (a) and (i);
- 23 Count X - Complicity to Statutory Rape I - RCW
24 9A.44.070 (1), RCW 9A.08.020 (1),
25 (2) and (a) and RCW 9A.08.020 (1),
26 (2), (c), (3), (a) and (i);
- 27 Count XII - Statutory Rape I - RCW 9A.44.070 (1);
- 28 Count XIII - Complicity to Statutory Rape I - RCW
29 9A.44.070 (1), RCW 9A.08.020 (1),
30 (2) and (a) and RCW 9A.08.020 (1),
31 (2), (c), (3), (a) and (i);
- 32 Count XIV - Complicity to Statutory Rape I - RCW
33 9A.44.070 (1), RCW 9A.08.020 (1),
34 (2) and (a) and RCW 9A.08.020 (1),
35 (2), (c), (3), (a) and (i);
- 36 Count XV - Statutory Rape I - RCW 9A.44.070 (1); and

Findings, Conclusions, Judgment and Sentence

(SEAL) Deputy

DEPARTMENT OF CORRECTIONS
SUPERIOR COURT OF CLARK COUNTY

appeared
his thumbprints thereto.

Right Thumb

241/297

BY (SEAL)

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Count XVI - Statutory Rape I - RCW 9A.44.070 (1), and the court having afforded each counsel the right to speak, having asked the defendant if he wished to make a statement in mitigation of punishment, and having heard and considered the arguments presented, now, therefore, the Court makes the following:

1. FINDINGS OF FACT

1. The defendant is guilty of the above-listed crimes;

2. The maximum terms for the above crimes are:

- Count III - Life
- Count VII - Life
- Count IX - Life
- Count X - Life
- Count XII - Life
- Count XIII - Life
- Count XIV - Life
- Count XV - Life
- Count XVI - Life

3. The following crimes encompass the same criminal conduct and count as one crime in determining criminal history:
Counts: N/A

4. Possession by the defendant or an accomplice of a deadly weapon as defined by RCW 9.94A.125 at the time of the commission of the crimes charged in Count(s) N/A

(was) (was not) specially alleged and proven, and N/A

are to be added to the presumptive sentencing range.

BY: [Signature]
(SEAL) Deputy

1 5. The Court finds that the defendant has a criminal
2 history as set forth in the Declaration of Criminal History
3 previously filed.

4 6. The defendant has served ninety seven (97)
5 _____ days of confinement prior to sentencing, said
6 confinement being solely related to the crimes for which the
7 defendant is being sentenced.

8 7. The presumptive sentencing range for this defendant
9 based upon the criminal history related above is as follows:

- 10 Count III - 12 1/2 - 17 1/2 mos. Count XIII - 12 1/2 - 17 1/2 mos.
- 11 Count VII - 12 1/2 - 17 1/2 mos. Count XIV - 12 1/2 - 17 1/2 mos.
- 12 Count IX - 12 1/2 - 17 1/2 mos. Count XV - 12 1/2 - 17 1/2 mos.
- 13 Count X - 12 1/2 - 17 1/2 mos. Count XVI - 12 1/2 - 17 1/2 mos.
- 14 Count XII - 12 1/2 - 17 1/2 mos.

15 8. The following facts are found to exist and
16 justify an exceptional sentence outside the presumptive
17 sentencing range:

18 N/A
19 _____
20 _____
21 _____
22 _____

23 II. CONCLUSIONS OF LAW

24 1. The Court has jurisdiction over the defendant
25 and the subject matter.

26 2. The defendant is guilty of the crime(s) set forth
27 above.

28 3. There (~~exist~~) (do not exist) substantial and
29 compelling reasons justifying an exceptional sentence outside
30 the presumptive sentencing range.
31
32

24

1 III. JUDGMENT AND SENTENCE

2
3 The court having determined that no legal cause
4 exists to show why judgment should not be pronounced, now,
5 therefore,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
7 defendant is sentenced to a term of confinement as follows:

8 Count III - 171 months
9 Count VII - 171 months
10 Count IX - 171 months
11 Count X - 171 months
12 Count XII - 171 months 171 months total
13 Count XIII - 171 months
14 Count XIV - 171 months
15 Count XV - 171 months
16 Count XVI - 171 months

17 Said terms to run as follows: Consecutive to
18 .. Counts I and II.

19 Further, defendant shall make the following monetary
20 payments:

- 21 1. _____ restitution.
22 2. _____ fine.
23 3. _____ court costs.

24 Defendant is hereby remanded to the custody of the
25 Clark County Sheriff for detention until delivered into the
26 custody of Officers of the State of Washington, Department of
27 Corrections for transportation to a correctional facility
28 designated by the Department.

29 DONE in Open Court and in the presence of the

30 /
31 /
32 /

Findings, Conclusions, Judgment and Sentence
(Prison) - 4

1
2
3 Tom Lodge
4 JUDGE OF THE SUPERIOR COURT

5 APPROVED AS TO FORM:

6
7 James N. Peters
8 Deputy Prosecuting Attorney

9 James E. Rulli
10 Attorney for Defendant

11
12 STATE OF WASHINGTON)
13 : ss
14 COUNTY OF CLARK)

15 I, GEORGE MILLER, County Clerk and Clerk of the
16 Superior Court of the State of Washington, for the County of
17 Clark, holding terms at Vancouver, in said County, do hereby
18 certify that the foregoing is a full, true and correct copy
19 of the Judgment and Sentence in the above-entitled action,
20 now on record in this office.

21 WITNESS my hand and seal of the said Superior Court
22 affixed this 23rd day of May, 1985.

23
24
25 GEORGE J. MILLER
26 Clerk of said County and State

27 By: _____
28 Deputy

29
30
31
32 Findings, Conclusions, Judgment and Sentence
(Prison) - 5

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P. O. BOX 3000
VANCOUVER, WASHINGTON 98668
(206) 499-2261

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
Plaintiff,) No. 85-1-00007-2
vs.)
CLYDE RAY SPENCER,) WARRANT OF COMMITMENT
Defendant.) TO STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

STATE OF WASHINGTON)
COUNTY OF CLARK) ss

THE STATE OF WASHINGTON, to the Sheriff of Clark
County, Washington, and the State of Washington, Department
of Corrections, Officers in charge of correctional facilities
of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly
convicted in the Superior Court of the State of Washington of
the County of Clark of the crimes of:

- Count III - Stat. Rape 1^o
- Count VII - Stat. Rape 1^o
- Count IX - Complicity to Stat. Rape 1^o
- Count X - Complicity to Stat. Rape 1^o
- Count XII - Stat. Rape 1^o
- Count XIII - Complicity to Stat. Rape 1^o
- Count XIV - Complicity to Stat. Rape 1^o
- Count XV - Stat. Rape 1^o
- Count XVI - Stat. Rape 1^o

and judgment has been pronounced and the defendant has been

1 sentenced to a term of imprisonment in such correctional
2 institution under the supervision of the State of Washington,
3 Department of Corrections, as shall be designated by the
4 State of Washington, Department of Corrections, pursuant to
5 RCW 72.13, all of which appears of record; a certified copy
6 of said judgment being endorsed hereon and made a part hereof,
7

8 NOW, THIS IS TO COMMAND YOU, said Sheriff, to
9 detain the defendant until called for by the transportation
10 officers of the State of Washington, Department of Corrections,
11 authorized to conduct defendant to the appropriate facility,
12 and this is to command you, said Superintendent of the
13 appropriate facility to receive defendant from said officers
14 for confinement, classification and placement in such
15 correctional facilities under the supervision of the State
16 of Washington, Department of Corrections, for a term of
17 confinement of:

- 18 Count III - _____
 - 19 Count VII - _____
 - 20 Count IX - _____
 - 21 Count X - _____
 - 22 Count XII - _____
 - 23 Count XIII - _____
 - 24 Count XIV - _____
 - 25 Count XV - _____
 - 26 Count XVI - _____
- 171 months*

27 And these presents shall be authority for the same.

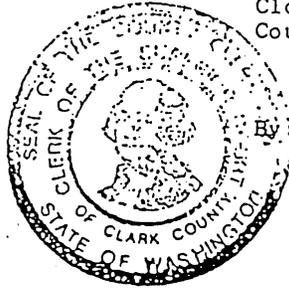
28 HEREIN FAIL NOT.

29 WITNESS, HONORABLE THOMAS L. LODGE

30 /
31 /
32 /

1 JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS 23rd
2 day of May, 1985.

3
4 GEORGE J. MILLER
5 Clerk of the Clark County Superior
6 Court



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BY James Baird
Deputy

1 arrest and detention of said defendant, CLYDE RAY SPENCER
2 _____, and that said defendant shall be entitled to
3 be released from such arrest and detention upon the following
4 condition:

5
6 The execution of an appearance bond with
7 sufficient solvent securities in the sum of
8 \$ 100,000
9 or the deposit of cash in lieu thereof with
10 the Clerk of the Court.

11 or

12
13 _____ No bail pending appearance before the Court.

14 By this Court this 28th day of February,
15 1985.

16
17 John H. Skina
18 JUDGE OF THE SUPERIOR COURT

19 Presented by:

20
21 James M. Peters
22 Deputy Prosecuting Attorney
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
Plaintiff,) No. 85-1-00007-2
vs.)
CLYDE RAY SPENCER) STATEMENT OF DEFENDANT
Defendant.) ON PLEA OF GUILTY

1. My true name is: CLYDE RAY SPENCER
2. My age is: 37
3. I went through the 16th grade in school, and can/cannot read and write the English language.
4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is JAMES E. RULLI.
5. I have been given and have read a copy of the Information and I have been informed and fully understand that I am charged with the following crimes which carry maximum sentences of:

(See Attached Sheet)

Ct. I: all counts, 20 years, and/or fine fine.
Ct. II: and for a \$50,000 fine.
Ct. III: and for a \$50,000 fine.
Ct. IV: and for a \$50,000 fine.

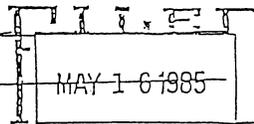
The standard sentence range for the above offense(s) is as shown on the attached offender scoring sheet based upon the attached Prosecutor's Declaration of Criminal History.

6. The elements of the crimes charged against me are:

See attached Information as read by the

court to the defendant in

open court.



George J. Miller, Clerk, Clark Co.

7. I have been informed and fully understand that:

- (a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
- (b) I have the right to remain silent before and during trial and I need not testify against myself.
- (c) I have the right at trial to hear and question witnesses who testify against me.

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- (d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
- (f) I have the right to appeal a determination of guilty after a trial.
- (g) If I plead guilty I give up the rights in statements 7(a)-(f).

8. I have been informed and fully understand the Prosecuting Attorney will make the following recommendation to the Court, and take the following action:

Prosecutor will recommend the Defendant be sent to the
institution

9. I plead guilty to the crime(s) of:

Seven counts of Statutory Rape 1° and
Four counts of Complicity to Statutory Rape 1°
 as charged in the second amended Information.

- 10. I make this plea freely and voluntarily.
- 11. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 12. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 13. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed this present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and Prosecuting Attorney's recommendation increases.
- 14. I have been fully informed and fully understand that the court must impose a sentence within the standard sentence range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard sentence range, either I or the state can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. I have been informed and fully understand that the Court does not have to follow anyone's recommendation as to sentence.

when sentencing is within the standard range. I have been informed that I may be ordered to pay restitution, court costs, a fine, attorney's fees, a victim's compensation assessment or a drug fund contribution, if applicable.

15. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. If I am on probation or parole, this plea could be the basis for revocation of probation or parole.
16. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime in the information. This is my statement:

17. I have read or have had read to me and fully understand all of the numbered sections above (1 through 16) and have received a copy of "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the court.

James M. Piles
Deputy Prosecuting Attorney

Ray Saucier
Defendant

James E. Rulli
Defendant's Lawyer

The foregoing statement was read by or to the defendant and signed by the defendant in the presence of his attorney, and the undersigned Judge, in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

Dated this 16th day of May, 1985.

Sam Lodge
JUDGE OF THE SUPERIOR COURT

In the Superior Court of the State of Washington
In and For the County of Clark

STATE OF WASHINGTON,

Plaintiff,

vs.
CLYDE RAY SPENCER,

No. 85-1-00007-2

INFORMATION

"SECOND AMENDED"

Defendant.....

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this inform the Court that the above named defendant..... is guilty of the crime.....committed as follows, to-wit:

Count I.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on an unknown date during the summer of 1983, being over thirteen (13) years of age, engage in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count II.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on an unknown date during the summer of 1983, being over thirteen (13) years of age, engage in sexual intercourse with Matthew Ray Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count III.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being over thirteen (13) years of age, did engage in sexual intercourse, to-wit: by placing his penis or finger in Kathryn E. Spencer's vagina or rectum when she was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count IV.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being over thirteen (13) years of age, did engage in sexual intercourse, to-wit:

ARTHUR D. CURTIS
Prosecuting Attorney in and for Clark County, Washin. In

By _____
Deputy Prosecuting Attorney

by placing his penis into the mouth of Kathryn E. Spencer when she was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count V.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, being a person over thirteen (13) years of age, did, between July 14, 1984, and August 26, 1984, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Kathryn E. Spencer, an innocent or irresponsible person, to engage in such conduct, or, with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Kathryn E. Spencer to commit it by engaging in sexual intercourse, to-wit: fellatio with Matthew Ray Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1) and RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count VI.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, being a person over thirteen (13) years of age, did, between July 14, 1984, and August 26, 1984, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Kathryn E. Spencer, an innocent or irresponsible person, to engage in such conduct, or, with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Kathryn E. Spencer to commit it by engaging in sexual intercourse, to-wit: fellatio with Matthew Hansen, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1) and RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count VII.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, engage in sexual intercourse, to-wit: by placing his penis or finger in the rectum of Matthew Ray Spencer, a person who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count VIII.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between August 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, did engage in sexual intercourse, to-wit: fellatio, with Matthew Ray Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count IX.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Matthew Ray Spencer, an innocent or irresponsible person, to engage in such conduct, or, with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Matthew Ray Spencer to commit it, by engaging in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age, by placing his fingers in her rectum, in violation of RCW 9A.44.070 (1), and RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c); (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count X.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Matthew Ray Spencer, an innocent or irresponsible person, to engage in such conduct, or, with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage or request Matthew Ray Spencer to commit it, by engaging in sexual intercourse with Matthew Hansen, who was less than eleven (11) years of age, to-wit: by placing his fingers in Matthew Hansen's rectum or by committing fellatio on Matthew Hansen, in violation of RCW 9A.44.070 (1), and RCW 9A.08.020 (1), (2) and (a), and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XI.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, engage in sexual intercourse with Matthew Hansen, a person who was less than eleven (11) years of age, to-wit: by causing him to place his mouth upon the defendant's penis, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XII.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, did engage in sexual intercourse with Matthew Hansen, a person who was less than eleven (11) years of age, to-wit: by causing him to place his fingers in the defendant's rectum, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XIII.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, being a person over thirteen (13) years of age, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Matthew Hansen, an innocent or irresponsible person, to engage in such conduct, or with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Matthew Hansen to commit it, by engaging in sexual intercourse with Matthew Ray Spencer, who was less than eleven (11) years of age, to-wit: by placing his thumb in Matthew Ray Spencer's rectum and/or by placing his penis in his rectum, in violation of RCW 9A.44.070 (1), and RCW 9A.08.020 (1), (2) and (a), and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XIV.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, being a person over thirteen (13) years of age, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Matthew Hansen, an innocent or irresponsible person, to engage in such conduct, or with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Matthew Hansen to commit it, by engaging in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), and RCW 9A.08.020 (1), (2) and (a), and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XV.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on an unknown date between August 27, 1984, and December 25, 1984, being a person over thirteen (13) years of age, did engage in sexual intercourse with Matthew Hansen, who was less than eleven (11) years old, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

date same as Ct. VI

Count XVI.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on or about the 16th day of February, 1985, being a person over thirteen (13) years of age, did engage in sexual intercourse with Matthew Hansen, who was less than eleven (11) years old, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

ARTHUR D. CURTIS
Prosecuting Attorney in and
for Clark County, Washington

By: s/ James M. Peters
James M. Peters, WSBA #7295
Deputy Prosecuting Attorney

Date: May 3, 1985

- Count I - Statutory Rape I - RCW 9A.44.070 (1);
- Count II - Statutory Rape I - RCW 9A.44.070 (1);
- Count III - Statutory Rape I - RCW 9A.44.070 (1);
- Count IV - Statutory Rape I - RCW 9A.44.070 (1);
- Count V - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
- Count VI - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
- Count VII - Statutory Rape I - RCW 9A.44.070 (1);
- Count VIII - Statutory Rape I - RCW 9A.44.070 (1);
- Count IX - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
- Count X - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
- Count XI - Statutory Rape I - RCW 9A.44.070 (1);
- Count XII - Statutory Rape I - RCW 9A.44.070 (1);
- Count XIII - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
- Count XIV - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
- Count XV - Statutory Rape I - RCW 9A.44.070 (1);
- Count XVI - Statutory Rape I - RCW 9A.44.070 (1);

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
 Plaintiff,) No. 85-1-00007-2
 vs.)
CLYDE RAY SPENCER,) DECLARATION
 Defendant.) OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his attorney, and the Prosecuting Attorney's Office, the defendant has the following prior criminal convictions:

I. UNDISPUTED:		COUNTY and STATE	SENTENCE
YEAR	CHARGE		
	NONE		

II. DISPUTED:		COUNTY and STATE	SENTENCE
YEAR	CHARGE		

Dated this 16 day of MAY, 1985.

Ray Spencer
 Defendant
James E. Kull
 Attorney for Defendant
James D. Peters
 Deputy Prosecuting Attorney

- 5. Count I - Statutory Rape I
- Count II - Statutory Rape I
- Count III - Statutory Rape I
- Count IV - Statutory Rape I
- Count V - Complicity to Statutory Rape I
- Count VI - Complicity to Statutory Rape I
- Count VII - Statutory Rape I
- Count VIII - Statutory Rape I
- Count IX - Complicity to Statutory Rape I
- Count X - Complicity to Statutory Rape I
- Count XI - Statutory Rape I
- Count XII - Statutory Rape I
- Count XIII - Complicity to Statutory Rape I
- Count XIV - Complicity to Statutory Rape I
- Count XV - Statutory Rape I
- Count XVI - Statutory Rape I

STATUTORY RAPE, FIRST DEGREE
(RCY 9A.44.070)
VIOLENT

I. OFFENDER SCORING (RCY 9.94A.360 (5))

ADULT HISTORY: (All adult offenses served concurrently count as ONE offense; those served consecutively are counted separately)

Enter number of Serious Violent and Violent felony convictions X 2 = _____
Enter number of Nonviolent felony convictions X 1 = _____

JUVENILE HISTORY: (All adjudications entered on the same date count as ONE offense)

Enter number of Serious Violent and Violent felony adjudications X 2 = _____
Enter number of Nonviolent felony adjudications X 1/2 = _____

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

Enter number of other Serious Violent and Violent felony convictions 8 X 2 = 16
Enter number of other Nonviolent felony convictions X 1 = _____

Total the last column to get the TOTAL OFFENDER SCORE
(round down to the nearest whole number)

16

II. STANDARD SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE:	31 - 41	35 - 46	41 - 54	46 - 61	51 - 66	57 - 75	77 - 102	87 - 116	108 - 144	129 - 171
(Seriousness Level IX)	months	months	months	months						

B. The range for attempt, solicitation, and conspiracy is 75% of the standard sentence range for the completed crime (RCY 9.94A.410)

C. Financial obligations may be added: fines, restitution, court costs, attorney's fees, assessments (SMB 1247 Section 23, RCY 9.94A.110, 9.94A.120 (9), 9.94A.270 (1))

III. SENTENCING OPTIONS FOR FIRST DEGREE STATUTORY RAPE

- A. If no prior sex offense conviction and sentence is less than six years: special sexual offender sentencing alternative (RCY 9.94A.120 (7)(a))
- B. If sentence is less than six years: sexual offender treatment program (RCY 9.94A.120 (7)(b))
- C. Exceptional sentence (RCY 9.94A.120 (2))

THIS OFFENSE REFERENCE SHEET IS FOR USE WITH THE VIOLENT SCORING FORM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
 Plaintiff,) No. 85-1-00007-2
 vs.)
CLYDE RAY SPENCER,) DECLARATION
 Defendant.) OF CRIMINAL HISTORY

... COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his attorney, and the Prosecuting Attorney's Office, the defendant has the following prior criminal convictions:

I. UNDISPUTED:		COUNTY and STATE	SENTENCE
YEAR	CHARGE		
	NONE		

II. DISPUTED:		COUNTY and STATE	SENTENCE
YEAR	CHARGE		

Dated this 16 day of MAY, 1985.

Ray Spencer
 Defendant
James E. Lulli
 Attorney for Defendant
James H. Peters
 Deputy Prosecuting Attorney

In the Superior Court of the State of Washington
In and For the County of Clark

STATE OF WASHINGTON,

Plaintiff,

vs.

CLYDE RAY SPENCER,

Defendant.....

85 1 00007 2
No.....

INFORMATION

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this inform the Court that the above named defendant..... is guilty of the crime.....committed as follows, to-wit:

Count I.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being over thirteen (13) years of age, did unlawfully and feloniously engage in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age at the time, to-wit: age five (5) years, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count II.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, did knowingly cause Kathryn E. Spencer, not the spouse of the defendant and less than fourteen (14) years of age, to-wit: age five (5) years, to have sexual contact with the defendant or another, in violation of RCW 9A.44.100 (1) (b), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Date: January 2, 1985

Count I - Statutory Rape I - RCW 9A.44.070 (1) and Count II - Indecent Liberties - RCW 9A.44.100 (1) (b)

FILED
JAN 3 - 1985

George J. Nether, Clerk, Clark Co.

ARTHUR D. CURTIS
Prosecuting Attorney in and for Clark County, Washington

By _____
Deputy Prosecuting Attorney

In the Superior Court of the State of Washington
In and For the County of Clark

STATE OF WASHINGTON,

Plaintiff,

vs.

CLYDE RAY SPENCER,

Defendant.....

No. 85-1-00007-2

INFORMATION

A M E N D E D

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this inform the Court that the above named defendant..... IS..... guilty of the..... crime... committed as follows. to-wit:

Count I.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being over thirteen (13) years of age, did unlawfully and feloniously engage in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age at the time, to-wit: age five (5) years, in violation of RCW 9A.44.070(1), and contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count II.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, did knowingly cause Kathryn E. Spencer, not the spouse of the defendant and less than fourteen (14) years of age, to-wit: age five (5) years, to have sexual contact with the defendant or another, in violation of RCW 9A.44.100(1)(b) and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

Count III.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on an unknown date during the summer of 1984, being a person over thirteen years of age, did engage in sexual intercourse with Mathew Allen Charles Hanson, who is less than eleven years old, to-wit: age four, in violation of RCW 9A.44.070 and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

FILED
FEB 28 1985

ARTHUR D. CURTIS ^{George J. Miller, Clerk, Clark Co.}
Prosecuting Attorney in and for Clark County, Washington

By _____
Deputy Prosecuting Attorney

Count IV.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on an unknown date between August 27th, 1984, and December 25, 1984, being a person over thirteen years of age, did engage in sexual intercourse with Mathew Allen Charles Hanson, who is less than eleven years old, to-wit: age four, in violation of RCW 9A.44.070 and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

Count V.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on or about February 16, 1985, being a person over thirteen years of age, did engage in sexual intercourse with Mathew Allen Charles Hanson, who is less than eleven years old, to-wit: age four, in violation of RCW 9A.44.070 and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

February 28, 1985

ARTHUR D. CURTIS,
Prosecuting Attorney
Clark County, Washington

BY: 
James M. Peters
Deputy Prosecuting Attorney

Count I: Statutory Rape I, RCW 9A.44.070(1)
Count II: Indecent Liberties, RCW 9A.44.100(1)(b)
Count III: Statutory Rape I, RCW 9A.44.070
Count IV: Statutory Rape I, RCW 9A.44.070
Count V: Statutory Rape I, RCW 9A.44.070

85-1-7-2

1 STATE OF WASHINGTON)
2 COUNTY OF CLARK) :ss

3 JAMES M. PETERS, being first duly sworn, upon oath,
4 deposes and states:

5 That I am a Deputy Prosecuting Attorney for Clark
6 County, Washington, and in the course of that capacity have
7 personal knowledge that Clyde Ray Spencer is presently
8 pending trial before Department 3 of the Superior Court of
9 Clark County, Washington for the crimes of Statutory Rape
10 in the First Degree and Indecent Liberties involving his
11 daughter, Kathryn E. Spencer, age five, said trial is set
12 to begin April 15th, 1985.

13 In my official capacity, on February 28th, 1985,
14 I was contacted by Detective Sharon N. Krause of the
15 Clark County Sheriff's Office, who is known to your affiant
16 to be a reliable and credible individual and who reported
17 the following information:

18 That this morning, February 28th, 1985, she was
19 contacted by Shirley Spencer, who is the wife of the
20 defendant, Clyde Ray Spencer, and her five year old son,
21 Mathew Allen Charles Hanson, whose date of birth is November
22 28, 1975. During the course of that contact Krause had
23 occasion to interview Mathew Allen Charles Hanson based on
24 concerns expressed by Shirley Spencer that her son, age five,
25 may have been sexually molested by Clyde Ray Spencer within
26 the preceding twelve months. During the course of her
27 interview with Mathew Allen Charles Hanson, age five, Krause
28 determined the following information:

29 Mathew appeared to be a bright and verbal child
30 who was easy to understand and informed Krause that he
31 had observed his father engaged in sexual acts with both
32 his step-sister, Kathryn Spencer, who is the victim of

FEB 28 1985

George J. Miller, Clerk, Clark Co.

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P. O. BOX 8000
VANCOUVER, WASHINGTON 98008
(206) 699-2281

16

1 Counts I and II of the present Information, and his
2 step-brother, Mathew Spencer, age nine, who is the
3 natural son of Clyde Ray Spencer;

4 Mathew also related to Deputy Krause that he
5 himself had been victimized by Ray Spencer on numerous
6 occasions describing in detail acts of having to perform
7 fellatio on his father, his father performing fellatio
8 on him, his father penetrating his rectum digitally, he
9 having to perform digital penetration upon his father
10 and his father performing penal penetration upon the
11 child's rectum;

12 Specifically, Mathew indicated that during
13 the sum of 1984 when his step-siblings, Katy and big
14 Matt were present at his residence on the Lewis River
15 in Clark County, Washington, his stepfather took him
16 into the master bedroom of the house while his mother,
17 Shirley, was at work. Further, that Clyde Ray Spencer,
18 and he were both naked during this contact and that
19 Clyde Ray Spencer engaged him in anal penetration of
20 Mathew's rectum and required Mathew to perform fellatio
21 upon Clyde Ray Spencer;

22 Further Mathew described to Deputy Krause that
23 sometime after his step-sister, Katy, left to return to
24 her home in California, which Krause advises was on
25 August 27th, 1984, a number of additional acts occurred.
26 Specifically, on one occasion he and the defendant, Ray
27 Spencer were in the bathtub and Ray Spencer forced
28 Mathew's head under the bath water and caused him to
29 put his mouth on Ray's erect penis. Mathew further
30 indicated to Krause that there were bubbles in the bath-
31 tub when this occurred.

32 In interviewing Spencer's wife, Shirley, Shirley

1 indicated that on one occasion after Katy left she attempted
2 to put bubble bath in Mathew's bathwater and Mathew expressed
3 extreme fear of having bubbles in his bathwater.

4 Further, that Shirley Spencer indicated to Deputy
5 Krause that on or about February 16, 1985, Ray Spencer was
6 residing at the Salmon Creek Motel located in Clark County,
7 Washington. She indicated that she had an appointment in
8 the evening of that date and had agreed with Ray Spencer
9 to leave Mathew in his care at the Salmon Creek Motel.
10 She indicated she dropped Mathew off in Room 17 of that
11 motel and described the room as an upstairs room located
12 at the back of the complex with a television set mounted
13 high upon the wall. In her interview with Mathew, Krause
14 learned that during that interaction with Ray Spencer,
15 Mathew was again sexually assaulted. Mathew indicated
16 that Ray Spencer inserted his penis into Mathew's rectum
17 and also forced Mathew to put his mouth on Ray Spencer's
18 penis.

19 Further, your affiant requested that Sgt. Mike
20 Davidson of the Clark County Sheriff's Office verify the
21 description of the motel room on February 28, 1985 at 1:20
22 p.m. your affiant was advised that Davidson had personally
23 viewed the room and determined the existence of the television
24 mounted high on the wall. Further, he verified that Spencer
25 was registered at the Salmon Creek Motel between February 6th
26 and February 20, 1985.

27 Wherefore, based upon the foregoing information,
28 your affiant believes there is good and sufficient information
29 to believe that Clyde Ray Spencer is guilty of an additional
30 three counts of Statutory Rape in the First Degree and your
31 affiant prays that he be apprehended and brought before the
32 Court for further proceedings.
MOTION AND AFFIDAVIT - 4

Further your affiant saith not.

James M. Peters

James M. Peters
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN TO BEFORE ME THIS 28 day of February,
1985.

Donald Engdberst
Notary Public in and for the
State of Washington residing
at Vancouver, therein.

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Date: 11/27/84

X
Suspect: SPENCER, Bruce

Subject: Clyde Ray Spencer Referred Crime: SR 1°

Officer: Sharon Krause Agency: Clallam Co. Sheriff's Off. Case No: 84-8506

We are declining to file this case in Superior Court for the following reason:

- A. Case is being returned for filing in municipal or district court.
- B. Case is being declined for non-evidentiary reasons.
- C. Case is being returned because it is legally insufficient.

Reasons:

1) A 13 year old victim alleges her natural father sexually assaults her when she visits and her step-mom Shirley in Vancouver, WA. Initial disclosure to Shirley and victim names 3 others as having abused her in addition to the 1.

2) Child appears from police reports to be extremely reluctant to talk about facts. Sharon Krause had to spend several hours one on one with victim, who also indicated she would not talk about it "with Boys". She also did not talk to a female counselor. This clearly does not bode well for testifying in court.

3) Initial naming of multiple →

Interview? yes no

Notified on _____

Proposed by: _____ Date: _____

Approved by: R. J. Roe Date: 11/27/84

King County Prosecuting Attorney's Office

DECLINE EXHIBIT E

(Original to file; copy to detective; Chief, Criminal Division)

suspects is very disturbing and child explanation that she thought it wouldn't hurt Shirley's feelings as much just didn't make her "sit back" & away. Combined with p. 5 of Shirley's handwritten statement, where child talked about rubbing Shirley - it creates questions about fact vs. fantasy. I believe this point is a built in reasonable doubt

There are inconsistencies - not surprising in child's statements over all issues:

no. of times - many times, vs. one time
what & wearing - Δ nude vs. Δ wearing underwear vs. Δ wearing robe
what & wearing - both nude vs. I's had panties vs. I had pajamas

all the varying descriptions may well be the result of the descriptions of different events - but then I find it disturbing that she's inconsistent on whether it happened more than once. I don't expect consistency on number of times for 5 yr. old, but question of one vs. more than one - should be consistent.

Date: 11-27-84

Suspect: Clyde Ray Spencer Referred Crime: Rape (Stat)
Officer: _____ Agency: _____ Case No: 84-8506

Suspect:

ntd
are declining to file this case in Superior Court for the following reason:

- A. Case is being returned for filing in municipal or district court.
- B. Case is being declined for non-evidentiary reasons.
- C. Case is being returned because it is legally insufficient.

Reasons:
If it happened more than 1x - to account for inconsistent explanations, I'd expect exculpation at some point being described.

In sum, I think a case with a five year old and absolutely nothing else is fileable if there is no significant problem with what the five year old says. Here there are several problems. Although I believe child was clearly abused, and probably by the defendant, the case is unwinnable even assuming you can get the child to talk.

Interviewed? yes no
 Notified on _____
 by _____

Proposed by: _____ Date: _____
 Approved by: R J Roe Date: 11/27/84
 King County Prosecuting Attorney's Office
DECLINE

(Original to file; copy to detective; Chief, Criminal Division)

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IN THE UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAYMOND SPENCER,)
)
Petitioner,)
)
vs.)
)
JOSEPH KLAUSER, Warden, Idaho)
State Institution; CHRISTINE)
GREGOIRE, Attorney General,)
State of Washington,)

Respondents.)

No. C94-5238RJB

ORIGINAL

DEPOSITION UPON ORAL EXAMINATION
OF
SHARON A. KRAUSE

DATE TAKEN: May 22, 1996
TIME: 10:30 a.m.
PLACE: Hall of Justice
Longview, Washington

SUZAN R. WELLS
Archer Associates, Inc.
P. O. Box 1092
Longview, Washington 98632
(360) 423-2195

1 A Yes. I'm sure it was.

2 Q What was significant about that? Why was that a
3 problem?

4 A Well, I think that's a big problem. We weren't looking
5 at one. There could have been others. The other thing
6 that concerned me personally was that I remember him
7 saying some of the other men had guns on their ankles.

8 Q You were concerned that these other potential suspects
9 might be police officers?

10 A Absolutely.

11 Q Was there an investigation that followed up on that?

12 A There was. And I remember Jim Holtz and I discussing
13 that.

14 Q Jim Holtz was with the Vancouver Police Department?

15 A Was the detective who was doing it. Other than that, I
16 can't really tell you. We were never able to identify,
17 you know, if there was, who they were.

18 Q Now, during the period of time of the Spencer
19 investigation, did you become aware that your
20 supervisor, Mike Davidson, began having a romantic
21 relationship with Shirley Spencer?

MR. SAMSON: I'll object on the
grounds of relevancy. This claim was addressed by the
ninth circuit and was rejected by the ninth circuit so I
don't think the issue is really relevant anymore to this

Sharon A. Krause

FE
-84

POSITION
SECTION ADDI-

ENTION

1)

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rded

ical Cen

i on

Ing

CASE NO.
84-8506

HIBIT

1 action. But you can answer if you want.

2 Q (By Mr. Camiel:) You can answer.

3 A I was aware of it, yes. So was everybody else.

4 Q Was that ongoing while you were conducting your
5 investigation?

6 A My memory of that, that was way on into the
7 investigation that I became aware of that. And I don't
8 -- I don't remember if it -- You know, it's been so
9 long. My recollection of that is that when I became
10 aware of that, it was long after I had interviewed
11 Little Matt. And I don't remember if it was before he
12 pled or after, to be honest with you. But at some point
13 I became -- but it was --

14 Q At the point where you learned about it, you've
15 indicated that it was long after you'd interviewed
16 Little Matt.

17 A It seems to me. That's what I think it was. That's my
18 memory.

19 Q I wanted to identify "Little Matt" as Matt Hansen.

20 A Correct.

21 Q Matt Hansen is the Matt that lived up here in the state
22 of Washington?

23 A Right. His mother is Shirley Spencer.

24 Q When you learned that your supervisor, Michael Davidson,
25 was involved with Shirley Spencer, at the point where

1 you learned that, was it your understanding that their
2 relationship had been going on for a period of time?

3 MR. SAMSON: I'll object.

4 Irrelevant. But you can answer.

5 THE WITNESS: What I remember is --
6 At the point I was told about it, my impression was it
7 hadn't been going on very long. I didn't ever get the
8 impression that this was a thing that had been going on
9 for years, if that's what you're wondering. At some
10 point I became aware that they were seeing each other,
11 but I didn't get the impression that it was a long --
12 they'd been seeing each other for a long time.

13 Q (By Mr. Camiel:) Did it -- Was it your impression
14 they'd been seeing each other for several weeks or a
15 matter of months?

16 A I can't really say. I would say weeks maybe at the time
17 I became aware. Well, it was enough that he felt like
18 he needed to tell me, I guess.

19 Q You learned about it from Sergeant Davidson?

20 A Yes.

21 Q Did the fact that Sergeant Davidson was in a
22 relationship with Shirley Spencer affect the way you
23 handled the Spencer investigation?

24 A Absolutely not.

25 Q Did you continue to have your reports reviewed by

1 Sergeant Davidson?

2 A I don't know that he was actively reviewing my reports.
3 Again, a lot of times it's just verbal what's going on.
4 You sit down and talk about it. I don't know that he
5 was reviewing my reports, to be honest. There's a good
6 possibility he wasn't.

7 Q But he was obviously aware that you were the lead
8 detective in the Spencer case?

9 A Surely.

10 Q And that one of the victims was Shirley Spencer's son?

11 A That's correct.

12 Q And he felt the need to advise you that he was in a
13 relationship with Shirley Spencer?

14 A That's correct.

15 Q Did you become aware at any point in time as to whether
16 or not Sergeant Davidson had been having contact with
17 Ray Spencer while Ray was in the jail?

18 MR. SAMSON: Objection. Irrelevant.

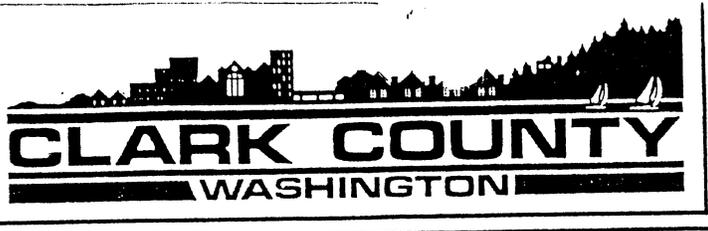
19 Q (By Mr. Camiel:) You can answer.

20 A I don't recall that. I don't recall being aware of that.

21 Q At any point in time did you become aware that Sergeant
22 Davidson had been going to the jail and talking to Ray
23 Spencer?

24 MR. SAMSON: Objection. Irrelevant.

25 THE WITNESS: No. I don't remember



CLARK COUNTY
WASHINGTON

ARTHUR D. CURTIS
PROSECUTING ATTORNEY

CURT WYRICK
CHIEF DEPUTY

DENNIS M. HUNTER
CHIEF CRIMINAL DEPUTY

RICHARD S. LOWRY
CHIEF CIVIL DEPUTY

MARY K. YOUNG
OFFICE ADMINISTRATOR

July 1, 1992

RECEIVED

JUL 6 1992

EDWARD SIEB,
WIGGINS & HATHAWAY
ATTORNEYS AT LAW

Mr. Howard Goodfriend
Attorney at Law
6501 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104

Re: State of Washington v. Raymond Spencer
Clark County Cause No. 85-1-00007-2

Copy to Client

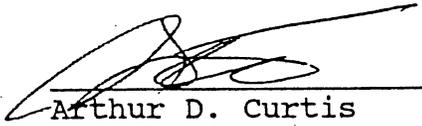
Date Sent: _____

Dear Mr. Goodfriend:

I am in receipt of your letter dated June 10, 1992, requesting production of any and all medical records which exist pertaining to the victim in the above case, Kathryn Spencer. Because I did not recall whether such medical records exist, I asked one of my legal assistants, Linda Engelbart, to review the file for me. Ms. Engelbart has recently done this and states that no such medical records exist in our file. Consequently, if such medical records do exist, they apparently were never provided to us.

Please let me know if I can be of any further assistance to with respect to this matter.

Sincerely,



Arthur D. Curtis
Prosecuting Attorney

ADC:ca

THERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT

032 084 97 17 4 3R
SPENCER, KATHRYN E.
F 01 13 79 EXP 10 84

762/PED ACC
08 30 84

All cases of Suspected Child Abuse Neglect are to be reported by telephone and in writing (by submitting this form) to the designated agencies (C and D below) within 36 hours. (Penal Code Section 11161.5 and 11161.7)

GENERAL INFORMATION

Patient's Name Spencer Kathryn Unit# _____

Address 3930 Bechira City Sacramento State CA Phone 482-1057

Age 5 Birthdate 1-13-79 Race C Sex F Date, Time of Examination 8-30-84 Place of Examination Post. Acute 1:30

Reporting Party's Name Kathryn Eells-Magee M.D. Family Practice UCD Department _____ Phone 453-3630

FAMILY—Parents:

Name (Last, First, Middle)	Birthdate	Sex	Race	Name (Last, First, Middle)	Birthdate	Sex	Race
<u>Shannon DeAne</u>		<u>F</u>	<u>C</u>	<u>Chyle Ray Spencer M</u>		<u>M</u>	<u>C</u>

Address 3930 Bechira Address Woodstock

Home Phone _____ Business Phone _____ Home Phone _____ Business Phone _____

Siblings:

Name	Birthdate	Sex	Race	Name	Birthdate	Sex	Race
<u>1. Matthew</u>	<u>8yr</u>	<u>M</u>	<u>C</u>	<u>4. _____</u>			
<u>2. _____</u>				<u>5. _____</u>			
<u>3. _____</u>				<u>6. _____</u>			

Child's Family/Home Environment—Include risk factors in parent and/or child. Specify who is/are caretaker(s).

Katie lives with mother and siblings. Parents divorced. Father has visitation for six weeks in summer month at 4:30. And two at Christmas every other year.

4 (13)
E. Wiest
Date: 7-24-96
MILLER & LICHTEN
(209) 252-9053

Previous reports of abuse of child or in family? Yes No If yes, describe when, who involved, etc.

Print Last Name Eells-Magee Signature K. Eells-Magee Date of Report 8/30/84

00000277

032-084 97 17 4 3R

762/PED ACC

SPT TEL. ATHLETIC
F 1 17 70 EXP 10 84
4 35 482 3957

03 30 84

THERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT

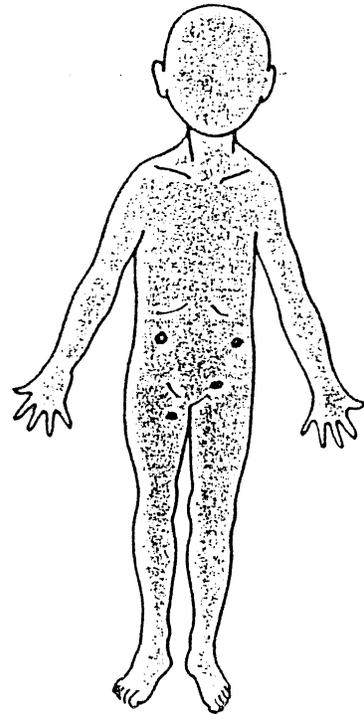
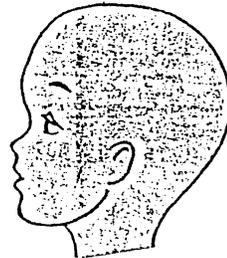
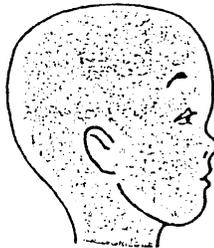
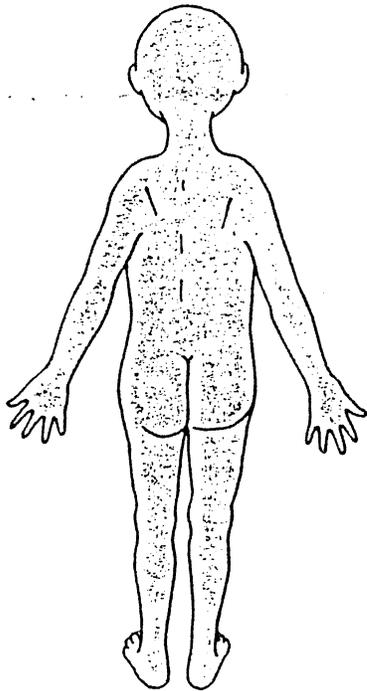
10:20
PHYSICAL EXAMINATION

Patient's General Appearance:

white female child cowering in her
mother's lap

Ht 110.5 cm 25th %ile
Wt 17.0 kg 15th %ile
Hc _____ cm _____ %ile

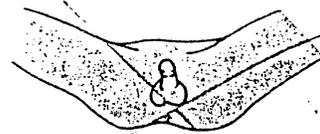
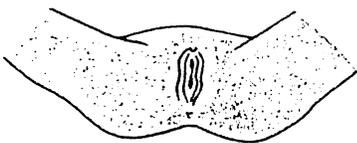
Locate and describe in detail any injuries or findings related to maltreatment. Indicate location of lesions/findings; shade for bruises or burns. Beside each injury indicated note color, size, pattern, texture, and sensation. Note if recognizable imprint or bruise goes around curve.



4 erythematous
bug bites

A pelvic examination should not be performed unless the parent, guardian or minor consent or unless necessary as part of treatment. See Department of Health Regulations Title 22, Division 2, Victims of Sexual Assault.

Pelvic
No erythema
Hymer intact
No lacerations
No swelling



FINDINGS: Pelvic within normal limits.

- Fundoscopic Examination— Normal Abnormal Not done
- Development Assessment— Normal Questionable Abnormal, by DDST Estimate Other
- Behavioral Assessment— Normal during visit Abnormal during visit (Specify) not used to speak or scream
- X-ray bone survey— Normal Not done Abnormal (findings) through exam
- Hemostasis tests performed— PT PTT Platelets None Other _____ Results _____
- Cultures for gonorrhea performed— genitalia throat anus. VDRL— Done Not done
- Menarche age _____ Periods regular? Yes No L.M.P. _____
- Pregnancy test— Positive Negative Not performed

4.2

Signature Eells-Moore Print Last Name Eells-Moore Date of Report 8/30/84

022 084 97 17 4 3R

7b2 / PED ACC

UNIVERSITY OF CALIFORNIA DAVIS
MEDICAL CENTER
SACRAMENTO

SPENCER, KATHRYN E.
F 01 13 70 EXP 10 34
4 00 482 8057

03 30 04

THERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT

MALTREATMENT HISTORY:

Give history of event(s) including time, date, place, perpetrator, circumstance, people present, etc. Underline name of person giving each version, e.g., Father said ... Child said ... Officer said ...

Mother said

Children were visiting father to blocks during summer returned to mother on 8-26. Step father reported to Woodbury police that the father had molested. Report was based on interview with the boy made on 8-24-84. Video obtained by father as a favor from police. Father did not report to police. The boy's statement is correct.

Diagnostic Conclusion(s):

Child's story consistent with history of molestation.
No physical findings.

MANAGEMENT

1. Reported to: Officer	ID No.	Department	Phone
<u>Pat F. Wood</u>		<u>Shasta</u>	<u>440-5191</u>
Dependent Intake or CPS Worker		Department	Phone
		<u>OS</u>	<u>366-3386</u>

2. Medical Follow-up: Date _____ Time _____

Scan F/U Clinic P.M.D. (Name) 4-29-84

UCD Clinic (Name) _____ Other _____

None (Why not?) _____

3. Mental Health Follow-up: Date _____ Time _____

Referred to William Woodruff

None _____

4. Disposition:

Police Hold? Yes No

Receiving Home Foster home Relative's home Parent's home Other

Hospitalized

5. Other Treatment:

Print Last Name	Signature	Date of Report
<u>Eells-Magee</u>	<u>K. Eells-Magee</u>	<u>8/30/84</u>

0000279

4.3

KAISER
PERMANENTE
MEDICAL CARE PROGRAM

DATE	LOCATION	STATION	SERVICE CODE
NAME			
HEALTH RECORD NO.		D.O.B.	
GROUP NO.		MEDICARE CLASS	
BENEFIT ARRAY			

(cont)

self more & not interested in doing usual things & just seemed generally ill x few days.

Main concern now is if any physical injury has been done -

See R & No evidence for any physical injury presently.

[Signature]

VC

FEB 25 1986

KA - G

meds &

Rm 5

CLINIC (SB) CASE: 6448

T-99.8

M. Nylander Pa C/C cough, (R) ear pain, swollen glands (R) & (L) sides of neck cough & ST x 3-4 days Ear pain x 1 day

c/o Pa above

Rx. ENT. (R) TM is intact & very red
 Throat is clear

(R) anterior & posterior cervical adenitis

Lungs clear to T & P

Imp. ROM

Rx. Pmax 250 mg / 5 ml's TID 150 mg

elix of Tylenol 2 1/2 ml's q 4h prn

Rx 10-14 days

R. Nylander

Record name, chart number and doctor.
(Stamp preferred)

KAISER FOUNDATION

UO 3 SER

11/26/85
11/26/85

MATTHEW ALLAN HANSEN
4104 27 48 0230 H

1959-025
1 A X X A
W#694-2494
h#254-5498

CHART

PERMANENT MEDICAL CASE PROGRAM

DATE: 11/26/85
LOCATION OBTAINED: OS
BY: DDOOS

PERTINENT CLINICAL INFORMATION: 2410

RESULTS TELEPHONED: TO: BY: TIME:

APPROPRIATE BOX:
PRIMARY TRACT SYMPTOMS:
 PRESENT ABSENT

ROUTINE (CULTURED IF INDICATED)

DATE REPORTED	BYLOC	WHITE BLOOD CELLS	RED BLOOD CELLS	BACTERIA	TRICHO MONAS	YEAST	CRYSTALS	MUCOUS	ANDROPHOUS	EPITH. CELLS	HYALINE	FINE GRANULAR	COARSE GRANULAR
3/16	03	0	0	0	0	0	0	0	0	0	0	0	0

SPECIAL ORDERS CULTURE NOT REQUIRED CULTURE REQUIRED

BYLOC: 03
DATE REPORTED: 3/16

WHITE BLOOD CELLS: 0
RED BLOOD CELLS: 0
BACTERIA: 0
TRICHO MONAS: 0
YEAST: 0
CRYSTALS: 0
MUCOUS: 0
ANDROPHOUS: 0
EPITH. CELLS: 0
HYALINE: 0
FINE GRANULAR: 0
COARSE GRANULAR: 0

MICRO: BYLOC

THIS SPECIMEN HAS BEEN CULTURED
 THIS SPECIMEN HAS NOT BEEN CULTURED

SDA	WBC	GLUCOSE	NETONES	BILE	BLOOD	UROBILIN- OGEN	BYLOC	DATE REPORTED
4.5	4.62	13.3	0	0	0	0	03	3/16

NEUT	BAND	LYMPH	MONO	GRAN	PLT	MPV	WBC	HGB	HCT	MCH	MCHC	RDW	PLT	MPV
75	0	20	0	0	100	10	13.3	13.3	38.1	26.0	14.7	10.0	100	10

PRELIMINARY REPORT

NO GROWTH 48 hrs
GRAM COCCI
STAPH COAG
STREPT
GRAM BACILLI
POSS
PRESUMPTIVE N. GONORRHOEAE

ORGANISM #1: NO GROWTH 48 HRS
ORGANISM #2: NO GROWTH 48 HRS
ORGANISM #3: NO GROWTH 48 HRS

FOR SMEAR & CULTURE QUANTIFICATION CODES PLUS ANTIBIOTIC CLINICAL PHARMACOLOGY SEE REVERSE SIDE

QUALITY CONTROL

TEST	RESULT
NITROFURANTOIN	000000
TRIMETH/SULFA	000000
TRIMETHOPRIM	000000
BETA LACTAMASE	000000

BACTERIAL CULTURE
GRAM STAIN ONLY
THROAT FOR GRA STREP
GENITAL FOR N. GONORRHOEAE
A/B CULTURE AND SMEAR
FUNGUS CULTURE AND SMEAR

NO GROWTH 48 HRS
GRAM COCCI
STAPH COAG
STREPT
GRAM BACILLI
POSS
PRESUMPTIVE N. GONORRHOEAE

ORGANISM #1: NO GROWTH 48 HRS
ORGANISM #2: NO GROWTH 48 HRS
ORGANISM #3: NO GROWTH 48 HRS

PRELIMINARY REPORT

NO GROWTH 48 hrs
GRAM COCCI
STAPH COAG
STREPT
GRAM BACILLI
POSS
PRESUMPTIVE N. GONORRHOEAE

ORGANISM #1: NO GROWTH 48 HRS
ORGANISM #2: NO GROWTH 48 HRS
ORGANISM #3: NO GROWTH 48 HRS

PRELIMINARY REPORT

BETA LACTAMASE

NO GROWTH 48 hrs
GRAM COCCI
STAPH COAG
STREPT
GRAM BACILLI
POSS
PRESUMPTIVE N. GONORRHOEAE

ORGANISM #1: NO GROWTH 48 HRS
ORGANISM #2: NO GROWTH 48 HRS
ORGANISM #3: NO GROWTH 48 HRS

PRELIMINARY REPORT

NO GROWTH 48 hrs
GRAM COCCI
STAPH COAG
STREPT
GRAM BACILLI
POSS
PRESUMPTIVE N. GONORRHOEAE

ORGANISM #1: NO GROWTH 48 HRS
ORGANISM #2: NO GROWTH 48 HRS
ORGANISM #3: NO GROWTH 48 HRS

M 69 (REV. 11-83) CHARTED BY 19 323591 P.O. 24225

M 87 (REV. 7-84) CHARTED BY 19 323591 P.O. 25671

DATE REPORTED 11-22-83

CHART FINAL

CHART FINAL

DECLARATION OF MATTHEW SPENCER

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CLARK COUNTY SUPERIOR COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON

No. 85-2-00007-2

VS.

CLYDE RAY SPENCER

DECLARATION OF MATTHEW RAY
SPENCER

I, MATTHEW RAY SPENCER DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON AND THE UNITED STATES THAT THE FOLLOWING FACTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

1. I AM THE SON OF CLYDE RAY SPENCER WHO WAS CONVICTED IN 1985 IN CLARK COUNTY WASHINGTON OF HAVNG SEXUALLY ABUSED ME, MY SISTER KATHRYN AND MY STEPBROTHER MATT HANSEN.
2. I CURRENTLY RESIDE IN CALIFORNIA AND WORK AS AN AUTOMOTIVE TECHNICIAN. I HAVE HAD TWO YEARS OF COLLEGE.
3. IN 1985 I WAS NINE YEARS OLD. MY DATE OF BIRTH IS NOVEMBER 28, 1975.

DECLARATION OF MATTHEW SPENCER

1

Mair & Camiel, P.S.
710 Cherry Street
Seattle, WA 98104
Phone: 206-624-1551
Facsimile: 206-623-5951

DECLARATION OF MATTHEW SPENCER

- 1 4. I AM NOW 30 YEARS OLD AN I AM MAKING THIS DECLARATION OF MY
2 OWN FREE WILL WITHOUT ANY THREAT, PROMISE, INCUCEMENT OR
3 PRESSURE PUT UPON ME.
- 4 5. IN 1984 I LIVED WITH MY MOTHER AND SISTER IN CALIFORNIA. MY
5 FATHER LIVED IN THE STATE OF WASHINGTON. MY SISTER AND I
6 CAME TO VISIT DURING THE SUMMER.
- 7 6. I HAVE HAD NO CONTACT WITH MY FATHER, CLYDE RAY SPENCER OR
8 HIS ATTORNEY OR INVESTIGATOR SINCE 1984, ALTHOUGH I AM AWARE
9 OF THE FACT THAT OVER THE YEARS THE ATTORNEY WORKING FOR MY
10 FATHER HAS ATTEMPTED TO CONTACT ME AND THAT MY FATHER WROTE
11 LETTERS AND SENT CHRISTMAS GIFTS.
- 12 7. I AM AWARE THAT OVER THE YEARS MY MOTHER OBJECTED TO MY
13 BEING INTERIVEWED BY MY FATHER'S ATTORNEY OR INVESTIGATOR
14 AND TOLD THEM NOT TO CONTACT ME.
- 15 8. IN 2005 I LEARNED THAT MY FATHER HAD BEEN RELEASED FROM
16 PRISON AFTER SERVING OVER 20 YEARS.
- 17 9. THE FIRST CONTACT I HAVE HAD WITH MY FATHER WAS THROUGH A
18 NEWSPAPER REPORTER, KEN OLSON FROM THE VANCOUVER COLUMBIAN
19 WHO TOLD ME HE WAS WRITING AN ARTICLE ABOUT MY FATHER'S CASE
20 AND WANTED TO INTEVIEW ME. AT THE TIME THAT THE REPORTER
21 CONTACTED ME IN ABOUT SEPTEMBER OF 2005 I TOLD THE REPORTER
22 I WANTED TO COME TO SEATTLE TO MEET WITH MY FATHER.
23
24
25

DECLARATION OF MATTHEW SPENCER

2

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DECLARATION OF MATTHEW SPENCER

1 10. IN LATE 2005 MY FATHER SENT ME AN E-MAIL AND WE EXCHANGED E-
2 MAI LS THAT LED TO MY VISITING WITH HIM IN SEATTLE FOR THE
3 FIRST TIME IN LATE FEBRUARY 2006.

4 11. THIS VISIT WAS THE FIRST TIME I HAVE SEEN MY FATHER SINCE
5 1984 AND THE FIRST TIME I HAVE EVER TALKED TO HIM ABOUT THE
6 CRIMINAL CHARGES.

7 12. I UNDERSTAND THAT MY FATHER WAS ACCUSED OF SEXUALLY
8 MOLESTING ME AND MY SISTER AND MY STEPBROTHER. I ALSO KNOW
9 THAT HE PLEADED GUILTY TO THOSE CRIMINAL CHARGES AND
10 RECEIVED A LIFE SENTENCE.

11 13. I CAN STATE UNEQUIVOCALLY THAT I WAS NEVER MOLESTED IN ANY
12 MANNER AT ANY TME BY MY FATHER.

13 14. I RECALL THAT IN 1985 I WAS INTERVIEWED BY A DETECTIVE AT
14 MY HOME. HE ASKED ME IF MY FATHER HAD TOUCHED ME
15 IMPROPERLY. I REMEMBER I TOLD THE DETECTIVE THAT I HAD NOT
16 BEEN TOUCHED BY MY FATHER IN ANY INAPPROPRIATE WAY.

17
18 15. I KNOW THAT I WAS INTERVIEWED BY A FEMALE DETECTIVE. I
19 REMEMBER DETECTIVE KRAUSE BY NAME. SHE WAS INVESTIGATING
20 THE ALLEGATIONS IN 1984 OR 1985 AND CAME DOWN TO CALIFORNIA
21 TO INTERVIEW ME AND MY SISTER. SHE DROVE ME AND MY SISTER
22 AROUND AND TOOK US TO HER MOTEL. SHE REPEATEDLY ASKED ME IF
23 MY FATHER HAD MOLESTED ME. SHE TOLD ME THAT MY SISTER AND
24 LITTLE MATT HAD ADMITTED THAT HE HAD MOLESTED THEM.

25 DECLARATION OF MATTHEW SPENCER

3

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DECLARATION OF MATTHEW SPENCER

1
2 16. I KEPT TELLING HER HE DIDN'T DO ANYTHING. SHE WOULDN'T
3 ACCEPT MY DENIALS AND KEPT SUGGESTING THAT HE HAD MOLESTED
4 ME AND THAT I WASN'T BEING TRUTHFUL.
5

6 17. FINALLY I FIGURED THAT IF MY FATHER HAD MOLESTED MY SISTER
7 AND LITTLE MATT THAT MAYBE HE HAD MOLESTED ME AS WELL SO I
8 TOLD HER THAT HE HAD. I MADE UP SPECIFIC DETAILS OF WHAT
9 MY FATHER DID BASED ON WHAT THE DETECTIVE ASKED ME. NONE OF
10 THIS WAS TRUE.
11

12 18. I HAVE HAD THE OPPORTUNIT TO REVIEW THE REPORT WRITTEN BY
13 DETECTIVE KRAUSE CONCERNING HER MARCH 24, 1985 INTERVIEW
14 WITH ME. WHILE I BELIEVE THAT I DID TELL HER THE THINGS
15 WRITTEN IN THE REPORT ATTRIBUTED TO ME ABOUT MY FATHER
16 SEXUALLY ABUSING ME NONE OF IT IS TRUE.
17

18 19. LATER I WAS FLOWN UP TO WASHINGTON FOR ANOTHER INTERVIEW. I
19 RECALL I MADE UP STORIES OF OTHER POLICE OFFICERS ALONG WITH
20 MY FATHER BEING INVOLVED IN ABUSING ME, LITTLE MATT AND
21 KATHRYN AND SOMEONE DRIVING A RED PORSCHE. NONE OF THIS
22 WAS TRUE.
23
24
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DECLARATION OF MATTHEW SPENCER

4

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Seattle, WA 98104
Phone: 206-624-1551
Facsimile: 206-623-5951

DECLARATION OF MATTHEW SPENCER

1 20. I NEVER OBSERVED MY FATHER HAVE ANY SEXUAL CONTACT WITH MY
2 SISTER OR STEPBROTHER, MATT HANSEN, NOR DID EITHER ONE OF
3 THEM EVER TELL ME THAT HE DID SO.

4 21. OVER THE YEARS I HAVE TALKED WITH MY SISTER KATHRYN. SHE HAS
5 TOLD ME THAT SHE MUST HAVE BLOCKED OUT THE ABUSE BY MY
6 FATHER BECAUSE SHE HAS NO MEMORY OF HAVING BEEN ABUSED BY
7 HIM.

8 22. OVER THE YEARS I HAVE ALWAYS WANTED TO COME FORWARD AND MAKE
9 CLEAR THAT MY FATHER HAD NOT SEXUALLY ABUSED ME, BUT I HAVE
10 NOT KNOWN HOW TO GO ABOUT SETTING THE RECORD STRAIGHT.

11 23. ON FEBRUARY 27TH, 2006 I MET WITH MY FATHER'S LAWYER, PETER
12 A. CAMIEL IN SEATTLE AND TOLD HIM ALL OF THE ABOVE FACTS.

13 24. I HAVE CAREFULLY REVIEWED EVERY LINE OF THIS DECLARATION FOR
14 ACCURACY. IT IS ALL TRUE TO THE BEST OF MY KNOWLEDGE AND I
15 AM WILLING TO GO TO COURT AND SWEAR TO THESE FACTS BEFORE A
16 JUDGE.

17 DATED THIS 27TH DAY OF FEBRUARY, 2006 AT SEATTLE, WASHINGTON
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21 MATTHEW RAY SPENCER
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DECLARATION OF MATTHEW SPENCER

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3
4 SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLARK COUNTY

5 STATE OF WASHINGTON,)

6 Plaintiff,)

7 v.)

8 CLYDE RAY SPENCER,)

9 Defendant.)

No. 85-1-00007-2

DECLARATION OF KATHRYN E. SPENCER

10 I, Kathryn E. Spencer Tetz, hereby state under penalty of perjury that the following is true and
11 correct.

12 1. I am the natural daughter of Clyde Ray Spencer. I was born on January 13, 1979 and I am
13 now 28 years old, married and have a newborn child. I presently reside in Roseville, California. I am
14 employed as a medical recruiter.

15 2. I understand that my father was convicted of crimes involving sexual molestation of me, my
16 brother, Matt Spencer, and my stepbrother, Matt Hansen.

17 3. Up until August of 2007, I have not had any contact with my father since the summer of 1984.
18 I initiated the contact with my father to try to reestablish communication with him. I am aware of the
19 fact that he was convicted in Clark County of sexually abusing me, my brother, Matt Spencer, and my
20 stepbrother, Matt Hansen, and I am aware that he was sentenced to serve the rest of his life in prison.
21 I am also aware of the fact that he was granted a commutation of his sentence by the Governor of the
22 State of Washington and is currently free.

23 4. Beginning in August of 2007, I first had contact with my father. I began asking my father
24 questions about the charges. My father put me in touch with his attorney, Peter A. Camiel.

25 5. My father's attorney, Peter Camiel, questioned me regarding my memory of whether or not
26 I had ever been sexually abused by my father. The attorney also provided me with copies of an
27

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1 investigative summary prepared by Clark County Sheriff's Detective Sharon Krause regarding Detective
2 Krause's interviews with me in October of 1984. I have also reviewed a medical examination report
3 conducted at the University of California Medical Center Davis Sacramento on August 30, 1984.

4 6. I have no absolutely no memory of my father ever having sexually abused me or
5 inappropriately touching me in anyway whatsoever. I believe that if my father had in fact engaged in
6 the type of sexual abuse described in the Detective's reports and in the charges brought against my
7 father, I would remember such actions.

8 7. I also have absolutely no memory of ever having observed my father engage in any sexual
9 misconduct of any kind with either my brother, Matt Spencer, or my stepbrother Matt Hansen. I also
10 have absolutely no memory of either my brother, Matt Spencer, or my stepbrother, Matt Hansen,
11 engaging in any sexual misconduct with me.

12 8. I do have a vague recollection of having been questioned by Detective Sharon Krause. I don't
13 recall the details of the questioning and don't recall the responses that I gave at that time even after
14 reading the Detective's reports.

15 9. It is my belief that if I had been sexually abused in the manner described in the police reports
16 alleged against my father, I would have a memory of this having occurred. I have no such memory.
17 Because I have no memory whatsoever of having been sexually abused by my father, I am concerned that
18 I was never abused and that my father was wrongfully convicted.

19 10. I have reviewed this declaration carefully and made changes to it so that I am comfortable
20 that it is completely truthful to the best of my knowledge.

21 DATED this 14th of September, 2007.

22
23 
24 Kathryn Spencer Tetz
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CONDITIONAL COMMUTATION
OF
CLYDE RAY SPENCER

To All To Whom These Presents Shall Come, Greetings:

WHEREAS, Clyde Ray Spencer served in the United States Air Force before joining the police department in Vancouver, Washington in 1979. In 1985, he was charged with 11 counts of statutory rape in the first degree of his two biological children and one stepchild. He entered an *Alford* plea, maintaining his innocence while acknowledging sufficient evidence existed to find him guilty. Given that the crimes for which he was convicted took place over a period of years, some of his convictions are pre-Sentencing Reform Act (SRA) and others are post-SRA. Specifically, he received an indeterminate sentence of two concurrent life sentences with parole for the two earliest convictions to run consecutive to a separate 171 month determinate sentence for the remaining nine counts; and

WHEREAS, there were a number of troubling aspects of the investigation. Clark County authorities withheld the fact that, despite the allegations of severe, repeated sexual abuse of the children, medical reports showed no sign of physical abuse. While the children recounted that Mr. Spencer had taken photographs of the abuse, no photos were ever found. Because Mr. Spencer was a City of Vancouver Police Officer, the Clark County Prosecutor submitted the case to King County Senior Deputy Prosecuting Attorney, Rebecca Roe, a renowned specialist in child sexual abuse cases. Ms. Roe noted significant problems with the case, including the interview techniques used with Mr. Spencer's daughter and resulting inconsistencies in her testimony. Ms. Roe found it "disturbing that she's inconsistent on whether it happened more than once." While denying for eight months that anything had happened, Mr. Spencer's son 9-year-old son began to say that his father abused him after being threatened with a polygraph; and

WHEREAS, another troubling fact in this case is that one of the lead detectives investigating Mr. Spencer's case began having an affair with his wife, Shirley Spencer, during the investigation. After Mr. Spencer's conviction, the detective left his own wife and moved in with Mr. Spencer's wife. This detective was also the supervisor of the primary detective involved in interviewing the children; and

WHEREAS, Mr. Spencer completed his determinate sentence of 171 months in 1994 and continues to serve time for the remaining two life terms. Mr. Spencer appeared before the Indeterminate Sentencing Review Board (ISRB) in 1990, 1992, 1994, 1998 and 2001. At each hearing the Board determined that he was not paroleable because he has not received treatment based on his denial of guilt. He has now served more time than anyone convicted of the same crime under the Sentencing Reform Act; and

WHEREAS, James M. Peters, an Assistant United States Attorney in the District of Idaho, who was a Senior Deputy Prosecuting Attorney for the Clark County Prosecutor's Office at the time that Mr. Spencer was prosecuted submitted a letter to the ISRB prior to a 1998 paroleability

hearing discussing the life sentences. Specifically, "I submit that 'life' in Mr. Spencer's case should be interpreted to mean the high end of whatever the applicable calculation would have been if all the offenses would have taken place under the Sentencing Reform Act. . . . I believe that the combination of an equitable interpretation of the meaning of a 'life' sentence, coupled with mandatory sex offender treatment would achieve the goals of sentencing fairness and community safety"; and

WHEREAS, Mr. Spencer had no criminal history prior to his conviction. He has been an exemplary inmate without disciplinary problems. He has been constantly employed within the institution and taken every opportunity to further his education; and

WHEREAS, 56-year-old Mr. Spencer will have support upon his release. He is remarried to Norma Spencer, a registered nurse, who he has known for over 30 years; and

WHEREAS, I have reviewed all pertinent facts and circumstances surrounding this matter, the unanimous favorable recommendation of the Washington State Clemency and Pardons Board, and in light of the circumstances I have determined that the best interests of justice will be served by this action;

NOW, THEREFORE, I, Gary Locke, by virtue of the power vested in me as Governor of the State of Washington, hereby commute the remainder of the sentence imposed upon Clyde Ray Spencer to a term of community custody, SUBJECT TO THE FOLLOWING CONDITIONS:

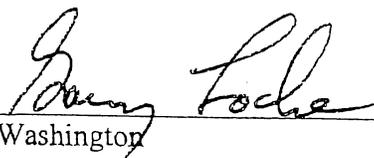
Mr. Spencer shall:

1. Serve 36 months of community placement after his release from confinement, reporting regularly to a Community Corrections Officer as directed by the Department of Corrections;
2. Pay a monthly supervision fee as directed by the Community Corrections Officer;
3. Notify the Department of Corrections prior to any changes of address or employment;
4. Remain in the geographic area as directed by the Community Corrections Officer;
5. Not possess, receive, ship, or transport a firearm, ammunition, or explosives;
6. Not possess or use alcohol or possess or use any controlled substances without a prescription;
7. Submit to regular and random urinalysis and breathalyzer testing, as directed by the Community Corrections Officer;
8. Not patronize or frequent businesses or other areas where the sale of intoxicating beverages is a main source of funding;
9. Not have any contact with minors unless approved by the Community Corrections Officer and his certified therapist and unless there is a responsible guardian present at all times;
10. Participate in a sex offender evaluation as directed by the Community Corrections Officer, and follow-up on any recommendations from such evaluation;
11. Participate in weekly sex offender treatment with a certified therapist for a period no less than three years;

- 12. Submit to regular and random polygraph and plethysmograph examinations, as directed by the Community Corrections Officer and/or his certified therapist;
- 13. Participate in electronic monitoring, if deemed appropriate by the Community Corrections Officer;
- 14. Participate in any mental health evaluation as recommended by the Community Corrections Officer, and follow-up on any recommendations from such evaluation; and,
- 15. Comply with all conditions, recommendations, and instructions of community placement as directed by the Community Corrections Officer.

Violation of any of the above conditions shall result in sanctions as deemed appropriate by the Department of Corrections. **PROVIDED**, that in the event Mr. Spencer commits any offense classified as a felony or gross misdemeanor in the State of Washington, this Conditional Commutation is revoked and the sentence imposed by the court reinstated without the benefit of sentence reduction credit, whereupon Mr. Spencer shall be immediately returned to the Washington Corrections Center or any such other facility as the Secretary of Corrections deems appropriate. The Department of Corrections shall provide a written report to the Clemency and Pardons Board regarding the violation of any condition of this Conditional Commutation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be affixed at Olympia on this 23rd day of December, A.D. two thousand and four.



 Governor of Washington

BY THE GOVERNOR:

 Secretary of State

1 May 16, 1985

2
3 CHANGE OF PLEA

4
5 THE COURT: State vs. Spencer.

6 I think this is the latest amended, Second Amended
7 Information that was filed on May 3, 1985. As I understand
8 it based upon this Motion and Order of Dismissal that
9 Mr. Peters has presented on behalf of the Prosecutor's
10 Office, Mr. Spencer proposed to plead guilty to all of the
11 counts except IV, V and VI, VIII and XI. So he would be
12 pleading guilty to the 11 remaining counts, is that right?

13 MR. RULLI: That's correct, Your
14 Honor.

15 THE COURT: Also I understand
16 that this is proposed to be an Alfred or Newton plea, is
17 that right?

18 MR. RULLI: That's correct.

19 THE COURT: Okay. Mr. Spencer,
20 you still have the right to remain silent. Do you understand
21 that you don't have to plead guilty, or even discuss the
22 plea of guilty if you don't want?

23 MR. SPENCER: Yes, sir, I
24 understand.

25 THE COURT: And have you prepared

1 and gone over this Plea Statement with your attorney,
2 Mr. Rulli?

3 MR. SPENCER: Yes, sir.

4 THE COURT: Do you feel you
5 understand everything that is in it?

6 MR. SPENCER: Yes, sir.

7 THE COURT: I'm going to go
8 through it with you in detail. If you have any questions,
9 just ask and we will try to answer them.

10 You're thirty-seven years of age. You have two years
11 of post-high school education, is that correct?

12 MR. SPENCER: Yeah, I have four
13 years.

14 THE COURT: Sixteen total years
15 of education, right?

16 MR. SPENCER: Yes, sir.

17 THE COURT: Okay. Now, you're
18 familiar with the Second Amended Information, and you have
19 read all of the charges, correct?

20 MR. SPENCER: Yes, sir.

21 THE COURT: Do you understand
22 that you do have the right to a speedy, public trial by
23 jury, and that trial is set for Monday, May 20th, at
24 9 o'clock?

25 MR. SPENCER: (Nodding head)

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THE COURT: And during the course of these proceedings, the original charges, I believe, were filed on January 3, 1985. The case was originally set for trial on February 27th, 1985. You and Mr. Rulli asked for a continuance, and a continuance was granted, and you did execute a Waiver of Speedy Trial. Is that correct?

MR. SPENCER: Yes, sir.

THE COURT: The case was then set for trial on April 17th, 1985. Somewhere in that time period additional charges were filed by the Prosecutor, and, again, your attorney and you requested a continuance to adequately prepare for the additional charges. And you executed a Waiver of Speedy Trial on March 14th, 1985, correct?

MR. SPENCER: That's correct.

THE COURT: The case was then set for trial on May 20th, and between then and May 3rd, the Second Amended Information was filed. Now, if you did proceed to trial, you have the right to remain silent; the right to confront any witnesses called by the State to testify against you; the right to have witnesses produced at public expense, if you were unable to get your witnesses here.

You would be entitled to the presumption of innocence. The State would have to prove you're guilty beyond a reasonable doubt.

1 What the State has to prove, or what we call the elements
2 of the crime, I'll go through those with you one by one.
3 Even if you lost the trial, you could appeal to the Court of
4 Appeals and/or the Supreme Court to review any errors that
5 you felt were committed at the time of trial. If you plead
6 guilty, of course, you give up your trial rights. Do you
7 have any questions about that?

8 MR. SPENCER: No, sir.

9 THE COURT: Do you feel you
10 understand your trial rights?

11 MR. SPENCER: Yes, sir.

12 THE COURT: Okay. With respect
13 to Count I, the State alleges and would have to prove beyond
14 a reasonable doubt that you, Clyde Ray Spencer, in Clark
15 County, Washington, during the summer of 1983, at a time
16 that you were over thirteen years of age, did engage in
17 sexual intercourse with Kathryn E. Spencer, who was less
18 than eleven years of age.

19 Sexual intercourse would involve some penetration of
20 the vagina of the victim in some fashion by you by person
21 or instrument, is that correct?

22 MR. PETERS: Or rectum or any
23 oral contact with her involving his genitals, or he involving
24 her genitals.

25 THE COURT: That's correct.

1 Now, Count II, Clyde Ray Spencer, Clark County, State
2 of Washington, again during the summer of 1983, did engage
3 in sexual intercourse, same definition, at a time that you
4 were over thirteen and the victim was less than eleven. The
5 victim alleged, Matthew Ray Spencer.

6 Count III, again yourself, Clark County, Washington, on
7 one or more occasions between July 14, 1984 and August 26,
8 1984, at a time when you were over thirteen years of age, did
9 engage in sexual intercourse by placing your penis or finger
10 in Kathryn E. Spencer's vagina or rectum when she was less
11 than eleven years of age.

12 Count V, again, yourself ----

13 MR. PETERS: That's dismissed,
14 Your Honor. IV, V and VI are part of the plea bargain.

15 THE COURT: Okay, moving on to
16 VII, that you, Clyde Ray Spencer in Clark County on or about
17 or between July 14th and August 26th, 1984, at a time when
18 you were over thirteen years of age, engaged in sexual
19 intercourse by placing your penis or finger in the rectum of
20 Matthew Ray Spencer at a time when the victim was less than
21 eleven years of age. Count VIII, that you,
22 Clyde Ray Spencer ----

23 MR. PETERS: Count VIII is
24 dismissed.

25 THE COURT: VIII is another one.

1 MR. PETERS: Your Honor, number
2 IX is a complicity or accomplice count. Basically the
3 allegation -- I know we need to read the elements. For the
4 Court's information, the allegation is that Mr. Spencer was
5 having the children, making the children perform sexual acts
6 with one another as he looked on.

7 THE COURT: Okay. What the
8 information charges is the State would have to prove beyond
9 a reasonable doubt would be that between July 14 and
10 August 26, 1984, at a time that you were over thirteen years
11 of age, you did act with the kind of culpability that is
12 sufficient for the commission of the crime of Statutory Rape
13 in the First Degree, did cause Matthew Ray Spencer, an
14 innocent or irresponsible person, to engage in such conduct,
15 or, with knowledge that it would promote or facilitate the
16 commission of the crime of Statutory Rape in the First Degree,
17 did solicit, command, encourage or request Matthew Ray Spencer
18 to commit it by engaging in sexual intercourse with
19 Kathryn E. Spencer, who was less than eleven years of age,
20 by placing his fingers in her rectum in violation of the law
21 of the State of Washington.

22 Count X, Clyde Ray Spencer, Clark County, between
23 July 14 and August 26, 1984, at the same time when you were
24 over thirteen years of age, acting with the kind of
25 culpability that is sufficient for the commission of the

1 crime of Statutory Rape in the First Degree, did cause
2 Matthew Ray Spencer, an innocent or irresponsible person, to
3 engage in such conduct, or, with knowledge that it would
4 promote or facilitate the commission of the crime of
5 Statutory Rape in the First Degree, did solicit, command,
6 encourage or request Matthew Ray Spencer to commit it, by
7 engaging in sexual intercourse with Matthew Hansen, who was
8 less than eleven years of age, to-wit: By placing his
9 fingers in Matthew Hansen's rectum or by committing
10 fellatio on Matthew Hansen, in violation of State Law of the
11 State of Washington.

12 Count XII, Clyde Ray Spencer, Clark County, Washington,
13 did on one or more occasions between July 14th and August 26th
14 1984, being a person over thirteen years of age, engage in
15 sexual intercourse with Matthew Hansen, a person who is less
16 than eleven years of age, to-wit: By causing him to place
17 his fingers in the defendant's rectum.

18 MR. PETERS: The next two counts,
19 Your Honor, you'll recall at arraignment you added the dates.
20 Those were inadvertently omitted.

21 THE COURT: Count XIII, in that
22 Clyde Ray Spencer, in Clark County, Washington, between
23 July 14th and August 26th, 1984, acting with the kind of
24 culpability that is sufficient for the commission of the
25 crime of Statutory Rape in the First Degree, did cause

1 Matthew Hansen, an innocent or irresponsible person, to
2 engage in such conduct, or with knowledge that it would
3 promote or facilitate the commission of the crime of
4 Statutory Rape in the First Degree, did solicit, command,
5 encourage, or request Matthew Hansen to commit it, by engaging
6 in sexual intercourse with Matthew Ray Spencer, who was less
7 than eleven years of age, to-wit: By placing his thumb in
8 Matthew Ray Spencer's rectum and/or by placing his penis in
9 his rectum in violation of the law of the State of Washington.

10 Count XIV, Clyde Ray Spencer, Clark County, Washington,
11 between July 14th and August 26th, 1984, at a time when you
12 were more than thirteen years of age, acting with the kind
13 of culpability that is sufficient for the commission of the
14 crime of Statutory Rape in the First Degree, did cause
15 Matthew Hansen, an innocent or irresponsible person, to
16 engage in such conduct, or with knowledge that it would
17 promote or facilitate the commission of the crime of
18 Statutory Rape in the First Degree, did solicit, command,
19 encourage, or request Matthew Hansen to commit it, by
20 engaging in sexual intercourse with Kathryn E. Spencer,
21 who was less than eleven years of age.

22 Count XV, Clyde Ray Spencer, Clark County, State of
23 Washington, on or about an unknown date between August 27
24 and December 25, 1984, at a time when you were over thirteen
25 years of age, did engage in sexual intercourse with

1 Matthew Hansen, who was less than eleven years of age.

2 Count XVI, Clyde Ray Spencer, Clark County, Washington,
3 on or about the 16th day of February, 1985, at a time that
4 you were over thirteen years of age, did engage in sexual
5 intercourse with Matthew Hansen, who was less than eleven
6 years of age.

7 Those are the legal elements that the State would have
8 to prove to a jury beyond a reasonable doubt. The jury would
9 have to take each count separately, make a decision on each
10 count and they would be instructed that they couldn't
11 cumulate the evidence from one count to prove that you were
12 guilty of other counts.

13 Any questions about what the State would have to prove
14 at the time of trial?

15 MR. SPENCER: No, sir.

16 THE COURT: As far as any
17 recommendation by the Prosecutor in the plea bargaining
18 process, the Prosecutor makes no commitment other than to
19 recommend that you do be sent to the Department of
20 Corrections. Is that correct?

21 MR. SPENCER: Yes, sir.

22 MR. RULLI: And, of course, a
23 dismissal of the five counts, Your Honor.

24 THE COURT: The five counts that
25 we have talked about.

1 Has anybody made any threats or promises of any kind
2 that we haven't talked about to you to cause you to plead
3 guilty?

4 MR. SPENCER: No, sir.

5 THE COURT: Would any plea that
6 you made today be made freely and voluntarily?

7 MR. SPENCER: Yes, sir.

8 THE COURT: As far as sentencing
9 goes, the sentencing range would be based upon the fact that
10 you have no criminal history and you would be required then
11 to sign a statement stating that you have no criminal history,
12 is that correct?

13 MR. SPENCER: Yes, sir.

14 THE COURT: If it turns out that
15 there were a criminal history, then the Prosecutor could
16 change any recommendation made and the sentencing range could
17 increase. According to the Offender's Scoring Sheet
18 Statutory Rape in the First Degree, you would have an
19 offender's score of 16, which would put you at the top of
20 the sentencing range, 129 to 171 months is the top of the
21 range.

22 MR. PETERS: That's right, and
23 in addition to that, Your Honor, there are Counts I and II
24 that are pre-SRA and the maximum on those are 20 to life,
25 with five -- Excuse me, fifty thousand dollar fine maximum

1 on each, that was not stated, I might indicate, in item five
2 where it usually is.

3 But the maximum on all of these is 20 to life and
4 fifty thousand dollar fine.

5 THE COURT: Okay. Even though
6 under the new Sentencing Reform Act we talk about ranges as
7 a matter of maximums, these are 20 to life counts and the
8 two that are under the pre-SRA Act, or Sentencing Reform Act
9 do carry 20 to life.

10 So the Judge is bound to sentence you to not less than
11 20 and could sentence you up to life. Any time set by the
12 Judge in the pre-SRA cases would serve as a maximum and the
13 Board of Prison Terms and Paroles would set the minimum time,
14 or the release date.

15 As far as the SRA cases, I mean counts, those would
16 be -- You would have to serve the time indicated or set by
17 the Judge less the possibility of good time which could be
18 up to one third off.

19 MR. PETERS: And credit for time
20 served.

21 THE COURT: Credit for time
22 served.

23 The Court does have the authority to, under certain
24 circumstances, to go outside of the standard sentencing
25 range, either go under or above the range and the Court does

1 not have to follow any recommendation with respect to the
2 sentence within the standard range. So, even, for example,
3 if the Prosecutor recommended the minimum within the range,
4 the Court could still give you the maximum.

5 Also, this may be academic, but it's on the form, you
6 could be required to pay restitution, court costs, a fine,
7 attorney's fees, and victim's compensation assessment.

8 Also, as Mr. Peters said, each one of these carries up
9 to a fifty thousand dollar fine.

10 Now, if you're not a United States citizen, you could
11 be deported to your home country if you plead guilty to a
12 felony, which either of these counts is.

13 And if you did have a criminal history and you were on
14 probation or parole, a plea of guilty here would be the
15 basis to revoke probation or parole. Any questions so far?

16 MR. SPENCER: No, sir.

17 THE COURT: Now, as I understand
18 it, you do not admit that you committed any of these
19 offenses, is that correct?

20 MR. SPENCER: That's correct.

21 THE COURT: But you have reviewed
22 the State's evidence with Mr. Rulli on each count, is that
23 correct?

24 MR. SPENCER: Yes, sir.

25 THE COURT: And you do feel that

1 if the State's evidence were presented to the jury and you
2 presented whatever defense you might have, that the jury
3 would find you guilty to each count beyond a reasonable
4 doubt?

5 MR. SPENCER: That's correct.

6 THE COURT: Do you have any
7 question in your mind about that?

8 MR. SPENCER: No, sir.

9 THE COURT: Have you considered
10 in entering this type of plea, that is a plea without
11 admitting guilt, that the fact that the Prosecutor has in
12 effect dropped five of the sixteen counts?

13 MR. SPENCER: Yes, sir.

14 THE COURT: Has that been some
15 inducement for you to enter your plea?

16 MR. SPENCER: Yes, sir.

17 THE COURT: Okay. Why are you
18 entering a plea without admitting guilt?

19 MR. SPENCER: Because I don't
20 remember the crimes.

21 THE COURT: You don't remember
22 the crimes?

23 MR. SPENCER: That's correct.

24 THE COURT: You think you're
25 blocking them out now, or do you know?

1 MR. SPENCER: Well, I have taken
2 every test they have got and they can't find anything, if
3 I'm suppressing down deep.

4 THE COURT: Is there any type
5 of defense based upon his capacity?

6 MR. RULLI: Your Honor, I have
7 had Mr. Spencer examined by Dr. McGovern and by
8 Dr. Hank Dixon, two psychiatrists, and both doctors
9 concluded that he has his full capacity about him. We do
10 not have any insanity or diminished capacity defense; that
11 he was not under the influence of any alcohol or drugs at
12 the time of these alleged offenses.

13 THE COURT: That's correct, was
14 there any alcohol or drugs involved or anything that might
15 have affected your mental capacity?

16 MR. SPENCER: No, sir.

17 THE COURT: So you feel that
18 based upon the doctor's evaluations and opinions, that you
19 and Mr. Rulli's advice that you can present no legal defenses
20 to the charges?

21 MR. SPENCER: That's correct.

22 THE COURT: All right, I'm going
23 to have the Prosecutor now go through the State's evidence
24 because I have to be able to make a determination that there
25 is sufficient evidence for the jury to reach a verdict beyond

1 a reasonable doubt. Mr. Peters.

2 MR. PETERS: Your Honor, if I
3 may, I would like to ask Deputy Sharon Krause of the
4 Sheriff's Office to approach the bench and assist me. I
5 have personally interviewed each of these children as has
6 Mr. Rulli in my presence with the exception of one of the
7 victims he interviewed with Mrs. Krause yesterday, I believe.
8 But she's interviewed them in much more depth than I have.
9 There may be some things that she can add that I missed.

10 So, if she would with the Court's permission, step
11 forward.

12 THE COURT: All right. Fine.
13 Mr. Rulli, is there any question in your mind that the jury
14 if presented the evidence the State has would convict
15 Mr. Spencer?

16 MR. RULLI: I have no doubt,
17 Your Honor.

18 THE COURT: All right.
19 Deputy Krause or Mr. Peters.

20 MR. PETERS: With respect to
21 Count I and Count II, Your Honor. Count I and II involved
22 indecent liberties that occurred to Kathryn Spencer and
23 Matthew Spencer. Both of the children are the natural
24 children of Ray Spencer. Kathryn now is six, I believe,
25 and Matthew is nine.

1 These two children describe having been in Clark County,
2 Washington during the summer of 1983 to visit their father
3 at the brown house where he lived. We have evidence that
4 Mr. Spencer in fact did reside at that time, that being the
5 summer of 1983, in a brown house here in Clark County,
6 Washington.

7 They both describe numerous incidents of sexual contact
8 between themselves and their father involving penetration
9 in both cases, of their rectum, involving oral sex on both
10 cases. This occurred on numerous occasions during the
11 summer.

12 Also, involving contact with Kathryn's genitals, by
13 Mr. Spencer.

14 Can you remember other details, Mrs. Krause?

15 THE COURT: Those are Counts I
16 and II?

17 MR. PETERS: That's Count I and
18 II, both children described having observed these behaviors
19 with one another, in other words, they corroborate each
20 other.

21 THE COURT: Do you have any
22 basis to refute the testimony of the kids relative to those
23 Counts, I and II?

24 MR. SPENCER: No, sir.

25 THE COURT: Do you feel they're

1 sufficiently competent, or that the jury would accept their
2 versions of what happened?

3 MR. SPENCER: Yes, sir.

4 MR. PETERS: I might indicate,
5 Your Honor, that Mr. Spencer is thirty-seven years of age,
6 which is one of the elements that we have to prove, and he's
7 acknowledged that here and he's obviously over thirteen from
8 looking at him here.

9 THE COURT: Okay.

10 MR. PETERS: Count III, Your
11 Honor, the victim here is Kathryn Spencer. Again, she's at
12 this time six years old. This occurred last summer. We have
13 alleged between July 14th, '84 and August 26th, '84. The
14 reason for those dates is that Kathryn came to Clark County
15 from Sacramento where she resides with her mother for a
16 summer visit with her father, Ray Spencer, on July 14th.
17 And returned, according to the evidence from -- that would
18 be provided by her mother as well as Clyde Spencer that it
19 was August 26, 1984.

20 Obviously Mr. Spencer continues to be over thirteen
21 years of age, he engaged in sexual intercourse and our
22 theory would indicate there was numerous occasions during
23 the summer. She as well as her brother, Matthew and her
24 stepbrother Matthew Hansen observed these incidents.

25 Again, most of these incidents occurred with all three

1 children being present in Mr. Spencer's house, which he
2 shared with his wife, Shirley, on Lucia Falls Road. Most
3 of the incidents occurring in the bedroom of the house. But
4 they also occurred in the shower and in the living room, and
5 in one other bathroom in the house.

6 Kathryn indicates to myself, to Mr. Rulli and Mrs. Krause
7 that he placed his penis or finger in her rectum, and that
8 he placed his penis or finger in or about the area of her
9 vagina, but she was very clear about pain upon these
10 penetrations, that she cried, the other children are clear
11 that she cried from the pain. And she's very clear about
12 the penetration of her rectum in any case. I think that's
13 all.

14 THE COURT: Do you have any
15 basis to refute the Prosecutor's case with respect to
16 Count III?

17 MR. SPENCER: No, sir.

18 MR. PETERS: Count No. VII, Your
19 Honor, involves the victim, Matthew Ray Spencer, involves
20 the same time frame that is mentioned in the previous count,
21 that would be Count III, July 14th to August 26th, 1984.

22 Matthew Spencer is the nine-year old son of Ray Spencer,
23 natural son. He came up during that time frame to visit
24 his father. When Mr. Rulli and I spoke with Matthew in
25 Sacramento last week, he was clear about having been here

1 during that time frame. He in response to one of Mr. Rulli's
2 questions, he remembered that he spent the Fourth of July,
3 the firecracker time as he described, in Sacramento. He
4 remembers the previous summer of having spent firecracker
5 time up here in Clark County and having gone to the fireworks
6 at Fort Vancouver. So he was able to differentiate one
7 summer from the other.

8 He indicated to us that on numerous occasions during
9 last summer on the dates stated, there was sexual contact
10 with his father, that is his father would place his penis or
11 finger in the rectum of Matthew Spencer, who, as I said, is
12 nine. He was able to describe the difference between a
13 flaccid and an erect penis, indicating that when these events
14 occurred, his father's penis was hard and caused him a great
15 deal of pain when he penetrated his rectum. He also
16 indicated he was crying when these occurred.

17 His statements were corroborated by his stepbrother,
18 Matthew Hansen, and his sister, Kathryn.

19 THE COURT: That was VII?

20 MR. PETERS: That was VII.

21 THE COURT: Do you have any basis
22 to refute Count VII's evidence by the State?

23 MR. SPENCER: No, sir.

24 MR. PETERS: Your Honor, Count IX,
25 the count of complicity or another word would be accomplice

1 to Statutory Rape in the First Degree. The proof that we
2 would have offered if we had gone to trial would involve the
3 three children's testimony that between July 14th and
4 August 26th, 1984, Mr. Spencer, who was then obviously over
5 thirteen, caused these children in the instance of Count No.
6 IX, Matthew Spencer, himself five years old -- Excuse me,
7 nine years, Matthew Spencer, to engage in sexual intercourse
8 with his sister, Kathryn, who was six.

9 The children said, or would say or would testify that
10 their father made them do this with one another. Matthew
11 would testify and Kathryn will testify that their father
12 made them engage in this behavior as he looked on, and on
13 some occasions took photographs.

14 THE COURT: Were any of those
15 recovered?

16 MR. PETERS: No, there hasn't
17 been a search warrant executed, Your Honor, although we have
18 been advised by Shirley Spencer that she has searched the
19 house. She's been cooperative. There was no search warrant
20 executed. She has searched the house, and a number of items
21 of pornography were discovered, books involving descriptions
22 of incest and sexual behavior between adults and children.
23 But no photographs involving these children were discovered.

24 In any case, Matthew and Kathryn would both testify
25 that Ray did solicit, command, request, or encourage Matthew

1 to engage in sexual intercourse with Kathryn by having
2 Matthew place his fingers into her rectum with Ray and the
3 other child, Matthew Hansen, looking on. Again, all three
4 children are corroborative of one another.

5 THE COURT: Do you have any basis
6 to refute Count IX's evidence?

7 MR. SPENCER: No, sir.

8 MR. PETERS: Count X, Your Honor,
9 is basically the same type of interaction, except that the
10 victims are different. It's the same date, last summer,
11 July 14th to August 26th, 1984, and basically the children
12 again would testify, that is the two named children as well
13 as Kathryn Spencer, that the defendant caused them, or in
14 their words, made them engage in sexual behavior, and in
15 this particular case, Matthew Ray Spencer, age nine to engage
16 in sexual intercourse with Matthew Hansen, who was age five
17 at that time, by having Matthew place his finger in
18 Matthew Hansen's rectum, and by having Matthew Spencer place
19 his penis in Matthew Hansen's -- Excuse me, mouth on
20 Matthew Hansen's penis.

21 Again, the facts are corroborated by all three children.

22 THE COURT: Any defense to
23 Count X?

24 MR. SPENCER: No, sir.

25 MR. PETERS: Count No. XI is the

1 same dates, July 14th, August 26th.

2 MR. RULLI: Count XII.

3 MR. PETERS: Yes, Count XII. The
4 State would offer proof that Mr. Spencer, the defendant, was
5 over the age of thirteen at that time. That he engaged in
6 sexual intercourse with Matthew Hansen, again, who is five
7 years old, by having Matthew Hansen place his finger in
8 defendant's rectum.

9 Your Honor, the children will testify as to all of these
10 counts, and we would have corroborative information from
11 Mr. Spencer's police department work records as well as from
12 Shirley Spencer and her work records that Shirley, the
13 mother of Matthew Hansen and the wife of the defendant, was
14 working multiple shifts during last summer. She works for
15 C-Tran and was working as a relief driver, and was gone
16 sometimes in the early morning, sometimes during the day and
17 sometimes in the evening.

18 Mr. Spencer, who was a police officer at the time, was
19 working five days on, two days off followed by five days on,
20 three days off shift, and his work records indicate that he
21 took multiple sick-vacation and comp time days off last
22 summer in addition to the normal days off that he had,
23 presumably to spend time with his children.

24 The testimony would be that he had access to them on
25 numerous days when his wife was not present. The children

1 would also testify to that and indicate that on virtually
2 everyday or almost everyday that their father was alone with
3 them, he would engage in these sexual behaviors.

4 So, as to Count XII, we have charged that on numerous
5 occasions during that period of time there was sexual
6 intercourse between the defendant and six-year old Matt Hansen
7 by having Matt cause -- Excuse me, by causing the defendant,
8 causing Matt to place his finger in the defendant's rectum.
9 I believe I stated the ages, didn't I?

10 THE COURT: Any defense to
11 Count XII?

12 MR. SPENCER: No, sir.

13 MR. PETERS: Count XIII, Your
14 Honor, is another count of complicity, this time involving
15 Matt Hansen, the person who is the so-called, if you would,
16 perpetrator, albeit innocent perpetrator, he's six years
17 old, and he would testify that on one or more occasions
18 during the time period between July 14th and August 26th,
19 1984, he was forced or caused, or made by his father, the
20 defendant -- stepfather, the defendant, to engage in sexual
21 intercourse with the defendant's natural son,
22 Matthew Ray Spencer, who was nine at the time, by the
23 defendant causing Matthew Hansen to place his thumb in
24 Matthew Spencer's rectum, and by placing his penis in
25 Matthew Spencer's rectum.

1 Again, our theory there was complicity to commit
2 Statutory Rape in the First Degree.

3 THE COURT: Any defense to
4 Count XIII?

5 MR. SPENCER: No, sir.

6 MR. PETERS: Count No. XIV, Your
7 Honor, involves the defendant again being over thirteen years
8 of age, involving himself with two innocent children,
9 Matthew Hansen, age five, and Kathryn Spencer, age six,
10 causing them to have sexual contact with one another,
11 actually sex with him, and of course with one another.
12 Again, during this time frame between July 14th, August 26th,
13 1984 on one or more occasions, Matthew Hansen, and
14 Kathryn Spencer will testify that then the defendant had
15 Matthew Hansen engage in sexual intercourse with
16 Kathryn Spencer.

17 Mrs. Krause, would you relate what the children told
18 you about how that occurred, that would be Matthew Hansen
19 when Matthew Hansen was doing the things to Kathryn Spencer.

20 DEPUTY KRAUSE: Matthew Hansen
21 indicates that he had to insert his finger into Kathryn's
22 rectum, and also place his mouth on Kathryn's vagina, and
23 that Kathryn had to do those same acts to him by placing her
24 mouth on his penis.

25 THE COURT: Any defense to

1 Count XIV?

2 MR. SPENCER: No, sir.

3 MR. PETERS: I might add all
4 these counts up to this point in addition to the next last
5 two counts occurred at Mr. Spencer's home on Lucia Falls
6 Road in Clark County, Washington.

7 THE COURT: Okay.

8 MR. PETERS: With one exception,
9 that is the last count, No. XV occurred in the house that I
10 indicated involves the defendant on an unknown date between
11 August 27th and December 25th, 1984.

12 Now, the Court will note this is a different period of
13 time. The defendant engaged in sexual intercourse with
14 Matthew Hansen.

15 Mrs. Krause's interview as well as -- or contacts with
16 Matthew Hansen indicate that this behavior took place after
17 the two California children, Kathryn and Matthew Ray Spencer
18 returned to Sacramento. They returned on August 26th,
19 therefore the beginning date of this time frame is August 27th.

20 Matthew Hansen further indicated this behavior took
21 place prior to Christmas and the concluding date being
22 December 25th, and what he indicated was that on that
23 occasion his father was giving him a bubble bath and he was
24 in the bubble bath with him, is that correct?

25 DEPUTY KRAUSE: That's correct.

1 MR. PETERS: And he forced
2 Matthew's head down under the water through the bubbles onto
3 the defendant's erect penis.

4 The way this count was discovered was that young
5 Matthew reacted -- Who had always enjoyed bubble baths,
6 reacted very violently when his mother, Shirley Spencer,
7 the defendant's wife, attempted to give him a bubble bath.
8 That prompted questioning by her and statements, which we
9 believe would have been admissible under the hearsay
10 exception 98.44.120 regarding his stepfather causing him to
11 perform fellatio on him during that period of time, again,
12 when Matthew was approximately five years old.

13 THE COURT: Any defense to
14 Count XV?

15 MR. SPENCER: No, sir.

16 MR. PETERS: Your Honor, the
17 last count, Count XVI occurred after Mr.. Spencer was
18 originally charged with one or more counts under this
19 cause number. It is alleged to have taken place
20 February 16th, 1985. This is the one and only offense that
21 did not take place in the Lucia Falls home that we're aware
22 of. This offense took place at a motel on Highway 99 in
23 Clark County where Mr. Spencer was staying after he had been
24 released by Your Honor.

25 What happened in this particular case and the way that

1 we're able to verify the date, first of all, by the motel
2 receipt from when Mr. Spencer was staying at the motel.

3 Second, Mrs. Shirley Spencer would testify that she
4 took her son, Matthew Hansen, age five, to this motel to
5 stay, to see his stepfather while she was working.

6 Mr. Spencer, the defendant, asked to have Matthew stay
7 overnight with him for a visit, and that during that visit,
8 Matthew would be prepared to testify that the defendant
9 engaged in oral sex with him and penetrated his rectum with
10 his penis, that is the defendant penetrated the boy's rectum
11 with his penis.

12 Additional corroboration of that was obtained first of
13 all by statements that the boy made to his mother. Secondly,
14 the boy's detailed description that the boy was able to give
15 of this motel room which was somewhat unique.

16 The police then went out and corroborated the fact that
17 the description he gave of the motel room was in fact
18 accurate.

19 THE COURT: At that time he was
20 only charged with assaulting or with abusing Kathryn?

21 MR. PETERS: That's right.
22 There was no knowledge at that time that he had in fact
23 engaged in any behavior with his children.

24 THE COURT: Any defense to
25 Count XVI?

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MR. SPENCER: No, sir.

THE COURT: Mr. Rulli, do you agree that you would be able to present no defense to any of the counts?

MR. RULLI: Yes, Your Honor.

THE COURT: So, you would just be putting the State to it's test if it went to trial?

MR. SPENCER: Yes, sir.

THE COURT: Did you anticipate putting on any defense witnesses?

MR. RULLI: No.

THE COURT: Do you agree?

MR. SPENCER: Yes, sir.

MR. PETERS: I might indicate, Your Honor, we planned in addition to the proof of these behaviors calling the mothers of both children to describe a series of unusual behaviors and symptoms exhibited by the children. The details of which, I guess, are not particularly necessary right now, but we were also prepared to call an expert witness, a counselor who deals almost exclusively with sexually abused children, by the name of Patricia Walker, to testify that these behaviors or symptoms are consistent with and typically seen in children who have had serious trauma or a serious, dramatic event in their lives. They're consistent with those things seen in children

1 who have been sexually abused.

2 THE COURT: Well, based upon the
3 evidence that would be presented by the State as reviewed by
4 Mr. Peters, it does appear there's overwhelming evidence from
5 which a jury could, and likely would, conclude beyond a
6 reasonable doubt that Mr. Spencer is guilty of Count I, II,
7 III, VII, IX, X, XII, XIII, XIV, XV, XVI in the Second
8 Amended Information.

9 Mr. Spencer, with respect to each of those counts, do
10 you propose to enter the same pleas?

11 MR. SPENCER: Yes, sir.

12 THE COURT: What is that plea?

13 MR. SPENCER: Guilty.

14 THE COURT: Do you have any
15 questions at all about this procedure?

16 MR. SPENCER: No, sir.

17 THE COURT: Do you feel that you
18 were adequately represented by Mr. Rulli and that Mr. Rulli
19 has, as far as you're concerned, made a maximum legal effort
20 to explore any defenses you might have whether for mental
21 as well as any factual defenses?

22 MR. SPENCER: Yes, sir.

23 THE COURT: Do you have any
24 questions at all about his representation?

25 MR. SPENCER: No, sir.

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THE COURT: Do you think that he's adequately, fairly and on your behalf presented to you your options relative to pleading guilty versus going to trial?

MR. SPENCER: Yes, sir.

MR. PETERS: Your Honor, I might indicate for the record in case this matter is reviewed, it is, I think, important to note that Mr. Spencer was, at the time of these offenses, a Vancouver Police Officer and had been for the previous five or six years approximately; prior to that was involved as a law enforcement officer in California, and has considerable experience with the system.

THE COURT: Are there any statements made that would have required preliminary hearings?

MR. PETERS: Well, there was one series of statements after his arrest in February, February 18th, I believe, where we would have had to have had a 3.5 Hearing. It was not the sort of statement that is a classic admission, but Mr. Spencer did indicate upon questioning, after Advice of Rights, that he did not remember doing these things, as much as he stated here today, but if the children said it's true, it must be true.

THE COURT: Do you understand that you would be entitled to a preliminary hearing at which time the Court would make sure that all constitutional

1 safeguards were in place and for your benefit prior to
2 allowing those statements to be presented to a jury?

3 MR. SPENCER: Yes, sir.

4 THE COURT: And do you feel that
5 any statements made by you to any police officers during the
6 custodial setting were made freely and voluntarily by you
7 with a full understanding of your rights?

8 MR. SPENCER: Yes, sir.

9 THE COURT: Any evidence on the
10 suppression question?

11 MR. PETERS: The only evidence
12 that there was, physical evidence that had any particular
13 value was that pile of pornographic books which were brought
14 to the police by Shirley Spencer. I did not intend to
15 introduce those in my case in chief, and only intended to
16 use them should Mr. Spencer take the witness stand and in
17 some way say that he would never think of doing such a thing.
18 We have these books to use for cross examination.

19 THE COURT: Do you agree that
20 those books were brought to the authorities by your wife?

21 MR. SPENCER: I don't know
22 anything about it.

23 THE COURT: Well, you don't have
24 any basis to ask that those be suppressed, Mr. Rulli?

25 MR. RULLI: No, sir, there's no

1 legal basis.

2 THE COURT: Anything else?

3 MR. PETERS: Can I have just a
4 moment. Your Honor, there is one matter that was just
5 brought to my attention by Mr. Curtis, which I think is a
6 good idea. I don't know if the Court is aware of the
7 Harold Bernard Smith case, that was a case that came back
8 before Clark County Courts some ten years after the fact.

9 THE COURT: I had the case on
10 rebound.

11 MR. PETERS: Where an attorney
12 was being -- Basically was a federal judge who was being --
13 who had been an attorney prior, because he allegedly did not
14 allege -- on the return was that the attorney did not do a
15 competent job with regard to the mental health aspects of
16 the case.

17 I wonder if we might want to inquire further of
18 Mr. Rulli about the mental health aspects of this in terms
19 of perhaps a report from Dr. Dixon or Dr. McGovern, which
20 would indicate that Mr. Spencer was -- does not have a
21 mental disease or defect defense; make those things part of
22 the record so that in the future this doesn't come back.

23 THE COURT: Mr. Rulli.

24 MR. RULLI: Well, I think we
25 adequately covered that already on the record, Your Honor.

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THE COURT: Well, have you examined both with a respect to a defense of insanity or mental incompetence?

MR. RULLI: Dr. Dixon related to me that my client did not suffer from any mental diseases.

THE COURT: And is competent and able to assist you in his defense?

MR. RULLI: Yes, sir, he's cognizant of the charge against him and to the best of his recollection he's been able to assist me.

THE COURT: Do you agree?

MR. SPENCER: Yes, sir.

MR. PETERS: Your Honor, it is my understanding from plea negotiation consultations, that Mr. Spencer had seen Dr. Dixon on four occasions, and Dr. McGovern on one or more occasions. I'm not sure exactly about that.

THE COURT: Is that correct?

MR. SPENCER: Yes, sir.

MR. PETERS: Dr. Dixon is known to me as a -- I believe he's a forensic psychiatrist, Board certified forensic psychiatrist. He's testified both for the Defense and the Prosecution.

THE COURT: Numerous times.

MR. PETERS: Dr. McGovern is a

1 well-known psychologist who is also well-known and
2 remembered for his forensic work and abilities.

3 THE COURT: That's correct.

4 As far as the form here goes, paragraph 16 has a blank,
5 is there an attachment to that?

6 MR. PETERS: That's the factual
7 basis which I stated orally along with Mrs. Krause.

8 THE COURT: And you're willing,
9 Mr. Spencer, in a typical plea we have a written statement
10 in here, even in a Newton plea, that you feel the evidence
11 is such that the jury could and likely would find you guilty
12 beyond a reasonable doubt, and you're willing to accept
13 Mr. Peter's and Sharon Krause's narrative as your statement,
14 or as a statement of the State's case in paragraph 16, is
15 that correct?

16 MR. SPENCER: That's correct.

17 MR. PETERS: Okay, I request, and
18 this is somewhat unusual, that we have the court reporter
19 do a transcript of this now -- I mean not right now ----

20 THE COURT: Have it attached in
21 a week or two, is that satisfactory with you that the
22 transcript of this proceeding be attached as support for
23 paragraph 16?

24 MR. SPENCER: That's fine.

25 MR. RULLI: No objections,

1 Your Honor.

2 MR. PETERS: There are additional
3 paragraphs that are blank, paragraph 5 didn't have the
4 maximums. I stated those orally, as did the Court.

5 THE COURT: I suppose we could
6 bring that -- They're all the same.

7 MR. PETERS: Yes, 20 to life with
8 a fifty thousand dollar maximum fine.

9 With respect to paragraph No. 6, Your Honor read and
10 stated the elements to each count prior to proceeding beyond
11 paragraph 6, other than that, I think everything is in order.

12 THE COURT: All right,
13 Mr. Spencer's pleas are accepted by the Court as having been
14 made freely and voluntarily, with a full and intelligent
15 understanding of the potential consequences and that there's
16 an overwhelming factual basis for the pleas, and there is
17 sufficient evidence from which the jury could and likely
18 would find Mr. Spencer guilty of each count beyond a
19 reasonable doubt.

20 If Mr. Spencer would sign the statement, please.

21 (Mr. Spencer signs
22 statement)

23 THE COURT: The statement is
24 signed by Mr. Spencer, each attorney and myself.

25 Sentencing?

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MR. PETERS: Your Honor, I have prepared an order for a presentence report. I don't know if you want to execute it or not. You do have some discretion in this matter with regard to concurrent or consecutive on Counts I and II with regard to 20 and up to life on both of those counts as well as within the range on the remainder of the counts.

THE COURT: I don't think a presentence would serve any practical purpose myself, do you?

MR. RULLI: No, sir.

THE COURT: Are you requesting one?

MR. RULLI: No, sir.

THE COURT: Presentence report takes up to 40 work days. Do you request a presentence report?

MR. PETERS: No, sir.

THE COURT: Do you?

MR. RULLI: No, sir.

THE COURT: Do you feel a presentence report would present any facts that might mitigate or aid you in the decision that I will have to make at the time of sentencing?

MR. SPENCER: No, sir.

THE COURT: Okay, based upon that,

1 there's no need for one.

2 MR. PETERS: I would ask Your
3 Honor that if any mental health professionals are going to
4 be called to testify, or reports provided, we have notice of
5 those five days prior to the sentencing hearing so we can
6 prepare.

7 THE COURT: Have you thought
8 about your presentation for sentencing yet?

9 MR. RULLI: I have asked
10 Dr. Dixon to submit a written report, Your Honor, and I
11 haven't received it yet.

12 THE COURT: So how far down the
13 line do you want sentencing set?

14 I have signed an Order of Dismissal in Counts IV, V, VI,
15 VIII and XI.

16 We could probably -- I could schedule it next Thursday,
17 the 23rd of May at 1:30.

18 MR. RULLI: Your Honor,
19 Mr. Spencer requested that the Court proceed now.

20 THE COURT: I don't really have
21 enough feeling for the decision I have to make on
22 consecutive versus concurrent and versus 20 to life to
23 proceed right now. I was notified this morning there may be
24 a plea. I was called at home that there would be a plea,
25 and I simply haven't had enough time to think about those

1 major decisions in your life.

2 There's a lot of difference between 20 and life.

3 MR. SPENCER: Yes, sir, there
4 is.

5 THE COURT: For a thirty-seven
6 year old man, there's also a lot of difference in the
7 concurrent-consecutive, so I think I would need -- I would
8 like to have some input from the professionals, Dr. Dixon
9 and anybody else that has information.

10 MR. PETERS: As I said, Your
11 Honor, if they're going to be calling any witnesses, we would
12 really want to know that five days ahead of time so that we
13 can prepare to question them.

14 MR. RULLI: McGovern and Dixon
15 would be two professionals, Your Honor.

16 MR. PETERS: If they're going to
17 testify I would like to have access to them to interview
18 them, or to have their reports prior to sentencing.

19 THE COURT: That's fine. Do you
20 plan to bring them in person?

21 MR. RULLI: I don't know if they
22 will want to be here in person. I'll talk to the doctors
23 and find out.

24 MR. PETERS: We don't have five
25 days between now and next Thursday.

1 THE COURT: You could know by
2 tomorrow afternoon whether you're going to use them live or
3 not?

4 MR. RULLI: Yes.

5 THE COURT: And if you should,
6 tell them they both need to be available to Mr. Peters
7 Monday, Tuesday or Wednesday of next week for an interview.

8 MR. RULLI: All right.

9 MR. PETERS: Same if they're
10 going to submit reports.

11 THE COURT: Well, you want to
12 interview them either way?

13 MR. PETERS: I'm not sure,
14 whenever I read the reports I would know.

15 THE COURT: Well, they should be
16 available for his interview whether they're coming live or
17 by written report or both.

18 MR. PETERS: Thank you.

19 THE COURT: Thank you.

20 MR. SPENCER: Thank you, Your
21 Honor.

22 (Conclusion of Change of
23 Plea Hearing)

24 * * * * *

25

FILED

NOV 30 1995

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLYDE RAYMOND SPENCER,)	No. 95-35113
)	
Petitioner-Appellant,)	D.C. No. CV 94-05238-RJB
)	
v.)	MEMORANDUM*
)	
JOSEPH KLAUSER; CHRISTINE O.)	
GREGOIRE,)	
)	
Respondents-Appellees.)	

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Argued and Submitted November 14, 1995
Seattle, Washington

Before: BOOCHEVER, FERNANDEZ, and KLEINFELD, Circuit Judges

Clyde Ray Spencer appeals the denial of his petition for writ of habeas corpus, the grant of the state's motion for summary judgment, and the denial of his cross-motion for summary judgment, or alternatively, an evidentiary hearing. We affirm in part and reverse in part and remand for further proceedings.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

1. Competence to Plead Guilty

a. Procedural due process

A competency hearing must be held if a reasonable judge has a bona fide doubt as to the defendant's competence at the change-of-plea hearing. Moran v. Godinez, 40 F.3d 1567, 1572 (9th Cir.), as amended on denial of reh'g, 57 F.3d 690 (9th Cir. 1994), cert. denied, ___ U.S. ___, No. 95-5776, 1995 WL 545599 (Nov. 13, 1995). At the plea hearing, Spencer's attorney indicated that two psychiatrists, Dr. Dixon and Dr. McGovern, had examined Spencer and concluded that "he has his full capacity about him." Spencer's attorney also stated that "Dr. Dixon related to me that my client did not suffer from any mental diseases" and that he was competent and able to assist his attorney in his defense. Spencer agreed. Spencer's statements during the hearing supported the idea that he had "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him." Godinez v. Moran, ___ U.S. ___, 113 S. Ct. 2680, 2685, 2688, 125 L. Ed. 2d 321 (1993) (internal quotations omitted). Substantial weight is attached "to contemporaneous on-the-record statements in assessing the voluntariness of pleas." United States v. Mims, 928 F.2d 310, 313 (9th Cir. 1991). Thus, the trial judge did not violate Spencer's procedural due process rights because Spencer failed to raise a bona fide doubt as to his competence.

b. Sufficiency of the evidence

Spencer did, however, present enough evidence to the district court to raise a "real and substantial doubt as to his [mental] competency." See Boag v. Raines, 769 F.2d 1341, 1343 (9th Cir. 1985), cert. denied, 474 U.S. 1085, 106 S. Ct. 860, 88 L. Ed. 899 (1986); Steinsvik v. Vinzant, 640 F.2d 949, 954 (9th Cir. 1981). It is true that Dr. Dixon and Dr. McGovern indicated that Spencer was competent. However, they had not been retained to make that specific determination. Also, Dr. Halpern's report raises doubts about Spencer's ability to intelligently participate in his own defense while he was taking the drugs prescribed for his depression. We do not say that Dr. Halpern's report would be enough to require a hearing if it stood alone. It did not. Declarations submitted on behalf of Spencer attest to his confused and depressed state, and one asserts that Spencer was "incapable of thinking rationally" or of choosing how to proceed with his defense. Many of those declarations were from lay persons, but even lay witnesses can comment on another's affect, especially when they have known him for some time. See United States v. Mastberg, 503 F.2d 465, 469-70 (9th Cir. 1974); Cole v. United States, 327 F.2d 360, 361 (9th Cir. 1964); see also Kaufman v. United States, 350 F.2d 408, 414-15 (8th Cir. 1965), cert. denied, 383 U.S. 951, 86 S. Ct. 1211, 16 L. Ed. 2d 212 (1966) (lay witnesses competent to testify as to defendant's sanity due to previous observation of defendant during arrest); cf. United States v. Langford, 802 F.2d 1176, 1179 (9th Cir. 1986), cert. denied, 483 U.S. 1008, 107 S. Ct. 3235, 97 L. Ed. 2d 740 (1987) (fact that one lay witness met defendant fifty times and another

lay witness knew defendant his entire life was factor in finding that opinion testimony satisfied Fed. R. Evid. 701). In addition, Spencer had been hospitalized for suicidal ideation and nervous depression in the recent past, and he was housed in the medical unit of the jail. Finally, he had been administered a very large dose of the barbiturate sodium amytal two days before his plea. That, too, may have affected his ability to make the momentous decision which led to his life sentences.

We, of course, do not say that all of this requires the ultimate conclusion that Spencer was not competent to enter a guilty plea. We only say that, taken as a whole, the facts in the record do raise sufficient doubt to require an evidentiary hearing on the issue.

2. Coercion

A guilty plea must be knowing and voluntary, rather than the result of threats, misrepresentations, or improper promises. Sanchez v. United States, 50 F.3d 1448, 1454 (9th Cir. 1995); United States v. Anderson, 993 F.2d 1435, 1437 (9th Cir. 1993). Repeated inquiries by the trial judge regarding the voluntariness of a guilty plea which are met with affirmative responses support a finding a voluntariness. See United States v. Andrade-Larrios, 39 F.3d 986, 990-91 (9th Cir. 1994).

Sergeant Davidson's statements about Spencer's children did not rise to the level of coercion. Spencer was represented by counsel and could easily ascertain whether the state would recommend forty-one months imprisonment as Davidson indicated.

Moreover, rather than accede to Davidson's blandishments, Spencer had him kept away. Finally, Spencer repeatedly assured the court that his plea was given free of coercion and of his own volition. We affirm the district court's determination of this issue.

3. The Medical Reports

The state must turn over material evidence which exculpates the defendant. Pennsylvania v. Ritchie, 480 U.S. 39, 57, 107 S. Ct. 989, 1001, 94 L. Ed. 2d (1987); Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196, 10 L. Ed. 2d 215 (1963). In the context of a guilty plea, evidence is material if "there is a reasonable probability that but for the failure to disclose the Brady material, the defendant would have refused to plead and would have gone to trial." Sanchez v. United States, 50 F.3d 1448, 1454 (9th Cir. 1995). There is a great deal of evidence that medical reports regarding the children did exist and that they showed no evidence of sexual abuse. If they did exist, we see little excuse for the prosecutor's failure to make them available to Spencer's attorney. Those reports may well have influenced the decision to plead. The children asserted that Spencer had molested them but he said he had no memory of having done so. Perhaps that was merely pseudo-amnesia, but as Dr. Dixon and Dr. Halpern have indicated, it might also have meant that the incidents did not happen. Reports that indicated that there were no residual signs of the claimed abuse could have tipped the scales. In fact, the lack of that information together with Spencer's mental state might have had a synergistic effect which

led to a plea by an innocent man. We do not say that it did, nor do we say that the reports exist, nor do we say that they will turn out to be material if they do exist. We do say that Spencer is entitled to an evidentiary hearing on the matter.

4. Ineffective Assistance of Counsel

To establish that the defendant suffered from ineffective assistance of counsel, he must show: (1) that counsel's performance was deficient--"that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment"; and (2) that "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985); Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). We are unable to say that Spencer has demonstrated that his counsel was not functioning as counsel guaranteed by the Sixth Amendment. Thus, we affirm the district court's determination of this issue.

a. Failure to advise of judge's sentencing policy

Spencer's attorney did not perform deficiently by failing to educate himself about the judge's sentencing policy and then relate the information to Spencer; the law does not demand that he do so. See United States v. Johnson, 760 F.2d 1025, 1026 (9th Cir. 1985).

b. Erroneous advice regarding sentencing

It is error for an attorney to misinform his client about the applicable sentencing statute. Iaea v. Sunn, 800 F.2d 861, 864 (9th Cir. 1986). Spencer's attorney zealously advocated for his client at the plea hearing by arguing for an interpretation that would allow the judge to order that Spencer be evaluated before sentencing for possible treatment--an interpretation that was viable at the time. The statute itself appears to allow an evaluation. See Wash. Rev. Code § 9.94A.120. Only later did the cases hold that no evaluation was possible. See State v. Hermanson, 829 P.2d 193, 195 (Wash. App.) (per curiam), review denied, 844 P.2d 436 (Wash. 1992); State v. Goss, 784 P.2d 194, 196 (Wash. App. 1990). In any event, nothing on the record indicates that he would not have entered his plea had he known that an evaluation would not be possible if he refused to admit his guilt.

c. Failure to investigate client's mental condition

The failure of an attorney to seek a psychiatric examination for his client to determine whether the client is competent to plead guilty can be a Sixth Amendment violation. See Smith v. McCormick, 914 F.2d 1153, 1170 (9th Cir. 1990). Conversely, an attorney is entitled to rely upon "detailed, reasoned" psychiatric reports that find the defendant is competent. See Moran v. Godinez, 40 F.3d 1567, 1576 (9th Cir. 1994). Spencer's attorney did have reports from a psychiatrist and a psychologist which touched on his competence but which were not detailed because they were not prepared for competency purposes. Perhaps counsel should

have ordered further psychiatric examinations for Spencer in order to determine his competency to plead guilty and stand trial. Nevertheless, there is not sufficient evidence to show that Spencer's attorney failed to function as Sixth Amendment counsel. Even the psychiatric experts apparently found nothing to suggest incompetence though they did examine and work with him. As counsel told the trial court, the doctors said that Spencer had "his full capacity about him."

d. Failure to investigate charges

An attorney must make a reasonable investigation of his client's case or at least make a reasonable decision that makes particular inquiries unnecessary. Strickland v. Washington, 466 U.S. at 691, 104 S. Ct. at 2066. Despite the Washington Court of Appeals' finding that "counsel did investigate the case and interview witnesses," this factual determination "is not fairly supported by the record." 28 U.S.C. § 2254(d)(8). Nonetheless, Spencer did not tell the district court what investigation his attorney failed to do, nor does he tell us. Also, he did not submit a list of witnesses who should have been interviewed. He did submit an expert opinion issued six years after his plea which criticized the investigative techniques of the police, but that does not cast light on his counsel's investigation. As it was, counsel said he would put the State to its proof--that hardly excludes attacks on police techniques, or, for that matter, the children's stories. In that regard, it should also be noted that counsel was dealing with a client who did not exactly say that he did not commit the acts, but who assumed a posture that he could

not remember doing them. One of the examining experts referred to that as "a cloak of pseudo-amnesia."

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this disposition.