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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

STEVEN HESSELGRAVE,

Petitioner.

NO. 49251-2-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Should the Court consider issues that were or could have been previously raised in the direct appeal?
2. Does the petitioner demonstrate constitutional error resulting in actual and substantial prejudice?
3. Does the petitioner demonstrate deficiency of counsel which prejudiced the result of his appeal?
4. Does the petitioner demonstrate improper argument which was unable to be cured by instruction; resulting in actual prejudice?

B. STATUS OF PETITIONER:

Petitioner, Steven Hesselgrave, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 11-1-02300-3. Appendix A.

1 In September, 2012, the petitioner was tried and convicted of one count of rape of a
2 child in the first degree. *See* Appendix A. He filed a direct appeal. *See State v.*
3 *Hesselgrave*, #44177-2-II, noted at 184 Wn. App. 1021 (2014)(2014 WL 5480364).
4 Appendix B. He sought review in the Supreme Court, which was denied. 183 Wn.2d 1004
5 (2015). The Mandate in the appeal was filed on June 24, 2015. Appendix C. The petitioner
6 filed this PRP on June 16, 2016.

7
8 C. ARGUMENT:

9 1. THE PETITIONER ARGUES ISSUES WHICH COULD HAVE
10 BEEN PREVIOUSLY RAISED IN THE DIRECT APPEAL.

11 As a general rule, "collateral attack by [personal restraint petition] on a criminal
12 conviction and sentence should not simply be a reiteration of issues finally resolved at trial
13 and direct review, but rather should raise new points of fact and law that were not or could
14 not have been raised in the principal action, to the prejudice of the defendant." *In re*
15 *Personal Restraint of Gentry*, 137 Wn.2d 378, 388-389, 972 P.2d 1250 (1999). The
16 petitioner in a PRP is prohibited from renewing an issue that was raised and rejected on
17 direct appeal unless the interests of justice require relitigation of that issue. *In re Personal*
18 *Restraint of Lord*, 123 Wn.2d 296, 303, 868 P.2d 835 (1994); *see also Gentry*, at 388.
19 The interests of justice are served by reexamining an issue if there has been an intervening
20 change in the law or some other justification for having failed to raise a crucial point or
21 argument in the prior application. *In re Personal Restraint of Stenson*, 142 Wn.2d 710,
22 720, 16 P.3d 1 (2001).

23 ““This court from its early days has been committed to the rule that questions
24 determined on appeal or questions which might have been determined had they been
25 presented, will not again be considered on a subsequent appeal in the same case.”” *State v.*
Bailey, 35 Wn. App. 592, 594, 668 P.2d 1285 (1983)(quoting *Davis v. Davis*, 16 Wn.2d

1 607, 609, 134 P.2d 467 (1943)). Because the personal restraint petition process is not a
2 substitute for appeal, the defendant cannot raise a valid issue on collateral attack by simply
3 revising an issue raised and rejected on direct appeal. On this issue, the Washington
4 Supreme Court stated:

5 Simply “revising” a previously rejected legal argument, however,
6 neither creates a “new” claim nor constitutes good cause to reconsider
7 the original claim. As the Supreme Court observed in *Sanders*¹,
8 “identical grounds may often be proved by different factual allegations.
9 So also, identical grounds may be supported by different legal
10 arguments, . . . or be couched in different language, . . . or vary in
11 immaterial respects”. (Citations omitted.) *Sanders v. United States*,
12 supra at 16. Thus, for example, “a claim of involuntary confession
13 predicated on alleged psychological coercion does not raise a different
14 ‘ground’ than does one predicated on physical coercion”. *Sanders*, at
15 16.

16
17 *In re Personal Restraint of Jeffries*, 114 Wn.2d 485, 488, 789 P.2d 731 (1990).

18 The Supreme Court and this Court have both stated:

19 We take seriously the view that a collateral attack by PRP on a criminal
20 conviction and sentence should not simply be reiteration of issues finally
21 resolved at trial and direct review, but rather should raise new points of fact
22 and law that were not or could not have been raised in the principal action,
23 to the prejudice of the defendant.

24
25 *Gentry*, 137 Wn.2d at 388-389; *In re Personal Restraint of Hegney*, 138 Wn. App. 511,
543-544, 158 P.3d 1193 (2007).

 The petitioner has had ample opportunity to raise and argue legal issues found in
the record. Here, he re-argues the State’s closing argument, choosing new objections that
could have been raised at trial or in the direct appeal.

 The prosecutor’s closing argument in this case was a major topic in the direct
appeal. *See App. Brf. at 44-52; Resp. Brf. at 61-70.* The defendant’s main contention was
that the closing was improper as a “false choice” argument. *App. Brf. at 47-51.* In so

¹ *Sanders v. United States*, 373 U.S. 1, 83 S. Ct. 1068, 10 L. Ed. 2d 148 (1963).

1 doing, appellate counsel pointed out several slides in the State's presentation, citing
2 Exhibit 25. App. Brf. at 45, 46. Appellate counsel specifically examined slides 7-9. *Id.*

3 The Court of Appeals considered the arguments regarding improper closing and
4 rejected them. Slip op., at 17-19. Appendix B. Shortly after the trial, the Supreme Court
5 issued *In re Personal Restraint of Glasmann*, 175 Wn.2d 696, 704, 286 P.3d 673 (2012),
6 which was highly critical of a slide-style illustrated closing argument.

7 Although *Glasmann* was the first opinion to specifically address the issues of the
8 use of media in closing argument, the Court made the point that the principles prohibiting
9 the use of altered evidence (*Id.*, at 705), misuse of the prosecutor's position (*Id.*, at 706), or
10 expressing a personal opinion (*Id.*, at 707) were nothing new. As argued below, appellate
11 counsel argued many of the same general principles.

12 In his appeal, the petitioner raised the issue of the closing argument. He fails to
13 demonstrate why the Court should consider his revised argument four years later.

14
15 2. THE PETITIONER FAILS TO DEMONSTRATE
16 CONSTITUTIONAL ERROR THAT RESULTED IN ACTUAL
17 AND SUBSTANTIAL PREJUDICE.

18 a. The petitioner has the burden of proof.

19 To obtain relief in a personal restraint petition challenging a judgment and
20 sentence, the petitioner must show actual and substantial prejudice resulting from alleged
21 constitutional errors, or, for alleged nonconstitutional errors, a fundamental defect that
22 inherently results in a miscarriage of justice. *In re Personal Restraint of Cook*, 114 Wn.2d
802, 813, 792 P.2d 506 (1990).

23 b. Closing argument of prosecuting attorney was proper.

24 In a PRP asserting prosecutorial misconduct, the reviewing court applies the same
25 standard as a direct review: the petitioner must show both improper conduct and resulting

1 prejudice. *Glasmann*, 175 Wn.2d at 704. Prejudice exists when there is a substantial
2 likelihood that the misconduct affected the verdict. *Id.* In the present case, after the closing
3 arguments were over and the case was to the jury, defense counsel objected that the slide
4 presentation which accompanied the prosecutor's closing shifted the burden, "used the
5 wrong standard," and vouched for SL or opined that SL was telling the truth. 7 RP 988.
6 Although defense counsel moved for a mistrial after the arguments were over (7 RP 985),
7 he failed to request a curative instruction when he made his objections.

8 The Court of Appeals found that the objections were sufficient to preserve the
9 issues argued on appeal. *See* Slip op., at 18, n. 13. Appendix B. However, trial counsel did
10 not object to other slides. In order to give the trial court the opportunity to rule on
11 evidence, remedy improper questions, and to preserve the issues for review, objections
12 must be on specific grounds. *See State v. Guloy*, 104 Wn.2d 412, 423, 705 P. 2d 1182
13 (1985)(evidentiary objection); *State v. Padilla*, 69 Wn. App. 295, 300, 846 P.2d
14 (1993)(prosecutor misconduct in cross-examination). Therefore, the petitioner must meet a
15 higher standard of review.

16 Generally, if the defendant fails to object to the prosecutor's improper conduct, he
17 waives any error unless that conduct was so flagrant and ill-intentioned that an instruction
18 could not have cured the resulting prejudice. *State v. Emery*, 174 Wn.2d 741, 762, 278
19 P.3d 653 (2012). *Emery* also went on to say that the focus should be less on whether the
20 prosecutor's misconduct was flagrant or ill -intentioned and more on whether the resulting
21 prejudice could have been cured. *Id.*, at 762. The Court pointed out that the defendant has a
22 duty to object to improper argument. Cases show that even serious misstatements in
23 closing argument can be cured through prompt objection. *See State v. Warren*, 165 Wn.2d
24 17, 195 P.3d 940 (2008); *State v. Rafay*, 168 Wn. App. 734, 833, 285 P.3d 83 (2012).

1 **Emery** did not involve a closing argument using slide-style presentation. But, the
2 same principle is still true; if defense counsel feels that part an illustrated closing argument
3 is improper, he has a duty to object. The objectionable slide could be removed and counsel
4 cautioned; the jury could be instructed or re-instructed. He cannot “simply lie back, not
5 allowing the trial court to avoid the potential prejudice, gamble on the verdict, and then
6 seek a new trial on appeal.” *Emery*, at 762 (additional internal citations omitted).

7 The Washington Supreme Court has discussed the use of slide-style or multi-media
8 presentations, such as PowerPoint, in closing arguments in criminal trials. In *Glasmann*,
9 The Court pointed out some abuses of such a presentation. The Court found that the
10 prosecutor had altered evidence by adding opinion and commentary or superscript to
11 photographs admitted into evidence. *Id.*, at 705-706. He was also alleged to have used
12 slides with “GUILTY” in red letters across the defendant’s booking photograph which had
13 been admitted into evidence. *Id.*, at 701. In *State v. Hecht*, 179 Wn. App. 497, 505-506,
14 319 P.3d 836 (2014), the prosecutor used a similar presentation.

15 *State v. Fedoruk*, 184 Wn. App. 866, 339 P.3d 233 (2014) presented a similar
16 problem. There, the prosecutor argued that “[t]he Defendant is guilty, guilty, guilty” while
17 flashing the word “GUILTY” in front of the jury in large, red, capital letters on a screen
18 bearing the heading “Murder 2.” *Id.*, at 889.

19 In *State v. Walker*, 182 Wn.2d 463, 341 P. 3d 976 (2015), the Court found that
20 repetitive captions and titles expressed an opinion, rather than organizing or supporting the
21 presentation. *Id.*, at 478. The Court found that exhibits had been altered with inflammatory
22 captions and superimposed text. *Id.*, at 471-473. The slides suggested to the jury that
23 Walker should be convicted because he was a callous and greedy person who spent the
24 robbery proceeds on video games and lobster. *Id.*, at 474. The presentation juxtaposed
25 photographs of the victim with photographs of Walker and his family celebrating. *Id.*

1 However, the Court also recognized that such technology is a modern form of
2 communication. 182 Wn.2d. at 476. The Court made clear that use of this technology is not
3 in and of itself improper: “Attorneys may use multimedia resources in closing arguments
4 to summarize and highlight relevant evidence, and good trial advocacy encourages creative
5 use of such tools. Moreover, closing arguments are an opportunity for counsel to argue
6 reasonable inferences from the evidence.” *Id.*, at 476-477.

7 Here, the prosecutor used the slides to “summarize and highlight relevant
8 evidence,” as the Court put it in *Davis*. Some of the slides use all capital letters to show the
9 category or topic, such as SEXUAL INTERCOURSE, CREDIBILITY, FORENSIC
10 INTERVIEW, and REASONABLE DOUBT. Appendix D. These were all important topics
11 and issues in this case. Some of the slides use underlined or capitalized words to highlight
12 various point being made. Appendix D. Again, the use of such techniques to emphasize or
13 draw attention to certain points in making an oral presentation to a group are quite
14 common and well within reason.

15 The slide that has the word GUILTY in large letters is at the end of the argument.
16 A prosecutor may properly argue that a defendant is guilty. *See State v. McKenzie*, 157
17 Wn.2d 44, 53, 134 P.3d 221 (2006). It is the conclusion that most, if not all, prosecutors
18 argue after reviewing and arguing the law and evidence. To determine whether the
19 prosecutor is expressing a personal opinion of the defendant's guilt, independent of the
20 evidence, the Court views the challenged comments in context and looks for “clear and
21 unmistakable” expressions of personal opinion. *McKenzie*, at 53-54. There is nothing in
22 the record, let alone anything “clear and unmistakable,” to indicate that the prosecutor’s
23 argument and this slide is an expression of personal opinion.

24 A prosecutor has wide latitude to argue reasonable inferences from the evidence,
25 *State v. Thorgerson*, 172 Wn.2d 438, 448, 258 P.3d 43 (2011). That is how the prosecutor

1 used the slides in this case. None of the slides used the “shouting” graphics the Court
2 found improper in *Glasmann*, 175 Wn.2d at 708; or *Hecht*, 179 Wn. App. at 505. The
3 prosecutor did not “alter” evidence by adding subscript or argument to photographs
4 admitted into evidence, which the *Glasmann* and *Davis* Courts found improper.

5 The prosecutor did not comment on the petitioner’s right to counsel; nor to his right
6 to confront witnesses. A prosecutor's argument should be viewed in “context of the total
7 argument, the issues in the case, the evidence addressed in the argument, and the
8 instructions given to the jury.” *State v. Russell*, 125 Wn.2d 24, 85, 882 P. 2d 747 (1994).
9 Here, the remark that “two lawyers asking a ten year old every question they can think of”
10 was in the context of reviewing S.L.’s disclosures, statements, and how they came about. 7
11 RP 930-931. The prosecutor was making the point that S.L.’s statements were more
12 detailed and accurate in the appropriate context, such as the interview with Ms. Thomas
13 and testifying in court.

14 Defense counsel objected, on the grounds that it violated a motion in limine
15 prohibiting disparaging counsel, the same argument made in this PRP. But the prosecutor’s
16 remarks did not disparage counsel, nor comment on the petitioner’s right to a trial. The
17 remarks recounted the sequence of S.L.’s disclosures and sought to explain why her
18 statements became more detailed as the case progressed.

19 Even assuming, for the purpose of argument, that some of the prosecutor’s closing
20 was improper, the petitioner fails to show prejudice. The petitioner must show that, absent
21 the allegedly improper slides, the result would have been different; i.e. he would have been
22 acquitted. In the trial, there was no question of identity; the petitioner was SL’s stepfather.
23 The petitioner’s statements confirmed much of SL’s account. He admitted that SL may
24 have seen his penis while he watched pornography and masturbated. 5 RP 562-563. He
25 admitted that he watched pornography involving bestiality. 5 RP 564.

1 At trial, S.L. gave detailed accounts of the petitioner having oral, vaginal, and anal
2 intercourse with her. 3 RP 315, 316, 319-320. Despite extensive cross-examination, she
3 maintained her account. 3 RP 328, 330, 333.

4
5 c. Witness Thomas did not opine on the credibility of S.L.

6 A trial court's decision to admit opinion testimony is reviewed for an abuse of
7 discretion. *State v. Ortiz*, 119 Wn.2d 294, 308, 831 P.2d 1060 (1992). Testimony is not
8 improper as opinion if it “is not a direct comment on the defendant's guilt or on the
9 veracity of a witness, is otherwise helpful to the [fact finder], and is based on inferences
10 from the evidence.” *City of Seattle v. Heatley*, 70 Wn. App. 573, 577, 854 P.2d 658
11 (1993) (quoting *State v. Black*, 109 Wn.2d 336, 348, 745 P.2d 12 (1987)). In addition,
12 opinion testimony is not improper merely because it involves ultimate factual issues.
13 *Heatley*, at 578; *see also State v. Montgomery*, 163 Wn.2d 577, 590, 183 P.3d 267 (2008)
14 (mere fact that opinion testimony addresses an issue that the jury has to pass upon does not
15 call for automatic exclusion of the testimony). Whether testimony constitutes an
16 impermissible opinion on the guilt of the defendant or a permissible opinion embracing an
17 “ultimate issue” will generally depend on the specific circumstances of each case,
18 including the type of witness involved, the specific nature of the testimony, the nature of
19 the charges, the type of defense, and the other evidence before the trier of fact. *Heatley*, at
20 579.

21 A witness may not comment on the credibility of another witness. *State v. Carlson*,
22 80 Wn. App. 116, 123, 906 P.2d 999 (1995). Expert testimony is admissible when (1) the
23 witness qualifies as an expert, (2) the opinion is based upon an explanatory theory
24 generally recognized in the scientific community, and (3) if it will be helpful to the trier of
25 fact. ER 702; *In re Personal Restraint of Morris*, 176 Wn.2d 157, 168–69, 288 P.3d 1140

1 (2012). An expert's opinion is not automatically excluded if it covers an issue to be decided
2 by the trier of fact. ER 704; *State v. Kirkman*, 159 Wn.2d 918, 929, 155 P.3d 125 (2007).

3 In *Kirkman*, the defendant was accused of sexually assaulting a child. 159 Wn.2d
4 at 924. The doctor who examined the victim testified that there was no physical evidence
5 of sexual contact. *Id.* The State asked the doctor if his findings were consistent with the
6 victim's allegations of abuse. *Id.* The doctor replied that “to have no findings after
7 receiving a history like [the victim reported] is actually the norm rather than the
8 exception.” *Id.* The Washington Supreme Court found this testimony proper. *Id.* at 933. It
9 noted that, where a child victim's credibility is at issue, a trial court has broad discretion to
10 admit evidence corroborating the child's testimony. *Id.* There, the doctor did not opine that
11 the defendant was guilty or that the victim was truthful. *Id.* Rather, his testimony was
12 “content neutral” and did not comment on the substance of the matters they discussed. *Id.*

13 Here, forensic interviewer Cornelia Thomas testified regarding her interview with
14 S.L. Direct examination of Ms. Thomas began with general questions concerning her
15 training, experience, and child interview methods and protocol. In this context, the
16 prosecutor asked Ms. Thomas if she was trained to be alert for “coaching.” 6 RP 673. Ms.
17 Thomas explained what coaching is and what, in her experience, were indicators of
18 coaching. 6 RP 673-674.

19 Then, the prosecutor moved on to inquire about the specific interview with S.L. 6
20 RP 674. The next questions were about the who, when, and how of the interview. 6 RP
21 675-676. Defense counsel was obviously alert to the issue of improper opinion, as he
22 objected that some questions called for an opinion about the credibility of the witness
23 (S.L.). 6 RP 676, 678.

24 After the court and the jury saw the DVD of the interview, the prosecutor asked if
25 Ms. Thomas had seen any evidence of coaching in the video. 6 RP 681. Defense counsel

1 objected, because “it calls for credibility.” *Id.* The court overruled the objection and invited
2 defense counsel to inquire regarding the issue on cross examination. *Id.*

3 Indeed, defense counsel began cross-examination with the coaching issue. 6 RP
4 682-683. Ms. Thomas testified that she did not know whether S.L. was coached or not. 6
5 RP 682. She further testified that a well-coached child could “get right past [her].” 6 RP
6 683. Defense counsel soon continued with questions regarding Ms. Thomas’ evaluation of
7 a child’s understanding of the difference between truth and lying. 6 RP 684-687. Toward
8 the end of cross-examination, defense counsel returned to the coaching issue. 6 RP 689. He
9 pointed out that in the interview, S.L. had told Ms. Thomas that S.L.’s mother had told
10 S.L. to tell the truth so that two other persons would not go to jail. *Id.* Ms. Thomas
11 admitted that this was possibly indicative of coaching. 6 RP 690.

12 Ms. Thomas did not comment or opine on whether S.L. had been coached. Her
13 testimony was “content neutral” about her training and experience with interviewing
14 children. Part of that training and experience was to be alert to indicators that the child’s
15 answers had been influenced or coached by others. She did not testify or opine that S.L.
16 was credible, nor that S.L. had not been coached. Ms. Thomas testified about her
17 observations, as the doctor in *Kirkman* did. She was subject to cross-examination, where
18 she admitted that her observations could be wrong. There was no error.

19
20 d. The court did not comment on the evidence.

21 Article IV, section 16 of the Washington Constitution “prohibits a judge from
22 conveying to the jury his or her personal attitudes toward the merits of the case.” *State v.*
23 *Becker*, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997); *State v. Brush*, 183 Wn.2d 550, 556-57,
24 353 P.3d 213 (2015). An impermissible comment on the evidence is one that “conveys to
25 the jury a judge's personal attitudes toward the merits of the case or allows the jury to infer

1 from what the judge said or did not say that the judge personally believed the testimony in
2 question.” *State v. Swan*, 114 Wn.2d 613, 657, 790 P.2d 610 (1990).

3 Here, during jury selection, the court was questioning prospective jurors with
4 previous jury service about their experiences. The court used an example raised by
5 prospective Juror 4 to illustrate the difference between direct and circumstantial evidence.
6 Prospective Juror 4 had sat as a juror in an arson case. 2 RP 107. No witness had seen the
7 fire being set. 2 RP 108. The juror responded that the distinction between direct and
8 circumstantial evidence caused some problems during deliberations. *Id.*

9 In this exchange, the court was alerting jurors that they would be instructed on the
10 law, and that often the law was different than the jurors’ preconception of it. Jurors are
11 instructed that it is their duty to “accept the law from my instructions, regardless of what
12 you personally believe the law is or what you think it ought to be.” *See* WPIC 1.01. The
13 court did not opine about the weight or value of evidence that they might hear in the
14 present case, but merely alerted them so that they would be attentive.

15
16 e. Court’s order regarding legal financial obligations.

17 *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) holds that sentencing courts
18 must conduct an individualized determination of the defendant’s present and future ability
19 to pay discretionary LFO’s. Here, the court did not do so. Without the request of either
20 party, the court ordered \$1,500 recoupment of fees for an attorney at public expense.

21 11/9/2012 RP 8.

22 *Blazina* also holds that RAP 2.5(a) gives appellate courts discretion whether to
23 consider a defendant's LFO challenge raised for the first time on *appeal. Id.*, at 834–835.
24 Since *Blazina* imposes no obligation for appellate courts to review LFO challenges raised
25 for the first time in a direct appeal, it therefore follows *Blazina* does not require review of
LFO claims made initially in a personal restraint petition. As pointed out in *Blazina*, 191

1 Wn.2d at 834, the discretionary determination of LFO's is not a constitutional issue. *See*
2 *also*, RAP 2.5(a). This is a non-constitutional trial error to which the petitioner made no
3 objection. The defendant could not raise it in his direct appeal, and he cannot raise it in this
4 PRP.

5 Also, because the defendant may seek remission of the discretionary and other fees
6 through RCW 10.01.160(4), the error does not "result in a complete miscarriage of
7 justice." He may seek relief through RCW 10.01.160(4) even if his PRP is dismissed.
8 Where he has a remedy other than a PRP, the Court must dismiss the petition. *See* RAP
9 16.4(d).

10 f. The State adduced sufficient evidence that the defendant was
11 S.L.'s stepfather at the time of the crime.

12 In a challenge to the sufficiency of the evidence, the appellate court determines
13 whether any rational fact finder could have found the essential elements of the charged
14 crime beyond a reasonable doubt, viewing the trial evidence in the light most favorable to
15 the State. *State v. Brockob*, 159 Wn.2d 311, 336, 150 P.3d 59 (2006). An insufficiency
16 claim "admits the truth of the State's evidence and all inferences that reasonably can be
17 drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *see also*
18 *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). Direct and circumstantial
19 evidence are equally reliable. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P. 3d 970 (2004).
20 The Court defers to the trier of fact on issues of conflicting testimony, witness credibility,
21 and the persuasiveness of evidence. *Thomas*, at 874-875; *State v. Delmarter*, 94 Wn.2d
22 634, 638, 618 P.2d 99 (1980). The presence of contrary or countervailing evidence is
23 irrelevant to a sufficiency-of-the-evidence challenge because the evidence is viewed in the
24 light most favorable to the State. *State v. Ibarra-Cisneros*, 172 Wn.2d 880, 896, 263 P.3d
25 591 (2011).

1 The charging period for the crime was July 11, 2008-December 31, 2010.
2 Appendix E. S.L. was born July 11, 2002. 3 RP 306. She lived with defendant. 3 RP
3 310. Leona Ling, S.L.'s mother, lived with the petitioner October, 2004-June or
4 July 2008. 4 RP 374. Ling divorced the petitioner February 16, 2010. 4 RP 378.
5 Because of Ling's poor financial circumstances, S.L. lived for a while with the
6 petitioner after separation, before the divorce. 4 RP 376, 382. S.L. lived with the
7 petitioner until September 2009. 4 RP 390, 391. The petitioner told Detective Quilio
8 that S.L. lived with him March-September, 2009. 5 RP 560. From this evidence, the
9 jury could conclude that the petitioner was S.L.'s stepfather at the time he had sex
10 with her.

11 3. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.
12

13 To prevail on a claim of ineffective assistance of appellate counsel, the petitioner
14 must demonstrate the merit of any legal issue appellate counsel raised inadequately or
15 failed to raise and also show how he or she was prejudiced. *In re Personal Restraint of*
16 *Netherton*, 177 Wn.2d 798, 801, 306 P.3d 918 (2013). Failure to raise all possible
17 nonfrivolous issues on appeal is not ineffective assistance, and the exercise of independent
18 judgment in deciding what issues may lead to success is the heart of the appellate
19 attorney's role. *In re Personal Restraint of Dalluqe*, 152 Wn.2d 772, 787, 100 P. 3d 279
20 (2004).

21 The petitioner must show deficiency of counsel, e.g. failing to raise a legitimate
22 legal issue; and prejudice, i.e. that the issue was dispositive. To meet this standard, the
23 defendant must show that "but for counsel's errors the outcome of the proceedings would
24 have been different." *State v. Varga*, 151 Wn.2d 179, 198, 86 P. 3d 139 (2004) (quoting
25 *State v. Brett*, 126 Wn.2d 136, 199, 892 P.2d 29 (1995)).

1 Appellate counsel need not raise every colorable claim on behalf of a client. *Jones*
2 *v. Barnes*, 463 U.S. 745, 752–754, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983). Appellate
3 counsel decides which issues to concentrate on in order to maximize the likelihood of
4 success on appeal. See *Smith v. Robbins*, 528 U.S. 259, 288, 120 S. Ct. 746, 145 L. Ed. 2d
5 756 (2000). *Strickland* test applies to appeals. *Robbins*, at 289. “[a] court considering a
6 claim of ineffective assistance must apply a ‘strong presumption’ that counsel’s
7 representation was within the ‘wide range’ of reasonable professional assistance.”
8 *Strickland v. Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).
9 “The challenger’s burden is to show ‘that counsel made errors so serious that counsel was
10 not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment.’”
11 *Strickland*, 466 U.S. at 687. And in assessing whether Strickland’s first prong is satisfied,
12 “[j]udicial scrutiny of counsel’s performance must be highly deferential.” *Strickland*, 466
13 U.S. at 689. Be watchful “to eliminate the distorting effects of hindsight.” *Strickland*, 466
14 U.S. at 689.

15 There was no deficiency in representation. The petitioner was represented on
16 appeal by very experienced counsel. Appellate counsel wrote a 69 page brief which
17 thoroughly examined the issues. As pointed out above, she identified and discussed some
18 of the same issues that are re-examined with hindsight in this PRP. As further argued
19 above, the prosecutor’s argument and use of the slide illustrations was appropriate and
20 reasonable.

21 It is true that the appellate brief, written shortly after *Glassmann*, 175 Wn.2d 696
22 (2012) and *Emery*, 174 Wn.2d 741 (2012) were published, cites neither of these cases.
23 However, appellate counsel discussed the important principles of the defendant’s
24 constitutional right to a fair trial and the prosecutor’s duty to act in the interest of justice.
25

1 App. Brf. at 44. The petitioner fails to show prejudice; that the result would have been
2 different if *Glasmann* and *Emery* had been cited.

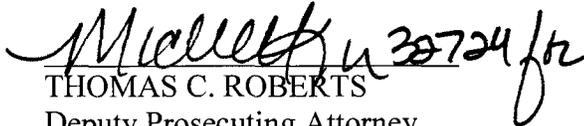
3
4 D. CONCLUSION:

5 The petitioner had ample opportunity to raise the issues he now argues in his PRP.
6 All the issues are based in the trial record. The issues could and should have been raised in
7 the direct appeal. Defense counsel in the direct appeal identified and argued issues,
8 including the closing argument, which she thought would have the best chance of success.
9 Those arguments were considered and rejected by the Court. Substantively, the prosecuting
10 attorney made a proper closing argument, which included illustrative slides which were
11 reasonable and appropriate to the argument.

12 The petitioner fails to demonstrate constitutional error resulting in actual prejudice.
13 The State respectfully requests that the petition be denied.

14 DATED: November 29, 2016

15 MARK LINDQUIST
16 Pierce County
17 Prosecuting Attorney

18 
19 THOMAS C. ROBERTS
20 Deputy Prosecuting Attorney
21 WSB # 17442

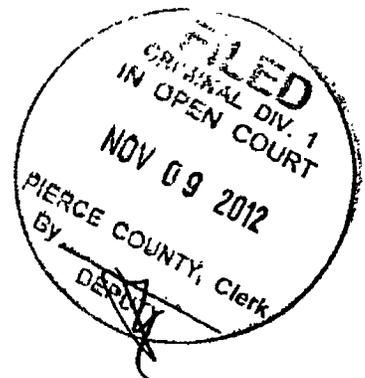
22 Certificate of Service:

23 The undersigned certifies that on this day she delivered by U.S. mail or
24 ABC-LMI delivery to the petitioner true and correct copies of the document to
25 which this certificate is attached. This statement is certified to be true and
correct under penalty of perjury of the laws of the State of Washington. Signed
at Tacoma, Washington, on the date below.

Date Signature

APPENDIX “A”

Judgment and Sentence



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO 11-1-02300-5

vs

STEVEN L HESSELGRAVE,

Defendant

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

NOV - 9 2012

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement in Department of Corrections custody).

WARRANT OF COMMITMENT -1

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

1
2 [] 3 YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for
3 classification, confinement and placement as ordered in the Judgment and Sentence
4 (Sentence of confinement or placement not covered by Sections 1 and 2 above).

5 Date: 11/9/2012

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By: [Signature]
JUDGE
KEVIN STOCK
CLERK
Chris Hutton
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

NOV - 9 2012 Chris Hutton

FILED
CRIMINAL DIV. 1
IN OPEN COURT
NOV 09 2012
PIERCE COUNTY, Clerk
By: [Signature]
DEPUTY

STATE OF WASHINGTON ss:
County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____,

KEVIN STOCK, Clerk
By: _____ Deputy
mac



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

NOV - 9 2012

Plaintiff, CAUSE NO. 11-1-02300-3

vs.

JUDGMENT AND SENTENCE (JJS)

STEVEN L. HESSELGRAVE

Defendant

- Prison
- RCW 9.94A 712A.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

SID: UNKNOWN
 DOB: 09/14/1983

I. HEARING

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

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS.

2.1 CURRENT OFFENSE(S). The defendant was found guilty on 09/21/2012 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	CHILD RAPE 1 (136/DV)	9A.44.073		07/11/08-12/31/10	TPC 111530753

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

The State has pleaded and proved that the crime charged in Count(s) I involve(s) domestic violence.

JUDGMENT AND SENTENCE (JS)
 (Felony) (7/2007) Page 1 of 12

17-9-12099-5

Office of Prosecuting Attorney
 930 Tacoma Avenue S. Room 946
 Tacoma, Washington 98402-2171
 Telephone: (253) 798-7400

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525): NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	0	XII	93-123 MONTHS TO LIFE		93-123 MONTHS TO LIFE	LIFE/50K

- 2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:
- within below the standard range for Count(s) _____
 - above the standard range for Count(s) _____
 - The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
 - Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.
- Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):
-

- The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:
-

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1

- 3.2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts _____
-

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

CLASS CODE

RTNRJN	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$ 1500	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$ _____	Fine
JFR	\$ _____	Jury Fee

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 2300 TOTAL

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION. Order Attached

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.750(8).

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ 110/week per month commencing 12/10/12 RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.750(7)(b)

COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 12

COSTS ON APPEAL. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 1073.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with S.L. (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

AS PER APPENDIX H AND LCO
NO CONTACT WITH VICTIM'S MOTHER, GROWA LING

4.4a All property is hereby forfeited

Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b **BOND IS HEREBY EXONERATED**

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

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

110 months on Count I TO LIFE months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count I Minimum Term: 110 Months Maximum Term LIFE

Count _____ Minimum Term _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

Actual number of months of total confinement ordered is: 110 MONTHS TO LIFE

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above)

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers: RCW 9.94A.589. _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 525 DAYS

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[X] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count(s) _____ 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007), Page 5 of 12

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

A COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Count I until _____ years from today's date for the remainder of the Defendant's life

Count _____ until _____ years from today's date for the remainder of the Defendant's life

Count _____ until _____ years from today's date for the remainder of the Defendant's life.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody.

Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

consume no alcohol.

have no contact with: S. L.

remain within outside of a specified geographical boundary, to wit: PER CLD

not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

participate in the following crime-related treatment or counseling services: _____

PSYCHOSEXUAL EVALUATION AND TREATMENT

undergo an evaluation for treatment for domestic violence substance abuse

mental health anger management and fully comply with all recommended treatment

comply with the following crime-related prohibitions: _____

Other conditions: PER APPENDIX H AND CLD

For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an

JUDGMENT AND SENTENCE (JS)

emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

[] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

OFF LIMITS ORDER (known drug trafficker) RCW 10.65.020 The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections.

CONFINEMENT RCW 9.94A.712 Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC)

Count I Minimum Term 10 Months Maximum Term: LIFE

Count _____ Minimum Term _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

The Indeterminate Sentencing Review Board may increase the minimum term of confinement. [] COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence.

Count I until _____ years from today's date for the remainder of the Defendant's life

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.190. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4)

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

~~X~~ Defendant waives any right to be present at any restitution hearing (sign initials): SLH

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634

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

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register at the time of your release and within three (3) business days from the time of release.

2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in

this state.

3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person signed written notice of your change of residence to the sheriff within three (3) business days of moving. If you change your residence to a new county within this state, you must register with that county sheriff within three (3) business days of moving, and must, within three (3) business days provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom you last registered. If you move out of Washington State, you must send written notice within three (3) business days of moving to the county sheriff with whom you last registered in Washington State.

4. **Additional Requirements Upon Moving to Another State** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three (3) business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within three (3) days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three (3) business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three (3) business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three (3) business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three (3) business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. **Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within three (3) business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three (3) business days after losing your fixed residence, you must provide signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county within three (3) business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. **Application for a Name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three (3) business days of the entry of the order. RCW 9A.44.130(7).

[X] The defendant is a sex offender subject to undeterminate sentencing under RCW 9.94A.712.

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 9 of 12

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision RCW 9.94A.562.

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 11/9/2012

JUDGE
Print name

[Signature]
RONALD E. COLPEPPER

Deputy Prosecuting Attorney

Print name: Neil Harris
WSB #: 36724

Attorney for Defendant

Print name: Kent W. Underwood
WSB #: 27250

Defendant

Print name: Steven L Hesselgrave

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637, b) A court order issued by the sentencing court restoring the right, RCW 9.92.086, c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050, or d) A certificate of restoration issued by the governor, RCW 9.95.020. Voting before the right is restored is a class C felony, RCW 92A.84.660

Defendant's signature:

[Signature]



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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 11-1-02300-3

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

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

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Court Reporter **CARLA HIGGINS**

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed;

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions.

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary: Per LCO
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: S.L. OR MINORS
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol: _____
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: Per Appendix H

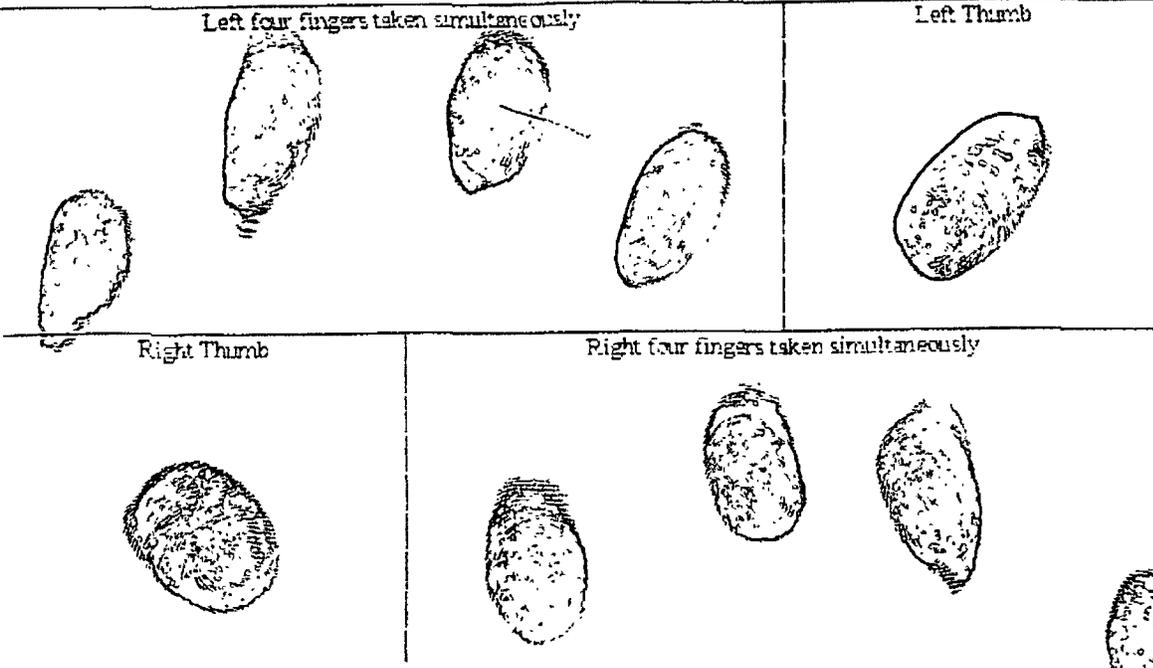
APPENDIX F

IDENTIFICATION OF DEFENDANT

SID No UNKNOWN Date of Birth 09/14/1983
(If no SID take fingerprint card for State Patrol)
FBI No UNKNOWN Local ID No UNKNOWN
PCN No 540444013 Other
Alias name, SSN, DOB: _____

Race: Ethnicity: Sex:
[] Asian/Pacific [] Black/African-American [X] Caucasian [] Hispanic [X] Male
[] Native American [] Other: [X] Non-Hispanic [] Female

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto Clerk of the Court, Deputy Clerk. [Signature] Dated: 11.9.12

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: _____

1 Case Name HELSELGAVE, STAN Cause No. 11-1-02300-3

2
3 **Sex and Kidnapping Offender Registration.** RCW 9A.44.130, Laws of 2010, ch. 267
4 § 1, 10.01.200.

5 **1. General Applicability and Requirements:** Because this crime involves a sex
6 offense or kidnapping offense involving a minor as defined in Laws of 2010, ch. 267 § 1,
7 you are required to register.

8 If you are a resident of Washington, you must register with the sheriff of the county of
9 the state of Washington where you reside. You must register within three business
10 days of being sentenced unless you are in custody, in which case you must register at
11 the time of your release with the person designated by the agency that has jurisdiction
12 over you. You must also register within three business days of your release with the
13 sheriff of the county of the state of Washington where you will be residing.

14 If you are not a resident of Washington but you are a student in Washington or you are
15 employed in Washington or you carry on a vocation in Washington, you must register
16 with the sheriff of the county of your school, place of employment, or vocation. You
17 must register within three business days of being sentenced unless you are in custody,
18 in which case you must register at the time of your release with the person designated
19 by the agency that has jurisdiction over you. You must also register within three
20 business days of your release with the sheriff of the county of your school, where you
21 are employed, or where you carry on a vocation.

22 **2. Offenders Who are New Residents or Returning Washington Residents:** If you
23 move to Washington or if you leave this state following your sentencing or release from
24 custody but later move back to Washington, you must register within three business
25 days after moving to this state. If you leave this state following your sentencing or
26 release from custody but later while not a resident of Washington you become
27 employed in Washington, carry on a vocation in Washington, or attend school in
28 Washington, you must register within three business days after starting school in this
state or becoming employed or carrying out a vocation in this state.

29 **3. Change of Residence Within State:** If you change your residence within a county,
30 you must provide, by certified mail, with return receipt requested or in person, signed
31 written notice of your change of residence to the sheriff within three business days of
32 moving. If you change your residence to a new county within this state, you must
33 register with the sheriff of the new county within three business days of moving. Also
34 within three business days, you must provide, by certified mail, with return receipt
35 requested or in person, signed written notice of your change of address to the sheriff of
36 the county where you last registered.

37 **4. Leaving the State or Moving to Another State:** If you move to another state, or if
38 you work, carry on a vocation, or attend school in another state you must register a new
address, fingerprints, and photograph with the new state within three business days
after establishing residence, or after beginning to work, carry on a vocation, or attend
school in the new state. If you move out of the state, you must also send written notice

1 within three business days of moving to the new state or to a foreign country to the
2 county sheriff with whom you last registered in Washington State.

3 **5. Notification Requirement When Enrolling in or Employed by a Public or Private**
4 **Institution of Higher Education or Common School (K-12):** If you are a resident of
5 Washington and you are admitted to a public or private institution of higher education,
6 you are required to notify the sheriff of the county of your residence of your intent to
7 attend the institution within three business days prior to arriving at the institution. If you
8 become employed at a public or private institution of higher education, you are required
9 to notify the sheriff for the county of your residence or your employment by the
10 institution within three business days prior to beginning to work at the institution. If your
11 enrollment or employment at a public or private institution of higher education is
12 terminated, you are required to notify the sheriff for the county of your residence of your
13 termination of enrollment or employment within three business days of such termination.
14 If you attend, or plan to attend, a public or private school regulated under Title 28A
15 RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your
16 residence of your intent to attend the school. You must notify the sheriff within three
17 business days prior to arriving at the school to attend classes. The sheriff shall
18 promptly notify the principal of the school.

19 **6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you
20 do not have a fixed residence, you are required to register. Registration must occur
21 within three business days of release in the county where you are being supervised if
22 you do not have a residence at the time of your release from custody. Within three
23 business days after losing your fixed residence, you must send signed written notice to
24 the sheriff of the county where you last registered. If you enter a different county and
25 stay there for more than 24 hours, you will be required to register with the sheriff of the
26 new county not more than three business days after entering the new county. You must
27 also report weekly in person to the sheriff of the county where you are registered. The
28 weekly report shall be on a day specified by the county sheriff's office, and shall occur
during normal business hours. You must keep an accurate accounting of where you
stay during the week and provide it to the county sheriff upon request. The lack of a
fixed residence is a factor that may be considered in determining an offender's risk level
and shall make the offender subject to disclosure of information to the public at large
pursuant to RCW 4.24.55D.

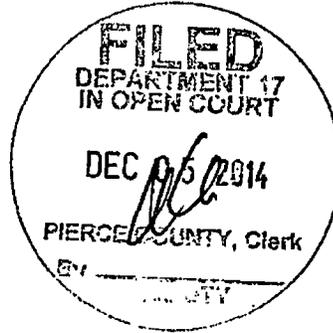
7. Application for a Name Change: If you apply for a name change, you must submit
a copy of the application to the county sheriff of the county of your residence and to the
state patrol not fewer than five days before entry of an order granting the name change.
If you receive an order changing your name, you must submit a copy of the order to the
county sheriff of the county of your residence and to the state patrol within three
business days of the entry of the order. RCW 9A.44.130(7).

29 Date: 11/9/12

[Signature]
Defendant

[Signature]
Attorney for Defendant 27252

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-02300-3

vs.

STEVEN L HESSEL GRAVE,

MOTION AND ORDER CORRECTING
JUDGMENT AND SENTENCE

Defendant.

CLERKS ACTION REQUIRED

THIS MATTER coming on regularly for hearing before the above-entitled court on the Motion of the Deputy Prosecuting Attorney for Pierce County, Washington, for an order correcting Judgment and Sentence heretofore granted the above-named defendant on November 9, 2012, pursuant to defendant's conviction of the charge(s) of RAPE OF A CHILD IN THE FIRST DEGREE, as follows. This Court is implementing the changes to the Appendix "H" of the judgment & sentence as mandated by the Court of Appeals in its 10/29/14 opinion, and this Court is doing so in a purely ministerial manner without exercising its discretion in any way.

1) That Page 2 of the Appendix "H" to the Judgment and Sentence, section (b)(13) reflects "You shall not possess or consume any controlled substances without a valid prescription from a licensed physician" and should note "You shall not possess or consume any controlled substances without a valid prescription.";

1) That Page 2 of the Appendix "H" to the Judgment and Sentence, section (b)(16) reflects "Do not initiate, or have in any way, physical contact with children under the age of 18

11-1-02300-3 4477 12/8/2014 4477

1
2 for any reason, unless approved as per #14 above. Do not have any contact with physically or
3 mentally vulnerable individuals" and should note "Do not initiate, or have in any way, physical
4 contact with children under the age of 18 for any reason, unless approved as per #14 above.";

5 3) That Page 3 of the Appendix "H" to the Judgment and Sentence, section (b)(25)
6 reflects "Do not possess or peruse any sexually explicit materials in any medium. Your sexual
7 deviancy treatment provider will define sexually explicit material. Do not patronize prostitutes
8 or establishments that promote the commercialization of sex. Also, do not possess or use any
9 cell phone that may provide access to the internet as well" and should note "Do not possess or
10 peruse any sexually explicit materials in any medium. Your sexual deviancy treatment provider
11 will define sexually explicit material. Do not patronize prostitutes.";

12 4) That all other terms and conditions of the Judgment and Sentence are to remain in full
13 force and effect as if set forth in full herein; and the court being in all things duly advised,
14

15
16
17 Now, Therefore, It is hereby

18 ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the
19 defendant on November 9, 2012, be and the same is hereby corrected as follows:

20 1) Page 2 of the Appendix "H" to the Judgment and Sentence, section (b)(16) is
21 corrected as follows:

22 a) "You shall not possess or consume any controlled substances without a valid
23 prescription from a licensed physician" is deleted; and

24 b) "You shall not possess or consume any controlled substances without a valid
25 prescription." is inserted in its stead.
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2) Page 2 of the Appendix "H" to the Judgment and Sentence, section (b)(16) is corrected as follows:

a) "Do not initiate, or have in any way, physical contact with children under the age of 18 for any reason, unless approved as per #14 above. Do not have any contact with physically or mentally vulnerable individuals" is deleted; and

b) "Do not initiate, or have in any way, physical contact with children under the age of 18 for any reason, unless approved as per #14 above." is inserted in its stead.

3) Page 3 of the Appendix "H" to the Judgment and Sentence, section (b)(16) is corrected as follows:

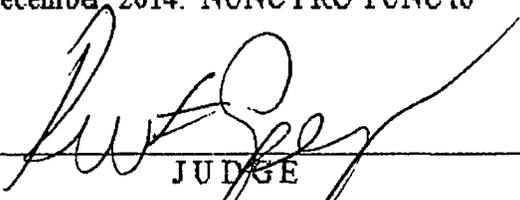
a) "Do not possess or peruse any sexually explicit materials in any medium. Your sexual deviancy treatment provider will define sexually explicit material. Do not patronize prostitutes or establishments that promote the commercialization of sex. Also, do not possess or use any cell phone that may provide access to the internet as well" is deleted; and

b) "Do not possess or peruse any sexually explicit materials in any medium. Your sexual deviancy treatment provider will define sexually explicit material. Do not patronize prostitutes." is inserted in its stead.

4) All other terms and conditions of the original Judgment and Sentence shall remain in full force and effect as if set forth in full herein.

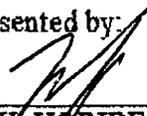
IT IS FURTHER ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed on November 9, 2012, so that any one obtaining a certified copy of the judgment will also obtain a copy of this order.

DONE IN OPEN COURT this 5 day December 2014. NUNC PRO TUNC to
November 9, 2012.



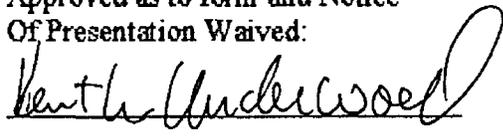
JUDGE
RONALD E. CULPEPPER

Presented by:



NEIL HORIBE
Deputy Prosecuting Attorney
WSB# 36724

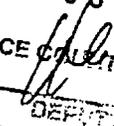
Approved as to form and Notice
Of Presentation Waived:



Keith Underwood

Attorney for Defendant
WSB# 272520

mrp

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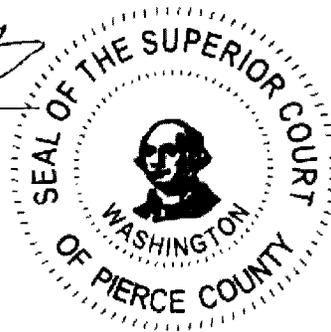
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 29 day of November, 2016



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: Nov 29, 2016 9:44 AM



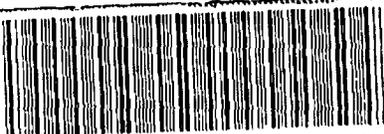
Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: B648B29E-3D45-40D1-85D91EC11E4BB80A.

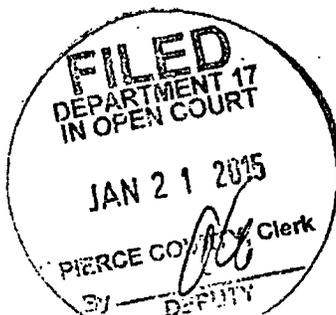
This document contains 21 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Opinion--#44177-2



11-1-02300-3 43987303 CPOPN 01-22-15



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DIVISION II

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STATE OF WASHINGTON

BY DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 44177-2-II

Respondent,

v.

11-1-02300-3

STEVEN L. HESSELGRAVE,

ORDER AMENDING OPINION AND
DENYING MOTION TO RECONSIDER

Appellant.

Appellants have filed a motion asking the court to reconsider its unpublished opinion filed on October 29, 2014. Having considered the motion and supporting materials, the court now orders as follows:

- (1) The first sentence on page 9 is amended to read as follows:

But error is harmless "if we are convinced beyond a reasonable doubt that any reasonable jury would have reached the same result without the error." *Jones*, 168 Wn.2d at 724 (quoting *Smith*, 148 Wn.2d at 139).

- (2) The first paragraph on page 10 is amended to read as follows:

Accordingly, the trial court's ruling limiting Hesselgrave's ability to impeach S.L. was harmless. Hesselgrave was able to attack S.L.'s credibility by showing the jury, through defense witnesses, that S.L.'s recollection of the events was at times contradictory, if not completely inaccurate. The jury was free to decide that such inconsistencies rendered S.L.'s testimony unreliable and her credibility suspect. Consequently, we are convinced beyond a reasonable doubt that any reasonable jury would have reached the same result had Hesselgrave been able to continue questioning S.L. without constraint. Thus, although the trial court arguably limited Hesselgrave's ability to conduct cross-examination, we hold that any error was harmless. This error did not prevent Hesselgrave from presenting his defense.⁹

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(3) In all other respects the motion for reconsideration is denied.

IT IS SO ORDERED.

DATED this 21ST day of JANUARY, 2015.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Melnick, J.
MELNICK, J.

Hunt, J.P.T.
HUNT, J.P.T.

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condition number 13, remand to clarify condition 16, and remand to strike condition number 25.

We affirm the conviction and remand to correct the community custody conditions.

FACTS

I. BACKGROUND

In 2011, S.L. was an eight-year-old female student attending elementary school. Hesselgrave is S.L.'s former step-father. One May afternoon, S.L. disclosed sexual abuse by her step-father. Laurel Powell, the school counselor, reported the matter to Child Protective Services (CPS). CPS social worker Christine Murillo conducted a "safety interview" with S.L. on May 17, during which S.L. disclosed sexual abuse by her stepfather. On May 25, Cornelia Thomas, an employee of the Child Advocacy Center in Pierce County, conducted a forensic interview with S.L. S.L. made several detailed disclosures to Thomas that involved allegations of oral, vaginal, and anal intercourse. S.L. testified consistently with these disclosures at trial. According to Thomas, S.L. maintained sufficient memory to have an independent recollection of the occurrence, S.L.'s statements describing the incident appeared to be based on her perception, S.L. communicated "quite well," and S.L. was able to distinguish truth from lies. 6 Report of Proceedings (RP) at 677.

On the night of the incident, Hesselgrave also showed S.L. magazines depicting naked women, in addition to a video on his computer which featured an elephant touching a woman's

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vagina. S.L. declared that on the same night, Hesselgrave woke up her brother, J.H.,¹ told him to take off his clothes, and instructed S.L. to bite J.H.'s penis, a request with which S.L. complied.²

On June 2, Detectives Jennifer Quilio and Brad Graham interviewed Hesselgrave at police headquarters. When asked if there was any reason that S.L. may have seen his penis, Hesselgrave responded that it was possible because he watched pornography at night in the living area of his apartment when he thought the children were sleeping. Hesselgrave surmised that S.L. could have woken up and inadvertently seen him masturbating. Aware of S.L.'s allegations, Detective Quilio asked Hesselgrave whether he viewed pornography that contained images of animals and women engaging in sexual acts. Hesselgrave admitted that he did, but claimed that he had never seen a video involving an elephant. Hesselgrave denied any sexual contact with S.L.

The day after his police interview, Hesselgrave told Leona Ling,³ S.L.'s mother, that she would never see him again and that he was leaving with their sons. Ling then called 911 to report what she believed to be an imminent kidnapping. Patrol officers arrested Hesselgrave. The State charged Hesselgrave with first degree rape of a child contrary to RCW 9A.44.073.⁴

¹ J.H. is S.L.'s half-brother and Hesselgrave's biological son. J.H. would have been either five or six at the time of the alleged abuse.

² J.H. testified that he had no recollection of this incident.

³ Ling is also the mother of Hesselgrave's two sons.

⁴ RCW 9A.44.073 provides,

(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony.

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II. PROCEDURE

A. PRETRIAL MOTIONS

Before trial, the court held a hearing to address Hesselgrave's challenge regarding S.L.'s competence to testify. The State called numerous witnesses including Murillo, Thomas, S.L., and others. The trial court also admitted and published the digital video disc recording of S.L.'s interview with Thomas.

At the hearing, Hesselgrave argued that S.L. failed to show that she had an independent memory of the incident and that she had difficulty distinguishing truth from lie because she did not understand the concept of a mistake. The trial court considered the timing of the incident in addition to the *Allen*⁵ factors and found that Hesselgrave had failed to overcome the presumption that S.L. was competent to testify.

Also before trial, the State moved to admit S.L.'s statements to Thomas, Murillo, and the classmates to whom she made the initial disclosures under RCW 9A.44.120, the child hearsay statute. The court considered the *Ryan*⁶ factors and determined that S.L.'s statements were admissible provided that S.L. also testified.

B. TRIAL

At trial, during cross-examination of S.L., Hesselgrave asked S.L. about a pretrial defense interview of S.L. conducted by defense counsel and investigator Julie Armijo, but S.L. testified that she had no recollection of such an interview. Hesselgrave then asked a series of additional

⁵ *State v. Allen*, 70 Wn.2d 690, 424 P.2d 1021 (1967).

⁶ *State v. Ryan*, 103 Wn.2d 165, 691 P.2d 197 (1984).

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questions attempting to highlight S.L.'s inconsistent recitations of the incident. S.L. denied having made such inconsistent statements. Hesselgrave continued with this line of questioning, but the State began to object, arguing that the questions were cumulative, asked and answered, and "[ER] 613." 3 RP at 349. Hesselgrave argued that he was attempting to impeach S.L., but the court sustained the objections. Hesselgrave finished cross-examination, but reserved the right to recall S.L.

Later, during direct examination of Armijo, Hesselgrave asked a series of similar questions, again attempting to demonstrate that S.L.'s responses during the defense interview were frequently inconsistent with S.L.'s trial testimony. After several of these questions were answered, the State again objected, citing improper impeachment and improper questioning.

Outside the jury's presence, the parties argued as to whether S.L.'s interview responses were inconsistent with her trial testimony. The court agreed that the interview transcript contained inconsistencies, but nevertheless sustained the State's objection, noting that under ER 613(b), extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon. The court found that requirement unmet and ruled that Hesselgrave was not allowed to ask additional questions of Armijo from S.L.'s interview transcript.

Hesselgrave argued that the opportunity to explain did not have to occur prior to the introduction of the extrinsic evidence. Defense counsel then sought to recall S.L. The trial court said it would allow a few questions, but it placed limitations on the subject matter of the questions Hesselgrave could ask. Hesselgrave objected to this limitation on his right to cross-examination

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"of the only witness in this case." 7 RP at 782. Hesselgrave later recalled both S.L. and Armijo, but asked few questions of either witness, citing constraint by the court's earlier ruling.

Again, outside the jury's presence, Hesselgrave sought to admit documents related to divorce proceedings between himself and Ling, which he argued supported Hesselgrave's theory that Ling prompted S.L. to make false accusations because Ling was unhappy with the terms of the divorce. The trial court allowed some limited questioning of Ling on this topic, but it refused to admit the documents because they contained prejudicial, irrelevant information about Ling's history of substance abuse.

In closing argument, the State contended that, in its view, there were only three possibilities in the case. The prosecutor said,

So here's what it really comes down to in this case. There's three possibilities for what happened: Someone coached [S.L.]; [S.L.] made it up on her own, or she is telling the truth. That's it.

7 RP at 938. The State also utilized a "Power Point" slide, which displayed these three "options" ordered numerically. Hesselgrave objected, citing improper argument, but the court overruled. In rebuttal closing, the prosecutor said that "it can't be explained through coaching or planning," an argument that also drew Hesselgrave's objection on grounds that it constituted "burden shifting."

7 RP at 975. This objection was also overruled. Hesselgrave was convicted as charged.

At sentencing, in addition to incarceration, the court imposed community custody along with certain associated conditions, including the following:

13. You shall not possess or consume any controlled substances without a valid prescription from a licensed physician.
....
16. . . . Do not have any contact with physically or mentally vulnerable individuals.
....

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25. Do not possess or peruse any sexually explicit materials in any medium. Your sexual deviance treatment provider will define sexually explicit material. Do not patronize prostitutes or establishments that promote the commercialization of sex. Also, do not possess or use any cell phone that may provide access to the Internet as well.

Clerk's Papers (CP) at 243-44. Hesselgrave appeals.

ANALYSIS

I. RIGHT TO PRESENT A DEFENSE

Hesselgrave argues that the State violated his constitutional right to present a defense when the trial court limited his ability to impeach S.L. on cross-examination and when the court excluded evidence related to Hesselgrave and Ling's dissolution proceedings. We hold that any error associated with his right to confrontation and cross-examination was harmless and that the court did not err by properly excluding evidence.

A. STANDARD OF REVIEW

"The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010) (quoting *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)). A defendant's right to an opportunity to be heard in his defense, including the rights to examine witnesses against him and to offer testimony, is basic in our system of jurisprudence. *Chambers*, 410 U.S. at 294. "The right to confront and cross-examine adverse witnesses is [also] guaranteed by both the federal and state constitutions." *State v. Darden*, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002) (citing *Washington v. Texas*, 388 U.S. 14, 23, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967)). Ordinarily, we review a trial court's decision to limit cross-examination of a witness for impeachment purposes for abuse of discretion. *State v. Aguirre*, 168 Wn.2d 350,

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361-62, 229 P.3d 669 (2010). But a court “necessarily abuses its discretion by denying a criminal defendant’s constitutional rights.” *State v. Iniguez*, 167 Wn.2d 273, 280, 217 P.3d 768 (2009) (quoting *State v. Perez*, 137 Wn. App. 97, 105, 151 P.3d 249 (2007)). And we review a claim of a denial of Sixth Amendment rights de novo. *Iniguez*, 167 Wn.2d at 280-81. Because Hesselgrave argues that the trial court violated his constitutional right to present a defense, our review is de novo. *Iniguez*, 167 Wn.2d at 280-81. Any error, however, is harmless “if we are convinced beyond a reasonable doubt that any reasonable jury would have reached the same result without the error.” *Jones*, 168 Wn.2d at 724 (quoting *State v. Smith*, 148 Wn.2d 122, 139, 59 P.3d 74 (2002)).

B. IMPEACHMENT OF S.L.

ER 613(b) provides,

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

Our courts have concluded that under ER 613(b), a witness may be impeached with a prior inconsistent statement either before or after the extrinsic evidence is introduced so long as the witness being impeached is subject to recall. *State v. Horton*, 116 Wn. App. 909, 916, 68 P.3d 1145 (2003) (citing *State v. Johnson*, 90 Wn. App. 54, 70, 950 P.2d 981 (1998)).

Here, after her cross-examination, Hesselgrave unequivocally reserved the right to recall S.L. Thus, the trial court erred in placing limitations on Hesselgrave’s ability to impeach S.L. solely on grounds that she was not given an opportunity to explain or deny her inconsistent

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statements during cross-examination.⁷ But error is not prejudicial unless “we are convinced beyond a reasonable doubt that any reasonable jury would have reached the same result without the error.” *Jones*, 168 Wn.2d at 724 (quoting *Smith*, 148 Wn.2d at 139).

We now look at whether the error was prejudicial. Here, a review of the record reveals that answers to several of the most crucial questions that Hesselgrave sought to ask S.L. on recall were either elicited from S.L. herself or from other witnesses, namely, Armijo. By way of this questioning, Hesselgrave was able to emphasize the fact that S.L. had been inconsistent in her recollection of the events. When Armijo testified, she was questioned about S.L.’s response when asked whether she recalled what happened with Hesselgrave. Armijo, reading from the transcript of the defense interview, testified that S.L. answered, “I forgot. It’s been like a long time since that happened.” 6 RP at 743. Armijo also testified that S.L. answered “no” when asked specifically whether S.L. told anyone at school about what happened, generally whether she had told anyone what happened with Hesselgrave, whether she had ever made a comment about Hesselgrave’s penis,⁸ whether S.L. had seen her dad watching movies with naked people in them, when asked whether she told anyone she was touched in an improper way, and that S.L. answered “yes” when asked whether she wanted to live with her brothers and whether Hesselgrave going to jail would make that easier.

⁷ Hesselgrave also argues in the alternative that he received ineffective assistance of counsel to the extent that his counsel failed to lay the proper foundation for S.L.’s impeachment. But because we determine that the trial court, and not Hesselgrave’s counsel, misinterpreted ER 613, we conclude that Hesselgrave’s attorney’s performance was not deficient and, thus, Hesselgrave’s ineffective assistance of counsel claim necessarily fails.

⁸ S.L. referenced Hesselgrave’s penis during her initial disclosures of abuse.

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Accordingly, the trial court's ruling limiting Hesselgrave's ability to impeach S.L. was harmless. Hesselgrave was able to attack S.L.'s credibility by showing the jury, through defense witnesses, that S.L.'s recollection of the events was at times contradictory, if not completely inaccurate. The jury was free to decide that such inconsistencies rendered S.L.'s testimony unreliable and her credibility suspect. Consequently, Hesselgrave cannot show that a reasonable jury would have reached a different result had he been able to continue questioning S.L. *Jones*, 168 Wn.2d at 724. Thus, although the trial court arguably limited Hesselgrave's ability to conduct cross-examination, we hold that any error was harmless. Further, this error did not prevent Hesselgrave from presenting his defense.⁹

C. DISSOLUTION PLEADINGS

Hesselgrave asserts that the trial court further violated Hesselgrave's rights to present a defense by excluding documents related to Hesselgrave's divorce from Ling. We disagree.

We review de novo whether a trial court's evidentiary ruling violated a defendant's Sixth Amendment right to present a defense. *Jones*, 168 Wn.2d at 719. The right to present a defense is not absolute. *Jones*, 168 Wn.2d at 720. Defendants have a right to present only relevant evidence, with no constitutional right to present *irrelevant* evidence. *Jones*, 168 Wn.2d at 720 (citing *State v. Gregory*, 158 Wn.2d 759, 786 n.6, 147 P.3d 1201 (2006)). Evidence is relevant when it has any tendency to make the existence of any fact that is of consequence to the

⁹ When Hesselgrave recalled S.L., the trial court placed limitations on the scope of S.L.'s questioning. The trial court discussed the limitations after hearing the State's argument that Hesselgrave already had a chance to cross-examine S.L. and that he should not be entitled to call her as a witness. In this way, the trial court's ruling was more akin to a ruling in limine than it was a limitation of Hesselgrave's right to cross-examine witnesses.

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determination of the action more probable or less probable than it would be without the evidence.

ER 401.

Here, Hesselgrave urged the trial court to admit various documents and findings of fact from his dissolution proceedings to show that Ling was unhappy with the parenting plan, custody determination, and child support obligation and that, therefore, Ling could have influenced S.L.'s disclosures because she had a motive to retaliate.

The trial court agreed that evidence of Ling's dissatisfaction with the dissolution proceedings might be relevant to show motive to fabricate allegations. Accordingly, the court allowed Hesselgrave to ask Ling questions on cross-examination regarding her dissatisfaction with the parenting plan, custody arrangement, and child support order. Hesselgrave was able to elicit testimony that Ling wished to change the parenting plan and modify the child support order to reduce her monthly obligation. Thus, the jury was aware of Ling's frustration concerning the arrangement with Hesselgrave and the possibility that she might be vindictive for the same reason.

But the trial court declined to admit the documents because those documents revealed that Ling had a history of emotional impairment, substance abuse, and parenting issues. The trial court correctly recognized that admitting findings that suggest that Ling has a history of emotional impairment and substance abuse would have been irrelevant and unduly prejudicial.¹⁰ Evidence of Ling's substance abuse history does not have any tendency to make the existence of any fact

¹⁰ The court cited ER 404(b), which provides,

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

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that is of consequence to the determination of this action more probable or less probable. ER 401. Accordingly, the trial court did not err and its ruling did not violate Hesselgrave's right to present a defense.

II. COMPETENCE TO TESTIFY

Hesselgrave argues that the trial court abused its discretion in finding S.L. competent to testify because (1) her statements were unreliable and (2) there was insufficient corroborating evidence to support the conviction. We hold that the trial court did not abuse its discretion by finding S.L. competent to testify. We hold further that corroborating evidence was not required because S.L. was not "unavailable."

A. STANDARD OF REVIEW

An appellate court will not disturb a trial court's conclusion as to the competency of a witness to testify except for abuse of discretion. *State v. S.J.W.*, 170 Wn.2d 92, 97, 239 P.3d 568 (2010) (citing *Faust v. Albertson*, 167 Wn.2d 531, 545-46, 222 P.3d 1208 (2009)). This standard of review is especially applicable to child witnesses because "[t]he competency of a youthful witness is not easily reflected in a written record, and [an appellate court] must rely on the trial judge who sees the witness, notices the witness's manner, and considers his or her capacity and intelligence." *State v. Woods*, 154 Wn.2d 613, 617, 114 P.3d 1174 (2005) (citing *State v. Przybylski*, 48 Wn. App. 661, 665, 739 P.2d 1203 (1987)). As our Supreme Court has noted, "There is probably no area of law where it is more necessary to place great reliance on the trial court's judgment than in assessing the competency of a child witness." *Woods*, 154 Wn.2d at 617 (quoting *State v. Borland*, 57 Wn. App. 7, 11, 786 P.2d 810, review denied, 114 Wn.2d 1026 (1990)).

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Furthermore, every person is presumed competent to testify, including children. *S.J.W.*, 170 Wn.2d at 100. A child's competency is now determined by the trial judge within the framework of RCW 5.60.050, while the *Allen*¹¹ factors serve to inform the judge's determination. *S.J.W.*, 170 Wn.2d at 100. Accordingly, a party challenging the competency of a child witness has the burden of rebutting that presumption with evidence indicating that the child is of unsound mind, intoxicated at the time of his production for examination, incapable of receiving just impressions of the facts, or incapable of relating facts truly. RCW 5.60.050. Moreover, inconsistencies in a child's testimony do not necessarily call into question witness competency. *State v. Carlson*, 61 Wn. App. 865, 874, 812 P.2d 536 (1991), review denied, 120 Wn.2d 1022 (1993). Instead, such inconsistencies generally relate to the witness's credibility and the weight to give his or her testimony. *Carlson*, 61 Wn. App. at 874 (citing *State v. Stange*, 53 Wn. App. 638, 642, 769 P.2d 873, review denied, 113 Wn.2d 1007 (1989)).

B. RELIABILITY OF S.L.'S STATEMENTS

Here, Hesselgrave contends that the court erred in finding S.L. competent to testify because the trial court did not properly consider the question of S.L.'s mental capacity at the time of the occurrence. We disagree with Hesselgrave.

¹¹ The *Allen* factors include

- (1) an understanding of the obligation to speak the truth on the witness stand;
- (2) the mental capacity at the time of the occurrence . . . to receive an accurate impression of [his testimony];
- (3) a memory sufficient to retain an independent recollection of the occurrence;
- (4) the capacity to express in words his memory of the occurrence; and
- (5) the capacity to understand simple questions about [the occurrence].

70 Wn.2d at 692.

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Hesselgrave relies on *In re Dependency of A.E.P.*, 135 Wn.2d 208, 223, 956 P.2d 297 (1998), for the proposition that a trial court cannot determine a child's mental capacity when there is no evidence establishing when the crime occurred. But *A.E.P.* is distinguishable. There, the court concluded that after reviewing the entire record there was nothing establishing the date or time period of the alleged sexual abuse. *A.E.P.*, 135 Wn.2d at 223.

But here, the record reveals that the alleged abuse happened either during the time S.L. lived with Hesselgrave, from December 2008 until September 2009, or during one night in the fall of 2010 when S.L. spent the night. Thus, the record does establish a general time period during which the alleged abuse occurred, that was sometime between late 2008 and the fall of 2010 when S.L. was either six, seven, or eight years old.

In considering the *Allen* factors, the trial court here said,

She has to have the capacity at the time, which was some years ago, to receive accurate impressions of what was happening. I don't see any reason to doubt that. She may not have a great ability to express it, and some of her statements appear to be somewhat inconsistent with each other. That doesn't mean she couldn't understand what was happening to her. A six-year-old is old enough.

RP (Aug. 23, 2012) at 189. Accordingly, the trial court's written findings make clear that it considered whether S.L. was able to receive accurate impressions from the earlier of the two periods when she was six. And the court concluded that she could.

Furthermore, if a child can relate contemporaneous events, the court can infer the child is competent to testify about the abuse incidents as well. *A.E.P.*, 135 Wn.2d at 225. Here, S.L. was able to describe events from 2007. S.L. was also able to testify accurately regarding circumstances surrounding her time living with Hesselgrave in 2008 to 2009. Ling's testimony confirmed the

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truth of these statements. Accordingly, substantial evidence supports the trial court's finding that S.L. could receive accurate impressions during the period in which the events allegedly occurred.

Again, relying on *A.E.P.*, Hesselgrave argues that there are serious questions regarding the potential impact of the therapy and interrogation S.L. underwent as the victim of a crime separate and distinct from the current allegation. The court in *A.E.P.* held that the third *Allen* factor, "a memory sufficient to retain an independent recollection of the occurrence," may not be satisfied if the defendant can establish that a child's memory of events has been corrupted by improperly suggestive interviews. 135 Wn.2d at 230 (quoting *State v. Allen*, 70 Wn.2d 690, 692, 424 P.2d 1021 (1967)). Hesselgrave discusses the fact that Anna Watson, who conducted a forensic interview of S.L. after unrelated abuse came to light, used positive reinforcement techniques when S.L. made disclosures and did not question the truth of what S.L. said, instead "validating" the child's disclosures so that she would feel "good" if she made additional disclosures in the future.

But Hesselgrave advances no argument regarding how use of these techniques amounts to "improper interviews" nor does he suggest how participation in a forensic interview unrelated to her current disclosure would "taint" S.L.'s memory such that the aforementioned *Allen* factor is unsatisfied. Given the record of S.L.'s testimony and the deference we afford the trial court's determination of competence, there is sufficient evidence to support the finding that S.L. retained an independent recollection of the occurrence.

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C. CORROBORATION

Hesselgrave also argues that the trial court erred in admitting S.L.'s hearsay statements under RCW 9A.44.120 because there was insufficient corroboration to support those statements.¹² But the trial court did not err because S.L. was available to testify and in fact did testify at trial.

Corroboration of the hearsay statements is required only if the child is unavailable to testify at trial. *A.E.P.*, 135 Wn.2d at 226. And a child witness is considered "unavailable" under the purview of the statute if she is deemed incompetent to testify. *A.E.P.*, 135 Wn.2d at 227.

Here, the trial court properly found S.L. competent to testify and S.L. did testify. Accordingly, the trial court needed to find only that the time, content, and circumstances of S.L.'s statements provided sufficient indicia of reliability. The trial court considered the *Ryan* factors and entered findings determining that the statements were admissible. Thus, the trial court's rulings were not based on manifestly untenable grounds and the trial court did not abuse its

¹² RCW 9A.44.120 provides,

A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm as defined by RCW 9A.04.110, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if:

- (1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and
- (2) The child either:
 - (a) Testifies at the proceedings; or
 - (b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

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discretion in finding that Hesselgrave failed to rebut the presumption of competence and in ruling that S.L.'s hearsay statements were admissible under RCW 9A.44.120.

III. PROSECUTORIAL MISCONDUCT

Hesselgrave asserts that his conviction must be reversed because the prosecutor's closing argument suggested to the jury that acquittal of Hesselgrave was only possible by determining that the State's witnesses were lying. We hold that the prosecutor's argument was not improper because it did not suggest that the jury must disbelieve S.L. in order to acquit Hesselgrave.

A. STANDARD OF REVIEW

To establish prosecutorial misconduct, Hesselgrave has the burden of establishing that the challenged conduct was both improper and prejudicial. *State v. Cheatam*, 150 Wn.2d 626, 652, 81 P.3d 830 (2003). We review the prosecutor's conduct "by examining that conduct in the full trial context, including the evidence presented, the 'context of the total argument, the issues in the case, the evidence addressed in the argument and the instructions given to the jury.'" *State v. Monday*, 171 Wn.2d 667, 675, 257 P.3d 551 (2011) (internal quotation marks omitted) (quoting *State v. McKenzie*, 157 Wn.2d 44, 52, 134 P.3d 221 (2006)). When a defendant objects to alleged misconduct at trial, the defendant must show that the prosecutor's misconduct resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. *State v. Emery*, 174 Wn.2d 741, 760, 278 P.3d 653 (2012).

B. FALSE CHOICE

In closing argument, over defendant's objection, the prosecutor told the jury that in the State's view there were only three possibilities to determine the outcome of the case: (1) that

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someone coached S.L., (2) that S.L. made it up on her own, or (3) that S.L. was telling the truth.¹³ To prevail, Hesselgrave must show that the alleged misconduct had a substantial likelihood of affecting the jury's verdict. *Emery*, 174 Wn.2d at 760.

Here, Hesselgrave characterizes the State's argument as misconduct based on the presentation of a "false choice," which occurs when a party misstates the burden of proof, as well as the jury's role, by misleading the jury into thinking that acquittal requires the conclusion that the prosecution's witnesses are lying. Hesselgrave relies on *State v. Barrow*, 60 Wn. App. 869, 809 P.2d 209, review denied, 118 Wn.2d 1007 (1991), *State v. Miles*, 139 Wn. App. 879, 162 P.3d 1169 (2007), and *State v. Fleming*, 83 Wn. App. 209, 921 P.2d 1076 (1996), review denied, 131 Wn.2d 1018 (1997), in support of his argument.

But *Barrow*, *Miles*, and *Fleming* are readily distinguishable from Hesselgrave's case because in each of the cited instances, the prosecutor actually told the jury that they must disbelieve the State's witnesses in order to acquit the defendant and here, no such statement was made. *Miles*, 139 Wn. App. at 889-90; *Barrow*, 60 Wn. App. at 874-75; *Fleming*, 83 Wn. App. at 213.

Here, the prosecutor presented the jury with three "possibilities," but he did not tell the jury that it must agree with one of those possibilities in order to acquit Hesselgrave. Indeed, the prosecutor did not tell the jury that they *had* to find anything. Read in context, the prosecutor's statements were more a comment on S.L.'s credibility, which the prosecutor has wide latitude to do in closing argument. *State v. Stenson*, 132 Wn.2d 668, 727, 940 P.2d 1239 (1997) (citing *State v. Hoffman*, 116 Wn.2d 51, 94-95, 804 P.2d 577 (1991)), cert. denied, 523 U.S. 1008 (1998). Some

¹³ As a threshold matter, Hesselgrave objected after the prosecutor presented the "three possibilities" argument. Accordingly, Hesselgrave has preserved the issue for review.

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of the prosecutor's "Power Point" slides to which Hesselgrave takes issue support this proposition.

The State used a slide that read,

**No Evidence to Support
S.L. Made it up
on Her Own**

Ex. 24 at 8. Following this slide was one that read, "One Conclusion (3) S.L. is telling the truth."

Ex. 24 at 8. This is not an argument that the jury must disbelieve S.L. to acquit Hesselgrave, but rather that the evidence shows that the jury *should* believe S.L. because her version of the events is credible. We hold that the prosecutor's argument was not improper.

IV. COMMUNITY CUSTODY

Hesselgrave asserts that the sentencing court erred by imposing community custody condition numbers 13, 16, and 25 because these conditions are either unconstitutional or because the sentencing court was not statutorily authorized to impose them. We hold that the trial court was without authority to impose conditions 13, 16, and 25 as they currently read.

A defendant may argue for the first time on appeal that sentencing conditions placed on his community custody were imposed without authority under existing statutes. *State v. Jones*, 118 Wn. App. 199, 204, 76 P.3d 258 (2003). Whether to impose community custody conditions is within the discretion of the sentencing court and will be reversed only if manifestly unreasonable. *State v. Bahl*, 164 Wn.2d 739, 753, 193 P.3d 678 (2008). Imposition of an unconstitutional condition would be manifestly unreasonable. *Bahl*, 164 Wn.2d at 753. Similarly, a court abuses its discretion when it exceeds its sentencing authority. *State v. C.D.C.*, 145 Wn. App. 621, 625, 186 P.3d 1166 (2008). Furthermore, when a sentencing court imposes an unauthorized condition of community custody, appellate courts remedy the error by remanding the matter with instructions

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to strike the unauthorized condition. *State v. O'Cain*, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008).

The State concedes that we should remand to strike the phrase “from a licensed physician” contained in condition 13 because prescriptions can be lawfully issued by medical professionals other than licensed physicians. Br. of Resp’t at 73. We accept the State’s concession because RCW 9.94A.703(2)(c) only allows a court order to direct an offender to “[r]efrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions” and does not include a requirement that the prescriber be a “licensed physician.” Accordingly, the court exceeded its sentencing authority in imposing condition 13.

Hesselgrave also challenges condition 16 that provides,

Do not initiate, or have in any way, physical contact with children under the age of 18 for any reason, unless approved as per #14 above. Do not have any contact with physically or mentally vulnerable individuals.¹⁴

CP at 243. Hesselgrave contends that this condition was not statutorily authorized because his case involved no “physically or mentally vulnerable individuals.” CP at 243. RCW 9.94A.703(3)(f) states that a court may order an offender to comply with any crime-related prohibitions. Additionally, the statute allows a court to order that an offender refrain from direct or indirect contact with the victim of the crime or a specified class of individuals. RCW 9.94A.703(3)(b). Our Supreme Court has concluded that when read in context, a provision prohibiting contact with a class of individuals also requires some relationship to the crime. *State*

¹⁴ Condition 14 states that any contact with minor children would need to be supervised and would require prior approval by the sexual deviancy treatment provider and the community corrections officer.

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v. *Riles*, 135 Wn.2d 326, 350, 957 P.2d 655 (1998), *overruled on other grounds by State v. Valencia*, 169 Wn.2d 782, 239 P.3d 1059 (2010). Notwithstanding Hesselgrave's argument, the sentencing court erred by imposing this condition for the reasons we describe below.

We recently analyzed an identical condition and held that the use of the term "vulnerable" fails to provide the safeguards against arbitrary enforcement required by due process. *State v. Johnson*, 180 Wn. App. 318, 327, 327 P.3d 704 (2014). We noted that, considering the definition of "vulnerable," the "breadth of [the condition] is startling."¹⁵ *Johnson*, 180 Wn. App. at 328. We held that remand was required and ordered the trial court to either clarify the meaning of "vulnerable" or to strike that portion of the condition. *Johnson*, 180 Wn. App. at 329. Therefore, we remand for the trial court to clarify the term "vulnerable" or to strike condition 16.

Last, Hesselgrave takes issue with condition 25, which provides,

Do not possess or peruse any sexually explicit materials in any medium. Your sexual deviancy treatment provider will define sexually explicit material. Do not patronize prostitutes or establishments that promote the commercialization of sex. Also, do not possess or use any cell phone that may provide access to the Internet as well.

CP at 244. Hesselgrave contends that the record does not support imposition of this condition because the case did not involve prostitution or "adult shops" and because the condition is unconstitutionally vague. Forbidding Hesselgrave from possessing sexually explicit materials was a crime-related prohibition because the record demonstrates that Hesselgrave showed S.L. sexually explicit material in print and video format and a sentencing court has broad discretion to impose reasonably crime-related conditions. *O' Cain*, 144 Wn. App. at 775.

¹⁵ "Vulnerable" means "capable of being wounded: defenseless against injury" or "open to attack or damage: readily countered: inviting obvious retort, ridicule, or obloquy." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2567 (2002).

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Similarly, the court did not err in imposing the provision prohibiting Hesselgrave from patronizing prostitutes. In Washington, it is a misdemeanor to patronize a prostitute. RCW 9A.88.110. Because trial courts are allowed to impose conditions requiring offenders to engage in law-abiding behavior, *Jones*, 118 Wn. App. at 205-06, and requiring that Hesselgrave not patronize prostitutes is consistent with law-abiding behavior, the trial court did not err by imposing these prohibitions contained within condition 25.

But regarding the prohibition against going to establishments that promote the "commercialization of sex" and the prohibition on the use of a cell phone that is capable of accessing the internet, these are prohibitions that are not reasonably crime related. There is no evidence to suggest that such establishments were in any way related to Hesselgrave's crime. Likewise, nothing in the record reveals that cellular phones were involved in Hesselgrave's crime. Moreover the court struck a separate condition that would have prohibited Hesselgrave from having internet access generally, unless it was otherwise approved. It is unreasonable to strike that condition but maintain the prohibition on the possession or use of a cellular phone which is capable of accessing the internet. The prohibition on possession of sexually-explicit material in any medium would also cover possession of such material obtained from the internet on a cell phone. Considering the ubiquity of "smart" cellular phones and the pace at which the technology develops, this provision essentially bars Hesselgrave from owning a cellular phone at any time in the future. We hold that the trial court abused its discretion in imposing conditions 13, 16, and 25. We order these conditions stricken or clarified on remand, consistent with this opinion.

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Finding no other prejudicial error, we affirm the conviction and remand to correct the community custody conditions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Melnick, J.
MELNICK, J.

Hunt, J.P.T.
HUNT, J.P.T.

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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 29 day of November, 2016



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: Nov 29, 2016 9:44 AM



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APPENDIX “C”

Mandate--#44177-2

June 24 2015 3:20 PM

KEVIN STOCK
COUNTY CLERK
NO: 11-1-02300-3

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

STEVEN L. HESSELGRAVE,
Appellant.

No. 44177-2-II

MANDATE

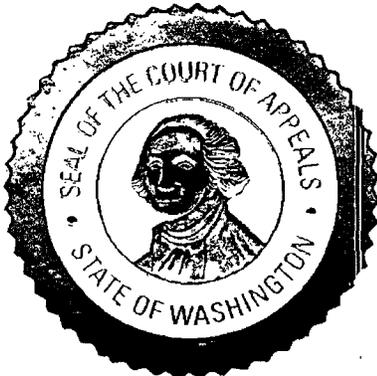
Pierce County Cause No.
11-1-02300-3

Court Action Required

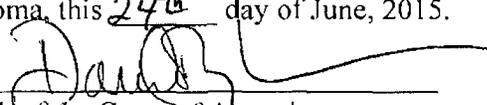
The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on October 29, 2014 became the decision terminating review of this court of the above entitled case on June 3, 2015. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Court Action Required: The sentencing court or criminal presiding judge is to place this matter on the next available motion calendar for action consistent with the opinion.



IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 24th day of June, 2015.


Clerk of the Court of Appeals,
State of Washington, Div. II

MANDATE
44177-2-II
Page Two

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PO Box 42633
Olympia, WA 98504-2633

Hon. Ronald E. Culpepper
Pierce Co Superior Court Judge
930 Tacoma Ave So
Tacoma, Wa 98402

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 29 day of November, 2016



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: Nov 29, 2016 9:44 AM



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APPENDIX “D”

Printout of Powerpoint Slides, Exhibit No. 24



11-1-02300-3 39233670 EXRV 09-24-12



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff

Cause No. 11-1-02300-3

vs.

EXHIBIT RECORD

HESSELGRAVE, STEVEN L,
Defendant

All Here C.H

9/24/12

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	1	DVD (copy) of Forensic Interview of S.L. by Corneila Thomas	X	Yes	Admitted Published	09/19/12	
P	2	DVD (copy - Audio) of safety interview with S.L. of 5/17/11 by Christina Murillo	X	No	Admitted Published Withdrawn	09/13/12 09/21/12	
P	2A	REDACTED copy of P EXH #2			Admitted Subst for #2	09/20/12 09/21/12	
P	3	DVD - S.L. Forensic Interview					
D	4	Transcript of Defense Interview of Scott Rich of 6/28/12 (15 pages)					
D	5	Transcript of Defense Interview of Cindy Homer of 6/28/12 (10 pages)					
D	6	Transcript of Defense Interview of Laurel Powell of 6/28/12 (25 pages)					
D	7	Transcript of Defense Interview of Tenessa Starks of 6/28/12 (20 pages)					

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
D	8	Transcript of Child Competency/Child Hearsay Hearing of 7/11/12 (73 pages)					
D	9	Certified Copy of Parenting Plan (Final Order) Pierce County Superior Court Case No. 09-3-03436-1	X	Yes	Reserved Admitted - redacted	09/20/12 09/20/12	
D	10	Certified Copy of Finding of Facts and Conclusions of Law/Joinder and Worksheet Pierce County Superior Court Case No. 09-3-03436-1	X	Yes	Admitted	09/20/12	
D	11	Certified Copy of Order of Child Support/Worksheets (Final Order) Pierce County Superior Court Case No. 09-3-03436-1	X	Yes	Admitted (redacted)	09/20/12	
D	12	Transcript of interview of Leona Ling dated 06/18/12					
D	13	Transcript of interview of Giselle Soto dated 06/18/12					
D	14	Transcript of interview of Priscila Soto dated 06/18/12					
D	15	Transcript of interview of Sabrina Laro dated 06/14/12					
P	16	Investigative Report of Christina Murillo					
P	17	Transcript of interview with S.L. by Christina Murillo of 5/17/11 (14 pages)					
P	18	Series of 2011 Incident Reports generated by ST WIT Detective Quilio					
P	19	C.A.D.					
P	20	Counseling notes from Anna Watson in re S.L.					
D	21	Primary Report of S.L. - Tacoma Public Schools/Larchmont	X	Yes	Not Admitted	09/20/12	
D	22	Enrollment record of S.L. - Larchmont Elementary School					
D	23	Certified Copy of Memorandum of Journal Entry of 3/5/2010 re Pierce County Superior Court Case # 09-3-03436-1 (2 pages)	X	No	Admitted	09/20/12	
P	24	State's closing argument Power Point Presentation					

STATE OF WASHINGTON
VS.
STEVEN L. HESSELGRAVE

**An Imperfect World
and
A VIOLATION of Trust**

THE WORDS OF A CHILD

- Didn't see the defendant come to wake her up... only HEARD HIS FOOTSTEPS
- When the defendant "peed" in her mouth, it TASTED LIKE A BAR OF SOAP"

Rape of a Child in the First Degree

1. Between July 11, 2008, and December 31, 2010, the defendant had sexual intercourse with S.L.
2. S.L. was less than 12 years old and not married to the defendant
3. Defendant was at least 24 months older
4. Washington State

Not disputed by any witness...

- Sabrina's date of birth is 7-11-02; (6 years old in 2009, 8 years old in October 2010)
- Sabrina lived with the defendant in Spring of 2009 to fall of 2009
- Sabrina also stayed the night at his house in October 2010 when her mom was at bachelorette party
- Never been married
- Defendant was at least 24 months older (9/14/1983; 19 years older than Sabrina)
- Happened in the State of Washington

What's in Dispute?

■ Sexual Intercourse

SEXUAL INTERCOURSE

...the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight, OR

- This is: *Penis* in vagina or anus

SEXUAL INTERCOURSE

... any penetration of the vagina or anus however slight, by an object, including a body part, when committed on one person by another, *OR*...

- This is: object or finger/etc. in vagina or anus

SEXUAL INTERCOURSE

... any act of sexual contact between persons involving the sex organs of one person and the MOUTH or anus of another.

- This is: mouth on penis OR mouth on vagina (penetration irrelevant)

Sexual Intercourse

- Penetration not an issue here because defendant is just flat out saying he didn't do it

CREDIBILITY

- You are the sole judges
- You weigh the testimony

COMMON SENSE

CREDIBILITY

- Witness' memory
- Witness' manner while testifying
- Interest
- Bias
- Prejudice
- REASONABLENESS
- Any other factors that bear on believability

Sabrina

- Ever changing residence, living conditions
- Mom had very limited resources
- Mom unsupportive; had her own life problems to deal with

Timeframes IRRELEVANT

- Living with Defendant because mom homeless
 - March 2009 to Sept. 2009
 - Sabrina: 6 years old
- Mom @ bachelorette party, Sabrina staying with defendant
 - October 2010
- BOTH are between 7/11/2008 and 12/31/2010, so it doesn't matter

Sabrina's disclosures

- Giselle Soto on the bus (least detailed)
- Christina Murillo, CPS (some details)
- Cornelia Thomas, FI (more detailed)
- In court testimony (most detailed)

Sabrina's Disclosures

- Consider context
 - In passing on the bus -> “safety” interview -> Trained forensic interview -> 2 lawyers asking everything they can think of
- Length of time
 - 1 minute or less -> about 15 minutes -> about 40 minutes -> 1 – 2 hours+
- Location
- Training

Disclosure to Giselle Soto

- My daddy's penis tastes like mint
- Maybe not a "true" disclosure, but got the ball rolling
- Mint vs. chocolate chips = WHO CARES!
 - Important thing is that she said she tasted it

Disclosure to Christina Murillo

- On tape. Preliminary “safety” interview
- Told about Palfrey first
- When asked if anyone told her to keep “secret” she says defendant told her to keep S-E-X secret
- His penis in her vagina
- The importance of asking the right question with children...

FORENSIC INTERVIEW

- Cornelia Thomas:
 - Approx. 40 minutes
 - Uncomfortable setting
 - Unnatural process
 - Uncomfortable questions
 - Went beyond “attention threshold” of 30 minutes
- Provided specific details – Funnel Method

Details of Forensic Interview

- Above all **WATCH IT AGAIN!**
- Sabrina only talks when she's ready to talk
- Lots of details when asked, including spontaneous statements
- Sabrina answers the question *that she is asked*

Details continued...

- 10:35:50- talks about wiping herself, putting the toilet paper in the toilet after

Details continued...

- 10:37:30- Penis in mouth. "Peed" "ew!"
- 10:41:20- DEMONSTRATES how the defendant interlaced his fingers behind her head and made it bob up and down
(*NOTE- also demonstrated in court)

Details continued...

- 10:48:00- Defendant told her not to tell
- 10:51:00- Didn't tell counselor, Anna Watson, about what defendant did because counseling was "about Kelvin"

Sabrina

- Manner while testifying
- Scared
- Hid from the defendant; didn't want to look over at him to say if his suit had stripes
- How should she behave

Sabrina

■ Interest, Bias, Prejudice

- Didn't even intend to "disclose;" just mentioned strange comment to classmates and then answered questions after that
- She has lost her mother; been in foster care since

Jack Hesselgrave

- **Interest, Bias, Prejudice, Reasonableness**
 - Moved to this state to support his son
 - Bias: obvious contempt for Leona
 - Toss in: Oh, you mean when she was HOMELESS
 - In 2+ years of living with the defendant, the defendant was never home without him for more than 10-15 minutes?!?
 - REASONABLE? NO!
 - It's clear where his bias leans; stand by his son

Jacob Hesselgrave

■ Interest, Bias, Prejudice, Reasonableness

- Would have only been 4 years old or so
- Doesn't even remember Sabrina ever staying the night at the apartment, even though every other witness agrees she did for months on end
- Dr. Reintz: kids younger than 6 may forget entirely

THREE POSSIBILITIES

1. Someone coached Sabrina
2. Sabrina made it up on her own
3. Sabrina is telling the truth

(1) Coaching/frame job- IMPOSSIBLE to plan the chain

- The miracle “chain of disclosure”
- Random “penis” comment on the bus to classmate, Giselle....
 - If they decided not to tell their babysitter = CHAIN BROKEN, no disclosure
- Tenessa Starks hears about Sabrina’s comment from Priscilla
 - Giselle didn’t initiate conversation with Tenessa. If Priscilla wouldn’t have heard, CHAIN BROKEN, no disclosure.

(1) Coaching/frame job- IMPOSSIBLE to plan the chain

- **Tenessa decides to call school, even though she doesn't know Sabrina and has no obligation to report comment!**
 - **If Tenessa decided to just file it away as a strange comment, or something she misheard, or maybe just decided she didn't want to go through the trouble of reporting = CHAIN BROKEN, no disclosure**

(1) Coaching/frame job- IMPOSSIBLE to plan the chain

- **Laurel Powell decides to report comment to CPS**
 - **If she just decided it was a weird comment but not a specific report of abuse = CHAIN BROKEN, no disclosure**

(1) Coaching/frame job- **IMPOSSIBLE to plan the chain**

- Christina Murillo does safety interview.
 - Asks about inappropriate touching and Sabrina only mentions Palfrey. Christina thinks to ask a follow up question about “secrets” and finally Defendant’s sexual contact is truly disclosed
 - If Ms. Murillo asked about inappropriate contact only, and not “secret” question = **CHAIN BROKEN, no disclosure!**

(1) Coaching/frame job- IMPOSSIBLE to plan the chain

- All these links were OUT OF Sabrina or Leona's control
- Leona didn't even KNOW that Sabrina had said anything at all until after Safety Interview
- MORE likely that the chain would have been broken than it would have lead to full disclosure
- Is it reasonable to believe Sabrina or her mom "planned" for all the links in the chain to reach the defendant?

■ **NO!!!!**

(1) Coaching/frame job- IMPOSSIBLE to plan the chain

- If Leona and Sabrina wanted to make a sure fire disclosure that would get defendant caught, there was a much easier way
- 3/25/11 - just about 1 month prior, Sabrina could have just disclosed to Anna Watson
- Mandatory reporter who they already knew would contact police

That means...

- Since it is essentially impossible that Leona or Sabrina could have “planned” the chain of disclosure.....
- Any “motive” to plan it DOESN’T matter!

(1) Coaching/Suggestibility

- Even if you do still want to think about coaching...
- Forensic interview technique
- Funnel Method
- Alternative hypotheses
- Corneila Thomas- NO evidence of coaching. 1500+ child interviews worth of experience

(1) Coaching/Suggestibility

- Does Sabrina sound memorized?
- Answers questions
- Builds upon details
- Provides specifics
- Spontaneous statements
- Corrects errors
- Stream of consciousness details

(1) Coaching/Suggestibility

- Parents aren't in the forensic interview
- Don't know what questions are going to be asked
- Ask yourself, how sophisticated are these people?

(1) Coaching/Suggestibility

- Sexually explicit details concerning sensations – it hurt, “ew”
- The way she describes wiping herself and the taste of the “pee”
 - These are all from direct experience

NO EVIDENCE TO
SUPPORT ANY CLAIM THAT
SABRINA WAS COACHED BY
HER MOTHER WHEN SHE
DISCLOSED

(2) Sabrina made it up on her own

- The Impossible to Plan Chain
 - NO WAY should could have planned to “get” the defendant when she was talking to Giselle Soto on the bus
- No “motive” that would make sense to an 8-year-old

(2) Sabrina made it up on her own

■ Why do people lie?

– to get **THEMSELVES** out of trouble, (I.e. I didn't break the lamp) or to make themselves look good

– **Allegations of abuse do neither**

■ Attention is negative

■ Criminal justice process is uncomfortable at best

(2) Sabrina made it up on her own

- Some details an 8-year-old can only learn through experience; examples:
 - Wiping yourself after vaginal rape
 - Didn't see the defendant coming...but heard his footsteps
 - Describing the "taste" of the "pee" in her mouth
 - Defendant telling her during vaginal sex "everything is going to be ok"

(2) Sabrina made it up on her own

COMMON SENSE

**No Evidence to Support
Sabrina Made it up
on Her Own**

One Conclusion

(3) Sabrina is telling the
truth

REASONABLE DOUBT

■ Reasonable Doubt

- One for which a reason exists
- May arise from evidence or lack of evidence

Beyond a Reasonable Doubt

- **Abiding belief in the truth of the charge**

Sabrina's World is Not Perfect

- Leona is not the mother any of us would wish for a child
- Maybe she didn't know...and maybe she did and decided to do nothing because she was worried about losing her kids to CPS
- BUT...her failings are not Sabrina's failings

Bottom line...

- No way Leona or Sabrina could have planned the “chain”
- Too many spontaneous details to be made up
- If you believe Sabrina that the defendant did ANY form of intercourse he is **GUILTY**

Juror's Responsibility

- **Defendant wants you to be overwhelmed**
- **Wants you to focus on the trees and ignore the forest**
- **High burden**
 - Same burden used by juries all over this country every day

JUSTICE

“Justice, though due the accused, is due the
accuser also.”

■ Benjamin Cardozo

**An Imperfect World
and
A VIOLATION of Trust**

GUILTY

State v. HESSELGRAVE

REBUTTAL

Some things to think
about...

“Casual” Amber Alert

■ Reasonable?

■ NO!

RED HERRINGS

- Since it is essentially impossible that Leona or Sabrina could have “planned” the chain of disclosure.....
- Any “motive” to plan it DOESN’T matter!

▪ No one “forgot” the
space shuttle exploded

The State has MET its burden.

■ The defendant thought he choose a victim too vulnerable, too broken to reveal his secret. He was **WRONG**.

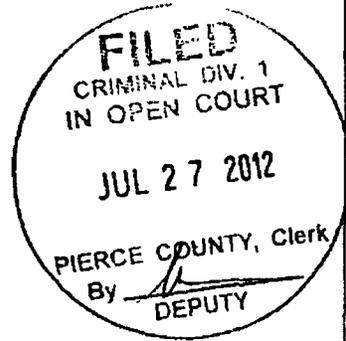
■ So what is the **REASONABLE VERDICT?**

REASONABLE VERDICT

GUILTY

APPENDIX “E”

Amended Information



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-02300-3

vs.

STEVEN L HESSELGRAVE,

AMENDED INFORMATION

Defendant.

DOB: 9/14/1983
PCN#: 540444013

SEX : MALE
SID#: UNKNOWN

RACE: WHITE
DOL#: UNKNOWN

COUNT 1

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse STEVEN L HESSELGRAVE of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows:

That STEVEN L HESSELGRAVE, in the State of Washington, during the period between the 11th day of July, 2008 and the 31st day of December, 2010, did unlawfully and feloniously being at least 24 months older than S.L., engage in sexual intercourse with S.L., who is less than 12 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.073, a domestic violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

DATED this 25th day of July, 2012.

TACOMA POLICE DEPARTMENT
WA02703

MARK LINDQUIST
Pierce County Prosecuting Attorney

nsh

By:

NEIL HORIBE
Deputy Prosecuting Attorney
WSB#: 36724

AMENDED INFORMATION- 1

ORIGINAL

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

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 29 day of November, 2016



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: Nov 29, 2016 9:44 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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PIERCE COUNTY PROSECUTOR

November 29, 2016 - 1:44 PM

Transmittal Letter

Document Uploaded: 2-prp2-492512-Response.pdf

Case Name: In re the PRP of: Steven Hesselgrave

Court of Appeals Case Number: 49251-2

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

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