

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

IN RE THE PERSONAL)	NO. 48672-5-II
RESTRAINT PETITION OF)	
)	RESPONSE TO
CYNTHIA SUE MILLER)	PERSONAL RESTRAINT
)	PETITION

Comes now Jon Tunheim, Prosecuting Attorney in and for Thurston County, State of Washington, by and through Carol La Verne, Deputy Prosecuting Attorney, and files its response to petitioner's personal restraint petition pursuant to RAP 16.9.

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

Cynthia Sue Miller is currently in the custody of the Washington Department of Corrections, serving an exceptional sentence of 423 months of confinement imposed following her conviction at a bench trial for two counts of first degree assault of a child, domestic violence, with aggravating factors; one count of second degree assault of a child, domestic violence, with aggravating factors; one count of third degree assault of a child, domestic violence, with aggravating factors; one count of fourth degree criminal mistreatment, domestic violence; and one count of second degree assault of a child, domestic violence,

but without aggravating factors. See Appendix A, copy of Judgment and Sentence, at 1, 5.

II. STATEMENT OF PROCEEDINGS

A. Procedural facts.

On December 24, 2013, Wright was charged by information with one count of second degree assault of a child, domestic violence.

The information was subsequently amended three times, the last time during trial, to charge the crimes of which she was convicted.

Appendix B, Information and Third Amended Information. The trial began on January 11, 2016, before the Honorable Carol Murphy, Judge. Miller waived her right to a jury. Appendix C, jury waiver.

The trial took place on January 11-13 and 19-21, 2016. Appendix D, clerk's trial minutes, at 1. On January 22, the court entered written findings as required by CrR 6.1(d). Appendix E, Court's Decision After Bench Trial. Sentencing followed on March 2, 2016. Appendix A. Miller filed a direct appeal, Case No. 48672-5-II, which has been stayed pending consideration of this personal restraint petition (PRP).

B. Substantive facts.

The charges against Miller were based upon physical injuries caused to the victim, including broken bones. There were no allegations of sexual abuse.

The victim, S. L. K., came to the attention of Child Protective Services when officials at her elementary school became concerned about bruises on her face and body, as well as a recent loss of a significant amount of weight. Cynthia Miller had custody of S. L. K., as well as four other children. A medical examination of S. L. K. revealed bruises on her buttocks and body in various stages of healing and blisters on the inside of her upper thighs. There were marks that appeared to be healed burns. S. L. K. was taken to Mary Bridge Children's Hospital in Tacoma for X-rays. She was found to have healing fractures to both wrists, left arm, a finger, and a toe. An old spiral fracture of her left leg was also detected. See Appendix F, Declaration Supporting Probable Cause.

S. L. K. was interviewed by police. She said she was treated differently from the other children in the household because she had a "demon," and she would be spanked with a belt. Appendix F;

Appendix I at 12.¹ In a later interview, S. L. K. told police that Miller had tried to drown her. Appendix J at 6-7. She said that “a lot of times” Miller tied her hands to the bed so she could not get up, because Miller suspected her of stealing things. Appendix J at 9-10. Miller would hit her with a hard stick. Appendix J at 11. S. L. K. was not allowed to eat for a couple of days at a time. Appendix J at 13-14.

During these interviews, S. L. K. did not allege that anyone other than Miller had harmed her.

III. RESPONSE TO ISSUES RAISED

The State did not withhold potentially exculpatory information either before, during, or after the trial. First, the information Miller claims is exculpatory is not, and second, it was not in the possession of the State until after the trial. Further, information that in retrospect is significant was made available to Miller six months before the trial began.

A. This is a collateral attack on a conviction, not a direct appeal.

A PRP is not a substitute for a direct appeal and relief in a collateral attack is limited. In re Pers. Restraint of Brockie, 178 Wn.2d 532, 539, 309 P.3d 498 (2013). To obtain relief by means of a personal restraint petition, the petitioner must establish either constitutional error that caused actual and substantial prejudice to her

¹ See footnote 2 regarding Appendix G.

case or nonconstitutional error that caused a fundamental defect resulting in a complete miscarriage of justice. In re Pers. Restraint of Cook, 114 Wn.2d 802, 810-13, 792 P.2d 506 (1990). The petitioner bears the burden of establishing that her restraint is unlawful. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 299, 88 P.3d 390 (2004).

A petitioner must make at least a prima facie showing that her allegations have merits. In re Personal Restraint of Rice, 118 Wn.2d 876, 828 P.2d 1086 (1992):

Thus, a mere statement of evidence that the petitioner *believes* will prove his factual allegations is not sufficient. If the petitioner's allegations are based on matters outside the existing record, the petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief. If the petitioner's evidence is based on knowledge in the possession of others, he may not simply state what he thinks those others would say, but must present their affidavits or other corroborative evidence. The affidavits, in turn, must contain matters to which the affiants may competently testify. In short, the petitioner must present evidence showing that his factual allegations are based on more than speculation, conjecture, or inadmissible hearsay.

Rice, 118 Wn.2d at 886.

After establishing the appropriateness of collateral review, a petitioner still has the ultimate burden of proof. The petitioner must show the existence of an error, and must show by a preponderance of

the evidence that he or she was prejudiced by the asserted error. Cook, 114 Wn.2d at 814. If the petitioner fails to meet this burden, she is not entitled to relief.

A personal restraint petition is not an appeal. It is a collateral challenge to a judgment and sentence, and relief granted in a collateral attack is extraordinary. In re Pers. Restraint of Coats, 173 Wn.2d 123, 132, 267 P.3d (2011). “[O]ur respect for settled judgments remains.” Id. at 133.

B. The State has the obligation to disclose to the defense any potentially exculpatory or impeachment information known to the State.

The State’s obligation to disclose information to the defense is described in Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). To prove a violation of the State’s duty, a defendant must demonstrate that (1) the evidence at issue is favorable to him either because it was exculpatory or impeaching; (2) the evidence was either willfully or inadvertently suppressed by the State, and (3) he was prejudiced by the failure to disclose. State v. Mullen, 171 Wn.2d 881, 895, 259 P.3d 158 (2011). Regarding the third element, the evidence is “material” or “prejudicial” “if there is a reasonable probability that, had the evidence been disclosed to the

defense, the result of the proceeding would have been different.” Id. at 897, quoting Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). The defendant need not prove he would have been acquitted had the State disclosed the suppressed evidence, but only that the suppression of information undermined confidence in the outcome of the trial. State v. Davila, 184 Wn.2d 55, 73, 357 P.3d 636 (2015). The effect of the omission must be evaluated cumulatively and in the context of the entire trial record. Id. at 78.

There is no Brady violation “if the defendant, using reasonable diligence, could have obtained the information” at issue. In re Pers. Restraint of Benn, 134 Wn.2d 868, 916, 952 P.2d 116 (1998).

The underlying factual findings of the trial court are reviewed for substantial evidence; the question as to the materiality of the Brady evidence is a legal issue reviewed de novo. Davila, 184 Wn.2d at 74.

C. The only information about Kenneth Spears known to the State before the end of the trial was given to the defense six months before trial.

Miller claims that there was an ongoing investigation into allegations that Kenneth Spears assaulted the victim in this case

during the pendency of her case, and that had she known that she could have brought a defense that Spears was the one who caused the injuries to the victim. In fact, the State had no information about Kenneth Spears until after the trial concluded, and even then there was no information to suggest that the sexual abuse Spears inflicted on the victim could have caused any of the physical injuries she suffered.

Attached as Appendix G is a declaration of Deputy Prosecuting Attorney Megan Winder, the prosecutor who handled the case. In summary, she states, under oath, the following: She had information before trial that the victim in Ms. Miller's case had alleged that a "Kenneth Unknown" had sexually assaulted her, but no other information about the allegation. That information was sent to defense counsel six months before trial. Appendix G at 1. During forensic interviews of the victim pertaining to allegations against Miller, the victim did not make any allegations against anyone other than Miller. Appendix G at 2. At trial, when the victim was asked if anyone other than Miller had hurt her, she identified only a person named Dean. Appendix G at 2; Appendix L. It was not until after the trial that the victim's grandfather informed Winder that both the victim

and her sister had disclosed that a person named Kenneth had sexually abused them. Appendix G at 2. Winder advised the grandfather to report this to the Lacey Police Department, which he did on March 3, 2016. Appendix G at 2; Appendix M at 4.²

The record contained in the attached appendices shows that there was no investigation into allegations against Kenneth Spears until after Miller's trial concluded. Further, defense counsel was informed months before trial that a "Kenneth Unknown" had been accused by this victim of sexual assault. Miller was in a unique position to identify "Kenneth Unknown," because he is her nephew. Appendix G at 1. Had she informed the police, the prosecutor, or her attorney of that fact, an investigation could have begun long before Miller's trial. In short, there was no Brady violation.

² Appendices H through O support statements made in Winder's declaration, Appendix G, and are referenced therein. They are being filed separately but consecutively with this response, along with a motion to seal Appendices H through O. Those appendices contain the names of several minors, along with identifying information and some medical records. Redacting the information would make those documents virtually unreadable.

D. Miller has not met her burden of showing the necessity for a reference hearing.

Miller suggests in her petition that this matter should be remanded for a reference hearing pursuant to RAP 16.12. She has not met her burden of showing the necessity for such a hearing.

Rule of Appellate Procedure (RAP) 16.12 provides for reference hearings. It says:

If the appellate court transfers the petition to a superior court, the transfer will be to the superior court for the county in which the decision was made resulting in the restraint of petitioner or, if the petitioner is not being restrained on the basis of a decision, in the superior court of the county in which petitioner is located. If the respondent is represented by the Attorney General, the prosecuting attorney, or a municipal attorney, respondent must take steps to obtain a prompt evidentiary hearing and must serve notice of the date set for hearing on all other parties. The parties, on motion and for good cause shown, will be granted reasonable pretrial discovery. Each party has the right to subpoena witnesses. The hearing shall be held before a judge who was not involved in the challenged proceeding. The petitioner has the right to be present at the hearing and the right to cross-examine adverse witnesses. The Rules of Evidence shall apply at the hearing. Upon the conclusion of the hearing, if the case has been transferred for a reference hearing the superior court shall enter findings of fact and have the findings and all appellate court files forwarded to the appellate court. Upon conclusion of the hearing if the case has been transferred for a determination on the merits, the superior court shall enter findings of fact and conclusions of law and an order deciding the petition.

An appellate court does not determine questions of fact. State v. Davis, 25 Wn. App. 134, 137, 605 P.2d 359 (1980). “If a personal restraint petitioner presents a prima facie case of error, but the issues cannot be resolved on the existing record, the case will be transferred to superior court for a reference hearing.” In re the Pers. Restraint of Cadwallader, 155 Wn.2d 867, 879, 123 P.3d 456 (2005).

A petitioner must state with particularity the evidence that warrants a reference hearing. She may not use the reference hearing to meet that initial burden. In re Pers. Restraint of Rice, 118 Wn.2d 878, 886, 828 P.2d 1086 (1992). Personal restraint petition claims must be supported by affidavits stating particular facts, certified documents, certified transcripts, and the like. Petition of Williams, 111 Wn.2d 353, 364, 759 P.2d 436 (1988). If the petitioner fails to provide sufficient evidence to support her challenge, the petition must be dismissed. Id.

A reference hearing is not a substitute for the petitioner's failure to provide evidence to support her claims. As the Supreme Court stated, "the purpose of a reference hearing is to resolve genuine factual disputes, not to determine whether the petitioner

actually has evidence to support his allegations." In re Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). "Bald assertions and conclusory allegations will not support the holding of a hearing," but the dismissal of the petition. Rice, at 886, Williams, at 364-365. A petitioner must present evidence showing that his factual allegations are based on more than speculation, conjecture, or inadmissible hearsay. In re Rice, 118 Wn.2d at 886.

In this case, Miller has offered nothing but her unsupported allegations that there was an ongoing investigation into Kenneth Spears before or during her trial. She has provided no documentation that there was such an investigation, and the documents attached to this response prove that there was not. Further, she alleges that she would have inquired further of her expert witness had she known about the allegations against Spears, Petition at 4, but she offers no documentation of her claims that this expert opined the injuries against the victim were indicative of a sexual assault. She simply has nothing but accusations. Therefore, this court can find on this record that her petition is baseless without remanding for a reference hearing.

IV. CONCLUSION

Because Miller has failed to show that there was any investigation into Spears before or during her trial she has not met her burden for either collateral relief or a reference hearing. The State respectfully asks this court to deny and dismiss her petition.

RESPECTFULLY SUBMITTED this 26th day of October, 2016.

JON TUNHEIM
Prosecuting Attorney



CAROL LA VERNE, WSBA #19229
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I certify that I served a copy of the State's Response to Personal Restraint Petition on the date below as follows:

Electronically filed at Division II

TO: DAVID PONZOHA, CLERK
COURT OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA WA 98402-6045

AND VIA E-MAIL

WILLIAM ANTHONY ROMAINE
LAW OFFICE OF WILLIAM ROMAINE
16404 SMOKEY POINT BLVD, STE 302
ARLINGTON WA 98223-8417

WAR@LAWROMAINE.COM

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

Dated this _____ day of October, 2016, at Olympia,
Washington.

CYNTHIA WRIGHT, PARALEGAL

APPENDIX A

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FILED
SUPERIOR COURT
THURSTON COUNTY, WASH

16 MAR -2 AM 9: 56

**SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON**

Linda Myhre Enlow
Thurston County Clerk

STATE OF WASHINGTON, Plaintiff,

vs.

No. 13-1-01891-1

CYNTHIA SUE MILLER,

Defendant.

FELONY JUDGMENT AND SENTENCE (FJS)

Prison (non-sex offense)

SID: WA27436787
If no SID, use DOB: 03/12/1960
PCN: 767161620 BOOKING NO. C0182673

I. HEARING

1.1 A sentencing hearing was held on March 2, 2016 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 January 21, 2016
by plea jury-verdict bench trial of

COUNT	CRIME	RCW	DATE OF CRIME
I	ASSAULT OF A CHILD IN THE FIRST DEGREE - DOMESTIC VIOLENCE - with aggravating factors.	9A.36.120(1)(b)(ii); 10.99.020; 9.94A.525(3)(a); 9.94A.525(3)(b); 9.94A.525(3)(h); 9.94A.525(3)(n)	BETWEEN MARCH 17, 2011 AND OCTOBER 31, 2013
II	ASSAULT OF A CHILD IN THE FIRST DEGREE - DOMESTIC VIOLENCE - with aggravating factors.	9A.36.120(1)(b)(ii); 10.99.020; 9.94A.525(3)(a); 9.94A.525(3)(b); 9.94A.525(3)(h); 9.94A.525(3)(n)	BETWEEN MARCH 17, 2011 AND OCTOBER 31, 2013
III	ASSAULT OF A CHILD IN THE SECOND DEGREE-DOMESTIC VIOLENCE- with aggravating factors.	9A.36.130(1)(a); 9A.36.021; 10.99.020; 9.94A.525(3)(a); 9.94A.525(3)(b); 9.94A.525(3)(h); 9.94A.525(3)(n)	BETWEEN MARCH 17, 2011 AND OCTOBER 31, 2013
IV	ASSAULT OF A CHILD IN THE THIRD DEGREE-DOMESTIC VIOLENCE - with aggravating factors.	9A.36.140; 9A.36.031; 10.99.020, 9.94A.525(3)(a); 9.94A.525(3)(b); 9.94A.525(3)(h); 9.94A.525(3)(n)	BETWEEN October 1, 2013 AND OCTOBER 31, 2013
V	CRIMINAL MISTREATMENT IN THE FOURTH DEGREE - DOMESTIC VIOLENCE	9A.42.037	BETWEEN MARCH 17, 2011 AND OCTOBER 31, 2013
VI	ASSAULT OF A CHILD IN THE SECOND DEGREE-DOMESTIC VIOLENCE	9A.36.130(1)(a); 9A.36.021	BETWEEN MARCH 17, 2011 AND OCTOBER 31, 2013

as charged in the THIRD AMENDED information.

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.
- A special verdict/finding for use of **firearm** was returned on Count(s) _____. RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____ . RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- For the crimes charged in Counts I - VI, **domestic violence** was pled and proved. RCW 10.99.020.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):
- A special verdict/finding of aggravating factor of **deliberate cruelty to the victim** was returned on Counts: I, II, III and IV RCW 9.94A.535(3)(a).
- A special verdict/finding of aggravating factor that the **victim was particularly vulnerable or incapable of resistance** was returned on Counts I, II, III, and IV . RCW 9.94A.535(3)(b).
- A special verdict/finding of aggravating factor of **domestic violence and the offense was part of an ongoing pattern of psychological or physical abuse of the victim manifested by multiple incidents over a prolonged period of time or that the offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim** was returned on Counts I, II, III and IV . RCW 9.94A.535(3)(h).
- A special verdict/finding of aggravating factor **the defendant used her position of trust, or confidence to facilitate the commission of the current offense** was returned on Counts I, II, III and IV . RCW 9.94A.535(3)(n).
- None of the current offenses constitute same criminal conduct except: _____

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME	DV* YES
None known for SRA purposes						

* DV: Domestic Violence was pled and proved

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:
 None of the prior convictions constitutes same criminal conduct except _____

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	5	XII	138 – 184 months	N/A	138 – 184 months	LIFE; \$50,000
II	0	XII	93 – 123 months	N/A	93 – 123 months	LIFE; \$50,000
III	7	IX	87 – 116 months	N/A	87 – 116 months	10 years; \$20,000
IV	4	III	12+ - 16 months	N/A	12+ - 16 months	5 years; \$10,000
V	N/A	N/A	0 – 90 days	N/A	0 – 90 days	90 days; \$1,000
VI	7	IX	87 – 116 months	N/A	87 – 116 months	10 years; \$20,000

Counts I and II shall run consecutive to each other as they constitute serious violent offenses per RCW 9.94A.589(1)(b).

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present. Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. 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) III - which shall run consecutive to Counts I+II

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 or

Judge's Decision Following Bench Trial is attached and Appendix 2.4 including the Court's findings

Based on the aggravating factors the Court hereby imposes an exceptional sentence and orders that Count(s) III be served consecutive to Count(s) I and II.

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):

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 and Appendix 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:

JASS CODE

\$ RESERVED Restitution to: _____

RTN/RJN

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided
confidentially to Clerk of the Court's office.)

PCV

\$ 500.00 Victim assessment RCW 7.68.035

\$ 115.00 Domestic Violence assessment RCW 10.99.080

CRC

\$ 200.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 2.00 FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ _____ SFR/SFS/SFW/WRF

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Other \$ _____

PUB

\$ _____ Fees for court appointed attorney RCW 9.94A.760

WFR

\$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH

\$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine
deferred due to indigency RCW 69.50.430

CDF/LDI/FCDF
NTF/SAD/SDI

\$ _____ Drug enforcement fund of Thurston County RCW 9.94A.760

\$ _____ Thurston County Drug Court Fee

CLF

\$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee [] not imposed due to hardship RCW 43.43.7541

RTN/RJN

\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000
maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 915.⁰⁰ TOTAL RCW 9.94A.760

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

[] RESTITUTION. Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant CAUSE NUMBER (Victim's name) (Amount-\$)

RJN

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.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.760.

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

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

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

[] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with S.K. (DOB: 09/14/04) (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 or Antiharassment No-Contact Order is filed with this Judgment and Sentence.

4.4 OTHER: - NO contact with any minor children unless in the presence of that child's parent or guardian
- no contact with SK, pursuant to DV no contact order

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):

184 months on Count I 16 months on Count IV
123 months on Count II
116 months on Count III 116 months on Count VI

Actual number of months of total confinement ordered is: 423 months
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above.) Exceptional Sentence imposed, running Counts I, II and III consecutively

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

NON-FELONY COUNTS:

Sentence on count(s) V ^{not} is ~~are~~ suspended for _____ months on the condition that the defendant comply with all requirements outlined in the supervision section of this sentence.

90 days of jail ~~are suspended~~ ^{is imposed} on Count _____
_____ days of jail are suspended on Count _____

** Count V shall be run concurrently to all other Counts*

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon 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 with the sentence in cause number(s) _____

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

Confinement shall commence immediately unless otherwise set forth here: _____

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

4.6 [X] **COMMUNITY CUSTODY** is ordered as follows:

- Count I for 36 months (serious violent offense);
- Count II for 36 months (serious violent offense);
- Count III for 18 months (violent offense);
- Count IV for 12 months (nonviolent offense);
- Count VI for 18 months (violent offense)

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

STATUTORY LIMIT ON SENTENCE. Notwithstanding the length of confinement plus any community custody imposed on any individual charge, in no event will the combined confinement and community custody exceed the statutory maximum for that charge. Those maximums are: Class A felony--life in prison; Class B felony--ten (10) years in prison; Class C felony--5 (5) years in prison.

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		

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.

- 4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

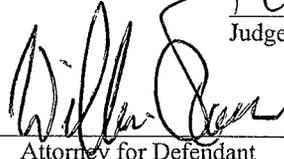
V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the 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(5). 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.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 5.6 **FIREARMS.** You 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 clerk of the court 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 [] 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.

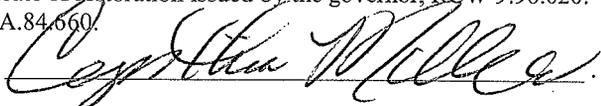
5.8 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.9 OTHER: Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party.

DONE in Open Court and in the presence of the defendant this date: March 2, 2016

		
Deputy Prosecuting Attorney WSBA No. 42962 Name: MEGAN A. WINDER	Attorney for Defendant WSBA No. 21364 Name: WILLIAM A. ROMAINE	Judge/Print name: Cynthia Sue Miller

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: 

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

I, _____, 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 the Court of said county and state, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA27436787
(If no SID take fingerprint card for State Patrol)

Date of Birth 03/12/1960

FBI No. 258799XD0

Local ID No. _____

PCN No. 767161620

Other _____

Alias name, DOB: _____

Race:

Asian/Pacific
Islander

Black/African-American

Caucasian

Ethnicity:

Hispanic

Sex:

Male

Native American

Other: _____

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: 3/2/16

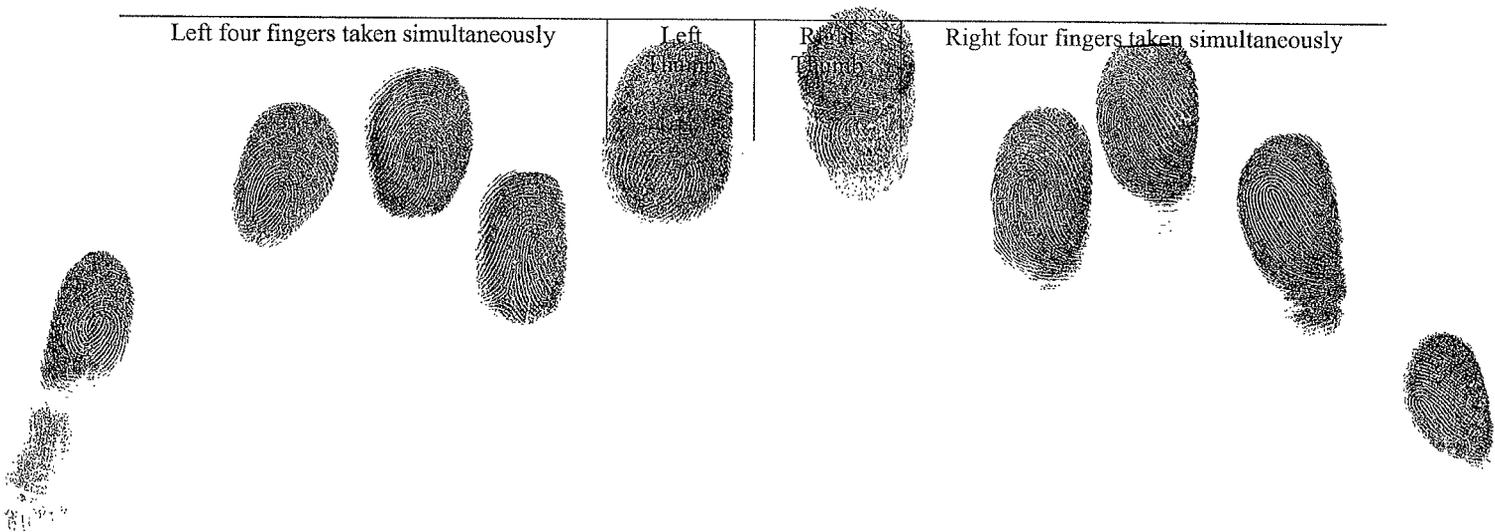
DEFENDANT'S SIGNATURE: [Signature]

Left four fingers taken simultaneously

Left

Right

Right four fingers taken simultaneously



**SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF THURSTON**

STATE OF WASHINGTON

NO. 13-1-01891-1

Plaintiff,

vs.

WARRANT OF COMMITMENT ATTACHMENT TO
JUDGMENT AND SENTENCE (PRISON)

CYNTHIA SUE MILLER,

Defendant.

DOB: 03/12/1960
SID: WA27436787 FBI: 258799XD0
PCN: 767161620
RACE: W
SEX: F
BOOKING NO: C0182673

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant CYNTHIA SUE MILLER has been convicted in the Superior Court of the State of Washington for the crime(s) of:

ASSAULT OF A CHILD IN THE FIRST DEGREE, DOMESTIC VIOLENCE (2 CNTS.), ASSAULT OF A CHILD IN THE SECOND DEGREE-DOMESTIC VIOLENCE (2 CNTS.), ASSAULT OF A CHILD IN THE THIRD DEGREE-DOMESTIC VIOLENCE, AND CRIMINAL MISTREATMENT IN THE FOURTH DEGREE

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, 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.

By direction of the Honorable:

CAROL MURPHY

LINDA MYHRE-ENLOW
CLERK

By: 
DEPUTY CLERK

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5 **IN THE SUPERIOR COURT OF WASHINGTON**
IN AND FOR THURSTON COUNTY

6 STATE OF WASHINGTON,

Plaintiff,

7 vs.

8 CYNTHIA SUE MILLER,

9 Defendant.
10

NO. 13-1-01891-1

APPENDIX 2.4

11 The Court hereby finds that there are substantial and compelling reasons that exist which
12 justify an exceptional sentence:

- 13 1. The testimony supported that the conduct of Defendant did manifest deliberate cruelty to S.K.
14 2. The Court finds that SK was particularly vulnerable because the Defendant was aware of the prior
15 family situation that led SK to be living with Defendant, which included physical abuse that SK
16 suffered prior to living with Defendant. The physical abuse that SK suffered was considerable and
17 led to her being removed from that situation and be placed with the Defendant. The Court
18 specifically finds that SK was particularly vulnerable because she was a prior victim of abuse.
19 3. Testimony at trial indicated that SK did not have adequate food. The Court finds that while the
20 lack of nourishment did not make SK particularly physically vulnerable, it did make her
21 particularly vulnerable to the conduct of the Defendant.
22 4. The Court finds that the Defendant did specifically use her position of trust or confidence in
23 perpetrating these crimes. The Defendant took care of children and was responsible for children in
every way – food, transportation, school, etc. SK subject to treatment that Defendant decided
upon, which was adduced by the evidence at trial. In that role, she did not ensure adequate medical
treatment for the physical injuries.
5. The injuries to SK were significant.

Dated this the 2nd day of March 2016.

Carol Murphy

Judge Carol Murphy

APPENDIX 2.4

1

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
360/786-5540 Fax 360/754-3358

State v. Miller, 13-1-01891-1

Appendix 2.4: The Court's Decision After Bench Trial
(Findings of Fact and Conclusions of Law)

7

13-1-01891-1
CTD
Court's Decision
91163



2016 JAN 22 PM 2:45

Linda Nyholm
Thurston County Clerk

IN THE SUPERIOR COURT OF WASHINGTON

IN AND FOR THURSTON COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MILLER, CYNTHIA SUE

Defendant

Case No.: 13-1-01891-1

THE COURT'S DECISION AFTER BENCH TRIAL

As to Count I, the Court finds that the Defendant is GUILTY beyond a reasonable doubt of Assault of a Child in the first Degree – Domestic Violence.

a. The Court finds that the elements have each been met beyond a reasonable doubt with regard to Count I.

i. The Court finds that on or between March 17, 2011 and October 31, 2013, in an act separate from that alleged in the other counts, the Defendant intentionally assaulted S.K. (DOB: 09/14/04) and caused substantial bodily harm;

ii. The Court finds that the Defendant was eighteen years of age or older and S.K (DOB: 9/14/04) was under the age of thirteen;

iii. The Court finds that the Defendant had caused S.K. (DOB: 09/14/04) physical pain or agony that was equivalent to that produced by torture; and

iv. The Court finds that these acts occurred in the State of Washington.

b. The Court finds that the following aggravators have been proven beyond a reasonable doubt with regard to Count I, Assault of a Child in the First Degree - Domestic Violence:

i. The Court finds that Count I was aggravated by the fact that S.K. (DOB:

THE COURT'S DECISION AFTER BENCH TRIAL - 1

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09/14/04) was a family or household member, pursuant to RCW 10.99.020;

ii. The Court finds beyond a reasonable doubt that Count I was aggravated in that the Defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim, S.K. (DOB: 09/14/04);

iii. The Court finds beyond a reasonable doubt that Count I was aggravated in that the Defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance;

iv. The Court finds beyond a reasonable doubt that Count I was aggravated in that the current offense involved domestic violence, as defined in RCW 10.99.020, and the following was present:

1. The Defendant's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

v. The Court finds beyond a reasonable doubt that Count I was aggravated in that the Defendant used her position of trust or confidence, to facilitate the commission of the current offense.

As to Count II, the Court finds that the Defendant is GUILTY beyond a reasonable doubt of Assault of a Child in the First Degree - Domestic Violence.

a. The Court finds that the elements have each been met beyond a reasonable doubt with regard to Count II.

i. The Court finds that on or between March 17, 2011 and October 31, 2013, in an act separate from that alleged in the other counts, the Defendant intentionally assaulted S.K. (DOB: 09/14/04) and caused substantial bodily harm;

ii. The Court finds that the Defendant was eighteen years of age or older and S.K. (DOB: 09/14/04) was under the age of thirteen;

iii. The Court finds that the Defendant had caused S.K. (DOB: 09/14/04) physical pain or agony that was equivalent to that produced by torture; and

iv. The Court finds that these acts occurred in the State of Washington.

1 b. The Court finds that the following aggravators have been proven beyond a
2 reasonable doubt with regard to Count II, Assault of a Child in the First Degree - Domestic
Violence:

3 i. The Court finds that Count II was aggravated by the fact that S.K.
4 (DOB: 09/14/04) was a family or household member, pursuant to
RCW 10.99.020;

5 ii. The Court finds beyond a reasonable doubt that Count II was
6 aggravated in that the Defendant's conduct during the commission of the
7 current offense manifested deliberate cruelty to the victim, S.K. (DOB:
09/14/04);

8 iii. The Court finds beyond a reasonable doubt that Count II was
9 aggravated in that the Defendant knew or should have known that the
10 victim of the current offense was particularly vulnerable or incapable of
resistance;

11 iv. The Court finds beyond a reasonable doubt that Count II was
12 aggravated in that the current offense involved domestic violence, as
13 defined in RCW 10.99.020, and one or more of the following was
present;

14 1. The Defendant's conduct during the commission of the current
offense manifested deliberate cruelty or intimidation of the victim.

15 v. The Court finds beyond a reasonable doubt that Count II was
16 aggravated in that the Defendants used her position of trust or confidence,
to facilitate the commission of the current offense.

17 As to Count III, the Court finds that the Defendant is GUILTY beyond a reasonable doubt
18 of Assault of a Child in the Second Degree - Domestic Violence.

19 a. The Court finds that the elements have each been met beyond a reasonable from
20 other counts doubt with regard to Count III;

21 i. The Court finds that on or between March 17, 2011 and October 31,
22 2013, in an act separate from other counts, the Defendant intentionally
assaulted S.K. (DOB: 09/14/04) and thereby recklessly inflicted substantial
bodily harm;

23 ii. The Court finds that the Defendant was eighteen years of age or older
24 and S.K. (DOB: 09/14/04) was under the age of thirteen; and

25 iii. The Court finds that this act occurred in the State of Washington.

THE COURT'S DECISION AFTER BENCH TRIAL - 3

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b. The Court finds that the following aggravators have been proven beyond a reasonable doubt with regard to Count III, Assault of a Child in the Second Degree - Domestic Violence:

- i. The Court finds that Count III was aggravated by the fact that S.K. (DOB: 09/14/04) was a family or household member, pursuant to RCW 10.99.020;
- ii. The Court finds beyond a reasonable doubt that Count III was aggravated in that the Defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim, S.K. (DOB: 09/14/04);
- iii. The Court finds beyond a reasonable doubt that Count III was aggravated in that the Defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance;
- iv. The Court finds beyond a reasonable doubt that Count III was aggravated in that the current offense involved domestic violence, as defined in RCW 10.99.020, and following was present:
 - 1. The offense was part of an ongoing pattern of psychological or physical abuse of the victim manifested by multiple incidents over a prolonged period of time: and
 - 2. The Defendant's conduct during the commission of the current Offense manifested deliberate cruelty or intimidation of the victim.
- v. The Court finds beyond a reasonable doubt that Count III was aggravated in that the Defendant used her position of trust or confidence to facilitate the commission of the current offense.

As to Count IV, the Court finds the Defendant is GUILTY beyond a reasonable doubt of Assault of a Child in the Third Degree.

a. The Court finds that the elements have each been met beyond a reasonable doubt with regard to Count IV.

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i. The Court finds that on or between October 1, 2013 and October 31, 2013, in an act separate from that alleged in other counts, the Defendant committed the crime of assault in the third degree against S.K. (DOB: 09/14/04);

1. Specifically the Court finds that with criminal negligence the Defendant caused bodily harm accompanied by substantial pain that extended for a period sufficient to cause considerable suffering.

ii. The Court finds that the Defendant was eighteen years of age or older and S.K. (DOB: 09/14/04) was under the age of thirteen; and

iii. The Court finds that this act occurred in the State of Washington.

b. The Court finds that the following aggravators have been proven beyond a reasonable doubt with regard to Count IV – Assault of a Child in the Third Degree – Domestic Violence:

i. The Court finds that Count IV was aggravated by the fact that S.K. (DOB: 09/14/04) was a family or household member, pursuant to RCW 10.99.020;

ii. The Court finds beyond a reasonable doubt that Count IV was aggravated in that the Defendant’s conduct during the commission of the current offense manifested deliberate cruelty to the victim, S.K. (DOB: 09/14/04);

iii. The Court finds beyond a reasonable doubt that Count IV was aggravated in that the Defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance;

iv. The Court finds beyond a reasonable doubt that Count IV was aggravated in that the current offense involved domestic violence as defined in RCW 10.99.020, and the following was present:

1. The offense was part of an ongoing pattern of psychological or physical abuse of the victim manifested by the multiple incidents over a prolonged period of time; and

2. The Defendant’s conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

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v. The Court finds beyond a reasonable doubt that Count IV was aggravated in that the Defendant used her position of trust or confidence, to facilitate the commission of the current offense.

As to Count V, the Court finds the Defendant is GUILTY beyond a reasonable doubt of Criminal Mistreatment -- Domestic Violence.

a. The Court finds that the elements have each been met beyond a reasonable doubt with regard to Count V:

i. The Court finds that between March 17, 2011 and October 31, 2013 the Defendant was entrusted with the physical custody of S.K. (DOB: 09/14/04) or had assumed the responsibility to provide to S.K. (DOB: 09/14/04) the basic necessities of life;

ii. The Court finds that the Defendant did, with criminal negligence create an imminent and substantial risk of bodily injury to S.K. (DOB: 09/14/04) by withholding the basic necessities of life;

iii. The Court finds that these acts occurred in the State of Washington; and

iv. The Court finds that the Defendant S.K. (DOB: 09/14/04) were family members, pursuant to RCW 10.99.020.

As to County VI, The Court finds the Defendant is GUILTY beyond a reasonable doubt of Assault of Child in the Second Degree -- Domestic Violence.

a. The Court finds that the elements have each been met beyond a reasonable doubt with regard to Count VI.

i. The Court finds that on or between March 17, 2011 and October 31, 2013, in an act separate from that alleged in other counts, the Defendant assaulted S.K. (DOB: 09/14/04) by suffocation;

ii. The Court finds that the Defendant was eighteen years of age or older and S.K (DOB: 09/14/04) was under the age of thirteen; and

iii. The Court finds that this act occurred in the State of Washington.

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b. The Court finds that S.K. (DOB: 09/14/04) was a family or household member pursuant to RCW 10.99.020.

Dated this 21ST of January, 2016.

Carol Murphy

Judge Carol Murphy

APPENDIX B

E-FILED
SUPERIOR COURT
THURSTON COUNTY, WA
Dec 24, 2013 12:44 PM
BETTY J. GOULD
County Clerk

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE OF WASHINGTON,
Plaintiff,

vs.

CYNTHIA SUE MILLER
DESC: W/F/506/150/BLU/BLK
DOB: 03/12/1960
SID: WA27436787 FBI: 258799XD0
BOOKING NO. C0182673
PCN: 767161620
Defendant.

NO. 13-1-01891-1

INFORMATION

JOSEPH JACKSON
Deputy Prosecuting Attorney

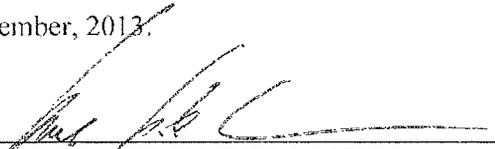
Jointly Charged with Co-Defendant(s):
N/A

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crimes:

**COUNT 1 - ASSAULT OF A CHILD IN THE SECOND DEGREE-DOMESTIC VIOLENCE,
RCW 9A.36.130(1)(a), RCW 9A.36.021(1)(a), 10.99.020 – CLASS B FELONY;**

In that the defendant, CYNTHIA SUE MILLER, being at least eighteen (18) years of age, in the State of Washington, on or between October 1, 2013 and October 31, 2013, did intentionally assault S.L.K., a child who was under the age of thirteen (13), a family or household member pursuant to RCW 10.99.020 and thereby recklessly inflicting substantial bodily harm.

DATED this 27 day of December, 2013.


JOSEPH JACKSON, WSBA #37306
Deputy Prosecuting Attorney

INFORMATION

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
360/786-5540 Fax 360/754-3358

13-1-01891-1
AMINF
Amended Information
86273



FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2016 JAN 19 AM 10: 57

Linda Myhre Enlow
Thurston County Clerk

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE OF WASHINGTON,
Plaintiff,

vs.

CYNTHIA SUE MILLER
DESC: W/F/506/150/BLU/BLK
DOB: 03/12/1960
SID: WA27436787; FBI: 258799XD0
BOOKING NO: C0182673
PCN: 767161620
Defendant.

NO. 13-1-01891-1

THIRD AMENDED INFORMATION

MEGAN A. WINDER
Deputy Prosecuting Attorney

Jointly Charged with Co-Defendant(s):
N/A

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crimes:

COUNT I: ASSAULT OF A CHILD IN THE FIRST DEGREE- DOMESTIC VIOLENCE, RCW 9A.36.120(1)(b)(ii), 10.99.020 CLASS A FELONY:

In that the Defendant, Cynthia Sue Miller, being at least eighteen (18) years of age, in the State of Washington, on or between March 17, 2011 and October 31, 2013, did intentionally assault SK, a child who was under the age of thirteen (13) years, and did cause substantial bodily harm, the defendant having previously engaged in a pattern or practice of either assaulting the child, which resulted in bodily harm that was greater than transient physical pain or minor temporary marks, or causing the child physical pain or agony that was equivalent to that produced by torture. The substantial bodily harm alleged for Count I is the fractured ulna.

OR IN THE ALTERNATIVE

COUNT I: ASSAULT OF A CHILD IN THE SECOND DEGREE-DOMESTIC VIOLENCE, RCW 9A.36.130(1)(b), 10.99.020 – CLASS B FELONY:

In that the Defendant, Cynthia Sue Miller, being at least eighteen (18) years of age, in the State of Washington, on or between March 17, 2011 and October 31, 2013, did intentionally assault SK, a child who was under the age of thirteen (13) years, and intentionally assaulted SK, and caused bodily harm that was greater than transient physical pain or minor temporary marks, and the defendant has previously

THIRD AMENDED INFORMATION - 1

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakemidge Drive S.W
Olympia, WA 98502
360/786-5540 Fax 360/754-3358

1 engaged in a pattern or practice either of (i) assaulting the child which has resulted in bodily harm that is
2 greater than transient pain or minor temporary marks, or (ii) causing the child physical pain or agony that
3 is equivalent to that produced by torture. The bodily harm alleged for Count I is the fractured ulna.

4 **The State alleges that the following aggravators apply to both alternatives of Count I:**

5 The State alleges that in Count I, SK was a family or household member pursuant to RCW 10.99.020.

6 The State alleges that the crime in Count I was aggravated in that the defendant's conduct during the
7 commission of the current offense manifested deliberate cruelty to the victim, pursuant to RCW
8 9.94A.535(3)(a).

9 The State alleges that the crime in Count I was aggravated in that the defendant knew or should have
10 known that the victim of the current offense was particularly vulnerable or incapable of resistance,
11 pursuant to RCW 9.94A.535(3)(b).

12 The State alleges that the crime in Count I was aggravated in that the current offense involved domestic
13 violence, as defined in RCW 10.99.020, and one or more of the following was present: (i) The offense
14 was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims
15 manifested by multiple incidents over a prolonged period of time; or (iii) The offender's conduct during
16 the commission of the current offense manifested deliberate cruelty or intimidation of the victim pursuant
17 to RCW 9.94A.535(3)(h).

18 The State alleges that the crime in Count I was aggravated in that the defendant used her position of trust,
19 or confidence to facilitate the commission of the current offense pursuant to RCW 9.94A.535(3)(n).

20 **COUNT II: ASSAULT OF A CHILD IN THE FIRST DEGREE- DOMESTIC VIOLENCE,**
21 **RCW 9A.36.120(1)(b)(ii), 10.99.020 CLASS A FELONY**

22 In that the Defendant, Cynthia Sue Miller, being at least eighteen (18) years of age, in the State of
23 Washington, on or between March 17, 2011 and October 31, 2013, did intentionally assault SK, a child
24 who was under the age of thirteen (13) years, and did cause substantial bodily harm, the defendant having
25 previously engaged in a pattern or practice of either assaulting the child, which resulted in bodily harm
that was greater than transient physical pain or minor temporary marks, or causing the child physical pain
or agony that was equivalent to that produced by torture. The bodily harm alleged for Count II is the
lateral condylar fracture of the humerus.

OR IN THE ALTERNATIVE

COUNT II: ASSAULT OF A CHILD IN THE SECOND DEGREE-DOMESTIC VIOLENCE,
RCW 9A.36.130(1)(b), 10.99.020 – CLASS B FELONY

In that the Defendant, Cynthia Sue Miller, being at least eighteen (18) years of age, in the State of
Washington, on or between March 17, 2011 and October 31, 2013, did intentionally assault S.K. a child
who was under the age of thirteen (13), and thereby recklessly inflicted substantial bodily harm; or that

1 the Defendant, did intentionally assault S.K. a child who was under the age of thirteen (13), and caused a
2 bodily harm that was greater than transient physical pain or minor temporary marks, and the defendant
3 has previously engaged in a pattern or practice of assaulting the child which has resulted in bodily harm
4 that is greater than transient pain or minor temporary marks. The bodily harm alleged for Count II is the
5 lateral condylar fracture of the humerus.

6 **The State alleges that the following aggravators apply to both alternatives of Count II:**

7 The State alleges that in Count II, SK was a family or household member pursuant to RCW 10.99.020.

8 The State alleges that the crime in Count II was aggravated in that the defendant's conduct during the
9 commission of the current offense manifested deliberate cruelty to the victim, pursuant to RCW
10 9.94A.535(3)(a).

11 The State alleges that the crime in Count II was aggravated in that the defendant knew or should have
12 known that the victim of the current offense was particularly vulnerable or incapable of resistance,
13 pursuant to RCW 9.94A.535(3)(b).

14 The State alleges that the crime in Count II was aggravated in that the current offense involved domestic
15 violence, as defined in RCW 10.99.020, and one or more of the following was present: (i) The offense
16 was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims
17 manifested by multiple incidents over a prolonged period of time; or (iii) The offender's conduct during
18 the commission of the current offense manifested deliberate cruelty or intimidation of the victim pursuant
19 to RCW 9.94A.535(3)(h).

20 The State alleges that the crime in Count II was aggravated in that the defendant used her position of
21 trust, or confidence to facilitate the commission of the current offense pursuant to RCW 9.94A.535(3)(n).

22 **COUNT III: ASSAULT OF A CHILD IN THE SECOND DEGREE-DOMESTIC VIOLENCE,**
23 **RCW 9A.36.130(1)(a) 9A.36.021(g), 10.99.020 – CLASS B FELONY**

24 In that the Defendant, Cynthia Sue Miller, being at least eighteen (18) years of age, in the State of
25 Washington, on or between March 17, 2011 and October 31, 2013, did intentionally assault S.K. a child
who was under the age of thirteen (13), and thereby recklessly inflicted substantial bodily harm; or
Cynthia Sue Miller, being at least eighteen (18) years of age, in the State of Washington, on or between
March 17, 2011 and October 31, 2013, committed the crime of assault in the second degree, by
intentionally strangling or suffocating S.K., a child.

The State alleges that the following aggravators apply to both alternatives of Count III:

The State alleges that in Count III, SK was a family or household member pursuant to RCW 10.99.020.

The State alleges that the crime in Count III was aggravated in that the defendant's conduct during the
commission of the current offense manifested deliberate cruelty to the victim, pursuant to RCW
9.94A.535(3)(a).

1 The State alleges that the crime in Count III was aggravated in that the defendant knew or should have
2 known that the victim of the current offense was particularly vulnerable or incapable of resistance,
pursuant to RCW 9.94A.535(3)(b).

3 The State alleges that the crime in Count III was aggravated in that the current offense involved domestic
4 violence, as defined in RCW 10.99.020, and one or more of the following was present: (i) The offense
5 was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims
6 manifested by multiple incidents over a prolonged period of time; or (iii) The offender's conduct during
7 the commission of the current offense manifested deliberate cruelty or intimidation of the victim pursuant
8 to RCW 9.94A.535(3)(h).

9 The State alleges that the crime in Count III was aggravated in that the defendant used her position of
10 trust, or confidence to facilitate the commission of the current offense pursuant to RCW 9.94A.535(3)(n).

11 **Count IV: ASSAULT OF A CHILD IN THE THIRD DEGREE-DOMESTIC VIOLENCE,**
12 **RCW 9A.36.140(1) 9A.36.031(f), 10.99.020 – CLASS C FELONY**

13 In that the Defendant, Cynthia Sue Miller, being at least eighteen (18) years of age, in the State of
14 Washington, on or between March 17, 2011 and October 31, 2013, did intentionally assault S.K., a child
15 who was under the age of thirteen (13), with criminal negligence, and caused bodily harm accompanied
16 by substantial pain that extended for a period sufficient to cause considerable suffering to said person.

17 **The State alleges that the following aggravators apply to both alternatives of Count IV:**

18 The State alleges that in Count IV, SK was a family or household member pursuant to RCW 10.99.020.

19 The State alleges that the crime in Count IV was aggravated in that the defendant's conduct during the
20 commission of the current offense manifested deliberate cruelty to the victim, pursuant to RCW
21 9.94A.535(3)(a).

22 The State alleges that the crime in Count IV was aggravated in that the defendant knew or should have
23 known that the victim of the current offense was particularly vulnerable or incapable of resistance,
24 pursuant to RCW 9.94A.535(3)(b).

25 The State alleges that the crime in Count IV was aggravated in that the current offense involved domestic
violence, as defined in RCW 10.99.020, and one or more of the following was present: (i) The offense
was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims
manifested by multiple incidents over a prolonged period of time; or (iii) The offender's conduct during
the commission of the current offense manifested deliberate cruelty or intimidation of the victim pursuant
to RCW 9.94A.535(3)(h).

The State alleges that the crime in Count IV was aggravated in that the defendant used her position of
trust, or confidence to facilitate the commission of the current offense pursuant to RCW 9.94A.535(3)(n).

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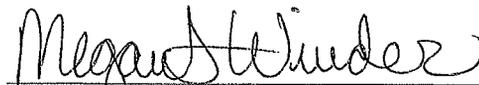
COUNT V: CRIMINAL MISTREATMENT IN THE FOURTH DEGREE – DOMESTIC VIOLENCE, RCW 9A.42.037(1)(a), 10.99.020 -MISDEMEANOR:

In that the Defendant, Cynthia Sue Miller, in the State of Washington, on or between March 17, 2011 and October 31, 2013, as a person entrusted with the physical custody of a child or has assumed the responsibility to provide to a dependent person the basic necessities of life, did with criminal negligence create an imminent and substantial risk of bodily injury to S.K. by withholding the basic necessities of life. The State also alleges that S.K. was a family or household member pursuant to RCW 10.99.020.

COUNT VI: ASSAULT OF A CHILD IN THE SECOND DEGREE – DOMESTIC VIOLENCE, RCW 9A.36.130(1)(A), 9A.36.021(G), 10.99.020 – CLASS B FELONY:

In that the Defendant, Cynthia Sue Miller, being at least 18 years of age, in the State of Washington, on or between March 17, 2011 and October 31, 2013, did intentionally assault S.K. (DOB: 09/14/04) a child, who was under the age of thirteen (13), committed an assault in the second degree by intentionally suffocating SK (DOB: 09/14/04). The State further alleges that S.K. was a family or household member, pursuant to RCW 10.99.020.

DATED this 19th day of January, 2016.


MEGAN A. WINDER, WSBA #42962
Deputy Prosecuting Attorney

APPENDIX C



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

THE STATE OF WASHINGTON,
Plaintiff,

NO. 13-1-01891-1

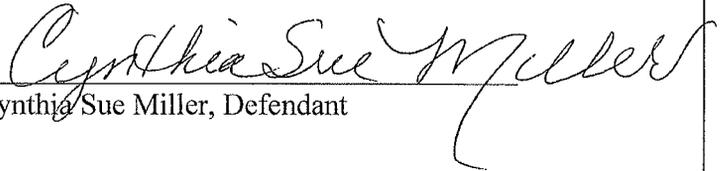
vs.

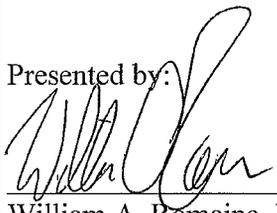
WAIVER OF JURY

CYNTHIA SUE MILLER,
Defendant.

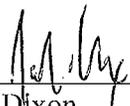
COMES NOW the Defendant **Cynthia Sue Miller** and her attorney William Romaine and informs the court that Cynthia Sue Miller hereby freely and voluntarily waives her right to a jury trial pursuant to CrR 6.1(a) and wishes to proceed with a bench trial.

DATED this 21 day of December, 2015.


Cynthia Sue Miller, Defendant

Presented by:

William A. Romaine, WSBA 21364
Attorney for Defendant

The Court hereby finds that the Defendant's waiver of jury trial is knowingly, voluntarily and intelligently entered, and the Court hereby approves the waiver, therefore the Court ORDERS that this case be scheduled for a bench trial.


Judge James Dixon

JAMES J. DIXON

APPENDIX D



7

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY	
State of Washington,	Plaintiff(s)
vs.	
Cynthia Miller	Defendant(s).

NO. 13-1-1891-1

Judge Carol Murphy

Court Reporter: Pam Jones/Rafe Beswick

Clerk: Doug Bales

Date: January 11-13 and 19-21, 2016

Plaintiff(s) Appearing: Through

Attorney for Plaintiff(s): Megan Winder

Present: Yes No

Defendant(s) Appearing: Yes No

Attorney for Defendant(s): William Romaine

Present: Yes No

THIS MATTER CAME ON BEFORE THE COURT FOR: Bench Trial

(Court Reporter: Pam Jones)

8:57 Court in session.

8:59 The Court held colloquy with counsel. The Court heard argument form both as to Motions in Limine. The Court placed ruling on the record.

9:44 Ms. Winder presented opening statements. Mr. Romaine presented opening statements.

10:08 Court recessed. 10:26 Court reconvened. The Court held colloquy with counsel.

10:30 Savannah Kempton was sworn by the Court. Ms. Winder conducted direct examination. Mr. Romaine conducted cross examination.

11:11 Court recessed. 11:28 Court reconvened.

11:28 Ms. Winder conducted redirect examination of Ms, Kempton. Mr. Romaine conducted recross examination. Ms. Kempton stepped down.

11:45 Ms. Winder placed comments on the record as to Seth Wright. Mr. Romaine addressed the Court. No action taken by the Court.

11:50 Court recess. 1:30 Court reconvened.

1:31 Ms. Winder addressed the Court as to Seth Wright. Mr. Romaine addressed the Court. No action taken by the Court.

- 1:33 The Court placed comments on the record as to the colloquy the Court held with the Clerk during a break as to the video equipment.
- 1:35 Saria Wright was sworn by the Court. Ms. Winder conducted direct examination. Mr. Romaine conducted cross examination. Ms. Winder conducted redirect examination. Ms. Wright stepped down and was excused.
- 1:57 The Court addressed counsel as to a person viewing into the courtroom through the courtroom door window. Both counsel left the courtroom to inquire as to the person.
- 1:59 Both counsel entered the courtroom. Ms. Winder addressed the Court as to the person standing at the courtroom door window. Mr. Romaine addressed the Court. The Court took no action.
- 2:00 Court in recess. 2:20 Court reconvened.
- 2:21 Lisa Wahl was sworn by the Court. Ms. Winder conducted direct examination. Ms. Winder presented exhibit no. 35, identified. Ms. Winder presented exhibit no. 33, identified, moved admit, no objection, admitted. Ms. Winder presented exhibit nos. 1-32, identified, moved admit, no objection, admitted.
- 3:34 Court recessed. 4:03 Court reconvened.
- 4:03 Mr. Romaine conducted cross examination of Lisa Wahl.
- 4:50 Court recessed.

***** Day Two, January 12, 2016 *****

(Court Reporter: Pam Jones)

- 9:05 Court in session.
- 9:05 The Court addressed briefing issues. Mr. Roman addressed the Court.
- 9:16 Court in recess. 9:30 Court in session.
- 9:30 Lisa Wahl resumed the stand. The Court instructed the witness that she was still under oath. Ms. Winder conducted redirect examination. Mr. Romaine conducted recross examination. Ms. Wahl stepped down and was excused.
- 10:14 Kristin Whitcomb was sworn by the Court. Ms. Winder conducted direct examination.
- 10:21 Court recessed. 10:41 Court in session.
- 10:42 Ms. Winder resumed direct examination of Ms. Whitcomb. Mr. Romaine conducted cross

examination. Ms. Winder conducted redirect examination. Ms. Whitcomb stepped down and was excused.

11:10 Tara Kessel was sworn by the Court. Ms. Winder conducted direct examination. Ms. Winder presented exhibit no. 38, identified. Mr. Romaine conducted cross examination.

11:52 Ms. Winder addressed the Court as to her expert witness.

11:53 Court recessed. 1:30 Court reconvened.

1:30 Mr. Romaine presented argument as to the State's Motion as to Expert Witness - Dr. Gilbert. Ms. Winder presented argument. The Court denied the Defendant's Motion as to Expert Witness. Mr. Romaine stipulated as to witness as to Mr. Campbell.

2:03 Mr. Romaine resumed cross examination of Ms. Kessel. Mr. Romaine presented exhibit no. 42, identified. Mr. Romaine presented exhibit no. 38, identified. Ms. Winder conducted redirect examination. Mr. Romaine conducted recross examination. Ms. Winder conducted redirect examination. Ms. Kessel stepped down and was excused.

2:56 Court recessed. 3:15 Court in session.

3:15 Dr. Joyce Gilbert was sworn by the Court. Ms. Winder conducted direct examination. Ms. Winder presented exhibit no. 56, identified, moved to admit, no objection, admitted. Mr. Romaine conducted cross examination. Ms. Winder conducted redirect examination. Dr. Gilbert stepped down and was excused.

4:03 Detective Jamie Gallagher was sworn by the Court. The Court and counsel held colloquy as to the video exhibit. Ms. Winder conducted direct examination. Ms. Winder presented exhibit no. 34, identified. Ms. Winder presented exhibit nos. 43, 44, and 45, identified, moved to admit, objection, ruling reserved. Counsel to discuss the issue. Court will rehear this issue tomorrow.

4:40 Court recessed.

***** Day Three, January 13, 2106 *****

(Court Reporter: Pam Jones)

9:08 Court in session. The Court held colloquy with counsel indicating she signed the orders presented by counsel

The Court signed:

- Order Denying the Defendant's Motion to Exclude Expert Testimony by State's Witness
- Order on Agreed Motions in Limine

9:09 Dr. Shireen Khan was sworn by the Court. Ms. Winder conducted direct examination. Ms. Winder presented exhibit no. 46, identified, moved to admit, no objection, admitted. Ms. Winder presented exhibit nos. 47-53, identified, moved to admit, no objection, admitted. Mr. Romaine conducted cross examination. Ms. Winder conducted redirect examination. Mr. Romaine conducted recross examination. Ms. Winder conducted redirect examination. Dr. Khan stepped down and was excused.

9:56 The Court readdressed the issue as to a stipulation with counsel the Court heard at the end of the day yesterday.

10:00 Court recessed. 10:29 Court in session.

10:29 The Court held colloquy with counsel as to the Stipulation. The Court read the stipulation on the record. The Court questioned Mr. Romaine. The Court questioned Ms. Miller.

The Court signed:

- Stipulation by the Defendant

10:36 Detective Jamie Gallagher resumed the stand. The Court instructed the defendant that she was still under oath. Ms. Winder continued direct examination. Ms. Winder presented exhibit no. 36, identified. Ms. Winder presented exhibit no. 55, identified. Ms. Winder presented exhibit no. 37, identified. Ms. Winder moved to admit exhibit no. 37 and 55, no objection, admitted. Exhibit no. 55 was published in open court.

10:57 Court recessed due to technical difficulties with exhibit no 55. 11:04 Court reconvened.

11:04 Ms. Winder resumed the publication of exhibit no. 55.

11:46 Court recessed. 1:32 Court Reconvened.

1:34 Ms. Winder resumed direct examination of Detective Gallagher. Mr. Romaine conducted cross examination.

2:43 Court recessed. 3:04 Court reconvened.

3:04 The Court held colloquy with counsel as to scheduling. Ms. Winder addressed the Court as to the issue of needing medical treatment and request the trial be continued after Detective Gallagher is done testifying. The Court placed comments on the record as to Ms. Winder being ill. The Court granted a continuance of the trial to Tuesday, January 19, 2016.

3:12 Ms. Winder resumed redirect examination of Detective Gallagher. Ms. Winder presented exhibit no. 34, identified. Detective Gallagher stepped down subject to recall.

3:30 The Court held colloquy with counsel.

3:34 Court recessed.

***** Day Four, January 19, 2016 *****

(Court Reporter: Rafe Beswick)

9:08 Court in session.

9:10 The defendant was served with a Third Amended Information.

9:19 The Court heard colloquy with counsel. The Court will hold the arraignment after the morning break. Ms. Winder indicated she would be resting after the arraignment.

9:20 Detective Jamie Gallagher resumed the stand and was instructed by the Court that she was still under oath. Mr. Romaine conducted examination. Mr. Romaine presented exhibits no. 39-41 and 36, identified.

9:30 Court recessed. 9:54 Court reconvened.

9:54 The Court held colloquy with counsel. Mr. Romaine waived reading and further advisement of rights and entered a not guilty plea on behalf of his client.

9:54 Mr. Romaine conducted examination of Detective Gallagher. Detective Gallagher stepped down, subject to recall.

10:53 Alex Tarasar was sworn by the Court. Mr. Romaine conducted direct examination.

11:00 Court recessed. 11:12 Court reconvened.

11:12 Mr. Romaine resumed direct examination of Mr. Tarasar. Ms. Winder conducted cross examination. Mr. Romaine conducted redirect examination. Mr. Tarasar stepped down and was excused.

11:22 Hailey Wright was sworn by the Court. Mr. Romaine conducted direct examination. Ms. Winder conducted cross examination. Ms. Wright stepped down and was excused.

11:54 Court recessed. 1:30 Court reconvened.

1:31 Ashley Wright was sworn by the Court. Mr. Romaine conduct direct examination. Ms. Winder conducted cross examination. Mr. Romaine conducted redirect examination. Ms. Wright stepped down and was excused.

2:36 Court recessed. 2:59 Court reconvened.

Cause No. 13-1-01891-1

Trial Date: January 11-13 & 19-21, 2016

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MINUTES CONTINUED

2:59 Defense rests.

3:00 Detective Jamie Gallagher was sworn by the Court. Ms. Winder conducted direct examination. Ms. Winder presented exhibit nos. 40-41 & 57, identified. Mr. Romaine conducted cross examination. Mr. Romaine moved to admit exhibit no. 57, no objection, admitted.

3:27 State rests.

3:32 Court recessed. 3:36 Court reconvened.

3:39 Mr. Romaine moved to admit Exhibits 36, 39-41, identified, moved to admit, no objection, admitted.

3:41 The Court held colloquy with counsel concerning the amount of time for closing.

3:45 Court recessed.

******* Day Five, January 21, 2015 *******

(Court Reporter: Beswick)

9:03 Court in session.

9:03 Ms. Winder presented closing argument.

10:06 Mr. Romaine presented closing argument.

10:57 Court recessed. 11:21 Court reconvened. The Court held colloquy with counsel.

11:23 Ms. Winder presented rebuttal argument.

11:31 The Court set a hearing for January 21, 2015 at 10:00 a.m. for the Court's Ruling.

11:33 Court recessed taking all admitted exhibits for review.

Cause No. 13-1-01891-1

Trial Date: January 11-13 & 19-21, 2016

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MINUTES CONTINUED

*******Day 5, January 21, 2016*******

(Court Reporter: Rafe Beswick)

9:45 All admitted exhibit were returned to the Clerk.

10:00 Court in session.

10:00 The Court placed findings on the record. The Court found the defendant guilty of counts 1, 2, 3, 4, 5 and 6:

10:20 Ms. Winder requested the defendant be taken into custody. Mr. Romaine objected. The Court ordered the defendant into custody.

The Court will sign the Findings later today after they are prepared. The Court set a sentencing date for March 2, 2016 at 8:30.

The Court signed

- **Conditions of Release**

APPENDIX E

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13-1-01891-1
CTD
Court's Decision
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2016 JAN 22 PM 2:45

Linda Nylro
Thurston County Clerk

IN THE SUPERIOR COURT OF WASHINGTON

IN AND FOR THURSTON COUNTY

STATE OF WASHINGTON,

Case No.: 13-1-01891-1

Plaintiff,

vs.

THE COURT'S DECISION AFTER BENCH TRIAL

MILLER, CYNTHIA SUE

Defendant

As to Count I, the Court finds that the Defendant is GUILTY beyond a reasonable doubt of Assault of a Child in the first Degree – Domestic Violence.

a. The Court finds that the elements have each been met beyond a reasonable doubt with regard to Count I.

i. The Court finds that on or between March 17, 2011 and October 31, 2013, in an act separate from that alleged in the other counts, the Defendant intentionally assaulted S.K. (DOB: 09/14/04) and caused substantial bodily harm;

ii. The Court finds that the Defendant was eighteen years of age or older and S.K. (DOB: 9/14/04) was under the age of thirteen;

iii. The Court finds that the Defendant had caused S.K. (DOB: 09/14/04) physical pain or agony that was equivalent to that produced by torture; and

iv. The Court finds that these acts occurred in the State of Washington.

b. The Court finds that the following aggravators have been proven beyond a reasonable doubt with regard to Count I, Assault of a Child in the First Degree - Domestic Violence:

i. The Court finds that Count I was aggravated by the fact that S.K. (DOB:

THE COURT'S DECISION AFTER BENCH TRIAL - 1

1 09/14/04) was a family or household member, pursuant to RCW
2 10.99.020;

3 ii. The Court finds beyond a reasonable doubt that Count I was aggravated
4 in that the Defendant's conduct during the commission of the current
5 offense manifested deliberate cruelty to the victim, S.K. (DOB: 09/14/04);

6 iii. The Court finds beyond a reasonable doubt that Count I was
7 aggravated in that the Defendant knew or should have known that the
8 victim of the current offense was particularly vulnerable or incapable of
9 resistance;

10 iv. The Court finds beyond a reasonable doubt that Count I was
11 aggravated in that the current offense involved domestic violence, as
12 defined in RCW 10.99.020, and the following was present:

13 1. The Defendant's conduct during the commission of the
14 current offense manifested deliberate cruelty or intimidation of
15 the victim.

16 v. The Court finds beyond a reasonable doubt that Count I was
17 aggravated in that the Defendant used her position of trust or
18 confidence, to facilitate the commission of the current offense.

19 As to Count II, the Court finds that the Defendant is GUILTY beyond a reasonable
20 doubt of Assault of a Child in the First Degree - Domestic Violence.

21 a. The Court finds that the elements have each been met beyond a reasonable
22 doubt with regard to Count II.

23 i. The Court finds that on or between March 17, 2011 and October 31,
24 2013, in an act separate from that alleged in the other counts, the
25 Defendant intentionally assaulted S.K. (DOB: 09/14/04) and caused
substantial bodily harm;

ii. The Court finds that the Defendant was eighteen years of age or older
and S.K. (DOB: 09/14/04) was under the age of thirteen;

iii. The Court finds that the Defendant had caused S.K. (DOB: 09/14/04)
physical pain or agony that was equivalent to that produced
by torture; and

iv. The Court finds that these acts occurred in the State of Washington.

1 b. The Court finds that the following aggravators have been proven beyond a
2 reasonable doubt with regard to Count II, Assault of a Child in the First Degree - Domestic
3 Violence:

4 i. The Court finds that Count II was aggravated by the fact that S.K.
5 (DOB: 09/14/04) was a family or household member, pursuant to
6 RCW 10.99.020;

7 ii. The Court finds beyond a reasonable doubt that Count II was
8 aggravated in that the Defendant's conduct during the commission of the
9 current offense manifested deliberate cruelty to the victim, S.K. (DOB:
10 09/14/04);

11 iii. The Court finds beyond a reasonable doubt that Count II was
12 aggravated in that the Defendant knew or should have known that the
13 victim of the current offense was particularly vulnerable or incapable of
14 resistance;

15 iv. The Court finds beyond a reasonable doubt that Count II was
16 aggravated in that the current offense involved domestic violence, as
17 defined in RCW 10.99.020, and one or more of the following was
18 present;

19 1. The Defendant's conduct during the commission of the current
20 offense manifested deliberate cruelty or intimidation of the victim.

21 v. The Court finds beyond a reasonable doubt that Count II was
22 aggravated in that the Defendants used her position of trust or confidence,
23 to facilitate the commission of the current offense.

24 As to Count III, the Court finds that the Defendant is GUILTY beyond a reasonable doubt
25 of Assault of a Child in the Second Degree - Domestic Violence.

 a. The Court finds that the elements have each been met beyond a reasonable from
other counts doubt with regard to Count III;

 i. The Court finds that on or between March 17, 2011 and October 31,
2013, in an act separate from other counts, the Defendant intentionally
assaulted S.K. (DOB: 09/14/04) and thereby recklessly inflicted substantial
bodily harm;

 ii. The Court finds that the Defendant was eighteen years of age or older
and S.K. (DOB: 09/14/04) was under the age of thirteen; and

 iii. The Court finds that this act occurred in the State of Washington.

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3 b. The Court finds that the following aggravators have been proven beyond a
4 reasonable doubt with regard to Count III, Assault of a Child in the Second Degree - Domestic
5 Violence:

6 i. The Court finds that Count III was aggravated by the fact that S.K.
7 (DOB: 09/14/04) was a family or household member, pursuant to RCW
8 10.99.020;

9 ii. The Court finds beyond a reasonable doubt that Count III was
10 aggravated in that the Defendant's conduct during the commission of the
11 current offense manifested deliberate cruelty to the victim, S.K. (DOB:
12 09/14/04);

13 iii. The Court finds beyond a reasonable doubt that Count III was
14 aggravated in that the Defendant knew or should have known that the
15 victim of the current offense was particularly vulnerable or incapable of
16 resistance;

17 iv. The Court finds beyond a reasonable doubt that Count III was aggravated
18 in that the current offense involved domestic violence, as defined in RCW
19 10.99.020, and following was present:

20 1. The offense was part of an ongoing pattern of psychological or
21 physical abuse of the victim manifested by multiple incidents over
22 a prolonged period of time: and

23 2. The Defendant's conduct during the commission of the current
24 Offense manifested deliberate cruelty or intimidation of the
25 victim.

v. The Court finds beyond a reasonable doubt that Count III was aggravated
in that the Defendant used her position of trust or confidence to facilitate the
commission of the current offense.

As to Count IV, the Court finds the Defendant is GUILTY beyond a reasonable doubt of
Assault of a Child in the Third Degree.

a. The Court finds that the elements have each been met beyond a reasonable doubt
with regard to Count IV.

1 i. The Court finds that on or between October 1, 2013 and October 31,
2 2013, in an act separate from that alleged in other counts, the Defendant
3 committed the crime of assault in the third degree against S.K. (DOB:
09/14/04):

4 1. Specifically the Court finds that with criminal negligence the
5 Defendant caused bodily harm accompanied by substantial pain
6 that extended for a period sufficient to cause considerable
7 suffering.

8 ii. The Court finds that the Defendant was eighteen years of age or older
9 and S.K. (DOB: 09/14/04) was under the age of thirteen; and

10 iii. The Court finds that this act occurred in the State of Washington.

11 b. The Court finds that the following aggravators have been proven beyond a
12 reasonable doubt with regard to Count IV – Assault of a Child in the Third Degree – Domestic
13 Violence:

14 i. The Court finds that Count IV was aggravated by the fact that S.K.
15 (DOB: 09/14/04) was a family or household member, pursuant to
16 RCW 10.99.020;

17 ii. The Court finds beyond a reasonable doubt that Count IV was
18 aggravated in that the Defendant's conduct during the commission of the
19 current offense manifested deliberate cruelty to the victim, S.K. (DOB:
20 09/14/04);

21 iii. The Court finds beyond a reasonable doubt that Count IV was
22 aggravated in that the Defendant knew or should have known that the
23 victim of the current offense was particularly vulnerable or incapable of
24 resistance;

25 iv. The Court finds beyond a reasonable doubt that Count IV was
aggravated in that the current offense involved domestic violence as
defined in RCW 10.99.020, and the following was present:

1. The offense was part of an ongoing pattern of psychological or
physical abuse of the victim manifested by the multiple incidents
over a prolonged period of time; and

2. The Defendant's conduct during the commission of the current
offense manifested deliberate cruelty or intimidation of the victim.

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v. The Court finds beyond a reasonable doubt that Count IV was aggravated in that the Defendant used her position of trust or confidence, to facilitate the commission of the current offense.

As to Count V, the Court finds the Defendant is GUILTY beyond a reasonable doubt of Criminal Mistreatment – Domestic Violence.

a. The Court finds that the elements have each been met beyond a reasonable doubt with regard to Count V:

i. The Court finds that between March 17, 2011 and October 31, 2013 the Defendant was entrusted with the physical custody of S.K. (DOB: 09/14/04) or had assumed the responsibility to provide to S.K. (DOB: 09/14/04) the basic necessities of life;

ii. The Court finds that the Defendant did, with criminal negligence create an imminent and substantial risk of bodily injury to S.K. (DOB: 09/14/04) by withholding the basic necessities of life;

iii. The Court finds that these acts occurred in the State of Washington; and

iv. The Court finds that the Defendant S.K. (DOB: 09/14/04) were family members, pursuant to RCW 10.99.020.

As to County VI, The Court finds the Defendant is GUILTY beyond a reasonable doubt of Assault of Child in the Second Degree – Domestic Violence.

a. The Court finds that the elements have each been met beyond a reasonable doubt with regard to Count VI.

i. The Court finds that on or between March 17, 2011 and October 31, 2013, in an act separate from that alleged in other counts, the Defendant assaulted S.K. (DOB: 09/14/04) by suffocation;

ii. The Court finds that the Defendant was eighteen years of age or older and S.K (DOB: 09/14/04) was under the age of thirteen; and

iii. The Court finds that this act occurred in the State of Washington.

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b. The Court finds that S.K. (DOB: 09/14/04) was a family or household member pursuant to RCW 10.99.020.

Dated this 21st of January, 2016.

Carol Murphy

Judge Carol Murphy

APPENDIX F

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2013 DEC 23 PM 2:32

BETTY J. GOULD, CLERK

**SUPERIOR COURT OF WASHINGTON
THURSTON COUNTY**

STATE OF WASHINGTON,

Plaintiff,

NO: 13-1-01891-1

vs.

**DECLARATION OF PROSECUTOR
SUPPORTING PROBABLE CAUSE**

CYNTHIA SUE MILLER,

Defendant

JAMES C. POWERS, Deputy Prosecuting Attorney for Thurston County, declares the following in support of probable cause for charges in the above-entitled cause:

I am a Deputy Prosecuting Attorney for Thurston County, Washington. I believe that there is probable cause to believe that the above named defendant has committed the crime(s) of **ASSAULT OF A CHILD IN THE SECOND DEGREE/DOMESTIC VIOLENCE**, based on the following information from the official investigative reports:

On October 31, 2013, Acting Sergeant Simper at TCSO asked Det. Gallagher to respond to Southbay Elementary School to assist Child Protective Services (CPS) with a child neglect complaint. When Det. Gallagher arrived, she spoke with CPS Social worker Tara Kessel. She advised she had come to the school to check the welfare of a group of children placed with their grandmother. One of the girls, S.L-K. (09-14-2004) had suspicious bruising on her face and body, and the school had become concerned about her welfare. Tara had interviewed the girls and learned the other girls were in relatively good health with no immediate health concerns. S.L-K. however, had several concerning factors including a report she was not being fed properly and had recently lost a large amount of weight. Det. Gallagher placed the children into protective custody at the school and assisted Tara with contacting the custodial grandmother, Cynthia Miller at her house.

Cynthia said S.L-K. is the biological child of Heather Yeck-Kempton, who was her deceased son's girlfriend at one point S.L-K. had been placed into custody of California CPS when she was about two years old because of abuse by Heather. According to Cynthia, while S.L-K. was in protective custody she continued to be abused, so California placed her and her sister, with her. Cynthia has had custody of the two girls since S.L-K. was about five years. Recently two other granddaughters had been placed with her when they were taken out of their parent's custody in Mason County. Cynthia also had half time custody of her grandson. During Det. Gallagher's discussion with Cynthia, she said S.L-K. has an issue with stealing and often steals items such as makeup and food. She denied any type of food punishment with S.L-K., and said she only spansks her sometimes. Cynthia

**DECLARATION OF PROSECUTOR
SUPPORTING PROBABLE CAUSE - 1**

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakoridge Drive S.W.
Olympia, WA. 98502
(360) 786-5540 FAX (360) 754-3358

1 said she "whipped" S.L-K. the night before, but said she looked and there was no bruising
on her when she checked.

2 S.L-K. was taken to the St. Peter Hospital Sexual Assault Clinic and examined by
3 Dr. Hall and Lisa Wahl the following day. The examination showed S.L-K. had bruising
4 on her entire body from the top of her head to her toes. Her buttocks had a large bruise,
5 about three inches in diameter on the right side of her buttocks. On her left buttocks, there
6 was a bruise in the shape of a handprint. She had red blisters on the inside of her upper
7 thigh, which appeared to be blistering. The bruises on her body were in various states of
8 healing, some bruising was on top of older bruises. She had old marks on her body, which
9 appeared to be burn marks. The following week, S.L-K. was taken to Mary Bridge
10 Children's Hospital and an X-Ray was done from head to toe on her. An old spiral fracture
11 to her left leg was noted, but did not appear on the x-ray. The x-ray showed healing
12 fractures to both of S.L-K.'s wrists, a healing fracture to her left arm, and a healing fracture
13 to one of her fingers and one of her toes.

14 Det. Gallagher interviewed the girls separately. Each noted S.L-K. was treated
15 different because she had a "demon." They each said they would yell "Jehovah" at her
16 while she stood in a corner holding a bible over her head in an effort to get the demon out.
17 They talked about how S.L-K. would get spanked with a belt, but they would not. When
18 Det. Gallagher interviewed S.L-K., she was reluctant to talk about Cynthia, but said she
19 did not want to go back and did not feel safe there. Her body language changed
20 dramatically whenever Det. Gallagher approached the topic of Cynthia and discipline. She
21 would immediately change the topic and would attempt to evade questions. When the tape
22 recorder was turned off, S.L-K. advised that Cynthia had tried to drown her in the bathtub
23 by holding her under the water. This had also been reported to CPS.

Det. Gallagher made several attempts to meet with Cynthia to obtain her statement
but those efforts were unsuccessful. On December 10, 2013, Cynthia was contacted at the
Thurston county Family Court, where she had a scheduled hearing with CPS, She was
placed into custody and booked into the Thurston County Jail. She refused to make a
statement to Detectives and invoked her Right to Remain Silent.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing
is true and correct to the best of my knowledge. Signed on December 23, 2013, in Olympia,
Washington.


JAMES C. POWERS
Deputy Prosecuting Attorney
WSBA # 12791

DECLARATION OF PROSECUTOR
SUPPORTING PROBABLE CAUSE - 2

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
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APPENDIX G

investigation of Kenneth Spears.

4. During the pendency of this case, I did not personally interview the victim about the facts of the case. It is my practice not to interview child victims when they have already been interviewed by law enforcement or a forensic interviewer and I have the transcripts of those interviews, unless defense counsel wishes to interview them, at which point I generally offer to be present. Additionally, when I have transcripts from medical interviews, which I did in this case, there is even less reason for me to personally interview them about the facts of the case. I did, on a number of occasions, inquire of Mr. Romaine if he wished to interview the victim and her sister and he replied that he did not believe it was necessary.

5. I relied upon the statements made by the victim to Detective Jamie Gallagher of the Thurston County Sheriff's Office on November 18, 2013, and December 31, 2013, which are attached to this response as Appendix I and J. I also relied upon statements the victim made to sexual assault nurse examiner Lisa Wahl on November 1, 2013, which is attached to this response as Appendix K. At no time did the victim indicate anyone other than Ms. Miller had hurt her. These reports are true and accurate copies of the reports that I received.

6. Ms. Miller's bench trial was held on January 11, 12, 13, 19, 20, and 21, 2016. The Court entered its written Decision After Bench Trial on January 22, 2016.

7. During trial, I asked the victim if anyone else had hurt her. She said that no one other than Ms. Miller and a person named Dean had done so. See Appendix L, a portion of the victim's testimony at trial.

8. On February 24, 2016, the victim had a counseling appointment in the same building where my office is located. Stephon Stephens, the grandfather of the victim who has custody of her, came to my office and informed me that the victim and her sister had disclosed that a person named Kenneth had sexually abused them. Mr. Stephens was of the opinion that because the girls were away from Ms. Miller, they felt safe enough to disclose other bad acts they had experienced. At no time did Mr. Stephens indicate that the victim had recanted her accusations against Ms. Miller.

9. On February 24, 2016, I contacted the Sheriff's Office regarding this report. In the days following my contact, I was advised to speak directly with Detective Gallagher.

Detective Gallagher was unavailable for a few days, and when I spoke with her she advised me that because of a recent annexation, the address in question was actually in Lacey, Washington, and out of her jurisdiction. I gave this information to Mr. Stephens and advised him to call Dispatch to make a report to the Lacey Police Department. I provided him with Dispatch's number, as he had more details and had direct knowledge of the disclosures that the victim and her sister had made.

10. On March 3, 2016, the Lacey Police Department opened the investigation. See Appendix M to this response, which contains portions of the police report of Detective J. P. Williams. This report is a true and accurate copy of the report that I obtained from Detective Williams regarding his investigation of Kenneth Spears.

11. On March 4, 2016, I forwarded to Detective Williams an e-mail I had received on January 8, 2016, regarding the possible identity of "Kenneth Unknown." A copy of that e-mail is attached to this response as Appendix N.

12. As part of the investigation into the allegations against Kenneth Spears, the victim was again interviewed and examined by Lisa Wahl, the sexual assault nurse examiner. During that interview, which occurred on April 14, 2016, the victim told Ms. Wahl that she had told Cynthia Miller about Kenneth Spears' sexual abuse, and that Ms. Miller beat her for telling, and then turned her over to Ms. Miller's adult son, who punished her by holding her hand over a hot burner and threatening to cut her hand or fingers off with a knife. See Appendix N, report of Ms. Wahl, at 5-6. The victim further told Ms. Wahl that no one else had done sexual things to her before. Appendix O at 4. These reports are true and accurate copies of the reports that I received.

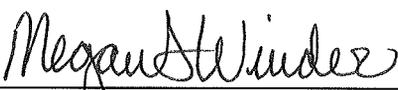
13. There was no investigation into Kenneth Spears' crimes against this victim before or during the trial of Cynthia Miller. To the best of my knowledge, the victim has not recanted any of Ms. Miller's action. The only information I had about "Kenneth Unknown" was provided to Mr. Romaine six months before trial.

14. In June 2016, I spoke with Detective Williams and he inquired as to whether Ms. Miller would make a statement. I informed him that Ms. Miller was represented, and that I would contact Mr. Romaine, her attorney, to see if she wished to make a statement on Kenneth Spears's case. I made the contact with Mr. Romaine via email. A copy of the e-mail, dated June 17, 2016, is attached to this response as Appendix P. I never received

a response to that e-mail.

I do solemnly swear and affirm, under the penalty of perjury under the laws of the State of Washington, that the above is true and correct.

Signed this 26th day of October, 2016, in Olympia, Washington.



Megan A. Winder, WSBA # 42962
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I certify that I served a copy of the State's Response to Personal Restraint Petition on the date below as follows:

Electronically filed at Division II

TO: DAVID PONZOHA, CLERK
COURT OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA WA 98402-6045

AND VIA E-MAIL

WILLIAM ANTHONY ROMAINE
LAW OFFICE OF WILLIAM ROMAINE
16404 SMOKEY POINT BLVD, STE 302
ARLINGTON WA 98223-8417

WAR@LAWROMAINE.COM

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

Dated this 26th day of October, 2016, at Olympia,

Washington.


CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTOR

October 26, 2016 - 2:31 PM

Transmittal Letter

Document Uploaded: 5-prp2-486725-Response.pdf

Case Name: STATE V CYNTHIA MILLWE

Court of Appeals Case Number: 48672-5

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: Cynthia L Wright - Email: wrightc@co.thurston.wa.us

A copy of this document has been emailed to the following addresses:

WAR@ROMAINELAW.COM