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DIVISION II

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STATE OF WASHINGTON

BY _____
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In the Court of Appeals of the State of Washington
Division Two

State of Washington, Respondent,	No. 50918-1-II
v	
John Griffin Headrick, Appellant.	Statement of Additional Grounds for Review

I John Griffin Headrick, Appellant, have received and reviewed the opening brief prepared by Lise Ellner and Erin Sperger, Attorneys for Appellant. Summarized below are the additional grounds for review that are not addressed in the opening brief. I understand this Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits. And please be reminded that pro se pleadings are held to a less stringent standard than those drafted by lawyers.

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A. Assignment of Errors

1. The State failed to inform the Appellant of the nature and cause of the accusation against him as child molestation does not have an explicit mens rea requirement.

2. The State violated the Appellant's privileged marital communications and legal documents by intercepting, opening, seaching then seizing his mail sent to his wife as a pretrial detainee.

3. The Appellant was denied the right to effective assistence of counsel.

4. The State failed to provide all discovery.

5. The Appellant was denied his fundamental right to be present at all stages of the proceedings.

6. The Appellant was denied his fundamental right to a Speedy Trial.

7. The State made errors at the Judment and Sentencing hearing.

B. Supplemental Statement of the Case

Headrick adopts and incorporates the Statement of the Case as presented by Appellant Attorneys in the Opening Brief of Appellant. The Additional Grounds for Review are presented below and are related to the issues in this matter.

C. Additional Ground One

Mens Rea Requirement

Headrick challenges his conviction of Child molestation in the first degree pursuant to RCW 9A.44.083, due to Child molestation lacks an explicit mens rea requirement to be informed of the nature and cause of the accusation against him guaranteed under the Sixth and Fourteenth Amendments and the State's corollary Art. 1, § 3 and Art. 1, § 22.

Living under a rule of law entails various suppositions, one of which is that "[all persons] are entitled to be informed as to what the State commands or forbids." Lanzetta v. New Jersey, 306 US 451, 453, 59 SCt 618, 83 LEd 888 (1939).

The statement by the Bluford court, "Child molestation does not explicitly include an intent requirement," is disturbing in light of well established law because prohibited

criminal acts must have a clearly defined mens rea or intent behind the wrongdoing from which a prohibited result follows; a guilty or evil intent in performing an act prohibited and penalized as a crime. State v. Bluford, 195 WnApp 570, 584, 379 P3d 163 (2016) rev'd on other grounds, 183 Wn.2d 298, 393 P3d 1219 (2017).

"The existence of a mens rea requirement that the accused know the facts that make the accused's conduct illegal is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence; generally speaking, an accused's knowledge of the facts that make the accused's conduct fit the definition of the criminal offense is necessary to establish mens rea." Staples v. United States, 511 US 600, 114 SCt 1793, 128 LEd 2d 608 (1994).

The mens rea or intent behind child molestation needs to be defined so that the accused may know the nature and cause of the accusation against him or her, to know what the wrongdoing is that he or she is prohibited from committing to defend against the charge.

The courts may not circumvent the mens rea or intent requirement and it is a question of law to be determined by the courts, not the legislature, and certainly not left in the hands of the jury to determine.

"The mens rea requirement, that an accused know the facts that make the accused's conduct illegal under a criminal statute is a question of law, to be determined by a court; it is for courts, through the interpretation of the statute, to define the mens rea required for a conviction; that task cannot be reduced to setting a general standard that leaves it to a jury to determine." Staples v. United States, 511 US 600, 114 SCt 1793, 128 LEd 2d 608 (1994).

The State bears the burden of proving every element of a crime beyond a reasonable doubt. How may the State obtain a lawful conviction of child molestation, that is, proving every element beyond a reasonable doubt, when "child molestation does not explicitly include an intent requirement"? And that requirement cannot be reduced to setting a general standard that leaves a jury to determine?

Will this Court, clearly define the mens rea requirement of Child molestation required for a lawful conviction?

It appears the obvious effect of the legislature to not embody an explicit mens rea or intent requirement for child molestation, is to ease the prosecution's course to conviction, thereby effectively to decorticate the defendant of such benefit as he derived at common law from innocence of evil purpose.

The purpose of the mens rea requirement is to avoid punishing people "for apparently innocent activity." Assuming that, "innocent activity" describes conduct without any consciousness of wrongdoing, the risk of punishing such activity can be avoided by reading into the statute the common-law concept of mens rea: "an evil or mental culpability."

There is an old cliché, "nothing new under the sun," and this rings true as the archaic and historical written record of child molestation, among other crimes, is found in laws given on Mount Sinai around the year 1445 BC..

"If a man entices a virgin who is not betrothed, and lies with her, he shall surely pay the bride-price for her to be his wife. If her father utterly refuses to give her to him, he shall pay money according to the bride-price of virgins." Exodus 22:16,17 NKJV

In dissecting the verse above in more modern terms, the man would be the perpetrator, the virgin (at any age) is the intended victim, the crime (lies with) is a sex offense - rape, molest, etc..., the purpose is sexual gratification.

Headrick has not violated this biblical law.

D. Additional Ground Two

Privileged Communication Violations

Headrick challenges the intercepting, opening (outgoing sealed mail), reading, copying and dissemination of his privileged marital communications and legal documents, hereafter PMC & LD, he mailed to his wife while he was a pretrial detainee in the Grays Harbor County Jail, hereafter GHCJ, that the GHCJ turned over to the State without his knowledge, consent or warrant, depriving him of his rights guaranteed under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments and the State's corollary Art. 1, § 3; Art. 1, § 5; Art. 1, § 7; Art. 1, § 9 and Art. 1 § 22.

Interference with Headrick's PMC & LD implicates his spousal communication privileges.

The State admitted on October 19, 2017, in its "Answer to Petitioner's Writ of Habeas Corpus," hereafter Answer, COA 50588-6-II, "While in the jail, any incoming and outgoing mail is also monitored and inspected. Mail that is found to contain material that may be relevant to an on-going investigation or filed case may be copied and forwarded the investigating officer and/or prosecutor for review." p.7.

The State further stated, "On January 22, 2017, the Defendant wrote a letter to his wife, Shannan Headrick. Along with that letter, the Defendant enclosed a "Statement and Pleading." "...The letter and statement was intercepted by the Corrections Deputy Walter of the Grays Harbor County Sheriff's Office and copies were forwarded to the Prosecutor's office on January 24, 2017." Answer p. 7-8.

By the State's own testimony, shows that the pratice of intercepting, opening, reading of Headrick's PMC&LD that is sent out through the outgoing mail and copied for the State is not an isolated one-time "error." Rather, it appears to be an on-going deliberate, if not routine practice. See RCW 9.73.020, 9.73.030 and 9.73.060.

How might the State benefit from reading Headrick's mail?

From the State reading Headrick's PMC&LD through the mail, the State gained information about:

i) The private, confidential, personal and inner workings of Headrick's defense and his relationship with his defense counsel;

ii) The methodology of Headrick's own private consulting experts which includes Shannan Headrick his wife;

iii) A view of Headrick's relationship with his family and his wife which includes PMC & LD to which the State is not entitled under the PMC between a husband and wife;

iv) Headrick's Judaic, Talmudic and Messianic religious views and beliefs;

v) Headrick's personality, friends and associates.

The PMC & LD mail that the GHCJ intercepted, opened, read, copied and disseminated to the State are letters and trial preparation legal paperwork Headrick sent to his wife (Shannan Headrick) and possible PMC & LD Shannan mailed to him. These communications between a husband and wife are privileged. Blau v. United States, 340 US 332, 71 S Ct 301, 95 LEd 306 (1951).

Possible Violations of 18 U.S.C. § 1702

The Code of Federal Regulations, in its section on inmate correspondence, does not provide for the GHCJ to send copies of inmate correspondence to anyone. In fact, interfering with Headrick's mail may be a violation of 18 USC § 1702.

The freedom to write and receive private letters while incarcerated as a pretrial detainee exists behind jail doors.

A central principle of our law regarding prisoners and pretrial detainees is that "[t]here is no iron curtain drawn down between the constitution and the prisons of this country." Bell v. Wolfish, 441 US 520, 545, 99 SCt 1861, 60 LEd2d 447 (1979) (quoting Wolf v. McDonnell, 418 US 539, 94 SCt 2963, 41 LEd2d 935 (1974). "Prison walls do not form a barrier separating prison inmates from the protections of the constitution." Turner v. Safley, 482 US 78, 84, 107 SCt 2254, 96 LEd2d 64 (1987); Thornburgh v. Abbott, 490 US 401, 407, 109 SCt 1874, 104 LEd 2d 459 (1989). The principle cited above applies to all the pretrial detainees incarcerated in our county jails throughout our State. Pretrial detainees are afforded protection under the Fourteenth Amendment and jail regulations and policies cannot abolish the constitutional right to privacy and PMC nor can it eliminate their ability to correspond freely.

As Justice Holmes observed almost a century ago, "the use of the mail is almost as much as a part of free speech as the right to use our tongues ...." United States ex rel Milwaukee Social Democratic Pub. Co. v. Burleson, 255 US 407, 437, 41 SCt 352, 65 LEd 704 (1921) (dissenting) and Blount v. Rizzi, 400 US 410, 416, 91 SCt 423, 27 LEd 2d 498 (1971) affirming this principle.

Violation of the First Amendment and Art. 1, § 5.

"The right to receive and send mail is unquestionably protected by the first amendment." Wolfish v. Levi, 573 F.2d 118, 130 (2nd Cir. 1978) rev'd and remanded on other grounds in Bell v. Wolfish, 441 US 520, 99 S Ct 1861, 60 L Ed 2d 447 (1979), citing Blount v. Rizzi, 400 US 410, 91 S Ct 423, 27 L Ed 2d 498 (1971).

As the Judge writes in Wolfish v. Levi, "It cannot be gainsaid that the reading of mail by jail officials chills the expression of first amendment rights by correspondence inside and outside the institution. It takes a little more than common sense to realize that a tender note, so important to the moral of the individual, might never be penned if the writer knew it would first be scrutinized by a guard." And then the Judge ordered the facility to refrain from reading inmate correspondence absent good cause. Id. at 130.

It is more chilling to know that the Headricks' love letters and religious prayers are being read not just by the GHCJ, but also by the prosecution, investigators, Sheriff's Office and is now available for public disclosure, which is preposterous, that places the Headricks' at open risk and jeopardy of public harassment, humiliation, injury and ridicule. No member of the prosecution or investigators assigned to this case,

should be given access to any of the Headricks' PMC&LD by the GHCJ without following due process of law and a "spurious claim of security cannot vindicate infringement of so basic a right." Wolfish v. Levi, at 130-131. See also Wolfle v. United States, 291 US 7, 78 LEd 617, 54 S Ct 279 (1934).

It is an obvious assumption that the State is using the mail system inside the GHCJ to infringe upon the privacy rights of its pretrial detainees and as a spying tool to reconnoiter information against Headrick to prejudice and impair the fairness of this case.

The right to privacy of one's mail was recognized by the U.S. Supreme Court in ex parte Jackson. "The constitutional guaranty of the right of the people to be secure in their papers against unreasonably searches and seizures extends to their papers, thus closed against inspection, whoever they may be." Ex parte Jackson, 96 US 727, 733, 24 LEd 877 (1878).

Violation of the Fourth Amendment and the State's corollary Art. 1, §7.

The Fourth Amendment provides for the "right of the people to be secure in their persons, houses, papers

and effects..." U.S.C.A. Amendment IV. A remedy for an unlawful search and seizure is suppression of that evidence and the fruits thereof. Wong Sun v. United States, 371 US 471, 83 SCt 407, 9 LEd 2d 441 (1963).

While the GHCJ is not Headrick's home, "the Fourth Amendment protects people, not places." Katz v. United States, 389 US 347, 351, 88 SCt 507, 19 LEd 2d 576 (1967). Headrick does have a reasonable expectation of his privacy if the GHCJ officers tell him his correspondence is checked for contraband but not read.

Pretrial detainees do not lose all of their privacy rights under the Fourth Amendment while incarcerated, and the State's corollary, Art. 1, §7, provides equal or more protection. State v. Jackson, 138 Wn 2d 343, 349, 979 P 2d 833 (1999) (quoting State v. Houser, 95 Wn 2d 143, 149, 622 P 2d 1218 (1980)). "An individuals mere presence in a prison cell does not totally strip away every garment cloaking his Fourth Amendment rights [.]" United States v. Cohen, 796 F.2d 20, 24 (2nd Cir. 1986). And the Fourth Amendment and Art. 1, §7, protects from unreasonable searches and seizures. State v. Hendrickson, 129 Wn 2d 61, 70, 917 P 2d 563 (1996); State v. Knox, 86 Wn App 831 (1997); and State v. Thompson, 151 Wn. 2d 793, 802, 92 P 3d 228 (2004).

There are no sufficient facts that would lead a reasonable person to conclude there was a remote possibility or even a slight probability that the Headricks' were involved in criminal activity by writing love letters and working on pending pretrial legal matters together as a husband and wife should communicate one-to-another. Headrick consults with his wife on legal matters as she has her bachelor's degree in Criminal Justice and he will not place all his faith in one court appointed attorney. There is no 'nexus of probable cause' between criminal activity and the Headricks' PMC&LD; suspicion and belief is legally insufficient; and is limited to what the officer knew at the time of the arrest. State v. Card, 103 Wn 2d 361, 365, 693 P2d 81 (1985); State v. Anderson, 105 Wn App 223, 228, 19 P3d 1094 (2001); State v. Thein, 138 Wn 2d 133, 140, 977 P2d 582 (1999); State v. Scott, 93 Wn 2d 7, 11, 604 P2d 943 (1980); State v. Helmka, 86 Wn 2d 91, 92, 542 P2d 115 (1975) and State v. Maesse, 29 Wn App 642, 629 P2d 1349 (1981).

If in this case, the State instigated the intercepting, searching and seizing of the PMC&LD, then the Headricks' rights have been violated. An evidentiary hearing can establish the facts in this case. We need to know who ordered the interception, collection, opening, reading, copying and dissemination of the Hearicks' PMC&LD to the State. This Court may also remand this petition for a full hearing on the

merits or a reference hearing pursuant to RAP 16.11(a) and RAP 16.12. cln re Rice, 118 Wn2d 816, 828 P2d 1086 (1992).

Violation of the Fifth Amendment and Art. 1, §9.

The State presented at trial the PMC & LD Headrick mailed to his wife for discussion and consultation. The State's use of the PMC & LD against him as evidence, invokes a violation of his Fifth Amendment and Art. 1, §9, right not to be compelled to be a witness against himself. The Fifth Amendment privilege against compelled self-incrimination applies to the states through the Fourteenth Amendment Due Process Clause.

See also Additional Ground Three.

Violation of the Fourteenth Amendment and Art. 1, §3.

GHCJ is operated and controled under the direct supervision of the Sheriff's Office. The Sheriff's Office not only enforces the law but also has a duty under oath to guard the rights of pretrial detainees in their care and custody. Headrick was denied his fundamental right to privacy, liberty and property in his efforts to prepare himself for trial when the State intercepted, searched and seized PMC & LD. The freedom from unreasonable search and seizures is

expressly guaranteed by the Fourth Amendment and considered a fundamental right under the Fourteenth Amendment. See Wolf v. Colorado, 338 US 25, 69 SCt 1359, 93 LEd 1782 (1949), overruled on other grounds in Mapp v. Ohio, 367 US 643, 81 SCt 1684, 6 LEd 2d 1081 (1961).

At some point in time, due process of law that is guaranteed by Federal and State law, has failed to protect Headrick of his fundamental rights behind jail doors inside the GHCJ.

Nothing can destroy a government more quickly than its failure to observe its own laws. As Justice Brandis said in his dissenting opinion, "Our Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example.... If the Government becomes a lawbreaker, it breeds contempt for law, it invites every man to become a law unto himself; it invites anarchy." Olmstead v. United States, 277 US 438, 485, 48 SCt 564, 72 LEd 944 (1928).

The ignoble short cut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. It has been recognized that the right of privacy embodied in the Fourth Amendment is enforceable against the State, and the right

to be secure against severe invasions of privacy by State Officers and its agencies, is constitutional in origin, and can no longer be permitted to remain an empty promise on such a fundamental right. Because it is enforceable in the same manner and like effect to other basic rights secured by the Due Process Clause of the Fourteenth Amendment. It can no longer be permitted revocable at the whim of any State officers or its agencies, who in the name of law enforcement, chooses to suspend its enjoyment.

If Headrick's PMC&LD can thus be intercepted, held, and searched without a warrant and then used as evidence him for the offense charged, then the protection of the Fourth Amendment declaring Headrick's right to be secure against such searches and seizures is of no value, and so far on those thus placed are concerned, might as well be stricken from the constitution. The courts and its officers in their role to prosecute the accused is not to be aided by sacrificing those great principles established by many years of endeavor and great suffering which has resulted in their embodiment in the Supreme Law of the Land.

The Fourteenth Amendment prohibits the conviction and incarceration, whose trial was offensive to the common

and fundamental ideas of fairness and right.

E. Additional Ground Three

Ineffective Assistance of Counsel

The right to effective assistance of counsel in a criminal proceeding is guaranteed by the Sixth Amendment and the State's corollary Art. 1, § 22 (Amend 10). Strickland v. Washington, 466 US 668, 104 SCt 2052, 80 LEd 2d 674 (1984); State v. Hendrickson, 129 Wn 2d 61, 77, 917 P2d 563 (1996). Counsel is ineffective if his or her conduct deficient, or that it fell below an "objective standard of reasonableness," and that the conduct caused actual prejudice to the defendant. In other words, the defendant must be able to establish that there is a reasonable possibility that the outcome of the proceeding would have been different but for the deficient conduct of counsel. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P2d 816 (1987).

An ineffective assistance of counsel claim cannot be predicted on conduct that may be characterized as legitimate trial strategy or tactics. State v. Goldberg, 123 Wn App 848, 99 P3d 924 (2004); State v. McNeal, 145 Wn 2d 352, 362, 37 P3d 280 (2002) (citing State v. Adams, 91 Wn 2d 86, 90, 586 P2d 1168 1978)). However, the deference owed to strategic judgments is

cemented in the adequacy of the investigation supporting judgments, "strategic choices made after a thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigations. In other words, counsel has a duty to make a reasonable decision that make particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 US 510, 521-22, 123 S Ct 2527 (2003) (quoting Strickland v. Washington, 446 US 668, 690-91, 104 S Ct 2052, 80 L Ed 2d 674 (1984).

The inquiry in determining whether counsel's performance was constitutionally defective is whether counsel's assistance was reasonable considering all of the circumstances. Strickland v. Washington, 466 US at 689-91. To provide constitutionally adequate assistance, "Counsel must, at a minimum, conduct a reasonable investigation enabling [counsel] to make informed decisions about how to best represent [the] client." In re Brett, 142 Wn 2d 868, 16 P 2d 601, 604 (2001); Sanders v. Ratelle, 21 F.3d 1446, 1456 (9th Cir. 1994) (citing Strickland v. Washington, 466 US at 691); see also the ABA

Standards for Criminal Justice: Defense Function Standard 4-4.1 and 4-6.1, National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representation, Guideline 4.1 (1997)("Investigation"); RPC 1.

"A lawyer shall provide competent representation to a client. Competent representation requires... thoroughness and preparation reasonably necessary for the representation." RPC1.1. The degree and extent of investigation required will vary depending upon the issues and facts of each case, but the Washington Supreme Court held that "at the very least, counsel must reasonably evaluate the evidence against the accused." State v. A.N.J., 168 Wn2d 91, 225 P3d 956 (2010). To fail to do so renders counsel ineffective. Id.

There is no indication that defense counsel conducted a reasonable investigation, evaluated the evidence and did not inform his client about the PMC&LD violations that were used against Headrick at trial. These items contain Headrick's private statements to which the State has access to outside the presence of his attorney. See, e.g., Massiah v. United States, 377 US 201, 84 SCt 1199, 12 LEd2d 246 (1964). Similary PMC&LD in which Headrick discusses with his wife should be protected from perusal by the State, and its contents and any fruits thereof should be suppressed. See, e.g., Satterwhite v. Texas, 486 US 249, 108 SCt 1792,

100 LEd 2d 284 (1983).

Unbeknownst to the jury, was that the Statement and Pleading presented to the court for the jury to evaluate was Headrick's early on pretrial preparation legal paperwork in progress, PMC&LD between a husband and his wife, late discovery (surprise evidence) presented at trial and computer altered by the prosecution. The jury's evaluation and strength of the Statement and Pleading may well have been the jury's determinative decision to decide a verdict unfavorable against Headrick. Enclosed is a copy of the Statement and Pleading.

"[T]rial courts must take strong measures to ensure that the balance is never weighed against the accused." Sheppard v. Maxwell, 384 US 333, 86 SCt 1507, 16 LEd2d 600 (1966).

To give defense counsel the benefit of doubt, if in the State's Answer, "The letter and statement were provided to defense on January 27, 2017.", p. 8, was made in error, the evidence record would establish the truth of the matter, then defense counsel would not of known to acquaint himself with the facts of the PMC&LD violations to conduct a reasonable investigation enabling him to make informed decisions about how to best represent his client.

There is no doubt that at trial, defense counsel was handed a computer altered version of the Statement and Pleading from the deputy prosecuting attorney to be entered as evidence and for counsel to review. This was the first time Headrick became aware of his PMC&LD being used against him and did not know his rights were being violated as his counsel did not inform him of his PMC rights. This disclosure was introduced when Headrick was in a state of confusion as to why he was at trial because Headrick was never informed of a trial date and knows now, the trial setting hearing was held in his absence that will be addressed in Additional Ground Five below. Headrick was also confused because there was no trial preparation with defense counsel and why trial was proceeding forward when there was an unresolved pending pre-trial petition, COA 50588-6-II, challenging his confinement and other constitutional issues. By the State proceeding with trial, the trial affected the petitions outcome.

Instead of defense counsel motioning the court to suppress the late discovery evidence nor requested that there be an evidentiary hearing to determine the facts, the unthinkable happened, defense counsel beguiled Headrick who is still under threat, duress, and coercion, and defense counsel allowed the use of the PMC&LD to prejudice

Headrick further at trial which no reasonably competent defense counsel would have committed.

Headrick mailed the PMC&LD to his wife and he is no longer the owner of the mail but his wife who is the addressee and may not give consent of its use. Shannan Headrick did not authorize or give consent to the State nor to her husband's defense counsel permission to use any PMC&LD mailed to her to be used against her husband at trial.

If defense counsel knew the State was unlawfully obtaining Headrick's PMC&LD as far back as January 2017, failed to advise his client of the violation, did not make any legal sound attempt to have the State cease and desist from violating PMC&LD rights, then defense counsel would be non-competent, ineffective and not acting in the best interest of his client. In fact, defense counsel's actions would actually be constitutionally defective and actually prejudice his client.

With the defense counsel's actions above in mind, we have to question, did defense counsel, Michael J. Nagle, WSBA # 20657, meet all of the endorsed standards, certifications and qualifications to fully and effectively represent Headrick in this most serious "Persistent Offender Repre-

sentation" case, pursuant to RCW 10.101.060(1)(a)(iii)? See also Standard 14, Qualification of Attorneys.

F. Additional Ground Four

Discovery Violation

The failure of the State to provide all the requested discovery is an unconstitutional denial of Headrick's right to discovery in violation of Federal and State due process.

Under Criminal Rule (CrR) 4.7, the prosecutor is directed to disclose to the defendant the following materials and information "within the prosecuting attorney's knowledge which tends to negate the defendant's guilt as to the offense charged." CrR 4.7(3). Additionally, CrR 4.7(c) requires the prosecuting attorney to disclose relevant information and material regarding specified searches and seizures, and CrR 4.7(e) authorizes the court to order disclosure of any other relevant material.

The purpose of discovery rules in a criminal context is to prevent the defendant from being prejudiced by surprise, misconduct or arbitrary action by government. State v. Cannon, 130 Wn 2d 313, 922 P2d 1293 (1996). The U.S. Supreme Court has expressed the philosophy behind rules such as CrR 4.7 in language that is particularly appropriate and

proper in this case, "The adversary system of trial is hardly an end in itself; it is not yet a poker game in which players enjoy an absolute right always to conceal their cards until played." Williams v. Florida, 399 US 78, 90 SCt 1893, 1896, 26 LEd2d 446 (1970).

A prosecutor must resolve questions of doubt regarding disclosure in favor of disclosure to the defense. United States v. Agurs, 427 US 97, 108, 96 SCt 2392, 49 LEd2d 342 (1976). As the Supreme Court pointed out in its decision in Berger, "the prosecutor's interest is not that he/she shall win a case, but that justice shall be done." Berger v. United States, 295 US 78, 55 SCt 629, 79 LEd 1314 (1935). And, "the prosecutor must resolve any doubt regarding disclosure in favor of sharing the evidence with the defense." State v. Dunivin, 65 Wn App 728, 829 P2d 799 (1992).

Although the duty of disclosure is limited to information within the knowledge, possession or control of the prosecutor, this duty also encompasses agents acting under the prosecutor's authority, including the investigating officers and deputy's. Id; State v. Vaster, 99 Wn 2d 44, 53, 659 P2d 528 (1983); City of Seattle v. Fettig, 10 Wn App 773, 775, 519 P.2d 1002 (1974). In fact, the prosecutor has a duty to learn of any favorable evidence known to agents acting under the prosecutor's authority, including the investigating officers

and deputy's of the Sheriff's Office. Id; citing Kyles v. Whitley, 514 US 419, 437, 115 SCt 1555, 131 LEd 2d 490 (1995).

At a minimum, CrR 4.7 requires the prosecutor to disclose the type of information required under Brady v. Maryland, 373 US 83, 87, 83 SCt 1194, 10 LEd 2d 215 (1963) (State v. Garcia, 45 WnApp 132, 724 P2d 412 (1986); State v. Greiff, 141 Wn 2d 910, 10 P3d 390 (2000); State v. Bartholomew, 98 Wn 2d 173, 205, 654 P2d 1170 (1982), rev'd on other grounds, 463 US 1203, 103 SCt 353, 77 LEd 2d 1383 (1983) (The State's disobedience to a discovery rule can constitute a violation of a defendant's right to due process.)) "A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice [...]" Brady v. Maryland, 373 US at 87-88. And since Brady, evidence is implicit, if not directly incorporated by CrR 4.7, then withholding of the disclosure of such evidence is inconsistent with, and in violation of Washington's statutorily driven discovery rules.

It cannot be disputed that there was a discovery violation in this matter. Just look at the date the Statement and Pleading was entered for evidence at trial. Obviously, the prosecution was required to provide the requested

discovery. Yet, all discovery has not been provided. How much PMC&LD did the State intercept and seize, what other searches and seizures did the prosecution know of but failed to disclose to the defendant? There can be no arguement in regarding the occurrence of discovery violations in this case. The only discussion to be had here is with regard to the appropriate sanctions for those violations of due process.

Where a discovery violation occurs, the court may grant a continuance, impose sanctions or dismiss the action under CrR 4.7(h)(7)(i), which states, "If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such a party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances."

The late discovery of evidence should not have been allowed as argued under Additional Ground Three above. Headrick's Speedy Trial rights were ignored and a continuance for might have been a viable solution for defense counsel reassess the case and motion for a dismissal.

A Brady violation has three components: (1) the evidence

at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently, and (3) prejudice must have ensued. In re Brennan, 117 Wn App 797, 72 P3d 182 (2003). Prejudice exists, for the purpose of a Brady violation, only if there is a reasonable probability that, had the evidence been disclosed to the defendant, the result of the proceeding would have been different. Id.

Here, the requested discovery is likely exculpatory or of impeachment value. The State, either willfully or inadvertently, suppressed this evidence through its continuous failure or refusal to ensure full and complete discovery in this case cannot be disputed. Prejudice is just as clear, as, provided a timely manner response to its discovery requests, the defendant would have been able to fully and accurately evaluate the State's case against him, again motion the court for dismissal prior to trial with this discovery violation or an agreement may have been reached if the defendant was given just a little respect and the right to be heard in court, either of which would have saved Headrick from undue duress and emotional hardship. This non-disclosure is plainly a Brady violation, as with this information in hand, Headrick would most likely have attacked the inter-

ception, search and seizure of the PMC&LD without a valid warrant, thus securing either an acquital or a favorable disposition in this matter.

However, even if these omissions do not fall under the category of a Brady violation, they are plainly a blatent violation of the plain terms of the discovery rules, which clearly require disclosure of this information.

G. Additional Ground Five

Right to be Present

Headrick challeges the State and defense counsel for denying him his fundamental right to be present at every stage of the proceedings which may take away his life or liberty and to defend against the charge that is guaranteed under the Fifth and Fourteenth Amendments and the State's corollary Art. 1, § 3 and Art. 1, § 22.

The State attests, "The case was set over to June 9, 2017 to reset dates and a new pretrial date was set for June 19, 2017 with trial set for July 11, 2017." See Answer p. 16.

Headrick's case was scheduled for very important

pretrial and trial date setting court hearings Headrick was not informed about nor was he allowed to be physically present to see, hear and defend against the charge.

A trial date setting is a crucial hearing to be present at so that Headrick would know exactly when his trial date is scheduled, hopefully have his attorney meet with him to discuss and plan for the trial, to let his wife, family and friends know so they might request time off work to be present. All of the court hearings give Headrick the opportunity to ask questions, defend himself, gather more information, prepare his defense, Motion for Caveat, request discovery or suppress discovery, communicate with counsel and address the court to resolve all pending pretrial petitions and motions before commencing forward.

By Headrick not being allowed to attend his court hearings, he was denied his right to be present, the right to be heard, the right to redress any grievances and was able to contribute to the fairness of the proceeding. Headrick is a proactive participant in his case to protect and assert those fundamental rights to the frustration of the State and defense counsel. Defense counsel

cannot waive Headrick's right to be present without his written knowledge or consent.

It cannot be argued that Headrick's absence was per se harmless because his counsel was at all times present to guard his interests. In the first place, whether counsel who attempts without the knowledge or consent of the defendant to waive his right to be present, can be trusted to protect and defend Headrick's other rights, for example the PMC&LD issue, is a dubious assumption. More importantly, the mere presence of counsel is no substitute for the presence of Headrick himself. The right to be present at all criminal proceedings stems in part from the fact that by the defendant's physical presence, the defendant can hear and see the proceedings and can participate in the prentation of his rights. But that right also rests upon society's interest in due process. As stated in Hopt supra, "the public has an interest in [the defendants] life and liberty. Neither can be lawfully taken away except in the mode prescribed by law." Hopt v. Utah, 110 US 574, 579, 28 LEd 262, 4 SCt 202 (1884).

A criminal defendant's right to be present is rooted in the Fifth and Fourteenth Amendments and the State's corollary Art. 1, § 3 and Art. 1, § 22 under the Due Process Clause. Whether the defendant's right to be present

was violated, is a question of law the Appellate Court reviews de novo. If the right is violated, the Appellate Court will reverse unless the court is persuaded beyond a reasonable doubt that the error was harmless. The core of the Constitutional right to be present is, when evidence is presented. Beyond that, the defendant has a right to be present at a proceeding whenever his or her presence has a relation, reasonably substantial, to the fulness of his or her opportunity to defend against the charge.

The basic question here is, whether Headrick in this case that is labeled as a most serious case, has a constitutional right to be personally present at all of the proceedings, where his liberty may be taken away from him for the rest of his natural life? If Headrick does have the right to be present, then the State has the burden of proving beyond a reasonable doubt that the error here was harmless.

The right of a defendant charged with a felony offense to be personally present at every stage conducted is fundamental to our system of justice. This right was recognized by the U.S. Supreme Court well over a century ago, "A leading principle that pervades the entire law of criminal procedure is that, after indictment found, noth-

ing shall be done in the absence of the prisoner." Lewis v. United States, 146 US 370, 372, 13 SCt 136, 137, 36 LEd 1011 (1892). This principle has been consistently upheld and continually reaffirmed. See Hopt v. Utah, 110 US 574, 4 SCt 202, 28 LEd 262 (1884); Diaz v. United States, 223 US 442, 35 SCt 250, 56 LEd 500 (1912); Illinois v. Allen, 397 US 337, 90 SCt 1057, 25 LEd 2d 353 (1970).

Headrick challenges the State's statement, "The defendant refused to sign any document and "In Custody" was placed on the defendant's signature line by the assigned prosecutor with the agreement of defense counsel." Answer, p.16. For one, Headrick was not present to sign, and two, if he was present, he never affords an opportunity to pen down on paper his First Amendment right to the freedom of speech in writing, even if it is a small handwritten statement or plea placed on a court document asserting fundamental rights, as such, "I do not waive my Speedy Trial rights" or a plea for help "I'm under threat, duress and criminal coercion."

H. Additional Ground Six

Felony Judgment and Sentencing Errors

Headrick challenges the erroneous Felony Judgment and

Sentence (FJS) document that contain errors which cannot be considered clerical errors or harmless error.

The first notable error in the FJS document discussed here is the materially false statement contained on page one which reads, "The court conducted a sentencing hearing this date, the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present." On page eleven is the signature and witness page of those who claimed to present and witnessed the proceeding.

The following is a list of those who were actually present in the courtroom at the FJS hearing:

1) Stephen E. Brown, Superior Court judge;
2) Richard Peterson, deputy prosecuting attorney;
3) Michael J. Nagle, Attorney for defendant;
4) John G. Headrick, defendant.

Not in attendance: Erin C. Jany, deputy prosecuting Atty.

At Sentencing, Erin C. Jany, who was not present, had Richard Peterson present her pre-signed FJS document containing her materially false or perjured statement that she knew or should have known was false under her oath required or authorized by law.

At Sentencing, Richard Peterson, who presented FJS document to the Superior court, knew or should have known to be false under his oath required or authorized by law. He failed to correct the error.

At Sentencing, Judge Stephen E. Brown and Michael J. Nagle, both signed and witnessed the FJS document the both of them knew or should known was false under oath required or authorized by law.

Would that make Judge Brown and Michael J. Nagle false witnesses under their oaths of office?

Judge Stephen E. Brown and Michael J. Nagle fail to stop and correct the error.

The second obvious error on the FJS document is no signature or initials by the handwritten changes of Richard Peterson who present the FJS document to the court.

Headrick decided not to sign the erroneous FJS document after carefully reading it, as he will not not contract, agree, witness or confirm a pre-signed false court document by Erin C. Jany. But, Headrick did write on the FJS document, "No contract, under

duress, and criminal coercion," "void" and "Fingerprints void this document." This is where the third treasonous error against constitutional rights was inflicted upon, Judge Stephen E. Brown disagreed with Headrick's assertion of his protected right to be heard in writing, freedom of speech but in writing, Judge Brown undeniably abolished those precious words from history to be never read again by marking a line through those words and redacted from the record forever. See enclosed FSS.

Here we have a judge and three officers of the court, who together, committed false statements under oath and on the record. This Court will have to decide if it is reversable error or not.

I. Additional Ground Seven

Right to a Speedy Trial

Headrick challenges the State denying his right to a speedy trial under the Sixth and Fourteenth Amendments and the State's corollary Art. 1, § 3 and Art. 1, § 22.

On December 27, 2016, while Headrick was in custody of the GHCJ, he was brought before the Grays Harbor

County District Court for the Criminal Complaint Hearing. See enclosed Criminal Complaint, filed DEC 27, 2016.

Under CrR 3.3 (c)(1) and CrR 4.1 (a), the speedy trial period starts to run for a defendant charged with a felony in district court on the date the charge is filed if, on the filing date, the defendant is "detained in jail." See State v. Hardesty, 110 Wn App 702, 42 P.3d 450, rev'd on other grounds, 149 Wn. 2d 230, 66 P3d 621 (DIV. 3 2002)(citing State v. Brown, 40 Wn App 91, 93, 697 P2d 583 (1985)).

"For the purposes of calculating the time within which a defendant must be brought to trial for a crime originally charged in district court but later refered to superior court, the decision not to prosecute the case in the district court does not constitute a "dismissal" of the prosecution." Id., and none of the subsections contained under CrR 3.3(c)(2) applicable for resetting the commencement date in this matter when the case was later refered to superior court on January 25, 2017 as Headrick was still "detained in jail" and increasing his oppressive pretrial detention out another 30 days would be prejudicial. "Once the time for trial period has commenced upon entry of the charge in district court, the trial clock continues to run on the charges unless the district court enters an order dismissing the prosecution." Id. Headrick was not

at any hearing where the district court dismissed the prosecution and he was still being detained.

"A mere decision by the State not to pursue the case in district court does not suffice to stop the speedy trial clock." State v. Duffy, 86 Wn App 334, 342, 936 P2d 444 (1997).

Headrick has strongly asserted his speedy trial rights, even in his own handwriting on court documents, "I DO NOT WAIVE MY 60 DAY SPEEDY TRIAL RIGHTS" as verified in the State's Answer p. 13. Headrick has objected to all delays, has never signed a waiver, has done nothing to acquise the delay, defense counsel verbally request a motion to dismiss but was denied and is entitled to "strong evidentiary weight."

"The Speedy Trial Clause primarily protects those who assert their rights, not those who acquise in the delay." United States v. Aguirre, 994 F.2d 1454, 1457 (9th Cir. 1993).

To determine whether there has been a speedy trial violation, courts balance the length of the delay, the reason for the delay, the defendant's assertion of his right and prejudice to the defendant.

This is not a complex or complicated case. The prosecu-

tion contrived over 185 days to formulate a scheme that transposes or converts Headrick's innocent caretaking role into the crime charged. The prosecution would have to be an architectural virtuoso to make Headrick's caretaking role to match the crime, and for the prosecution attempting this accomplishment against what the evidence suggests, would make this a complex or complicated case on part of the prosecution not the defense. In other words, the insufficiency of the evidence is in effect a determination that the State's case against Headrick was so lacking, it had to continually delay the case. If the judiciary was not being prejudicial towards Headrick, the trial court should have entered a judgement of acquittal.

"A deliberate delay caused by the government to frustrate the defense will be weighted heavily against the State." State v. Iniguez, 167 Wn 2d 273, 284, 217 P3d 768 (2009).

Prejudice generally involves (1) oppressive pretrial incarceration (2) anxiety and concern of the accused and (3) the possibility the accused's defense will be impaired by dimming memories and loss of exculpatory evidence. Pretrial incarceration disadvantages the accused because of job loss and disruption to family life. It also has

a practical effect of hampering a defendant's preparation of his defense because he cannot gather evidence or contact witnesses on his behalf.

Headrick communicated with the investigating officers, agreed to meet with them at his house (with or without their threat of a warrant) and turned himself in to resolve the issue as a normal person would do. Headrick is not a danger to the community, not a flight risk nor does he have any history of absconding but his bail was excessively set above the limitations of Headrick's finances, he had to remain a pretrial detainee that became oppressive after the numerious continuences caused by the State.

Headrick was (1) a pretrial detainee before trial for over 185 days; (2) prejudiced by his pretrial incarceration which caused the loss of his employment and income to provide for his wife and daughter, causing anxiety and concern exacerbated by the delay; (3) never the cause of any pretrial delay; (4) consistently asserted his speedy trial rights and objecting to all delays; and (4) filed a Writ of Habeas Corpus challeging his oppressive confinement.

The State's (1) delay due to the unavailability of the State's witnesses should be weighted against the State;

(2) delay due to intercepting, searching and seizing of the Headricks' PMC & LD as late or surprise discovery should be weighted against the State; (3) delay caused by the State wanting to introduce 100 pages of police reports from closed and completed cases over 25 years ago; (4) delay caused by the State going outside the case to look for other alleged crimes due to the insufficiency of the evidence should be weighted against the State; (5) delay caused by the State allowing the use of Greg's Sanchez's testimony, who's testimony, does not match testimony from the other witnesses, should be weighted against the State. RP 76, 79-80. See also enclosed Statement of William Bryant and Declaration of Fact.

J. Dismissal.

The court may dismiss a case in the furtherance of justice due to criminal misconduct when there has been prejudice to the rights of the accused which materially affects the accused's right to a fair trial. CrR 8.3(b). To dismiss a case for prosecutorial misconduct, the court must find that the prosecution engaged in "arbitrary action or misconduct" and that the defendant would be prejudice by the prosecution's actions. State v. Michielli, 132 Wn2d 229, 240, 937 P2d 587 (1997). Purposeful action is not necessary; misconduct may be proven by simple mismange-

ment. Id. at 239-40.

A dismissal under CrR 8.3 is reviewed for a manifest of discretion. State v. Blackwell, 120 Wn 2d 822, 830, 845 P 2d 1017 (1993) (citing State ex rel. Carrol v. Junker, 79 Wn 2d 12, 26, 482 P 2d 775 (1971)). However, dismissal of charges is an extraordinary remedy available only in "truly egegious cases of mismangement or misconduct by the prosecutor" and when the prejudice to the defendant is such that his right to a fair trial has been compromised. State v. Duggins, 68 Wn App 396, 401, 844 P 2d 441 (1993); State v. Garza, 99 Win App 291, 295, 994 P. 2d 868 (2000) (citing City of Seattle v. Orwick, 113 Wn 2d 823, 830, 784 P 2d 161 (1989)).

While dismissal is authorized by the rule, the courts have historically held that dismissal is an extraordinary remedy, and is unwarranted in cases where the "suppression of evidence may eliminate whatever prejudice is caused by governmental misconduct." State v. Marks, 114 Wn 2d 724, 730, 790 P 2d 138 (1990) (city of Seattle v. Orwick, 113 Wn 2d 823, 784 P 2d 161 (1989)); accord United States v. Morrison, 449 US 361, 366, 101 S Ct 665, 66 L Ed 2d 564 (1981) ("The remedy in the criminal proceeding is limited to denying the prosecution the fruits of its transgresson.")

However, in this case, the extraordinary remedy of dismissal

is warranted due to the truly egregious case of mismangement, misconduct or arbitrary actions by the prosecution throughout the case as argued in this appeal.

Concerning the first element, courts have held that simple case mismanagement falls within the standard of government misconduct. State v. Blackwell, 120 Wn 2d 822, 831 (1993); State v. Sulgrove, 19 Wn App 860, 863 (1978). Moreover, Washington courts have held that the misconduct need not be intentional, evil or dishonest, but that simple mismanagement is indeed sufficient. State v. Sherman, 59 Wn App 763, 801 P 2d 274 (1990). The defendant is prejudiced by the misconduct when it affects his or her right to a fair trial. Id. The underlying purpose of CrR 8.3(b) is fairness to the defendant. State v. Stephans, 47 Wn App 600, 603 (1987). This is why CrR 8.3 exists; it provides a court with the authority to dismiss and suppress evidence in any criminal prosecution in the furtherance of justice and to ensure that an accused person is treated fairly. State v. Wilke, 28 Wn App 590, 624 P 2d 1176 (1981).

"A prosecutor should not institute, or cause to be instituted, or permit the continued pendency of criminal charges when it is known that the charges are not supported by probable cause.... or permit the continued pendency of criminal charges in the absence of sufficient evidence to support a

conviction." ABA Standard 3-3.9. The Function of the Prosecutor.

K. Conclusion

(1) Conduct an evidentiary hearing, remand the petition for a full hearing on the merits or for a reference hearing pursuant to RAP 16.11 (a) and RAP 16.12;

(2) define the mens rea or intent requirement for child molestation required for a conviction;

(3) determine if the State violated privileged communications and compromised a fair trial;

(4) determine if Headrick was denied his right to be present and had ineffective assistance of counsel;

(5) determine if there was mismanagement, misconduct or arbitrary actions involved in this case;

(6) suggested remedy as in opening brief or dismissal above.

Dated this 2nd day of April 2018.

John Griffin Headrick
Appellant

had concerns about the welfare of the defendant's five year old daughter, E.H., given the statements he made about treating the victim like he did his own daughter. As a result, detectives and Children's Protective Services (CPS) attempted to get E.H.'s mother, Shannan Headrick, to have the child medically evaluated and forensically interviewed. Additionally, given that E.H. was present during the alleged events in this case, E.H. was considered a material witness and needed to be interviewed by detectives. Ms. Headrick refused to cooperate and the State sought an order from the court to compel Ms. Headrick to have her child interviewed. On February 27, 2017, the State's motion for a forensic interview of witness, E.H., was heard and the court granted the order. A forensic interview of E.H. was scheduled with Ms. Mitchell of the Youth Advocacy Center of Lewis County for March 7, 2017.

While in the jail, any phone calls and jail visits that the inmates have are monitored and recorded. The inmates and the person calling/visiting receive a warning that their calls/contacts are being recorded. The jail visits are both audio and visually recorded. While in the jail, any incoming and outgoing mail is also monitored and inspected. Mail that is found to contain material that may be relevant to an on-going investigation or filed case may be copied and forwarded to the investigating officer and/or prosecutor for review.

On January 22, 2017, the Defendant wrote a letter to his wife, Shannan Headrick. Along with the letter, the Defendant enclosed a "Statement and Pleading" in which he described what he had done and why with relation to his victim and made a claim that he had told the officer that he had messed up by allowing a sleep over with his background, but did so under duress and coercion. The Defendant further stated that he pled not guilty to the alleged crime. The letter and statement was intercepted by Corrections Deputy Walter of the Grays Harbor County Sheriff's Office and copies

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were forwarded to the Prosecutor's Office on January 24, 2017. The letter and statement were provided to defense on January 27, 2017.

On March 2, 2017, three days after the order that E.H. was going to be forensically interviewed had been issued, the defendant met with his wife at the Grays Harbor County jail for a visit. The visit was audio and video recorded. In the video, the defendant appeared to have taken something out of his mouth and held it up near the glass partition for Shannan Headrick to read. Shannan Headrick appears to be reading whatever the defendant has shown to her. The audio recorded a span of time (1 minute and 11 seconds) when the two are not talking, which further indicates that Shannan Headrick was reading a note from the defendant. After which, Shannan Headrick responds by stating, "Oh really." The defendant then stated, "Yeah, they probably want to ask about the house, you know." Shannan Headrick stated, "Right" and the defendant goes on to say, "But you know that person doesn't have to, they can say, I don't want to answer your questions." Shannan replied again by stating, "Right." The conversation then moved on to other things. Near the end of the conversation, the defendant tells Shannan Headrick twice to just remember the words he wrote. Shannan Heardrick pauses for a while, then responds by stating, "Yeah, I know, but I wouldn't want to get myself into trouble." Shannan Headrick pauses again and stated, "Either way, one way or another." The defendant stated, "Ok." Shannan Headrick further stated something to the effect of "I know it sucks, but…I love you" and the conversation ended soon after that point. The information about the jail visit and the conversation captured between the defendant and Shannan Headrick was provided with Detective Sergeant Wallace's follow-up report, dated March 8, 2016. Copies of the audio and video from the jail visit were provided to defense on March 15, 2017.

It appeared clear from the timing of the conversation and the content of the both the voice and video recordings from the jail visit that the defendant was attempting to have Shannan Headrick

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The initial hearing dates and trial were set on January 30, 2017. The initial trial date was set for March 14, 2017. The defendant refused to sign the scheduling order, writing "UNDER DURESS AND COERCION" on the defendant's signature line. An omnibus order and 3.5 stipulation were entered on February 13, 2017. The State provided the defendant's attorney with new discovery, which primarily dealt with the defendant's prior cases, and consisted of hundreds of documents. On February 21, 2017, which was the pretrial conference date, there was discussion of a continuance due to the nature of the case and recent discovery that had been provided to defense. The defendant spoke to the court in Hebrew and refused to waive speedy. The court set over the case over to February 27, 2017 to allow defense to review the new material more completely and discuss the continuance request further with his client.

On February 27, 2017, defense counsel advised that due to the nature of the case and the consequences to the defendant, i.e. the fact that he was facing a forth strike on a sex offense and would be sentenced to life without the possibility of parole, he requested a continuance over his client's objection. A continuance requested by defense counsel, even over the defendant's objection, is acceptable under well-established case law and the continuance was not objected to by the State under the circumstances. The defendant refused to move from the gallery while his case was being heard and refused to sign the new scheduling order, writing, "I DO NOT WAIVE SPEEDY TRIAL RIGHTS. UNDER THREAT, DURESS, AND CRIMINAL COERCION." A child hearsay hearing was set for April 5, 2017, along with a new pretrial conference on March 13, 2017 and a new trial on April 11, 2017. On March 13, 2017, defense counsel asked for a second continuance, again over his client's objection. That State, again, did not object to defense's request for a second continuance. New dates were again set and the defendant refused to sign the new scheduling order, writing, "I DO NOT WAIVE 60 DAY SPEEDY TRIAL RIGHTS UNDER DURESS, THREAT, CRIMINAL

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stated that the defendant had said he had touched the girl during the sleepover, fondling her and touching her and playing with her bottom and vagina, several times over the course of the sleepover. The witness further reported that the defendant had said he put barrier cream on her because he trying to cover up the red marks that he had caused while touching her. The witness further stated that the defendant had said he had taken some pictures of the girl from the sleepover and of his kid's friends. The witness stated that the defendant had said that the pictures were electronically save on the internet, perhaps on Google drive. When asked if the defendant had mentioned anything about touching his daughter or taking pictures of her, the witness stated that they all had been naked together when he took the pictures. The witness stated that he took it mean that in order for the defendant to get the clothes off one girl, he had his daughter get naked, too, in order to make the child(ren) feel it was okay. The witness was not given anything in exchange for this information nor was he given anything for his later testimony at trial.

This information was presented to the court and the parties asked for an agreed continuance of the trial due to the discovery of this witness to allow the parties to have the opportunity to obtain a transcript of the recorded interview of this witness, to interview the witness as needed, and digest the new information before proceeding with the trial. The case was set over to June 9, 2017 to reset dates and a new pretrial date was set for June 19, 2017 with trial set for July 11, 2017. The defendant refused to sign any documents and "In Custody" was placed on the defendant's signature line by the assigned prosecutor with the agreement of defense counsel. On July 11, 2017, the trial commenced. The victim's mother, the victim, the forensic interviewer, the SANE nurse examiner, the detective, and the witness all testified at trial for the State. The defendant also testified at trial, presenting his argument that he was caring for the child as he would his own child and that he had touched her, but only for the purpose of putting barrier cream on the child. The defendant admitted that he did not

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FILED
DEC 2 7 2016
DISTRICT COURT
GRAYS HARBOR COUNTY

GRAYS HARBOR DISTRICT COURT, DEPARTMENT NO. 1

STATE OF WASHINGTON, Plaintiff,	No.: 2016475
v.	**CRIMINAL COMPLAINT PRELIMINARY HEARING**
JOHN GRIFFIN HEADRICK, DOB: 10-21-1970 Defendant.	LEA #: GHSO 16-20660

The undersigned, under penalty of perjury under the laws of the State of Washington, certifies as follows:

I am a Deputy Prosecuting Attorney for Grays Harbor County.

That I have reasonable grounds to believe, and do believe, the Defendant committed the crime of CHILD MOLESTATION IN THE FIRST DEGREE, as follows:

> That the said Defendant, John Griffin Headrick, in the State of Washington, on or about December 16, 2016, being at least thirty-six (36) months older than J.L., had sexual contact with J.L., who was less than twelve (12) years old and not married to the Defendant;

CONTRARY TO RCW 9A.44.083 and against the peace and dignity of the State of Washington.

DATED this 27th day of December, 2016, at Montesano, Washington.

KATHERINE L. SVOBODA
Prosecuting Attorney
for Grays Harbor County

By: _____
ERIN C. JANY
Deputy Prosecuting Attorney
WSBA #43071

ECJ/lh

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STATEMENT AND PLEADING

I, JOHN G HEADRICK, WELL HAVE TO PROVE MY INNOCENCE TO THIS COURT FOR THE ALLEGED CRIME. I STATE AND PLEAD THE FOLLOWING:

I DID APPLY BARRIER CREAM/LOTION ON THE SKIN OF JAZMYN LOURIA AROUND HER VAGINA AS A PREVENTATIVE MEASURE, PRE-CAUTION, TO HELP PREVENT POSSIBLE SKIN IRRITATION OR A RASH DUE TO HER DIARRHEA. ANY CONTACT WITH THE VAGINA DURING THE APPLICATION WAS INADVERTENT, NOT SEXUALLY MOTIVATED. AND NOT FOR SEXUAL GRATIFECATION.

I BELIEVE THE APPLICATION WAS NECESSARY. MY WIFE AND I HAD TO APPLY BARRIER CREAM/LOTION ON OUR CHILD IN A SIMILAR SITUATION AS ADVISED BY OUR PEDIATRICIAN.

AS A CONCERNED PARENT AND WITH OVER FIVE YEARS OF EXPERIENCE REARING A CHILD WITH MY WIFE, I ALSO CHECKED JAZMYN'S FOREHEAD TO FEEL IF SHE WAS RUNNING A FEVER AND CHECKED THE GLANDS ON HER NECK FOR ANY SWELLING.

I BELIEVE JAZMYN WAS UNCOMFORTABLE WITH THE APPLICATION OF THE BARRIER CREAM/LOTION AS I'M NOT ONE OF HER PARENT'S AND I'M A MALE.

UNDER DURESS AND COERCION, I DID STATE TO THE DETECTIVE THAT I MESSED UP, PLACING MYSELF IN A VUNERABLE SITUATION.

THEREFORE, I PLEAD NOT GUILTY TO THE ALLEDGED CRIME.

PREVENTATIVE CHILDCARE AND HYGIENE

The prosecution's case is only focusing on alleged sexual abuse not proper childcare and hygiene. I have denied any sexual abuse from the start and was providing the proper child care, hygiene and protection for J. L. left or placed in my care.

In 2013, my wife and I attended a parenting class to further educate ourselves on child rearing to help us with our daughter.

The parenting class was presented by a DSHS employee and covered many topics: childcare, health, hygiene, developmental skills, welfare, behavior, sexual abuse, negligent treatment or maltreatment, and much more. It was more than we expected. Advanced Parenting 101 plus.

I have attended everyone of my daughter's doctor's visits with my wife, I've held my daughter's hand for each shot and have been educated by her pediatrician how to properly care for my daughter.

I have used my education and knowledge I have learned from the parenting class, my daughter's pediatrician and experience rearing my daughter over the last five years to provide childcare, hygiene and protection for the alledged victim J. L..

Preventative Childcare and Hygiene

I have been taught, "... A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purpose of providing hygiene, childcare, and medical treatment or diagnosis...." See CPS FOUNDED LETTER, DSHS 09-91 (REV. 03/2013). In a parenting class by DSHS employee.

J. L. was placed in my care and protection. I applied the proper childcare and hygiene for J. L. due to her diarrhea, as I have for my daughter in the past.

I made sure J. L. had a bath, I felt her forehead to see if she was running a fever, I felt the glands on her neck to check if they were swollen, I applied my daughter's barrier cream lotion on J. L. to protect her skin from a possible rash or irritation as I have been instructed by my daughter's pediatrician in a similar circumstance.

It was not a sexual contact, not sexual in nature, and not for sexual gratification. I treated J. L. as my own daughter with the proper preventative childcare, hygiene and protection.

If J. L. would have skinned her knee, I would have used the proper childcare and hygiene to treat her. I would clean the scrape or cut, apply ointment and then place a bandage on the child even though she was not my child.

Failure to act is maltreatment, as section (5) in the hand out from the parenting class.

factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to such actions as allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in:

(a) Prostitution;
(b) Sexually explicit, obscene or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; or
(c) Sexually explicit, obscene or pornographic activity as part of a live performance, or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, or safety. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances which create a clear and present danger to the child's health, welfare, or safety. Negligent treatment or maltreatment includes, but is not limited to:

(a) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, or safety. Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves.
(b) Actions, failures to act, omissions that result in injury to or which create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child; or
(c) The cumulative effects of a pattern of conduct, behavior or inaction by a parent or guardian in providing for the physical, emotional and developmental needs of a child's, or the effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, and duties, when the result is to cause injury or create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.13.031, chapter 26.44 RCW, and 2005 c 512. 07-14-011, § 388-15-009, filed 6/22/07, effective 7/23/07. Statutory Authority: RCW 74.13.031, 74.04.050, and chapter 26.44 RCW. 02-15-098 and 02-17-045, § 388-15-009, filed 7/16/02 and 8/14/02, effective 2/10/03.]

STATEMENT OF WILLIAM BRYANT

I William Bryant Room With John Headrick. Never at anytime has Headrick Confessed To Any Crime To me. Headrick has maintained his innocence all along since we became Roomates. From Then Till Now i Believe Headrick To Be very Relicious, and a very loving Family man.

When Sanchez was our Roomate he Tried To Pressure Headrick out of his meals when he found out Headrick was fasting

Another Roemate Drake Shaw let me know he knew Sanchez from Bieng incarsirated within in The Past. and That Sanchez had Been caught stealing from other inmates at That Time.

Sanchez started picking on Drake acting like He (Sanchez) was a master of martial arts.

On several occations ive suspected Sanchez of going Through mine and Headrick's personal property while were at visiting.

"Sanchez Told other inmates in The dayroom He had a plan To Get out of his Felony."

I'm not in agreement With ~~him~~ Sanchez using me To Back up his false statement.

ive never at anytime agreed To Join Sanchez or Any of his conspirators To further Any illegal act.

William Bryant

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

JOHN GRIFFIN HEADRICK,
PETITIONER,

No: 50918-1-II

V.

STATE OF WASHINGTON
RESPONDENT.

DECLARATION OF FACT

(1) WE THE UNDER SIGNED BELOW, OF SOUND MIND, FREE WILL, WITHOUT ANY COERCION OR PROMISE, WILL TESTIFY WITHOUT A DOUBT THAT GREGORY DELL SANCHEZ ID: 6004 WAS A ROOMMATE WITH JOHN G. HEADRICK AND WILLIAM A. BRYANT IN UNIT 213 ROOM B. MR. SANCHEZ SLEPT ON THE FLOOR NEAR THE DOOR AFTER BEING ASSIGNED TO ROOM B IN UNIT 213. MR. SANCHEZ LATER MOVED TO ROOM C WITH MARK A. WAKEFEILD AND HOMER TAYLOR.

(2) WE WILL ALSO TESTIFY WITHOUT A DOUBT THAT MR. SANCHEZ HAD EASY ACCESS TO ALL ROOMMATE'S LEGAL WORK IN THE ROOMS AS THERE IS NO SECURE AREAS FOR RESIDENTS TO SECURE ONE'S CONFIDENTAL AND PROPRIETARY INFORMATION FROM OTHER RESIDENTS IN THE UNIT.

(3) WE WILL ALSO TESTIFY WITHOUT A DOUBT THAT

MR. SANCHEZ WAS OVER HEARD SPEAKING WITH OTHER RESIDENTS IN THE UNIT THAT HE HAD A PLAN TO GET OUT OF HIS FELONY, R.C.W. 9A.52.025 RESIDENTAL BURGLARY CASE # 17-1-272-14, BY INFORMING ON OTHERS.

PRINTED NAME	SIGNATURE
John G. Headrick	John G. Headrick
William A Bryant	William Bryant
Mark J. Wakefield	M.J. Wakefield
Edward J Lopez III	Edward J Lopez III
Richard Sharp	[illegible]
JEFFREY L Butterfield	Jeffrey L Butterfield

DATED 8TH AUGUST 2017.

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

State of Washington, Plaintiff, vs. JOHN GRIFFIN HEADRICK, Defendant, PCN: SID: 15783628 DOB: 10/21/1970	**No. 17-1-32-1** **Felony Judgment and Sentence -- Persistent Offender (FJS)** ☒ **Clerk's Action Required, para 2.1, 4.1, 4.3, 4.7, 5.2 5.3, 5.5, 5.7 and 5.8** ☐ **Juvenile Decline** ☐ **Mandatory** ☐ **Discretionary**

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 Current Offenses: The defendant is guilty of the following offenses, based jury-verdict (date) July 12, 2017:

Count	Crime	RCW	Class	Date
1	Child Molestation in the First Degree	9A.44.083	FA	12-16-16

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

☒ Count __1__ is a most serious offense and the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

☒ Count __1__ is a crime listed in RCW 9.94A.030(37)(b)(i) e.g., rape in the first degree, rape of a child in the first degree (when the offender was 16 years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was 18 years of age or older when the offender committed the offense), or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree,

murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(37)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(37)(b)(i) or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(37)(b)(i).

The jury returned a special verdict or the court made a special finding with regard to the following:

☐ The offense was predatory as to Count _____. RCW 9.94A.836.
☐ The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.
☐ The defendant acted with **sexual motivation** in committing the offense in Count_____. RCW 9.94A.835.

2.2 Criminal History (RCW 9.94A.525):

Crime	*Date of Crime*	*Date of Sentence*	*Sentencing Court (County & State)*	*A or J Adult, Juvenile*	*Type of Crime*	*Points*
Theft in the First Degree	09/02/1989	1989	Multnomah County, OR 900432195	A	F	Wash Out
Child Molestation in the First Degree	07/1991	10/22/1992	Clark County 92-1-00149-7	A	F	3
Child Molestation in the First Degree	01/90-08/91	08/28/1992	Clark County 92-1-00401-1	A	F	3
Child Molestation in the First Degree	07/04/91-07/08/91	06/30/1993	Thurston County 93-1-00056-5	A	F	3
Theft in the Second Degree	09/02/1989	1989	Multnomah County, OR 900432195	A	M	
Theft in the Third Degree	09/02/1989	1989	Multnomah County, OR 900432195	A	M	

Sub judge

☒ The prior offenses listed ~~as number(s)~~ for Child Molestation in the First Degree _____ above, or in appendix 2.2, require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570).
☐ The prior convictions listed as number(s) _____ above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525).
☐ The prior convictions listed as number(s) _____ above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	*Offender Score*	*Seriousness Level*	*Standard Range (not including enhancements)*	*Plus Enhancements**	*Total Standard Range (including enhancements)*	*Maximum Term*
1	9*	X	149 – 198 months to Life*	- None -	149 – 198 months to Life*	25 years to Life and/or $50,000 fine

*Per RCW 9.94A.030 and 9.94A.570, the Defendant shall be sentenced to a term of total confinement for life without the possibility of release.

For violent offenses, most serious offenses, or armed offenders, recommended **sentencing agreements or plea agreements** are ☐ attached ☐ as follows: _____.

2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's 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. (RCW 10.01.160). The court makes the following specific findings:

☐ The defendant has/will have the ability to pay restitution and legal financial obligations in the future.

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

_____.

☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

☐ (Name of agency) _____ 's costs for its emergency response are reasonble. RCW 38.52.430 (effective August 1, 2012).

2.6 ☐ **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010, and:

☐ The defendant should register as a felony firearm offender. The court considered the following factors in making this determination:

☐ the defendant's criminal history.

☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

☐ evidence of the defendant's propensity for violence that would likely endanger persons.

☐ other:_____.

☐ The defendant must register as a felony firearm offender because the offense was committed in conjunction with an offense committed against a person under the age of 18, or a serious violent offense or offense involving sexual motivation as defined in RCW 9.94A.030.

III. Judgment

3.1 The defendant is ***guilty*** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

IV. Sentence and Order

It is ordered:

4.1 Confinement. RCW 9.94A.570. The court sentences the defendant to the following term of total confinement in the custody of the Department of Corrections:

Life without the possibility of early release on Count 1

~~LIFE~~ months on Count ~~I~~

_____ months on Count _____

_____ months on Count _____

Actual number of months of total confinement ordered is: life without the possibility of early release.

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement for firearm, other deadly weapon, sexual motivation, sexual conduct with a child for a fee, passenger(s) under age 16, or impaired driving as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

_____

_____.

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): _____.

Confinement shall commence immediately unless otherwise set forth here:_____.

Court Ordered Treatment: If the defendant is currently undergoing court ordered mental health or chemical dependency treatment, the defendant must notify DOC and must release treatment information to DOC. RCW 9.94A.562.

4.2 Other:

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE			
PCV	$ 500.00	Victim assessment RCW 26.50.110	RCW 7.68.035
CRC	$ 200.00	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190 Criminal filing fee $_____ FRC	

	Witness costs	$_____	WFR
	Sheriff service fees	$_____	SFR/SFS/SFW/WRF
	Jury demand fee	$_____	JFR
	Extradition costs	$_____	EXT
	Other	$_____	

PUB	~~$1,300.00~~	Fees for court appointed attorney	RCW 9.94A.760
	$ 100.00	DNA collection fee	RCW 43.43.7541
RTN/RJN	$ TBD	Restitution to: J. L.	
	$_____	***Total***	RCW 9.94A.760

☒ The above total does 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:

☒ shall be set by the prosecutor.

☐ is scheduled for_____(Date).

☒ The defendant waives any right to be present at any restitution hearing (sign initials):_____.

☐ ***Restitution*** Schedule attached.

☒ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☒ The court orders the defendant to pay costs of incarceration at the rate of $_____ per day (actual costs not to exceed $100 per day). (*JLR*) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

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.

4.4 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. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense RCW 43.43.754.

☒ ***HIV Testing***. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

☒ The defendant shall not have contact with J. L. including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 99 years (which does not exceed the maximum statutory sentence).

☐ The defendant is excluded or prohibited from coming within _____ (distance) of:

☐ _____ (name of protected person(s))'s
☐ home/ residence ☐ work place ☐ school [ ] (other location(s))
_____
_____, or

☐ other location _____, or
for _____ years (which does not exceed the maximum statutory sentence).

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

4.6 Other:

1. The Defendant is prohibited from any and all criminal acts and shall have no crimes against persons and no registration offenses;
2. The Defendant shall submit to HIV testing. RCW 70.24.340;
3. If ever released from custody, the Defendant shall comply with all conditions of community custody/placement as
imposed by the Department of Corrections (DOC) and his community corrections officer (CCO);
4. If ever released, while on community custody or placement, the Defendant shall:

    1. Report to and be available for contact with the assigned CCO as directed.

    2. Work at DOC approved education, employment and /or community service/restitution.

    3. Pay supervision fees as determined by DOC.

    4. Perform affirmative acts as necessary to monitor compliance with the orders of the court as required by DOC.

    5. Have prior DOC approval for all residence locations and living arrangements.

5. The Defendant shall follow all conditions as set in the Department of Corrections Appendix F that shall apply should the Defendant ever be released;
6. If ever released, the Defendant shall follow all sex offender registration requirements;
7. The Defendant shall have no contact with juveniles under 18 years of age;
8. The Defendant shall obtain a sexual deviancy evaluation and follow all treatment recommendations. Must be from a State-certified therapist approved by his CCO;
9. The Defendant shall submit to polygraph examinations to monitor compliance with

conditions and/or treatment at the direction of CCO and/or therapist. Must not be found deceptive;

10. The Defendant shall not own, possess or have under his control any firearm pursuant to RCW 9.41.040.

11. See Appendix F of the Presentence Investigation filed by the Department of Corrections for additional conditions.

4.7 **Exoneration**: The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

V. Notices and Signatures

5.1 **Collateral Attack on Judgment**. If you wish to petition or move 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, you must do so 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**. If you committed your offense prior to July 1, 2000, you 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. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your 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 (DOC) 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 Reserved.

5.5a **Firearms**. **You may not own, use or possess any firearm, and under federal law any firearm or ammunition,** unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. **You must immediately surrender any concealed pistol license.** (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.

5.5b ☐ **Felony Firearm Offender Registration**. The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

Delete or cross off if not applicable:

5.6 ☐ **Sex and Kidnapping Offender Registration**. RCW 9A.44.128, 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense, or kidnapping offense involving a minor as defined in RCW 9A.44.128, you are required to register.

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

While in custody, if you are approved for partial confinement, you must register when you transfer to partial confinement with the person designated by the agency that has jurisdiction over you. You must also register within three business days from the end of partial confinement or release from confinement with the sheriff of the county where you reside.

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

2. Offenders Who are New Residents, Temporary Residents, or Returning Washington Residents: If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state. If you are visiting and intend to reside or be present 10 or more days in Washington, then you must register the location where you plan to stay or your temporary address with the sheriff of each county where you will be staying within three business days of your arrival.

3. Change of Residence Within State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in peson, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three

business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

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

5. **Travel Outside the United States:** If you intend to travel outside the United States, you must provide signed written notice of the details of your plan to travel out of the country to the sheriff of the county where you are registered. Notice must be provided at least 21 days before you travel. Notice may be provided to the sheriff by certified mail, with return receipt requested, or in person.

If you cancel or postpone this travel, you must notify the sheriff within three days of canceling or postponing your travel or on the departure date you provide in your notice, whichever is earlier.

If you travel routinely across international borders for work, or if you must travel unexpectedly due to a family or work emergency, you must personally notify the sheriff at least 24 hours before you travel. You must explain to the sheriff in writing why it is impractical for you to comply with the notice required by RCW 9A.44.130(3).

6. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12)**: You must give notice to the sheriff of the county where you are registered within three business days:

i) before arriving at a school or institution of higher education to attend classes;

ii) before starting work at an institution of higher education; or

iii) after any termination of enrollment or employment at a school or institution of higher education.

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

the public at large pursuant to RCW 4.24.550.

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

5.7 ☐ **Department of Licensing Notice:** The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action**–The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information):**

☐ Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of ____ .

☐ No BAC test result.

☐ BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.

☐ Drug Related. The defendant was under the influence of or affected by any drug.

☐ THC level was _____ within two hours after driving.

☐ Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: ☐ Commercial Veh. ☐ 16 Passenger Veh. ☐ Hazmat Veh.

5.8 ☐ **Department of Licensing Notice – Defendant under age 21 only.**

Count _____ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense **OR** (b) a violation under RCW 9.41.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense **OR** (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, **AND** the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

Clerk's Action –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265

5.9 **Other:** _____

_____

_____

_____.

Done in Open Court and in the presence of the defendant this date: SEPTEMBER 15, 2017.

_____

Judge ~~F. Mark McCatley~~ / ~~David L. Edwards~~ / Stephen E. Brown

ERIN C. JANY Deputy Prosecuting Attorney WSBA No. 43071	MICHAEL J. NAGLE Attorney for Defendant WSBA No. 20657	JOHN GRIFFIN HEADRICK Defendant ~~VOID~~ ~~NO CONTRACT UNDER DURESS THREAT AND CRIMINAL COERCION~~

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: 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 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: NO CONTRACT VOID UNDER DURESS, THREAT, CRIMINAL COERCION

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at (city) _____, (state) _____, on (date) _____.

_____ _____

Interpreter Print Name

VI. Identification of the Defendant

SID No. 15783628 Date of Birth 10/21/1970
(If no SID complete a separate Applicant card (form FD-258) for State Patrol)

FBI No. 897123KA7 Local ID No. _____

PCN No. _____ Other _____

Alias name, DOB: _____

Race: **Ethnicity**: **Sex**:

☐ Asian/Pacific Islander ☐ Black/African-American ☒ Caucasian ☐ Hispanic ☒ Male

☐ Native American ☐ Other: _____ ☐ Non-Hispanic ☐ Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, Cindy Balsley Dated: 9-15

~~FAILURE TO SIGN VOID THIS DOCUMENT~~

The defendant's signature: ~~NO CONTRACT VOID UNDER THREAT, DURESS, COERCION OR FRAUD~~

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously

NO. 50918-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

JOHN HEADRICK,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

Grays Harbor Cause No. 17-1-00032-1

The Honorable Stephen E. Brown, Judge

BRIEF OF APPELLANT

LISE ELLNER, WSBA NO. 20955
ERIN SPERGER, WSBA NO. 45931
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Vashon, WA 98070
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April 11, 2018

Washington State Court of Appeals
Division Two
950 Broadway, Suite 300
Tacoma, Wa 98402-4454

State of Washington v. John Headrick
Case No. 50918-1-II

Dear Mr. Derek M. Byrne, Court Clerk,

Please find enclosed my SAG.

Im still currently indigent and unable to afford purchasing copies of my SAG to send to the Appellant Counsel Lise Ellner as instructed in your last letter directed to me on March 7, 2018, and the Washington State Penetentiary allows only one copy to the court.

Would you please send a copy to Appellant counsel if needed?

Thank you.

Yours,

John G Headrick
DELTA W102
WASHINGTON STATE PENITENTIARY
1313 N. 13TH AVE
WALLA WALLA, WA 99362

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CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON