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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON,
DIVISION TWO

IN RE DARREL HARRIS,

Petitioner

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Vicki Hogan, Judge

PERSONAL RESTRAINT PETITION

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I. Status of Petitioner & Procedural History

Petitioner Darrel Harris is currently incarcerated at Stafford Creek Corrections Center, a Department of Corrections facility located in Washington State.

The Pierce County Prosecutor charged Darrel with child rape in the first degree and child molestation in the first degree, both alleged to have been committed against JJ. CP 1-2. He was also charged with indecent liberties, alleged to have been committed against KM, the child's mother. *Id.*; CP 3-4. A jury found him guilty as charged on February 25, 2015, and Judge Vicki Hogan imposed an indeterminate sentence on April 17, 2015. The Court of Appeals affirmed his conviction (47477-8-II) and the Washington Supreme Court denied review. A mandate was issued on June 8, 2017.

Petitioner is not seeking to proceed at public expense.

II. Grounds for Relief

Petitioner was denied his Sixth Amendment right to effective assistance of counsel.

III. Introduction to Case and Issues Presented

Darrel Harris had two jobs and worked six days a week. He was well respected by his employers and others within his work and neighborhood communities. He had a reputation as an honest, hard-working man.

Although Darrel had battled with alcohol in the past, in 2013 he had been sober for more than five years. He owned a three-bedroom house in Puyallup and had good relationships with his family and neighbors.

Darrel's 25-year-old niece, KM, was a single woman with a five-year-old child named JJ. KM lived an unmoored life, having broken off relationships with all who were once near to her. She had called the police on her mom and filed protection orders against other family members. She had been kicked out of a house for stealing medications, detained at Walmart for shoplifting, and was the focus of other police investigations. She was heavily involved in the drug scene, particularly marijuana and pain killers, and regularly took her young daughter to late night parties.

In 2013, Darrel's steady lifestyle was disrupted when, against his better judgment, he let KM and JJ stay at his house. KM had begged her Uncle Darrel to let them stay "for a short time." She said she had moved out of "a bad situation" with her boyfriend and was homeless. Darrel had allowed KM to stay at his house once before and had regretted it. But now KM had a child and he worried about what would happen to JJ if he didn't provide shelter. Even though KM's own mother was warning Darrel not to let her in the house, Darrel had a big heart and went against family advice. Mindful of KM's history, Darrel set conditions—getting a job, using her

food stamps to pay for JJ's meals, and contributing to the household—to which KM agreed.

KM did not live up to the agreement. On a Saturday morning, Darrel informed her by phone that it was time for her to move out. KM responded by calling the police later that day to allege that Darrel had inappropriately touched her three days earlier. After the police arrived to take a statement, five-year-old JJ began claiming that she too had been abused by Darrel, just like her mom.

The constitutional issues presented in this personal restraint petition is defense counsel's failure to introduce much of the evidence discussed above. When the prosecutor challenged Darrel's truthfulness on the witness stand, defense counsel did not rebut with evidence of Darrel's reputation within the community. Nor did defense counsel present reputation testimony of Darrel's sexual morality, even though such evidence was readily available. When KM said that Darrel was often home during the day, at which time he could have molested JJ, defense counsel did not call Darrel's employers to refute that testimony. Nor did defense counsel question KM about her criminal activity or other conduct bearing upon credibility and motive. The jury also did not hear about KM's pervasive drug usage and its impact on her ability to accurately perceive events.

IV. Statement of the Case

A. Sources of Facts

The facts relating to this petition are based on the clerk's papers and transcripts filed in the direct appeal under case number 47477-8-II,¹ and the additional materials filed as an appendix to this PRP. This consists of the following:

1. Declaration of James Dixon (and attachments)
2. Declaration of Darrel Harris
3. Declaration of Kay Linda Midgette
4. Declaration of Don Satre
5. Declaration of Robert Hall
6. Declaration of Towne Collins

B. Trial Testimony

1. KM moves into Darrel Harris' house

In the late summer of 2013, Darrel Harris was 48 years old. RP 693. He worked as a property manager and real estate agent and owned a three-bedroom house in Puyallup. RP 660, 674. His niece, KM, was 25 years old. She had a five-year-old daughter named JJ. RP 397-98.

¹ The report of proceedings is sequentially numbered with two exceptions. The opening was separately transcribed and is referred to herein as "ORP." Additionally, February 24, 2015 is separately paginated. That transcript, which includes the closing argument, is referred to herein as "CRP."

In September of 2013, KM contacted Darrel and asked if she and JJ could move in with him for a short time. She told him she had recently broken up with her boyfriend and was trying to get out of a bad living situation. RP 662. Darrel had allowed her to stay with him twice before. *Id.* Feeling bad for her, he agreed to help them out. KM and JJ moved in on September 23, 2013. RP 661.

Although there was no date set for KM to move out, it was understood that the arrangement was temporary until she could get back on her feet. RP 662-63. Darrel set some ground rules, such as: 1) KM must actively seek paid employment, and 2) KM covers JJ's food through KM's food stamps and cash allotment. RP 663. KM moved into the second bedroom and JJ moved into the third.

Darrel grew frustrated with KM over the next six weeks. Although he thought her intentions were good, she was inconsiderate. She did not wash dishes, and Darrel ended up buying disposable plates and cups. RP 677. When Darrel occasionally told KM he was unhappy with the situation, KM would change her ways for a few days, before reverting to her old habits. RP 677-78.

Darrel's frustration only grew over time. KM constantly asked for money and rides, and did nothing to help around the house. RP 680-81. In

late October, Darrel wrote KM a note telling her the situation was unacceptable and that things needed to change. *Id*; Ex. 8. He wanted her to stop asking him for things. RP 681. The note stated, “You are not my companion. You are a roommate. Act like a roommate. Stop borrowing my clothes. Stop asking for rides. Stop acting like a family.” Ex. 8; RP 680. Although KM seemed hurt by the note, her behavior and their relationship improved for a while. RP 681.

On Wednesday, November 6, 2013, Darrel went to work late so he could drive KM to a doctor’s appointment. RP 683. The appointment was at 11:00 am, and all three of them left the house a little after 10:00 am. RP 683-84. Following the doctor visit, they stopped for lunch at a restaurant, returning home with leftovers around 3:00 pm. RP 684. Although KM had another doctor’s appointment scheduled for the following day, Darrel told her he had already missed too much work and would not be able to drive her. RP 685.

At about 3:15 pm, Darrel was preparing to leave for work and walking towards his car when KM called him back. She was seated outside. KM gestured with her arms for Darrel to pull her up, which he did. She gave him a big hug. RP 385. Darrel then continued on to work. (These interactions were captured on video from an outside security camera, which the judge refused to allow into evidence.)

When Darrel got home that evening, KM and JJ were gone. He received a call from KM telling him that she and JJ were staying at her aunt's that night because her aunt would be able to get her to the doctor's office the next day. KM and JJ did not come back to the house on Thursday. RP 686-87. On Friday afternoon, KM arrived at the house with a friend to pick up her food stamps. Darrel reminded her that it was her turn to pick up groceries once the food stamps arrived. KM said she would return shortly and they would go grocery shopping that evening. RP 689. She did not come back, leaving Darrel even more frustrated. The next morning, he had to go to the store to buy groceries for breakfast. This was the final straw. Darrel phoned KM and told her she was no longer welcome at the house and to come pick up her stuff. RP 689-90. KM later acknowledged that she had received that call. That was the last contact Darrel had with either JJ or KM. RP 692.

Darrel explained that at no time did he inappropriately touch either KM or JJ. RP 693.

2. KM gives a different account of what occurred on November 6th.

Deputy Richards of the Pierce County Sheriff's Office was working the late swing shift on November 9, 2013. RP 247. Dispatch had taken a call from KM, and Deputy Richards was returning that call around 5:45 pm. KM

told him that her uncle had touched her inappropriately. RP 248. Richards spent approximately twenty to thirty minutes talking to KM, but because she was crying hysterically, it was difficult to make out everything she was saying. Richards suggested she try writing it down, and said he would come by to see her. RP 248-50.

He arrived about a half hour later. KM was still “hysterically crying.” RP 251; 258. In fact, compared with other people, KM was “one of the more upset people as far as crying.” RP 252. She told Richards that three or four days earlier she had woken to find Darrel sitting on her bed, rubbing her vagina over her pajamas. RP 257. She told him to stop, which he did. Darrel told her that he wanted sex with her twice a week if she was going to live there for free. RP 257. Later that morning she received a note from Darrel telling her that she had better start living up to her end of the bargain if she wanted to stay in the house. RP 255; Ex. 8. KM said that she did not report it earlier because she was fearful of him. RP 252.

While Deputy Richards was speaking with KM, she advised him that her daughter had just recently told her that she also had been touched by Darrel. RP 258, 278. KM had not mentioned this during the telephone call. RP 281. Because Richards did not have any experience in interviewing children, he had KM ask the questions. RP 259. KM told JJ to tell Richards what she had said earlier. *Id.* In response to her mom’s questions, JJ said

Darrel touched her in “the private spot” with his finger and it hurt. RP 259-60. She said it happened one time. RP 429.

By the time KM took the stand at trial, her story had changed. She now testified that Darrel had put his hand inside her pajamas. RP 411. Her testimony that she went outside to the porch to confront Darrel after she found the note was inconsistent with her earlier written statement. In the statement she described finding the note and going into Darrel’s room, where he was laying on the bed, to confront him. RP 463, 465. She also testified the reason she waited three days to call the police was that, “I didn’t know what to do. I was in such shock.” RP 422.

At trial, KM stated that she first learned about JJ being touched **after** Deputy Richards had arrived at the house. KM testified she had been asking JJ every day since they left whether Darrel had touched her, and that JJ always said “no.” RP 427-28. Then, while Deputy Richards was at the house on the 9th, KM told JJ that “something bad had happened to mommy. Did Darrel do something to you?” RP 428. At that point JJ said “yes.” *Id.*

Following JJ’s statement, she was subjected to physical examinations and forensic interviews. At the forensic interview with Keri Arnold, JJ jumped right into talking about the abuse. The interviewer acknowledged that this does not usually happen, but it “isn’t completely uncommon.” RP 542. JJ told the interviewer that the abuse happened 33 times. RP 547. She

also said she saw Darrel grab her mother and take her clothes off. RP 568. This did not raise any alarms for Ms. Arnold. *Id.* In fact, because JJ provided some details instead of just repeating the same sentence over and over again, the interviewer thought it unlikely JJ had been coached. RP 549. The interviewer acknowledged she was employed by the Pierce County Prosecutor's Office but assured the jury it did not in any way influence her opinions. RP 577.

The physical examination revealed no physical evidence of abuse. RP 305-06. The examination was normal, including the genital and anal exams. RP 596. The State's medical witnesses testified that lack of physical signs of abuse did not rule out the possibility of abuse. RP 596. JJ's hearsay statements were introduced through KM, JJ's great aunt, and the Ms. Arnold.

JJ herself took the stand. The first time she was asked questions about what Darrel had done that she did not like, she stated, "I forgot." RP 340. Outside the presence of the jury, JJ said she did not want to talk about it that day, and so she was excused. RP 342-45.

The next day JJ took the stand again. RP 386. Before doing so, she watched the video of her earlier forensic interview. RP 391. JJ stated that Darrel "touched me in the wrong places. . . girl places." RP 387. JJ said it happened during the day and night. It happened in the living room, his room,

and her bedroom. RP 392-93. JJ did not remember what any of those rooms looked like. RP 395.

JJ told her aunt that Darrel came into her room and shut her door while her mom slept. JJ also said that Darrel picked her up, carried her into his room, and shut the door. RP 354-55, 364.

Darrel testified that JJ's account was impossible, as there were no doors on his or KM's bedrooms. He produced pictures demonstrating this fact. Darrel also attempted to introduce testimony from a private investigator who inspected the house and determined there was no sign of hinges on the door frame. The court excluded the investigator's testimony as cumulative to Darrel's testimony.

Darrel also testified that although they had put up a door in JJ's room, the location of the bed prevented the door from closing. Consequently, given the location of the beds in KM and JJ's rooms, they would have been able to see each other's beds. Darrel produced pictures. KM disputed much of this. RP 409-19.

In cross-examination, the prosecutor challenged Darrel's credibility. She suggested the photographs were staged, and that Darrel had not shown other pictures that were less helpful. RP 696-99; CRP 15. In closing, she told the jury that they should consider his motive when evaluating his credibility. CRP 63.

Nor was that the only time the prosecutor questioned Darrel's credibility. She asked him whether he had ever touched KM's "rear end." When he said no, the jury was excused, and the State moved to introduce video which showed Darrel had touched her rear. 6aRP 703-717. Darrell ended up agreeing that he did rub her buttocks. CRP RP 8-9. Predictably, in closing the prosecutor relied upon this evidence to argue that Darrel was not credible, that he refused to admit what he had done. CRP 66. She asked the jury, "What else doesn't he want to admit to, to doing to [JJ] and to [KM]? It is a fair question to ask yourselves." *Id.*

As described below, these questions went unanswered by defense counsel. He did not present available reputation evidence regarding Darrel's truthfulness or his sexual morality and decency. He did not establish with independent witnesses that Darrel could not have been home during many of the times JJ claims she was abused. Nor did he present evidence challenging JJ's credibility. He did not contest the State's motion to exclude KM's extensive drug use, despite its relevancy to her ability to perceive. Nor did he suggest ways in which JJ may have become confused, if in fact she really had been abused by someone. In short, defense counsel was overly dependent upon the security footage of the hug and the private investigator's examination of the door frame, and when that evidence was

excluded, he failed to consider other available means of challenging the State's evidence.

V. Argument

A. Darrel Harris was Denied his Sixth Amendment Right to Effective Assistance of Counsel.

1. Legal Standard

A criminal defendant has a Sixth Amendment right to competent counsel. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed.2d 674 (1984). This right is violated when the defendant is prejudiced by counsel's deficient performance, that is, when there is a reasonable likelihood that counsel's errors could have affected the result. *Id.* The prejudicial effect of counsel's errors must be considered cumulatively rather than individually. *Williams v. Taylor*, 529 U.S. 362, 120 S.Ct 1495, 1515, 146 L.Ed.2d 389 (2000); *Harris v. Wood*, 64 F.3d 1432, 1438-39 (9th Cir. 1995).

2. Favorable Character Evidence Should Have Been Presented

Because there was no physical evidence of abuse, the case turned upon the credibility of the witnesses. If Darrel's testimony gave the jury a reason to doubt his guilt, then the jury was required to acquit. In seeking a conviction, the prosecutor attacked Darrel's veracity. She argued that Darrel was staging the evidence, that he was hiding other evidence, and that he was

not being truthful in what he told the jury. This was defense counsel's opportunity to present evidence of Darrel's reputation for truthfulness in the community. Defense counsel failed to do so.

One of the witnesses prepared to testify regarding Darrel's reputation for truthfulness was Towne Collins. He graduated from law school in 1964 and has since been heavily involved in the real estate business. In 1998, he founded Better Properties Real Estate, with approximately 160 agents associated with the office. Collins Dec. at 1. Darrel began working for him in 2007 as a licensed real estate agent. Because Darrel had a wide range of useful skills, Mr. Collins used him in the office as well. In his declaration, Mr. Collins stated: "Within the work place community, as well as the local real estate industry as a whole, Darrel was well known and respected. He had a reputation of being honest, truthful, and a hard worker. He had an excellent reputation for veracity." *Id. at 2.*

Mr. Collins' testimony meets all of the criteria for reputation evidence. Evidence Rule 608(a) allows evidence of a witness's reputation for truthfulness after his character for truthfulness has been attacked by "reputation evidence or otherwise." While it is easy to determine whether someone's reputation is attacked, it is sometimes more difficult to determine when a person's character for truthfulness has been attacked. *State v. Harper*, 35 Wn. App. 855, 860, 670 P.2d 296 (1983). While impeachment on

an inconsistent statement may not necessarily rise to that level, the accusations by the prosecutor here were far more sweeping. She suggested Darrel staged evidence and hid the truth. She also asked the jury to consider what else Darrel was not telling them. This clearly fits within ER 608(a).

The party seeking to admit reputation evidence must show that the community is both neutral and general. *State v. Callahan*, 87 Wn. App. 925, 936, 943 P.2d 676 (1997) (allowing defendant to present evidence of his reputation within his workplace). Given the amount of time Darrel had worked at the office, the number of other people who worked there, and the fact that he was well known to the other brokers, Mr. Collins' evidence would have been admissible had defense counsel presented it.

In addition to the workplace, Darrel also had a reputation for truthfulness in the community he used to live in. Bob Powers is the property manager at Hidden Glen Mobile Park. Darrel owned a unit in the park until he bought a house in 2012. Mr. Powers was ready to testify that although it was a large, 196 unit park, Darrel was well known and trusted. According to Mr. Powers, Darrel had a reputation for honesty within the Hidden Glen community. (Powers Declaration at 1-2). Another member of that community, Rob Hall, was qualified and prepared to offer similar testimony. (See Hall Declaration).

Besides his reputation for truthfulness, Darrel also had a reputation for sexual morality and decency around children. Evidence Rule 404 provides that while evidence of a person's character is not admissible for the purposes of proving that the person acted in conformity therewith, evidence of a 'pertinent trait of character' is admissible if offered by the accused. ER 404(a)(1). Evidence of one's reputation in the community for sexual morality is relevant and may be admissible as character evidence if the accused is charged with a sex offense. *State v. Harper*, 35 Wn. App. 855, 859-60, 670 P.2d 296 (1984); *State v. Grisvold*, 98 Wn.App. 817, 829, 991 P.2d 657 (2000), *abrogated on other grounds* by *State v. DeVincentis*, 150 Wn.2d 11, 74 P.3d 119 (2003). *See also*, *State v. Lopez*, 190 Wn.2d 104, fn 7, 410 P.3d 1117 (2018) (noting that Divisions Two and Three permit character evidence of sexual morality and decency, while Division One does not).

The reputation evidence that could have been presented in this case meets the requirements of ER 404(a). Both Bob Powers and Rob Hall were members of the same mobile home community as Darrel. Unlike more traditional neighborhoods, residents in mobile home communities tend to know each other better. As the residential manager, Bob Powers would have known if there were concerns about Darrel. He states in his declaration:

As a residential manager, I was in tune with the reputation of many of the residents. If people had a problem with a particular resident, they would often come to talk to me about

it. Darrel was considered by the community to be a safe person for the kids to be around and talk to. I would say that he had a reputation for sexual morality and decency.

(Powers Declaration). Similarly, as a parent with a young daughter, Rob Hall paid particular attention to the reputations of other residents in the park. As Mr. Hall notes in his declaration, he never would have left his daughter with Darrel but for his unimpeachable reputation for sexual morality and decency around children. (Hall Declaration).

In *State v. Thomas*, 110 Wn.2d 859, 757 P.2d 512 (1988), the defendant was accused of statutory rape. The trial court permitted three character witnesses to testify that the defendant had a good reputation for being sexually moral or sexually righteous, and for being sexually decent person. The issue before the Washington Supreme Court was whether the trial judge should have given a special jury instruction that specifically addressed the character evidence. The Supreme Court affirmed the trial judge's failure to give the instruction, but in doing so, the Supreme Court stated, "Defendant's evidence of a character trait was admitted in careful compliance with ER 404 (a)(1)." *Id.* at 864. The Court emphasized that defense counsel was allowed to argue this sexual morality character evidence to the jury in closing argument. *Id.* at 863-64.

In the present case, defense counsel's failure to not introduce available character evidence relating to sexual morality was inexcusable. In a

case without physical evidence, and where KM and JJ made multiple inconsistent statements, there is a reasonable possibility that the character evidence would have influenced the jury. While trial counsel is granted considerable deference, there simply is no legitimate trial strategy in failing to introduce this evidence.

3. Evidence that Darrel Spent Most Days at Work

JJ testified that Darrel assaulted her 33 times, and that many of these times were during the day in various rooms in the house. While Darrel disputed that he was even home during most of those hours, KM testified that he worked irregular hours. Given this conflicting testimony, defense counsel should have called Darrel's boss as a witness. In his declaration, Towne Collins states:

I was not at the trial, but I later learned that the woman making these accusations had stated that Darrel did not work regular hours and was often at home during the day. That is completely inaccurate. I personally saw Darrel at the office almost every day of the week; although, he would sometimes be out showing a house or performing his duties as a property manager. I do remember that during the time his niece was staying with him, that he did take time away to drive her to the doctor's office. This seemed to happen a lot.

(Collins Declaration at 2). Evidence that showed JJ's claims were either impossible or highly unlikely would have benefited the defense. Similarly, testimony from a credible witness that directly refuted KM's testimony would have undercut the State's case, creating more reasonable doubt. As

with the reputation testimony, there was no good reason not to call Mr. Collins to testify.

4. Evidence of KM's Pervasive Drug Use

There was substantial evidence of KM's pervasive misuse of marijuana and prescription medication. KM admitted at the defense interview that she regularly used marijuana while living at Darrel's house, and that she misused prescription drugs as well. At the defense interview, KM refused to reveal the specific medication or where she was receiving treatment. However, Darrel was aware from his own observations that she was misusing pain medication and muscle relaxants. (Harris Declaration at 3). Darrel was aware that KM was quite often high around the house and she woke up groggy because of the drugs. (*Id.*)

This was consistent with the observations of Darrel's neighbor, Don Satre. He noted that KM was smoking marijuana all of the time at the house, and that her clothes always smelled like marijuana. Many times Satre started walking over to see Darrel only to see KM smoking marijuana on the porch. Whenever he saw that, Satre would just turn and walk away. He had a job that does not allow him to consume marijuana and he was concerned that just getting close to someone smoking could get him in trouble. (Satre Declaration at 2).

The State moved to exclude reference to KM’s drug use in a motion in limine. Because defense counsel did not oppose that motion, this issue must now be raised as ineffective assistance of counsel. Evidence of drug use at or around the time of the crime is admissible to impeach the defendant's “memory of events and overall credibility.” *State v. Clark*, 48 Wn. App. 850, 863, 743 P.2d 822 (1987) (in prosecution for murder, defendant's use of marijuana was admissible “for an assessment of his memory of events and his overall credibility”); *State v. Kendrick*, 47 Wn. App. 620, 634, 736 P.2d 1079 (1987) (in murder prosecution in which defendant met victim at a bar, evidence that defendant had used cocaine and alcohol that night “substantially impeached Kendrick's recall of events in [the bar]”); *State v. Dault*, 19 Wn. App. 709, 719, 578 P.2d 43 (1978) (“Generally, evidence of drug use is admissible to impeach the credibility of the witness ... if there is a showing that the witness was using or was influenced by drugs at the time of the occurrence which is the subject of the testimony.”). *See also* 5A KARL B. TEGLAND, *Washington Practice: Evidence Law and Practice* § 607.12, at 402 (5th ed. 2008) (“A witness's use of alcohol or other drugs at the time of the events in question is admissible to show that the witness may not remember the events accurately.”)

In addition to KM's own acknowledgment of drug misuse—a problem serious enough to require her to enter treatment—other potential witnesses observed the effects of drugs on her. For instance Bob Powers, the manager at Hidden Glen, notes in his declaration, “I met KM approximately a dozen times while Darrel was living here. Just about every time I saw her, she seemed like she was high on drugs. She had a strange look in her eyes and did not appear to be tracking the conversation very well. I remember feeling sorry for her child.” (Powers Declaration at 2). Similarly, a year before her accusations against Darrel, she called the police to complain that she was being harassed by someone to whom she owed money. The officer reported, “While I was talking to her, I noted that her pupils were extremely constricted and she was acting very agitated. Both of those are characteristics of someone who is under the influence of drugs.” (Dixon Declaration).

Later that same year, KM was kicked out of a different house for stealing medication from her roommate. (Dixon Declaration, report 12009987). Soon after, Kimberly Pirolo, KM's former roommate, contacted the police about jewelry she found in the back seat of her car that she believed KM had stolen. Per the police report, “Pirolo stated that she was helping out [KM] offering her a place to stay at her home until she discovered that [KM] had stolen her medication. Pirolo kicked [KM] out of the residence around 11-08-12.” *Id.*

Eric Steel, another former roommate of KM, filed a protection order against her a year earlier. In his statement, Steel explained “[KM] is a transient with a long history of marijuana and Methadone abuse, who is showing schizophrenic and sociopathic tendencies and is emotionally unstable.” (Dixon Declaration attachment). Mr. Steel further stated that “incidents of violence or unstable behavior are too numerous to recall.” *Id.*

There is overwhelming evidence of KM’s drug abuse addiction and the deleterious impact of same. Her consumption of drugs bears directly upon her ability to perceive and remember events. There is no legitimate reason for defense counsel to have conceded the exclusion of this evidence. Defense counsel was ineffective in doing so.

5. Evidence of KM’s Acts of Dishonesty

Although KM does not have any convictions for crimes of dishonesty, she has engaged in criminal acts that bear directly upon her veracity. During the time she stayed with Darrel, she was apprehended at Walmart for shoplifting. She admitted as much during a defense interview. She also received a civil compromise letter from Walmart, allowing her to pay a civil fine to avoid civil litigation. (Harris Declaration at 2).

Evidence Rule 608(b) allows for impeachment by instances of misconduct in the absence of a conviction:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of a crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness's character for truthfulness or untruthfulness . . .

See also *State v. Mendez*, 29 Wn. App. 610, 630 P.2d 476 (1981) (explaining operation of the rule). In exercising discretion, a court should take into consideration whether the witness's misconduct is relevant to the witness's veracity on the stand. *State v. O'Connor*, 155 Wn.2d 335, 349, 119 P.3d 806 (2005). See e.g., *State v. Benn*, 120 Wn.2d 631, 651, 845 P.2d 289 (1993) (witness's drug dealing "did not impact [his] ability to relate his discussions with Benn on the witness stand"). Washington courts treat thefts, including shoplifting, as an act of dishonesty highly relevant to veracity. See *State v. Schroeder*, 67 Wn. App. 110, 834 P.2d 105 (1992).

Once Mr. Harris's attorney learned of KM's shoplifting and apprehension at Walmart, he was obliged to obtain Walmart's theft report.² Defense counsel also failed to use the police report describing KM's theft of medication from Ms. Pirolo. With one or both of these reports in hand, defense counsel could have more authoritatively confronted KM regarding her acts of dishonesty. Failure to further investigate the acts of dishonesty and

² Without subpoena power, counsel in this PRP cannot obtain the report from Walmart. If this Court orders a reference hearing, counsel will subpoena that report.

to use those reports in an ER 608 motion amounts to ineffective assistance of counsel. See *State v. Clark*, 143 Wash.2d 731, 766, 24 P.3d 1006 (2001) (“Failing to allow cross-examination of a state's witness under ER 608(b) is an abuse of discretion if the witness is crucial and the alleged misconduct constitutes the only available impeachment.”). Defense counsel was ineffective in failing to impeach KM with her prior acts of dishonesty.

Additionally, defense counsel should have elicited evidence of the false claims KM has brought against others as dishonest acts. Kay Linda Midgette, KM's mother, writes in her declaration:

I love my daughter, but I know KM to be manipulative and deceitful in order to get what she wants. . . . One example is when she called the police on me after I kicked her out of my house of which she did not reside for her hostile, angry attitude. She claimed I had assaulted her by pulling her hair, she was arrested when the police saw the scratch marks on my arm.

(Declaration of Kay Linda Midgette). This declaration is not only evidence of false claims and manipulation by KM, it is also reveals the way in which KM lashes out when angry at family members. Significantly, KM's own mother warned Darrel about allowing KM into his house.

This was not a strong case for the State. The suspicious timing of KM's disclosures, the initial questioning of JJ by her mother, the inconsistent statements, and the lack of physical evidence all contributed to a questionable prosecution. Had defense counsel introduced the favorable

character testimony, rebutted the claim that Darrel was usually at home with credible testimony from Mr. Collins, introduced KM's extensive drug use, and impeached KM with her multiple acts of dishonesty, there is a reasonable probability that the outcome would have been different. Significantly, a defendant need not show that counsel's deficient conduct "more likely than not altered the outcome in the case." *In re Crace*, 174 Wn.2d 835, 841-42, 280 P.3d 1102 (2012). Rather, a defendant need only establish "a probability sufficient to undermine confidence in the reliability of the outcome." *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987), quoting *Strickland v. Washington*, 466 U.S. 668, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). This standard applies in personal restraint petitions, as well as direct appeals. *In re Grace*, 174 Wn.2d at 841-42. Because defense counsel's performance impacted Darrel's right to a fair trial, reversal is required.

VI. Request For Relief

Darrel Harris received ineffective assistance of counsel. Based on the foregoing, he asks this Court to reverse and remand for a new trial. In the alternative, he requests a reference hearing.

VII. Oath

After being first duly sworn on oath, I depose and say that I am the attorney for petitioner, I have read the petition, know its contents, and believe the petition is true.

Dated this 7th day of June, 2018

s/ James R. Dixon
State Bar Number 18014
Dixon & Cannon, Ltd.
601 Union Street, Suite 3230
Seattle, WA 98104
Telephone: (206) 957-2247
Fax: (206) 957-2250
E-mail: james@dixoncannon.com

CERTIFICATE OF SERVICE

I, James R. Dixon, certify on June 7, 2018, I caused a true and correct copy of this
Personal Restraint Petition to be served on the following in the manner indicated below:

Chelsey Miller
Pierce County Prosecutor's Office
cmille2@co.pierce.wa.us

(X) Email

DATED: June 7, 2018

s/ James R. Dixon
State Bar Number 18014
Dixon & Cannon, Ltd.
601 Union Street, Suite 3230
Seattle, WA 98104
Telephone: (206) 957-2247
Fax: (206) 957-2250
E-mail: james@dixoncannon.com

DECLARATION OF
JAMES DIXON
(AND ATTACHMENTS)

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

STATE OF WASHINGTON,
Plaintiff,

v.

DARREL LORNE HARRIS,
Defendant.

No. 14-1-00309-1

Declaration of James Dixon

I, James Dixon, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. My name is James Dixon and I am the attorney representing Darrel Harris in his personal restraint petition.
2. I read his declaration to Darrel Harris and he authorized me to sign it for him as his attorney. This personal restraint petition will be supplemented with his personally signed declaration once it is received from Stafford Creek Corrections Center.
3. I have attached to this declaration a true and correct copy of Puyallup Police Incident Report 12009987, which is referenced in the personal restraint petition. I have attempted to redact all references to KM's actual name.

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4. I have attached to this declaration a portion of Puyallup Police Incident Report 12006008.2, which is referenced in the personal restraint petition. I have attempted to redact all references to KM's actual name.

5. I have attached to this declaration a portion of the petition for a protection order under Pierce County Superior Court case number 11-2-02908-1, which is referenced in the personal restraint petition. I have attempted to redact all references to KM's actual name.

DATED this 7th day of June 2018 in Seattle, WA,



James R. Dixon

Puyallup Police Incident Report

Incident No. 12009987.1
Jurisdiction Agency: Puyallup Police

| | | | | |
|---------------------|----------------------|------------------------------|--|--------------------------------|
| PDA: | Homeland Security: | Subject: | Found Property Found jewelry | Incident No. 12009987.1 |
| IBR Disposition: | Active | Case Management Disposition: | | |
| Forensics: | None Required | Reporting By/Date: | PPD233 - Kowalski, Michael 12/7/2012 09:38:50 | |
| Case Report Status: | Approved | Reviewed By/Date: | PPD293 - Gill, Kevin 12/7/2012 16:56:07 | |

Related Cases:

| | |
|--------------------|--------|
| Case Report Number | Agency |
|--------------------|--------|

Non-Electronic Attachments

| Attachment Type | Additional Distribution | Count |
|-----------------|-------------------------|-------|
|-----------------|-------------------------|-------|

| | | | |
|--------------------|------------------------------------|-------------------|---------------------------------|
| Location Address: | 2104 29th Ave Se | Location Name: | |
| City, State, Zip: | Puyallup, WA 98374 | Cross Street: | |
| Contact Location: | | City, State, Zip: | |
| Recovery Location: | | City, State, Zip: | |
| CB/Grid/RD: | 9468 - Puyypd Grid | District/Sector: | PY_S1 - Puyallup - South |
| Occurred From: | 12/6/2012 16:01:00 Thursday | Occurred To: | |
| Notes: | | | |

Offense Details: 7802 - Found Property

| | | | | | | | |
|-----------------------------|--------------------------------|---------------------|--|---------------|--|-----------------------|--|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | | Juvenile: | |
| Completed: | Completed | Crime Against: | | Hate/Bias: | | None (No Bias) | |
| Criminal Activity: | | Type of Security: | | Using: | | | |
| Location Type: | Single Family Residence | Evidence Collected: | | Tools: | | | |
| Total No. of Units Entered: | | | | | | | |
| Entrance Compromised: | | | | | | | |
| Entry Method: | | | | | | | |
| Suspect Description: | | | | | | | |
| Suspect Actions: | | | | | | | |
| Notes: | | | | | | | |

Other Entity O1: Pirolo, Kimberly A

PDA:

| | | | | | | | | | |
|----------|-------------------------|---------|------------|-------------|--------------------------|------------|---------------------|------------|---------------------|
| Aliases: | | | | | | | | | |
| DOB: | 12/5/1967 | Age: | 45 | Sex: | Female | Race: | White | Ethnicity: | Non-Hispanic |
| Height: | 5' 3" | Weight: | 185 | Hair Color: | Blonde/strawberry | Eye Color: | Brown | | |
| Address: | 2104 29th Ave Se | | | County: | | Phone: | 253-841-5643 | | |

| | | | | | | |
|------------------------------|----------------------------|-----------------------------|------------------------------------|-------|----------|-------------|
| Call Source: | Dispatched | Assisted By: | | | | |
| Phone Report: | No | Notified: | | | | |
| Insurance Letter: | | Entered By: | PPD233 - Kowalski, Michael | | | |
| Entered On: | 12/7/2012 09:07:05 | Approved By: | PPD15075 - McNiven, Nichole | | | |
| Approved On: | 12/10/2012 09:26:04 | Exceptional Clearance: | | | | |
| Adult/ Juvenile Clearance: | | Exceptional Clearance Date: | | | | |
| Additional Distribution: | PPD - SIU | Other Distribution: | | | | |
| Validation Processing | Distribution Date: | County Pros. Atty. | Juvenile | Other | CPS | Supervisor: |
| | By: | City Pros. Atty. | Military | DSHS | PreTrial | |

Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.

Printed: 12/10/2012 09:26:04
Printed By: PPD15075 - McNiven, Nichole

Puyallup Police Incident Report

Jurisdiction Agency: Puyallup Police

Incident No. 12009987.1

Page 2 of 3

| | | | | | |
|--------------------|-----------------------------|-------------------------------|-------------------|-------------------------|--|
| City, State Zip: | Puyallup, WA 98374 | Country: | | Business Phone: | |
| Other Address: | | | | Other Phone: | |
| Resident: | Full - Time Resident | Occupation/Grade: | | Employer/School: | |
| SSN: | | | | Place Of Birth: | |
| Driver License No: | | Driver License State: | Washington | Driver License Country: | |
| Attire: | | | | Complexion: | |
| SMT: | | | | Facial Hair: | |
| Entity Type: | Complainant | Reporting Statement Obtained: | | Facial Shape: | |
| Entity Notes: | | | | | |

Other Entity O2:

PDA:

| | | | | | | | | | |
|--------------------|-------------------------|-----------------------|-------------------------------|-------------|-------------------------|------------------|--------------|-----------------|---------------------|
| Aliases: | | | | | | | | | |
| DOB: | 5/7/1988 | Age: | 24 | Sex: | Fem ale | Race: | White | Ethnicity: | Non-Hispanic |
| Height: | 5' 8" | Weight: | 130 | Hair Color: | Brown | | Eye Color: | Green | |
| Address: | | | | | | County: | | Phone: | |
| City, State Zip: | | | | | | Country: | | Business Phone: | |
| Other Address: | | | | | | | | Other Phone: | |
| Resident: | Unknown | | Occupation/Grade: | | | Employer/School: | | | |
| SSN: | | | | | | Place Of Birth: | | | |
| Driver License No: | | Driver License State: | Washington | | Driver License Country: | | | | |
| Attire: | | | | | | Complexion: | | | |
| SMT: | | | | | | Facial Hair: | | | |
| Entity Type: | Other Individual | | Reporting Statement Obtained: | | | Facial Shape: | | | |
| Entity Notes: | | | | | | | | | |

Property Item No. 1/1: 20515 - Jewelry - Necklace

| | | | |
|-----------------------|---|--------------------|--|
| Other Common Item: | | Photographed: | |
| Description: | 6 gold colored necklaces, 2 silver colored necklace and a SS ring with a turquoise colored stone | Fingerprinted: | |
| Quantity: | 9 | Contents Sampled: | |
| Finding Location: | | Owner: | |
| Status: | F - Found (Includes Found Drugs) | Value: | |
| Recovered Date: | | Make/Brand: | |
| Recovered Value: | | Model: | |
| Field Tested: | | Serial No: | |
| Field Test Results: | | OAN: | |
| Property Disposition: | Booked into Property | Insurance Company: | |
| Disposition Location: | Puyallup PD | Policy No: | |

Vehicle Information:

| | | | |
|--------------------------|--|---------------------|--|
| License: | | Locked: | |
| License State: | | Keys in Vehicle: | |
| License Country: | | Delinquent Payment: | |
| Vehicle Year: | | Victim Consent: | |
| Make: | | Drivable: | |
| Model: | | Estimated Damage: | |
| Vehicle Style: | | Damage: | |
| Primary Vehicle Color: | | Damaged Area: | |
| Secondary Vehicle Color: | | Tow Company: | |
| VIN: | | Tow Consent: | |
| Special Features: | | Hold Requested By: | |

Puyallup Police Incident Report

Jurisdiction Agency: Puyallup Police

Incident No. 12009987.1

Page 3 of 3

Drug Information:

Drug Type:

Drug Measure:

Drug Quantity:

Drug Measure Type:

Jewelry Information:

Metal Color:

Total # of Stones:

Metal Type:

Inscription:

Stone Color:

Generally Worn By:

Firearm Information:

Caliber:

Length:

Gauge:

Finish:

Action:

Grips:

Importer:

Stock:

Property Notes:

| Enter | Date | Time | WACIC | LESA | Initial | Release Info. | Date | Time | Release No. | Release Authority |
|-------|------|------|-------|------|---------|----------------|------|------|----------------|-------------------|
| Clear | | | | | | Owner Notified | | | Operators Name | |

Investigative Information

| | |
|-------------------|------------------------------|
| Means: | Motive: |
| Vehicle Activity: | Direction Vehicle Traveling: |

| | |
|-----------|--|
| Synopsis: | Pirola turned jewelry over to me that was left behind by a former housemate that she believes may be stolen. |
|-----------|--|

| | |
|------------|--|
| Narrative: | On 12-06-12 I was dispatched to contact Pirola in the PPD lobby. Pirola stated that she was helping out offering her a place to stay at her home until she discovered that had stolen her medication. Pirola kicked out of the residence around 11-08-12. Pirola discovered the listed jewelry in the back seat of her work car and she believed that it was left there by . Pirola stated that she believed that the jewelry was stolen based on past behavior and wanted to turn it over to the PPD. I then met Pirola at her residence where she turned over the listed items to me. Pirola stated that she has not spoken to since she moved out and did not know where she was staying. The jewelry was logged into evidence. |
|------------|--|

| | |
|--------------|----------------|
| Reviewed By: | Reviewed Date: |
|--------------|----------------|

Puyallup Police Supplemental Report

Incident No. 12006008.2
 Jurisdiction Agency: Puyallup Police

| | | | | | | |
|---------------------|-----------------|------------------------------|--|----------|-------------------------|------------------------------------|
| PDA: | No | Homeland Security: | | Subject: | Harassment Fel | Incident No. 12006008.2 |
| IBR Disposition: | Active | Case Management Disposition: | | | | |
| Forensics: | | Reporting By/Date: | PPD290 - Kearney, Robert 7/28/2012 19:43:17 | | | |
| Case Report Status: | Approved | Reviewed By/Date: | PPD241 - Pashon, Dan 7/29/2012 05:08:43 | | | |

Related Cases:

| | |
|--------------------|--------|
| Case Report Number | Agency |
|--------------------|--------|

Non-Electronic Attachments

| Attachment Type | Additional Distribution | Count |
|-----------------|-------------------------|-------|
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| | | | |
|--------------------|----------------------------------|-------------------|---------------------------------|
| Location Address: | 3001 S Meridian | Location Name: | |
| City, State, Zip: | Puyallup, WA 98373 | Cross Street: | |
| Contact Location: | | City, State, Zip: | |
| Recovery Location: | | City, State, Zip: | |
| CB/Grid/RD: | 9410 - Puyypd Grid | District/Sector: | PY_S1 - Puyallup - South |
| Occurred From: | 7/27/2012 19:30:00 Friday | Occurred To: | |
| Notes: | | | |

Offense Details: 1341 - Harassment / Verbal Threats Only

| | | | | | | | |
|-----------------------------|-----------------------|---------------------|-------------|---------------|-----------------------|-----------|-----------------------|
| Domestic Violence: | No | Child Abuse: | No | Gang Related: | No | Juvenile: | No |
| Completed: | Completed | Crime Against: | | Hate/Bias: | None (No Bias) | Using: | Not Applicable |
| Criminal Activity: | | Type of Security: | | Tools: | | | |
| Location Type: | Parking Lot | Evidence Collected: | None | | | | |
| Total No. of Units Entered: | | | | | | | |
| Entrance Compromised: | Not Applicable | | | | | | |
| Entry Method: | Not Applicable | | | | | | |
| Suspect Description: | Not Applicable | | | | | | |
| Suspect Actions: | Not Applicable | | | | | | |
| Notes: | | | | | | | |

Investigative Information

| | | | |
|-------------------|--|------------------------------|--|
| Means: | | Motive: | |
| Vehicle Activity: | | Direction Vehicle Traveling: | |

| | | | | | | | |
|---|--|-----------------------------|--|-------|----------|-------------|--|
| Call Source: | Dispatched | Assisted By: | PPD312 - Bond, Andrew | | | | |
| Phone Report: | | Notified: | | | | | |
| Insurance Letter: | | Entered By: | PPD290 - Kearney, Robert | | | | |
| Entered On: | 7/28/2012 00:27:34 | Approved By: | PPD15075 - McNiven, Nichole | | | | |
| Approved On: | 7/30/2012 09:29:14 | Exceptional Clearance: | | | | | |
| Adult/ Juvenile Clearance: | | Exceptional Clearance Date: | | | | | |
| Additional Distribution: | PPD - PC Prosecutor PPD - DV Advocate | Other Distribution: | | | | | |
| Validation Processing | Distribution Date: | County Pros. Atty. | Juvenile | Other | CPS | Supervisor: | |
| | By: | City Pros. Atty. | Military | DSHS | PreTrial | | |
| Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report. | | | Printed: 7/30/2012 09:29:14 Printed By: PPD15075 - McNiven, Nichole | | | | |

Synopsis:

Narrative:

On 07/27/2012 I was working a patrol shift for the City of Puyallup Police Department. At about 1934 hours I responded to assist Officer Bond with a suspicious incident where a woman was calling 9-1-1 to report being followed by a known subject in a red pickup truck (B26837K). The caller said she would respond to the Puyallup Police Station and that the pickup truck had turned into the Taco Bell drive through in the 700 block of S Meridian.

Officer Bond went to the Police Station to speak to the caller while I did an area check for the pickup. I did not see it in the drive through, so I began checking the area. I located the pickup in the Safeway parking lot (611 S Meridian) and found it to be unoccupied. I parked nearby, notified CityComm and phoned Officer Bond. He told me that there may be probable cause to arrest the driver, Gavin Nelson, for felony harassment. As I was speaking to Officer Bond I saw a white male adult exit the Safeway. The subject walked toward the pickup, then saw me and turned toward me. I saw that he had a Taco Bell cup in his hand, so I approached him and asked if he was Gavin.

He told me that he was, and that he figured I was there to talk to him about what happened earlier at the 7-11. He was cooperative, calm and polite as I asked him to tell me what happened. Gavin told me that [redacted] owed him money, and he approached her at the 7-11 when he saw her pull into the parking lot. He told me he was on his way to the McDonalds at Wal Mart to get something to eat at the time.

Gavin said that he pulled into the parking lot and confronted [redacted] about the money she owes him (\$50) and then he saw that she was on the phone, so he decided to leave. He told me he never threatened to kill her, but that he did say "When I move, you're fucked." He said he meant that she would have nowhere to stay because they were planning to move into a house together.

I asked why he left, and Gavin told me [redacted] is "crazy" and that she has made up stories in the past to get people into trouble. He said that he didn't want to have anything to do with her drama, and that she was the one who followed him out of the parking lot, not the other way around. He also told me that [redacted] smokes pills, and that she was probably "high" right now.

Gavin provided a written statement and I discussed the incident with Officer Bond over the phone. I told Gavin that the prosecutor would be reviewing the case and that he may be contacted.

After taking Gavin's statement, I went to the Police Station to meet with Officer Bond. I gave Officer Bond the statement, and [redacted] was still there with him finishing her statement. I asked her about the money she owed Gavin, and she admitted that she did owe him money. While I was talking to her, I noted that her pupils were extremely constricted and she was acting very agitated. Both of these are characteristics of someone who is under the influence of drugs.

This supplemental report will be added to Officer Bond's general report.

Reviewed By:

Reviewed Date:

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

August 15 2011 9:17 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ERIC STEELE

Petitioner(s)

vs.

[Redacted]

Respondent(s)

NO. 11-2-02908-1

**PETITION FOR ORDER
FOR PROTECTION
(PTORPRT) (All Cases)**

| | |
|---|--|
| 1. <input checked="" type="checkbox"/> I am <input type="checkbox"/> A member of my family or household is the victim of domestic violence committed by the respondent as described in the statement below. | 3. My age is: <input type="checkbox"/> Under 16 <input type="checkbox"/> 16 or 17 <input checked="" type="checkbox"/> 18 or over |
| 2. <input checked="" type="checkbox"/> I live in this county. <input type="checkbox"/> I left my residence because of abuse and this is the county of my new or former residence. | Respondent's age is: <input type="checkbox"/> Under 16 <input type="checkbox"/> 16 or 17 <input checked="" type="checkbox"/> 18 or over |
| 4. My relationship with the respondent is: <input type="checkbox"/> Spouse <input type="checkbox"/> Former spouse <input type="checkbox"/> Parent or child | <input type="checkbox"/> In-law/Related by Marriage <input type="checkbox"/> Related by blood <input type="checkbox"/> Have child in common <input type="checkbox"/> Presently reside together <input type="checkbox"/> Resided together in past <input checked="" type="checkbox"/> Presently dating <input type="checkbox"/> Dated in past |

5. Identification of Minors No Minors involved.

| Name | Age | Race | Sex | How Related to | | Resides with |
|------|-----|------|-----|----------------|------------|--------------|
| | | | | Petitioner | Respondent | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

11-2-02908-1

6. Other court cases or other restraining, protection or no-contact orders involving me, the minors and the respondent:

| | | | |
|--------------|--|--|--|
| CASE NAME | | | |
| CASE NUMBER | | | |
| COURT/COUNTY | | | |

REQUEST FOR TEMPORARY ORDER: AN EMERGENCY EXISTS as described in the statement below: I need a temporary restraining order issued immediately without notice to the respondent until a hearing to avoid irreparable injury. I request a Temporary Order for Protection that will:

| I REQUEST AN ORDER FOR PROTECTION following a hearing THAT WILL: | | |
|--|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | ¹ RESTRAIN respondent from causing any physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking <input checked="" type="checkbox"/> me <input type="checkbox"/> these minors: |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | ² RESTRAIN respondent from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing of court documents, with <input checked="" type="checkbox"/> me <input type="checkbox"/> these minors, subject to any court-ordered visitation: |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | ³ EXCLUDE respondent from <input checked="" type="checkbox"/> our shared residence <input type="checkbox"/> my residence <input type="checkbox"/> my workplace <input type="checkbox"/> my school; <input type="checkbox"/> the day care or school of these minors: |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | ⁴ DIRECT respondent to vacate our shared residence and restore it to me. |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | ⁵ PROHIBIT respondent from knowingly coming within, or knowingly remaining within the property boundaries of: <input checked="" type="checkbox"/> our shared residence <input type="checkbox"/> my residence <input type="checkbox"/> my workplace <input type="checkbox"/> my school; <input type="checkbox"/> the day care or school of these minors: |

11-2-02908-1

| | | |
|--|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | ⁶ GRANT me possession of essential personal belongings, including the following: Blankets, Towels, Phone Charger. |
| | | ⁷ Grant me use of the following vehicle: |
| | | ⁸ OTHER: |
| | <input checked="" type="checkbox"/> | ⁹ DIRECT the respondent to participate in appropriate treatment or counseling services. |
| | <input checked="" type="checkbox"/> | ¹⁰ REQUIRE the respondent to pay the fees and costs of this action. |
| | | ¹¹ REMAIN EFFECTIVE longer than one year because respondent is likely to resume acts of domestic violence against me if the order expires in a year. |
| Check the following only if you are requesting protection involving a minor: | | |
| | | ¹² Subject to any court-ordered visitation, GRANT me the care, custody and control of these minors: |
| | | ¹³ RESTRAIN respondent from interfering with my physical or legal custody of these minors: |
| | | ¹⁴ RESTRAIN the respondent from removing from the state these minors: |

REQUEST FOR SPECIAL ASSISTANCE FROM LAW ENFORCEMENT AGENCIES:

I request the court order the appropriate law enforcement agency to assist me in obtaining:

- Possession of my residence. Use of designated vehicle.
 Possession of my essential personal belongings at the shared residence respondent's residence
 Custody of these minors:

OTHER:

Domestic violence includes physical harm, bodily injury, assault, stalking, OR inflicting fear of imminent physical harm, bodily injury or assault between family or household members.

11-2-02908-1

STATEMENT: The respondent has committed acts of domestic violence as follows. (Describe specific acts of domestic violence and their approximate dates, beginning with the most recent act. You may want to include police responses.)

Describe the most recent incident or threat of violence and date:

██████████ is a transient with a long history of Marijuana and Methadone abuse who is showing schizophrenic and sociopathic tendencies and is emotionally unstable.

Describe the past incidents where you experienced violence, where you were afraid of injury or where the respondent threatened to harm or kill you:

██████████ has on multiple occasions physically assaulted me and verbally abused me. Incidents of violence or unstable behavior are too numerous to recall.

Describe any violence or threats towards children:

**DECLARATION OF
DARREL HARRIS**

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

STATE OF WASHINGTON,
Plaintiff,

No. 14-1-00309-1

v.

Declaration of Darrel Harris

DARREL LORNE HARRIS,
Defendant.

I, Darrel Harris, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. My name is Darrel Harris and I currently reside in Stafford Creek Corrections Center. I am the defendant under this cause number. I am over 18 years of age and base this declaration on my personal knowledge and observations.

2. I am KM's uncle. Prior to 2013, I had allowed KM to move in with me once before. It had been a mistake and I had regretted doing so. Because of that, I had to give it a lot of thought before agreeing to let her move in this time. Her family warned me against it. I was concerned for their welfare, however, so I eventually decided to allow them both to move in.

1
2 2. During the trial, the State attacked my character and suggested that I was a liar. I
3 told my attorney that we should call my boss and others who could testify I was known as
4 trustworthy and truthful. My attorney told me this type of evidence was inadmissible.

5 3. I also wanted to call witnesses that would testify that I could be trusted around kids.
6 My attorney told me that we could not present that kind of testimony.

7
8 4. At trial, JJ said that I had sexually abused her during the day time. KM testified that
9 I worked irregular hours and was often home during the day. I told my attorney this was not true
10 and asked him to call the owner of Better Properties who could testify that I worked long hours
11 Monday through Saturday. In fact, I was working more than one job at the time. I was a licensed
12 real estate agent with Better Properties and served as a property manager for one of Better
13 Properties' brokers. As a property manager, I managed three apartments and two houses. I also
14 performed administrative work at the Better Properties office when I was not out showing property.

15
16 5. I wanted my attorney to introduce evidence that KM was often high on drugs. I told
17 him that KM regularly used marijuana, pain pills and muscle relaxants, and possibly other drugs.
18 KM was often high at the house and seemed out of touch with what was going on. She was usually
19 still groggy in the morning from the drugs. By contrast, in 2013 I had more than five years of
20 sobriety under my belt. I had witnesses who could have talked about how KM was constantly
21 getting high. KM even admitted it in her interview. My attorney told me that none of this evidence
22 was admissible.
23

24 6. I advised my attorney that I knew KM had been in trouble with the police and that
25 she had been accused of stealing from Walmart while living with me. I knew about Walmart
26

**DECLARATION OF
KAY LINDA MIDGETTE**

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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 IN AND FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Plaintiff,

9 v.

10 DARREL LORNE HARRIS,

11 Defendant.
12

No. 14-1-00309-1

Declaration of Kay Linda Midgette

13
14 I, Kay Linda Midgette, declare under penalty of perjury under the laws of the State of
15 Washington that the following is true and correct:

16 1. My name is Kay Linda Midgette. I am over 18 years of age and base this declaration
17 on my personal knowledge and observations.

18 2. Although I didn't raise KM, I am her mother, JJ's grandmother, and Darrel
19 Harris's sister. When we began communicating in 2003, I returned to Washington State. In
20 2009, I returned to California to finish my undergraduate studies receiving a BS in Psychology in
21 2013. I currently live in New Mexico where I am an owner/member of several businesses under the
22 umbrella of DavMid, llc: DavMid Home Care Services (helping elders age at home), DavMid
23 Lubricants Company (providing lubrication to local agriculture and automotive shops), and
24 Sleeping Dragon Farmers Market, (providing access to local grown whole produce to our
25 community) to name a few of the businesses.
26
27

28 *Declaration of Kay Linda Midgette*

PAGE 1 OF 3

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Seattle, WA 98101
(206) 957-2247*

1
2 3. Communication with KM is sporadic, primarily when she wants or needs
3 something. She had burned her bridges with most family members when she turned to Darrel for
4 living arrangements. When Darrel asked me about letting KM and JJ move in with him, I
5 advised him not to do it. However, Darrel having a big heart, went against family advice. I have
6 not had much contact with KM over the last few years since the allegations against my brother.
7 Nor have any other family members seen or talked with her recently.
8

9 4. I do know that she has lost custody of JJ, who now resides with her father. In
10 February 2018, my eldest daughter, her two children and I visited with JJ and her dad. JJ is
11 growing and maturing into a beautiful, STEM interested, young lady. It is my understanding that
12 my daughter is not allowed to visit with JJ until she takes certain steps to improve herself as
13 determined by JJ's father.
14

15 5. JJ often referred to KM's friends and/or 'landlords' as grandma, uncle and aunt,
16 even though they are not part of our actual family. When I was able to contact KM and JJ by
17 phone from California between 2009 and 2013, JJ would exclaim, "Oh, my real Grandma, in
18 California." the parties lasted late into the night, KM would put JJ in a bedroom at the party's
19 location to go to sleep.
20

21 6. It seems to me that JJ's molestation, was much more likely to have happened
22 when KM was taken to these parties. I say this because JJ described someone closing the door to
23 the bedroom, and there is no door to close inside Darrel's house. It is easy to see how a young
24 child could become confused as to where she was and whom she was with when awakened late
25 at night.
26
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1
2 7. When KM and JJ came to California to visit in 2011, KM told me that JJ had just
3 told her of being touched in her private areas at day care. I was unable to ascertain if it was
4 another child or an adult who made the assault. I advised KM to make a report of this incident
5 when she returned to Washington State. KM said she would handle it. On this trip, KM, JJ, my
6 partner and I were going to New Mexico to look at moving. We had to fly KM and consequently
7 JJ home early due to KM's unacceptable behavior when we stayed overnight at Motel 6 in
8 Phoenix.
9

10 8. I love my daughter, but I know KM to be manipulative and deceitful in order to
11 get what she wants. She had entitlement issues, beyond that of most millennials, partially
12 because of my absence. And when things didn't go her way, she resorted to drama and often
13 violent acts of retaliation. One example is when she called the police on me, after I kicked her
14 out of my house of which she did not reside for her hostile, angry attitude. She claimed I had
15 assaulted her by pulling her hair, she was arrested when the police saw the scratch marks on my
16 arm.
17

18 9. Although it would have pained me to testify, I would have done so in order to
19 describe JJ's residential history and how that could have led to a false charge against Darrel. I
20 discussed this with Darrel's attorney at the time, however, I never testified being told that I
21 would only be confirming what others had already declared.
22
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25 DATED this _____ day of June 2018 in _____, NM
26 (city)

27 _____
28 Kay Linda Midgette

Declaration of Kay Linda Midgette

PAGE 3 OF 3

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Seattle, WA 98101
(206) 957-2247*

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3 told her of being touched in her private areas at day care. I was unable to ascertain if it was
4 another child or an adult who made the assault. I advised KM to make a report of this incident
5 when she returned to Washington State. KM said she would handle it. On this trip, KM, JJ, my
6 partner and I were going to New Mexico to look at moving. We had to fly KM and consequently
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11 get what she wants. She had entitlement issues, beyond that of most millennials, partially
12 because of my absence. And when things didn't go her way, she resorted to drama and often
13 violent acts of retaliation. One example is when she called the police on me, after I kicked her
14 out of my house of which she did not reside for her hostile, angry attitude. She claimed I had
15 assaulted her by pulling her hair, she was arrested when the police saw the scratch marks on my
16 arm.
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19 describe JJ's residential history and how that could have led to a false charge against Darrel. I
20 discussed this with Darrel's attorney at the time, however, I never testified being told that I
21 would only be confirming what others had already declared.
22
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24
25 DATED this 6th day of June 2018 in Deming, NM
(city)

26 Kay Linda Midgette
27 Kay Linda Midgette
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Declaration of Kay Linda Midgette

PAGE 3 OF 3

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DECLARATION OF
DON SATRE

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 DARREL LORNE HARRIS,

13 Defendant.
14
15

No. 14-1-00309-1

Declaration of Donald Satre

16 I, Donald Satre, declare under penalty of perjury under the laws of the State of
17 Washington that the following is true and correct:

18 1. My name is Donald Satre. I am over 18 years of age and base this declaration on
19 my personal knowledge and observations.
20

21 2. I was Darrel Harris' neighbor from across the street when his niece was living
22 with him in 2013. I used to see his niece and her daughter often, as she would come over to our
23 house on most days.

24 3. Her clothes usually smelled like marijuana. There were many times that I would
25 walk over to see Darrel, but K.M. would be on the front porch smoking marijuana. I would just
26
27

28 *Declaration of Don Satre*

PAGE 1 OF 2

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1
2 turn around and walk away. I have a job that does not allow me to consume marijuana, and I was
3 concerned that just being close to her could get me in trouble. I never saw Darrel smoking
4 marijuana. He always was sober when I spoke to him, which is more than I can see for the way
5 that K.M. often acted when I saw her.

6
7 4. I would have testified about K.M. smoking marijuana all of the time at the house
8 if I had been asked to do so.

9
10 DATED this 6 day of June 2018 in Puyallup, WA
11 (city)

12 
13 Donald Satre

DECLARATION OF
ROBERT HALL

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

STATE OF WASHINGTON,

Plaintiff,

v.

DARREL LORNE HARRIS,

Defendant.

No. 14-1-00309-1

Declaration of Robert Hall

I, Robert Hall, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. My name is Robert Hall. I am a telephone operator with the Veterans Administration. I am over 18 years of age and base this declaration on my personal knowledge and observations.

2. I first knew Darrel Harris when we were both fellow residents at Hidden Glen Mobile Park in Puyallup. I lived there with my wife Sandra and daughter Stephanie.

3. Darrel had a dog named Spongi that he walked every day. He often stopped and talked with other residents while doing so. Because of that, people probably got to know Darrel

Declaration Rob Hall

PAGE 1 OF 2

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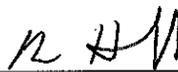
1
2 even more than other residents. Because residents at mobile parks are packed a little closer
3 together, people tend to know each other a little more. It is also a little easier to develop a
4 reputation, either good or bad at a place like that.

5 4. Our daughter Stephanie is in college now, but when we first met Darrel she would
6 have been around 9 or 10 years old. My wife and I are both protective of Stephanie and check
7 out the reputation of anyone she is around. This included Darrel. After learning more about
8 Darrel as well as getting to know him ourselves, we felt very comfortable with him around our
9 daughter. Other people in the neighborhood felt the same way, as evidenced by the kids that
10 often played with Darrel's dog.
11

12 5. Based on my time in the Hidden Glen community, I know that Darrel has an
13 excellent reputation as an honest and truthful person. I know that he also had a reputation as
14 someone who was safe around kids. While I don't recall anybody specifically using this
15 language, Darrel had a reputation of sexual morality and decency around children.
16

17 6. Darrel moved out of the park in 2012. Spongi and our family dog were best
18 buddies and he still brought Spongi over after he moved away. I know that he was heartbroken
19 when Spongi died. Even with Spongi gone, we still stayed in touch.
20

21
22 DATED this 6 day of June 2018 in Spanaway, WA,
23 [city]

24 
25 _____
26 Robert Hall

27
28 *Declaration Rob Hall*

PAGE 2 OF 2

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**DECLARATION OF
TOWNE COLLINS**

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

9 STATE OF WASHINGTON,

10
11 Plaintiff,

12 v.

13 DARREL LORNE HARRIS,

14 Defendant.
15

No. 14-1-00309-1

Declaration of Towne Collins

16 I, Towne Collins, declare under penalty of perjury under the laws of the State of Wash-
17 ington that the following is true and correct:

18 1. My name is Towne Collins. I am over 18 years of age and base this declaration on
19 my personal knowledge and observations.
20

21 2. I graduated from law school in 1964 and have been in the real estate business for
22 the past 35 years. In 1998, I founded Better Properties Real Estate. I opened up an office in
23 Lakewood and had approximately 160 agents associated with my office. I also began licensing
24 the name Better Properties to other agents who wished to open their own office. There are ap-
25 proximately 40 different offices that operate under that name.
26
27

28 *Declaration of Towne Collins*

PAGE 1 OF 2

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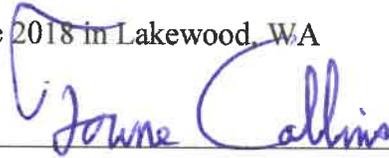
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2 3. Darrel began working for me in 2007 as a licensed real estate agent. Because he
3 had a wide range of useful skills, we used him in the office as well. Darrel also maintained a sec-
4 ond job serving as a property manager for one of our clients from 2012 through 2014. Darrel was
5 hard working, trustworthy and well liked. I had planned on setting him up in his own office.

6
7 4. As I stated above, we had a lot of agents working out of our office. Within the
8 work place community, as well as the local real estate industry as a whole, Darrel was well
9 known and respected. He had a reputation of being honest and a hard worker.

10
11 5. I was not at the trial, but I later learned that the woman making these accusations
12 had stated that Darrel did not work regular hours and was often at home during the day. That is
13 completely inaccurate. I personally saw Darrel at the office almost every day of the week; alt-
14 hough, he would sometimes be out showing a house or performing his duties as a property man-
15 ager. I do remember that during the time his niece was staying with him, that he did take time
16 away to drive her to the doctor's office. This seemed to happen a lot.

17
18 6. I was particularly upset to learn that the prosecutor characterized Darrel as a dis-
19 honest person who was unwilling to tell the truth. Again, that is completely contrary to his repu-
20 tation at the office. I wish I had been called as a witness, as I could have testified that Darrel had
21 a reputation of trustworthiness and truthfulness within the real estate community.

22 DATED this 6 day of June 2018 in Lakewood, WA

23
24 
25 _____
26 Towne Collins
27

28 *Declaration of Towne Collins*

PAGE 2 OF 2

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DIXON CANNON, LTD

June 07, 2018 - 4:36 PM

Filing Personal Restraint Petition

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs Harris, Darrel Lorne
Trial Court Case Number: 14-1-00309-1
Trial Court County: Pierce County Superior Court
Signing Judge: Vicki Hogan
Judgment Date: 04/20/2015

The following documents have been uploaded:

- PRP_Personal_Restraint_Petition_20180607162753D2175189_3741.pdf
This File Contains:
Personal Restraint Petition
The Original File Name was _2018_06_07 PRP FINAL.pdf

A copy of the uploaded files will be sent to:

- cmille2@co.pierce.wa.us

Comments:

Personal Restraint Petition with exhibits attached

Sender Name: James Dixon - Email: james@dixoncannon.com

Filing on Behalf of: James Robert Dixon - Email: james@dixoncannon.com (Alternate Email: litigators@dixoncannon.com)

Address:
601 Union Street Suite 3230
Seattle, WA, 98101
Phone: (206) 957-2247

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