FILED
Court of Appeals
Division II
State of Washington
10/11/2019 11:33 AM

No. _____
Pierce County Superior Court No.

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

IN RE THE PERSONAL RESTRAINT OF
WELDON MARK GILBERT

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I. STATUS OF PETITIONER

On November 16, 2009, Weldon Mark Gilbert pled guilty to multiple counts of sexual exploitation of a child in the production of child pornography in the Federal District Court for the Western District of Washington. See *United States v. Gilbert*, 07-5732. He was sentenced to 25 years in prison (300 months). On November 6, 2012, Gilbert entered a plea to multiple counts of child molestation of the same victims included in the federal indictment in the Pierce County Superior Court. That same day he was sentenced to a total of 116 months in prison to run *consecutively* to the sentence imposed in the Federal District Court for the Western District of Washington. Both the state and federal proceedings were based upon the victims, facts and conduct.

Gilbert is currently serving his federal court sentence in the Federal Bureau of Prisons.

In this Petition, Gilbert raises only one issue: Whether the Washington State protections against double jeopardy barred his conviction in Pierce County after he was first convicted in the Western District of Washington for the same conduct?

II. STATEMENT OF THE CASE

On November 6, 2007, Weldon Mark Gilbert was charged in Pierce County with several counts of child molestation. The charges expanded before Gilbert plead and are discussed in more detail below. App. 212-256. But the initial charges, and those later added before Gilbert entered a plea, arose from a joint state and federal investigation and search of Gilbert's home. App. 230-244.

At Gilbert's first appearance, the Pierce County Superior Court judge imposed a bail of $1.5 million, with stringent conditions. Gilbert engaged a surety and posted a bail bond on November 13, 2007. However, there was a note in the jail records instructing the Pierce County Jail not to release Gilbert but to instead call the FBI.

The FBI was notified, and Gilbert was arrested and transported to the Federal Detention Center at SeaTac. On November 21, 2007, Gilbert was charged with three counts of sexual exploitation of a minor. App. 2-5. Each count named a different "John Doe" as a victim, but the Government provided a redacted list of the names to the defense. App. 6-7. He was also charged with one count of transportation of a minor, John Doe 1, for purposes of engaging in illegal sexual activity. App 5. On November 28, 2007, the Federal District Court held a detention hearing. That Court noted that, given the nature of the charges, the law imposed a

"presumption" of detention. The district court denied release and the federal case proceeded while the state case was held in abeyance.

Eventually the United States filed a Fourth Superseding Indictment charging Gilbert with thirty-three counts of Sexual Exploitation of a Child in the Production of Child Pornography, in violation of 18 USC Sections 2251(a) and (e) and Section 2256, two counts of Transportation of Child to Engage in Illegal Sexual Activity, in violation of 18 USC Section 2423 and Section 2, and two counts of Obstruction of Justice. App. 23-30.

The federal prosecution proceeded first. As the trial date approached, the Government filed pleadings listing the victims and evidence it intended to rely on at trial. App. 31-38. However, the shortly before trial, the parties reached a "global settlement" of both the state and federal charges. App. 39-54.

On April 23, 2009, Gilbert pleaded guilty in federal district court to Sexual Exploitation of a Child in the Production of Child Pornography, as charged in Counts One through Twenty One, Twenty-Three through Thirty-One and Thirty-Three and Transportation of a Minor to Engage in Sexual Activity, as charged in Counts Thirty-Four and Thirty-Five, in violation of Obstruction of Justice, as charged in Counts Thirty-Six and Thirty-Seven. That agreement included the explicit provision that the

Pierce County Prosecutor's would recommend a 198-month sentence to run concurrently with any federal court sentence. App. 55; 56-92; 113.

Prior to the sentencing, the United States Probation Department conducted a presentence investigation and prepared a report exclusively for the sentencing judge and the parties. App. 101-102. That investigation detailed all of the facts and circumstances of the various allegations against Gilbert.

At the sentencing in federal court the Government argued:

> This defendant, Your Honor, recorded 100 plus hours of edited videotape, engaged his victims in sadistic sexual abuse, oral and anal sex, masturbation; his victims were as young as 10 and ranged in ages from 12, 13, 14, all the way up to 17. He has collected more than two dozen known victims. He has been doing it for more than a decade, maybe according to his own sexual deviancy evaluator maybe two decades.

App. 130.

The federal probation officer told the court:

> I would just say that in terms of, I guess, what really struck the probation office is just the magnitude of this offense in terms of the number of victims, the number of tapes, just how big of an offense this was, the level of manipulation, and that led to our recommendation for the 25 years.

App. 156.

Pursuant to the global plea agreement, Gilbert was sentenced to 300 months (25 years) imprisonment. App. 184.

In subsequent federal court proceedings Gilbert forfeited hundreds of thousands of dollars in property. App 191-215. .And, the federal district court ordered Gilbert to pay restitution to 21 "John Does." App. 188.

As part of the plea agreement, Gilbert was returned to Pierce County was re-arraigned in Pierce County on March 5, 2010. On November 20, 2009, he plead guilty to numerous crimes arising from the same or similar conduct as his federal charges. The agreed state sentence was contemplated to be a concurrent, determinate sentence of no longer than 198 months. However, during the sentencing hearing on January 12, 2010, Gilbert learned that the sentence to be imposed would not, in fact, be determinate and thus would be subject to the Indeterminate Sentencing Review Board's discretion as to when his State sentence was completed. Because this development did not reflect the plea agreement as stated in federal court, Gilbert was permitted to withdraw his plea.

During the pretrial proceedings in Pierce County, it became clear that the federal court presentence report had been provided to someone in Pierce County. Thus, the amended charges and the amended certificates of probable cause included specific facts taken almost verbatim form this document. Because federal law prohibits the dissemination of federal court Presentence Reports to anyone other than the parties and the federal

district court judge, Gilbert filed a motion for the return of any copies of this document. App. 2019-229.

After additional legal proceedings, on November 6, 2012, Gilbert pled guilty to multiple counts of child molestation in the 2nd and third degrees. All of these acts were alleged to have occurred between 2001 and 2007. In the state court pleadings, the victims were not numbered. Instead, they included the following persons using initials and their John Doe numbers. The alleged victims were R.L.K. born 3/14/89, John Doe 1. in the federal indictment, E.L.K., born 11/4/94, John Doe 2, C.D.F., born 4/6/95, John Doe 3; N.C.W., born 6/5/87, John Doe 4, S.C., born 9/6/88, John Doe 5, A.H., John Doe 6, A-Y., born 10/9/86, John Doe 7, D.R., born 3/31/87, John Doe 8, B.M., born 1/9/82 John Doe 9, L.C, John Doe 10, Z.M.R., born 9/13/86, John Doe II, J.M.R., born 6/10/84, John Doe 12, V. Z., born 10/l/91, John Doe 13, S.N.P., born 3/20/91, John Doe 14, C.S.M., born 4/12/87, John Doe 15, A.S.C., born 1017/89, John Doe 17, A.J.G., born 11/22/87, John Doe 18. App. 253-269.

The State recommended that any state sentence be concurrent with the 25 years imposed in federal court. App. 269-307. The Pierce County Superior Court trial judge failed to follow the joint recommendation, however. The court ordered that the 116-month state sentence on the child

molestation be served *consecutively* to the federal sentence. The court said:

> He has been sitting in the Pierce County Jail for the last three-odd years serving time on his federal charges. I'm not going to give him any credit for time served seeing as he could have had these done concurrently back in 2009, but he has chosen to delay that; therefore, there are consequences to those games that you've played.

App. 294-295.

II. GROUNDS FOR RELIEF AND ARGUMENT

A. GILBERT'S PETITION IS TIMELY

Gilbert's conviction in this matter was final no later than 2013. As a general rule, personal restraint petitions must be filed within one year of the date the case is otherwise final. There are several exceptions, however, including any claim that his conviction was barred by double jeopardy under Fifth Amendment of the United States Constitution or Article I, section 9 of the state Constitution. RCW 10.73.100(3). The Court does not have to decide whether the entire claim is completely meritorious in order to decide whether it fits within an exception to the time bar. *Matter of Schorr*, 191 Wash. 2d 315, 320, 422 P.3d 451, 455 (2018). Although Gilbert entered a plea to the charges in the Superior Court, the double jeopardy claim in this case is raised as a challenge to a

sentence that exceeds the court's authority. *Id.* at 323. Thus, he did not "waive" his protection against double jeopardy when he entered the plea.

B. THE CONSECTIVE SENTENCE IMPOSED BY THE PIERCE COUNTY SUPERIOR COURT VIOLATES THE STATE DOUBLE JEOPARDY CLAUSE AND RCW 10.43.040.

The Double Jeopardy Clause provides that '[n]o person shall … be subject for the same offense to be twice put in jeopardy of life or limb.' U.S. Const. Amend. V. This constitutional guarantee provides three forms of protection: It prohibits "a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense." *Dep't of Revenue v Kurth Ranch*, 511 US 767, 769 n. 1 (1994). In the federal system, a single act that violates the laws of two sovereigns constitutes two separate crimes. In general, prosecutions of a defendant by separate sovereigns, no matter how similar in character, do not violate the Fifth Amendment's Double Jeopardy Clause. *United States v Trammell*, 133 F 3d 1343, 1349 (10th Cir. 1998); *United States v Guzman*, 85 F3d 823, 836 (1st Cir. 1996). As a result, successive prosecutions by multiple sovereigns for that single act do not violate the federal Double Jeopardy Clause. *Heath v Alabama*, 474 US 82, n. 88 (1985).

States, however, may override the doctrine by either state constitution or by statute by providing they will not prosecute a defendant

who has already been prosecuted for the same offense elsewhere. *State v Ivie*, 136 Wash. 2d 173, 178, 961 P.2d 941, 944 (1998); See also Anno: *Conviction or acquittal in federal court as bar to prosecution in state courts for state offense based on same facts - modern view*, 6 ALR 4th 802, 826-24 (1981), superseded by 97 ALR 5th 201 (2002-2004).

Washington has done just that via RCW 10.43.040. The statute provides:

> Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, in a judicial proceeding conducted under the criminal laws of such state or country, founded upon the act or omission with respect to which he or she is upon trial, such former acquittal or conviction is a sufficient defense. Nothing in this section affects or prevents a prosecution in a court of this state of any person who has received administrative or nonjudicial punishment, civilian or military, in another state or country based upon the same act or omission.

This statute abrogates "dual sovereignty" in this jurisdiction. *State v. Ivie*, 136 Wash. 2d 173, 178, 961 P.2d 941, 944 (1998), see also See, e.g., *State v. Caligur*i, 99 Wash.2d 501, 512, 664 P.2d 466 (1983)(Washington "rejected the dual sovereignty doctrine ... by statute.") (construing RCW 10.43.040); *State v. Rudy*, 105 Wash.2d 921, 924, 719 P.2d 550 (1986) (RCW 10.43.040 provides "greater protection against double jeopardy."); *State v. Duncan*, 111 Wash.2d 859, 868, 765 P.2d 1300 (1989)(RCW

10.43.040 is statutory "protection against double jeopardy in multiple jurisdictions."); *In re Personal Restraint of Cook*, 114 Wash.2d 802, 814, 792 P.2d 506 (1990) (citations omitted) (RCW 10.43.040 provides "statutory double jeopardy protection"); *State v. Mathers*, 77 Wash.App. 487, 489–90, 891 P.2d 738 ("This state, however, provides greater protection against double jeopardy by statute.").

While the statute explicitly refers only to prior prosecution by another state or country, the Washington State Supreme Court has construed it to include prosecution by the federal government also. *Caliguri*, at 512, 664 P.2d 466 (1983); see also, *Rudy* at 924, 719 P.2d 550, 551 (1986). In *Caliguri*, the Supreme Court unanimously recognized RCW 10.43.040 statutorily extends double jeopardy protection to bar Washington prosecutions which follow prosecutions by other sovereigns. The issue in *Caliguri* was whether the Washington prosecution for conspiracy to commit arson was for the same "act or omission" under RCW 10.43.040 as a prior federal prosecution for racketeering based on similar acts. *Caliguri*, 99 Wash.2d at 512, 664 P.2d 466. Acknowledging the phrase "act or omission" is undefined in the statute, the Court noted the statute pertains to double jeopardy and turned to double jeopardy jurisprudence to define the term. *Id*. at 512–14, 664 P.2d 466. The Court said:

> Because RCW 10.43.040 simply extends double jeopardy protections we read it to mean Washington will not place a defendant in jeopardy if he has already been placed in jeopardy elsewhere. "Criminal prosecution" therefore means a proceeding sufficient to invoke jeopardy under double jeopardy jurisprudence.

The Court in *Caliguri* also held that the statute prohibits multiple prosecution for any "act or omission" rather than merely the "same offense". Compare RCW 10.43.040 with Const. art. 1, § 9. Thus, the statutory language focuses on identity "in fact" rather than identity "in law.

The Court said:

> The statutory focus on fact alone rather than fact and law is justified because crimes defined by different sovereigns may differ in certain technical respects which have little to do with the interest protected. We therefore construe RCW 10.43.040 to prohibit state prosecution for any offense which is in fact alone identical to or included within an offense for which a defendant has been previously prosecuted in another jurisdiction.

Id. 513–14 (citations omitted).

State v. Neufeld, 351 Mont. 389 (2009) supports Gilbert's claims. The defendant, age 28, began having sex with a 13-year-old. He videotaped himself having sex with her and also photographed her in "sexual poses or performing sexual acts." *Id.* at 389. The Montana Supreme Court held the defendant's conviction for the federal crim of sexual exploitation of a child by videotaping the child barred the

defendant's subsequent state court conviction for sexual intercourse with a child under 16.

Neufield's claim was based on a Montana statue that said:

> When conduct constitutes an offense within the jurisdiction of any state or federal court, a prosecution in any jurisdiction is a bar to a subsequent prosecution in this state if: (1) the first prosecution resulted in an acquittal or in a conviction and the subsequent prosecution is based on an offense arising out of the same transaction;

MCA § 46-11-504(1).

The Court held that both the state and federal government had the authority to prosecute the defendant. As to whether the charges were the "same offense," the court held:

> The crimes Neufeld was charged with are different, but the same conduct led to the equivalent charges. Offenses arise from the same transaction when a defendant's underlying conduct which gives rise to each prosecution is motivated by a purpose to accomplish the same criminal objective. . In this case, Neufeld's criminal objective was to engage in sexual contact with a minor, and in addition he recorded that activity. His sexual contacts with that minor constitute a crime under both the Montana statute and the federal statutes.

Id. at 509. Further:

> The crimes Neufeld was charged with are different, but the same conduct led to the equivalent charges. Offenses arise from the same transaction when a defendant's underlying conduct which gives rise to each prosecution is motivated by a purpose to accomplish the same criminal objective.

Id. The concurring opinion noted that, when Neufeld was sentenced in the federal court, his sentence was increased because the victim was a minor.

Here the crimes for which Gilbert was convicted and sentenced were the same in fact as the crimes for which he was sentenced in federal court. The charges all arose from the central claim that Gilbert engaging in unlawful sexual contact with minors and filming those encounters. The same set of victims was alleged in each proceeding. The investigation was conducted jointly by state and federal law enforcement officers based upon precisely the same evidence. The federal government forfeited hundreds of thousands of dollars to be paid to the victims named in both the state and federal charging documents and plea agreements.

Moreover, the Pierce County judge ran the sentences consecutively for reasons unrelated to any notion that the state court proceedings were based on different facts. Instead she focused on Gilbert's efforts to ensure the original plea agreement was followed and his exercise of his right to represent himself.

C. THIS PETITION IS NOT FRIVOLOUS AND SHOULD BE REFERRED EITHER TO THE TRIAL COURT FOR A REFERENCE HEARING OR TO A FULL PANEL OF THE COURT.

Pursuant to RAP 16.11(b), the chief judge may only dismiss a PRP without transfer to the superior court or referral to a three-judge panel if "the issues presented are frivolous." Such issues are "frivolous" within the meaning of that rule if they fail to present an arguable legal or factual basis for collateral relief considering the constraints of PRP procedures. *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686–87, 363 P.3d 577 (2015). If a PRP filed in the Court of Appeals is not frivolous, however, it must be treated differently. A non-frivolous PRP that can be decided solely on the record must be referred to a three-judge panel for a determination on the merits. RAP 16.11(b). A non-frivolous PRP that cannot be decided solely on the record must be transferred to the superior court for a determination on the merits or a reference hearing. *Id.*

Gilbert's claims are clearly not frivolous. Gilbert believes that he is entitled to relief based upon the proof that he has supplied with this petition. However, if the Court believes that additional facts are necessary or that there are factual issues that must be resolved, this Court should remand for further hearings in the trial court.

IV. CONCLUSION

This Court should grant Gilbert's Petition.

DATED this 10th day of October 2019.

Respectfully submitted,

___/S/_____
Suzanne Lee Elliott, WSBA #12634
Attorney for Gilbert

CERTIFICATE OF SERVICE

I certify that on the date listed below, I served by First Class United States Mail, postage prepaid, one copy of this brief and appendix on the following:

Pierce County Prosecutor's Office
Via this Court's Electronic Filing System

__10/10/19_____ _/S/_____
Date Suzanne Lee Elliott

No. _____

Pierce County Superior Court No. 07-1-05618-3

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

IN RE THE PERSONAL RESTRAINT OF

WELDON MARK GILBERT

APPENDIX TO PRP

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07-CR-05732-INDI

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

November 21 20 07

BRUCE RIFKIN, Clerk

By Judith A. Thomas Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT ~~SEATTLE~~ Tacoma

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07 5732BHS INDICTMENT

The Grand Jury charges that:

COUNT ONE
(Sexual Exploitation of a Child in the Production of Child Pornography)

Beginning on a date unknown, but in or about 2001, and continuing until on or about October 31, 2007, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and intentionally use, persuade, induce, entice, and coerce a minor male, John Doe 1, who at the time was under the age of eighteen (18) years, to engage in sexually explicit conduct, specifically, sexual spanking, mutual masturbation, oral-genital sexual intercourse, and the lascivious exhibition of the genitals and pubic area of said minor male, for the purpose of producing visual depictions of such conduct, that is, videotapes and digital video discs (DVDs), such

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visual depictions having been produced using materials that had been mailed, shipped, and transported in interstate and foreign commerce.

All in violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT TWO
(Sexual Exploitation of a Child in the Production of Child Pornography)

Beginning on a date unknown, but in or about 2001, and continuing until on or about October 31, 2007, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and intentionally use, persuade, induce, entice, and coerce a minor male, John Doe 2, who at the time was under the age of eighteen (18) years, to engage in sexually explicit conduct, specifically, sexual spanking, mutual masturbation, oral-genital sexual intercourse, and the lascivious exhibition of the genitals and pubic area of said minor male, for the purpose of producing visual depictions of such conduct, that is, videotapes and digital video discs (DVDs), such visual depictions having been produced using materials that had been mailed, shipped, and transported in interstate and foreign commerce.

All in violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT THREE
(Sexual Exploitation of a Child in the Production of Child Pornography)

Beginning on a date unknown, but in or about 2001, and continuing until on or about October 31, 2007, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and intentionally use, persuade, induce, entice, and coerce a minor male, John Doe 3, who at the time was under the age of eighteen (18) years, to engage in sexually explicit conduct, specifically, sexual spanking, mutual masturbation, oral-genital sexual intercourse, and the lascivious exhibition of the genitals and pubic area of said minor male, for the purpose of producing visual depictions of such conduct, that is, videotapes and digital video discs (DVDs), such

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visual depictions having been produced using materials that had been mailed, shipped, and transported in interstate and foreign commerce.

All in violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT FOUR
(Transportation of a Minor to Engage in Illegal Sexual Activity)

In or about 2005, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and willfully transport and caused to be transported a minor male, John Doe 1, who at the time was under the age of eighteen (18) years, in interstate and foreign commerce from Pierce County, in the State of Washington, to Canada, with the intent that the minor male engage in sexual activity under circumstances as would constitute a criminal offense by a person under Revised Code of Washington (RCW) Section 9A.44.089, Child Molestation; RCW Section 9.68A.090, Communication with a Minor for Immoral Purposes; RCW Section 9.68A.040, Sexual Exploitation of a Minor; RCW Section 9A.44.093,

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Sexual Misconduct with a Minor in the First Degree; RCW Section 9A.44.096, Sexual Misconduct with a Minor in the Second Degree; and Title 18, United States Code, Section 2251(a), Sexual Exploitation of a Child in the Production of Child Pornography.

All in violation of Title 18, United States Code, Section 2423(a) and Section 2.

A TRUE BILL:

DATED: 11/21/07

The signature of the foreperson has been redacted pursuant to the policy of the Judicial Conference of the United States

FOREPERSON

JEFFREY C. SULLIVAN
United States Attorney

LAWRENCE LINCOLN
Assistant United States Attorney

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Judge Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-5732BHS SEALED IDENTIFICATION OF VICTIMS IN SUPERSEDING INDICTMENT [redacted]

I. INTRODUCTION

On September 3, 2008, the Grand Jury handed down a superseding indictment in the above-entitled case. The superseding indictment alleges 28 separate counts of Production of Child Pornography, two counts of Transportation of Minors for Illegal Sexual Activity, and two counts of Obstruction of Justice. The victims in the indictment are referred to as "John Doe 1," "John Doe 2," etc. In order to assist the Court and the parties in identifying the counts and evidence attendant to each count, the Government offers the following list of victims, filed under seal.

II. LIST OF VICTIMS

JOHN DOE 1 - [redacted]

JOHN DOE 2 - [redacted]

JOHN DOE 3 - [redacted]

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JOHN DOE 4 - [redacted]

JOHN DOE 5 - [redacted]

JOHN DOE 6 - [redacted]

JOHN DOE 7 - [redacted]

JOHN DOE 8 - [redacted]

JOHN DOE 9 - [redacted]

JOHN DOE 10 - [redacted]

JOHN DOE 11 - [redacted]

JOHN DOE 12 - [redacted]

JOHN DOE 13 - [redacted]

JOHN DOE 14 - [redacted]

JOHN DOE 15 - [redacted]

JOHN DOE 16 - [redacted]K

DATED this 4th day of September, 2008.

Respectfully submitted,

JEFFREY C. SULLIVAN
United States Attorney

s/Roger S. Rogoff
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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/ Salee Wongsuk

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Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

October 29 20 08
BRUCE RIFKIN, Clerk
By Deputy

FILED LODGED ENTERED RECEIVED
OCT 29 2008
AT SEATTLE
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-5732BHS SECOND SUPERSEDING INDICTMENT

The Grand Jury charges that:

COUNTS ONE THROUGH TWENTY-EIGHT
(Sexual Exploitation of a Child in the Production of Child Pornography)

On exact dates unknown, but before on or about October 31, 2007, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and intentionally use, persuade, induce, entice, and coerce the following minor males, who at the time were under the age of eighteen (18) years, to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, that is, videotapes and digital video discs (DVDs), such visual depictions having been produced using materials that had been mailed, shipped, and transported in interstate and foreign commerce, with each such production constituting a separate Count of this Superseding Indictment:

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COUNT	MINOR VICTIMS	EXHIBIT NUMBER/SCENE
One	John Doe 1	Exhibit 5, Scene 1
Two	John Doe 2	Exhibit 6, Scene 2
Three	John Doe 3	Exhibit 3, Scene 4
Four	John Doe 4	Exhibit 5, Scene 4
Five	John Doe 5	Exhibit 7, Scene 2
Six	John Doe 6	Exhibit 9, Scene 1
Seven	John Doe 7	Exhibit 9, Scene 4
Eight	John Doe 8	Exhibit 9, Scene 5
Nine	John Doe 9	Exhibit 9, Scene 7
Ten	John Doe 10	Exhibit 11, Scene 5
Eleven	John Doe 11	Exhibit 5, Scene 5
Twelve	John Doe 12	Exhibit 9, Scene 11
Thirteen	John Does 1 and 13	Exhibit 3, Scene 2
Fourteen	John Does 1 and 14	Exhibit 7, Scene 1
Fifteen	John Does 8 and 15	Exhibit 16, Scenes 12-14
Sixteen	John Doe 1	Exhibit 8, Scene 4
Seventeen	John Doe 1	Exhibit 10, Scene 4
Eighteen	John Doe 1	Exhibit 3, Scene 7
Nineteen	John Doe 1	Exhibit 13, Scene 4
Twenty	John Doe 1	Exhibit 14, Scene 4
Twenty-One	John Doe 1	Exhibit 15, Scene 7
Twenty-Two	John Doe 1	Exhibit 12, Scene 4
Twenty-Three	John Doe 1	Exhibit 2, Scene 1
Twenty-Four	John Doe 1	Exhibit 8, Scene 2
Twenty-Five	John Doe 4	Exhibit 1, Scene 7
Twenty-Six	John Doe 4	Exhibit 12, Scenes 3 and 4 (connected)

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COUNT	MINOR VICTIMS	
Twenty-Seven	John Doe 8	Exhibit 9, Scene 6
Twenty-Eight	John Doe 8	Exhibit 16, Scene 2

All in violation of Title 18, United States Code, Sections 2251(a) and (e) and Section 2256.

COUNT TWENTY-NINE
(Transportation of a Minor to Engage in Illegal Sexual Activity)

In or about 2005, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and willfully transport and caused to be transported a minor, John Doe 1, who at the time was under the age of eighteen (18) years, in interstate and foreign commerce from Pierce County, in the State of Washington, to Canada, with the intent that John Doe 1 engage in sexual activity under circumstances as would constitute a criminal offense by a person under Revised Code of Washington (RCW) Section 9A.44.089, Child Molestation; RCW Section 9.68A.090, Communication with a Minor for Immoral Purposes; RCW Section 9.68A.040, Sexual Exploitation of a Minor; RCW Section 9A.44.093, Sexual Misconduct with a Minor in the First Degree; RCW Section 9A.44.096, Sexual Misconduct with a Minor in the Second Degree; and Title 18, United States Code, Section 2251(a), Sexual Exploitation of a Child in the Production of Child Pornography, all in violation of Title 18, United States Code, Section 2423(a) and Section 2.

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COUNT THIRTY
(Obstruction of Justice)

Beginning on or about October 30, 2007, and continuing until on or about August 28, 2008, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, with others known and unknown to the Grand Jury, knowingly did corruptly persuade, attempt to corruptly persuade, and engage in misleading conduct toward John Doe 1, by trying to convince John Doe 1 not to cooperate with law enforcement and judicial officers, with intent to hinder, delay and prevent the communication to a law enforcement officer and judge of the United States, of information relating to the commission or possible commission of a Federal offense, namely Production of Child Pornography, as charged in Counts 1, 13, 14, and 16 through 24 of this Indictment, in violation of Title 18, United States Code, Section 2251, and Transportation of a Minor With Intent to Engage in Criminal Sexual Activity, as charged in Count 29 of this Indictment, in violation of Title 18, United States Code, Section 2423(a).

All in violation of Title 18, United States Code, Section 1512(b)(3).

COUNT THIRTY-ONE
(Obstruction of Justice)

Beginning on or about October 30, 2007, and continuing until on or about August 28, 2008, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, with others known and unknown to the Grand Jury,knowingly did corruptly persuade, attempt to corruptly persuade, and engage in misleading conduct toward John Doe 1, by trying to convince John Doe 1 not to cooperate with law enforcement and judicial officers, with intent to influence, delay, or prevent the testimony of any person in an official proceeding, namely, proceedings related to the conduct charged in this Indictment.

All in violation of Title 18, United States Code, Section 1512(b)(1).

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(206) 553-7970

ASSET FORFEITURE ALLEGATIONS

The allegations contained in Counts 1 - 28 of this Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2253(a).

Upon conviction of the offenses in violation of Title 18, United States Code, Sections 2251(a) and (e) and 2256 set forth in Counts 1-28 of this Superseding Indictment, the defendant, WELDON MARC GILBERT, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 2253(a)(3), any property, real or personal, used or intended to be used, to commit or to promote the commission of such offenses and any property traceable to such property, including but not limited to:

a. One 2004 blue Lexus GX470, bearing Washington license plate 029RYB, VIN JTJBT20X940035115;

b. One 2006 white Ford F150 pick-up, Washington license plate A68898Z, VIN 1FTRF12206NB15476;

c. A 1981 Bell 206B-III helicopter bearing tail number N325JR and serial number 3296, and all flight logs and maintenance logs associated with this aircraft;

d. One 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft;

e. One 2003 Sea Ray Boat, model 185BR, bearing license number WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore Land'r trailer, Washington license plate 0059RG, VIN 1MDJ2JR163A248710;

f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel number 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and, Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington;

g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel number 8996010110, its buildings, improvements,

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Seattle, Washington 98101-1271
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appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and, Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington

If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 2253(b).

The allegations contained in Count 29 of this Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2253(a).

Upon conviction of the offense in violation of Title 18, United States Code, Section 2423(a) set forth in Count 29 of this Superseding Indictment, the defendant, WELDON MARC GILBERT, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 2253(a)(3), any property, real or personal, used or intended to be used, to commit or to promote the commission of such offense and any property traceable to such property, including but not limited to:

a. One 2004 blue Lexus GX470, bearing Washington license plate 029RYB, IN JTJBT20X940035115.

If any of the property described above, as a result of any act or omission of the defendant:

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a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 2253(b).

A TRUE BILL:

DATED:

The signature of the foreperson has been redacted pursuant to the policy of the Judicial Conference of the United States

FOREPERSON

JEFFREY C. SULLIVAN
United States Attorney

LAWRENCE LINCOLN
Assistant United States Attorney

ROGER ROGOFF
Assistant United States Attorney

MICHAEL DION
Assistant United States Attorney

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

OCTOBER 30, 20 08

BRUCE RIFKIN, Clerk

By _____ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-5732BHS THIRD SUPERSEDING INDICTMENT 07-CR-05732-INDI

The Grand Jury charges that:

COUNTS ONE THROUGH TWENTY-EIGHT
(Sexual Exploitation of a Child in the Production of Child Pornography)

On exact dates unknown, but before on or about October 31, 2007, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and intentionally use, persuade, induce, entice, and coerce the following minor males, who at the time were under the age of eighteen (18) years, to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, that is, videotapes and digital video discs (DVDs), such visual depictions having been produced using materials that had been mailed, shipped, and transported in interstate and foreign commerce, with each such production constituting a separate Count of this Indictment:

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COUNT	MINOR VICTIMS	EXHIBIT NUMBER/SCENE
One	John Doe 1	Exhibit 5, Scene 1
Two	John Doe 2	Exhibit 6, Scene 2
Three	John Doe 3	Exhibit 3, Scene 4
Four	John Doe 4	Exhibit 5, Scene 4
Five	John Doe 5	Exhibit 7, Scene 2
Six	John Doe 6	Exhibit 9, Scene 1
Seven	John Doe 7	Exhibit 9, Scene 4
Eight	John Doe 8	Exhibit 9, Scene 5
Nine	John Doe 9	Exhibit 9, Scene 7
Ten	John Doe 10	Exhibit 11, Scene 5
Eleven	John Doe 11	Exhibit 5, Scene 5
Twelve	John Doe 12	Exhibit 9, Scene 11
Thirteen	John Does 1 and 13	Exhibit 3, Scene 2
Fourteen	John Does 1 and 14	Exhibit 7, Scene 1
Fifteen	John Does 8 and 15	Exhibit 16, Scenes 12-14
Sixteen	John Doe 1	Exhibit 8, Scene 4
Seventeen	John Doe 1	Exhibit 10, Scene 4
Eighteen	John Doe 1	Exhibit 3, Scene 7
Nineteen	John Doe 1	Exhibit 13, Scene 4
Twenty	John Doe 1	Exhibit 14, Scene 4
Twenty-One	John Doe 1	Exhibit 15, Scene 7
Twenty-Two	John Doe 1	Exhibit 12, Scene 5
Twenty-Three	John Doe 1	Exhibit 2, Scene 1
Twenty-Four	John Doe 1	Exhibit 8, Scene 2
Twenty-Five	John Doe 4	Exhibit 1, Scene 7
Twenty-Six	John Doe 4	Exhibit 12, Scenes 3 and 4 (connected)

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COUNT	MINOR VICTIMS	
Twenty-Seven	John Doe 8	Exhibit 9, Scene 6
Twenty-Eight	John Doe 8	Exhibit 16, Scene 2

All in violation of Title 18, United States Code, Sections 2251(a) and (e) and Section 2256.

COUNT TWENTY-NINE
(Transportation of a Minor to Engage in Illegal Sexual Activity)

In or about 2005, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and willfully transport and caused to be transported a minor, John Doe 1, who at the time was under the age of eighteen (18) years, in interstate and foreign commerce from Pierce County, in the State of Washington, to Canada, with the intent that John Doe 1 engage in sexual activity under circumstances as would constitute a criminal offense by a person under Revised Code of Washington (RCW) Section 9A.44.089, Child Molestation; RCW Section 9.68A.090, Communication with a Minor for Immoral Purposes; RCW Section 9.68A.040, Sexual Exploitation of a Minor; RCW Section 9A.44.093, Sexual Misconduct with a Minor in the First Degree; RCW Section 9A.44.096, Sexual Misconduct with a Minor in the Second Degree; and Title 18, United States Code, Section 2251(a), Sexual Exploitation of a Child in the Production of Child Pornography, all in violation of Title 18, United States Code, Section 2423(a) and Section 2.

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COUNT THIRTY
(Obstruction of Justice)

Beginning on or about October 30, 2007, and continuing until on or about August 28, 2008, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, with others known and unknown to the Grand Jury, knowingly did corruptly persuade, attempt to corruptly persuade, and engage in misleading conduct toward John Doe 1, by trying to convince John Doe 1 not to cooperate with law enforcement and judicial officers, with intent to hinder, delay and prevent the communication to a law enforcement officer and judge of the United States, of information relating to the commission or possible commission of a Federal offense, namely Production of Child Pornography, as charged in Counts 1, 13, 14, and 16 through 24 of this Indictment, in violation of Title 18, United States Code, Section 2251, and Transportation of a Minor With Intent to Engage in Criminal Sexual Activity, as charged in Count 29 of this Indictment, in violation of Title 18, United States Code, Section 2423(a).

All in violation of Title 18, United States Code, Section 1512(b)(3).

COUNT THIRTY-ONE
(Obstruction of Justice)

Beginning on or about October 30, 2007, and continuing until on or about August 28, 2008, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, with others known and unknown to the Grand Jury,knowingly did corruptly persuade, attempt to corruptly persuade, and engage in misleading conduct toward John Doe 1, by trying to convince John Doe 1 not to cooperate with law enforcement and judicial officers, with intent to influence, delay, or prevent the testimony of any person in an official proceeding, namely, proceedings related to the conduct charged in this Indictment.

All in violation of Title 18, United States Code, Section 1512(b)(1).

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(206) 553-7970

ASSET FORFEITURE ALLEGATIONS

The allegations contained in Counts 1 - 28 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2253(a).

Upon conviction of the offenses in violation of Title 18, United States Code, Sections 2251(a) and (e) and 2256 set forth in Counts 1-28 of this Third Superseding Indictment, the defendant, WELDON MARC GILBERT, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 2253(a)(3), any property, real or personal, used or intended to be used, to commit or to promote the commission of such offenses and any property traceable to such property, including but not limited to:

a. One 2004 blue Lexus GX470, bearing Washington license plate 029RYB, VIN JTJBT20X940035115;

b. One 2006 white Ford F150 pick-up, Washington license plate A68898Z, VIN 1FTRF12206NB15476;

c. A 1981 Bell 206B-III helicopter bearing tail number N325JR and serial number 3296, and all flight logs and maintenance logs associated with this aircraft;

d. One 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft;

e. One 2003 Sea Ray Boat, model 185BR, bearing license number WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore Land'r trailer, Washington license plate 0059RG, VIN 1MDJ2JR163A248710;

f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel number 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and, Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington;

g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel number 8996010110, its buildings, improvements,

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appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and, Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington

If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 2253(b).

The allegations contained in Count 29 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2253(a).

Upon conviction of the offense in violation of Title 18, United States Code, Section 2423(a) set forth in Count 29 of this Indictment, the defendant, WELDON MARC GILBERT, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 2253(a)(3), any property, real or personal, used or intended to be used, to commit or to promote the commission of such offense and any property traceable to such property, including but not limited to:

a. One 2004 blue Lexus GX470, bearing Washington license plate 029RYB, IN JTJBT20X940035115.

If any of the property described above, as a result of any act or omission of the defendant:

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a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 2253(b).

A TRUE BILL:

DATED:

The signature of the foreperson has been redacted pursuant to the policy of the Judicial Conference of the United States

FOREPERSON

JEFFREY C. SULLIVAN
United States Attorney

LAWRENCE LINCOLN
Assistant United States Attorney

ROGER ROGOFF
Assistant United States Attorney

MICHAEL DION
Assistant United States Attorney

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

DECEMBER 10, 2008

BRUCE RIFKIN, Clerk

By _____ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-5732BHS FOURTH SUPERSEDING INDICTMENT 07-CR-05732-INDI

The Grand Jury charges that:

COUNTS ONE THROUGH THIRTY-THREE
(Sexual Exploitation of a Child in the Production of Child Pornography)

On exact dates unknown, but before on or about October 31, 2007, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did use, persuade, induce, entice, and coerce the following minor males, who at the time were under the age of eighteen (18) years, to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, that is, videotapes and digital video discs (DVDs), such visual depictions having been produced using materials that had been mailed, shipped, and transported in interstate and foreign commerce, with each such production constituting a separate Count of this Fourth Superseding Indictment:

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COUNT	MINOR VICTIMS	DISCOVERY TAPE #, SCENE #
One	John Doe 1	Tape SW2-7, Scene 2
Two	John Doe 2	Exhibit 6, Scene 2
Three	John Doe 3	Exhibit 3, Scene 4
Four	John Doe 4	Exhibit 5, Scene 4
Five	John Doe 5	Tape SW2-2, Scene 1
Six	John Doe 6	Exhibit 9, Scene 1
Seven	John Doe 7	Exhibit 9, Scene 4
Eight	John Doe 8	Exhibit 9, Scene 5
Nine	John Doe 9	Exhibit 9, Scene 7
Ten	John Doe 10	Exhibit 11, Scene 5
Eleven	John Doe 11	Exhibit 5, Scene 5
Twelve	John Doe 12	Exhibit 9, Scene 11
Thirteen	John Does 1 and 13	Exhibit 3, Scene 2
Fourteen	John Does 1 and 14	Tape SW2-34, Scene 1
Fifteen	John Does 8 and 15	Exhibit 16, Scenes 12-14
Sixteen	John Doe 1	Tape SW2-28, Scene 1
Seventeen	John Doe 1	Tape SW2-68, Scene 1
Eighteen	John Doe 1	Tape SW2-43, Scene 2
Nineteen	John Doe 1	Exhibit 13, Scene 4
Twenty	John Doe 1	Exhibit 14, Scene 4
Twenty-One	John Doe 1	Exhibit 15, Scene 7
Twenty-Two	John Doe 1	Exhibit 12, Scene 5
Twenty-Three	John Doe 1	Tape SW2-29, Scene 3
Twenty-Four	John Doe 1	Exhibit 8, Scene 2
Twenty-Five	John Doe 4	Exhibit 1, Scene 7
Twenty-Six	John Doe 4	Exhibit 12, Scenes 3 and 4 (connected)

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Seattle, Washington 98101-1271
(206) 553-7970

COUNT	MINOR VICTIMS	
Twenty-Seven	John Doe 8	Exhibit 9, Scene 6
Twenty-Eight	John Doe 8	Tape SW2-67, Scene 5
Twenty-Nine	John Doe 8	Tape SW2-71, Scene 3
Thirty	John Doe 18	Tape SW2-70, Scene 3
Thirty-One	John Doe 12	Tape SW2-65, Scene 5
Thirty-Two	John Doe 12	Tape SW2-39, Scene 5
Thirty-Three	John Doe 1	Tape SW2-27, Scenes 3 and 4

All in violation of Title 18, United States Code, Sections 2251(a) and (e) and Section 2256.

COUNTS THIRTY-FOUR AND THIRTY-FIVE
(Transportation of a Minor to Engage in Illegal Sexual Activity)

On or about the dates set forth below, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and willfully transport and caused to be transported the following minor males, who at the time were under the age of eighteen (18) years, in interstate and foreign commerce from Pierce County, in the State of Washington, to Canada, with the intent that the minor male engage in sexual activity under circumstances as would constitute a criminal offense by a person under Revised Code of Washington (RCW) Section 9A.44.089, Child Molestation; RCW Section 9.68A.090, Communication with a Minor for Immoral Purposes; RCW Section 9.68A.040, Sexual Exploitation of a Minor; RCW Section 9A.44.093, Sexual Misconduct with a Minor in the First Degree; RCW Section 9A.44.096, Sexual Misconduct with a Minor in the Second Degree; and Title 18, United States Code, Section 2251(a), Sexual Exploitation of a Child in the Production of Child Pornography, with each transportation constituting a separate Count of this Fourth Superseding Indictment:

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//

COUNT	DATE	MINOR VICTIMS	TAPE #
Thirty-four	In or about 2005	John Doe 1	SW2-5
Thirty-five	On a date unknown but within five years of on or about October 31, 2007	John Does 1, 5, 13, 17	SW2-13

All in violation of Title 18, United States Code, Section 2423(a) and Section 2.

COUNT THIRTY-SIX
(Obstruction of Justice)

Beginning on or about October 30, 2007, and continuing until on or about August 28, 2008, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, with others known and unknown to the Grand Jury, knowingly did corruptly persuade, attempt to corruptly persuade, and engage in misleading conduct toward John Doe 1, by trying to convince John Doe 1 not to cooperate with law enforcement and judicial officers, with intent to hinder, delay and prevent the communication to a law enforcement officer and judge of the United States, of information relating to the commission or possible commission of a Federal offense, namely Production of Child Pornography, as charged in Counts 1, 13, 14, and 16 through 24 of this Indictment, in violation of Title 18, United States Code, Section 2251, and Transportation of a Minor With Intent to Engage in Criminal Sexual Activity, as charged in Counts 29 and 30 of this Indictment, in violation of Title 18, United States Code, Section 2423(a).

All in violation of Title 18, United States Code, Section 1512(b)(3).

COUNT THIRTY-SEVEN
(Obstruction of Justice)

Beginning on or about October 30, 2007, and continuing until on or about August 28, 2008, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, with others known and unknown to the Grand

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Seattle, Washington 98101-1271
(206) 553-7970

Jury,knowingly did corruptly persuade, attempt to corruptly persuade, and engage in misleading conduct toward John Doe 1, by trying to convince John Doe 1 not to cooperate with law enforcement and judicial officers, with intent to influence, delay, or prevent the testimony of any person in an official proceeding, namely, proceedings related to the conduct that forms the basis of the charges in this Indictment.

All in violation of Title 18, United States Code, Section 1512(b)(1).

ASSET FORFEITURE ALLEGATIONS

The allegations contained in Counts 1 - 28 of this Fourth Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2253(a).

Upon conviction of the offenses in violation of Title 18, United States Code, Sections 2252(a) and (e) and 2256 set forth in Counts 1-28 of this Fourth Superseding Indictment, the defendant, WELDON MARC GILBERT, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 2253(a)(3), any property, real or personal, used or intended to be used, to commit or to promote the commission of such offenses and any property traceable to such property, including but not limited to:

a. One 2004 blue Lexus GX470, bearing Washington license plate 029RYB, VIN JTJBT20X940035115;

b. One 2006 white Ford F150 pick-up, Washington license plate A68898Z, VIN 1FTRF12206NB15476;

c. A 1981 Bell 206B-III helicopter bearing tail number N325JR and serial number 3296, and all flight logs and maintenance logs associated with this aircraft;

d. One 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft;

e. One 2003 Sea Ray Boat, model 185BR, bearing license number WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore

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Land'r trailer, Washington license plate 0059RG, VIN 1MDJ2JR163A248710;

f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel number 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and, Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington;

g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel number 8996010110, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and, Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington

If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 2253(b).

The allegations contained in Counts 29 - 30 of this Fourth Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2253(a).

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Upon conviction of the offenses in violation of Title 18, United States Code, Section 2423(a) set forth in Counts 29 - 30 of this Fourth Superseding Indictment, the defendant, WELDON MARC GILBERT, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 2253(a)(3), any property, real or personal, used or intended to be used, to commit or to promote the commission of such offenses and any property traceable to such property, including but not limited to:

a. One 2004 blue Lexus GX470, bearing Washington license plate 029RYB, IN JTJBT20X940035115.

If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

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c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 2253(b).

A TRUE BILL:

DATED:

The signature of the foreperson has been redacted pursuant to the policy of the Judicial Conference of the United States

FOREPERSON

JEFFREY C. SULLIVAN
United States Attorney

LAWRENCE LINCOLN
Assistant United States Attorney

ROGER ROGOFF
Assistant United States Attorney

MICHAEL DION
Assistant United States Attorney

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Judge Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-5732BHS GOVERNMENT'S THIRD AMENDED EXHIBIT LIST

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Roger Rogoff and Michael Dion, Assistant United States Attorneys, files this third amended list of exhibits the Government may offer in its case-in-chief in this case:

Exhibit Number	Description of Item
1-33	Video recorded scenes that form basis for Counts 1-33, respectively;
1a-24a	Original video cassette tapes from which Exhibits 1-33 were excerpted;
1b-24b	Full digitized version of Exhibits 1a through 24a, respectively;
1c-e	Still photographs selected from Exhibits 1;
2c-f	Still photographs selected from Exhibits 2;
3c-g	Still photographs selected from Exhibits 3;
4c-h	Still photographs selected from Exhibits 4;
5c-h	Still photographs selected from Exhibits 5;

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6c-f	Still photographs selected from Exhibits 6;
7c-e	Still photographs selected from Exhibits 7;
8c-g	Still photographs selected from Exhibits 8;
9c-g	Still photographs selected from Exhibits 9;
10c-i	Still photographs selected from Exhibits 10;
11c-i	Still photographs selected from Exhibits 11;
12c-d	Still photographs selected from Exhibits 12;
13c-e	Still photographs selected from Exhibits 13;
14c-i	Still photographs selected from Exhibits 14;
15c-p	Still photographs selected from Exhibits 15;
16c-k	Still photographs selected from Exhibits 16;
17c-v	Still photographs selected from Exhibits 17;
18c-l	Still photographs selected from Exhibits 18;
19c-f	Still photographs selected from Exhibits 19;
20c-i	Still photographs selected from Exhibits 20;
21c-i	Still photographs selected from Exhibits 21;
22c-o	Still photographs selected from Exhibits 22;
23c-n	Still photographs selected from Exhibits 23;
24c-f	Still photographs selected from Exhibits 24;
25c-l	Still photographs selected from Exhibits 25;
26c-i	Still photographs selected from Exhibits 26;
27c-m	Still photographs selected from Exhibits 27;
28c-e	Still photographs selected from Exhibits 28;
29c-i	Still photographs selected from Exhibits 29;
30c-i	Still photographs selected from Exhibits 30;
31c-m	Still photographs selected from Exhibits 31;
32c-e	Still photographs selected from Exhibits 32;
33c-n	Still photographs selected from Exhibits 33;

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34	Video recorded scene offered in support of Count 34;
34a	Original video recording from which Exhibit 34 was excerpted;
34b	Digitized version of Exhibit 34a;
34c-r	Still photographs selected from Exhibit 34;
35	Video recorded scene offered in support of Count 35;
35a	Original video recording from which Exhibit 35 was excerpted;
35b	Digitized version of Exhibit 35a;
35c-k	Still photographs selected from Exhibit 35;
36 and 36a	Sony camcorders seized from Defendant's home;
37	Avertec laptop computer Model 5500 seized from Defendant's home;
38	Frye's computer tower seized from Defendant's home;
39a-39d	Four computer hard drives seized from Defendant's home;
40	Avertec Notebook computer Model 2200 (and case containing receipts) seized at Defendant's arrest;
41	Travel bag with ticket for Defendant's 10/29/07 flight to Georgia;
42	Paddle that Defendant gave to R.K.;
43	Defendant's letter to A.K., intercepted by FDC;
44	Defendant's letter to "Bravo", seized from cell at FDC;
45	Fax from Jeffrey P. Gilbert to Spencer Aircraft, Attn: Jeff Pratt;
46	2/8/08 letter from Defendant to Mr. Jeffrey Pratt;
47	1/3/07 letter from Defendant to "Jeffrey;"
48a	Bible sent by Jeffrey Pratt to R.K.;
48b	Note contained in Ex. 48a;
48c	Printed version of Matthew 18:21-35;
48d	Printed version of Matthew 7:1-5;

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48e	Printed version of Proverbs 24:10-12;
49	Master Disc - Defendant's FDC telephone calls;
49a	Excerpt - Defendant's April 14, 2008 call from FDC
49b	Excerpt - Defendant's January 8, 2008 call from FDC
49c	Excerpt - Defendant's January 13, 2008 call from FDC
50	Original audiotape of spanking discussion, seized from Defendant's home;
50a	Digitized version of Exhibit 50;
51	"Young Eagles" certificate of E.K.;
52	Defendant's personal financial statement;
53	Bellino Coffee operating agreement;
54	Defendant's passport;
55	R.K.'s passport;
56	"Punishment Room" sign;
57	Graduation photograph of E.K. and R.K.;
58	Photograph of Defendant and R.K. in front of helicopter;
59	Broken paddle from Defendant's master bedroom;
60	Blindfolds from "Mario room;"
61	Plastic vagina;
62	Bag of lotions and sex toys from master bedroom closet;
63	Bag of belts, ropes, and rubber hose from master bedroom closet;
64	Rope from "Mario room;"
65-65k	Paddles and spanking implements;
66-66aa	Paddles, ruler, straps, belt, and leather strip;
67-67l	Gym bag with restraints, bondage equipment, spanking implements, and hoses;
68	Camera tripod from master bedroom closet;

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69-69b	Commercial pornography videos from master bedroom dresser;
70a-70aa	Photographs taken during search of Defendant's home;
71	.17 revolver and case;
72	.357 revolver;
73	11/13/07 Jeffrey Pratt email to the third party;
74	Handwritten letter from Defendant to "R;"
75a-75l	"Barespanker" title page/stories from "malespank.net;"
76a-76n	Emails between Defendant and Cliff Meador;
77	AOL subpoena response re "Barespanker;"
78	Registration for Defendant's Lexus;
79	Registration for Defendant's Ford F-150;
80	FAA paperwork for Defendant's Bell helicopter;
81	FAA paperwork for Defendant's Cessna;
82	Registration for Defendant's Sea Ray boat;
83-83a	Deeds for 2901 211th Avenue East property (both parcels);
84	Forensic disc from DESE7
84a-84e	Photographs stored on R.K.'s computer (DESE7);
85	Homepage for "malespank.net;"
86	"Summer Job – Part 2" by "Steve2001"
87	Forensic disc from DESE9
87a -i	Commercial child pornography/erotica from Defendant's hard drive (DESE9);
88	Document titled "Completing The Transition;"
89	Document titled "Nialos Learning Presents For Adults Only! Reader Submissions"
90	1/18/2006 email from "kristostudio@direcway.com" to "barespanker@aol.com;"
91	12/9/06 email from "support@ccbill.com" to "tappsflyer@aol.com;"

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92	AOL user history dated 10/22/08;
93	1/15/06 email from "lochgelly 69@gmail.com" to "m_mspanking@yahoogroups.com;"
94	Forensic disc from DESE5;
94a-94e	Additional images from Defendant's hard drive (DESE5);
95	A+ Computer Center, L.L.C., Form SS-4;
96	Voicemail messages left by Defendant for R.K.;
96a	Digitized version of Ex. 96 - Part 1;
96b	Digitized version of Ex. 96 - Part 2;
97	Citibank records;
98	Stipulation regarding exhibits manufactured outside the State of Washington;
99a-99p	Photographs from service of second search warrant;
100	1/21/08 Keg Restaurant Receipt;
101	Certified copies of Drivers License for S.P.;
102	Certified copies of Drivers License for A.H.;
103	Certified copies of Drivers License for V.Z.;
104	Certified copies of Drivers License for A.C.;
105	Certified copies of Drivers License for C.M.;
106	Certified copies of Drivers License for R.K.;
107	Certified copies of Drivers License for A.Y.;
108	Certified copies of Drivers License for D.R.;
109	Certified copies of Drivers License for J.R.;

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110 Certified copies of Drivers License for N.W.; and

111 Certified copies of Drivers License for Z.R.

DATED this 21st day of April, 2009.

Respectfully submitted,
JEFFREY C. SULLIVAN
United States Attorney

s/ Roger S. Rogoff
ROGER S. ROGOFF
Assistant United States Attorney
WSBA #23362
United States Attorney's Office
700 Stewart Street, Suite 5220
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s/Michael Dion
MICHAEL DION
Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Lisa Elliott
Lisa Elliott
Legal Assistant
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: 206-553-2267
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E-mail: Lisa.Elliott@usdoj.gov

Judge Settle

07-CR-05732-PLAGR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-5732BHS PLEA AGREEMENT

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Roger Rogoff and Michael Dion, Assistant United States Attorneys for said District, and the defendant, WELDON MARC GILBERT, and his attorneys, John Henry Browne and Emma Scanlan, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C):

1. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Fourth Superseding Indictment ("Indictment"). By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document.

a. Sexual exploitation of a child in the Production of Child Pornography, as charged in Counts 1 through 21, 23 through 31, and 33, in violation of Title 18, United States Code, Section 2251(a) and (e), and 2256;

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b. Transportation of a minor to engage in illegal sexual activity, as charged in Counts 34 and 35, in violation of Title 18, United States Code, Section 2423(a) and Section 2;

c. Obstruction of justice, as charged in Count ~~35~~ 36, in violation of Title 18, United States Code, Section 1512(b)(3); and

d. Obstruction of justice, as charged in Count ~~36~~ 37, in violation of Title 18, United States Code, Section 1512(b)(1).

Defendant further understands that before entering his pleas of guilty, Defendant will be placed under oath. Any statement given by Defendant under oath may be used by the government in a prosecution for perjury or false statement.

2. Elements of the Offenses. The elements of the offenses are as follows:

a. The elements of the offense of Production of Visual Depictions of Minors Engaged in Sexually Explicit Conduct, as charged in Counts 1 through 21, 23 through 31, and 33, of the Indictment, are:

First, Defendant employed, used, persuaded, induced, enticed or coerced the victim to take part in sexually explicit conduct for the purpose of producing a visual depiction of such conduct;

Second, at the time, the victim was a minor; and

Third, the visual depiction was produced or transmitted using materials that had been mailed, shipped, or transported in or affecting interstate or foreign commerce.

b. The elements of the offense of Transportation of Minors to Engage in Illegal Sexual Conduct, as charged in Counts 34 and 35 of the Indictment, are:

First, Defendant knowingly transported an individual in interstate commerce;

Second, the individual was under 18 years of age when the transportation took place; and

Third, Defendant intended that the person engage in sexual activity for which any person can be charged with a criminal offense.

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c. The elements of the offense of Obstruction of Justice, as charged in Count 36 of the Indictment, are:

First, Defendant knowingly did corruptly persuade, attempt to corruptly persuade, or engage in misleading conduct toward another by trying to convince such person not to cooperate with law enforcement and judicial officers;

Second, Defendant did so with intent to hinder, delay and prevent the communication to a law enforcement officer or judge of the United States, of information relating to the commission or possible commission of a Federal offense.

d. The elements of the offense of Obstruction of Justice, as charged in Count 37 of the Indictment, are:

First, Defendant knowingly did corruptly persuade, attempt to corruptly persuade, and engage in misleading conduct toward another, by trying to convince that person not to cooperate with law enforcement and judicial officers; and

Second, Defendant did so with intent to influence, delay, or prevent the testimony of any person in an official proceeding.

3. The Penalties.

a. The statutory penalties for Production of Visual Depictions of Minors Engaged in Sexually Explicit Conduct, as charged in Counts 1 through 21, ~~22~~ 23 through 31, and 33, of the Indictment, are, as to each count: imprisonment for not less than fifteen (15) years and not more than Life, a fine of up to two-hundred and fifty thousand dollars ($250,000.00), or both, a one-hundred dollar ($100.00) penalty assessment, and a period of supervision following release from prison of not less than five (5) years and up to the lifetime of the offender.

b. The statutory penalties for Transportation of Minors with Intent to Engage in Illegal Sexual Conduct, as charged in Counts 34 and 35 of the Indictment are: imprisonment for not less than 10 years nor more than Life, a fine of up to two-hundred and fifty thousand dollars ($250,000.00), or both, a one-hundred dollar ($100.00) penalty

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assessment, and a period of supervision following release from prison of not less than five (5) years and up to the lifetime of the offender.

c. The statutory penalties for Obstruction of Justice, as charged in Count 36 and 37 of the Indictment are: imprisonment for not more than 20 years, a fine of up to two-hundred and fifty thousand dollars ($250,000.00), or both, a one-hundred dollar ($100.00) penalty assessment, and a period of supervision following release from prison of not more than three (3) years.

Defendant understands that supervised release is a period of time following imprisonment, during which he will be subject to certain restrictions and requirements. Defendant further understands that if supervised release is imposed and he violates one or more of its conditions, he could be returned to prison for all or part of the term of supervised release that was originally imposed. This could result in Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

Defendant agrees that any monetary penalty the Court imposes, including the special assessment, fine, costs or restitution, is due and payable immediately, and further agrees to submit a completed Financial Statement of Debtor form as requested by the United States Attorney's Office.

4. Rights Waived by Pleading Guilty. Defendant understands that, by pleading guilty, he knowingly and voluntarily waives the following rights:

a. The right to plead not guilty, and to persist in a plea of not guilty;

b. The right to a speedy and public trial before a jury of Defendant's peers;

c. The right to the effective assistance of counsel at trial, including, if Defendant could not afford an attorney, the right to have the Court appoint one for Defendant;

d. The right to be presumed innocent until guilt has been established at trial, beyond a reasonable doubt;

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e. The right to confront and cross-examine witnesses against Defendant at trial;

f. The right to compel or subpoena witnesses to appear on Defendant's behalf at trial;

g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and

h. The right to appeal a finding of guilt or any pretrial rulings

5. United States Sentencing Guidelines. Defendant understands and acknowledges that, absent applicable intervening law:

a. The United States Sentencing Guidelines, promulgated by the United States Sentencing Commission, are applicable to this case;

b. The Court will determine Defendant's applicable Sentencing Guidelines range at the time of sentencing; and

c. Except as provided in paragraph 7 below, Sentencing, Defendant may not withdraw a guilty plea solely because of the sentence imposed by the Court.

6. Statement of Facts. The parties agree on the following facts in support of Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged offenses and expressly waives any right to have these facts determined by a jury beyond a reasonable doubt.

Background

a. At all relevant times, WELDON MARC GILBERT resided at his house in Lake Tapps, Washington. GILBERT was born on August 26, 1960.

Child Pornography Production Charges

b. GILBERT used one or more foreign-made video cameras to create videos of minors engaged in sexually explicit conduct. All of the videos described below were created using those foreign-made video cameras, and those cameras traveled to Washington state in interstate and foreign commerce before being used to create those videos.

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c. GILBERT filmed all of the videos described below with the purpose and intent of creating visual depictions of minors engaged in sexually explicit conduct. GILBERT knew that the victims shown on the videos were minors, and he knew that they were engaging in sexually explicit conduct.

d. GILBERT created thirty-one visual depictions of minors engaged in sexually-explicit conduct, as charged in Counts 1 through 21, 23 through 31, and 33 of the Indictment. The videos show 17 different victims. The youngest victims are 10, 12, 13, and 14 when they first appear in the videos. GILBERT arranged the lighting, camera angle, and the victims' bodies to ensure that the victims' genitalia would be clearly caught on film. All of the videos fall into one of the following two categories: (a) GILBERT engaged in some form of sex act with the victim, or the victim masturbating at GILBERT's direction; or (b) a lascivious display of the victims' genitalia. With respect to category (b), each and every one of those videos also displayed one or more of the following: (1) GILBERT striking the unclothed victim with his hand, or with an implement, such as a paddle, belt, or cane; (2) GILBERT restraining the victim, either by hand or by tying the victim down; (3) the victim indicating that GILBERT was inflicting pain upon them; (4) welts, bruises, or blisters inflicted by GILBERT, (5) GILBERT caressing the nude bodies of the victims while striking them; (6) GILBERT commenting upon the victims' genitalia; (7) GILBERT touching, or attempting to touch, the victims' genitalia; and (8) GILBERT engaging in a sexual discussion with the victim.

e. There was no legitimate reason for GILBERT to create any of these visual depictions of minors engaged in sexually explicit conduct. GILBERT created the videos for the purpose of producing child pornography that he could watch whenever he wanted to. GILBERT created these videos over a period of several years. All of the videos were created in Washington State. GILBERT agrees and acknowledges that all of the videos were sexually explicit, in that each and every one of the videos showed one or more of the following: (1) actual or simulated sexual intercourse; (2) masturbation; (3) sadistic abuse; and (4) lascivious exhibition of the genitals and pubic area.

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f. GILBERT used, persuaded, and induced each of the victims to appear in the videos.

Transportation of minors charges

g. In 2005, GILBERT transported a minor male victim ("John Doe 1") from Washington State to Whistler, British Columbia, Canada. One of GILBERT's dominant purposes in transporting John Doe 1 to Canada was to engage in illegal sexual conduct with John Doe 1, namely, GILBERT intended to produce pornographic videos of John Doe 1 in violation of 18 U.S.C. § 2251(a). GILBERT did in fact produce a pornographic video of John Doe 1, the content of which was along the lines of the videos described above. GILBERT used a video recorder that had traveled in interstate or foreign commerce, GILBERT knew that John Doe 1 was a minor, and GILBERT deliberately created a visual depiction of John Doe 1 engaged in sexually explicit conduct.

h. In 2007, GILBERT transported four minor male victims, John Doe 1 and three of his friends, from Washington State to Whistler, British Columbia, Canada. One of GILBERT's dominant purposes in transporting these victims to Canada was to engage in illegal sexual conduct with the victims, namely, GILBERT intended to produce pornographic videos of the victims in violation of 18 U.S.C. § 2251(a). GILBERT used a video recorder that had traveled in interstate or foreign commerce, GILBERT knew that the victims were minors, and GILBERT deliberately created a visual depiction of the victims engaged in sexually explicit conduct along the lines of the other videos described above.

Obstruction of justice charges

i. On October 30, 2007, GILBERT learned that he was being investigated by law enforcement. GILBERT soon learned that the subject of the investigation was child abuse, child molestation, and production of child pornography. GILBERT knew that the evidence would prove that he committed these crimes. GILBERT knowingly and intentionally set out to obstruct the investigation and eventual prosecution of these crimes. GILBERT repeatedly attempted to tamper with John Doe 1. GILBERT's goals were: (1)

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to prevent John Doe 1 from telling law enforcement the truth about GILBERT's crimes; (2) to prevent John Doe 1 from testifying at trial; and (3) to convince John Doe 1 to make false statements in a legal proceeding that would support GILBERT's efforts to suppress evidence seized during the investigation.

j. GILBERT was charged in federal court in this case on November 2, 2007. From that point on, GILBERT knew that he was the subject of a federal criminal proceeding before the United States District Court for the Western District of Washington, and his attempts to tamper with John Doe 1 were aimed at (1) corruptly persuading John Doe 1 to lie, or to refuse to testify, in that proceeding, and (2) to prevent John Doe 1 from communicat~~ion~~ing information to federal agents and federal judicial officers in connection with that proceeding~~s~~.

k. GILBERT made several attempts to tamper with John Doe 1 in the manner described above. In January of 2008, GILBERT wrote a letter to John Doe 1. GILBERT arranged for a third party to meet with John Doe 1 and convey the contents of the letter to him. The letter encouraged John Doe 1 to make false statements to the federal judge in the context of the federal criminal case. GILBERT believed that these false statements would support an effort by defense to have the search warrant declared invalid and the critical evidence suppressed. ~~As an inducement, GILBERT offered John Doe 1 a financial reward~~. In February of 2008, GILBERT wrote another letter to the third party he had previously used to contact John Doe 1. In the letter, GILBERT instructed the third party about how to approach John Doe 1 ~~and convince him not to testify truthfully to the Court, and not~~ and convince him to not cooperate with federal agents, in the pending criminal case regarding the federal offense of production of child pornography. GILBERT told the third party to mention to John Doe 1 an incident in which one of John Doe 1's friends was charged with stealing a television from GILBERT. The third party was to tell John Doe 1 that GILBERT was willing to falsely tell the police that the friend had permission to take the television. GILBERT hoped that, in return for his willingness to lie to protect John Doe

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1's friend, John Doe 1 would stop cooperating with the federal investigation and prosecution of the case against GILBERT.

7. Sentencing.

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties acknowledge and agree that the appropriate sentence of imprisonment to be imposed by the Court at the time of sentencing should be within the range of 228 to 300 months, to be followed by supervised release for life. If the sentencing court rejects the agreement of the parties and seeks to impose a sentence outside the agreed upon sentencing range, both the defendant and the United States reserve the right to withdraw from this agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure and to proceed to trial. No other agreement has been made with regard to the imposition of the sentence in this matter, and the parties understand that the Court retains full discretion to impose a sentence within the range agreed to above.

8. Presentation of Evidence at Sentencing. The Government agrees to the following restrictions on the evidence that it will present in support of its sentencing recommendation: (1) the Government will not present any videos, excerpts from videos, or stills from videos, unless requested by the Court; and (2) the Government will not present the document it has marked as trial Exhibit 75 (and sub-exhibits), unless requested by the Court.

With respect to (1), the Government is free to describe videos in as much detail as it wishes. Furthermore, if Defendant disputes the accuracy of the Government's description of a video, the parties agree to request that a judicial officer of this District, other than the sentencing judge, review the video at issue and report to the sentencing judge about whether the Government's description is accurate.

Defendant acknowledges and understands that this Paragraph will not bar the Government from providing whatever information it is required to provide to the United States Probation Office.

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9. Non-Prosecution of Additional Offenses. As part of this Plea Agreement, the United States Attorney's Office for the Western District of Washington agrees to move to dismiss the remaining counts in the Indictment at the time of sentencing and not to prosecute Defendant for any additional offenses known to it as of the time of this Agreement that are based upon evidence in its possession at this time, or that arise out of the conduct giving rise to this investigation. In this regard, Defendant recognizes that the United States has agreed not to prosecute all of the criminal charges that the evidence establishes were committed by Defendant solely because of the promises made by Defendant in this Agreement. Defendant acknowledges and agrees, however, that for purposes of preparing the Presentence Report, the United States Attorney's Office will provide the United States Probation Office with evidence of all relevant conduct committed by Defendant.

The United States Attorney's Office for the Western District of Washington also agrees not to prosecute any other person based upon evidence in its possession at this time, or that arise out of the conduct giving rise to this investigation, relating to witness tampering, obstruction of justice, or related offenses, in connection with this case.

Defendant agrees and acknowledges that any charges to be dismissed before or at the time of sentencing were substantially justified in light of the evidence available to the United States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119 (1997).

10. Voluntariness of Plea. Defendant acknowledges that he has entered into this Plea Agreement freely and voluntarily, and that no threats or promises, other than the promises contained in this Plea Agreement, were made to induce Defendant to enter these pleas of guilty.

11. Statute of Limitations. In the event that this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of

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the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

12. Post-Plea Conduct. Defendant understands that the terms of this Plea Agreement apply only to conduct that occurred prior to the execution of this Agreement. If, after the date of this Agreement, Defendant should engage in illegal conduct, or conduct that is in violation of his conditions of release or confinement (examples of which include, but are not limited to: obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the Pretrial Services Officer, Probation Officer or Court), the United States is free under this Agreement to seek a sentence that takes such conduct into consideration. Such a sentence could include, to the extent the United States Sentencing Guidelines are applicable, a sentencing enhancement or upward departure.

13. Forfeiture of Property: Defendant agrees to forfeit to the United States immediately all of his right, title and interest in any property, real or personal, used or intended to be used, to commit or to promote the commission of the offense of Sexual Exploitation of a Child in the Production of Child Pornography and any property traceable to such property, pursuant to Title 18, United States Code, Section 2253(a)(3), including the following properties:

a. One (1) 2004 blue Lexus GX470, bearing Washington license plate 029RYB, VIN JTJBT20X940035115;

b. One (1) 2006 white Ford F150 pick-up, Washington license plate A68898Z, VIN 1FTRF12206NB15476;

c. One (1) 1981 Bell 206B-III helicopter bearing tail number N325JR and serial number 3296, and all flight logs and maintenance logs associated with this aircraft;

d. One (1) 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft;

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e. One (1) 2003 Sea Ray Boat, Model 185BR, bearing license number WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore Land'r trailer, Washington license plate 0059RG, VIN 1MDJ2JR163A248710;

f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and,

g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010110, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington;

h. One (1) Sony Digital Handicam Digital 8 cam corder, model: DCR-TRV250, s/n: 388947;

i. One (1) Sony Video 8 Handycam cam corder, model: model: CCD-TR40, s/n: 3009669;

j. One (1) Averatec laptop computer, model: 5500 series, s/n obliterated;

k. One (1) Fry's Intel Pentium 4 computer tower, model: FS7470, s/n: 747FSX340000296;

l. One (1) Averatec Notebook computer, model: 2200 series, s/n partially obliterated, starting with NW04CE06040;

m. One (1) Seagate Medalist 13640 hard drive, model: ST313640A, s/n: 7AE054NA;

n. One (1) Western Digital WD1600 Enhanced IDE hard drive, model: WD1600BB-00DAA0, s/n: WMACK2069917;

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o. One (1) Western Digital WD400 Enhanced IDE hard drive, model: WD400JB-00ENA0, s/n: WCAD19728957;

p. One (1) Western Digital WD1600 Enhanced IDE hard drive, model: WD1600JB-75GVC0, s/n: WCAL96008970; and

q. One (1) MX 1000 Camera tripod.

Defendant agrees to forfeit to the United States immediately all of his right, title and interest in any visual depiction described in Title 18, United States Code, Section 2251, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter, pursuant to Title 18, United States Code, Section 2253(a)(1), including the following properties:

a. Any and all images of child pornography, in whatever form and however stored, including but not limited to, those stored on zip disks, CDs/DVDs, video cassette tapes, and floppy disks.

Defendant agrees to forfeit to the United States immediately all of his right, title and interest in any property, real or personal, used to commit or to facilitate the commission of the violation of Transportation of a Minor to Engage in Illegal Sexual Activity, and any property traceable to such property, pursuant to Title 18, United States Code, Section 2428(b)(1)(A), including the following property:

a. One (1) 2004 blue Lexus GX470, bearing Washington license plate 029RYB, VIN JTJBT20X940035115.

Defendant agrees to fully assist the United States in the forfeiture of the listed assets, including but not limited to: surrendering title and executing any documents necessary to effectuate such forfeiture; assisting in bringing any assets located outside the United States within the jurisdiction of the United States; and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden, or otherwise made unavailable for forfeiture. Defendant further agrees to

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withdraw all claim(s) to the listed properties in the related civil forfeiture action, United States v. One 2004 Blue Lexus, GX470, et al., Docket No. C08-5084BHS.

The United States agrees that once the preliminary order of forfeiture is entered, forfeiting the defendant's interest in the above-listed assets, the government will negotiate with counsel representing the defendant in the related civil forfeiture case in this district to attempt to achieve the objective of applying the assets, or proceeds from the sale of the assets, for the benefit of the victims of the crimes to which the defendant is pleading guilty and any related crimes, with the exception of the visual depictions, or those electronic items containing visual depictions, being forfeited to the United States. In addition, the government will seek to obtain all necessary approvals to achieve the goal of utilizing the forfeited assets to compensate the victims of the defendant's crimes, in lieu of obtaining final orders of forfeiture for the assets. The defendant in turn will take all steps necessary to ensure that these assets in fact are utilized for the benefit of the victims and will not go back to him or any of his relatives, including the removal of any liens or interests in the assets that currently exist in favor of any of his relatives.

14. Interdependence of Plea Agreements. The parties agree that this Plea Agreement shall be conditioned upon the defendant entering a plea in Pierce County Superior Court in the matter of State of Washington v. Weldon Marc Gilbert, cause number 07-1-05618-3, as set forth in the Memorandum attached as Appendix A to this plea agreement.

Defendant understands, therefore, that this Agreement is part of a package plea agreement with the United States and the State of Washington, to wit, if Defendant does not enter into, and plead guilty pursuant to the respective Plea Agreements in Federal District Court and ~~King~~ Pierce County Superior Court, or if Defendant subsequently seeks to withdraw from either guilty plea, then the United States will withdraw from the instant Plea Agreement and will seek an indictment against Defendant for all crimes for which the United States has sufficient evidence. Defendant's plea of guilty in State of Washington v. Weldon Marc Gilbert is integral to the instant plea agreement. If the State

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of Washington fails to abide by the agreement set forth in Appendix A, the defendant may withdraw his federal plea agreement.

15. Acceptance of Responsibility. The United States acknowledges that Defendant has assisted the United States by timely notifying the authorities of his intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently. If at the time of sentencing, the United States remains satisfied that Defendant has accepted responsibility, then it will recommend a sentence that takes this acceptance of responsibility into consideration. Defendant understands and agrees that the United States will base its recommendation on factors set forth in the United States Sentencing Guidelines, including Section 3E1.1.

16. Waiver of Appeal. As part of this Plea Agreement and on the condition that the Court imposes a term of imprisonment that does not exceed the sentencing range set forth in this Agreement, Defendant waives to the full extent of the law:

a. any right conferred by Title 18, United States Code, Section 3742 to appeal the sentence, including any restitution order imposed; and

b. any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation

Furthermore, this waiver does not preclude Defendant from bringing an appropriate motion pursuant to 28 U.S.C. 2241, to address the conditions of his confinement or the decisions of the Bureau of Prisons regarding the execution of his sentence.

If Defendant breaches this Plea Agreement at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or sentence in any way, the United States may prosecute Defendant for any counts, including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

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17. Completeness of Agreement. The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement only binds the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 23d day of ~~May~~ April, 2009.

WELDON MARC GILBERT
Defendant

JOHN HENRY BROWNE
Attorney for Defendant

EMMA SCANLAN
Attorney for Defendant

ROBERT WESTINGHOUSE
Assistant United States Attorney

ROGER ROGOFF
Assistant United States Attorney

MICHAEL DION
Assistant United States Attorney

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Exhibit A

Pierce County

Memo

Gerald A. Horne
Prosecuting Attorney

To: Asst. U.S. Attorney Roger Rogoff
From: Patrick J. Hammond
Date: 4/23/2009
Re: State v. Weldon Marc Gilbert, Pierce County Cause No. 07-1-05618-3

The purpose of this memorandum is to outline the Pierce County Prosecutor's Office plea agreement in Mr. Gilbert's case in State court. Because the primary focus of the plea negotiations has been on Mr. Gilbert's federal case, only the broadest parameters of the agreement in State court can be outlined at this time. However, this should be sufficient to enable the federal plea agreement to go forward.

If Mr. Gilbert pleads guilty under the terms negotiated with federal prosecutors on April 23, 2009, the Pierce County Prosecutor's Office will agree to file an Amended Information in which Mr. Gilbert is charged with multiple offenses, the most serious of which will be Child Molestation in the First Degree. The Amended Information will not include any allegations of Child Rape, in any degree. The Amended Information will result in Mr. Gilbert having an offender score of nine, which will give him a determinate sentencing range of 149-198 months in prison. The State will recommend that Mr. Gilbert receive a sentence of 198 months in prison, to run concurrently with the sentence Mr. Gilbert receives in Federal Court. Mr. Gilbert's term of community custody has not yet been determined. However, the State will recommend the conditions of probation that are typically included in Appendix "H" (e.g. deviancy treatment, restrictions on contact with minors, etc.).

The State will recommend the typical legal financial obligations associated with a case of this nature, including the crime victim's penalty assessment, court costs, DNA assessment, and restitution. The Amended Information filed in State Court as part of this plea agreement will contemplate all of the known victims who have come to light in the course of the investigation and prosecution of Mr. Gilbert, for whom the statute of limitations has not already run.

cc: File

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CASE NO. CR07-5732BHS
	)	
v.	)	SEATTLE, WASHINGTON
	)	April 23, 2009
WELDON MARC GILBERT,	)	
	)	CHANGE OF PLEA
Defendant.	)	
	)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: ROGER ROGOFF
MICHAEL DION

For the Defendant: EMMA SCANLAN
JOHN HENRY BROWNE

Reported by: NANCY L. BAUER, CCR, RPR
Federal Court Reporter
700 Stewart Street, Suite 17205
Seattle, WA 98101
(206) 370-8506
nancy_bauer@wawd.uscourts.gov

April 23, 2009 6:41 p.m.

PROCEEDINGS

THE CLERK: We're here in the matter of United States v. Weldon Marc Gilbert, Cause No. CR07-5732, assigned to Judge Settle's court. Counsel, please rise and make your appearances for the record.

MR. ROGOFF: Good evening, Your Honor. Roger Rogoff and Mike Dion for the United States.

THE COURT: Gentleman, thank you.

MR. BROWNE: Good evening, Your Honor. John Henry Browne and Emma Scanlan on behalf of Mr. Gilbert.

THE COURT: Counsel and Mr. Gilbert --

MR. BROWNE: Thank you very much for staying late. Like the old days.

THE COURT: Like the old days.

Counsel, I understand that Judge Jones has been working with the parties on this particular case to see if they can negotiate a particular plea. The court has been given a draft. Do we have the signed copy?

MR. DION: May I approach, Your Honor?

THE COURT: Please.

Mr. Gilbert, I have had a chance to review the draft --

MR. BROWNE: Do you want us to stand, Your Honor?

THE COURT: No, that's fine. You're fine right there.

-- and I understand that you have negotiated an agreement with the United States government in this case. I have the agreement in my hand. We refer it to as plea agreement. It's basically a contract between you and the United States government that resolves these particular charges.

I've known your counsel, Mr. Browne, for, well, over three decades now. I don't know Ms. Scanlan at all, but I can tell you that Mr. Browne is one of the, and has been during that time, one of the top criminal defense attorneys in not only our Northwest area but probably a good part of the United States.

My question to you is, after having gone through this long day with your attorneys' and Judge Jones' help negotiating with the United States government, is this the agreement you wish to enter into?

THE DEFENDANT: It is, Your Honor.

THE COURT: All right. Let me tell you what my job is during this hearing and what we are going to do. I need to assure myself that you understand the charges that are being brought against you, the rights that you waive or give up by asking the court to accept your plea of guilty, and most importantly the potential consequences that you will face, assuming the court accepts the pleas. In order to do that, I'll go through this entire plea form paragraph by paragraph. All right?

If at any point you need any clarification about anything, if you have a question about anything for either me, your counsel, or even the government counsel, don't hesitate to ask. All right? Because at the very end, I will ask you what your pleas are to these particular charges, and before I do that, I need to assure myself that you understand everything that you are doing. Make sense?

THE DEFENDANT: Okay.

THE COURT: All right. We need to place you under oath to answer the questions of the court. Please understand that this means you are actually swearing to tell the truth. If you make any false statements here, you can be prosecuted for perjury or of making a false statement. Is that understood?

THE DEFENDANT: Yes.

THE COURT: Please stand for the oath.

THE CLERK: Do you solemnly swear or affirm that the testimony you are about to give in the cause number before the court will be the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: I do.

THE COURT: Let me ask a little bit of biographical information about you and your background, and then we'll get to the actual plea agreement itself. The caption here reads United States of America versus Weldon Marc Gilbert. Is that

your true and correct name?

THE DEFENDANT: It is.

THE COURT: Tell me your date of birth.

THE DEFENDANT: August 26th, 1960.

THE COURT: How far did you go in school?

THE DEFENDANT: Four years of college, but I didn't graduate.

THE COURT: I'm assuming you're able to read and write in English without any problem?

THE DEFENDANT: Yes.

THE COURT: Have you read the entire document yourself?

THE DEFENDANT: I did.

THE COURT: Gone over it with your counsel?

THE DEFENDANT: I have.

THE COURT: Do you believe you understand everything that it contains?

THE DEFENDANT: Yes.

THE COURT: Have you ever been treated for any type of mental illness or any addiction to any narcotic drugs of any type?

THE DEFENDANT: No.

THE COURT: Are you currently taking any type of medication?

THE DEFENDANT: Blood pressure medication.

THE COURT: It doesn't affect your mental acuity in any way, shape, or form?

THE DEFENDANT: No.

THE COURT: All right. Do you have a copy of the plea agreement in front of you, sir?

THE DEFENDANT: No.

MR. BROWNE: We haven't had a chance to make a copy. Since you have a draft, may I approach, Your Honor?

THE COURT: Yes. Mr. Gilbert, if you'd look at paragraph 1, page 1, it starts out with the charges, and it says there that, "The defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the fourth superseding indictment." That's the charging document. "By entering this plea of guilty, the defendant hereby waives all objections to the form of the charging document."

So the first count will be sexual exploitation of a child and the production of child pornography as charged in Counts 1 through 21, 23 through 31, and 33, in violation of Title 18, United States Code, Sections 2351(a) and (e) and 2256.

Page 2 says transportation of a minor to engage in illegal sexual activity as charged in Counts 34 and 35 in violation of Title 18, U.S.C., Section 2423(a) and Section 2.

Then next is obstruction of justice charged in Count 35 in

violation of Title 18, United States Code, Section 1512(b)(3), and finally, obstruction of justice as charged in Count 36 in violation of Title 18, United States Code, Section 1512(b)(1).

Do you understand those are the charges and those are the counts that you'll be pleading guilty to?

THE DEFENDANT: I do.

THE COURT: Do you understand that, as I indicated to you here before, that all of your answers that you are giving to this court at this time during this hearing are under oath?

THE DEFENDANT: I do.

THE COURT: All right. Let's take a look at paragraph 2. This sets out the elements of these offenses. Now, the elements of any criminal offense are those things that the government must prove to a jury beyond any reasonable doubt -- that's a standard that we charge them with -- before they can return a verdict of guilty on any criminal count. All right? The government bears the burden of proof beyond a reasonable doubt.

So the elements of the offense of production of visual depictions of minors engaged in sexually explicit conduct as charged in Counts 1 through 21, 23 through 31, 33 of the indictment are as follows:

First, defendant employed, used, persuaded, induced,

enticed, or coerced the victim to take part in sexually explicit conduct for the purpose of producing visual depiction of such conduct; second, at that time the victim was a minor; and third, the visual depiction was produced or transmitted using materials that had been mailed, shipped, or transported in, or affecting interstate or foreign commerce.

Let's look at the elements of next charge. The elements in the offense of transportation of minors to engage in illegal sexual conduct as charged in Counts 34 and 35 of the indictment are as follows:

First, the defendant knowingly transported an individual in interstate commerce; second, the individual was under 18 years of age when the transportation took place; and third, the defendant intended that the person engage in sexual activity for which any person can be charged with a criminal offense.

Next, page 3, let's go over the elements of the offense of obstruction of justice as charged in Count 36 of the indictment. It says, first, the defendant knowingly did directly persuade, attempt to corrupt or persuade or engage in misleading conduct toward another by trying to convince such person not to cooperate with law enforcement or judicial officers; second, the defendant did so with intent to hinder, delay, and prevent the communication to a law enforcement or judge of the United States of information relating to the

conviction or a possible conviction of a federal offense.

And, finally, the elements of the offense of obstruction of justice charged in Count 37: First, defendant knowingly did corrupt or persuade or attempt to corrupt or persuade to engage in misleading conduct of another by trying to convince that person not to cooperate with law enforcement or judicial officers; secondly, the defendant did so with the intent to influence, delay, or prevent the testimony of any person in an official proceeding.

Do you have any questions about any of the elements of any of these charges?

THE DEFENDANT: No.

THE COURT: All right. Take a look at paragraph 3, because that sets out the maximum statutory penalties for these particular offenses.

The statutory penalty for production of visual depiction of minors engaged in sexually explicit conduct as set out in Counts 1 through 21, 22 through 31, and 33 are as to each count imprisonment for not less than 15 years, not more than life; a fine of $250,000 or both; there's a mandatory $100 penalty assessment for every one of the counts, and a period of supervision upon release from prison of not less than five years and up to the lifetime of the offender.

The statutory penalties for transportation of minors with intent to engage in illegal sexual conduct as charged in

Counts 34 and 35 are to be imprisonment for not less than ten years, no more than life, a fine of up to $250,000 or both, a $100 penalty assessment, and a supervised period following release from custody not less than five years and up to the lifetime of the defendant.

THE DEFENDANT: Your Honor, I have one question I'd like to ask counsel.

THE COURT: Absolutely.

MS. SCANLAN: Your Honor, do we have the original of the agreement?

THE COURT: I have it before me.

MS. SCANLAN: You do. Under paragraph 3, I think Mr. Gilbert is right. It should say Counts 1 through 21 and then 23 through 31.

THE COURT: 1 through 21.

MS. SCANLAN: And then 23 through 31. It's supposed to skip Count 22 because that count is to be dismissed at sentencing.

MR. ROGOFF: That's correct, Your Honor.

THE COURT: Okay. I see. Because under paragraph 1, that's exactly what it says: 1 through 21 and then 23 through 31. So Count 3 will be corrected to read 1 through 21 and 23 through 31 and 33 of the indictment; is that correct?

THE DEFENDANT: Yes.

THE COURT: All right. Thank you.

Mr. Gilbert, the statutory penalties for obstruction of justice as charged in Counts 36 and 37 are imprisonment of not more than 20 years, a fine of up to $250,000 or both, $100 statutory penalty assessment, and again a period of supervised release of not more than three years.

Now, supervised release is a period of time following custody time for which you'll be subject to certain restrictions and requirements as set by the sentencing judge. Do you understand that if supervised release is imposed, and it must be for these particular counts, and you were to violate in the future those conditions or requirements set by the sentencing judge, you could then be returned to court? If you're found to be in violation of those, you could be returned to custody for all or part of the term of supervised release that was originally imposed. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand that that could result in you serving a total term of imprisonment greater than the statutory maximum for any of these offenses?

THE DEFENDANT: I do.

THE COURT: All right. That paragraph concludes by saying that you agree that any monetary penalty that is imposed by the court -- that includes any assessment, fines, cost, or restitution -- would be due and payable immediately.

You further agree to submit a completed financial statement of debtor form as requested by the U.S. Attorney's Office. Do you have any questions about that?

THE DEFENDANT: No, Your Honor.

THE COURT: Let's look at paragraph 4. Paragraph 4 sets out the rights that you waive or give up by asking the court to accept your plea. It says here you understand by pleading guilty you knowingly and voluntarily waive the following rights. I will go over those rights with you, I will ask you if you understand each of those rights, and I'll ask if you willingly and voluntarily waive them.

First of all, you have the right to plead not guilty, to persist in any plea of not guilty, the right to a speedy and public trial before a jury of peers, the right to the effective assistance of counsel at trial, including, obviously, if you cannot afford an attorney, the right to have the court appoint one for you. You have the right to be presumed innocent until guilt has been established at trial beyond a reasonable doubt. You waive the right to confront and cross-examine witnesses that might be called against you at that trial, the right to compel and subpoena witnessed to appear and testify on your behalf. You also give up the right to testify yourself or to remain silent at trial, at which trial said silence cannot be used against you. And, finally, you give up the right to appeal any finding of guilt

or any pretrial rulings made in your particular case.

Question No. 1: Do you understand each of those rights?

THE DEFENDANT: I do.

THE COURT: Are you willingly and voluntarily waiving those rights?

THE DEFENDANT: I am.

THE COURT: Look at paragraph 5, page 5. It sets out there that you understand and acknowledge that absent applicable intervening law, the United States Sentencing Guidelines, as promulgated by the United States Sentencing Commission, are applicable to this case. This tells you that the sentencing judge will determine your applicable guideline range at the time of sentencing, and a sentence provided in paragraph 7 below in this agreement, you will not be allowed to withdraw your guilty plea solely because of the sentence imposed by the court. Do you understand?

THE DEFENDANT: I do.

THE COURT: Take a look at paragraph 6. Paragraph 6 is a statement of facts. In the beginning paragraph there, it says that, "The parties agree on the following facts in support of the defendant's guilty plea and sentencing: Defendant admits he is guilty of the charged offenses and expressly waives any right to have these facts determined by a jury beyond a reasonable doubt." Do you agree with that?

THE DEFENDANT: I do.

THE COURT: All right. Here's what I'm going to do. I'm going to read into the record what it has in this entire statement of facts, and then I will ask you if that's what happened and do you agree with those facts. All right?

It says, "At all relevant times, Weldon Marc Gilbert resided at his house in Lake Tapps, Washington. Gilbert was born August 26th, 1960.

"B: Gilbert used one or more foreign-made video cameras to create videos of minors engaged in sexually explicit conduct. All of the videos described below were created using those foreign-made video cameras, and those cameras traveled to Washington State and interstate and foreign commerce before being used to create those videos.

"C: Gilbert filmed all of the videos described below with the purpose and intent of creating visual depictions of minors engaged in sexually explicit conduct. Gilbert knew that the victims shown on the videos were minors, and he knew that they were engaging in sexually explicit conduct.

"D: Gilbert created 31 visual depictions of minors engaged in sexually explicit conduct as charged in Counts 1 through 21, 23 through 31, and 33 of the indictment. The videos show 17 different victims. The youngest victims are 10, 12, 13, and 14 when they first appear in the videos. Gilbert arranged the lighting, camera angle, and the victims' bodies to ensure the victims' genitalia would be clearly

caught on film. All of the videos fall into one of the following two categories: (a) Gilbert engaged in some form of sex act with the victim, or the victim masturbating at Gilbert's direction; or (b) lascivious display of the victims' genitalia. With respect to category (b), each and every one of those videos also displayed one or more of the following: (1) Gilbert striking the unclothed victim with his hand or with an implement such as a paddle, belt, or cane; (2) Gilbert restraining the victim either by hand or by tying the victim down; (3) the victim indicating that Gilbert was inflicting pain upon them; (4) welts, bruises, or blisters inflicted by Gilbert; (5) Gilbert caressing the nude bodies of the victims while striking them; (6) Gilbert commenting upon the victims' genitalia; (7) Gilbert touching or attempting to touch the victims' genitalia; and (8) Gilbert engaging in a sexual discussion with the victim.

"There was no legitimate reason for Gilbert to create any of these visual depictions of minors engaged in sexually explicit conduct. Gilbert created the videos for the purpose of producing child pornography that he could watch whenever he wanted to. Gilbert created these videos over a period of several years. All of the videos were created in Washington State. Gilbert agrees and acknowledges that all of the videos were sexually explicit in that each and every one of the videos showed one or more of the following: (1) actual

or simulated sexual intercourse; (2) masturbation; (3) sadistic abuse; and (4) lascivious exhibition of the genitals and pubic area.

"Gilbert used, persuaded, and induced each of the victims to appear in the videos."

Regarding the transportation of minor charges, the facts are as follows: "In 2005, Gilbert transported the minor male victim, John Doe 1, from Washington State to Whistler, British Columbia. One of Gilbert's dominant purposes in transporting John Doe 1 to Canada was to engage in illegal sexual conduct with John Doe 1, namely, Gilbert intended to produce pornographic videos of John Doe 1 in violation of Title 18, U.S.C. 2251(a). Gilbert did, in fact, produce a pornographic video of John Doe 1, the content of which was along the lines of the videos described above. Gilbert used a video recorder that had traveled in interstate or foreign commerce, Gilbert knew that John Doe 1 was a minor, and Gilbert deliberately created a visual depiction of John Doe 1 engaged in sexually explicit conduct.

"In 2007, Gilbert transported four minor male victims, John Doe 1 and three of his friends, from Washington State to Whistler, B.C., Canada. One of Gilbert's dominant purposes in transporting these victims to Canada was to engage in illegal sexual conduct with the victims, namely, Gilbert intended to produce pornographic videos of the victims in

violation of Title 18, U.S.C. 2251(a). Gilbert used a video recorder that had traveled in interstate or foreign commerce, Gilbert knew that the victims were minors, and Gilbert deliberately created a visual depiction of the victims engaged in sexually explicit conduct along the lines of the other videos described above."

The facts now regarding obstruction of justice charges.

"On October 30, 2007, Gilbert learned that he was being investigated by law enforcement. Gilbert soon learned that the subject of investigation was child abuse, child molestation, and production of child pornography. Gilbert knew that the evidence would prove that he committed these crimes. Gilbert knowingly and intentionally set out to obstruct the investigation and eventual prosecution of the crimes. Gilbert repeatedly attempted to tamper with John Doe 1. Gilbert's goals were (1) to prevent John Doe 1 from telling law enforcement the truth about Gilbert's crimes; (2) to prevent John Doe 1 from testifying at trial; and (3) to convince John Doe 1 to make false statements in a legal proceeding that would support Gilbert's efforts to suppress evidence seized during the investigation.

"Gilbert was charged in federal court in this case on November 2, 2007. From that point on, Gilbert knew that he was the subject of a federal criminal proceeding before the United States District Court for the Western District of

Washington, and his attempts to tamper with John Doe 1 were aimed at (1) corruptly persuading John Doe 1 to lie or refuse to testify in that proceeding, and (2) to prevent John Doe 1 from communicating information to federal agents and federal judicial officers in connection with that proceeding."

Am I correct, counsel? That should be "to prevent John Doe 1 from communicating," not "from communication" as it reads?

MR. ROGOFF: Yes, Your Honor.

THE COURT: I'll change "communication" to "communicating."

"Gilbert made several attempts to tamper with John Doe 1 in the manner described above. In January of 2008, Gilbert wrote a letter to John Doe 1. Gilbert arranged for a third party to meet with John Doe 1 and convey the contents of the letter to him. The letter encouraged John Doe 1 to make false statements to the federal judge in the context of the federal criminal case. Gilbert believed that these false statements would support an effort by defense to have the search warrant declared invalid and the critical evidence suppressed. In February of 2008, Gilbert wrote another letter to the third party he had previously used to contact John Doe 12. In the letter, Gilbert instructed the third party about how to approach John Doe 1 and convince him to not cooperate with the federal agents in the pending criminal

case regarding the federal offense of production of child pornography. Gilbert told the third party to mention to John Doe 1 an incident in which one of John Doe 1's friends was charged with stealing a television from Gilbert. The third party was to tell John Doe 1 that Gilbert was willing to falsely tell the police that the friend had permission to take the television. Gilbert hoped that in return for his willingness to lie to protect John Doe 1's friend, John Doe 1 would stop cooperating with the federal investigation and prosecution of the case against Gilbert."

Those are all the facts that are set out in the different paragraphs and the court has read into the record. Do you agree, Mr. Gilbert, that those facts are true and correct?

THE DEFENDANT: Yeah, Your Honor.

THE COURT: Mr. Gilbert, take a look at paragraph No. 7 on page 9. It talks about sentencing. This is a special type of plea, and it's pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. It says there, "The parties acknowledge and agree that the appropriate sentence of imprisonment to be imposed by the court at the time of sentencing should be within the range of 228 to 300 months, to be followed by supervised release for life.

"If the sentencing court rejects the agreement of the parties and seeks to impose any sentence outside of the agreed-upon sentencing range, both the defendant and the

United States reserve the right to withdraw from this agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, and thereby proceed to trial. No other agreement has been made with regard to the imposition of the sentence in this matter, and the parties understand that the court retains full discretion to impose a sentence within the range agreed to above."

Do you understand that entire paragraph?

THE DEFENDANT: I do.

THE COURT: Do you understand the judge is bound -- he can do one of two things. He can follow the agreement of the parties, but he must impose a sentence within that range, from the top to the bottom, anywhere in that range. Or he can say, no, I'm not going to impose that range at all, and then both sides have the ability to withdraw from the plea agreement. Do you understand that?

THE DEFENDANT: I do.

THE COURT: All right. Paragraph 8 deals with presentation of evidence at sentencing. It says, "The government agrees to the following restrictions on the evidence that it will present in support of a sentencing recommendation: (1) The government will not present any videos, excepts from videos or stills from videos, unless requested by the court; and (2) the government will not present the document marked as Trial Exhibit 75 and

sub-exhibits unless requested by the court.

"With respect to No. 1, the government is free to describe videos in as much detail as it wishes. Furthermore, if the defendant disputes the accuracy of the government's description of a video, the parties agree to request that a judicial officer of this district, other than the sentencing judge, review the video at issue and report to the sentencing judge about whether the government's description is accurate.

"Defendant acknowledges and understands that this paragraph will not bar the government from providing whatever information it is required to provide to the United States Probation Office."

Do you understand everything in paragraph 8?

THE DEFENDANT: I do.

THE COURT: Is that your agreement?

THE DEFENDANT: Yes.

THE COURT: Do you understand, of course, that the sentencing judge in this case, Judge Settle, has the right and the authority and the discretion to say, no, I want to see this, and then, of course, the government will have to produce this?

THE DEFENDANT: Yes.

THE COURT: All right. Take a look at paragraph 9, page 10, entitled "Non-prosecution of Additional Offenses." It says there: "As part of this plea agreement, the United

States Attorney's Office For the Western District of Washington agrees to move to dismiss all of the remaining counts in the indictment at the time of sentencing and not to prosecute defendant for any additional offenses known to them at the time of this agreement that are based upon evidence in their possession at this time or that arises out of the conduct giving rise to this investigation."

It goes on to say that, in this regard, you recognize that the government has agreed not to prosecute each and every one of the criminal charges that the evidence establishes were committed by you solely because of the promises made by you in this agreement. You acknowledge and agree, however, that for purposes of preparing the presentence report, the U.S. Attorney's Office will provide the U.S. Probation Office with evidence of all relevant conduct they believe was committed by you. The United States Attorney's Office for this district also agrees not to prosecute any other person based upon evidence in its possession at this time or that arise out of the conduct giving rise to this information relating to witness tampering, obstruction of justice, or related offenses in connection with this case. And, again, you agree and acknowledge that any charges to be dismissed either before or at the time of sentencing, that those charges were substantially justified in light of all the evidence available to the United States; in other words, they were not

vexatious, they were not frivolous, they were not brought in bad faith, and the dismissal will not provide you with a basis for any future claims under the Hyde Amendment.

Do you have any questions about anything in paragraph 9?

THE DEFENDANT: No, sir.

THE COURT: Take a look at paragraph 10. This deals with the voluntariness of your plea. Your attorneys' job is to make a recommendation to you as to what they think is best for you in light of the evidence the government has, their experience, their understanding of the case that can be brought, the potential consequences. But this is their job. This is your life. You're the one that has gets to choose. You're the one that gets to decide, not them. The question I have for you is very simple.

Are you entering into this plea agreement freely and voluntarily?

THE DEFENDANT: I am.

THE COURT: Has anyone made any threats or promises, other than the very specific ones contained in this plea agreement, in order to induce you to change your pleas from not guilty to guilty?

THE DEFENDANT: No.

THE COURT: Take a look at paragraph 11. That is titled "Statute of Limitations." It says that in the event this agreement is not accepted by the court for any reason or

the defendant has breached any terms of this agreement, that time frame of the statute of limitations shall be deemed to have been tolled -- that means stopped from running -- from the date of agreement dated 30 days following the date of nonacceptance of the agreement by the court or 30 days following the date in which the breach of agreement by the defendant is discovered by the U.S. Attorney's Office; in other words, maximizing the amount of time they have to seek an indictment. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about that?

THE DEFENDANT: No.

THE COURT: Paragraph 12 deals with post-plea conduct. It says there that you understand that the terms of this agreement apply only to conduct that occurred prior to the execution of this agreement. If, after the date of this agreement, defendant should engage in illegal conduct or conduct that is in violation of his conditions of release or confinement -- an example of that can include but are not limited to obstructing justice in any way, failing to appear for court proceedings, other criminal conduct while pending sentencing, making false statements to law enforcement agents, Pretrial Services officers, probation officers, or the court -- then the government is free under this agreement to seek a sentence that takes such conduct into

consideration, and such a sentence could include, to the extent the United States guidelines are applicable, a sentencing enhancement or upward departure. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Take a look at paragraph 13. It deals with forfeiture of specific property. In this paragraph, you agree to forfeit to the United States government, immediately, all of your rights, title, and interest in any and all property, real or personal, used or intended to be used to commit or promote the commission of the events of sexual exploitation of a child and the production of child pornography, and any property traceable to such property pursuant to Title 18, U.S.C. 2253(a)(3), and that includes the following properties:

A: One 2004 blue Lexus, that sets out the plate number and the VIN; one 2006 white Ford F-150 pickup, again setting out the Washington State license plate number and the VIN; one 1981 Bell 206B-III helicopter, sets out the tail number and the serial number; all flight logs, maintenance logs associated with that aircraft; one 1968 Cessna float plane, sets out the appropriate tail number and serial number; all flight logs and maintenance logs associated with that aircraft; one 2003 Sea Ray boat, sets out the model number, the license number, the boat hull number; one Shore Land'r

trailer with plate number and VIN; real property located at 2901 211th Avenue East, Lake Tapps, Washington, sets out the parcel numbers; all buildings, improvements, appurtenances, fixtures, attachments, and easements that's at the particular description; real property also located at 2901 -- Counsel, is that a different parcel number?

MR. ROGOFF: It is, Your Honor, a different parcel number.

THE COURT: Okay. And also its buildings, improvements, appurtenances, fixtures, attachments, and easements, et cetera, Lot 11 of Tapps Island Division 1. The first one was Lot 10 of Lake Tapps Island Division 1.

One Sony Handycam camcorder, sets out the model number; one Sony Video 8 Handycam camcorder, setting out the appropriate model number; one Averatec laptop computer; one Fry's Intel Pentium 4 computer tower; one notebook computer, sets out the model numbers; one Seagate Medalist hard drive; one Western Digital Enhanced hard drive; another Western Digital Enhanced IDE hard drive; another Western Digital Enhanced IDE hard drive; and, finally, one MX 1000 camera tripod.

It says you agree to forfeit to the United States all of your rights, title, interest, any visual depictions described in Title 18, U.S.C. 2251; any book, magazine, periodical, film, videotape or other matter which contains any such

visual depiction which was produced, transported, mailed, shipped, or received in violation of this chapter, and that includes the following properties and any and all images of child pornography in whatever form, however stored, including but not limited to those stored on zip disks, CDs/DVDs, video cassettes tapes, and floppy disks.

You agree to forfeit to the government all of your rights, title, interest in any property, real or personal, used to commit or to facilitate the commission of the violation of transportation of a minor to engage in illegal sexual activity and any property traceable to such property pursuant to Title 18, U.S.C, Section 2428(b)(1)(A), including the following property: One blue Lexus GX470.

You agree to fully assist the United States in the forfeiture of the listed assets, including but not limited to: Surrendering title and executing any documents necessary to effectuate such forfeiture; assisting in bringing any assets located outside the United States within the jurisdiction of the United States; taking whatever steps are necessary to ensure that assets are not sold, dispersed, wasted, hidden, or otherwise made unavailable for forfeitures. You agree to withdraw all claims to the listed properties in the related civil forfeiture action, including the United States v. One 2004 Blue Lexus. The United States agrees that once preliminary forfeiture is entered,

forfeiting your interest in the above-listed assets, the government will negotiate with counsel representing you in the related civil forfeiture case in this district to attempt to achieve the objective of applying the assets or proceeds from the sale of the assets for the benefit of the victims of the crimes to which you are pleading guilty and any related crimes, with the exception of the visual depictions or those electronic items containing visual depictions being forfeited to the United States.

In addition, the government will seek to obtain all necessary approvals to achieve the goal of utilizing the forfeited assets to compensate the victims of the defendant's crimes in lieu of obtaining final orders of forfeiture for the assets. The defendant, in turn, will take all steps necessary to ensure that these assets, in fact, are utilized for the benefit of the victims and will not go back to him or any of his relatives, including the removal of any liens or interests in the assets that currently exist in favor of any of his relatives.

Do you understand everything contained within the forfeiture of property section?

THE DEFENDANT: I do.

THE COURT: Do you have any questions about any of that?

THE DEFENDANT: No.

THE COURT: No? All right. Look at paragraph 14. That is titled, "Interdependence of Plea Agreement."

"The parties agree that this plea agreement shall be conditioned upon the defendant entering a plea in Pierce County Superior Court in the matter of State of Washington v. Weldon Marc Gilbert, Cause No. 07-1-05618-3, as set forth in the memorandum attached as Appendix A to this plea agreement," and there is an Appendix A attached.

It says, "The defendant understands, therefore, that this agreement is part of a package plea agreement with the United States and the State of Washington, to wit, if defendant does not enter into a plea of guilty pursuant to the respective plea agreements in Federal District Court and Pierce County Superior Court, or if defendant subsequently seeks to withdraw from either guilty plea, then the United States will withdraw from the instant plea agreement and will seek an indictment against defendant for all crimes for which the United States has sufficient evidence. The defendant's plea of guilty in State of Washington v. Weldon Marc Gilbert is integral to the instant plea agreement. If the State of Washington fails to abide by the agreement set forth in Appendix A, the defendant may withdraw his federal plea agreement."

Most of the time the United States Attorney's Office is not able to bind local authorities; in fact, they can't bind

them at all absent some agreement like this. This agreement, then, is interdependent, of course, with these other local jurisdictions. Do you understand?

THE DEFENDANT: I do.

THE COURT: Do you have any questions about this paragraph?

THE DEFENDANT: No.

THE COURT: Take a look at paragraph 15, page 15. That is titled "Acceptance of Responsibility." It says, "The United States acknowledges that defendant has assisted the United States by timely notifying the authorities of his intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the court to allocate its resources efficiently. If, at the time of sentencing, the United States remains satisfied that defendant has accepted responsibility, then it will recommend a sentence that takes this acceptance of responsibility into consideration. Defendant understands and agrees that the United States will base its recommendation on factors set forth in the United States Sentencing Guidelines, including Section 3E1.1."

Do you understand that paragraph?

THE DEFENDANT: I do. I just -- I -- the (c)(1)(C) supersedes this portion in relying on sentencing guidelines, right?

THE COURT: Yes. Let me answer your question this way:

Many times when we sentence defendants in federal court for felony offenses, the starting line is the sentencing grid -- right? -- in the guideline range. That's the very first thing we are mandated to find as sentencing judges. Part of that calculation has to do with whether there are any modifications in terms of either aggravating circumstances of some sort, or like in this case, accepting responsibility means we can deduct two or three points from that point level to get to what that guideline range is. All right?

You're right, in a sense, but saying that the 11(c)(1)(C) plea sets a bottom and it sets a top for the sentencing judge. Regardless however the United States government or the sentencing judge factors in your acceptance of responsibility, he will not be able to go above or below that range if he accepts that. Does that answer your question?

THE DEFENDANT: Yeah.

THE COURT: All right. Take a look at paragraph 16, "Waiver of Appeal."

It says, "As part of this plea agreement and on the condition that the court imposes a term of imprisonment that does not exceed the sentencing range set forth in this agreement, defendant waives to the full extent of the law, (a) any right conferred by Title 18, United States Code,

Section 3742 to appeal the sentence, including any restitution order imposed; (b) any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation.

"Furthermore, this waiver does not preclude the defendant from bringing an appropriate motion pursuant to 28 U.S.C. 2241 to address the conditions of his confinement or the decisions of the Bureau of Prisons regarding the execution of his sentence.

If defendant breaches the plea agreement at any time by appealing or collaterally attacking, except as to the effectiveness of legal representation, the conviction or sentence in any way, the United States may prosecute defendant for any counts, including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this plea agreement."

Do you understand?

THE DEFENDANT: I do.

THE COURT: Paragraph 17 is titled, "Completeness of Agreement." It says, "The United States and the defendant acknowledges that these terms constitute or make up the entire plea agreement between the parties. This agreement only bounds the United States Attorney's Office for the Western District of Washington. It does not bind any other

United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor." Again, subject to the interdependent plea we discussed with the local jurisdictions.

Do you understand?

THE DEFENDANT: I do.

THE COURT: The original I have here is dated the 23rd. I know we were late, counsel, but the 23rd of May, I don't think we're quite there yet, so let me change that to "April."

I recognize Mr. Browne's signature, I see Ms. Scanlan's signature, I recognize Mr. Westinghouse's signature, Mr. Rogoff's signature is illegible, and Mr. Dion's signature are all on this page. What I'm concerned about is that your signature above your printed name where it says "Weldon Marc Gilbert."

THE DEFENDANT: Yes.

THE COURT: Yes. Mr. Gilbert, we've gone over the entire plea document. Do you understand the nature of the charges brought against you, the ones you're pleading guilty to?

THE DEFENDANT: I do.

THE COURT: Do you understand the rights you're waiving by asking the court to accept your plea of guilty?

THE DEFENDANT: I do.

THE COURT: Do you understand the consequence of entering these pleas?

THE DEFENDANT: I do.

THE COURT: Do you have any questions for your counsel, government counsel, or the court about anything that we've discussed, reviewed, most importantly anything at all within this document?

THE DEFENDANT: No.

THE COURT: Mr. Gilbert, for the record, then, they brought charges against you of sexual exploitation of a child and production of child pornography, charging Counts 1 through 21, 23 through 31, and Count 33. They brought charges of transportation of a minor to engage in illegal sexual activity, charging Counts 34 and 35. They brought charges of obstruction of justice --

MR. DION: 35 and 36, Your Honor -- 36 and 37.

THE COURT: That was my question, Counsel. On page 2 of the plea agreement, it says Count 35. I thought that was transportation of minors.

MR. DION: That's a typo on page 2. It should be the first obstruction count is 36, and the second obstruction count is 37.

THE COURT: All right. Ms. Scanlan, do you agree?

MS. SCANLAN: I do.

THE COURT: All right. I've changed those. See,

Mr. Gilbert, we catch typos at all points in time. We've changed those, and now paragraph 1, Section C says, obstruction of justice as charged in Count 36, and paragraph D is obstruction of justice as charged in Count 37. They brought those charges against you.

Understanding the elements the government will have to prove at this point in time, how do you wish to plead to all those counts, guilty or not guilty?

THE DEFENDANT: Guilty, Your Honor.

THE COURT: Ms. Scanlan, Mr. Browne, is there any legal reason that either of you can think of why I should not accept his plea of guilty?

MR. BROWNE: No, Your Honor.

MS. SCANLAN: No.

THE COURT: Any reason why the court should not accept the plea of guilty?

MR. ROGOFF: No, Your Honor.

THE COURT: Counsel, after reviewing the plea agreement in detail with Mr. Gilbert, this court is satisfied he understands the nature of the charges against him, the elements of those offenses, the rights he waives by pleading guilty, and most importantly, the potential consequence of his plea. The court is satisfied this plea of guilty is made knowingly, willingly, voluntary, and intelligently. The court, therefore, will accept the agreement of the parties.

I make a finding of guilty as to all of these counts.

Counsel, I've been informed by our clerk that Judge Settle has set sentencing for the 17th day of August, 2009, at 9:00 in the morning. Anything else we need to do at this particular point in time?

MR. ROGOFF: No, Your Honor.

MR. BROWNE: No. On behalf of all of us, we thank you for your time and the lower bench for their time.

THE COURT: Well, I want to thank our lower bench, and thank you to the court reporter for staying late and all of you for working so hard at this.

Mr. Gilbert, I've done this for 20 years now, and I've sentenced a lot of people during that period of time. I know it's not easy. At the same time, you had extremely competent counsel, and believe me, going to trial in many of these cases is usually not the best idea. So I know this is tough, but I wish you the best. All right?

THE DEFENDANT: Thank you, sir. Thank you for staying late.

THE COURT: We'll be at recess.

(THE PROCEEDINGS CONCLUDED.)

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 10th day of February 2010.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter

UNITED STATES DISTRICT COURT

Western District of Washington

UNITED STATES OF AMERICA
V.
WELDON MARC GILBERT

JUDGMENT IN A CRIMINAL CASE

Case Number: CR07-5732BHS-001

USM Number: 37955-086

John Henry Browne
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 - 21, 23 - 31 and 33 - 37 of the Indictment Plea: 04/23/09

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 2251(a) and (e) and 2256	Sexual Exploitation of a Child in the Production of Child Pornography	10/31/2007	1 - 21, 23 - 31 and 33
18 U.S.C. §§ 2423(a) and 2	Transportation of a Minor to Engage in Illegal Sexual Activity	10/31/2007	34 and 35
18 U.S.C. § 1512(b)(3)	Obstruction of Justice	08/28/2008	36
18 U.S.C. § 1512(b)(1)	Obstruction of Justice	08/28/2008	37

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 22, and 32 of the Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Assistant United States Attorney

November 16, 2009
Date of Imposition of Judgment

Signature of Judge

The Honorable Benjamin H. Settle
United States District Judge

Nov. 16, 2009
Date

DEFENDANT: WELDON MARC GILBERT
CASE NUMBER: CR07-5732BHS-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 300 Months (25 years)

☒ The court makes the following recommendations to the Bureau of Prisons:
Court recommends placement at Terminal Island

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: WELDON MARC GILBERT
CASE NUMBER: CR07-5732BHS-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : Life years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug and/or alcohol test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight valid tests per month, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☒ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: WELDON MARC GILBERT
CASE NUMBER: CR07-5732BHS-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to a search of his or her person, residence, office, property, storage unit or vehicle conducted in a reasonable manner and at a reasonable time by a probation officer.

The defendant shall not possess or peruse any authentic, altered, or manufactured, in whatever form, material that depicts and/or describes "sexually explicit conduct," as defined in 18 U.S.C. § 2256(2) or "child pornography," as defined in 18 U.S.C. § 2256(8).

The defendant's employment must be approved in advance by the probation officer. The defendant may not engage in any paid occupation or volunteer service that exposes him/her, either directly or indirectly, to minors, unless approved in advance by the probation officer.

The defendant, who is required to register under the Sex Offender Registration and Notification Act, must comply with all requirements of that Act. The defendant shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any jurisdiction where the person resides, is employed, or is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of the residence. Registration must occur within three business days after sentencing (if the offender did not receive a prison sentence) or within three business days after being released from custody.)

The defendant shall participate in a sexual deviancy evaluation conducted by a sexual deviancy treatment provider, as directed and approved by the U.S. Probation Officer. The treatment provider shall be trained and experienced in the treatment of sexual deviancy, and follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The sexual deviancy evaluation may include psychological and physiological testing* The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of the evaluation, according to his/her ability, as determined by the U.S. Probation Officer. *except plethysmograph

The defendant shall actively participate and make reasonable progress in a certified sexual deviancy treatment program, as designated by the U.S. Probation Officer. The sexual deviancy treatment program shall follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The program shall offer individual and group sessions, and appropriate testing, to determine the defendant's patterns of sexual arousal, and to monitor the defendant's progress and compliance with treatment goals and conditions of supervision. The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of treatment, according to his/her ability, as determined by the U.S. Probation Officer.

The defendant shall follow all rules, to include other lifestyle restrictions by the defendant's therapist, and continue with those rules and restrictions as they pertain to avoiding risk situations throughout the course of the defendant's supervision.

The defendant shall not go to places nor loiter within 100 feet of an area where minors are known to frequent without the prior approval of the probation officer and the sexual deviancy therapist. The defendant shall not affiliate with, own, control, volunteer, and/or be employed, in any capacity, by an organization in an activity, which would place him/her in direct or indirect contact with children under the age of 18.

The defendant shall have no direct or indirect contact with any children under the age of 18, unless accompanied and supervised by an adult, who has been approved in advance by the sexual deviancy therapist and the supervising probation officer. The defendant shall immediately report any unauthorized contact with children to the probation officer and sexual deviancy therapist.

The defendant's residence shall be pre-approved by the probation office. The defendant shall not reside in direct view of places used primarily by minors, such as school yards, parks, public swimming pools, or recreational centers, playgrounds, youth centers, video arcade facilities, or other places primarily used by children under the age of 18.

Restitution in the amount of $TBD is due immediately. Any unpaid amount is to be paid during the period of supervision in monthly installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall not be waived.

The defendant shall consent to the U.S. Probation Office conducting ongoing monitoring of his/her computer(s), hardware, and software, and any/and all electronic devices/media. The monitoring may include the installation, at the defendant's expense, of hardware or software systems which allow evaluation of his/her computer use. Monitoring may also include the retrieval and copying of all data form his/her computer(s) or any/and all other electronic devices/media. The defendant shall also comply with the requirements of the U.S. Probation Computer Monitoring Program as directed.

The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.

No contact with victims

DEFENDANT: WELDON MARC GILBERT
CASE NUMBER: CR07-5732BHS-001

CRIMINAL MONETARY PENALTIES

	Assessment	Fine	Restitution
TOTALS	$ 3,500	$ Waived	$ TBD

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
	TBD	TBD	
TOTALS	$ TBD	$ TBD	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☒ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

☐ The court finds that the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: WELDON MARC GILBERT
CASE NUMBER: CR07-5732BHS-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

☒ PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.

☒ During the period of imprisonment, no less than 25% of their inmate gross monthly income or $25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.

☒ During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.

☐ During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: WELDON MARC GILBERT
CASE NUMBER: CR07-5732BHS-001

ADDITIONAL FORFEITED PROPERTY

One 2004 blue Lexus GX470, bearing Washington license 029RYB, VIN JTJBT20X940035115; One 2006 white Ford F150 pick-up, Washington license A68898Z, VIN1FTRF12206NB15476; One 1981 Bell 206B helicopter, Tail #N325JR, Serial #3296, and all flight logs and maintenance logs associated with this aircraft; One 1968 Cessna A185E float plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft; One 2003 Sea Ray boat, Model 185BR, license #WN8212NM, Boat Hull #0059RG, VIN 1MDJ2JR163A248710; Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010100, its buildings, improvement, appurtenances, fixtures, attachments and easements, more particularly described as : Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive records of Pierce County, Washington; Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010110, its buildings, improvement, appurtenances, fixtures, attachments and easements, more particularly described as : Lot 11 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive records of Pierce County, Washington; One Sony Digital Handicam Digital 8 camcorder, model DCR-TRV250, Serial #388947; One Sony Video 8 Handicam camcorder, model CCE-TR40, Serial #3009669; One Averatec laptop computer, model 5500 series, Serial number obliterated; One Fry's Intel Pentium 4 computer tower, model FS7470, Serial #747FSX340000296; One Averatec Notebook computer, model 2200 series, Serial number partially obliterated, starting with NW04CE6040; One SeaGate Medalist 13640 hard drive, model ST313640A, Serial #7AE054NA; One Western Digital WD1600 Enhanced IDE hard drive, model WD1600BB-00DAA0, Serial #WMACK2069917; Onee Western Digital WD400 Enhanced IDE hard drive, model WD400JB-00ENA0, Serial #WCAD19728957; One Western Digital WD1600 Enhanced IDE hard drive, model WD1600JB-75GVC0, Serial #WCAL96008970; One MX 1000 camera tripod; and Any and all images of child pornography, in whatever form and however stored, including but not limited to, those stored in zip disks, CDs/DVDs, video cassette tapes, and floppy disks.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,	Docket No. CR07-5732BHS
Plaintiff,	Tacoma, Washington
vs.	November 16, 2009
WELDON MARC GILBERT,	
Defendant.	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE BENJAMIN H. SETTLE
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff: ROGER S. ROGOFF
MICHAEL DION
Assistant United States Attorneys
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For the Defendant: JOHN HENRY BROWNE
EMMA SCANLAN
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Court Reporter: Teri Hendrix
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1717 Pacific Avenue
Tacoma, Washington 98402
(253) 882-3831

Proceedings recorded by mechanical stenography, transcript produced by Reporter on computer.

MONDAY, NOVEMBER 16, 2009 - 1:30 P.M.

* * *

THE CLERK: This is in the matter of the United States of America versus Weldon Marc Gilbert, Cause No. CR07-5732BHS.

Counsel, please make an appearance for the record.

MR. ROGOFF: Good afternoon, Your Honor, Roger Rogoff and Michael Dion for the United States.

THE COURT: Good afternoon.

MR. BROWNE: Good afternoon, Your Honor, John Henry Browne on behalf of Mr. Gilbert. Ms. Scanlan has been ill, but I think she's going to show up. If she comes in a little late I ask for forgiveness.

THE COURT: All right. Good afternoon, Mr. Browne.

Good afternoon. This matter has been set for sentencing this afternoon.

The first thing I want to inquire of Mr. Gilbert is, are you satisfied yet with the services you have received from Mr. Browne and Ms. Scanlan?

THE DEFENDANT: Yes?

THE COURT: Have you had ample opportunity, do you believe, to review with him all the materials that have been supplied to the Court; that would be the presentence report, the government's sentencing memorandum with all its exhibits, of course your own sentencing memorandum and the exhibits that

were attached to it? Have you had a chance to review those fully with him?

THE DEFENDANT: I have.

MR. BROWNE: Your Honor, may I? Actually, Mr. Gilbert has not had an opportunity to review the preliminary order of forfeiture. We received it Thursday, I believe. As you know, Ms. Scanlan and I have been in trial, one trial or another, for almost six weeks. Ms. Scanlan had the swine flu last week, so I was a little overwhelmed with things. So he hasn't had an opportunity to review this yet. I think when we get to an appropriate point in this procedure, I can talk about that.

THE COURT: I will be coming to that here shortly.

MR. BROWNE: I did want to tell you, Your Honor, I was told -- I was in trial in Yakima -- but I was told that last time that Ms. Scanlan was here, you had some questions about the pending Pierce County matters?

THE COURT: Correct.

MR. BROWNE: I just want to bring you up-to-date on that.

The prosecuting attorney assigned to that case -- there's only one, and he's had some very, very -- I don't think it is my place to tell you -- has had some very serious family health issues, his family, involving his mom. There's apparently nobody else involved that can help out, so he has

been completely unavailable to us -- and totally understandable; I am not criticizing him at all.

I spoke with him actually on Thursday or Friday, and he told me what was going on. And I gave him my condolences, but also he thought he might be able to get us a drafted information about the Pierce County matter by Friday, but then told me that given what was going on in his health situation with his mom, that that was not going to happen.

We've had two meetings canceled; one because we were in trial and one because of his mother's health situation. So we haven't been able to iron out a lot of the details I think you were asking about last time. However, I did confirm with the deputy prosecuting attorney that it is his understanding and his intent that the matter in state court be disposed of concurrently with this, and that if that was not the case, there would be a violation of the plea agreement.

So I think that everybody is onboard on that, and will make that happen, because certainly nobody wants this to fall apart. So I can relate to you that he told me that, and I felt very comfortable with that. He is certainly over his head with some family problems right now. I think you wanted to know, because you were asking questions about it.

THE COURT: I was concerned about that, and it was my understanding at that time -- and Ms. Scanlan has joined us -- at the last hearing was that the plea arrangement there was

she had just been or was going to be provided it; and apparently even that, in the time that has transpired, has not been able to be accomplished for the reasons that you've stated here.

MR. BROWNE: It's through no fault of his, just one of those things that happens with family. But I am personally confident that it is going to work, and it is going to work the correct way. My client may feel somewhat uncomfortable about that, but the reality is that if it doesn't work the way the prosecutor and I and the U.S. Attorneys have agreed to, then the plea agreement would be voided, and nobody wants that.

THE COURT: All right. In any case, both parties have agreed to proceed this afternoon, and nobody is indicating that the plea agreement at this point is in breach of any kind, so we can proceed; is that the parties' -- Mr. Rogoff?

MR. ROGOFF: That's correct, Your Honor.

THE COURT: And Mr. Browne --

MR. BROWNE: Yes, Your Honor. Thank you.

THE COURT: -- has indicated as well.

I have reviewed all those documents that I relayed a moment ago in my question of Mr. Gilbert; as well, I have reviewed the victims' statements. And I assume, Mr. Browne, that you received those same statements --

MR. BROWNE: We have, Your Honor.
THE COURT: -- in preparation for this hearing? Are there any other documents that the Court needs to review then?
MR. ROGOFF: Not from the government, Your Honor.
MR. BROWNE: I just wanted to clarify -- I am sorry -- we did attach to our presentence report, a report from Dr. Bill Lennon. I assume you've read that.
THE COURT: I have.
MR. BROWNE: And from Ms. Rogers, the mitigation specialist who's here today as well.
THE COURT: I reviewed that as well.
There has been a motion by Mr. Gilbert to seal the sentencing memorandum. Now the Court is not inclined to seal the entire memorandum; Exhibits A and B to that memorandum being in the nature of medical reports should be sealed. And that would seem to me, after my review of the memorandum, should be the matter that would be of greatest concern.
Is Mr. Gilbert interested in further sealing, Ms. Scanlan?
MS. SCANLAN: Your Honor, we'd be happy to redact. My concern would be that there are portions of Exhibits A and B that are cited verbatim within the sentencing memorandum itself. So if we could submit to the Court a redacted copy possibly with the government's agreement.
THE COURT: All right. Well I was going to suggest that we do that within one week of today's date. In other

words, next Monday file a substituted redacted portion of the memorandum. I see Mr. Rogoff is nodding in agreement.

MR. ROGOFF: I am, Your Honor. Thank you.

THE COURT: Now, with regard to these orders on sealing, I want to clarify that these are orders without prejudice, that is, if there's just cause at a later time that is presented to the Court, those orders can be revisited.

Next matter I want to take up is this motion for restitution hearing in 90 days. And there is this question of the preliminary order of forfeiture. Mr. Rogoff?

MR. ROGOFF: Certainly, Your Honor; I am happy to address that.

THE COURT: The preliminary order of forfeiture, is that not an order that is better submitted to Judge Bryan who has the civil forfeiture proceeding?

MR. ROGOFF: Well, Your Honor, typically we have the preliminary order of forfeiture signed at the time of sentencing, because it's criminal forfeiture.

THE COURT: We are talking about the criminal?

MR. ROGOFF: That's correct.

THE COURT: Preliminary order of forfeiture, because I believe there's one pending in Judge Bryan's court also, a civil one.

MR. ROGOFF: There is, Your Honor.

THE COURT: Let me ask you: You've indicated that

you'd like to have a hearing on this, and I think that that is appropriate. I think it would be difficult to take up all the implications of a restitution order today, and the statute allows for a continuance up to 90 days. And I think that the appropriate time for that would be sometime the middle of January, not the full 90 days, because that might not be the last of the hearing. And Gretchen, do you have a date for that?

THE CLERK: January 4th or January 25th.

THE COURT: I am going to set it for January 4th at 10 a.m.

MR. BROWNE: Your Honor, I am going to be out of town until the 8th on a much deserved vacation.

THE COURT: All right, let's work on getting -- that date was going to be a holding place in any case, because it may well have to be changed depending on what the circumstances are. So I am going to set it for the 4th of January, Mr. Browne. But we are going to work with the parties to get a date which works for everyone.

Now, with regard to that hearing, Mr. Browne, let me just ask you: Does Mr. Gilbert waive his presence?

MR. BROWNE: No: You are probably aware, this procedure, as far as I know, has never been done before in the United States, and that is there's an effort to give meaning to the plea agreement and to the victims, to put together a

1 pool of assets that will be available, and we were told by the
2 United States government attorneys, not necessarily these
3 attorneys, that the only way to accomplish that legally is
4 through the restitution process. So we are really kind of in
5 unchartered territory here, so the idea -- I don't know if you
6 are aware of this, but the idea is to have that -- the assets
7 sold by the Marshals, the pool would be created, and then a
8 special master, we were thinking perhaps Magistrate Kelly
9 Arnold, would take a look at everybody's restitution request,
10 and then make appropriate distributions.
11 The reason I am bringing that up now, I think it is
12 important enough and part of the plea agreement that I think
13 Mr. Gilbert would like to be here; we are not trying to play
14 games with the Court or anything, but I think it is important
15 he be here.
16 THE COURT: You addressed the special master. That
17 person was not identified in your pleading, but Mr. Browne
18 suggested it may be Judge Arnold; is that right?
19 MR. ROGOFF: That would be fine with the government,
20 Your Honor. I think that frankly Your Honor is going to
21 receive in the next 30 days, some pleadings related to
22 forfeiture and restitution. And I think it is a great idea to
23 set a place holding date of January 4th for a hearing. And
24 within the next few weeks, there will be a motion or at least
25 a memorandum from the government indicating exactly how we

want this procedure to work. Hopefully that would be an agreed memoranda or agreed motion, and then we will move from there.

I don't have -- Judge Kelley Arnold is the magistrate or the special master. If he's appointed that would be fine for the government; we haven't really sat down and talked about it yet, but that is a terrific suggestion.

THE COURT: I will reserve ruling on whether a special master or this Court will retain -- I will retain it in any case because it will be a referral, but as to whether or not there's a need for a special master.

Am I correct that Judge Arnold has already been approached?

MR. ROGOFF: No, Judge Arnold has not. We originally approached former U.S. Attorney Kathryn Pflaumer, who was willing to do it. But that was sort of, we initially talked about doing this. We talked about doing it in the context of the civil lawsuits that are filed in state court.

After some consideration, the U.S. government has decided that that doesn't make a lot of sense for a lot of different reasons. So we would rather keep this restitution/forfeiture issue here in federal court. The easiest way to do that and the way that I think is legally permissible is through restitution, and restitution allows the appointment of a magistrate or special master to make that happen.

THE COURT: I am familiar with that statute and I am going to reserve ruling with regard to that; we will have the hearing. I do anticipate that there are multiple issues involved in managing such a fine and setting up any methodology for disbursement from him.

There are a couple of victim impact statements that have been filed, making claims. Clearly those will have a priority, because those have been filed in compliance with the rule and then we will go from there.

MR. ROGOFF: Thank you, Your Honor.

THE COURT: Have you heard, by the way, from the Department of Justice on the request for an opinion?

MR. ROGOFF: Mr. Cohen will tackle me if I say this wrong, but I think technically yes, but we don't have an official answer as to exactly how to do it.

THE COURT: The next thing I want to review with the parties is the calculation of the sentencing guidelines. It appears to me that the guidelines as they were prepared by the probation officer are correct with a clarification and bit of a change.

The government has indicated that it is recommending acceptance of responsibility, a three-level reduction.

Mr. Gilbert also objected to the method used in paragraph 124 of the presentence report with regard to the multiple count adjustment. Now, there was an explanation, Mr. Browne,

that was supplied by the probation officer as to how that was performed. I understand how it was performed. I accept the fact that, and I think the probation officer accepts the fact that each individual victim needs to be in a grouping and there's a specific offense characteristic that applies to some, but not all.

But I think the net result in terms of the calculation wouldn't change the calculation in any way. Is that your understanding?

MR. BROWNE: Yes, Your Honor. And given this is an 11(c)(1)(C) recommendation to the Court, then I think what you said is an accurate recitation of the record and we agree with that at this point.

THE COURT: All right, without an objection from the parties, I am going to accept the calculation that was performed -- it is rather detailed -- that was performed by the probation officer in this case. The sum of it is that the offense level would be 50, but since the maximum under the guidelines is 43, this is an offense level of 43. There is no dispute either -- I think that there is in Mr. Gilbert's history, no criminal history of any kind, so that would put it in criminal history category of I.

Now, is that all a correct summary of what we have here?

MR. ROGOFF: Your Honor, I agree with the calculation. I would indicate the defendant does have a DUI

1 citation but I don't think it counts in the criminal history
2 category so you state it correctly.
3 MR. BROWNE: That's correct.
4 THE COURT: All right. Now, in addition, Mr. Gilbert
5 has made some objections to some contents in the presentence
6 report. The Court is going to decline to amend those
7 statements with the exception of paragraph 29, and it will be
8 deleted from the presentence report.
9 I am declining these objections and adopting the reasoning
10 that was employed by the probation officer in responding to
11 those objections. I can go over, but I don't think it would
12 be a good use of time, to go over each of those objections at
13 this time unless, Mr. Browne, on behalf of your client you are
14 asking for that.
15 MR. BROWNE: No, Your Honor, I think we made our
16 objections perfectly clear and they were recounted accurately
17 in the amended presentence report.
18 THE COURT: You did.
19 MR. BROWNE: So I think the record is clear.
20 THE COURT: I might say that the comments made there
21 are noted by the Court and taken into consideration. The
22 report will not be altered, except as I mentioned in paragraph
23 29.
24 The maximum imposable punishment for counts 1 through 21,
25 as well as 23 through 31, and 33, is life imprisonment and the

minimum imprisonment sentence for these offenses is 15 years. With regards to count 34 and 35, the maximum imposable sentence is also life imprisonment, and the minimum on those is 10 years.

Finally, with regard to counts 36 and 37, the maximum sentence is 20 years, with no minimum applicable. Has the Court correctly stated these maximum and minimum sentences?

MR. ROGOFF: Yes, Your Honor.

MR. BROWNE: Yes, Your Honor.

THE COURT: Then having determined that we have an offense level of 43, and with the criminal history category of I, that would indicate that the United States sentencing guideline is life imprisonment. Is that also a correct statement?

MR. ROGOFF: Yes, Your Honor.

MR. BROWNE: Yes, Your Honor.

THE COURT: Now the plea agreement as has already been referenced in this case was made under the Federal Rules of Criminal Procedure 11(c)(1)(C). In which the parties have agreed to the imposition of a sentence of imprisonment of between 19 and 25 years. The effect of the agreement then is that the Court can either accept this range and sentence within it or reject the plea agreement and allow either party to withdraw from the plea agreement and proceed to trial on all charges. Is this also a correct statement?

MR. ROGOFF: Yes, Your Honor.

MR. BROWNE: That's correct, Your Honor.

THE COURT: All right. I am going to hear first from the government on its recommendation.

MR. ROGOFF: Good afternoon, Your Honor. With the Court's permission, what I would like to do is first introduce some of the victims who are here in court by their initials and indicate which one of those victims wish to address the Court directly.

You will notice when some of them speak, that they are reading letters that you have already seen, and I will apologize on their behalf for repeating, but I think it is important for them to be able to say to the world and to the defendant out loud how they feel, how this has affected them, and what it means to them to be able to put this criminal case behind them and hopefully move on with their lives.

So if that is okay with the Court.

THE COURT: And you certainly don't need to apologize for them; the Court fully understands the need for them to read the letter. That is perfectly all right.

I might also add, with regard to the initials, the Court's determination, which I think was communicated to you, perhaps not, which is any victim who wishes to address the Court may do so using initials. And then, for the record, there will be a document that would be on file with the Court under seal

that connects the initials to the name, so that there's a complete record on that.

MR. ROGOFF: Thank you, Your Honor.

Present in court today are victims L.C., S.C., A.C., J.G., Z.R., and R.K.

That is who I saw in the courtroom when I sat down and started facing you, so if anyone else has shown up, I am sure they will let me know.

The ones that wish to speak today are L.C. and his parents, J.F. and C.F., J.G., and Z.R.

So with the Court's permission, what I would like to do, to begin with, is just invite L.C. and his parents up. What I would like to do is allow the victim's to speak, and then I will say a few words with regard to the government's recommendation.

I see L.C. going out to get his parents. So, why don't we start with Z.R.

Z.R.: I am Z.R., and I would just like to read my victim impact statement.

What would you like the Judge to know about the defendant, or your situation as a result of the crime?

My statement is as follows: I was 16 years old when March Gilbert seduced me into a web of horror which continues to terrorize me to this day. Mr. Gilbert took advantage of me, both physically and emotionally. I have been diagnosed as

having post-traumatic stress disorder and have continuing emotional issues as a result.

Mr. Gilbert is an evil man. I was an object to him that he could manipulate for his own benefit without regard for the consequences his actions had on me or any of the others that he preyed on. I was at an age where my moral boundaries were just beginning to develop, and he took advantage of this time in my life to set up himself up as a "Good Guy" and someone that could be trusted and looked up to as a father figure.

Once he established this bond of trust, he used this influence to seduce me into his sick world of sexual bondage and exploitation. I have since learned that Mr. Gilbert is a liar and manipulator whose actions have scarred me for life.

The damage that he inflicted on me has had a significant adverse impact on the quality of my life and interpersonal relationships with others. I have struggled to maintain what little self-esteem I have left and have experienced significant depression and recurring episodes of anxiety. For many years I withdraw from my family and close friends and had a very difficult time allowing myself to get close to anyone or allow anyone to get close to me. In many ways, I became a stranger to myself as a result of the abuse suffered at the hands of Mr. Gilbert.

I experienced such deep emotional pain that I turned to various means of self medicating in a desperate attempt to

soothe the pain and fear that I experienced. I would try anything I could in order to get away from the memories, anxiety and shame for even just a few minutes at a time.

This profoundly affected my relationship with my family members, some of which have not recovered to this day. My fear of being exposed resulted in my inability to be honest about any emotional detail and has resulted in long term trust issues with my parents and siblings. I acted out in irrational ways in an attempt to avoid and cope.

Mr. Gilbert didn't just harm me. I remain estranged from my biological father as a result of behavior that is directly related to the emotional damage caused by one man's perverted and selfish actions.

The ongoing depression and anxiety I have experienced have had a big impact on my motivation to move forward in life. At times it remains very difficult for me to look beyond my shame and see anything positive about the future.

I am in long-term treatment to attempt to address the various issues I have suffered as a result of Mr. Gilbert's admitted crime against me. I have resentment that I have to spend time working to clean up historical pain when I should be able to use this time to experience the positive things that life has to offer someone my age.

Mr. Gilbert abused his position of trust and hurt me in and many others deeply and in some cases beyond our ability to

repair. I will never forget the horror and shame that I experienced at his hands. I am angry and remain deeply affected by his actions, and I hope there will be a day when I can move on and leave this nightmare behind, for good.

When considering what punishment would be appropriate for a man who has committed and admitted to crimes as horrible as what I experienced, it is my hope that the Court will be mindful of the injustice of Mr. Gilbert's actions. That is, no man has a right to rob a child of his or her innocence. Mr. Gilbert took my innocence away. I will never be able to get it back, nor will I ever be able to make the choice to share my innocence on my terms. It is gone forever.

MR. ROGOFF: Thank you. The government would call up J.G.

J.G.: Your Honor, I would just like to say a couple quick things here. I mean, there are various forms of victimization. And, you know, whether or not this started when the defendant was a young man or not, which I have rumored to be true or not, you know, it's a mindful battle for every minute of my innocence that was taken away when I was a child, to every current minute that I'm in treatment, that I am in a sense of fear, a sense of loss, just trying to develop the kind of relationships that I know a person is capable of, and that I was led by an example that was wrong.

So when I put trust into a person, and that is completely

disheveled down to zero, it really makes that time hard to get back to currently where I am at, which is not even a percentage of what I was capable of, I'm sure.

Just one quick thing for, I guess, my idea of where the sentencing could go, is he has obviously money in investments and that sort of thing. And I guess I would just ask the Court to err on the side of the maximum sentence to prevent any further victims from being exposed to such horror that I was exposed to.

Thank you, sir.

THE COURT: Thank you.

MR. ROGOFF: Finally, Your Honor, L.C. and his parents J.F. and C.F.

J.F.: Hi, Your Honor. I am J.F. This is L.C. and this is my wife C.F.

Before I start, this kind of drags on in the middle, but this was trying to condense ten years into just a few pages.

THE COURT: Take whatever time you need, sir.

J.F.: At age twelve our son Logan was a happy, well-adjusted boy on his way to a bright future. He is the youngest of our four boys and the second youngest of our seven children. He was our family's favorite. His infectious smile and energetic way of living his life was a joy to all of us. He was fearless! On the mountain he would go off the biggest jump while snowboarding, and on the trampoline he would work

for hours to perfect a flip. He was doing well in school with a high B average. He had lots of friends and was popular with multiple groups within his school. His brothers and sisters all have very fond memories of how sweet he was. Logan was accepted by the "big kids" (the oldest four) even though he was one of the "little kids" (the youngest three).

Logan was so excited one afternoon because a friend of his was getting free flying lessons from an "uncle" that was a pilot. He begged us to allow him to accept the invitation from his friend to go for a visit to the "uncle's" house where he could see the plane and helicopter. We have always encouraged curiosity and I, as a young man, was a pilot, so we were excited for Logan, he was showing an interest in a potential career.

At the time, he was working around our neighborhood doing odd jobs. When he told us that the "uncle" needs some boys to do work around his home in Lake Tapps, we said, "that's fine but we'll have to meet him first." The "uncle" stopped by so we could meet. He understood why we would want to meet him before we would allow him to take our son to his home. There's so many weirdos out there.

This is how we met Marc Gilbert. We all hit it off; he was interested in our work, our family and our home. We live in and build log homes; he "loved" log homes. I am a pilot; he is a pilot. He likes the energy of kids, and we loved our

large family. He gave us his card after he viewed our home so that we would have contact with him, and we sent Logan away with him.

Recently, when we found out about this, Logan told us that after that meeting with Gilbert, Gilbert said, "I don't like them...I don't trust them, and I'm sorry I gave them my phone number." So, basically, driving out our driveway from our home, Gilbert was already creating a need for secrecy and manipulating Logan into his future role.

This was the beginning of Logan's "new life," a life of deception. He was told to hide the fact that Gilbert was giving him huge quantities of alcohol, showing him very explicit porn, paying him for work he didn't do, and tying and spanking him, et cetera, and then he begged and screamed for him to stop.

He was also told, "If you tell your parents, they will not love you." This man made Logan feel like he was very special and that he "loved" him. How does a twelve-year-old cope with this? Here's the answer; this is a description of what our son has become.

Logan's last ten years have been a spiral downward culminating in a life of bad choices. I am going to summarize.

There was a lot of drug problems all through high school. We sent him to a place called Spring Creek; that's a lockdown

1 facility. Within Spring Creek, there was no access to drugs
2 or any other things to get him into trouble that he'd been
3 exposed to at age 12, with no ability or skills to cope with
4 it at all, no way of understanding.
5 He finished that portion of his life with a 3.6 GPA,
6 graduated from high school, came home, got a job.
7 Logan is now 22. It's been nine or ten years since his
8 time with Gilbert. In that time all of his brothers and
9 sisters have become extremely high functioning adults. Some
10 have their Masters. Some are still in college with their
11 4.0s. All are employed. Most own their own homes or are in
12 the process.
13 While all the other children were becoming so successful
14 with their choices, Logan was failing at everything. He's now
15 separated from his brothers and sisters. They are trying to
16 hold a relationship, but it is so difficult.
17 By this time, Logan had been repeatedly caught with
18 drugs -- I am going to skip some of this -- at 18, we are
19 considered adults and can make our own choices. Logan chose
20 to leave Spring Creek. He swore he was a changed man. He got
21 that job I told you about with the electrician. Within a year
22 he was fired for drinking on the job. He had problems with
23 the police. He was arrested frequently.
24 He met, fell in love with, and got a young girl pregnant.
25 There has been heroin addiction all through their two years of

raising this child. She was 17 and he was nearly 19 when they lost their first baby due to Oxy use. They got pregnant again six weeks later. During this time Logan was arrested and charged with a felony. He was given probation. They came to us confessing their Oxy use and asked us to help them get clean. We moved them into our home. They lived with us for a couple years. We helped them. I am trying to summarize this to get to the part I want to say.

By this time we had spent thousands of dollars and countless hours on treatment and court costs, but we felt we were on the right track. He kept various delivery jobs for only a few months at a time until he was fired. The struggle was daily for us, but we included him in all of our life and family events because even at this point he was still a little of the Logan we remembered, and we cherished the times when he was somewhat normal.

By the time our granddaughter Kendle was born, Logan had become a heroin addict. We believed the girl was helping him to get him clean. He loved his little girl, and he knew he could beat his addiction for her and his fiancee.

By the time Kendle was five months old we had found syringes and paraphernalia all over their space in our house. We were worried. We got him into Schick Shadel. Logan had a bed date of January 5th. The day before he was to enter treatment, he and his lady were stopped after a bank called

the police regarding a check that was being forged. One syringe, next to the baby in her car seat, still had heroin in it. The police were about to arrest both of them. We convinced them to let us take Logan to Schick and convinced them that the mom was a "good mom."

The next day we realized her arms were covered with scabby tracks and bruises, and this is when she confessed to being a heroin addict. We had no idea. There is no way I can describe the feeling of concern we felt for these young parents. Heroin use and addiction were unthinkable, especially while raising a baby. We knew Logan was safe at the hospital. So we took over with the young mother and helped her detox at home.

Anybody that has been around heroin addiction knows that this was just the beginning for us. Even though they were both working, the relapses became more and more frequent. It got so bad that they lost their jobs and had endangered the baby repeatedly. They gave both of us informal written custody. They were both going to NA and they were both counseled by professionals for their drug use and family problems. But all this time we thought they were getting better, their addiction was escalating. Soon we found new syringes and spoons and again lived in constant fear for our son's life with nowhere to turn.

After months of wrecked cars, more syringes, constant lies

and broken promises, they agreed to enter inpatient. Brandi went away, she went away to a facility in Yakima, and Logan began detox. She graduated and is in outpatient now. Logan has failed detox three times, walked out of each one of the treatment facilities he's been in.

We are in a third party custody battle for our granddaughter. We fear for her life. This suit has become very contentious with many false accusations and huge legal bills because grandparents have no rights in this state.

That brings us up to the end of last year or early this year. We got a call during Logan's multiple treatment failures, and the caller ID'd himself as a U.S. Attorney. We thought, "now what's he done?"

The caller identified himself as an FBI agent investigating Marc Gilbert. He told us he needed to speak to our son. After we described Logan's situation to the agent, he revealed that Logan had been identified by other victims and was possibly a victim of the man that we were hearing about on the news. We were shocked. We had no idea.

Logan had successfully hidden the truth from us for all these years. We spoke to our son after he talked with the FBI agent and were told that it was true, he was one of Marc Gilbert's victims and that they wanted him to testify. He agreed. We went to the courthouse where he gave a statement to the prosecutor.

He's been diagnosed with post-traumatic stress disorder, and his counselor says until he faces the truth of his past, he will continue his painful struggle.

Marc Gilbert has stolen our son's very bright future and replaced it with a life fraught with danger and self destruction. Logan has lost access to his daughter, just in the last few months, he's gotten two more DUI's in three weeks, and repeatedly failed in his treatment. He has threatened suicide while trying to force us to give him money. All his "friends" are addicts.

There is no way to describe the pain and the anguish we have lived with for these past ten years. We see our other children doing so well; we are grateful for that. Logan grew up in the exact situation all of his brothers and sisters have prospered in. The only life event they don't share is the exposure to Marc Gilbert. There's no way to calculate what he's cost Logan. How do you put a value on happiness? How do you put a value on self-esteem? How do you put a value on lost education and life opportunity?

Logan will forever be a felon and an addict. He won't have a Master's in business or a scholarship to Seattle U. He won't be a journeyman electrician. He won't be a utilities lineman with his own home. He won't be a radiologist or run a major service company. He won't ever have what his brothers and sisters have; a normal life with normal opportunities.

He won't ever be able to give his little girl the unconditional love of a man happy in his life. He will never be the confident boy he was the day before he left with Marc Gilbert.

Through Logan, this man has brought pain to the lives of all the people that love our son. Who can guess the future this baby would have if her daddy had been allowed to grow up normally? Instead of being the child of college graduates with bright futures, she's the daughter of drug addicts. She plays in the back at NA meetings, visits with her dad at a Mental Health "clean and sober house," full of others struggling through life.

Marc Gilbert is the only influence Logan has had that our other children don't share. How can we not blame him for all of Logan's pain, our pain, our financial devastation, and Logan's incredible loss?

Again, he has been diagnosed with post-traumatic stress disorder and is receiving help. He's still struggling with drugs and is facing two years in jail if he fails in any way to complete his court-ordered program of mental health and drug treatment.

He sees his beautiful baby girl for only a few minutes semi-weekly. Instead of getting ready for work every morning like the rest of our family, Logan prepares for another day of trying to work through all the bad choices that he has made

since he was assaulted by the Devil.

There is no penalty big enough for Gilbert. How many lives has he ruined? How many families has he destroyed? How much joy has Logan forever lost?

Locking him up doesn't begin to be enough to restore all these broken lives.

Child molesters are one of the lowest forms of human existence and that is how they are treated in prison. We believe in capital punishment and, in this case, we hope he gets what he deserves, a violent painful death with total loss of anything that brings him joy.

Thank you.

Your Honor, a lot of people asked me, because I have done sexual abuse cases for a long time, how I do it and how I have done it for so long, how I talk to victims who have been through what you just heard described. I guess the answer is -- sort of an answer to what LC's parents were just asking, which was how can my son move forward after this?

I guess what I would tell them and tell you is that the best part of my job is sitting in a room with someone like L.C., the very first time he came in and talked to me, a kid who had been through what his parents described, and with seemingly no self-esteem and no reason to stand up and say what happened to him, seemingly no reason to talk about events that for him were shameful and embarrassing, humiliating,

1 things that for him were things he intended never to talk
2 about ever.
3 The best part of my job is watching someone like him stand
4 up in front of me and tell me, and gathering the courage and
5 gathering the self-esteem to move forward. I am hopeful -- in
6 fact, I know having spoken to L.C. and all these other guys
7 who this happened to, that they are going to pick themselves
8 up, the ones that need picking up, and they are going to move
9 forward, and they will have -- they will find a way to have
10 beautiful lives because the courage it takes to report what
11 happened to them, in the way it happened to them, is almost
12 more difficult than any other kind of child molestation case.
13 For a boy who's now a man to talk about what happened to
14 him as a teenager is the most difficult thing that we see as
15 child sex abuse prosecutors. So when J.F. asks how, I believe
16 that L.C. will find a way, find a way to have a beautiful
17 life.
18 Your Honor, if a man came before you and was convicted of
19 videotaping one nude 17-year-old boy, lasciviously displaying
20 his penis, a man who had never been in trouble before, a man
21 who did not videotape sadism or masochism, a man who had no
22 other victims at all, a man who had otherwise lived an
23 honorable, honest, forthright life, who'd been honest with his
24 family and reported what happened to him -- what he did right
25 away, who admitted his crime and meaningfully took

1 responsibility for it and who behaved perfectly from the day
2 he was charged with that crime to the day he was sentenced,
3 Your Honor would sentence him to 15 years in prison. That
4 would be the only choice you would have. That would be the
5 least, smallest sentence you could sentence him to.
6 This defendant, Your Honor, recorded 100 plus hours of
7 edited videotape, engaged his victims in sadistic sexual
8 abuse, oral and anal sex, masturbation; his victims were as
9 young as 10 and ranged in ages from 12, 13, 14, all the way up
10 to 17.
11 He has collected more than two dozen known victims. He
12 has been doing it for more than a decade, maybe -- according
13 to his own sexual deviancy evaluator -- maybe two decades.
14 He concocted his entire lifestyle around his paraphilia,
15 and just to be clear, his paraphilia is not spanking. I don't
16 care whether he spanks anyone. What I care about is that he
17 spanks children. That is the crime that he was convicted of,
18 videotaping children in sexually explicit conduct.
19 He arrogantly continued, even though he was criminally
20 investigated for it six years before his most current arrest.
21 He still has difficulty admitting the crimes to his family,
22 and upon his arrest, he tried to obstruct justice by
23 contacting the victims and trying to convince them to lie.
24 The idea that he would simply get four more years than
25 that defendant who only abused one child and lived an

otherwise honorable life would be a travesty of justice. He deserves more. He deserves as much as his plea agreement allows. He deserves 25 years.

Given the advisory guidelines range, that request from the government is reasonable. It is measured and, most importantly, it takes into account the feelings of the victims who would have to come and testify in this case.

Your Honor, I want to talk a little bit about the defendant's sentencing memorandum and what was attached to it. But before I do that, and before I do what I normally avoid during sentencings, which is sort of diving into the defendant's life and trying to explain the prosecutor's perspective on his life, and I usually avoid that because it is really hard for a prosecutor to do. I don't know the defendant. I don't get to talk to him. All I have is whatever supporting documentation is provided to me. So what a prosecutor normally does during sentencing is we stand up here and tell you the effect the crime has had on the victims, how it compares to other crimes that are similar to this one, and why the defendant should be punished a certain way. We usually leave the defendant's explanation for his behavior to him; we don't quarrel about it too much.

I am going to do that in this case because the supporting documentation is so great and because we have the bonus ability to be able to relate to you what we saw as the crime

was being committed. So we are in a much different position here today than we normally would be.

But before I get into that, what I do want to tell you is that no matter what you think about the prosecutor's theory of the defendant's motivations and what he thinks and what he does and what's best for him, sometimes the magnitude of the crime, the gravity of the crime, simply outweighs the defendant's needs.

There are simply cases where even though we can perhaps explain some of the defendant's behavior and perhaps understand some of the defendant's behavior, the crime itself deserves a sentence that is the maximum that the Court can give it under the agreement presented to it. And that is where we are today.

As I start talking about the defendant's arguments in this case, let's be done with a couple of phrases that were used throughout their argument. Phrases like "young men" that he abused, because he didn't. He abused minors. "Sexual relationships," he didn't have. He molested and he raped children. "Consenting adults," which is a phrase that is legal and has nothing to do with what the defendant did in this case.

When he orally copulates with a 14-year-old boy, there is no more argument about sex with consenting adults. Let's be done with convoluted explanations of the defendant's spanking

1 paraphilia. He is not charged with spanking. He is charged
2 with molesting and raping boys on tape.
3 The defendant's overriding theme is that because of my
4 past, I didn't know that what I was doing was wrong until I
5 learned about it through my therapy post-arrest. That's
6 essentially what he says, and that theme runs throughout his
7 sentence memorandum, as well as his mitigation brief,
8 mitigation report -- I don't quite know what to call it -- by
9 Ms. Rogers, as well as what is extracted from Dr. Lennon's
10 report by the defense. It is simply not true. The theme at
11 its root is wrong.
12 He knew he was -- he was aware of his wrongful conduct.
13 He knew it was illegal. He knew it was illegal in 2001, Your
14 Honor. He knew what he destroyed, hours and hours of tapes
15 with Cliff Metor. He knew, when he tried to get those boys to
16 lie during the 2001 investigation, that what he was doing was
17 illegal.
18 This argument that he didn't know, and it is sort of just
19 dawning on him now and he's having this breakthrough, is
20 simply wrong. It does not comport with the evidence and the
21 information that you have and the evidence and the information
22 that was found by law enforcement in this case.
23 You don't not know the wrongfulness of your conduct when
24 you hide tapes and don't tell anyone about it; when you wait
25 for law enforcement to find those tapes two weeks before your

trial; when you try to get ahold of your main victim at the time of the search warrant and have him get rid of the tapes, which were the voicemail messages that the defendant left for R.K.; When you try to convince your main victim to lie about the circumstances of law enforcement getting the search warrant to search your house, as he did in what I will call the "Hi, Bravo" letter, a letter which I know you've read, Your Honor.

He kept all of this a secret. He told his victims to keep this a secret. This was the overriding message to his victims, and all these guys who have written letters, and all the guys who have given statements to the police or to law enforcement, which you have, relate the same overriding message: This was supposed to be a secret thing. This was our thing that we kept to ourselves and no one else was to know. The defendant did that because he knew it was wrong, and he certainly knew it was wrong since 2001.

Your Honor, with regard to the report from the mitigation specialist, first of all it is a little difficult to respond to it, to be perfectly honest with you. It is hard because I don't know who this person is. I was not provided with a CV. You weren't provided with a CV, I don't think. I don't know what her training and education and background are. I don't know if she's a psychologist. She's referred to as Ms. Rogers. Somehow I think I had the idea that she was

1 trained as a psychologist, and that is how I assumed it was
2 when I read her report.
3 But she certainly makes psychological, if not diagnoses,
4 at least psychological leaps based on her understanding of the
5 defendant's background and how that might affect someone in
6 the future. I have no idea how much time she spent with the
7 defendant. I have no idea how much time she spent with the
8 defendant's family. I have no idea about the source of any of
9 the information she provided.
10 The best she does is say that she talked to some
11 relatives. I have no idea who and I have no idea what else
12 they said other than what she summarized in her report.
13 With regard to Dr. Lennon's report, which the defendants
14 rely on heavily, I have read a lot of Dr. Lennon's reports
15 over the years, and they are the most thorough reports you
16 will ever read. When you get 70 pages of someone's history,
17 you know that he has spent significant time gathering and
18 culling together information.
19 The problem with Dr. Lennon's reports and the problem with
20 this one is that he gets a little blurry at the end as to
21 exactly how to pull all that together, all that massive
22 information, and provide some cohesive ideas about how
23 dangerous the defendant is and about what the Court should be
24 concerned about.
25 There are some interesting pieces of information about the

1 defendant, though. The first thing I want the Court to recall
2 or remember is that this evaluation was done in August 2008,
3 three months before we found the additional 230 videotapes of
4 the defendant, three months before we found the much more
5 blatantly sexual videotapes that were included in the hidden
6 compartment in the defendant's closet.
7 Because of that, the defendant was not truthful with
8 Dr. Lennon. Despite passing a polygraph which should give the
9 Court serious concerns about the defendant's ability to lie
10 and lie convincingly, he wasn't truthful with Dr. Lennon.
11 Let me just give you an example. On page 12, he said he
12 videotaped males without their knowledge only 15 to 20 times
13 and they were between the ages 14 and 19. We know that the
14 ages are much broader than that. They go from about age 10 up
15 to age 19 or 20, and we know that they happened a lot more
16 than 15 or 20 times.
17 On page 30, he said that John Doe 1 or R.K. initiated the
18 sex with him, which is in direct contravention to what R.K.
19 says in his affidavit. He denied being sexually aroused
20 during spanking, which we know is not true. That was on page
21 32 of Dr. Lennon's report.
22 He claims he was only being charged because the males had
23 their pants off, which we now know is not true. He's being
24 charged because he orally and anally copulated and also
25 masturbated young boys.

He never continued after being told to stop; that is what he says on page 33. Those videotapes, Your Honor, show a significant number of boys asking him to stop and then begging him to stop and then screaming for him to stop when they are restrained and they are tied down.

On page 33, he says only five males were sexually assaulted. Your Honor, he's not even close, and even if he was talking only about males who were sort of traditionally, I would call it, sexually assaulted, we are talking about a number into a dozen. So he completely minimized that number as well.

He claimed he only had penile/anal intercourse with one boy. We know from the videotapes it is at least three, perhaps more.

He denied possessing child pornography. He denied possessing child pornography, a denial he maintained up until May and then August of 2009 when he talked to his family.

He denied obtaining child pornography on the Internet, yet the government found a significant number of child pornography images that were unrelated to any of the males that he abused on his computer.

He denied using prostitutes except for the few times that he was in Korea or some Asian country, yet did not mention the fact that he bought some of those prostitutes for John Doe 1, and that he allowed a number of boys to engage in prostitution

activities with strippers at his house, which we have video of.

He denied group sex. We know he engaged in group sex. There's video of him laying on a bed mutually masturbating with a number of different young boys. We have videotape of him -- we have videotape of him with boys who are together. We have a number of group sex images that are contained in the videos that were provided.

He claimed no anal stimulation of himself or any of his victims. We know that is not true from the videotapes that we have seen, where we have video of vibrators being used.

That the boys were never spanked against their will. I think that the defendant and I may forever have a difference of opinion about what "against your will" means. In other words, even if you convince a boy who does not have the power and the smarts and the intelligence that you have to lay down over your lap and allow you to spank him, which I believe is against their will to start with, but even if we agree that that is not against their will, that that is somehow consenting, even though they are under age, the fact that these boys asked and begged and screamed for him to stop and he didn't, certainly was against their will.

That he never engaged in sexual contact with a minor he hadn't reported. We know that is false as of August 2008 when he had this evaluation with Dr. Lennon because we found those

1 new videotapes three months later, which included new victims,
2 new boys, new types of sexual assault.
3 He also claimed that he did not purposefully withhold
4 information. The summary of what I have just talked about
5 proves otherwise. He was not honest with his evaluator. He
6 did not provide that evaluator with the information that
7 evaluator needed to make the decision that the defense now
8 provides to you as proof of mitigation or evidence of
9 mitigation.
10 Dr. Lennon did an MMPI, and what I really want the Court
11 to pull from that is that, number one, the defendant does have
12 substance abuse issues and that substance abuse issues are
13 incredibly complicated when they conflate with sexual deviancy
14 issues.
15 That Dr. Lennon was concerned about potential borderline
16 personality disorder with the defendant, yet that was never
17 followed up on in any further evaluation, not by the
18 mitigation specialist and not by any other evaluator.
19 That he engages in emotionally perverse relationships and
20 has no impulse control. In other words, he's dangerous.
21 The Hare Psychopathy Checklist that Dr. Lennon asked him
22 to do indicates that the defendant "bears resemblance to those
23 known to exhibit psychopathic personality traits. He has no
24 empathy." He "poses a risk to public safety and is therefore
25 a forensic concern." Page 56.

In the end, Dr. Lennon's conclusions essentially are these, Your Honor: "The defendant is a smart, physically healthy, sexually compulsive substance abuser with no prosocial influences, no committed relationships and has psychopathic personality traits and is a pedophile." That is no somebody who needs to be out in the community any time soon and someone that the Court should keep in custody for as long as possible.

The last thing I want to talk about, Your Honor, is that the defendant has been dishonest with the Court since day one. He has not yet brought himself to say the words, "I made child pornography." He's not yet brought himself to say the words, "I committed rape" or "I committed child molestation." For all the words in the letter you have from the defendant, you have words like "wrongful and illegal act"; you have words like "took advantage for my own deviant purposes," "wrongful activities," "a few relationships that were sexual in nature," "lustful desires that are difficult to explain."

Those are lawyerly words, Your Honor. Those are not honest words. He told Judge Arnold within a week after he was arrested in this case, in a letter to that court, that he would not contact any victims. He lied. He told you lie after lie about the "Hi, Bravo" letter. When he told you he never intended to send that letter, he lied. When he told you that the letter was cathartic and simply for him, he lied.

When he told you the letter, well, it wasn't cathartic but it was for his lawyer's review which was the second argument, he lied. When he told you he never sent that letter, he also lied because John Doe 1 tells us he received that letter and it was read to him.

When he told you he wasn't trying to tamper with witnesses, he lied. When he claimed that all these kids were the age of consent, he lied. When he told the world through his lawyers that what he was doing wasn't sexual, he wasn't truthful.

Your Honor, when the defendant is able to stand up in front of the world and say that for two decades he built his home and his lifestyle around the need to surround himself with young, slim, hairless teenage boys to whom he was attracted, and when he can tell the world that he offered himself as a mentor primarily so he could be close to those boys he was sexually attracted to, and that his very real and nice gestures were the groundwork for his ability to abuse those boys, that the spanking of those boys was sadistic sexual abuse, that his videotaped touching of these boys was production of child pornography, and that his videotaped anal and oral sex with these boys was child rape, then we are getting close to a defendant who's ready to be in treatment and ready to start that process.

We aren't there yet. The 3553 factors that Your Honor is

required to review for sentencing, when you really break them up, there's about 12 of them. They include nature and circumstance of the offense, history and characteristics of defendant, seriousness of offense, promote respect for the law, provide just punishment, afford a deterrence and it goes on and on, including policy statements by the Sentencing Guidelines Commission.

The defendant's entire presentation to you with his mitigation specialist and his evaluators and his lawyers and all these people, as well as the letters from his family who clearly love him and want to support him, all deal with exactly two of those 15 or so factors.

Even if you disagree with what I have told you today, that the defendant's proposed motivations are not accurate and are not truthful, you've only now dealt with two of the 15 factors that the Court has to deal with. The other 13 beg you to put him in prison for as long as possible.

Based on that, the government's recommendation of 25 years, which is less than what the Sentencing Guidelines Commission recommends, is fair and we would ask you to impose it.

Thank you.

MR. BROWNE: Good afternoon, Your Honor. One of the things that I noted about Mr. Rogoff's able presentation -- and we certainly know he's an able attorney -- is a number of

1 times during his presentation, he talked about things that
2 were contrary to his beliefs -- his, Mr. Rogoff's. I think
3 there's no question that the allegations in this case are
4 probably against all our beliefs in one way or another.
5 I am not sure our personal beliefs have a lot to do with
6 our obligation as an attorney to present evidence to the
7 Court. Of course, I can't stand up here and say my personal
8 belief is that it is all right to spank children in this way
9 because I wouldn't and I couldn't and I don't. Neither does
10 Mr. Gilbert.
11 I am reminded -- first of all, let me just say a little
12 background of this case from our perspective, Your Honor. We
13 have literally spent over 3,000 hours in this case, as you
14 probably -- as you would understand based on our work and the
15 time we've been with you and with Mr. Gilbert.
16 We have spent over 300 hours of our own time viewing
17 various evidence and videotapes. We have probably spent
18 250 hours minimum with Mr. Gilbert, in face-to-face
19 situations. We've been with Mr. Gilbert in very trying
20 circumstances when Mr. Gilbert did things that clearly were
21 not in his best interest, and clearly against our advice and
22 dealing with him and basically saying how can a person who has
23 accomplished what he's accomplished -- and you are well aware
24 of that, and Mr. Rogoff I don't think disputes any of that --
25 is that one of the dilemmas in this case is that Mr. Gilbert,

I guess before all this happened, was a conservative Republican. He made out of nothing a career where he was the youngest 747 pilot in the history of the United States, which is still true.

He trained a number of his associates to be pilots. Two of them who are listed as victims became the youngest 737 pilots in the history of the United States and are still flying people that Mr. Gilbert taught how to fly, and also who were involved in this bizarre scenario, to say the least.

I would indicate that -- and I think counsel is aware -- I am not going to talk about my beliefs because I don't think that is appropriate, but I can talk about my experiences in this case.

I had two of the alleged victims in this case actually call me, and I remember it because it was at home, through my answering service, and both of them told me that -- I won't use their words because it would be offensive to everyone -- but basically this was a bunch of playful nonsense to them. Now, these two individuals are now 26 and 27 years old and very successful in their endeavors as pilots. They made that call to me.

It points out the perplexities of this case and reminds me, because there's no question that Mr. Gilbert built himself from nothing, certainly to have a lot more money than I'll ever have, a lot more respect in many ways than many people

have, who believed in the work ethic with these individuals to the extent that he had plaques on his walls, which you've probably seen photographs of, talking to the people at his house who were young men and in some cases children about the importance of hard work and how he's only been able to succeed at what he did because of hard work and discipline.

So it's very difficult to square that with obviously the horrible events that occurred, as described by Mr. Rogoff. The only explanation for it that makes sense is that Mr. Gilbert was consumed, as I think Dr. Lennon has pointed out, with an illness. I don't mean to minimize it by using that word, but a deviancy -- that is a better word -- by a deviancy that he was simply unable to control and, more importantly, unable to understand.

Countless hours with our client explaining to him how his behavior 90 percent of the time -- let's just take that out -- may have been positive and mentoring, and that 10 percent of it was basically a chamber of horrors, and that he created that situation and that he's responsible for that. I believe he accepts that, and I have always believed that he accepts that.

Despite what counsel has pointed out through Mr. Gilbert's efforts to influence other individuals, which actually in the long run did nothing but hurt Mr. Gilbert, we see -- and I take a little bit of offense to Mr. Rogoff suggesting that

1 Mr. Gilbert is using lawyer-like words, insinuating we had
2 something to do with the letters that he wrote to you, which
3 we did not.
4 I think they are words that certainly minimize the
5 behavior in his mind because he cannot, and still has
6 difficulty at times, understanding how a person who is so
7 competent and so able and, in his own way, so supportive of a
8 number of young individuals could at the same time participate
9 in these horrific acts. I think that's the crux of it, and I
10 think that he does understand that.
11 Our recommendation is obviously for 228 months. That is a
12 lot of time. That is 19 years, Your Honor. I hope and pray
13 that you and I are both here, but I am not sure we will be. I
14 hope so. That is a lot of time. I have had sentencings of
15 individuals for first degree murder, premeditated murder with
16 weapons that are sentenced to 25 years.
17 I think proportionality is one of the factors that
18 Mr. Rogoff was alluding to, but didn't mention. I think
19 proportionality is really important also, and it is not a
20 minimization of anything. I just don't think we can lose
21 sight of the fact that 19 years is a great deal of time.
22 Also not mentioned by Mr. Rogoff is the studies from the
23 United States government itself that shows that recidivism in
24 sex offenders after the age of 60 is almost zero. This is the
25 federal government's own studies.

We know that Dr. Lennon in his report -- Dr. Lennon is nationally known and nationally respected, I believe. I first heard of him through Mr. Rogoff's previous office. I said, "Who's the hardest nosed therapist that you know and who does the best job," and they all said Dr. Lennon.

Every since then, I have sought his assistance in cases involving sexual deviancy. Many times, he could not help me and said, "Mr. Browne, I can't write a report because it will do nothing but hurt your client." But in this case, he didn't. He wrote a report saying that Mr. Gilbert is amenable to treatment, saying that Mr. Gilbert understands his deviant behavior, saying that given the age Mr. Gilbert will be at the time he's released from the institution, that the chances of recidivism is almost none.

We do know from the probation officer's report, which I think was quite thorough -- we don't necessarily agree with the conclusion, but we certainly appreciate that he put a lot of work into this, a lot of work into this -- that there are institutions within the Federal Bureau of Prisons that can provide treatment, something the public doesn't really know a lot.

We also know that treatment for sexual offenders is highly successful compared to treatment for alcoholism or drug addiction, that once a person realizes they have a problem and they are willing to do it, the success rate for people with

sexual deviancy problems is far higher than it is for people with substance abuse problems. Unfortunately, the public is not aware of that or it's something the press doesn't like to report because the offenses themselves are so horrendous.

I am reminded that there was -- you may remember, but I am not sure a lot of younger folks will remember -- there was a fabulous play and movie written by Lillian Hellman, who was married to Dashiell Hammett. You may remember that Dashiell Hammett is one of the individuals who was blacklisted by the McCarthy people. But his wife, Lillian Hellman, wrote a play called The Children's Hour. It is a fabulous movie, fabulous play and fabulous book. But it is about two teachers in New England, women who have never been married, the word they used was spinsters. I don't know if that is politically correct anymore, but that's how they were referred to in the book. Some young girl made up a story about them being homosexual, and the play goes through that whole thing. It's obviously a metaphor for the sake of witch trials, but the one scene that came to mind is the last scene in the movie, because they lost everything, they lost their house, they lost their self-respect, none of their relatives would talk to them again, they lost everything.

The last scene of the play is like trying to prove you are not a witch. Everything you do, well, you mentored these children, well, you were grooming them. We really did mentor

1 them. No, you were just grooming them so you could have
2 access to them.
3 Mr. Gilbert's many efforts that he made to try to put some
4 of these kids on the straight and narrow have been turned into
5 grooming, and in some cases that is probably true. I mean,
6 the reality is, it's probably both. I am not minimizing
7 anything. I am just trying to put things into perspective
8 because I think courts need to take things into perspective
9 and talk about, or make some sort of a resolution to a case
10 that is proportionate.
11 Now, none of us have gone through what these young men and
12 boys went through, at least not that I know of. I have seen
13 the tapes and my staff has seen the tapes and Mr. Gilbert --
14 we've all seen them. I don't think you have, which I think
15 you've been spared that. But you can clearly see by looking
16 at those things that there is, in many instances, an effort
17 to -- you got bad grades, you are going to get spanked 13
18 times. You got caught for a traffic infraction, you are going
19 to get spanked 20 times.
20 Now, that is pervasive in many instances. Now, once
21 again, I am sure Mr. Rogoff would say well, that's just
22 grooming or it was a way for Mr. Gilbert to take advantage of
23 these young boys, and maybe that is the case. But there's
24 also the other side of that, where he believed and fooled
25 himself that what he was doing was partially beneficial.

He now knows -- he did not know before -- but he now knows the other part of it, which is huge, was destructive and vicious and wrong. I would point out something that perhaps the people who are here sitting behind me don't realize is that we wouldn't really be here today having this proceeding if Mr. Gilbert hadn't participated in two very lengthy -- one all day long -- settlement conferences with Judge Jones, who we thank and we will all thank for his efforts in this matter.

They were very tiring, as you can imagine, going back and forth in a settlement conference. I don't know if you've done any. But they are very tiring and everybody gets tired and angry with each other. The bottom line was, when Mr. Gilbert said I will go along with this 19 to 25 was -- and he said it to Judge Jones and he said it to us, and I believe he said it to the U.S. Attorneys, I don't want to put the boys through this trial. He didn't use the word young men, by the way, because he still thinks of them as boys. They are mostly young men. He said I don't want to put these kids through the ordeal of a trial. Believe me, you have no idea because you haven't seen these things what an ordeal this would have been for these young men. I think that motivation was true because he's not -- 19 to 25 years is certainly not the deal of the century, not when one of my clients can get 25 for killing somebody premeditatively.

So 19 to 25 years is not a fabulous plea bargain from the

1 defense standpoint. It will mean that if you impose the 19 or
2 20 years that Mr. Gilbert will be getting out when he's 65,
3 66, 67, long after the government's own statistics say that
4 people with sexual deviancy are no longer dangerous in that
5 respective. He will have hopefully gone through the treatment
6 programs that are available -- I know he will -- at the three
7 or four different correctional institutions which you have
8 listed in your presentence report.
9 I just want to look at my notes if I might, Your Honor,
10 for a minute.
11 This has been distorted somewhat by the media -- not
12 intentionally, I think -- just because this kind of thing is
13 overwhelming to everybody. There's absolutely no evidence
14 that any of these videos were distributed anywhere, any time,
15 under any circumstance. What makes this a federal crime, Your
16 Honor, was not the behavior itself but was the videotaping of
17 that behavior. That is what made it a federal crime.
18 Now, you and I and Mr. Rogoff and others -- normally, in
19 this situation where people produce this sort of
20 inappropriate, disgusting material and disseminate it -- and I
21 believe that was the intent of the statute, one that we all
22 agree with and understand -- but there was no evidence of
23 that.
24 I know that one of the things that -- I was in Alaska
25 trying a case in federal court when I got a call from

Mr. Gilbert and he was in Atlanta, and he knew that the jig was up basically. He wasn't in custody. He hadn't been contacted by any police authorities. Some of the people involved in this had let him know that tapes had been turned in and that he was in big trouble.

Mr. Gilbert called and basically said, I want to make arrangements to turn myself in. We tried to do that. I tried to do that from Alaska, and my staff in Seattle actually make calls to the Pierce County authorities who were less than cooperative at that juncture. But he didn't flee. Here's a man that flies 747s. He could certainly fly a Piper that he could rent and fly to Mexico with his passport and a lot of money. But he didn't do that.

He since then has done some things that have really harmed him during the time he's been incarcerated, but at the same time, he's also grown a great deal.

It is impossible for us to really have a window into his behavior that makes any sense because it doesn't make much sense to any of us. So I would suggest, rather than talk about what we personally believe, that we focus on the facts of what happened to these young men, which is bad enough.

Twenty years is a long time for this sort of behavior. I think Ms. Scanlan, if you wouldn't mind -- she spent probably 100 hours with Mr. Gilbert, and she is not well, as you know, but she's no longer contagious. I think she wanted to just

add a couple things, if that would be all right.

THE COURT: That would all right.

MS. SCANLAN: Good afternoon, Your Honor. I did have a few things that I wanted to say, but I actually think that Mr. Browne may have covered most of them. I think all that I would add, having spent -- we have spent a long time, of course, with Mr. Gilbert, and in that way, this case is a little bit different.

It has gone on for two years, and we've been with Mr. Gilbert since the beginning of that time. I think that's the point that we were trying to make in submitting the evaluation and some of the things that we know are so easily submitted to attack in return.

I have never submitted a sexual deviancy evaluation and had a prosecutor not come back and attack me with it. But the point of doing that is to be as honest as we can be, which is to give you as much information as we have, good and bad, meaning that the point as I saw it when I read the evaluation, I see it as a midpoint.

When Mr. Gilbert came to us, although he did not plea and he did accept the responsibility in coming here and accepting what may be the rest of his life -- I mean, the government speaks about it in the term of 25 years, but we are talking about what to Mr. Gilbert is a life sentence. We are talking about the difference between 19 and 25, which in this case is

1 the difference between maybe having one to two years out and
2 absolutely no chance whatsoever. And that is a big
3 difference.
4 Mr. Gilbert came into this at the very beginning
5 absolutely unwilling to do anything but go to trial, which in
6 some ways was a very rational position, but he's moved. In
7 two years, someone who's had this issue for so long, and it is
8 not black and white, he's not a monster. People are a lot of
9 things, and if we want to talk about what we believe, I think
10 that what defense attorneys believe is that people are not
11 just what they do in one realm, in one time, in one moment.
12 They are more than that.
13 What we are asking is that you see that there might be
14 just a little bit more than that, and that at the end, maybe
15 that one year of life of Mr. Gilbert, that you could give him,
16 some one year, to see if maybe he could work towards
17 something, that he could be in treatment when he's in custody,
18 that he could take that time, do that, be punished,
19 Mr. Gilbert, take your punishment for 20 years, and maybe we
20 will give you that one glimpse to show us all that you are
21 more than that. And in those two years, that is what he's
22 done, even just a little bit.
23 What we see in the evaluation is all kinds of things that
24 we can wave around and say that he's terrible, but it also
25 shows that Mr. Gilbert is someone who has looked his own

1 demons in the face, which is hard for the average person to
2 do, let alone someone in this situation, and he's accepting
3 responsibility for it.
4 We had a psychologist who met with him over and over
5 again, Dr. Wise, and Dr. Wise told me at one point that there
6 was no way that Mr. Gilbert would ever be a person who can
7 accept responsibility for what he did because his brain just
8 wasn't going to do that.
9 Dr. Wise is a neuropsychologist and he was explaining this
10 to me, and basically what he said to me is that he has this
11 thing, this magical thinking, and he's never going to change.
12 It is never going to happen. He can't think that way. He
13 can't accept who he is, the monstrosity of what he's done.
14 But that is what he's done, against all odds.
15 Dr. Wise came back to me six months later after
16 Mr. Gilbert pled of his own free will, and he said never mind,
17 I was wrong, he is changing.
18 We are not saying that he's the miraculous hope after two
19 years, that he's completely different, but what I am saying is
20 that he is changing, that he is accepting the monstrosity of
21 what he has done to these people, and that he is starting to
22 look at it without flinching away.
23 That matters, and it matters in the sense that when we
24 look at what kind of sentence is appropriate for a person
25 who's done something very terrible, we look at what they have

done, but we look at who they are and where they are going and what they could be become. All we are asking is that you give him the slightest bit, that you sentence him to 19 years to 20 years, that you give him a hope of some little glimmer of something to prove that he's more than just this case.

Thank you.

THE COURT: Mr. Acker, our probation officer who wrote the presentence report, did a thorough job. Have you anything you wish to add?

PROBATION OFFICER: Thank you, Your Honor. I will be brief. I really don't have a lot to add to the memo that we compiled. I would just say that in terms of, I guess, what really struck the probation office is just the magnitude of this offense in terms of the number of victims, the number of tapes, just how big of an offense this was, the level of manipulation, and that led to our recommendation for the 25 years.

Also just briefly, I would mention about the tapes, the videotapes. There hasn't been a lot that has been said about them at this point, and obviously that was the focal point of the presentence report because that is basically the primary evidence in this particular case.

I spent a fair amount of time throughout developing the report trying to get as much information about the substance of those tapes as I possibly could, and in response to

1 objections from defense, I spent additional time recontacting
2 the government and basically confirming what was on the tapes.
3 Over the period of an afternoon, the government actually
4 played the tapes while talking to me over the phone and
5 describing the tapes, and I could hear in the background what
6 was going on. And just listening to what was happening, not
7 even seeing it, was incredibly disturbing, to hear him
8 interrogating young children and then punishing them and then
9 having them just screaming out in pain; these were very
10 disturbing tapes, having not even seen them. I think that is
11 important for Your Honor to be aware of.
12 Beyond that, I have nothing to add unless you have some
13 questions, Your Honor.
14 THE COURT: No, I don't. Thank you.
15 Now, Mr. Gilbert, you've heard here, now for an hour and a
16 half, everybody else talking about you, and you have the
17 opportunity to address the Court on your own behalf.
18 THE DEFENDANT: I would like to, Your Honor.
19 Good afternoon. I am here today standing before you, we
20 are all here because I have created one horrendous mess. I am
21 personally responsible for causing an incredible amount of
22 pain and grief to countless people. I cannot begin to tell
23 you the remorse that I feel, and how helpless I feel to be
24 able to right the wrongs that I have committed.
25 I reiterate to you what I said in my letter, and I pray

that you are able to see that my heart is hurting, and my genuine compassion for the people whose lives have been so afflicted by my actions.

I am so sorry, that I never meant to hurt anyone, and yet I did, over and over again.

So much of what Mr. Rogoff says to you about me is absolutely true. I did utilize my position and my resources to take advantage of young people's trust and faith in me, and I did this solely for my own benefit, never stopping to think about the negative consequences that they might experience.

What I thought at the time as playful, consensual activity involving these young people, was viewed through blinders. I didn't realize that they were participating so willingly because of their desire to please me. I obviously manipulated them into these activities, and I see that so clearly now. I wish I'd seen it earlier. I am deeply ashamed and embarrassed.

As much as I would like to, Your Honor, I won't elaborate on the details of my wrongful behavior as to why it occurred and what I was thinking, or point out any errors of the evidence that's been presented to you. As much as this bothers me, I now realize that why the activity occurred, the spirit and contact that had happened, or the correct age of a victim described, is not relevant. The activity was plainly wrong.

For an adult to be participating in this type of activity with teenagers is inappropriate, hook, line and sinker.

It makes no difference the context in which it occurred, or whether the victims were 15 or 17 years old, for example. I took advantage of younger, more vulnerable people for my own sinful desires. It was hugely wrong on so many levels.

I want you to know, Judge Settle, that I did not intend to hurt anyone. These young people were the center of my life. They were, in many ways, my own family. I deeply cared for each one of them and thoroughly enjoyed their company. My home became a place of refuge, a fraternal atmosphere, where they could come over with their friends, watch movies, go float on the lake and have fun.

I cannot begin to tell you how much their friendships meant to me. In many ways, I was more of a peer to them instead of a respected mentor, or at least that is how I saw myself.

We had a lot of fun; we did. Most of the time, none of this inappropriate activity happened. With a few of these relationships, I deluded myself that I had found more than a mentoring friendship; and instead, the loving companionship of a surrogate son who needed me.

I realize that is no excuse. The fact is that inappropriate behavior did occur all too often. I crossed a line I should have known not to cross, and I did it with these

young people over and over again.

I failed them all; every one of them. And in doing so, I caused all of these people untold embarrassment and pain. I will always regret that.

Over the past two years, I have come to realize just how wrong, how seriously wrong my actions have been. When I was first charged, I was completely convinced that my actions had harmed no one, as they were all consensual and with people who were much more mature than the physical age. I didn't see teenagers as vulnerable, as no one could have ever told me when I was 16 years old that I was incapable of making decisions and sticking to it, just as any adult would. I didn't see teenage guys as chosen, as most of society does.

But what I have come to realize is just because I put them on a peer level with me, or actually me with them, they didn't see me in the same light. They participated to please me, and in doing so, compromised their own morals and values at times. There's no doubt that I caused them undue remorse. I see it clearly now. My actions were very wrong, and they caused harm.

To acknowledge that I hurt the people that I cared the most about is devastating. How could I have been so blind? Realizing all of this, the pain that I have caused these people causes me deep anguish and remorse.

I cannot imagine the burden that they have had to endure,

and the embarrassing media attention that has brought them and their families. I am sure all they wanted to do was to hide under a rock and to avoid talking to anybody about this. I am so sorry that my actions caused them to be drug into this. They certainly didn't deserve this in their lives.

I would like to say something if I could, Your Honor, to the victims.

I apologize to everyone from the bottom of my heart. I am so sorry that I caused this. I didn't mean to harm anyone. I truly didn't. I care about every one of them. I cannot imagine the public embarrassment that each of you has been subjected to. Some of you have been told that you were part of a big porn ring and that the images were distributed commercially. I want you to know that is emphatically not true. None of these tapes, none of these images, ever left my house; not one, on one occasion, ever. And I am very, very sorry that you were told otherwise.

I realize that I failed each one of you tremendously as a mentor and a friend. I acted in ways that were inexcusable. I wish I could redo all the good times that we had together, only never crossing the line that I should have known not to cross. Forgive me and believe me.

Zach, I especially want you to know how sorry I am for your pain. You did nothing to deserve this. I want you to know that it was when my attorneys reported to me how much

emotional pain that you were in, while being interviewed in the U.S. Attorney's Office in preparation for trial, that it was at that point that I decided to accept this plea and end this. I could no longer allow you guys to suffer because of my wrongdoing. I am so sorry that you have been subjected to all of this. Please forgive me, Zach; I am sorry.

Bravo, I want you to know how especially devastated I am that you suffered so much because of my actions. I would do anything to undo this tragedy that you are going through.

I am sure that there are some who are blaming you. Please know that you have no blame here whatsoever. I've caused this. I caused this; not you. No one else. You know better than anyone on the face of the earth my motives and you know me. My love and concern for you was, and is, genuine, regardless of what you've been told.

You know this in your heart. I am crushed that you have been harmed, and that I have harmed you by taking advantage of you. I never meant to cause you any pain, ever.

I was stupid and selfish and not thinking of your best interests. How terribly I failed you as a mentor and surrogate father. My heart is broken as I hear about your suffering. I am so sorry, buddy. I am so sorry. Not a day goes by that I don't pray for you and your family. Please, never blame yourself for any of this. I caused this; not you.

Your Honor, if I could give any of these young people any

advice at all, it would be for them to learn from my mistake. I knew in my heart that this activity was wrong. I knew it. There were warnings signs, which I ignored. How I wish I could have heeded those warning signs and paid attention to my inner consciousness.

Whatever happens in life with you guys, pay attention to subtle signs saying that you are acting improperly and change your course.

These victims, Your Honor, these guys are what matters. I pray that they are all able to recover as quickly from this as possible and resume their lives.

I have formally agreed, as part of this plea, to forfeit all of my seized assets, the bulk of my estate, only upon the condition -- only upon the condition -- that the proceeds be distributed directly to the victims; not just restitution, but as payment to them for the misery that they have endured.

My understanding is that these assets are currently being liquidated and will be put into a fund overseen by a special master to be distributed directly to the victims.

It is my hope that this small gesture might help to enrich their lives and speed their recovery. I am willing to do all I can to assist them in any other way that is possible to help them.

Your Honor, I am anxious to be healed and to find a way to contribute to society again. While I am incarcerated, I will

look for ways that I might be able to help others experiencing the similar problems.

I am positive and upbeat about my future. My life's direction needed to change, and it has, significantly. I now have so much more understanding of why these desires occurred, and the mask I was wearing for so long.

As I realize the damage my desires caused, I already received a lesson. I am anxious to put this terrible part of my life behind me and be a major contributor to society in a uniquely positive way.

I know that will happen. I can't undo what I have done in the past, unfortunately; but I can change the future tremendously.

I accept your judgment, Your Honor, and your sentence, regardless of what you deem appropriate. I reiterate to you my deep regret for the harm that I have caused these people. And I pledge to you that nothing along these lines will ever happen again, regardless of when I am released.

It is important that you realize that I finally understand how harmful my actions have been. And that as much as I would like to think so, I am not a teenager, and I have to live up to my social responsibilities.

I am also sorry for the turmoil that I have caused this court over the past two years. It was inexcusable for me to try to interfere in any way with John Doe 1's cooperation with

investigators. In my mind, from what I've heard, I thought he was being manipulated, but it is no excuse. I should not have tried to interfere, and yet I did. I am sorry.

As my attorney keeps reminding me, ad nauseam, I am my own worst enemy. And finally, Your Honor, I would like to relate to you how much my faith in our Lord has increased.

As a pilot, it is very hard for me to let go and not try to control my own surroundings. But I am now at peace with whatever path the Lord directs me. And I hope I can be more of a worthy servant than I have been in the past.

I respectfully ask for your compassion, and yet I am fully aware that I should have had much more compassion for the young people who I entrusted.

Thank you for hearing me out, and I also thank you for your civility and your patience in this last two years with this case.

I am absolutely open to any questions that you might have of me before you render judgment.

THE COURT: I don't have any questions.

MR. BROWNE: Would you like us to stand here or --

THE COURT: You can return to the table.

It's difficult to know where to begin in a case as extraordinary a case as this one is.

On July 9, 2007, I took an oath to uphold and defend the Constitution of the United States and its laws, and I was a

pretty new judge when the case landed on my doorstep. It has been now over two years.

You sit here, Mr. Gilbert, convicted of 35 separate and very serious felony offenses. The thing is, it is not just one incident in a man that has otherwise had a productive and successful life. It is a pattern that went on for years and years and lots of young boys, and boys who are younger than 16 even, which is young enough, but when you describe your life at the age of 16 and the decisions you made independently, don't forget we are talking about also boys younger.

How many other young boys might have suffered beyond the victims that have been identified, we don't know. The agents reporting to the probation officer put the number at approximately 40.

There's no adequate words to describe the horrible things that these victims had to suffer at the hands of someone who was in a position of power and control over the emotions and will of those who could not legally or morally give consent to any of the things that happened to them. Youth are extremely susceptible to the influence of powerful and resourceful adults in their lives. That is why law and society protect them from those who would abuse them physically, emotionally and mentally through manipulation and enticement.

The extent of human suffering in this case cannot be overstated, the suffering that goes on to this day and will be

felt for a lifetime for those whose childhood and innocence was stolen from them. No one except those who have suffered under this kind of abuse can begin to understand the toll it takes. Having loving and supportive families and friends, years of painful but hopefully beneficial counseling sessions will not erase the harm that has been done.

Each victim knows that he is not responsible for what happened, and always in the case of child abuse this must be emphasized over and over. It is so obvious that no one can challenge this. That there are so many victims demonstrates better than anything that can be said here that these people had no responsibility for your actions.

When a young person undergoes the kind of horrendous acts that these victims experienced, the suffering and pain does not end with them. Whole families and communities can be devastated.

The Congress of the United States instructs and guides a sentencing judge on what should be considered in arriving at a fair and just sentence. It does this first by setting a maximum sentence that can be imposed and, with more serious crimes, it tells the Court that there must also be a minimum. Here, the Court is looking at the law which tells me that my discretion may be exercised somewhere between 15 years to life imprisonment. In exercising this discretion, I am instructed to look at several factors before imposing a sentence.

The Congress has also established guidelines based on many variables, and I am sure you have reviewed these also with your attorneys. But any analysis begins with the seriousness of the crime or crimes to which the defendant has been adjudged guilty. I have already said some things that have addressed the seriousness of the crimes that have been committed by Mr. Gilbert, but more needs to be said.

It wasn't enough, Mr. Gilbert, that you would for so many years ensnare minors into your corrupt and deviant behavior, but when finally caught, you attempted to further manipulate the victims and obstruct justice by using all the tools that you could employ, which included your attempt to instill fear and shame into your victims, and if that wouldn't work, to not so subtly attempt to buy a victim's silence with the offer of financial reward or assistance.

It is no wonder that these crimes carry a maximum of life imprisonment, because not only is the Court required to look at the seriousness of the offense but also be concerned about protecting the public from you and to deter you and others from engaging in activity that creates so much human wreckage and suffering.

The Court must also take notice of who the person is that is before the Court. When looking at all the suffering that has occurred at your hands, it is difficult to also look at the human being behind this monstrous activity that went on

for years and years. As Ms. Scanlan said, you are not a monster. You are a human being, but you did engage in monstrous activity, and I think that has been acknowledged.

In other aspects of your life, you've been someone who's made a considerable success of yourself without the involvement in any other criminal activity. You have people in your life -- you are fortunate -- who have and continue to support you and admire you.

The record indicates also that you may have even saved the life of someone who was experiencing a heart attack, and it is not completely surprising that you yourself suffered at the hands of a father who physically abused you. We hear from the experts that one who experiences abuse as a child has an increased chance of being an abuser himself. The sentencing guidelines recognize this as a matter to be considered, and I do.

The Court also is told to impose a sentence that is generally in line but not unjustifiably different from the sentences others receive for having committed similar offenses, who have similar personal history. It is difficult for me to imagine any cases that can be looked to to find such similarities.

Finally, the sentence is to be sufficient but not greater than necessary to accomplish the goals of the sentencing factors that I have discussed. I will accept the plea

1 agreement reached by the parties. I believe the range
2 established is one that is justified, and it is justified for
3 a few reasons, but the most important of which is that
4 ultimately a plea was entered here. I think we had five
5 continuances leading up to the eve of trial, and finally sense
6 prevailed.
7 You are now, what, 49 years of age. Not only will you
8 spend most of the rest of your life in prison, but almost all
9 of what you worked for all your life will be gone. It is
10 right and just that most of the rather substantial assets that
11 you have acquired will now presumably go to those who you have
12 victimized.
13 For you, in this case, the best day was the day that you
14 decided to plead guilty and enter into a plea agreement.
15 Because, Mr. Gilbert, the guidelines suggest a life sentence,
16 and when you look at the number of people and lives ruined, I
17 do respect Mr. Browne's statement that 25 years for someone
18 who commits premeditated murder, that happens. That is maybe
19 the isolated incident than somebody who had otherwise had no
20 other criminal history. This wasn't an isolated incident.
21 This was years and years of lives devastated.
22 So the Court comes to the conclusion that I think it must,
23 which is that the plea agreement here should be and will be
24 accepted, but it also means that you must serve 25 years in
25 prison, 276 months. When you are released, it will be for the

remainder of your life that you will be on supervised release.

You must accept that you and you alone have rendered the vast remainder of your life as one in which your freedom has been taken away. Indeed, you should want no less. You have a huge debt to pay here on earth, one that as far as the victims are concerned, can never be repaid. It is up to you whether you fully embrace these consequences as just and deserving because, if you do, you have a chance of enabling yourself to finish out your life, making it a better world as you sit here, even if your world for the most of that life will be spent in prison.

Everything you do from now on to assist the government and others in the forfeiture process to facilitate compensation to your victims will be real proof of your claims to have a repentant heart.

Those conditions of supervised release are the standard conditions, and on the release from imprisonment, these special conditions shall also apply.

You will cooperate in the collection of DNA as directed by the probation officer.

You shall be prohibited from possessing a firearm or destructive device.

You shall submit to one drug and/or alcohol test within 15 days of your release of imprisonment, and at least two periodic drug tests or alcohol tests thereafter, not to exceed

eight per month.

You shall submit to a search of your person, residence, office, property, storage unit or vehicle conducted in a reasonable manner and in a reasonable time by the probation officer.

You shall not possess or peruse any authentic, altered or manufactured in whatever form material that depicts sexually explicit conduct or child pornography.

Your employment must be approved in advance by the probation officer. You may not engage in any paid occupation or volunteer service that exposes you either directly or indirectly to minors, unless approved in advance by the probation officer.

You are required to register under the Sex Offender Registration Act, the notification act, and you will report your address and any subsequent change of address to the probation officer. You must register within three business days of your release from prison.

You shall participate in a sexual deviancy evaluation conducted by a sexual deviancy treatment provider as directed and approved by the probation officer. The treatment provider shall be trained and experienced in the treatment of sexual deviancy and follow the guideline practices established by the Association for the Treatment of Sexual Abusers.

The sexual deviancy evaluation may include psychological

and physiological tests, but not the plethysmograph. You shall disclose all previous sex offender or mental health evaluations to the treatment provider. You shall also contribute to the cost of your evaluation according to your ability to pay as determined by the probation officer.

You shall actively participate and make reasonable progress in a certified sexual deviancy treatment program as designated by the probation officer. It shall follow the guidelines and practices again established by the Association for Treatment of Sexual Abusers.

The program shall offer individual and group sessions and appropriate testing to determine the patterns of sexual arousal and to monitor your progress and compliance with treatment goals and conditions of supervision.

You shall disclose all previous sex offender or mental health evaluations to the treatment provider, and you will contribute to that cost in accordance with your ability to pay as determined by the probation officer.

You shall follow all rules, to include other lifestyle restrictions by your therapist, that are set by your therapist and continue with those rules and restrictions as they pertain to avoiding risk situations throughout the course of your supervision.

You shall not go to places or loiter within 100 feet of any area where minors are known to frequent without the prior

approval of the probation officer and sexual deviancy therapist. You shall not affiliate with, own, control or volunteer or be employed in any capacity by an organization or activity which will place you in direct or indirect contact with children under the age of 18.

You shall have no direct or indirect contact with any children under the age of 18, unless accompanied and supervised by an adult who's been approved in advance by the sexual deviancy therapist and the supervising probation officer.

You shall immediately report any unauthorized contact with children to your probation officer and sexual deviancy therapist.

Your residence shall be preapproved by the probation office, and you shall not reside in direct view of places used primarily by minors, such as a school yards, parks, public swimming pools or recreational centers, playgrounds, youth centers, video arcade facilities or other places primarily used by children under the age of 18.

The restitution must be paid and the restitution will be determined at the hearing that we previously established.

Any unpaid amount is to be paid during the period of your supervision in monthly installments of not less than 10 percent of your gross household monthly income. Interest on the restitution shall not be waived.

You shall consent to the probation officer conducting ongoing monitoring of your computer hardware and software use and all electronic devices. Monitoring may include the installation, at your expense, of hardware or software systems which allow for evaluation of your computer use. Monitoring may also include the retrieval and copying of data from your computer and any and all other electronic devices or media.

You shall also comply with the requirements of the U.S. probation computer monitoring program as directed, and you shall provide the probation officer with access to any requested financial information, including authorization to conduct credit checks and obtain copies of your federal income tax returns.

In addition, you will pay a special assessment in the amount of $3500, which is due immediately.

MR. ROGOFF: Your Honor, I just want to make sure I understand. You sentenced the defendant to 25 years, and then you mentioned 276 months. I assume, because we are two years since arrest, that you are giving him credit for time served.

THE COURT: Yes. It should be 300 months, which is 25 years. That constitutes the time for -- giving credit for time served, which of course he will be given, yes.

MR. BROWNE: Your Honor, I just wanted to ask if you can designate or think about designating Terminal Island. I know that Mr. Gilbert will end up in Phoenix most likely, but

that program is not usually until the last three or four years of their incarceration.

THE COURT: That recommendation can be made and included in the judgment.

MR. BROWNE: The judgment and sentence accurately reflect the sentence you imposed.

THE COURT: Do you have any legal objection to it being entered?

MR. BROWNE: To what?

THE COURT: Do you have any legal objection to it being entered?

MR. BROWNE: No, Your Honor.

MR. ROGOFF: As I listened to you review the standard conditions and the special conditions, I don't think I heard no contact with the victims. Would Your Honor order that the defendant not contact the victims?

THE COURT: I absolutely would. I don't believe that was included in the list. I may have overlooked it. It certainly is an important condition.

MR. ROGOFF: May I approach, Your Honor?

THE COURT: You may. Mr. Browne, do you have any objection to that addition?

MR. BROWNE: No, Your Honor. It gets difficult, I think, when you are dealing with adults, as opposed to children. Clearly, I would think that if any of the victims

in this case wanted to have contact with Mr. Gilbert, which I wouldn't be surprised if maybe some of them did, that that should go through the U.S. Attorney's Office.

MR. ROGOFF: Certainly we'd bring that before the Court, if there was a need to do that.

THE COURT: I am sure there can be a way in which it can be arranged, but there can't be any indirect contact of any kind. I am sure that if a victim wanted to have that contact, it could be arranged, but it would have to go through the prison officials.

The Court finds that the judgment as prepared conforms to the sentence imposed, and I am signing it.

It was difficult for many of those in the gallery to be here at all to listen to this proceeding. It is certainly my hope that in some way, it does accomplish some of the needs that you've had to bring closure of some kind. It is a term that we use too loosely. We know closure will not occur simply by the conclusion of this hearing, but it offers something to those who have been so affected by these proceedings and the actions that necessitated them.

Mr. Gilbert, I believe that you still have, as has been said, a long way to go to fully, fully appreciate what transpired. For your sake, I hope that you really do work hard with counselors, with your own self-counsel, with your own relationship with your creator that you will get to that

place where you fully, fully recognize the depths of the problems that you've caused because -- I know I am telling you what you already know, but when you say that what you did was inappropriate, and you said things worse than that, but you just need to take that out of your vocabulary.

"Inappropriate" doesn't describe your conduct. But I also believe that a man of your success, a man of your intelligence and your resourcefulness and desire to live a better life, you can do that in prison. You can be a person in prison who builds on the lives of others and not steals from others their lives. You can do that. And I hope that you do.

Anything else to come before the Court?

MR. ROGOFF: Your Honor --

THE COURT: There's a dismissal of the other counts, and I think that was included.

MR. ROGOFF: That was, Your Honor, and also normally -- I am not sure if Your Honor, when there's an appeal waiver advises the defendant of any of his appeal rights but --

THE COURT: I will mention that. I don't always, but I know that Mr. Gilbert knows his plea agreement well and that he gave up his right to appeal the sentence if it was within the 11(c)(1)(C) plea agreement, which it was.

You do have the right to challenge your sentence based on ineffective assistance of legal counsel, and as unlikely as I

1 think that would be, it's your right and you'd have within one
2 year of today's date to do that.
3 I say unlikely because I think I am saying something that
4 you already believe, that you've had in these two lawyers
5 people who have worked closely with you and have served you,
6 in my opinion, well.
7 Now, is there anything else?
8 MR. ROGOFF: No, Your Honor. Thank you.
9 THE COURT: Court will be in recess.
10 THE CLERK: All rise.
11 (Proceedings concluded at 3:51 p.m.)
12 * * * * *
13 C E R T I F I C A T E
14
15 I certify that the foregoing is a correct transcript from
16 the record of proceedings in the above-entitled matter.
17
18 /S/ Teri Hendrix _____ December 2, 2011
19 Teri Hendrix, Court Reporter Date
20
21
22
23
24
25

Judge Benjamin Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-05732BHS DECLARATION OF ROGER S. ROGOFF IN SUPPORT OF AMENDED JUDGMENT WITH RESTITUTION AMOUNTS

I, Roger S. Rogoff, declare as follows:

1. I am an Assistant United States Attorney, and I am assigned to the prosecution of the above-entitled case.

2. Defendant Weldon Marc Gilbert pled guilty to 30 separate counts related to the production of Child Pornography. On November 16, 2009, the Honorable Benjamin H. Settle sentenced Gilbert to 25 years in prison.

3. The Court delayed entry of restitution amounts for the many victims in Gilbert's case because the Government and defense lawyers were attempting to find a mechanism to transfer forfeited funds that the Government took from Gilbert and apply those funds to payment of restitution. Moreover, because of the number of victims and the complexity of their restitution requests, an assessment of an appropriate amount of restitution was difficult. The Court has granted several continuances of the restitution hearing so that the parties can continue to work on these issues.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

4. The parties have now come to an agreement regarding restitution. Those restitution agreements are contained within the proposed Amended Judgment that the undersigned AUSA sent to the Court on September 19, 2011. The agreement regarding restitution includes agreements from the government, the defendant, and the victims who have made restitution claims.

5. All of the victims who have made restitution claims are represented by counsel. The email confirmation from each of these lawyers, wherein they each express their agreement to the restitution amounts, is attached to this declaration as Exhibit A.

6. The parties arrived at these restitution amounts by taking the restitution requests directly from the victims, discussing with the victims' lawyers the limits of the federal restitution statute, and determining the appropriate amount of restitution allowable under those statutes. Each victim lawyer had an opportunity to discuss restitution with the undersigned AUSA, and each lawyer has agreed to the amounts being requested.

7. In an effort to protect the identities of the victims, the undersigned AUSA has redacted the names of all victims referenced in Exhibit A, and replaced the names with the "John Doe (JD)" numbers that correspond to the restitution amounts.

8. JD6 is not a protected victim, but is the Department of Industries Crime Victim's Compensation Program. The amount of restitution in the amended judgment is the amount they requested.

9. Based on this global agreement, the parties jointly request that the Court enter the amended judgment with the requested restitution amounts.

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UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
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(206) 553-7970

Pursuant to Title 28, United States Code, Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of October, 2011.

/s/ Roger S. Rogoff
ROGER S. ROGOFF
Assistant United States Attorney
WSBA #23362
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Telephone: 206-553-4330
Facsimile: 206-553-2054
E-mail: Roger.Rogoff@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

s/Aisha L. Rich
AISHA L. RICH
Legal Assistant
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-4377
Facsimile: (206) 553-4440
E-mail: aisha.rich@usdoj.gov

AO 245C (Rev. 6/05) Amended Judgment in a Criminal Case
Sheet 1 (Rev. USAO 10/2005)

(NOTE: Identify Changes with Asterisks (*))

UNITED STATES DISTRICT COURT

WESTERN District of WASHINGTON

UNITED STATES OF AMERICA
V.
WELDON MARC GILBERT

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: CR07-5732BHS-001
USM Number: 37955-086
John Henry Browne
Defendant's Attorney

Date of Original Judgment: November 16, 2009
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ■ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ■ pleaded guilty to Counts 1-21, 23-31, and 33-37 of the Fourth Superseding Indictment
- ☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
- ☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number
18 USC §§ 2251(a) & (e) and 2256	Sexual Exploitation of Child in Production of Child Pornography	10/31/2007	1-21, 23-31, & 33
18 USC §§ 2423(a) and 2	Transportation of a Minor to Engage in Illegal Sexual Activity	10/31/2007	34 and 35
18 USC §§ 1512(b)(3)	Obstruction of Justice	08/28/2008	36
18 USC §§ 1512(b)(1)	Obstruction of Justice	08/28/2008	37

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

■ Count(s) 22 and 32 ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Signature of Assistant United States Attorney

10/7/11
Date of Imposition of Judgment

Signature of Judge

Benjamin H. Settle, US Dist. Judge
Name and Title of Judge

10/7/11
Date

DEFENDANT: Weldon Marc Gilbert
CASE NUMBER: CR07-5732BHS-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **300 months (25 years)**

■ The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant be placed at Terminal Island Correctional Facility.

■ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO (Rev. 6/2005) Amended Judgment in a Criminal Case (Rev. USAO 10/2005)
Sheet 3 — Supervised Release (NOTE: Identify Changes with Asterisks

DEFENDANT: Weldon Marc Gilbert
CASE NUMBER: CR07-5732BHS-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised **Life**

- ■ The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons
- ■ The defendant shall not commit another federal, state or local crime.
- ■ The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, up to a maximum of 8 tests per month at dates and times directed by the U.S. Probation Officer.
- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ■ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ■ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ■ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: Weldon Marc Gilbert
CASE NUMBER: CR07-5732BHS-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to a search of his/her person, residence, office, property, storage unit, or vehicle conducted in a reasonable manner and at a reasonable time by a probation officer.

The defendant shall not possess or peruse any authentic, altered or manufactured, in whatever form, material that depicts and/or describes "sexually explicit conduct," as defined in 18 USC § 2256(2) or "child pornography," as defined in 18 USC §2256(8).

The defendant's employment must be approved in advance by the probation officer. The defendant may not engage in any paid occupation or volunteer service that exposes him/her, either directly or indirectly, to minors, unless approved in advance by the probation officer.

The defendant, who is required to register under the Sex Offender Registration and Notification Act, must comply with all requirements of the Act. The defendant shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any jurisdiction where the person resides, is employed, or is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of the residence. Registration must occur within three business days after sentencing (if the offender did not receive a prison sentence) or within three business days after being released from custody.

The defendant shall participate in a sexual deviancy evaluation conducted by a sexual deviancy treatment provider, as directed and approved by the U.S. Probation Officer. The treatment provider shall be trained and experienced in the treatment of sexual deviancy, and follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The sexual deviancy evaluation may include psychological and physiological testing **except plethysmograph ** The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of the evaluation, according to his/her ability, as determined by the U.S. Probation Officer.

The defendant shall follow all rules, to include other lifestyle restrictions, recommended by the defendant's therapist, and continue with those rules and restrictions as they pertain to avoiding risk situations throughout the course of supervision.

The defendant shall not go to places nor loiter within 100 feet of an area where minors are known to frequent without the prior approval of the probation officer and the sexual deviancy therapist. The defendant shall not affiliate with, own, control, volunteer, and/or be employed, in any capacity, by an organization in an activity which would place him in the direct or indirect contact with children under the age of 18.

The defendant shall have no direct or indirect contact with any children under the age of 18, unless accompanied and supervised by an adult, who has been approved in andvance by the sexual deviancy therapist and the supervising probation officer. The defendant shall immediately report any unauthorized contact with children to the probation officer and sexual deviancy therapist.

The defendant's residence shall be pre-approved by the probation office. The defendant shall not reside in direct view of places used *primarily by minors, such as school yards, parks, public swimming pools, or recreational centers*, playgrounds, youth centers, video arcade facilities, or other places primarily used by children under the age of 18.

Restitution in the amount of $1,072,175.76 is due in full within 30 days.

The defendant shall consent to the U.S. Probation Office conducting ongoing monitoring of his computers, hardware, and software and any electronic devices/media. The monitoring may include the installation, at the defendant's expense, of hardwware or software systems which allow evaluation of his computer use. Monitoring may also include the retrieval and copying of all data from his computers or any/all other electronic devices/media. The defendant shall also comply with the requirements of the U.S. Probation Computer Monitoring Program as directed.

The defendant shall provide the probation officer with access to any requested financial information including authorizations to conduct credit checks and obtain copies of the defendant's federal income tax returns.

The defendant shall have no contact whatsoever with any of the victims in this case.

DEFENDANT: Weldon Marc Gilbert
CASE NUMBER: CR07-5732BHS-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 3,500	$ Waived	$ $1,072,175.76

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

■ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Amount of Total	Amount of Restitution	Priority or Percentage
John Doe 1	23,612.50	23,612.50	
John Doe 2	51,250.00	51,250.00	
John Doe 3	98,750.00	98,750.00	
John Doe 4	67,127.59	67,127.59	
John Doe 5	94,144.17	94,144.17	
See Add'l Payees on	Attached page		
TOTALS	$ 1,072,175.76	$ 1,072,175.76	

☐ Restitution amount ordered pursuant to plea agreement $ _____

■ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the 30th day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

■ the interest requirement for the ☐ fine ■ restitution is modified as follows:

Interest is not ordered so long as the restitution is paid in full 30 days from today's date

☐ The Court finds that the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Weldon Marc Gilbert
CASE NUMBER: CR07-5732BHS-001

ADDITIONAL RESTITUTION PAYEES

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
John Doe 6	1,717.49	1,717.49	
John Doe 7	69,195.45	69,195.45	
John Doe 8	49,021.40	49,021.40	
John Doe 9	58,713.99	58,713.99	
John Doe 10	71,749.03	71,749.03	
John Doe 11	98,750.00	98,750.00	
John Doe 12	47,520.00	47,520.00	
John Doe 13	21,225.00	21,225.00	
John Doe 14	32,758.80	32.758.80	
John Doe 15	2,204.52	2,204.52	
John Doe 16	7,089.77	7,089.77	
John Doe 17	54,353.55	54,353.55	
John Doe 18	68,575.00	68,575.00	
John Doe 19	67,625.00	67,625.00	
John Doe 20	34,962.50	34,962.50	
John Doe 21	51,830.00	51,830.00	

* Findings for the total amount of losses are required by Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Weldon Marc Gilbert
CASE NUMBER: CR07-5732BHS-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

☒ PAYMENT IS DUE IMMEDIATELY. Defendant will fully pay the restitution amount within 30 days.:

☐ During the period of imprisonment, no less than _____% of their inmate gross monthly income or $25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.

☐ During the period of supervised release, in monthly installments amounting to not less than _____% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.

☐ During the period of probation, in monthly installments amounting to not less than _____% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment.

All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to: United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified at pages 5 & 6 of this Judgment.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: Weldon Marc Gilbert
CASE NUMBER: CR07-5732BHS-001

ADDITIONAL FORFEITED PROPERTY

One blue Lexu GX470, bearing WA License 029RYB, VINGJTJBT20X940035115; One 2006 white Ford F150 pick-up, WA license A68898Z, VIN1FTRF12206NB15476; One 1981 Bell 206B helicopter, Tail#N325JR, Serial #3296, and all flight logs and maintenance logs associated with this aircraft; One 1968 Cessna A185E float plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft; One 2003 Sea Ray boat, Model 185BR, license #WN8212NM, Boat Hull #0059RG, VIN 1MDJ2JR163A248710; Real property located at 2901 211th Avenue East, Lake Tapps, Washington, 98391, parcel numbers 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Lake Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive records of Pierce County, Washington; Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010110, its buildings, improvements, appurtenances, fixtures, attachments, and easements, more particularly described as: Lot 11 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive records of Pierce County, Washington; One Sony Digital Handicam Digital 8 camcorder, mode DCR-TRV250, Serial #388947; One Sony Video 8 Handicam camcorder, model CCE-TR40, Serial #3009669; One Averatec laptop computer, model 5500 series, Serial number obliterated; One Fry's Intel Pentium 4 computer tower, model FS7470, Serial #747FSX340000296; One Averatec Notebook computer, model 2200 series, Serial number partiall obliterated, starting with NW04CE6040; One SeaGate Medalist 13640hard drive, model ST313640A, Serial #7AE054NA; One Western Digital WD1600 Enhanced IDE hard drive, model WD1600BB-00DAA0, Serial #WMACK2069917; One Western Digital WD400 Enhanced IDE hard drive, model WD400JB-00ENA0, Serial #WCAD19728957; One Western Digital WD 1600 Enhanced IDE hard drive, model WD1600JB-75GVC0, Serial #WCAL96008970; One MX 100 camera tripod; and any and all images of child pornography, in whatever form and however stored, including but not limited to, those stored in zip disks, CDs/DVDs, video cassette tapes, and floppy disks.

The Hon. Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-5732BHS STIPULATED AGREEMENT AND ORDER REGARDING FORFEITURE/RESTITUTION Noting Date: October 12, 2011

The United States of America, Plaintiff herein, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington; Richard E. Cohen, Roger S. Rogoff, Michael Dion, Anastasia D. Bartlett, Assistant United States Attorneys for said District; Defendant/Claimant Weldon Marc Gilbert, by and through his counsel, attorneys John H. Browne and Allen M. Ressler; Claimant JP Morgan Chase, by and through its counsel, David A. Weibel; and Claimant Northwest Helicopters, Inc., by and through its counsel, John J. Sinclair, hereby enter into this Stipulated Agreement Regarding Forfeiture/Restitution, with respect to the following personal and real properties:

a. One (1) 2004 blue Lexus GX470, bearing Washington license plate 029RYB, VIN JTJBT20X940035115;

b. One (1) 2006 white Ford F150 pick-up, Washington license plate A68898Z, VIN 1FTRF12206NB15476;

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c. One (1) 1981 Bell 206B-III helicopter bearing tail number N325JR and serial number 3296, and all flight logs and maintenance logs associated with this aircraft;

d. One (1) 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft;

e. One (1) 2003 Sea Ray Boat, Model 185BR, bearing license number WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore Land'r trailer, Washington license plate 0059RG, VIN 1MDJ2JR163A248710;

f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and,

g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010110, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington;

(hereinafter collectively referred to as the "properties").

This stipulation is based on the following facts, agreed to by the United States and by Defendant/Claimant Weldon Marc Gilbert, Claimant JP Morgan Chase, and Claimant Northwest Helicopters, Inc.

Civil Forfeiture Proceedings in Related Case, *United States v. One 2004 Blue Lexus GX470, et al.*, No. C08-5084RJB (WAWD)

1. On February 13, 2008, the United States filed a Complaint for Forfeiture in rem against the above listed properties, alleging that said properties are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 2254, as properties, real or personal, used or intended to be used to commit or promote the commission of an offense involving a visual depiction described in Chapter 18, United States Code, Sections 2251, 2251A, 2252, 2252A, or 2260, or used or intended to be used to commit or to promote the commission of an offense under Chapter 18, United States

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Code, Sections 2421, 2422 or 2423 or chapter 117, in violation of Title 18, United States Code, United States Code, Sections 2251, 2252(a)(4)(B) and (b)(2). See Docket No. 1.

2. On March 3, 2008, Attorney Allen M. Ressler filed a Notice of Appearance on behalf of Claimant Weldon Marc Gilbert. See Docket No. 5. On March 4, 2008, Allen M. Ressler filed a Claim on behalf of Claimant Weldon Marc Gilbert. See Docket No. 6.

3. On April 9, 2008, Plaintiff filed a Stipulated Motion for the Entry of an Amended Complaint for Forfeiture in rem and Amended Lis Pendens. See Docket No. 15.

4. On April 9, 2008, Plaintiff filed an Amended Verified Complaint for Forfeiture in rem, Notice of Amended Complaint for Forfeiture in rem, Amended Lis Pendens, and Warrant of Arrest in rem (hereinafter referred to as the "amended complaint and related documents"). See Docket Nos. 16 through 18.

5. The Notice of Amended Complaint for Forfeiture in rem was published in The Daily Journal of Commerce and The Tacoma Daily Index on April 14, 21, and 28, 2008. All interested persons were advised to file their claims pursuant to Supplemental Rule G(5) of the Federal Rules of Civil Procedure with the Clerk of the Court within thirty (30) days after the date of publication and to serve their Answers to the Complaint within twenty (20) days after filing a claim. See Docket Nos. 33 and 34.

6. On April 25, 2008, the United States Marshals Service filed a Return of Service, wherein the United States Marshals Service certified that on April 15, 2008, Charles Bombard, a person believed to have an interest in the property(ies), was served with the amended complaint and supporting documents. See Docket No. 30.

7. On June 11, 2008, the United States Marshals Service filed a Return of Service, wherein the United States Marshals Service certified that on April 30, 2008, Jeff Winner, Nominee for Northwest Helicopters, Inc., an entity believed to have an interest in the property(ies), was served with the amended complaint and supporting documents. See Docket No. 39.

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8. On May 1, 2008, the United States filed an Acknowledgment of Service, wherein attorney Mark Phelps, an Authorized Agent of JP Morgan Chase Bank, an entity believed to have an interest in the property(ies) acknowledged service of the amended complaint and related documents on April 29, 2008. See Docket No. 29.

9. On May 13, 2008, Mark Phelps filed an Answer, with attached Claim, to the Amended Complaint for Forfeiture in rem, on behalf of JP Morgan Chase Bank. See Docket No. 35.

10. On May 13, 2008, the United States filed an Acknowledgment of Service, wherein attorney Paul Rieke, counsel for KeyBank National Association, an entity believed to have an interest in the property(ies), acknowledged service of the amended complaint and related documents on May 12, 2008. See Docket No. 36.

11. On May 20, 2008, the United States filed an Acknowledgment of Service, wherein attorney Mark Phelps, an Authorized Agent of JP Morgan Chase Bank, successor in interest for Home Savings of America, acknowledged service of the amended complaint and related documents on May 20, 2008. See Docket No. 37.

12. On May 22, 2008, the United States received a letter from attorney John J. Sinclair, counsel for Northwest Helicopters, Inc., wherein attorney John J. Sinclair specified that Northwest Helicopters, Inc. claims an interest in $7,955.95 United States funds, for payment in full of a lien placed by Northwest Helicopters, Inc., against the 1981 Bell 206B-III helicopter.

13. On June 25, 2008, the United States Marshals Service filed a Return of Service, wherein the United States Marshals Service certified that on June 6, 2008, Jeff Pratt, Nominee for Spencer Aircraft, an entity believed to have an interest in the property(ies), was served with the amended complaint and supporting documents. See Docket No. 44.

14. On June 25, 2008, the United States Marshals Service filed a Return of Service, wherein the United States Marshals Service certified that on June 6, 2008, Chuck

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Young, a person believed to have an interest in the property(ies), was served with the amended complaint and supporting documents. See Docket No. 45.

15. On June 25, 2008, the United States Marshals Service filed a Return of Service, wherein the United States Marshals Service certified that on June 6, 2008, the United States Marshals Service posted the amended complaint and supporting documents at the residence located at 2901 211th Avenue East, Lake Tapps, Washington 98391, Pierce County Parcel Number 8996010110 and at the undeveloped residential lot located at 2901 211th Avenue East, Lake Tapps, Washington 98391, Pierce County Parcel Number 8996010100. See Docket No. 46 and 48.

16. On June 25, 2008, the United States Marshals Service filed a Return of Service, wherein the United States Marshals Service certified that on June 6, 2008, A.K., a person believed to have an interest in the property(ies) was served with the amended complaint and supporting documents. See Docket No. 47.

17. On February 4, 2009, attorney David A. Weibel, counsel for JP Morgan Chase Bank, filed a Notice of Appearance on behalf of JP Morgan Chase Bank. See Docket No. 52.

18. All persons and entities believed to have an interest in the properties subject to forfeiture were given proper notice of the intended forfeiture. No petitioners or claimants, other than Weldon Marc Gilbert (who, in the related criminal case, agreed not to pursue his Claim as part of the Plea Agreement), JP Morgan Chase, and Northwest Helicopters, Inc. have come forth to assert an interest in any of the forfeited properties and the time for doing so has expired.

19. On October 13, 2009, the United States filed a Stipulation and Proposed Order For an Interlocutory Sale and to Lift Stay for Entry of Order Authorizing Interlocutory Sale of the Defendant Properties Named in This Civil Forfeiture Matter (stipulated to by the United States, Claimant Weldon Marc Gilbert, Claimant JP Morgan Chase, and Claimant Northwest Helicopters, Inc., by and through their respective counsel). See Docket No. 53. On October 14, 2009, the Court herein approved the

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Stipulation For an Interlocutory Sale and to Lift Stay for Entry of Order Authorizing Interlocutory Sale of the Defendant Properties Named in This Civil Forfeiture Matter. See Docket No. 53.

20. On November 19, 2009, the United States Marshals Service filed a Return Receipt, wherein the United States Marshals Service certified that the 2003 Sea Ray Boat, Model 185BR, bearing license number WN8212NM, Boat Hull #SERV5716E303185BR3560 and Shore Land'r trailer, Washington license plate 0059RG, VIN 1MDJ2JR163A248710, were sold for $7,500.00, and that those funds were deposited into the United States Department of Justice Seized Asset Deposit Account on October 24, 2009. See Docket No. 58.

21. On November 19, 2009, the United States Marshals Service filed a Return Receipt, wherein the United States Marshals Service certified that the 2006 white Ford F150 pick-up, Washington license plate A68898Z, VIN 1FTRF12206NB15476, was sold for 9,000.00, and that those funds were deposited into the United States Department of Justice Seized Asset Deposit Account on October 24, 2009. See Docket No. 59.

22. On December 23, 2009, the United States Marshals Service filed a Return Receipt, wherein the United States Marshals Service certified that the 2004 blue Lexus GX470, bearing Washington license plate 029RYB, VIN JTJBT20X940035115, was sold for $20,000.00, and that those funds were deposited into the United States Department of Justice Seized Asset Deposit Account on December 5, 2009. See Docket No. 71.

23. On December 29, 2009, the United States Marshals Service filed a Return Receipt, wherein the United States Marshals Service certified that the 1981 Bell 206B-III helicopter bearing tail number N325JR and serial number 3296, and all flight logs and maintenance logs associated with this aircraft, was sold for $300,100.00, and that those funds were deposited into the United States Department of Justice Seized Asset Deposit Account on December 16, 2009. See Docket No. 72.

24. On January 14, 2010, the United States Marshals Service filed a Return Receipt, wherein the United States Marshals Service certified that the 1968 Cessna

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A185E Float Plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft, was sold for $83,599.99, and that those funds were deposited into the United States Department of Justice Seized Asset Deposit Account on December 16, 2009. See Docket No. 73.

25. On December 6, 2010, the United States Marshals Service filed a Return Receipt, wherein the United States Marshals Service certified that the real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel number 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, was sold and the net proceeds, in the amount of $119,386.25 (after satisfaction of the JP Morgan Chase lien on the real property), were deposited into the United States Department of Justice Seized Asset Deposit Account on November 29, 2010. See Docket No. 78. Pursuant to the Stipulation for Interlocutory Sale, at the time of closing of the sale of this defendant real property, JP Morgan Chase's lien against the real property was satisfied. Pursuant to the Stipulation for Interlocutory Sale, payment was made to Claimant JP Morgan Chase, in satisfaction of it's lien against the defendant real property, and in satisfaction of JP Morgan Chase's Claim to the real property in the related criminal and civil forfeiture actions alleging forfeiture against this real property.

26. On December 6, 2010, the United States Marshals Service filed a Return Receipt, wherein the United States Marshals Service certified that the real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel number 8996010110, its buildings, improvements, appurtenances, fixtures, attachments and easements, was sold and the net proceeds, in the amount of $70,636.69 (after satisfaction of the JP Morgan Chase lien on the real property), were deposited into the United States Department of Justice Seized Asset Deposit Account on November 22, 2010. See Docket No. 79. Pursuant to the Stipulation for Interlocutory Sale, payment was made to Claimant JP Morgan Chase, in satisfaction of it's lien against the defendant real property, and in satisfaction of JP Morgan Chase's Claim to the real property in the related criminal and civil forfeiture actions alleging forfeiture against this real property.

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27. The total amount of net proceeds realized from the sale of the properties, after government costs associated with the maintenance, storage, and sale of the properties, is $493,277.13. Pursuant to the stipulation for interlocutory sale, the net proceeds from the sale of the properties have been substituted for the above-described properties and are being held as substitute *res* by the United States Marshals Service pending a further order of this Court. Said funds have been accruing interest while being held in the United States Department of Justice Seized Asset Deposit Account. The total amount of interest accrued will be determined after the funds are withdrawn from said account.

Criminal Forfeiture Proceedings

28. On December 10, 2008, the United States filed its Fourth Superseding Indictment of Weldon Marc Gilbert, charging thirty-three counts of Sexual Exploitation of a Child in the Production of Child Pornography, in violation of Title 18, United States Code, Sections 2251(a) and (e) and Section 2256, two counts of Transportation of a Minor to Engage in Illegal Sexual Activity, in violation of Title 18, United States Code, Section 2423 and Section 2, and two counts of Obstruction of Justice, in violation of Title 18, United States Code, Sections 1512(b)(3) and (b)(1). See Criminal Docket No. 202.

29. The Fourth Superseding Indictment alleges that the properties, as listed above, are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 2253(a)(3) for violations of the offenses charged in Counts One through Thirty contained therein. *Id*.

30. On April 23, 2009, defendant Weldon Marc Gilbert signed a Plea Agreement within which he pleaded guilty to Sexual Exploitation of a Child in the Production of Child Pornography, as charged in Counts One through Twenty-One, Twenty-Three through Thirty-One and Thirty-Three, in violation of Title 18, United States Code, Section 2251(a) and (e) and 2256; Transportation of a Minor to Engage in Illegal Sexual Activity, as charged in Counts Thirty-Four and Thirty-Five, in violation of

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Title 18, United States Code, Section 2423(a) and Section 2; Obstruction of Justice, as charged in Counts Thirty-Six and Thirty-Seven, in violation of Title 18, United States Code, Sections 1512(b)(3) and (b)(1). See Criminal Docket No. 249.

31. In defendant Weldon Marc Gilbert's Plea Agreement, he further agreed to the forfeiture of the above listed properties pursuant to Title 18, United States Code, Section 2253(a)(3), for the offense of Sexual Exploitation of a Child in the Production of Child Pornography and pursuant to Title 18, United States Code, Section 2428(b)(1)(A), for the offense of Transportation of a Minor to Engage in Illegal Sexual Activity. *Id*.

32. Further, as part of the Plea Agreement, the United States and defendant Weldon Marc Gilbert agreed upon the following:

> Defendant agrees to fully assist the United States in the forfeiture of the listed assets, including but not limited to: surrendering title and executing any documents necessary to effectuate such forfeiture; assisting in bringing any assets located outside the United States within the jurisdiction of the United States; and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden, or otherwise made unavailable for forfeiture. Defendant further agrees to withdraw all claim(s) to the listed properties in the related civil forfeiture action, *United States v. One 2004 Blue Lexus, GX470, et al.*, Docket No. C08-5084BHS.
>
> The United States agrees that once the preliminary order of forfeiture is entered, forfeiting the defendant's interest in the above-listed assets, the government will negotiate with counsel representing the defendant in the related civil forfeiture case in this district to attempt to achieve the objective of applying the assets, or proceeds from the sale of the assets, for the benefit of the victims of the crimes to which the defendant is pleading guilty and any related crimes, with the exception of the visual depictions, or those electronic items containing visual depictions, being forfeited to the United States. In addition, the government will seek to obtain all necessary approvals to achieve the goal of utilizing the forfeited assets to compensate the victims of the defendant's crimes, in lieu of obtaining final orders of forfeiture for the assets. The defendant in turn will take all steps necessary to ensure that these assets in fact are utilized for the benefit of the victims and will not go back to him or any of his relatives, including the removal of any liens or interests in the assets that currently exist in favor of any of his relatives. *Id*.

33. On November 16, 2009, a Judgment in a Criminal Case was filed, sentencing Weldon Marc Gilbert to 300 months (25 years) imprisonment. The restitution section of the Judgment in a Criminal Case stated "TBD," (to be determined); and a restitution hearing was scheduled.

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34. On December 21, 2009, the United States filed a Stipulated Motion for Preliminary Order of Forfeiture (stipulated to by the United States and Defendant Weldon Marc Gilbert, by and through each of their respective counsel). On December 21, 2009, the Court herein approved a Preliminary Order of Forfeiture. See Criminal Docket No. 287.

35. On January 6, 2010, the United States sent notice, via certified mail, to Regional Air Center, an entity believed to have an interest in the property(ies), of the intent of the United States to forfeit the assets listed in the Notice of Publication in the criminal case filed against Weldon Marc Gilbert. The return receipt indicates delivery on January 11, 2010. See Attachment "A," return receipt.

36. On January 6, 2010, the United States sent notice, via certified mail, to Northwest Helicopters, Inc. (care of Jeff Winner), an entity believed to have an interest in the property(ies), of the intent of the United States to forfeit the assets listed in the Notice of Publication in the criminal case filed against Weldon Marc Gilbert. The return receipt indicates delivery on January 11, 2010. See Attachment "B," return receipt.

37. On January 6, 2010, the United States sent notice, via certified mail, to Northwest Helicopters, Inc. (care of attorney John Sinclair, counsel for Northwest Helicopters, Inc.), an entity believed to have an interest in the property(ies), of the intent of the United States to forfeit the assets listed in the Notice of Publication in the criminal case filed against Weldon Marc Gilbert. The return receipt indicates delivery on January 11, 2010. See Attachment "C," return receipt.

38. On January 6, 2010, the United States sent notice, via certified mail, to Marc Gilbert Developments (care of Jeffrey P. Gilbert), an entity believed to have an interest in the defendant property(ies), of the intent of the United States to forfeit the asset listed in the Notice of Publication in the criminal case filed against

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Weldon Marc Gilbert. The return receipt indicates delivery on January 11, 2010. See Attachment "D," return receipt.

39. On January 6, 2010, the United States sent notice, via certified mail, to JP Morgan Chase (care of attorney David E. Weibel, counsel for JP Morgan Chase), an entity believed to have an interest in the defendant property(ies), of the intent of the United States to forfeit the asset listed in the Notice of Publication in the criminal case filed against Weldon Marc Gilbert. The return receipt indicates delivery on January 11, 2010. See Attachment "E," return receipt.

40. On January 6, 2010, the United States sent notice, via certified mail, to Spencer Leasing (care of Jeffrey P. Gilbert), an entity believed to have an interest in the defendant property(ies), of the intent of the United States to forfeit the asset listed in the Notice of Publication in the criminal case filed against Weldon Marc Gilbert. The return receipt indicates delivery on January 11, 2010. See Attachment "D," return receipt.

41. On January 6, 2010, the United States sent notice, via certified mail, to Charles Bombard, a person believed to have an interest in the defendant property(ies), of the intent of the United States to forfeit the asset listed in the Notice of Publication in the criminal case filed against Weldon Marc Gilbert. The return receipt indicates delivery on January 19, 2010. See Attachment "E," return receipt.

42. Pursuant to Title 21, United States Code, Section 853(n), the United States published notice on www.forfeiture.gov, for at least thirty (30) consecutive days, beginning with January 23, 2010. In the publication, the United States published notice of the Preliminary Order of Forfeiture and the intent of the United States to dispose of the properties in accordance with law. This notice further stated that any person, other than the defendant, having or claiming a legal interest in the above-described properties was required to file a petition with the Court within thirty (30) days of the final publication of notice or personal receipt of

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notice, whichever is earlier, setting forth the nature of the petitioner's right, title, and interest in the properties. See Docket No. 303.

43. On February 8, 2010, attorney David Weibel, counsel for JP Morgan Chase Bank, filed a Claim to the defendant real properties on behalf of JP Morgan Chase Bank. See Docket No. 298.

44. On February 9, 2010, the United States Marshals Service filed a Return Receipt wherein the United States Marshals Service certified that pursuant to the Stipulation for Interlocutory Sale, $7,955.95 was paid to Claimant Northwest Helicopter, Inc., in satisfaction of it's lien against the 1981 Bell Jet Ranger III 206B helicopter, tail #N325JR, serial #3296, and in satisfaction of Northwest Helicopter Inc.'s Claim to the helicopter in the related civil forfeiture action. See Docket No. 300.

Stipulation Re: Forfeiture/Restitution

45. Defendant/Claimant Weldon Marc Gilbert withdraws his Claim to the above-referenced properties, and the proceeds from the sale of the properties.

46. Claimant JP Morgan Chase withdraws its Claim to the above-referenced real property, and the proceeds from the sale of the real property.

47. Claimant Northwest Helicopters, Inc. withdraws its claim to the defendant helicopter, and the proceeds from the sale of the helicopter.

48. The parties agree that probable cause existed for the institution of this forfeiture action against the properties and further agree to release, forever discharge, and hold harmless the United States of America, its officers, agents, attorneys, servants and employees, from any and all actions, causes of action, suits, proceedings, debts, judgments, damages, claims or demands whatsoever in law or equity which claimant, their heirs, successors or assignees ever had, now have or may have, whether known or unknown, in connection with this forfeiture action including any claims for interest or attorney's fees.

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49. This Stipulated Agreement represents a full settlement and satisfaction of all ownership and possessory claims to the properties (and their proceeds) and of any causes of action arising out of the seizure of the properties.

50. Following approval of this settlement agreement, and following the Court's entry of a restitution order, all funds realized from the sale of the properties (less government costs), held as substitute *res* by the United States Marshals Service, plus accrued interest, shall be remitted to the Court herein, to be applied for payment towards restitution owed by Weldon Marc Gilbert in this action, and no right, title, and interest in said funds shall exist in Claimants Weldon Marc Gilbert, JP Morgan Chase, and Northwest Helicopters, Inc., or any persons or entities who have failed to file a Claim.

51. Following distribution of said substitute *res* funds to the Clerk of the Court, and following remittance of said funds to the victims named in the restitution order, Weldon Marc Gilbert shall receive credit against the outstanding restitution obligation owed by him, for the amount paid towards restitution and remittance to recipients pursuant to the restitution order.

52. Following approval of this settlement agreement, and following distribution of the substitute *res* funds realized from the sale of the properties to the Court herein (less government costs), plus accrued interest, the United States will file with the Court, a motion for dismissal of the civil forfeiture action, and none of the parties to this action will contest said motion.

Respectfully submitted,

JENNY A. DURKAN
United States Attorney

DATED: 10/12/11

s/ Richard E. Cohen
RICHARD E. COHEN
Assistant United States Attorney

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

DATED: 10/12/11

s/ Roger S. Rogoff
ROGER S. ROGOFF
Assistant United States Attorney

DATED: 10/12/11

s/ Michael Dion
MICHAEL DION
Assistant United States Attorney

DATED: 10/12/11

s/ Anastasia D. Bartlett
ANASTASIA D. BARTLETT
Assistant United States Attorney

DATED: 10/12/11

*s/ Allen M. Ressler **
ALLEN M. RESSLER
Attorney for Defendant/Claimant
Weldon Marc Gilbert

** Allen M. Ressler authorized electronic signature via e-mail.*

DATED: 10/11/11

*s/ John H. Browne **
JOHN HENRY BROWNE
Attorney for Defendant/Claimant
Weldon Marc Gilbert

** John H. Browne authorized electronic signature via e-mail.*

DATED: 9/19/11

*s/ John J. Sinclair **
JOHN J. SINCLAIR
Attorney for Claimant
Northwest Helicopters, Inc.

** John J. Sinclair authorized electronic signature via e-mail.*

DATED: 9/27/11

*s/ David A. Weibel **
DAVID A. WEIBEL
Attorney for Claimant
JP Morgan Chase

** David A. Weibel authorized signature via e-mail.*

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SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

ORDER

The Court, having reviewed the foregoing Stipulation and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Stipulation is hereby APPROVED, and its terms are hereby ORDERED.

2. Following approval of this settlement agreement, and following the Court's entry of a restitution order, the United States Marshals Service shall remit proceeds from the sale of the following properties (less government costs), plus accrued interest, to the Court herein:

a. One (1) 2004 blue Lexus GX470, bearing Washington license plate 029RYB, VIN JTJBT20X940035115;

b. One (1) 2006 white Ford F150 pick-up, Washington license plate A68898Z, VIN 1FTRF12206NB15476;

c. One (1) 1981 Bell 206B-III helicopter bearing tail number N325JR and serial number 3296, and all flight logs and maintenance logs associated with this aircraft;

d. One (1) 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft;

e. One (1) 2003 Sea Ray Boat, Model 185BR, bearing license number WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore Land'r trailer, Washington license plate 0059RG, VIN 1MDJ2JR163A248710;

f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington; and,

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UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010110, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 11 of Tapps Island Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive, records of Pierce County, Washington.

3. Upon receipt of the above-referenced substitute *res* funds, the Clerk of the Court is directed to remit the funds to the victims named in the restitution order entered against Weldon Marc Gilbert, pursuant to the terms specified therein.

4. Following distribution of said substitute *res* funds to the Clerk of the Court, and following remittance of said funds to the victims named in the restitution order, Weldon Marc Gilbert shall receive credit against the outstanding restitution obligation owed by him, for the amount paid towards restitution and remittance to recipients pursuant to the restitution order.

5. No right, title, or interest in the properties, or proceeds realized from the sale of the properties, or the accrued interest, shall exist in Claimants Weldon Marc Gilbert, JP Morgan Chase, or Northwest Helicopters, Inc., or any person or entity who has failed to file a Claim to the properties.

DATED this 18th day of October, 2011.

BENJAMIN H. SETTLE
United States District Judge

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

Presented by:

s/ Richard E. Cohen
RICHARD E. COHEN
Assistant United States Attorney

s/ Roger S. Rogoff
ROGER S. ROGOFF
Assistant United States Attorney

s/ Michael Dion
MICHAEL DION
Assistant United States Attorney

s/ Anastasia D. Bartlett
ANASTASIA D. BARTLETT
Assistant United States Attorney

s/ Allen M. Ressler
ALLEN M. RESSLER
Attorney for Defendant/Claimant
Weldon Marc Gilbert

** Allen M. Ressler authorized electronic signature via e-mail.*

*s/ John H. Browne **
JOHN HENRY BROWNE
Attorney for Defendant/Claimant
Weldon Marc Gilbert

** John H. Browne authorized electronic signature via e-mail on October 11, 2011.*

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*s/ John J. Sinclair **
JOHN J. SINCLAIR
Attorney for Claimant
Northwest Helicopters, Inc.

** John J. Sinclair authorized electronic signature via e-mail on September 19, 2011.*

*s/ David A. Weibel **
DAVID A. WEIBEL
Attorney for Claimant
JP Morgan Chase

** David Weibel authorized electronic signature via e-mail on September 27, 2011.*

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THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-05732BHS MOTION FOR ORDER DIRECTING THE RETURN OF PRESENTENCING INVESTIGATION REPORT AND ORDER TO SHOW CAUSE

MOTION

COMES NOW the Defendant, Weldon Marc Gilbert, by and through his attorney, John Henry Browne, and moves this Court for an Order directing the Pierce County Sheriff Department and the Pierce County Prosecutor's Office to return any and all copies of the Presentence Investigation Report (PSR) to the undersigned judge within ten (10) days and to order the Government to show cause as to how this report was re-disclosed to Pierce County Officials without an order from the undersigned sentencing judge.

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Seattle, WA 98104-3414
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BACKGROUND

The Defendant entered a guilty plea with the court in the above entitled cause on April 23, 2009. Prior to the sentencing, the United States Probation Department conducted a presentence investigation and prepared a report exclusively for the sentencing judge. The first two pages of the preliminary report are attached. See Exhibit A, filed under seal.

As part of the plea agreement, the Defendant was to return to Pierce County and plead guilty to numerous crimes arising from the same or similar conduct as his Federal charges. The agreed State sentence was contemplated to be a concurrent, determinate sentence of no longer than 198 months. The Defendant subsequently was returned to Pierce County on November 18, 2009 and pled guilty to the State charges on November 20, 2009. However, during the sentencing hearing on January 12, 2010, the Defendant learned that the sentence to be imposed would not, in fact, be determinate and thus would be subject to the Indeterminate Sentencing Review Board's discretion as to when his State sentence was completed. The sentencing judge also indicated at that hearing that she had the authority to impose a sentence consecutive to the Defendant's Federal sentence, and was not in any way bound by the terms of the plea agreement. Because the Defendant was not advised of that during the change of plea hearing, he was allowed to withdraw his State plea of guilty.

The Defendant was re-arraigned in State Court on March 5, 2010 and has been held in the Pierce County Jail awaiting trial. The Defendant requested and the state court granted his motion to represent himself on the state charges.

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ARGUMENT

It is the policy of the Federal Judiciary and the Department of Justice that disclosure of the PSR is prohibited beyond the sentencing judge and the U.S. Bureau of Prisons. See Exhibit A. (Restrictions of Use for Redisclosure of Presentence Investigation Report).

The Defendant has recently learned that State authorities have been referring to and using information contained in the Federal PSR to assist in the prosecution of the Defendant on State charges. See Exhibit B, Affidavit of Defendant, Weldon Marc Gilbert. Excerpts from this report and its addendum have been included in State pleadings and thus filed in Court records available to the public. See Exhibit C, *State's Response to Defendant's Motion to Dismiss for Government Misconduct and Discovery Violations* on pages 2 and 3; and, Exhibit D, *State's Memorandum Opposing Defendant's Motion to Suppress* on page 6.

In addition, the State prosecutor has included excerpts of this report as exhibits in the hearing conducted on Defendant's Motion to Dismiss. See Exhibit E, Exhibit Record, Plaintiff Exhibits 24 and 26. Pierce County Sheriff's Department Detective Sgt. Teresa Berg testified on August 14, 2012 that she was familiar with the information in the report and affirmed the prosecutor's references to the information contained in the excerpts filed as exhibits. At a previous hearing, PCSD Det. Deborah Heishman also referred to the PSR in her testimony to the Court.

This Court has jurisdiction and authority under Fed. Crim. Pro. R. 32 to order the return of documents which were prepared for and belong to the Federal Judiciary. Further, the Court has jurisdiction and authority under Fed. Crim. Pro. R. 32 to order the Government to show cause, explaining the circumstances under which this confidential document was released to

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unauthorized parties, the extent of the improper disclosure, and why sanctions should not be imposed on the individuals responsible for causing the improper disclosure.

RESPECTFULLY SUBMITTED this 21st day of August, 2012.

s/John Henry Browne
JOHN HENRY BROWNE, WSBA #4677
Attorneys for Weldon Marc Gilbert
108 South Washington Street, Suite 200
Seattle, Washington 98104
206-388-0777 fax: 206-388-0780
Email: johnhenry@jhblawyer.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of August, 2012, I electronically filed Defendant Weldon Marc Gilbert's Motion for Order Directing the Return of Presentencing Investigation Report and Order to Show Cause with the clerk of the court using the CM/ECF system which will send notification of such filing to the attorneys of record. I hereby certify that I have served any other parties of record that are non-CM/ECF participants via Telefax/U.S. postal mail.

DATED this 22nd day of August, 2012.

s/Kathleen Martens

Kathleen Martens, Legal Assistant
JOHN HENRY BROWNE, WSBA #4677
Attorneys for Weldon Marc Gilbert
108 South Washington Street, Suite 200
Seattle, Washington 98104
206-388-0777 fax: 206-388-0780
Email: johnhenry@jhblawyer.com

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-05732BHS **AFFIDAVIT OF DEFENDANT, WELDON MARC GILBERT**

Weldon Marc Gilbert, first being duly sworn on oath, states:

1. I am the Defendant in the above entitled cause as well as in State of Washington v. Weldon Marc Gilbert, Pierce County cause No. 07-1-05618-3.
2. During July or August of 2009, I met with US Probation Officer Daniel Acker at the Federal Detention Center in Seatac, Washington to participate in an interview pursuant to the preparation of my Federal Presentence Investigation Report. Also, present at that meeting was my attorney, John Henry Browne.

3. Mr. Acker began the interview by stating that he was acting in the capacity of a neutral party to gather information from both the defense and prosecution as a liaison to the Court for sentencing purposes. Mr. Acker assured me that my statements would only be seen by Judge Settle, the sentencing judge, my attorneys, the prosecutors in my case, and the Bureau of Prisons for use during my classification. I was assured the report was otherwise confidential. I otherwise would not have chosen to participate.
4. I have since discovered that this report has been disseminated to Pierce County authorities for use in a subsequent prosecution by the State of Washington.
5. On several occasions over the course of the last six months, I have heard the prosecutor, DPA Patrick Hammond, PCSD Detective Sgt. Berg, and PCSD Detective Deborah Heishman refer to this report while addressing the Court or while testifying. I have also learned this PSR has been referenced in several court pleadings and excerpts taken from it have been inserted in these pleadings.
6. During the hearing on August 14, 2012, DPA Hammond offered, and the Court admitted, over my objection, two exhibits which were excerpts from this confidential report.
7. Because my candid and unguarded remarks to Mr. Acker have now been made public by Pierce County officials, I have been substantially prejudiced in my ability to prepare a meaningful defense and receive a fair trial.

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FURTHER THE AFFIANT SAYETH NAUGHT.

Dated this 21st day of August, 2012 in Tacoma, Washington.

Respectfully submitted,

Weldon Marc Gilbert

Weldon Marc Gilbert

I, Lea Sanders, Notary Public in and for the State of Washington, do hereby certify that on this 21st day of August, 2012, personally appeared before me, Weldon Marc Gilbert, to be known to be the individual described in and who executed the within instrument and acknowledged that Weldon Marc Gilbert electronically signed the same as his free and voluntary act and deed for the uses and purposes herein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 21st day of August, 2012

LEA SANDERS
Commission Expires
NOTARY
PUBLIC
02-15-2014
STATE OF WASHINGTON

Stamp/Seal

Notary Public in and for the State
Of Washington, residing at Tacoma, WA
My commission expires: 2/15/2014

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-05732BHS MOTION FOR ORDER DIRECTING THE RETURN OF PRESENTENCING INVESTIGATION REPORT AND ORDER TO SHOW CAUSE

MOTION

COMES NOW the Defendant, Weldon Marc Gilbert, by and through his attorney, John Henry Browne, and moves this Court for an Order directing the Pierce County Sheriff Department and the Pierce County Prosecutor's Office to return any and all copies of the Presentence Investigation Report (PSR) to the undersigned judge within ten (10) days and to order the Government to show cause as to how this report was re-disclosed to Pierce County Officials without an order from the undersigned sentencing judge.

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Seattle, WA 98104-3414
(206) 388-0777 FAX (206) 388-0780

BACKGROUND

The Defendant entered a guilty plea with the court in the above entitled cause on April 23, 2009. Prior to the sentencing, the United States Probation Department conducted a presentence investigation and prepared a report exclusively for the sentencing judge. The first two pages of the preliminary report are attached. See Exhibit A, filed under seal.

As part of the plea agreement, the Defendant was to return to Pierce County and plead guilty to numerous crimes arising from the same or similar conduct as his Federal charges. The agreed State sentence was contemplated to be a concurrent, determinate sentence of no longer than 198 months. The Defendant subsequently was returned to Pierce County on November 18, 2009 and pled guilty to the State charges on November 20, 2009. However, during the sentencing hearing on January 12, 2010, the Defendant learned that the sentence to be imposed would not, in fact, be determinate and thus would be subject to the Indeterminate Sentencing Review Board's discretion as to when his State sentence was completed. The sentencing judge also indicated at that hearing that she had the authority to impose a sentence consecutive to the Defendant's Federal sentence, and was not in any way bound by the terms of the plea agreement. Because the Defendant was not advised of that during the change of plea hearing, he was allowed to withdraw his State plea of guilty.

The Defendant was re-arraigned in State Court on March 5, 2010 and has been held in the Pierce County Jail awaiting trial. The Defendant requested and the state court granted his motion to represent himself on the state charges.

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ARGUMENT

It is the policy of the Federal Judiciary and the Department of Justice that disclosure of the PSR is prohibited beyond the sentencing judge and the U.S. Bureau of Prisons. See Exhibit A. (Restrictions of Use for Redisclosure of Presentence Investigation Report).

The Defendant has recently learned that State authorities have been referring to and using information contained in the Federal PSR to assist in the prosecution of the Defendant on State charges. See Exhibit B, Affidavit of Defendant, Weldon Marc Gilbert. Excerpts from this report and its addendum have been included in State pleadings and thus filed in Court records available to the public. See Exhibit C, *State's Response to Defendant's Motion to Dismiss for Government Misconduct and Discovery Violations* on pages 2 and 3; and, Exhibit D, *State's Memorandum Opposing Defendant's Motion to Suppress* on page 6.

In addition, the State prosecutor has included excerpts of this report as exhibits in the hearing conducted on Defendant's Motion to Dismiss. See Exhibit E, Exhibit Record, Plaintiff Exhibits 24 and 26. Pierce County Sheriff's Department Detective Sgt. Teresa Berg testified on August 14, 2012 that she was familiar with the information in the report and affirmed the prosecutor's references to the information contained in the excerpts filed as exhibits. At a previous hearing, PCSD Det. Deborah Heishman also referred to the PSR in her testimony to the Court.

This Court has jurisdiction and authority under Fed. Crim. Pro. R. 32 to order the return of documents which were prepared for and belong to the Federal Judiciary. Further, the Court has jurisdiction and authority under Fed. Crim. Pro. R. 32 to order the Government to show cause, explaining the circumstances under which this confidential document was released to

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unauthorized parties, the extent of the improper disclosure, and why sanctions should not be imposed on the individuals responsible for causing the improper disclosure.

RESPECTFULLY SUBMITTED this 21st day of August, 2012.

s/John Henry Browne
JOHN HENRY BROWNE, WSBA #4677
Attorneys for Weldon Marc Gilbert
108 South Washington Street, Suite 200
Seattle, Washington 98104
206-388-0777 fax: 206-388-0780
Email: johnhenry@jhblawyer.com

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-05732BHS **AFFIDAVIT OF DEFENDANT, WELDON MARC GILBERT**

Weldon Marc Gilbert, first being duly sworn on oath, states:

1. I am the Defendant in the above entitled cause as well as in State of Washington v. Weldon Marc Gilbert, Pierce County cause No. 07-1-05618-3.
2. During July or August of 2009, I met with US Probation Officer Daniel Acker at the Federal Detention Center in Seatac, Washington to participate in an interview pursuant to the preparation of my Federal Presentence Investigation Report. Also, present at that meeting was my attorney, John Henry Browne.

3. Mr. Acker began the interview by stating that he was acting in the capacity of a neutral party to gather information from both the defense and prosecution as a liaison to the Court for sentencing purposes. Mr. Acker assured me that my statements would only be seen by Judge Settle, the sentencing judge, my attorneys, the prosecutors in my case, and the Bureau of Prisons for use during my classification. I was assured the report was otherwise confidential. I otherwise would not have chosen to participate.
4. I have since discovered that this report has been disseminated to Pierce County authorities for use in a subsequent prosecution by the State of Washington.
5. On several occasions over the course of the last six months, I have heard the prosecutor, DPA Patrick Hammond, PCSD Detective Sgt. Berg, and PCSD Detective Deborah Heishman refer to this report while addressing the Court or while testifying. I have also learned this PSR has been referenced in several court pleadings and excerpts taken from it have been inserted in these pleadings.
6. During the hearing on August 14, 2012, DPA Hammond offered, and the Court admitted, over my objection, two exhibits which were excerpts from this confidential report.
7. Because my candid and unguarded remarks to Mr. Acker have now been made public by Pierce County officials, I have been substantially prejudiced in my ability to prepare a meaningful defense and receive a fair trial.

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FURTHER THE AFFIANT SAYETH NAUGHT.

Dated this 21st day of August, 2012 in Tacoma, Washington.

Respectfully submitted,

Weldon Marc Gilbert

Weldon Marc Gilbert

I, Lea Sanders, Notary Public in and for the State of Washington, do hereby certify that on this 21st day of August, 2012, personally appeared before me, Weldon Marc Gilbert, to be known to be the individual described in and who executed the within instrument and acknowledged that Weldon Marc Gilbert electronically signed the same as his free and voluntary act and deed for the uses and purposes herein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 21st day of August, 2012

LEA SANDERS
Commission Expires
NOTARY
PUBLIC
02-15-2014
STATE OF WASHINGTON

Stamp/Seal

Notary Public in and for the State
Of Washington, residing at Tacoma, WA
My commission expires: 2/15/2014

8/2/2012 18329 510205

07-1-05618-3 38948659 SRSP 08-01-12

FILED
DEPARTMENT 1
IN OPEN COURT
AUG 0 2012
Pierce County Clerk
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. WELDON MARC GILBERT, Defendant.	CAUSE NO. 07-1-05618-3 STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR GOVERNMENT MISCONDUCT AND DISCOVERY VIOLATIONS

ORIGINAL

Motion

COMES NOW the Plaintiff, State of Washington, by and through Deputy Prosecuting Attorney Patrick J. Hammond, and respectfully asks the Court to deny the defendant's Motion to Dismiss for Government Misconduct and Discovery Violations.

Argument

The defendant's argument rests primarily on a distorted rendition of the facts of this case. Fortunately, most of the defendant's factual assertions can either be refuted outright, or at the very least placed in context, by evidence that was already adduced during the Evidentiary Hearing the Court just concluded. Accordingly, in this brief, the State will simply address each factual allegation the defendant makes

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1. The Defendant alleges that State ignored its obligations under CrR 4.7(a) and *State v Boyd*, 160 Wn.2d 424, 158 P.3d 54 (2007); and (2) The defendant alleges that the State refused to provide copies of the video evidence that was seized from the defendant's home:

The Court may recall that from October, 2010, through May, 2011, the State repeatedly brought up the issue of how the defendant was going to be able to view the video evidence in this case, given his status as an inmate in the jail. The State did agree with the Court, on the record, that the jail seemed a poor venue for this operation. However, ultimately, the Court concluded that a poor option was its only one, and the initial procedure for review of discovery was established. It is difficult to characterize the State repeatedly raising the issue of access to the discovery, then helping to fashion a procedure through which the defendant could have access to materials, as "ignoring" the State's discovery obligations. A more fair characterization would be that the State struggled to work out a way in which it could comply with its discovery obligations.

3. The Defendant alleges that he could not conduct witness interviews before reviewing the video evidence seized from his home:

The Court may recall that the defendant's standby attorney testified that: (1) He always reviews all of the video evidence in a case such as this with his client prior to trial; and (2) He was ready to go to trial on this case in Federal Court, where the case settled on the eve of trial. The State has previously presented evidence to the Court that Federal prosecutors stated on the record in Federal Court that they had provided all of the evidence in this case to the defense. Indeed, the Federal Presentencing Investigation includes objections by the defendant to the characterizations of the video evidence, as well as responses from the Probation Officer[1]. It

[1] For example, the defendant asserted that "70%" of the scenes depicting R.K. were scenes of R.K. spanking the defendant. The Probation Officer responded that there were 55 scenes in which the defendant spanked R.K. and 64 where R.K. spanked the defendant, and further noted nine scenes involving anal or oral sex with R.K. The

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8/6/2012 18374 08136

07-1-05618-3 38867560 MMPA 08-06-12

FILED
DEPARTMENT 17
IN OPEN COURT
AUG 03 2012
PIERCE COUNTY, Clerk
By ____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs WELDON MARC GILBERT, Defendant.	CAUSE NO. 07-1-05618-3 STATE'S MEMORANDUM OPPOSING DEFENDANT'S MOTION TO SUPPRESS

ORIGINAL

Motion

COMES NOW the Plaintiff, State of Washington, by and through Deputy Prosecuting Attorney Patrick J. Hammond, and respectfully asks the Court to deny the defendant's Motion to Suppress Evidence he alleges was obtained illegally. The State rests on the authorities and arguments below.

Background

After Pierce County Sheriff's Detectives served a search warrant at the defendant's home on October 31, 2007, the defendant was transported from Atlanta. Following an arraignment in State Court, the defendant was taken into custody by Federal agents, and remained in Federal custody until his Federal case resolved. During the first few months the defendant's case was pending in Federal Court, Pierce County Detectives continued to be a part of the investigation, reviewing seized tapes, and interviewing witnesses and victims, sometimes with Federal Agents present. Also during that time, R.K. was interviewed with his attorney and Federal Agents

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fabrications, goes so far beyond the pale that even a defense attorney with a zealous obligation to represent a criminal defendant would hesitate to put it in writing, lest RPC 3.3 be invoked. Ironically, in his attack on the credibility of Detective Berg, the defendant underscores his own lack of candor.

The defendant repeats his protest of how Detective Berg describes the scenes depicted in the VHS tape that R.K. turned over to the detectives during his first meeting with them. This echoes not only his argument in the first CrR 3.6 hearing in this case, but also objections he made during his Federal case, when he claimed the video did not depict E.K squirming and crying. In that case, the Federal Probation Officer responded in this way.

> We acknowledged that [E.K.] began laughing when the defendant first began spanking him. However, the defendant then began spanking [E.K.] harder and faster and [E.K.] began to squirm and cry. [E.K.] also attempted to block the spankings with his arm and the defendant repeatedly told him to put his arm down. This was not a light and playful spanking."[2]

It is understood that the Court has viewed this video, and did not perceive some details in the same way that Detective Berg described them. However, ultimately the Court found that:

> "Detective Berg's affidavit states that the video shows defendant touching, rubbing, or pinching the genitals of the boys in the video. A view of the video does not show such activity with any clarity. Although the court disagreed with Detective Berg's description of a portion of the VHS video referred to in her complaint for the search warrant, any potential inaccuracy in the description of the video was not done with reckless disregard for the truth."[3]

These findings do not indicate any deliberate misrepresentation on Detective Berg's part. It simply reflects the fact that people watching the same video can perceive certain actions within that video in different ways. The fact that everyone else in the world would not choose the same

[2] Addendum to Presentence Report, United States v. Weldon Marc Gilbert, Docket No. CR07-5732BHS-001, page 2.
[3] Court's Findings of Fact & Conclusions of Law [as to the first CrR 3.6 Hearing], page 3, filed July 26, 2011.

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Judge Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WELDON MARC GILBERT, Defendant.	NO. CR07-5732BHS GOVERNMENT'S STATUS REPORT REGARDING RETRIEVAL OF COPIES OF PSR

The United States of America, by and through Jenny A. Durkan, United States Attorney, and Roger Rogoff and Michael Dion, Assistant United States Attorneys, submits this report on the Government's progress in tracking down and retrieving copies of the Presentence Report ("PSR") that were distributed to state officials, pursuant to this Court's September 18, 2012, Order (docket no. 355).

The Government has worked directly with Pierce County Prosecutor's Office ("PCPO") to obtain all improperly disclosed copies of the PSR. The PCPO forwarded the Government an initial packet, containing some full or partial copies of the PSR, that the Government delivered to Kalen Thomas at the United States Probation Office. The PCPO has done additional searches of its files, which have yielded further complete or partial copies. The PCPO has also worked with the Pierce County Sheriff's Office, and has obtained complete or partial copies that were in the possession of the Sheriff's Office. The PCPO is forwarding all of these copies to the Government, which will deliver them

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SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

to Probation.

The PCPO reported that the Washington State Department of Corrections ("DOC") has no file on this case (probably because Gilbert withdrew his plea and did not go to sentencing in state court), and thus any copies that the DOC might have had are destroyed or otherwise irretrievable.

SUBMITTED this 2nd day of October, 2012.

Respectfully submitted,

JENNY A. DURKAN
UNITED STATES ATTORNEY

s/ Roger S. Rogoff
ROGER S. ROGOFF, WSBA #23362
Assistant United States Attorney

s/Michael Dion
MICHAEL DION
Assistant United States Attorney

United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

UNITED STATES ATTORNEY
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SEATTLE, WASHINGTON 98101-1271
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November 01 2007 3:57 PM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. WELDON MARC GILBERT, Defendant.	CAUSE NO. 07-1-05618-3 INFORMATION

DOB:	SEX : MALE	RACE: WHITE
PCN#:	SID#: UNKNOWN	DOL#: UNKNOWN

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least

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36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT III

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT IV

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

COUNT V

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That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT VI

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 48 months older than E.L.K., engage in sexual intercourse with E.L.K., who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

COUNT VII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of October, 2007, did unlawfully and feloniously, being at least 36 months older than E.L.K., have sexual contact with E.L.K., who is at least 12 years old but less than 14 years old, and not married to the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT VIII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

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That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause E.L.K., a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT IX

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 2nd day of November, 2004 and the 14th day of March, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause E.L.K., a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

DATED this 1st day of November, 2007.

PIERCE COUNTY SHERIFF
WA02700

GERALD A. HORNE
Pierce County Prosecuting Attorney

mer

By: /s/ MARY E. ROBNETT
MARY E. ROBNETT
Deputy Prosecuting Attorney
WSB#: 21129

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KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. WELDON MARC GILBERT, Defendant.	CAUSE NO. 07-1-05618-3 DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

MARY E. ROBNETT, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the PIERCE COUNTY SHERIFF, incident number 073030751;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the period between the 14th day of March, 2001 and the 29th day of October, 2007, the defendant, WELDON MARC GILBERT, did commit the crimes of **Rape of a Child in the Second Degree, Child Molestation in the Second Degree, Rape of a Child in the Third Degree, and Sexual Exploitation of a Child.**

Pierce County Sheriff's Detective Berg reports that on October 30, 2007, she was contacted by two adult men who wanted to report that their younger brothers were being sexually molested by the defendant, Weldon Marc Gilbert. The brothers identified their younger brothers as R.L.K. born 03-14-89 and E.L.K. born 11-04-94.

Detective Berg reports that she contacted R.L.K. and he reported the following: he met the defendant when he was 12 year old shortly after his father died. R.L.K. often went to the defendant's home and he also went on trips with the defendant to Hong Kong, Thailand and Europe. The defendant would frequently spank R.L.K. with his hand or an assortment of paddles while R.L.K. was naked. R.L.K. reported that he would have welts, bruises and cuts from the spankings. The defendant would also have R.L.K. spank the defendant. The defendant would also touch R.L.K., on the buttocks and genitals, they would mutually masturbate and the defendant would perform oral sex on R.L.K. R.L.K. reported the events happened regularly and frequently. R.L.K. reports that he eventually found out that the defendant would sometimes video tape the spanking and R.L.K. discovered that the defendant had numerous tapes of himself spanking R.L.K. and others. The defendant would often pay R.L.K. for the spankings, R.L.K. had been living with the defendant for the past several months and the last incident occurred on October 28, 2007. R.L.K. said the defendant had been showing some interest in his 12 year old brother, and R.L.K. told the defendant to stay away from E.L.K. However, R.L.K.'s older brother unknowingly brought E.L.K. to the defendant's house on October 29th and E.L.K. thereafter reported that the defendant had spanked him and videotaped him. R.L.K. provided the Detective Berg with a video tape of the defendant spanking him and the second half of the tape depicts the defendant spanking E.L.K.

Detective Berg reports that she has reviewed the tape and it includes images of the defendant spanking R.L.K. and touching and rubbing and pinching his buttocks and genitals. Detective berg reports

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the tape also depicts the defendant spanking E.L.K. and touching and rubbing E.L.K.'s buttocks and genitals.

Detective Berg reports that on October 31, 2007 she and other detectives executed a search warrant at the defendant's residence. The detectives seized numerous video tapes, DVDs, CDs, floppy discs, assorted sex toys, numerous paddles, several cameras, a tripod, paddles, blindfolds, ropes, spanking devices, bondage implements, computers and two handguns.

R.L.K. reported that he had taken the defendant to the airport and that the defendant was traveling to Atlanta. R.L.K. reported the defendant is due back Saturday, November 3rd. Detective Berg reports that she has been able to determine that the defendant works for UPS as a pilot and he is currently staying in Atlanta for job related training.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: November 1, 2007
PLACE: TACOMA, WA

/s/ MARY E. ROBNETT
MARY E. ROBNETT, WSB# 21129

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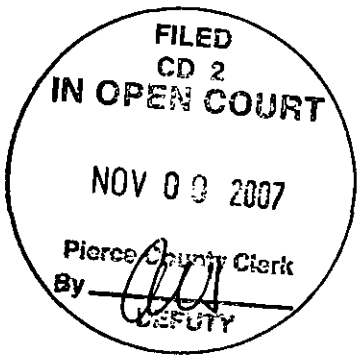

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. WELDON MARC GILBERT, Defendant.	CAUSE NO. 07-1-05618-3 **CORRECTED INFORMATION** (AS TO DEFENDANT'S DATE OF BIRTH AND COUNT V)

DOB: 8/26/1960 SEX : MALE RACE: WHITE
PCN#: SID#: UNKNOWN DOL#: UNKNOWN

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

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That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT III

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

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COUNT IV

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 48 months older than R.L.K., engage in sexual intercourse with RL.K., who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

COUNT V

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

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and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

COUNT VI

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 48 months older than E.L.K., engage in sexual intercourse with E.L.K., who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

COUNT VII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of October, 2007, did unlawfully and feloniously, being at least 36 months older than E.L.K., have sexual contact with E.L.K., who is at least 12 years old but less than 14 years old, and not married to the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT VIII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

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and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause E.L.K., a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT IX

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 2nd day of November, 2004 and the 14th day of March, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause E.L.K., a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

DATED this 9th day of November, 2007.

PIERCE COUNTY SHERIFF
WA02700

GERALD A. HORNE
Pierce County Prosecuting Attorney

bs

By: _____
MARY E. ROBNETT
Deputy Prosecuting Attorney
WSB#: 21129

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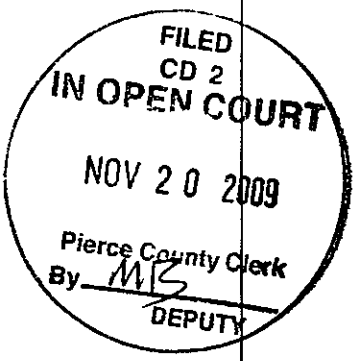

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. WELDON MARC GILBERT, Defendant.	NOV 23 2009 CAUSE NO. 07-1-05618-3 AMENDED INFORMATION

DOB: 8/26/1960 SEX : MALE RACE: WHITE
PCN#: SID#: 24227529 DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K., have sexual contact with R.L.K., who is less than 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.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously, being at least

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36 months older than E.L.K., have sexual contact with E.L.K., who is less than 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.

COUNT III

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause S.C., A.H. and A.Y., minors, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT IV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause D.R., B.M., C.M., L.C., Z.R. and J.R., minors, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT V

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

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That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause V.Z., S.P., I.C., R.M. and O.P., minors, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT VI

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause K.B., V.P., N.H. and B.Y., minors, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT VII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause B.M., V.C., Y.K., and I.C., minors to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT VIII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

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and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause D.D., T.M., A.M., B.V. and D.H., minors to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT IX

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause R.L.K., a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT X

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause C.F., a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT XI

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the

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same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause N.W., a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

DATED this 20th day of November, 2009.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

tmc

By: _____
PATRICK HAMMOND
Deputy Prosecuting Attorney
WSB#: 23090

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

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs WELDON MARC GILBERT, Defendant.	CAUSE NO 07-1-05618-3 SECOND AMENDED INFORMATION

DOB: 8/26/1960 SEX MALE RACE: WHITE
PCN#: 539961888 SID#: 24227529 DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R K , have sexual contact with R.K., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least

ORIGINAL

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36 months older than R.K., have sexual contact with R.K., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT III

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.K., have sexual contact with R K., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT IV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 48 months older than R.K., have sexual contact with R.K., who is at least 14 years old but less than 16 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington

COUNT V

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows·

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That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 48 months older than R.K., have sexual contact with R.K., who is at least 14 years old but less than 16 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington.

COUNT VI

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least 48 months older than R.K , have sexual contact with R.K., who is at least 14 years old but less than 16 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington.

COUNT VII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of October, 2007, did unlawfully and feloniously, being at least 36 months older than E.K., have sexual contact with E.K., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44 086, and against the peace and dignity of the State of Washington

COUNT VIII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single

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scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 6th day of April, 2007 and the 1st day of October, 2007, did unlawfully and feloniously, being at least 36 months older than C.F., have sexual contact with C.F., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT IX

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 6th day of April, 2007 and the 1st day of October, 2007, did unlawfully and feloniously, being at least 36 months older than C.F., have sexual contact with C.F., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT X

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 11th day of May, 2003 and the 10th day of May, 2005, did unlawfully and feloniously, being at least 48 months older than V.Z., have sexual contact with V.Z., who is at least 14 years old but less than 16 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington.

COUNT XI

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime

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based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 20th day of March, 2004 and the 19th day of March, 2005, did unlawfully and feloniously, being at least 36 months older than S.P., have sexual contact with S.P., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington

COUNT XII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 12th day of November, 2004 and the 11th day of November, 2006, did unlawfully and feloniously, being at least 36 months older than T.M., have sexual contact with T.M., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT XIII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 12th day of November, 2004 and the 11th day of November, 2006, did unlawfully and feloniously, being at least 36 months older than T.M., have sexual contact with T M., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT XIV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD

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MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, on or about the 30th day of October, 2007, did unlawfully and feloniously, being at least 48 months older than I.C., have sexual contact with I.C , who is at least 14 years old but less than 16 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A 44 089, and against the peace and dignity of the State of Washington.

DATED this 5th day of November, 2012.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

mac

By: _____
PATRICK HAMMOND
Deputy Prosecuting Attorney
WSB#: 23090

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Tacoma, WA 98402-2171
Main Office (253) 798-7400

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. WELDON MARC GILBERT, Defendant	CAUSE NO 07-1-05618-3 WARRANT OF COMMITMENT 1) ☐ County Jail 2) ☐ Dept. of Corrections 3) ☒ Other Custody (United States Marshal's Service) (to serve federal time.)

NOV - 5 2013

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

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

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

[ ] 2 YOU, THE DIRECTOR ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

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

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Telephone: (253) 798-7400

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

Dated: November 6, 2012

By direction of the Honorable

JUDGE

KEVIN STOCK KATHERINE M. STOLZ

CLERK

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

NOV - 6 2012 Deputy

SEAL OF THE SUPERIOR COURT OF PIERCE COUNTY WASHINGTON

STATE OF WASHINGTON

ss.

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____.

KEVIN STOCK, Clerk

By:_____ Deputy

mac

FILED DEPT. 2 IN OPEN COURT NOV - 6 2012 Pierce County Clerk By DEPUTY

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

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

FILED DEPT. 2 IN OPEN COURT NOV - 6 2012 Pierce County Clerk By DEPUTY

NOV - 6 2013

STATE OF WASHINGTON, Plaintiff,	CAUSE NO 07-1-05618-3
vs.	**AS TO COUNTS I THROUGH XIV ONLY**
WELDON MARC GILBERT Defendant.	JUDGMENT AND SENTENCE (FJS)
SID. 24227529	[X] Prison
DOB: 08/26/1960	[ ] RCW 9.94A.712\9.94A.507 Prison Confinement
	[ ] Jail One Year or Less
	[ ] First-Time Offender
	[ ] Special Sexual Offender Sentencing Alternative
	[ ] Special Drug Offender Sentencing Alternative
	[ ] Alternative to Confinement (ATC)
	[ ] Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
	[ ]Juvenile Decline [ ]Mandatory [ ]Discretionary

I. HEARING

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

II. FINDINGS

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

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 11-6-12 (November 6, 2012) by [X] plea [ ] jury-verdict [ ] bench trial of

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	CHILD MOLEST 2 (I40)	9A.44.086		03/14/01-03/13/03	PCSD 073030751
II	CHILD MOLEST 2 (I40)	9A.44.086		03/14/01-03/13/03	PCSD 073030751
III	CHILD MOLEST 2 (I40)	9A.44.086		03/14/01-03/13/03	PCSD 073030751
IV	CHILD MOLEST 3 (I41)	9A.44.089		03/14/03-03/13/05	PCSD 073030751

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12-9-11958-0

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
V	CHILD MOLEST 3 (I41)	9A.44.089		03/14/03-03/13/05	PCSD 073030751
VI	CHILD MOLEST 3 (I41)	9A.44.089		03/14/03-03/13/05	PCSD 073030751
VII	CHILD MOLEST 2 (I40)	9A.44.086		10/27/07	PCSD 073030751
VIII	CHILD MOLEST 2 (I40)	9A.44.086		04/06/07-10/01/07	PCSD 073030751
IX	CHILD MOLEST 2 (I40)	9A.44.086		04/06/07-10/01/07	PCSD 073030751
X	CHILD MOLEST 3 (I41)	9A.44.089		05/11/03-05/10/05	PCSD 073030751
XI	CHILD MOLEST 2 (I40)	9A.44.086		03/20/04-03/19/05	PCSD 073030751
XII	CHILD MOLEST 2 (I40)	9A.44.086		11/12/04-11/11/06	PCSD 073030751
XIII	CHILD MOLEST 2 (I40)	9A.44.086		11/12/04-11/11/06	PCSD 073030751
XIV	CHILD MOLEST 3 (I41)	9A.44.089		10/30/07	PCSD 073030751

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

as charged in the SECOND AMENDED Information

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589)

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY (RCW 9.94A.525):**

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	SEXUAL EXPLOITATION OF CHILD IN PROD OF CHILD PORN **29 COUNTS**	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	
2	TRANPORT OF MINOR TO ENGAGE IN SEXUAL ACTIVITY	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	
3	TRANPORT OF MINOR TO ENGAGE IN SEXUAL ACTIVITY	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	
4	OBSTRUCTION OF JUSTICE	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	

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5	OBSTRUCTION OF JUSTICE	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	
6	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
7	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
8	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
9	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
10	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
11	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
12	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
13	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
14	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
15	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
16	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
17	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
18	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525).

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[X] The following prior convictions 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
I	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
II	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
III	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
IV	9+	V	60 MONTHS		60 MONTHS	5YR/10K
V	9+	V	60 MONTHS		60 MONTHS	5YR/10K
VI	9+	V	60 MONTHS		60 MONTHS	5YR/10K
VII	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
VIII	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
IX	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
X	9+	V	60 MONTHS		60 MONTHS	5YR/10K
XI	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
XII	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
XIII	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
XIV	9+	V	60 MONTHS		60 MONTHS	5YR/10K

2 4 [ ] **EXCEPTIONAL SENTENCE** Substantial and compelling reasons exist which justify an exceptional sentence

[ ] within [ ] below the standard range for Count(s) _____

[ ] above the standard range for Count(s) _____

[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act

[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury by special interrogatory

Findings of fact and conclusions of law are attached in Appendix 2 4 [ ] Jury's special interrogatory is attached. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2 5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9 94A 753

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9 94A 753):

_____

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate

_____

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

III. JUDGMENT

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

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

_____

IV. SENTENCE AND ORDER

IT IS ORDERED

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

JASS CODE

RTN/RJN $_____ Restitution to _____

$_____ Restitution to _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office)

PCV $ 500.00 Crime Victim assessment

DNA $ 100.00 DNA Database Fee

PUB $_____ Court-Appointed Attorney Fees and Defense Costs

FRC $ 200.00 Criminal Filing Fee

FCM $_____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$_____ Other Costs for _____

$_____ Other Costs for _____

$ 800.00 TOTAL

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

[ ] shall be set by the prosecutor.

[ ] is scheduled for _____.

[ ] **RESTITUTION** Order Attached

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

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

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

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

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

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

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

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

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

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

4.3 **NO CONTACT**

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

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

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

Appendix "F" per United States Probation and Parole

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4.4a [ ] All property is hereby forfeited

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

4.4b **BOND IS HEREBY EXONERATED**

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

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

~~I, II, III~~ 116 months on Counts I, II, III — 60 months on Count IV, V, VI

116 months on Count VII and VIII — 60 months on Count X

116 months on Count IX, XI, XII, XIII — 60 months on Count XIV

Actual number of months of total confinement ordered is 116 Months

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

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

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Counts to run concurrent to one another, but consecutive to Federal cause number CR07-5732BHS.

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

Confinement shall commence immediately unless otherwise set forth here: Defendant to be remanded to the United States Marshal's Service for service of Federal sentence prior to commencing consecutive sentence under this cause number.

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

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

Count _____ for _____ months.

Count _____ for _____ months.

Count _____ for _____ months.

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

(A) The defendant shall be on community custody for the longer of to be supervised for a period of 4 months Community Custody by U.S. Probation and Parole.

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

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

Count(s) ~~I, II, III, VII, VIII, IX~~ 4 months for Serious Violent Offenses
~~XI, XII, XIII~~

Count(s) _____ 18 months for Violent Offenses

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

(B) While on community placement or community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed, (2) work at DOC-approved education, employment and/or community restitution (service), (3) notify DOC of any change in defendant's address or employment, (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition, (7) pay supervision fees as determined by DOC, (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court. (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence Violation of community custody imposed for a sex offense may result in additional confinement.

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

[ ] consume no alcohol

[X] have no contact with minor children.

[ ] remain [ ] within [ ] outside of a specified geographical boundary, to wit _____

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

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

[ ] undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse

[ ] mental health [ ] anger management and fully comply with all recommended treatment.

[ ] comply with the following crime-related prohibitions: _____

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[ ] Other conditions

_____

_____

_____

[ ] For sentences imposed under RCW 9 94A 702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment If any court orders mental health or chemical dependency treatment the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision RCW 9 94A 562

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

4 7 [ ] **WORK ETHIC CAMP** RCW 9 94A 690, RCW 72 09 410 The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement The conditions of community custody are stated above in Section 4.6.

4 8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10 66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

_____

_____

_____

_____

V. NOTICES AND SIGNATURES

5 1 **COLLATERAL ATTACK ON JUDGMENT** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10 73 100 RCW 10 73.090.

5 2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000 the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime RCW 9 94A 760 and RCW 9 94A 505 The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations RCW 9 94A 760(4) and RCW 9 94A 753(4)

5 3 **NOTICE OF INCOME-WITHHOLDING ACTION** If the court has not ordered an immediate notice of payroll deduction in Section 4 1, you are notified that the Department of Corrections or the clerk of the

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court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING**

[ ] Defendant waives any right to be present at any restitution hearing (sign initials) _____

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

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

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

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

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

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

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

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your

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residence of your intent to attend the institution within three (3) business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three (3) business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three (3) business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72 40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school You must notify the sheriff within three (3) business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register Registration must occur within three (3) business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody Within three (3) business days after losing your fixed residence, you must provide signed written notice to the sheriff of the county where you last registered If you enter a different county and stay there for more than 24 hours, you will be required to register in the new countywithin three (3) business days after entering the new county You must also report weekly in person to the sheriff of the county where you are registered The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4 24 550

7. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three (3) business days of the entry of the order RCW 9A 44 130(7).

[X] The defendant is a sex offender subject to indeterminate sentencing under RCW 9 94A 712.

5 8 [ ] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license RCW 46.20.285.

5 9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9 94A 562

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5.10 OTHER

DONE in Open Court and in the presence of the defendant this date November 6, 2012

JUDGE

Print name Katherine Stolz

Deputy Prosecuting Attorney

Print name. Tim Lewis

WSB # 33767

Attorney for Defendant Ann Stenberg Standby

Print name Ann Stenberg

WSB # 22596

Defendant

Print name: Weldon Marc Gilbert

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

Defendant's signature:

FILED
DEPT. 2
IN OPEN COURT
NOV - 6 2012
Pierce County Clerk
By DEPUTY

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case 07-1-05618-3

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

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

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

IDENTIFICATION OF COURT REPORTER

KIMBERLY A. O'NEILL

Court Reporter

Office of Prosecuting Attorney
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Telephone: (253) 798-7400

APPENDIX "F"

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

X sex offense
____ serious violent offense
____ assault in the second degree
____ any crime where the defendant or an accomplice was armed with a deadly weapon
____ any felony under 69 50 and 69 52

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

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

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

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

The offender shall pay community placement fees as determined by DOC

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

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

The Court may also order any of the following special conditions

____ (I) The offender shall remain within, or outside of, a specified geographical boundary: ____

____ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals minor children

____ (III) The offender shall participate in crime-related treatment or counseling services.

____ (IV) The offender shall not consume alcohol.

____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or

____ (VI) The offender shall comply with any crime-related prohibitions.

____ (VII) Other ____

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IDENTIFICATION OF DEFENDANT

SID No 24227529 Date of Birth 08/26/1960
(If no SID take fingerprint card for State Patrol)

FBI No 37895VC1 Local ID No UNKNOWN

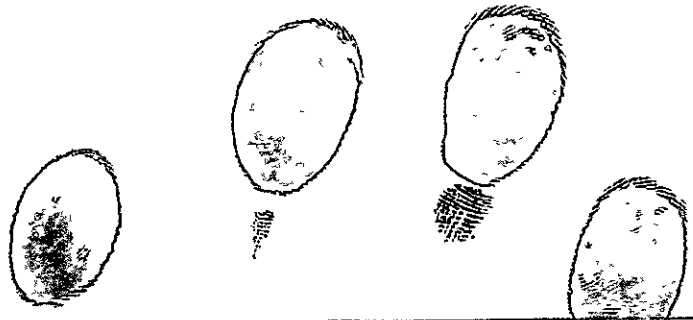
PCN No 539961888 Other

Alias name, SSN, DOB: _____

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

FINGERPRINTS

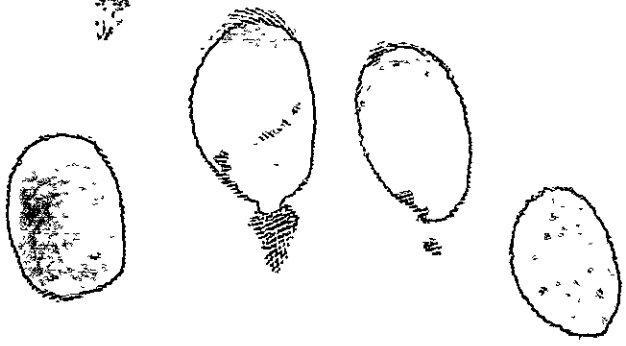
Left four fingers taken simultaneously



Left Thumb

Right Thumb

Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto Clerk of the Court, Deputy Clerk, L. Simpson Dated 11/6/12

DEFENDANT'S SIGNATURE _____

DEFENDANT'S ADDRESS _____

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Tacoma, Washington 98402-2171
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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. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence or your employment by the institution within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence. Even if you do not have a fixed residence, you are required to register. Registration must occur within three 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 than24 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.

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

Date: 11·6·2012

Defendant

Attorney for Defendant #22596

Standby

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

Case Name State v. Gilbert Cause No. 07-1-05618-3

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

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in Laws of 2010, ch. 267 § 1, 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 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 the state of Washington where you will be residing.

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 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.

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 person, 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

KWS

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

STATE OF WASHINGTON, Plaintiff,	)	No. 07-1-05618-3
vs.	)	
WELDON MARC GILBERT, Defendant.	)	

VERBATIM TRANSCRIPT OF PROCEEDINGS

Tuesday, November 6, 2012
Before The Honorable Katherine M. Stolz
Pierce County Courthouse
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

For the Plaintiff: PATRICK HAMMOND
TIM LEWIS
Deputy Prosecuting Attorneys

For the Defendant: WELDON MARC GILBERT
Pro Se

Also Present: ANN STENBERG
Standby Counsel

Reported by: Kimberly A. O'Neill, CCR
License No. 1954

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1 BE IT REMEMBERED that on Tuesday, the 6th
2 day of November, 2012, the above-captioned cause came on
3 duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: All right. I understand we
13 have a question regarding the media order?
14 WOMAN IN GALLERY: Yes, Your Honor.
15 MR. WHITTENBERG: Yes, Your Honor.
16 THE COURT: Okay. One at a time.
17 MR. WHITTENBERG: We were just wondering:
18 The order states that we can't photograph the witnesses. We
19 were wondering if it's allowed to get audio from the
20 witnesses, if possible, and whether or not we could shoot
21 them from the shoulders down.
22 THE COURT: The State?
23 MR. HAMMOND: Well, Your Honor, I think we
24 should probably inquire of each witness what they are
25 comfortable with and then make a decision after we've heard

1 from them if that's acceptable.

2 MR. WHITTENBERG: That's fair.

3 MR. HAMMOND: Okay.

4 THE COURT: That seems to be, I think, the

5 most appropriate. It's their comfort level I'm concerned

6 with and no one else's. All right. Mr. Hammond?

7 MR. HAMMOND: Good morning, Your Honor.

8 For the record, Patrick Hammond representing the State of

9 Washington. The State, obviously, is prepared to proceed at

10 this time with trial and with opening statements. However,

11 as the Court is aware, yesterday afternoon there were some

12 discussions of a potential plea agreement. Mr. Lewis was

13 the individual who handled most of those conversations; so

14 at this time, I'm going to defer to Mr. Lewis.

15 THE COURT: Mr. Lewis?

16 MR. LEWIS: Thank you, Your Honor. Good

17 morning. Tim Lewis appearing on behalf of the State. Your

18 Honor, the parties have prepared or entered into a plea

19 agreement pursuant to 9.94A.421. The State handed, or

20 provided, the Court with a copy of that plea agreement

21 between the State of Washington and the defendant in this

22 matter, Weldon Marc Gilbert, I believe earlier this morning,

23 for the Court to review.

24 Your Honor, we are asking the Court, pursuant to

25 9.94A.431, to review that proposed plea agreement and to

1 comment on the plea agreement as outlined by the statute in
2 determining whether or not it's consistent with the interest
3 of justice and the prosecuting standards. I think once the
4 Court has made a finding regarding that, depending on the
5 Court's finding, it is the understanding of the State that
6 Mr. Gilbert would like to proceed with -- by way of a plea
7 of guilty to a second amended information.
8 THE COURT: Well, the second amended
9 information drops these charges down to child molestation in
10 the second degree and child molestation in the third degree.
11 The original plea agreement that Mr. Gilbert entered into,
12 and later withdrew, was child molestation in the first
13 degree and child molestation in the second degree. There is
14 a significant difference in those; and the Court has to
15 admit, the Court is somewhat hesitant to accept a second
16 amended information. It's the Court's inclination that if
17 he's going to plead guilty, he pleads guilty to the first
18 amended information which was filed and which he signified
19 he was willing to plea to and then later on withdrew his
20 plea. That carries a maximum penalty on the child
21 molestation in the first degree of 198 months as the top end
22 of the standard range. These are indeterminate sentencing.
23 I'm not certain why, at this time, we would be dropping it
24 down to child molestation in the second degree and child
25 molestation in the third degree given the severity of the

1 charges, the number of the charges, and the actions which --
2 the factual pattern which underlies these charges; so if
3 he's going to plead guilty, it's to the first amended
4 information.
5 MR. LEWIS: Your Honor, may I address that
6 briefly?
7 THE COURT: You may.
8 MR. LEWIS: The terms of the underlying
9 global plea agreement, and that's what this was part of, was
10 a plea agreement that was reached between Mr. Gilbert and
11 the United States Attorney's Office, as well as our office.
12 The Court referenced a moment ago that the plea agreement
13 was for two counts of child molestation in the first degree
14 which would be indeterminate sentencing. That was never
15 part of the original plea, Your Honor. The original plea
16 agreement always contemplated, and our office was obligated
17 under that plea agreement, to amend the charge of child
18 molestation in the first degree to reflect offense dates
19 which predated the imposition of indeterminate sentencing,
20 specifically September 5, 2001. It was always contemplated
21 by the parties and agreed upon by the parties that the
22 offenses to which Mr. Gilbert would be pleading in state
23 court would be determinate offenses, not indeterminate
24 offenses.
25 Secondly, Your Honor, I think I'd be remiss if I did not

1 impress upon the Court that while the Court is correct,
2 originally Mr. Gilbert agreed to enter a series of pleas to
3 other offenses that are before the Court today, the State
4 has some concerns about some of the offenses that were
5 originally negotiated in that initial amended information.
6 We believe we have addressed those concerns with the
7 proposed second amended information.
8 Additionally, Your Honor, the primary aim of the State
9 this morning in asking the Court to accept filing of the
10 second amended information does not ignore that there is a
11 reduction in charges; there certainly is. However, we do
12 believe that the charges to which the defendant is prepared
13 to plead guilty does adequately describe and cover his
14 criminal conduct. Further review of the case, and during
15 some of which included interviews of victims who, at this
16 point in time, were not sure of their specific ages at the
17 time that these acts were committed, raised questions about
18 some of the original charges in the initial first amended
19 information that the Court has referred to and whether or
20 not the State can proceed on these charges.
21 Finally and probably most importantly, Your Honor, the
22 State is asking the Court to consider filing the second
23 amended information because, as is stipulated to in the plea
24 agreement between Mr. Gilbert and the State, it is in
25 conformity with the section 14 of the federal plea

1 agreement, the interdependency, which the Court will note
2 states in the very first paragraph that the parties agree
3 that this plea agreement shall be conditioned upon the
4 defendant entering a plea in Pierce County Superior Court in
5 the State of Washington vs. Marc Weldon -- or Weldon Marc
6 Gilbert, Cause No. 07-1-05618-3, that, coupled with the
7 concern on the part of the victims in this case who, more
8 than anything else, want the 25-year sentence that Judge
9 Settle imposed in the federal case to remain intact so that
10 they are not necessarily required to go through this
11 prosecution in the event that this matter proceeded to trial
12 which would, quite possibly, void the federal plea and
13 sentence subjecting the victims to a second prosecution
14 where, again, Your Honor, frankly, we're talking about
15 individuals who, at the time, were young men who are, now,
16 grown adults; and I think I'm fair in stating that a number
17 of these young men, with whom I've had personal contact, are
18 almost uniform in their support of this plea agreement and
19 also in their reluctance to participate in a state
20 prosecution or a federal prosecution. The underlying desire
21 of the victims in this case is that Mr. Gilbert be allowed
22 to plea pursuant to this plea agreement that has been
23 proffered this morning which is consistent with his federal
24 plea agreement and that Mr. Gilbert be remanded to the
25 United States Bureau of Prisons to begin service of a

1 25-year federal prison sentence. Thank you.
2 THE COURT: Well, this plea agreement was
3 struck in April of 2009, and we are now here at November of
4 2012.
5 MR. LEWIS: Yes, Your Honor.
6 THE COURT: Mr. Gilbert has been well able
7 to go back to the plea agreement any time in the last three
8 years. He's been sitting over in the Pierce County Jail at
9 the County expense, you know, knowing presumably that when
10 it came to crunch time, he was going to get cold feet once
11 he saw the whites of the jury's eyeballs and didn't want to
12 go to trial. I understand the concern for the victims.
13 Mr. Gilbert, is there anything you wish to say regarding
14 this?
15 MR. GILBERT: Well, the only thing I would
16 say, Your Honor, is: It isn't -- it isn't a matter of
17 seeing the whites of the jury's eyes as much as it is the
18 realization that I've caused so much pain to these
19 individuals as it is. I cannot drag them through the trial.
20 That's -- more than anything else, I want to avoid the
21 specter of a trial for them; and I -- I -- I am just -- I
22 feel horrible with what they have gone through already
23 because of my actions, and I want to end this and go on with
24 the -- with what it was originally contemplated to be.
25 THE COURT: Excuse me if I don't believe

1 that you've been struck down on the road to Damascus with,
2 you know, a sudden revelation of all the pain that you've
3 caused. You've been sitting over there knowing that if
4 those tapes are played to a jury, there is no doubt they are
5 going to probably come back and find you guilty, you know;
6 and I think it caught you by surprise that this Court said
7 this case was going to trial, and you have a drop-dead date
8 if you're going to plead guilty; but I do understand the
9 State's concern, and I will reluctantly accept the second
10 amended information.
11 That information charges Mr. Gilbert with Count I, child
12 molestation in the second degree; Count II, child
13 molestation in the second degree; Count III, child
14 molestation in the second degree; Count IV, child
15 molestation in the third degree; Count V, child molestation
16 in the third degree; Count VI, child molestation in the
17 third degree; Count VII, child molestation in the second
18 degree; Count VIII, child molestation in the second degree;
19 Count IX, child molestation in the second degree; Count X,
20 child molestation in the third degree; Count XI, child
21 molestation in the second degree; Count XII, child
22 molestation in the second degree; Count XIII, child
23 molestation in the second degree; Count XIV, child
24 molestation in the third degree.
25 I assume, Mr. Gilbert, you have reviewed the second

1 amended information. Is it your intention to plead guilty
2 to those charges now?
3 MR. GILBERT: It is, Your Honor.
4 THE COURT: All right. The Court has been
5 provided with the Prosecuting Attorney's statement regarding
6 the amended information. The Court has also been provided
7 with a plea agreement and a statement of defendant on plea
8 of guilty, and it is this Court's intention to go through
9 the plea agreement and then the statement of defendant on
10 plea of guilty thoroughly so that Mr. Gilbert doesn't get
11 another case of buyer's remorse down the road and want to
12 come back in and try to take his plea back yet again.
13 All right. Mr. Gilbert, you are agreeing that you are
14 going to plead guilty to each of the counts in the second
15 amended information contingent upon the Court's acceptance
16 of that second amended information in which you are charged
17 with Counts I through III, VII through IX, XI through XIII
18 with child molestation in the second degree contrary to RCW
19 9A.44.086 and in Counts IV through VI, X and XIV with child
20 molestation in the third degree contrary to RCW 9A.44.089.
21 Now, your plea of guilty to these counts will result in
22 the imposition of a determinate sentence. You understand
23 that child molestation in the second degree is a Class "B"
24 Felony, punishable by up to 10 years imprisonment and a
25 $20,000 fine per statute; that child molestation in the

1 third degree is a Class "C" Felony, punishable by up to 5
2 years in prison and/or a $10,000 fine. You also understand
3 that child molestation in the second degree and child
4 molestation in the third degree, as charged in the second
5 amended information, require 36 months of community custody
6 upon your release from confinement and that violation of the
7 terms of community custody could result in additional terms
8 of imprisonment.
9 You also understand that child molestation in the second
10 degree is a sex offense which will require you to register
11 as a sex offender for a period of 15 years. Do you
12 understand that fully?
13 MR. GILBERT: I do.
14 THE COURT: Section 2, factual basis for
15 the plea: You are entering pleas of guilty to all charges
16 in the second amended information by Alford Newton and an In
17 Re: Barr plea. You understand that by entering into an
18 Alford Newton or In Re: Barr plea, you are not required to
19 admit guilt but will acknowledge that the State possesses
20 sufficient evidence to prove you are guilty beyond a
21 reasonable doubt of the original charges in the corrected
22 amended information.
23 You also understand that by entering In Re: Barr pleas,
24 you are entering pleas of guilty to crimes in the second
25 amended information which you did not commit and for which

there is no factual basis but are doing so in order to take advantage of this agreement reached with the State. You are stipulating that there is a factual basis to support all of the charges in the corrected amended information, and the State possesses sufficient evidence to provide -- prove each of the counts in the corrected amended information beyond a reasonable doubt. Do you agree with that?

MR. GILBERT: I do, Your Honor.

THE COURT: You understand you have a right to an appeal to appeal your convictions. You understand that since you are entering a plea of guilty to the charges, you are waiving your right to raise certain issues as discussed in the statement of defendant on plea of guilty in an appeal. You understand that you have a right to appeal any sentence which is outside the standard sentencing range. Do you understand that fully?

MR. GILBERT: I do, Your Honor.

THE COURT: You understand the Court is not seeking restitution in this matter, as forfeiture of your assets and restitution of the victims have been incorporated into your plea and sentence under the United States of America vs. Weldon Marc Gilbert, Cause No. CR07-5732BHS. Is that your understanding?

MR. GILBERT: It is, Your Honor.

THE COURT: And you are proceeding pro se

1 in this case with the assistance of standby counsel, and
2 you've elected to do so knowingly and voluntarily. You
3 understand that you are completely satisfied with your
4 assistant which has been afforded to you by your standby
5 counsel in this case which is Ann Stenberg?
6 MR. GILBERT: Yes, Your Honor.
7 THE COURT: You need to speak up. I can't
8 hear you.
9 MR. GILBERT: Yes, Your Honor.
10 THE COURT: All right. And you understand
11 that you elected to represent yourself pro se despite the
12 advice of this Court and other Courts that that was not a
13 very smart move on your part. Do you acknowledge that?
14 MR. GILBERT: I do.
15 THE COURT: All right. And you understand
16 that pursuant to your plea of guilty to the second amended
17 information filed by the State for purposes of sentencing,
18 you would present with an offender score of nine plus. The
19 standard sentencing range for child molestation in the
20 second degree, with an offender score of nine plus, is 87 to
21 116 months in prison. The standard sentencing range for
22 child molestation in the third degree, with an offender
23 score of nine plus, is 60 months in prison.
24 Contingent upon your entering pleas of guilty to Counts I
25 through XIV of the amended information, the State will make

1 the following recommendation to the Court: On the child
2 molestation in the second degree counts, they are
3 recommending 116 months determinate sentencing imprisonment,
4 each count concurrent with the other -- concurrent with the
5 other counts of the second amended information and
6 concurrent with the defendant's sentence imposed in the
7 United States of America vs. Weldon Marc Gilbert; credit for
8 time spent in custody since the defendant's initial arrest
9 on November 1, 2007; 36 months' community custody to be
10 supervised and served concurrently with lifetime supervision
11 by United States Probation as ordered in the judgment in
12 United States of America vs. Weldon Marc Gilbert; conditions
13 of supervision as ordered in the judgment in United States
14 of America vs. Weldon Marc Gilbert; legal/financial
15 obligations of $500 crime victim penalty assessment, $200
16 court costs, $100 DNA lab fee; no contact with victims
17 listed in the second amended information; and no contact
18 with minors.
19 On the child molestation in the third degree, the State's
20 recommending 30 months determinate imprisonment, each count
21 concurrent with the other cause numbers and concurrent with
22 your sentence imposed under United States of America vs.
23 Weldon Marc Gilbert, 36 months' community custody, credit
24 for time served since the defendant's initial arrest on
25 November 1, 2007. Lifetime supervision would be by the

United States in the United States of America vs. Weldon Marc Gilbert. Is that your understanding of the State's recommendations?

MR. GILBERT: It is, Your Honor.

THE COURT: And you are stipulating that the Superior Court of the State of Washington, in and for Pierce County, has both personal and subject matter jurisdiction over you and this case; and you're waiving any objections to venue.

You also understand that the Court is not bound by any sentencing recommendation by the parties pursuant to RCW 9.94A.431(2) but that pursuant to 9.94A.431, subsection (1), upon review of this plea agreement, the Court shall determine if the plea agreement is consistent with the interest of justice and the prosecuting standards found at RCW 9.94A.441. If the Court determines the plea agreement is not consistent with the interest of justice and the prosecuting standards, the Court shall, on the record, inform the defendant and the State, they are not bound by the agreement; and the defendant may withdraw his plea of guilty if one has been entered.

Pursuant to statute, the Court is not bound by any sentencing recommendation contained in any plea agreement. The Court is free to sentence the defendant anywhere within his standard range of 87 to 116 months on Counts I, II, III,

1 VII, VIII, IX, XI, XII, XIII, child molestation in the
2 second degree; and 60 months on Counts IV, V, VI, X and XIV,
3 child molestation in the third degree. The State of
4 Washington makes no promise or representation concerning
5 what sentence the Court will impose, and the defendant
6 understands he cannot withdraw your plea of guilty based
7 upon the sentence imposed by the Court. Do you understand
8 that, Mr. Gilbert?
9 MR. GILBERT: I do, Your Honor.
10 THE COURT: This written agreement
11 constitutes the complete plea agreement between the
12 plaintiff and the State of Washington and the defendant,
13 Weldon Marc Gilbert. The defendant acknowledges that no
14 threats, promises, or representations have been made nor
15 agreements reached other than those set forth in writing in
16 this plea agreement to cause the defendant to plead guilty
17 to the second amended information in this case. Do you
18 understand that, Mr. Gilbert?
19 MR. GILBERT: I do, Your Honor.
20 THE COURT: You are also stipulating that
21 the second amended information in this plea agreement
22 satisfies and complies with the obligation of the State of
23 Washington as outlined and described in section 14,
24 interdependence of the plea agreement between the defendant
25 and the United States Attorney for the Western District of

1 Washington entered in United States of America vs. Weldon
2 Marc Gilbert, Cause No. CR07-5732BHS, Attachment A, dated
3 the 6th day of November, 2012, signed by Patrick Hammond and
4 Tim Lewis on behalf of the Pierce County Prosecuting
5 Attorney's office. Underneath, it says, Defendant's
6 Signature: I hereby agree that I have consulted with my
7 standby attorneys and fully understand all rights I have as
8 a criminal defendant as to these charges and that I am
9 giving up those rights by voluntarily entering into this
10 plea agreement with the State of Washington and by entering
11 pleas of guilty to the second amended information in this
12 case.
13 I further understand that the Sentencing Reform Act, RCW
14 9.94A, and the sentencing guidelines therein apply fully to
15 my case, and the Court is not bound by any recommendation by
16 the party as to the sentence I receive. I have read this
17 plea agreement fully and reviewed each portion of this plea
18 agreement with my standby attorney. I understand this
19 agreement and voluntarily agree to it. Is that a true and
20 correct statement, Mr. Gilbert?
21 MR. GILBERT: It is, Your Honor.
22 THE COURT: And standby counsel has also
23 signed on this plea agreement indicating that she has
24 reviewed each and every part of this agreement with the
25 defendant and that his decision to enter into this plea

1 agreement is informed and voluntary. Is that correct,
2 Ms. Stenberg?
3 MS. STENBERG: Yes, Your Honor.
4 THE COURT: And, Mr. Gilbert, you are
5 agreeing that Ms. Stenberg has consulted fully with you
6 regarding this plea agreement?
7 MR. GILBERT: I am, Your Honor.
8 THE COURT: And you are satisfied with her
9 services therein?
10 MR. GILBERT: Yes.
11 THE COURT: All right. The Court will
12 accept the plea agreement. I now have the statement of
13 defendant on plea of guilty. Your name, sir, is Weldon Marc
14 Gilbert. You are 52 years of age, and your date of birth is
15 August 26, 1960; is that correct?
16 MR. GILBERT: It is, Your Honor.
17 THE COURT: And you are a college
18 graduate?
19 MR. GILBERT: No, Your Honor.
20 THE COURT: All right. What was the
21 highest grade you completed then?
22 MR. GILBERT: It was, I guess, 15 -- it
23 was the junior year in college.
24 THE COURT: All right. And you are
25 representing yourself in this case as a pro se litigant with

1 standby counsel, Ann Stenberg; is that correct?
2 MR. GILBERT: That's correct.
3 THE COURT: And did you read the statement
4 of defendant on plea of guilty fully?
5 MR. GILBERT: Would that be --
6 THE COURT: This one, the statement of
7 defendant on plea of guilty.
8 MR. GILBERT: I did, Your Honor.
9 THE COURT: Do you understand it?
10 MR. GILBERT: I do.
11 THE COURT: And you consulted with your
12 standby counsel regarding the provisions of the statement of
13 defendant on plea of guilty?
14 MR. GILBERT: I did, Your Honor.
15 THE COURT: And you have certain
16 constitutional rights. One of those is the right to a
17 speedy and public trial by an impartial jury, the right to
18 remain silent before and during trial and the right to
19 refuse to testify against yourself, the right at trial to
20 hear and question witnesses who will testify against me, the
21 right at trial to testify and to have witnesses testify for
22 you, and those witnesses can be made to appear at no expense
23 to you, the right to be presumed innocent unless the State
24 proves the charge beyond a reasonable doubt, or you enter a
25 plea of guilty, the right to appeal a finding of guilt after

1 trial, as well as other pretrial motions such as time for
2 trial challenges and suppression issues. Do you understand
3 those constitutional rights, Mr. Gilbert?
4 MR. GILBERT: I do, Your Honor.
5 THE COURT: And you are giving up those
6 constitutional rights?
7 MR. GILBERT: I am.
8 THE COURT: And you have an offender score
9 of 39. On the child molestation in the second degree, the
10 standard range is 87 to 116 months in custody. The maximum
11 is 10 years and/or a $20,000 fine, and there is a community
12 custody range of 36 months. Is that your understanding?
13 MR. GILBERT: It is, Your Honor.
14 THE COURT: And on the child molest in the
15 second degree, the standard range is -- the maximum is 60
16 months in prison, 36 months' community custody; and the
17 maximum is 5 years and/or a $10,000 fine. Is that your
18 understanding?
19 MR. GILBERT: It is, Your Honor.
20 THE COURT: And the State's recommendation
21 has been outlined in the plea agreement which I just
22 reviewed with you; is that correct?
23 MR. GILBERT: That's correct, Your Honor.
24 THE COURT: You also understand that if
25 you are not a citizen of the United States that a plea of

1 guilty to these charges may be grounds for deportation,
2 exclusion from admission, or denial of naturalization to the
3 United States. Do you understand that?
4 MR. GILBERT: I do.
5 THE COURT: You also understand that as a
6 convicted felon, you may not own, possess, or have under
7 your control a firearm or vote until such time as your right
8 to do so would be restored to you by a court of law. Do you
9 understand that?
10 MR. GILBERT: I do.
11 THE COURT: You also understand that as a
12 sexual offender that you will be required to register where
13 you reside, study, or work. Do you understand that?
14 MR. GILBERT: I do.
15 THE COURT: And you also understand that
16 the child molestation in the second degree is a most serious
17 offense or strike; and if you are to have two or more
18 strikes on your record, you could be sentenced to life in
19 prison without any possibility of parole. Do you understand
20 that?
21 MR. GILBERT: I do.
22 THE COURT: And you also understand, the
23 Court does not have to follow any recommendations made by
24 the State in this matter but could sentence you to anything
25 within the standard range. Do you understand that?

1 MR. GILBERT: I do, Your Honor.
2 THE COURT: Are you making this plea
3 freely and voluntarily?
4 MR. GILBERT: I am, Your Honor.
5 THE COURT: No one has made any threats or
6 promises in order to have you sign this?
7 MR. GILBERT: No.
8 THE COURT: You are stipulating that there
9 are facts sufficient for a finding of guilt to the original
10 charges as set forth in the statement on probable cause
11 which has been filed in this matter?
12 MR. GILBERT: I am.
13 THE COURT: You are making these pleas,
14 however, under In Re: Barr, which is 102 Wn.2d 265, a 1984
15 case; and State vs. Newton, 87 Wn.2d 363, which is a 1976
16 case. You are not acknowledging that you are guilty of
17 these crimes, but you are agreeing that if the State went
18 forward to trial, they could prove these charges beyond a
19 reasonable doubt; is that correct?
20 MR. GILBERT: That's correct.
21 THE COURT: Are you pleading guilty, at
22 this time, to child molestation in the second degree and
23 child molestation in the third degree as set forth in the
24 plea agreement?
25 MR. GILBERT: I am.

1 THE COURT: All right. The Court finds
2 the defendant's plea is knowingly, intelligently, and
3 voluntarily made. The Court is satisfied the defendant
4 understands the nature of the charges and the consequences
5 of the plea, that there is a factual basis for the plea; and
6 the Court accordingly finds the defendant guilty as charged.
7 Are we going to be setting this out for sentencing with
8 any presentence report?
9 MR. LEWIS: Your Honor, I believe the
10 parties can proceed if the Court is willing or prepared to
11 proceed to sentencing at this time.
12 THE COURT: Mr. Gilbert, do you wish to
13 proceed to sentencing at this time; or do you wish to have
14 this set out so that we can have a presentence report done?
15 MR. GILBERT: I would prefer it being
16 taken care of at this time, Your Honor.
17 THE COURT: All right. Does the State
18 have anything to add to its recommendations?
19 MR. LEWIS: No, Your Honor. The only
20 thing that the State would add, which I think we've made
21 clear in our filing of the plea agreement: We are asking
22 the Court to follow the recommendation and to run the
23 sentence imposed on Mr. Gilbert this morning concurrent to
24 his federal sentence. We are asking the Court to do that,
25 frankly, in order to preserve the federal plea and to

1 prevent that plea from being withdrawn or that plea
2 agreement being compromised, Your Honor.
3 THE COURT: Mr. Gilbert?
4 MR. GILBERT: I don't have anything else
5 to add, Your Honor.
6 THE COURT: You have the right of
7 allocution, Mr. Gilbert. Is there anything you want to say
8 on your behalf?
9 MR. GILBERT: I think I stated it earlier,
10 Your Honor. It's time for this to end and accept the
11 responsibility and the pain for everyone involved. I
12 apologize.
13 THE COURT: Again, this Court really does
14 not feel that you are remorseful given the -- given what has
15 occurred during the last four years since you withdrew your
16 plea agreement. Your insistence upon representing yourself
17 and insistence upon viewing these videos while you're in
18 custody as your own attorney, your many demands to interview
19 the victims, the conditions you attempted to put on those
20 interviews, none of which indicate to this Court that you
21 care in any way, shape, or form about the pain that you've
22 put your victims through. You have just played games with
23 us from the get-go, you know. I mean, I sat and listened to
24 you during voir dire and where you basically tried to
25 minimize what you did, categorizing it as spanking, some

1 kind of fraternity ritual. I mean, the bottom line is that
2 you're a pedophile. You're sexually attracted to children,
3 and you are an extreme deviant.
4 This Court is going to order on the child molestation in
5 the second degree charges 116 months. It will run
6 consecutive to the federal sentence. He has been sitting in
7 the Pierce County Jail for the last three-odd years serving
8 time on his federal charges. I'm not going to give him any
9 credit for time served seeing as he could have had these
10 done concurrently back in 2009, but he has chosen to delay
11 that; therefore, there are consequences to those games that
12 you've played.
13 Sixty months on the child molestation in the third
14 degree. It will run concurrently with the child molestation
15 in the second degree. It will also be consecutive to the
16 federal sentence.
17 There are consequences, Mr. Gilbert. You can probably go
18 back in and try to argue with them whether or not you're
19 going to withdraw that plea; but, quite frankly, I think at
20 some point, you better use some common sense and realize
21 that the more you play games with the judicial system, the
22 more it may rebound on you. Do you understand that?
23 MR. GILBERT: I understand, Your Honor.
24 My intention was never to play any games.
25 THE COURT: Sir, I know what your

1 contention is. I know what you describe your videotapes
2 that you made as, as just fraternity rituals. I think we
3 all know that those were not fraternity rituals. I think
4 that was graphic evidence of the fact that you were raping
5 and molesting your victims and inflicting substantial pain
6 on them. Maybe you don't want to hear it in the blunt
7 Anglo-Saxon, but that's where it is, you know. I mean,
8 you've argued with me about many things, trying to get me to
9 agree with your interpretation; and as I told you: Those
10 were jury questions. They would watch those DVDs, and they
11 would decide whether or not you were sexually aroused, which
12 I really rather think you know they would probably come back
13 with a finding of guilty, and the fact that you couldn't see
14 or would refuse to use any kind of sense is your choice.
15 You made choices, Mr. Gilbert, a lot of them, and they
16 were really bad choices all the way down the line; so I
17 would think long and hard before I tried to wiggle out of my
18 federal plea agreement because if you do, they'll go to
19 trial. They've got all those videos, too, you know. You
20 were already indicted by a federal jury with these cases. I
21 really don't think things are going to change once a jury
22 looks at those on trial.
23 Thirty-six months community custody on these charges.
24 The Court adopts the appendixes which were set forth in the
25 plea agreement. He's to have no contact with minors,

1 whatsoever, under the age of 18; no possession of
2 pornography; no access to the Internet until such time as
3 perhaps his probation officers might be satisfied that he
4 can do that. Any questions, Counsel?
5 MR. LEWIS: None from the State, Your
6 Honor.
7 THE COURT: Mr. Gilbert, any questions?
8 MR. GILBERT: No, Your Honor.
9 THE COURT: All right.
10 MR. LEWIS: And, Your Honor, if I may just
11 have one moment, I'm going to complete the judgment and
12 sentence and then provide an opportunity for Ms. Stenberg to
13 go through it with Mr. Gilbert before we hand it forward to
14 Your Honor.
15 THE COURT: All right. In the meantime,
16 Counsel, we have 16 people penned up --
17 MR. LEWIS: Yes, Your Honor.
18 THE COURT: -- in that jury room --
19 MR. LEWIS: Yes, Your Honor.
20 THE COURT: -- tight quarters.
21 MR. LEWIS: Very. And, Your Honor, we --
22 I don't know how the Court wants to deal with that, if the
23 Court wants to discharge them at this time instead of
24 keeping them waiting. I need to complete the judgment and
25 sentence, and there's also an issue as to the warrant of

1 commitment that we have to address, as well.
2 THE COURT: All right. Well, my
3 inclination, then, before we deal with all those issues, is
4 to bring the jury in and thank them for their service and
5 discharge them. I need, however, at this time, to sign
6 their certificates of recognition rather than continue to
7 hold them.
8 (Pause.)
9 THE COURT: All right. I've signed these.
10 We'll bring the jury in and discharge them. Counsel, I
11 think I forgot on legal/financial obligations: $200 court
12 costs, $500 crime victim penalty assessment, $100 DNA lab
13 fee.
14 MR. LEWIS: Yes, Your Honor. Thank you.
15 (The jury was present.)
16 THE COURT: You may be seated.
17 Mr. Gilbert has chosen to plead guilty this morning prior to
18 the commencement of opening statements; so at this time, I
19 am going to discharge you as jurors in this case. I want to
20 thank you for undergoing the voir dire process and putting
21 up with the imprisonment, as it were, in the jury room which
22 is not particularly large.
23 Sometimes the attorneys like to talk to a jury
24 afterwards. I'm not -- you know, in this case, you didn't
25 get to do much; but they still might find it interesting.

1 Counsel, do you anticipate you would want to talk to the
2 jury?
3 MR. LEWIS: Your Honor, only if they would
4 like to speak with us. I would be happy to speak with any
5 of them or answer any of their questions after I'm done with
6 the judgment and sentence.
7 THE COURT: If any of you wish to speak to
8 Mr. Lewis, you can remain in the jury room. For some of
9 you, this might be your third week in which case you're
10 probably anxious to get out of the courthouse and away from
11 here. I'm going to ask that you all go back downstairs and
12 turn your badges in. If it is your second week, they could,
13 conceivably, reassign you to another jury, and you could go
14 through this whole process again.
15 All right. But I want to thank you very much for your
16 patience. Ms. Shipman has something for you, if you'll step
17 back into the jury room. Those who want to talk to
18 Mr. Lewis can wait until he's finished with the judgment and
19 sentence in this matter. Thank you.
20 (The jury was excused.)
21 MR. LEWIS: Your Honor, just to make sure
22 that I'm doing this correctly, we have an issue regarding
23 community custody. The reason I raise this is for Counts I,
24 II, III, VII, VIII, XIV, XI, XII, XIII, the Court has
25 imposed a sentence of 116 months. The statutory maximum is

1 120 months, so I believe the only community custody that can
2 be reflected is --
3 THE COURT: Four months.
4 MR. LEWIS: -- four months.
5 THE COURT: All right. Four months.
6 MR. LEWIS: Thank you, Your Honor.
7 THE COURT: It's sort of academic since
8 he'll be on lifetime supervision by the federal government.
9 It sounds like some of them are waiting.
10 MR. LEWIS: Your Honor, in that same vein,
11 does the Court have any objection to the judgment and
12 sentence noting that that four months of supervision may be
13 performed by U.S. Probation and Parole?
14 THE COURT: I have no problem with putting
15 it on the federal government's expense.
16 (Pause.)
17 THE COURT: He'll be fingerprinted.
18 That's the ink pad.
19 (Pause.)
20 MS. STENBERG: Your Honor, may we hand up
21 a portion of the sentencing and related documents?
22 MR. LEWIS: You know what? I'm sorry,
23 Your Honor. I have not -- are those the no-contact orders?
24 THE COURT: Advice of right to appeal --
25 MR. LEWIS: I believe -- I don't know if I

1 need to sign those or not.

2 THE COURT: That one, you don't need to

3 sign --

4 MR. LEWIS: Okay.

5 THE COURT: -- HIV testing. One of you

6 needs to sign that one.

7 MR. LEWIS: Yeah.

8 THE COURT: All right.

9 MR. LEWIS: I think there were some that I

10 still need to put my signature on.

11 THE COURT: Okay. Stipulation on prior

12 record. I don't think you need to sign those. I'll hand

13 those down.

14 MR. LEWIS: Thank you so much, Your Honor.

15 MS. STENBERG: These are registration and

16 no-contact orders, Your Honor.

17 THE COURT: This one needs to be dated,

18 and Mr. Hammond or you needs to sign that one, Mr. Lewis.

19 MR. LEWIS: Yes, Your Honor. And, Your

20 Honor, I've completed the order requiring HIV testing. And,

21 Your Honor, I am signing the stipulation -- dating and

22 signing the stipulation to offender score.

23 (Pause.)

24 MR. LEWIS: Your Honor, I've signed and

25 dated the order for biological sample; and I'm handing that

1 forward to the Court.

2 THE COURT: We seem to be missing a page

3 on the no-contact order on I.C.

4 MR. LEWIS: I believe --

5 MS. STENBERG: That's probably the --

6 THE COURT: Second page.

7 MS. STENBERG: -- second page. I'm sorry.

8 MR. LEWIS: Yeah. That's all right.

9 THE COURT: Signature page.

10 MR. LEWIS: And, Your Honor, we were -- we

11 thought we were missing the face page which, apparently, you

12 have in front of you; and I believe Mr. Hammond went up to

13 get a new face page which --

14 THE COURT: This is what you get for

15 getting them out of order, Counsel.

16 MR. LEWIS: Exactly.

17 THE COURT: All right. The Court has

18 signed the no-contact orders with the victims in this

19 matter. No contact, Mr. Gilbert, means no-contact either in

20 person or through a third party, by phone, card, letter,

21 texting, e-mailing, befriending on Facebook, myspace.com, or

22 any other social network which, of course, is forbidden to

23 you under other orders. Any way you can think of, including

24 carrier pigeon or slow camel from Ulan Bator, you have

25 contact with any of the victims, it may lead to new charges

1 being imposed against you and would make this Court really
2 unhappy in which case, then, you may be facing some
3 additional jail time.
4 (Pause.)
5 THE COURT: Did you find the second page?
6 MR. LEWIS: Your Honor, no, because I
7 think Mr. Hammond took it with him to find the first page.
8 THE COURT: All right.
9 MR. LEWIS: So, yes, the comedy of errors
10 continues; and I apologize.
11 THE COURT: That's quite all right. I was
12 in practice. I understand how these things go.
13 MR. LEWIS: You're exactly right, and this
14 is what happens when you get the paperwork out of order.
15 Your Honor, for the record, I do want to note that the
16 no-contact orders that have been signed and issued by the
17 Court are being served upon Mr. Gilbert in open court at
18 this time; and I'd ask that Mr. Gilbert acknowledge receipt
19 for the record.
20 MR. GILBERT: I do.
21 THE COURT: All right. The record will
22 reflect that Mr. Gilbert has been served with the no-contact
23 orders in this matter.
24 MR. LEWIS: Your Honor, I have reviewed
25 the judgment and sentence -- excuse me, it's missing the

1 signature of Mr. Gilbert in one place.
2 THE COURT: Presumably, that's the place
3 where he's advised of his voting rights being forfeited.
4 MR. LEWIS: Actually, Your Honor, he
5 signed that one. He missed the one above it; so --
6 THE COURT: Usually, it's the other way
7 around.
8 MR. LEWIS: Thank you, Mr. Gilbert. And,
9 Your Honor, the judgment and sentence appears to reflect the
10 oral ruling and orders of the Court. I'll hand it forward
11 for the Court's inspection at this time.
12 THE COURT: We'll need the warrant of
13 commitment.
14 MR. LEWIS: Your Honor, we do; but may I
15 address that after the Court goes through the judgment and
16 sentence?
17 THE COURT: All right. I've signed the
18 judgment and sentence.
19 MR. LEWIS: Your Honor, as to the warrant
20 of commitment, Mr. Gilbert was secured for purposes of
21 prosecution in this matter in November of 2009 pursuant to a
22 writ of habeas corpus. I don't see Mr. Hammond. I believe
23 he has a copy of it, but it is in LINX. A writ of habeas
24 corpus was served upon the United States Marshall Service
25 asking for temporary custody. In that writ of habeas

1 corpus, Judge Felnagle indicated that Mr. Gilbert would be
2 remanded to the United States Marshall Service immediately
3 upon conclusion of all judicial proceedings in this matter;
4 so the warrant of commitment that I'm handing forward, Your
5 Honor, is a little bit unique in that we are designating
6 other custody; and we're asking the Court to remand
7 Mr. Gilbert to the United States Marshall Service at this
8 time.
9 THE COURT: That certainly makes sense.
10 MR. LEWIS: Finally, Your Honor, there has
11 been an order to seal juror questionnaires that has,
12 graciously, been prepared by your judicial assistant. It
13 appears to bear the signature of all parties. It appears,
14 also, to cover the bases required under the Bone-Club
15 analysis for sealing of such questionnaires; but, obviously,
16 I believe the Court wants to make a record to that with the
17 gallery, as well; and I'll hand that forward to the Court.
18 THE COURT: All right. Order to seal
19 juror questionnaires. All right. The juror questions
20 include information regarding criminal and sexual history to
21 not only the jurors, themselves, but to family members and
22 friends who have no say in disclosure of such information.
23 Such information is generally private and often sensitive
24 and held in confidence away from public consumption. Both
25 the State and Defense have requested to seal the

1 questionnaires. Does any member of the public object to
2 that? All right. No one having objected to that, the Court
3 does find that it is in the best interest to go ahead and
4 seal those, and I will do so at this time.
5 MR. LEWIS: Thank you, Your Honor.
6 THE COURT: Their privacy concerns
7 outweigh the public interest in this matter, and I've signed
8 the warrant of commitment; and, I believe, Mr. Hammond, you
9 have another page one since I had the page one, and we
10 didn't have page two.
11 MR. HAMMOND: We brought a complete new
12 set for that one, Your Honor.
13 THE COURT: All right. I've signed that
14 last no-contact order. We'll need to serve that on
15 Mr. Gilbert with the rest of them.
16 MR. LEWIS: And, Your Honor, we'd simply
17 ask that once it is served upon Mr. Gilbert that Mr. Gilbert
18 would note for the record that he acknowledges receipt.
19 MR. GILBERT: I do.
20 MR. HAMMOND: I'm serving a no-contact
21 order with I.C.
22 THE COURT: The record will so reflect
23 that Mr. Gilbert has acknowledged receipt of the no-contact
24 order with I.C. I'm not certain that maybe some jurors in
25 the jury room --

MR. LEWIS: Yes, Your Honor.

THE COURT: All right.

MR. LEWIS: As soon as I finish breaking up the judgment and sentence.

THE COURT: The skills they don't teach you in law school paperwork.

MR. LEWIS: No, they don't.

THE COURT: All right. Anything else?

MR. HAMMOND: No, Your Honor, nothing from the State.

THE COURT: Mr. Gilbert, anything else?

MR. GILBERT: No, Your Honor.

THE COURT: All right. The Court will be at recess.

(Court was adjourned.)

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LAW OFFICE OF SUZANNE LEE ELLIOTT

October 11, 2019 - 11:33 AM

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 Gilbert, Weldon M
Trial Court Case Number:	07-1-05618-3
Trial Court County:	Pierce County Superior Court
Signing Judge:	Katherine Stoltz
Judgment Date:	11.06.2012

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