

836175

FILED
COURT OF APPEALS
DIVISION II

08 SEP 29 AM 9:21

STATE OF WASHINGTON
DEPUTY

NO. 37089-1-II

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

STATE OF WASHINGTON, Respondent

v.

TYRONE D. FORD, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE JOHN P. WULLE
CLARK COUNTY SUPERIOR COURT CAUSE NO. 06-1-02432-0

BRIEF OF RESPONDENT

Attorneys for Respondent:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

MICHAEL C. KINNIE, WSBA #7869
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

TABLE OF CONTENTS

I. STATEMENT OF THE FACTS1
II. RESPONSE TO ASSIGNMENT OF ERROR NO. 11
III. RESPONSE TO ASSIGNMENT OF ERROR NO. 27
IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 310
V. RESPONSE TO ASSIGNMENT OF ERROR NO. 415
VI. CONCLUSION21

TABLE OF AUTHORITIES

Cases

<u>City of Seattle v. Eze</u> , 111 Wn.2d 22, 27, 759 P.2d 366 (1988)	12
<u>City of Spokane v. Douglass</u> , 115 Wn.2d 171, 178, 795 P.2d 693 (1990).....	12
<u>In Re Personal Restraint of Cashaw</u> , 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994)	14
<u>In Re Personal Restraint of Mattson</u> , 124 Wn. App. 130, 172 P.3d 719 (2007)	15
<u>In Re Personal Restraint of Shepard</u> , 127 Wn.2d 185, 191, 898 P.2d 828 (1995)	15
<u>State v. Balisok</u> , 123 Wn.2d 114, 117, 866 P.2d 631 (1994)	5
<u>State v. Blight</u> , 89 Wn.2d 38, 45 – 47, 569 P.2d 1129 (1977).....	20
<u>State v. Bogart</u> , 57 Wn. App. 353, 357, 788 P.2d 14 (1990).....	19
<u>State v. Bourgeois</u> , 133 Wn.2d 389, 403, 945 P.2d 1120 (1977)	5
<u>State v. Crane</u> , 116 Wn.2d 315, 335, 804 P.2d 10(1991).....	20
<u>State v. Crawford</u> , 159 Wn.2d 86, 99 – 100, 147 P.3d 1288 (2006)	20
<u>State v. Davenport</u> , 100 Wn.2d 757, 762 – 763 675 P.2d 1213 (1984).....	7
<u>State v. Eaton</u> , 82 Wn. App. 723, 735, 919 P.2d 116 (1996)	15
<u>State v. Escalona</u> , 59 Wn. App. 251, 254, 742, P.2d 190 (1987)	6
<u>State v. Hicks</u> , 41 Wn. App. 303, 313, 704 P.2d 1206(1985)	7
<u>State v. Jackman</u> , 113 Wn.2d 772, 777, 783 P.2d 580 (1989).....	5
<u>State v. Jones</u> , 118 Wn. App. 199, 206, 76 P.3d 258 (2003).....	8
<u>State v. Langland</u> , 42 Wn. App. 287, 292-93, 711 P.2d 1039 (1985)	13
<u>State v. Massey</u> , 81 Wn. App. 198, 200, 913 P.2d 424 (1996)	13
<u>State v. McFarland</u> , 127 Wn.2d 322, 334 – 335, 899 P.2d 1251(1995)....	20
<u>State v. Parramore</u> , 53 Wn. App. 527, 530, 768 P.2d 530 (1989).....	10
<u>State v. Riles</u> , 86 Wn. App. 10, 17-18, 936 P.2d 11 (1997), aff'd, 135 Wn.2d 326, 957 P.2d 655 (1998)	13
<u>State v. Riley</u> , 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).....	10
<u>State v. Tharp</u> , 96 Wn.2d 591, 599, 673 P.2d 961 (1981).....	5
<u>State v. Thomas</u> , 150 Wn.2d 821, 871, 83 P.3d 970 (2004).....	5
<u>State v. Weber</u> , 99 Wn.2d 158, 165 – 166, 659 P.2d 1102 (1983).....	6
<u>State v. Wheeler</u> , 95 Wn.2d 799, 805, 631 P.2d 376 (1981).....	19
<u>State v. Williams</u> , 96 Wn.2d 215, 221, 634 P.2d 868 (1981).....	18
<u>State v. Wilson</u> , 71 Wn.2d 895, 899, 431 P.2d 221 (1967).....	18
<u>Strickland v. Washington</u> , 466 U.S. 668, 691, 104 S. Ct. 2052 80 L. Ed. 2d 674 (1984).....	20

Statutes

RCW 9.94A.030(13).....10
RCW 9.94A.505(8).....10
RCW 9.94A.700(5)(d).....8
RCW 9.94A.700(5)(e).....13

Rules

CrR7.5.....18
RAP 16.414

I. STATEMENT OF THE FACTS

Because of the nature of the claimed errors, the relevant portion of the record will be set forth in the argument section of the brief.

Concerning the actual trial testimony, the State agrees with the recitation set forth in the defendant's brief.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is a claim that the trial court coerced the jury into returning a verdict on one of the two charges.

By Amended Information (CP 19) the defendant was charged in Count One with Rape of a Child in the Second Degree with the named victim L.A.K. and the period of sexual misconduct occurring between August 9, 2006 and September 9, 2006. Count Two of the Amended Information alleged Rape of A Child in the Third Degree with the same named victim but a different time period of September 16, 2006 to September 17, 2006.

The jury found the defendant guilty on both Counts One and Two. At the time that the verdict was taken the defendant was present and the presiding juror had filled out Count Two of the Amended Information

only. Count Two found the defendant guilty of Rape of A Child in the Third Degree. (RP 390). The Court then went on with its discussion as follows:

THE COURT: Would you pass the verdict forms to my bailiff, and then you may be seated, sir.

Gentlemen, I'll dispense with the reading of the caption heading.

"We, the jury, find the defendant, Tyrone Ford, guilty of the crime of Rape of a Child in the Third Degree as charged in Count Two."

(Pause; reviewing documents.) Gentlemen, sidebar.
(Bench conference; not recorded.)

THE COURT: I'm sending the jury back to the jury room. Verdict form No. 1 is completely blank. It must be filled in. Please go with Dorothy.

The defendant is remanded into custody at this time.
(Jurors exit courtroom.)

THE COURT: I believe we have just a momentary delay, I think they just forgot to fill out the form.

CUSTODY OFFICER: Okay, so let's wait for the jury to come back and then we'll take him into custody.

THE COURT: Yeah, but he should not - - he should not be leaving the courtroom.

CUSTODY OFFICER: Okay, sir.
(Thirty-second recess.)

THE COURT: I'm of the opinion that one of two things has happened. They have forgotten to fill in the form. Or in the alternative, they have reached a decision that either means they were deadlocked on Count One or that they reached a not guilty finding on Count One.

I'm inclined to have Dorothy tell them if they have a question to write the question out and submit it to us. Is that agreeable?

MR. HARVEY: That's agreeable.

MR. LADOUCEUR: That's fine, Judge.

THE COURT: Okay, let me do that right now, then.

(Recess.)

THE COURT: Gentlemen, based on our prior decision, I'll just let you know that I started to go to let Dorothy know and the jury was already coming back, so they have not received that communication.

(Jurors reenter courtroom.)

THE COURT: Presiding juror, have you reached a verdict as to Count One?

THE PRESIDING JUROR: Yes.

THE COURT: Was it a unanimous verdict?

THE PRESIDING JUROR: Yes.

THE COURT: Why don't you go ahead and give it to Dorothy, then.

(Pause; reviewing document.) Okay, as to Count One:

"We, the jury, find the defendant, Tyrone Ford, guilty of the crime of Rape in the Second Degree as charged in Count One."

(Jurors polled.)

THE COURT: Okay. Thank you.

-(RP 390, L. 3 – 392, L. 12)

We also know the exact times these matters took place and the short amount of time that all of this took. We know this because of the recitation from the defense attorney at the time of sentencing. Mr. Britnall, the Attorney for sentencing, set it forth as follows:

MR. BRINTNALL (Defense Attorney): The other thing my client maintains, and this again goes to the ineffective assistance, is he was not told about SSOSA until after he was convicted.

THE COURT: Hmm.

MR. BRINTNALL: Again, that's a factual issue that I can't - - cannot really address. I can cite the Court the place in the trial transcript that I had the concern. It was at 14:01 P.M. the jury verdict came in. The foreman had only signed verdict form two.

And then there was a sidebar at 14:05. The Court remanded the defendant in custody and then sent the - the jury back.

At 14:09 the jury came back with the verdict form one showing a guilty verdict.

And then the - and then the entire panel was polled at that time.

Okay, that was - that was the only issue. And that was not really an issue because they came back so quickly, it - it seemed to me that, frankly, it was not something that - they had already made up their mind, they just hadn't filled out the forms the way they should have, and -

THE COURT: Well, now that you say that, that does ring a bell.

MR BRINTNALL: The only - the only problem - I - I was concerned - I - the - the concern I had was the time frame in that, the Court remanded him to custody and I was wondering if that would taint the jury's verdict on verdict - on verdict form one. But it didn't seem to because they came back in five minutes, or four minutes, actually, which means, I think, they went back into the jury room, said, you know, Are we in agreement on verdict form one? The foreman signed it and -

THE COURT: So you're interpreting that as an -

MR. BRINTNALL: -- filled it in.

THE COURT: -- oversight where they simply forgot to fill -

MR. BRINTNALL: Right.

THE COURT: -- in the form.

MR. BRINTNALL: I think it's - yeah, I - I could not see a procedural issue there. The jury seemed to have made a decision already, they just hadn't filled out the forms correctly.

-(RP 433, L15 - 435, L. 10).

Appellate Courts are reluctant to inquire into the manner in which a jury reaches its verdict. State v. Balisok, 123 Wn.2d 114, 117, 866 P.2d 631 (1994). “A strong, affirmative showing of misconduct is necessary in order to overcome the policy favoring stable and certain verdicts and the secret, frank and free discussion of the evidence by the jury.” State v. Balisok, 123 Wn.2d at 117 – 118. A trial court’s decision on a motion for new trial alleging juror misconduct or juror bias will not be disturbed on Appeal unless the ruling is based on an erroneous interpretation of the law or constitutes an abuse of discretion. State v. Jackman, 113 Wn.2d 772, 777, 783 P.2d 580 (1989). A trial of irregularity is not prejudicial unless, within reasonable probabilities, the trial’s outcome would have differed had the error not occurred. State v. Thomas, 150 Wn.2d 821, 871, 83 P.3d 970 (2004); State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1977); State v. Tharp, 96 Wn.2d 591, 599, 673 P.2d 961 (1981).

In determining the effect of an irregularity at trial, the appellate court will examine (1) its seriousness (2) whether it involved cumulative evidence, and (3) whether the trial court properly instructed to disregard it. State v. Bourgeois, 133 Wn.2d at 409.

It is obvious in our situation that the Judge was not telling the jury that they had to reach a verdict. He is merely reminding them that they have not filled in the verdict form as required. The jury returns to the jury

room for a very short period of time and then comes back into Court with the verdict that they, obviously, had forgotten to date and sign. There does not appear to have been enough time for even to have a minor discussion in the jury room among the jurors or to have changed their vote or to have had a full discussion concerning the issues. The jury had announced to the bailiff that they had verdicts and had inadvertently forgotten to fill out one of the forms.

The issue of the jury hearing that the defendant was being taken into custody is a non issue. The jury had already made a finding of guilt on one of the counts. There is absolutely nothing to indicate that this fact had anything to do with the finding of guilt on Count One.

If all of this is to be considered an irregularity in the court proceeding, the trial court has a great deal of discretion in how to handle it. The Appellate Court looks at the seriousness of the irregularity and whether or not it would have any type of impact on the defendant receiving a fair trial. State v. Escalona, 59 Wn. App. 251, 254, 742, P.2d 190 (1987). Because the trial Judge is in the best position to determine if an irregularity caused prejudice at trial, the Appellate Court reviews the decision to grant or deny a mistrial for abuse of discretion. State v. Weber, 99 Wn.2d 158, 165 – 166, 659 P.2d 1102 (1983). There is nothing to indicate that the trial Court has abused its discretion in handling the

matter in the way that it did. It is interesting to note that the defense attorney appointed by the Court to handle the sentencing also indicated that he had reviewed this entire matter and concluded that there was nothing to base a new trial motion on. There is nothing to indicate that this constituted any type of prejudicial error against the defendant. Where the defendant claims a trial of irregularity, the reviewing Court must decide whether the record reveals a substantial likelihood that the trial irregularity affected the jury verdict, thereby denying the defendant a fair trial. State v. Hicks, 41 Wn. App. 303, 313, 704 P.2d 1206(1985); State v. Davenport, 100 Wn.2d 757, 762 – 763 675 P.2d 1213 (1984). The State submits that in our situation there is absolutely no showing that the trial irregularity revealed a substantial likelihood that it affected the jury verdict.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is a claim that the trial Court entered various items of community custody conditions which were not appropriate in his case. He indicates that because alcohol was not a factor he should not have alcohol related conditions; he disagrees with the conditions related to use and possession of drug

paraphernalia; he objects to the deadly weapon provisions of the Judgment and Sentence.

The Court entered its Felony Judgment and Sentence on November 27, 2007. A copy of the Felony Judgment and Sentence (CP 45) is attached hereto and by this reference incorporated herein. The alcohol provisions that the defendant complains of are found in the Appendix F of the Judgment and Sentence. The areas concerning drugs and deadly weapon are found in the main body of the Judgment and Sentence on pages 8 and 9.

USE OF ALCOHOL CONDITIONS

The SRA provides that an offender shall not consume alcohol. RCW 9.94A.700(5)(d). Other special conditions include words “crime related” while the prohibition against alcohol does not. By doing so, the legislature manifested its intent that a trial Court be permitted to prohibit consumption of alcohol regardless of whether alcohol had contributed to the offense. State v. Jones, 118 Wn. App. 199, 206, 76 P.3d 258 (2003). However, the Court may not impose alcohol counseling when there is no evidence that alcohol contributed to the defendant’s criminal conduct. State v. Jones, 118 Wn. App. at 208. In our situation, there is nothing to indicate that alcohol was involved in the commission of this particular

activity and as such the Court rightfully could prohibit him from consuming alcohol but other conditions concerning being in places where alcohol is sold or other treatment modalities would most likely be inappropriate and the State does not object to the striking of some of those provisions.

USE OF DRUGS

However, the situation is different when it relates to the drugs. In our case, there was clear testimony from the child involved that the defendant had used drugs with her prior to the commission of various activities. For example, at RP 138 – 139, the child indicates that she and the defendant were smoking marijuana outside the residence and then had sexual relations at around the same time. At that time she was thirteen years old. (RP 138 – 139). This area was also emphasized by the Prosecutor at the time of sentencing hearing after review of the pre-sentence investigation report (RP 424). It does appear from the evidence at the time of trial that the question of drug ingestion and providing the drugs to the minor prior to sexual relations is an appropriate area for concerns by the court which would therefore justify the implementation of drug restraints and controls.

Under RCW 9.94A.505(8) the Court may impose and enforce crime related prohibitions as part of a sentence. A crime related prohibition means an order of a Court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted. RCW 9.94A.030(13). The existence of a relationship between the crime and the condition always will be subjective and such issues have traditionally been left to the discretion of the sentencing Judge. State v. Parramore, 53 Wn. App. 527, 530, 768 P.2d 530 (1989); State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant deals with community custody conditions and the argument that some of these conditions will not be ripe unless the defendant violates the prohibitions. The claim is that because of that it prevents the defendant from having a right of effective appellate review.

The State submits that this matter together with the question of the deadly weapon language used in the conditions section of the Judgment and Sentence and the paragraphs specifically referred to by the defendant as being vague are subject to the rules in State v. Motter, 139 Wn. App. 797, 162 P.3d 1190 (2007). The State submits that the question raised by

the defendant of pre-enforcement vagueness challenges are very similar to his claims of improper delegation. The State submits that similar to the improper delegation claims which cannot be raised for the first time on Appeal (State v. Smith, 130 Wn. App. 721, 729 – 730, 123 P.3d 896 (2005)), the claims of vagueness and other considerations can only be challenged in the context of a harmful application of the community custody condition. Until that occurs, it is not properly before the Court and should not be addressed.

For example, the defendant assigns specifically to a provision in the Judgment and Sentence (CP 45) which indicates as follows:

Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, police scanners; and hand held electronic scheduling and data storage devices.

(Judgment and Sentence, CP 45, page 8)

The defendant maintains that this particular provision of the defendant's sentence is "hopelessly vague". (Brief of Appellant, page 29). Further, he maintains that this matter should be heard at this time and is ripe for decision.

A statute or condition is void of vagueness if it fails to define the criminal offense with sufficient definiteness that ordinary people can

understand what conduct is prescribed. City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). The Appellate Court presumes that statutes are constitutional and the defendant has a heavy burden of proving that a statute is unconstitutional beyond a reasonable doubt. State v. Smith, 111 Wn.2d 1, 5, 759 P.2d 372 (1988). The fact that some terms in a statute are not defined does not necessarily mean the statute or condition is void for vagueness. Douglass, 115 Wn.2d at 180. Impossible standards of specificity are not required, and a statute “is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct.” City of Seattle v. Eze, 111 Wn.2d 22, 27, 759 P.2d 366 (1988).

The State submits that this identical argument and claim was raised recently in State v. Motter, 139 Wn. App. 797, 162 P.3d 1190 (2007). In the Motter case, the defendant challenged the identical provision of his judgment and sentence. He attacked it for vagueness and for the reasons also raised in this appeal. Division II, in the Motter case, indicated as follows:

B. Prohibition on Paraphernalia Possession and Use

Second, Motter challenges the trial court's order that he: shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular

phones, police scanners, and hand held electronic scheduling and data storage devices. CP at 149. This condition does not order affirmative conduct. And, as demonstrated above, Motter's crime was related to his substance abuse. Thus, forbidding Motter from possessing or using controlled substance paraphernalia is a "crime-related prohibition" authorized under RCW 9.94A.700(5)(e). Thus, this condition is valid.

Motter argues that "almost any item can be used for the ingestion of controlled substances, such as knives, soda cans, or other kitchen utensils." Br. of Appellant at 29. A community custody condition may be void for vagueness if it fails to define specifically the activity that it prohibits. State v. Riles, 86 Wn. App. 10, 17-18, 936 P.2d 11 (1997), aff'd, 135 Wn.2d 326, 957 P.2d 655 (1998). But Motter fails to cite to authority and his argument consists of one unhelpful sentence in the context of a complex constitutional legal doctrine.

Moreover, Motter's challenge is not ripe. In State v. Massey, 81 Wn. App. 198, 200, 913 P.2d 424 (1996), the defendant challenged a condition that he submit to searches. This court held that the judicial review was premature until the defendant had been subjected to a search he thought unreasonable. And in State v. Langland, 42 Wn. App. 287, 292-93, 711 P.2d 1039 (1985), we held that the question of a law's constitutionality is not ripe for review unless the challenger was harmed by the law's alleged error. Here, Motter claims that the court order could prohibit his possession of innocuous items. But Motter has not been harmed by this potential for error and this issue therefore is not ripe for our review. It is not reasonable to require a trial court to list every item that may possibly be misused to ingest or process controlled substances, items ranging from "pop" cans to coffee filters. Thus, we can review Motter's challenge only in context of an allegedly harmful application of this community custody condition. This argument is not properly before this court and we will not address it.

- Motter, 139 Wn. App. at 804.

The State submits that nothing has been added in this brief to undermine that Motter determination.

Finally, the defendant maintains that under the WAC provisions that this matter would not come back before the court nor would there be an opportunity for review of the conditions once they do become “ripe”. However, the State would submit that since this matter is not ripe at this time, that when it become ripe, the defendant would have the opportunity to file a personal restraint petition to seek some type of other relief at that time. It would not make any sense to forestall him at that point from raising it.

A petitioner who has had no previous or alternative avenue for obtaining state judicial review need only satisfy the requirements under RAP 16.4. E.g., In Re Personal Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994) (a personal restraint petition (PRP) challenging a decision of the Indeterminate Sentence Review Board concerning parole need not meet the threshold requirements for constitutional and nonconstitutional errors because the policy of finality underlying those requirements is absent where the prisoner has had no previous or alternative avenue for obtaining state judicial review of the board decision); see also In Re Personal Restraint of Shepard, 127 Wn.2d 185,

191, 898 P.2d 828 (1995); In Re Personal Restraint of Mattson, 124 Wn. App. 130, 172 P.3d 719 (2007).

The validity of a community custody condition is not ripe for review until the condition has been enforced or the defendant has suffered negative consequences from it. State v. Eaton, 82 Wn. App. 723, 735, 919 P.2d 116 (1996). Ford's argument is speculative and not ripe for review.

The State submits that Motter is the controlling case law and should be applied in this circumstance.

V. RESPONSE TO ASSIGNMENT OF ERROR NO. 4

The fourth assignment of error appears to be an ineffective assistance of counsel argument in that the attorney did not file a motion for a new trial on behalf of the defendant. It is difficult to tell exactly what the basis of the motion for new trial is other than an indication in the appellant's brief that the defendant had received some type of communication at the Readiness Hearing on the Thursday before the Trial of a possible offer and that he had rejected it. The defendant maintains that he never received this offer prior to trial but was only told about it after the trial. On page 42 – 43 of the appellants brief the appellant attorney quotes at length from Mr. Brintnall, the court appointed attorney

to represent the defendant at the time of sentencing who did not file the Motion for new Trial. One of the reasons he didn't do so was because of contact with Mr. Ladoucer, the prior defense attorney, who indicates that the defendant was advised of the offer and had rejected it. This became part of the Verbatim Report of Proceedings on or about November 30, 2007 with an ongoing discussion between the Prosecutor, Defense Attorney and the Court:

MR. BRINTNALL (Defense Attorney): And my – in discussion just before we came out here, my – my client was discussing it, since that – you brought that up, was discussing if it – that he was – his understanding was the Court appointed me to investigate and proceed on or not proceed on an ineffective assistance of counsel claim.

My understanding from the Court was I was – I was to determine whether or not there were grounds for a motion for new trial.

As I told him, this pretty much would blunt my inquiries, at least for a while, and that he needs to bring the ineffective assistance of counsel a the Court of Appeals level on appeal and not, you know, there's – he's maintaining that, you know, because he was not told about the offer prior to the trial that that's ineffective assistance of counsel, and I said yes – and I've agreed with him that, yes, there is a case on that, in fact, you know, in – in play.

However, I don't have anything other than what – you know, I have his statement, but we have a statement from Mr. Ladouceur that directly contradicts it. And I don't know where to go from here as far as the possibility of – of – of, you know, pursuing the ineffective assistance of counsel –

THE COURT: Considering you've already gone through sentencing, would that not be an issue that would be addressed at the appellate level?

MR. BRINTNALL: That's -- that's what I -- you know, that's what I'm --

THE COURT: Okay.

MR. BRINTNALL: -- maintaining, but --

THE COURT: Have we done --

MR. BRINTNALL: -- Mr. Ford seems to think that he want -- Mr. Ford wanted me to bring up the ineffective assistance claim here.

The only thing -- the only possible way -- thing I could think of would be if, in fact, Mr. Harvey has a copy of the -- because Mr. Ford and I have kind of a disagreement as far as in our memory as to what Mr. Harvey said at the sentencing hearing about when he received the notice from Mr. Ladouceur.

My understanding was it -- but both of us, I think, that it was an e-mail, an e-mail rejection of the offer. Is that correct, Mr. Harvey?

MR. HARVEY: Regarding -- are we talking about the offer --

MR. BRINTNALL: Yeah.

MR. HARVEY: -- and just to be clear, the offer referred to at sentencing was an offer that was made at the readiness, conveyed to the defendant after it was conveyed by myself to Mr. Ladouceur, and then rejected by e-mail the Friday before the -- the trial day, the next day.

MR. BRINTNALL: Okay. The only thing I could think of would be if we could see a copy of that -- of that e-mail.

MR. HARVEY: I can get a copy of the e-mail.

THE COURT: Do you save that stuff?

MR. HARVEY: Absolutely. I have it.

-(RP 460, L. 16 -- 463, L. 5).

This was all part of a claim by the defendant of ineffective assistance of counsel, that is, Mr. Ladouceur who was the trial attorney.

(RP 466 – 477). Now, on Appeal, the claim of ineffective assistance is against Mr. Brintnall, the attorney who was assigned by the Court to look into the question of whether or not there were grounds for a motion for new trial. This motion for new trial would not be based on something that occurred at the trial but rather on something that was pretrial: That is, a claim that a plea offer was made and not imparted to the defendant prior to trial. It is interesting to note that the claim is that this would have been some type of SSOSA recommendation but that totally flies in the face of the fact that the defendant at the time of sentencing categorically maintained his complete innocence in this matter. (RP 447, L. 20 – 24). The State submits that it is doubtful that he would have been a SSOSA candidate. CrR7.5 deals with new trials and the grounds for a new trial. None of those grounds appear to fit what it is that the defendant is maintaining. Further, in deciding a motion for a new trial (if one had actually been made) the trial Court is vested with broad discretion. The trial Court's denial of a motion will not be disturbed absent a manifest abuse of discretion. State v. Williams, 96 Wn.2d 215, 221, 634 P.2d 868 (1981). The rule for granting of a new trial deals primarily with whether or not the defendant's rights were materially affected at the time of trial because of something that occurred in the trial. State v. Wilson, 71 Wn.2d 895, 899, 431 P.2d 221 (1967). What the defendant is claiming in our

case is something that is outside the Court record and did not occur at the time of trial nor did it have any impact on the trial itself. Further, absent of guilty plea or some other form of detrimental reliance, the State may revoke any plea proposal. State v. Wheeler, 95 Wn.2d 799, 805, 631 P.2d 376 (1981). It is the defendant's burden to establish detrimental reliance. State v. Bogart, 57 Wn. App. 353, 357, 788 P.2d 14 (1990). Where the defendant did not enter a guilty plea, the defendant must establish that he relied on the bargain in a manner that makes a fair trial impossible. State v. Bogart, 57 Wn. App. at 357. To determine whether a defendant detrimentally relied on a revoked plea offer, the Court's must resolve the factual issues of how far the proposal extended and what the reasonable expectations of the parties were. State v. Bogart, 57 Wn. App. at 356. Here, the Appellate system has absolutely no evidence or information to interpret what this so called plea bargain was going to be. There simply is nothing in the record to support this. In that regard, it becomes something outside of the record which is more appropriate as a personal restraint petition rather than a matter on direct appeal. But it certainly has nothing to do with a motion for new trial. It is a common rule that the State can revoke a plea proposal offered to a defendant up until the defendant enters a plea or has done some act of detrimental reliance on the State's proposal. State v. Wheeler, 95 Wn.2d at 803. Here, the offer was rejected by the

defendant thus none of the other matters were triggered. The Court of Appeals cannot consider matters outside the record on appeal. State v. Crane, 116 Wn.2d 315, 335, 804 P.2d 10(1991); State v. Blight, 89 Wn.2d 38, 45 – 47, 569 P.2d 1129 (1977).

The defendant has made a claim of ineffective assistance of counsel. To establish that the right to effective assistance of counsel has been violated, the defendant must make two showings: that counsel's representation was deficient and that counsel's deficient representation caused prejudice. State v. McFarland, 127 Wn.2d 322, 334 – 335, 899 P.2d 1251(1995). But, even deficient performance by counsel does not warrant setting aside the Judgment of a criminal proceeding if the error had no effect on the Judgment. Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052 80 L. Ed. 2d 674 (1984). A defendant must affirmatively prove prejudice, not simply show that the errors had some conceivable effect on the outcome. Strickland, 466 U.S. at 693. "In doing so, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." State v. Crawford, 159 Wn.2d 86, 99 – 100, 147 P.3d 1288 (2006).

The State maintains that there has been absolutely no showing of ineffective assistance of counsel nor has there been any showing by the defendant that this matter is ripe for review as a direct appeal. The matters, if they exist, are outside the record that has been sent to the Court in this direct appeal.

VI. CONCLUSION

The State agrees that certain provisions concerning alcohol should be modified by the sentencing court. In all other matters, the trial court should be affirmed.

DATED this 24 day of Sept, 2008.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By: 
MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

APPENDIX "A"

**FELONY JUDGMENT AND SENTENCE
PRISON- COMMUNITY PLACEMENT/ COMMUNITY CUSTODY**

FILED
NOV 27 2007
Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,
v.
TYRONE DENTYROLL FORD,
Defendant.
SID: WA19705259
DOB: 3/9/1984

No. 06-1-02432-0
FELONY JUDGMENT AND SENTENCE (JS)
PRISON - COMMUNITY PLACEMENT/COMMUNITY CUSTODY
NON PERSISTENT OFFENDER - RCW 9.94A.712
 Clerk's Action Required; Paragraph 4.5 (SDOSA), 4.2, 5.3, 5.6 and 5.8

07-9-07735-8

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 August 27, 2007 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	8/9/2006 to 9/9/2006
02	RAPE OF A CHILD IN THE THIRD DEGREE	9A.44.079	8/16/2006 to 8/17/2006

as charged in the Amended Information.

Additional current offenses are attached in Appendix 2.1.

The Court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.

A special verdict/finding that the offense was **predatory** was returned on Count(s) _____. RCW 9.94A.____.

Waf

- A special verdict/finding that the **victim was under 15 years of age** at the time of the offense was returned on Count(s) _____ RCW 9.94A.____.
- A special verdict/finding that the **victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult** at the time of the offense was returned on Count(s) _____ RCW 9.94A.____, 9A.44.010.
- A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.835
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of **firearm** was returned on Count(s) _____ RCW 9.94A.602, 510
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) _____ RCW 9.94A.602
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) _____ is/are **Domestic Violence** offense(s) as that term is defined in RCW 10.99.020:
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) _____. RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- 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
No known felony convictions					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score).

- RCW 9.94A.525
- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9.94A.525: _____
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: _____
- The State has moved to dismiss count(s) _____.
- The defendant is found NOT GUILTY of Counts _____.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	3	XI	102 MONTHS to 136 MONTHS		102 MONTHS to 136 MONTHS	LIFE \$50,000
02	3	VI	26 MONTHS to 34 MONTHS		26 MONTHS to 34 MONTHS	5 YEARS \$10,000

* (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, RCW 9.94A.533(8).

- Additional current offense sentencing data is attached in Appendix 2.3.

- 2.4** **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) _____.

The defendant and the 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 to by the defendant, admitted by the defendant in the guilty plea, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

The defendant stipulates and waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct 2348, 147 L. Ed 2d 435 (2000), *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

Findings of fact and conclusions of law are attached in Appendix 2.4. 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.750/753.

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

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

If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty.

III. JUDGMENT

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

3.2 The Court DISMISSES Counts _____.

The defendant is found NOT GUILTY of Counts _____.

3.3 There do do not exist substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RTN/RJN	\$TBS	Restitution to be paid to: <input checked="" type="checkbox"/> Victim(s) and amounts to be set by separate court order	RCW 9.94A.750/.753
PCV	\$ 500.00	Victim Assessment	RCW 7.68.035
	\$ _____	DV Penalty Assessment	RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
FRC	\$ 200.00	Criminal filing fee	RCW 9.94A.505
WFR	\$ _____	Witness costs	RCW 10.01.160 and RCW 2.40.010
SFR/SFS/SFW/WRF	\$ _____	Sheriff Service Fees	RCW 10.01.160 and 36.18.040
JFR	\$250.00	Jury Demand Fee \$ 250.00	RCW 10.01.160 and 10.46.190
EXT	\$ _____	Extradition costs	RCW 9.94A.505
	\$ 120.75	Other Costs: Transcription costs at public expense	RCW 9.94A.760
PUB	\$ 1400.00 \$ 1500.00	Fees for court appointed attorney Trial per diem if applicable (3 DAYS)	RCW 9.94A.505/.760/.030
WFR	\$ 300.00	Court appointed defense expert and other defense costs	RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$ 500.00	Fine	RCW 9A.20.021
CDF/LDI/FCD/NTF/SAD/SDI	\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
CLF	\$ _____	Crime lab fee - <input type="checkbox"/> Suspended due to Indigency	RCW 43.43.690
	\$ 100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)	RCW 43.43.7541

RTN/RJN	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To: _____ (List Law Enforcement Agency)	RCW 38.52.430
	\$ _____	Other Costs for: _____	RCW 9.94A.760

- The above financial obligations do not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.750/753. A restitution hearing:
- shall be set by the prosecutor
 - is scheduled for _____
- The defendant has stipulated that restitution shall include loss of wages, costs of counseling, and other related expenses for the victim and their immediate family as a result of the criminal acts.
- Restitution ordered above shall be joint and several with the co-defendants listed in the Information or identified below: _____.
- The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602
- All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____ RCW 9.94A.760
- The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.
- In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate of \$ _____. (JRL) RCW 9.94A.760
- The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190
- 4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754
- HIV TESTING. The defendant shall be tested and counseled for HIV as soon as possible and the defendant shall fully cooperate in the testing and counseling. RCW 70.24.340.
- Failure to provide the DNA/HIV testing sample is a violation of the Judgment and Sentence and a warrant may be issued to compel compliance.
- 4.3 The defendant shall not have contact with L A K (female, 9/10/1992) including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for Life years (not to

exceed the maximum statutory sentence). Any modifications of this order must occur by further order of the court after an appropriately scheduled hearing with notice to all parties and only after the defendant has secured a recommendation of approval, in writing, from the community corrections officer and the therapist. This condition applies during any period of incarceration.

- A Supplemental Domestic Violence Protection Order, Antiharassment No Contact Order, or Sexual Assault Protection Order is filed with the Judgment and Sentence.
- The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.4 OTHER:

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 confinement in the custody of the Department of Corrections:

126 days/months on Count 01

34 days/months on Count 02

Actual number of months of total confinement ordered is: 126
(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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, or sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: _____

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

COUNT	Minimum Term	Maximum Term
01	126 months 126 months	LIFE
02	34 months 34 mos.	

- (c) The defendant shall receive credit for time served of 100 days, that confinement being solely under this cause number. RCW 9.94A.505.

Credit for 100 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced.

4.6 COMMUNITY PLACEMENT is ordered on Counts _____ for _____ months

COMMUNITY CUSTODY for count(s) 1 sentenced under RCW 9.94A.712 is ordered for any period of time the Defendant is released from total confinement before the expiration of the maximum sentence.

COMMUNITY CUSTODY is ordered on Counts 2 for a range from 26 to 36 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and ± 26 months (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

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

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

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 Department of Corrections-approved education, employment and/or community 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) pay supervision fees as determined by the Department of Corrections; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections and (8) for sex offenses, submit to electronic monitoring if imposed by Department of Corrections. The 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 defendant's conditions of Community Placement/Community Custody include the following:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with _____
- Defendant shall remain within the prescribed geographical boundary specified by his community corrections officer.
- If the offense was committed on or after July 24, 2005, you may not reside within eight hundred eighty (880) feet of the facilities and grounds of a public or private school. RCW 9.94A.030
- For Sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by the Department of Corrections. Emergency conditions shall not remain in effect longer than seven working days unless approved by the Indeterminate Sentence Review Board pursuant to law. RCW 9.94A.713.
- Other conditions may be imposed by the court or Department during community custody, or are

set forth here:

-
- The conditions of community supervision/community custody shall begin immediately or upon the defendant's release from confinement unless otherwise set forth here:
-
- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family or as authorized by his/her community corrections officer for treatment/housing purposes. Additionally, the defendant shall not initiate or permit communication or contact with the following persons:
-
- Defendant shall not have any contact with other participants in the crime, either directly or indirectly.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers.
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed.
- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, police scanners, and hand held electronic scheduling and data storage devices.
- Defendant shall not frequent known drug activity areas or residences.
- Defendant shall not use or possess alcoholic beverages at all to excess.
The defendant will will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.
- Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.
- Defendant shall undergo an evaluation for treatment for substance abuse mental health anger management treatment parenting program and fully comply with all recommended treatment.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a substance abuse mental health anger management treatment parenting program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a **domestic violence perpetrator program** as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the

defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate.

- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.
- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
- Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
- Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):

- Defendant shall not possess burglary tools.
- Defendant shall not possess ammunition or deadly weapons.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
- Defendant shall not possess a checkbook or checking account.
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.

- Defendant shall not have any contact with minors. Minors mean persons under the age of 18 years. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing. *Except the Defendant's biological children in a supervised environment.*
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a Washington State certified sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the Prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "Cooperate with" means the defendant shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.

The sex offender therapist shall submit quarterly reports on your progress in treatment to the court, Department of Corrections, and prosecutor and the defendant shall execute a release of information to the community corrections officer, Prosecuting Attorney and the Court so that the treatment provider can discuss the case with them. The quarterly report shall reference the treatment plan and include the following, at a minimum: dates of attendance, the defendant's compliance with requirements, treatment activities, and relative progress in treatment.
- Defendant shall, at his/her own expense, submit to periodic polygraph examinations at the direction of his/her community corrections officer and/or Prosecuting Attorney to ensure compliance with the conditions of community placement/custody. This shall occur no less than twice yearly. Copies of the examination results shall be provided to the Prosecuting Attorney's office upon request. Such exams will be used to ensure compliance with the conditions of community supervision/placement, and the results of the polygraph examination can be used by the State in revocation hearings.
- Defendant shall, at his own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's office upon request.
- Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals; provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2). or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment for view or sale.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:

- 4.7 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limit to the defendant while under the supervision of the County Jail or Department of Corrections:
-
- 4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.10 When there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct searches of the defendant's person, residence, automobiles or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.
- 4.11 Other:
-
-

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 ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes 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 9.94A505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections 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.7606
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

Cross off if not applicable:

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 involving a minor as 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 within 24 hours of your 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 business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. 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, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 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 10 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 10 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 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. 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 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. 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 10 days of such termination. (Effective September 1, 2006) 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 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. 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 24 hours 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 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in 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. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

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

5.8 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270. The clerk of the court is further 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.

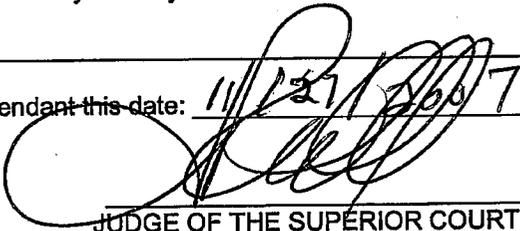
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW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

5.10 Persistent Offense

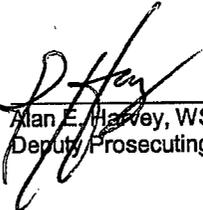
- The crime(s) in count(s) 01 is a "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505
- The crime(s) in count(s) 01 is one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

5.11 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 11/27/2007

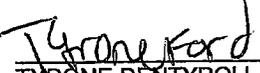

JUDGE OF THE SUPERIOR COURT

Print Name: John P. Wille


Alan E. Hawley, WSBA #25785
Deputy Prosecuting Attorney


~~Thomas A. Ladd~~, WSBA #12883
Attorney for Defendant

George Brentnall #8090


TYRONE DENTYROLL FORD
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK
STATE OF WASHINGTON, Plaintiff,

v.

TYRONE DENTYROLL FORD,

Defendant.

SID: WA19705259

DOB: 3/9/1984

NO. 06-1-02432-0

**WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	8/9/2006 to 9/9/2006
02	RAPE OF A CHILD IN THE THIRD DEGREE	9A.44.079	8/16/2006 to 8/17/2006

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	Minimum Term	Maximum Term
01	RAPE OF A CHILD IN THE SECOND DEGREE	126 months	Life
02	RAPE OF A CHILD IN THE THIRD DEGREE	34	

These terms shall be served concurrently to each other unless specified herein:

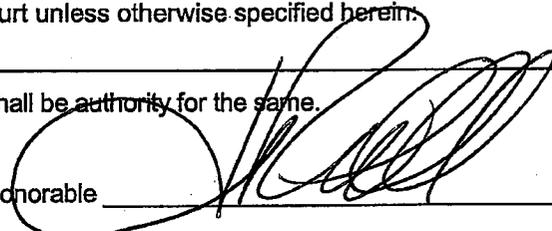
The defendant has credit for 100 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein.

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



John P. Wulle

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 11-27-07

SHERRY W. PARKER, Clerk of the
Clark County Superior Court

By: Kathy L. Boehm
Deputy



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

Defendant's signature: Tyrone Ford

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

Interpreter signature/Print name: _____

I, SHERRY W. PARKER, 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: _____

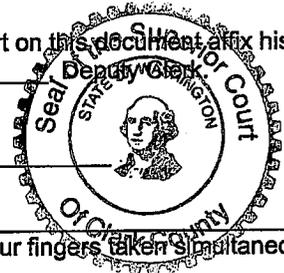
Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT TYRONE DENTYROLL FORD	
SID No. WA19705259 (If no SID take fingerprint card for State Patrol)	Date of Birth 3/9/1984
Race: B	Sex: M
Driver License No. FORD*TD160DZ	Driver License State: WA
FBI No. 813701NC0	Local ID No. (CFN): 185250
Alias name, SSN, DOB:	Corrections No.
Other	

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document, affix his or her fingerprints and signature thereto. Clerk of the Court: Kathy Beinn

Dated: 11-27-07

DEFENDANT'S SIGNATURE: Tyrone Ford



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

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

STATE OF WASHINGTON)

Cause No.: 06-1-02432-0

Plaintiff)

JUDGEMENT AND SENTENCE (FELONY)

v.)

APPENDIX F

FORD, Tyrone Dentroll)

ADDITIONAL CONDITIONS OF SENTENCE

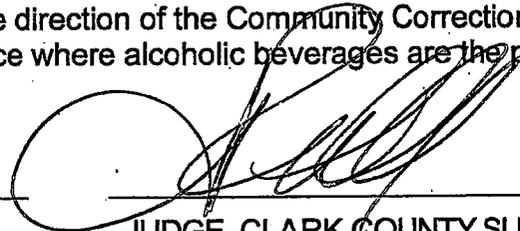
Defendant)

DOC No. 310040)

CRIME RELATED PROHIBITIONS

1. No contact with minor children under the age of 18. *(Except the Defendant's biological children in a supervised context)*
2. Do not frequent areas where children congregate.
3. Polygraph monitoring, including a full disclosure polygraph.
4. Obtain an evaluation for substance abuse treatment and follow recommendations.
5. Do not possess or consume controlled substances.
6. Do not possess or consume alcoholic beverages.
7. Take antabuse at the direction of the Community Corrections Officer.
8. Do not be in any place where alcoholic beverages are the primary sale item.

11/27/2007
DATE



JUDGE, CLARK COUNTY SUPERIOR COURT

SF/dc

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

STATE OF WASHINGTON,
Plaintiff,
v.
TYRONE DENTYROLL FORD,
Defendant

No. 06-1-02432-0

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
PSP 1	CLARK/WA 99-8-01043-0	8/25/1999	9/27/1999	0 (16)

The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this 27 day of ~~December~~, 2007.
November

Tyrone Ford
Defendant

George Andrew Brintnall
GEORGE BRINTNALL, WSPA #8090
Attorney for Defendant

[Signature]
Scott [Signature], WSBA #16230 25795
Deputy Prosecuting Attorney
[Signature]

APPENDIX "B"

DECLARATION OF THE THOMAS LADOUCEUR

3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
NOV 30 2007
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,
Plaintiff,
v.

I. DECLARATION OF THE THOMAS
LADOUER

TYRONE DENTYROLL FORD,
Defendant.

No. 06-1-02432-0

DECLARATION
-1
CC

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 or (360) 397-2183

DECLARATION OF COUNSEL

Thomas A. Ladouceur, declares the following, under penalty of perjury:

1) I was appointed to represent Tyrone Ford.

2) A readiness hearing was held on August 23, 2007. A jury trial began on August 27, 2007. After the readiness hearing on August 23, I met with the deputy prosecuting attorney assigned to the case, Alan Harvey. At that time he made an offer to settle the case. The offer was for Mr. Ford to enter a plea of guilty to one count of assault in the third degree with a sexual motivation. The sentencing range for that offense was 1-3 months. Mr. Harvey did not indicate what his sentencing recommendation would be, but it was my understanding that we could have further discussions regarding that if Mr. Ford was interested in continued negotiations. The offer was made orally and I was given nothing in writing reflecting it. Mr. Harvey and I had this conversation in a conference room at the courthouse.

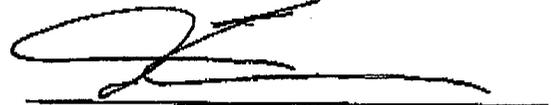
3) Mr. Ford was waiting for me in a hall while I was speaking with Mr. Harvey. When I finished my conference with him I spoke with Mr. Ford. I met with him in the same or a nearby conference room. I conveyed the offer to him just as it was conveyed to me. I inquired of Mr. Ford whether he understood the offer and whether he wished to accept it. He indicated to me he did understand it and the ramifications of a conviction for that charge. However, he very clearly rejected the offer and wished to proceed to trial.

4) On either Friday, August 24, 2007, or Saturday, August 25, 2007, I telephoned Mr. Ford. I wanted to make sure that he understood that he could enter a "Newton" plea to the offer we had received. He indicated that he understood what that meant, but reiterated that he did not wish to accept the offer and wanted to proceed to trial.

5) On Friday, August 24, 2007, I advised Mr. Harvey that Mr. Ford had rejected the offer and our intention was to proceed to trial as scheduled.

6) During the course of my representation of Mr. Ford I did explain to him the option of a SOSSA sentence. I do not recall the specific date that we discussed this.

DATED this 28 day of November, 2007, at Longview,
Washington.



Thomas A. Ladouceur
WSBA No. 19963

APPENDIX "C"
AMENDED INFORMATION

FILED

AUG 28 2007

Sherry W. Parker, Clerk, Clark Co.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,
Plaintiff,
v.
TYRONE DENTYROLL FORD
Defendant.

AMENDED INFORMATION

No. 06-1-02432-0
(VPD 06-22021)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - RAPE OF A CHILD IN THE SECOND DEGREE - 9A.44.076

That he, TYRONE DENTYROLL FORD, in the County of Clark, State of Washington, between August 9, 2006 and September 9, 2006, did have sexual intercourse with L.A.K., who was at least twelve years old but less than fourteen years old and not married to the defendant and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.076.

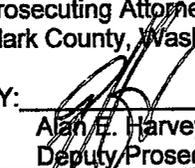
This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(28), RCW 9.94A.030(32), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

COUNT 02 - RAPE OF A CHILD IN THE THIRD DEGREE - 9A.44.079

That he, TYRONE DENTYROLL FORD, in the County of Clark, State of Washington, between September 16, 2006 and September 17, 2006 did have sexual intercourse with L.A.K., who was at least fourteen years old but less than sixteen years old and not married to the defendant and the defendant was at least forty-eight months older than the victim ; contrary to Revised Code of Washington 9A.44.079.

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

Date: August 28, 2007

BY: 
Alan E. Harvey, WSBA #25785
Deputy Prosecuting Attorney

DEFENDANT: TYRONE DENTYROLL FORD			
RACE: B	SEX: M	DOB: 3/9/1984	
DOL: FORD*TD160DZ WA		SID: WA19705259	
HGT: 601	WGT: 185	EYES: BLK	HAIR: BLK
WA DOC:		FBI: 813701NC0	
LAST KNOWN ADDRESS(ES): O - 11010 NE 48TH CR, VANCOUVER WA 98682			

AMENDED INFORMATION - 1
CC

Child Abuse Intervention Center
P.O. Box 61992
Vancouver Washington 98666
(360) 397-6002



APPENDIX "D"

COURT'S INSTRUCTIONS TO THE JURY

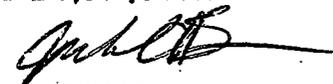
16

FILED

AUG 28 2007

Sherry W. Parker, Clerk, Clark Co.

6:30pm



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

TYRONE DENTYROLL FORD,

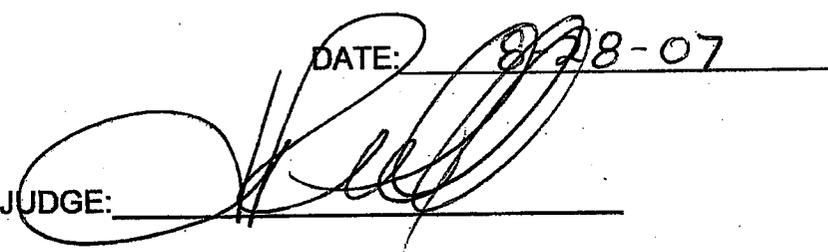
Defendant.

No. 06-1-02432-0

COURT'S INSTRUCTIONS TO THE JURY

DATE: 8-28-07

JUDGE:



44
Ⓞ

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of

testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given to the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt

INSTRUCTION NO. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

Sexual intercourse means that the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight or any penetration of the vagina or anus however slight, by an object, including a body part, when committed on one person by another, any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

INSTRUCTION NO. 6

A person commits the crime of rape of a child in the second degree when the person has sexual intercourse with a child who is at least twelve years old but less than fourteen years old, who is not married to the person, and who is at least thirty-six months younger than the person.

INSTRUCTION NO. 7

To convict the defendant of the crime of rape of a child in the second degree as charged in count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or between August 8, 2006 and September 9, 2006, the defendant had sexual intercourse with L.A.K.;
- (2) That L.A.K. was at least twelve years old but was less than fourteen years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That L.A.K. was at least thirty-six months younger than the defendant;
and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 8

A person commits the crime of rape of a child in the third degree when the person has sexual intercourse with a child who is at least fourteen years old but less than sixteen years old, who is not married to the person, and who is at least forty-eight months younger than the person.

INSTRUCTION NO. 9

To convict the defendant of the crime of rape of a child in the third degree as charged in count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That between September 16, 2006 and September 17, 2006, the defendant had sexual intercourse with L.A.K.;
- (2) That L.A.K. was at least fourteen years old but was less than sixteen years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That L.A.K. was at least forty-eight months younger than the defendant; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 10

In order to convict a person of a sexual offense against a child, it shall not be necessary that the testimony of the alleged victim be corroborated.

INSTRUCTION NO. 11

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 12

There are allegations that the defendant committed acts of Rape of a Child in the Second Degree and Rape of a Child in the Third Degree on Separate occasions. To convict the defendant, one or more particular acts must be proved beyond a reasonable doubt and you must unanimously agree as to which act or acts have been proved beyond a reasonable doubt. You need not unanimously agree that all the acts have been proved beyond a reasonable doubt.

INSTRUCTION NO. 13

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted into evidence, these instructions, and a verdict form for each count.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror will sign it and notify the bailiff, who will conduct you into court to declare your verdict.

