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No. 66398-4

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

IN RE PERSONAL RESTRAINT PETITION OF:

ZAHID KHAN,

PETITIONER.

PERSONAL RESTRAINT PETITION

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DIVISION ONE

DEC 3 2010

A. STATUS OF PETITIONER

Zahid Khan (hereinafter “Khan”) challenges his five Snohomish County convictions for attempted, second and third degree child molestation and second and third degree rape of a child (Sno. Co. No. 07-1-02449-7). Khan remains incarcerated serving the 280-month sentence imposed by the trial court.

This is Khan’s first collateral attack on this judgment.

B. FACTS

1. Procedural History

On October 18, 2007, Mr. Khan was charged by *Amended Information* with child molestation in the second degree, rape of a child in the second degree, rape of a child in the third degree, child molestation in the third degree and attempted child molestation in the third degree.

On November 29, 2007, Mr. Khan’s jury found him guilty on all five counts. *See Judgment and Sentence* attached as Appendix A.

On January 14, 2008, Mr. Khan was sentenced to 280 months in prison.

Khan appealed. (No. 61207-7). His conviction and sentence were affirmed by this Court in an unpublished appeal filed on April 20, 2009. The Washington Supreme Court denied his petition for review on November 5, 2009. The mandate was issued on December 4, 2009.

This PRP timely follows.

2. Facts of the Crime

On direct appeal, this Court described the facts as follows:

On July 16, 2007, Eram Mirza and her husband Zahid Khan were hosting various family members in town for a celebration. The couple's seven-year-old son R.K., and six-year-old daughter, M.K., slept on the floor of the second floor loft close to Mirza's 14-year-old daughter, R.H., who slept on the couch. Following incidents that occurred that night, the State charged Khan with second degree child molestation, second degree rape of a child, third degree rape of a child, third degree child molestation and attempted third degree child molestation. All charges involved R.H.

At trial R.H. testified that shortly after the family moved to Bothell in September 2004, while the children were still sleeping on mattresses on the floor, she awoke to find Khan squeezing her breasts. In August 2006, after she fell asleep on the loft couch while watching television, she awoke to Khan kneeling next to the couch moving his finger in and out of her anus. On another occasion, while she was 13 or 14, she was sleeping on her bed in her room when she was awakened by Khan moving his finger in and out of her vagina. She testified that Khan had touched her several other times and that she was afraid to tell anyone because he threatened her and bought her gifts to keep her from telling her mother. At last, in July 2007, when she woke up on the couch and saw him reaching for her chest, she called out to her mother because she believed her visiting family members would help her.

Mirza testified that on July 16, after Khan was asleep in his bedroom and the children were asleep in the loft, she and her sister Sanober went down the street to visit their sister. Mirza and Sanober both testified that when they returned after midnight, they heard R.H. call out, "Mom, Mom. Where are you?" As they started quickly up the stairs, they heard Khan say, "Shut up. Shut up. What's your problem?" When they reached the loft, they saw Khan, with a full erection, standing near the couch where

R.H. sat, crying. Mirza testified that she took R.H. downstairs where R.H. said, “it’s been happening for a long time.”

Mirza testified that she sent R.H. to California with Sanobar and her husband the next morning. A few days later, after the remaining relatives left, Mirza contacted Child Protective Services (CPS). CPS reported the call to police. In early August, R.H. returned to Washington and provided statements.

Khan denied touching R.H. He testified that R.H. was rebelling against him for his strict rules based on his Muslim faith. He claimed that on the night in July 2007, he was merely covering his daughter M.K. with a blanket when R.H. started yelling and he did not have an erection.

Because the extra-record facts relied on by Khan are specific to the claims he sets forth below, he sets them out in their respective sections.

C. ARGUMENT

1(A). MR. KHAN WAS DENIED HIS RIGHTS TO DUE PROCESS, TO EQUAL PROTECTION, TO BE PRESENT, TO COUNSEL, TO CONFRONT, AND TO A FAIR TRIAL WHEN HE WAS NOT PROVIDED AN INTERPRETER DESPITE HIS LACK OF PROFICIENCY IN ENGLISH.

1(B). MR. KHAN WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO REQUEST AN INTERPRETER FOR KAHN DESPITE KAHN’S LACK OF PROFICIENCY IN ENGLISH.

Facts

Zahid Khan, whose native language was Urdu and who was unable to “readily” understand and communicate in English, needed the services of an interpreter at his trial for crimes that could result in lifetime

incarceration. He was denied that right because his attorney, who did not spend sufficient prior to trial time talking with Khan to appreciate his language difficulties, unreasonably failed to request that the court provide an interpreter. In addition, counsel told Khan that he did not need an interpreter and that it would hurt his case.

This claim is supported in part by Khan's own declaration (which although in English was the result of communications with post-conviction counsel aided by an interpreter). *See* Appendix B.

That declaration states in pertinent part:

3. Urdu is my native language.
4. I was born in Pakistan on August 30, 1972. I came to the United States in late 1999. I moved to Washington State in 2001. During this time I lived with family in houses where Urdu was the primary language spoken.
5. I attended middle school in Pakistan. I took an English class in middle school, but wrote it, rather than spoke it. I did not attend high school. When I arrived in the United States I started working immediately. Prior to recent prison classes, I did not attend school in the United States. Since being sentenced to prison, I have attempted to obtain my GED, but failed because my English is so limited.
6. I speak English slightly better now than when I went to trial in this case.
7. My family retained Lennard Nahajski to represent me on the charged filed against me.
8. When I met with my attorney, who only visited once in jail, I told him that Urdu was my native language and that I did not speak English very well.

9. My attorney told me that he would speak for me and that I should not speak in court. I told him that I would probably not understand everything that was said in court. Once again, my attorney told me that I need not worry because he would be able to understand and respond to everything that was said.
10. Although I told my attorney several times that I was not understanding what was said in court, in response he told me “don’t worry. Everything is good,” and assured me that the case would turn out well.
11. My attorney never read the court papers or any of the witness statements to me.
12. My attorney never asked me who I thought could be called as a witness in my case.
13. My attorney did not talk to me about my testimony before he called me to the stand. As a result, he was unable to put on proof to support my testimony. For example, because he did not talk to me much before my testimony, he was not prepared to put on testimony about the nightly prayer schedule that I had kept for years—a fact that was known to several family members. Consequently, the State was able to claim that I was up at night only to molest my daughter.
14. During trial, I understood some things that were said and did not understand other parts of trial.
15. As a result of my inability to understand everything that was being said during trial, I felt unable to consult with and assist my attorney.
16. When I testified, I was confused several times. I did my best to understand and answer, but there were a number of times when I did not understand exactly what was asked or how to accurately express myself in English. I did my best but know that I could have done better with an interpreter.

17. If I had known that I could have asked the court for an interpreter, contrary to my attorney's advice, I would have done so.
18. I did not voluntarily give up my right to an interpreter. Instead, I told my attorney several times that I spoke limited English. In response, he told me that using an interpreter would make me look bad.

In addition, two fellow prisoners note in their respective declarations (Appendix C), Khan's obvious difficulties with English upon arrival to prison following his trial, as well as his improvements over time.

The trial provides significant support for the conclusion that Khan's fluency in English was limited, resulting in unfair attacks on his credibility. Even on direct, the record demonstrates that time after time Mr. Khan did not understand the questions he was being asked. RP 339-405. Simple questions often had to be repeated or asked in simple two or three word sentences. After one line of questioning by his own attorney, counsel finally gave up and said: "Maybe I should ask a different question." RP 342. This was followed with the explanation, "That's what I'm trying to ask. Who else was – who was in R[]'s bedroom...". RP 343.

During one exchange, counsel could not even get Mr. Khan to understand the simple question, "Who was downstairs?" RP 343. Likewise, when asked, "Did you walk over to where the children were on the floor?" Mr. Khan responded: "Say again?" RP 344. Especially telling is the fact that, after the question, "How do you and Sanober get along?"

was repeated several times, Mr. Khan asked: "Along means what?" RP 349. Only after the question was rephrased was Khan was finally able to answer this question. *Id.*

Although direct examination gave an indication of the problems facing Mr. Khan, it was in the unfriendly environment of cross examination where this problem of constitutional magnitude was fully exploited.

For example, the prosecutor pressed Khan at length about when he was leaving for the airport the morning of July 17th:

DPA: And you had to work in the morning?

Khan: Yes, but I have to drop off Sanober and my uncle at airport.

DPA: So you were taking them to the airport at 6 am?

Khan: Yes, I was.

DPA: You were going to leave at 5:30?

Khan: What you mean, leave at 5:30?

RP 355 – 356.

This follows with a back and forth where Khan tried to explain his work schedule and the prosecutor asked: "But you were planning on working the next day?" and Khan responded, "Not really. But I was that plan." The prosecutor, rather than taking into account that this was a nonsensical response which was the result of language difficulties, chose to exploit the inconsistency by asking, "I thought you said that you were

working.” RP 355. While the subject matter was largely insignificant, it almost certainly negatively impacted Khan’s credibility before the jury.

Over the course of cross examination, there were many indications that Mr. Khan was struggling to understand what he was being asked, yet not once did the prosecutor stop to explain and not once did his defense attorney object. At no point was Khan provided an interpreter.

Khan’s lack of proficiency in English was heavily exploited during questioning over whether he had an erection on July 17th. In response to a question, Khan asked: “What do you mean, erection?” RP 358. The prosecutor then asked: “You don’t ever get erections?” Khan answered, “No. No.” RP 358. Clearly, Khan misunderstood the relatively simple temporal distinctions the State was trying to draw (whether he had an erection on July 17th vs. whether he had an erection at other times in his life).

However, this confusion continued. In an effort to try and explain himself he responded, “I wish I had camera with me to make my own video.” RP 358. The prosecutor later asked: “So you want to show what, that you didn’t have an erection?” RP 372. Mr. Khan responded, “I don’t have erection.” Again, rather than try to clear up the confusion, the prosecutor chose to make Khan look like a liar and asked, “Ever?” Khan responded, “Never. Ever. Look at this, this [is] my family. Okay, front of my kids, what I’m showing this kind of thing? I am respectable person.”

Id. Once again, Khan's credibility was dealt a heavy blow because he was not provided an interpreter.

At another point when Khan responded: "How you know I'm doing sexual things?", the prosecutor, rather than seeking to clarify the question posed, treated Khan's faulty understanding and broken English as an admission and an opportunity to express a personal opinion: "Well, I've been sitting here for three days." RP 361.

There are many other times during his testimony when Khan expressed his lack of understanding. *See e.g.*, (What do you mean, accused?" RP 382); ("I really don't understand question." RP 391); ("What mean curse?" RP 401); ("Say again question, please." RP 404); (Q: "You know what I mean by curse; right?"; A: "Curse means I pray? Say again slowly." RP 402).

It was not until his sentencing date on January 14, 2008, that Mr. Khan on his own asked for an interpreter after the judge asked him if he had anything to say. Mr. Khan responded, "Yes. Can I speak in my own language? It's better." RP 10. The judge asked if there was an interpreter and it was defense counsel who said to his client, "You need to speak in English." *Id.* Obviously, even if Khan had been provided an interpreter at that time, the damage had been done.

Argument

In this State, the right of a defendant in a criminal case to have an

interpreter is based upon the Sixth Amendment constitutional right to confront witnesses and “the right inherent in a fair trial to be present at one's own trial.” *State v. Woo Won Choi*, 55 Wash.App. 895, 901, 781 P.2d 505 (1989), *review denied*, 114 Wash.2d 1002, 788 P.2d 1077 (1990). *See also United States ex rel. Negron v. New York*, 434 F.2d 386, 389 (2d Cir.1970).

Washington provides an expansive right to interpreter services in its declared policy under RCW 2.43.010 which guarantees an interpreter:

...to secure the rights, constitutional or otherwise, of persons who, because of a non-English speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

RCW 2.43.020 defines a "Non-English-speaking person" as any person involved in a legal proceeding who cannot *readily* speak or understand the English language.

Interpreters play multiple roles in criminal proceedings: (1) they make the questioning of a non-English speaking witness possible; (2) they facilitate the non-English speaking defendant's understanding of the colloquy between the attorneys, the witnesses, and the judge; and (3) they enable the non-English speaking defendant and the defendant's English-speaking attorney to communicate. Williamson B.C. Chang & Manuel U. Araujo, *Interpreters for the Defense: Due Process for the Non-English-*

Speaking Defendant, 63 Cal. L.Rev. 801, 802 (1975). The authors refer to the first use of an interpreter as a “witness interpreter,” to the second use as a “proceedings interpreter,” and to the third use as a “defense interpreter.”
Id.

A defendant's full comprehension of criminal proceedings implicates cherished constitutional values. See *United States v. Lim*, 794 F.2d 469, 470 (9th Cir.), cert. denied sub nom *Dong Joon Ahn v. United States*, 479 U.S. 937, 107 S.Ct. 416, 93 L.Ed.2d 367 (1986).

For example, the failure of a defendant to fully understand the proceedings at trial because of language difficulties implicates the right to counsel.

The Sixth Amendment to the United States Constitution guarantees to indigent defendants the assistance of counsel in criminal cases. The Washington State Constitution also confers a right to counsel. Wash. Const., art. 1, § 22. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since *access* to counsel's skill and knowledge is necessary to accord defendants the “ample opportunity to meet the case of the prosecution' to which they are entitled.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275, 276 (1942)). The inability to fully consult with counsel is a structural error, which requires a showing only of the interference with the right to counsel, not prejudice as

a result. *Geders v. United States*, 425 U.S. 80, 91 (1976).

Recognizing both the importance of a defendant's ability to consult with counsel during trial and the elusive nature of the resulting prejudice the *United States v. Joshi*, 896 F.2d 1303, 1310 (11th Cir. 1990), held "a defendant's Sixth Amendment rights were potentially implicated when a defense interpreter began to translate from the back of the courtroom by means of a radio headset and no interpreter was seated at the defense table." However, in that case, when defense counsel expressed concern over whether counsel could then communicate with the defendant, the trial court "immediately appointed a second translator to effectuate communications between [defendant] and his attorney while the first translator continued to interpret the trial proceedings." *Id.* at 1311. Nevertheless, the reviewing court noted: "Even if the district court had not acted prudently by appointing a second translator, [defendant's] sixth amendment rights would not have been violated if the court had permitted brief recesses to allow client-attorney communication when requested." *Id.* at 1311. What the case makes clear is that the denial of an interpreter which results in the inability to communicate with counsel for a meaningful amount of time results in the denial of the right to assistance of counsel.

The denial of an interpreter also impacts a defendant's right to be present. In *Ling v. State*, ___ S.E.2d ___, 2010 WL 4704423 (Ga. 2010), the Georgia Supreme Court explained how the unreasonable denial of an

interpreter constituted a *de facto* denial of the right to be present—“one who cannot communicate effectively in English may be effectively incompetent to proceed in a criminal matter and rendered effectively absent at trial if no interpreter is provided.”

In addressing the constitutional concerns raised by failing to provide an interpreter for an accused, “every criminal defendant – if the right to be present is to have meaning – [must] possess sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.” *Citing United States ex rel. Negron v. State of New York*, 434 F.2d 386, 389 (1970), *Dusky v. United States*, 362 U.S. 402 (1960); *State v. Calderon*, 13 P.2d 871, 874-875 (Kan. 2000); *Giraldo-Rincon v. Dugger*, 707 F. Supp. 504, 507 (M.D. Fla. 1989). One who is unable to communicate effectively in English and does not receive an interpreter’s assistance is no more competent to proceed than an individual who is incompetent due to mental incapacity. *See Gonzalez v. Philips*, 195 F.Supp.2d 893, 903 (E.D. Mich. 2001) (“The Court sees little difference between trying a mentally incompetent[] defendant and trying a defendant who cannot understand the proceedings against him because he does not understand the language”); *Louisiana v. Lopes*, 805 So2d 124, 128 (2001) (non-English speaking defendants confront same barriers as those who are mentally incompetent); *United States v. Mosquera*, 816 F. Supp. 168, 173 (E.D.N.Y. 1993) (prohibition against trying incompetent defendants also

refers to “those who are hampered by their inability to communicate in the English language”); see also *New Hampshire v. Staples*, 437 A2d 266, 268 (N.H. 1981) (“Though the defendant in this case was not mentally deficient, his hearing impairment presents us with an analogous and equally serious problem”).

Of course, the right to counsel and the right to be present are necessary prerequisites to the rights to confrontation, compulsory process, and ultimately to a fair trial.

This case largely turned on credibility. Mr. Khan’s credibility was likely seriously injured not because he was untruthful, but because he did not fully understand what he was being asked and could not readily express himself precisely and accurately in English. A person’s lack of proficiency in English should have no place in the judgment of credibility. Here, it did—an unfortunate fact fully exploited by the State.

Khan frames this claim as one of ineffectiveness by his counsel. Reasonably competent counsel would have sought the services of an interpreter, especially given that Khan was called as a witness. There was no reasonable tactical reason for trial counsel to fail to request an interpreter for Mr. Khan. Trial counsel’s failure was either the result of his failure to spend sufficient time speaking with Khan prior to trial in order to assess Khan’s lack of proficiency or, it was a grossly unreasonable—or both. It is clear that Khan did not waive his right to an interpreter much

less the fundamental constitutional rights that were dependent on the ability to readily understand and communicate. In short, Khan's trial attorney's failure constituted deficient performance.

Khan was prejudiced in numerous ways. He was unable to fully consult with counsel. He was functionally denied his right to be present. Both of those errors are structural and automatically mandate reversal. He was also prejudiced because his credibility was severely injured based on what should always be an irrelevant consideration.

The outcome of a trial in an American courtroom should not be influenced by the defendant's Kafkaesque failure to readily understand and communicate. The use of an interpreter does not involve the balancing of rights versus the possible prejudice. Instead, the use of an interpreter is readily understood by all as part of the inherent fairness of our judicial system.

Because Khan was denied this right, reversal and remand for a new trial is required. At a minimum, remand for an evidentiary hearing is required pursuant to RAP 16.11.

2. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE FOR A CURATIVE INSTRUCTION AND A MISTRIAL IN RESPONSE TO THE REPEATED, FLAGRANT AND IMPROPER CROSS-EXAMINATION OF KHAN BY THE PROSECUTOR WHO EXPLOITED KHAN'S LACK OF FAMILIARITY WITH THE ENGLISH LANGUAGE.

As noted previously, Khan testified and was subject to cross-examination. RP 339-405. During cross-examination the prosecutor struck a number of foul blows. In an effort to admit a photograph, she asked Khan question after question by either misstating what he had said on direct examination or by posing questions with a predicate clause that Khan had previously denied—so-called “loaded questioning.” (The most obvious example of a loaded question is: when did you stop beating your wife?). For example, while asking Khan about getting into a verbal dispute with the alleged victim, the prosecutor asked: So what about this caused you to get the erection?” RP 358. Khan had, of course, denied having an erection, just as he denied molesting the complaining witness.

Later, the prosecutor asked whether Khan thought the victim was “worried that you’re going to do the [sexual things] to M[] that you have been doing to her?” RP.361. Khan responded “How you know I’m doing sexual things?” Happy to assume the role of judge and jury, the prosecutor responded, “Well, I’ve been sitting here for three days.” RP 361.

Still later, while asking Khan about his marriage, the prosecutor loaded up again: “And you said your erection was caused by what?” RP 390.

Despite this overwhelming amount of misconduct, counsel for Khan never sought a single curative instruction. In addition, he never moved for a mistrial. There can be no strategic reason to allow a prosecutor to ask

such improper questions. Counsel's failure to seek any remedy for this
flagrant misconduct constitutes ineffective assistance of counsel.

Considered in light of Khan's language difficulties, this error becomes
more obvious and prejudicial.

Misconduct by a lawyer may violate a defendant's due process right
to a fair trial. Most misconduct can be cured by an objection and a curative
instruction. However, sometimes misconduct is so flagrant or ill-
intentioned that a curative instruction could not have obviated any
prejudice. *State v. Belgarde*, 110 Wn.2d 504, 507, 755 P.2d 174 (1988).

Where the comments of counsel are so flagrant and ill-intentioned that they
"cause an enduring and resulting prejudice that could not have been
neutralized by an admonition to the jury," they deprive the defendant of a
fair trial. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995);
State v. Evans, 96 Wn.2d 1, 5, 633 P.2d 83 (1981); *State v. Charlton*, 90
Wn.2d 657, 664, 585 P.2d 142 (1978).

For example, in *State v. Jerrels*, 83 Wash.App. 503, 504, 925 P.2d
209 (1996), the State charged the defendant with raping his daughter and
two stepchildren. During the trial, the prosecutor repeatedly asked Jerrels'
wife, and the mother of the three children, if she believed the children were
telling the truth about the defendant's actions. 83 Wn.App. at 506-07. The
questioning focused on the mother's belief in the truth of the specific sexual
abuse incidents about which the children had testified. 83 Wn.App. at 507.

The court found that the mother's opinion as to her children's veracity could not easily be disregarded, and that the repeated questioning had a cumulative effect. *Jerrels*, 83 Wash.App. at 508. See also *United States v. Cruthchfield*, 26 F.3d 1098 (11th Cir. 1994); *Locken v. United States*, 383 U.S. F.2d 340 (9th Cir. 1967).

This case essentially turned on the credibility of accuser and accused. In such a swearing contest, the likelihood of the jury's verdict being affected by improper questioning is substantial. *State v. Padilla*, 69 Wn. App. at 302.

The prosecutor's repeated misconduct provided Khan's counsel with numerous opportunities to object, request curative instructions, ask for an interpreter, and ultimately a mistrial. See *State v. Hamilton*, 47 Wash.App. 15, 18, 733 P.2d 580 (1987). Nevertheless, counsel for Khan never sought a curative instruction. Counsel should have sought an instruction telling the jury that the prosecutor's questions were improper, that the jury was the sole judge of the credibility of a witness, that no witness can be asked to comment on the credibility of another witness, and that the jury should not consider any of the prosecutor's improper questions (or any of Khan's answers prior to any sustained objection) in determining Khan's credibility.

Just as importantly, these questions exploited Khan's difficulties understanding and communicating in English. To borrow a metaphor, it

was the equivalent of fighting a man who had one hand tied behind his back.

Especially considered in connection with the first claims of error, Khan was prejudiced. Reversal is therefore required.

3. MR. KHAN WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO RETAIN AND CONSULT WITH AN EXPERT WHO COULD HAVE TESTIFIED THAT THE COMPLAINING WITNESS' LACK OF INJURY WAS INCONSISTENT WITH HER ACCUSATIONS AGAINST KAHN AND WHERE SUCH AN EXPERT COULD HAVE REBUTTED THE TESTIMONY OF THE STATE'S EXPERT THAT NO INJURY WAS CONSISTENT WITH REPEATED RAPES.

Facts

R.H. testified that Khan penetrated her anally, vaginally, as well as molesting her at least 20 times in Bellevue and 20 or 30 times in Snohomish. She gave graphic details. She remembered his fingers moving in and out and it felt really bad; she would wake up and his finger was in her vagina and moving in and out and it felt really bad; he would go inside my anus and it felt really uncomfortable and hurt; he would put his fingers between my butt cheeks, moving in and out. RP 48 – 102

In addition, the State's expert witness testified that R.H. told her that she was digitally penetrated 20 – 30 times and it was painful every time.

RP 236 - 256

Amy Muth, an attorney who is familiar with the standards of practice in sexual assault cases reviewed a number of documents related to this case and opined as follows:

9. In my opinion, no reasonably competent attorney would fail to consult with an expert regarding the lack of any injury in a sexual abuse case involving a young girl who alleged over 40 instances of sometimes prolonged digital vaginal and anal penetration beginning when she was eleven years old. Put another way, it falls below the minimal standard of reasonable performance for a lawyer defending an individual against these accusations who claims that he did not rape or molest the victim to fail to consult with an expert regarding the total lack of medical evidence to support or corroborate the complaining witness' accusations. This is especially true where the State offers the testimony of an expert that the lack of medical findings is not inconsistent with the allegations of abuse.
10. In my experience, it is not uncommon for a State's expert in a sexual assault case to testify that the lack of any medical evidence of injury is consistent with accusations of rape. As a result, reasonably competent counsel must be prepared to challenge this testimony in appropriate cases. While it is sometimes true that no evidence of injury is consistent with a prior rape that is not always the case. Instead, there are a number of situations where no evidence of injury is highly inconsistent with accusations of rape. In those cases, the failure to consult with and call an expert clearly falls below the minimal standard of practice for competent counsel.
11. Various studies, published in peer-reviewed journals, support the conclusion that medical findings corroborating accusations of rape are not uncommon.
12. For example, the August-November 2006 issue of the Journal of Clinical Forensic Medicine published a study entitled: *Victims of sexual offences: medicolegal examinations in emergency settings*. The study was based on 352 alleged victims of sexual offences referred by investigating police

authorities and physicians working at hospital emergency rooms. Females represented about 92% with a large over-representation of those aged from 0 to 19 years (61% of the total). Victims were mainly girls of school age (36%) or under 6 years old (25%). Medical and laboratory findings were in accordance with some sort of sexual offense in 34% of the cases.

13. In a 1999 study of adolescent girls who reported sexual abuse, the findings confirmed that while non-penetrative sexual acts leave no lasting genital signs, repeated abusive genital penetration significantly more often than non-penetrative abuse leaves deep posterior hymenal clefts and/or vestibular scarring. In addition, perianal scarring was recorded. Edgardh K, von Krogh G, Ormstad K., *Adolescent girls investigated for sexual abuse: history, physical findings and legal outcome*; Forensic Sci Int. 1999 Sep 30;104(1):1-15.
14. Perhaps most significantly given the accusations in this case, a 2003 study reported in the Journal of Forensic Science which had the aim of assessing anal physical findings in children whose abuse was admitted by the perpetrator (i.e., where the abuse was confirmed), The medical assessment included examination to detect the presence of anal physical signs. The results were not as the State's expert described in this case—no medical signs. Quite the contrary, the most frequent signs were anal scars and tags (either single or multiple) present, respectively, in 84 and 32% of cases. In some cases scars extended to the perianal region. Other signs included reflex anal dilatation (RAD) and venous congestion (VC) found, separately or associated with other signs, in over 33% of the cases. The results of this study confirmed that physical signs, including scars, tags, RAD, funneled anus and extensive venous congestion, are *often* present in abused children, singly or in combination, and that anal examination should be undertaken even months after a known or suspected sexual assault. In short physical signs are often seen in association with anal abuse. See Bruni M., *Anal findings in sexual abuse of children (a descriptive study)*; J Forensic Sci. 2003 Nov;48(6):1343-6.
15. Given the accusations in this case and the testimony of the State's expert that the lack of medical findings was consistent

with accusations of abuse, it is my opinion that it was deficient performance for trial counsel not to consult with an expert who could have countered this testimony. With an expert, trial counsel could have presented a compelling case that the lack of medical findings was not simply consistent with abuse and consistent with no abuse, but that the findings were inconsistent with abuse and most consistent with no abuse.

See Declaration of Muth attached as Appendix D.

Khan's PRP is further supported by a declaration from Dr. William Rollins. Dr. Rollins declaration is consistent with the medical literature referenced in Ms. Muth's declaration. Dr. Rollins opined that some "damage" or injury would likely be apparent during a medical examination if the alleged victim's account was truthful. Dr. Rollins continued:

It is so unlikely in the extreme, that an eleven or thirteen year old would never wake up after being digitally raped on fifty occasions, that given the conspicuous absence of any damage to the hymen, I am also confident in assessing that the step-daughter is being truthful about being raped....

See Declaration of Rollins attached as Appendix E. *See also Declaration of Dr. Ryan Donahue* attached as Appendix F (offering the opinion that it is extremely unlikely that the alleged victim would respond in the manner in which she testified).

Argument

At the heart of an effective defense is an adequate investigation. Without sufficient investigation, a defense attorney, no matter how intelligent or persuasive in court, renders deficient performance and

jeopardizes his client's defense. *Richter v. Hickman*, 578 F.3d 944 (9th Cir. 2009). To provide constitutionally adequate assistance, "counsel must, at a minimum, *conduct a reasonable investigation* enabling [counsel] to make informed decisions about how best to represent [the] client." *In Re Brett*, 142 Wn.2d 868, 16 P.2d 601, 604 (2001)(*emphasis in the original*); *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir.1994)(citing *Strickland*, 466 U.S. at 691); *State v. Visitacion*, 55 Wn.App. 166, 776 P.2d 986 (1989)(trial counsel's failure to interview witnesses based upon their police statements fell below the prevailing professional norms) and *State v. Jury*, 19 Wn.App 256, 576 P.2d 1302, *review denied*, 90 Wn.2d 1006 (1978)(counsel's failure to acquaint himself with the facts of the case by interviewing witnesses was an omission which no reasonably competent counsel would have committed.); and *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010).

Effective assistance of counsel is, of course, guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and art. 1, § 22 of the Washington constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *State v. Mierz*, 127 Wn.2d 460, 471, 901 P.2d 286 (1995).

To establish that trial counsel's representation was constitutionally inadequate, Mr. Khan must show that counsel's performance was deficient and that the deficient performance was prejudicial to his defense. *Strickland*, 466 U.S. at 687. The measure of attorney performance is reasonableness under prevailing professional norms. *Id.* at 688.

The touchstone of the prejudice inquiry is the fairness of the trial and the reliability of the verdict in light of any errors made by counsel. *Id.* at 696. If there is a reasonable probability that, but for counsel's unreasonable errors or omissions, the outcome of the proceeding would have been different, the defendant is entitled to a new trial. *Id.* at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*; *State v. Thomas*, 109 Wn.2d 222, 226, 742 P.2d 816 (1987). The Supreme Court has also explained that a "reasonable probability" of a different result is shown when the information trial counsel failed to develop and present "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the jury verdict." *Kyles v. Whitley*, 514 U.S. 419, 435 (1995) (footnote omitted).¹ The Supreme Court in *Kyles* emphasized that materiality, or, here, prejudice, is not a sufficiency of the evidence test. *Kyles*, 115 S. Ct. at 1566.

The "reasonable probability" standard has been uniformly described by courts around the country as "not stringent," requiring a showing by less than a preponderance of the evidence that the outcome of the proceeding would have been different had the claimant's rights not been violated. *See*,

¹ *Kyles* argued the State had suppressed exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The Court's analysis of *Brady* "materiality" is applicable to the "prejudice" analysis in the present context (i.e., regarding claims of ineffective assistance of counsel) because the same standard applies in both situations. In defining "prejudice," *Strickland* imported the materiality analysis of *Brady* claims. *Strickland*, 466 U.S. at 694 ("the appropriate test for prejudice finds its roots in the test for materiality of exculpatory information to disclose to the defense by the prosecution"). *See also United States v. Bagley*, 473 U.S. 667, 682, (1985). *Kyles*

e.g., *Skaggs v. Parker*, 235 F.3d 261, 270-271 (6th Cir. 2000) ("[A] petitioner [claiming error under this standard] need not prove by a preponderance of the evidence that the result would have been different, but merely that there is a reasonable probability that the result would have been different."); *Hull v. Kyler*, 190 F.3d 88, 110 (3rd Cir. 1999) (the reasonable probability standard "is not a stringent one," and is "less demanding than the preponderance standard") (citation omitted); *Paters v. United States*, 159 F.3d 1043, 1049 (7th Cir. 1998) (Rovner, J., concurring) (the reasonable probability standard "clearly is less demanding than a preponderance of the evidence standard"); *Belyeu v. Scott*, 67 F.3d 535, 540 (5th Cir. 1995) (under the reasonable probability standard, "the result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the [error] cannot be shown by a preponderance of the evidence to have determined the outcome").

Prejudice is assessed by measuring the cumulative effect of trial counsel's errors and omissions. *Williams v. Taylor*, 529 U.S. 362, 397-98, (2000) (finding the state court's prejudice determination unreasonable because that court "failed to evaluate the totality of the available mitigation evidence" not presented at trial).

again acknowledged this connection. *Kyles*, 115 S. Ct. at 1565-66 (relying on both *Brady* and *Strickland* and their respective progeny in assessing materiality).

The ABA Standards for Criminal Justice that define the basic competence expected of counsel in every case state:

Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.

Standard 4-4.1—Duty to Investigate.

Mr. Khan has certainly presented a *prima facie* case of error—sufficient to merit an evidentiary hearing. At trial, the lack of medical proof of injury was portrayed as a fact equally consistent with guilt as with innocence. If counsel had conducted a competent investigation, Khan would have been aided by testimony that the lack of medical corroboration was more consistent with his testimony and his innocence than with guilt. Put simply, no evidence was more consistent with no crime than with a crime. The opinion of Dr. Rollins, if it had been obtained and presented to Khan's jury, is incredibly strong: the lack of medical corroboration renders the alleged victim's testimony completely unbelievable. Taken as true, which this Court must do in assessing whether a reference hearing is mandated, it provides a compelling case of prejudice.

This claim should also be considered along with the other claims of ineffectiveness, including trial counsel's failure to request an interpreter.

Not only was Khan deprived of the opportunity to fully participate in his trial, he was provided an inadequate defense based on counsel's failure to conduct a competent investigation.

4. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING INVESTIGATE AND PRESENT TESTIMONY OF A MOTIVE TO FABRICATE CHARGES AGAINST KHAN.

Facts

Sadaqet Hussian, Petitioner's uncle, could have been a powerful witness in this case—if trial counsel had conducted a constitutionally adequate investigation.

Mr. Hussian's declaration (attached as Appendix G) provides in pertinent part:

4. Zahid's family and Mona's (Iram Mirza) family had a history (*sic*) of conflicts. I speak with Sanober Mirza on a regular basis because she is married to my brother. Sanober Mirza mentioned many times that her family wanted to take revenge because they believed Zahid was cheating on Mona and their mother died due to stress from him.
5. I was never interviewed in this case by either the State's attorney or Zahid Khan's attorney, Lennard Nahajski.
6. I was not even called and consulted about what I knew about the case.
7. I wanted to testify in the case but never received a subpoena from either side.

Argument

Khan has already set forth the relevant law on ineffectiveness. In this claim of error, Khan asserts that his trial counsel was deficient because

he failed to conduct a competent investigation. That investigation would have uncovered a witness could have testified to a motive to falsely accuse Khan of a crime.

The duty to investigate for a motive to falsely accuse was even more important in a case like the instant one where the State put on affirmative evidence of negative cultural ramifications to the complaining witness for making these claims. RP 120-21; 173-74. In other words, while cases of child sexual abuse commonly raise questions in jurors' minds of "why would she say that if it was not true," in this case the State put on affirmative evidence taking that question to the next level. As a result, it was imperative for counsel to investigate and counter that evidence.

In response, counsel did nothing. If counsel had instead conducted a minimally competent investigation he would have been able to counter the State's evidence with powerful evidence of a pre-existing motive.

Once again, and especially considered in combination with counsel's other errors, Khan has made a sufficient showing to merit an evidentiary hearing.

This was not counsel's only investigatory deficiency. Counsel's failure to investigate resulted in the failure to obtain otherwise readily available evidence that would have further undermined the mother's credibility.

In response to a question about whether she could start her business when Khan was removed from the house, Eram Mirza (Mona) stated: “Not right away. I still had some classes to take, a lot of requirements from the daycare that I filled in. Then I got licensed.” RP 185. However, documents since obtained from the Department of Early Learning indicate that on the very day that Mona reported this incident to CPS, she also applied for her license and had completed the requirements. *See Appendix H.*

Mona also testified that Mr. Khan never bought her any presents, but only bought presents for R.H. RP 212, 222. This evidence was used to suggest that Khan’s untoward interest in R.H. In fact, in 2005, Khan paid \$5153 for a diamond ring for Mona. *See Receipt attached as Appendix I.*

Taken together, this new evidence (which could have been easily discovered with only a minimal investigation) would have provided an effective counter to the State’s “negative incentive” evidence, which it used to bolster the alleged victim’s testimony.

Once again, if contested by the State, this evidence merits an evidentiary hearing.

- 5 (A). MR. KHAN'S RIGHT TO AN OPEN AND PUBLIC TRIAL WAS VIOLATED WHEN JURORS FILLED OUT A FORM USED TO PROVIDE BACKGROUND INFORMATION, BUT WHERE THOSE FORMS WERE CONFIDENTIAL, WERE NEVER AVAILABLE TO THE PUBLIC, AND WERE PLACED UNDER SEAL.
- 5 (B). MR. KHAN WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL UNREASONABLY FAILED TO ADVISE KAHN ABOUT HIS RIGHT TO AN OPEN AND PUBLIC TRIAL AND WHERE KHAN WOULD NOT HAVE WAIVED THE RIGHT IF HE HAD BEEN PROPERLY ADVISED.
- 5 (C). MR. KHAN WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL WHEN COUNSEL FAILED TO ASSIGN ERROR TO THE PRIVATE JUROR QUESTIONNAIRES.

Facts

Prior to the start of jury selection, jurors filled out a short background or biographical form. A copy of a blank form is attached as Appendix J. That form, which was never publically available, was later placed under seal. *See* Appendix K.

No one, not the court or counsel, explained to Mr. Khan that this secret questioning implicated his right to a public and open trial. *See Declaration of Khan.* If Khan had been informed of his fundamental right to an open and public trial, he would not have personally waived this right. *Id.*

Argument

Mr. Khan's constitutional right to an open and public trial was violated. This violation occurred when a background questionnaire was

given to jurors and was placed under seal without being preceded by a *Bone-Club* hearing. No one—not the trial court and not trial counsel—discussed the implications of placing these documents under seal with Mr. Khan.

The right to a public trial is protected by both the federal and the Washington state constitutions. *See* U.S. CONST. AMEND. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.”); WASH. CONST., ART. 1, § 22 (“In criminal prosecutions the accused shall have the right. . . to have a speedy public trial.”); WASH. CONST., ART. 1, § 10 (“Justice in all cases shall be administered openly.”). This right includes the right to open jury selection. *In re Orange*, 152 Wn.2d 795, 804, 100 P.3d 291 (2005), citing *Press-Enter Co. v. Superior Court*, 464 U.S. 501, 505, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984).

Washington Courts have scrupulously protected the accused and the public’s right to open public criminal proceedings. *State v. Easterling*, 157 Wn.2d 167, 181, 137 P.3d 825 (2006) (state constitution requires open and public trials); *State v. Brightman*, 155 Wn.2d 506, 514, 122 P.3d 150 (2005) (closing courtroom during *voir dire* without first conducting full hearing violated defendant’s public trial rights); *In re Restraint of Orange*, 152 Wn.2d 795, 812, 100 P.3d 291 (2004) (reversing a conviction where the court was closed during *voir dire* and holding that the process of juror

selection is a matter of importance, not simply to the adversaries but to the criminal justice system); *State v. Bone-Club*, 128 Wn.2d 254, 256, 906 P.2d 325 (1995) (reversible error to close the courtroom during a suppression motion); *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d 716 (1982) (setting forth guidelines that must be followed prior to closing a courtroom or sealing documents). “[P]rotection of this basic constitutional right clearly calls for a trial court to *resist* a closure motion *except under the most unusual circumstances.*” *Orange*, 152 Wn.2d at 805, *citing State v. Bone-Club*, 128 Wn.2d 254, 259, 906 P.2d 325 (1995) (emphasis in original).

For that reason, this Court has developed a test which must be applied in every case where a closure is contemplated. The *Bone-Club* requirements are:

1. The proponent of closure. . . must make some showing [of a compelling interest], and where that need is based on a right other than an accused’s right to a fair trial, the proponent must show a “serious and imminent threat” to that right;
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure;
3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests;
4. The court must weigh the competing interests of the proponent of the closure and the public;
5. The order must be no broader in its application or duration than necessary to serve its purpose;

Easterling, at 175, n.5; *Bone-Club*, at 258-259. As the test itself demonstrates, it must be conducted *before* closing the courtroom. For example, it is impossible to weigh the reasons given by a member of the press or public opposed to closure, if the trial court fails to expressly invite comment on the matter. After conducting a full hearing, the trial court must then make findings. The constitutional presumption of openness may be overcome only by “an overriding interest *based on findings* that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.” *Orange*, 152 Wn.2d at 806 (emphasis added) (quoting *Waller v. Georgia*, 467 U.S. 39, 45, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984)). These requirements are necessary to protect both the accused’s right to a public trial *and* the public’s right to opening proceedings. *Easterling*, at 175.

The process of jury selection is included, not excepted, from this rule. *Brightman, supra; Orange, supra*. As the United States Supreme Court stated in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 505, 104 S. Ct. 819, 78 L.Ed.2d 629 (1984), “(t)he process of juror selection is itself a matter of importance, not simply to the adversaries but to the criminal justice system.”

In this case, the trial court permitted jurors to answer a number of questions secretly—in writing. It is highly likely that the answers to questions on the “questionnaire” were never discussed in open court. Indeed, that is precisely the reason for using the document. However, whether a question was asked orally or in writing makes no difference legally speaking. The simple fact remains: a portion of the trial was conducted in violation of the guarantee to an open and public trial.

While juror privacy may be one appropriate consideration in weighing a decision to close or seal, it is not a factor that justifies the failure to conduct a *Bone-Club* hearing. *State v. Duckett*, 141 Wash. App. 797, 808, 173 P.2d 948 (2007) (“In this case only a limited portion of voir dire was held outside the courtroom, but this does not excuse the failure to engage in a *Bone-Club* analysis.”). As the Court recognized in *Orange* and confirmed in *Easterling*, the guaranty of a public trial under our constitution has never been subject to a *de minimis* exception. *Orange*, 152 Wash.2d at 812-14; *Easterling*, 157 Wash.2d at 180-81. The closure here was deliberate, and the questioning of the prospective jurors concerned their ability to serve; this cannot be characterized as ministerial in nature or trivial in result. *See Easterling*, 157 Wash.2d at 181.

The State may argue that defense counsel’s failure to means that this issue has been waived. The Washington Supreme Court has answered this question in the negative, holding that is “the request to close itself, and not

the party who made the request, that triggered the trial court's duty to apply the five-part *Bone-Club* requirements. The trial court's failure to apply that test constitutes reversible error." *Easterling*, 157 Wash.2d at 180.

Specifically, the *Easterling* Court held that this outcome was compelled by "our prior decisions relating to article 1, section 22 of our state constitution, which require trial courts to strictly adhere to the well-established guidelines for closing a courtroom, and . . . [by] public policy as made manifest by the federal and state constitutions which favors keeping criminal judicial proceedings open to the public unless there is a compelling interest warranting closure." *Easterling*, 157 Wash.2d at 177.

Because the trial court must act to protect the rights of both a defendant and the public to open proceedings, "the defendant's failure to lodge a contemporaneous objection at trial [does] not effect a waiver of the public trial right." *Brightman*, 155 Wash.2d at 517.

"Prejudice is necessarily presumed where a violation of the public trial right occurs." *Easterling*, 157 Wash.2d at 181. "The denial of the constitutional right to a public trial is one of the limited classes of fundamental rights not subject to harmless error analysis." *Id.* The remedy is reversal and a new trial. *Id.* at 174.

Khan's right to an open and public trial was violated when the juror questionnaire was sealed because the documents were not available to the

public at any time. As a result, *State v. Coleman*, 151 Wn. App. 614, 214 P.3d 158 (2009), does not apply.

If given an opportunity to voice his position, Khan would *not* have waived this constitutional right.

The *Strode* court noted:

The right to a public trial is set forth in the same provision as the right to a trial by jury, and it is difficult to discern any reason for affording it less protection than we afford the right to a jury trial. It seems reasonable, therefore, that the right to a public trial can be waived only in a knowing, voluntary, and intelligent manner. *See City of Bellevue v. Acrey*, 103 Wash.2d 203, 207-08, 691 P.2d 957 (1984) (waiver of the jury trial right must be affirmative and unequivocal). A waiver of that right must be voluntary, knowing, and intelligent. *State v. Forza*, 70 Wash.2d 69, 422 P.2d 475 (1966). Additionally, a court must indulge every reasonable presumption against waiver of fundamental rights. *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942).

167 Wn.2d at 229, n.3.

Waivers of fundamental rights are disfavored, *Hodges v. Easton*, 106 U.S. 408, 412 (1882), and must be knowing, intelligent and voluntary, *Johnson v. Zerbst*, 304 U.S. 458, 469 (1938); *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973).

The waiver of the right to a 12-person jury is constitutionally valid “on a showing of either (1) a personal statement from the defendant expressly agreeing to the waiver, or (2) an indication that the trial judge or defense counsel has discussed the issue with the defendant prior to the

attorney's own waiver" on behalf of the defendant. *Stegall*, 124 Wn.2d at 729.

In *Stegall*, our Supreme Court extended the rule announced in *Wicke* to the waiver of the right to a 12-person jury. 124 Wn.2d at 728-29. In *Stegall*, the issue of waiving the right to a 12-person jury suddenly arose during jury selection and appeared to be partially attributed to defense counsel's "own desire to avoid the embarrassment of proceeding with jury selection with a broken zipper on his fly." *Stegall*, 124 Wn.2d at 731. The court observed that the record was devoid of any personal expression by the defendant or any other indication that his attorney had discussed the waiver with him prior to orally stipulating to proceed with fewer than 12 jurors. *Stegall*, 124 Wn.2d at 731.

Declaring the right to a 12-person jury to be an "integral part of a felony defendant's right to jury trial" under article I, section 21, the court held that the waiver of the right to a 12-person jury could be sufficiently demonstrated only upon a showing of a personal statement by the defendant or "an indication that the trial judge or defense counsel... discussed the issue with the defendant prior to the attorney's own waiver." *Stegall*, 124 Wn.2d at 728-29.

In this case, there is absolutely no showing in the record to support Khan's waiver of his right to a public and open trial. As a result, this Court cannot find a voluntary and intelligent waiver. Further, the declarations

attached to this petition firmly establish that Khan did not waive this right—and would not have waived it if given an opportunity to decide.

“Prejudice is necessarily presumed where a violation of the public trial right occurs.” *Easterling*, 157 Wash.2d at 181. “The denial of the constitutional right to a public trial is one of the limited classes of fundamental rights not subject to harmless error analysis.” *Id.* The remedy is reversal and a new trial. *Id.* at 174.

As the Supreme Court recognized in *Orange* and confirmed in *Easterling*, the guaranty of a public trial under our constitution has never been subject to a *de minimis* exception. *Orange*, 152 Wn.2d at 812-14; *Easterling*, 157 Wn.2d at 180-81.

This error mandates reversal in a number of ways. First, because an objection is not required to preserve the error, Khan can raise it as a “straight” violation of his right to an open and public trial. Second, because counsel did not advise Khan that the private questionnaires violated Khan’s right to an open and public trial and because Khan would not have waived that fundamental right if properly advised, trial counsel was ineffective. Finally, because this issue would have resulted in reversal if raised on direct appeal, appellate counsel was ineffective.

Consequently, it is overwhelmingly clear that reversal is required.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should vacate Khan's judgment of conviction and remand this case to Snohomish County Superior Court for a new trial. Alternatively, this Court should remand this case to the trial court for an evidentiary hearing.

DATED this 3rd day of December, 2010.

/s/ B. Renee Alsept

Jeffrey E. Ellis #17139

B. Renee Alsept # 20400

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Verification of Zahid Khan

APPENDIX A

Nahayset

FILED

JAN 25 2008

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

KHAN, ZAHID AZIZ

Defendant.

No. 07-1-02449-7

JUDGMENT AND SENTENCE

Prison

Special Sexual Offender

Sentencing Alternative

Clerk's Action Required,
restraining order entered para. 4.3

Clerk's action required
firearms rights revoked, para. 4.3 and 5.6

Clerk's action required, para 5.4
Restitution Hearing set.

SID: WA23107286

If no SID, use DOB: 08/30/1972

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 11-29-07 by jury verdict of:

<u>COUNT</u>	<u>CRIME</u>	<u>RCW</u>	<u>INCIDENT #</u>	<u>DATE OF CRIME</u>
I	Child Molestation in the 2 nd Degree	9A.44.086	SSO, 0717938	9/15/04-12/31/04
II	Rape of a Child in the 2 nd Degree	9A.44.076	SSO, 0717938	9/15/04-9/9/06
III	Rape of a Child in the 3 rd Degree	9A.44.079	SSO, 0717938	9/10/06-7/16/07
IV	Child Molestation in the 3 rd Degree	9A.44.089	SSO, 0717938	9/10/06-7/16/07
V	Attempted Child Molestation in the 3 rd Degree	9A.28.020 9A.44.089	SSO, 0717938	7/17/07

as charged in the Amended Information.

COPIED

- [] Additional current offenses are attached in Appendix 2.1.
- [] A special verdict/finding for use of a **deadly weapon** which was a **firearm** was returned on Court(s) _____ RCW 9.94A.602, 9.41.010, 9.94A.533
- [] A special verdict/finding for use of **deadly weapon** which was not a firearm was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533
- [] A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.837
- [] A special verdict/finding that the offense was predatory was returned on count(s) _____ RCW .94A.____ (laws of 2006 ch. 122 section 1(2), effective 3-20-06)
- [] 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.____ (laws of 2006, ch. 122 section (2), effective 3-20-06)
- [] 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.010, 9.94A.____ (laws of 2006, ch. 122, section 3, effective 3-20-06)
- [] A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a 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, RCW 69.50.605, 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(45)
- [] This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- [] The court finds that the offender has a **chemical dependency** which contributed to the offense and imposes as a condition of sentence that defendant shall participate in the rehabilitative program/affirmative conduct:

RCW 9.94A.607
- [] The crime charged in Count(s) _____ involve(s) **domestic violence**.
- [] The offense in Count(s) _____ was committed in a county jail or state correctional facility. RCW 9.94A
- [] The court finds that in Count _____ a **motor vehicle was used in the commission of this felony**. The Department of Licensing shall revoke the defendant's driver's license. RCW 46.20.285.
- [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.515):

<u>CRIME</u>	<u>DATE OF SENTENCE</u>	<u>SENTENCING COURT (County & State)</u>	<u>DATE OF CRIME</u>	A or J Adult, Juv.	<u>TYPE OF CRIME</u>
1 None					
2					
3					
4					
5					

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:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9	VII	87-116 months	N/A	87-116 months	10 years
II	9	XI	210-280 months- life	N/A	210-280 months- life	Life
III	9	VI	60 months	N/A	60 months	5 years
IV	9	V	60 months	N/A	60 months	5 years
V	6M	NM	45 months up to 1 yr	N/A	45 months N/A	5 years 1 year

*Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile Present

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 **EXCEPTIONAL SENTENCE [For Determinate Sentence]**. Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s)

The defendant and state stipulate that justice is best served by imposition of an exceptional sentence above the standard range and the court finds that exceptional sentence furthers and is consistent with the interest of justice and the purposes of the sentence reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. The jury's interrogatory is attached. The prosecuting attorney

did did not recommend a similar sentence.

EXCEPTIONAL MINIMUM TERM [For Maximum and Minimum Term Sentence] Substantial and compelling reasons exist which justify an exceptional minimum term above within below the standard range for Count(s) _____. 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.753

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 The prosecutor's recommendation was 280 months/days on Count 1, 110 months/days on Count 2, 60 months/days on Count 3, 60 months/days on Count 4. The prosecutor recommended counts 1-4 run concurrently/consecutively.

Count I - 1yr suspended - no crimes.

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 _____
- 3.3 The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RMA	\$15/\$25/\$50	Restitution Monitoring Fee	SCC 4.94.010
		The Clerk shall collect this fee before collecting restitution or any other assessed legal financial obligations.	RCW 9.94A.760
PCV	\$500	Victim assessment	RCW 7.68.035
		\$100.00 crimes committed prior to June 6, 1996.	
		\$500.00 crimes committed on or after June 6, 1996.	
CRC	\$ _____	Court costs, including	RCW 9.94A.030, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee \$ _____	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/SRF
		Jury demand fee \$ _____	JFR
		Other \$ _____	
PUB	\$ _____	Fees for court appointed attorney	RCW 9.94A.030
WFR	\$962	Court appointed defense expert and other defense costs	RCW 9.94A.030
FCM	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDI/ FCD/NTF/SAD/SDI	\$ _____	Drug enforcement fund of _____	RCW 9.94A.030
CLF	\$ _____	Crime lab fee <input type="checkbox"/> deferred due to indigency	RCW 43.43.690
EXT	\$ _____	Extradition costs	RCW 9.94A.505
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$100	Biological Sample Fee (for offenses committed after 7-1-2002)	RCW 43.43.7541
	\$ _____	Domestic Violence Penalty (for offenses committed after 06-04-2004, \$100 maximum)	RCW 10.99.080
	\$ _____	Other costs for: _____	
	\$1000.00	TOTAL	RCW 9.94A.760

- The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753.
- RESTITUTION. Schedule attached, Appendix 4.1.
- Restitution ordered above shall be paid jointly and severally with:
- | | | | |
|--------------------------------|---------------------|----------------------|--------------------|
| <u>NAME of other defendant</u> | <u>CAUSE NUMBER</u> | <u>(Victim name)</u> | <u>(Amount-\$)</u> |
|--------------------------------|---------------------|----------------------|--------------------|

RJN

The Department of Corrections may immediately issue a Notice of Payroll Deduction.
RCW 9.94A.7602, 9.94A.760(9)

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

\$ 5.00 per month commencing immediately
RCW 9.94A.760

All payments shall be made within 10 years months of: release of confinement;
 entry of judgment; Other _____

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 \$50.00 per day unless another rate is specified here _____ RCW 9.94A.760(2)

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

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.

4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 206, Everett, WA 98201 within one (1) hour of this order to arrange for the test. RCW 70.24.340

DNA TESTING. The defendant shall have a biological sample (offenses committed 7-1-2002 and after), blood sample (offenses committed before 7-1-2002) drawn 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

4.3 The defendant shall not have contact with R.H., DOB: 9/10/92, including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence). EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.

(Check for any domestic violence crime as defined by RCW 10.99.020(3), Anti-harassment no contact order, or Sexual Assault Protection Order): VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST. ANY ASSAULT, DRIVE-BY SHOOTING, OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY. RCW 10.99.050.

(Check for any harassment crime as defined by RCW 9A.46.060): VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 9A.46 AND WILL SUBJECT A VIOLATOR TO ARREST. RCW 9A.46.080.

(For Domestic Violence orders only:) The clerk of the court shall forward a copy of this order on or before the next judicial day to the _____ County Sheriff's Office or _____ Police Department (where the protected person above-named lives), which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring, in the amount of \$ _____.

OTHER: _____

4.4 CONFINEMENT OVER ONE YEAR.

CONFINEMENT [Determinate Sentences]. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

_____ months on Count ~~III~~ 60 months on Count ~~IV~~
1160 months on Count ~~II~~ 12 months on Count ~~IV~~
60 months on Count ~~III~~ _____ months on Count _____

CONFINEMENT [Maximum Term and Minimum Term]. Defendant is sentenced to total confinement as follows. The maximum and minimum terms of confinement shall be served in a facility or institution operated, or utilized under contract, by the State of Washington.

Count ~~II~~ : maximum term of life years AND minimum term of 240 months
Count _____ : maximum term of _____ years AND minimum term of _____ months
Count _____ : maximum term of _____ years AND minimum term of _____ months
Count _____ : maximum term of _____ years AND minimum term of _____ months

FURTHER PROVISIONS APPLICABLE TO ALL SENTENCES:

The minimum term of actual total confinement ordered on all counts cumulatively is 240 months
(Add mandatory firearm and deadly weapon enhancement time to run consecutively to other counts. See Sec. 2.3, Sentence Data above.)

The maximum term of total confinement ordered on all counts cumulatively is life.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively with the sentence in cause number(s) _____
but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

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

4.6 **COMMUNITY PLACEMENT [For Determinate Sentences]** is ordered as follows: Count _____ for _____ months; Count _____ for _____ months; Count _____ for _____ months.

COMMUNITY CUSTODY RANGE [For Determinate Sentences] is ordered as follows:
Count IV for a range from 30 to 48 months;
Count IV for a range from 30 to 48 months;
Count IV for a range from 30 to 48 months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. The combined term of community placement or community custody and confinement shall not exceed the statutory maximum. [See RCW 9.94A for community placement offenses – serious violent offense, second degree assault, any crime against a person with a deadly weapon finding. Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense – RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

COMMUNITY CUSTODY [For Maximum And Minimum Term Sentences]: For ^{Count II} each count, the defendant is sentenced to community custody under the supervision of the Department of Corrections (DOC) and the authority of the Indeterminate Sentence Review Board for any period of time that the defendant is released from total confinement before expiration of the maximum sentence. In addition to other conditions, the defendant shall comply with any conditions imposed by the Indeterminate Sentence Review Board under RCW 9.94A.713; 9.95.420, .425, .430, .435.

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with orders of the court as required by DOC. 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 may be extended for up to statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.
 Defendant shall have no contact with: R.H.
 Defendant shall remain within outside of a specific geographical boundary, to wit: _____

The defendant shall participate in the following crime-related treatment or counseling services:

as attached in Appendix A

The defendant shall undergo an evaluation for treatment and fully comply with all recommended treatment for

- sexual deviancy
- domestic violence
- substance abuse
- mental health
- anger management

The defendant shall comply with the following crime-related prohibitions: Attached in Appendix A

Other conditions may be imposed by the court or DOC during community custody, or are set forth here:

4.7 WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

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

4.9 Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the 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.7753(4); RCW 9.94A.760 and RCW 9.94A.505(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 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): _____
 Defendant waives any right to a restitution hearing within 6 months RCW 9.94A.750.
 A restitution hearing shall be set for _____
The Prosecutor shall provide a copy of the proposed restitution order and supporting affidavit(s) of victim(s) 21 judicial days prior to the date set for said restitution hearing. The defendant's presence at said restitution hearing may be excused only if a copy of the proposed restitution order is signed by both defendant and defense counsel and returned to the Court and Prosecutor no later than 10 judicial days prior to said hearing.
- 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 may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

If this is a crime enumerated in RCW 9.41.040 which makes you ineligible to possess a firearm, you must surrender any concealed pistol license at this time, if you have not already done so.

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court. The Clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the department of licensing along with the date of conviction).

The defendant is ordered to forfeit any firearm he/she owns or possesses no later than _____ to _____ (name of law enforcement agency) RCW 9.41.098.

Cross off if not applicable:

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), 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 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.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 3 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 out a vocation in Washington, or attend school in Washington, you must register within 30 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. 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.

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, register with that sheriff within 24 hours of moving and you must 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 also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

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.

Even if you lack 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 or within 14 days after ceasing to have a fixed residence. 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 in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level. 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.

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. 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 RIGHT TO APPEAL. If you plead not guilty, you have a right to appeal this conviction. If the sentence imposed was outside of the standard sentencing range, you also have a right to appeal the sentence.

This right must be exercised by filing a notice of appeal with the clerk of this court within 30 days from today. If a notice of appeal is not filed within this time, the right to appeal is IRREVOCABLY WAIVED.

If you are without counsel, the clerk will supply you with an appeal form on your request, and will file the form when you complete it.

If you are unable to pay the costs of the appeal, the court will appoint counsel to represent you, and the portions of the record necessary for the appeal will be prepared at public expense.

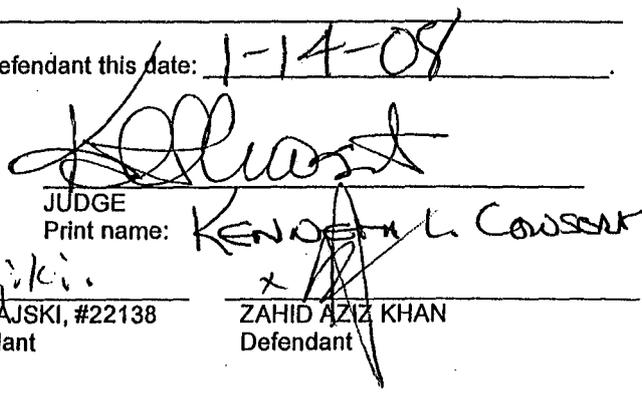
5.9 Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order 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.

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 1-14-08


CINDY A. LARSEN, #26280
Deputy Prosecuting Attorney

Nahajski
LENNARD A. NAHAJSKI, #22138
Attorney for Defendant


JUDGE
Print name: KENNETH L. COWSER
ZAHID AZIZ KHAN
Defendant

Interpreter signature/Print name: _____
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.

CAUSE NUMBER of this case: 07-1-02449-7

I, Pam L. Daniels, 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, _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA23107286
(If no SID take fingerprint card for State Patrol)

Date of Birth: 08/30/1972

FBI No. 769393KC2

Local ID No.

PCN No. _____

DOC _____

Alias name, SSN, DOB: _____

Race: White

Ethnicity:

Sex: M

[] Hispanic

[] Non-Hispanic

Height: 6'0

Weight: 192

Hair: Black

Eyes: Brown

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

Dated: 1/14/08

[Signature]

DEFENDANT'S SIGNATURE: _____

[Signature]

ADDRESS: _____

DOC

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



CHILD MOLESTATION, SECOND DEGREE

(RCW 9A.44.086)

CLASS B FELONY

NONVIOLENT SEX

11/30/07 (gpd)
KHAN, Zahid Aziz

I. OFFENDER SCORING (RCW 9.94A.525(16))

ADULT HISTORY:

Enter number of sex offense convictions..... 0 x 3 = 0
 Enter number of other felony convictions 0 x 1 = 0

JUVENILE HISTORY:

Enter number of sex offense dispositions..... 0 x 3 = 0
 Enter number of other serious violent and violent felony dispositions..... 0 x 1 = 0
 Enter number of other nonviolent felony dispositions..... 0 x 1/2 = 0

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions..... 3 x 3 = MS 9
 Enter number of other felony convictions 0 x 1 = 0

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = 0

Total the last column to get the Offender Score
 (Round down to the nearest whole number)

MS 9

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VII)	15 - 20 months	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	41 - 54 months	57 - 75 months	67 - 89 months	77 - 102 months	87 - 116 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.595).
- C. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 36 to 48 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-6 or III-7 to calculate the enhanced sentence.
- E. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and the current offense occurred on or after September 1, 2001, then the sentence is subject to the requirements of RCW 9.94A.712.

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eleven years: Special Sex Offender Sentencing Alternative (RCW 9.94A.670).
 - *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules*

RAPE OF A CHILD OR ATTEMPTED RAPE OF CHILD, SECOND DEGREE

11/30/07 (gp)
 KHAN, Zahid Aziz

(RCW 9A.44.076)
 CLASS A FELONY
 VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(16))

ADULT HISTORY:

Enter number of sex offense convictions..... 0 x 3 = 0
 Enter number of other serious violent and violent felony convictions..... 0 x 2 = 0
 Enter number of other nonviolent felony convictions..... 0 x 1 = 0

JUVENILE HISTORY:

Enter number of sex offense dispositions..... 0 x 3 = 0
 Enter number of other serious violent and violent felony dispositions..... 0 x 2 = 0
 Enter number of other nonviolent felony dispositions..... 0 x 1/2 = 0

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions..... 13 x 3 = 39
 Enter number of other serious violent and violent felony convictions..... 0 x 2 = 0
 Enter number of other nonviolent felony convictions..... 0 x 1 = 0

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = 0

Total the last column to get the Offender Score
 (Round down to the nearest whole number)

39

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL XI)	78 - 102 months	86 - 114 months	95 - 125 months	102 - 136 months	111 - 147 months	120 - 158 months	146 - 194 months	159 - 211 months	185 - 245 months	210 - 280 months

- B. The range for an attempt is 75% of the range for the completed crime (RCW 9.94A.595).
- C. If the offender is not a persistent offender, then the minimum term for this offense* is the standard sentence range, and the maximum term is the statutory maximum for the offense. See RCW 9.94A.712.
- D. When a court sentences a non-persistent offender to this offense, the court shall also sentence the offender to Community Custody under the supervision of the Dept. of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See RCW 9.94A.712.
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-6 or III-7 to calculate the enhanced sentence.
 - *The offense must have been committed on or after September 1, 2001.*

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eleven years: Special Sex Offender Sentencing Alternative (RCW 9.94A.670).
 - *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules*

RAPE OF A CHILD, THIRD DEGREE
 (RCW 9A.44.079)
 CLASS C FELONY
 NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(16))

ADULT HISTORY:

Enter number of sex offense convictions 0 x 3 = 0
 Enter number of other felony convictions 0 x 1 = 0

JUVENILE HISTORY:

Enter number of sex offense dispositions 0 x 3 = 0
 Enter number of other serious violent and violent felony dispositions 0 x 1 = 0
 Enter number of other nonviolent felony dispositions 0 x 1/2 = 0

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions 13 x 3 = 119
 Enter number of other felony convictions 0 x 1 = 0

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = 0

Total the last column to get the Offender Score
 (Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VI)	12+ - 14 months	15 - 20 months	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	46 - 60* months	60* months	60* months	60* months

- B. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 36 to 48 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-7 or III-8 to calculate the enhanced sentence.
- D. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and the current offense occurred on or after September 1, 2001, then the sentence is subject to the requirements of RCW 9.94A.712.
 - Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eleven years: Special Sex Offender Sentencing Alternative (RCW 9.94A.670).
 - The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

11/30/07 (gp)
 KHAN, Zahid Axiz

CHILD MOLESTATION, THIRD DEGREE
 (RCW 9A.44.089)
 CLASS C FELONY
 NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(16))

ADULT HISTORY:

Enter number of sex offense convictions 0 x 3 = 0
 Enter number of other felony convictions..... 0 x 1 = 0

JUVENILE HISTORY:

Enter number of sex offense dispositions 0 x 3 = 0
 Enter number of other serious violent and violent felony dispositions 0 x 1 = 0
 Enter number of other nonviolent felony dispositions..... 0 x 1/2 = 0

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions 3 x 3 = 9
 Enter number of other felony convictions..... 0 x 1 = 0

STATUS: Was the offender on community custody on the date the current offense was committed? (If yes), + 1 = 0

Total the last column to get the Offender Score
 (Round down to the nearest whole number) 9

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL V)	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	41 - 54 months	51 - 60* months	60* months	60* months

- B. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 36 to 48 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-7 or III-8 to calculate the enhanced sentence.
- D. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and the current offense occurred on or after September 1, 2001, then the sentence is subject to the requirements of RCW 9.94A.712.
 - *Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eleven years, see Special Sex Offender Sentencing Alternative (RCW 9.94A.670).
- B. If sentence is one year or less: one day of jail can be converted to eight hours of community service (up to 240 hours) (RCW 9.94A.680).
- C. If a sentence is one year or less: community custody may be ordered for up to one year (See RCW 9.94A.545 for applicable situations).

The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

11/30/07 (gp)
 KHAN, Zahid Aziz

ATTEMPTED
 CHILD MOLESTATION, THIRD DEGREE
 (RCW 9A.44.089)
 CLASS C FELONY
 NONVIOLENT SEX

N/A - GM

I. OFFENDER SCORING (RCW 9.94A.525(16))

ADULT HISTORY:

Enter number of sex offense convictions 0 x 3 = 0
 Enter number of other felony convictions 0 x 1 = 0

JUVENILE HISTORY:

Enter number of sex offense dispositions 0 x 3 = 0
 Enter number of other serious violent and violent felony dispositions 0 x 1 = 0
 Enter number of other nonviolent felony dispositions 0 x 1/2 = 0

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions 4 x 3 = 12
 Enter number of other felony convictions 0 x 1 = 0

STATUS: Was the offender on community custody on the date the current offense was committed? (If yes), + 1 = 0

Total the last column to get the Offender Score.
 (Round down to the nearest whole number)

75%
 II. SENTENCE RANGE

45 mo/s

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL V)	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	41 - 54 months	51 - 60* months	60* months	60* months

- B. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 36 to 48 months, or to the period of earned release, whichever is longer. (RCW 9.94A.715).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-7 or III-8 to calculate the enhanced sentence.
- D. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and the current offense occurred on or after September 1, 2001, then the sentence is subject to the requirements of RCW 9.94A.712.
 - *Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eleven years, see Special Sex Offender Sentencing Alternative (RCW 9.94A.670).
- B. If sentence is one year or less: one day of jail can be converted to eight hours of community service (up to 240 hours) (RCW 9.94A.680).
- C. If a sentence is one year or less: community custody may be ordered for up to one year (See RCW 9.94A.545 for applicable situations).

The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

ORDER OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of the County of Snohomish; State of Washington, and to the Secretary of the Department of Corrections, and the Superintendent of the Washington Corrections Center of the State of Washington, GREETINGS:

WHEREAS, ZAHID AZIZ KHAN, has been duly convicted of the crime(s) of Count 1 Child Molestation in the Second Degree, Count 2 Rape of a Child in the Second Degree, Count 3 Rape of a Child in the Third Degree, Count 4 Child Molestation in the Third Degree, Count 5 Attempted, as charged in the Amended Information filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him/her that he/she be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term(s) as provided in the judgment which is incorporated by reference, all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

THIS IS TO COMMAND YOU, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification, and placement in such corrections facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable KENNETH L. COWSERT, Judge of the said Superior Court and the seal thereof, this 14th day of January, 2008.

Ram L. Daniels Sonya Kraski
CLERK OF THE SUPERIOR COURT

By: [Signature]
Deputy Clerk

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

KHAN, ZAHID AZIZ

Defendant.

No. 07-1-02449-7

APPENDIX A
ADDITIONAL CONDITIONS
OF COMMUNITY CUSTODY

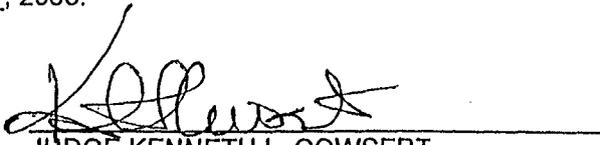
ADDITIONAL CONDITIONS OF COMMUNITY CUSTODY:

1. Obey all laws. Have no new law violations.
2. Have no direct or indirect contact with R.H. (DOB 6/10/92).
3. Pay the costs of crime-related counseling and medical treatment required by R.H.
4. Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer.
5. Do not seek employment or volunteer positions which place you in contact with or control over minor children.
6. Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer.
7. Do not date women nor form relationships with families who have minor children, as directed by the supervising Community Corrections Officer.
8. Do not remain overnight in a residence where minor children live or are spending the night.
9. Participate in offense related counseling programs, to include sexual deviancy treatment and Department of Corrections sponsored offender groups, as directed by the supervising Community Corrections Officer.
10. Participate in polygraph and plethysmograph examinations as directed by the supervising Community Corrections Officer.
11. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
12. You must consent to DOC home visits to monitor your compliance with supervision. Home visits include access for purposes of visual inspection of all areas of the residence in which you live or have exclusive or joint control and/or access.

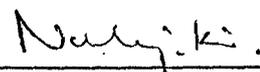
Dated this 14th day of January, 2008.



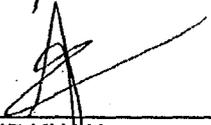
CINDY A. LARSEN, #26280
Deputy Prosecuting Attorney



JUDGE KENNETH L. COWSERT



LENNARD A. NAHAJSKI, #22138
Attorney for Defendant

✕ 

ZAHID AZIZ KHAN
Defendant

APPENDIX B

DECLARATION OF ZAHID KHAN

I, Zahid Khan, declare:

1. I am the petitioner in this Personal Restraint Petition.
2. This declaration was written in both English and Urdu.
3. Urdu is my native language.
4. I was born in Pakistan on August 30, 1972. I came to the United States in late 1999. I moved to Washington State in 2001. During this time I lived with family in houses where Urdu was the primary language spoken.
5. I attended middle school in Pakistan. I took an English class in middle school, but wrote it, rather than spoke it. I did not attend high school. When I arrived in the United States I started working immediately. Prior to recent prison classes, I did not attend school in the United States. Since being sentenced to prison, I have attempted to obtain my GED, but failed because my English is so limited.
6. I speak English slightly better now than when I went to trial in this case.
7. My family retained Lennard Nahajski to represent me on the charged filed against me.
8. When I met with my attorney, who only visited once in jail, I told him that Urdu was my native language and that I did not speak English very well.
9. My attorney told me that he would speak for me and that I should not speak in court. I told him that I would probably not understand everything that was said in court. Once again, my attorney told me that I need not worry because he would be able to understand and respond to everything that was said.
10. Although I told my attorney several times that I was not understanding what was said in court, in response he told me "don't worry. Everything is good," and assured me that the case would turn out well.
11. My attorney never read the court papers or any of the witness statements to me.
12. My attorney never asked me who I thought could be called as a witness in my case.
13. My attorney did not talk to me about my testimony before he called me to the stand. As a result, he was unable to put on proof to support my testimony. For example, because he did not talk to me much before my testimony, he was not prepared to put on

testimony about the nightly prayer schedule that I had kept for years—a fact that was known to several family members. Consequently, the State was able to claim that I was up at night only to molest my daughter.

14. During trial, I understood some things that were said and did not understand other parts of trial.

15. As a result of my inability to understand everything that was being said during trial, I felt unable to consult with and assist my attorney.

16. When I testified, I was confused several times. I did my best to understand and answer, but there were a number of times when I did not understand exactly what was asked or how to accurately express myself in English. I did my best but know that I could have done better with an interpreter.

17. If I had known that I could have asked the court for an interpreter, contrary to my attorney's advice, I would have done so.

18. I did not voluntarily give up my right to an interpreter. Instead, I told my attorney several times that I spoke limited English. In response, he told me that using an interpreter would make me look bad.

19. Prior to jury selection, my attorney was given a number of written documents related to each possible juror. No one was allowed to see those documents other than the attorneys and the judge.

20. My attorney did not object.

21. I was not asked if I objected.

22. I did not think I had a right to object. Instead, I thought it was a question just for my attorney.

23. I did not waive and did not authorize my attorney to waive my right to an open and public trial by permitting jurors to answer certain questions privately.

24. My trial attorney simply made those decisions without discussing them with me at all.

25. If my rights had been explained to me and if I had been asked, I would not have waived my right to an open and public trial.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

12/1/2010 Aberdeen WA
Date and Place



Zahid Khan

DECLARATION OF KHUSHDEV TIWANA

I Khushdev Tiwana, declare:

1. I am an interpreter in the Urdu language registered in the State of Washington and I work frequently in King county court system.
2. On December 01, 2010, I read a two page declaration with numbers 1 through 25 to Zabid Khan.
3. I read this document to him in his native language of Urdu.
4. I was able to spend sufficient time with him reading this document to him to be certain that he understood the document fully.
5. The only change he made was that "late" 1999, should be December 1999.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

12/02/2010 KENT, WA

Date and Place



Khushdev Tiwana

APPENDIX C

11-19-2010

TO WHOM IT MAY CONCERN.

FROM: DAVID A. HAWKINS, #271420
Stafford Creek Correction Center
191 Constantine way, H-4-A98
Aberdeen, WA 98520

IN RE: PERSONAL KNOWLEDGE. AFFIDAVIT.

I David A. Hawkins, an Inmate at the Stafford Creek Corrections Center, located in Aberdeen, Washington, and being over the age of Majority and able to testify to. Deposes and states the following is true and is made free and willingly;

1. That I have known Mr. Zahid Khan, Inmate number 313004. since he arrived at Washington Correction center, located in Shelton, Washington some time at the beginning of the year 2008.
2. That I meet Mr. Khan through the Law Library, where I was employed as a Law Clerk.
3. Mr. Khan came for help with his Legal problems/issues.
4. That Mr. Khan was, and is hard to understand due to the Language barrier for when he came to Washington correction center, he could not speak many words of English, Nor could he understand any English.
5. That, Mr. Khan has over the last 2 years learned some English, and has been able to learn some Legal parameters so that he is able to somewhat understand what has happened to him.
6. In 2009 Mr. Khan was transferred to Stafford creek correction center, where I lost track of Mr. Khan.
7. I was transferred to Stafford creek correction center in June 2010, where i found Mr. Khan still working on his legal Issues, and has been working on his English and Reading Skills.
8. At this present time, and date, Mr. Khan is still hard to Understand, due to his inability to articulate his English, he has greatly approved but is still hard to understand, and it takes great patience to make him understand what you are trying to tell him.
9. That to my personal knowledge Mr. Khan has learned some English, but at the time he arrived in D.O.C. his understanding, and speech of the English Language was very Limited, and he had no understanding of the legal system.

I declare under the penalty of perjury under the laws of the State of Washington that the aforementioned is true and correct.



3. I first met Zahid Kahn about December 2009 at Stafford Creek Correction Center ("SCCC") in Aberdeen Washington, a division of the Dept. of Corrections ("DOC").

4. Although I do not speak Arabic languages, I have a fluent ear for person who do not speak the English language at all or very well, and can understand parts of Hebrew, Yiddish, Polish, and some Spanish. I took French in College in 1982-1983. I can understand and make myself understood to Zahid Khan with great difficulty and persistence usually requiring several attempts at explaining in English using only very simple terms and phrases, even then sometimes failing to be understood by Mr. Kahn.

5. Communication theory has several factors that are both visual, auditory and environmental. Mr. Khan seems to include Urdu, which is a mixed Pakistani, French and Arabic with bits of English metaphors mixed in such as the word "email." His comprehension of English is improving with his time exposed to it since his trial in this case in November; 2007, but it is still bad: less than a third grade level and has never had any formal English speaking instruction.

6. Mr. Khan does not understand English well, even now, in 2010. Although he tries to understand English, I have noticed that often Mr. Zahid will appear blank

when speaking to him and he frequently does not ask questions when he doesn't understand the English being spoken because he is embarrassed at not understanding. After hearing something several times, he might ask someone what a word or phrase means, revealing that all along he didn't understand what was being said while not letting others know he didn't understand.

7. After reviewing the court record in Mr. Kahn's case I recognized many instances where Mr. Kahn did not understand the proceedings and the English being spoken. In other words, he should have been provided an interpreter per GR-11, and both his attorney and the court after observing and hearing Mr. Kahn's behavior and question answers and questions to the Judge should have inquired into his language disability.

Signed at Aberdeen WA on 08/14/10.


Allan Parmelee

APPENDIX D

DECLARATION OF AMY MUTH

I, Amy Muth, declare as follows:

1. I am an attorney in good standing admitted to practice in the State of Washington since 2001. I am also admitted to the bars of the United States District Court for the Western District of Washington and the Ninth Circuit Court of Appeals.
2. This declaration is based on my experience and my review of materials in *PRP of Zahid Khan*.
3. After graduating from Ohio State University College of Law in 2001, I worked for five years for the law firm of Ness & Associates in Port Orchard, Washington. From January 2007 to July 2008, I was a staff attorney in the felony unit of The Defender Association, a non-profit organization in Seattle, Washington that contracts with the King County Office of Public Defense to provide indigent representation. From July 2008 to July 2010, I worked with Rhodes & Meryhew, LLP, a Seattle law firm that focuses on the defense of sexual assault cases. I recently opened my own practice and continue to specialize in sexual assault cases.
4. From 2001 to the present, my practice has primarily focused on criminal defense, as well as the representation of individuals facing civil commitment as sexually violent predators. I have represented individuals at trial in both in state and federal court. While at The Defender Association, I was routinely assigned the most serious felonies, in particular, sexual assault cases. My current caseload is comprised exclusively of sexual assault cases.
5. I have presented at Continuing Legal Education seminars on the defense of sexual assault cases. I have lectured at seminars sponsored by the Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association (WDA), Northwest Defender's Association (NDA), Associated Counsel for the Accused (ACA), Washington State Office of Public Defense and The Innocence Project Northwest (IPNW).
6. Based on my experience, I believe I am qualified to offer an opinion about the relevant standard of practice in the State of Washington relating to the defense of sexual assault cases.
7. I reviewed a number of documents related to trial and defense of Zahid Kahn, including the direct appeal opinion, the testimony of the victim and the State's expert, the defense case, as well as a summary of the defense investigation.

8. In reviewing these materials, it appears that defense counsel failed to consult with an expert witness regarding the lack of medical evidence to corroborate the alleged victim's allegations of rape.
9. In my opinion, no reasonably competent attorney would fail to consult with an expert regarding the lack of any injury in a sexual abuse case involving a young girl who alleged over 40 instances of sometimes prolonged digital vaginal and anal penetration beginning when she was eleven years old. Put another way, it falls below the minimal standard of reasonable performance for a lawyer defending an individual against these accusations who claims that he did not rape or molest the victim to fail to consult with an expert regarding the total lack of medical evidence to support or corroborate the complaining witness' accusations. This is especially true where the State offers the testimony of an expert that the lack of medical findings is not inconsistent with the allegations of abuse.
10. In my experience, it is not uncommon for a State's expert in a sexual assault case to testify that the lack of any medical evidence of injury is consistent with accusations of rape. As a result, reasonably competent counsel must be prepared to challenge this testimony in appropriate cases. While it is sometimes true that no evidence of injury is consistent with a prior rape that is not always the case. Instead, there are a number of situations where no evidence of injury is highly inconsistent with accusations of rape. In those cases, the failure to consult with and call an expert clearly falls below the minimal standard of practice for competent counsel.
11. Various studies, published in peer-reviewed journals, support the conclusion that medical findings corroborating accusations of rape are not uncommon.
12. For example, the August-November 2006 issue of the *Journal of Clinical Forensic Medicine* published a study entitled: *Victims of sexual offences: medicolegal examinations in emergency settings*. The study was based on 352 alleged victims of sexual offences referred by investigating police authorities and physicians working at hospital emergency rooms. Females represented about 92% with a large over-representation of those aged from 0 to 19 years (61% of the total). Victims were mainly girls of school age (36%) or under 6 years old (25%). Medical and laboratory findings were in accordance with some sort of sexual offense in 34% of the cases.
13. In a 1999 study of adolescent girls who reported sexual abuse, the findings confirmed that while non-penetrative sexual acts leave no lasting genital signs, repeated abusive genital penetration significantly more often than non-penetrative abuse leaves deep posterior hymenal clefts and/or vestibular scarring. In addition, perianal scarring was recorded. Edgardh K, von Krogh G, Ormstad K., *Adolescent girls investigated for sexual abuse: history, physical findings and legal outcome*; *Forensic Sci Int.* 1999 Sep 30;104(1):1-15.

14. Perhaps most significantly given the accusations in this case, a 2003 study reported in the Journal of Forensic Science which had the aim of assessing anal physical findings in children whose abuse was admitted by the perpetrator (i.e., where the abuse was confirmed), The medical assessment included examination to detect the presence of anal physical signs. The results were not as the State's expert described in this case—no medical signs. Quite the contrary, the most frequent signs were anal scars and tags (either single or multiple) present, respectively, in 84 and 32% of cases. In some cases scars extended to the perianal region. Other signs included reflex anal dilatation (RAD) and venous congestion (VC) found, separately or associated with other signs, in over 33% of the cases. The results of this study confirmed that physical signs, including scars, tags, RAD, funneled anus and extensive venous congestion, are *often* present in abused children, singly or in combination, and that anal examination should be undertaken even months after a known or suspected sexual assault. In short, physical signs are often seen in association with anal abuse. See Bruni M., *Anal findings in sexual abuse of children (a descriptive study)*; J Forensic Sci. 2003 Nov;48(6):1343-6.
15. Given the accusations in this case and the testimony of the State's expert that the lack of medical findings was consistent with accusations of abuse, it is my opinion that it was deficient performance for trial counsel not to consult with an expert who could have countered this testimony. With an expert, trial counsel could have presented a compelling case that the lack of medical findings was not simply consistent with abuse and consistent with no abuse, but that the findings were inconsistent with abuse and most consistent with no abuse.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

12/2/10, Seattle, WA
Date and Place


Amy Muth

APPENDIX E

DECLARATION

My name is Dr. William Rollins. I am a medical doctor. I have a Doctoral Degree in Medicine from an accredited institution and I am licensed to practice medicine in the State of Washington. I have several years of experience in the practice of medicine.

Mr. Zahid Khan was convicted of several counts of rape of a child, based on his step-daughter's testimony that she was digitally raped over 50 times between 2004 and 2007, beginning when she was 11 years old. The step-daughter testified that all 50 of these rapes began and were all completed, with Mr. Khan's finger in her orifices, moving in and out, before she awoke from sleep to realize she was being raped.

Medical testimony at trial was provided by Barb Haner, R.N. Nurse Haner testified that there was no damage or injury to the step-daughter's hymen. The hymen was intact, and presented no indication of any trauma, rape, or other penetration. The hymen exhibited no tearing, scarring, lesions, nor disfigurement; nor was there any evidence that the step-daughter had ever been sexually active, or penetrated vaginally.

Expert Medical Opinion

It is my considered, medical opinion that given the results of Nurse Haner's examination, per her testimony at trial, that it is impossible that the step-daughter is telling the truth about being raped digitally, beginning at age eleven.

It is so unlikely in the extreme, that an eleven or thirteen year old would never wake up after being digitally raped on fifty occasions, that given the conspicuous absence of any damage to the hymen, I am also confident in assessing that it is impossible that the step-daughter is being truthful about being raped and never waking up until the rape was completed, or in progress.

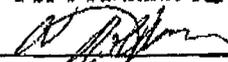
I have examined Mr. Khan. He is 6' 2", over 200 pounds, and has very large fingers. Damage to the hymen of an eleven year old girl after even a few instances of digital rape by the fingers Mr. Khan has would be inevitable.

I have been shown the Prosecutor's closing argument, where the State asserts that it is only with repeated penile intercourse that any hymen damage would be sustained. This is factually incorrect.

It is my considered medical opinion that damage to the step-daughter's hymen would be inevitable if the incidents of rape she testified to were true.

Done this 10 day of DECEMBER, 2007. Affirmed to be true and correct to the best of my knowledge under penalty of perjury of the laws of the State of Washington.

W. ROLLINS, M.D.


_____, M.D.
William Rollins, M.D.
191 Constantine Way, SCCC Medical Section
Aberdeen, WA 98520

APPENDIX F



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
STAFFORD CREEK CORRECTIONS CENTER
191 Constantine Way, MS WA-39 - Aberdeen, Washington 98520
(360) 537-1800
FAX: (360) 537-1807

February 3, 2010

DECLARATION

QUALIFICATIONS

My name is Ryan D. Donahue, Ph.D. I hold a doctorate in clinical psychology from Washington State University. I have been employed by the Department of Corrections as a Psychologist 3 at the Stafford Creek Corrections Center in Aberdeen, Washington for the past three years.

FACTS AS SUPPLIED BY ZAHID KHAN

Mr. Zahid Khan is an inmate at the Stafford Creek Corrections Center (SCCC), and is convicted of raping and molesting his step-daughter, R. H.

The victim testified at trial that she was digitally raped between the ages of 11 and 14 a total of 20 to 60 times, or less than 20, or more than 60. Apparently, this victim may have been guessing. R. H. testified that she may have been raped vaginally or anally by Mr. Khan's penis, but was not certain it occurred because she slept through it, if and when it happened.

R. H. testified that she never woke up during any of the less than 20 or more than 60 incidents until Mr. Khan's finger was moving in and out of her. Mr. Khan describes himself as 6'2", and from 2004-2007 weighed 245 pounds. His hands are very large; his fingers are very large.

PROFESSIONAL PSYCHOLOGICAL OPINION, ABSENT FIRST-HAND ASSESSMENT

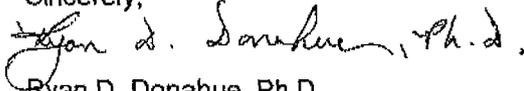
In the opinion of the undersigned, it would be highly unlikely that a victim would not have awakened at least once during a sexual assault of this type, barring unusual circumstances (i.e., intoxication, serious mental illness, or serious medical condition). According to Mr. Khan, the victim was not sexually active previous to the time period of the alleged abuse. The expected reaction in normal levels of consciousness to this type of sexual assault would likely be instantaneous alarm and some type of defensive or fleeing behavior. Persons asleep are still capable of these reactions, though there may be some latency. A phenomenon known as sleep paralysis does occur during the REM stage sleep (i.e., also called REM atonia), during which it is very difficult to awaken a sleeping individual (i.e., must first cycle up to a lighter stage of sleep, which may take several seconds). However, an individual cycles through this stage multiple times at night, with the pattern likely to vary due to situational factors (e.g., level of fatigue, psychological stressors, or hormone changes in puberty). Therefore, during a span of three years of sexual assault, the likelihood that each of the 50+ assaults strategically occurred during the deep stages of REM sleep when sleep paralysis was occurring would be minimal. It should also be noted that a victim of prolonged sexual assault would likely display evidence of emotional disturbance such as acting out behaviors, fear / avoidance behaviors, depressive symptoms, nightmares, or social withdrawal. Mr. Khan denies such changes in his daughter were evident during the alleged period of assault. These matters aside, it would be important to include that a child may choose not to react during an assault out of fear, but would only do so if the child was

aware of what was happening. In situations involving ongoing abuse, children may choose to avoid the stress of directly confronting their assailant by pretending to be asleep, or afterwards stating that they were asleep. This would not be the case if the child were openly reporting the abuse in court (i.e., the child would no longer be avoiding or denying the issue).

Declared to be true and correct to the best of my professional knowledge under penalty of perjury of the laws of the State of Washington.

Done this 3rd day of February 2010, at Aberdeen, Washington.

Sincerely,



Ryan D. Donahue, Ph.D.
Psychologist 3
Mental Health Unit
Stafford Creek Corrections Center

APPENDIX G

DECLARATION OF SADAQAT HUSSAIN

I, Sadaqat Hussain, declare:

1. I am the brother of Shoukat Khan and the uncle of the petitioner of this petition.
2. This declaration was written in English.
3. I was born in Pakistan and immigrated to the United States in 2005. I live in California.
4. Zahid's family and Mona's (Iram Mirza) family had a history of conflicts. I speak with Sanober Mirza on a regular basis because she is married to my brother. Sanober Mirza mentioned many times that her family wanted to take revenge because they believed Zahid was cheating on Mona and their mother died due to stress from him.
5. I was never interviewed in this case by either the State's attorney or Zahid Khan's attorney, Lennard Nahajski.
6. I was not even called and consulted about what I knew about the case.
7. I wanted to testify in the case but never received a subpoena from either side.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

12/02/2010

Date and Place



Sadaqat Hussain

APPENDIX H



STATE OF WASHINGTON
DEPARTMENT OF EARLY LEARNING
P.O. Box 40970, Olympia, Washington 98504-0970

September 21, 2009

Zahid Aziz Kahn DOC # 313004
H-6A 84 L
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

Subject: Your public records request.

Dear Mr. Zahn:

Enclosed is the record you requested from the Department of Early Learning (DEL). I received your request on Monday, September 21, 2009.

You asked for a copy of Eram Mirza's child care license. DEL does, indeed, license Ms. Mirza. She has been licensed since September 13, 2007. Her license is valid through September 12, 2010, at which point she would be up for a three-year renewal.

In this time, Ms. Mirza has never had a licensing complaint against her.

This closes your request. If you have any other questions, don't hesitate to let me know.

Sincerely,

A handwritten signature in black ink that reads "C. Brandon Chapman".

C. Brandon Chapman
Communications Specialist | Department of Early Learning
Brandon.Chapman@del.wa.gov | Phone:360.725.4385 | FAX:360.413.3482
Kids' Potential, Our Purpose



ESA Economic Services Administration

FAMILY HOME CHILD CARE APPLICATION FOR LICENSE

INSTRUCTIONS: Use black ink. Application instructions are attached.

1. CAMIS IDENTIFICATION NUMBER (FOR DCCCL USE ONLY) 113827
2. DATE OF APPLICATION 8.23.07
3. TYPE OF APPLICATION [X] Initial [] Other (explain): [] Renewal

4. APPLICANT #1: NAME LAST FIRST M.I. MIRZA ERAM
5. APPLICANT #2: NAME LAST FIRST M.I.
6. ADDRESS: 2333 194th St SE BOTHELL 98012
7. E-MAIL ADDRESS (IF ANY)
8. TELEPHONE NUMBER (INCLUDE AREA CODE) Cell Home: (425) 415-1212 Work: (206) 859-334

9. NEAREST ELEMENTARY SCHOOL: FERNWOOD
10. DIRECTIONS FOR REACHING YOUR HOME: From 405 Groingy North Exit #23 BOTHELL/MILL Creek take RIGHT on Ramp its BOTHELL EVERETT HIGHWAY take RIGHT on 196th St LEFT on 23rd Dr.
RECEIVED JUN 06 2007 DEL Everett TB-98

11. ETHNIC BACKGROUND (OPTIONAL)
APPLICANT 1 2
[] [] Black/African-American
[] [] Mexican, Mexican-American, Chicano
[] [] Caucasian/White
[] [] Puerto Rican
Asian or Pacific Islander (API):
[] [] Chinese [] [] Korean
[] [] Filipino [] [] Samoan
[] [] Hawaiian [] [] Vietnamese
[] [X] Asian Indian [] [] Laotian
[] [] Japanese [] [] Guamanian
[] [] Cambodian
[] [] Other API (identify):
[] [] American Indian (identify the name of the enrolled or principal tribe below):
[] [] Eskimo
[] [] Aleut
[] [] Other race (indicate race or culture below):
[] [] I don't know.
If you are more than one race, check "Multi-Racial" below and indicate primary and secondary ethnicity preference:
[] [] Multi-Racial:

12. Primary language spoken: ENGLISH - HINDI
a. Have you had training to work with special needs children? YES [] NO [X]
b. Have you had training on working with diverse populations? YES [] NO [X]
c. Do you need interpreter services? YES [] NO [X]

13. PERSONS LIVING IN HOUSEHOLD. Attach an additional sheet for additional persons.
Table with columns: NAME, BIRTHDATE, RELATIONSHIP TO APPLICANT(S), NAME, BIRTHDATE, RELATIONSHIP TO APPLICANT(S)
Rows: ERAM MIRZA (09.29.65), ZAHID KHAN (08.30.72) HUSBAND, MANAL KHAN (07.06.01) Daughter, RIYAH HASAN (09.10.92) Daughter, RAJAY KHAN (07.04.00) SON

AP45

APPLICATION FOR LICENSE

APPLICANT #1			
NAME	LAST	FIRST	M.I.
ERAM MIRZA			

14. REFERENCES (SEE SECTION 4.A. INSTRUCTIONS)

NAME	ADDRESS	ZIP CODE	TELEPHONE (INCLUDE AREA CODE)
a.			
LIZMAT BHATTI	902 200th PL SW LYNWOOD	98036	(425) 351-6613
b.			
SHAMA HUSSAIN	2419 194th ST SE BOTHELL	98012	(425) 483-9284
c.			
HAWA USOPD	19829 22nd DR SE BOTHELL	98012	(206) 669-9594

PLEASE ANSWER THE FOLLOWING QUESTIONS

	APPLICANT			
	1		2	
	YES	NO	YES	NO
15. Has applicant ever been deprived of custody of own children by court action? (If yes, attach a statement of explanation).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Has applicant or any other member of the household:				
a. Been found to be a perpetrator of child abuse?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Engaged in the illegal use or sale of drugs?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Been convicted of a felony?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Been released from prison in the past seven years?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Been denied a license to care for children or adults?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Had a license to care for children or adults suspended or revoked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Department of Social and Health Services (DSHS) may not license, make referrals to, payments to, or include in its directories the names of agencies which discriminate in the provision of services because of race, creed, color, national origin, sex, disability, or age, which discriminate in employment practices because of race, creed, color, national origin, sex, disability, age (40+), sexual orientation, marital status, disabled veteran status, or Vietnam era veteran status. I hereby agree not to engage in prohibited discriminatory practices.

I hereby certify that I have received, read, understand and agree to comply with the provisions of Chapter 74.15 of the Revised Code of Washington (child care agency licensing statute), and with the provisions of Chapter 388-296 of the Washington Administrative Code (WAC) (minimum licensing requirements). I (we) hereby further certify that the above information and required attachments are true and complete to the best of my (our) knowledge. I (we) further understand that DCCEL does a criminal history record check and a check of DSHS files of abuse and neglect for all persons applying for child care licenses.

The information that I give the department is subject to verification by federal and state officials, verification can include follow-up contacts from department staff including fraud investigations.

APPLICANT #1 SIGNATURE	DATE	APPLICANT #2 SIGNATURE	DATE
	105-08-07		

NOTE: WAC 388-296-0450(e) provides that DCCEL may deny, suspend, revoke or not renew a license for misrepresentation or material omissions on this application.

0/4
2000 AN IN IN 2000
IN IN IN IN

SHARON & KNIGHT
CONSULTING AND EDUCATION SERVICES

ADULT EDUCATOR AND MOTIVATIONAL SPEAKER

CERTIFICATE OF COMPLETION

ERAM MIRZA

20 HOUR STARS BASIC GUIDEBOOK TRAINING

Sharon

365990

3/24/07

S-Knight Consulting & Education Services
PO Box 8056
Tacoma, Washington 98419
Email: info@s-knight.com
Web: www.s-knight.com
Phone: (253) 572-4953
Fax: (253) 272-4289

RECEIVED

JUN 06 2007

DEL Everett
TB-98

3-31-07
Date Issued

Basic First Aid

This card expires two years from date of issue and meets Washington State L & I Requirements.

KID SAFETY



WORKSHOP

Has successfully completed a Basic First Aid course

Bleu
Instructor

Basic Life Support for Healthcare Providers and First Responders

Has successfully completed and completely performed the
Required knowledge and skill objectives for a course in:
CPR AED Child CPR AED Infant CPR
(Knowledge and skill not assessed is crossed out above)



American Heart & Safety Institute
An association of professional safety and health educators
A WORLD OF EXPERIENCE
Research and safety of your first step

ASHI APPROVED CERTIFICATION CARD

Bleu
Authorized Instructor (Print Name)

Notary Signature

3-31-07
Date Completed

3 2009
Reissue Date

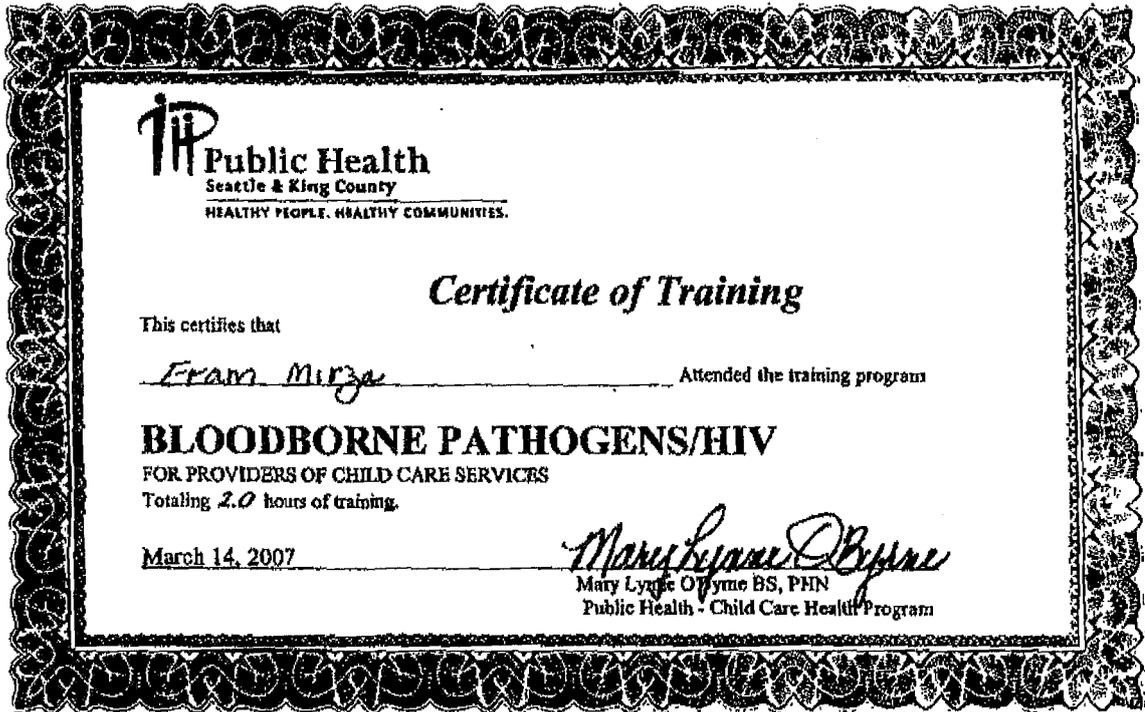
688 SD00
Training Center Prefix No.

BCC
Training Center No.

Successful completion indicates that holder has met required knowledge and skill objectives of the course. The completion of an ASHI approved program indicates successful completion of the course. ASHI performance are only able to certify in following: Program certified in their state. ASHI approved for: 1st Aid, CPR, AED, Child CPR, Infant CPR, and EDC. For Guidelines for CPR and EDC (Revision 7/05) and other information, please visit our website at www.ashi.state.org or call (800) 245-1101.

RCW 42.56.230(5)

RECEIVED
JUN 06 2007
DEL Everett
TB-98



RECEIVED

JUN 06 2007

DEL Everett
TB-08

AR45

APPENDIX I

Gordon's

Everett Mall
Everett, WA 98208
(425) 347-3560

RE-PRINT RE-PRINT RE-PRINT RE-PRINT RE-PRINT

★ ZAHID A KHAN

08/31/05 20 27 4593 TRANS#: 293735
282807, REG#:02

SALE

Qty		
1	RT GDR CERT AD 3/ 003 15582737 Mkdn 5 5.0% x 4995.00 =	4995.00 <u>249.75-</u>
	Item Subtotal:	4745.25
	Subtotal	4745.25
	Tax @ 2000%	408.09
	Total	5153.34

★

CASH 153.34
CHARGE *****7151 REGULAR REVOLVE
Auth:031379 501 5000.00
CHANGE DUE 0.00

Add'l Amt Charged To Gordon's
Consumer Credit Agreement 5000.00

WITH CERTAIN PURCHASES THAT INCLUDE A
REQUIRED DOWN PAYMENT, ANY RELATED CREDIT
LINE INCREASE MAY NOT BE REFLECTED
IMMEDIATELY. IF YOU MADE ONE OF THESE
PURCHASES, UNTIL YOUR ACCOUNT INFORMATION
IS UPDATED, THE CREDIT LINE SHOWN ON YOUR
BILLING STATEMENT, OR WITH YOUR CARD IN THE
CASE OF A NEW ACCOUNT, MAY BE LESS THAN THE
BALANCE ON YOUR ACCOUNT IMMEDIATELY
FOLLOWING THIS TRANSACTION.

CUSTOMER'S SIGNATURE

DATE:

THANK YOU FOR YOUR PATRONAGE
NO REFUND OF GIFT CARDS
30 DAY REFUND/90 DAY EXCHANGE PRIVILEGE
REFUNDS OVER \$200 MAY TAKE TWO WEEKS
** SHOP ONLINE AT www.GordonsJewelers.com **

APPENDIX J

APPENDIX K



CL12423306

Filed in Open Court

November 26, 2007

PAUL L. DANIELS
CLERK

By [Signature]
Deputy Clerk

**SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY**

State of Washington
Plaintiff / Petitioner

vs.

Zahid Khan
Defendant / Respondent

NO. 07-1-02449-7

ORDER SEALING RECORD – GR 31 (j)
(CLERK’S ACTION REQUIRED)

(ORSF)

IT IS HEREBY ORDERED THAT the following court records shall be sealed pursuant to GR 31 (j) and cannot be opened without further order of this court:

- Juror Biographical Forms
- Juror Questionnaires/Interrogatories

The above court records shall be made-available to the Appellate Court.

Done in open court this 26th day of November, 2008.

[Signature]
JUDGE

[Handwritten mark]

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

Detective Steven Martin present at counsel table.
Prospective jurors present.

The following persons ~~were selected~~ to qualify as jurors on this cause and seated in the jury box:

- | | |
|----------------------|-------------------------|
| 1. Rita Booth | 7. Alice Wilburn |
| 2. David McKenna | 8. Steven Princic |
| 3. Kathleen Anderson | 9. Dennis Hill |
| 4. Gary Page | 10. Paula Koehler |
| 5. Kelli Stemmer | 11. Kathleen Hesseltine |
| 6. Melissa Spillum | 12. Patrick Harasek |
| | 13. Vickie Pettijohn |
| | 14. Carla Yates |

And seated sequentially on the courtroom seats:

15. Cathy Russell
16. Boback Bahandori
17. Rowena Duez
18. Lindsay Tucker
19. William Wortman
20. Allison Keith
21. Janet Littlefield
22. Samuel Wahleithner
23. Scott Gettman
24. Douglas Putnam
25. Jessica D'Arcis
26. Vanna Nao
27. Denise Husby
28. William Cort
29. Vicki Huynh
30. Donald Moore
31. Allen Arp
32. James Turner
33. Deana Dunbar
34. James Welton
35. Dawn Swapp
36. James Andrews
37. Mayumi Smith
38. Patricia Vail
39. Ko Tong Tjok
40. Jennifer Golden

10:40 All prospective jurors sworn: Oath of Voir Dire.

The Court directs general questions to all prospective jurors.

11:01 State inquires of juror #12.

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

- Defendant inquires of juror #12.
- 11:02 Juror #12, Patrick Harasek, excused for cause.
Cathy Russell picked to qualify as juror #12.
- 11:17 State's initial voir dire of entire prospective jury panel.
- 11:29 Defendant inquires of prospective juror #28.
- 11:30 Court inquires of prospective juror #28.
Prospective juror #28, William Cort, excused for cause.
- 11:49 Prospective jurors not present.
Juror #2, David Mckenna, present.
The Court inquires of juror #2.
- 11:51 State inquires of juror #2.
- 11:52 Juror #2, David Mckenna, excused for cause.
Boback Bahandori picked to qualify as juror #2.
- 11:53 Prospective juror #25, Jessica D'Arcis, present.
The Court inquires of prospective juror #25.
- 11:55 Defendant inquires of prospective juror #25.
- 11:59 Prospective juror #25 not present.
Colloquy of Court and counsel.
- 12:00 Court in recess until 1:30 p.m.
- 1:33 Court resumes as heretofore, defendant present, in custody, and all parties present.
Prospective jurors not present.

State's motion in limine to exclude mention of the Defendant's criminal history. Granted/Stipulated.

State's motion in limine to exclude reference to the word felon, felony, or reference to prison or deportation: Granted.

State's motion in limine to preclude the defense from eliciting evidence regarding the defendant's good character:
Granted/Stipulated.

State's motion in limine to prohibit the defense from eliciting evidence regarding any of the witnesses' character:
Granted/Stipulated.

State's motion in limine to prohibit the defense from expressing either the defense attorney's opinion or the defense investigator's opinion as to the victim's truthfulness. Granted.

State's motion in limine to preclude the defense from making any mention of the victim allegedly having a boyfriend or from mentioning the status of the victim's pubic hair. Granted.

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

State's motion in limine to allow a redacted version of Raquel Rivera's electronic journal: Granted.

State's motion in limine to preclude the defense from discussing the marital history of Eram Mirza: Granted.

State's motion in limine to preclude the defense from inquiring about Mrs. Mirza and the defendant's sexual relationship: Granted.

State's motion in limine to direct the defendant to disclose in advance any evidence of prior bad acts of any State's witness: Granted.

State's motion in limine to limit or exclude reference to the Myspace account: Denied.

State's motion in limine to preclude the defense from attempting to admit the Defendant's self-serving hearsay statements:

2:01 Defendant's motion in limine to exclude reference to the defendant exercising his right to remain silent: Granted.

Defendant's motion in limine to exclude reference to the 2007 Incident: Granted.

Defendant's motion in limine to exclude reference to the Defendant's comments regarding the television show: Granted.

Defendant's motion in limine to exclude the conversation between the witnesses that will not testify: Granted.

2:07 Court in recess.

2:12 Court resumes as heretofore, defendant present, in custody, and all parties present.

Prospective jurors not present.

Prospective juror #35, Dawn Swapp, present.

The Court inquires of prospective juror #35.

2:14 Defendant inquires of prospective juror #35.

2:16 Prospective juror #35 not present.

Prospective juror #40, Jennifer Golden, present.

The Court inquires of prospective juror #40.

2:18 State inquires of prospective juror #40.

Defendant inquires of prospective juror #40.

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

- 2:19 Court in recess.
- 2:26 Court resumes as heretofore, defendant present, in custody, and all parties present.
Prospective jurors present.
Defendant's initial voir dire of entire prospective jury panel.
- 3:00 State's concluding voir dire of entire prospective jury panel.
- 3:12 Defendant's concluding voir dire of entire prospective jury panel.
- 3:20 State's first peremptory challenge: Boback Bahandori.
Rowena Duez picked to qualify as juror #2.
Defendant's first peremptory challenge: Kathleen Anderson.
Lindsay Tucker picked to qualify as juror #3.
- State's second peremptory challenge: Alice Wilburn.
William Wortman picked to qualify as juror #7.
Defendant's second peremptory challenge: Carla Yates.
Allison Keith picked to qualify as juror #14.
- State's third peremptory challenge: Steven Princic.
Janet Littlefield picked to qualify as juror #8.
Defendant's third peremptory challenge: Janet Littlefield.
Samuel Wahleithner picked to qualify as juror #8.
- State's fourth peremptory challenge: Samuel Wahleithner.
Scott Gettman picked to qualify as juror #8.
Defendant's fourth peremptory challenge: Rita Booth.
Douglas Putnam picked to qualify as juror #1.
- State's fifth peremptory challenge: Douglas Putnam.
Jessica D'arcis picked to qualify as juror #1.
Defendant's fifth peremptory challenge: Vicki Pettijohn.
Vanna Nao picked to qualify as juror #13.
- State's sixth peremptory challenge: Scott Gettman.
Denise Husby picked to qualify as juror #8.
Defendant's sixth peremptory challenge: Denise Husby.
Vicki Huynh picked to qualify as juror #8.
- State's seventh peremptory challenge: Vicki Huynh.
Donald Moore picked to qualify as juror #8.
Defendant's seventh peremptory challenge: Accepts panel.
- State's eighth peremptory challenge: Accepts panel.

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

3:29 The following 14 jurors were sworn to try this cause, alternates to be designated prior to deliberation.

- | | |
|--------------------|--------------------------|
| 1. Jessica D'Arcis | 7. William Wortman |
| 2. Rowena Duez | 8. Donald Moore |
| 3. Lindsay Tucker | 9. Dennis Hill |
| 4. Gary Page | 10. Paula Koehler |
| 5. Kelli Stemmer | 11. Kathleen Hesselstine |
| 6. Melissa Spillum | 12. Cathy Russell |
| | 13. Vanna Nao |
| | 14. Allison Keith |

The remaining jurors excused and directed to report to the Jury Coordinator.

The Court directs general instructions to the Jury.

3:40 Jury not present.

Colloquy of Court and counsel.

3:41 Court in recess.

4:00 Court resumes as heretofore, defendant present, in custody, and all parties present.

Jury present.

Reported.

State makes opening statement.

4:14 Defendant makes opening statement.

Juror Biographical Forms filed in open court. Order Sealing Record GR 31 entered, filed in open court.

4:36 Court in recess until Tuesday, November 27, 2008 @ 9:00 a.m.

TUESDAY, NOVEMBER 27, 2007

Clerk: Lisa Henderson

Reporter: Laurel Olson

Court opened at 9:22 a.m., Kenneth L. Cowsert, Judge

The following proceedings were had to wit:

This matter continued from previous day.

State of Washington represented through Deputy Prosecuting Attorney Cynthia Larsen.

Defendant present, in custody, represented by counsel Lennard Nahajski.

Detective Steven Martin present at counsel table.

Jury not present.

Colloquy of Court and counsel.

9:24 Jury present.

RIJAH HASAN, called by the State, sworn and testified.

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

Exhibit no. 1 offered by State:	Admitted 11-27-07
Exhibit no. 2 offered by State:	Admitted 11-27-07
Exhibit no. 3 offered by State:	Admitted 11-27-07
Exhibit no. 4 offered by State:	Admitted 11-27-07
Exhibit no. 5 offered by State:	Admitted 11-27-07
Exhibit no. 6 offered by State:	Admitted 11-27-07
Exhibit no. 7 offered by State:	Admitted 11-27-07
Exhibit no. 8 offered by State:	Not offered
Exhibit no. 9 offered by State:	Admitted 11-27-07
Exhibit no. 10 offered by State:	Admitted 11-27-07
Exhibit no. 11 offered by State:	Not offered
Exhibit no. 12 offered by State:	Admitted 11-27-07
Exhibit no. 13 offered by State:	Admitted 11-27-07
Exhibit no. 14 offered by State:	Admitted 11-27-07
Exhibit no. 15 offered by State:	Admitted 11-27-07
Exhibit no. 16 offered by State:	Not offered
Exhibit no. 17 offered by State:	Not offered
Exhibit no. 18 offered by State:	Admitted 11-27-07
Exhibit no. 19 offered by State:	Not offered
Exhibit no. 20 offered by State:	Rejected 11-28-07
Exhibit no. 21 offered by State:	Not offered
Exhibit no. 22 offered by State:	Admitted 11-28-07
Exhibit no. 23 offered by State:	Admitted 11-27-07
Exhibit no. 24 offered by State:	Admitted 11-27-07
Exhibit no. 25 offered by State:	Admitted 11-27-07
Exhibit no. 26 offered by State:	Not offered
Exhibit no. 27 offered by State:	Not offered
Exhibit no. 28 offered by State:	Not offered
Exhibit no. 29 offered by State:	Not offered
Exhibit no. 30 offered by State:	Not offered
Exhibit no. 31 offered by State:	Not offered
Exhibit no. 32 offered by State:	Not offered
Exhibit no. 33 offered by State:	Not offered
Exhibit no. 34 offered by State:	Not offered
Exhibit no. 35 offered by State:	Admitted 11-27-07/ Illustrative purposes

10:23 Cross examination of Rijah Hasan by the Defendant.

11:03 Court in recess.

11:19 Court resumes as heretofore, defendant present, in custody, and all parties present.
Jury present.

Redirect examination of Rijah Hasan by the State.

11:31 Attorney conference at sidebar.

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

- 11:32 Continuation of testimony of Rijah Hasan on redirect examination by the State.
- 11:32 Recross examination of Rijah Hasan by the Defendant.
- 11:37 Further redirect examination of Rijah Hasan by the State.
- 11:38 Further recross examination of Rijah Hasan by the Defendant.
- 11:40 **ERAM MIRZA**, called by the State, sworn and testified.
- 11:49 Court in recess until 1:30 p.m.

- 1:35 Court resumes as heretofore, defendant present, in custody, and all parties present.
Jury not present.
Colloquy of Court and counsel.
- 1:40 Jury present.
The Court instructs the Jury not to remain in the hall way during breaks.
- 1:41 Continuation of testimony of Eram Mirza on direct examination by the State.

Exhibit no. 36 offered by State: Not offered

- 1:52 Voir dire of the witness by the Defendant.
Continuation of testimony of Eram Mirza on direct examination by the State.
- 2:21 Cross examination of Eram Mirza by the Defendant.
- 2:49 Court in recess.
- 3:06 Court resumes as heretofore, defendant present, in custody, and all parties present.
Jury not present.
Colloquy of Court and counsel.
- 3:11 Jury present.
Redirect examination of Eram Mirza by the State.
- 3:22 Recross examination of Eram Mirza by the Defendant.
- 3:29 Further redirect examination of Eram Mirza by the State.
- 3:31 **BARBARA HANER**, called by the State, sworn and testified.

Exhibit no. 37 offered by State: Not offered

- 4:08 Cross examination of Barbara Haner by the Defendant.
- 4:18 Redirect examination of Barbara Haner by the State.
- 4:20 Recross examination of Barbara Haner by the Defendant.
- 4:24 **RAQUEL RIVERA**, called by the State, sworn and testified.
- 4:28 Cross examination of Raquel Rivera by the Defendant.

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

Exhibit no. 38 offered by Defendant: Not offered

- 4:33 Redirect examination of Raquel Rivera by the State.
4:35 Court in recess until Wednesday, November 28, 2007 @ 9:30 a.m.

WEDNESDAY, NOVEMBER 28, 2007

Clerk: Lisa Henderson
Reporter: Laurel Olson

Court opened at 9:38 a.m., Kenneth L. Cowser, Judge

The following proceedings were had to wit:

This matter continued from previous day.

State of Washington represented through Deputy Prosecuting
Attorney Cynthia Larsen.

Defendant present, in custody, represented by counsel Lennard
Nahajski.

Detective Steven Martin present at counsel table.

Jury not present.

Colloquy of Court and counsel.

9:46 Jury present.

KIMBERLY JOHNSTED, called by the State, sworn and testified.

9:49 Cross examination of Kimberly Johnsted by the Defendant.

Exhibit no. 39 offered by Defendant: Not offered

9:51 Attorney conference at sidebar.

9:52 Continuation of testimony of Kimberly Johnsted on cross
examination by the Defendant.

9:53 Redirect examination of Kimberly Johnsted by the State.

9:55 **DETECTIVE STEVEN MARTIN**, called by the State, sworn and
testified.

Exhibit no. 40 offered by State: Admitted 11-28-07

Exhibit no. 41 offered by State: Admitted 11-28-07

Exhibit no. 42 offered by State: Admitted 11-28-07

Exhibit no. 43 offered by State: Admitted 11-28-07

10:07 Cross examination of Detective Steven Martin by the Defendant.

10:08 Redirect examination of Detective Steven Martin by the State.

10:10 **SAMOVER MIRZA**, called by the State, sworn and testified.

10:31 Cross examination of Samover Mirza by the Defendant.

10:49 Court in recess.

11:11 Court resumes as heretofore, defendant present, in custody, and
all parties present.

Jury not present.

Colloquy of Court and counsel.

State of Washington vs. Zahid Aziz Khan
07-1-02449-7

- 11:15 Jury present.
Redirect examination of Samover Mirza by the State.
- 11:24 Recross examination of Samover Mirza by the Defendant.
- 11:27 State rests.
ZAHID KHAN, called by the Defendant, sworn and testified.
- 11:41 Cross examination of Zahid Khan by the State.
- 12:01 Court in recess until 1:30 p.m.
- 1:51 Court resumes as heretofore, defendant present, in custody, and all parties present.
Jury present.
Continuation of testimony of Zahid Khan on cross examination by the State.
- 1:59 Attorney conference at sidebar.
Jury not present.
Argument of counsel.
- 2:01 Zahid Khan called by the State on an offer of proof, previously sworn and testified.
- 2:06 Court in recess.
- 2:15 Court resumes as heretofore, defendant present, in custody, and all parties present.
Jury not present.
Argument of counsel.
- The Court will allow the State to inquire about the nature of the photo, exhibit #22. The Court further allows the admission of exhibit #22 if it is offered.
- 2:19 Jury present.
Continuation of testimony of Zahid Khan on cross examination by the State.
- 2:26 Attorney conference at sidebar.
Continuation of testimony of Zahid Khan on cross examination by the State.
- 2:34 Redirect examination of Zahid Khan by the Defendant.
- 2:46 Recross examination of Zahid Khan by the State.
- 2:47 Further redirect examination of Zahid Khan by the Defendant.
- 2:49 Court in recess.
- 3:20 Court resumes as heretofore, defendant present, in custody, and all parties present.
Jury present.
Defendant rests.

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- Eram Mirza recalled by the State on rebuttal, previously sworn and testified.
- 3:24 Cross examination of Eram Mirza by the Defendant.
- Exhibit no. 44 offered by Defendant: Not offered
- 3:31 Detective Steven Martin recalled by the State on rebuttal, previously sworn and testified.
- 3:34 State rests.
Defendant rests.
Colloquy of Court and counsel.
- 3:34 Court in recess until Thursday, November 29, 2007 @ 9:30 a.m.
- THURSDAY, NOVEMBER 29, 2007** Clerk: Lisa Henderson
Reporter: Laurel Olson
- Court opened at 9:55 a.m., Kenneth L. Cowser, Judge
The following proceedings were had to wit:
This matter continued from previous day.
State of Washington represented through Deputy Prosecuting Attorney Cynthia Larsen.
Defendant present, in custody, represented by counsel Lennard Nahajski.
Detective Steven Martin present at counsel table.
Jury not present.
The Court takes exceptions and objections to instructions: none given.
- 9:57 Jury present.
Reported.
The Court instructs the Jury.
- 10:15 State opens closing arguments.
- 11:11 Defendant makes closing argument.
- 11:56 State makes final argument.
- 12:22 Court designates Melissa Spillum, and Gary Page as the alternate jurors and excuses said alternate jurors.
The Jury retires to deliberate upon their verdict.
- 12:24 Court in recess.
- 2:41 The jury returns to open court with their verdict.
State of Washington represented through Deputy Prosecuting Attorney Cynthia Larsen.
Defendant present, in custody, represented by counsel Lennard Nahajski.
Verdict read in open court finding the Defendant Guilty of the crime of Child Molestation in the Second Degree as charged in Count I; Guilty of the crime of Rape of a Child in the Second

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Degree as charged in Count II; Guilty of the crime of Rape of a Child in the Third Degree as charged in Count III; Guilty of the crime of Child Molestation in the Third Degree as charged in Count IV; and Guilty of the crime of Attempted Child Molestation in the Third Degree as charged in Count V.

Jurors polled: verdict unanimous.

Verdict is received and filed.

Court's Instructions filed in open court.

Jurors discharged and directed to report to the Jury Coordinator for further assignment.

Sentencing set for Monday, January 14, 2008 @ 1:00 p.m. in Department 5. (JC)

Presentence Investigation report returned no later than January 7, 2008.

2:48 Court adjourned.

FILED

S. Hill

NOV. 26, 07

PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

IN RE:

State of Washington
Petitioner/Plaintiff,

vs.

Zahid Khan
Respondent/Defendant.

CASE NO. 07-1-02449-7

DOCUMENT REMOVED TO LOCKED CABINET

Juror Biographical Forms
(title of document)

JUDGE/COMMISSIONER THAT SIGNED ORDER: Kenneth L. Cowsett

ATTORNEY PRESENTING ORDER: _____

INSTRUCTIONS:

PURSUANT TO SUB NUMBER: _____

THIS DOCUMENT HAS BEEN REMOVED AND PLACED IN CONFIDENTIAL STORAGE.
CONTENTS TO BE DISCLOSED ONLY PURSUANT TO A COURT ORDER, OR AS
SPECIFIED:

- No one, absent specific court order
- Parties of Record
- Attorney of Record
- Law Enforcement
- Other: _____

- Child Protective Services
- Guardian ad Litem
- Volunteer Guardian ad Litem
- Family Court Investigations

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VERIFICATION OF PETITION

I, Zahid Khan, verify under penalty of perjury that the attached *Personal Restraint*
Petition is true and correct and has been filed on my behalf.

DATED this 17th day of November, 2010.
3rd December

↓
Zahid Khan