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Washington State  
Supreme Court

COA No. 32779-5-III

93894.2

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

SEAN JOSEPH BATES,

Petitioner.

---

MOTION FOR DISCRETIONARY REVIEW

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Sean Joseph Bates #375510  
Petitioner Pro Se  
Coyote Ridge Corrections Center  
P.O. Box 769  
Connell, Washington 99326-0769

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#### A. IDENTITY OF PETITIONER

Sean Joseph Bates, the Petitioner in this action, and pro se in the above entitled-case,<sup>1</sup> asks this Court to accept review of the Opinion of the Court of Appeals (COA) who, on September 22, 2016, entered an Opinion affirming Mr. Bates's convictions. A copy of the Opinion is attached as Appendix-C.

This Court has jurisdiction over this matter pursuant to Rules of Appellate Procedure (RAP) 13.5A(a)(1), and authority to grant review under RAP 13.4(b); RAP 13.5A(b); as well as the discretion to grant review in the interest of justice, or to correct a fundamental miscarriage of justice.

#### B. DECISION OF COURT OF APPEALS

The Court of Appeals of the State of Washington Division III, affirmed Mr. Bates's conviction. In Mr. Bates's Statement of Additional Grounds. He unsuccessfully claimed five instances of Ineffective Assistance of Counsel. Mr. Bates feels the Court failed to address these issues. SAG at 6-7. (see appendix A). Mr. Bates unsuccessfully filed a Motion for Reconsideration, pro se. (see appendix D). Mr. Bates is without counsel in his Motion for Discretionary Review. (see appendix B). Mr. Bates has a Constitutional right to the effective assistance of counsel on direct appeal, which is an appeal as a matter of right. Evitts v. Lucey, 469 U.S. 387, 397, 105 S.Ct. 830, 83 L.Ed. 2d 821 (1985).

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<sup>1</sup> Mr. Bates asks this Court to please take notice of his pro se status and apply the less stringent standard to this action. See Meleng v. Cook, 490 U.S. 488, 493, 109 S.Ct. 1923, 1927, 104 L.Ed.2d 540 (1989)(citing Haines v. Kerner, 404 U.S. 519, 30 L.Ed2d 652, 92 S.Ct. 594 (1972)(Holding that pro se petitions must be held to less stringent standard than formal pleadings drafted by lawyers and should be liberally construed), rehearing denied, 405 U.S. 948, 30 L.Ed.2d 819, 92 S.Ct. 963 (1972); see also, Sanders v. Ryder, 342 F.3d 991, 999 (9th Cir. 2003); cert denied, 541 U.S. 956, 124 S.Ct. 1661, 158 L.Ed.2d 394 (2004); Peterson v. Lambert, 319 F.3d 1153, 1159, (9th Cir. 2003).

C. ISSUES PRESENTED FOR REVIEW

I. Opinion Published in Part. Court of Appeals of the State of Washington  
Division III, No. 32779-5-III

1. Petitioner- Bates received the ineffective assistance of trial counsel in violation of the Sixth Amendment to United States Constitution and Wash. Const. art. I, 22.

a. Counsel's failure to conduct a reasonable investigation to enable him to make informed decisions about how best to represent his client was deficient performance and prejudicial to his client.

b. Counsel's failure to to send I-Pad to forensic specialist was deficient performance and prejudicial to his client.

c. Counsel's failure to investigate or hire an investigator to investigate alleged crime scene was deficient performance and prejudicial to his client.

d. Counsel's failure to pursue medical reports of alleged victim was deficient and prejudicial to his client.

e. Counsel's failure to pursue DNA evidence of alleged victim was deficient performance and prejudicial to his client.

f. Counsel's failure to interview witnesses in advance of trial was deficient performance and prejudicial to his client.

g. Counsel's failure to effectively cross-examine the States witnesses was deficient performance and prejudicial to his client.

D. STATEMENT OF THE CASE

The Statement of the case and supporting materials that are filed in this case are filed in the COA, is the same here, and would be a re-statement. As such, the statement of the case, procedural history, facts, issues, grounds, argument, and evidence, as presented, briefed, and argued in the COA, are incorporated herein by reference as though fully set forth.

The one additional fact I would like to be noted. I would like this Court to be aware that the Trial Court in Benton County Superior Court, granted over twenty continuances directly related to extracting evidence from an I-Pad, that trial counsel ignored. Even when directed by the Honorable Vic L. Vanderschoor.(see appendix E).

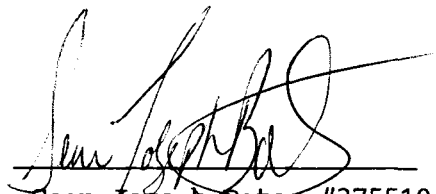
E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The issues presented in this case involve significant questions of law under the Constitution of the United States. As a result, Mr. Bates was denied his right of due process and his right to a fair trial under the Sixth and Fourteenth Amendments, and Wash. Const. art. I, 3, 22.

F. CONCLUSION

Because the lower court erred, this Court should exercise its discretion and either accept review and reverse, or accept review and remand for re-trial.

DATED: this 28 day of November, 2016.



Sean Joseph Bates #375510  
Petitioner Pro Se  
Coyote Ridge Corrections Center  
P.O. Box 769  
Connell, Washington 99326-0769

I N D E X   T O   A P P E N D I C E S

- Appendix-A ----- Mr. Bates's Statement of Additional Grounds  
pages six and seven.  
DATED: September 15, 2015.  
[2 pages]
- Appendix-B ----- Letter from Renee S. Townsley, Clerk/Administrator  
The Court of Appeals, of the State of Washington,  
Division III, Ruling on Motion to Extend Time for Filing  
Motion for Reconsideration or Petition for Review,  
Also, Motion for Consent for Appointed Counsel to  
Withdraw.  
DATED: October 20, 2016.  
[1page]
- Appendix-C ----- OPINION OF THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIV. III.  
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[9 pages]
- Appendix-D ----- Order Denying Motion for Reconsideration  
DATED: October 27, 2016.  
[1 page]
- Appendix-E ----- Mr. Bates's Superior Court Summary in Benton County Superior  
Court State v. Bates Cause No. 13-1-00730-8  
DATED: 07/12/2013-07/10/2015.  
[5 pages]

A P P E N D I X    A

Mr. Bates's Statement of Addition Grounds  
pages six and seven.

DATED: September 15, 2015.

[2 pages]

Additional Ground II

Mr. Ryan Michael Swinburnson # 30227 provided ineffective assistance of counsel by:

(I) Failure to obey a Court Order. The Honorable Vic L. Vanderschoor ordered Mr. Swinburnson (no matter what the cost) to send Patty Quinn's I-PAD to a forensic computer analyst.

\* Superior Court Case Summary. Sub-44 Docket Date 04-03-2014  
Docket Code order for CONTINUANCE STIPULATED \*

A direct violation of the Rules of Professional Conduct 8.4- Misconduct.

(i) Commit any act involving moral turpitude, or corruption or any unjustified act of assault or other act which reflects disregard for the Rule of Law.

Also failure to conduct any forensic testing of physical evidence.

Siripongs v. Calderon 35 F.3d 1308 (9th Cir. 1994).

U.S. v. Dixon 113 S.Ct. 2849, 509 U.S. 688.

Interest of the Court in preserving it's authority. It cannot be lightly dismissed.

(II) Counsels failure to visit alleged crime scene or employ an investigator. (RP 234).

Berry v. Granley 74 F. Supp. 2d 808.

Thompson v. Calderon 120 F. 3d 1045 (9th 1997).

Failure to investigate.

(III) Counsel's failure to investigate another suspect.

Jones v. Wood 114 F.3d 1002 (9th Cir. 1997).

Stated in 9a.44 Hearing from Aaliyah Valdez (RP 22) claiming it was her (S.J.'s) Stepdad. Again stated by Savannah Moore (RP 282) "StepChad rhymes with Stepdad."

(IV) Counsel's failure to obtain medical reports.

Vick v. Lockhart 952 F.2d 999 (8th Cir. 1991).

As stated by Ms. Whittier (RP 226 & 227).



(IV) Mr. Ryan M. Swinburnson's cumulative errors and complete failure to investigate and prepare for trial.

Thompson v. Calderon 120 F.3d 1045 (9th Cir. 1997); United States v. Tucker 716 F.2d 576 (9th Cir. 1983); Clabourne v. Lewis, 64 F.3d 1373, 1378 (9th Cir. 1995).

Even though the U.S.C.A Const. Amend. 6 states, The defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case in order to demonstrate ineffective assistance of counsel.

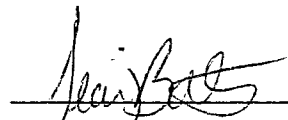
I believe the fabulous work that Ms. Gemberling has done proves beyond a reasonable doubt that Mr. Swinburnson's performance in trial fell below an objective standard of reasonableness.

That concludes my second and final argument.

IN CONCLUSION

I believe my, Sean Joseph Bates's conviction should be reversed.

Dated this 15th day of September, 2015.

  
Sean Joseph Bates #375510  
Appellant 'Pro Se'

A P P E N D I X B

Letter from Renee S. Townsley, Clerk/Administrator  
The Court of Appeals, of the State of Washington,  
Division III, Ruling on Motion to Extend Time for Filing  
Motion for Reconsideration or Petition for Review,  
Also, Motion for Consent for Appointed Counsel to  
Withdraw.

DATED: October 20, 2016.

[1 page]

Renee S. Townsley  
Clerk/Administrator

(509) 456-3082  
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*The Court of Appeals  
of the  
State of Washington  
Division III*



500 N Cedar ST  
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October 20, 2016

Janet G. Gemberling  
Janet Gemberling PS  
PO Box 8754  
Spokane, WA 99203-0754  
**E-Mail**

Sean Joseph Bates  
#375510  
Coyote Ridge Correction Center  
PO Box 769  
Connell, WA 99326

CASE # 327795  
State of Washington v. Sean Joseph Bates  
BENTON COUNTY SUPERIOR COURT No. 131007308

Counsel and Mr. Bates:

Pursuant to the "Motion to Extend Time for Filing Motion for Reconsideration or Petition for Review," the following notation ruling is entered:

**The Motion to Extend Time for Filing Motion for Reconsideration by Sean Bates is granted in part. The Motion for Reconsideration is now due October 13, 2016, date of receipt.**

Also, pursuant to the Motion for Consent for Appointed Counsel to Withdraw, the following notation ruling is entered:

**The Motion for Consent for Appointed Counsel to Withdraw is granted.**

Mr. Bates is now considered a pro se appellant. The Motion for Reconsideration of Decision Terminating Review filed by Sean Bates on October 13, 2016 has now been circulated to a panel of judges for consideration. You will be notified once a decision on the motion has been entered,

Sincerely,

Renee S. Townsley  
Clerk/Administrator

RST:jcs

c: Andrew Kelvin Miller  
Megan Whitmire  
Brittnie Elizabeth Roehm  
Benton County Prosecutors Office  
7122 W Okanogan Pl Bldg A  
Kennewick, WA 99336-2359  
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A P P E N D I X C

OPINION OF THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON DIV. III  
DATED: September 22, 2016.  
[19 pages]

**FILED**  
**SEPTEMBER 22, 2016**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,	)	
	)	No. 32779-5-III
Respondent,	)	
	)	
v.	)	OPINION PUBLISHED
	)	IN PART
SEAN JOSEPH BATES,	)	
	)	
Appellant.	)	

SIDDOWAY, J. — Our Supreme Court has long held that before offering the testimonial out-of-court statement of a witness against a criminal defendant, “the confrontation clause’s indispensable component of cross-examination ‘requires the *State* to elicit the damaging testimony from [a] witness so the defendant may cross-examine if he so chooses.’” *In re Pers. Restraint of Grasso*, 151 Wn.2d 1, 29, 84 P.3d 859 (2004) (Sanders, J., dissenting) (quoting *State v. Rohrich*, 132 Wn.2d 472, 478, 939 P.2d 697 (1997)). Following the United States Supreme Court’s decision in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), our Supreme Court reaffirmed *Rohrich*, holding that *Crawford* “left intact the governing case law analyzing

the sufficiency of a witness's testimony for confrontation clause purposes." *State v. Price*, 158 Wn.2d 630, 650, 146 P.3d 1183 (2006). Sean Bates appeals his conviction of two counts of first degree child rape, complaining for the first time on appeal that the State's examination of his child victim was not sufficient for confrontation clause purposes.

The rationale for requiring the State to sufficiently elicit damaging information is so the defense can cross-examine the witness about that information, whether it is contained in in-court or out-of-court statements. In a case such as this, it spares the defendant the risk of inflaming the jury if he calls a child as a direct witness. It safeguards the defendant's right to rely on the State's burden of proof in a criminal case.

In this case, the State's direct examination of the child victim was broad enough to open the door to cross-examination of all of the damaging information provided by the child victim, in court or out of court. For purposes of his confrontation clause challenge, Mr. Bates fails to demonstrate manifest constitutional error. For purposes of a related ineffective assistance of counsel argument, he fails to demonstrate any error or prejudice.

Mr. Bates does show (and the State concedes) that a community custody condition involving Internet use is not crime related, and that the trial court failed to undertake an individualized inquiry into his ability to pay discretionary legal financial obligations. For these reasons, and because Mr. Bates raises no meritorious arguments in a statement of additional grounds, we affirm his convictions and remand for resentencing.

## FACTS AND PROCEDURAL BACKGROUND

For 18 months, Sean Bates rented the basement living area of the home of a female coworker. Her granddaughter, S.J., is the victim in this case. Evidence was presented at trial that during the time he rented the basement, Mr. Bates was a trusted friend of his coworker. She allowed S.J. and S.J.'s younger brother to go down to the basement living area to play on Mr. Bates's iPod (as long as it was okay with him) and allowed them to swim and play with Mr. Bates in the family pool.

During the charging period of September 1, 2012 to July 6, 2013, when S.J. was in the first grade and turned seven years old, Mr. Bates put his finger underneath S.J.'s clothes or bathing suit on numerous occasions to touch what she called her "front private and [her] back private"—"sometime[s on] the outside and the inside" of her privates. Report of Proceedings (RP) at 292-93.<sup>1</sup> Eventually, on July 6, 2013, he took her into his basement bathroom, closed the door, pulled down her pants and underwear, and holding her upside down, "licked [her] privates [on the] front and back." RP at 294. After his conduct came to light, Mr. Bates was charged with two counts of child rape in the first degree.

Following a pretrial hearing to determine whether statements about Mr. Bates's conduct that S.J. made to family and to a State child investigator would be admitted

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<sup>1</sup> "RP," without a date, refers to the report of proceedings of the trial. Reports of other proceedings are identified by date.

under the child hearsay exception,<sup>2</sup> the court found that the statements S.J. had made to others “are reliable and will be admitted at trial.” RP (June 9, 2014) at 104.

At trial, the State presented its case by first calling as witnesses several family members who had spoken with S.J. about Mr. Bates’s sexual contact after it came to light on July 9, 2013. The night before S.J. disclosed his conduct, she had a sleepover at her aunt’s house, with two cousins. The State’s first witness was S.J.’s 8-year-old cousin, who testified that when “talking about secrets,” S.J. told her that “a guy at her grandma’s” had “licked her . . . private spot”. RP at 37.

The State’s next witness was S.J.’s 13-year-old cousin, to whom the 8-year-old cousin immediately ran to report S.J.’s “secret,” with S.J. in tow. S.J. repeated what Mr. Bates had done to her to her older cousin.

The State next called S.J.’s aunt, whom the 13-year-old phoned, asking her to come over right away because it was “an emergency.” RP at 54. S.J.’s aunt spoke to

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<sup>2</sup> The exception, codified at RCW 9A.44.120, provides that a statement made by a child under the age of 10 describing any act of sexual contact performed with or on the child by another is admissible in evidence in criminal proceedings if the court finds, in a hearing outside the presence of the jury,

- (1) . . . that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and
- (2) The child either:
  - (a) Testifies at the proceedings; or
  - (b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.



S.J., who told her about what “Sean,” her “[boyfriend] that lived at her grandma’s house” had done to her. RP at 55. All three witnesses recounted similar reports by S.J.: that Sean, who lived at her grandma’s house, had licked her “private part,” or “bottom,” and had once put his finger in her “butt.” RP at 37, 55, 45. S.J.’s aunt called her brother—S.J.’s father—as well as the police.

Before the State called S.J. to testify at trial, it called Mari Murstig, a child interviewer with the Benton County Prosecutor’s office who had conducted a videotaped interview of S.J. on July 10, the day after the allegations of molestation came to light. After questioning Ms. Murstig about her position, background, training, methods, and her interview of S.J., the prosecutor had her authenticate the videotape, which was admitted into evidence without objection. The approximately 40-minute videotape was then played for the jury. In the course of the interview, S.J. told Ms. Murstig that on the prior Saturday, Mr. Bates had pulled down her pants and underpants, hung her “upside down” and licked her private parts in her grandma’s downstairs bathroom. Ex. 30 at 21 min., 7 sec. She said Mr. Bates had been about to put his “wiener” inside her when her grandma knocked on the door, and he stopped. *Id.* at 26 min., 12 sec. She told Ms. Murstig that on many occasions before that day, Mr. Bates had touched her “pee-pee” with his finger—on the couch downstairs, on the couch upstairs, and outside on the tennis court. *Id.* at 39 min., 00 sec.

S.J.'s parents were both called as witnesses and testified to consistent statements S.J. had made to them after they picked her up from her aunt's home on July 9. And S.J.'s grandmother testified that S.J. and her younger brother often spent time in the basement with Mr. Bates because he would let them play games on his iPod. The grandmother also recalled that she had gone looking for S.J. on July 6, the Saturday when S.J. had been molested in the basement bathroom, and had called for her in the basement in response to which Mr. Bates, and then S.J., answered "In here," from behind the closed bathroom door. Because the bathroom had an outside door to the pool area and was a preferred entrance for wet swimmers who would otherwise track water through the house, the grandmother assumed the two were just coming in from swimming.

The State called S.J. as its final witness. Almost three dozen of the prosecutor's questions related directly to Mr. Bates's sexual contact with S.J. She testified that on the Saturday in question, Mr. Bates had turned her upside down and licked her private parts, but that when her grandmother knocked on the door they put their clothes back on. She also stated Mr. Bates had touched her private parts with his hand on the downstairs couch while she was playing with his iPod on many Saturdays and Sundays. She denied that she had ever played with Mr. Bates's iPod on the tennis court. When asked if she remembered talking "to a lady about it when you colored with markers" (from the videotape, jurors would have known this was Ms. Murstig), S.J. said that she did. RP at 296. She said she had told the lady about what happened with Mr. Bates. The prosecutor

did not ask S.J. to tell the jury anything about the content of her interview by Ms. Murstig.

On cross-examination, defense counsel asked S.J. a number of questions about the statements she made when interviewed by Ms. Murstig. The State did not object to any of the questioning as being beyond the scope of its direct examination.

Mr. Bates testified in his own defense, denying S.J.'s allegations of sexual contact. He also called his ex-girlfriend to testify to text and voice communications they had off and on during the late afternoon and early evening of July 6. Evidence suggested that it was sometime during that time frame that the molestation in the bathroom occurred.

The jury found Mr. Bates guilty of both counts charged. He was sentenced to 144 months to life in prison. The court imposed a condition of community custody that prohibits Mr. Bates from using "a computer or electronic device capable of accessing the internet without authorization from [his] Community Corrections Officer and/or therapist." Clerk's Papers (CP) at 109. It also imposed both mandatory and discretionary legal financial obligations (LFOs) without conducting an individualized inquiry into Mr. Bates's ability to pay. Mr. Bates appeals.

## ANALYSIS

### *I. Sixth Amendment confrontation right*

Mr. Bates's principal argument on appeal is that his United States constitutional Sixth Amendment confrontation right was violated when the court admitted S.J.'s

unsworn interview by Ms. Murstig without then questioning S.J. broadly enough to subject her to cross-examination. Unlike S.J.'s reports to family members, her recorded interview by the prosecutor's child investigator was testimonial, implicating his confrontation right. *See Ohio v. Clark*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2173, 2182, 192 L. Ed. 2d 306 (2015) (statements about abuse made to teachers were not testimonial, unlike such statements made to persons charged with uncovering and prosecuting criminal behavior). Confrontation clause violations are reviewed de novo. *State v. Jasper*, 174 Wn.2d 96, 108, 271 P.3d 876 (2012) (citing *Lilly v. Virginia*, 527 U.S. 116, 137, 119 S. Ct. 1887, 144 L. Ed. 2d 117 (1999)).

Citing *State v. Clark*, 139 Wn.2d 152, 159, 985 P.2d 377 (1999), Mr. Bates argues that under United States Supreme Court decisions in *United States v. Owens*<sup>3</sup> and *California v. Green*,<sup>4</sup> “the admission of hearsay statements will not violate the confrontation clause if the hearsay declarant is a witness at trial, is asked about the event *and the hearsay statement*, and the defendant is provided an opportunity for full cross-examination.” Br. of Appellant at 7-8. The emphasis, “*and the hearsay statement*,” is Mr. Bates's, not *Clark*'s. He argues that because S.J. “was not asked about her hearsay statements, she did not concede having made any of the statements reported by Ms.

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<sup>3</sup> 484 U.S. 554, 108 S. Ct. 838, 98 L. Ed. 2d 951 (1988).

<sup>4</sup> 399 U.S. 149, 90 S. Ct. 1930, 26 L. Ed. 2d 489 (1970).

Murstig and thus she was not open to “‘cross-examination at trial as to *both* stories.’ [Price,] 158 Wn.2d at 640.” *Id.* at 8. The emphasis of “*both*” is again Mr. Bates’s, not Price’s.

*Clark* extended an analysis of the confrontation clause first announced by our Supreme Court in *Rohrich*. In *Rohrich*, which involved prosecution of the defendant for first degree child rape and first degree child molestation of his stepdaughter, the State called the stepdaughter to the stand as its first witness and asked her innocuous questions unrelated to alleged abuse. Defense counsel did not cross-examine her. After that, the State presented its evidence of abuse through other witnesses: four adults, who testified to what the victim had told them. The Supreme Court found both statutory and constitutional problems with this manner of proceeding.

We consider only the Court’s confrontation clause analysis, since Mr. Bates raised no objection in the trial court to the State’s offer of S.J.’s videotaped interview and any challenge based on the child hearsay exception was not preserved. RAP 2.5(a). A violation of the right to confront witnesses is constitutional error which, if manifest, we may consider for the first time on appeal. RAP 2.5(a)(3); *Clark*, 139 Wn.2d at 156.

In its confrontation clause analysis, the *Rohrich* court held:

The opportunity to cross-examine means more than affording the defendant the opportunity to hail the witness to court for examination. It requires the State to elicit the damaging testimony from the witness so the defendant may cross-examine if he so chooses. *Shaw v. Collins*, 5 F.3d 128, 132 n.7 (5th Cir. 1993). In this context “not only [must] the declarant have been

generally subject to cross-examination; he must also be subject to cross-examination concerning the out-of-court declaration.” *United States v. West*, 670 F.2d 675, 687 (7th Cir.[ 1982]), [overruled on other grounds by *United States v. Green*, 285 F.3d 683 (7th Cir. 2001)]. The State’s failure to adequately draw out testimony from the child witness before admitting the child’s hearsay puts the defendant in “a constitutionally impermissible Catch-22” of calling the child for direct or waiving his confrontation rights. *Lowery v. Collins*, 996 F.2d 770, 771-72 (5th Cir. 1993).

132 Wn.2d at 478 (first alteration in original) (footnotes omitted).

Both of the Fifth Circuit decisions relied on in *Rohrich* offered the same reason why the government’s failure to adequately draw out an accuser’s testimony created a “constitutionally impermissible Catch-22.” *Shaw* relied on *Lowery*:

Requiring a criminal defendant to examine his accuser during his case-in-chief rather than mandating that the prosecution call the witness during its case-in-chief places the defendant in a no-win situation. *Lowery v. Collins*, 988 F.2d 1364, 1369-70 (5th Cir. 1993). Such a requirement is inconsistent with the Confrontation Clause, for it requires the criminal defendant to either risk inflaming the jury by cross-examining the child-complainant or to avoid that risk by forgoing his Sixth Amendment rights to confront and cross-examine his accuser. *Id.* at 1369-1370.

*Shaw*, 5 F.3d at 132 n.7. *Lowery* observed in addition that forcing a criminal defendant to call a child complainant to testify “unfairly requires a defendant to choose between his right to cross-examine a complaining witness and his right to rely on the State’s burden of proof in a criminal case.” 988 F.2d at 1368.

The Seventh Circuit case cited by *Rohrich* arose in the different context of Federal Rules of Evidence 801(d)(1)(B). *West*, 670 F.2d at 686. The court held that if a witness (Witness A) is impeached with a prior inconsistent statement suggesting recent

fabrication, then any prior *consistent* statement by Witness A offered to rebut the charge of recent fabrication must come in through Witness A, on redirect or as a rebuttal witness, in order to subject him or her to cross-examination. *Id.* at 687. Rejecting the views of other federal courts, the Seventh Circuit held that the prior consistent statement cannot be established by the testimony of a third party (Witness B). *Id.* In that context, *West* explains that it is not enough that Witness A had testified and was subject to cross-examination *sometime during trial*; he or she “must also be subject to cross-examination concerning the out-of-court declaration.” *Id.*

At issue, then, is the scope of cross-examination and the State’s burden of proof in a criminal case. To demonstrate a violation of the confrontation clause as construed by the Fifth Circuit Court of Appeals and our Supreme Court,<sup>5</sup> Mr. Bates must show that the State’s presentation of evidence required him to forego cross-examination or to challenge S.J.’s allegations by calling her as a witness himself. To demonstrate *manifest* constitutional error, he must show how the error actually affected his rights at trial; it is this showing of actual prejudice that makes the error “manifest,” allowing appellate review. *State v. Kirkman*, 159 Wn.2d 918, 926-27, 155 P.3d 125 (2007).

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<sup>5</sup> In *State v. Tompkins*, 859 N.W.2d 631, 640-41 (2015), the Iowa Supreme Court characterized our courts’ view of this confrontation requirement as a minority view of *Crawford* and other controlling decisions of the United States Supreme Court.

Mr. Bates does not make this showing. To begin with, he *did* cross-examine S.J. about statements she had made to Ms. Murstig when interviewed. And the State did not object to the questions as outside the scope of its direct examination. He does not show that the State's conduct forced him to limit his cross-examination or to call S.J. as a witness.

In addition, given the State's extensive questioning of S.J. about Mr. Bates's offensive contact, it is hard to imagine any relevant questioning that would not have fallen within the scope of cross-examination if the State *had* tried to object on the basis of scope. ER 611(b) governs the scope of cross-examination, and provides:

Cross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

Given the breadth of S.J.'s testimony about Mr. Bates's sexual contact with her, any relevant cross-examination based on her videotaped interview—including the couple of events she described in the interview that she omitted or denied later—would have fallen within ER 611(b)'s permitted scope.

Mr. Bates depends heavily on statements in several of our Supreme Court's decisions that the confrontation clause requires the State to question an accuser about the accuser's out-of-court statement admitted into evidence. But in each case, the scope of the accuser's direct examination was, or would have been, too limited to permit full



cross-examination without questioning about the prior statement. *Rohrich* quotes *West*'s statement that a declarant "' must . . . be subject to cross-examination concerning the out-of-court declaration,'" 132 Wn.2d at 478 (quoting *West*, 670 F.2d at 687), because the questioning of the stepdaughter in *Rohrich* was so narrow that it did not subject her to questioning about alleged abuse at all.

*Clark*, which discusses the United States Supreme Court decisions in *Green* and *Owens*, states that the admission of hearsay statements will not violate the confrontation clause if the hearsay declarant "is asked about the event and the hearsay statement," 139 Wn.2d at 159, but in *Clark*, *Green* and *Owens*, it was only the hearsay statement that was inculpatory. *Clark* and *Green* involved witnesses who recanted or backed away from a prior accusation and *Owens* involved a brain-injured witness who had lost his memory of an event by the time of trial. Unlike this case, in those cases it was *only* by questioning the witnesses at trial about their hearsay statements that the State would subject them to cross-examination about the damaging accusations admitted into evidence.

*Price* states that the confrontation clause does not require excluding the prior statement of a witness "' who concedes making the [out-of-court] statements'" and thereby "' open[s] himself to full cross-examination at trial as to both stories,'" but it is quoting *Green*. 158 Wn.2d at 640 (quoting *Green*, 399 U.S. at 164).

The language on which Mr. Bates relies applies in cases where the only way an accuser will be subjected to cross-examination about the damaging information contained

in an out-of-court statement is if the State's direct examination elicits the damaging information *from* that statement. This is not such a case.

Mr. Bates has not identified manifest constitutional error.

*II. Ineffective assistance of counsel*

Mr. Bates's trial lawyer did not object when the State offered the videotape of Ms. Murstig's interview, but Mr. Bates is willing to excuse that failure to object in light of the State's "implicit intent to make S.J. available as a witness." Br. of Appellant at 11. But he argues on appeal that once the prosecutor concluded direct examination without asking S.J. about her statements to Ms. Murstig, "defense counsel provided ineffective assistance in failing to move for a mistrial." *Id.* To demonstrate ineffective assistance of counsel, a defendant must show that his trial lawyer's representation was deficient (i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances) and the deficient representation prejudiced the defendant (i.e., there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different). *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (citing *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)). The claim fails if the defendant fails to satisfy either prong. *Thomas*, 109 Wn. at 226.

Our conclusion in addressing Mr. Bates's first assignment of error was that he had not identified manifest constitutional error, but we might as easily have said that he had

not demonstrated any error—or any prejudice. As already discussed, the State did not raise a scope objection and cut off Mr. Bates’s cross-examination. Its direct examination of S.J. was so broad that every subject matter of relevant cross-examination reflected in the record would fall within the scope of cross-examination. Mr. Bates did not perform ineffectively by failing to move for a mistrial.

We affirm Mr. Bates’s convictions and remand for resentencing consistent with this opinion.

The remainder of this opinion has no precedential value. Therefore, it will be filed for public record in accordance with RCW 2.06.040, the rules governing unpublished opinions.

### *III. Community custody condition*

Mr. Bates next argues that the trial court erred when it imposed a community custody condition prohibiting him from using a device to access the Internet because there is no evidence his crime was related to Internet access. “As part of any term of community custody, the court may order an offender to . . . comply with any crime-related prohibitions.” RCW 9.94A.703(3)(f). A “crime-related prohibition” is an order that prohibits “conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10). ““There must be some basis for the “crime-related” determination if the limitation is to have any meaning.”” *State v.*

*Parramore*, 53 Wn. App. 527, 531, 768 P.2d 530 (1989) (quoting DAVID BOERNER, SENTENCING IN WASHINGTON § 4.5 (1985)).

Though Mr. Bates did not object to the condition at trial, challenges to community custody conditions as illegal or erroneous may be made for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008).<sup>6</sup>

The State concedes that the record does not support any inference of a nexus between Mr. Bates's offenses and use of a computer or other access to the Internet. Br. of Resp't at 8-9. We agree, accept the State's concession, and remand with directions to strike the condition.

#### IV. LFOs

Finally, Mr. Bates argues for the first time on appeal that the trial court erred when it imposed LFOs without conducting an individualized inquiry into his ability to pay. The State concedes that no individualized inquiry was made and that this was error. Br. of Resp't at 9.

As a preliminary matter, we must consider whether to accept review of the issue. Mr. Bates made no objection to the finding that he had the present or future ability to pay

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<sup>6</sup> Mr. Bates is currently incarcerated and has not yet been charged with violating the challenged community custody condition. Considering the hardship to the parties that may result from withholding court consideration, and because the issue raised is primarily legal, does not require further factual development, and the challenged action is final, we find his challenge is ripe for review. *Bahl*, 164 Wn.2d at 751.

pay and thereby failed to preserve a claim of error. RAP 2.5(a); *State v. Blazina*, 182 Wn.2d 827, 833, 344 P.3d 680 (2015) (“[u]npreserved LFO errors do not command review as a matter of right”). But we enjoy discretion to consider the issue for the first time on appeal. RAP 2.5(a); *Blazina*, 182 Wn.2d at 835. Because the State concedes error and further action in the trial court is required, we exercise our discretion to review the claimed error.

Under RCW 10.01.160(3), “[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” “The record must reflect that the trial court made an individualized inquiry into the defendant’s current and future ability to pay.” *Blazina*, 182 Wn.2d at 838. The record does not reflect any such inquiry in this case. We remand for resentencing at which Mr. Bates’ ability to pay the \$1,297.60 in discretionary LFOs shall be considered.<sup>7</sup>

#### STATEMENT OF ADDITIONAL GROUNDS

In a pro se statement of additional grounds for review (SAG), Mr. Bates raises two.

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<sup>7</sup> Discretionary LFOs included a \$60.00 sheriff’s filing fee, \$250.00 jury demand fee, \$287.60 witness fee, and \$700.00 in attorney fees. The \$200.00 filing fee under RCW 36.18.020(2)(h) is mandatory. The discretionary or mandatory character of the jury demand fee remains unclear. *See State v. Clark*, No. 32839-2-III, slip op. at 4 (Wash. Ct. App. Sept. 8, 2016), [https://www.courts.wa.gov/opinions/pdf/328392\\_pub.pdf](https://www.courts.wa.gov/opinions/pdf/328392_pub.pdf).

*S.J.'s Credibility.* Having reviewed his copy of the transcript of proceedings, Mr. Bates identifies instances in which he characterizes S.J.'s testimony as incorrect or inconsistent, argues that those errors and inconsistencies bear on her credibility, and cites statutes from other states that he contends recognize the need to consider corroborating evidence in determining whether a child's testimony is trustworthy.

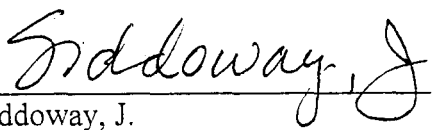
S.J.'s statements and testimony were sometimes inconsistent but were largely consistent, and she could very reasonably be found to be credible. We defer to the trial court's assessment of credibility in applying the child hearsay exception and to the jury's assessment in arriving at its verdict. *State v. Swan*, 114 Wn.2d 613, 667, 790 P.2d 610 (1990) ("Appellate courts . . . recognize . . . that the trial court is in the best position to make the decisions as to competency and credibility" in a hearing on the admission of child hearsay); *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994) ("The credibility of witnesses . . . are matters within the province of the jury." (emphasis omitted) (quoting *Burke v. Pepsi-Cola Bottling Co.*, 64 Wn.2d 244, 246, 391 P.2d 194 (1964))).

*Ineffective Assistance of Counsel.* Mr. Bates alleges his trial lawyer provided ineffective assistance of counsel at trial in five instances; according to Mr. Bates, his lawyer (1) failed to obey a court order to send his ex-girlfriend's iPad to a forensic computer analyst (she was a defense witness and testified to matters she had reviewed on her iPad); (2) failed to visit the crime scene or employ an investigator; (3) failed to

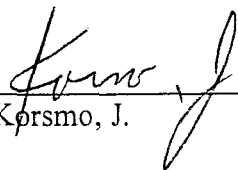
No. 32779-5-III  
*State v. Bates*

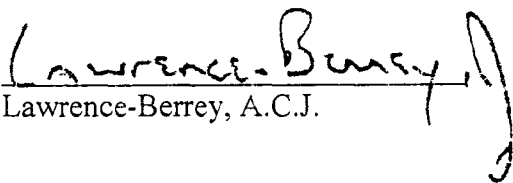
investigate another suspect; (4) failed to obtain medical reports; and (5) failed to investigate and prepare for trial. SAG at 6-7. The record does not reveal that his trial lawyer failed to do any of these things. To the extent Mr. Bates's challenge depends upon facts outside the record of this appeal, his remedy is to seek relief by personal restraint petition. *State v. Norman*, 61 Wn. App. 16, 27-28, 808 P.2d 1159 (1991).

Again, we affirm Mr. Bates's convictions and remand for resentencing consistent with this opinion.

  
Siddoway, J.

WE CONCUR:

  
Korsmo, J.

  
Lawrence-Berrey, A.C.J.

A P P E N D I X D

Order Denying Motion for Reconsideration

DATED: October 27, 2016.

[1 page]



FILED  
OCTOBER 27, 2016  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

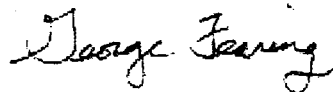
STATE OF WASHINGTON,	)	No. 32779-5-III
	)	
Respondent,	)	
	)	
v.	)	ORDER DENYING MOTION
	)	FOR RECONSIDERATION
SEAN JOSEPH BATES,	)	
	)	
Appellant.	)	

THE COURT has considered Appellant's motion for reconsideration, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of September 22, 2016, is hereby denied.

PANEL: Judges Siddoway, Korsmo, Lawrence-Berrey

FOR THE COURT:



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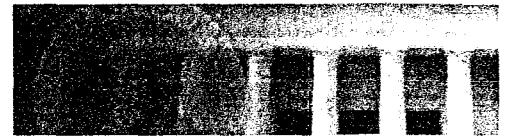
GEORGE B. FEARING, Chief Judge

A P P E N D I X E

Mr. Bates's Superior Court Summary  
in Benton County Superior Court  
State v. Bates Cause No. 13-1-00730-8.

DATED: 07/12/2013-07/10/2015

[ 10 pages ]



# Superior Court Case Summary

# About Dockets

**Court:** Benton Superior Ct  
**Case Number:** 13-1-00730-8

Sub	Docket Date	Docket Code	Docket Description	Misc Info
001	07-12-2013	INFORMATION	Information	
002	07-12-2013	MOTION FOR ARREST/DETENT PROB CAUSE	Motion For Arrest/detent Prob Cause	
003	07-12-2013	ORDER FOR WARRANT	Order For Warrant	
	07-12-2013	EX-PARTE ACTION WITH ORDER JDG0002	Ex-parte Action With Order Judge Bruce A. Spanner	
004	07-12-2013	WARRANT OF ARREST	Warrant Of Arrest Bail: \$50,000.00	
	07-12-2013	NOTICE OF ARRAIGNMENT ACTION	Notice Of Arraignment 2 Cts Rape Of Child 1 Arraign	07-15-2013PL
005	07-12-2013	CERTIFICATE	Certificate Of Address Search	
006	07-12-2013	STATE'S LIST OF WITNESSES	State's List Of Witnesses	
007	07-12-2013	OMNIBUS APPLICATION OF PROS ATTY	Omnibus Application Of Pros Atty	
008	07-15-2013	SHERIFF'S RETURN WARRANT OF ARREST	Sheriff's Rtn War Of Arr-07-12-13	
009	07-15-2013	ADVICE OF RIGHTS	Advice Of Rights	
	07-15-2013	NOTICE OF OMNIBUS HEARING SETTING ACTION	Notice Of Omnibus Hearing Setting Omnhrgr 2 Cts Rape Of Child 1	08-08-2013CO
	07-15-2013	NOTICE SETTING FOR PRE-TRIAL HEARIN ACTION	Notice Setting For Pre-trial Hearin Pretrial 2 Cts Rape Of Child 1	08-15-2013
010	07-15-2013	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date 2 Cts Rape Of Child 1 Jtrial	08-26-2013
	07-15-2013	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release Bail: \$50,000.00	
011	07-15-2013	ORDER FOR SEXUAL ASSAULT PROTECTION	Pretrial Order For Sxl Asslt Prot	
012	07-15-2013	INITIAL ARRAIGNMENT JDG0001	Initial Arraignment Judge Vanderschoor/mclaughlin/sxd	

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013	08-08-2013	OMNIBUS ORDER	Omnibus Order	
014	08-08-2013	PROTECTIVE ORDER	Agreed Protective Order	
	08-08-2013	STIPULATION	Stipulation Re Audio Evidence	
015	08-08-2013	OMNIBUS HEARING JDG0001	Omnibus Hearing Jdg Vanderschoor/mclaughlin/kkd	08-26- 2013
		ACTION	2 Cts Rape Of Child 1	
		ACTION	Pretrial	
	08-08-2013	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset 2 Cts Rape Of Child 1	09-09- 2013
		ACTION	Jtrial	
016	08-15-2013	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket - Whittier 2 Cts Rape Of Child 1	08-29- 2013CT
		ACTION	Pretrial	
017	08-29-2013	ORDER FOR CONTINUANCE: STIPULATED	Order For Continuance: Stipulated	
	08-29-2013	WAIVER OF SPEEDY TRIAL ACTION	Waiver Of Speedy Trial Mthrg/case Status **vlvs**	09-12- 2013CM
		ACTION	2 Cts Rape Of Child 1	
	08-29-2013	NOTICE SETTING FOR PRE-TRIAL HEARIN ACTION	Notice Setting For Pre-trial Hearin Pretrial **vlvs**	10-10- 2013CT
		ACTION	2 Cts Rape Of Child 1	
	08-29-2013	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset 2 Cts Rape Of Child 1	10-21- 2013
		ACTION	Jtrial **vlvs**	
018	08-29-2013	MOTION HEARING JDG0006	Motion Hearing Judge Carrie L. Runge/adams/trc Case To Be Preassigned	
019	09-05-2013	LETTER	Letter From Court Administration	
020	09-12-2013	MOTION HEARING	Motion Hearing	
	09-12-2013	HEARING CONTINUED: UNSPECIFIED JDG0006	Hearing Continued: Unspecified Judge Carrie L. Runge/adams/kkd	09-19- 2013CM
		ACTION	2 Cts Rape Child 1	
		ACTION	Mthrg/case Status **vlvs**	
021	09-19-2013	MOTION HEARING	Motion Hearing	
	09-19-2013	HEARING STRICKEN: IN COURT OTHER JDG0001	Hearing Stricken: In Court Other Jdg Vanderschoor/mclaughlin/trc	
022	10-10-2013	ORDER FOR CONTINUANCE: STIPULATED	Order For Continuance: Stipulated	
	10-10-2013	WAIVER OF SPEEDY TRIAL ACTION	Waiver Of Speedy Trial 2 Cts Rape Of Child 1	11-07- 2013CT
		ACTION	Pretrial *vlvs*	
	10-10-2013	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset Evihr/9a.44/3.5/jtrial *vlvs*	12-02- 2013
		ACTION	2 Cts Rape Of Child 1	

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023	10-10-2013	MOTION HEARING JDG0001	Motion Hearing Judge Vic L Vanderschoor/king/kkd	
024	10-10-2013	NOTE FOR MOTION DOCKET ACTION ACTION	Note For Motion Docket - Whittier Evihrg/3.5 1 Hr *vlvs* 2 Cts Rape Of Child 1	12-02- 2013
025	10-10-2013	NOTE FOR MOTION DOCKET ACTION ACTION	Note For Motion Docket - Whittier 2 Cts Rape Of Child 1 Evihrg/9a.44 2 Hrs *vlvs*	12-02- 2013
026	10-10-2013	NOTICE OF TRIAL DATE ACTION ACTION	Notice Of Trial Date - Whittier 2 Cts Rape Of Child 1 Jtrial 1 Wk *vlvs*	12-02- 2013
027	11-07-2013 11-07-2013	MOTION HEARING HEARING CONTINUED:DEF/RESP REQUEST JDG0001 ACTION ACTION	Motion Hearing Hearing Continued:def/resp Request Jdg Vanderschoor/mclaughlin/trc Pretrial @ 1:30 *vlvs* 2 Cts Rape Of Child 1	11-13- 2013C2
028	11-13-2013	STATE'S LIST OF WITNESSES	1st Amend State's List Of Witnesses	
029	11-13-2013 11-13-2013	MOTION HEARING HEARING CONTINUED: UNSPECIFIED JDG0001 ACTION ACTION	Motion Hearing Hearing Continued: Unspecified Judge Vanderschoor/mclaughlin/las 2 Cts Rape Child 1 Pretrial	11-14- 2013AO
030	11-14-2013 11-14-2013	MOTION HEARING HEARING CONTINUED:DEF/RESP REQUEST JDG0001 ACTION ACTION	Motion Hearing Hearing Continued:def/resp Request Judge Vanderschoor/mclaughin/kxs 2 Cts Rape Child 1 Pretrial **vlvs**	11-21- 2013CT
031	11-21-2013 11-21-2013	MOTION HEARING JDG0001 ACTION ACTION NOTICE OF TRIAL DATE ACTION ACTION	Motion Hearing Jdg Vic Vanderschoor/mclaughlin/kxs 2 Cts Rape Child 1 Pretrial Notice Of Trial Date - Reset 2 Cts Rape Child 1 Jtrial ***vlvs****	11-27- 2013CT  12-09- 2013
032	11-27-2013 11-27-2013 11-27-2013	ORDER FOR CONTINUANCE: STIPULATED WAIVER OF SPEEDY TRIAL JDG0001 ACTION ACTION NOTICE OF TRIAL DATE ACTION ACTION	Order For Continuance: Stipulated Waiver Of Speedy Trial Judge Vic L Vanderschoor/king/trc 2 Cts Rape Child 1 Pretrial ***vlvs*** Notice Of Trial Date - Reset Jtrial ***vlvs*** 2 Cts Rape Child 1	12-05- 2013CT  01-21- 2014
033	11-27-2013	MOTION HEARING	Motion Hearing	

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		JDG0001	Judge Vic L Vanderschoor/king/trc	
034	12-05-2013	MOTION HEARING	Motion Hearing	
	12-05-2013	HEARING CONTINUED: UNSPECIFIED JDG0001	Hearing Continued: Unspecified Jdg Vanderschoor/mclaughlin/kxs	01-09- 2014C2
		ACTION	2 Cts Rape Child 1	
		ACTION	Pretrial ***vlvs***	
035	01-09-2014	MOTION HEARING JDG0001	Motion Hearing Jdg Vic Vanderschoor/mclaughlin/kxs	01-16- 2014CT
		ACTION	2 Cts Rape Child 1	
		ACTION	Pretrial *vlvs*	
	01-09-2014	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset Jtrial	01-27- 2014
		ACTION	2 Cts Rape Child 1	
036	01-16-2014	ORDER FOR CONTINUANCE: STIPULATED	Order For Continuance: Stipulated	
	01-16-2014	WAIVER OF SPEEDY TRIAL ACTION	Waiver Of Speedy Trial 2 Cts Rape Child 1	02-06- 2014CT
		ACTION	Pretrial	
	01-16-2014	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset Jtrial	02-18- 2014
		ACTION	2 Cts Rape Child 1	
037	01-16-2014	MOTION HEARING JDG0001	Motion Hearing Judge Vic L Vanderschoor/king/trc	
038	02-06-2014	MOTION HEARING	Motion Hearing	
	02-06-2014	NOTICE SETTING FOR PRE-TRIAL HEARIN JDG0001	Notice Setting For Pre-trial Hearin Jdg Vanderschoor/mclaughlin/trc	02-13- 2014CT
		ACTION	2 Cts Rape Child 1	
		ACTION	Pretrial *vlvs*	
	02-06-2014	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset Jtrial *vlvs*	02-24- 2014
		ACTION	2 Cts Rape Child 1	
039	02-13-2014	ORDER FOR CONTINUANCE: STIPULATED	Order For Continuance: Stipulated	
	02-13-2014	WAIVER OF SPEEDY TRIAL ACTION	Waiver Of Speedy Trial 2 Cts Rape Child 1	03-13- 2014CT
		ACTION	Pretrial *vlvs*	
	02-13-2014	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset Jtrial	03-24- 2014
		ACTION	2 Cts Rape Child 1	
040	02-13-2014	MOTION HEARING JDG0001	Motion Hearing Judge Vanderschoor/mclaughlin/las	
041	03-13-2014	MOTION HEARING JDG0001	Motion Hearing Judge Vanderschoor/mclaughlin/las	03-20- 2014CT
		ACTION	2 Cts Rape Child 1	

		ACTION	Pretrial	
	03-13-2014	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset 2 Cts Rape Child 1	04-07-2014
		ACTION	Jtrial	
042	03-20-2014	MOTION HEARING	Motion Hearing	
	03-20-2014	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified 2 Cts Rape Child 1	03-27-2014CT
		JDG0001	Judge Vic L Vanderschoor/adams/ccf	
		ACTION	Pretrial	
043	03-27-2014	MOTION HEARING JDG0001	Motion Hearing Judge Vanderschoor/mclaughlin/kkd	04-03-2014CT
		ACTION	Pretrial/status *vlvs*	
		ACTION	2 Cts Rape Child 1	
	03-27-2014	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset Jtrial *vlvs*	04-14-2014
		ACTION	2 Cts Rape Child 1	
044	04-03-2014	ORDER FOR CONTINUANCE: STIPULATED	Order For Continuance: Stipulated	
	04-03-2014	WAIVER OF SPEEDY TRIAL ACTION	Waiver Of Speedy Trial 2 Cts Rape Child 1	05-01-2014CT
		ACTION	Pretrial *vlvs*	
	04-03-2014	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date 2 Cts Rape Child 1	05-12-2014
		ACTION	Jtrial *vlvs*	
045	04-03-2014	MOTION HEARING JDG0001	Motion Hearing Judge Vanderschoor/mclaughlin/kxs	
046	05-01-2014	MOTION HEARING	Motion Hearing	
	05-01-2014	HEARING CONTINUED:DEF/RESP REQUEST JDG0003	Hearing Continued:def/resp Request Judge Salvador Mendoza Jr/king/ccf	05-08-2014CT
		ACTION	Pretrial ***vlvs****	
		ACTION	2 Cts Rape Child 1	
047	05-08-2014	MOTION HEARING ACTION JDG0001	Motion Hearing Evihrg/3.5/9a.44/pt @2:30 **vlvs** Judge Vanderschoor/mclaughlin/las	06-09-2014TR
		ACTION	2 Cts Rape Child 1	
	05-08-2014	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset 2 Cts Rape Child 1	06-23-2014TR
		ACTION	Jtrial ***vlvs***	
048	06-05-2014	STATE'S LIST OF WITNESSES	State's List Of Witnesses	
049	06-05-2014	STATE'S LIST OF WITNESSES	Amended State's List Of Witnesses	
050	06-06-2014	MEMORANDUM	Memorandum Of Authorities 9a.44.120	
051	06-09-2014	WITNESS RECORD	Witness Record	
052	06-09-2014	EXHIBIT LIST	Exhibit List	

053	06-09-2014	EVIDENTIARY HEARING JDG0001	Evidentiary Hearing Judge Vanderschoor/mclaughlin/ccf	
054	06-09-2014	ORDER RE: EXHIBITS	Order Destruction Of Re: Exhibits	
055	06-12-2014	NOTE FOR MOTION DOCKET ACTION ACTION	Note For Motion Docket - Whittier Pretrial **vlv** 2 Cts Rape Child 1	06-12- 2014AO
056	06-12-2014	MOTION HEARING JDG0001	Motion Hearing Judge Vanderschoor/mclaughlin/kkd	
057	06-30-2014	OTHER	Jury Questionnaires	
058	06-30-2014	JURY PANEL	Jury Panel	
	06-30-2014	PEREMPTORY CHALLENGE SHEET	Peremptory Challenge Sheet	
	06-30-2014	LIST	Jury List	
	06-30-2014	LIST	Jury Random List	
059	06-30-2014	WITNESS RECORD	Witness Record	
060	06-30-2014	EXHIBIT LIST	Exhibit List - 3.5 Hrg	
061	06-30-2014	EXHIBIT LIST	Exhibit List - State 1-33 & 35 Def 34	
062	06-30-2014	PLAINTIFF'S PROPOSED INSTRUCTIONS	Plaintiff's Proposed Instructions	
063	06-30-2014	COURT'S INSTRUCTIONS TO JURY	Court's Instructions To Jury	
064	06-30-2014	JURY NOTE	Jury Note - 6/30/14 @ 8:51	
	06-30-2014	RESPONSE	Response From Court	
065	06-30-2014	VERDICT	Verdict A - Guilty	
066	06-30-2014	VERDICT	Verdict B - Guilty	
067	06-30-2014	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release Bail: None	
068	06-30-2014	JURY TRIAL JDG0001	Jury Trial Judge Vanderschoor/mclaughlin/kkd	07-24- 2014C2
		ACTION	2 Cts Rape Child 1	
		ACTION	Snthrg *vlv*	
069	06-30-2014	ORDER RE: EXHIBITS	Order Re: Exhibits	
070	06-30-2014	PRESENTENCE INVESTIGATION ORDER	Presentence Investigation Order	
071	07-09-2014	REPORT	Report Court Special From Doc	
072	07-14-2014	COST BILL	County Cost Bill	
	07-14-2014	EX-PARTE ACTION WITH ORDER JDG0002	Ex-parte Action With Order Judge Bruce A. Spanner	
073	07-24-2014	MOTION HEARING	Motion Hearing	
	07-24-2014	CONTINUED: PLAINTIFF/PROS REQUESTED JDG0007	Continued: Plaintiff/pros Requested Jdge Cameron Mitchell/pelletier/ccf	08-07- 2014CS
		ACTION	Snthrg	
		ACTION	2 Cts Rape Child 1	
074	08-01-2014	MOTION	Motion For Stay Of Execution	



			Of Filing And Perfection Of An Appeal	
			Judgment & Sentence Pending The	
			By Appointment Of New Counsel	
075	08-07-2014	MOTION HEARING	Motion Hearing	
	08-07-2014	HEARING CONTINUED:DEF/RESP REQUEST JDG0007	Hearing Continued:def/resp Request Judge Cameron Mitchell	08-27- 2014
		ACTION	2 Cts Rape Child 1	
		ACTION	Snthrg/psi:ssosa *vlvs*	
			To Be Spec Set	
076	08-12-2014	NOTE FOR MOTION DOCKET	Note For Motion Docket - Whittier	08-27- 2014
		ACTION	2 Cts Rape Child 1	
		ACTION	Snthrg Psi:ssosaspec Set **vjv**	
077	08-13-2014	COST BILL	County Cost Bill	
078	08-18-2014	NOTE FOR MOTION DOCKET	Note For Motion Docket- Whittier	08-27- 2014C2
		ACTION	2 Cts Rape Child 1	
		ACTION	Snthrg Psi:ssosa Spec Set *vlv*	
079	08-21-2014	PRE-SENTENCING INVESTIGATION REPORT	Pre-sentencing Investigation Report	
080	08-27-2014	FELONY JUDGMENT AND SENTENCE	Felony Judgment And Sentence	
	08-27-2014	APPENDIX	Appendix F	
	08-27-2014	COST BILL	Cost Bill	
081	08-27-2014	ORDER FOR SEXUAL ASSAULT PROTECTION	Post Conv Ord Sxl Asslt Protection	
082	08-27-2014	SENTENCING HEARING JDG0001	Sentencing Hearing Jdg Vic Vanderschoor/mclaughlin/kxs	
083	08-27-2014	WARRANT OF COMMITMENT	Warrant Of Commitment	
084	09-23-2014	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal	
085	09-23-2014	ORDER OF INDIGENCY COM0001	Order Of Indigency Commissioner Jacqueline I. Stam	
086	09-24-2014	TRANSMITTAL LETTER - COPY FILED	Trans Ltr/e-file/coa/#084 & 085	
087	09-30-2014	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
088	10-16-2014	COST BILL	C/state Cost Bill For 6/9/14 Hrg Pd Rcpt #8507	
089	10-16-2014	COST BILL	C/ State Cost Bill For 6-30-14 Hrg Pd Rcpt #8507	
090	10-20-2014	PERFECTION NOTICE FROM CT OF APPLS	Perfection Notice From Ct Of Appls Coa# 327795	

091	11-21-2014	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers	
092	11-24-2014	INDEX	Designation Index/#091/1vol Pages 1-117	
	11-24-2014	LETTER	Index Cover Letter	
093	11-24-2014	INVOICE VOUCHER	Invc Vchr/opd/clerk's Papers #091/ Prep 58.50 Bates 29.25	
094	12-08-2014	TRANSMITTAL LETTER - COPY FILED	Trans Ltr/e-file/coa/clerk's Papers #091	
095	12-17-2014	LETTER	Letter From Def To Clerk	
096	12-18-2014	LETTER	Letter To Def From Appeal Clerk	
	01-12-2015	CLERK'S PAPERS - FEE RECEIVED	Fee Received Prep & Bates Rcp#00266	
097	03-16-2015	LETTER	Letter Fr Deft	
098	03-16-2015	NOTICE OF APPEARANCE	Notice Of Appearance-deft	
099	03-16-2015	DECLARATION OF MAILING	Declaration Of Mailing	
100	03-16-2015	LETTER	C/letter Fr Clerk To Deft	
101	03-23-2015	FINDINGS OF FACT&CONCLUSIONS OF LAW	Findings Of Fact&conclusions Of Law 3.5 Hrg	
	03-23-2015	EX-PARTE ACTION WITH ORDER JDG0001	Ex-parte Action With Order Judge Vic L Vanderschoor	
102	03-26-2015	LETTER	Letter Fr Deft Re: Clarifications	
103	03-26-2015	DECLARATION OF MAILING	Declaration Of Mailing	
104	03-31-2015	FINDINGS OF FACT&CONCLUSIONS OF LAW	Findings Of Fact&conclusions Of Law 9a.44 Hrg	
105	03-31-2015	MOTION HEARING JDG0001	Motion Hearing Judge Vanderschoor/pelletie/jga	
106	03-31-2015	NOTICE OF APPEARANCE	Notice Of Appearance-pro Se	
107	03-31-2015	MOTION	Supp Mt Order Of Indigence	
108	03-31-2015	AFFIDAVIT	Affidavit In Supp Supp Order Of Indigence	
109	03-31-2015	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket-deft 2 Cts Rape Child 1	04-17- 2015TR
		ACTION	Deft Mt F/order Of Indigence	
110	03-31-2015	WAIVER	Waiver Of Appearance At Mt Hrg	
111	03-31-2015	DECLARATION OF MAILING	Declaration Of Mailing	
112	04-02-2015	RETURN ON	Returned Document To Defendant	
113	04-06-2015	DESIGNATION	Supp Designation Of Clerk's Papers	
114	04-07-2015	INDEX	Supp Clerk's Papers Index/1vol Pg 118-130	
	04-07-2015	INVOICE VOUCHER	Invoice	

			Voucher/opd/bates/3.25
115	04-15-2015	MEMORANDUM	Memorandum From Def To Clerk
116	04-16-2015	VERBATIM REPORT OF PROCEEDINGS	Verbatim Report Of Proceedings 06-09-2014/06-12-2014/06-23-2014 06-24-2014/06-25-2014/6vol Mclaughlin
117	04-17-2015	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted/coa/#115
118	04-20-2015	WAIVER	Deft Waiver Appearance At Mt Hrg
119	04-20-2015	MOTION	Motion F/ord Authorize Copies Of Mts & Filings F/deft
120	04-20-2015	PROPOSED ORDER/FINDINGS	Proposed Order Authorize Copies Of Deft Motions & Filings
121	04-20-2015	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket-deft 05-01-2 Cts Rape Of Child 1 **viv** 2015TR
		ACTION	Def Mt Authorize Copies Of Docs
122	04-20-2015	AFFIDAVIT OF MAILING	Confirmation Of Mailing
123	04-20-2015	DECLARATION OF MAILING	Declaration Of Mailing
124	04-21-2015	LETTER	Letter From Clerk To Def
125	04-21-2015	TRANSMITTAL LETTER - COPY FILED	Trans Ltr/e-file/coa/clerk's Papers #113
126	04-27-2015	LETTER	Verbatim Cover Ltr/coa/#116
127	04-28-2015	INVOICE VOUCHER	Invc Vchr/opd/postage/#116/21.84
128	04-30-2015	LETTER	Letter From Def To Judge
129	05-05-2015	MOTION	Motion Preserve Tangible Evidence And Rough Notes
130	05-05-2015	WAIVER	Waiver Of Appearance At Hrg
131	05-05-2015	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket-deft 05-22-Deft Mt Preserve 2015TR
		ACTION	Evidendence/notes 2 Cts Rape Of Child 1 *vlv* 9:00
132	05-05-2015	AFFIDAVIT OF MAILING	Affidavit Of Mailing
133	05-05-2015	DECLARATION OF MAILING	Declaration Of Mailing
134	05-05-2015	RETURN ON	Return On Unsigned Order To Deft
135	05-07-2015	NOTICE	Advance Notice Of Intent To Req Subpoena For Production Duces Tecum
136	05-07-2015	DECLARATION OF MAILING	Declaration Of Mailing
137	05-18-2015	DECLARATION OF MAILING	Declaration Of Mailing
138	05-20-2015	LETTER	C/ Letter From Sup Crt To Def
139A	05-29-2015	REOUEST	Request F/public Records

			Disclosure
	06-02-2015	COMMENT ENTRY	Payment Received Rcp# 04094
139	06-02-2015	LETTER	Letter Fr Eo To Def Tre Copy Costs
140	06-02-2015	LETTER	Letter Fr Pa Request Exhibit Copys
141	06-04-2015	DESIGNATION	Designation Of Exhibits
142	06-08-2015	INDEX	Designation Of Exhibits Index
	06-08-2015	LETTER	Index Cover Letter
143	06-08-2015	LETTER	Exhibit Cover Letter/coa/#141
144	06-10-2015	INVOICE VOUCHER	Invc Vchr/postage For Exhibits Opd/#141/ 19.31
145	06-26-2015	COPY	Conformed Copy Of Exhibit Cover Ltr From Coa
	07-10-2015	COMMENT ENTRY	Postage Paid Rcp# 05567

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)
	) No. 32779-5-III
Respondent,	)
	) DECLARATION OF SERVICE BY MAIL
v.	)
	) MOTION FOR DISCRETIONARY REVIEW
SEAN JOSEPH BATES,	)
	)
Petitioner.	)
	)
	)
	)

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I, Sean Joseph Bates, the declarant herein, and the Petitioner in the above entitled-case, declare that, on the 27 day of November, 2016, I deposited the foregoing:

- 1. Declaration of Service by Mail;
- 2. Motion for Discretionary Review.

And a copy thereof, in the internal legal mail system of the Washington Department of Corrections, Coyote Ridge Corrections Center, and made arrangements for first class postage, addressed to:

Original to:

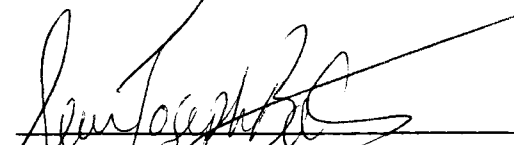
Washington Supreme Court  
 Clerk of Court  
 P.O. Box 40929  
 Olympia, WA. 98504-0929

Copy to:

Court of Appeals Div. III  
 Clerk of Court  
 500 N Cedar ST  
 Spokane, WA 99201-1905

I hereby invoke the "Mail Box Rule" set forth in General Rule 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: this 27 day of November, 2016.

  
 Sean Joseph Bates #375510  
 Declarant  
 Coyote Ridge Corrections Center  
 P.O. Box 769  
 Connell, Washington 99326-